# The Law and Practices of the International Atomic Energy Agency 1970–1980

## Supplement 1 to the 1970 edition of Legal Series No. 7

Reinhard H. Rainer
and
Paul C. Szasz

LEGAL SERIES No. 7-S1

INTERNATIONAL ATOMIC ENERGY AGENCY, VIENNA, 1993

# THE LAW AND PRACTICES OF THE INTERNATIONAL ATOMIC ENERGY AGENCY 1970–1980

Supplement 1 to the
1970 edition of Legal Series No. 7

The following States are Members of the International Atomic Energy Agency:

AFGHANISTAN
ALBANIA
ALGERIA
ARGENTINA
ARMENIA
AUSTRALIA
AUSTRIA
BANGLADESH
BELARUS
BELGIUM
BOLIVIA
BRAZIL
BULGARIA
CAMBODIA
CAMEROON
CANADA
CHILE
CHINA
COLOMBIA
COSTA RICA
COTE D'IVOIRE
CROATIA
CUBA
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TURKEY
UGANDA
UKRAINE
UNITED ARAB EMIRATES
UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND
UNITED REPUBLIC OF TANZANIA
UNITED STATES OF AMERICA
URUGUAY
VENEZUELA
VIET NAM
YUGOSLAVIA
ZAIRE
ZAMBIA
ZIMBABWE

The Agency's Statute was approved on 23 October 1956 by the Conference on the Statute of the IAEA held at United Nations Headquarters, New York; it entered into force on 29 July 1957. The Headquarters of the Agency are situated in Vienna. Its principal objective is "to accelerate and enlarge the contribution of atomic energy to peace, health and prosperity throughout the world".



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# PREFACE

The text of the 1970 edition of Legal Series No. 7 (the basic book) was written after its author, Mr. Paul C. Szasz, who is also the co-author of the present book, left the International Atomic Energy Agency in 1966. Developments in the Agency up to 1970 were included in the basic book. The study proved useful within the Agency community and apparently also among scholars and others concerned with the law of international organizations. Over the subsequent years the Agency's work expanded, emphasis of its programme components shifted and administrative practices changed. Consequently, it became desirable to bring the study up to date to ensure its continued value as a comprehensive reference tool and documentation of the main legal and administrative developments that had taken place in the Agency.

In 1980, Mr. Szasz became available to start work on the present book; with the collaboration of Ms. Katherine Larsen, who was then serving in the Agency's Legal Division, he wrote more than half of the text. However, the project had to be discontinued, and it was only in 1989 that work on it could be resumed, with Dr. Reinhard H. Rainer, who had been serving in the Agency from 1958 to 1986, completing the manuscript and finalizing the book, in consultation with Mr. Szasz.

When work on the present book was started in 1980, considerable thought was given to the method of updating the basic book. There were two possibilities of doing this: either to rewrite the entire text to encompass a longer period or to prepare an additional book that would supplement the earlier one. One argument in favour of the first course was that the original publication was out of print and that some minor errors in the text had been found. The main objection to this approach was that more than one thousand pages would have to be reset. So, it was decided in 1981 to make a reroll of the basic book, including minor corrections but no updating, and to prepare a supplement covering the developments during the decade 1970–1980. This decision necessitated retaining the original structure as far as possible, though obviously not including material under headings where there had been no developments during this period (principally all of Part A, Foundation), and adding new sections for activities begun after 1970 (for example peaceful nuclear explosions; the application of safeguards under the Non-Proliferation Treaty; nuclear safety and the environment).

Upon resumption of the project in 1989, another important decision had to be taken, namely whether to retain the original time frame, i.e. roughly from 1970 to 1980, or to choose another time frame, for example up to 1990. Although the desirability of the latter alternative was obvious, the work involved in treating the longer time span would again have postponed completion of the project and there would have been the risk of another long suspension of the work or even an abandonment of the project. Consequently, the time frame 1970–1980 was largely maintained, which made it possible to use the earlier completed portions of the

manuscript, in the hope that this would permit a reasonably rapid publication of this updated book.

Both the purposes and the methodology of the original study have thus been maintained. In general, it will probably be necessary to consult the basic book and the present one in order to obtain a complete picture of any given subject. In any event, consultation of both books seriatim is facilitated by the retention in the present book of the structure and of most of the relevant section and subsection headings of the basic book. Under practically every heading of the present book one finds a direct continuation of the historical and analytical account given in the basic book, usually with an indication of whether any essential changes have taken place during the period 1970–1980.

Again, and for the reasons explained in the Preface to the basic book, there is no index. It should be possible for the user to find any subject by reference to the list of the systematically structured headings in the Detailed Table of Contents at the end of the book. Once a subject has been located under the most logical heading, numerous cross-references to the same subject or to related subjects can be found in the footnotes to the text, many of which refer to other subsections.

The above account explains why the present book covers approximately the decade 1970–1980. It should be understood that, since the basic book did not have a precise cut-off date, the starting point for any given subject in the present book is always where the treatment of this subject in the basic book ended. This study also has no absolutely firm cut-off, since, from the present perspective, a slightly longer period sometimes gives a more rounded picture.

Finally, it should be noted that the Bibliography covers the period until 1991, since the reasons for not carrying forward the study to the Agency's third decade, i.e. the massive additional work that would have been required and the possible jeopardization of the entire project, do not apply to the assembly of an up-to-date bibliography.

## ACKNOWLEDGEMENTS

Among those who commented on the manuscript we wish to mention especially Mr. D.A.V. Fischer, former Assistant Director General External Relations of the Agency, who read much of the manuscript. We are particularly grateful for his numerous suggestions regarding Chapter 21 on Safeguards — a subject in which he had been intimately involved while at the Agency and after his retirement. Ms. G. Leitner reviewed Chapter 25 (Finance) in detail and provided valuable advice. Mr. M. ElBaradei (Director of the Legal Division from 1987 to 1991, now Assistant Director General External Relations) was instrumental in securing the necessary funds to complete the study, and Mr. W. Sturms, his successor in the Legal Division, raised funds to have the manuscript printed.

Ms. A. McGregor Lanier typed part of the original manuscript. Ms. I. Spencer worked as a secretary for both of us and prepared the complete version of the study. We thank her for her dedication to the work and for her patience.

Vienna/New York,
December 1993

Reinhard H. Rainer and Paul C. Szasz

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* Part A (Foundation) is not included in this book because there were no developments during 1970–1980.

Part F. LEGAL MATTERS



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# Part B
# STRUCTURE

# Chapter 5
# THE STATUTE

## PRINCIPAL INSTRUMENTS

Amendment of Article VI.A–D of the Statute (INFCIRC/159/Rev.3);
General Conference Rules of Procedure (GC(XIX/INF/152) 21, 69(b), 97–100.

## 5.1. FORM AND ENTRY INTO FORCE

### 5.1.5. Reservations, observations and statements

*5.1.5.1. Article III.B.4 (perhaps also Articles III.B.1, XII.C and XVI.B)*

(i) Reservation by Switzerland

In connection with the Safeguards Transfer Agreement of 28 February 1972 between Switzerland, the United States of America (USA) and the Agency[1], the Swiss representative transmitted a letter to the Director General which recalled the Swiss reservation to the Statute and stated that in the view of the Swiss Government the Agreement "and in particular Article 23(b) thereof, falls within the scope of the aforementioned reservation". It is not clear whether that statement simply expressed the opinion that the Agreement was consistent with the reservation or whether the purpose of the statement was to make the Agreement subject to that reservation. The latter interpretation would have required the explicit or at least the tacit consent of the other two Parties to the Agreement.

*5.1.5.4. Article XVIII*

(vi) Statement of interpretation and understanding by the USA

(vii) Note added to the Venezuelan signature

The two amendments to the Statute (of paragraphs A.3 and A–D of Article VI) came into force only after the USA and Venezuela had deposited their instruments of acceptance of these amendments. Thus the occasion did not arise to test the acceptability of the statement and of the note to other Governments in respect of amendments to the Statute.

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[1] INFCIRC/161.

## 5.3. AMENDMENTS

### 5.3.2. Amendments proposed

There were no further developments with regard to the proposals for amending the Statute described in Sections 5.3.2.2 and 5.3.2.3 of the basic book. The review of Statute Article VI, initiated in 1968 and relating to the composition of the Board, resulted in an amendment of Article VI.A–D (see Section 5.3.2.4; for the substantive implications of the amendment adopted, see Section 8.2.1.2.2). In 1977 and 1978, two further efforts to amend Article VI.A.2(a) (which had already been amended in 1963) were undertaken but did not result in an amendment to that Article (see Section 5.3.2.5).

#### *5.3.2.4. Article VI.A–D*

As reported in Section 8.2.1.2.2 of the basic book, the review of Statute Article VI, started in 1968, was stimulated principally by the Conference of non-nuclear-weapon States and by a resolution of the 23rd United Nations General Assembly. To perform that review the Board of Governors appointed in 1969 an Ad Hoc Committee of the Whole, which held eleven meetings during 1969 and 1970 but was unable to achieve a consensus on a text of an amendment. On 24 June 1970 the Director General communicated the certified texts of five separate proposed amendments to the Member States[2] and later also to the General Conference together with the observations of the Board thereon. These observations indicated merely that the Board had been unable to reach a consensus on any of the proposals and was therefore transmitting to the Conference the records of all relevant discussions by it and by its Ad Hoc Committee, and also a separate set of observations by individual Governors[3]. The General Conference, at its 14th regular session in 1970, considered these proposals and ultimately adopted the one that had been submitted by the largest number of sponsors[4], after specifically rejecting several proposed changes thereto[5]. The approved amendment, which thoroughly restructured

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[2] Circular note of 24 June 1970 (L/119-3).

[3] GC(XIV)/437 and Add.1.

[4] GC(XIV)/RES/272.

[5] GC(XIV)/COM.2/54, defeated 10:30:24, GC(XIV)/COM.2/OR.57, para. 60; GC(XIV)/451, defeated 11:41:25, GC(XIV)/OR.142, para. 17. In the intense debate in both organs, and in particular in the Administrative and Legal Committee, several procedural questions were raised: whether a secret ballot can be taken on a question other than an election (e.g. on a proposal to adjourn debate) (see Section 7.3.6); whether the 24-hour rule prevents putting an amendment to a vote on the day submitted (GC/XIV)/COM.2/OR.57, paras 36–48); whether a Main Committee of the Conference is to take certain decisions by a two-thirds majority (see Section 7.3.6); whether a Main Committee can take a decision on an important question before the Credentials Committee report has been acted upon (see footnote 90, Section 7.3.5.4); and whether the Conference can take any action to change the proposed text of a statutory amendment in view of the 90-day rule in Statute Article XVIII.A and in the corresponding Procedural Rules of the General Conference (see Section 5.3.3.2).

paragraph A of Article VI and made consequential amendments to paragraphs B–D (see Section 8.2.1.2.2.1), received the necessary number of acceptances by Member States to enter into force on 1 June 1973[6].

*5.3.2.5. Article VI.A.2(a) (as amended)*

In January 1977 the Board of Governors initiated a discussion on a proposal for increasing the number of its members elected by the General Conference from 22 to 27, specifically from the areas of Africa and of the Middle East and South Asia, as well as for deleting the prohibition of re-election of Board members in amended Article VI.A.2(a)[7]. A formal proposal to this effect submitted by five States[8] was communicated to Member States by the Director General on 28 June 1977[9]. Neither the Board nor the General Conference were able to reach an agreement or a substantive decision on the question, even though each of them discussed the matter during 1977–1980 (see Section 8.2.1.2.2) and the United Nations General Assembly recommended in 1977 that the Agency take steps towards a more equitable geographical composition of its Board[10]. A more modest amendment proposed by Iran, Pakistan and Saudi Arabia in 1978 and communicated to Member States on 19 June of that year[11], which provided that the number of elective seats would merely be increased to 24 (allowing just one additional seat each for the two areas in question) and that the ban against re-elections would be retained, also did not find the necessary support in the General Conference.

### 5.3.3. Practice

Only minor evolutions of the existing practice took place in connection with the adoption in 1970 of the amendment to Article VI.A–D and the consideration, since 1977, of two further amendments to Article VI.A.2(a).

In the course of amending its Rules of Procedure in respect of other matters[12], the General Conference renumbered but did not textually change the relevant former Rules 100–103[13], which became Rules 97–100[14].

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[6] INFCIRC/159/Rev.3.
[7] GOV/1821.
[8] GOV/1848, Annex I and GOV/1848/Add.1.
[9] Circular note (L/119-3).
[10] General Assembly resolution 32/49.
[11] Circular note (L/119-3).
[12] Section 7.3.1.
[13] Formerly GC(VII)/INF/60.
[14] Now GC(XIX)/INF/152.

*5.3.3.1. Initiating the amending procedure*

All the proposals for amending Statute Article VI were introduced by one or more Member States, precisely as foreseen in Article XVIII.A of the Statute and in Procedural Rule 97 of the General Conference.

*5.3.3.2. Communication of proposed amendments*

When the Board was considering, in June 1977, the text of a proposed amendment to Statute Article VI.A.2(a), the following legal question arose: If that text were communicated to Member States pursuant to Statute Article XVIII.A and if later consultations in the Board led to the development of a revised text, could that revised text be considered by the next session of the General Conference in the light of its Procedural Rules 98 and 100 and, if necessary, could these Rules be suspended pursuant to Rule 102? The Legal Adviser advised the Board that, formally, these Rules could be suspended; however, their effect could thereby not be avoided, since they merely reflected the requirement of Statute Article XVIII.A, which was designed to give Governments 90 days' notice of proposed amendments to be considered by the General Conference[15]. In the event, the Board did not develop a revised text and the Conference was only required to consider the proposal originally submitted by the five Members in question.

The certified[16] texts of the amendments proposed in 1970, 1977 and 1978[17] were communicated to Member States according to their expressed preference, in either English, French or Spanish, with a Russian version supplied additionally to some States; no Chinese version was prepared at that stage.

*5.3.3.3. Observations by the Board*

In considering the proposed amendments in 1969–1970 and 1977–1980 the Board was not able to reach a substantive consensus on any of the proposals. Consequently, the Board merely declassified the summary records of its discussions and communicated them to the General Conference[18]. In 1970 the records of the proceedings of the Ad Hoc Committee established by the Board[19], as well as the

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[15] Extract from summary records of the 502nd meeting of the Board (para. 22) and the 503rd meeting (paras 2–5), as reproduced in GC(XXI)/584, Annex IV.

[16] The certification was signed in each case by the Director or the Acting Director of the Legal Division, as specified in AM.V/6, para. 11.

[17] Circular notes of 21 June 1980, 28 June 1977 and 19 June 1978, each numbered L/119-3.

[18] GC(XIV)/437, part B, para. 4; GC(XXI)/584, Annex IV; GC(XXII)/602, Annex I; GC(XXIII)/616 and Add.1; GC(XXIV)/632.

[19] GC(XIV)/437, part B, para. 4.

brief observations that were especially prepared by some Governors in respect of the five proposed amendments were also transmitted to the Conference[20].

*5.3.3.4. Consideration by the General Conference*

In 1970 the proposed amendments were considered first by the Administrative and Legal Committee of the General Conference. In 1977–1980, as a consequence of the reorganization of the Committee structure of the Conference effected in 1973[21], initial consideration of amendments took place in the Committee of the Whole.

When the 1970 proposal to amend Article VI.A–D was being considered, changes were moved to the draft resolution both in the Administrative and Legal Committee and in the Plenary[22]. These changes would have had the effect of substantively altering the proposed amendment (within the meaning of former Procedural Rule 103 — now Rule 100); in the Committee, the Chairman ruled that it was not contrary to that Rule for the Committee to consider such a motion, though final action on it could only take place after a 90 day delay[23]. In the event, the proposed changes were defeated in both the Committee and the Plenary[24].

*5.3.3.5. Communication of approved amendments*

As in 1961, the amendment to Article VI.A–D, approved by the General Conference in 1970, was communicated to Member States by the Director General[25] rather than by the depositary Government; however, in 1970 no communication was sent to the few non-Member States then eligible to ratify or accept the Statute. Again, the communication included a certified[26] version of the amendment in all five languages.

*5.3.3.6. Depositary practice*

The practice of the depositary Government in respect of the 1970 amendment was similar to that in respect of the 1961 amendment[27]. Again, the depositary's communications to States included the texts of objections to the acceptance of the

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[20] GC(XIV)/437, Appendix.

[21] Section 7.3.3.4.

[22] GC(XIV)/COM.2/54 and GC(XIV)/451.

[23] GC(XIV)/COM.2/OR.56, para. 29; GC(XIV)/450, para. 4.

[24] See footnote 5.

[25] Circular note of 19 November 1970 (L/119-3).

[26] See footnote 16.

[27] When Mali erroneously forwarded its instrument of acceptance to the Agency, the latter transmitted it to the Permanent Mission of the USA, with the request that the instrument be conveyed to the Washington Embassy of Mali, which could then properly accomplish the deposit. The USA accepted this procedure.

amendment deposited by certain States (the Republic of China, the Republic of Korea and the Republic of Vietnam)[28], as well as the objection to the declaration by the Federal Republic of Germany on the applicability of the amendment to West Berlin[29].

### *5.3.3.7. Entry into force*

In calculating the number of acceptances by Member States required in order to bring the 1970 amendment into force, the depositary Government applied the rule it used in respect of the 1961 amendment. Accordingly, the calculation was based on the number of States that were Members at the time the calculation was made and not on the number of States that were Members on the date the amendment was approved[30].

### *5.3.3.8. Effective date of amendments*

As in respect of the 1961 amendment, the 1970 amendment to Article VI.A–D, which entered into force on 1 June 1973[31], was not implemented immediately on that date. Rather, the designations made by the Board later that month and the elections by the General Conference in September 1973 were for the first time based on the amended version of Article VI[32]. The constitution of the enlarged Board therefore only took place at the end of the 1973 regular session of the General Conference. As in 1963, no objection was raised to this unavoidable delay, which was not specifically provided for under the terms of the amendment.

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[28] US Department of State circular note verbale of May 10, 1972.

[29] US Department of State circular note verbale of September 20, 1971; subsequently, objections were circulated (e.g. by the German Democratic Republic, US circular note verbale of March 6, 1974), as well as responses to those objections (e.g. by the United Kingdom, US circular note verbale of April 2, 1974).

[30] The actual calculation as of 1 June 1973 was not specified in the depositary Government's circular note verbale of June 8, 1973, which, therefore, conceals a certain theoretical ambiguity: on that date, the Agency would have had 103 Members if China had been counted as a Member and 102 Members if China had not been counted as a Member (INFCIRC/2/Rev.27); prior to 1 June 1973, 68 ratifications had been received, including one from the Republic of China on 12 October 1971 (two weeks before the United Nations General Assembly adopted its resolution excluding that Government from the United Nations and two months before the Agency's Board took similar action (INFCIRC/42/Rev.8, part III) (see Section 6.2.1). Thus, prior to 1 June 1973, the number of acceptances was one short, irrespective of whether China was counted as a Member or not and whether its acceptance was counted or disregarded.

[31] GC(XVII)/502.

[32] GC(XVII)/DEC/10. With respect to the special problems caused by the failure of the amendment to balance out the number of electoral posts to be filled in successive years, see Section 8.2.2.4.2.

Certain difficulties might have arisen had the amendment entered into force less than 60 days before the 1973 session of the General Conference. In that case the Board of Governors could not have complied with the requirement of the Statute that designations of new Board members be made not less than 60 days before the annual regular session of the General Conference, because there is no procedure for postponing a regular session of the General Conference from the date set by the Conference itself at its previous session.

*5.3.3.9. Form*

All proposed statutory amendments were again formulated as changes to the existing text of the Statute.

## ADDITIONS TO NOTES IN THE BASIC BOOK

4 Add the following to the final sentence: however, after over a decade of UNIDO operating as an organ of the General Assembly, the latter convened a plenipotentiary conference at which, on 8 April 1979, a treaty entitled Constitution of the United Nations Industrial Development Organization was adopted, which, upon entering into force, will reconstitute UNIDO as a specialized agency.

5 Add the following: 471 U.N.T.S. 334.

32 Add the following: See also US Senate Report on ratification of the IAEA Statute.

84 For a procedure to avoid the contretemps referred to in this note, see note 27. INFCIRC/42/Rev.5, referred to in notes 6, 10, 13, 15, 17, 18, 21, 23, 24, 29, 31, 32, 51, 83, 86 and 90, has been superseded by INFCIRC/42/Rev.8, setting out information up to 30 November 1972.

# Chapter 6

# MEMBERSHIP

PRINCIPAL INSTRUMENTS

IAEA Statute, Articles IV; V.E.2,3; XVIII.D.E; XXI.A-F;
General Conference Rules of Procedure (GC(XIX)/INF/152) 92-96.

## 6.1. ACQUISITION

### 6.1.1. Principle of universality

Though the membership of the Agency did not increase markedly from the end of 1968 (99) to the end of 1980 (110)[1], the 'principle of universality' had come closer to being observed. During that period several States (in particular the German Democratic Republic, the Democratic People's Republic of Korea and the Socialist Republic of Vietnam) became Members; these States had previously been excluded by the tacit understanding that States not yet admitted to the United Nations would not be admitted to the Agency either. In the light of these developments, almost any State had become eligible to attain membership.

The People's Republic of China did not show interest in becoming a Member of the Agency and South Africa's participation in the Agency's activities was more and more restricted[2]. There was still a large number of States that were not Members of the Agency but that were Members of the United Nations and some of the specialized agencies; however, these were mostly countries with no interest in nuclear energy.

### 6.1.2. Initial members

The situation in respect of 'initial members' did not change. However, as reported in Section 6.1.5, one further initial member withdrew but later rejoined the Agency as an 'other member'.

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[1] By 31 December 1980 the membership did not change from that recorded in the list of 1 October 1977 (INFCIRC/2/Rev.32).

[2] See Sections 6.2.1 and 6.3.3, respectively.

### 6.1.3. Other members

The applications for membership submitted by States not signatories of the Statute continued to consist of written or cabled communications to the Director General, giving the assurance of the ability and the undertaking to carry out the obligations of Agency membership and to act in accordance with the purposes and principles of the United Nations Charter. When Mauritius submitted an application from which such assurance and undertaking were lacking[3], the Secretariat — though conscious (as shown by an internal memorandum[4] and a legal opinion[5]) that such a statement was not legally required because it was for the Board of Governors and the General Conference to make the required determination — did suggest to the Government to make such a statement on the ground that it was customary to do so[6]; the Government then communicated an application in the form suggested[7], whereupon both the original application and the expanded application were transmitted to the Board of Governors[8] and to the General Conference[9].

The determination of whether an applicant State is able and willing to carry out its IAEA and United Nations obligations is basically a political one. However, in one set of circumstances consideration was given, at least within the Secretariat, to the relevance of payment of outstanding financial obligations. The question was raised whether the arrears of assessed contributions that had not been paid when Honduras and Nicaragua withdrew from the Agency should be cancelled so as to facilitate the rejoining of these States. The Legal Advisor pointed out that if either of these States should apply for membership without having paid the assessed contributions outstanding at the time of its withdrawal, the Board of Governors and the General Conference might find it difficult to certify the ability and willingness of that State to carry out its financial obligations under the Statute[10]. In the event, no proposal for the cancellation of the outstanding contributions was ever submitted to the General Conference; Honduras did not apply for readmission, and before Nicaragua applied it paid the entire outstanding contributions before the Board considered the application[11].

In the period under review, all applications for membership were disposed of positively and without any negative vote in either the Board or the General

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[3] Note verbale of 18 September 1973.
[4] From the Director, External Relations, of 27 September 1973.
[5] Recorded in a file note of 15 November 1973.
[6] Note verbale of 28 September 1973.
[7] Note verbale of 26 October 1973.
[8] GOV/1641, para. 1.
[9] GC(XVIII)/521, para. 1.
[10] Memorandum from the Director, Legal Division, of 27 May 1975.
[11] Section 6.1.5.

Conference. In the case of Bangladesh, which applied for Agency membership at a time when its application to the United Nations was still blocked by a Chinese veto, three States stated at the General Conference (which took its decision without a vote) that they would abstain if a vote were to be taken[12].

### 6.1.4. Formalities

Previous practice required that instruments of acceptance of the Statute by new Members be deposited directly with the depositary Government. In the period under review the depositary Government agreed in at least one instance to accept an instrument that was transmitted by the applicant Government to the local UNDP Resident Representative, who then forwarded it to the local Embassy of the USA with the request that it be forwarded by the latter's diplomatic pouch to Washington[13].

When an instrument of acceptance had to be deposited by a Government that had no diplomatic relations with the depositary Government, arrangements were made, as suggested by the latter, for the instrument to be deposited in Washington by a diplomatic representative of a third country[14].

### 6.1.5. Rejoining the Agency

One initial member, Nicaragua, which withdrew from membership in 1970, rejoined the Agency in 1976. Except for informing the Board of Governors of the arrangements made to pay the arrears of assessed contributions outstanding at the time that State had left the Agency[15], neither the application, nor its consideration by the Board or the General Conference, nor the recommendation adopted by the former[16] or the resolution by the latter[17] differed in any way from that for the admission of a non-signatory State. Nicaragua was also required to deposit an instrument of acceptance of the Statute before its new membership became effective — i.e. no residual effect was attributed to its previous instrument of ratification by means of which it had once become an initial member.

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[12] GC(XVI)/OR.151, paras 45, 46, 49, 50.

[13] Letter, G.A. Faruqi, UNDP Resident Representative in Sierra Leone, to W. Bradford, Chargé d'Affaires a.i. of the US Embassy, 30 May 1967.

[14] Letter by S.N. Hinson, Adviser, US Mission to the Agency, to the Director, External Relations, of 5 September 1974, and Aide-Memoire of 6 September 1974, transmitted by the Agency to the Ambassador of the Democratic People's Republic of Korea.

[15] GOV/1796, para. 2, and GOV/OR/489, para. 77.

[16] GC(XX)/563.

[17] GC(XX)/RES/333.

## 6.2. SPECIAL MEMBERSHIP QUESTIONS

### 6.2.1. China

The basic book reported the general features of the annual consideration of the issue of the representation of China at the General Conference, as well as the numerous episodic challenges concerning various actions taken by the "Government of the Republic of China" in respect of the Statute or other legal instruments relating to the Agency. This pattern continued unchanged until just after the 15th regular session of the General Conference in 1971 (at which the Republic of China was for the second time elected for a two-year term on the Board of Governors under Statute Article VI.A.3)[18].

On 25 October 1971 the United Nations General Assembly adopted resolution 2758(XXVI) on the "Restoration of the Lawful Rights of the People's Republic of China in the United Nations", by which it recognized the representative of that Government as "the only lawful representative of China in the United Nations" and decided "to restore all its rights to the People's Republic of China and to recognize the respresentatives of its Governments as the only legal representatives of China to the United Nations, and to expel forthwith the representatives of Chiang Kai-shek from the place which they unlawfully occupy in the United Nations, *and in all the organizations related to it*" (emphasis added). While on its face this resolution purported to expel the "Government of the Republic of China" also from independent organizations, such as the specialized agencies and the IAEA, in fact this part of the resolution was considered as a recommendation addressed to these organizations rather than an automatically applicable or even a mandatory decision. It was in that sense that the Secretary-General of the United Nations transmitted the resolution to the Agency, calling attention to an earlier General Assembly resolution by which it had recommended that "the attitude adopted by the General Assembly ... concerning [any question of which one of several authorities should represent a Member State in the United Nations] should be taken into account in other organs of the United Nations and in the specialized agencies"[19]. The Director General conveyed the texts of these two resolutions to the Board of Governors in a document informing it of "matters of interest to the Agency discussed by the General Assembly of the United Nations"[20].

The General Assembly's resolution was considered by the Board at a meeting on 9 December 1971, under an agenda item entitled "Representation of China in the

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[18] GC(XV)/DEC/9, 27 September 1971.

[19] General Assembly resolution 396(V) (1950). It is this resolution which for years had been used to turn aside proposals that the People's Republic represent China in the Agency before this change occurred in the United Nations (see basic book, Section 6.2.1, note 27).

[20] GOV/INF/247, para. 5, and Annexes B and C.

Agency''. Romania proposed a draft resolution that referred to General Assembly resolution 2758, to Statute Articles III.B.1 and XVI.B.2, and to Article V of the Relationship Agreement, by which the Board would recognize ''that the Government of the People's Republic of China is the only Government which has the right to represent China in the International Atomic Energy Agency'' and ''that Chiang Kai-shek's representatives be expelled immediately from the place they unlawfully occupy in the [Agency]''[21]. Although the representatives of ''the Republic of China'', South Africa and Colombia argued that the proposed resolution affected membership and therefore exceeded the competence of the Board and should be referred to the General Conference (which had just elected ''the Republic of China'' to the Board), and Colombia even suggested that a two-China solution be explored, the Board at the same meeting adopted the proposed resolution (by a vote of 16 for, 6 against and 5 abstentions), with ''the Republic of China'' not participating in the vote[22]. The General Conference was not consulted or otherwise involved in the decision but was merely informed of the decision in the Board's next Annual Report[23].

The repercussions of this resolution, which by its terms asked the Board Chairman and the Director General to see to its implementation, were twofold: a generally abrupt, but not entirely complete, disengagement of the Agency from the authorities in Taiwan; and attempts to establish relations with, and particularly to advance the membership of, the People's Republic of China. These two efforts, as well as their consequences regarding China's membership in the Agency, are described below:

*(a) Disengagement from the Republic of China (Taiwan)*

(i) Immediately on the adoption of the Board's resolution the Taiwanese representative left the Board. From then on, no representative of Taiwan was invited to participate or participated in any representative organ of the Agency. However, as in the United Nations, no steps were taken to dismiss any Taiwanese members of the Secretariat[24].

(ii) On 31 December 1971 the Agency formally notified the Government of Austria, in its capacity as host Government, of the Board's resolution; some months later another notification was sent that, as of 1 April 1972, the Permanent Mission of the ''Republic of China'' had wound up its affairs; this terminated the privileges and immunities that this Mission had enjoyed under

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[21] GOV/1499 and Rev. 1.

[22] GOV/OR.444, paras 1-45; GOV/DEC/70(XV), No.(14).

[23] GC(XVI)/480, para. 139.

[24] Compare the staff of the Agency as of 30 June 1971 and 30 June 1972, as listed in INFCIRC/22/Rev.11 and 12. Incidentally, both before and after the Board's 1971 resolution, the country of nationality of the staff members concerned was listed as ''China''.

the Headquarters Agreement. Further contact with the Taiwanese authorities in respect of the matters referred to below (especially safeguards) were thereupon maintained through the quasi-official "Institute for Chinese Culture" in Vienna (which evidently reported to the Taiwanese Ministry of Foreign Affairs) and through the Institute for Nuclear Energy Research in Taiwan.

(iii) At the time of the Board's decision, the Government of the "Republic of China" had not paid its assessed contributions for 1970 (US $414 872) and for 1971 (US $472 482); for 1972 an amount of US $539 580 had been assessed[25]. The 1972 accounts show these amounts as obligations. In 1973 these amounts were, following the example of other international organizations, on the advice of ACABQ and with the consent of the Board of Governors[26], transferred to a special account that was immediately closed by corresponding transfers from the credit of the "Republic of China" in the Working Capital Fund (US $61 540) and from Undistributed Budgetary Surplus (US $1 365 394)[27]. An unpaid pledge of US $10 000 to voluntary contributions in 1972 was simply written off[28].

(iv) Regarding various contractual and other arrangements, the Agency's conduct was based on the principle that already approved and recommended projects relating to Taiwan should be completed and existing contractual obligations discharged, but that no new projects were to be initiated. All negotiations that were under way were broken off. In particular, three technical assistance projects, 12 fellowships and 13 research contracts that were in the course of execution at the time of the Board's decision were completed within their original terms (mostly within a year), but were not extended.

(v) All routine distribution of documents and publications to Taiwan was immediately discontinued. However, requests for individual publications continued to be complied with, against reimbursement, and public information material was supplied. Taiwanese scientists were not invited to meetings restricted to nominees of Member States, though they were permitted to attend those meetings that were open to the general public. Members of the Agency's staff did not officially attend meetings in Taiwan, though they did sometimes do so in a personal capacity.

(vi) The most difficult questions related to the continuation of safeguards, which, unlike technical assistance granted from the Agency's own resources, are not restricted to Member States[29]. Under the then already generally accepted one-China approach, Taiwan was considered as constituting part of China, and

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[25] GC(XVII)/504, Part III, paras 9 and 10, and Schedules B.1 and C; see also the Annual Report for 1971–1972, GC(XVI)/480, Annex E, Tables I and 2.

[26] GOV/COM.9/OR.112, paras 4–7; GOV/OR.455, paras 15–18; GOV/DEC/76(XVI), No.(24).

[27] GC(XVIII)/527, Part III, paras 12 and 13, and Schedules F.2 and 3.

[28] Compare GC(XVI)/480, Annex E, Table 3, with GC(XVIII)/500, Annex D, Table 4.

[29] See the basic book, Sections 13.3.1 and 13.3.2.

safeguards could therefore not be carried out there against the opposition of the Government of China recognized by the Agency — i.e. as of 9 December 1971 the Government of the People's Republic of China. On the other hand, the carrying out of safeguards in practice also required the consent and co-operation of the Taiwanese authorities. In the event, it proved advantageous to all concerned to accept, on a de facto basis, the continuation of the status quo. Thus the People's Republic of China and Supplier States were assured through Agency verification that nuclear energy was used only for peaceful purposes in Taiwan, and Taiwan could continue its international co-operation in the nuclear energy field, which required the application of Agency safeguards. At the time of the Board's resolution, two Safeguards Agreements were in force: a Safeguards Transfer Agreement relating to a US bilateral agreement[30] and a Unilateral Submission Agreement relating to the Taiwan Research Reactor Facility[31]; also, an NPT Safeguards Agreement was then in the course of negotiation. Negotiation of the NPT Agreement was discontinued[32], but the existing two Safeguards Agreements continued to be implemented, including implementation through inspections. New nuclear facilities were brought under these Agreements, as appropriate, and new Subsidiary Arrangements were negotiated, as necessary[33]. The costs of these safeguards were reimbursed to the Agency by Taiwan, by analogy with and using the same formula as was applied in charging non-Member States for the carrying out of safeguards[34].

(vii) The information on the above arrangements, which appeared in the Agency's Annual Report for 1971–1972[35], elicited protests in the General Assembly when it was presented to the United Nations[36]. Subsequent Annual Reports, which changed the nomenclature to listing facilities under safeguards in "China" on the basis of two specified agreements with the "Republic of China"[37], have not resulted in any objections. In general, references to China were reduced to a minimum in Agency publications, which made it clear that

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[30] INFCIRC/158.

[31] INFCIRC/133.

[32] The Agency kept listing the "Republic of China" as a Party to the NPT (e.g. GC(XXIV)/627, Table 10), indicating that all such information was reproduced as provided by the depositary Governments of the NPT (UK, USA, USSR).

[33] Compare the Annual Report for 1979, GC(XXIV)/627, Table 12, parts A, B and C, with the corresponding Table in earlier Annual Reports.

[34] The amount was shown, without any specific identification of Taiwan or any other non-Member State, in the Annual Reports, for example those for 1979 (GC(XXIV)/629, Part V, Schedule F, "Amounts Recoverable under Safeguards Agreements from non-Member States", US $82 557).

[35] GC(XVI)/480, Tables 20–22, Annexes A, B, C.I, E.1–3.

[36] In spite of an attempt by the Director General to explain the nature of the entries (G.A.O.R. 27th session, A/PV.2076, para. 32), strong objections were voiced by China (A/PV.2077, paras 99–100).

[37] For example for 1979, GC(XXIV)/627, Tables 11 and 12.A–C.

pre-1972 references related to actions by the Chinese authorities that were recognized before the Board's 1971 resolution[38].

*(b) Establishment of relations with the People's Republic of China*

(i) On the day after the Board's 1971 decision, the text of the resolution was cabled to the Foreign Minister of the People's Republic of China and was also transmitted to that Government's Embassy in Vienna. Within the next few months there were several contacts with the Embassy to convey information and to attempt to elicit some information about the Government's attitude towards the Agency.

(ii) The Director General, in a personal letter to the Foreign Minister, invited the People's Republic of China to be represented at the 16th regular session of the General Conference; however, the Chinese reply indicated that no delegation would be sent to that session and requested the Agency to take categorical measures to sever all relations with Taiwan. Until 1977 the Director General continued to send annual personal invitations to the People's Republic of China to be represented at the General Conference, without indicating whether the representation was to be as a Member or as a non-Member, but no replies were received. As of 1978, only the standard circular letters that were addressed to all non-Member States that were members of the United Nations were transmitted to the People's Republic of China.

(iii) In response to a request by the Chinese Government, that Government was informed in 1979 that it could not nominate an expert for a technical committee meeting, since that meeting was only open to designees of Member States[39].

The Chinese Government thus did not react to these multiple overtures by the Agency. This position was consistent with the Government's reservation of its right to decide what account, if any, it would take of certain legal transactions by the "Republic of China", such as the signature and ratification of the Agency's Statute, at the time when that Government still enjoyed international recognition[40]. In

[38] In addition, in connection with the preparation of the respective Annexes referring to the IAEA in the 1971 and 1972 United Nations Yearbooks, extensive correspondence took place between the Legal Counsel of the United Nations and various officials of the Agency to arrive at formulations satisfactory to the two Secretariats as well as the People's Republic of China.

[39] Letter of 15 August 1979.

[40] See the text of the communication addressed by the Foreign Minister of the People's Republic of China to the United Nations Secretary-General in 1972 (reproduced annually in the Introduction to Multilateral Treaties in respect of which the Secretary-General Performs Depositary Functions (e.g. ST/LEG/SER.D/13)). It is interesting to note that in early 1980 the People's Republic of China assumed China's membership in the three organizations of the World Bank Group, including IFC and IDA, which were both established after 1949 and in which the legal steps for membership had been taken by the Republic of China (i.e. a situation analogous to that in the IAEA, except for the close association and the subsidiary nature of IFC and IDA with the IBRD, which was established before establishment of the People's Republic of China in 1949).

respect of the Agency several special questions may also have been relevant: the uncertain state of China's peaceful nuclear energy programme; the consequent question as to China's proper place on the Board (for example, would it qualify as a globally or regionally most advanced Member in the nuclear field)[41]; its then negative attitude towards the NPT, the implementation of which had become a principal Agency activity; and its ambiguous attitude towards the continuation of Agency safeguards in Taiwan.

*(c) Status of China in the Agency*

(i) No action was taken by the 1972 General Conference to replace the "Republic of China" as a member of the Board of Governors by another State, even though the People's Republic of China never sent a representative; consequently, the term "Republic of China" on the Board was permitted to expire naturally at the adjournment of the General Conference in 1973.

(ii) On 25 February 1972, Romania objected to the notification by the depositary Government circulated on 8 November 1971 (i.e. after the General Assembly's decision, but before the Board's decision on the representation of China) that the "Republic of China" had accepted the amendment to Article VI.A–D of the Statute. The depositary Government never responded to this objection; in the event, it became unnecessary to determine whether or not the Chinese acceptance was to be counted towards the entry into force of the amendment[42].

(iii) In 1972 the General Conference, on the recommendation of the Director General[43], did not assess any contribution for China, though China continued to be listed on the scale of assessments[44]. In subsequent years, that listing itself was omitted[45].

(iv) China's name was dropped from the list of Agency Members of 27 November 1973[46] and was also omitted from subsequent lists.

### 6.2.2. West Berlin

As was done in connection with the 1961 amendment to Statute Article VI.A.3, the acceptance of the 1970 amendment to Article VI.A–D by the Federal Republic of Germany was followed by a declaration regarding the applicability of the

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[41] Under the then current version of Statute Article VI.A.1.

[42] See Section 5.3.3.7, note 30.

[43] GC(XVI)/486, Appendix, Table 1, note c/.

[44] GC(XVI)/RES/295, Annex. For the brief debate on the subject, see GC(XVI)/COM.1/OR.98, paras 76–83; GC(XVI)/OR.158, paras 45–46.

[45] For example GC(XVII)/RES/308, Annex.

[46] INFCIRC/2/Rev.28; the last previous list had been published on 19 December 1972 and still listed "China".

amendment to West Berlin[47]. This declaration in turn was followed by the same type of objections as made in 1961, and in turn by justifications and further objections. This time, the initial objection was filed by the German Democratic Republic soon after it became a Member of the Agency; its objection related not only to the last amendment but also to the extension of the Statute itself to West Berlin, allegedly in violation of provisions of the Quadripartite Agreement of 3 September 1971[48] according to which treaties affecting matters concerning the security and status of West Berlin were not to be extended to the latter by the Federal Republic of Germany on its own authority[49]. All three Western Parties to the Quadripartite Agreement responded by identical notes confirming that they had given their authorization, under established procedures designed to ensure the security and status of West Berlin, to the extension of the IAEA Statute to West Berlin[50]. In addition to the novel element of the invocation of the Quadripartite Agreement, the considerations listed in this section of the basic book apply also to the 1970 amendment.

Soon after becoming the second State Party to the Agreement on the Privileges and Immunities of the Agency, the Federal Republic of Germany notified the Director General that that Agreement also extended to West Berlin[51]; unlike the later, pro forma extension to West Berlin of the two amendments to the Statute, the extension of the Privileges and Immunities Agreement could have had important practical consequences for any activity (e.g. meetings) of the Agency in West Berlin. Well over a decade later, on depositing with the Director General its instrument of acceptance of that Agreement, the German Democratic Republic used the occasion to object to the earlier notification of the Federal Republic of Germany in respect of West Berlin, by referring to the security clause of the Quadripartite Agreement[52]. This objection elicited a response from the United Kingdom, acting also on behalf of France and the USA, that the three Western Powers had through standard procedures authorized the extension of the Privileges and Immunities Agreement to West Berlin; moreover, since the German Democratic Republic was not a Party to the Quadripartite Agreement it was not in a position to base objections on, or to give any authoritative interpretation of, that instrument[53].

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[47] INFCIRC/42/Rev.8, Part III, para. 2.

[48] France, the UK, the USA and the USSR are the Parties to that Agreement.

[49] Note verbale of 17 December 1973, circulated under cover of the US Department of State circular note verbale of March 6, 1974.

[50] British and French notes verbales of 28 March 1974, US Department of State circular note verbale of 2 April 1974; US circular note verbale of April 3, 1974.

[51] For some reason, this notification was not reflected either in the Information Circular summarizing the acceptances by Member States of the Privileges and Immunities Agreement (INFCIRC/9/Rev.2/Add.2) or in Agreements Registered with the International Atomic Energy Agency (IAEA Legal Series No. 3, various editions), Agency registration No. 44 (see, however, UNTS, Vol. 374, No. 5334).

[52] Note verbale of 10 October 1974, circulated by the Agency under cover of its circular note verbale of 3 December 1974 (L/230-A).

[53] Note verbale of 5 August 1975.

In respect of meetings scheduled by the Agency in West Berlin the following points should be noted:

(a) In 1974 (on the occasion of the first such meeting)[54] it was agreed that invitations for such meetings must originate either with the Senate of West Berlin or jointly with the Senate and the Government of the Federal Republic of Germany; in practice, the latter approach was used.

(b) In connection with a 1977 meeting in West Berlin, the USSR and the German Democratic Republic stated that the Federal Republic of Germany was not competent to take decisions concerning the entry of foreign nationals into West Berlin[55]. The three Western Powers replied in a joint note that they had delegated to the Federal Republic of Germany authority to represent West Berlin abroad, inter alia for the purpose of issuing visas[56]; later the USSR responded to this joint note[57].

In 1976 the Federal Republic of Germany requested that, henceforth, all host country agreements for conferences in its territory but outside West Berlin should contain a clause to the effect that the agreement would also extend to West Berlin unless the Government informed the Agency within 90 days that no such extension was to take place. The Agency's agreement (in principle) to that request was objected to by the USSR and Bulgaria, followed by defences of the proposed procedure by the three Western Powers and by the Federal Republic of Germany. This arrangement was subsequently modified and the Federal Republic of Germany included its "Berlin clause" in the formal letter offering to host a particular conference. The Agency would accept this offer in general terms, i.e. without specific reference to or repetition of the clause[58]. This practice was similar to that followed by the Federal Republic of Germany in the United Nations. It served obviously more general political purposes, since there were hardly any legal or practical implications in the extension of a conference agreement to a territory well outside the conference venue.

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[54] International Training Course on Activation Analysis in Industry and Research, Berlin, 25 November to 6 December 1974.

[55] Respectively, note verbale of 8 July 1977, Agency circular note verbale (F/610-211) of 28 July 1977, and note verbale of 20 July 1977, Agency circular note verbale of 23 August 1977.

[56] Note verbale of 27 January 1978, Agency circular note verbale of 9 February 1978.

[57] Note verbale of 29 June 1978, Agency circular note verbale of 25 July 1978.

[58] See Host Agreement for the Specialists Meeting on Thermo-hydraulic Consequences of Loss-of-coolant Accidents Inside and Outside the Containment, Cologne, Summer 1976, Agency registration No. 1200.

### 6.2.3. State succession

#### *6.2.3.4. Republic of Viet Nam (Viet-Nam); Republic of South Viet-Nam; Socialist Republic of Viet Nam (Viet Nam)*

The Republic of Viet Nam, officially referred to and listed as Viet-Nam[59] and generally known as South Viet-Nam, became an initial Member of the Agency on 24 September 1957, having been invited to the Conference on the Statute and then to sign the Statute as a member of several specialized agencies. Starting at the 13th session of the General Conference in 1969, objections were raised to the credentials of the Vietnamese delegation, sometimes coupled with suggestions that this Government should be represented by the Provisional Revolutionary Government of South Viet Nam[60]. In particular, after the conclusion of the 1973 Paris Agreement the USSR[61] contended that there existed in Viet Nam two zones and two administrations and that therefore the "Saigon" administration could not by itself act for Viet Nam[62]. After the fall of the Republic of Viet-Nam, the Republic of South Viet-Nam was established on the same territory. After a brief period of administrative uncertainty, that Government took the place of the former Vietnamese Government in the Agency in the spring of 1975[63]. In particular, it was represented without objection at the 19th session of the General Conference in 1975[64].

On 20 July 1976 the Foreign Minister of the Socialist Republic of Viet Nam informed the Director General that the Democratic Republic of Vietnam (formerly North Viet Nam) and the Republic of South Viet-Nam had merged as the Socialist Republic of Viet Nam, which "had succeeded the Republic of South Viet Nam as a Member of the Agency". The Director General responded by a letter of 17 November 1976, pointing out that the succession was a question for the Member States of the Agency and requesting information as to whether the new State considered itself a Party to the NPT, to the NPT Safeguards Agreement with the Agency of 9 June 1974[65] and to the Project Agreement of 16 October 1967 covering the

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[59] For example INFCIRC/2/Rev.29; INFCIRC/42/Rev.8, Table 1.

[60] For example GC(XIII)/426, paras 2–3, 7; GC(XIII)/OR.133, paras 46, 56–57; GC(XIV)/449 and /Corr.1, paras 2–4, GC(XIV)/OR/141, paras 26, 37.

[61] GC(XVIII)/538, para. 3; the matter was debated by the General Conference in considering the report on credentials (GC(XVIII)/OR.174, paras 62–75).

[62] The USSR made the same point in a letter of 11 March 1974 in connection with the entry into force of the Vietnamese NPT Safeguards Agreement (INFCIRC/219) on 9 January 1974.

[63] INFCIRC/2/Rev.30.

[64] GC(XIX)/561, para. 3; GC(XIX)/INF/157/Rev.2.

[65] INFCIRC/219.

Viet Nam R-1 reactor[66]. On 27 May 1977 the Government stated that it was re-examining the Agreements concluded by the previous administration. The Annual Report for 1975 listed the Republic of South Viet-Nam as a Party to these Agreements[67].

In view of the uncertainty of the status of these Agreements, all references to them were omitted from the 1976 and 1977 Annual Reports[68]; as of 1978, the entries were restored, but with a footnote concerning the NPT Safeguards Agreement to the effect that Viet Nam was reconsidering adherence to the commitments of the former Administration under international agreements[69].

The Socialist Republic of Viet Nam was not represented at the 1976 and 1977 General Conferences, and initially made no payments towards the contributions that continued to be assessed for 1975, 1976 and 1977. On 15 June 1977 the Vice Minister of Foreign Affairs of the Socialist Republic of Viet Nam wrote to the Director General, indicating that even though his Government regarded the Agency with great interest, 30 years of war and the needs of reconstruction had left his country temporarily unable to fulfil its obligations towards the Agency, though he hoped that in the not too distant future the Government would again be able to do so. On 10 June 1978 the Vice Minister wrote again to notify the Director General that his Government was ready to resume its activities in the Agency and to fulfil its obligations as a Member. The Director General informed the depositary Government of this communication on 6 December 1978, but did not otherwise communicate it to Member States. Meanwhile, Viet Nam paid its 1975 contribution just before the opening of the 22nd General Conference in 1978, at which it was again represented (under the name Viet Nam)[70]; during 1979 it paid the contributions outstanding for 1976–1978.

Thus the succession of the Socialist Republic of Viet Nam (which encompasses the entire territory of Viet Nam) to the former membership of the Republic of Viet-Nam (which only controlled the southern part of that country) was accomplished without any explicit consideration of the question by either the General Conference or the Board of Governors. The end result, however, corresponded to that reached in different ways in other organizations of the United Nations system in which solely the Republic of Viet-Nam had been a member.

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[66] INFCIRC/106.

[67] GC(XX)/565, Tables 8 and 9. However, in Table 10A, the VNR-1 reactor is no longer listed as being under safeguards.

[68] GC(XXI)/580, Tables 11 and 13; GC(XXII)/597, Tables 8 and 9.

[69] GC(XXIII)/610, Table 11 and note e/; see also Table 12.

[70] GC(XXII)/INF/179/Rev.2, Part I. The name "Socialist Republic of Viet Nam" is used in INFCIRC/2/Rev.31 of 31 March 1977, and the name "Viet Nam" is used in INFCIRC/2/Rev.32 of 1 October 1977.

### 6.2.4. Other changes in name or identity

Again, there were several instances in which the name of a Member State was changed. These did not, however, affect the international personality of the State concerned and had simply to be noted by the Agency. The Democratic Republic of the Congo (formerly Congo (Léopoldville)) became the Republic of Zaire in November 1971[71]. Cambodia became the Khmer Republic in October 1970[72], but reverted to its earlier name in January 1976. Libya became the Libyan Arab Republic in September 1969[73] and then, in April 1977, the Socialist People's Libyan Arab Jamahiriya (of which, by request of the Government, only the last three words were normally used)[74]. In January 1974, Burma became the Socialist Republic of the Union of Burma, but requested that it remain listed under its former name[75].

As recorded in the basic book, the shift from the designation Vatican City to Holy See in June 1960 was treated as a mere change in name carried out at the request of the Government. However, the Preamble to the NPT Safeguards Agreement that the Holy See concluded with the Agency on 1 August 1972[76] records the distinction between the two entities as follows: "the Holy See enjoys exclusive sovereignty and jurisdiction over the Vatican City State, of which the Roman Pontiff is the sovereign"; consequently, the Agreement was concluded by the Holy See "acting in the name and on behalf of the Vatican City State".

### 6.2.5. Special entities

#### *6.2.5.1. Palestine Liberation Organization*

On 1 April 1976 a representative of the Palestine Liberation Organization (PLO) requested information about membership in the Agency, to which the Director General responded on 23 April, indicating that only States could become Members. On 10 May 1976 the same PLO representative addressed another letter to the Director General which referred to Statute Article IV.B and contained the standard assurance that the PLO was able and willing to carry out the obligations of membership in the Agency and the United Nations. This letter was not treated as a membership application and was therefore not submitted to the Board of Governors.

Instead, as described in Section 7.3.9.5, the General Conference later that year granted the PLO observer status to all sessions of the Conference[77].

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[71] INFCIRC/42/Rev.8, Part 1, para. 1(n) (iii).
[72] Ibid., para. 1(g).
[73] Ibid., para. 1(h).
[74] Note verbale of the Libyan Permanent Mission, 3 May 1977.
[75] Communication of the Burmese Permanent Mission, 5 February 1974.
[76] INFCIRC/187.
[77] GC(XX)/RES/334.

## 6.3. LOSS OR SUSPENSION

### 6.3.2. Practice as to loss

On 23 December 1970 the Adviser to the US Governor wrote to the Director General that:

> "... on 14 December 1970 the Department of State received notification of Nicaragua's withdrawal from the IAEA pursuant to Article XVIII.D of the IAEA Statute. Nicaragua's withdrawal is effective December 14, 1970 ..."[78].

Pursuant to Statute Article XVIII.D, the US Secretary of State included this information in a circular note verbale of 10 March 1971, and the Director General included it in a document for the Board of Governors[79]. As mentioned in Section 6.1.5, some years later Nicaragua rejoined the Agency.

### 6.3.3. Practice as to suspension

Although no application was made of Statute Article XIX.B, which permits the suspension of a Member from the exercise of the rights and privileges of membership, certain steps taken in respect of South Africa should be mentioned. These steps were taken in part because of statements that South Africa had violated provisions or at least the spirit of the Statute, and they resulted in depriving that country de facto of certain rights and privileges of membership. The first of these steps was the 1977 replacement of South Africa by Egypt as the regionally most advanced nuclear State in Africa (see Section 8.2.2.1.2.2); the second step was the rejection of the South African credentials by the General Conference at its 23rd (1979) session[80], thus depriving South Africa of the possibility to participate further in that session of the Conference (see Section 7.3.5.4). In 1980, South Africa sent no delegation to the General Conference; therefore, the question of credentials did not arise in that year.

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[78] INFCIRC/42/Rev.8, Part I, para. 12(a).

[79] GOV/INF/237; earlier, the Secretariat was informed by SEC/NOT/220.

[80] GC(XXIII)/DEC/6.

## ADDITIONS TO NOTES IN THE BASIC BOOK

16 Former General Conference Procedural Rule 99 is now, with the same text, Rule 96 (GC(XIX)/INF/152.

58 Honduras has not yet paid the amounts outstanding at the time of its withdrawal. INFCIRC/42/Rev.5, referred to in notes 5, 13, 17, 20–22, 32–36, 41, 46–48, 51 and 57, has been superseded by INFCIRC/42/Rev.8, setting out information up to 30 November 1972.

# Chapter 7

# THE GENERAL CONFERENCE

## PRINCIPAL INSTRUMENTS

IAEA Statute, mainly Article V, but also Articles IV.B; VI.A.2; VII.A, E; XIV.A, D, F-H; XVI.A; XVII.B, C(i); XIX;
General Conference Rules of Procedure (GC(XIX/INF/152).

## 7.2. FUNCTIONS AND POWERS

### 7.2.1. Statutory

As a result of the two amendments to Article VI.A of the Statute[1], the General Conference obtained the competence to elect a majority of the members of the Board.

### 7.2.2. Additional authority

As a result of a 1974 amendment to the Rules of Procedure of the General Conference of 1974, the Credentials Committee of the Conference was abolished[2].

The previous annual authorizations of the Board to invite certain intergovernmental organizations to be represented at the next regular session of the Conference were in 1972 replaced by a standing request addressed to the Board[3]. In 1975 a similar standing request was made by the Conference in respect of non-governmental organizations not in consultative status[4].

## 7.3. PROCEDURES

### 7.3.1. Rules of Procedure

The Rules of Procedure of the General Conference, which had remained substantially unchanged for over a decade, were subject to an extensive review and a substantial revision in 1973–1974. The immediate occasion for that review was

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[1] See Section 5.3.2.1 in the basic book and Section 5.3.2.4 in the present book, and Sections 8.2.1.2.2 in both books. Originally, the Conference elected ten members of a 23-member Board; this ratio rose to 12 out of 25 in 1963, and to 22 out of 34 in 1973. As recorded in Sections 5.3.2.5 and 8.2.1.2.2, another amendment is under consideration that would presumably further increase the number of Board members elected by the Conference.

[2] Section 7.3.3.3.

[3] GC(XVI)/RES/291; Section 7.3.9.3.

[4] GC(XIX)/RES/332; Section 7.3.9.4.

the need to make certain changes in the Rules for electing members of the Board of Governors, consequent on the entry into force of the amendment to Statute Article VI.A–D (Section 8.2.1.2.2.1); at the same time it was considered opportune to streamline the elaborate structure of the Conference, which was out of line with its functions and activities.

After the entry into force of the amendment to the Statute in June 1973[5], the Director General presented to the 1973 Conference a proposal for entirely recasting the Rules of Procedure[6]. The stated purposes of the proposed changes were to:

- Shorten normal sessions to a period of one week;
- Eliminate most committee reports;
- Eliminate simultaneous meetings of plenary organs (as a relief to small delegations);
- Enlarge and simplify the structure of the General Committee (to be renamed 'Bureau'), while slightly changing its functions and eliminating routine meetings;
- Replace the existing two Main Committees by a single Committee of the Whole;
- Simplify the adoption of the agenda;
- Eliminate the routine examination of credentials;
- Make some drafting improvements.

Aside from several introductory comments, the Director General's proposal consisted merely of a complete redraft of the Rules, with neither identification of the specific changes proposed nor explanations therefor[7].

Although the Secretariat had hoped that because of the extensive informal consultations it had conducted, it would be possible to adopt the new set of Rules quickly and without extensive debate or changes[8], the Administrative and Legal Committee devoted most of five meetings to the subject, at which discussion concentrated on the revised role and composition of the General Committee[9]; after considering five

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[5] Section 5.3.2.4.

[6] GC(XVII)/503.

[7] Ibid., Annex.

[8] The Secretariat originally considered quick adoption at the very beginning of the Conference to be so feasible that the Director General originally presented two alternative draft provisional Conference agendas to the Board, in which the second one assumed immediate adoption and implementation of the proposed Procedural Rules, so that the structure of the Conference and its method of conducting business would be changed even before the agenda had been adopted (GOV/1597, paras 4 and 5, and Annexes A and B). This idea was dropped after discussion in the Board (GOV/OR.455, paras 3–14), and the draft agenda actually issued did not assume any immediate change in the Conference's procedures (GC(XVII)/497).

[9] GC(XVII)/COM.2/OR.63–67.

sets of amendments to the Director General's proposed text[10] the Committee recommended to the Conference[11] that:

(a) It adopt immediately those new Rules that related directly to the election of members of the Board under the amended Statute (i.e. mainly the replacement of former Rules 83–88 by two simpler provisions);
(b) Consideration of the other changes be referred, as a priority item, to the next Conference session, before which comments from Member States would be solicited; the Director General would examine these comments with the help of a three-person Working Group, consisting of the officers of the Administrative and Legal Committee of the 17th session of the Conference.

These recommendations were adopted by the Conference[12].

The 1974 General Conference consequently received another, more modest, set of proposals from the Director General, based on the comments by Governments, the report of the Working Group and further consultations[13]. Without attempting to recast the Rules as a whole or to make drafting improvements the new proposals were restricted to:

— Simplification of the election procedures for the officers of the Conference and of its committees;
— Replacement of the two Main Committees by a single Committee of the Whole;
— Consequential changes in the composition of the General Committee;
— Abolition of the Credentials Committee and transfer of its functions to the General Committee.

The main goals of the 1973 proposals were thus preserved, though some collateral matters had been dropped. After a brief debate in the Administrative and Legal Committee[14] the proposed amendments were adopted by the Conference[15].

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[10] GC(XVII)/COM.2/58, 59, 60, 61/Rev.1, 63.

[11] GC(XVII)/517.

[12] Respectively, as GC(XVII)/RES/300 and GC(XVII)/DEC/7. The Rules of Procedure, as amended by the Conference resolution, were issued as GC(XVIII)/INF/146.

[13] GC(XVIII)/530. The texts of the governmental comments and of the report of the Working Group (which report consisted of a letter addressed to the Director General by the Chairman of the Group on 11 April 1974) were not included in the Director General's report or otherwise published; they are available in the archives of the Agency.

[14] GC(XVIII)/COM.2/OR.69–70, summarized in GC(XVIII)/537.

[15] GC(XVIII)/RES/313. The Rules of Procedure, as amended, were issued as GC(XIX))/INF/152; aside from the substantive changes in Rules 28–29, 34, 40–41, 42(b), 45–46, 55, 72 and 83–85, these Rules and those in GC(XVIII)/INF/146 differ from those in GC(VII)/INF/60 and in earlier sets by the renumbering of former Rules 89–106 as Rules 86–103.

At a meeting of the Programme, Technical and Budget Committee at the 1974 General Conference, the question was raised whether the Committee could suspend the quorum requirement (Rule 53) in order to enable it to start its meetings more promptly. Though this point was not discussed further at the Conference, the Secretariat later informally advised the representative concerned that, in its view, the suspension of any rule could only be accomplished under Rule 102 and through action by the General Conference itself; thus, no subsidiary body (even a plenary Main Committee) could suspend a procedural Rule applicable to it.

### 7.3.2. Sessions

#### *7.3.2.1. Regular*

In accordance with Rule 1 of its Rules of Procedure, the General Conference continued to convene its annual sessions in September, either in the third or fourth week (occasionally extending into the first days of October), except for the 23rd regular session, which took place in India and which was convened in early December 1979.

On several occasions informal consideration was given to the possibility of changing the opening date of a particular session of the Conference. In each such case it was concluded that, under Rule 1, only the Conference itself could set or change the date at which the next regular session was to be convened. Once set at the previous regular session, that date could not be changed except by the Conference, meeting for that purpose in a special session.

The length of sessions was also shortened. Except for the three sessions that took place outside of Vienna (see Section 7.3.2.3), all of which were slightly longer than seven days, the 11th to the 17th sessions extended over seven days each and the 18th to the 24th sessions lasted only five days each (from Monday to Friday). This latter reduction followed an observation of the Director General made in 1973, in connection with the proposed recasting of the Rules of Procedure and the restructuring of the Conference, that there appeared to be a general desire for one-week sessions[16].

This further contraction of Conference sessions was made possible in part by a series of minor reforms whereby Conference meetings were conducted more briskly than before: except when making statements in the general debate, delegates speak from their seats in the Plenary rather than walking to a rostrum[17]; election procedures were simplified; the number of subsidiary organs was reduced, as was the number of items on which there must be reports by such an organ to the

[16] GC(XVII)/503, para. 2.
[17] GC(XVIII)/537, para. 2.

Plenary. Though some general political issues invariably influenced the work of the Conference (in particular through the consideration of credentials — see Section 7.3.5.4), discussion of certain matters of relevance to the Agency but of more general concern (such as disarmament) took place more frequently in the United Nations General Assembly rather than in the Agency's General Conference[18]. The faster pace basically reflected the desire for shorter sessions by the majority of Governments, many of whom had to cope with a steadily increasing number of international meetings. Most of the actual business brought to and accomplished at each session was routine and for the most part (e.g. elections) prearranged. It was therefore possible for the sessions to take precisely as long as they had been scheduled for.

No further consideration was given to an earlier proposal to change to biennial sessions.

### *7.3.2.2. Special*

During the period under review no special session of the General Conference took place. In connection with the consideration of the proposed amendments to Statute Article VI.A–D in 1973, the suggestion was made that a special session of the Conference might be convened[19] if agreement on the amendments could not be reached at the regular session, or if changes in the formally proposed amendments made another 90 day waiting period necessary, in the event that the Conference adopted the amendments at that session, so that no consideration had to be given to other arrangements.

### *7.3.2.3. Location*

Three sessions of the General Conference took place away from Vienna:

— The 16th session in Mexico City;
— The 20th session in Rio de Janeiro;
— The 23rd session in New Delhi.

Each time, the relevant decision resulted from an invitation by a Member State, accepted by the Conference at the previous session[20]. In each case, as directed by

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[18] See Section 12.2.2.4 and Annex 2.4 of the basic book.
[19] GC(XIV)/COM.2/OR.53, para. 9.
[20] Respectively, GC(XV)/DEC/7; GC(XIX)/DEC/8; GC(XXII)/DEC/7.

the Conference in the same decision, an agreement was concluded with the host Government[21] under which, inter alia, the latter assumed all extra costs to the Agency of holding the session away from the Headquarters' city[22].

### 7.3.3. Structure and organization

As a result of the 1974 amendment of the Rules of Procedure, the structure and work of the General Conference was considerably simplified.

#### *7.3.3.1. The Plenary*

In addition to the officers mentioned in the basic book, the General Conference also elected the Chairman of the Committee of the Whole[23], rather than convening a short meeting of the Committee itself to carry out that election[24].

The practice as to the rotation of the office of the President continued to be followed. The tacit understanding of not electing a President from the five Members most advanced in nuclear technology continued to apply. This understanding was, however, not extended to nationals of the additional 'most advanced' Members (four) that were to be designated under the 1973 amendment to the Statute. In 1979 an official of the host State, India, was elected to the Presidency[25] and in 1980 the President came from the Federal Republic of Germany[26]. The practice of area rotation was continued.

Since the Chairman of the Committee of the Whole was elected by the Conference, the President did not act as Temporary Chairman of that Committee, nor did the President any more propose the membership of the Credentials Committee, since that body was abolished in 1974. On the other hand, the President assumed the formal duty of proposing to the Conference the election of all its other officers as well as of the Chairman of the Committee of the Whole[27] and the 'additional

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[21] Host agreement for the 16th regular session of the General Conference of the IAEA in Mexico City, 26 September to 30 October 1972 (Agency registration No. 8934); Host agreement for the 20th regular session of the General Conference of the IAEA in Rio de Janeiro, 21–28 September 1976 (Agency registration No. 1215); Host agreement for the 23rd regular session of the General Conference of the IAEA in New Delhi, 4–10 December 1979 (Agency registration No. 1361).

[22] This is the same practice as is applicable to scientific meetings (basic book, Section 20.1.2, subpara. (c)). The same practice is required by the United Nations General Assembly in respect of all meetings held away from the seat or headquarters of the organ concerned (UNGA resolution 31/140, para. 5).

[23] GC(XIX)/INF/152, Rule 34.

[24] Basic book, Section 7.3.3.4, second para.

[25] GC(XXIII)/DEC/1.

[26] GC(XXIV)/DEC/1.

[27] GC(XIX)/INF/152, Rule 34.

members' of the General Committee[28]. These new provisions of the Rules of Procedure reflected the previously accepted practice that the distribution of the various offices was pre-arranged by consultations on the basis of the various informal understandings and accepted practices[29]; difficulties for the President could, of course, have arisen had the consultations on the slate of officers not been successful.

The considerations set out in the basic book concerning the election of Vice-Presidents continued to apply also after the amendment of the Rules. However, the statements made in the basic book about the composition of the General Committee should be read in the light of the changes discussed in the next section. It should also be noted that even though the new Rule 34 called for the President to propose to the Conference the 'names' of eight Vice-Presidents, he actually proposed the names of eight countries, whose delegates (as was true previously) then held those posts[30].

Under the revised Rules of Procedure, only two committees were required: the General Committee[31] and the Committee of the Whole[32].

### *7.3.3.2. General Committee*

The 1974 amendment of the Rules did not change the established composition of the General Committee because the disappearance of one Committee Chairman consequent on the merger of the previous two Main Committees was balanced by the creation of a fifth 'additional member' to be elected to the General Committee[33].

With the consideration of the 1973 proposals for recasting the Rules of Procedure and the consequent debates in the Administrative and Legal Committee of the 17th General Conference[34], considerable attention was devoted to the composition of the General Committee; this continued through the debate on the Rules of Procedure at the 1974 Conference[35] and, later, in connection with the actual elections (or, rather, the pre-election consultations) at subsequent Conferences. The particular issue was the appropriate representation of the developing countries, and

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[28] GC(XIX)/INF/152, Rule 40.

[29] This was expressly stated during the debate leading to the adoption of the amendments to Rules 34 and 40 (GC(XVIII)/COM.2/OR.70, paras 25, 44–45).

[30] For example GC(XXIII)/OR.209, para. 19; GC(XXIII)/DEC/2. However, the records of the meetings of the General Committee show attendance in terms of named individuals as Vice-Presidents or as representing named Vice-Presidents, but the same practice was even followed for the 'additional members' of the Committee, which have always been considered to be States (e.g. GC(XXIII)/OR.32–34, "Attendance at the Meeting").

[31] GC(XIX)/INF/152, Rules 40–43, as well as Rules 28–29.

[32] Ibid., Rule 45, as well as Rules 34, 40–41.

[33] Ibid., Rule 40.

[34] GC(XVII)/COM.2/OR.63–67.

[35] GC(XVIII)/530, para. 4; GC(XVIII)/COM.2/OR.70, paras 9, 39 and 46.

in particular those in 'Africa' (which became a separate region after the amendment of Statute Article VI.A–D, which had separated it from the Middle East and merged the latter region with that of South Asia). Africa had only one representative on the Committee even though it had the largest number of States of all the geographical areas. Consequently, in 1976, when it proved to be impossible to achieve a consensus on the distribution of seats within the framework of the numbers of States specified in the Rules of Procedure, Rules 34 and 40 were suspended to permit the election of an additional Vice-President, and Africa received two representatives on the Committee that year[36]; in 1977, after a similar impasse, Rule 40 was suspended in order to permit two extra 'additional members' to be elected to the Committee, and Africa received three of the 17 places thereon[37]; finally, in 1978, only one 'additional member' was elected, but this time Africa received just one seat on the Committee[38]. The dissatisfaction with these ad hoc arrangements, which also required the annually repeated suspension of some of the applicable Rules, led the President of the 22nd General Conference to conduct informal consultations among representatives of the eight geographic areas with a view to finding a satisfactory permanent arrangement. After various solutions had been explored, including an amendment of the Rules to enlarge the Committee, the problem was resolved when three of the areas (North America, Western Europe and Eastern Europe) agreed that each of them would in turn, in successive years, relinquish one of 'its' seats on the Committee so as to enable Africa always to have two; by drawing lots it was determined that Eastern Europe would do so at the 23rd regular session (1979) (and again at every third regular session thereafter), North America would do so at the 24th session and Western Europe at the 25th session. The resulting distribution of seats (assigning fractional values for seats relinquished in particular years) was therefore as follows: Africa 2, Eastern Europe $2\frac{2}{3}$, Far East 1, Latin America 2, Middle East and South Asia 2, North America $1\frac{2}{3}$, South East Asia and the Pacific 1 and Western Europe $2\frac{2}{3}$. It was also agreed that the distribution of seats for special sessions would be decided on an ad hoc basis[39]. However, there was no formal regulation of the composition of the General Committee because the agreed formula resulted from an informal understanding (there are no records in any formal document); furthermore, it only related as such to the assignment of one particular seat, leaving the other 14 seats to be determined on the basis of established practices. Indeed, the understanding was already changed the year after it was instituted;

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[36] GC(XX)/OR.186, paras 30-32; GC(XX)/DEC/2-4.

[37] GC(XXI)/OR.194, paras 1-3; GC(XXI)/DEC/2-4.

[38] GC(XXII)/OR.200, paras 1-6; GC(XXII)/DEC/2-4.

[39] The above stated agreed arrangements are set out in a letter of July 1979 from Malu wa Kalenga, President of the 22nd regular session of the General Conference, to the President of the 23rd regular session (then not yet elected). Attached to that letter are minutes of the informal consultation held on 26 February 1979 and a protocol on the "Drawing of lots for the implementation of the 'rotation' principle" on 28 June 1979, as well as relevant correspondence.

in order to permit the election of a member of the Philippine delegation as Chairman of the Committee of the Whole while also ensuring a vice-presidency for the region Far East, Rule 40 was once more suspended in order to elect six (instead of five) 'additional members' of the General Committee[40], thus again increasing its size to 16 members and increasing the Far Eastern representation to two members.

In his 1973 proposals for revised Rules of Procedure, the Director General included provisions that would have completely relieved the General Committee of its routine business, requiring it to be convened only to consider certain specific questions (for example, a dispute about the agenda or a formal credentials challenge)[41]; to emphasize the change, the organ was to be called the 'Bureau'[42]. The actual amendments adopted in 1973 and 1974 made considerably less radical changes:

(a) The functions of the Committee in respect of the agenda remained essentially unchanged, as had those in respect of the closing date of the current session and the opening date of the next session; whenever the Conference was considering an invitation to meet outside Vienna, that too was vetted in the Committee in connection with the latter item[43].
(b) In connection with the elections to the Board, the Committee no longer determined the areas for which elections must be held. This function was performed by the President[44].
(c) The Committee continued to have, but did not exercise, the functions of revising resolutions adopted by the Conference and of assisting the President in conducting and co-ordinating the work of the Conference[45].
(d) The Committee received the additional function of acting as Credentials Committee[46].

As a consequence of its functions in respect of credentials, which, in contrast to its other business, it usually exercised towards the end of the session, the General Committee normally held at least two meetings during each session. These

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[40] GC(XXIV)/OR.222, paras 1–4.

[41] GC(XVII)/503, para. 5 and Annex, draft Rule 36.

[42] Ibid., draft Rule 34. 'Bureau' is already the name of the General Committee in French (corresponding to the usage in the United Nations General Assembly, where, incidentally, the documents of the General Committee have the symbol .../BUR/... unlike the .../GEN/... used in the IAEA).

[43] For example the Indian invitation to hold the 23rd General Conference in New Delhi, considered by the General Committee at the 22nd Session (GC(XXII)/GEN/OR.29, paras 9–16; GC(XXII)/OR.205, paras 4–5).

[44] GC(XIX)/INF/152, Rule 83.

[45] GC(XIX)/INF/152, Rule 42(b).

[46] Ibid., Rule 28. Section 7.3.5.4.

meetings were closed and its documents and records earmarked for 'Restricted Distribution'[47].

### *7.3.3.3. Credentials Committee*

The Credentials Committee was abolished in 1974. Consequently, references to it were deleted from the Rules of Procedure; its functions were transferred to the "General Committee, meeting for this purpose as a credentials committee"[48].

### *7.3.3.4. Main Committees*

Under revised Rule 45, there was to be only a single Main Committee — the Committee of the Whole, a plenary organ like the two it replaced: the former Programme, Technical and Budget Committee and the Administrative and Legal Committee.

Under Rule 34, the Chairman of the Committee of the Whole was elected by the Conference itself. That procedure changed the previous practice of interrupting the opening Plenary for the purpose of holding a special meeting of each Main Committee to elect its Chairman, before the Plenary could resume election of the Vice-Presidents. Instead, the Chairman of the Committee of the Whole was proposed as a part of the slate of officers and other General Committee members that the President presented to the Conference under Rules 34 and 40[49].

Under Rule 46, which provides for the election of 'other officers', the Committee of the Whole departed from the practice of its predecessors of electing one Vice-Chairman and a Rapporteur, and instead elected two Vice-Chairmen. Though these were elected on an ad personam basis, the areas or groups from which they were chosen were selected with a view to complementing to some extent the area or group represented by the Chairman.

The post of Rapporteur was abolished because the Committee of the Whole did not, like its predecessors, present written reports to the Plenary[50]. Instead, when the Committee recommended a resolution to be adopted by the Conference, merely

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[47] The practice of private meetings, not specified in the former Rules of Procedure or in the amended Rules of Procedure, would have been made explicit in the Director General's 1973 proposals (GC(XVII)/503, Annex, draft Rule 36).

[48] GC(XIX)/INF/152, Rule 28. Section 7.3.5.4.

[49] For example GC(XXIV)/OR.222, paras 1–6.

[50] The abolition of written reports of the Main Committee did not require any change in the Rules of Procedure, since these contained no relevant provision. However, such reports were customary until the Director General proposed their abolition as part of the 1973 reforms (GC(XVII)/503, para. 2). Though only briefly alluded to in the debates (GC(XVIII)/COM.2/OR/70, para. 55), the practice of oral reports by the Chairman of the Committee of the Whole was established at the same time as that Committee itself (GC(XIX)/OR/183, para. 53; see, for example, GC(XIX)/560).

the text thereof, without any explanation except for a title line indicating its submission by the Committee, was presented to the Conference with a brief oral statement by the Chairman[51]. This change presumably reflected the fact that, with the simplified structure of the Conference and its short duration, representatives were sufficiently aware of the circumstances under which the Committee of the Whole had decided on its recommendations; for a permanent record the summary records of the Committee were available.

#### *7.3.3.7. Officers*

The general statements made in the basic book about the officers of the General Conference and its subsidiary organs continued to apply, with changes in order to take account of the disappearance of the Credentials Committee and the merger of the two former Main Committees.

In recognition of the fact that the principal officers of the Conference (i.e. the eight Vice-Presidents, the Chairman of the Committee of the Whole and the five additional members of the General Committee) constituted a balanced slate arrived at by consultations, Rules 34 and 40 provided for the President to propose to the Conference the election of the officers there named, instead of nominations by Governments followed by unanimous acceptance or occasionally a ballot. The actual practice became for the President to present the entire slate to the Conference as a single package; this made it necessary to complete all the relevant consultations before the session or during its initial hours[52]. The only officers still elected after individual nominations were the President of the Conference himself and the two Vice-Chairmen of the Committee of the Whole[53].

### 7.3.4. Agenda

#### *7.3.4.1. Procedure*

The revised Rules of Procedure made no change in the method of preparing the provisional agenda or of adopting it by the General Conference on the recommendation of its General Committee, nor was any change made in the pertinent practice[54].

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[51] For example GC(XXIV)/OR/227, paras 20–31, as well as the citation at the end of the previous note.

[52] In practice, these consultations were carried out by delegations rather than by the President.

[53] Respectively under Rules 34 and 46.

[54] As mentioned in footnote 8, the Director General presented to the Board in 1973 two alternative draft agendas for the 17th General Conference (GOV/1597, paras 4–5). The discussion in the Board (GOV/OR.455, paras 3–14) evidently helped him to decide to present only one of these proposals to the Conference (GC(XVII/497).

It might, however, be noted that in 1973 the Director General proposed that the provisional agenda normally be presented directly to the Conference for adoption; only if any question should arise about a particular item that the Conference could not resolve quickly would the President be authorized to refer that item to the General Committee with the question of including that item[55].

*7.3.4.2. Content*

The agendas of the regular General Conference sessions through 1974 followed the general pattern described in the basic book, with the average number of items somewhat more than twenty. Starting with the 1975 session, the number of items was significantly reduced, for example to as few as 13 at the 22nd session (1978). Most of that reduction related to the purely formal items concerning the organization of the current session and the following sessions; to some extent the shortening of the agenda was a matter of presentation accomplished by combining former separate items or presenting them as sub-items under a single heading[56]. No consistent pattern is discernible, since some of these formal items appeared in and disappeared from successive agendas. In any event, the general effect was to present an agenda that reflected more clearly the principal items on which the Conference was to concentrate, such as the Budget and, in alternate years, also the Programme, as well as items relating to the substantive activities of the Agency. Of the 12 items listed in the basic book, only a single one, "The annual reports to the United Nations", disappeared. This was the result of a 1971 Conference resolution that the report submitted by the Board each year to the General Conference was also to serve as the Agency's annual report to the General Assembly and the Economic and Social Council[57].

In the years since 1969 relatively few new non-housekeeping 'substantive' items have appeared on Conference agendas:

(a) Financing of nuclear projects;
(b) Financing of nuclear power in the developing countries;
(c) Market survey for nuclear power;
(d) Financing of technical assistance;
(e) Financing of safeguards.

Except for item (d), which was considered twice, each of the other items appeared on the agenda only a single time.

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[55] GC(XVII)/503, para. 6 and Annex, Rule 14.

[56] For example the agenda of the 22nd General Conference (GC(XXII)/605), "Arrangements for the Conference", includes three sub-items that had for many years been separate items (e.g. GC(XVIII)/534, items 8, 10, 11). Similarly, item 1, "Election of officers and appointment of the General Committee", had encompassed items 2, 4 and 5 at the 18th General Conference.

[57] GC(XV)/RES/274.

## 7.3.5. Conduct of business

### *7.3.5.1. Plenary*

As of the 1979 regular session of the General Conference, an item entitled "Message from the Secretary-General of the United Nations" was included in the agenda, just before the item "Statement of the Director General" [58]. As to the latter item, it had been suggested as part of the 1973/1974 reforms that the text of the Director General's statement be distributed to Member States about a week before the Conference session to facilitate comments on it during the general debate[59]; consequently, an advance copy of the text was informally distributed to delegations on their arrival at the Conference.

Because of the shortening of the sessions to a single week and, to some extent, the increased membership, the general debate extended over an ever larger part of each session. The nature and duration of the general debate did not change. A partial reform in the character of the interventions, by eliminating the oral description of national programmes and substituting it by written statements, was pursued for some years; when it did not result in any substantive reduction in the length of the oral statements, it was abandoned in 1975 [60].

The right of reply under Procedural Rule 58 was exercised occasionally, mostly as a response to statements of a political nature[61]. Unlike in the United Nations, where this 'right' has, in effect, become absolute, Presidents of General Conferences retained the prerogative to decide whether the right should be granted under particular circumstances — for example if a representative desired to reply to a reply.

After the 1974 regular session, the Director General discontinued his thirteen-year practice of making a statement at the end of the general debate.

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[58] For example GC(XXIV)/637, items 2 and 3. At the 21st regular session of the General Conference (1977), which commemorated the 20th anniversary of the establishment of the Agency, both the statement of the Director General and that of the representative of the United Nations Secretary-General, as well as several formal greetings by or on behalf of heads of State, were delivered under an item entitled "Opening Statements"; at the 22nd session of the Conference the previous order was restored, with only an additional entry for the Director General's statement, and thereafter the new order mentioned in the text was introduced.

[59] GC(XVII)/517, para. 5; GC(XVII)/COM.2/OR.67, paras 1-3.

[60] See the basic book, Chapter 7, note 106. In 1974, for the last time, the Secretariat issued advance requests for written descriptions of national programmes, only ten of which were submitted and reproduced in GC(XIX)/INF/56 and Add.1-3. By 1975, no further requests were made, but two States submitted statements, reproduced in GC(XX)/INF/165 and Add.1; since then, an occasional written statement was submitted, which was only reproduced if the delegation concerned insisted.

[61] For example GC(XXIV)/OR.226, paras 45-46 (prov).

The substantive items disposed of directly in the Plenary were not affected by any of the procedural reforms, though the item "Approval of reports to United Nations organs" was abandoned after the General Conference decision of 1971 to submit to the General Assembly and to ECOSOC the annual report that the Conference had received from the Board of Governors.

Since 1975, only two standing committees report to the Conference: the Committee of the Whole, generally on substantive questions, and the General Committee, on procedural and organizational items. The reports of the Committee of the Whole were usually received on the last day — indeed sometimes on the last evening — in the form of a single oral report by the Chairman of the Committee[62], accompanied by the written texts of proposed resolutions[63] which were then normally adopted without any debate or with only the most cursory debate[64].

*7.3.5.2/3. Main Committees: Committee of the Whole*

As a consequence of the amendments to the Rules of Procedure adopted in 1974, the former Programme, Technical and Budget Committee and the Administrative and Legal Committee were merged into the Committee of the Whole[65]. Until then, the former Committees still carried out their regular activities.

The Programme, Technical and Budget Committee continued to be the far more active of the two Main Committees. Aside from considering and proposing draft resolutions on the routine financial items, the Committee formulated draft resolutions on the following subjects:

(a) Financing of nuclear projects (GC(XIII)/RES/256);
(b) Introduction, use and financing of nuclear power in the developing countries (GC(XV)/RES/285);
(c) Market survey for nuclear power (GC(XVII)/RES/302);
(d) Financing of technical assistance (GC(XVIII)/RES/318).

The Administrative and Legal Committee had little to do during its last years, and this constituted one of the principal factors justifying the merger. One of its former regular items, "The representation of certain intergovernmental

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[62] For example GC(XXIV)/OR.227, paras 20–31.

[63] For example GC(XXIV)/639, the sole resolution prepared by the Committee of the Whole at the 24th regular session of the General Conference, though the Committee also recommended other resolutions originally proposed by the Board of Governors (e.g. GC(XXIV)/629, Part I).

[64] For example GC(XXIV)/OR.227, paras 32–40.

[65] The documentation of the former two Main Committees was marked respectively as /COM.1 and /COM.2 (Section 34.2.3). For the documentation of the new Committee of the Whole the symbol /COM.5 was introduced, because /COM.3 and /COM.4 had been used in the early years by other, temporary committees (basic book, Section 7.3.3.5 and note 79 thereto).

organizations at the next regular session of the Conference'', had become largely non-controversial and was entirely abolished after the Board was in 1972 given standing authority to issue invitations to such organizations[66]. The main substantive items dealt with by the Committee were the review of Article VI of the Statute at the 13th and 14th sessions (1969, 1970)[67] and the amendment to the Rules of Procedure at the 17th and 18th sessions (1973, 1974)[68]. In 1973 the Committee considered and recommended a resolution on the Agency's responsibility to provide services in connection with nuclear explosions for peaceful purposes[69].

As of 1975, the Committee of the Whole took over the functions of the former two Main Committees. In effect, it prepared for the Plenary all items except 'political' ones and certain appointments, the approval of new Members and the procedural questions considered by the General Committee. The Plenary could thus concentrate on the general debate during almost the entire span of each Conference. Since the Committee of the Whole only reported on the last day, it had about three days (normally six to seven meetings) available to complete its work; in practice it did not need more than six meetings, and in some years only one meeting. Its meetings took place simultaneously with the general debate in the Plenary.

### *7.3.5.4. Credentials Committee*

Though the Credentials Committee was eliminated as a separate entity by the 1974 amendment of the Rules of Procedure, the General Conference rejected the Director General's 1973 suggestion of the Committee's complete abolition; instead, its functions were transferred to the General Committee[70]. This change of forum did not change, and was not intended to change, the points raised on credentials, and the nature of their consideration and of the reports thereon. At successive regular sessions, objections of various types were raised in the Committee, or objections to the discussion of the Committee's report were raised in the Plenary, or, in both the Committee and the Plenary, objections were raised to the credentials of the representatives of the following Members:

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[66] GC(XVI)/RES/291. Section 7.3.9.3.

[67] Section 5.3.3.4.

[68] Section 7.3.1.

[69] GC(XIII)/RES/258. Section 17.5.

[70] GC(XIX)/INF/152, Rules 28-29. The Director General had proposed that credentials normally be examined only by the Secretariat, which would report to the General Conference; only at the request of a representative would the General Committee examine any question arising out of that report (GC(XVIII)/503, para. 7 and Annex, draft Rule 27). This procedure is similar to that followed in the Board of Governors (GOV/INF/60, Rule 4).

| | |
|---|---|
| 13th session (1969) | Republic of China (Taiwan), Republic of Viet-Nam (South Viet-Nam); |
| 14th session (1970) | Republic of China (Taiwan), Republic of Viet-Nam; |
| 15th session (1971) | Republic of China (Taiwan), Republic of Viet-Nam, Republic of Korea (South Korea); |
| 16th session (1972) | Republic of Viet-Nam, Republic of Korea; |
| 17th session (1973) | Republic of Viet-Nam, Republic of Korea; |
| 18th session (1974) | Republic of Viet-Nam; |
| 19th session (1975) | Chile; |
| 20th session (1976) | Chile, South Africa; |
| 21st session (1977) | Chile, Republic of Korea, South Africa, (Cyprus)[71]; |
| 22nd session (1978) | Chile, Republic of Korea, South Africa; |
| 23rd session (1979) | Chile, Israel, Republic of Korea, South Africa; |
| 24th session (1980) | Chile, Israel, Republic of Korea. |

The consideration of the Chinese credentials in 1969 and 1970 followed the pattern described in the basic book. At the 1971 session the special resolution of annually freezing the Chinese credentials issue was no longer proposed, but in the usual report of the Credentials Committee the acceptance of the credentials of the Republic of China was still proposed, in spite of several objections[72]. For the reasons indicated in Section 6.2.1, China was not represented at subsequent sessions of the General Conference and, therefore, no question about its credentials arose.

In respect of the Republic of Viet-Nam, the repeated challenges concerned that Government's right to represent South Viet-Nam, in view of the presence of the Viet Cong forces — especially after these had achieved a measure of recognition in the Paris Agreement[73]. However, as pointed out in Section 6.2.3.4, the status of Viet-Nam at the General Conference and in the Agency was never affected by the debates about credentials.

The repeated objections to the credentials issued by Chile and the Republic of Korea were not based on legal grounds but reflected the objection to those regimes and the fact that a number of Member States maintained no diplomatic relations with these two countries[74]. The objections to Israel appeared to be of a similar nature;

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[71] No question concerning the credentials of Cyprus was raised by any member of the General Committee, but, at the end of the latter's consideration of credentials, a letter from the Turkish representative was read to the Committee, together with the text of an enclosed message from the President of the "Turkish Federated States of Cyprus" objecting to the representation of all of Cyprus by the current Government of Cyprus (GC(XXI)/GEN/OR.28, para. 25). This communication was neither discussed nor referred to in the report of the Committee (GC(XXI)/593). Nevertheless, the Greek and Cypriot delegations objected to it and arranged that letters from their Missions be sent through the Secretariat to all members of the General Committee.

[72] GC(XV)/473; GC(XV)/OR.149, paras 14–24.

[73] Section 6.2.3.4.

[74] For example GC(XXIV)/638, paras 4–6, 11–12.

the question of the legitimacy of the membership of Israel was raised and analogies were drawn to the grounds for and the methods of depriving South Africa of its representation in the General Conference[75]. None of these objections affected the representation of the countries concerned in the General Conference or otherwise in the Agency.

The challenge to South Africa's credentials started at the 21st General Conference (1977)[76], three years after the United Nations General Assembly had definitely rejected the credentials issued by that Government and one year after the General Conference had adopted a resolution requesting the Board of Governors to review the annual designations of South Africa to the Board as the State most advanced in nuclear technology in the African region, as a result of which resolution Egypt was designated instead in 1977 and thereafter[77]. The challenge to the South African credentials was repeated in 1978[78], but neither in 1977 nor in 1978 did the General Committee do more than report in detail on the challenge raised and the resulting statements in the Committee[79], and the Conference accepted that report[80] — thus, in effect, permitting South Africa to continue to sit. At the 23rd session of the General Conference (1979), South Africa's credentials were challenged on a point of order at the second meeting of the Conference itself, which immediately requested the General Committee to examine the matter[81]. The latter devoted a full meeting thereto, at which seven members (including the Chairman) spoke against the acceptance of the credentials on the grounds of South Africa's apartheid policy and its alleged efforts to produce nuclear weapons; six members, while joining in the condemnation of the regime's racial policies, considered that these were political matters, not justifying the rejection of formally correct credentials; two delegations indicated that, on a vote, they would abstain[82]. Because of controversy over the voting rights of the Chairman, the Committee took no formal decision, but its Chairman (the President of the Conference) reported to the Plenary on the division of opinion that had prevailed in the Committee[83]. After the Director General in an unusual intervention had called the Conference's attention to the safeguards that the Agency was carrying out in South Africa and those that were then under negotiation[84], and after a debate mirroring that in the General Committee[85], the Conference decided (by a roll-call vote as requested by South Africa) by

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[75] GC(XXIV)/638, paras 7-9.
[76] GC(XXI)/GEN/OR.28.
[77] Section 8.2.2.1.2.2.
[78] GC(XXII)/GEN/OR.30.
[79] GC(XXI)/593, para. 5; GC(XXII)/607, para. 4.
[80] GC(XXII)1607, GC(XXII)/OR.207, para. 31.
[81] GC(XXII)/OR.120, paras 1-2.
[82] GC(XXII)/GEN/OR.31.
[83] GC(XXII)/OR.211, para. 3.
[84] Ibid., paras 4-5.
[85] Ibid., paras 6-20; see also the explanations of votes in paras 27-34.

49:24 (including South Africa) :9 to reject the credentials of South Africa and not to allow its delegation to participate in the Conference[86]; the South African delegation immediately withdrew from the session. No South African delegation was sent to the 24th regular session, so the issue concerning its credentials did not arise.

The General Committee, following the example of the former Credentials Committee, continued to examine credentials at a meeting towards the end of the Conference session; its report was considered by the Conference at the beginning of the final day[87]. This timing still allowed the Conference to act on credentials before it formally considered the reports of the Committee of the Whole and before it elected the members of the Board; thus, if any credentials should be rejected, the delegation concerned would be barred from participating in the substantive decisions taken by the Conference — though it would previously have participated in the general debate and in the work and decisions of the Committee of the Whole[88]. In practice, as the South African example shows, if a delegation's credentials were to be challenged seriously, this was likely to happen on a point of order raised at an early Plenary meeting. Nevertheless, the USSR objected from time to time, though without success up to that time, to the established pattern of the late consideration of credentials[89].

Invariably, the reports on credentials indicated that a number of delegations had not yet submitted credentials conforming to the Rules of Procedure and proposed that these delegations be allowed to participate provisionally, "on the understanding that satisfactory credentials for each of them will be submitted to the Director General as soon as possible" [90]. The Secretariat regularly followed up the matter by correspondence and by personal contacts with the Missions and Governments concerned, until, several months and sometimes as long as a year after the Conference, it was possible to record (internally) that satisfactory credentials had been received from each delegation participating in that session of the Conference.

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[86] GC(XXII)/OR.211, paras 21-26. GC(XXIII)/DEC/6.

[87] At the 19th regular session of the General Conference (1975) the "Examination of delegates' credentials" became one of the last items on the provisional and final agendas (respectively, GC(XIX/542 and 559, item 13), which did not prescribe, but usually reflected, the rough order in which items were expected to be and usually were considered.

[88] This matter became an issue during the considerations of the proposed amendments to Statute Article VI at the 14th regular session of the General Conference (1970), when the propriety of the Administrative and Legal Committee's consideration of a proposed recommendation to the Conference was challenged on the ground that the Credentials Committee had not yet reported and therefore the validity of the Main Committee's actions could not be ensured; however, the Legal Adviser counselled that under the provisional admission rule (Rule 29) there could be no objection to such a vote (GC(XIV)/COM.2/OR.55, paras 54-71; /OR.56, paras 4-6) (see Section 7.3.6).

[89] For example GC(XII)/GEN/OR.16, paras 4-6.

[90] For example GC(XXIV)/638, para. 13.

### 7.3.6. Voting requirements

No changes were made in the majority requirements for various types of decisions of the Conference. However, when the Administrative and Legal Committee considered the amendments to Article VI.A–D of the Statute, the question was raised and an inconclusive debate took place as to whether the two-thirds majority requirement established by Statute Article XVIII.C(i) and by Procedural Rule 69(b) also applied in the Committee[91] — as had been the previous understanding (see the basic book).

The same Committee debate on the proposed statutory amendments also resulted in the examination of several other procedural issues related to voting:

(a) Could any vote on a substantive matter be taken in the Committee before the Credentials Committee report had been examined by the Conference? The debate on this point was inconclusive, with the Legal Adviser counselling that such a vote could be taken in view of the explicit rule as to the provisional participation even of delegations directly challenged (Rule 29)[92].

(b) Could a secret ballot be taken on a matter other than an election, for example on a proposal to recommend to the Conference the adjournment of debate on an item? The Legal Adviser counselled that the Committee could decide to take such a ballot, but, in the event, the proposal to do so was rejected[93].

(c) Could an amendment submitted on the same day, aside from being 'considered' on an exceptional basis (as permitted by Rule 63), actually be put to the vote? The Chairman ruled that, on the basis of precedents, this could be done, and this ruling was upheld by 34:14:22[94].

At the 22nd and 23rd sessions of the General Conference (1978 and 1979) the question arose, both times in connection with the consideration of the South African credentials in the General Committee, whether the President of the Conference, acting as Chairman of the Committee, could vote in the latter capacity — in both cases to break a tie[95]. At both sessions the Legal Adviser counselled that the Chairman could not vote, because Rule 51 precluded the presiding officer of the Conference from voting. Under Rule 82 the procedures for the conduct of business in the Plenary applied also "as far as is appropriate" to subsidiary organs. At the 1979 session, attention was also drawn to a precedent set at the 5th session of the Conference, when the Chairman of the General Committee had declined to vote.

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[91] GC(XIV)/COM.2/OR.57, paras 49–58.

[92] See footnote 88.

[93] GC(XIV)/COM.2/OR.55, paras 25, 37–50. This question required an interpretation of Rule 72, in the light of Rule 79.

[94] GC(XIV)/COM.2/OR.57, para. 42.

[95] GC(XXII)/GEN/OR.30, paras 10–11, 13–17; (GC(XXIII)/GEN/OR.31, paras 17–36.

In 1978 the further question was raised whether the Chairman could appoint another member of his delegation to vote in his stead, by analogous application of Rule 51, which applies to the President acting in the Plenary. The Legal Adviser held that this practice could not apply in the General Committee, since under Rule 40 no two of its members could be from the same delegation; he later pointed out that the same restriction would apply if the Chairman left the meeting and one of the Vice-Presidents presided over the Committee in his stead, in which case the Vice-President could neither vote nor appoint another member of his delegation to vote[96]. Neither at the 22nd session nor at the 23rd session of the Conference was the matter finally resolved. At the 23rd session a number of Committee members challenged the interpretation of the Legal Adviser. In the event, no votes were taken at either session, but the Committee's reports to the Conference recorded both the split regarding the South African credentials and the issue of the Chairman's right to vote[97].

Finally, it should be noted that after the initial years few votes were taken at the Conference, either in the Plenary or in any of the committees. The few votes that were taken almost never related directly to the Agency's functions, but dealt with political questions, such as the representation of South Africa or of the PLO. The practice of avoiding votes was generally considered desirable by most Members; accordingly, presiding officers normally attempted to have decisions taken by consensus and only resorted to a vote either if it was clear that no consensus was possible or if a representative specifically demanded that a vote be taken.

### 7.3.9. Participation of non-Member States and of organizations

#### *7.3.9.2. The United Nations and the specialized agencies*

In the late 1970s the United Nations was represented in multiple form at sessions of the General Conference, that is by the Organization itself (i.e. by an emissary of the Secretary-General), as well as by representatives of the United Nations Environment Programme (UNEP) and UNIDO[98]. On the other hand, the only specialized agency regularly represented at the Conference was the FAO[99].

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[96] GC(XXIII)/GEN/OR.31, paras 29–33.

[97] GC(XXII)/607, para. 4(h), GC(XXIII)/OR.211, para. 3 (prov.).

[98] For example GC(XXIII)/INF/188/Rev.5, Part III; GC(XIV)/INF/193/Rev.3, Part III. It should be noted that under Article VII.1 of the Relationship Agreement (INFCIRC/11, Part I.A), only the Secretary-General of the United Nations is entitled to attend Agency meetings; thus the representatives of other United Nations organs might be considered either as additional representatives of the Secretary-General, appointed by him from specialized sections of the Secretariat, or as invitees having no status under the Relationship Agreement.

[99] For example GC(XXII)/INF/179/Rev.2, Part III; GC(XIV)/INF/193/Rev.3, Part III.

*7.3.9.3. Other intergovernmental organizations*

In addition to agreements with the organizations listed in the basic book[100], agreements within the meaning of Procedural Rule 32(a), permitting attendance at sessions of the General Conference and participation without a vote in matters of common interest, were concluded with the following organizations: the Agency for the Prohibition of Nuclear Weapons in Latin America (OPANAL), the Council for Mutual Economic Assistance (COMECON), the European Atomic Energy Community (Euratom) and the League of Arab States[101].

Instead of renewing annually the authorization for the Board to invite interested intergovernmental organizations to attend the General Conference, the Conference at its 16th session issued a standing request to the Board to invite those "intergovernmental organizations that did not have co-operation agreements with the Agency but are concerned with developing uses of nuclear energy for peaceful purposes or with research in the nuclear sciences, which it may from time to time decide it would be in the Agency's interest to invite"[102]. In complying with that request, the Board annually at its June session considered which organizations to invite[103]. Normally, the same ones were invited year after year (see Section 12.5.1).

The nature of the participation of these intergovernmental organizations (i.e. of non-specialized agencies) did not change.

*7.3.9.4. Non-governmental organizations*

At the 19th General Conference (1975) the Board called attention to the fact that only 19 non-governmental organizations had been granted consultative status pursuant to which such an organization was automatically invited to be represented by an observer at all sessions of the Conference and that since 1961 (the last year in which an organization had received consultative status) a number of additional organizations had been founded that it would be useful to invite[104]. The Board therefore proposed that it be granted standing authority, similar to that which it had received in respect of intergovernmental organizations, to invite annually certain non-governmental organizations to be represented at the Conference. The Conference thereupon issued a standing authorization to that effect to the Board[105].

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[100] The Inter-American Nuclear Energy Agency, referred to in the first paragraph of this section in the basic book, should have been called the Inter-American Nuclear Energy Commission (of OAS) (Section 12.5.3.3). The European Nuclear Energy Agency, referred to in the same paragraph, has become the Nuclear Energy Agency (of the OECD) (Section 12.5.3.1).

[101] INFCIRC/25/Add.3–5. Section 12.5.2.

[102] GC(XVI)/RES/291.

[103] For example GOV/1986, para. 2; GOV/OR.548, para. 5.

[104] GC(XIX)/546.

[105] GC(XIX)RES/332.

Accordingly, the Board also considered annually, at its June session, what non-governmental organizations to invite[106]. In respect of intergovernmental organizations, normally the same non-governmental organizations were invited year after year; for the 24th regular session, six such organizations were invited.

No indication was given either in the Board's proposal or in the Conference's decision as to whether non-governmental organizations invited on an ad hoc basis would have the same rights as organizations with consultative status, whose rights are specified in the Rules on the Consultative Status of Non-Governmental Organizations with the Agency. The question had no practical relevance nor was there differentiation among the invited non-governmental organizations.

### *7.3.9.5. National liberation organizations*

No Agency instrument contains any general provisions concerning the status of national liberation movements, and until 1976 the issue of their participation was not raised in concrete terms. At the request of Iraq, the 20th General Conference (1976) included in its agenda an item entitled "Invitation to the Palestine Liberation Organization to attend sessions of the General Conference as an Observer"[107]. During the debate[108] the proponents of such an invitation referred to a number of reasons why the PLO should be invited:

(a) The United Nations General Assembly resolution 3237(XXIX), adopted in 1974, recommended that the PLO be invited to participate as an observer in all international conferences convened under the auspices of other organs of the United Nations;
(b) The obligation of the Agency to consider recommendations addressed to it by the General Assembly and to conform its activities to the purposes and principles of the United Nations;
(c) Precedents established by a number of specialized agencies that had granted observer status to the PLO;
(d) The recognition that the PLO had achieved as a representative of the Palestinian people;
(e) The fact that no provision of the Rules of Procedure of the General Conference prevented such participation.

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[106] For example GOV/1986, para. 3; GOV/OR.548, para. 5.

[107] GC(XX)/562, item 3. Before this item was included in the definitive agenda (GC(XX)/573, item 3) an intensive debate took place in the General Committee (GC(XX)/GEN/OR.25, paras 2-21; GC(XX)/OR.187, para. 2).

[108] GC(XX)/OR.187, paras 7-21, 28.

The opponents of an invitation argued that:

(a) The cited United Nations General Assembly resolution was not addressed to the Agency;
(b) The Agency had a right to conduct its activities separately from the United Nations;
(c) The PLO did not fall into any of the categories for which invitations to the General Conference were foreseen in the Rules of Procedure;
(d) Whenever the Conference had in the past provided for the invitation of observers it had delegated that function to the Board operating under criteria laid down by the Conference, which criteria related to a congruence between the interests of the Agency and those of the potential invitee.

The General Conference voted 46:4:21 to adopt a resolution inviting the PLO to attend, as an observer, the then current and all future sessions and meetings of the Conference[109].

The 1976 resolution did not specify the rights that the PLO would enjoy as an observer. However, at that session, a representative of the PLO was permitted to address the Plenary, within the general debate, and used that opportunity to thank the Conference for the invitation[110]. No PLO representative addressed the Conference in the following years.

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[109] GC(XX)/OR.187, paras 22–26. GC(XX)/RES/334.
[110] GC(XX)/OR.188, para. 78.

## ADDITION TO A NOTE IN THE BASIC BOOK

35 Add the following: This question was briefly referred to in the Board's Annual Report (GC(XI)/362, paras 112–115).

| | |
|---|---|
| 13th session (1969) | Republic of China (Taiwan), Republic of Viet-Nam (South Viet-Nam) |
| 14th session (1970) | Republic of China, Republic of Viet-Nam |
| 15th session (1971) | Republic of China, Republic of Viet-Nam, Republic of Korea (South Korea) |
| 16th session (1972) | Republic of Viet-Nam, Republic of Korea |
| 17th session (1973) | Republic of Viet-Nam, Republic of Korea |
| 18th session (1974) | Republic of Viet-Nam |
| 19th session (1975) | Chile |
| 20th session (1976) | Chile, South Africa |
| 21st session (1977) | Chile, Republic of Korea, South Africa, (Cyprus) |
| 22nd session (1978) | Chile, Republic of Korea, South Africa |
| 23rd session (1979) | Chile, Israel, Republic of Korea, South Africa |
| 24th session (1980) | Chile, Israel, Republic of Korea |

# Chapter 8
# THE BOARD OF GOVERNORS

## PRINCIPAL INSTRUMENTS

IAEA Statute, mainly Article VI;
General Conference Rules of Procedure (GC(XIX)/INF/152), mainly Rules 83–85;
Provisional Rules of Procedure of the Board of Governors (GOV/INF/60), as amended up to 13 June 1973 (October 1976 edition);
Relationship Agreement with the United Nations (INFCIRC/11, Part I.A), Articles VII.1, VIII.1.

## 8.1. DEVELOPMENT

The two amendments to Article VI of the Statute[1], and in particular the one that came into force in 1973, resulted in an expansion and reconstitution of the Board, with the result that the States selected as the most advanced in the technology of atomic energy including the production of source material constituted only about one third of the membership of the Board and that its power of co-option was drastically reduced (to 12 out of 34 members, compared with originally 13 out of 23 and, after the first amendment to the Statute, 13 out of 25).

## 8.2. COMPOSITION

The second amendment to the Statute, while greatly expanding the size of the Board, also considerably simplified its composition. The resulting statutory provisions specified only two main categories of Board membership, each with two subcategories differing only minimally from each other. Concomitant with that amendment, certain changes were also introduced in the Rules of Procedure of the General Conference. At the same time, a number of earlier 'gentlemen's agreements' that regulated certain aspects of Board membership lapsed, either because they were in effect incorporated into the new statutory provisions or because they became inapplicable under them; to some extent, these understandings were superseded by new ones, though not all of these have become fully evident from the pattern of the eight elections that have taken place until 1980 since the entry into force of the second statutory amendment.

[1] Section 8.2.1.2.2 of the basic book and Section 8.2.1.2.2.1 of the present book.

## 8.2.1. Development

### *8.2.1.2. Evolution*

#### 8.2.1.2.2. Amendments

*8.2.1.2.2.1. Article VI.A–D.* Section 8.2.1.2.2 of the basic book describes the beginning of a process, starting at the 1968 Conference of non-nuclear-weapon States, that was to change the 'unrepresentative character' of the Board. This process came to fruition several years later.

The Ad Hoc Committee of the Whole to Review Article VI of the Statute, established by the Board of Governors in February 1969, held its eleventh and final meeting on 8 June 1970[2], at which it considered primarily a slightly revised version of the proposal that had been co-sponsored by 23 members of the Committee in March of that year[3]; however, it failed to reach a consensus on that proposal and on four others that had been submitted to it. Consequently, the Director General, acting under Statute Article XVIII.A, on 24 June 1970 communicated the five proposed amendments to all Member States[4]. The sponsors of these amendments and their intended effects were as follows:

(a) Seven Socialist States: to increase the representation of Africa and Latin America while maintaining the relative weights of Eastern and Western Europe and leaving that of the Asian area unchanged[5];
(b) Pakistan: to increase the representation of Asia and Latin America, and to some extent that of Western Europe, with lesser increases for Eastern Europe and Africa[6];
(c) Mexico: to increase the representation of Latin America and especially Africa, while combining the three Asian areas and increasing (unlike the other proposals) the proportion of designated seats compared with elective seats[7];
(d) Two Middle Eastern States: to increase the number of representatives of all areas, while maintaining roughly the previous balance but considerably increasing the proportion of elective seats[8];
(e) Twenty-one miscellaneous States: to increase the representation of Africa and Latin America, as well as of the Member States of Euratom, while increasing the proportion of elective seats[9].

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[2] GOV/COM.20/OR/11.
[3] GOV/COM.20/17/Rev.1.
[4] Circular note of 24 June 1970 (L/119-3).
[5] GOV/1413, formerly GOV/COM.20/18, later GC(XIV)/437, part A.1.
[6] GOV/1414, later GC(XIV)/437, part A.2.
[7] GOV/1417, formerly GOV/COM.20/2, later GC(XIV)/437, part A.3.
[8] GOV/1416, later GC(XIV)/437, part A.4.
[9] GOV/1418, formerly GOV/COM.20/17/Rev.1, later GC(XIV)/437, part A.5.

The texts of these five amendments were also communicated to the 14th General Conference (1970), together with a brief report from the Board, indicating its lack of consensus, as well as the records of the five meetings of the Board and of the four meetings of the Ad Hoc Committee of the Whole at which the proposals had been discussed since the 13th General Conference, and brief statements of the views of most of the Governors on the proposed amendments[10].

At the 14th General Conference, the five proposed amendments were intensely debated by the Administrative and Legal Committee in a series of six meetings[11], together with four draft resolutions, supporting one or another of the proposed amendments[12], and an Eastern European amendment[13] to one of these. After rejecting that amendment to the proposal sponsored by 34 Members[14] (a distant derivative of the original Italian proposal), the Committee recommended the latter proposal to the General Conference[15], which adopted it after rejecting another amendment thereto sponsored by three Eastern European States[16]. The statutory amendment finally adopted by the Conference[17] thoroughly revised paragraph A of Article VI and made consequential changes in paragraphs B–D; the principal effects of these changes were:

(i) To increase from 5 to 9 the number of States most advanced in the technology of atomic energy, among the membership as a whole, that the Board was to designate;
(ii) To slightly change the reference to the States most advanced in the technology of atomic energy so as to substitute for the previous implication that these 'represent' particular areas the more neutral determination that they are 'located' in particular areas;
(iii) To change the definition of two of the eight specified geographical areas by changing the assignment of the Middle East from its original combination with Africa to a combination with South Asia;
(iv) To abolish the former category of supplier of technical assistance;
(v) To increase from 12 to 22 the number of Board members to be elected by the General Conference, according to a complex pattern by which 20 States are to be elected in specified numbers from seven of the eight areas and two more States are to be elected from two specified combinations of three areas each.

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[10] GC(XIV)/437 and Add. 1–2.
[11] GC(XIV)/OR.52–57.
[12] GC(XIV)/COM.2/50 and Add.1–4; /51/Rev.1; /52 and /53.
[13] GC(XIV)/COM.2/54, rejected 10:38:24.
[14] GC(XIV)/COM.2/50 and Add.1–4, approved 46:10:16.
[15] GC(XIV)/450 and Corr.1.
[16] GC(XIV)/451, rejected 11:41:25 (GC(XIV)/OR.142, para. 17).
[17] GC(XIV)/RES/272, adopted 54:9:13 (GC(XIV)/OR.142, para. 19).

The effect of this was to provide the following average number[18] of elective seats from the designated areas:

| | |
|---|---|
| 0 | from North America |
| 5 | from Latin America |
| 4 | from Western Europe |
| 3 | from Eastern Europe |
| $4\frac{1}{3}$ | from Africa |
| $2\frac{2}{3}$ | from the Middle East and South Asia |
| $1\frac{2}{3}$ | from South East Asia and the Pacific |
| $1\frac{1}{3}$ | from the Far East. |

(vi) To allow, under restricted conditions, the re-election of States from certain areas, thus permitting some elected members to serve continuously on the Board, which had previously only been possible for designated members.

The overall effect of the new amendment was to increase drastically the size of the Board (from 25 to 34) and to increase the ratio of beneficiary States to the 'most advanced' States and the ratio of States elected by the General Conference to States designated by the Board (from 12 out of 25 to 22 out of 34).

This amendment came into force on 1 June 1973[19] and was first implemented with the designation made by the Board in June 1973[20] and the elections[21] at the 17th General Conference in September 1973.

*8.2.1.2.2.2. Article VI.A.2(a) (as amended).* In January 1977, four Governors introduced in the Board a paper designed to elicit a discussion of the under-representation of the areas of Africa and of the Middle East and South Asia in the Board[22]. Specifically, it was proposed that the number of Board members elected by the General Conference under amended Article VI.A.2(a) be increased from 20 to 25 by increasing the number of African seats from 4 to 7 and those from the Middle East and South Asia from 2 to 4; at the same time it was proposed to delete all bars to the re-election of any Board member, on the ground that the provisions regulating the composition of the governing organs of other similar organizations contained no such restriction. The Board discussed these proposals at six meetings in the course of three separate sessions in 1977[23]; between the sessions, consultations took place, chaired by the Chairman or by one of the Vice-Chairmen of the Board. Nevertheless, no substantive consensus was reached. At the request of the proponent States and to enable the General Conference to act on the proposed amendment at its 21st session, the Director General on 28 June 1977 communicated

[18] For an explanation of the functional seats, see Section 8.2.2.4.3.3.

[19] INFCIRC/159/Rev.3, incorporating by reference INFCIRC/159/Rev.2 and Add. 1-2.

[20] GC(XVII)/502.

[21] GC(XVII)/DEC/10.

[22] GOV/1821.

[23] The 495th and 496th meetings in February, the 499th, 502nd and 503rd meetings in June, and the 506th meeting in September 1977.

a certified text to all Member States[24] and also included the text in a document for the General Conference[25], which also set out the text of a draft resolution and the summary records of the relevant Board debates.

On the recommendations of its Committee of the Whole[26], the Conference adopted a resolution asking the Board to give further consideration to the representation of the two areas in question and to report to the next session of the Conference[27]. In addition, several months later the United Nations General Assembly in a resolution asked the Agency to improve the geographical distribution of its Board[28].

During 1978, the Board discussed this question at three sessions[29] and also conducted informal consultations. On 19 June 1978, at the request of several States[30], the Director General circulated to all Members the text of a revised proposal[31], merely to increase the number of Board members elected under Article VI.A.2(a) from 20 to 22, by increasing by one seat each the number of members elected from the two areas in question; the existing provision restricting re-elections was not to be changed[31]. Once more, the new text and the records of the Board's debates were communicated to the General Conference[32], which adopted a resolution on the lines of that of the previous year, with the preamble reflecting the fact that the 1978 proposal came close to receiving the required two-thirds majority[33]. The new proposal again received support from the United Nations General Assembly[34].

During 1979, the Board again discussed this subject at three sessions[35], without reaching any substantive consensus, and communicated the records of its debates to the General Conference[36], which again adopted a similar resolution[37], which was, however, anticipated by a resolution of the United Nations General Assembly[38].

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[24] Circular note of 28 June 1977 (L/119-3).

[25] GC(XXI)/584 and Add.1-4.

[26] GC(XXI)/594, reflecting deliberations recorded in GC(XXI)/COM.5/OR.5-7.

[27] GC(XXI)/RES/353.

[28] UNGA/RES/32/49, para. 7.

[29] The 513th meeting in February, the 520th meeting in June and the 525th meeting in September 1978.

[30] GOV/1909 and Add. 1, and GOV/INF/350.

[31] Circular note of 19 June 1978 (L/119-3).

[32] GC(XXII)/602 and Add. 1.

[33] GC(XXII)/RES/361, reflecting deliberations recorded in GC(XXII)COM.5/OR.9-12.

[34] UNGA/RES/33/3, para. 5.

[35] The 528th meeting in February, the 534th meeting in June and the 539th meeting in November 1979.

[36] GC(XXIII)/616 and Add. 1.

[37] GC(XXIII)/RES/370, reflecting deliberations recorded in GC(XXIII)/COM.5/OR.18.

[38] UNGA/RES/34/11, para. 8, which was adopted before the December 1979 review of the General Conference.

During 1980, these steps were again repeated in the Board[39], the General Conference[40] and the Assembly. At one meeting of the Board its Chairman summarized the situation by classifying the positions taken by the States as follows: States favouring a 1 + 1 increase for the areas of Africa and of the Middle East and South Asia; States preferring a 3 + 2 increase; States proposing a complete recasting of the composition of the Board, and States that had not yet made up their minds[41].

### 8.2.2. Categories of Board members

*8.2.2.1. Most advanced members* (Article VI.A.1)

Statute Article VI.A.1 (as amended) provides that the outgoing Board is to designate for membership in the next Board the nine Member States most advanced in the technology of atomic energy including the production of source materials, and the Member States similarly most advanced and situated in each of the following areas in which none of the aforesaid nine States is located:

(1) North America
(2) Latin America
(3) Western Europe
(4) Eastern Europe
(5) Africa
(6) Middle East and South Asia
(7) South East Asia and the Pacific
(8) Far East.

8.2.2.1.1. Criteria

The amendment to Statute Article VI.A–D, with three changes in Article VI.A.1, did not change the criterion of the level of advancement in the technology of atomic energy. However, in the practical application of this criterion an important development was the 1977 decision of the Board to substitute Egypt for South Africa as the regionally most advanced State in Africa. That decision was not based on any reinterpretation of the criterion of technological advancement, but was taken on the basis of arguments that other provisions of the Statute must, under the given circumstances, take precedence over the one stated in Article VI.A.1. This decision was taken in spite of a change in this Article, which was no longer suggesting that any of the States designated by the Board 'represents' a particular

[39] The 545th meeting in March 1980, the 552nd and 553rd meetings in June 1980 and the 555th meeting in September 1980, reported to the General Conference in GC(XXIV)/632 and Add.1.
[40] GC(XXIV)/RES/378, reflecting deliberations recorded in GC(XXIV)/COM.5/OR.21.
[41] GOV/OR.552, para.21, reproduced in GC(XXIV)/632.

area, but was merely recognizing that a State is 'located' in a particular area, while still requiring that in respect of each of the eight areas listed in the Article at least one State be designated to the Board.

Designations of members by the Board pursuant to Statute Article VI.A.1 have led only once to a specific debate on a particular designation and the criteria for it, namely regarding which Member State was most advanced in Africa. However, in the course of the Board's annual consideration of these designations the problem of the extent to which these designations are — or whether they should be — in effect 'permanent' was discussed several times (see Section 8.2.2.1.3).

In addition, during the consideration of designations, several secondary criteria were mentioned:

(a) During the designations for the 17th Board, the USSR pointed out that it had accepted the amendment of Statute Article VI.A–D on the condition, inter alia, that the additional members to be designated under Article VI.A.1 (i.e. as the States most advanced in the technology of atomic energy in the world) would become Parties to the NPT[42].

(b) During the designations for the 24th Board, the Philippines requested that designated members pay their full share of voluntary contributions[43].

These suggestions might be understood either as establishing new selection criteria or as requests concerning the behaviour of designated members.

8.2.2.1.2. Sub-categories and incumbents

The two slightly different sub-categories established by the original version of Article VI.A.1 continued to persist.

*8.2.2.1.2.1. Most advanced in the world.* The first sub-category, "members most advanced [in the world]", has not changed, though the number of States to be designated in that category has been increased from 5 to 9. It should be noted that the Board still did not differentiate between the nine members most advanced in the world and those most advanced in particular areas[44]. However, the four additional States thus designated appear to be: the Federal Republic of Germany, India, Italy and either Japan or Australia. While the latter point cannot be determined unambiguously, some combinations are obviously excluded: the Federal Republic of Germany and Italy must be among those States designated as most advanced, since they come

[42] GOV/OR.456, paras 35-36. As a matter of fact, three out of the four Board Members enjoying this new designation, namely the Federal Republic of Germany, Italy and Japan, signed the NPT in 1975 or 1976, and all became Parties to the NPT within 1977; the fourth Board Member, India, has not signed the Treaty.

[43] GOV/OR.548, para. 9.

[44] Basic book, Section 8.2.2.1.2.2 (third para.).

from the area (Western Europe) that already includes France and the United Kingdom; when South Africa was replaced by Egypt, the Board made it clear that both of these States were considered only by the criterion of relative advancement within Africa; and the continuing rotation of Argentina and Brazil as the most advanced States in Latin America[45] strongly suggests that neither of these States is considered to be among the nine most advanced States in the world.

*8.2.2.1.2.2. Regionally most advanced.* The second sub-category was slightly changed to include "the member most advanced in the technology of atomic energy including the production of source materials in each of the following areas in which none of the aforesaid nine is located".

The change of wording in this criterion has already been mentioned[46], but its significance is difficult to establish. It would appear, however, that the purpose of those who proposed it (during the consultations either in the Board or in its Ad Hoc Committee of the Whole) was to defuse any suggestions that a State had to be 'representative' of its area, this being a secondary criterion for designation under this sub-category rather than constituting a mere geographical description of the areas for which designations were due.

In strict logic the selection for this second sub-category cannot take place until the members of the first one have been determined, and the Statute does not fix a specific number of members of this category. Since the entry into force of the amendment of Article VI.A–D in 1973, this number has actually always been three; however, theoretically the nine most advanced States might represent as few as one area or as many as all eight of the specific areas, and thus the number of members of the second sub-category could vary between zero and seven. Consequently, the total size of the Board was not actually fixed, but could vary from 31 to 38 (though it has remained at 34 after the 1973 amendment).

The practice established in the early days of the Board, to make all designations under Article VI.A.1 in one step, was retained after this Article was amended. It was this practice that created the minor ambiguity referred to in Section 8.2.2.1.2.1. The States so far unambiguously designated to the Board under this category are:

— For Latin America: Brazil alternating with Argentina;
— For Africa: South Africa, replaced in 1977 by Egypt, under the circumstances described below.

The only controversy concerning the designation of a particular member during the period 1970–1980 was that relating to South Africa. Questions about both the appropriateness of designating South Africa for the area of Africa and the Middle East and its status as the most advanced member in that region had already arisen

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[45] Basic book, Section 8.2.2.1.2.2, para. (b).
[46] Section 8.2.1.2.2.1, para. (ii).

earlier. These questions continued to be raised routinely, and concerted action to replace South Africa was started at the 19th General Conference (1975); at that session, 24 Member States (from Africa and from other regions) presented a declaration[47] objecting to the regular designation of South Africa by the Board in the light of the decision of the United Nations General Assembly at its 29th session (1974) to reject the South African credentials, and asserting the Board's obligation to comply with Statute Article III.B.1 (conduct in accordance with the purposes and principles of the United Nations). It was suggested that other African countries satisfied the criterion specified in Article VI.A.1[48]. When the Board in June 1976 considered the designations for the 20th Board, several Governors expressed reservations about the listing of South Africa, and at least one Governor referred to the declaration that had been submitted at the previous General Conference[49].

At the 1976 General Conference, 24 Member States submitted, under the item "Examination of Delegates' Credentials", a draft resolution entitled "Designation of members of the Board of Governors" in which the Board was asked to review the annual designation of South Africa, "taking due account of the inappropriateness and unacceptability of the apartheid regime of the Republic of South Africa as the representative of the area of Africa", and to report to the next General Conference[50]. This draft was adopted without debate[51], evidently as part of an arrangement meant to prevent at that session a successful challenge to the South African credentials; certain Member States might have accepted the resolution in the expectation that it would merely result in a report by the Board to the next Conference. However, when the Board, in June 1977, considered the designations for the 21st Board, the Chairman, on the basis of consultation and referring specifically to the Conference resolution, proposed a list in which South Africa was replaced by Egypt[52]. South Africa, warning against the politization of the Agency and reserving the right to resort to the provisions for settlement of disputes in Statute Article XVII, moved an amendment to restore its name to the list[53]. A long debate ensued[54], in which Governors favouring the replacement of South Africa by Egypt argued particularly that:

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[47] GC(XIX)/INF/158 and Mod. 1.

[48] This last suggestion implies an opinion on the term 'most advanced' as meaning not necessarily the single State absolutely in the lead, but rather a choice (presumably based on other criteria) from among a number of States considered to be sufficiently advanced.

[49] GOV/OR.489, para. 12; see, generally, paras 8–24.

[50] GC(XX)/576.

[51] GC(XX)/OR.191, paras 20–21, adopting GC(XX)/RES/336. On the same day, South Africa had a written communication circulated, stating its point of view (GC(XX)/INF/167).

[52] GOV/OR.501, para. 15.

[53] Ibid., paras 16-30.

[54] Ibid., paras 31–89.

(i) Article VI.A.1 had to be read in the light of other provisions of the Statute, including Articles III.A.3 and 4 (calling for the exchange of information and people, in which exchange South Africa did not participate regionally), Article III.B.1 (requiring the Agency to conduct its activities in accordance with the purposes and principles of the United Nations) and Article IV.B (listing, as a criterion for membership, the ability and willingness of a Member to act in accordance with the purposes and principles of the United Nations Charter);
(ii) The Statute had to be given a dynamic interpretation, taking into account significant developments in the world;
(iii) The Members of the Agency were bound by instruments such as the United Nations Declaration and Convention on the Elimination of Racial Discrimination and by various anti-apartheid and anti-South Africa resolutions adopted by the General Assembly;
(iv) The Board was bound by the recent General Conference resolution, which in effect (though not explicitly) called for the replacement of South Africa;
(v) In spite of the change in the wording of Statute Article VI.A.1, the States designated in respect of an area still had to be representative of it.

The Governors supporting the South African amendment considered that:

(i) Article VI.A.1 prescribed principally technical and objective criteria[55];
(ii) South Africa remained the State that still best fulfilled the stated criteria;
(iii) Intergovernmental organizations such as the Agency had to operate in a lawful manner;
(iv) The General Conference resolution, even if interpreted as demanding a change, could not take precedence over the Statute;
(v) The appropriate way to replace South Africa would be to amend the Statute, which amendment certain of the opponents of the Chairman's proposal would be prepared to support.

The Board voted 13:19:1 against the South African amendment and 19:12:2 for the list that included Egypt instead of South Africa[56]. On 31 August 1977 the South African Foreign Minister addressed a letter of protest to the Director General, which the latter circulated to all Member States[57].

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[55] To support this proposition, Canada cited Section 8.2.2.1.1 from the basic book (GOV/OR.501, para. 56). Egypt replied by referring to a statement in the final paragraph of Section 8.2.1.2.1 (GOV/OR.501, para. 69).

[56] GOV/OR.501, paras 90–99; GOV/DEC/93(XX), Nos (33)–(35). The designations were reported to the General Conference with a specific reference to this issue (GC(XXI)/579, para. 2).

[57] Note verbale 0/111 of 21 September 1977.

In June 1978 when the designations for the 22nd Board were being considered, the USA moved an amendment to the list proposed by the Chairman, to replace Egypt once again by South Africa; in support, it argued that under Article VI.A.1 a designated State did not have to represent an area and that South Africa still best fulfilled the criteria established by that Article. Egypt argued that a member must fulfil the criteria stated in Article IV.B, not only upon election but also throughout its membership. The proposed amendment was defeated 9:20:3 [58]. In the two subsequent years, during the consideration of the designations for the 23rd[59] and 24th[60] Boards, the USA and members of the European Community reiterated, without mentioning South Africa explicitly, that the designations made should comply with the Statute.

#### 8.2.2.1.3. Term

The amendment to Article VI.A.1 did not change the rule that designations under both sub-categories are for one-year terms that are renewable without restriction; thus, a State could stay on the Board permanently, subject, in principle, to an annual 'objective' evaluation. However, the point was raised several times whether the annual designations, which have remained stable since the inception of the Agency, should be examined more carefully on an annual basis so as to preclude 'permanent' Board members that might perhaps no longer qualify objectively for designation[61].

#### 8.2.2.1.4. Designation procedure

The procedure for making designations under Article VI.A.1 did not change. As mentioned in Section 8.2.2.1.2.2, there were two occasions when the list proposed by the Chairman of the Board was not acceptable to all Board members, but the amendments that were moved to the proposed list were not accepted by the Board.

### *8.2.2.2. Other producers of source materials* (Article VI.A.2, first clause)

This category of Board members was eliminated by the 1970 amendment to Article VI.A–D of the Statute.

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[58] GOV/OR.520, paras 1–46.
[59] GOV/OR.533, paras 74–75.
[60] GOV/OR.548, paras 7–8.
[61] GOV/OR.456, para. 40; GOV/OR.466, para. 52; GOV/OR.481, paras 48–51.

During the years before the elimination of this category, only a single complaint was raised: against the automatic designation in alternate years of Portugal as one of the source material suppliers[62].

*8.2.2.3. Supplier of technical assistance* (Article VI.A.2, second clause)

This category of Board members was also eliminated by the (1970) amendment to Article VI.A–D of the Statute.

*8.2.2.4. Geographical seats* (Article VI.A.3, later VI.A.2)

Until September 1972 the General Conference had to elect twelve members of the Board: three each from the areas Latin America and Africa and the Middle East, one member each from five other areas, and one further member. As of 1 June 1973, because of the amendment to Article VI.A–D, the corresponding provision became Article VI.A.2, under which the Conference has to elect:

(a) Twenty members:
  — Five from Latin America,
  — Four from Western Europe,
  — Three from Eastern Europe,
  — Four from Africa,
  — Two from the Middle East and South Asia,
  — One from South East Asia and the Pacific,
  — One from the Far East.
(b) One member from one of the following areas: Middle East and South Asia, South East Asia and the Pacific, and the Far East.
(c) One member from one of the following areas: Africa, Middle East and South Asia, and South East Asia and the Pacific.

8.2.2.4.1. Criteria

The criteria under the new Article VI.A.2 are the same as those under the former Article VI.A.3, except that the criterion "due regard to equitable representation on the Board as a whole" ostensibly only applies to the twenty members elected under Article VI.A.2(a) and not to the two members elected under Article VI.A.2(b) and (c). This could suggest that these two latter elections can take place, within their admittedly narrow limits, without regard to any general geographical considerations. Similarly, the Board members elected under Article VI.A.2(b) and (c) may not,

[62] GOV/OR.439, para. 39.

unlike those elected under Article VI.A.2(a), be regarded as 'representatives' of the combination of the areas indicated. Presumably, these anomalies merely represent slight imperfections in the drafting of the provision.

### 8.2.2.4.2. Term

Elections continued to be for two-year terms. Those elections under Article VI.A.2(a) are not immediately renewable, so that a State must wait for at least one year after leaving the Board before it may become a candidate for election under that paragraph again. This restriction does not apply to the elections under Article VI.A.2(b) and (c). A State that had served on the Board in a category other than that under Article VI.A.2(a) (i.e. as a designated member, or a member elected under Article VI.A.2(b) or (c)) can therefore immediately commence a term as an elected member under Article VI.A.2(a), or vice versa. Accordingly, a State from any of the four areas mentioned in Article VI.A.2(b) or (c) can serve on the Board continuously as an elected member, either by repeated elections under these sub-categories[63] or by alternating with terms of election under Article VI.A.2(a).

The amendment to Article VI.A.2 by Pakistan in 1977 originally proposed the elimination of the restriction on the re-election of Board members under Article VI.A.2(a)[64], but this demand was later dropped[65].

The first amendment to Statute Article VI.A.3, by which the number of elected Board members was increased from ten to twelve, did not provide that one of the two additional Board members should be elected for one year only, so that thereafter, in alternating years, either seven or five members were elected. The 1970 amendment to Article VI.A–D again made no provision for an initial shortening of some of the terms of elected members, so that in the normal course there would have had to be elections in alternating years of either eighteen or four members. It was important to avoid such an imbalance and in particular the biennial discontinuity in Board membership that would have resulted. Accordingly, at the first election after the amendment entered into force, seven of the eighteen members elected agreed voluntarily to serve for only one year[66]; the members then elected at the following General Conference to replace them served for full two-year terms, leading to a pattern of eleven elections each year.

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[63] Actually, because of the system of rotation informally established in respect of the multiple area seats (see Section 8.2.2.4.3.3), it was not feasible for any State to be continuously elected to one or the other of those seats.

[64] See GC(XXI)/584, Annex I.

[65] See GC(XXII)/602, Annex II.

[66] See GOV/OR.456, para. 41; GC(XXVII)/GEN/OR.21, paras 17–20; GC(XXVII)/OR.167, paras 19–20; GC(XVII)/DEC/10, footnote 1; GC(XVIII)/533, para. 2.

When Egypt replaced South Africa as a designated member of the Board, Egypt was serving on the Board for a two-year term under Article VI.A.2(c). Without any discussion of this point it was assumed that the designation automatically took precedence over the election, so that Egypt became unable to continue serving as an elected member during the second year[67]. Therefore, a special election was held under Article VI.A.1(c) at the 21st General Conference[68], with Senegal being elected for what would normally have been a two-year term; however, that State agreed to serve for only a single year[69], thus restoring as of the next year the pattern of eleven elections at each regular session of the Conference.

The interpretation of the two-year provision in Article VI.D is thus in accordance with the literal meaning of its text. If a State is elected to replace another State that has not served a full two-year term (either because it agreed to serve for only one year or because it resigned or because it became ineligible for an elective seat by designation under Article VI.A.1), then the newly elected Board member has a term of two full years and not merely the balance of the original term. On the other hand, the practice was that if service for a full term would upset the pattern of an equal number of elections at each Conference, then the State concerned agreed to serve only one year.

8.2.2.4.3. Sub-categories

The amended Article VI.A.2, unlike the previous Article VI.A.3, did not preserve the former two sub-categories of 'geographical seats' and 'floaters'. The 'floater' category was eliminated, although the multiple geographical seats are often referred to as 'floaters'. On the other hand, the first category can now be subdivided into two sub-categories:

(a) 'Single area geographical seats' under Article VI.A.2(a);
(b) 'Multiple area geographical seats' under Article VI.A.2(b) and (c).

*8.2.2.4.3.1. Single area geographical seats* (Article VI.A.2(a)). Instead of the original seven (later eleven) members to be elected under former Article VI.A.3 from seven of the eight areas listed in Article VI.A.1, Article VI.A.2(a) requires twenty members of the Board to be so elected. This statutory requirement is implemented in part in General Conference Procedural Rule 85(d), which reads in its relevant part:

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[67] Procedural Rule 85(a) (GC(XIX)/INF/152) of the General Conference provides that a vote cast for a State that has already been designated to the Board is invalid.

[68] GC(XXI)/592, footnote 2.

[69] GC(XXI)/OR.199, para. 54; GC(XXI)/DEC/8, footnote 1.

"In elections to the Board of Governors invalid votes shall include those cast for a Member of the Agency:

(d) Which is not in that area or group of areas referred to in Article VI.A.2 of the Statute in respect of which the election is being held."

With reference to the representative character of the Board members elected under this category, the analysis under this section in the basic book still applies, including the gentlemen's agreement set out there. Nothing in the process of amending Article VI.A–D or in the subsequent practice suggests that the understanding of area autonomy in choosing the Board members to be elected from this area has in any way been modified[70].

*8.2.2.4.3.2. 'Floaters'.* As indicated above, the sub-category of 'floaters' was eliminated by the amendment to Article VI.A–D. There are no longer any members of the Board not elected from a particular area or combination of areas, although multiple geographical seats are often referred to as 'floaters'. Until the entry into force of the statutory amendment in June 1973 the practice regarding 'floaters' remained unchanged.

*8.2.2.4.3.3. Multiple area geographical seats* (Article VI.A.2(b, c)). Statute Article VI.A.2(b, c) requires the election of one member each from the following two combinations of areas: (1) Middle East and South Asia, South East Asia and the Pacific, and Far East; and (2) Africa, Middle East and South Asia, and South East Asia and the Pacific. By the procedures described in Section 8.2.2.4.2 it was arranged that the election for each of these two groups of areas would be held in alternate years.

The Board members elected under these provisions may not be considered as 'representatives' of either their respective groups of areas or a particular area within them. Unlike Board members elected under Article VI.A.2(a), members elected under paragraph (b) or (c) can be immediately re-elected from the same category[71].

A study of the elections that have taken place under the amended provisions of the Statute shows the following pattern:

(a) Elections under Article VI.A.2(b) took place in odd-numbered years, in the following sequence: Far East (1973 and every 6th year thereafter), South East Asia and the Pacific (1975, etc.), Middle East and South Asia (1977, etc);

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[70] There is one instance in which, during the period covered by the present book, an area appears to have been unable to agree on a full slate of candidates. A second ballot had to be taken to elect the winner of the third Latin American seat (see GC(XXII)/OR.207, para. 38; /OR.208, paras 2–4, 17–19).

[71] As a matter of fact, no such re-election has as yet taken place. However, as indicated in Annex 3.1 of the basic book, the Philippines, which was elected at the 17th General Conference (1973) for a two-year term under Article VI.A.2(b), was re-elected at the 19th Conference for a two-year term under Article VI.A.2(a).

(b) Elections under Article VI.A.2(c) took place in even-numbered years, in the following sequence: Middle East and South Asia (1974 and every 6th year thereafter), Africa (1976, etc.), South East Asia and the Pacific (1978, etc.).

Under this pattern, each of the three areas in either of the groupings has an equal opportunity of receiving a seat within that grouping. Since two of the areas appear in both groupings, the long term distribution of these two seats should be as follows:

— Africa: one-third;
— Middle East and South Asia: two-thirds;
— South East Asia and the Pacific: two-thirds;
— Far East: one-third.

Moreover, if the existing rotation is maintained, neither the Middle East and South Asia nor South East Asia and the Pacific will ever have a seat under both Article VI.A.2(b) and Article VI.A.2(c) at the same time[72].

With reference to the choice of a particular State to be selected from the area in question, one can presume that the gentlemen's agreement mentioned in Section 8.2.2.4.3.1 in respect of the single area seats applies also here — i.e. the autonomy of each area in respect of its choice of candidates is honoured whenever the area makes such a choice, which was almost always the case.

The area choice of candidates was presumably made so as to take account of the other incumbents and candidates from the same area elected or to be elected under Article VI.A.2(a), and the number of times a State had been represented on the Board under any of the elective categories.

General Conference Procedural Rule 84(a), which was adopted after the amendment to Statute Article VI.A–D entered into force[73], provides that a single ballot should be taken in respect of all elective places to be filled; that these places are to be listed in the order in which they are reflected in Article VI.A.2 (i.e. the single geographical seats first, followed by the appropriate multiple ones); and that, if on such a ballot a particular Member "receives the majority of votes required for election in respect of more than one elective place, the Member shall be considered elected to whichever of these elective places appears first on the ballot paper". Accordingly, should a State be elected both to a single area seat and to a

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[72] At the 19th General Conference (1975) evidently no advance agreement had been reached on the area that was to present a candidate in the elections under Article VI.A.2(b), since 43 votes were cast for Indonesia (South East Asia and the Pacific), 36 for Pakistan and one for Bangladesh (Middle East and South Asia) (GC(XIX)/OR.183, paras 14–15). The latter two States were from an area already represented on the Board by Iraq, which had been elected in the previous year under Article VI.A.2(c); the outcome, i.e. the election of the South East Asia and Pacific candidate, appears to reflect the determination of the whole group of members that neither area should be doubly represented within the subcategory of multiple area geographical seats.

[73] See Section 7.3.1, para. (a).

multiple area seat it must take the former, regardless of its wishes or of the number of votes it received in respect of the two seats[74].

8.2.2.4.4. Pattern of elections

As a result of the arrangements described in Section 8.2.2.4.2 designed to even out the number of Board members elected at each session of the Conference, the following pattern of elections evolved:

(a) In odd-numbered years:
  (i) Two from Latin America,
  (ii) Two from Western Europe,
  (iii) Two from Eastern Europe,
  (iv) Two from Africa,
  (v) One from the Middle East and South Asia,
  (vi) One from the Far East,
  (vii) One from the Middle East and South Asia or from South East Asia and the Pacific or from the Far East.

(b) In even-numbered years:
  (i) Three from Latin America,
  (ii) Two from Western Europe,
  (iii) One from Eastern Europe,
  (iv) Two from Africa,
  (v) One from the Middle East and South Asia,
  (vi) One from South East Asia and the Pacific,
  (vii) One from Africa or from the Middle East and South Asia or from South East Asia and the Pacific.

The area from which the candidate under (a) (vii) or (b) (vii) is to be elected is the one indicated by the rotation referred to in Section 8.2.2.4.3.3.

8.2.2.4.5. Subsidiary gentlemen's agreements

Of the three gentlemen's agreements mentioned in the basic book, only the one relating to Argentina/Brazil apparently continued. The one relating to Africa and the Middle East became inapplicable because of the transfer of the Middle East to another area and because of the considerable increase in the number of African seats;

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[74] Presumably, however, the preference of most States would be in the sense opposite to that provided by Rule 84(a), because of the re-election ban on the single area seats. If the seat were one under Article VI.A.2(a) and if two years later no appropriate multiple area seat were available, re-election would be precluded. This would not be the case if the Procedural Rule were otherwise. The situation which the Rule addressed has not yet arisen.

the one relating to Western Europe became inapplicable because of the transfer of two Euratom States to designated seats under Article VI.A.1 and the elimination of both sub-categories of elective seats under former Article VI.A.2.

Taking into account the pattern of elections established since the entry into force in 1973 of the statutory amendment, the following informal understandings seem to have been observed:

(a) As to Latin America, the gentlemen's agreement provides for the continuous presence on the Board of both Argentina and Brazil, alternating with each other under Articles VI.A.1 and VI.A.2(a).

(b) As to Western Europe, the four Scandinavian States, which previously had shared a seat under the second sub-category of former Article VI.A.2, always received at least one, and sometimes even two, elective seats under Article VI.A.2(a). The other States interested in a seat apparently took their turns in an irregular pattern.

(c) As to Eastern Europe, which previously had one assured seat under the first sub-category of former Article VI.A.2 plus one under Article VI.A.3, the turns taken for the three seats under Article VI.A.2(a) do not seem to reflect any particular pattern.

(d) In respect of Africa, it is attempted to have among the four or five elective seats a balance between States that have English as their international language and States that have French as their international language. Furthermore, there seems to be an attempt to have a balance between States with a black population and those with an Arab population. However, occasional lapses seem to have occurred[75].

(e) No regular pattern has evolved in respect of the Middle East and South Asia. The two or three elective seats are sometimes held only by Middle Eastern States[76] and sometimes only by States from South Asia[77], though generally there is a mixture of both.

### 8.2.2.4.6. Definition of areas

The attribution of States to particular areas has not changed significantly. The only substantial change has been the shift of the Middle East from its previous combination with Africa to a new combination with South Asia[78]. However, the only

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[75] For example, the 22nd Board had five African members, but none was from among the francophone sub-Saharan States.

[76] On the 22nd Board, the elected members from the Middle East and South Asia were Iran, Kuwait and Saudi Arabia.

[77] On the 20th Board, the elected members from the Middle East and South Asia were Bangladesh and Pakistan, and the designated member was India.

[78] Section 8.2.1.2.2.1, para. (iii).

potential uncertainty resulting from that change — the attribution of Egypt (through the Sinai, Egypt also has Asian territory and is a member of both the United Nations Economic Commission for Africa and that for Western Asia) — was resolved by the Board's decision to designate Egypt instead of South Africa as the State most advanced in nuclear technology in the African area[79].

Because of the considerably larger number of States that are to be elected by the General Conference, classifications based on such elections, which always provide unambiguous types of attribution, have been secured for many additional States. Since 1973, the possibility of basing attributions on the reassignment of floaters has disappeared, but this indirect method had in any event not yielded new classifications. Tables 8A and 8B present a revised summary of area attributions of IAEA Member States.

8.2.2.4.7. Election procedure

*8.2.2.4.7.1. Determination of elective places.* The amendment to the General Conference Rules of Procedure consequent on the entry into force of the amendment to Statute Article VI.A–D had as its principal effect the elimination of the former function of the General Committee to determine at each regular session of the General Conference the elective places to be filled on the Board[80]. That function had in any event become routine, except possibly in respect of the 'floaters', and that sub-category had been eliminated in the amended Statute. Consequently, the Director General proposed in 1973, and the General Conference agreed, that the list of elective places to be filled should be proposed by the presiding officer of the Conference[81]. The President of the Conference has therefore done so in the form of a Conference document published during the early days of each regular session[82].

Because of the uniform pattern of the elections referred to in Section 8.2.2.4.4, these documents were practically identical every second year. Following the example of the communications previously issued by the General Committee, those by the President also included a list of the States already designated or elected to the next Board.

*8.2.2.4.7.2. Balloting in the Plenary.* The election procedure remained essentially unchanged. In particular, the elections always took place on the last day of the Conference, so as to give maximum time for arranging and informally circulating an acceptable slate of candidates.

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[79] Section 8.2.2.1.2.2.

[80] Section 7.3.1, para. (a); Section 7.3.3.2, para. (b).

[81] GC(XIX)/INF/152, Rule 83.

[82] For example GC(XXIV)/636.

TABLE 8A. 'AREA' ATTRIBUTION OF IAEA MEMBER STATES

| | |
|---|---|
| Afghanistan | SA(GC) |
| Albania | EE(G) |
| Algeria | A&ME(GC); A(GC) |
| Argentina | LA(GC; B) |
| Australia | SEA&P(P-1) |
| Austria | WE(GEN; GC); EE(V) |
| Bangladesh | ME&SA(GC) |
| Belgium | WE(GC) |
| Bolivia | LA(V; G) |
| Brazil | LA(P-1; B; GC; GEN) |
| Bulgaria | EE(GC) |
| Burma | ?; SA(V); SEA&P(V) |
| Byelorussian Soviet Socialist Republic | EE(G) |
| Cameroon, United Republic | (G) |
| Canada | NA(P-2) |
| Chile | LA(GC) |
| (China) | FE(GC) |
| Colombia | LA(GEN; GC) |
| Costa Rica | LA(GC) |
| Cuba | LA(V) |
| Cyprus | ?; WE(G); A(G); ME&SA(G) |
| Czechoslovakia | EE(GC) |
| Denmark | WE(GC) |
| Dominican Republic | LA(G) |
| Ecuador | LA(GC) |
| Egypt | A&ME(GC); A(B); AE&SA(V) |
| El Salvador | LA(GEN?; V) |
| Ethiopia | A&ME(V; G) |
| Finland | WE(GC); EE(G) |
| France | WE(P-1) |
| Gabon | (A(GC)) |
| German Democratic Republic | EE(GC) |
| Germany, Federal Republic of | WE(GEN) |
| Ghana | A(GC) |
| Greece | WE(GEN; GC) |
| Guatemala | LA(GC) |
| Haiti | LA(G) |
| Holy See | WE(G); ? |
| Hungary | EE(GC) |
| Iceland | WE(G; G); ? |
| India | SA(P-1); ME&SA(B) |
| Indonesia | SEA&P(GC) |
| Iran | A&ME(GC); ME&SA(GC) |
| Iraq | A&ME(GC); ME&SA(GC) |
| Ireland | WE(GC) |
| Israel | A&ME(V); ME&SA(V) |
| Italy | WE(GC; GEN) |
| Ivory Coast | A&ME(V; G) |
| Jamaica | ?; LA(G); NA(G) |
| Japan | FE(P-1) |
| Jordan | ME&SA(V; G) |
| Kampuchea, Democratic | ?; FE(V); SA(V); SEA&P(G) |
| Kenya | A(GC) |
| Korea, Democratic People's Republic | FE(GC); SEA&P(V) |
| Korea, Republic of | FE(GC) |
| Kuwait | A&ME(G); ME&SA(GC) |
| Lebanon | A&ME(GC); ME&SA(V) |
| Liberia | A(G) |

| | |
|---|---|
| Libyan Arab Jamahiriya | A(GC) |
| Liechtenstein | WE(G) |
| Luxembourg | WE(G) |
| Madagascar | A&ME(GC); A(V) |
| Malaysia | SEA&P(GC) |
| Mali | A(G) |
| Mauritius | |
| Mexico | LA(GC; GEN) |
| Monaco | WE(G) |
| Mongolia | FE(V) |
| Morocco | A&ME(GC); A(GC) |
| Netherlands | WE(GC; GEN) |
| New Zealand | SEA&P(V) |
| Nicaragua | LA(G) |
| Niger | A(GC) |
| Nigeria | A&ME(GC); A(GC) |
| Norway | WE(GC) |
| Pakistan | SA(GC); ME&SA(GC) |
| Panama | LA(GC) |
| Paraguay | LA(G) |
| Peru | LA(GC) |
| Philippines | FE(GC) |
| Poland | EE(GC) |
| Portugal | WE(GC) |
| Qatar | |
| Romania | EE(GC) |
| Saudi Arabia | A&ME(GC); ME&SA(GC) |
| Senegal | A(GC) |
| Sierra Leone | A(G) |
| Singapore | SEA&P(GC) |
| South Africa | A&ME(P-1); A(B) |
| Spain | WE(GEN; GC) |
| Sri Lanka | SA(GC) |
| Sudan | A(GC) |
| Sweden | WE(GC) |
| Switzerland | WE(GEN; GC) |
| Syrian Arab Republic | A&ME(GC); ME&SA(G) |
| Tanzania, United Republic of | A(GC) |
| Thailand | SEA&P(GC) |
| Tunisia | A&ME(GC); A(GC) |
| Turkey | WE(GEN; GC); A&ME(V,G); EE(V,G) |
| United Kingdom | WE(P-2) |
| Uganda | A(G) |
| Ukrainian Soviet Socialist Republic | EE(G) |
| Union of Soviet Socialist Republics | EE(P-2) |
| United Arab Emirates | |
| United States of America | NA(P-2) |
| Uruguay | LA(GC) |
| Venezuela | LA(GC) |
| Viet-Nam | FE(GC) |
| Yugoslavia | EE(GC); WE(V) |
| Zaire | A&ME(GC); A(GC) |
| Zambia | A(GC) |

## NOTES TO TABLE 8A

### 1. Statute Article VI.A.1, 'Areas'

NA — North America; LA — Latin America; WE — Western Europe; EE — Eastern Europe; A&ME — Africa and the Middle East (before the 1973 amendment); SA — South Asia (before the 1973 amendment); A — Africa (after the 1973 amendment); ME&SA — Middle East and South Asia (after the 1973 amendment); SEA&P — South East Asia and the Pacific; FE — Far East.

### 2. Basis of attribution

P-1: Designated by the Preparatory Commission under Article VI.A.1 with respect to the indicated area; later, these designations were repeated by the Board and thus the area attributions were by implication confirmed by it.

P-2: From the area designations made by the Preparatory Commission (see P-1 above), one can by combination and elimination deduce the area attributions of the five most advanced States designated by it under Article VI.A.1; these area attributions too were repeated by the Board and thus by implication confirmed by it.

B: Designated by the Board under Article VI.A.1, with respect to the indicated area.

GC: Election by the General Conference to a geographical seat under the former Article VI.A.3 or the present Article VI.A.2(a). Certain conclusions might also be drawn from the triple area elections under Article V.A.2(b) or (c), but in no case has such an analysis added to the certainty of an attribution.

GEN: Conclusion by the General Committee of the General Conference that a State is in the indicated area, as implied from its recommendation pursuant to former Procedural Rule 86 that no election with respect to that area was required; these recommendations of the General Committee had in no case been challenged by the Plenary and thus were by implication confirmed by the Conference. With the elimination of 'floaters' (see basic book, Section 8.2.2.4.3.2) in the current version of the Statute, these conclusions, which are now those of the President, as to the areas for which elections are required, are no longer useful in making attributions.

V: Unchallenged vote cast in an election by the General Conference for the State with respect to the indicated area. Since under Procedural Rule 85(d) (former Rule 88) a vote is invalid if cast for a State that is not in the geographical area in respect of which the election is being held, an unchallenged vote implies that the State is considered to be in that area; however, this implication is not a strong one, as witnessed by the fact that for some States votes have been cast for three separate areas (sometimes for two areas at the same meeting of the Plenary; see, for example, the failure to challenge the vote cast for the Democratic People's Republic of Korea for the area SEA&P, at the same election at which that State was elected to a seat for the area FE (GC(XXIII)/OR.217, paras 19–21)), and in no case has any vote been challenged

on this ground. Tellers are instructed to report as invalid any votes cast for States that are 'manifestly' not in the area in question — but this does not cover borderline cases, which are reported without comment to the President who may of course issue a ruling, or invite a challenge from the floor, or (as has always been the case) make no difficulties concerning a few votes scattered among miscellaneous candidates. Thus this test should not be taken into account if any more positive indication of attribution is available.

G: Assignment made on the basis of geographical logic, taking into account any relevant political factors. This indicium is recorded only if no more positive indication of the attribution of a State is available.

### 3. Comments on particular areas or attributions

*(a) Western Europe — Eastern Europe*

Though expressed in geographical terminology, it is clear that the terms Western Europe and Eastern Europe have acquired an overriding political meaning. Otherwise, Greece, which lies considerably to the east of several undoubtedly Eastern European countries (e.g. Hungary and Yugoslavia, both of which have been elected by the General Conference to represent Eastern Europe), could not have been implicitly classified as a Western European country by the General Committee at the 6th General Conference, and Turkey, which lies still further to the East, could not have been elected to a Western European seat by the 18th General Conference. In this connection it is interesting to recall that at the Working Level Meeting the Soviet representative officially recorded his understanding that the Eastern European area is composed of twelve States, among which he included Greece and Yugoslavia; however, the American and British representatives immediately reserved their positions as to this listing.

*(b) North America — Latin America*

This classification is incongruous, since it matches a geographical term (North) against an ethnic–linguistic one (Latin). Strictly speaking, Mexico is both within North America and within Latin America; the 10th General Conference elected it to a Latin American seat, thus confirming decisions reached by the General Committee at the 4th and 7th regular sessions. It is also difficult to assign Jamaica, which is too far south to be considered to belong to North America but is not linguistically Latin, since it has not yet been elected to the Board.

*(c) Far East — South Asia — South East Asia and the Pacific*

There is still no certainty as to where the boundary should be drawn between these three artificially designated areas, as testified by the fact that Kampuchea (Cambodia) has received unchallenged votes for all three areas and Burma for two of them. At the 5th General Conference, four undoubted members of the Far East area (China, Japan, Korea and the Philippines) stated that Viet-Nam was not in that area, but the Conference overruled them by electing Viet-Nam to the area seat (basic book, Section 8.2.2.4.3.1).

TABLE 8B. SUMMARY OF 'AREA' ATTRIBUTION OF IAEA MEMBERS

NORTH AMERICA (NA)

Canada
United States of America

Jamaica X

LATIN AMERICA (LA)

Argentina
Bolivia
Brazil
Chile
Colombia
Costa Rica
Cuba
Dominican Republic
Ecuador
El Salvador
Guatemala
Haiti
Mexico
Nicaragua
Panama
Paraguay
Peru
Uruguay
Venezuela

Jamaica?

WESTERN EUROPE (WE)

Austria
Belgium
Denmark
Finland
France
Germany, Federal Republic of
Greece
Holy See?
Iceland?
Ireland
Italy
Liechtenstein
Luxembourg
Monaco
Netherlands
Norway
Portugal
Spain
Sweden
Switzerland
Turkey
United Kingdom

Cyprus?

EASTERN EUROPE (EE)

Albania
Bulgaria
Byelorussian Soviet Socialist Republic
Czechoslovakia
German Democratic Republic
Hungary
Poland
Romania
Ukrainian Soviet Socialist Republic
Union of Soviet Socialist Republics
Yugoslavia

Cyprus X
Finland X

AFRICA (A)

Algeria
Cameroon, United Republic
Egypt
Ethiopia
Gabon
Ghana
Ivory Coast
Kenya
Liberia
Libyan Arab Jamahiriya
Madagascar
Mali
Mauritius
Morocco
Niger
Nigeria
Senegal
Sierra Leone
South Africa
Sudan
Tanzania, United Republic of
Tunisia
Uganda
Zaire
Zambia

Cyprus X

TABLE 8B (cont.)

| MIDDLE EAST (ME) | SOUTH EAST ASIA AND THE PACIFIC (SEA&P) |
|---|---|
| Iran | Australia |
| Iraq | Indonesia |
| Israel? | Malaysia |
| Jordan | New Zealand |
| Kuwait | Singapore |
| Lebanon | Thailand |
| Qatar | |
| Saudi Arabia | Burma X |
| Syrian Arab Republic | Cambodia X |
| United Arab Emirates | |
| Cyprus X | FAR EAST (FE) |
| | (China) |
| SOUTH ASIA (SA) | Japan |
| | Korea, Democratic People's Republic |
| Afghanistan | Korea, Republic of |
| Bangladesh | Philippines |
| India | Viet-Nam |
| Pakistan | |
| Sri Lanka | Kampuchea, Democratic? |
| | Mongolia? |
| Burma? | |
| | UNASSIGNED (?, X) |
| Cambodia X | |
| | Burma (SA) |
| | Cyprus (WE) |
| | Jamaica (LA) |
| | Kampuchea, Democratic (FE) |
| | Mongolia (FE) |

## NOTES TO TABLE 8B

*Conclusions* (based on Table 8A)

The reasonably unambiguous attributions are given immediately below the name of the 'areas' specified in Article VI.A.1 of the Statute; however, if the attribution is in any way doubtful, it is followed by a question mark.

The five States that are listed as 'unassigned' are tentatively attributed to the indicated areas below a broken line and are followed by a question mark.

Possible alternative attributions of certain States (for which there are some, albeit weak, indicia) are indicated by listing these States, for a second or third time, below a solid line and by adding an X.

Although the Middle East (ME) was not a separate area either in the original Statute (where it was combined with Africa) or in the present version of the Statute (where it is combined with South Asia), it is possible, by comparing attributions before and after the amendment to Statute Articles VI.A-D, to indicate which States belong to that region, and this has therefore been done in this table.

This timing also ensured that the report on credentials was adopted by the Conference before the Board election took place[83]. In order to save time, it was frequently arranged that the ballots be cast at the end of the morning meeting of the last Conference day[84], so that the ballots could be counted during the midday break and the results announced at the beginning of the afternoon meeting[85].

One more interesting and time saving innovation was introduced by the 1973 amendment to the Rules of Procedure: instead of balloting separately and sequentially for each area or group of areas, as had been the practice, the new Rule 84 calls for a single initial ballot for all areas or groups of areas[86]. Only if that ballot should be inconclusive as to one or more seats would separate ballots have to be held to fill those seats. As indicated in Section 8.2.2.4.3.3, General Conference Procedural Rule 84(a) also provides for the contingency if a State is simultaneously elected to fill a single area geographical seat and a multiple area geographical seat.

### 8.2.3. Overall distribution of Board membership

The revised Table 8C in the basic book shows the overall distribution, by geographical areas as well as by statutory categories, of all the seats of the Board, reflecting the situation under the original text of the Statute and the revised text in force from the 7th to the 16th General Conferences (1964–1973).

The relative stability of the Board, pointed out in the basic book, has not been substantially affected by the amendment to Article VI.A–D. Of the 34 members of the Board after the 1973 amendment, at least 23 (12 designated and 11 elected) members continued after each General Conference and, thus, at most 11 new members (and sometimes fewer because of the re-election possibilities afforded by Article VI.A.2(b) and (c)) appeared on each Board, and most of them have had previous service.

## 8.3. FUNCTIONS AND POWERS

### 8.3.1. Plenary powers granted by the Statute

No developments.

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[83] Section 7.3.5.4, penultimate paragraph.

[84] For example GC(XXII)/OR.207, paras 42–43; /OR.208, para. 1.

[85] Lists of agreed slates were circulated informally among the delegates and without any overt Secretariat assistance. At the 22nd session the Cuban representative complained that one of the lists circulated was incorrect regarding the Latin American candidates; thereupon, the President stated that, since nominations are prohibited under Procedural Rule 79, any lists circulated could only be informal and have no status (GC(XXII)/OR.207, paras 38–39).

[86] The first time the new procedure was used, a sample ballot was communicated in advance to the Conference (GC(XVII)/513, para. 3).

### 8.3.2. Statutory limitations

No developments.

### 8.3.3. Additional statutory powers

As a result of the two amendments to Article VI of the Statute[87], the Board no longer retained the power to co-opt the majority of its members, but merely somewhat over one-third (12 out of 34).

### 8.3.4. Non-statutory functions and powers

#### *8.3.4.1. Delegation from the General Conference*

In view of the decision of the General Conference in 1971 that the Agency should no longer prepare special reports to the United Nations General Assembly and the Economic and Social Council (ECOSOC), but should merely present to both the Annual Report that the Conference receives from the Board[88], the latter's functions described in paragraph (b) of Section 8.3.4.1 in the basic book have been eliminated. The Agency's Annual Reports to ECOSOC were discontinued in 1977[89].

The Board has received standing authority to invite both governmental and non-governmental[90] organizations to be represented by observers at regular sessions of the General Conference.

#### *8.3.4.3. Derived from international agreements*

There are agreements for the purpose of limiting the pollution of international waters which refer to the Agency in general, but not to the Board specifically, as the authority charged with making recommendations or definitions with respect to the dumping of radioactive materials[91].

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[87] Section 8.2.1.2.2.1.

[88] GC(XV)/RES/274. Sections 32.1.4 and 32.1.5.

[89] GOV/INF/335.

[90] GC(XVI)/RES/291; Section 7.3.9.3. GC(XIX)/RES/332; Section 7.3.9.4.

[91] The 1972 London Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matters (UKTS No.43 (1976), Cmnd 6486) and the 1976 Barcelona Convention for the Protection of the Mediterranean Sea against Pollution (OG of the EC No. L240).

## 8.4. PROCEDURES

### 8.4.1. Rules of Procedure

Two further amendments to the Rules of Procedure of the Board were adopted:

(a) Elimination of the requirement, formerly in Rule 8(a), for the Director General to submit periodic reports to the Board[92];
(b) A formal amendment to Rule 47 to reflect the deletion of the former Article VI.A.2 of the Statute[93].

In 1980, nearly a quarter of a century after their formulation, the Rules of Procedure of the Board were still designated as 'provisional'[94].

### 8.4.5. Structure and organization

#### *8.4.5.1. Officers*

With the election of the representative of Japan as Chairman of the 17th Board and of France as Chairman of the 23rd Board it became difficult to establish any exclusion principle for the posts of Chairman or Vice-Chairman; it was only noted that neither the UK nor the USA nor the USSR has ever held the post of Chairman or Vice-Chairman; on the other hand, all other States among the formerly five and now nine States most advanced in nuclear technology in the world have held such posts[95]. The affirmative selection rules appear to have been the following:

(a) The chairmanship is rotated in an eight-year cycle, apparently established as follows: Far East; Eastern Europe; Latin America; Africa; South East Asia and the Pacific; Middle East and South Asia; Western Europe; North America (24th Board, 1980–1981).
(b) There is always one officer from Eastern Europe.
(c) Each of the three officers comes from a different area[96].

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[92] GOV/DEC/65(XIV), No.(12)(a). GOV/INF/60/Mod.3. (See Section 32.1.1.)

[93] GOV/DEC/76(XVI), No.(30), GOV/INF/60/Mod.4.

[94] The Provisional Rules of Procedure of the Board of Governors were in 1980 still set out in a document marked GOV/INF/60, a symbol indistinguishable from that of the previous edition of the Rules. The edition marked "as amended up to 13 June 1973" was issued in October 1976.

[95] See Annex 3.1 of the basic book.

[96] The pattern of vice-chairmanship elections was apparently publicly mentioned only once, briefly and inconclusively (GOV/OR.508, paras 6–7).

When the Vice-Chairman from Ceylon resigned from the 15th Board, the representative of Egypt was elected in his stead[97], even though this represented not only a change of country[98] but also a change of geographical area[99].

When the Chairman from Argentina resigned from the 19th Board, another representative of Argentina was elected in his stead[100].

*8.4.5.2. Committees*

In the period 1970–1980, the Board established two committees:

(a) The Ad Hoc Advisory Group on Nuclear Explosions for Peaceful Purposes[101]. This body was characterized in the establishing decision as "an advisory group under the aegis of the Board, open to participation by interested Members of the Agency" [102]. It was originally required to submit its final report within 18 months, but later this deadline was slightly extended[103]. As directed, the Group elected its own Chairman and two Vice-Chairmen.

(b) The Committee on Assurances of Supply (CAS). This Committee was established by the Board in June 1980 [104], after the conclusion of the International Nuclear Fuel Cycle Evaluation (INFCE), to deal with one of the possible tasks of the Agency. Working Group 3 of INFCE had as its mandate the consideration of "assurances of long-term supply of technology, fuel and heavy water and services in the interest of national needs consistent with non-proliferation". As one Governor put it, the creation of CAS was the extension of the technical and analytical evaluation carried out by that Working Group into the 'political domain' [105]. Membership in the Committee was open to Member States, and "intergovernmental bodies interested in the subject" would be invited by the Secretariat[106]. The Committee's mandate was established as follows:

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[97] GOV/OR.448, paras 9–13.

[98] The Ceylonese Governor continued to be listed as such but no longer attended meetings of the Board. His resignation was evidently due to an inability to visit Vienna for Board meetings, rather than a reassignment by his Government; consequently (in contrast to the situation to which the next paragraph relates) there was no new Ceylonese representative who could have been elected Vice-Chairman.

[99] At the time of this by-election, the amendment to Statute Article VI.A–D had not yet entered into force. Thus, Egypt (which belongs in the Middle East) was still from the area Africa and the Middle East rather than from the soon to be constituted area Middle East and South Asia (to which Ceylon belongs).

[100] GOV/OR.486, paras 1–10. The Director General opened the meeting at which the election took place, but immediately received the agreement of the Board to transfer the temporary chairmanship to one of the Vice-Chairmen. See basic book, Chapter 8, notes 207 and 213, and the text associated with the latter.

[101] GOV/DEC/85(XVIII), No. (44); see Section 17.5.

[102] GOV/DEC/85(XVIII), No. (44), operative para. 1.

[103] GOV/DEC/93(XX), No. (43)(a).

[104] GOV/DEC/107(XXIII), No. (33).

[105] Canada; GOV/OR/553, para. 42.

[106] GOV/OR/553, para. 29.

"(a) To consider and advise the Board of Governors on:
(i) Ways and means in which supplies of nuclear material, equipment and technology and fuel cycle services can be assured on a more predictable and long term basis in accordance with mutually acceptable considerations of non-proliferation;
(ii) The Agency's role and responsibilities in relation thereto" [107].

CAS was thus created as an advisory body with no power to make binding decisions. The first, organizational meeting of CAS took place on 29–30 September 1980 [108]. At the end of the period covered by the present book, CAS had not yet begun substantive discussions.

In addition to the Safeguards Committee (1970), which completed its work during the period covered by the present book, two standing committees were reconstituted and functioned year after year: the Technical Assistance Committee and the Administrative and Budgetary Committee. Over the years the membership of these bodies increased, though, until 1973, at least a nominal attempt was made by the Chairman to specify, after consultations (i.e. after receiving all requests for participation), a balanced composition for both Committees [109]. In 1974 the Chairman of the Board asked that the Governors wishing to serve on these two Committees should so inform him by 1 November, and thereupon several Governors suggested that the Committees be made formally open to all Governors [110].

In 1976, this was agreed to, on an 'experimental' basis (after the Chairman of the Board noted that, for some years, almost all Governors had been appointed to and had participated in both Committees) [111], and this practice was continued in the following years, though nominally still only as an experiment.

### 8.4.7. Conduct of business

The Board continued to take most of its decisions by consensus or otherwise without a vote. The system of consultations which made this possible has become more institutionalized — probably in part because of the requirements of the considerably larger Board membership. Thus, from time to time, and in particular just before Board meetings, the Chairman convened informal consultations of the Board members; these consultations generally took place on the premises of the Agency, but without interpretation, with no attendance of Secretariat officials or with the attendance of only the most senior ones, and with no records, formal announcements

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[107] GOV/1997.

[108] At the first meeting, CAS agreed that the Provisional Rules of Procedure would apply and that "every effort would be made to take decisions by consensus" (GOV/2012, para. 4).

[109] For example GOV/OR.460, paras 25–26.

[110] GOV/OR.472, paras 31–35.

[111] GOV/OR.492, paras 17–18.

or indeed any other documents by which the results or even the very conduct of these meetings could be traced. These meetings were held in addition to those for consultations on senior personnel appointments, which constitute a long standing practice in the Agency and which are already referred to in the basic book[112].

A related development was one which reflected practices that were increasingly prevalent in other intergovernmental organizations: the conduct of 'group' meetings, usually of the Group of 77, of the West European and Others Group (WEOG) and of the East European States; at these meetings the positions of the members in the respective groups were co-ordinated and often unitary positions were decided that were then presented by group spokesmen at informal or formal Board meetings or in negotiations with the spokesmen for the other groups. These three groups do not correspond to the Agency areas specified in Statute Article VI.A.1 for the purpose of Board elections, but rather correspond to groupings prevalent in the United Nations; generally speaking, the Group of 77 corresponds to Group A (Latin America) and Group C (Africa and Asia) in UNIDO and UNCTAD, while WEOG corresponds to Group B (market-economy States) and Eastern Europe corresponds to Group D (centralized-economy or socialist States)[113]. In part, this practice probably developed because of the presence in Vienna of UNIDO, since the majority of the representatives to one organization also served as representatives to the other[114].

Since the Director General no longer rendered periodic reports[115], their consideration no longer constituted part of the Board's business.

### 8.4.10. Privacy and participation of outsiders

There was no change in the formal provisions relating to participation of outsiders in meetings of the Board. A representative of the United Nations was present at most meetings of the Board, though speaking only most rarely. In addition, representatives of subsidiary United Nations organs, such as UNIDO and UNEP, participated occasionally when matters of particular interest to these organs were being discussed. The specialized agencies continued to be present on a similar basis, with only the representative of FAO (with which the Agency has a Joint Division) in reasonably regular attendance[116].

As mentioned in Section 8.4.7, the members of the Board met from time to time in informal consultations, which cannot be considered to be meetings of the Board and from which outsiders were excluded.

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[112] Basic book, Section 8.4.10, last paragraph.

[113] The lists of the members of Groups A–D are set out in the Annex to the resolution establishing UNIDO (UNGA/RES/2152(XXI)), which Annex is amended from time to time by the General Assembly in order to take account of new States or of occasional changes in alignment.

[114] Section 13.2.1.2.

[115] Footnote 94, and Sections 9.3.2.3 and 32.1.1.

[116] The attendance of observers at any meeting of the Board is noted on the 'Attendance' list at the beginning of the Official Record (OR) of the meeting.

# Chapter 9

# THE DIRECTOR GENERAL AND THE SECRETARIAT

## PRINCIPAL INSTRUMENTS

IAEA Statute Articles VII, XII.B, XIV.a, XV.B and C;
Provisional Staff Regulations (INFCIRC/6/Rev.5; AM.II/1);
Financial Regulations (INFCIRC/8/Rev.1; AM.V/2), mainly Regulations 5.01, 10.01–06, 13.01;
General Conference Rules of Procedure (GC(VII)/INF/152), mainly Rules 5, 11, 12(1), 37–38, 55;
Board of Governors Rules of Procedure (GOV/INF/60, October 1976 edition), mainly Rules 4, 8–10, 11(b), 15(f), 17, 36(b), 48;
Administrative Manual, especially Part I (Organization and Headquarters) and Parts II/2 and V/4.

## 9.2. APPOINTMENT OF THE DIRECTOR GENERAL

### 9.2.3. Practice

During the period covered by the present book, the procedure of appointing a Director General was carried out two times. In 1973 and 1977, Dr. Sigvard Eklund of Sweden was appointed for his fourth and fifth terms of office, on both occasions by acclamation in the Board and at the General Conference.

#### *9.2.3.1. Consultations*

Informal consultations among Governments, particularly those represented in the Board, continued to be a preliminary and essential device, and generally in effect a sufficient one, for reaching a decision on the appointment of the Director General.

#### *9.2.3.2. Consideration and decision by the Board*

The procedures followed in the Board in reappointing Dr. Eklund in 1973 and 1977 were essentially identical with those followed at the time of the third appointment, in 1969. Following the custom introduced in 1969, the Board meetings at which the Director General's appointments were being considered were closed to all Secretariat officials except the Deputy Director General for Administration and the Secretary of the Board. Dr. Eklund absented himself from these meetings in 1973 and 1977 when his reappointments were under consideration.

*9.2.3.3. Consideration and decision by the General Conference*

The fourth and fifth appointments of Dr. Eklund, in 1973 and 1977, were approved by the General Conference in open meetings by acclamation.

### 9.2.4. Term of Office

Altogether, Dr. Eklund had five four-year terms; thus he served for twenty years, from 1 December 1961 to 30 November 1981.

### 9.2.5. Contract

The general form of the Director General's contract and the principles on which it was based did not change in the period covered by the present book. Because of the more rapid rate of inflation prevailing during this period and the fluctuation of the dollar/Schilling exchange rate, the Board of Governors had to make more frequent adjustments in the emoluments of the Director General than during the previous periods, in order to maintain his remuneration on the same level as that of the heads of major specialized agencies.

The greater part of these adjustments naturally related to the major emoluments: the salary and the amounts by which that salary is adjusted to take account of changes in the cost of living. However, these determinations by the Board have become largely formalities, since, during the period under review, the United Nations General Assembly in effect extended the salary scale it approves from time to time for the Professional and higher categories of staff to include the UNDP Administrator and later the Director General for Economic Co-operation and Development, whose remuneration is explicitly stated to be on a par with "that of the executive head of a major specialized agency"; thus, instead of making its own survey of how much those agencies are paying[1], all that the Board had to do was to reconform the Director General's emoluments to this highest level of the United Nations scale whenever it was adjusted by the General Assembly[2]. On this basis the 1969 net base salary of US $30 100 was raised to US $34 600 in 1971[3], to US $41 500 (equivalent to a gross base salary of US $69 800) in 1974[4], to US $44 000 (US $74 800) in 1975[5] and to US $53 200 (US $99 350) in 1977[6].

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[1] See, for example, the discussion at the time of the 1971 adjustment, recorded in GOV/OR.440, paras 92–97, in which actions or proposed actions by UNESCO, ILO, WHO, GATT and FAO were referred to.

[2] See, for example, the justification for the 1977 adjustment in GOV/OR.495, para. 56.

[3] GOV/DEC/67(XIV), No. (52).

[4] GOV/DEC/79(XVII), No. (20).

[5] GOV/DEC/84(XVIII), No. (21).

[6] GOV/DEC/92(XX), No. (19).

The representation and entertainment allowance, which had been set at US $10 000 in 1969, was raised to US $15 000 in 1971 (to follow the example of UNESCO and ILO), though at the same time the housing allowance was reduced by US $5000[7]. The representation and entertainment allowance was maintained at US $15 000 throughout the rest of the period.

The housing allowance, which had been limited to US $8000 in 1969, was reduced in 1971 to US $3000, with a view to its complete elimination in the future, since that allowance was an anomaly in the United Nations system[8].

## 9.3. FUNCTIONS AND POWERS

### 9.3.2. Grants flowing from instruments promulgated by the representative organs

#### *9.3.2.1. Staff Regulations*

No development.

#### *9.3.2.2. Financial Regulations*

No development.

#### *9.3.2.3. Rules of Procedure of the Board*

The third sentence of Rule 8(a) of the Provisional Rules of Procedure of the Board, under which the Director General was required to submit to the Board at least two reports annually on developments in the Agency's work, was deleted in 1971[9]. Thus, no more routine periodic reports had to be submitted after that change[10].

In 1971 the United Kingdom proposed that the Rules of Procedure be amended so as to permit the Director General to take routine or urgent decisions that required Board approval, by giving, with the approval of the Chairman or a Vice-Chairman, notice to all Board members and waiting for 28 days for any objections to be raised[11]. This suggestion was not followed up.

#### *9.3.2.4. Rules of Procedure of the General Conference*

No development.

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[7] GOV/OR.440, paras 96-97; GOV/DEC/67(XIV), No. (52).
[8] Ibid.
[9] GOV/DEC/65(XIV), No. (12) (a).
[10] Section 32.1.1.
[11] GOV/OR.434, para. 38.

*9.3.2.5. Rules regarding voluntary contributions*

No development.

*9.3.2.6. Technical Assistance Rules*

The Revised Guiding Principles and General Operating Rules to Govern the Provision of Technical Assistance by the Agency[12], approved by the Board, have again explicitly assigned certain functions to the Director General, while others have been assumed to exist implicitly. Unlike the original Guiding Principles, which specifically mentioned the Director General's functions in respect of EPTA projects, the revised Principles and Rules mention UNDP (the successor of EPTA) projects only cursorily and without special reference to the Director General[13]. This change was apparently not intended to reduce his authority and obligations vis-à-vis the Board in respect of such projects, but rather reflects the increased autonomy that States themselves enjoy in deciding how to utilize the assistance available to them from the UNDP[14].

With respect to the Agency's own programme, the Director General's functions were somewhat broadened. He is to prepare the proposals for expert and equipment projects[15] and indicate which of those are considered to make a substantial contribution to 'sensitive technological areas' that might require safeguards[16]. After consulting the Board, he is authorized to modify the time-table for the submission of requests for technical assistance[17]. He approves fellowship and training activities, is authorized to approve modifications in Board authorized projects as long as the nature and major objectives of the project are not thereby altered and no safeguards issues are involved, and may use a reserve fund established by the Board to finance additional projects or enlargements of projects up to a limit of US $25 000 per project. He is also authorized, after consulting the Government concerned, to cancel projects not implemented within two years of approval[18]. The implementation of the fellowship programme has been explicitly assigned to the Director General by the Revised Guiding Principles and General Operating Rules to Govern the Provision of Technical Assistance by the Agency[19].

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[12] INFCIRC/267; Section 18.1.2.
[13] INFCIRC/267, paras 3 and 25.
[14] Section 18.2.3.
[15] INFCIRC/267, para. 13.
[16] INFCIRC/262, Annex, para. 7.
[17] INFCIRC/267, para. 18.
[18] INFCIRC/267, paras 16, 20, 22 and 24.
[19] GOV/DEC/65(XIV), No. (18), para. 1 (see basic book, Section 9.3.6, para. (b)).

### *9.3.2.7. Safeguards and Health and Safety Documents, and Guidelines for the International Observation of Peaceful Nuclear Explosions*

The Board has given the Director General explicit authority to negotiate agreements required by the NPT on the basis of the NPT Safeguards Document[20].

The NPT Safeguards Document[21] as well as the revised Health and Safety Document[22] indicate in certain instances which organ of the Agency is authorized to take particular decisions on behalf of the organization or to perform certain actions.

The NPT Safeguards Document explicitly foresees the assignment of certain functions to the Director General in relation to the designation of inspectors (corresponding to those he is to carry out under the Inspectors Document)[23], including the possibility of referring cases to the Board when the repeated refusal of a State to accept inspectors impedes inspections[24]. It also foresees that various measures in relation to the verification of non-diversion will be taken by the Board upon submission of reports by the Director General[25]. He is authorized to conclude special arrangements with States relating to limitations of the Agency's access to safeguarded materials; if such limitations are due to unusual circumstances and if they are prolonged, then he has the obligation to report the arrangement in question to the Board[26].

Corresponding to a provision in the original Health and Safety Document, the revised version provides for the Director General to make arrangements with the State concerned for 'safety missions' (which have replaced the former 'inspections')[27].

The Guidelines for the International Observation by the Agency of Nuclear Explosions for Peaceful Purposes[28] provide that Agency observers are to report to the Director General[29]; when the observations have been concluded to his satisfaction, he is to issue a Record of Observation to the States concerned[30]; if a situation that contravenes or has the appearance of contravening the intent or letter of the relevant international agreement is not corrected to the Director General's satisfaction

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[20] INFCIRC/267, para. 16.

[21] INFCIRC/153; Section 21.4.4.

[22] INFCIRC/18/Rev.1; Section 22.1.2.

[23] GC(V)/INF/39, Annex. (Section 21.4.2 of the basic book).

[24] INFCIRC/153, paras 9 and 85.

[25] INFCIRC/153, paras 18 and 19.

[26] INFCIRC/153, para. 76(d). In fact, the Director General concluded all Subsidiary Arrangements with States; these contain, of course, definitions on access for inspections (see Section 21.5.7.3).

[27] INFCIRC/18/Rev.1, para. 5.3.

[28] INFCIRC/169.

[29] INFCIRC/169, paras 16–17.

[30] INFCIRC/169, para. 18.

within a reasonable period of time, the Agency is to request appropriate action by the participating State[31]. The provisions relating to Agency observers[32] are analogous to those relating to Agency inspectors under the NPT Safeguards Document.

*9.3.2.8. Regulations for the Registration of Agreements*

No development.

*9.3.2.9. Rules on the Consultative Status of International Organizations*

No development.

### 9.3.3. Special regulations adopted by the Board

No additional regulations have been adopted by the Board and no further consideration has been given by the Board to the provision of such regulations.

### 9.3.4. Ad hoc decisions and resolutions of the Board and the General Conference

During the period covered by the present book, a number of additional requests were addressed to the Director General and special authority in some areas was granted to him by the General Conference or the Board. The standing earlier grants of authority have generally been maintained or increased. These include:

(a) Special requests to:
   (i) Make a comprehensive study of the capital and foreign exchange requirements for nuclear power projects in developing countries and the ways and means to secure financing for them[33];
   (ii) Arrange for a thorough analysis and evaluation of the technical, economic and financial data collected in the market survey for nuclear power; update that survey from time to time as well as extend it in specified directions[34];
   (iii) Continue efforts to promote international co-operation in ensuring the adequate physical protection of nuclear facilities and materials and to facilitate the development of appropriate legal instruments[35];

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[31] INFCIRC/169, para. 4(e).
[32] INFCIRC/169, paras 20–21.
[33] GC(XIII)/RES/256, para. 1.
[34] GC(XVII)/RES/302, paras 1–2.
[35] GC(XXI)/RES/351, para. 2.

(iv) Take steps to increase substantially the number of staff members drawn from developing areas, especially at senior levels[36].

(b) Special authority to:
(i) Conclude agreements with States whose invitation to hold a session away from Vienna has been accepted by the General Conference[37].
(ii) Review and update recommendations on the physical protection of nuclear materials and assist Member States in developing national systems therefor[38].

The annually repeated authority of the Director General under the Regular Budget and Working Capital Fund Resolutions[39] remained unchanged, though the power to incur expenditures from extra-budgetary funds was substantially broadened[40].

The various powers granted in prior resolutions were maintained; those relating to the release of unobligated technical assistance funds have been incorporated in the Revised Guiding Principles and General Operating Rules for Technical Assistance[41].

### 9.3.5. Grants deriving from international agreements

Agreements concluded by the Agency with Member States or with intergovernmental organizations do, in certain instances, assign functions or responsibilities to specified organs of the Agency. These include:

(a) Under the Common Headquarters Seat Agreement with the United Nations and the Republic of Austria, disputes arising under the Agreement are to be resolved by an arbitral tribunal, one of whose members is to be appointed jointly by the executive heads of the two organizations[42];
(b) All NPT and Tlatelolco Safeguards Agreements provide for the functions and responsibilities of the Director General [as foreseen] as set out in the NPT Safeguards Document[43];

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[36] GC(XXV)RES/386, para. 1 (Section 24.7.3). The Director General indicated that he considered that this request constituted a directive with which he had to comply (GC(XXVI)/668, paras 5–6).
[37] GC(XV)/DEC/7, para. (6); GC(XIX)/DEC/8, para. (6).
[38] GC(XIX)/RES/328, paras 3–4.
[39] For example GC(XXV)/RES/383, para. 3.; GC(XXV)/RES/385, para. 3.
[40] Section 25.2.3, para. (a).
[41] INFCIRC/267, para. 24.
[42] INFCIRC/15/Rev.1/Add.1, Part IV, Article II; see also Part VII, para. (a) of that document.
[43] Section 9.3.2.7.

(c) The Director General is the designated depositary of the RCA Agreement[44] as well as of Project Agreements concluded pursuant to it[45]. He is also the depositary of the Convention on the Physical Protection of Nuclear Material, which assigns to him a number of responsibilities in that capacity (for example the convening of a five-year Review Conference)[46].

### 9.3.6. Established practice

Established practice continued to be a significant basis for the functions and powers of the Director General, and these were somewhat expanded during the period covered by the present book. However, several of the practices were formalized through specific delegations of authority and were codified in legal instruments (Section 9.3.2).

Some of the functions already performed over some time on the basis of established practice have become more significant during recent years. Thus the oral reports of the Director General to the United Nations General Assembly have gained considerably in significance owing to the elimination of the former special supplementary report to the Assembly and the change in the reporting period of the Board's Annual Report, which covered a period from 1 July to 30 June, to a period of a calendar year; thus, at a time of increased interest of the United Nations in the affairs of the Agency, it was solely these oral reports that covered the most recent nine to ten months of the Agency's work[47].

Finally, reference should be made here to the expansion of the Agency's extrabudgetary operations. As explained in Section 25.2.4.3, these operations have often not been controlled by either the General Conference or the Board. As a result, the Director General acquired considerable influence and a potentially powerful tool in shaping certain aspects of the Agency's programme in co-operation with Member States prepared to finance particular Agency activities[48].

## 9.4. ORGANIZATION OF THE SECRETARIAT

### 9.4.1. Structure

A number of changes in the structure of the Secretariat were made by the Director General. None of these was major and none aroused controversy in the Board, presumably also because the Director General conducted adequate advance

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[44] INFCIRC/167, Section 9.

[45] For example the Agreement Establishing the Asian Regional Co-operative Project on Food Irradiation (INFCIRC/285, Article XI.1).

[46] INFCIRC/247/Rev.1, Articles 14(1), 14(2), 16, 20(a), 22 and 23 (Section 23.7.6).

[47] Section 32.1.4. (See basic book, Section 9.3.6, para. (h).)

[48] Sections 25.2.1, 25.2.4.3 and 25.7.

consultations. The principal changes, i.e. those which involved Divisions or similar units and which were thus directly reflected in budget figures and apparent from published organizational charts, were the following:

(a) In 1971 the Division of Public Information and some units of the Division of Conferences and General Services and of the Division of Scientific and Technical Information were incorporated into the Division of External Liaison and Protocol, which was thereupon named the Division of External Relations[49]. The Division of Conferences and General Services was renamed Division of General Services.

(b) In 1972 the former Division of Health, Safety and Waste Management was renamed the Division of Nuclear Safety and Environmental Protection[50].

(c) Also in 1972 the Division of Languages and the Secretariat of the General Conference and the Board of Governors were merged into the Division of Languages and Policy-making Organs[51].

(d) In 1975 a Unit for Peaceful Nuclear Explosions Services was attached to the Department of Technical Operations[52].

(e) In 1976 the Division of Languages and Policy-making Organs was re-divided, with the restored Division of Languages remaining in the Department of Administration and the Secretariat of the Policy-making Organs reporting on substantive matters directly to the Director General[53].

(f) Also in 1976 a Division of Safeguards Information Treatment[54] was created in the Department of Safeguards and Inspection, and the name of the Department itself was abbreviated by deleting the final two words[55].

(g) In 1977, owing to the increasing safeguards operations, the former Division of Operations of the Department of Safeguards (which since 1975 had two Directors simultaneously) was formally divided into two Divisions (originally identified respectively as I and II, later as A and B)[56]. Also, the Division of Development of the Department was renamed Division of Development and Technical Support[57].

(h) In 1979 another of the 1971 reforms was undone, by restoring the Division of Public Information as a separate Division in the Department of Administration[58].

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[49] SEC/NOT/242; GC(XVI)/480, paras 152–153; GC(XVI)/485, para. V.15.65.

[50] SEC/NOT/249.

[51] SEC/NOT/259; GC(XVI), paras 152–153.

[52] SEC/NOT/391; GC(XIX)/544, para. 113; AM.IX/7.

[53] SEC/NOT/478.

[54] The new Division was first created as a Unit (SEC/NOT/479); GC(XX)/567, para. N.6.1); it was then established as a Division (SEC/NOT/539).

[55] SEC/NOT/527.

[56] SEC/NOT/535; GC(XIX)/550, paras N.10–11.

[57] SEC/NOT/539.

[58] SEC/NOT/641; GC(XXIII)/612, p.120 (explanations to Table 5).

As a result of these changes, the Agency's Secretariat was, in 1980, structured as indicated in Chart 9C. (Charts 9A and 9B, which are the organizational charts for 30 June 1958 and 30 June 1969, respectively, are presented in the basic book on pages 213 and 214.) A more complete breakdown, indicating the subdivision of the Departments (for the most part into Divisions, but also into Laboratories and Centres), of the Divisions (for the most part into Sections, but also into Units and Laboratories) and of Sections (for the most part into Units and Services), is given in the Administrative Manual under the heading "Organizational Structure of the Secretariat" [59].

### 9.4.2. Delegation of authority

The delegation of authority to various officials or Secretariat units, or rather the distribution of responsibilities, did not change significantly during the period covered by the present book. All important long term delegations were included in the Administrative Manual[60] and some can also be found in the Collection of Personnel Practices[61].

In renaming the position of Inspector General to that of Deputy Director General, Department of Safeguards, the Director General specified that the new DDG would not be designated Acting Director General in the absence of the Director General, as were the other DDGs[62]. This disposition is important, because an initial report by the Department of Safeguards on non-compliance with a Safeguards Agreement would thus have to be reviewed by another DDG in his capacity as Acting Director General before its referral to the Board.

Delegations of authority during temporary absences of DDGs were issued by the Director General; those for Division Directors and their equivalents were issued by the competent Department Head[63]. These dispositions were in the nature of temporary assignments of authority.

### 9.4.3. The Deputy Directors General and the Assistant Director General

No significant change has occurred in the position of the five Deputy Directors General during the period covered by this book (the previous title of Inspector General was changed to Deputy Director General, Department of Safeguards):

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[59] AM.I/1.

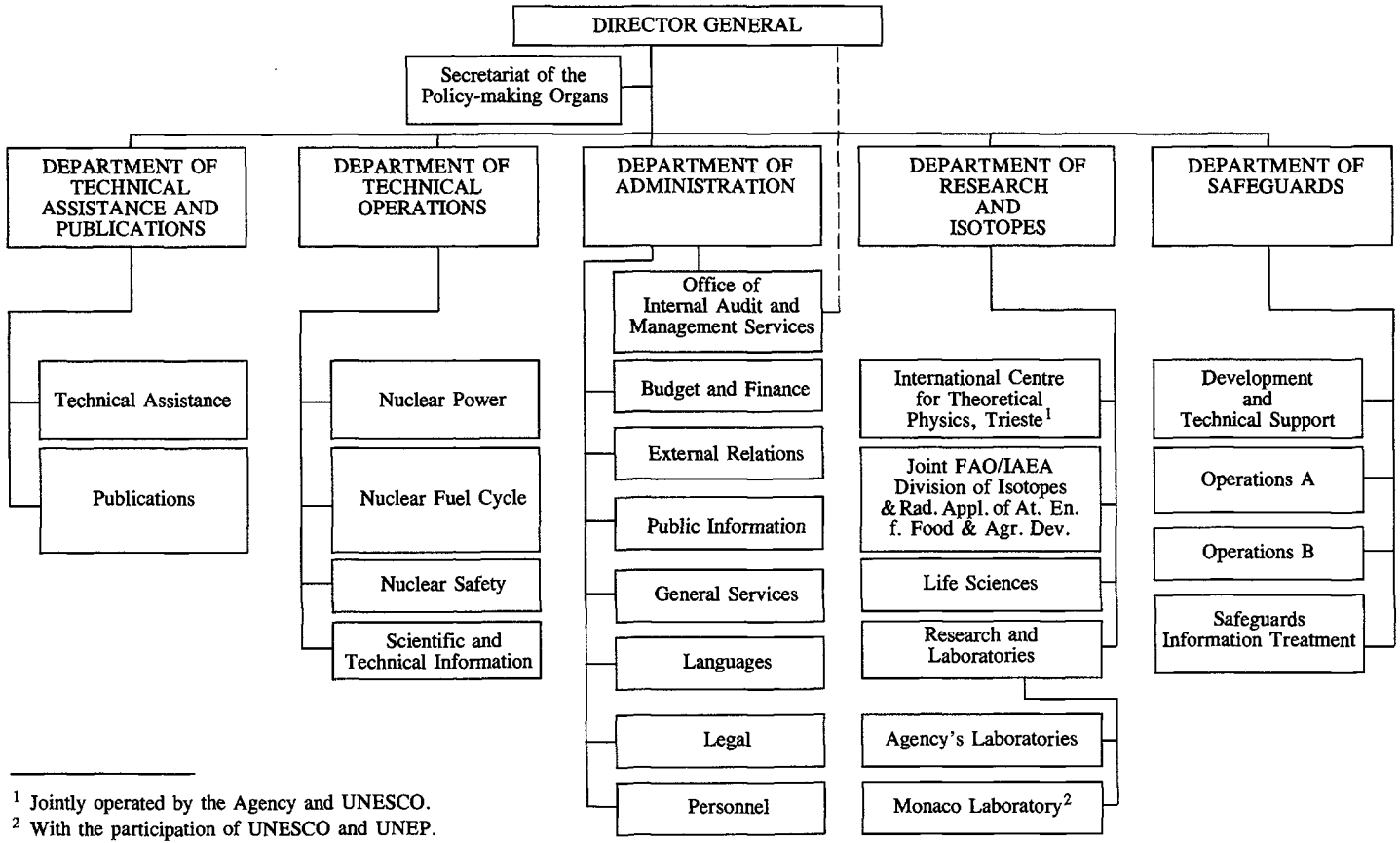
[60] See, in particular, AM.I/4, Appendix E, paras 2–9; AM.II/2; AM.V/4.

[61] See Section 24.1.7.

[62] SEC/NOT/257.

[63] These delegations of authority were communicated to the staff by IOM.

## CHART 9C. ORGANIZATIONAL CHART, 1 January 1981




[1] Jointly operated by the Agency and UNESCO.
[2] With the participation of UNESCO and UNEP.

(a) The continuing restriction on the DDG of the Department of Safeguards, discussed in Section 9.4.2, should be noted.
(b) The Joint Committee to Consider Promotions and Permanent Appointments of Professional Staff was renamed the Joint Committee to Consider Appointments, Promotions and Extensions of Professional Staff[64].
(c) Although there has always been a national of the USSR and one of the USA among the DDGs, no other countries or groups of countries have had a claim to the leadership of any particular Department, although the DDG, Department of Technical Assistance, has always come from a developing country.

In 1976 the then Director of the Division of External Relations was appointed Assistant Director General on an ad personam basis, with emoluments equivalent to those of a DDG[65].

### 9.4.4. Secretariat Committees

#### *9.4.4.1. Interdepartmental Committees*

Save as indicated below, the structure and functions of the Standing Interdepartmental Committees existing in 1969 remained unchanged until 1980 (excepting the titles of various officials or the names of Secretariat units):

(a) The Chairman of the *Computer Steering Committee* was appointed by the Director General; the Committee included additional non-voting members from each United Nations organization at the Vienna International Centre that entered into a Computer Service Agreement with the Agency; the Head of the Computer Section of the Division of Scientific and Technical Information served as Secretary. In addition to advising on the Agency's computer operations, the Committee also reviewed proposals for work submitted by the Vienna based United Nations organizations[66].
(b) The *Committee for Contractual Scientific Services* was enlarged by a member from the Safeguards Department appointed by the DDG of the Department[67].
(c) The former *Committee on Technical Assistance* was renamed *Committee on Technical Co-operation*[68].
(d) The *Technical Committee on Safeguards Research and Development* and the *Travel Co-ordination Committee* were abolished[69].

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[64] Section 24.10.2.2.1.
[65] SEC/NOT/269.
[66] AM/I/7, Appendix A.
[67] AM.I/7, Appendix C.
[68] AM.I/7, Appendix F.
[69] SEC/NOT/816.

(e) The *Publications Committee* was created in 1973, to consist of the Directors of the Division of Scientific and Technical Information (Chairman) and of the Publications Division (Vice-Chairman), and of one member each from the Department of Research and Isotopes and the Department of Technical Operations, and two members from the Department of Administration; the Head of the Publishing Section served as Secretary. The Committee reviewed the annual publications programme, approved individual publications, determined their languages, recommended subsidies and considered matters of publications policy[70].

(f) The *Editorial Committee for Public Information* was created in 1973, consisting of the Director of the Division of External Relations (Chairman) and the Director of the Division of Public Information (Secretary), with six other members, appointed ad personam for individual competence and knowledge of the Agency, and each representing one of six specific scientific fields. The main task of this Committee was to advise on the contents of the *Bulletin* and of other publications of the Public Information Division[71].

### *9.4.4.2. Administration–Staff Joint Committees and Panels*

The following changes (aside from minor ones in titles) have occurred in the joint Administration–Staff organs (see also Sections 24.10 and 24.13):

(a) The Joint Committee to Consider Promotions and Permanent Appointments of Professional Staff was renamed the *Joint Committee to Consider Appointments, Promotions and Extensions of Permanent Staff.*

(b) The Joint Staff Assistance Fund Committee and the Joint Staff Welfare Committee were combined in a new *Staff Welfare Committee*[72].

(c) A *Study Leave and Training Committee* was established[73].

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[70] AM.I/7, Appendix H.
[71] AM.I/7, Appendix I.
[72] SEC/NOT/840.
[73] SEC/NOT/788.

# Chapter 10

# RELATIONSHIP AMONG THE STATUTORY ORGANS

## PRINCIPAL INSTRUMENTS

IAEA Statute, principally Articles V, VI and VII.

No significant change has occurred in the mutual relations of the three statutory organs during the period covered by the present book. Consequently, this chapter merely reports on some minor and generally incidental adjustments in the interactions between the General Conference, the Board of Governors and the Director General.

This considerable stability reflects the general soundness of the statutory pattern and of the relations that evolved during the initial years of the Agency. Consequently, as of 1980 it was still true that there has never been any occasion that could have tested these inter-organ relationships and perhaps required a revision of them.

## 10.1. THE GENERAL CONFERENCE AND THE BOARD

The principal change that occurred in the relations between the two organs concerns the composition of the Board. Instead of electing merely 10 of 23 Board members, as the Statute originally provided, or 12 of 25 Board members, as the amended Statute prescribed at the end of the period covered by the basic book, the General Conference was charged with electing 22 of 34 Board members, leaving only 12 to be co-opted by the Board itself[1]. The principal purpose of these changes was not, however, to alter the balance of power between Conference and Board, but rather to increase the representation of developing States in the latter. In this connection it might also be noted that the repeated discussion in the Conference on another statutory amendment to change the geographical distribution of the Board still further[2] resulted from the inability of the Board, since 1977, to reach a consensus on that subject and did not presage a crisis between these organs (especially since statutory amendments need not originate with, or even have the concurrence of, the Board)[3].

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[1] Section 8.2.1.2.2.1.

[2] Section 8.2.1.2.2.2.

[3] Basic book, Section 5.3.3.3.

The General Conference has made or expanded some delegations to the Board: instead of the former annual authorization, it issued a standing request to the Board to invite intergovernmental organizations to the Conference[4]; it also issued a new, standing authorization of the Board to invite non-governmental organizations[5]. The Conference also decided that the statutory Annual Report submitted to it by the Board would constitute, without any change, the Agency's report to the United Nations General Assembly[6].

## 10.2. THE GENERAL CONFERENCE AND THE DIRECTOR GENERAL[7]

In a report submitted to the General Conference by the Board, the latter stated that the Director General was required to comply with directives issued by the Conference (in particular, one relating to the staffing of the Agency's Secretariat), as he was in the case of directives originating with the Board[8]. As suggested in Section 24.1.4a, this seems to reflect a political rather than a statutory, legal perception of the obligations of the Director General vis-à-vis the Conference in view of Statute Article VII.B.

## 10.3. THE BOARD AND THE DIRECTOR GENERAL

The Director General was in 1971 relieved of his obligation to submit periodic written reports to the Board on developments in the Agency's work[9]. Instead, he has since then made oral statements at each regular session of the Board, but these were facultative and, not being comprehensive, did not present the entire work of the Secretariat for scrutiny by the Board. However, as of 1976, he was charged with making a special annual report on one of the most important Agency functions, the implementation of safeguards[10].

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[4] GC(XVI)/RES/291. Section 7.3.9.3.

[5] GC(XIX)/RES/332. Section 7.3.9.4.

[6] GC(XV)/RES/274. Section 32.1.4.

[7] The Director General also discontinued his practice of making a statement at the closing of the general debate at each General Conference; the last such statement was made at the 1974 General Conference.

[8] GC(XXVI)/668, paras 5–6.

[9] Section 32.1.1.

[10] Section 32.2.9.

The Board delegated to the Director General the making of interim adjustments in the salary scales of the General Service and the Maintenance and Operative Service categories, in accordance with a formula approved by the Board on the recommendation of the International Civil Service Commission (ICSC)[11]. Earlier, the Board had given him authority to revise, without specific approval from it, the Post Adjustment levels for the Professional and higher categories, whenever such a revision was required by ILO calculations[12]; later, however, this authority was assigned to the ICSC[13].

The increasing resort to operations financed from extra-budgetary sources, which were carried out under the authority of the Director General and were not subject to prior Board scrutiny and approval, tended to afford him a somewhat increased degree of flexibility in carrying out the Agency's programme or providing services to Member States[14]. On the other hand, the need to receive the Board's approval for each staff member to be used as a safeguards inspector[15] could be considered a limitation in respect of staff deployment.

[11] GOV/DEC/115(XXV), No. (16). Section 24.4.1.2.1.
[12] GOV/DEC/77(XVI), No. (48)(b). Section 24.4.1.1.2.
[13] ICSC Statute, Article 11(c). Section 24.4.1.1.2.
[14] Sections 9.3.6, 25.2.1, 25.2.4.3 and 25.7.
[15] Section 21.8.1.1.

# Chapter 11

# NON-STATUTORY ORGANS

## PRINCIPAL INSTRUMENTS

Board decisions on the composition and terms of service of the Agency's Scientific Advisory Committee (GOV/DEC/72(XV), No. (47); /85(XVIII), No. (18) and (19); /100(XXI), No. (61); /102(XXII), No. (47));

Monaco Laboratory Agreement (INFCIRC/129/Rev. 1), Article 9(b);

Agreement for the Joint Operation of the International Centre for Theoretical Physics (INFCIRC/132), Sections 5 and 6; (AM.I/4, paras 12–13).

The Agency's practice in appointing a multitude of advisory panels, expert groups or committees for the purpose of performing tasks of an advisory nature has not changed. In most instances the members of these groups were appointed by the Director General and these groups were established to carry out a defined mandate. While activities of these bodies frequently related to regulatory functions of the Agency (for example in the safety field), they show no legal characteristics that would require discussion under this chapter. Acordingly, only developments relating to two categories of non-statutory organs are discussed here:

(a) The principal technical/scientific advisory body of the Agency, the Scientific Advisory Committee (SAC);
(b) Control or advisory bodies for special activities.

Other bodies (for example those established in relation to multilateral conventions) are discussed in the chapters dealing with the activity in question.

As mentioned in the basic book, any attempt at rigid classification of these 'organs' is bound to fail in view of the diversity of all the bodies that might or might not be considered 'non-statutory organs'.

## 11.1. THE SCIENTIFIC ADVISORY COMMITTEE (SAC)

### 11.1.2. Membership

Following a recommendation of the Director General, who pointed out that, even if it were enlarged by 50%, SAC would still be one of the smallest advisory bodies within the United Nations family[1], the Board in 1972 increased the

[1] GOV/OR.450, para. 38.

membership of the Committee from 10 to 12[2]. In February 1979, again on the recommendation of the Director General that more nuclear disciplines should be represented[3], the membership of SAC was increased to 15[4]. Appointments continued to be for a term of three years. The appointments due in 1978 were deferred at the request of the Director General to February 1979 so that the Agency had no SAC for several months in 1978/1979. This did not affect the Agency's programme, since SAC delayed the examination of the proposed programme, planned for its customary December meeting (which was cancelled for 1978), until after it was appointed with an enlarged membership in February 1979.

Nominations to SAC were, after consultations, presented by the Director General to the Board, for practically automatic approval[5]. In 1979 a Latin American Governor expressed the view that the scientific and technical achievements of Latin America would warrant greater representation on the Committee, but this suggestion did not result in a change in the composition of SAC[6]. The tendency has been to keep the membership as static as possible, replacing members only when they became unable to serve. When a member had to be replaced in the course of his three-year term, the successor was appointed for the balance of the original term[7].

### 11.1.4. Reports to the Board

The conclusions reached by SAC at its approximately annual sessions were reported to the Board in GOV/INF/... documents, entitled "Advice Provided by the Scientific Advisory Committee in [month, year]", with the sub-title "Memorandum by the Director General"[8]. In these documents the Director General briefly listed the points on which he had consulted the Committee and then summarized SAC's reactions to each of these points, ending up with lists of topics suggested for conferences, symposia and seminars.

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[2] GOV/DEC/72(XV), No. (47).

[3] GOV/1919 and /Rev.1; GOV/OR.527, para. 52.

[4] GOV/DEC/102(XXII), No. (18).

[5] In 1975, several Governors complained about insufficient consultations with their Governments (GOV/OR.480, paras 21–23). Subsequently, the names and countries of nominees were set out in a document distributed in advance (for example GOV/1919/Rev.1, para. 2), rather than merely being announced orally by the Director General at the beginning of the Board's consideration of the item.

[6] GOV/OR.527, para. 58.

[7] For example GOV/OR.458, para. 62; GOV/DEC/77(XVI), No. (47); GOV/OR.469, paras 9–10; GOV/DEC/80(XVII), No. (49).

[8] For example GOV/INF/406, reporting on the 30th SAC session, on 14–15 December 1981.

### 11.1.6. Accomplishments

During the period covered by the present book, there was a tendency to integrate SAC into the machinery for annually formulating the future programmes and budgets. The Committee normally met in December or January, just at a time when it could be presented with the tentative proposals for the programme and budget, to be considered by the Board in the following June and by the General Conference in September, and its advice was taken into account in formulating the programme and budget documents that the Director General must finalize early each year. The items on which the Committee's advice was requested largely corresponded to the principal programmes of the Agency (for example nuclear power and reactors and nuclear safety and environmental protection; research and isotopes; safeguards; the research contracts programme; topics for scientific meetings). Only when particularly important conferences were being proposed or planned was the Committee's attention directed especially to these, regarding both the scientific content and the optimum scheduling.

## 11.2. CONTROL OR ADVISORY ORGANS FOR SPECIAL ACTIVITIES

Many of the activities in respect of which special bodies had been established during the period covered by the basic book were later phased out, in part to be replaced by other activities, for some of which similar new organs were established.

### 11.2.1. NORA Committee

The NORA Project was terminated and its Joint Scientific Programme Committee ceased to function[9].

### 11.2.2. NPY Joint Committee

The Norway/Poland/Yugoslavia Co-operative Programme was terminated and its Joint Committee ceased to function[10].

[9] Section 19.3.2.1.
[10] Section 19.3.2.2.

### 11.2.3. IPA Joint Committee

The India/Philippines/Agency Joint Programme was terminated[11], the Programme having in effect been replaced by the RCA[12]. The Committee ceased to function.

### 11.2.4. Monaco Laboratory Advisory Committee

The Advisory Committee for the International Laboratory of Marine Radioactivity of the IAEA[13] continued substantially unchanged under the 1975 Agreement between the Agency, the Government of Monaco and the Oceanographics Institute of Monaco and its several extensions. A representative of the Scientific Centre at which the Laboratory was located was authorized to follow the work of the Committee in an observer capacity[14].

The Committee met at regular intervals; its conclusions were not reported to the Board.

### 11.2.5. Project Committee for the Fruit Irradiation Programme

The International Programme on Irradiation of Fruit and Fruit Juices was terminated and its Project Committee ceased to function[15]. The Programme was in effect replaced by the International Project in the Field of Food Irradiation, which itself has ceased to exist[16]. Though the Agency appointed the Project Leader[17], the Project was primarily an activity of the participating States, and the Board of Management of the Project cannot be considered an Agency organ. However, it is listed here, since the Project was established under the auspices of the Agency (see Section 19.3.2.5).

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[11] Section 19.3.2.3.

[12] Section 19.3.2.6.

[13] Section 19.1.2.

[14] INFCIRC/129/Rev.1, Article 9(b).

[15] Section 19.3.2.4.

[16] Section 19.3.2.5.

[17] Under administrative arrangements with the Federal Republic of Germany's Institut für Strahlentechnologie der Bundesforschungsanstalt für Lebensmittelfrischhaltung, acting as 'Host Centre' for the Project (IAEA Reg. No. 825). The basic agreement was deposited with the OECD/NEA.

### 11.2.6. Governing Body of the Middle Eastern Radioisotope Centre

Since the Agency terminated its participation in the Middle Eastern Regional Radioisotope Centre for the Arab Countries[18], its Governing Body ceased to be of direct concern to the Agency.

### 11.2.7. Scientific Council of the International Centre for Theoretical Physics

The Scientific Council of the International Centre for Theoretical Physics in Trieste continued to function as described in the basic book. However, in view of UNESCO's participation, its members were appointed jointly by the Directors General of UNESCO and the Agency, and its terms of reference required it to report to the Directors General of both organizations[19].

### 11.2.8. Study Group on a Nuclear Electric Power and Desalting Plant

The Agency/Mexico/USA Study Group for a Preliminary Study of a Nuclear Electric Power and Desalting Plant completed its work and ceased to exist.

### 11.2.9. Meeting of representatives of RCA Parties and Scientific Co-ordination Committees of RCA projects

The Regional [Asian and South Pacific] Co-operative Agreement for Research, Development and Training Related to Nuclear Science and Technology (RCA) provides that "The progress of co-operative projects established pursuant [to the RCA] shall be considered at a meeting of representatives of the Governments party to this Agreement and of the Agency, to be convened by the Agency and held in conjunction with the annual session of the General Conference of the Agency."[20]. That meeting was also to consider proposals for new projects.

The RCA also stipulates that each Project Agreement is to provide for the establishment of a Scientific Co-ordination Committee[21]. Accordingly, such a Project Committee was established, for example, for the Regional Co-operative Project on Food Irradiation, consisting of one representative from each of the States Parties to this Project (whether as a Donor or as a Participating Government) and

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[18] Section 19.3.1.

[19] AM.I/4.

[20] INFCIRC/167, Section 8. See, for example, General Conference Journal No. 209, for 23 September 1981, announcing the 10th meeting of representatives of the RCA Member States.

[21] INFCIRC/167, Section 5.

one representative from the Agency. The Committee was to meet at least once a year to supervise the implementation of the Project, to establish and amend portions of the Project assigned to particular Participating Governments, and to make recommendations with respect to the Project[22].

### 11.2.10. INIS Advisory Bodies

#### *11.2.10.1. INIS Advisory Committee*

In its 1969 decision approving the establishment of the International Nuclear Information System (INIS) on an operative basis, the Board decided that the operations of INIS were to be reviewed annually by an Advisory Committee, appointed by the Board on the recommendation of the Director General; the membership of this Committee would not be limited to nationals of States serving on the Board, and producers of inputs for INIS, administrators and users of outputs from INIS would be represented on the Committee[23]. Accordingly, the Director General in 1971 nominated seven persons[24], whom the Board appointed after some discussion[25]. The Committee met in this composition later that year and prepared a report to the Director General, which the latter submitted to the Board[26]. The Committee did not, however, meet annually as originally foreseen. In 1974 the Director General convened a second meeting of the Advisory Committee, whose membership had been enlarged by the Board to ten persons[27]. A third meeting of the Advisory Committee, enlarged now to twelve members and an observer, was convened in 1979[28] (see Section 20.4.5).

#### *11.2.10.2. Consultative Meetings of INIS Liaison Officers*

Since 1972, annual meetings were organized to which all Liaison Officers appointed by INIS participants (whether States or international organizations) were invited. These Consultative Meetings considered technical matters and routine operations relating to INIS and made recommendations thereon, which were then communicated to the Permanent Missions to the Agency[29].

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[22] INFCIRC/285, Article IV.

[23] GOV/DEC/57(XII), No. (12); GOV OR.408, sub-paras 40(d)–(e).

[24] GOV/1441 and /Mod. 1.

[25] GOV/OR.435, paras 13–40; GOV/DEC/65(XIV), No. (22).

[26] PL-476/5, reproduced under cover of GOV/1509/Add.1; originally, the Director General had merely submitted to the Board the recommendations of the Advisory Committee (GOV/1509), but some Governors then requested the full text of the report.

[27] GOV/INF/286, Annex I.

[28] GOV/INF/357, Annex.

[29] IAEA-INIS-19(Rev.1), para. 2.4.7(c).

### 11.2.11. International Fusion Research Council (IFRC)

In 1971 the Director General appointed an International Fusion Research Council (IFRC), consisting of scientists from all countries where significant work was being done on fusion and plasma physics. The IFRC was an advisory body to the Director General on the Agency's activities in this field (see Section 19.3.2.8).

## 11.3. SPECIAL BODIES RELATED TO MULTILATERAL CONVENTIONS

The activities of special bodies established in relation to multilateral conventions (civil liability, physical protection) are discussed in Chapter 23.

## 11.4. MISCELLANEOUS PANELS

The work of panels and advisory bodies is described in connection with the activity in question, to the extent that they had a mandate of relevance for the legal and regulatory functions of the Agency, other organizations or Member States.

## 11.5. INTER-SECRETARIAT WORKING GROUPS

See Chapter 12 for the organizations in question.

# Part C
# RELATIONSHIPS

# Chapter 12

# RELATIONSHIP WITH INTERNATIONAL ORGANIZATIONS

## PRINCIPAL INSTRUMENTS

United Nations Charter, Articles 57 and 63;
IAEA Statute, Articles III.B.4 and 5, V.E.6 and 7, VI.J, XVI;
Relationship Agreement with the United Nations (INFCIRC/11, Part I);
Relationship Agreements with Specialized Agencies (for example UNESCO, INFCIRC/20, Part I);
Co-operation Agreements with Regional Organizations (for example with ENEA, INFCIRC/25, Part I);
Rules on the Consultative Status of Non-Governmental Organizations (INFCIRC/14);
General Conference Rules of Procedure (GC(XIX)/INF/152), Rules 30 and 31;
Board of Governors Rules of Procedure (GOV/INF/60), Rules 49 and 50;
Arrangements in respect of the Joint FAO/IAEA Division of Isotopes and Radiation Applications of Atomic Energy for Food and Agricultural Development (AM.I/3);
Agreement with UNESCO for the Joint Operation of the International Centre for Theoretical Physics (INFCIRC/132) and related Procedural Arrangements (AM.I/4);
Standing request by the General Conference to the Board of Governors to invite Intergovernmental Organizations (GC(XVI)/RES/291);
Standing request by the General Conference to the Board of Governors to invite Non-Governmental Organizations (GC(XIX)/RES/332);
Memorandum of Understanding between the United Nations, UNIDO and the Agency of 31 March 1977 Concerning the Allocation of Common Services at the Donaupark Centre in Vienna.

## 12.1. SPECIAL STATUS IN THE UNITED NATIONS SYSTEM

No developments took place that would require amendment of or additions to the information given in the basic book. The special status of the Agency has not changed, nor has the General Assembly taken a decision (provided it could do so under the United Nations Charter) defining the Agency as a specialized agency. However, except for the special relationship to the principal United Nations organs described in the basic book, the Agency's position within the United Nations system continued to be practically identical with that of a specialized agency. Individual references to the Agency by United Nations organs in resolutions and other documents have often been avoided by using the phrase "... the organizations within the United Nations system" [1] or sometimes "specialized and related agencies" (a term that also includes GATT); sometimes the term "specialized agencies" is formally defined as including the Agency[2].

[1] For example General Assembly resolution 2994(XXVII) on the United Nations Conference on the Environment.

[2] For example the Rules of Procedure of ECOSOC (E/5715).

## 12.2. RELATIONS WITH THE UNITED NATIONS

### 12.2.1. Relationship Agreement

No amendments were made to that Agreement nor had the Agreement any subsidiary applications that need be reported. The review of the relationship agreements of the Agency and the specialized agencies with the United Nations called for by ECOSOC did not result in an amendment to the Agreement (see Section 12.2.2.4.2 (b)).

### 12.2.2. Relations with the principal United Nations organs

No legal instruments were concluded in addition to those existing, i.e. the exchange of letters on the use of the United Nations Laissez-Passer, the Agreement on the Admission of the Agency to the United Nations Joint Staff Pension Fund and the Agreement Extending the Jurisdiction of the Administrative Tribunal of the United Nations to the Agency on Pension Fund Matters. All these are reported in the basic book. The arrangements between the Agency and the United Nations/UNIDO regarding common services and co-ordination in the operation of the Vienna International Centre (VIC) are described in Section 12.7.

#### *12.2.2.2. Exchange of representatives*

The practice of 'accrediting' a particular United Nations official to the Agency was discontinued and various United Nations officials acted as 'Special Representatives of the Secretary-General' or 'Representatives of the United Nations' at Agency meetings. The Agency continued its practice of stationing a representative of the Director General at United Nations Headquarters in New York. The Agency's Liaison Office in Geneva, which covered all activities of United Nations bodies in Geneva, moved in 1973 from WHO Headquarters to the Palais des Nations.

#### *12.2.2.3. Participation in meetings*

One or more United Nations officials attended meetings of the Board of Governors when subjects of interest to the United Nations appeared on the Board's agenda[3]. A United Nations representative invariably attended regular sessions of the General Conference and delivered a message of the Secretary-General[4].

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[3] The name of the United Nations representative is included in the list of attendance, forming part of the summary records of the Board (see (GOV/OR/534 ff.).

[4] The attendance of a United Nations representative and the proposed delivery of a message of the Secretary-General is indicated in the annotation to the provisional agenda of the General Conference (see GC(XXI)/577, para. 2).

The Director General always personally presented the Agency's Annual Report to the General Assembly[5]. In the period under review there was no occasion for the Director General to attend a Security Council meeting. The existing practice of mutual attendance and participation in meetings organized by the two organizations did not change.

*12.2.2.4. United Nations resolutions and recommendations*

12.2.2.4.1. The General Assembly

The Director General continued the routine of informing the Board of matters of interest to the Agency discussed by the General Assembly and ECOSOC[6]. With the expansion of Agency activities into areas of particular concern to the United Nations, the Assembly, on a number of occasions, endorsed specific projects of the Agency or invited the Agency to take particular actions. Thus, with the assumption by the Agency of safeguards responsibilities under the NPT, the Assembly requested the Agency to include in its Annual Report full information on progress of its work on application of safeguards in connection with the NPT[7]. Also, the Agency was asked to continue its activities in connection with peaceful nuclear explosions and to include relevant information in its Annual Report[8]. In Assembly resolution 3261(XXIX) the Agency was asked again to continue its studies on peaceful nuclear explosions, and in 1976 the Agency was asked to give careful attention in its work to non-proliferation of nuclear weapons, to multinational fuel cycle centres and to international plutonium storage[9]. References to other significant activities appeared in subsequent resolutions[10]. However, none of these resolutions requested the Agency to start a new activity or to redirect its existing programme. The references to the Agency in these resolutions were a reflection of the information contained in the Agency's reports rather than an initiative of the Assembly.

12.2.2.4.2. ECOSOC

The Director General continued the practice of bringing to the Board's attention resolutions and recommendations of ECOSOC of concern to the Agency[11].

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[5] See the relevant reports by the Director General to the Board in the GOV/INF series of documents.

[6] This information is contained in documents of the GOV/INF series (e.g. GOV/INF/226, 254, 266, 298) which do not call for action by the Board. Resolutions of particular interest are presented in full, others are referred to in a list. This practice was changed at the end of the 1970s by simply listing all resolutions of interest to the Agency (e.g. GOV/INF/377).

[7] General Assembly resolution A/2825(XXVI).

[8] General Assembly resolution A/2829(XXVI).

[9] General Assembly resolution 31/189.

[10] Note, for example, General Assembly resolutions 32/49, 34/11 and 35/17.

[11] The practice was the same as that for General Assembly resolutions described in footnote 6.

During the period covered by the present book, ECOSOC adopted resolutions on a number of subjects of special concern to the Agency, for example:

(a) On the division of responsibilities between the United Nations and the Agency in projects involving prospecting for nuclear materials. The United Nations recognized the Agency's competence relating to prospecting for nuclear materials, asked it to provide assistance to the United Nations in multimineral surveys involving nuclear materials and emphasized the need for co-ordination[12].

(b) On the relationship of the Agency and the specialized agencies with ECOSOC, calling for a review of the existing relationship agreements of these organizations with the United Nations[13]. The Agency's Director General submitted views on the subject, which were then reflected in the Secretary-General's report to ECOSOC[14].

(c) On the proposal to create an International Energy Institute. Such a body might have had a substantial impact on the Agency's activities in the energy field. Although the Agency had dealt with factors of cost and economy of various sources of electricity generation, it had not systematically covered nuclear energy as part of an energy mix, probably also in view of its limited competence under its Statute. After consulting the Board[15] the Director General informed ECOSOC that the Agency favoured co-operation among, and strengthening of the mandate of, existing bodies rather than the creation of new institutions.

*12.2.2.5. Agency proposals to the United Nations*

As in the period covered by the basic book, the Agency did not request the inclusion of any item on the agenda of any principal United Nations organ.

*12.2.2.6. Distribution of Agency documents*

The relevant procedural rules of the Board and the General Conference have not changed, nor has the Agency's practice.

*12.2.2.7. Reports by the Agency*

12.2.2.7.1. Reports to the General Assembly

As noted in Section 32.1.4, the General Conference in 1971 approved a recommendation by the Board that henceforth the Board's Annual Reports to the General

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[12] Resolutions 1550(XLIV) and 1768(LIV).
[13] Resolution 1906(LVII) and documents E/5524 and Add. 1-5; GOV/INF/229, 269 and 284.
[14] Document E/5476 and Add. 1-13.
[15] GOV/INF/315.

Conference would also serve as the Annual Reports to the General Assembly and to ECOSOC, and that the Director General would bring these reports up to date in his oral statement to the General Assembly[16]. Consequent on this decision, the Annual Reports, beginning with the one for 1970/1971, contain one or more paragraphs on "matters of particular interest to the United Nations"[17]. This practice was discontinued as of the Annual Report for 1979 and, instead, a few paragraphs reporting on matters of special interest to the Agency, discussed in the General Assembly of the United Nations, were included with a reference to relevant resolutions[18]. The Assembly's resolutions noting the Agency's report were brought to the attention of the Board by the Director General, and so were other subjects of interest to the Agency discussed in the Assembly. These resolutions became longer and more substantial as the Agency's activities covered areas in which the Assembly had a special interest, in particular safeguards and non-proliferation, peaceful nuclear explosions, multinational fuel cycle centres and international plutonium storage.

12.2.2.7.2. Reports to ECOSOC

Until 1977 the Agency continued to submit an Annual Report to ECOSOC and, as in the case of the General Assembly, this consisted of the Annual Report of the Board of Governors to the General Conference. Occasionally, the Director General himself presented the Report. In 1977 ECOSOC decided to end its practice of separate consideration of the work of various agencies and to replace it by a study of various sectors of activity of the organizations of the United Nations system[19].

12.2.2.7.3. Reports to the Security Council

During the period covered by the present book the Agency had no occasion to make a report to the Security Council under Statute Article III.B.4 or XII.C. There was also no occasion for the Agency to bring any other matter before the Security Council.

12.2.2.7.4. List of registered agreements

No developments.

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[16] GC(XV)/RES/274.
[17] GC(XV)/455, paras 18–20.
[18] GC(XXIV)/627, paras 29–32.
[19] GOV/INF/335.

12.2.2.7.5. Special reports

Among the special reports which the Agency made to or at the request of the United Nations, its contributions to the NPT Review Conferences of 1975 and 1980 should be emphasized (see Section 12.2.4.3).

## 12.2.3. Relationship with subsidiary United Nations organs

### *12.2.3.1. United Nations Scientific Advisory Committee (UNSAC)*

The Agency did not consult with UNSAC in view of the existence of its own Scientific Advisory Committee. UNSAC, however, had a meeting in Vienna in connection with its discussion of the draft agenda of the (1971) Fourth International Conference on the Peaceful Uses of Atomic Energy, and the Director General also attended UNSAC meetings when it discussed that Conference in New York.

### *12.2.3.2. United Nations Scientific Committee on the Effects of Atomic Radiation (UNSCEAR)*

In the early 1970s some difficulties arose in the Agency's relationship with UNSCEAR. UNSCEAR was originally established in 1955 because of the importance of the biological consequences of nuclear weapons testing[20]. Over the years, a certain division of tasks between the Agency and UNSCEAR[21] had developed:

(a) The Agency had become the chief international medium for exchange and collection of information concerning releases of radioactivity into the environment from peaceful activities;
(b) UNSCEAR was concerned with the assessment of biological consequences of exposure to radiation using data submitted by Governments and organizations.

With the diminution of nuclear weapons testing, UNSCEAR concerned itself increasingly with various problems arising out of the peaceful uses of nuclear energy, in particular contamination resulting from nuclear energy generation and the application of radioisotopes[22].

This redirection of UNSCEAR's activities not only encroached on the Agency's statutory responsibilities but also resulted in a duplication of the Agency's work in two specific areas:

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[20] General Assembly resolution A/913(X).
[21] GOV/1475, para. 5.
[22] See UNSCEAR's report to the General Assembly in 1971 (A/8334).

(a) Collection of information from States;
(b) Reporting arrangements; the Agency reported to the General Assembly on its activities, including the establishment of safety standards, and on the evaluation of the environmental consequences of peaceful uses of atomic energy[23].

UNSCEAR, established as an advisory body, thus began to report to the General Assembly on the same matters as the Agency, and its reports covered areas where the Agency had regulatory and operational responsibility, which it had carried out over a number of years. It should be noted that UNSCEAR's decision to redirect its activities was endorsed by the General Assembly[24]. The difficulties could obviously not be resolved at the inter-Secretariat level because they did not relate to the scientific work of the two bodies but stemmed from governmental decisions. In 1971 the Director General put to the Board proposals for a division of competence and of activities[25]. The Director General did not, however, request the Board to take specific action, and neither the Board nor UNSCEAR pursued the matter. Apparently, the problem was of less concern to Governors than to the Secretariat, and the Board took no action[26].

UNSCEAR, in its reports to the General Assembly, in 1972 began to deal for the first time with the assessment of individual and population doses resulting from nuclear power programmes and, potentially, from nuclear explosions for peaceful purposes[27]. The UNSCEAR reports covered the same subjects as the Agency reports, with apparent overlaps. Accordingly, the Director General again raised the matter with the Board in 1972 in no uncertain terms: "... it is clear that a question now requiring the consideration of Governments is where do they wish international responsibility to be mainly concentrated, within the United Nations family, for radiation protection as related to the peaceful uses of atomic energy"[28]. UNSCEAR's reports to the General Assembly became less frequent after it had requested the General Assembly to be relieved of its obligation to report annually to the Assembly, a request which was approved by the Assembly[29]. Also, UNSCEAR was seeking active co-operation with, and a role in, the United Nations Environment Programme (UNEP)[30].

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[23] GOV/1475, para. 8.
[24] Resolution 2773(XXVI).
[25] GOV/1475, para. 9.
[26] GOV/OR.440, paras 24–52; the problem of co-ordination had also arisen between UNSCEAR and WHO; see statement by the WHO representative at the same Board meeting.
[27] GOV/INF/252, para. 7.
[28] Ibid., para. 12.
[29] The General Assembly subsequently requested UNSCEAR to report on specific topics (see, for example, resolution 2905(XXVII)).
[30] See UNSCEAR's report in document A/8843.

However, UNSCEAR continued to report to the General Assembly on the effects of atomic radiation regardless of the source and was invariably praised by the Assembly for its work and requested "... to continue its work, including its co-ordination activities, to increase knowledge of levels and effects of atomic radiation from all sources"[31]. Invariably, the General Assembly resolutions on the UNSCEAR report also expressed appreciation to the Agency for its assistance to UNSCEAR. While the texts of Assembly resolutions on UNSCEAR were originally provided in full to the Board, these resolutions were later simply listed in an information document for the Board, together with other Assembly resolutions of interest to the Agency[32]. A potential problem which had been regarded as an important issue of principle by the Agency thus did not reach the dimensions feared by the Secretariat and no jurisdictional conflict arose; nor did UNSCEAR's expanded role result in restrictions on the Agency's competence or programmes.

As a marginal note it might, however, be observed that this episode shows the difficulty of separating the effects of atomic radiation on the environment according to their peaceful or military origin. It demonstrates also the growing concern about environmental aspects of energy generation, in this case nuclear, a problem to which the Agency too had to pay increasing attention in the 1970s.

#### *12.2.3.3. Regional Economic Commissions*

The contacts with the United Nation's Regional Commissions were maintained, particularly with the Economic Commission for Europe (ECE), which participated in a number of Agency panels and advisory groups (for example in connection with the revision of the Agency's Transport Regulations, see Section 22.2.2.4.2).

#### *12.2.3.4. Financial organs*

The Agency's relationships with the financial organs are described in Chapter 25.

#### *12.2.3.5. Office of the United Nations Disaster Relief Co-ordinator (UNDRO)*

In 1977 the Agency concluded with UNDRO an agreement for closer co-ordination of their services for the benefit of countries in which radiation accidents might occur and for co-operation of the two organizations in disaster relief. The

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[31] For example General Asembly resolution A/2905(XXVII).
[32] GOV/INF/377.

Agency would provide technical and scientific assistance and advice if a natural disaster affected a nuclear installation and caused a radiation accident[33]. The Agency and UNDRO collaborated in collecting information on types of assistance that Member States might make available[34].

### *12.2.3.6. The United Nations Environment Programme (UNEP)*

Soon after UNEP was established, following the 1972 Stockholm Conference on the Human Environment, the Agency approached UNEP and submitted proposals that UNEP should finance certain Agency activities, particularly in relation to the Agency's extended programme relating to the environment[35].

UNEP was also invited to join in and support the Agency's work on nuclear safety codes and guides[36]. UNEP started to contribute financially to some Agency activities and became a major financial contributor to the work of the Monaco Laboratory regarding non-radioactive pollutants[37].

Inevitably, UNEP covered in its work issues of particular interest to the Agency and matters of concern to the Agency. One example was UNEP's comparative study on the impact of various energy sources on the environment. Already in 1973, the Board pointed out that the Agency should play the principal role with regard to nuclear safety and environmental protection and should emphasize its prerogatives when dealing with UNEP and other United Nations agencies[38].

When UNEP made a comparative study on the impact of various energy sources on the environment, it also covered the ecological effects of nuclear energy. UNEP's basic document was not found acceptable by a group of experts, and the Agency too deemed changes necessary. The Director General informed the Board and also offered to make experts available to UNEP[39]. Apart from this relatively minor, short lived incident it appears that collaboration with UNEP was smooth and without major problems.

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[33] GOV/INF/392, para. 13.

[34] WHO, FAO and ILO also participated; the information is published in the Agency document IAEA-TECDOC-237 of November 1980.

[35] GOV/OR.454, para. 28.

[36] GC(XIX)/544, para. 27.

[37] In 1979, UNEP provided nearly US $200 000 and in 1980 US $135 000 (GC(XXIV)/630, Table 5).

[38] The UK, GOV/OR.454, para. 45.

[39] GOV/OR.528, para. 30.

### 12.2.4. Participation in United Nations activities

#### *12.2.4.1. The 'Geneva' International Conferences on the Peaceful Uses of Atomic Energy*

(d) Fourth Conference — 1971

This Conference, held from 6 to 16 September 1971 in Geneva, had a broader agenda than the first three Conferences, with new emphasis on the practical problems of integrating nuclear power into national economies. The Conference confirmed the (then) Agency findings that in developing countries there was considerable interest in small and medium sized reactors to fit into their smaller electrical grids. Agency staff again served in the Conference Secretariat, and this time the Agency published the proceedings of the Conference. The Agency took an active part in the preparatory work of the Conference, and the meetings of UNSAC were attended by the Agency's Director General when it discussed arrangements and the agenda for the Conference. Otherwise, the Agency played the same role as at the 1964 Geneva Conference[40].

#### *12.2.4.2. The 1972 Stockholm Conference on the Human Environment*

In view of the growing importance and increasing public perception of environmental problems resulting from energy generation and the Agency's incipient programme in this area, the Agency participated actively in that Conference. This participation and the impact of the Conference on the Agency's work are discussed in Section 22.2.4.5.1.

#### *12.2.4.3. The 1975 and 1980 NPT Review Conferences*

Article VIII (3) of the NPT provides that "Five years after the entry into force of this Treaty, a conference of the Parties to the Treaty shall be held in Geneva, Switzerland, in order to review the operations of this Treaty with a view to assuring that the purposes of the preamble and the provisions of the Treaty are being realized". The Treaty also provides that a majority of the Parties may thereafter cause further review conferences to be convened at intervals of five years. The first such Conference was organized under the auspices of the United Nations and held in Geneva in May 1975. The second Conference also took place in Geneva in 1980[41]. For both Conferences the Agency prepared background papers describing

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[40] GC(XVI)/480, paras 114–116. The proceedings of the earlier conferences were published by the United Nations.

[41] Documents published under symbols NPT/CONF/... and NPT/CONF.II/... .

its activities in relation to Articles III, IV and V of the Treaty[42]. The Agency also participated in the preparatory work of both Conferences and provided part of the Conference Secretariat[43]. The Agency's contributions to the Conference and the Conference results are described in Section 21.3.2.3.2.

*12.2.4.4. The United Nations Conference on Peaceful Uses of Nuclear Energy (PUNE)*

In 1979 the General Assembly decided, in principle, to convene, in 1983, an international conference for the promotion of international co-operation in the peaceful uses of nuclear energy, to be held under the auspices of the United Nations system, with the Agency "fulfilling its appropriate role"[44]. Later, the General Assembly invited the Agency to participate, "within the scope of its responsibilities", at all stages of preparation of the Conference; at the Conference the Agency should make contributions to the discussion by making available technical data and documentation as needed, particularly in relation to the Agency's Committee on Assurances of Supply (CAS); the Agency was also requested to provide part of the Secretariat of the Conference[45]. [The Conference was finally convened in 1987.]

*12.2.4.5. Third United Nations Conference on the Law of the Sea*

Since the start of the Conference in 1973, the Agency attended the Conference sessions. The Agency was mainly interested in problems of control of pollution and preservation of the marine environment, and in scientific research and development and transfer of technology[46].

## 12.3. RELATIONS WITH THE SPECIALIZED AGENCIES

### 12.3.2. Relationship agreements

During the period under review, no new relationship agreement was concluded nor was any of the existing agreements amended.

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[42] See Section 21.3.2.3.2.

[43] The Agency was mainly interested in the work of Main Committee II, which at each Review Conference discussed the implementation of Articles III, IV and V of the Treaty.

[44] Assembly resolution 34/63.

[45] Assembly resolution 35/112.

[46] See also GOV/INF/242/Add. 1.

### 12.3.3. Practical relations with the agencies in general

The expansion of the Agency's programme also resulted in increased participation of the specialized agencies in the work of the Agency; this applied particularly to the regulatory activities relating to environmental protection and to health and safety, notably the development of safety standards, guidelines and codes of practice, some of which were co-sponsored by the agencies concerned (see Section 22.2.2.4). Other agencies contributed financially to Agency programmes of interest to them, for example the IBRD contributed to the regional fuel cycle centre study and to nuclear power studies[47]. Other programmes were executed as joint activities, such as the operation of the Trieste International Centre for Theoretical Physics by the IAEA and UNESCO[48], or as long term co-operative projects, for example work on standardization in the field of food irradiation[49].

### 12.3.4. Practical relations with certain agencies

#### *12.3.4.1. Food and Agriculture Organization of the United Nations (FAO)*

The FAO/IAEA Division for Atomic Energy in Agriculture continued its work under the arrangements of September 1964. In July 1979 the Division was renamed Joint FAO/IAEA Division of Isotope and Radiation Applications of Atomic Energy for Food and Agricultural Development[50]. This new title better reflected the type of activities which the Division carried out and did not result from a reorientation of its programme[51]. The administrative, personnel and financial arrangements remained the same as described in the basic book[52]. A review of the work of the Division, carried out in 1973 by a group of outside experts, endorsed the concentration of work on the solution of problems of developing countries. Of the total costs of the programme in the years 1980/1981 of over US $7 million, FAO contributed only US $1.6 million[53].

A major joint activity with FAO concerned standardization in the field of food irradiation. This co-operative project between FAO, WHO and the Agency achieved, after ten years of work, a major breakthrough in 1979, when the Codex Alimentarius Commission adopted a "Recommended International General Standard for Irradiated Foods" and a "Recommended Code of Practice for the Operation of Radiation Facilities Used for the Treatment of Foods", prepared by an IAEA/FAO

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[47] GC(XX)/567, Table 4 and para. I.2.
[48] Section 19.1.3.
[49] GOV/INF/374.
[50] AM.I/3.
[51] It is obviously only this part of nuclear energy which is relevant to the work of the Division.
[52] For example, staff belongs partly to FAO and partly to the Agency.
[53] GC(XXIV)/630, Table F.3.

advisory group. Such standardization led to a harmonization of national legislation and regulatory procedures[54]. FAO also became a Party to the Agreement for the Establishment of an International Facility for Food Irradiation Technology in the Netherlands[55].

#### *12.3.4.2. International Labour Organisation (ILO)*

ILO participated, together with WHO and OECD/NEA, in the revision of the Agency's Basic Safety Standards for Radiation Protection, which also serve as a basis for regulations for the protection of workers.

#### *12.3.4.3. United Nations Educational, Scientific and Cultural Organization (UNESCO)*

UNESCO continued in the joint operation with the Agency of the Trieste International Centre for Theoretical Physics, under the arrangements concluded in 1970. However, by the end of the decade, UNESCO's contribution of US $319 000 represented only about one third of the Agency's contribution and less than 15% of the total US $2 million cost of the Trieste Centre[56]. UNESCO also made a small financial contribution for the Monaco Laboratory[57].

#### *12.3.4.4. World Health Organization (WHO)*

WHO continued to participate in a variety of panels and advisory groups that developed safety standards, guidelines and codes of practice, and co-sponsored some of these standards. In 1975, WHO and the Agency agreed that the Agency would henceforth limit its work in medicine, radiation biology and dosimetry to purely technical and non-routine problems involving the use of nuclear techniques[58]. The office of WHO in Vienna was closed in 1973 and the Agency's Geneva office moved from WHO Headquarters to the Palais des Nations and became the Agency's Liaison Office for all activities in Geneva related to the United Nations[59].

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[54] GOV/INF/374.
[55] GC(XXIII)/610, para. 120.
[56] GC(XXIV)/630, Annex V.
[57] For example US $8500 in 1979 (GC(XXIV)/630, Table 5).
[58] GC(XX)/565, paras 17, 18.
[59] GC(XVIII)/525, para. 172.

*12.3.4.5. World Meteorological Organization (WMO)*

The Agency continued collection of isotopic data from the IAEA/WMO global network of precipitation stations and published these data. Agreements for further collaboration under the long term hydrological programme were concluded with UNESCO and WMO[60].

## 12.4. CO-ORDINATION WITHIN THE UNITED NATIONS FAMILY

Once the Agency had established itself as the leading organization in nuclear matters and was recognized as such by Governments, there was no longer a need for general co-ordination of atomic energy activities. Earlier attempts at multilateral co-ordination were not pursued, and potential jurisdictional disputes were either resolved between the Agency and the organizations concerned or avoided through pragmatic co-operation in concrete programmes. Financial constraints on international organizations constituted another barrier against the creation of new institutions or ambitious programmes. Whenever problems of overlapping competence arose, it was generally the Agency which raised the matter, pointing to its statutory responsibility. On the other hand, it became more and more evident that peaceful applications of nuclear energy often constituted only one aspect of a wider issue. For instance, the decision to embark upon or to expand a nuclear power programme was treated more and more as one element in the choice of the right mixture of various potential energy sources (fossil, hydro, nuclear) for electricity generation. Concurrently with this development, national institutions changed and so did the emphasis on the work of Government representatives to the Agency. National atomic energy commissions which had united promotional and regulatory functions were split up so as to separate these activities. As a further step, responsibility for atomic energy activities was assigned to administrative entities with wider competence, for example for the whole spectrum of energy activities or environmental affairs[61]. Protection of the environment required not only that all sources of pollution from energy production be checked and evaluated but also that the synergistic effects of chemical, thermal and radioactive releases be considered.

All these factors led to a situation where problems of co-ordination arose only sporadically. There were only a few occasions when the Director General felt it necessary to seek support in the Board to ensure that the Agency could play an

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[60] GC(XX)/565, para. 77.

[61] For example, in the USA the United States Atomic Energy Commission was abolished. Its regulatory functions were transferred to a new Nuclear Regulatory Commission (NRC) and its promotional activities were assigned to the Department of Energy (DOE).

appropriate role in new United Nations institutions or activities (for example in connection with the 1972 Stockholm Conference on the Human Environment or the creation of UNEP) or when existing bodies appeared to deal with matters which, in the opinion of the Agency, fell under its statutory responsibility (for example when UNSCEAR started to deal with effects of peaceful uses of nuclear energy).

### 12.4.2. General activities

#### *12.4.2.1. Participation in the Administrative Committee on Co-ordination (ACC) and its sub-committees*

As before, the Director General ordinarily attended ACC meetings, whereas the Deputy Director General for Administration participated in the preparatory meetings of Deputies.

During the 1970s, co-ordination of peaceful nuclear activities was no longer a topic for discussion by ACC and there was no instance when that topic appeared as a general item on the ACC agenda. The Board was regularly kept informed of matters of interest discussed by ACC, by means of information documents that did not require any action[62]. Copies of ACC reports were made available to Governors, but were not issued as a separate Agency document. ACC matters were also included in the Director General's report on "Matters of Interest Discussed by the General Assembly of the United Nations"[63]. As before, the Agency continued to participate in various ACC sub-committees, notably the Consultative Committee on Administrative Questions (CCAQ), and in the studies undertaken by these bodies. When CCAQ discussed improvements in the United Nations system of programming and budgeting, the Agency could point out that its budget for 1971 and its medium term programme for 1971–1976 already conformed to recommendations made in this regard[64].

Attempts by ACC to co-ordinate the legislative work of the organizations by having their legal offices serve as information centres for projected legislative activities of the organizations led to some exchanges of information between the Agency and specialized agencies on ongoing and projected activities[65].

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[62] For example GOV/INF/226, 254, 266, 298.

[63] Published in the GOV/INF series of documents, not requiring action by the Board.

[64] Note from the Director General to the United Nations Secretary-General of 9 March 1973, Ref. F/215.

[65] An Ad Hoc Inter-Agency Meeting of legal experts on co-ordination of legislative work of organizations agreed in 1973 to such an exchange of information. This project was subsequently endorsed by the Preparatory Committee of ACC. See note of 25 February 1977 by the Director, Legal Division, WHO, on legislative activities of that organization.

*12.4.2.2. Technical assistance co-ordination*

The study of the capacity of the United Nations Development System[66] (the so-called Jackson Report) of 1970 raised a number of important issues for the Agency:

(a) The relationship of the Agency's own technical assistance programme to that of UNDP[67];
(b) The organization of UNDP headquarters to enable it to cope with its increased responsibilities[68].

With respect to point (a), the Agency's concern was to preserve its role of co-ordinating UNDP atomic energy projects and its own projects. The Agency submitted three principal arguments in support of its role[69]:

(i) All requests for assistance emanated from national atomic energy commissions; accordingly, there was already automatic co-ordination when requests were submitted at the national level;
(ii) The Agency's Board was not likely to change the existing procedures for the selection and approval of the technical assistance programmes for countries under the Agency's regular programme;
(iii) The Agency could finance certain types of assistance which UNDP could not (for example activities related to direct research), and such assistance was "a statutory responsibility of the Agency".

With regard to point (b), the organization of the office of the UNDP Administrator changed and the new machinery for assessment of requests for assistance in the atomic energy field raised problems of jurisdiction for the Agency. Who should evaluate requests for UNDP atomic energy projects, technical staff at UNDP or the Agency's scientific staff? The Director General's views left no room for doubt; he did not consider it advisable "for the [UNDP] Administration to build up an independent technical competence in UNDP in matters relating to atomic energy". Moreover, he suggested that, "except for special cases to be agreed upon between UNDP and the Agency", the Agency's scientific staff should be the sole source of technical advice in the evaluation of requests for assistance in the field of atomic energy[70].

The Jackson Report also touched upon the role of the UNDP Resident Representatives, who should be the central co-ordinating authority for all development assistance programmes of the United Nations system — a suggestion causing

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[66] United Nations document DP/5.
[67] GOV/INF/235, para. 17.
[68] Ibid.
[69] Ibid., para. 18.
[70] Ibid., para. 19.

no problem for the Agency and which, moreover, was subject to the agreement of the organizations concerned. At the same time, the Agency tried to execute more UNDP funded projects and the Director General informed the Board that the Secretariat could handle a UNDP programme twice as large as the present one, with only a modest increase in staff.

*12.4.2.3. Other means of co-ordination*

In 1970, ECOSOC adopted a number of resolutions on programme co-ordination within the United Nations system, requesting prior consultation on new programmes or on changes of existing programmes and emphasizing the need to eliminate overlapping and duplication[71]. In view of the Agency's specialized and concrete work programme, these resolutions had little effect on the Agency and did not require any change in its work. As a specific case in point, but not of central relevance for the Agency, ECOSOC reaffirmed the primary role and responsibility of the United Nations in conducting multi-mineral or single-mineral surveys, but recognized the Agency's special competence and responsibility to conduct "surveys for nuclear metals" and stressed the need for it to co-operate with the United Nations in multi-mineral surveys by making available experts[72]. The administrative and management procedures of the Agency's programme and budget were the subject of a report by ACABQ[73]; the Director General, in turn, brought this report to the attention of the Agency's A&B Committee[74]. The Agency's practice of financing its meetings and conferences away from Headquarters was apparently considered an example for the United Nations when the Fifth Committee of the General Assembly requested the United Nations Secretary-General to study it and to report on the possible application of these methods to similar meetings held by other United Nations bodies away from United Nations Headquarters[75]. A number of other initiatives by ECOSOC affecting the Agency should also be mentioned, such as the ECOSOC review of the agreements with the specialized agencies and the Agency[76], ECOSOC resolutions relating to the application of science and technology to development[77], the United Nations Conference on Science and Technology for Development in Vienna (to which the Agency was invited)[78] and ECOSOC's restructuring of the economic and social system of the United Nations by incorporating most subsidiary bodies into ECOSOC and holding shorter and more frequent,

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[71] ECOSOC resolutions 1549(XIX), 1547(XIX).
[72] ECOSOC resolution 1550(XIX).
[73] United Nations documents A/8490, A/8447/Rev.1, A/8538.
[74] GOV/COM.9/91.
[75] GOV/INF/247/Add.1.
[76] ECOSOC resolution 1906(LVII).
[77] GOV/INF/284.
[78] General Assembly resolution 34/218.

subject oriented sessions of the Council[79]. With respect to the possible restructuring of ECOSOC, the Agency's Legal Adviser pointed out that this could not affect the Agency without the Statute and the Agency's Relationship Agreement with the United Nations being amended — another demonstration of the Agency's special relationship with the United Nations[80]. The Agency's relationship with the International Civil Service Commission (ICSC) is discussed in Chapter 24 and that with the United Nations Joint Inspection Unit (JIU) in Chapter 25. The Agency's Legal Adviser participated in the preparation of a study by an ad hoc meeting of Legal Advisers of the common system on the "Feasibility of Establishing a Single Administrative Tribunal" in 1979, which served as a report by ACC to the Assembly[81].

## 12.5. RELATIONS WITH REGIONAL AND OTHER INTERGOVERNMENTAL ORGANIZATIONS

### 12.5.1. Observers at the General Conference

The cumbersome annual exercise of inviting to the Agency's General Conference certain intergovernmental organizations that did not have a co-operation agreement with the Agency was greatly simplified in 1972. In that year the Conference issued a standing request to the Board to invite organizations "... concerned with developing uses of nuclear energy for peaceful purposes or with research in nuclear sciences"[82] to send observers to the regular sessions of the General Conference. This was implemented by annually submitting to the Board, at its June session, a list prepared by the Director General; the Board then decided to invite certain organizations; when submitting the list, the Director General also called attention to those other intergovernmental organizations that could attend General Conference sessions on the basis of their co-operation agreements[83].

Some organizations that had been receiving invitations were removed from the list when it became clear that they had no interest in attending the Conference. Other organizations that had been on the list no longer required special invitations when they had concluded a co-operation agreement with the Agency[84].

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[79] GOV/INF/353.

[80] Internal memorandum, 9 May 1978.

[81] Draft, dated 17 September 1979. See also General Assembly resolution 33/119 and ACC/1979/R.3.

[82] By resolution, GC(XVI)/RES/291.

[83] See, for example, the list for 1975 (GOV/1745).

[84] See Section 12.5.2 for the co-operation agreements concluded.

The following intergovernmental organizations were invited[85] to send observers to the 24th regular session (1980) of the General Conference:

(1) *By virtue of their co-operation agreements with the Agency:*

(a) The Agency for the Prohibition of Nuclear Weapons in Latin America (OPANAL);
(b) The Council for Mutual Economic Assistance (CMEA);
(c) The European Atomic Energy Community (Euratom);
(d) The Inter-American Nuclear Energy Commission of the Organization of American States (IANEC);
(e) The League of Arab States;
(f) The Nuclear Energy Agency of the Organisation for Economic Co-operation and Development (NEA, formerly ENEA);
(g) The Organization of African Unity (OAU).

(2) *By virtue of special invitations issued by the Board:*

(a) The Common Afro-Malagasy-Mauritian Organization;
(b) The International Bureau of Weights and Measures (IBWM);
(c) The Joint Institute for Nuclear Research (JINR);
(d) The Latin American Energy Organization (OLADE);
(e) The Middle Eastern Regional Radioisotope Centre for the Arab Countries;
(f) The Organization of Petroleum Exporting Countries (OPEC).

### 12.5.2. Co-operation agreements

The procedure for negotiating and concluding co-operation agreements with regional organizations did not change. Co-operation agreements with the following regional organizations existed as of 31 December 1980:

(a) The Agency for the Prohibition of Nuclear Weapons in Latin America (OPANAL) (INFCIRC/25/Add.4);
(b) The Council for Mutual Economic Assistance (CMEA) (INFCIRC/25/Add.5);
(c) The European Atomic Energy Community (Euratom) (INFCIRC/25/Add.5);
(d) The Inter-American Nuclear Energy Commission (IANEC) (INFCIRC/25, II);
(e) The League of Arab States (INFCIRC/25/Add.3);
(f) The Nuclear Energy Agency of the OECD (NEA) (INFCIRC/25, I);
(g) The Organization of African Unity (OAU) (INFCIRC/25/Add.2).

[85] GOV/DEC/107(XXIII), No. (21).

Any special questions that arose in the course of the negotiations of the four Agreements concluded during the decade are related in Section 12.5.3. These were Agreements with Euratom, CMEA, the League of Arab States and OPANAL.

### 12.5.3. Relations with particular organizations

#### *12.5.3.1. The Nuclear Energy Agency (NEA), formerly the European Nuclear Energy Agency (ENEA)*

The decision of the OECD Council to change the name of the European Nuclear Energy Agency (ENEA) to the Nuclear Energy Agency (NEA), to take account of the augmented membership of OECD with the participation of non-European States, did not affect the co-operation agreement with the Agency[86], and co-operation with the NEA continued on the basis of that existing agreement.

Co-operation with the NEA was intensified and covered, in particular in the following areas:

(a) *Uranium reserves.* Collaboration with the NEA in surveys of uranium reserves continued throughout the decade and was intensified and institutionalized through the creation of a Joint Steering Group on Uranium Resources and a Joint Standing Group of experts on research and development of uranium exploration techniques[87]. The Steering Group prepared regular reports on "Uranium Resources, Production and Demand"[88]. Another joint project in that field was the International Uranium Resources Evaluation Project (IUREP)[89].

(b) *Nuclear safety, the environment and waste management.* The Agency and the NEA jointly organized a number of symposia and other meetings, for example on low and intermediate level radioactive wastes[90], the continued effects of radioactive and non-radioactive releases on the environment[91], safety of nuclear ships[92] and underground nuclear waste disposal[93]. The NEA also collaborated in developing the Agency's Revised Basic Safety Standards for Radiation Protection and even co-sponsored these Standards[94].

(c) *Nuclear information.* In 1971 the Agency took over from the NEA responsibility for publishing the computer index of neutron data[95]. The Agency provided

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[86] INFCIRC/25, I.
[87] GC(XXI)/580, para. 53.
[88] Published by the Agency, occasionally referred to as "The Red Book".
[89] GC(XXII)/597, para. 60.
[90] GC(XV)/455, para. 102(b).
[91] GC(XX)/565, para. 119.
[92] GC(XXII)/597, para. 81.
[93] GC(XXIV)/627, para. 88.
[94] GC(XXIV)/627, para. 94.
[95] GC(XV)/455, para. 56.

the NEA with a computer program for its library at Ispra, Italy[96], and also distributed programs from the Ispra library to Agency Member States[97].

(d) *Civil liability.* Together with IMCO, the NEA and the Agency sponsored a Diplomatic Conference at Brussels, lasting from 29 November to 3 December 1971, which elaborated a Convention Relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material (Section 23.6.1). In the field of civil liability for nuclear damage the two organizations collaborated, with the aim of harmonizing the Vienna and the Paris Conventions (Section 23.1).

### *12.5.3.2. European Atomic Energy Community (Euratom)*

The principal area of collaboration of Euratom with the Agency, the application of safeguards, is described in Chapter 21. The conclusion of the Safeguards Agreement with the non-nuclear-weapon States of Euratom on 5 April 1973 and the ratification of the NPT by the (remaining) five non-nuclear-weapon States of Euratom on 2 May 1975 opened the way for the conclusion of a co-operation agreement with Euratom in 1975. When the text was put before the Board in September 1975[98] the Council of Ministers of Euratom had already approved it[99]. This Agreement did not in any way affect the Safeguards Agreement of 5 April 1973, and this point was emphasized in the Director General's note to the Board[100]. The Agency thus developed a double-track relationship with Euratom, and no case occurred where the implementation of one agreement influenced the other. In contrast to the Agreement with CMEA (Section 12.5.3.7) there was no discussion of the Euratom Agreement in the Board, which approved it without debate[101]. In view of the different institutional structure of the two organizations (Euratom does not have organs comparable to the General Conference or the Board) there is no reciprocity under the Agreement relating to the representation in the organs of each organization; such reciprocity applies only to "appropriate meetings convened under their respective auspices"[102]. After approval by the General Conference and completion of the internal procedures on the side of Euratom, the Agreement entered into force on 1 January 1976. Areas of co-operation of the Agency with Euratom included INIS, safeguards research projects, nuclear power[103], and INTOR, where Euratom represented its Member States[104].

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[96] GC(XV)/455, para. 110, GC(XVI)/480, para. 112.
[97] GC(XVII)/500, para. 133.
[98] GOV/1756 and Mod. 1.
[99] On 15 September 1975.
[100] GOV/1756, para. 3.
[101] GOV/OR/482, para. 3.
[102] INFCIRC/25, Add. 5; II.
[103] For example a joint symposium on special problems integrating nuclear power into grids in 1970.
[104] GC(XXV)/642, paras 37 and 38.

*12.5.3.3. Inter-American Nuclear Energy Commission (IANEC)*

No particular developments need be reported in the Agency's relations with that organization.

*12.5.3.4. African organizations*

No particular developments need be reported in relation to the Co-operation Agreement with the Organization of African Unity (OAU)[105] or in relation to the other African organizations that have been invited to send observers to the General Conference.

*12.5.3.5. River Commissions*

No developments.

*12.5.3.6. International Bureau of Weights and Measures (IBWM)*

No developments.

*12.5.3.7. Socialist organizations*

Concurrently with the Euratom Co-operation Agreement a corresponding Agreement with the Council for Mutual Economic Assistance (CMEA) was negotiated and entered into force on 26 September 1975[106]. Obviously, there was a political linkage in approving that Agreement in the Board just before the submission of the Euratom Agreement[107]. CMEA had been regularly invited to the Agency's General Conference; its co-operation Agreement provides, unlike the Euratom Agreement, for reciprocal representation[108]. The Joint Institute for Nuclear Research (JINR) at Dubna (USSR) was also regularly invited to the General Conference. As a contribution to the Agency's programme, JINR provided a number of fellowships in the early 1970s[109].

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[105] INFCIRC/25/Add. 2.

[106] INFCIRC/25/Add. 5, I.

[107] See the statement by the Governor from the Federal Republic of Germany and others in the Board on 11 June 1975 (GOV/OR/479, paras 30 and 31).

[108] INFCIRC/25, Add. 5, I.

[109] See, for example, GC(XVIII)/525, Annex A.

*12.5.3.8. Arab organizations*

12.5.3.8.1. League of Arab States

A standard Co-operation Agreement concluded with the League of Arab States in 1971 entered into force on 15 December 1971[110]. When the Agreement was discussed in the Board, concern was expressed that the obligation of the Agency to make available any statistical and legislative information relating to the peaceful uses of nuclear energy was too wide, because the Agency could not divulge certain confidential information, for example information relating to safeguards[111]. On the understanding that the words "of common interest" qualified the Agency's obligations, the Board approved the Agreement[112]. No special problems of legal or administrative relevance occurred in the relationship with this organization.

12.5.3.8.2. Middle Eastern Regional Radioisotope Centre for the Arab Countries

The Centre at Cairo was originally established in 1963 under an Agreement between a number of Arab States and the Agency[113]. The Agency ceased participating in the Centre as of 1969, but the Centre continued as an international organization in which Arab countries were members. As of 1973, 13 Arab States were members of the Centre. Beginning with 1977, the Centre was invited every year to attend the regular sessions of the General Conference[114].

*12.5.3.9. Latin American organizations*

12.5.3.9.1. Agency for the Prohibition of Nuclear Weapons in Latin America (OPANAL)

OPANAL, established by Article 7.1 of the Treaty for the Prohibition of Nuclear Weapons in Latin America (the Tlatelolco Treaty, see Section 21.3.2.2), is specifically authorized under the Treaty to enter into agreements that may "facilitate the efficient operation of the control system established by the Treaty"[115]. However, the IAEA/OPANAL Agreement does not deal with safeguards or other control matters foreseen by the Treaty; rather, it is a standard agreement of the type

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[110] INFCIRC/25/Add. 3.
[111] GOV/OR/434, para. 56, Article III(2) of the Agreement.
[112] GOV/OR/434, paras 60, 61.
[113] INFCIRC/38 and Add. 1/Rev. 1.
[114] GOV/DEC/93(XX) No. (31).
[115] Article 19.1 of the Treaty (United Nations Treaty Series, Vol. 634, No. 9068).

the Agency had concluded with other regional organizations[116]. OPANAL's General Conference issued a standing invitation for the Agency to attend its sessions and the Agency was represented at some of these sessions. The Secretary General of OPANAL was present at a number of sessions of the Agency's General Conference. OPANAL assisted the Agency in the conclusion of Safeguards Agreements with its Member States, but there was practically no co-operation in other areas of the Agency's programme.

12.5.3.9.2. Latin American Energy Organization (OLADE)

This organization, with some 20 Latin American States as members and its headquarters in Quito, Ecuador, was established with the fundamental purpose of "integration, protection, conservation, rational conservation, marketing, and defence of the energy sources of the region" [117]. OLADE was issued regular invitations to the Agency's General Conference; no problems of legal or administrative relevance arose in the relationship with that organization.

## 12.6. RELATIONS WITH NON-GOVERNMENTAL ORGANIZATIONS

### 12.6.2. Consultative status

The number of organizations with consultative status remained at 19, no organization being granted such status after 1961[118]. On the proposal of the Board, the General Conference issued a standing request to the Board to invite certain non-governmental organizations to the regular sessions of the Conference. These were organizations which did not enjoy consultative status (organizations having consultative status are entitled to attend sessions of the Conference, pursuant to Rule 3(b) of the Rules on the Consultative Status of Non-Governmental Organizations with the Agency)[119] but which "are concerned with developing uses of nuclear energy for peaceful purposes or with research in the nuclear sciences" [120]. These arrangements are thus similar to those for intergovernmental organizations. Following the conferral of this authority to the Board, the Director General annually prepared for the Board's June session a document with a list of those non-governmental organizations which he proposed be invited. The Board regularly approved this list without debate. For example, in 1980, six organizations were invited[121]:

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[116] INFCIRC/25, Add.4.
[117] GOV/1802, para.2.
[118] GC(XIX)/546, para. 1; a list of the organizations appears in the Annex to that document.
[119] INFCIRC/14.
[120] GC(XIX)/RES/332.
[121] GOV/DEC/107(XXII), No.(22).

— The American Nuclear Society
— The European Nuclear Society
— The International Institute for Applied Systems Analysis (IIASA)
— The International Radiation Protection Association
— The United States Atomic Industrial Forum
— The Uranium Institute.

### 12.6.3. Practical relations

In the execution of its programmes the Agency collaborated with a number of non-governmental organizations and institutions, regardless of whether these had consultative status or whether they appeared on the annual list of organizations entitled to send observers to the General Conference[122]. This collaboration occurred principally in three areas: (i) safety, science and technology; (ii) nuclear power; (iii) the programme of the Trieste Centre.

A continuing relationship developed with IIASA in carrying out a joint risk assessment project, which started in 1974[123]. Because of the increased concern of the public over the risks of nuclear power it was obviously of substantial importance for the Agency to find out how society judged the acceptability of new technologies and how objective information on risks would affect decision making[124].

## 12.7. RELATIONSHIP WITH THE UNITED NATIONS AND WITH UNIDO REGARDING THE VIENNA INTERNATIONAL CENTRE AND COMMON SERVICES

When UNIDO moved to Vienna in 1967, it became of advantage to this organization to use to the maximum extent possible the already existing administrative and supporting services of the Agency so as to avoid having to set up its own services and installations. Furthermore, cost reductions and increased efficiency were expected (and achieved). With the construction of the VIC and the joint occupation of that complex by the Agency (Section 28.2.4.7), the United Nations and UNIDO, the organization of common administrative and technical services became a matter of necessity.

### 12.7.1. Agency/UNIDO joint services

Since 1967, the Agency and UNIDO had entered into a number of administrative arrangements to organize joint services in the following areas:

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[122] Note, for example, the impressive list in GC(XXIV)/630, page V.
[123] See, for example, GC(XX)/544, para. 120; GC(XXIII)/610, para. 93.
[124] See, for example, GC(XX)/544, para. 120; GC(XXIII)/610, para. 93.

— Printing and reproduction
— Computers
— Medical services
— Procurement and general services
— Interpretation
— Microfiche services.

All these were existing Agency services which were then extended to UNIDO. Initially, UNIDO also assigned some of its staff to these services, but such a 'mixed system' proved cumbersome and impractical[125]. The staff concerned was shown on the manning tables of the organization concerned and remained subject to the authority of the releasing organization.

Accordingly, the administrative and organizational arrangements were changed as of 1970 and were based on the following principles[126]:

(a) The Agency would provide services to UNIDO on a contractual basis against payment;
(b) All staff employed would be Agency staff and all personnel actions would be taken by the Agency;
(c) The Agency would be responsible for the operation of these services under the Division Director and the Service Chief concerned.

A "Provisional Agreement for Common IAEA/UNIDO Services" was concluded, to take effect as of 1 January 1970[127]. Under the umbrella of this Master Agreement, individual working agreements were concluded. Furthermore, the Agency and UNIDO recorded their determination "to take such action consistent with their respective constitutional, legal, budgeting and financial regulations as will further the establishment of common services" [128].

In 1972 these arrangements resulted in an increase of Agency staff by 20, the costs for which were offset by estimated revenues for the Agency of US $309 000 [129]. The use of the Agency's facilities was a temporary measure to reduce overhead and capital costs, pending the move to the VIC and the definitive distribution of responsibility for individual services among the organizations.

The financial and administrative arrangements between the Agency and UNIDO were straightforward. Under the authority of the Provisional Agreement, which contained general conditions and principles of cost sharing, a series of provisional working agreements, transitional arrangements or similar instruments laid

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[125] GC(XV)/460, Annex VI, para. 1.
[126] Ibid., para. 2.
[127] Internal document, not published.
[128] Provisional Agreement, para. 2.
[129] GC(XV)/460, Annex VI, paras 10, 11.

down for each service the specific conditions applicable and the officers responsible[130]. Three further arrangements were concluded between the Agency and UNIDO:

(i) For the provision of library cataloguing services by the Agency to UNIDO;
(ii) For space allocation in, access to and maintenance of a building used jointly by the Agency and UNIDO as part of their temporary Headquarters;
(iii) For a Joint Housing Service (with the participation of IIASA); as an exception to the principles governing the other joint services, the Housing Service continued the mixed staffing system[131].

### 12.7.2. Common Services at the VIC

In preparation for the move to the VIC, the Agency, the United Nations and UNIDO negotiated "A Memorandum of Understanding Concerning the Allocation of Common Services at the Donaupark Centre in Vienna", signed by the executive heads of the three organizations on 31 March 1977[132]. This basic document governed the allocation and implementation of common services at the VIC for many years to come. While the Board of Governors on various occasions dealt with the problems between the Agency and the Austrian Government regarding the VIC (in particular those relating to cost sharing for maintenance and repairs)[133], this Memorandum was executed by the Director General on his own authority. Although UNIDO was at that time still a subsidiary organ of the United Nations General Assembly, it was considered "... for the purposes of the Memorandum and its implementation" a separate partner "on account of its geographical location" [134].

ACABQ mentioned the Memorandum of Understanding in its report to the Assembly on "Accommodation at the Donaupark Centre in Vienna" and expressed the expectation that the Secretary-General would attempt to create, wherever possible, combined United Nations, UNIDO and Agency administrative and support services[135]. The Memorandum covers the following services[136]:

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[130] Internal documents.

[131] This particular set-up was continued after the move to the VIC, with additional organizations using the service and making financial contributions (e.g. OPEC).

[132] United Nations Treaty Series, Vol. 1039, F. No. 779.

[133] Note, for example, GOV/1951, 1955, 1965.

[134] Apparently, UNIDO's location in Vienna is referred to with this legally imprecise description. Since the Memorandum is "to record the plans" of the organizations regarding common services and since it had the concurrence of the United Nations, the different legal status of the partners is perhaps not relevant. It should, however, be noted that in 1975 a process started for converting UNIDO into an independent specialized agency. By 1979 the constitution of UNIDO had been formulated and it entered into force in 1985.

[135] United Nations document A/33/7/Add. 2 of 13 December 1978, para. 19.

[136] Memorandum, paras 4–13.

(a) *Security Services.* In view of the extraterritoriality of the Headquarters area, Austrian police are precluded from entering that part of the VIC situated within the international boundaries. (Some security posts are part of the VIC, but they are located outside the international boundaries; the Austrian Conference Centre, known as the Austria Centre, is not part of the VIC). The organizations had therefore always maintained their own Security Services (although the powers and authority of the Agency's Security Service at its temporary Headquarters had never been defined and promulgated, for example in the form of a Headquarters Regulation). Responsibility for the VIC Security Service was allocated to the United Nations. One of the main functions of that service is to control access to the VIC. The checking area is "on public ground", i.e. outside the international boundaries, with Austrian police posts located nearby. The Security Service has responsibility for the common area and the Headquarters areas of all the organizations. The Agency excepted safeguards documents, the computer and the personal security of the Director General from the competence of the United Nations Security Service and retained responsibility for security measures in these areas[137]. Austrian security forces may enter the Headquarters area only if invited by the Executive Heads of the organizations[138]. The Memorandum is not clear with regard to how this right would be exercised in practice for the VIC. (Security Rules issued under the authority of the Executive Heads of the organizations at the VIC only several years later clarified the legal issues by defining the powers and authority of the Security Service.)

In view of the overall responsibility of the Security Service there was obviously the question of how Agency staff could be put under the obligation to comply with the instructions of another organization, and the question of the rights of security officers, for example to detain individuals temporarily. Initially, the United Nations Security Service issued a circular which had the same wording as the relevant New York circular[139] but which did not take account of the special situation at the VIC[140]. By the end of 1980 these points had not been resolved, although it appears that no incident occurred to test the (then) existing legal basis for actions of security staff as might be required for the protection of persons and property within the VIC[141]. The administration of the garage was allocated to the United Nations as part of the Security Service.

(b) *Commissary and Catering Services.* Responsibility for managing and operating the Commissary, as an in-house operation, was assigned to the Agency. The Commissary was to be a self-sustaining non-profit-making operation (except for

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[137] Records of the Tripartite Committee of 6 November 1979.

[138] For the Agency under Section 9(a) of its Headquarters Agreement (INFCIRC/15/Rev.1, I).

[139] United Nations document UN/INF/2.

[140] Note of the Agency's Legal Adviser of 22 January 1981.

[141] Security rules for the VIC were published and became effective as of 1 February 1983 (AM.I/10). These rules clarify many points. Apparently, these rules have, however, not been issued as IAEA Headquarters Regulations.

staff supervising the service) with a Manager in charge. An Advisory Committee, including staff and administration representatives, would give advice on general matters, for example pricing and the range of goods to be carried, but must not interfere in the management and operation of the service. The Commissary thus continued to be run by the Agency as the juridical person responsible, with no independent legal status of its own[142]. (New Commissary Regulations to implement the Memorandum of Understanding were issued in 1982.)

The Catering Service, for which UNIDO acquired responsibility, was contracted out. UNIDO acted as agent for the three organizations in making these contracts, i.e. the juridical partners to the arrangement were, as opposed to the arrangement for the Commissary, all the organizations.

(c) *Buildings Management.* Responsibility was assigned to UNIDO, with the principle that all buildings management and maintenance services would be contracted out. While UNIDO would be the contracting agent on behalf of the organizations (i.e. a legal construction similar to that for the Catering Service), the organizations retained the right to conclude contracts for matters directly affecting them subject to UNIDO's concurrence. Such direct contracts would simplify payments, refunds of the Austrian Value Added Tax (VAT) and other practical matters.

(d) *Procurement.* These services were not merged, but it was agreed to exchange information and to make a joint study to determine whether the joint service that had existed with UNIDO should be re-established.

(e) *Conference Services.* Initially, the United Nations was anxious to operate the Conference Services of the organizations as a joint service under the responsibility of the United Nations. The Agency's requirements were, however, different from those of the United Nations, in particular because of the many scientific and technical meetings which the Agency had to organize. Moreover, the Agency had operated a very efficient Conference Service for more than 20 years and was, naturally, reluctant to dissolve that service in favour of one operated by the United Nations, which also had different operating practices. The Memorandum, therefore, while referring to these services, does not foresee a merger of them, but provides for the continuation of the 'close co-operation' with UNIDO and the grant of mutual priority in the use of each other's conference rooms[143].

(f) *Printing and Reproduction.* The existing separate services would be merged and operated by the Agency. The services would be organized as part of the Agency, but "as a separate financial entity with the aim of being on a self-financing

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[142] AM.VIII/11.

[143] The United Nations pursued this matter also in the early 1980s; UNIDO and the United Nations agreed in 1978 that UNIDO's Conference Service would, on an experimental basis, be responsible for servicing all United Nations meetings in Vienna.

basis''. All organizations were anxious to ensure equal treatment regarding priorities, and an agreement on the relevant guidelines was to be reached before the actual merger; users would be charged on a cost basis.

(g) *Computer Services.* UNIDO would continue to use the Agency managed computer facilities, with representation ''for purposes of information'' on the Agency's Computer Steering Committee and on a joint Co-ordination Committee which would decide on the costs of the services to UNIDO and would establish priorities.

(h) *Storage and Inventory Control.* When the Memorandum was negotiated, no agreement regarding these operations could be reached; further consultations were to be held, because the VIC had only one common area for receiving goods.

(i) *Library.* The library would be under the 'general direction' of the Agency, in fact run as an Agency operation which also handled the acquisitions of material for the other organizations (these acquisitions would remain the property of the organization concerned)[144].

(j) *Medical Service.* The Agency would be responsible for the Medical Service. Appointment of a new chief would require the consent of all organizations.

(k) *Language Training.* This service was allocated to UNIDO.

(l) *Other services.* In addition to the above services, a working group examined the feasibility of joint services in other areas, such as mail, pouch, visas, insurance, travel, telex and customs declarations[145].

It is evident from the above that the concept of joint services embraces a variety of different legal and administrative constructions. Common to all joint services is the principle that one organization is responsible for a particular service (whether as contracting agent or executing agency), whereas the other organizations contribute to the costs of the service on the basis of some formula related to use. Except for the relatively small Housing Service[146], no truly 'joint service' exists.

### *12.7.2.1. Organization*

Under the Memorandum of Understanding, overall responsibility for the direction and management of the Common Services was vested in a Tripartite Committee (United Nations, UNIDO, IAEA), with one representative of each organization as

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[144] AM.VIII/12.

[145] This Working Group made proposals for a number of activities of an administrative nature to be allocated among the organizations (Report of the Group of 28 May 1978). Some of these activities were then operated as Common Services.

[146] Under the Agency/UNIDO/IIASA agreement of 5 September 1977 (Agency registration No. 1267).

member, having the power to take decisions that are binding for the organizations. It appears that these decisions required the concurrence of all Parties[147], although this is not stated expressly in the Memorandum. The Committee dealt with Common Service matters until the VIC was occupied in autumn 1979. However, the Committee continued with respect to Common Services and other matters, for example relations with the host Government regarding the VIC, also after the move to the VIC had been completed; in fact, it became a 'VIC Management Co-ordination Committee' for all matters affecting the three organizations and their occupancy of the VIC[148].

*12.7.2.2. Finance*

There were two aspects to which all organizations paid particular attention: finances and personnel matters. The initial understanding was that the Agency, the United Nations and UNIDO would bear, in about equal shares, the investment costs for the Common Services. This agreement was based, as was the Memorandum of Understanding, on the assumption that the Agency would relinquish tower A-2 (subsequently called tower B) in favour of the United Nations[149]. This release did not materialize because the projected growth of the Agency's staff made it necessary for the Agency to retain that tower. The distribution of investment costs as originally agreed was accordingly modified[150]. On the basis of the work of a task force foreseen in the Memorandum, the following financial arrangements were agreed upon:

(a) *Initial investments.* For all initial investment costs, except for printing and the computer, the Agency's share was 50%. For printing the ratio was 65% (Agency) to 35% (UNIDO) and for the computer the Agency paid 100% [151].

(b) *Operating costs.* Three services were to be operated on a self-sustaining basis, the Commissary, Catering and the Garage. Accordingly, no operating costs arose for the organizations (except for salaries of staff in higher positions who spent some of their time in supervising these services). For the other services different formulas were applied; for example for the Medical Service a combination of the number of examinations made and the total staff of each organization was used; for Buildings Management, utilities and similar items the area occupied by each organization determined the respective shares. The actual shares of each organization

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[147] Major disagreements were to be referred to the Executive Heads of the organizations (Memorandum, para. 15, "Settlement of Disputes").

[148] See the minutes of the Committee's meetings in 1979 and 1980.

[149] Under General Assembly resolution 31/194 of December 1976, the United Nations had assumed responsibility for the occupancy of tower A-2 (subsequently known as tower B) by the United Nations. See also GC(XX)/567, Chapter 5.

[150] GC(XXII)/600, Chapter R.

[151] GC(XXII)/600, Chapter R.3.

varied greatly in view of the unequal use made of the services. For example, for the computer the Agency paid over 70% and for language training about 38% of the total costs.

*12.7.2.3. Personnel*

The allocation of Buildings Maintenance and Management and of Security Services to other organizations required decisions regarding Agency staff that had been working in these services. This affected in particular staff in the Agency's Security Unit. The Agency decided to give the staff concerned the option of a transfer or loan to the United Nations[152]. For fixed term staff the loan was temporary because the Agency would, upon expiration of the appointment, separate the staff member, and the United Nations and UNIDO would then decide what type of appointment to offer the staff member. For staff members with permanent appointments the loan was for an indefinite period and they could remain staff members of the Agency.

At its temporary Headquarters the Agency itself had been operating the restaurant and cleaning services. The employment of outside contractors resulted in redundancy of staff, but the Agency resolved the problem by redeployment. A joint Agency/UNIDO task force on personnel questions, in which staff participated, developed "agreed principles for joint application in the selection of staff to be retained, the cases of redeployment, termination, the designation of Head of Service, the establishment of grade and seniority levels, as well as the contractual status of the staff and the like"[153]. As a principle it was agreed that the organization responsible for a joint service would employ or take into secondment the staff of the other organization. The redeployment of staff, the transfers and loans took place without major difficulties for the staff and the organizations.

*12.7.2.4. Commercial services at the VIC*

Contracts were concluded or extended, by the organizations, separately or jointly, with two banks, two travel agencies and one company running a newspaper stand. Except for one bank, these services are located in the common area of the VIC.

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[152] Offer by the Director of Personnel to 39 staff members in the Security Unit, dated 15 June 1979.
[153] Notice to the staff, SEC/NOT/532 of 1 April 1977.

# Chapter 13

# RELATIONSHIP WITH STATES

## 13.1. STATUTORY RIGHTS AND DUTIES OF MEMBER STATES

The principle that the Statute itself does not establish significant specific rights or obligations of Member States was not altered during the period covered by the present book. As was the case in the period covered by the basic book, the principal sources of the rights and obligations of Member States were agreements concluded with the Agency and decisions by the Board and the General Conference in implementation of the authority which the Statute conferred upon these organs. No major changes or developments occurred in the legal relations between the Agency and its Members, but some events should be reported here.

### 13.1.4. Receipt of assistance from the Agency

In relation to the discretionary, but not arbitrary, power of the Board to grant technical assistance, two issues arose. The first issue concerns objections by Board members to the granting of technical assistance to certain Member States[1]. No specific objections related to the Agency's work or to other general points were made. These statements, which were apparently made for the record, did, however, not lead to the denial or suspension of technical assistance to any Member State. Any such decision would have been difficult to reconcile with the constraints of Article III.C of the Statute.

The second issue concerns preferential treatment of developing countries Party to the NPT. Proposals for such privileged treatment were made in general terms on various occasions[2]. These suggestions were strongly rebutted by Governors from States not Party to the NPT, who regarded them as constituting a violation of the Statute (Article III.C and D) and an (unlawful) discrimination among Member States[3]. However, there was never a concrete proposal before the Board to test its attitude towards such a proposal. While the large majority of the Agency's Member States participates in the NPT and while the Agency has been entrusted with important functions under that Treaty, the NPT is a legal instrument separate from the

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[1] For example in February 1975 objections to technical assistance to Chile, Israel, South Korea and South Vietnam (GOV/OR.474, paras 23, 24, 29).

[2] For example for preference to NPT Parties: the USSR, Bulgaria and the German Democratic Republic (GOV/OR.474, paras 16, 23, 29).

[3] For example India (GOV/OR.529, para. 25).

Statute. Its provisions can, therefore, not be invoked to create a difference among Member States that is not based on the Statute. This argument applies to technical assistance from the Agency's own resources. As reported in Section 18.2.7, there are technically sound technical assistance projects which could not be financed from the Agency's own resources owing to lack of funds (these are the so-called footnote a/ projects because they are so identified in the report by the TAC to the Board)[4]. Governments have financed some of these projects bilaterally, with the Agency administering them. In selecting such projects, some donor Governments have given preference to NPT Parties. For example, Canada set up a special fund of US $300 000 to finance such projects over a period of 3–4 years in developing countries Party to the NPT[5]. Also the USA decided to provide additional technical assistance of an amount of US $1 million for such States[6]. Both offers were criticized by Member States not Party to the NPT as being discriminatory and contrary to the Statute[7]. However, financing of footnote a/ projects has always been a matter of free choice and discretion for donor Governments; Statute Article III.B.1 may also be relevant to show that this discrimination is not contrary to the Statute. [Apart from the selection of a project and the provision of funds, donor Governments played no role, and these projects were executed by the Agency in the same way as the other technical assistance projects.]

### 13.1.5. Safeguards

The basic book refers to the question of whether Article XIV.C of the Statute requires States submitting bilateral or unilateral arrangements for safeguards to reimburse the Agency for the resulting costs. This point has been resolved in practice, though not through legal interpretation of the Statute. The NPT Safeguards Document makes a distinction between Member States and non-Member States[8]. While the former are not charged the costs incurred by the Agency, the latter have to reimburse the Agency for these costs[9]. Such a distinction is juridically not required, but it takes account of the fact that all Member States contribute to the safeguards budget, although some of them only a symbolic amount (see Section 21.9).

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[4] See, for example, GOV/1706 and Add. 1.

[5] See the Agency's report to the second (1980) NPT Review Conference "Activities under Article IV of NPT" (NPT/CONF.II/7, para. 82).

[6] Offered at the United Nations Special Session on Disarmament at the NPT Review Conference (NPT/CONF.II/7, para. 87(c)); in addition, the USA offered US $2 million to support the conversion of research reactor cores to use fuel enriched to 20% or less, with preference to developing countries Party to the NPT.

[7] For example by Argentina (GOV/OR.512, para. 21).

[8] INFCIRC/153, para. 15.

[9] The income is listed in the budget document under "amounts recoverable under safeguards agreements with non-Member States" (e.g. GC(XXII)/600, Table 5).

There was no occasion to test the consequences of a finding of non-compliance by the Board. It appears, however, that supplier States would not interpret such a Board decision as creating an obligation for them to suspend or curtail also 'assistance' provided bilaterally. Under the London Guidelines, supplier States have reserved their position, should the Board make a determination under Statute Article XII.C and take the other action foreseen by that Article[10]. However, these States have not stated that automatic legal action would be taken by them or would be required. Moreover, one may legitimately put the question of whether the sale of a power reactor and/or nuclear fuel on commercial terms would constitute 'assistance' (if that term is at all correct for commercial contracts) by the supplier State to the recipient State.

### 13.1.6. Compliance with regulations

In addition to the agreements mentioned in the basic book providing for the application of Agency regulations (project agreements, or agreements in relation to bilateral or multilateral arrangements, or a national activity), technical assistance agreements also require the application of the Agency's Safety Standards[11].

### 13.1.8. Privileges and immunities

The Agency has not attempted to assert the existence of a statutory obligation for Members to accept the Privileges and Immunities Agreement in implementation of Statute Article XV.C. However, all agreements under which the Agency conducted its operations or organized meetings outside the Agency Headquarters incorporated the pertinent provisions of the Agreement by reference, regardless of whether the State concerned was already a Party to that Agreement or not[12].

### 13.1.9. Participation in the representative organs and in certain decisions

Statute Article V.A and B authorizes each Member State to be represented at the General Conference, although such attendance can, in fact, be precluded if the credentials of a delegate are not recognized. (This was the case with South Africa; in 1979 the General Conference decided not to recognize the credentials of the South African delegation; see Section 7.3.5.4.)

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[10] INFCIRC/254, para. 14.

[11] See Section 18.1.1.2.

[12] See also INFCIRC/153, para. 10, requiring that at least the same privileges and immunities as those set forth in the Privileges and Immunities Agreement be accorded to the Agency by non-Members.

Whether Article VI.A creates a right for a Member to be designated for a seat in the Board was discussed when Egypt was designated in 1977 instead of South Africa as the State regionally most advanced in nuclear technology in Africa. Reservations as to the designation of South Africa had already been expressed in the Board in 1976[13]. However, on that occasion, Uruguay stated that under Article VI.A the designation of South Africa was incontestably justified[14]. The 1976 General Conference then requested the Board to review the designation of South Africa[15]. When Egypt was designated instead of South Africa in June 1977[16], no Governor claimed that Egypt was more advanced in the nuclear field than South Africa. The Governors in favour of ousting South Africa from the Board cited a number of other provisions of the Statute as being relevant for a designation and emphasized that Article VI.A.1 had to be read in conjunction with these provisions. For a number of years the Governors speaking for the countries of the European Community and for the USA repeated their view that designations should be made in strict conformity with the Statute[17], which was apparently also a reminder that Egypt's designation should not create a precedent. This decision of the Board and its endorsement by the General Conference demonstrated that a majority of the Members considers that even a State clearly meeting the explicit criteria of Article VI.A.1 would not have an absolute right to be designated, but that other considerations and statutory provisions were also relevant and could even override that Article.

### 13.1.10. Settlement of disputes

When South Africa was not re-designated to the Board, its Governor reserved the right to have recourse to Article XVII of the Statute[18]. However, Article XVII.A, to the extent that it constitutes a reference to Article 36(1) of the Statute of the International Court of Justice, can only be invoked in respect of disputes between Member States. There is no forum to settle disputes between Member States and the Agency (other than fora resulting from agreements which normally include procedures for the settlement of disputes). However, Article XVIII.B of the Statute could be used if it were agreed between the State and the respective organ of the Agency (Board or General Conference) to settle a dispute on the basis of an advisory opinion of the International Court of Justice, to be requested by the organ in question. No attempt was ever made for a judicial review of decisions of the

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[13] GOV/OR.489, paras 9–15, 19, 20.

[14] GOV/OR.489, paras 16–18.

[15] GC(XX)/RES/336.

[16] GOV/OR.501, paras 15–99, GOV/1834. The matter came up again in 1978; Egypt was again designated by a roll-call vote.

[17] GOV/OR.520, paras 2–4, 7–10, GOV/OR.533, paras 74, 75.

[18] GOV/OR.501, para.29.

General Conference or of the Board if a Member State was of the opinion that any such decision violated its rights under the Statute or the rules governing the conduct of business in these organs. Apart from the question of the determination of the appropriate forum to handle such disputes there would be the question of whether certain decisions taken by these political organs were at all subject to judicial review. If it were a legal question, for example one relating to the interpretation of a treaty, a court or other international forum could settle it.

### 13.1.13. Suspension of privileges

There was no case of suspension of a Member from the exercise of the "privileges and rights of membership" under Article XIX.B. Consequently, no occasion arose to test the consequences of such a suspension. The "privileges and rights of membership" have not been defined, although, as indicated in the basic book, certain rights follow automatically from membership. For other rights the situation is not clear at all, in particular for those rights set forth in an agreement with the Agency. Moreover, the exercise of a right may depend upon action by one of the representative organs of the Agency (e.g. designation for Board membership), and there is possibly no way to determine whether such a right would exist or not.

## 13.2. OFFICIAL CONTACTS WITH MEMBER STATES

### PRINCIPAL INSTRUMENTS

IAEA Statute, Articles V.B and XV.B;
General Conference Rules of Procedure (GC(XIX)/INF/152) 23–25;
Board of Governors Rules of Procedure (GOV/INF/60) 1–3;
Headquarters Agreement (INFCIRC/15/Rev.1, Part I), Sections 1 and 27, and Articles XII–XIV;
Privileges and Immunities Agreement (INFCIRC/9/Rev.2), Sections 1 and 27, and Article V.

### 13.2.1. Representatives to the Agency

#### *13.2.1.1. Delegates to the General Conference*

The practice as reported in the basic book has not changed, except that the Credentials Committee of the General Conference was abolished as a separate body of the General Conference; its functions were assumed by the General Committee meeting as a credentials committee[19].

[19] See Section 7.3.3.3.

*13.2.1.2. Governors*

The reported practice for the designation of Governors and in respect of their credentials has not changed. The same applies for their authority to sign agreements with the Agency. The Agency has continued the practice of publishing at regular intervals a booklet listing all Governors, Resident Representatives and their staffs, whether resident in Vienna or not[20].

*13.2.1.3. Resident Representatives*

With the establishment of UNIDO, the transfer of various United Nations units to Vienna and the occupancy of the VIC by the organizations, many Governments have chosen to appoint one person as their representative to the international organizations in Vienna, with a title such as "Representative (Ambassador) to the international organizations in Vienna". Resident Representatives continued to submit their credentials to the Director General, who then informed the Austrian Foreign Ministry of the appointment. The practice of appointing local businessmen as Resident Representatives or 'Liaison Officers' was discontinued and the Agency no longer accepted such persons as Government representatives to the Agency. With the Board's decision on the representation of China in the Agency the Permanent Mission of the (then) 'Republic of China' (Taiwan) had to close down and lost its status as Permanent Mission. Correspondence and other Agency contacts with the authorities in Taiwan, particularly in relation to the application of safeguards under existing agreements, were thereupon carried out through the quasi-official Institute of Chinese Culture in Vienna.

### 13.2.2. Representatives of the Agency

The Agency's representatives in New York and Geneva continued to have no official functions in relation to the US or Swiss Governments, but only functions in relation to the New York or Geneva based activities of United Nations bodies. The Agency's safeguards offices in Tokyo and Toronto[21], established under agreements with each Government, were assigned limited functions to facilitate the application of safeguards. Their responsibilities go beyond the tasks that resident inspectors would normally carry out; the officials in charge of these offices may be regarded as Agency representatives to Governments, although with limited authority in relation to one part of the Agency's programme.

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[20] "Board of Governors and Permanent Missions of Member States"; the booklet also includes intergovernmental organizations maintaining a delegation in Vienna (this booklet is periodically issued, but has no reference number).

[21] Section 21.8.2.2.1.

## 13.3. RELATIONS WITH NON-MEMBER STATES

In addition to the treaties mentioned in the basic book, the Vienna Convention on Civil Liability for Nuclear Damage, the London Dumping Convention[22], the Convention for the Protection of the Mediterranean Sea Against Pollution (the Barcelona Convention)[23] and the Convention on the Physical Protection of Nuclear Material[24] provide for functions of the Agency in relation to non-Member States or contacts with such States. The Agency's functions are described in the sections discussing these Conventions.

### 13.3.1. Assistance to non-Members

The general situation remained as described in the basic book. The Agency ceased participation in the Middle Eastern Radioisotope Centre for the Arab countries in 1969, and non-Members no longer benefitted from the Agency's assistance to the Centre. With the occupation of the VIC by UNIDO and United Nations bodies, representatives of Member States to these organizations (even if not Members of the Agency) could benefit from the common services operated by the Agency on behalf of all organizations. Representatives of OPEC were also able to use certain common facilities operated by the Agency (Commissary, Housing).

### 13.3.2. Safeguards, and Health and Safety Regulations

The Safeguards Agreements required by the NPT or the Tlatelolco Treaty are not limited to Agency Members, and the NPT Safeguards Document (which was also used to negotiate Safeguards Agreements under the Tlatelolco Treaty) contains only one clause which specifically differentiates between Members and non-Members, i.e. the Article on the distribution of costs; unlike Members, non-Members are to reimburse the Agency for the costs incurred (Section 21.9.1.2). However, this clause was only of importance for a very short time and only in relation to one State, the German Democratic Republic. This State concluded its NPT Safeguards Agreement in 1972[25] and became a Member in 1973. Between these dates the Secretariat recognized a 'Liaison Office' of the German Democratic Republic for safeguards purposes. Among the States Party to the NPT there is no State with nuclear activities requiring the application of safeguards which is not at the same time a Member of

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[22] Section 22.2.4.5.2.
[23] Section 22.2.4.5.3.
[24] INFCIRC/274/Rev. 1.
[25] INFCIRC/181.

the Agency. Withdrawal of a Member from the Agency would not affect existing Safeguards Agreements, although amendment of the finance clause and the clause on privileges and immunities would become necessary.

A special situation arose with respect to the two Safeguards Agreements with the 'Republic of China' (Taiwan) after the Board's decision of December 1971 that henceforth the Government of the People's Republic of China would be the sole representative of China in relation to the Agency. This decision did not deal with the question of whether or not the People's Republic of China succeeded to the membership[26]. Without amendment of the Safeguards Agreements (which contained the usual formula for Members) the Taiwanese authorities and the Agency reached an informal understanding that the Agency would be reimbursed for the costs of applying safeguards in Taiwan.

Starting with the Annual Report for 1977, the Agency also included non-Members in the table listing non-nuclear-weapon States Party to the NPT that had not yet complied with Article III(4) of the Treaty[27]. It was an unusual step for an international organization to provide information on compliance by non-Members with obligations under a Treaty for which the organization did not perform depositary functions.

The Agency's health and safety measures never had to be applied to a non-Member. However, the Agency's Basic Safety Standards and other Safety Regulations (for example on transport of radioactive materials) were elaborated in co-operation with, and co-sponsored by, international organizations that had a membership slightly different from that of the Agency[28].

### 13.3.3. Contributions to the Agency

Non-Members did not make any voluntary contributions to the Operational Budget or provide extrabudgetary resources.

### 13.3.4. Agreements with non-Members

The practice during the decade 1970–1980 further demonstrated that there are no statutory limitations to the conclusions of agreements with non-Members. The major international treaty concluded during this period under the auspices of the

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[26] Section 6.2.1. In the event, China decided to apply for membership in 1984, since it did not recognize prior actions taken by the 'Republic of China' in relation to the Statute.

[27] GC(XXII)/597, Safeguards Table 4.

[28] Section 22.2.2.4.

Agency, the Convention on the Physical Protection of Nuclear Material, is open to all States[29]. As depositary, the Agency transmitted the certified copies "... to all States" [30].

### 13.3.5. Staff recruitment

Applicants for Professional staff positions in the Agency are required to be sponsored by Governments (Section 24.7.4). Accordingly, there have been only a few cases of employment of persons who were either nationals of non-Members or stateless. Chinese nationals on the Agency's staff continued to be employed after the Board's decision on China's representation (Section 6.2.1), but no new Chinese nationals were recruited.

### 13.3.6. Participation in Agency meetings

The restrictions on attendance of non-Members at Agency meetings continued to be applied.

### 13.3.7. Notifications concerning the Statute

The second amendment to the Statute, approved by the General Conference in 1970, was communicated by the Director General to all States eligible to become Members by either ratification or acceptance of the Statute.

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[29] INFCIRC/274/Rev.1, Article 18.
[30] Section 23.7.6.

# Chapter 13A

# RELATIONSHIP WITH NATIONAL LIBERATION ORGANIZATIONS

## PRINCIPAL INSTRUMENT

General Conference Resolution GC(XX)/RES/334.

The Palestine Liberation Organization (PLO) does not belong to any of the categories of entities explicitly listed in the Rules of Procedure as eligible to send observers to the Agency's General Conference. Despite this, and without amendment or suspension of its Rules of Procedure, the General Conference in September 1976 invited the PLO "... to participate, as an observer, in this session and in all future sessions and meetings of the General Conference" [1]. In the course of the procedural debate at the Conference and in its General Committee that preceded this invitation, a number of legal points were raised, but not systematically debated.

When the Board considered the provisional agenda for the 20th (1976) regular session of the General Conference the Director General added, at the request of Iraq, an item to the draft agenda he had prepared[2], with the title "Invitation of the Palestine Liberation Organization to attend sessions of the General Conference in the capacity of an observer" [3]. The brief explanatory memorandum by Iraq[4] made essentially five points, four of which should be noted:

(a) The PLO was very much interested in peaceful uses and development of nuclear energy;
(b) The United Nations General Assembly had invited the PLO to participate as an observer in its sessions and work[5];
(c) The PLO had been invited to participate in a number of international conferences[6];

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[1] GC(XX)/RES/334, para. 1.

[2] GOV/1790; under Rule 11 of the Rules of Procedure of the General Conference the Director General draws up the provisional agenda for the Conference in consultation with the Board. The Board need not approve, nor can it disapprove, the provisional agenda.

[3] GOV/1790, Add.1, GOV/OR/489, para. 1.

[4] GC(XX)/568.

[5] GC resolution 3237 (XXIX), operative para. (1).

[6] The Diplomatic Conference on Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, the World Population Conference, the World Food Conference.

(d) Representatives of national liberation movements had been invited to attend the meetings of the general representative organs of ILO, WHO and FAO[7].

There was no substantive discussion in the Board of the addition proposed by Iraq. In this connection it should be noted that any item proposed by a Member State must be included in the provisional agenda of the General Conference under Rule 12(c) of its Rules of Procedure.

The General Conference draft resolution referred to the relevant United Nations General Assembly resolution and to the fact that FAO, ILO, WHO, WMO and UNESCO had granted observer status to the PLO, and proposed that the Conference decide "to invite the Palestine Liberation Organization to participate, as an observer, in this session and all future sessions and meetings of the General Conference"[8].

The procedural struggle on this agenda item started in the General Committee of the Conference when it considered the provisional agenda in order to make recommendations thereon to the Plenary. The arguments against the inclusion of this item and subsequently against the admission of the PLO are summarized as follows[9]:

(a) There was no provision in the Statute or the Rules of Procedure to permit the invitation;
(b) An invitation would be against existing precedents, because only intergovernmental organizations and non-governmental organizations had been invited;
(c) General Assembly resolution 3237 (XXIX) was not addressed to the Agency; since the Agency did not belong to any of the categories of organizations mentioned in the resolution, the Agency was not bound to consider the resolution under the terms of the Relationship Agreement;
(d) The Agency was not bound by the precedents of specialized agencies because it was an 'autonomous organization';
(e) Since the PLO was a political entity, the Agency as a technical organization could not benefit from association with the PLO.

The arguments for the inclusion of the agenda item and for the invitation were as follows[10]:

(a) The General Committee should only make a recommendation on the inclusion of agenda items, but should not discuss their substance, and the Committee could not 'deprive' the Conference of its right to decide whether to issue an invitation or not;

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[7] GC(XX)/568, para. 6.

[8] GC(XX)/572; draft resolution sponsored by India, Indonesia, Iraq, the Libyan Arab Republic, Niger, Nigeria, Pakistan, Senegal, Sudan, Tanzania, Yugoslavia and Zambia.

[9] GC(XX)/GEN/OR.25 and GC(XX)/OR.187, paras 12-13.

[10] GC(XX)/GEN/OR.25 and GC(XX)/OR.187, paras 7-10.

(b) Procedural Rules 30–32 did not constitute an exhaustive list of observers;
(c) There was nothing to preclude an invitation, and the Conference had previously shown flexibility by inviting intergovernmental organizations without a co-operation agreement;
(d) Statute Article III.B.2 and Article V of the United Nations Relationship Agreement constituted authority to consider and issue the invitation.

Though the discussion of the issue delayed the approval of the agenda, the Conference, nonetheless, began a discussion of other, non-controversial items without a formal agenda. Immediately after adoption of the agenda the Conference decided, after a short debate, to invite the PLO by a roll-call vote: 46:4:2 [11].

The PLO representative thanked the Conference briefly for the invitation. The PLO participated only sporadically in subsequent sessions of the Conference.

[11] GC(XX)/RES/334.

# Chapter 14

# RELATIONSHIP WITH INDIVIDUALS AND PRIVATE ENTITIES

In carrying out its functions, the Agency continued to conclude a multitude of contracts and other arrangements of a less formal nature with semi-public organizations or corporations, commercial companies, scientific and educational institutions and individuals. As noted in the basic book, the Agency's relations and contracts are primarily with or through States and intergovernmental organizations. Its operational activities in most instances require agreements with Governments (e.g. for supply of materials, the application of safeguards and the organization of meetings outside its Headquarters). However, except as specifically required by the Statute or by the nature of the activities to be carried out, there is no obstacle that would prevent the Agency from establishing legal relations with individuals or entities not having international legal personality.

The legal relations between the Agency and individuals may be governed either by the internal law of the Agency, as is clearly the case for its staff or individuals having similar status, or by the national law of a State, or by international law. However, in many instances it might be doubtful whether these relations are at all subject to any identifiable legal system. Except for cases brought before the Administrative Tribunal by staff, there has been no experience and no case to test this question. (See Section 27.3.)

## 14.1. SUPPLIERS

Nuclear material continued to be supplied only by Member States and by one international organization (Euratom) and not by individuals or private sources[1]. There were also no gifts in money or in kind from 'non-governmental sources'[2]. Neither the Agency's Financial Rules[3] nor the Procurement and Management of Property Rules contain any limitations or conditions regarding the legal status of Parties executing contracts with the Agency, and procurement was made from private companies[4]. Arrangements for the Agency's Laboratory in Seibersdorf

[1] "Materials Delivered by Member States up to 31 December 1979" (NPT/CONF.II/7, Annex K).

[2] See NPT/CONF.II/7, Annexes F, G and H, for contributions of money, and Annex 5, for equipment and supplies given to the Agency in the period 1970-1980.

[3] AM.V/2 and 3.

[4] AM.VI/1.

continued to be made with the Österreichische Studiengesellschaft für Atomenergie GmbH (SGAE)[5], a company incorporated under Austrian law, which is the owner of the land and of the premises.

## 14.2. RECIPIENTS

As heretofore, project assistance and technical assistance were only requested by and granted to Member States. Fellowships were awarded to individuals, but applications had to be presented through governmental channels. Research contracts were concluded with institutions in Member States, and the Government concerned was informed about the contract.

The Trieste Centre entered into a variety of arrangements with individuals and educational or scientific institutions[6], such as:

(a) *Associate memberships.* These are awarded to individuals to enable them to spend brief periods of research at the Centre;

(b) *Federated institution agreements.* These are made with institutions in developing countries and, in special cases, also with institutions in developed countries for an exchange of scientists with the Centre;

(c) *Co-operative agreements.* These are made with non-profit-making institutes in Member States of the Agency or of UNESCO that are engaged in teaching or research, as a contribution to an activity of specific relevance for the Centre;

(d) *Consultants, visiting scientists, guest scientists, researchers.* These individuals are not staff members of the Agency (the Centre forms part of the Agency) and carry out specific functions for a limited period. Consultants are normally Professors of the University of Trieste.

## 14.3. SUBJECTION TO AGENCY CONTROLS

The verification activities of the Agency have always required Governmental concurrence and co-operation. The actual application of safeguards involved direct contacts with and co-operation of the operator and staff at nuclear facilities, for example to check facility records, analyse samples and apply containment and surveillance measures[7]. In implementation of the relevant legal instruments concluded with Governments, practical arrangements were made directly with operators of nuclear facilities.

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[5] For example under a lease contract of 3 July 1973 for the Safeguards Analytical Laboratory (SAL) (GC(XVIII)/525, para. 166).

[6] For all these see AM.I/4.

[7] See Section 21.7.1.

## 14.4. PARTICIPATION IN AGENCY MEETINGS

The relevant Rules of Procedure of the General Conference and of the Board relating to the attendance of individuals were not changed. As before, it was not possible for private persons to participate in the Conference; although the Board under its Rules could invite individuals to attend, it never did so during the period under review.

In connection with its programme of meetings the Agency made a variety of arrangements with individuals:

(a) *Conferences, seminars, symposia*[8]. Normally, Member States were invited to designate individuals to participate. The Agency has, however, invited at its expense speakers, lecturers and discussion leaders to such meetings. In exceptional cases the Agency made travel grants to participants from developing countries. The same practice applied to Technical Committees.

(b) *Advisory Groups*[9]. Members were designated by the Director General or appointed by the Board (for example the INIS Advisory Committee) in concurrence with the Government concerned. Their travel costs were paid by the Agency.

(c) *Technical Committees*[10]. Members were designated by Governments, but served in an individual capacity. As a rule, The Agency did not cover travel expenses but provided travel insurance for these individuals.

## 14.5. EMPLOYEES

The Agency's relations with its staff members are discussed in Chapter 24.

In addition to its staff, the Agency engaged individuals to perform services for it who did not have the status of staff members[11]:

(a) *Consultants.* These were outside specialists engaged under special service agreements to perform a defined task within a specific period of time.

(b) *Persons on sabbatical leave.* These were scientists on sabbatical leave under contract to work on a specific subject of interest to the Agency.

(c) *Seconded experts.* These were persons loaned to the Agency by a Member Government or an institution in a Member State.

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[8] AM.VII/1, Annex I.
[9] AM.VII/1, Annex II, paras 8-10.
[10] AM.VII/1, Annex II, paras 11-13.
[11] AM.II/11.

(d) *Interns*. These were either employees of Governments or institutions in Member States, assigned at the Government's request to perform work at the Agency, or students from a Member State who wished to spend some time at the Agency to perform a task that would also benefit the Agency.

The status of these persons was exclusively defined by their contracts and not by the Staff Regulations and Rules. However, they were "subject to the authority of the Director General", and Staff Regulations 1.03 to 10.5 were applicable to them[12]. Some of these persons were, in their status, assimilated to officials for purposes of privileges and immunities, and a determination to that effect was made in individual cases by a specific clause in their contract[13].

The status of Members of SAC remained the same as reported in the basic book. As heretofore, the provisions on Advisory Groups did not apply to Members of SAC who enjoyed special status with regard to travel standards, subsistence and honorarium.

## 14.6. SETTLEMENT OF DISPUTES

Under the Headquarters Agreement and the Privileges and Immunities Agreement the Agency is to make provision for settling "disputes of a private [law] character" [14]. Except in respect of staff members the Agency was never involved in a dispute under a contract or with third parties which would have required it to take such action, nor were there disputes with third parties arising out of tortious acts of the Agency.

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[12] AM.II/11, para. 6.

[13] Ibid., para. 7.

[14] INFCIRC/15/Rev.1, Part I, Section 50(a), and INFCIRC/9/Rev.2, Section 33(a).

# Part D
# ACTIVITIES

# Chapter 15

# FUNCTIONS, OPERATIONS AND PROGRAMMES

## PRINCIPAL INSTRUMENTS

IAEA Statute, Articles III.A.1-6 and VIII-XII;
The Agency's Programmes (1971-1976: GC(XIV)/433; 1973-1978: GC(XVI)/485; 1975-1980: GC(XVIII)/526; 1977-1982: GC(XX)/567; 1979-1984: GC(XXII)/600).

## 15.1. STATUTORY FUNCTIONS

### 15.1.1. Specified activities

The Statute does not indicate any priorities among the functions of the Agency, but rather lists a series of independent activities[1]. The expectation of the founders of the Agency that it would primarily be engaged in the receipt, storage and distribution of nuclear materials[2] was not fulfilled. In fact, the Agency never physically received nuclear material for distribution to Member States and never seriously considered the establishment of its own storage installations. Also, its functions as an intermediary in nuclear material transactions remained insignificant[3]. It is a moot point now to discuss why the Agency's programme did not develop in the direction envisaged by the Statute and why the Agency played only a minor role in this regard. The principal reason was obviously that Articles IX-XIII of the Statute did not meet the realities of nuclear trade. In anticipation of a substantial volume of commercial transactions, supplier countries preferred to conclude bilateral co-operation agreements with recipient countries[4] rather than using the Agency as an (unnecessary) intermediary; a central distribution function of the Agency for nuclear material, without the Agency having the ability to provide fuel cycle services, could not meet commercial and technological requirements; and last but not least, the Agency with its organizational structure under the Statute and as an intergovernmental organization within the United Nations system was hardly adequate to perform industrial, commercial activities on a large scale.

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[1] Statute Article III.A.

[2] As is also evident from the central position of the relevant Statute Articles IX-XIII.

[3] See "Materials delivered by Member States" up to 31 December 1979 (NPT/CONF.II/7, Annex K).

[4] Principally the USA, after the Atomic Energy Act of 1954 had opened the way to bilateral co-operation in the peaceful application of nuclear energy.

At the national level, regulation and control of nuclear activities were more and more separated from promotion, and responsibilities were assigned to separate institutions[5]. While concern has occasionally been voiced about a possible conflict resulting from the dual role of the Agency — promotion and control — there has been no instance when these potentially conflicting tasks resulted in a constitutional issue[6]. However, the Statute assigns both functions to the Agency. In retrospect, it is open to question whether the Agency devoted sufficient resources to its health and safety activities.

If technical assistance is regarded as part of the promotional activities, then it can be said that the Agency's resources were spent in about equal amounts on promotion and control. It could, of course, also be argued that regulatory and verification activities are an indispensable element of promotion of nuclear technology[7], and the borderline between some functions may be difficult to draw in the absence of clear criteria.

The provisions of the Statute relating to the Agency's functions were never amended and they proved wide enough to encompass activities not specifically mentioned. Two terms which do not appear in the Statute have to a great extent determined the Agency's activities in the 1970s: technical assistance and non-proliferation of nuclear weapons. On a small scale the Agency also embarked on activities in the non-nuclear field, for example work by the Monaco Laboratory on non-radioactive pollution of the Mediterranean — a project financed from extrabudgetary resources by the UNEP.

In general it can be said that the Agency's programmes during the period 1970–1980 were often reactions to, or reflections of, developments that occurred outside the Agency. The NPT, negotiated without any formal involvement of the Agency, resulted in a massive expansion of safeguards[8]. The Indian explosion of a nuclear device in 1974, concern over the acquisition of 'nuclear weapons capability' and the resulting reorientation of export policies by supplier countries, with practically an embargo[9] on sensitive fuel cycle technologies, reduced and finally stopped

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[5] For example in the USA, where these functions of the USAEC were split and assigned to ERDA (later the Department of Energy) and the NRC.

[6] The major concern of developing countries was that the increased expenses for safeguards should be matched by an at least equal increase of expenses for technical assistance.

[7] Nuclear trade never took place on commercial terms alone. In the 1970s, peaceful, non-explosive use undertakings by the recipient State and the application of Agency safeguards were an indispensable requirement for nuclear supplies.

[8] Particularly with the application of Agency safeguards in Euratom (compare, for example, the list of nuclear facilities under safeguards in 1970 (GC(XV)/455, Table 22) and 1980 (GC(XXV)/642, Table 14).

[9] INFCIRC/254 and Addenda.

the Agency's work in these fuel cycle areas. The environmental movement starting in the early 1970s required further emphasis in the Agency's programme relating to environmental effects of nuclear radiation. The 1979 Three Mile Island nuclear accident increased concern about nuclear safety and resulted in an expansion of the Agency's programme in the safety field[10].

Other factors influencing the Agency's programme were the drastic decline of the value of the US dollar, the economic crisis of the mid 1970s caused by the first oil price increase of 1973, and the growing tendency of Member States to impose budgetary restraints on intergovernmental organizations[11]. The growing heterogeneity of Member States in the nuclear field and different attitudes towards the NPT made accommodation and compromise in the Agency's programme difficult but necessary.

### 15.1.2. Peaceful and military activities

Concern over proliferation of nuclear weapons led to a redefinition of the borderline between peaceful and military activities, between permitted and prohibited activities. The NPT was the first multilateral Treaty based on the recognition that the technology and fundamental characteristics of nuclear weapons and other nuclear explosive devices, whatever their denomination, were the same. The NPT does not contain a definition of 'nuclear weapon' [12] covering all types of 'nuclear explosive devices', but refers to 'nuclear weapons' and to 'other nuclear explosive devices' and proscribes their development and acquisition by non-nuclear-weapon States[13]. Neither the term 'nuclear weapon' nor that of 'nuclear explosive device' is mentioned in the Statute, which distinguishes only between 'military' and 'peaceful' purposes[14]. This apparent shifting of the borderline was, however, not the result of the NPT. The Agency's controls under the Statute have to ensure that

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[10] GC(XXIV)/627, para. 76; a supplementary nuclear power safety programme was approved by the Board in 1979.

[11] The consideration of the A & B Committee and the budget discussion by the Board in June of each year invariably mirror this attitude of many Members.

[12] The Tlatelolco Treaty contains a definition in its Article 5. A nuclear weapon "is any device which is capable of releasing nuclear energy in an uncontrolled manner and which has a group of characteristics that are appropriate for use for warlike purposes". That definition is wide enough to include any nuclear explosive device. However, it must probably be read together with other provisions of the Treaty, dealing with peaceful nuclear explosions.

[13] Article II.

[14] It has often been overlooked that the Statute does not use the term 'peaceful uses'. Agency assistance must not be used "in such a way as to further any military purposes", a constraint that may be interpreted as being somewhat broader than the restriction to 'peaceful use'. See, however, also footnote 16.

items under safeguards are not used in such a way as "to further any military purpose". It would be difficult to argue that the development of a device which involved the same technology and fundamental characteristics as did a weapon does not further a military purpose. The Indian explosion of a nuclear device, built by the use of nuclear material subject to a 'peaceful use' undertaking (but not Agency safeguards), highlighted the possible ambiguity of the basic undertaking in Agency non-NPT Safeguards Agreements. The prohibition of using safeguarded items for any nuclear explosive device was therefore included in all non-NPT Safeguards Agreements after 1975 and, by interpretation of the Board, was also made applicable to earlier Safeguards Agreements[15]. This was the first interpretation by a representative organ of the Agency of the expression 'to further any military purpose'. An interpretation by the Board of the term 'peaceful uses' for technical assistance purposes was included in the Revised Guiding Principles and Operating Rules for Technical Assistance[16].

### *15.1.2.1. Licit and prohibited activities*

The Agency's programme was strongly influenced by the development of the non-proliferation regime, and the export policies of the principal suppliers also had a heavy impact on the Agency's programme. Heightened concern about the acquisition of 'nuclear weapons capability' by non-nuclear-weapon States determined suppliers' policies and expanded the NPT concept of legal prohibition coupled with verification. New policies were adopted by suppliers to prevent the acquisition by non-nuclear-weapon States of nuclear material that could be used for nuclear weapons (PU, HEU) and to limit the transfer of technologies by which such materials could be produced (enrichment, reprocessing)[17], although such processes are clearly peaceful (the Agency applies safeguards to such plants). Discussion of the borderline between activities permitted and activities proscribed under the Statute did not, however, escalate into controversy in drawing up the Agency's programme; other criteria and priorities, in particular financial constraints, determined the Agency's work. There was no instance when programmes were challenged as being offensive to the 'peaceful uses only' criterion, as happened in the 1960s.

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[15] Section 21.5.4.1.

[16] INFCIRC/267, para. A.1(i). "For technical assistance purposes peaceful uses shall exclude uses which could contribute to the proliferation of nuclear weapons, such as research on, development of, testing of or manufacture of a nuclear explosive device".

[17] President Carter made this one of the main themes in his election campaign (the 'plutonium economy').

*15.1.2.2. Control functions*

The basic book raised a number of questions relating to the interpretation of the term 'military purposes' in connection with safeguards. Although these problems are treated in more detail in Chapter 21, a brief discussion may help to answer the queries raised:

(a) May the Agency apply safeguards for different purposes under different Safeguards Agreements? The problem arose with the simultaneous application of NPT safeguards and non-NPT safeguards. When the NPT Safeguards Document was developed, this question was considered by the Safeguards Committee (1970), which concluded that there was no statutory obstacle that would prevent the Agency from applying safeguards for different purposes[18]. Also, while there are differences in coverage (as there are also under non-NPT safeguards) and in the technical procedures applied, the difference in the basic obligations is not of great practical relevance for the actual application of safeguards. Both types of safeguards apply only to peaceful activities, and both use nuclear material accountancy and containment and surveillance to ensure that nuclear material is not removed from safeguards in a clandestine manner; all Safeguards Agreements prohibit the use of safeguarded material for any nuclear explosive device. The essential difference lies in the possibility of temporarily removing nuclear material from NPT safeguards when it is to be used in a non-explosive military activity, a possibility which does not exist under non-NPT safeguards.

(b) May the Agency use its safeguards to deter activities that are clearly peaceful? In addition to the relevance of Article III.B.1 of the Statute, statutory safeguards must preclude uses that "further any military purpose". The development of a nuclear explosive device must be regarded as furthering such a proscribed purpose. With this proviso, safeguards must not impede or hamper peaceful activities[19].

(c) May the Agency apply safeguards to military activities? The Agency is concerned with peaceful uses of nuclear energy and cannot apply safeguards even to those military uses that might be permitted under the NPT[20].

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[18] Section 21.4.4.
[19] INFCIRC/66/Rev.2, I(b); INFCIRC/153, para. 4.
[20] INFCIRC/153, Article 14.

*15.1.2.3. Furthering disarmament*

The Agency has invariably kept to its mandate as a technical, and not a political, arms control organization. This principle was applied also to non-proliferation, where the Agency limited its functions to its statutory mandate when it accepted the tasks foreseen for it by the NPT. As a consequence, the Agency's Board of Governors and General Conference, while noting the developments that had taken place in the United Nations and in other fora, did not engage in any consideration to expand the Agency's functions into arms control matters (except for the limited technical task of safeguards). However, one could conceive of certain arms control verification measures that might fall under the Agency's statutory authority and that the Agency could perform, if requested to do so. Examples might be the verification of a cut-off of the production of nuclear material for military uses or the transfer of nuclear material from military stocks to peaceful activities[21]. Whether the experience which the Agency has gained in applying safeguards is susceptible to application in other arms control areas was not actually considered by the Agency.

## 15.2. ACTUAL OPERATIONS

### 15.2.1. During the period 1970–1980

Starting in 1971, the Agency presented its budget entirely on a programme basis[22]. The budget document for that year therefore contained the 1971 budget, subdivided into programme parts, and the programme for 1971–1976. Programme budgeting was also in conformity with a recommendation of the General Assembly's Ad Hoc Committee of Experts to Examine the Finances of the United Nations and the Specialized Agencies[23].

In 1971 the Agency's principal operations funded from all financial resources[24] were as follows (the percentage figures indicate the relative shares of the budget):

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[21] A precondition would probably be that all these installations and material be designated as peaceful.

[22] GC(XIV)/433, para. I.4.

[23] United Nations document A/6343.

[24] GC(XIV)/433, Figure 1.

| | |
|---|---|
| Technical Assistance and Training | 19% |
| Safeguards | 11% |
| Information and Technical Services | 7% |
| The Seibersdorf Laboratory | 7% |
| Nuclear Power and Reactors | 4% |
| Health, Safety and Waste Management | 4% |
| The Trieste Centre | 4% |
| Physical Sciences | 4% |
| Life Sciences | 4% |
| Food and Agriculture | 3% |
| The Monaco Laboratory | 1.3% |
| | 68.3% |

The above figures are without cost allocation for supporting services. Legal work was not given as an operational activity (as it should have been, at least in part), but it was listed under administrative costs, although during 1971 the Legal Division not only supported other Secretariat units but also included legal 'operational' activities, such as the legal aspects of safeguards, liability for nuclear damage, safety regulations, licensing and training in nuclear law[25]. The two activities of the Agency with the largest budget share — technical assistance and safeguards — reached approximate parity in funding in 1981, the share of each being about 23%[26]. The general pattern of operations and of the programme did not undergo major changes during the period under review, except for the expansion of safeguards and technical assistance, as well as an increased emphasis on the environmental impact of nuclear energy (as of the early 1970s) and on nuclear safety (first in 1974), with a further expansion of work in this field after the 1979 Three Mile Island nuclear accident. The general description of the trends in the overall programme of the Agency in the biannual Programme and Budget Document showed, with the foregoing exceptions, a large degree of continuity, with no major reorientation of programmes or shifting of funding[27].

### 15.2.2. Future prospects (as of 1970)

The basic book ventured a speculative forecast on the prospects of the Agency's operations and the qualitative and quantitative improvements after the first decade, and suggested that technical assistance might stimulate interest in atomic

[25] 70% of the work of the Division consisted of operational activities.

[26] GC(XXIV)/630, Table 1, the Consolidated Budget.

[27] See the Programme and Budget Documents for 1970-1980: GC(XIV)/433, GC(XVI)/485, GC(XVIII)/526, GC(XX)/567, GC(XXII)/600.

energy, even in the least developed countries. However, the 1970s did not see a breakthrough or a major commitment by developing countries to nuclear power. The 1968 Conference of Non-Nuclear-Weapon States had only an insignificant influence on the Agency's programme; its resolutions on financing of nuclear power projects in developing countries through a 'Special Nuclear Fund' and a World Bank programme did not result in the creation of favourable financing terms for nuclear power, nor did its appeal for the release of more information of commercial and industrial value for the benefit of developing countries result in the declassification and transfer of such information[28]. The optimism following the apparent breakthrough in nuclear power costs in the USA in the middle 1960s was soon dampened by the effects of the economic recession following the quadrupling of oil prices in 1973. Nuclear power as a capital intensive industry was particularly affected by high interest rates and the gloomy economic outlook.

## 15.3. PROGRAMMES

Throughout the period 1970–1980 the Agency maintained the rolling six-year programming cycles and thus, during the decade, in alternate years, five Programme and Budget Documents and five Budget Documents were submitted to the General Conference. Not only did programme budgeting better relate the programme with the financial resources to carry it out but it also enabled Governments to ascertain the extent to which the programme objectives were attained and the resources used. The Programme and Budget Documents contained not only the budget estimates for the next fiscal year but also preliminary budget estimates for a further year. In addition, actual obligations for the past year and the revised budget for the current year were presented. Thus, information was available on activities and on the resulting expenditure, extending over several years. A general, short statement of the programme objective and a description of the results achieved and of planned activities were given for programmes and sub-programmes. Over the years, this presentation was further refined by indicating related activities and by allocating costs for service activities to the various programmes (e.g. interpretation, translation, printing). This trend towards fuller cost allocation continued with the transfer of certain laboratory costs to other programmes in 1977. A short description of programme trends was introduced and, as of the budget for 1981[29], preliminary

[28] However, with INIS the Agency became the largest clearing house and source of information on nuclear energy (see Section 20.4).

[29] GC(XXIV)/630.

estimates for the two years following the budget year were introduced. The original distinction between a long term programme, which was to serve as a policy guide in planning and executing the Agency's work over the years, and the concrete periodic programme had already disappeared with the first six-year programme for 1969–1974. In the 1970s the Programme and Budget Documents indicated the plans for the fiscal year and for the next year in some detail and separately for the following four years in general terms.

The legal status of the Agency's periodic programmes did not change. They were adopted by the Board and did not require Conference endorsement or approval. The programme supported the budget estimates, but was not acted upon by the Conference; and it constituted a directive for the Director General by the Board pursuant to Articles VI.F and VII.B of the Statute[30].

## 15.4. EVALUATION

Not even during its second decade did the Agency institute a method for comprehensive review and evaluation of its activities. The only regular evaluation and reporting took place on safeguards, through the Annual Safeguards Implementation Report (SIR)[31]. As in the past, reviews were made of individual programme components, such as technical assistance and the work of the Monaco Laboratory[32]. The Agency's general annual reports and the reports on technical assistance contained descriptive information on the Agency's activities, but these reports did not evaluate the activities described[33].

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[30] See Section 15.3 in the basic book.

[31] Section 32.2.9.

[32] See the relevant sections in Chapters 18 and 19.

[33] The annual reports described activities performed and gave figures, but this was in most instances done without indicating the results achieved by these activities and without evaluating activities, costs and results.

# Chapter 16

# RECEIPT OF NUCLEAR MATERIALS AND RELATED ITEMS

## PRINCIPAL INSTRUMENTS

IAEA Statute, mainly Articles IX and X, but also Articles XI.C., XI.F.2 and 3, XIII, XIV.E, XX;
General supply agreements with the USSR, the UK and the USA (INFCIRC/5);
Amendment to the Agreement for Co-operation between the Agency and the USA (INFCIRC/5/Mod. 1);
Second Amendment to the Agreement for Co-operation between the Agency and the USA (INFCIRC/5/Mod. 2);
Master Agreement between the Agency and the USA Governing Sales of Source, By-Product and Special Nuclear Materials for Research Purposes (INFCIRC/210);
Communications received from the USA regarding the Supply of Nuclear Material through the Agency (INFCIRC/223);
Supply and Project agreements, for example those relating to a TRIGA reactor in Yugoslavia (INFCIRC/24 and Addenda), the GRR-1 reactor in Greece (INFCIRC/163), a nuclear power plant in Mexico (INFCIRC/203), a nuclear power plant in Yugoslavia (INFCIRC/213), a research reactor in Peru (INFCIRC/226) and a TRIGA reactor in Malaysia (INFCIRC/287);
Rules to Govern the Acceptance of Gifts of Services, Equipment and Facilities (INFCIRC/13, Part I);
Financial Regulation 10.06 (INFCIRC/8/Rev.1), Interim Financial Rules 3.01-3.03 (AM.V/3) and Terms of Reference of the Contract Review Committee (AM.I/7, Appendix B).

No significant development need be reported regarding the supply of nuclear material to the Agency. The Agency's potential role as a fuel bank or broker of nuclear material has not materialized as originally foreseen in the Statute. Nuclear co-operation and supplies took place on a bilateral basis, rather than through the Agency. Apart from the amendments to the general supply Agreement with the USA no new general supply agreement was concluded.

## 16.1. DEFINITIONS

The definitions of terms listed and discussed in the basic book do not call for further comment. An important clarification was made in the NPT Safeguards Document regarding the definition of 'source material', which "shall not be interpreted as applying to ore or ore residue" [1]. Although the definition applies legally only to NPT Safeguards Agreements, it might have general relevance should the need for clarification arise in another context. Since there have not been any supplies

[1] INFCIRC/153, para. 112.

of uranium or thorium ore through the Agency, this clarification had no practical effect for supplies to the Agency. The communications to the Agency regarding export arrangements by a number of States contained designations (or definitions)[2] of nuclear items which also affected supplies through the Agency; these export understandings are discussed in various sections of Chapter 21.

## 16.2. STATUTORY PROVISIONS

### *16.2.2.2. Storage*

The basic book outlines the statutory basis under which the Agency is authorized to establish storage depots for nuclear material[3]. Up to now, the Agency has had no occasion to provide for the storage of such material, and no facilities have been established. The concept of international spent fuel storage facilities, with varying degrees of Agency involvement, was discussed in the International Fuel Cycle Evaluation (INFCE)[4] and later in the Expert Group on International Spent Fuel Management (ISFM). The Expert Group started its work in 1979; it discussed technical-economic considerations as well as institutional, legal and procedural aspects. The Group also considered the possible role of the Agency in such a scheme. By the end of 1980, work of the Group was still in progress. (The Group finished its work in July 1982 with a final report to the Director General.)[5]

### 16.3.2. Fund of special fissionable materials

The proposals made in the late 1960s for the establishment of a fund of nuclear materials that could be made available to non-nuclear-weapon States, and to developing countries in particular[6], were further discussed by Member States. The most complete study of the problem took place within the context of INFCE. Working Group 3 of INFCE was devoted to "Assurances of Long Term Supply of Technology, Fuel and Heavy Water and Services in the Interest of National Needs Consistent with Non-Proliferation". The Group's report[7], in discussing multinational and international mechanisms to keep countries supplied in the event of delays or cut-offs, analysed the potential value of an International Nuclear Fuel

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[2] INFCIRC/209 and Addenda, INFCIRC/254.

[3] Statute Article IX.A, B, H.

[4] Report of INFCE Working Group 6, Section 9.5.3 (STI/PUB/534).

[5] The documents of the Group are published under the symbol IAEA-ISFM/... . For the initial work of the Group, see also GOV/OR.546, para. 13, and GOV/COM.9/OR.138, para. 37.

[6] CNNWS Resolutions H.III, J.II 1-2 and J.III, reproduced in United Nations Document A/7277, para. 17.

[7] Report of INFCE Working Group 3 (STI/PUB/534, March 1980).

Bank[8]. This Bank, which the Group indicated could be established within the framework of the Agency, could be designed to serve as an insurance mechanism to guarantee its members supplies when normal bilateral or multilateral mechanisms for such supplies failed. The report noted that unexpected changes in "agreements or their application would have more severe consequences for developing countries"[9] because of their dependence on a greater range of supply items; their small and consequently commercially less attractive demand for raw materials and enrichment; their greatly reduced capacity to meet load commitments if nuclear power plants could not be operated, and their weaker infrastructures[10]. No further discussion took place in the post-INFCE period regarding the establishment of a Fuel Bank under the auspices of the Agency. In June 1980 the Board established a Committee on Assurances of Supply (CAS) whose terms of reference require it to consider the Agency's role in relation to "ways and means in which supplies of nuclear material, equipment and technology and fuel cycle services can be assured on a more predictable and long term basis in accordance with mutually acceptable considerations of non-proliferation"[11].

## 16.4. GENERAL SUPPLY AGREEMENTS

No new general supply agreements have been concluded; however, the Agreement for Co-operation between the Agency and the USA has been amended on two occasions. The two substantive changes made by the First Amendment are discussed in Sections 16.4.2 and 16.4.11. The Second Amendment, however, deals with matters not addressed in the initial Agreement and these are discussed here:

(a) Second Amendment to the US Agreement

One of the reasons why the USA concluded a general supply Agreement with the Agency was to meet the requirements of the 1954 Atomic Energy Act which precluded delivery of nuclear materials to any State or intergovernmental organization without the conclusion of an Agreement for Co-operation[12]. In 1978, the Nuclear Non-Proliferation Act amended those sections of the 1954 Act which, inter

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[8] The Fuel Bank concept was largely the creation of the USA in connection with the requirements of the Nuclear Non-Proliferation Act of 1978, Title I, Section 104 (92 STAT. 120, US Public Law 95-242).

[9] Report of INFCE Working Group 3, Section 5.3, p.99.

[10] Report of INFCE Working Group 3, Section 5.3, p.88.

[11] Resolution establishing CAS, GOV/DEC/107(XXIII), No.(33). See also GOV/OR/533, paras 23-50.

[12] 42 U.S.C., Sections 2153 and 2154.

alia, related to criteria for nuclear exports[13]. These new requirements necessitated the Second Amendment to the Co-operation Agreement between the Agency and the USA.

One of the proposed changes was the inclusion of an Annex to the Agreement, to set forth, in detail, the US criteria for transfer and export arrangements[14]. The initial Agreement had contained the provision that "the United States undertakes that, subject to the applicable laws, regulations and license requirements of the United States, persons under the jurisdiction of the United States will be permitted to make arrangements to transfer and export material, equipment or facilities and to perform services ..." [15], but the specific requirements were not set forth in the Agreement. The new requirements set out in the Annex included the following points:

(i) Material, equipment or facilities made available to the Agency shall not be used in a non-nuclear-weapon Member State without the application of Agency safeguards to all of the Member State's nuclear activities[16];
(ii) The rights and obligations of the Parties in relation to supplies shall continue until safeguards have been terminated on all items including subsequent generations of produced special fissionable material, and the USA shall be informed about the status of inventories[17];
(iii) Prior approval by the USA is required for facilities where plutonium or highly enriched uranium is to be stored[18];
(iv) Prior approval by the USA is required for reprocessing or other alterations of supplied or produced material[19];
(v) Restrictions are imposed as to the subsequent enrichment of uranium supplied or used in connection with supplied items[20];
(vi) Adequate physical protection must be ensured of items supplied or connected with supplies according to the levels set forth in the Appendix to the Annex[21];

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[13] 92 STAT. 120, US Public Law 95-242.

[14] INFCIRC 5/Mod.2, Annex.

[15] INFCIRC/5, Part III, Article 4. Statute Article IX C refers to materials which a Member State is prepared to make available "in conformity with its laws"; thus, for a State to note in an agreement that certain domestic legislation is applicable is in accordance with the Statute.

[16] INFCIRC/5/Mod.2, Annex, Section A.

[17] INFCIRC/5/Mod.2, Annex, Section B.

[18] INFCIRC/5/Mod.2, Annex, Section C.

[19] INFCIRC/5/Mod.2, Annex, Section D.

[20] INFCIRC/5/Mod.2, Annex, Section E.

[21] INFCIRC/5/Mod.2, Annex, Section F. The levels of physical protection set forth in the Appendix are virtually identical with those in the Convention on the Physical Protection of Nuclear Material (INFCIRC/274/Rev.1) and the recommendations to Member States on "The Physical Protection of Nuclear Material" (INFCIRC/225/Rev.1).

(vii) Restrictions are imposed on the transfer of 'sensitive nuclear technology'. Such technology is defined as information related to design, construction, fabrication, operation or maintenance of any facility for uranium enrichment, reprocessing of nuclear fuel, heavy water production or fabrication of fuel containing plutonium; moreover, it includes other information so designated by the USA prior to transfer[22].

(viii) Prior approval by the USA is required for the retransfer of supplied items or special nuclear material used in or produced through the use of such items[23];

(ix) Provision is to be made for the application of bilateral safeguards by the USA in the event that the Agency is unable to carry out safeguards[24];

(x) Conditions are included resulting in the termination of co-operation and the return to the USA of items subject to the Supply Agreement[25].

The Annex and other sections of the proposed Amendment were the subject of extensive consultation among Member States prior to the approval of the Amendment. In presenting the proposal to the Board, the US Representative stated that the Amendment was intended to inform Member States in detail of the terms and conditions under which the USA was prepared to supply nuclear material and equipment or facilities to or through the Agency[26]. He also emphasized that the proposed changes were not intended to apply retroactively to previously concluded Supply and Project Agreements[27]. The Board pointed out that the Amendment should not be taken as a precedent for other negotiations[28] and that its approval should not be constructed as an endorsement of the substance of the conditions of US law set forth in the Annex[29]. The Amendment was approved with that understanding and with the additional provision that any changes in the Appendix on physical protection would be specifically subject to Board approval[30].

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[22] INFCIRC/5/Mod.2, Annex, Section G.

[23] INFCIRC/5/Mod.2, Annex, Section H.

[24] INFCIRC/5/Mod.2, Annex, Section I.

[25] INFCIRC/5/Mod.2, Annex, Section J.

[26] GOV/OR.536, para. 73.

[27] GOV/OR.536, para. 75.

[28] GOV/OR.536, paras 83 and 88; GOV/OR.537, paras 2 and 3.

[29] GOV/OR.536, paras 82 and 85.

[30] GOV/DEC/103(XXII), No. (37). See also GOV/OR.537, paras 10 and 11. It should be noted that INFCIRC/5/Mod.2 does not reflect the decision by the Board that any changes in the Appendix would require its approval. However, this is an internal Agency requirement which need not be included in the Agreement.

### 16.4.2. Price

(c) United States Agreement

The original provision on price was criticized because it did not allow for preference to the Agency but only for the price equivalent for prevailing charges applicable to the domestic US market. In 1974, however, in the First Amendment the Agreement was changed by deleting all references to price[31]. The reason given for the change was that the USA was not in a position to guarantee such a pricing formula in view of the long duration of the amended Agreement[32].

The deletion of the provision was a cause for concern in the Board, prompting one Governor to enquire whether future prices would be higher than the domestic US charges. The Amendment was nevertheless approved[33].

### 16.4.6. Safeguards

The safeguards provisions of the Unites States Agreement were also changed by the Second Amendment[34]. The changes, basically, were designed to meet the requirements of the US Nuclear Non-Proliferation Act of 1978[35]. The first change provided for the requirement to apply safeguards in accordance with the Agency's safeguards system as well as the Agency's Statute[36]. The second change permitted the transfer to Member States by the Agency of small quantities of nuclear material for safeguards related purposes and the exemption thereof from safeguards as long as the total quantity of such material did not exceed one effective kilogram[37]. The purpose of the change was to simplify procedures for the Agency to transfer material of US origin to Member States participating in the Agency's network of analytical laboratories[38].

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[31] INFCIRC/5/Mod.1, Article I.

[32] GOV/1649, para. 3. See Section 16.4.11.

[33] GOV/DEC/79(XVII), No. (15). See also GOV/OR.462, paras 2 and 7.

[34] INFCIRC/5/Mod.2, II (see also GOV/1879 (Rev.1)).

[35] 92 STAT. 120, US Public Law 95-242.

[36] INFCIRC/5/Mod.2, Article V(a). It is interesting to note that in the text of the Agreement the reference to the Agency's safeguards system is footnoted by a reference to INFCIRC/66/Rev.2. However, in introducing the draft amendment to the Board, the US Representative stated (GOV/OR.536, para. 79) that it was reasonable to view that system as built upon documents such as INFCIRC.66/Rev.2, INFCIRC/153 (corrected) and GOV/1621, and that it included practical techniques which evolved from safeguards implementation. This statement removed an apparent inconsistency between the footnoted text and the Annex to the Agreement which specifically refers to NPT Safeguards Agreements (which are not based on INFCIRC/66/Rev.2).

[37] INFCIRC/5/Mod.2, Article II, 1(a).

[38] GOV/1879/Rev.1, para. 5.

The language of the peaceful use undertaking of Article V(b) was modified to include specific language, in line with the Agency's policy and US legislation, precluding the use of items subject to the Agreement for any nuclear weapon or "for research on or development of any nuclear explosive device, or for any other military purpose"[39].

Finally, Article V(c) was amended to preclude the transfer by the Agency, without the consent of the USA, of any special nuclear material used in, or produced through the use of, material, equipment and facilities supplied to the Agency.

Of these proposals, only the retransfer provision drew criticism from members of the Board, some of whom argued that the provision was discriminatory and contrary to Article IX.J of the Statute, which provides that "no Member State shall have the right to require that the materials it makes available to the Agency be kept separately by the Agency or to designate the specific project in which they must be used". The Amendments were approved, however, on the understanding that the Agreement did not constitute a precedent[40].

### 16.4.11. Duration

Of the three General Supply Agreements, only that with the USA was amended to extend its duration to 55 years, as opposed to the initial 20 years[41]. The Amendment also provided that "the Agreement may be extended by agreement of the Parties pursuant to their statutory requirements"[42]. This change, designed to permit the supply of nuclear fuel through the Agency for the expected lifetime of the then current generation of power reactors[43], was welcomed by the Board[44].

### 16.4.12. Subsequent developments

No new General Supply Agreements were negotiated except for the Amendments to the Agreement with the USA. When other Member States made supplies through the Agency, agreements were concluded for individual transactions.

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[39] INFCIRC/5/Mod.2, Article V(b). The explicit language regarding explosive devices has been used in Safeguards Agreements and in other agreements with the Agency since 1975. In other cases, the USA requires assurance from the recipient Government that any supplied material would not be used for, or in connection with, the development, manufacture or testing of any nuclear explosive device.

[40] GOV/DEC/103(XXII), No. (37).

[41] INFCIRC/5/Mod.1, Article II.

[42] INFCIRC/5/Mod.1, Article II.

[43] GOV/1649, para. 2.

[44] GOV/OR.462, para. 3.

In 1974, the USA and the Agency concluded a new Master Agreement "Governing Sales of Source, By-Product, and Special Nuclear Material for Research Purposes"[45], which superseded the "Master Contract for Sales for Research Quantities of Special Nuclear Material", concluded in 1962[46]. The new Agreement was concluded pursuant to the Co-operation Agreement between the Agency and the USA, as amended[47], and is, by regulating the conditions governing the sale of source, by-product and special nuclear material, broader in scope than the Master Contract. In addition, the earlier Agreement referred to the purchase of 'research quantities' — a term that was not defined in the Agreement; the new Agreement refers to the sale of material for use in "defined research applications, including research and materials testing reactors"[48].

The new Agreement differs from the previous one in permitting material also to be furnished to persons other than the Agency; these customers, however, must meet the same requirements as the Agency[49]. Under the new Agreement, title passes to the purchaser upon delivery of the material to the purchaser's vehicle or commercial conveyance at the seller's facility[50]; previously, title had passed upon the departure of the material from US jurisdiction. Otherwise, the new Agreement, with slight variations from the earlier one, also covers questions of transport, costs, method of payment, liability for defects, exclusion of warranties regarding the use and performance of the material or the safety of the material for other uses, transfer of responsibility, non-assignment of rights and interests, and dispute settlement.

## 16.5. PARTICULAR SUPPLY ARRANGEMENTS

The basic book describes the possible range of legal instruments that could be used to cover supplies of nuclear material, through the Agency, from one Member State to another, or to the Agency itself. In the period under review, two simplifications were introduced in the various arrangements that were concluded between the Agency and Member States:

(a) The relevant Supply and Project Agreements were combined into a single legal instrument to which the Agency, the supplying State and the recipient State became Parties (Section 17.2.1.2). Such trilateral agreements clearly identified and separated the respective responsibilities of the Parties; for example,

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[45] INFCIRC/210.
[46] INFCIRC/83, Annex A.
[47] INFCIRC/5/Mod.2.
[48] INFCIRC/210, introductory para.
[49] INFCIRC/210, para. 1.
[50] INFCIRC/210, para. 2.

assurances regarding safeguards were only required from the recipient State. The undertaking of peaceful use was, however, given both to the Agency and to the supplying State. These agreements are thus 'asymmetrical', with varying rights and obligations of the Parties[51].

(b) An increasing number of agreements provided for the supply of material up to an agreed ceiling over a specified period of time, thus avoiding the need to conclude a series of supply arrangements for the same project[52].

### 16.5.2. Provisions

The Agency's concerns with regard to material supplied through it related primarily to its statutory responsibilities, such as its right to apply safeguards and to require the observance of Agency safety standards. In addition, the Agency (and supplier States) required assurances that there would be adequate physical protection of the material[53]. Provisions were also made to protect the Agency's fiscal and legal interests; for example, the Agency did not accept any financial obligations vis-à-vis the supplying State for which it was not covered by corresponding undertakings by the recipient State and it also declined to provide any guarantees or warranty for the material supplied.

### 16.5.3. Examples

Section 17.2.2 describes the important features of the agreements concluded during the period 1970–1980 in relation to Agency projects and discusses also the related supply arrangements. That section should therefore be consulted for information on specific supplies and the agreements concluded.

## 16.6. CHOICE OF SUPPLIER

As noted in the basic book, the Statute only establishes guidance as to how a supplier is to be chosen in relation to Agency projects and requires the Agency to take into account the preferences of the requesting Member State[54]. If the Agency wishes to obtain items for its own use, it is required under Financial Regulation 10.06 to seek tenders according to rules established by the Director General; these rules provide for competitive bidding subject to certain exceptions[55]. Proposals for

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[51] See, for example, INFCIRC/287.
[52] See, for example, INFCIRC/116/Add.1.
[53] See, for example, INFCIRC/238.
[54] Statute Article XI c.
[55] Interim Financial Rules, III (AM. V/3, page 6).

the purchase of goods for US $10 000 and above had to be examined by the Contract Review Committee; for scientific equipment, this limit was US $19 000, provided certain conditions were met[56].

Agreement on the commercial arrangements for the supply of nuclear fuel was generally reached between the supplying and the recipient States before they approached the Agency to act as an intermediary in implementing the procedure for the transfer. The Agency, however, continued to canvass Member States to find suppliers, particularly in cases of requests for small amounts of nuclear material. As in the past, the selection of a supplier was made by the recipient State if it had to pay for the material, otherwise the Agency made the choice.

## 16.7. FREE MATERIAL FROM THE USA

As noted in the basic book, Section 54 of the US Atomic Energy Act of 1954 permitted the free distribution to the Agency of up to US $50 000 worth of special fissionable material each year "to assist and encourage research on peaceful uses [of atomic energy] or for medical therapy". This possibility was explicitly incorporated into the Co-operation Agreement between the Agency and the USA[57]. There was thus considerable concern among Member States when that provision was deleted in the First Amendment to the Agreement. The USA, however, reassured the Agency in a letter to the Director General that the deletion did not affect the authority of the USA to continue to provide such material[58].

The USA continued to make such material available each year, although the procedures for doing so had been modified and no longer followed a strict calendar year schedule. Thus, the formal announcement of a gift at the General Conference was not always made in the year preceding that in which the gift was to be made. Following the announcement, the USA was notified by the Agency of those projects which were eligible to receive the material and also of the requirements of material for the Agency's own use. Once the US Department of Energy had considered all eligible projects and made its decision, the recipients were notified. This flexible scheduling eliminated many of the complicating factors discussed in the basic book.

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[56] AM.I/7, Appendix B.
[57] INFCIRC/5, part III.
[58] GOV/1649, Annex II, Letter of 16 January 1974.

# Chapter 17
# AGENCY PROJECTS

## PRINCIPAL INSTRUMENTS

IAEA Statute, mainly Article XI, but also VIII.B, IX.D and J, XII, XIV.B.2 and E, XVIII.E;
Safeguards Document (INFCIRC/66/Rev.2);
NPT Safeguards Document (INFCIRC/153, corrected);
Health and Safety Document (INFCIRC/18/Rev.1);
Project and Supply Agreements, for example those relating to: The Yugoslav TRIGA reactor (INFCIRC/32 and Addenda); The Mexican SUR-100 reactor (INFCIRC/162 and Mod.1); The Greek GRR-1 reactor (INFCIRC/163 and Addenda); The Mexican Laguna Verde power plant (INFCIRC/203); A research reactor in Peru (INFCIRC/226); The Malaysian TRIGA II reactor (INFCIRC/287);
Guidelines for the International Observation by the Agency of Nuclear Explosions for Peaceful Purposes (INFCIRC/169).

## 17.1. STATUTORY PROVISIONS REGARDING REQUESTS FOR ASSISTANCE

The statutory basis for Agency assistance to Member States for projects in the field of nuclear energy has not changed. The most common type of project involved the supply of research reactors and/or nuclear material for such reactors, although three projects relate to the establishment of nuclear power plants[1].

## 17.2. REACTOR PROJECTS

### 17.2.1. Procedures

No formal procedures for the processing of requests with respect to reactor projects were promulgated and the routine described in the basic book remained unchanged. The State requesting the Agency's assistance[2] had to provide specific information, as required by Article XI.A of the Statute. If the Agency wished to

[1] See Sections 17.2.2.18, 17.2.2.26 and 17.2.2.28.

[2] The basic book noted that no multi-State project had been concluded. This was still the case in 1980, but there was at least one project involving multiple supplier States (INFCIRC/226, Part I. Section 17.2.2.30).

make an on-site assessment, a mission might be sent to the country[3]. The State's request and the Secretariat's evaluation were then forwarded by the Director General to the Board with a request for its authorization for him to conclude the necessary agreements.

### *17.2.1.1. Basis of Board evaluation*

The criteria for the Board's evaluation of a project have remained unchanged. Since 1975 there has been an increasing tendency for supplier States to require that the recipient States give undertakings relating to the physical protection of nuclear material and facilities, to impose restrictions on retransfer and to retain the right of consent prior to subsequent processing or other alteration of the supplied nuclear material. These conditions, however, were not required by the Board and did not form part of its decision, although the Board was informed of these conditions if they were to be included in agreements concluded between Member States and the Agency.

### *17.2.1.2. Project Agreements*

The most significant change from the practice reported in the basic book was the practice of concluding, whenever possible, a combined Supply and Project Agreement instead of two separate agreements. This approach was intended to simplify and streamline negotiation procedures. The concern that the supplier State should not find itself bound by certain terms in Project Agreements, for example those relating to safeguards and health and safety, has been met in part by terms of the combined Agreement clearly identifying the respective responsibilities of the Parties[4]. For example, under its Agreement with the USA and the Agency, Malaysia alone guaranteed that specified items would be subject to safeguards in accordance with the terms of the Agreement[5] and that relevant safety standards and measures would be applied to the project[6].

One other important development was the trend to discontinue conclusion of Supply Agreements covering only the one-time supply of a specified amount of nuclear material. An increasing number of Agreements provided for the supply of material up to a set ceiling over a specified time period, such as five years[7]. This avoided the need to conclude a series of Supply Agreements for a single project.

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[3] The initial evaluation of a project is carried out within the Secretariat by staff members. It is possible, however, that the requesting State will seek further expert assistance from the Agency for the planning of the project and, in that case, outside experts may be called in by the Agency.

[4] See, for example, Agreement between Malaysia, the USA and the Agency (INFCIRC/287).

[5] INFCIRC/287, Article VII.

[6] INFCIRC/287, Article VIII.

[7] See, for example, Sections 17.2.2.2 (basic book) and 17.2.2.18, 17.2.2.22, 17.2.2.26, 17.2.2.28 (present book).

### 17.2.2. List and descriptions

The basic book gives a brief description, in chronological order, of each of the reactor projects up to 1970. In the following sections this practice is continued. In the case of projects discussed in the basic book, only updating information, if required, is given, whereas more complete information is given in the case of later projects. Significant differences from standard forms of agreements are also noted.

*17.2.2.1. Japanese JRR-3*

No developments.

*17.2.2.2. Finnish FIR-1*

The application of safeguards by the Agency under Article 5 of the Project Agreement[8] was suspended as of 9 February 1972 pursuant to Article 23 of Finland's NPT Safeguards Agreement[9].

*17.2.2.3. Finnish subcritical assemblies FINN*

No developments.

*17.2.2.4. Norwegian NORA*

No developments.

*17.2.2.5. Yugoslav TRIGA*

A Third Supply Agreement, following the lines of the Fourth Supply Agreement between the Agency, the USA and Finland[10], entered into force on 30 December 1970 and provided for the supply, over a five-year period, of up to 23 750 g of uranium enriched to 20%, to be contained in fuel for the TRIGA reactor, and of 3.4 g of uranium enriched to more than 90%, to be contained in two fission counters[11]. The Supply Agreement also amended the Project Agreement[12] to cover the new supplies. The Supply Agreement was amended in December 1972 by an exchange of letters to provide for the supply of an additional 4800 g of uranium,

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[8] INFCIRC/97/Mod.1.
[9] INFCIRC/155.
[10] INFCIRC/24/Add.4.
[11] INFCIRC/32/Add.3. See GOV/DEC/64/(XIV), No. (6).
[12] INFCIRC/32.

enriched to 70%, to be contained in fuel elements; a further amendment in October 1974 permitted direct payment by Yugoslavia to the US fuel manufacturer rather than payment through the Agency, as originally provided[13]. The Third Supply Agreement expired in 1975. Effective 28 December 1973, the application of safeguards by the Agency under Section 7 of the Project Agreement, as amended, was suspended pursuant to Article 25 of the Yugoslav NPT Safeguards Agreement[14].

In 1978, Yugoslavia approached the Agency with a request for assistance in securing additional fuel similar to that supplied under the Third Supply Agreement. To meet the new requirements, a Fourth Supply Agreement, providing for the supply of 1372 g of uranium, enriched to approximately 70%, to be contained in fuel elements, and an amendment to the Project Agreement were concluded and entered into force on 14 July 1980[15].

### *17.2.2.6. Other Yugoslav projects*

This section of the basic book discusses several projects that were approved by the Board but for which no agreements were concluded. No developments took place in relation to these projects.

### *17.2.2.7. Pakistani Pinstech*

A Supplementary Supply Agreement entered into force on 30 September 1969, providing for the transfer of approximately 2 g of 93% enriched uranium[16].

The Second Supply Agreement of 1967 was amended on 16 June 1971 to permit the fabrication in Japan, rather than in the USA, of enriched uranium provided through the Agency pursuant to the Agreement[17]. A Third Supply Agreement entered into force on 14 June 1974 and provided for the transfer, over a five-year period, of uranium enriched to approximately 93%, up to a total net weight of 5000 g, to be contained in fuel elements for the reactor[18]. In March 1975, the Third Supply Agreement was amended by an exchange of letters between the Agency and Pakistan to increase the total quantity to 5800 g of enriched uranium[19].

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[13] INFCIRC/32/Add.3/Mod.1.

[14] INFCIRC/204.

[15] INFCIRC/32/Add.4. The Fourth Supply Agreement provided for the conclusion of a supplementary contract, which took effect from 17 October 1980.

[16] INFCIRC/34/Add.2.

[17] INFCIRC/34/Add.3.

[18] INFCIRC/34/Add.4.

[19] The exchange of letters was approved by the Board (GOV/DEC/84(XVIII), No. (16)).

### *17.2.2.8. Zairian TRICO*

A Supplementary Supply Agreement was concluded in 1970 between the Agency, the Government of the Congo[20] and the Government of the USA, in order to provide for the additional transfer of approximately 1.5 g of highly enriched uranium[21].

A Second trilateral Supply Agreement entered into force in 1971 to provide for the supply of 14.5 kg of low enriched uranium[22]. The Second Supply Agreement also provided for the amendment to the Project Agreement to include the conversion of the original reactor into a 1000 kW Mark II type reactor and to extend Article 2 of the Project Agreement to cover material subject to the new Agreement[23].

The application of safeguards by the Agency under Section 5 of the Project Agreement (as amended by the Project Extension Agreement[24] and the Second Supply Agreement) was suspended as of 9 November 1972 pursuant to Article 23 of Zaire's NPT Safeguards Agreement[25].

### *17.2.2.9. Mexican TRIGA*

A Second Supply Agreement between the Agency and the Governments of Mexico and the USA entered into force on 4 October 1971 and provided for the supply, over a five-year period, of up to 3860 g of uranium, enriched to approximately 20%, and of approximately 10 800 g of uranium, enriched to approximately 70%[26].

As of 14 September 1973, the application of safeguards by the Agency under Section 6 of the Project Agreement[27] was suspended pursuant to Article 23 of the Agreement between Mexico and the Agency for the application of safeguards in connection with the Tlatelolco Treaty and the NPT[28].

A Third Supply Agreement was negotiated in 1979, but by the end of 1980 it had not yet been brought before the Board of Governors for approval.

### *17.2.2.10. Mexican subcritical assemblies*

No developments.

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[20] The Congo (Léopoldville) changed its designation to Zaire in 1971.
[21] INFCIRC/37/Add.3.
[22] INFCIRC/37/Add.4.
[23] INFCIRC/37.
[24] INFCIRC/37/Add.1.
[25] INFCIRC/37/Add.5. The NPT Safeguards Agreement is reproduced in INFCIRC/183.
[26] INFCIRC/22/Add.1.
[27] INFCIRC/22.
[28] INFCIRC/197.

*17.2.2.11. Argentine RAEP*

No developments.

*17.2.2.12. Uruguayan URR*

No developments.

*17.2.2.13. Philippine PRR-1*

As of 16 October 1974, the application of safeguards by the Agency under Section 5 of the Project Agreement[29] was suspended pursuant to Article 23 of the Philippine NPT Safeguards Agreement[30].

In 1975 the Board authorized the Director General to conclude a Third Supply Agreement with the Government of the Philippines to provide for the supply of approximately 4500 g of 93% enriched uranium[31]; however, no further action was taken and the agreement was not concluded.

*17.2.2.14. Iranian UTRR*

As of 15 May 1974, the application of safeguards by the Agency under the Project Agreement was suspended[32] pursuant to Article 23 of the Iranian NPT Safeguards Agreement[33].

*17.2.2.15. Vietnamese VNR-1*

The Supply Contract for this project, providing for the lease of 360 g of uranium enriched to 20% and contained in two fuel elements, was extended until 31 December 1974[34]; at that time the USA informed Vietnam that, since the material had not been returned to the USA, Vietnam was required to obtain title to it. Vietnam contacted the Agency with a request that the cost for the fuel be covered by the Agency under its technical assistance programme, but the Director General replied that funds were not available to cover the cost of acquiring the leased nuclear

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[29] INFCIRC/88, Part II.

[30] INFCIRC/216.

[31] GOV/DEC/84(XVII), No. (15).

[32] INFCIRC/97/Mod.1.

[33] INFCIRC/214. Safeguards were originally applied in relation to the Project under a Safeguards Transfer Agreement (INFCIRC/127). That Agreement was suspended during the time when and to the extent that the NPT Safeguards Agreement was in force (INFCIRC/127/Mod.1).

[34] INFCIRC/106.

material. There was no further development until the Agency was informed by the Minister of Foreign Affairs of the Republic of South Vietnam in December 1975 that all fuel elements of the TRIGA Mark II reactor had been withdrawn and returned to the USA by the US authorities; the two fuel elements which had been provided to Vietnam through the Agency were also included. At that time the Vietnamese authorities also requested the Agency's assistance in securing the supply of new fuel elements from the USA; however, no further supply from the USA was made.

In 1980 the Government of the Socialist Republic of Viet Nam notified the Director General that it did not consider itself bound by the TRIGA Project Agreement.

### *17.2.2.16. Israeli IRR-1*

No developments.

### *17.2.2.17. Spanish CORAL-I*

Under the Supply Agreement for this project, the original lease was scheduled to terminate on 31 December 1970, but it was extended initially until 30 June 1973 and later until 31 December 1974[35]. The second extension was accomplished by an exchange of letters between the three Parties[36].

### *17.2.2.18. Pakistani KANUPP*

A Second Supply Agreement, approved by the Board on 10 June 1971, entered into force on 22 June 1971 and provided for the transfer of up to a total of 100 kg of uranium, enriched to approximately 10.5%, from the USA to Pakistan during a period of eight years, commencing on 6 August 1971[37]. As did the First Supply Agreement, the Second Agreement too provided for the fabrication of the fuel in Canada.

Contrary to the indication in the basic book that the entire supplied nuclear fuel would be exempt from safeguards, it was decided that the reactor, its fuel and all nuclear material produced therein would be subject to safeguards pursuant to the Safeguards Transfer Agreement between the Agency and the Governments of Canada and Pakistan of 17 October 1969[38].

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[35] INFCIRC/99.
[36] Agency letter L/304 — SPA — 1, dated 19 June 1973 (not published).
[37] INFCIRC/116/Add.1.
[38] INFCIRC/135.

### *17.2.2.19. Argentine RA-3*

No developments.

### *17.2.2.20. Argentine SUR-100*

This project was approved in 1969 and the relevant Agreement entered into force on 13 March 1970[39]. The Agreement represents one of the first attempts at a combined Supply and Project Agreement; however, nothing in the record of negotiations or in the Board paper indicates any reason for the use of the new format.

In March 1974, Argentina requested that the Agency investigate the possibility of further assistance from the Federal Republic of Germany in relation to the use of the reactor.

In 1975 the Federal Republic of Germany made an additional offer regarding assistance through the Agency which included the provision of expert services, the training of engineers and technicians, and the provision of initial and supplementary equipment for the reactor. This offer was not placed before the Board for approval, but was accepted by the Agency in accordance with the Rules to Govern the Acceptance of Gifts of Services, Equipment and Facilities[40] through an exchange of letters with the Federal Republic of Germany. The provision of this assistance through the Agency was subject to the application of safeguards in accordance with Article 5 of the Project Agreement.

### *17.2.2.21. Chilean HERALD*

The relevant Supply and Project Agreements for this project entered into force on 19 December 1969. The lease termination date under the Supply Agreement was extended on 25 February 1971 and again on 16 January 1974. The second extension ran until 31 December 1974[41]. Effective on that date, the USA donated the material to Chile, and a Title Transfer Agreement was concluded between the Agency, Chile and the USA[42].

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[39] INFCIRC/143. In 1971, declarations were made by the Federal Republic of Germany and by Argentina that the Agreement was also applicable to Land Berlin, with effect from the date of the entry into force of the Agreement (INFCIRC/143/Add.1).

[40] INFCIRC/13.

[41] INFCIRC/137 and Add.1. Both extensions were accomplished by exchanges of letters and were not submitted to the Board for approval.

[42] INFCIRC/137/Add.1. The Title Transfer Agreement was not submitted to the Board for approval because the sale of the material was permitted under the terms of the Project Agreement and a related contract which had been approved by the Board in 1969 (INFCIRC/137).

*17.2.2.22. Indonesian TRIGA*

A Second Supply Agreement for the transfer of up to 12 000 g of enriched uranium over a five-year period entered into force on 14 September 1972[43]. It was amended by an exchange of letters on 7 April 1975[44] to provide for Indonesia to purchase the supplied enriched uranium directly from the manufacturer.

A Third Supply Agreement and an Amendment to the original Project Agreement entered into force on 1 December 1979[45] to cover the transfer of up to 3647.67 g of uranium-235 contained in uranium and enriched to approximately 19.90%. The related Supplemental Contract entered into force on 25 July 1980. The Amendment to the Project Agreement also provided for the continued application of the safeguards set forth in the Annex of the original Project Agreement until such time as the Indonesian NPT Safeguards Agreement had entered into force (which was on 14 July 1980)[46].

*17.2.2.23. Mexican SUR-100*

In 1970 the Government of Mexico requested the Agency's assistance for obtaining a training reactor and informed the Agency that the Federal Republic of Germany had offered to supply, on a cost-free basis, a Siemens SUR-100 reactor and its fuel. The Board approved the project on 23 February 1971. The Agreement, which is similar to the Agreement for the Argentine SUR-100[47] and which provides for the supply of the reactor and of approximately 3750 g of 20% enriched uranium, entered into force on 21 December 1971[48].

As of 14 September 1973, the application of safeguards by the Agency under the Agreement was suspended[49] pursuant to Article 23 of the Agreement between Mexico and the Agency for the application of safeguards in connection with the Treaty of Tlatelolco and the NPT[50].

*17.2.2.24. Greek GRR-1*

In 1970 the Government of Greece requested the Agency's assistance for obtaining title to 7045 g of 90% enriched uranium, contained in fuel elements, which

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[43] INFCIRC/136/Add.1. The Second Supply Agreement was based on INFCIRC/32/Add.3.

[44] INFCIRC/136/Add.1/Mod.1.

[45] INFCIRC/136/Add.2.

[46] INFCIRC/283.

[47] INFCIRC/143. See Section 17.2.2.2.20.

[48] INFCIRC/162. On the date of signature of the Agreement the Resident Representative of Germany informed the Director General on behalf of the Federal Republic of Germany that the Agreement was also applicable to Land Berlin (INFCIRC/162, II).

[49] INFCIRC/162/Mod.1.

[50] INFCIRC/197.

had been supplied by the USA under a bilateral lease agreement and which were already located in Greece at the GRR-1 reactor. The Board approved the project on 23 February 1971.

The Project Agreement and a Title Transfer Agreement entered into force on 1 March 1972 and provided for the transfer of title, as a gift, to 1355 g of previously supplied 90% enriched uranium from the USA[51]. The Project Agreement closely followed the Indonesian TRIGA Project Agreement[52]; the Title Transfer Agreement was modelled on the provisions of the Agreement relating to the Argentine RAEP reactor[53].

A Second Title Transfer Agreement, providing for the transfer of title, also as a gift, to a further 1755 g of 90% enriched uranium, entered into force in 1974[54].

In 1976 the Board approved the additional supply of up to 7000 g of 90% enriched uranium under the terms of the Master Agreement between the Agency and the USA Governing Sales of Source, By-Product, and Special Nuclear Materials for Research Purposes[55]. In accordance with the procedures provided for in the Master Agreement, a Supply Agreement was concluded and entered into force on 12 October 1977[56]. A Supplemental Contract, concluded under the terms of the Supply Agreement and setting forth conditions relating to the sale of the supplied material to Greece, took effect as of 20 October 1977. Part of the material was a gift to Greece from the USA and was covered by a Third Title Transfer Agreement, which entered into force on 15 December 1977[57].

The Agreements provided for the application of safeguards according to the provisions of the Greek NPT Safeguards Agreement[58].

### *17.2.2.25. Romanian TRIGA*

This project involves the supply of a TRIGA research reactor and fuel for it by the USA to Romania. The initial Supply and Project Agreements[59] entered into force on 30 March 1973. In addition to the reactor, approximately 46 470 g of uranium, enriched to 20%, and approximately 34 350 g of uranium, enriched to approximately 93%, were to be supplied in the form of fuel elements. In 1975 the

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[51] INFCIRC/163.

[52] INFCIRC/136, Part II.

[53] INFCIRC/62, Part I.

[54] INFCIRC/163/Add.1.

[55] INFCIRC/210.

[56] INFCIRC/163/Add.2. The Supply Agreement was similar to the Agreement concluded in June 1974 between the Agency and Pakistan (INFCIRC/34/Add.4).

[57] INFCIRC/163/Add.2.

[58] INFCIRC/166.

[59] INFCIRC/206. The Supply Agreement was based upon the Indonesian Supply Agreement (INFCIRC/136, Part I).

Supply Agreement was amended by an exchange of letters to provide for the supply of approximately 42 000 g of uranium, enriched to 93%[60]. In 1977 a second amendment provided for the title to the fuel to be vested in the Agency at the time when the US Department of Energy received payment for the fuel rather than at the time when the fuel left the jurisdiction of the USA, as had been originally agreed in the Supply Agreement[61].

A Second Supply Agreement entered into force in 1975[62] and provided for the supply of an additional 16 730 g of uranium, enriched to 93%.

Safeguards were to be applied under the Project Agreement pursuant to the NPT Safeguards Agreement between the Agency and Romania[63].

### *17.2.2.26. Mexican Laguna Verde*

On 12 February 1974 the Board approved this project, which relates to the establishment of a nuclear power plant at Laguna Verde and the supply of a 650 MW(e) boiling water reactor by the USA. The initial Supply and Project Agreements entered into force on that very day[64]. The Supply Agreement provides for the supply of uranium enrichment services through a long term fixed commitment contract with the US Government.

A Second Supply Agreement entered into force on 14 June 1974. That Agreement covers the supply of a second 650 MW(e) boiling water reactor by the USA as well as additional uranium enrichment services, again through a long term fixed commitment contract[65].

Under Article IV of the Project Agreement the implementation of safeguards is satisfied by the application of safeguards pursuant to the Agreement between Mexico and the Agency for the application of safeguards in connection with the Tlatelolco Treaty and the NPT. In the event that this Safeguards Agreement were terminated, safeguards would be implemented according to the Agreement between Mexico and the Agency for the application of safeguards pursuant to the Treaty of Tlatelolco[66]. This earlier Agreement was concluded in September 1968 and was suspended while the later NPT/Tlatelolco Treaty Safeguards Agreement was in force.

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[60] INFCIRC/206/Mod.1. See GOV/DEC/85(XVIII), No. (38).

[61] The Board was not requested to approve this amendment, also done by an exchange of letters, presumably because it did not change the fundamental terms of the project already approved by the Board.

[62] INFCIRC/206/Add.1.

[63] INFCIRC/180.

[64] INFCIRC/203.

[65] INFCIRC/203/Add.1.

[66] INFCIRC/118.

*17.2.2.27. Turkish subcritical assembly*

In 1973 the Board approved this project, which relates to the transfer of title to approximately 104 kg of uranium, enriched to 1.143%, to be used in the operation of a subcritical assembly at a research centre in Turkey. At the time of the Board's approval the material was already in Turkey under Agency safeguards pursuant to a Safeguards Transfer Agreement[67] and subject to a lease Agreement with the supplier, the USA.

The Transfer Title and Project Agreements entered into force on 17 May 1974[68]. Although it was intended that the application of the safeguards provisions of the Project Agreement would be suspended to the extent that the Safeguards Transfer Agreement was applied[69], no such suspension took place.

*17.2.2.28. Yugoslav KRSKO*

This was the third Agency Project relating to the establishment of a nuclear power plant. The 632 MW(e) pressurized water reactor and enrichment services for the fuel were to be supplied by the USA under Supply and Project Agreements which entered into force on 14 June 1974[70] and which are similar to those for the Mexican Laguna Verde Project[71]. Enrichment services under the Supply Agreement were to be provided according to the provisions of a long term contract. The duration of the Supply Agreement was to match the duration of that contract for a period of at least 33 years[72].

The Project Agreement provides for the application of the Agency's Health and Safety Measures[73]. However, the Agreement does not make the transfer of title to the supplied material to Yugoslavia contingent upon the Agency's determination that the safety measures described in the safety report were acceptable to the Agency. This provision, which appears in numerous Project Agreements involving the USA, was linked directly with earlier US policy with respect to the transfer of title to the fuel. Because of a change in US policy, the recipient State became the owner of the nuclear material upon its delivery to a US Government facility, and the Agency's determination was no longer required for the transfer of ownership to the recipient State.

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[67] The material was subject to Agency safeguards pursuant to the Safeguards Transfer Agreement between the Agency, Turkey and the USA (INFCIRC/123).

[68] INFCIRC/212. The Transfer Title Agreement followed the lines of the Greek Transfer Title Agreement (INFCIRC/163, Part I); the Project Agreement was similar to the Indonesian TRIGA Mark II Agreement (INFCIRC/136, Part II).

[69] GOV/1608.

[70] INFCIRC/213.

[71] INFCIRC/203.

[72] INFCIRC/213, Part I, Article VII.

[73] INFCIRC/18.

Like the GRR-1 Agreement, the Project Agreement provided for the application of safeguards pursuant to the Yugoslav NPT Safeguards Agreement[74]. Should that Agreement be terminated, Agency safeguards would have to be applied pursuant to supplementary arrangements to be agreed upon by Yugoslavia and the Agency.

The supply of the reactor and of enrichment services was also to be subject to several undertakings by Yugoslavia as required by the US Non-Proliferation Act of 1978[75]. These undertakings were set forth in a bilateral exchange of letters[76] and in the Second Amendment to the US/Agency Agreement for Co-operation[77].

### *17.2.2.29. Venezuelan RV-1*

On 20 February 1973 the Board authorized the conclusion of Supply and Project Agreements for this project. Venezuela had requested assistance from the Agency in obtaining from the USA 25 160 g of uranium, enriched to 20%, for use as fuel in the RV-1 reactor[78]. Before the Agreements had been concluded, Venezuela requested the Board in June 1974 to authorize the conclusion of a Title Transfer Agreement[79] rather than the Supply Agreement originally contemplated. This change was designed to permit the transfer of title, as a gift (as opposed to the former lease arrangements), from the USA to Venezuela, to 15 256 g of uranium enriched to 17.7% and 1080 g of uranium enriched to 19.92%; this uranium was already in use in Venezuela as fuel for the RV-1 reactor. Thus, the Title Transfer Agreement[80], which was similar to that for the Greek GRR-1 reactor project[81], and the Project Agreement[82] did not enter into force until 7 November 1975.

In 1977 the Board was requested to authorize the conclusion of a Supply Agreement for an additional supply of 13 500 g of uranium enriched to 20%, to be fabricated into fuel elements for the reactor[83]. The Board was also notified that the USA had informed the Director General that it was prepared to supply the material pursuant to the Agreement for Co-operation between the USA and the Agency, as amended[84], and subject to the following additional conditions:

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[74] INFCIRC/204.

[75] US Public Law 95-242, 92 STAT. 120.

[76] See, for example, the letter from the Federal Secretary for Foreign Affairs of the Socialist Federal Republic of Yugoslavia to the Director General, 21 July 1978, regarding the disposition of spent fuel from KRSKO.

[77] INFCIRC/5/Mod.2/Annex.

[78] GOV/DEC/75(XVI), No. (15). See also GOV/1585 and GOV/1585/Mod.1.

[79] GOV/DEC/80(XVII), No. (40).

[80] INFCIRC/238, Part I.

[81] INFCIRC/163, Part I.

[82] INFCIRC/238, Part II.

[83] GOV/1863.

[84] INFCIRC/5, Part III, and INFCIRC/5/Mod.1.

"(a) The undertaking concerning Agency safeguards set forth in Article IV, Section 4, of the existing Project Agreement should be amended to specifically prohibit any nuclear explosive device, in accordance with a statement made by the Director General to the Board of Governors in February 1975[85];

(b) Any transfer beyond the jurisdiction of Venezuela of the supplied material and of any nuclear material contained, used, produced or processed in or by the use of the RV-1 research reactor or the supplied material, would require the prior approval of the United States Government and the Agency;

(c) Any reprocessing, conversion, fabrication, alteration or storage of any of the supplied material or of any special fissionable material contained, used, produced or processed in or by the use of the reactor or the supplied material, would be performed only under conditions and in facilities acceptable to the United States Government and the Agency;

(d) The Venezuelan Government would take all the measures necessary for the physical protection of the reactor, the supplied material and any other nuclear material which is subject to the provisions of the Project Agreement and the relevant supply agreements or contracts; such measures must be acceptable to the United States Government and the Agency, and should, as a minimum, meet the standards laid down in the Agency's Recommendations for the Physical Protection of Nuclear Material." [86]

The Board approved the conclusion of the necessary agreements in 1977[87], but such agreements had not been concluded by the end of 1980.

### *17.2.2.30. Peruvian Research Reactor*

This was the first project which provided for the transfer of nuclear material and equipment from one developing country to another and which involved the first quadripartite supply agreement between three Governments and the Agency[88]. Pursuant to bilateral agreements concluded in May 1977, Argentina agreed to lend Peru a zero power research reactor and fuel therefor for research and training purposes. The enriched uranium contained in the fuel elements was owned by Argentina but was of US origin. In the absence of a co-operation agreement between the USA and Peru, the transfer of the fuel to Peru had to be brought under the

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[85] GOV/OR.474, paras 60–62.

[86] INFCIRC/225/Rev.1. All of the additional conditions were contained in draft legislation which later became the Nuclear Non-Proliferation Act of 1978, US Public Law 95-242, 92 STAT. 120.

[87] GOV/DEC/94(XX)/Rev.1, No.(62).

[88] INFCIRC/226, Part I.

US/Agency Co-operation Agreement[89]. Thus, both Argentina and Peru sought the Agency's assistance in carrying out the transfer, and the Board approved the project on 22 February 1978[90]; the Agreements entered into force on 9 May 1978[91].

Under the Supply Agreement the transfer of the material was to be made first by Argentina to the Agency under the Argentina/US Co-operation Agreement and then by the Agency to Peru under the US/Agency Co-operation Agreement. Accordingly, the US criteria for transfer and export arrangements, as set forth in the US/Agency Co-operation Agreement[92], were applicable. Transfer of the supplied material out of the jurisdiction of Peru was subject to the consent of the Parties, and the USA pointed out before the conclusion of the Agreement that it would approve the return of the material to Argentina, subject to the provisions of the Argentina/US Co-operation Agreement and following a joint request of Argentina and Peru and consultations with the Agency. This understanding is reflected in Article I of the Supply Agreement. In addition, storage, reprocessing or other alteration of the supplied material was subject to the concurrence of the three Governments. Enrichment of the material would require an amendment to the Supply Agreement or the conclusion of a new agreement.

Under the terms of the Project Agreement[93] the implementation of Agency safeguards is satisfied by the application of safeguards pursuant to the Agreement between Peru and the Agency for the application of safeguards in connection with the Treaty of Tlatelolco and the NPT[94]. Under Article V of the Supply Agreement, Peru agreed to permit the Agency to inform the other two Governments, upon request, of the status of any material required to be safeguarded under the Supply Agreement.

The Supply Agreement also provides for the maintenance of levels of physical protection as specified in an Annex thereto. Those levels may be modified by consent among the Parties without amendment to the Supply Agreement[95].

Finally, the duration of the Supply Agreement is linked with the actual use of any nuclear material subject to the Agreement.

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[89] INFCIRC/5 and INFCIRC/5/Mod.1.

[90] GOV/DEC/97(XXI), No. (12).

[91] INFCIRC/266.

[92] INFCIRC/5/Mod.2, Annex.

[93] INFCIRC/266, Part II.

[93] INFCIRC/273.

[94] The Annex is identical with that of the Appendix to the Second Amendment to the Agreement for Co-operation between the Agency and the USA (INFCIRC/5/Mod.2).

[95] INFCIRC/287; see also Sections 17.2.2.20 and 17.2.2.23, discussing the supply of SUR-100 reactors to Mexico and Argentina from the Federal Republic of Germany, where combined Agreements were used for the first time.

Discussions were held in 1979, with a view to the conclusion of a second Supply Agreement to provide for an additional supply of enriched uranium for fuel elements for the reactor; no agreement, however, was concluded as of the end of 1980.

### *17.2.2.31. Malaysian TRIGA-II*

In 1977 the Government of Malaysia requested the Agency's assistance in obtaining from the USA a TRIGA MARK II research reactor and approximately 24 760 g of uranium, enriched to 19.90%, and approximately 7.6 g of uranium, enriched to 93%. The Board approved the project on 17 June 1980, and the resulting Agreement is a combined Supply/Project Agreement[96]. The consolidated approach was intended to streamline the procedure for the negotiation of requisite legal arrangements. The actual terms of the Agreement were similar to those in the Agreements relating to the Yugoslav and Indonesian TRIGA reactors[97].

Safeguards under the Agreement were to be applied according to the provisions of the Malaysian NPT Safeguards Agreement[98].

## 17.3. SUPPLY OF SMALL QUANTITIES OF NUCLEAR MATERIAL

As discussed in the basic book, the Director General in 1968 received authority from the Board to assist Member States in obtaining small quantities of nuclear material[99] for research and development or for use in neutron sources through the conclusion of Master Agreements for the supply of materials.

Since then, the Agency has entered into ten agreements of this type which have not varied substantially from the initial format[100]. One change, however, was made in the safeguards provisions. Beginning with the Master Agreement concluded with New Zealand in 1980, the Agreements included an undertaking by the recipient Government that the supplied material must not be used for the "manufacture of

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[96] INFCIRC/287.

[97] INFCIRC/32, Add.4 (Section 17.2.2.5), and INFCIRC/136, Add.2 (Section 17.2.2.22).

[98] INFCIRC/182. The USA and Malaysia exchanged notes relating to the implementation of 'fall back' safeguards in the event that the Agency was for any reason unable to apply safeguards. The USA had originally sought to include a similar clause in the Agreement itself, but later agreed to handle the matter bilaterally.

[99] I.e. those quantities which would qualify for exemption from safeguards pursuant to the Revised Safeguards Document (INFCIRC/66/Rev.2).

[100] INFCIRC/286, INFCIRC/284, INFCIRC/196, INFCIRC/195, INFCIRC/194, INFCIRC/151, INFCIRC/150, INFCIRC/149, INFCIRC/148, INFCIRC/147.

nuclear weapons, for the furtherance of any military purpose and for uses which could contribute to the proliferation of nuclear weapons, such as research on, development, testing or manufacture of any nuclear explosive device" [101].

Safeguards are applied under these Master Agreements in accordance with various existing Safeguards Agreements, for example those concluded in connection with the NPT.

## 17.5. PEACEFUL NUCLEAR EXPLOSIONS

At the end of the period covered by the basic book, the Agency was just beginning to consider what role it should play under Article V of the NPT, taking into account other relevant agreements, such as the Partial Test Ban Treaty and Article 16 of the Tlatelolco Treaty. As described below, during the early part of the period covered by the present book, intensive consideration was given to this question both in the statutory organs of the Agency and in a number of ad hoc organs, as well as in the United Nations General Assembly; within the Agency the results of these considerations were set out in several special legal instruments.

The Agency's activities relating to peaceful nuclear explosions (PNE), conducted primarily through the work of several panels and expert groups, practically came to an end in 1977. Also, by that time, earlier optimistic expectations for this application of nuclear energy had vanished and, apart from some hypothetical studies, no concrete project was initiated. This turnabout was initiated mainly by the nuclear-weapon States, some of which had earlier performed extensive tests of various potential applications, only to conclude that none of them was likely to be practicable. A number of non-nuclear-weapon States were not immediately persuaded by these conclusions, which appeared to run counter to extensive earlier promises and to Article V of the NPT. Nevertheless, with time, the published information about economic and environmental problems dampened earlier enthusiasm regarding such projects and diminished any chances of an Agency role in that field. A number of States had also concluded that all nuclear explosions had potential military applications and therefore resisted any further work by the Agency in that field because of arms control considerations [102].

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[101] INFCIRC/286, Part I, Article VIII (Master Agreement between New Zealand and the Agency). The former provision read: "The Government undertakes that the supplied material shall not be used in such a way as to further any military purpose." See, for example, INFCIRC/284, Article VIII (Master Agreement between Poland and the Agency).

[102] See also Section 21.5.4.1.

### 17.5.1. Development of the Agency's policy

The basic book discussed the report on peaceful nuclear explosions by the Agency to the Secretary-General of the United Nations in 1969[103]. Following the receipt of that report, the General Assembly of the United Nations invited the Agency to submit a special report on the progress of its further studies and activities to the Secretary-General by 1 October 1970[104].

#### *17.5.1.1. Working Group on PNE*

A Working Group on PNE was convened by the Agency in December 1969 to make recommendations concerning the Agency's role in this field and to prepare an agenda for a first Panel planned for March 1970[105]. The Working Group suggested that the Agency should, for example:

(a) Undertake a technical review of PNE technology;
(b) Publish information on the current state of the art of using nuclear explosives for peaceful purposes;
(c) Consider making plans for the arrangement of education and instruction on PNE technology;
(d) Consider developing a plan for international co-operation for using PNE in scientific research;
(e) Consider what written material could be made available to Member States;
(f) Review its staffing requirements to cope with its role in the use of PNE[106].

#### *17.5.1.2. First Panel on PNE*

Nine Member States were invited to send participants to prepare papers for the Panel[107]. Six other Member States were invited to present papers through Panel observers[108]. Other Member States or international organizations which had indicated their interest in attending the Panel were also invited as observers.

The Panel was held from 2 to 6 March 1970 and was attended by eight Panel members and by observers from 29 Member States, the United Nations and the

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[103] GC(XIII)/INF/110.
[104] GOV/INF 218; GA/RES 2605B (XXIV), Annex B, paras 5 and 6.
[105] GOV/1405.
[106] GOV/1405/Annex, para. 5.
[107] Australia, France, India, Japan, Mexico, Sweden, the USSR, the UK and the USA were invited to send participants to the Panel.
[108] Brazil, Canada, Federal Republic of Germany, Norway, South Africa and Switzerland.

World Health Organization. The bulk of the papers presented during this session dealt with the potential technical application of PNE technology[109].

The Panel also discussed future activities of the Agency connected with PNE and recommended that the Agency:

(a) Publish an introductory review of PNE technology;
(b) Sponsor the publication of a multi-lingual glossary of PNE terms;
(c) Consider arranging for travelling lecturers on PNE, setting up of academic programmes and encouraging scientific research in related fields;
(d) Convene a second Panel to deal with the practical aspects of contained nuclear explosions for industrial purposes[110].

In 1970, and in line with the recommendations of the Panel, the Agency circulated several technical papers and published a bibliography on PNE, containing references to the relevant literature up to June 1969[111].

### *17.5.1.3. 14th General Conference*

The special report to the Secretary-General of the United Nations, which had been requested by the General Assembly, was prepared by the Secretariat and submitted to the General Conference for information at its 14th regular session in 1970[112]. One of the conclusions reached in the 1969 report of the Board[113] was that "performance of the functions of the international body referred to in Article V of the NPT, as well as the international observation called for by that Article, are within the Agency's technical competence and clearly fall within the scope of its statutory functions"[114]. In endorsing that report, the General Conference requested the Director General and the Board to continue their studies[115].

### *17.5.1.4. Expert Group on international observation of PNE*

Following the request by the General Conference, the Director General convened a Group of Experts, which met from 23 to 27 November 1970 to consider

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[109] GOV/1405, paras 10–18.
[110] GOV/1405, Annex, para. 2. The Proceedings of the Panel were later published by the Agency: Peaceful Nuclear Explosions — Phenomenology and Status Report, 1970 (STI/PUB/273).
[111] STI/PUB/21/38.
[112] GC(XIV)/INF/121.
[113] GC(XIII)/INF/110.
[114] GC(XIII)/410, para. 13(b).
[115] GC(XIII)/RES/258.

the international observation of PNE and to study the possible role of the Agency in this connection[116].

The Group's report, which was discussed by the Board[117], endorsed the view that the Agency was the appropriate international organization to carry out the observation activity called for by Article V of the NPT. The Group noted that the purpose of the international observation was to provide assurances that the nuclear explosives used in furnishing PNE services to a non-nuclear-weapon State remained under the custody and control of the nuclear-weapon State supplying the service. The international observation should furthermore provide assurances that the explosives were used in keeping with the declared purpose[118].

The Group recommended that the Agency should be prepared to make arrangements for appropriate international observation and suggested that the guiding principles of such observation could be set forth in a comparatively brief general Agency document on the subject, which could later be modified in the light of practical experience. Each particular PNE project would then be the subject of an individual agreement between the Agency, the Supplier Government and the Recipient Government, and would incorporate by reference the general document[119]. The individual agreement would include specific arrangements for the international observation of the explosion and would set forth the rights and obligations of the Parties in carrying out this function. Finally, the Group's report discussed various technical conditions and criteria that would facilitate the effective observation of any such explosion[120].

The Group also noted that the Agency should carry out its observation functions in a manner designed to avoid interference in actual PNE operations and the disclosure of any confidential or privileged information[121].

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[116] The Expert Group was chaired by Mr. U. Ericson of Sweden, with the participation of Brazil, France, Japan, Mexico, the USSR, the United Arab Republic, the UK and the USA. Experts from Australia, Belgium, Canada, Denmark, Finland, Germany, Indonesia, Israel, the Philippines, Poland, Romania, South Africa, Turkey and Yugoslavia participated as observers. Several other topics raised during the discussion of the Group were considered to be outside the Group's term of reference, for example questions connected with the obligations under the Partial Test Ban Treaty of 1963 or the Tlatelolco Treaty of 1967, settlement of disputes, the selection and designation of international observers, and the question of underground peaceful nuclear explosions in the sub-soil of the sea bed and ocean floor (see GOV/1433, Annex 2, Appendix).

[117] GOV/1433, Annex; GOV/OR.435, para. 63. In presenting the Group's report to the Board, the Director General requested the Board to endorse further work by the Secretariat on the basis of the Group's report.

[118] See Sections 4.1 and 4.2 of the "Report of the Group of Experts on the Question of International Observation of Peaceful Nuclear Explosions" reproduced in GOV/1433, Annex 2.

[119] Ibid., Sections 5.6 and 5.7.

[120] Ibid., Sections 5.6 and 5.7.

[121] The Group also stated that the Agency should request the minimum information necessary to perform its functions and should utilize only the minimum number of necessary observers (Group of Experts Report, Section 5.9).

*17.5.1.5. Second Panel on PNE*

The second Panel on PNE was convened by the Agency from 18 to 22 January 1971 to examine the practical applications of PNE technology[122].

*17.5.1.6. Third Panel on PNE*

The third technical Panel on PNE met from 27 November to 1 December 1972[123] to continue consideration of practical applications of the technology. It recommended, among other things, that detailed procedures should be developed by the Agency to enable it to respond to requests from Member States for PNE services.

*17.5.1.7. Expert Group on PNE assistance procedures*

Following the recommendations of the third technical Panel on PNE, a Group of Experts was brought together by the Director General in April 1974 to advise the Agency on the development of procedures for responding to requests from Member States for assistance in obtaining PNE services[124]. The Expert Group concentrated its work on procedures applicable to the early stages of a potential PNE project, i.e. well before the conclusion of an observation agreement between the Agency and the States concerned. Since it was thought unlikely that the Agency would soon receive requests for assistance related to project execution or for post-project evaluation, the Group examined the various assessment stages of PNE projects. In planning a typical PNE project, these stages would include a preliminary review, a pre-feasibility study that would elaborate on the preliminary review and, finally, a feasibility study[125], which would be a detailed technical study and would form the basis for the decision as to whether to proceed with the project or not. The Group noted that Agency assistance would probably not be needed until the project had passed one or more of these preliminary stages. A review by the Agency at that point would permit it to focus on suitable projects and to assist in the formulation of the request itself[126].

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[122] The Proceedings of the Panel were published by the Agency: Peaceful Nuclear Explosions II — Their Practical Application (STI/PUB/298).

[123] The Panel topic was the phenomenology of both contained and cratered events. The Proceedings of the Panel were published by the Agency: Peaceful Nuclear Explosions III (STI/PUB/367).

[124] The Expert Group was again chaired by Mr. U. Ericson of Sweden and consisted of members from Argentina, Australia, Egypt, France, Thailand, the USSR, the UK and the USA. Observers from the Federal Republic of Germany, the UK and the USA were also present.

[125] Procedures for the Agency to Use in Responding to Requests for Services Related to Nuclear Explosions for Peaceful Purposes (GOV/1691, Annex B), Section 2.

[126] Ibid., Sections 3.3 and 3.4. The Group noted that in some States, although they were not in a position to offer PNE services, other expertise might be available. The Group therefore designated such States as 'PNE Consultant States'.

The Group prepared basic guidelines for States requesting PNE services[127]. Although it recommended that the main responsibility for safety studies should rest with the requesting State and the PNE supplier State, it also stressed that the safety studies should be made public and that the Agency might consider reviewing these upon request in view of the interest of the international community in safety matters[128]. The Group also recommended that the Agency should consider the effects of a nuclear explosion which might occur outside the territory of the requesting State. Furthermore, the Group recommended that the Agency should assess the subsequent territorial distribution of, and the estimated resultant exposures from, the expected radioactivity[129]. Finally, the Group stated that the cost for the preparation of such a review could properly be borne by the Agency's Regular Budget in view of the interest of the international community in the Agency's review[130].

The Board of Governors approved the approach recommended by the Expert Group on 13 September 1974[131]. It also requested the Director General to bring to the attention of the Board and of the 1975 NPT Review Conference the nature and extent of the Agency's involvement in PNE related activities and to continue to develop detailed procedures for use by the Agency in responding to requests for PNE related services at all stages. The Board also adopted a resolution which, in its relevant part, requested the Director General:

"(a) To keep under review the status of the technology of nuclear explosions for peaceful purposes;
(b) To study the legal and health and safety aspects of such explosions under the auspices of the Agency;
(c) To establish within the Secretariat, when the number and nature of requests received by the Agency for assistance related to the applications of such explosions indicate the need to do so, a separate organizational unit with responsibility for the provision of an international service for such explosions ..." [132].

The Board also authorized the Director General to communicate its approval of the proposed Agency approach and the Agency's planned response to any requests for PNE services, together with the above resolution, to the Secretary-General of the United Nations for transmission to the General Assembly[133].

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[127] Ibid., Section 4.

[128] Ibid., Section 5.1. The procedures are not clear as to which State might request the review, the Supplier State, the Recipient State, or other States concerned.

[129] Ibid., Section 5.2.

[130] Ibid., Section 5.3.

[131] GOV/DEC/81(XVII), No.(51); GOV/OR.471, paras 71 and 72.

[132] GOV/DEC/81(XVII), No.(52).

[133] In view of that authorization the Board waived the normal circulation restrictions on the text of the resolution, the text of its related decision, and the text of Annex B to GOV/1691. (See GOV/OR.471, footnote 14.)

*17.5.1.8. 29th United Nations General Assembly*

Following the receipt of the information from the Agency, the United Nations General Assembly adopted two resolutions which referred to the Agency's activities in connection with PNE[134] and commended the Agency for its establishment of a separate organizational unit to respond to requests for services related to explosions for peaceful purposes[135]. The Agency was also requested by the General Assembly to "continue its studies on the peaceful application of nuclear explosions, their utility and feasibility, including legal, health and safety aspects, and to report on these questions to the General Assembly at its 30th Session" [136].

*17.5.1.9. Fourth Panel on PNE*

In January 1975 the fourth Panel on PNE met in Vienna to consider project studies based on both excavation and underground engineering applications as well as their related economic and health and safety aspects[137]. The Panel prepared a special report on the feasibility, utility and health and safety aspects of PNE for transmission to the 1975 NPT Review Conference and to the General Assembly and the Conference of the Committee on Disarmament[138].

*17.5.1.10. First (1975) NPT Review Conference*

The first (1975) NPT Review Conference considered the implementation of Article V of the NPT. With regard to the Agency's role, the Conference in its Final Declaration[139], inter alia:

(a) Considered the Agency to be the appropriate international body, referred to in Article V of the NPT, through which potential benefits from peaceful applications of nuclear explosions could be made available to any non-nuclear-weapon State;

(b) Urged the Agency to expedite work on identifying and examining the important legal issues involved in, and to commence consideration of the structure and content of, the special international agreement or agreements contemplated in Article V of the NPT;

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[134] GA resolutions 3213(XXIX) and 3261D(XXIX), reproduced in Annexes A and D to GOV/INF/289.

[135] A/RES/3213(XXIX).

[136] A/RES/3261D(XXIX).

[137] This Panel was for some reason called a Technical Committee. A summary of the technical papers presented and the conclusions of the Committee may be found in the Annex to GOV/INF/290.

[138] The text of the report is reproduced in GOV/INF/290/Add.1.

[139] Reproduced in GOV/INF/296.

(c) Commended the Agency for its work in that field, looking forward to the continuance of that work;
(d) Emphasized that the Agency should play the central role in matters relating to the provision of services for the application of PNE;
(e) Considered that the Agency should broaden its work in that field;
(f) Urged the Agency to set up within it a machinery for intergovernmental discussion and advice.

### *17.5.1.11. Ad Hoc Advisory Group on PNE*

In February 1975 the Board received a report by the Director General on the current status of the Agency's activities with regard to PNE[140]. On that occasion, five members of the Board proposed the establishment of a Committee of the Board, which would be open to all interested Members of the Agency. That Committee should examine those aspects of PNE which were within the Agency's competence; advise the Board on all the factors involved in the establishment and operation of an international service for PNE, including arrangements for any decision making machinery of the Board that might be required; and advise the Board, as appropriate, on the structure and content of agreements required under Article V of the NPT[141]. The Board took no decision on this proposal[142], and the matter was placed before the Board again in June 1975 by the five Governors who had made the earlier proposal for the establishment of a Committee[143]. The new draft resolution proposed the establishment of an Advisory Group on nuclear explosions for peaceful purposes. The proposed terms of reference for the Group were essentially the same as those which had been proposed earlier for the Committee. The new resolution also authorized the Group to invite States Party to the NPT but not Members of the Agency to participate in the work of the Group if they wished to do so. This latter provision reflected the provisions of the Final Declaration of the first (1975) NPT Review Conference. In presenting the proposal to the Board, the Australian Governor noted that the draft resolution made it clear that the Group would have advisory

[140] GOV/INF/290.

[141] The draft resolution was submitted by the Governors from Australia, the Federal Republic of Germany, Japan and the UK (GOV/1719), who were later joined by the Governor from Thailand (GOV/1719/Mod.1). Amendments were proposed to the draft resolution by Canada (GOV/1730); one of the Canadian amendments would have added a paragraph to emphasize the Agency's objective of ensuring 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".

[142] GOV/OR.476, para. 4.

[143] GOV/1750.

status and not decision making power and that it would not be permanent[144]. The resolution, as modified by its sponsors during the Board discussions, was adopted in June 1975[145].

The Director General circulated the text of the resolution to all Member States, requesting information from each Member State on whether it was to participate in the Advisory Group. A number of delegations to the 19th General Conference (1975) also commented favourably on the establishment of the Group[146].

At its first meetings on 30 September and 1 October 1975 the Advisory Group exchanged views on PNE and requested that the Director General arrange for services of consultants. The Secretariat was charged with studying and reporting on various technical, economic, health, safety and legal aspects relating to PNE[147].

In a second series of meetings from 31 May to 11 June 1976 the Group prepared a draft report on safety and economic aspects of PNE, together with preliminary material on legal aspects, as well as a tentative list of principles to be considered when formulating legal instruments. The Secretariat was requested to prepare an analysis as to how the relevant material could be incorporated in international legal instruments.

The Group held a third series of meetings from 8 to 17 November 1976. The draft report on health, safety and economic aspects of PNE was amended and accepted ad referendum[148]. Following a review of the draft material on legal aspects[149] and of the list of principles to be considered in formulating legal instruments[150], the Group confined itself to a preliminary study of the Secretariat's draft summary analysis of the possible structural content of legal instruments[151].

The Group reached agreement, ad referendum, on a draft report at its meeting in April 1977[152]. That draft was then transmitted to all Member States by the Director General, with a request for comments by 1 July. In June 1977 the Director

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[144] GOV/OR.480, para. 51.

[145] See GOV/DEC/85(XVIII), No. (44). During discussions in the Board, the sponsors announced several modifications to the draft text, the most significant of which were the replacement of the words "a subsidiary body" by the words "an advisory group under the aegis", the addition of the words "ad hoc" before the words "advisory group" and the modification of the reporting requirements to request the Group to submit a final report, if possible, within eighteen months (GOV/OR.480, para. 53).

[146] See, for example, GC(XIX)/OR.177, para. 73; GC(XIX)/OR.178, para. 69; GC(XIX)/OR.180, paras 33–35.

[147] See "Ad Hoc Advisory Group on Nuclear Explosions for Peaceful Purposes", Interim Report on Progress (GOV/INF/313, para. 2).

[148] GOV/COM.23/11/Rev.2.

[149] GOV/COM.23/13, Annex 1.

[150] GOV/COM.23/13, Annex 2.

[151] GOV/COM.23/14. See also GOV/INF/319, Chairman's Report on Progress.

[152] GOV/1841, para. 2.

General submitted a progress report to the Board and conveyed to the Board the Group's request for an extension of the time limit for its report so as to enable the Group to submit its final report to the Board in September 1977[153].

The Board approved the report of the Group on 23 September 1977[154]. The Board also adopted a resolution by which it noted the work of the Group, decided to keep the subject under review and requested the Director General to distribute the report to Member States for information and comment. The Director General was also charged to forward the report to the Secretary-General of the United Nations for information of its Member States[155].

#### *17.5.1.12. Fifth Panel on PNE*

The fifth and last technical Panel on PNE was convened by the Agency in Vienna, from 24 to 27 November 1976. The Panel reviewed the technical status of proposed applications of PNE and discussed health and safety and economic aspects. Some participants provided information on the technical programmes in their countries[156].

### 17.5.2. Other Secretariat activities

#### *17.5.2.1. Establishment of a Secretariat Unit*

As a result of the resolutions adopted by the 29th General Assembly[157], the Secretariat opened a register of PNE Supplier States and PNE Consultant States in order to provide Member States with an inventory of available services[158]. With effect from 15 January 1975 the Director General established a small Unit within the

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[153] GOV/1841, para. 3.

[154] GOV/DEC/93(XX), No.(43). See also GOV/OR.503, paras 19 and 20.

[155] GOV/DEC/94(XX), Nos (50) and (51). GOV/OR.505, paras 1-69. The draft resolution was originally submitted jointly by Australia, the Federal Republic of Germany and the UK (GOV/1864); subsequently, Egypt, Italy, Japan, Malaysia and Mexico also became sponsors (GOV/1864/Add.1). Statements of the representatives of Argentina, Denmark, the German Democratic Republic, Mexico and the USSR, made in the course of the work of the Group and which these representatives had requested be drawn to the particular attention of the Board, were also transmitted to the Member States of the Agency and to the United Nations Secretary-General.

[156] The Proceedings of the Panel were published by the Agency: Peaceful Nuclear Explosions V (STI/PUB/473).

[157] See Section 17.5.1.8.

[158] GOV/INF/290, para. 6.

Department of Technical Operations to deal with the technological, economic, safety and legal aspects of PNE[159].

### 17.5.3. Principal instruments

#### *17.5.3.1. Guidelines for international observation of PNE*

In June 1972 the Board approved "Guidelines for the International Observation by the Agency of Nuclear Explosions for Peaceful Purposes Under the Provisions of the Treaty on the Non-Proliferation of Nuclear Weapons or Analogous Provisions in Other International Agreements" [160]. These Guidelines were initially prepared by the Director General on the basis of a report by the Expert Group on International Observation of PNE[161] and of comments on that report received from Member States[162]. These Guidelines comprise the following sections:

(a) General Guidelines and Objectives;
(b) Purpose and Scope of the Observation Agreement;
(c) Character of Observation;
(d) Reporting;
(e) Emergency Projects;
(f) Designation of Agency Observers;
(g) Visits of Agency Observers;
(h) Miscellaneous Provisions.

Under the Guidelines the basic purpose of international observation was broadened with regard to that discussed on previous occasions so as to include also verification of the provisions of Articles I and II of the NPT or of analogous provisions in other international agreements. Observation would be required when PNE services were carried out, either through bilateral agreements, in accordance with

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[159] The Unit consisted only of two staff members and was dissolved in the early 1980s. In SEC/NOT/391 (issued on 16 January 1975) the terms of reference for the Unit were listed as follows:
(1) "To respond to requests for information on PNE";
(2) "To respond to and follow up on requests related to PNE services";
(3) "To handle all administrative arrangements concerning panels related to PNE matters, to provide scientific secretaries, and to follow up on panel recommendations";
(4) "To make preliminary evaluations of possible PNE projects upon request";
(5) "To study the possibility of determining criteria of health and safety measures";
(6) "To study the economies and utility of PNE vis-à-vis alternative technologies";
(7) "To keep and update a bibliography on PNE literature";
(8) "To be responsible for arranging scientific, technological or other meetings on PNE matters";
(9) "To develop procedures for the PNE services".

[160] INFCIRC/169. The Guidelines were placed before the Board in GOV/1540 and approved as amended (see GOV/OR.550, para. 20, GOV/DEC/72(XV), No. (43)).

[161] GOV/1433, Annex 2.

[162] GOV/1540, Annex A.

relevant international agreements, or directly by the Agency. The Guidelines provide for the conclusion of a specific observation agreement between the Agency and the State or States concerned to set forth the basic obligations of the respective Parties. Finally, the Guidelines also state that the relevant provisions of the document would only become legally binding upon entry into force of the observation agreement and to the extent that the provisions of the Guidelines were incorporated therein.

In approving the Guidelines, the Board also authorized the Director General to bring them to the attention of the General Assembly of the United Nations in response to the Assembly's invitation[163].

*17.5.3.2. Report of the Ad Hoc Advisory Group on PNE*

The Group's Report, approved by the Board in 1977[164], covered technical, economic and legal aspects related to the provision of PNE services. The Report deals with health and safety matters, economic aspects and a technical analysis of specific applications of nuclear explosions for peaceful purposes. One chapter of the Report discusses some of the legal issues related to PNE and reviews the relevant international treaties, including the Treaty on the Non-Proliferation of Nuclear Weapons (NPT); the Treaty Banning Nuclear Weapons in the Atmosphere, in Outer Space and Under Water (PTBT) of 1963; the Treaty for the Prohibition of Nuclear Weapons in Latin America (Treaty of Tlatelolco) of 1967; and the Antarctic Treaty of 1959[165]. The Group's Report confirms[166] that, although the Statute does not explicitly refer to the subject, many Statute Articles provide a basis for the Agency to carry out a range of functions relating to nuclear explosions for peaceful purposes. After having established the legal basis for functions of the Agency and having discussed the international legal regime governing the conduct of PNE, the Group formulated some basic principles which should be incorporated in international arrangements relating to PNE[167]. The Group stated that international arrangements relating to PNE projects should take account of the following principles:

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[163] RES/2829 (XXVI), para. 3.

[164] GOV/DEC/94(XX), Nos (50) and (51).

[165] Group of Experts Report, Section 3. The Group also mentioned briefly other treaties, such as the 1958 Geneva Convention on the High Seas; the 1967 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies; the 1971 Treaty on the Prohibition of the Placement of Nuclear Weapons and Other Weapons of Mass Destruction on the Seabed of the Ocean Floor and in the Subsoil thereof; and the 1972 London Convention on the Prevention of Marine Pollution by Dumping of Waste and Other Matter. The Group noted, however, that these treaties did not create any additional significant rights or obligations in those respects for Parties to the PTBT.

[166] Group of Experts Report, Section 3, para. 26. See, for example, Statute, Articles II, III, VIII(c) and IX–XII.

[167] Group of Experts Report, Section 8, paras 1–21.

(a) The purposes and provisions of relevant international treaties;
(b) International efforts to achieve complete nuclear disarmament;
(c) The opportunity for all States to participate in any negotiations of international arrangements;
(d) The implications of the fact that the NPT does not distinguish between nuclear explosive devices designed for peaceful purposes and those designed for nuclear weapons;
(e) The principle of non-discrimination, apart from the preferential treatment under the NPT of non-nuclear-weapon States Party to that Treaty;
(f) An essential role for the Agency, including a definition of the Agency's role consistent with its Statute;
(g) Observation by the Agency of all nuclear explosions for peaceful purposes in accordance with the Agency's Guidelines for International Observation;
(h) Provisions related to the assurances of the relevant Supplier State regarding safety, security and recoverability of nuclear explosive devices;
(i) The sovereign right of States to determine their own policies;
(j) For States contemplating a PNE project the furnishing of economic, legal, environmental, health, safety and technical assessments through the Agency to the extent that they concerned matters within the Agency's competence;
(k) Provisions to determine the responsibility for the payment of the assistance carried out by or on behalf of the Agency in relation to the PNE project;
(l) Appropriate provisions for third party liability[168].

Finally, after having established these basic principles, the Group suggested several alternative types of legal instruments which might be developed[169]:

One possibility was the development of an international multilateral agreement which would serve as an umbrella agreement and which would establish basic principles and procedures for PNE projects. Detailed provisions would be negotiated by the Parties to individual project agreements. The Group suggested that it would also be possible to add to the umbrella agreement a model project agreement. The Group stated that such a multilateral agreement would be an efficient way of uniformly handling issues such as health and safety, liability, consultations with third States, and the privileges and immunities of participants or observers in the project

[168] The Report discussed several possibilities for the allocation of liability among the Parties to or participants in a project. These include absolute liability for the Supplier State in circumstances where damage or injury is caused by the explosion or by radioactivity in excess of the specified limits, with all other responsibility and liability to lie with the Recipient State; allocation of responsibility among the States participating in the project; or channelling of liability to either the Supplier State or the Recipient State similar to the formula adopted in the Vienna and Paris Conventions on Civil Liability for Nuclear Damage (Group of Experts Report, Section 8, para. 21).

[169] Group of Experts Report, Section 9.

country, while the model project agreement would assist in standardizing the format and provisions for the individual project agreements[170]. The Group suggested that the Agency might convene a diplomatic conference with a view to negotiating such a multilateral agreement.

The second approach suggested by the Group was the formulation of general principles, similar to those discussed above, by an appropriate organ of the Agency in consultation with interested Member States. The general principles would not be embodied in a binding international agreement. As in the case of the NPT Safeguards Document[171], the general principles would be approved by the Board of Governors and would later form the basis for the negotiation of individual agreements, which would also be subject to Board approval. The Group suggested that a model project agreement could also be added to the set of general principles[172].

As a third approach, similar to that discussed above, the Group suggested that Supplier States should conclude bilateral Master Agreements with the Agency, the provisions of which would cover all the basic principles discussed above[173]. Individual Consultant States, i.e. those States which would provide PNE-related services, might also conclude Master Agreements with the Agency. Separate Project Agreements would then be concluded with the requesting States.

The most informal approach discussed by the Group would be for States to negotiate a basic set of principles which would be embodied in a Memorandum of Understanding. The Memorandum would not create binding rights and obligations under international law, but would contemplate the conclusion of individual Project Agreements between Supplier, Recipient and Consultant States. Codes of practice, to be developed by the Agency, would complement the Memorandum in areas such as technical and economical evaluation, health and safety aspects, and guidelines for the content of Project Agreements[174].

## 17.7. REPORTS ON AGENCY PROJECTS

Under Article VI.J of the Statute, the Board is required to include information on "any projects approved by the Agency" in its Annual Report to the General Conference. This was done initially for reactor projects in the year in which they were approved or occasionally in the year in which they were implemented. Since the early 1970s, projects were no longer described in the Report, but were only listed

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[170] Group of Experts Report, Section 9, para. 4.
[171] INFCIRC/153.
[172] Group of Experts Report, Section 9, paras 6 and 7.
[173] Ibid., Section 9, paras 8–12.
[174] Ibid., Section 9, para. 14.

in the tables of Project Agreements in connection with information on the application of safeguards. Deliveries of nuclear material continued to be reported separately in the document INFCIRC/40 and in the Addenda thereto.

## 17.8. POTENTIAL AGENCY FUNCTIONS

As discussed in the basic book, the importance and extent of Agency projects foreseen in the Statute did not develop. Only one or two new Project Agreements were concluded each year, and most States supplying material, equipment and services demonstrated a preference for concluding bilateral agreements for the supply of such items[175]. During the INFCE study, there was considerable discussion of a potential role for the Agency to ensure emergency supplies to States if normal sources of supply were cut off, but this discussion did not result in specific Agency programmes in that field.

### (a) Advisory services

The Agency received an increasing number of requests, particularly from countries with smaller nuclear programmes, for advisory services. In addition to the services mentioned in the basic book, advisory services[176] provided by the Agency included technical safety reviews for the proposed transport of irradiated fuel; assistance in connection with radiation accidents, safety evaluations and site assessment of proposed reactor installations; expert assistance for national water resource problems in the field of isotope hydrology; information on the industrial uses of isotopes; information on the application of atomic energy in the field of agriculture; the provision of dosimetry information in the field of life sciences; economic surveys to assess the need for power reactors; and legal assistance in the preparation of national legislation and regulations.

### (b) Licensing

The Agency did not perform any licensing activity in the same sense as licensing activities performed by national regulatory agencies (and probably never could do so under its Statute). However, many of the Agency's standards, recommendations and guidelines were used as criteria by national licensing authorities[177].

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[175] It should be noted, however, that all Supplier States were utilizing the Agency's services to a considerable extent by requiring the application of the Agency's Health and Safety Standards (INFCIRC/18/Rev.1), Agency safeguards, and the Agency's recommendations for the Physical Protection of Nuclear Material (INFCIRC/225/Rev.1) to bilateral transactions.

[176] IAEA Services and Assistance, IAEA, Vienna (1974) Annex VI.

[177] For example the Agency's Safety Standards.

(c) Allocation

While there was some discussion of a possible role for the Agency to act as a bank or broker of nuclear material to be made available to States in case of interruption of regular supplies, no concrete functions were developed for the Agency in this regard.

(d) Financial channel

Although a number of possibilities were discussed in the basic book, the Agency has not participated actively in the actual process of financing nuclear projects. Funding remained a major source of concern, especially for developing countries.

# Chapter 18

# TECHNICAL ASSISTANCE

## PRINCIPAL INSTRUMENTS

IAEA Statute Articles III.A.1–4, III.B.3, XI, XIV.B.2, XIV.E–F;

Relationship Agreement with the United Nations (INFCIRC/11, Part I), Article XV;

Revised Guiding Principles and General Operating Rules to Govern the Provision of Technical Assistance by the Agency (INFCIRC/267);

United Nations resolutions and decisions on technical assistance (principally, ECOSOC/RES/222, ECOSOC/RES/704(XXV), UNGA/RES/2029(XX), decision 80/44 by the UNDP Governing Council on Agency Support Costs);

Revised Supplementary Agreement concerning the Provision of Technical Assistance by the International Atomic Energy Agency (for example with Greece, 26 July 1979, Agency registration No. 0–1356);

Agreement for the Provision of Technical Assistance (for example with Kenya, TA/AGR/KEN/8, 12 September and 8 November 1978 (Agency registration No. 1324);

Agreement between States and the United Nations Development Programme (for example with Costa Rica, 7 August 1973, United Nations Treaty Series, Vol.885, p.13);

Administrative Manual, Parts AM.I/7, Appendix I, AM.II/3, Annex II, AM.IX/2–4;

Service Rules Governing the Conditions of Service of Technical Co-operation Experts, IAEA, January 1978 (as revised).

## 18.1. LEGAL INSTRUMENTS

### *18.1.1.2. Procedures*

Technical assistance is not specifically mentioned in the Statute. However, Article XI, which deals with Agency projects, contains some elements applicable to the Agency's technical assistance activities, because technical assistance projects and Agency projects have certain common characteristics, as discussed below.

(a) Requests

Both Agency projects and technical assistance activities are formally initiated by a request from a Member State to the Agency, except in the case of UNDP[1] projects, where the request is addressed to the Administrator of the UNDP programme.

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[1] Following the 1965 consolidation of the Expanded Programme of Technical Assistance (EPTA) and the Special Fund to the United Nations Development Programme (UNDP) (UNGA/RES/2029(XX)) (see basic book, Section 18.1.1.2, note 4).

(b) States eligible

Assistance under the Agency's Regular Programme continued to be granted only to Member States, although, as in the past, the Agency administered UNDP projects for non-Member States also.

(c) Source of financing

The basic financing structure remained the same as reported in the basic book, although the financing of technical assistance became the focus of considerable discussion in the Board and the General Conference (Sections 25.5 and 25.7.4.2). The costs of programming missions[2] continued to be charged to the Agency's Regular Budget, as were administrative costs relating to the formulation of proposals for technical assistance, while essentially all other technical assistance expenditures were charged to the Operational Budget.

(d) Examination by the Board

The Board continued to examine and approve all expert and equipment projects (except UNDP projects), while the Director General continued to have authority[3] to consider and approve fellowships, grants and training course proposals.

(e) Standards of examination

No specific situation occurred which would yield further information on the standards applied by the Board in examining technical assistance requests. In accordance with the Revised Guiding Principles and General Operating Rules (Section 18.1.2.1), all requests for the provision of equipment and experts' services were reviewed by the Secretariat in order to determine whether safeguards were required. Moreover, if requests for scientific visits and fellowships (which normally do not require the application of safeguards) related to sensitive technological areas and involved a substantial contribution to a project, the matter of safeguards would have to be brought before the Board[4]. No such situation arose during the period covered by the present book.

(f) Agreements

In principle, every technical assistance project required an agreement. (See Section 18.1.5.)

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[2] Formerly known as Preliminary Assistance Missions, see footnote 80 (Section 18.3.7).

[3] See basic book, Section 18.1.1.2, para. (d).

[4] INFCIRC/267, Annex, para. 8.

(g) Safeguards, and health and safety measures

Article XI.F.4 of the Statute requires that Project Agreements provide for the application of safeguards, including health and safety measures, in relation to each Agency project. The Agency's technical assistance agreements also contained undertakings against military use of the assistance and provisions for the application of the Agency's health and safety requirements. Following a decision by the Board in September 1977 and the adoption of the Revised Guiding Principles in 1979, all technical assistance agreements since then contain explicit undertakings against uses that could contribute to the proliferation of nuclear weapons and undertakings for the application of safeguards to technical assistance provided in sensitive technological areas.

## 18.1.2. Technical assistance rules

### *18.1.2.1. Revision of the Guiding Principles*

The Guiding Principles and General Operating Rules to Govern the Provision of Technical Assistance by the Agency were adopted in 1960[5]. Despite consideration of their revision on several occasions, they remained unchanged until February 1979, when the Board adopted the Revised Guiding Principles and General Operating Rules to Govern the Provision of Technical Assistance by the Agency[6]. Because of the importance of some of the issues that arose in the course of their development, the history of the revision will be recounted in some detail.

The revision of the Guiding Principles was discussed in the Board's Administrative and Budgetary Committee in May 1973 when the Director General was requested to initiate a study with a view to revising the Guiding Principles for technical assistance[7]. The Director General accordingly brought the matter to the Board's attention at the June 1973 meeting and indicated that a draft revision was under preparation[8]. A Secretariat draft revision was submitted to the Board in February 1974[9], but the Board, noting that the draft took into account new UNDP procedures which would not be codified before January 1976, decided to postpone discussion of the draft until the statute of the UNDP had been approved[10]. In November 1974 the Secretariat reported to the Technical Assistance Committee (TAC) that a draft was unlikely to go to the Board before January 1976, since any revision should be

[5] GC(IV)/RES/65, Annex.
[6] INFCIRC/267.
[7] GOV/COM.9/OR.114, para.22.
[8] GOV/OR/455, para.48.
[9] GOV/1644.
[10] GOV/OR/462, para.68.

in line with the statute of the UNDP, which was still under discussion[11]. A similar report was made by the Secretariat in 1975, indicating that an additional year's delay until 1977 was expected, which delay was due, once again, to changes taking place within the UNDP[12]. At the same TAC meeting it was noted that, since the Guiding Principles had been adopted in 1960, the nature and scope of the Agency's technical assistance programme had changed to an extent that required new flexibility. It also appeared that there would be a possible need for the Agency to apply safeguards in relation to certain UNDP projects executed by the Agency[13]. The Secretariat should also take these factors into consideration in its revision of the Guiding Principles.

In February 1976 the Director General made a report to the Board concerning the technical assistance programme. He noted the possibility that an increasing number of technical assistance projects might involve the transfer of sensitive technological information and might thus require the application of Agency safeguards in connection with the use of the information. As an example he referred to a project for technical assistance for a reprocessing plant which had been before the TAC. He also drew attention to the Agency's statutory obligations whenever it provided assistance in the form of services and information, including the requirement to apply Agency safeguards in connection with certain types of assistance[14]. These statutory directives had been further specified in the Agency's Safeguards Documents[15], and the Board had already taken decisions regarding safeguards in relation to transfers of technology.

The Director General discussed a similar point at the Board on 22 February 1977[16]. He noted that the Secretariat had tentatively applied these safeguards criteria to the 1977 technical assistance programme in view of the increasing number of safeguards agreements approved by the Board relating to the transfer of technology[17]. The Secretariat had in fact transmitted to requesting States draft agreements to cover activities that would have to be safeguarded as a result of the transfer of technological information. The Director General noted that, although all of these agreements would be placed before the Board for approval, it was his understanding that some Member States wished to have a general discussion prior to the

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[11] GOV/COM.8/OR.35, para. 64.

[12] GOV/COM.8/OR.36, para. 7.

[13] GOV/COM.8/OR.36, para. 9.

[14] GOV/OR.484, paras 6 and 7.

[15] INFCIRC/66/Rev.2, INFCIRC/153. The Director General also noted that the Secretariat had considered the matter and had applied these guidelines in preparing the 1976 Technical Assistance Programme.

[16] GOV/OR/493, paras 10–17.

[17] Ibid., para. 12.

submission of those individual agreements to the Board[18]. On that basis, he had suggested guidelines to the Board relating to the application of safeguards in respect of technical assistance[19].

Following an extensive discussion in the Board, its Chairman conducted a series of consultations on those projects in the current technical assistance programme which were thought to touch upon certain sensitive technological areas and submitted a report to the June 1977 Board[20]. He reported to the Board that, as a result of the informal consultations he had conducted, the Parties concerned had largely reached agreement upon a draft text prepared by the Secretariat. He noted that this text would be circulated to Member States in time for consideration at the September 1977 Board session[21].

At its September 1977 session the Board approved the document "The Application of Safeguards in Relation to the Granting of Technical Assistance"[22], listing certain 'sensitive technological areas' in relation to which safeguards would normally be applied[23], namely:

(a) Uranium enrichment;
(b) Reprocessing of spent fuel;
(c) Production of heavy water;
(d) Handling of plutonium, including manufacture of plutonium and of mixed uranium/plutonium fuel.

The Board also decided that this list would be kept under review by the Director General and might be modified by the Board from time to time in the light of experience[24]. In view of the difficulty of formulating exact threshold criteria for the application of safeguards, the Secretariat should analyse requests on a case by case basis and should be allowed a certain degree of flexibility when applying the policy within the broad guidelines established by the Board. A precondition for the application of safeguards in the areas listed above was that the assistance made a 'substantial contribution' to the project[25]. It was also agreed that the use of information transferred by the Agency which was already generally available to the public

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[18] In making this statement the Director General was proceeding on the basis of paragraph 8 of the Report of the Technical Assistance Committee (GOV/1812) which stated that, in the opinion of the members of the Committee, the Board was the appropriate body to determine the policy regarding the application of safeguards in connection with technical assistance.

[19] GOV/INF/316.

[20] GOV/OR.494, para. 59.

[21] GOV/OR.503, para. 58.

[22] GOV/1853, now set out in INFCIRC/267, Annex. Although the basic text had been drafted by the Secretariat, the document was issued, following the Chairman's consultations, as a proposal by Argentina, Brazil, Egypt, Mexico and Pakistan.

[23] GOV/1853, para. 4.

[24] GOV/OR.507, para. 15.

[25] Ibid., para. 5.

would not require the application of safeguards, nor would safeguards be applied in cases of assistance provided through Agency conferences, symposia and training courses, participation in INIS or in other generalized arrangements or projects for transfer of information[26]. Under the new procedures[27], all requests for technical assistance involving the provision of equipment and experts' services would be reviewed by the Secretariat in order to determine whether the application of safeguards was required. When submitting the draft regular technical assistance programme, the Director General would indicate to the TAC and the Board which of the proposed projects were considered to make a substantial contribution in one or more of the sensitive areas. In cases where safeguards were required, appropriate agreements would be concluded between the relevant Member States or State and the Agency unless the activity was already covered by a Safeguards Agreement. Finally, in cases of scientific visits and fellowships, no safeguards would normally be required in connection with the use of information obtained on these occasions. However, provision was made to bring cases to the attention of the Board where — in the opinion of the Secretariat — assistance provided through such visits and fellowships constituted a 'substantial contribution' to a project in a sensitive technological area.

Thus, it was not until 1977 that a revised draft of the Guiding Principles, prepared by the Secretariat, was placed before the TAC[28]. After considerable discussion it was agreed that the Chairman should continue consultations with Committee members[29]. These first consultations were carried out on the basis of a paper issued by the Chairman in January 1978 and focused on the following areas:

(a) The formulation of language prohibiting use of the assistance for any nuclear explosive device;
(b) The possibility of preference of NPT Parties;
(c) The scope of recommendations on the physical protection of nuclear material;
(d) The establishment of a reserve fund (Section 18.1.2.2(iv));
(e) The possible cancellation of a project;
(f) The need for agreements to be compatible with the Statute;
(g) The need for solutions regarding the use of non-convertible currencies.

The Secretariat circulated a letter with a revised text to members of the Board in August 1978. At the September 1978 Board it was agreed that consultations on the remaining issues should continue[30], and a revised text was once again submitted to the Board in February 1979[31]. The principal point of controversy concerned the

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[26] GOV/OR.507, para. 6.
[27] Ibid., para. 7.
[28] GOV/COM.8/60.
[29] GOV/COM.8/OR.40, para. 86.
[30] GOV/OR.524, paras 45–60.
[31] GOV/1931 and 1931/Corr.1.

definition of 'peaceful uses' in Article A.1(i) of the draft Guiding Principles. The argument was advanced that the definition of 'peaceful uses' (see Section 18.1.2.2) was incompatible[32] with the Statute or in conflict with it[33].

The definition, which is used specifically "for the purposes of the technical assistance programme", was the extension of a principle made explicit in all Safeguards Agreements since 1975, namely that research on, or development or manufacture of, any nuclear explosive device constituted a military purpose[34]. If technical assistance is regarded as falling under Statute Article XI, it is difficult to see how the undertaking required by that Article could possibly have meant something different for safeguards purposes and for the technical assistance programme. On the other hand, there is obviously a distinction between accepting a clause in an agreement as a Party and approving a general definition applicable to a large part of the Agency's programme. The text was adopted 25:3:4, by a roll-call vote[35].

### *18.1.2.2. Scope and provisions of the Revised Guiding Principles*

The Revised Guiding Principles and General Operating Rules consist of two parts and an Annex. Part I contains the Guiding Principles and Part II contains the General Operating Rules; the Annex contains the policy established by the Board for the "Application of Safeguards in Relation to the Granting of Technical Assistance".

The Revised Guiding Principles relate to all types of technical assistance to be provided by the Agency, regardless of the source of financing, including UNDP projects for which the Agency serves as executing agency. Section A of the Revised Guiding Principles establishes general principles which include, inter alia, the primary allocation of the Agency's technical assistance resources to developing countries, the application of the Agency's safety standards and measures[36], and the provision of technical assistance only for peaceful uses of atomic energy. Peaceful uses "shall exclude nuclear weapons manufacture, and furtherance of any military purpose and uses which could contribute to the proliferation of nuclear weapons, such as research on, development of, testing of or manufacture of a nuclear explosive device"; therefore, safeguards shall be applied in accordance with the Annex[37]. Finally, the Agency's recommendations regarding physical protection are to be

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[32] Argentina, GOV/OR/529, para. 19.

[33] Brazil, GOV/OR/529, para. 2.

[34] See, for example, the Project Agreement with Peru of 9 May 1978 (INFCIRC/266, Part II, Section 3).

[35] GOV/OR.529, para. 15. Peru could not vote because it was in arrears for its assessed contributions (Statute Article XIX.A, Section 25.3.5).

[36] INFCIRC/18/Rev.1.

[37] INFCIRC/267, I.A.1(i).

applied to nuclear facilities, equipment and materials relating directly to the technical assistance programme[38]. The Revised Guiding Principles also cover the following points:

(a) Description of States eligible

As regards assistance to be provided from the Agency's own resources, each Member State of the Agency is eligible to receive such assistance, subject to the principle that primary allocation shall be made to developing countries. Eligibility for assistance from the UNDP is governed by the UNDP conditions and is consequently limited to developing countries which are Member States of the United Nations or of one of its specialized agencies or of the Agency. Assistance from funds provided by Member States, such as funds in trust or funds for special projects or programmes, is to be governed by an agreement between the Agency and the State providing the funds, which agreement must be compatible with the Statute.

(b) Sources of technical assistance

The Agency may accept voluntary contributions of money and gifts of services, equipment and facilities in accordance with the established rules of the Agency[39]; it may also accept special fissionable material and source material[40]. The Agency may also act as executing agency for the UNDP or as intermediary on behalf of any other Member State of the Agency or any other State that is a Member of the United Nations or of any specialized agency, in accordance with the Agreement concluded between the Agency and the United Nations Special Fund[41] or an agreement concluded with the Government concerned.

(c) Agreements for the provision of technical assistance

An appropriate agreement must be concluded before provision of technical assistance, which agreement must provide for the application of the basic agreement used in relation to technical assistance under the UNDP; agreements must also incorporate the specific conditions required under the Agency's Statute for the provision of assistance by the Agency to its Members.

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[38] INFCIRC/267, I.A.1(j), referring to INFCIRC/225/Rev.1.

[39] Rules Regarding the Acceptance of Voluntary Contributions of Money and Rules to Govern the Acceptance of Gifts of Services, Equipment and Facilities (INFCIRC/13, Parts I and II).

[40] Article IX of the Agency's Statute.

[41] INFCIRC/33.

(d) Forms of technical assistance

Technical assistance includes the services of experts, consultants and visiting professors; fellowships, scientific visits, training courses, study tours; equipment and supplies; and other assistance which the Board finds to be consistent with the objectives of the Agency. Increasing emphasis is placed upon the provision of technical assistance in relation to integrated, multi-year programmes which have a relationship to the development plans or priorities of the recipient Member State or States.

The General Operating Rules cover the following points:

(i) Elaboration of the programme of technical assistance to be provided from the Agency's own resources

At the request of Member States, the Agency may assist in the development of programmes or the formulation of individual requests and may send staff members, experts or programming missions to the requesting State. Requests for technical assistance must be submitted in accordance with the specified timetable.

(ii) Annual approval and review of the technical assistance programme

The Director General, in submitting proposals to the Board, must indicate which projects are expected to be executed through the use of convertible currencies and which projects will be executed through the use of non-convertible currencies. In line with the increased support for multi-year projects, the Board may approve projects involving the services of experts or equipment for a period of more than one year. The Director General continues to be responsible for the approval of fellowship and training activities, which are to be reported in the Annual Report on Technical Assistance and in the Annual Report to the General Conference. The General Operating Rules also establish a timetable for the submission of requests for technical assistance to be provided by the Agency from its own resources.

(iii) Programme changes

The Director General may approve modifications to an approved project, provided its nature and major objective are not changed. For any project requiring the application of safeguards, however, no modification may be carried out without Board approval.

(iv) Establishment of a reserve fund

Up to 2.5% (subject to review by the Board) of the funds available for technical assistance under the Agency's programme are to be set aside each year as a reserve fund. The Director General may finance from this fund requests for assistance

received after the Board has approved the Agency's technical assistance programme or supplementary assistance for previously approved projects (subject to a US $25 000 limitation for each such project).

(v) Financial procedures to be applied to the programme of technical assistance provided from the Agency's own resources

The financial procedures for the technical assistance programme must conform to the Financial Regulations of the Agency and to any other relevant rules approved by the Board. In addition, the Operating Rules provide that the Director General may, in consultation with the Government concerned, cancel or replace projects when the earmarked funds have not been obligated within two years following their allocation by the Board.

(vi) Technical assistance under the UNDP

Such assistance is to be governed by the UNDP's statutory requirements, the Revised Guiding Principles and, to the relevant extent, the General Operating Rules.

(vii) Co-ordination of technical assistance

All technical assistance, including that for which the Agency acts as an executing agency or intermediary, must be co-ordinated with the technical assistance provided by other organizations of the United Nations system.

18.1.2.2.1. Application of safeguards

The Annex notes that a relatively small number of requests for technical assistance may be related to 'sensitive technological areas' in relation to which safeguards are normally applied. These areas[42] are as follows:

- Uranium enrichment;
- Reprocessing of spent fuel;
- Production of heavy water;
- Handling of plutonium, including the manufacture of plutonium and of mixed uranium/plutonium fuel.

[42] The list of sensitive technological areas is to be kept under review by the Director General and may be modified by the Board from time to time in the light of experience (INFCIRC/267, Annex, para. 4).

## 18.1.3. Participation in the UNDP

### *18.1.3.5. Influence on the Agency's Regular Programme*

The Revised Guiding Principles do not contain references pointing to the desirability of bringing the Agency's practices into conformity with those of the UNDP; exceptions are the following cases:

(a) UNDP statutory requirements apply, in addition to the Revised Guiding Principles and General Operating Rules, if the Agency acts as executing agency for the UNDP;
(b) The Agency's technical assistance is to be co-ordinated with the assistance provided by other organizations of the United Nations system.

On the administrative level, the Agency used UNDP Resident Representatives as before. For the purposes of NPT Safeguards Agreements, UNDP Resident Representatives acted on a number of occasions as intermediaries to obtain signatures from the Governmental authorities or for the transmission of agreements and letters[43].

## 18.1.5. Technical assistance agreements

### *18.1.5.1. Obligation to conclude an agreement*

The Revised Guiding Principle No. 7 states:

> "Before technical assistance is provided, the Agency and the Government concerned shall conclude an agreement which shall provide for application of the basic agreement used to govern the provision of technical assistance under UNDP. The agreement between the Agency and the Government shall further set forth the specific conditions required under the Agency's Statute for the provision of technical assistance by the Agency to its Members."

According to this principle, an agreement between the Agency and the Government concerned must always be concluded. However, arrangements for fellowships and special missions were generally made through an exchange of letters. Moreover, the Agency has been flexible in the interpretation and application of this principle.

### *18.1.5.2. Form of technical assistance agreements*

Since the Board's approval of the Revised Guiding Principles took immediate effect for new projects and for those which were already executed, the Secretariat

[43] Particularly with States not Members of the Agency or having no Permanent Mission in Vienna.

was faced with problems of implementing them without delay; in particular it was necessary

(a) To draw up revised supplementary legal instruments to incorporate the new Agency requirements;
(b) To apply the Revised Guiding Principles to ongoing projects and to new projects, pending the conclusion of new legal instruments, and to ensure their speedy acceptance;
(c) To establish a simplified procedure for that portion of the technical assistance programme which was not susceptible to being used for any military purpose and which would not require the application of physical protection measures.

18.1.5.2.1. Revised legal instruments

The Secretariat prepared revised versions of the following legal instruments:

(a) Two versions of a Revised Supplementary Agreement, depending on whether the State concerned had concluded with the UNDP the Revised Standard Agreement (RSA) or the Standard Basic Agreement (SBA).
(b) Two versions of the individual agreement which is concluded for each technical assistance project with those States that have not concluded a Revised Supplementary Agreement with the Agency. These versions differ, as does the Supplementary Agreement, according to whether the State has accepted the RSA or the SBA. The individual agreement had previously only been used for experts' services, but the new versions were to be concluded also for assistance involving equipment and supplies.

In March 1979, all States eligible to receive technical assistance from or through the Agency (including non-Members) were informed of the Board's decision and that henceforth all technical assistance by the Agency would be implemented in accordance with the Revised Guiding Principles and General Operating Rules[44]. Furthermore, States were informed that the existing agreements would have to be modified and that for projects not financed under the Agency's own programme (i.e. financed by the UNDP or by another source) an annex would be added to each Project Document to set out the new requirements[45].

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[44] Circular letter TA-501 GEN of 27 March 1979.

[45] The so-called Project Document defines the particulars of assistance and the responsibilities of the Government and of the Executing Agency for technical assistance financed under the UNDP.

18.1.5.2.2. Interim procedures and implementation

In order to secure immediate application of the Revised Guiding Principles, the text of the proposed Revised Supplementary Agreement was circulated for acceptance in April 1979[46]. States were also informed that, pending the conclusion of the new Supplementary Agreement, individual agreements would be required for each project.

However, as of 30 September 1980, there were over 80 ongoing projects in States that had not yet accepted the Revised Supplementary Agreement, which projects had been approved before the Revised Guiding Principles took effect[47]. Pending the conclusion of the Revised Supplementary Agreement, these projects were continued, but the States were notified that implementation of the projects in question would be subject to understandings on safety standards and measures, peaceful use undertakings and physical protection.

A slightly different approach was used for the implementation of the 1980[48] and 1981[49] programmes. The Secretariat classified projects into two categories:

— Projects that were not susceptible to military use, for example applications of radioisotopes and radiation, and radiological protection (Category I);
— Projects involving the use or transfer of nuclear reactor or fuel cycle technology (Category II).

As regards Category I projects, States that had not yet accepted the Revised Supplementary Agreement were urged to conclude that Agreement without further delay, but they were also informed that assistance for 1980 would be implemented subject to understandings on safety standards, peaceful use undertakings and physical protection[50]. A similar approach was adopted for the 1981 programme so as to avoid delays. For Category II projects, this simplified procedure was not regarded sufficient, and conclusion of individual agreements or of the Revised Supplementary Agreement was required before the project was implemented. Further simplified procedures were introduced for fellowships, training courses and study tours, in which case the nomination form or the Agency's notification of acceptance of participants referred to the Revised Guiding Principles.

It appears that the above simplifications were well within the terms and spirit of the Revised Guiding Principles. It was not contested that notification to a Government of certain understandings, which are then tacitly accepted by that Government

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[46] Circular letter TA-501 GEN, L-320 GEN of 24 April 1979.
[47] GOV/COM.8/73, Annex.
[48] GOV/COM.8/73, Annex lists 14 category II projects in countries which had not accepted the Revised Supplementary Agreement.
[49] GOV/COM.8/72/Add.1 lists nine category II projects in such countries.
[50] Circular letter TA-501 GEN, L-320 GEN of 29 January 1980.

as the basis for implementation of a project, constitutes an agreement between the Agency and the State of the type referred to in paragraph 7 of the Revised Guiding Principles.

The agreements noted above[51] and the new Annex to the Project Documents contain four common requirements[52]:

(a) Application of the relevant safety standards, in accordance with the Agency's Health and Safety Document, to operations involving technical assistance provided by or through the Agency;
(b) Acceptance of standard language for the peaceful use undertaking and, where appropriate, application of safeguards;
(c) Application, where relevant, of the recommendations of the Agency regarding the physical protection of nuclear material;
(d) Procedures for the transfer of title to any equipment or materials by or through the Agency to the recipient Government.

## 18.2. GRANTING AND FINANCING OF ASSISTANCE

Financing of the technical assistance programme of the Agency was the subject of discussion on a number of occasions. Under the Agency's Statute, technical assistance must be financed not through assessed contributions to the Regular Budget but from voluntary contributions to the General Fund. After inconclusive discussions in 1963 on an amendment to the Agency's Statute which would have permitted the financing of technical assistance from the Regular Budget (Section 25.1.1.1.2 of the basic book), no further action was taken until 1974, when the General Conference at its 18th session considered a special report on the financing of technical assistance[53]. The Conference adopted a resolution requesting the Board to keep the matter under continued review, "bearing in mind that the practice of financing the

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[51] Although Supplementary Agreements were concluded between Member States and the Agency as early as 1964, the standard text did not contain provisions for the transfer of title to equipment or supplies. The Agency practice at that time was to apply the provisions of Article I, paragraph 5, of the EPTA Revised Standard Agreement through an exchange of letters with the recipient country upon completion of the project. The experience in this regard was unsatisfactory, since in many instances no exchange of letters took place. In order to avoid possible legal liability arising out of equipment or supplies being no longer under the control of the Agency, and to clarify the respective rights and responsibilities of the Agency and recipient States, it was decided in April 1971 to insert a new standard clause on a title to equipment and material in the text of subsequent Supplementary Agreements. The new clause was designed to cover only transfers of equipment financed by the Agency from its own resources. Transfers of title under UNDP projects were governed by the relevant provisions of the Revised Standard Agreement or the Standard Basic Assistance Agreement.

[52] As of 21 February 1979, the date of the adoption of the Revised Guiding Principles, 52 Governments had concluded Supplementary Agreements with the Agency.

[53] GC(XVIII)/529.

provision of technical assistance from voluntary contributions to the General Fund will have to be continued until some alternative mode of financing can be decided upon'' [54]. The Board was also requested to bear in mind the need to compensate for such factors as inflation and fluctuations in exchange rates when considering the establishment of a target for voluntary contributions for technical assistance.

The special report on financing of technical assistance by the Secretariat noted that assessment of contributions of all Member States and financing of technical assistance from the Regular Budget might be favoured, for the following reasons:

(a) There would be universal, multilateral technical assistance because the contributions of all Member States would be assessed;
(b) Assessed contributions would help to alleviate uncertainty as to the amount available for technical assistance. Technical assistance would no longer depend upon voluntary contributions, which might be reduced by States;
(c) This increased assurance regarding the availability of funds would permit the provision of assistance for long term projects and would generally improve programme planning;
(d) If technical assistance became a part of the Regular Budget, the programme for technical assistance would develop in proportion to the rest of the Agency's programme;
(e) Under the Agency's Financial Regulations the assessed contributions are payable only in US dollars or Austrian Schillings; thus the problem of the receipt of voluntary contributions in the form of non-convertible currencies would be avoided.

On the other hand it was noted that:

(a) The trend in the United Nations family was to eliminate technical assistance financing from assessed contributions;
(b) The Agency's programme of technical assistance was financed from several sources, including voluntary contributions to the General Fund, funds made available by the UNDP, gifts in kind, and funds made available by other bodies. Gifts in kind constituted a significant contribution to the technical assistance programme and were often funded under a Member State's national budget. Thus, it might not be possible for Members to make extra contributions in cash as a substitute for gifts in kind;
(c) During recent years, nearly 75% of the annual increases in the Agency's Regular Budget had only served to balance costs resulting from inflation and exchange rate fluctuations. That part of the Agency's programme which was financed under the Regular Budget had shown a decreasing rate of growth. If

[54] GC(XVIII)/RES/318.

this had also been so in the case of the technical assistance budget, the Agency would have been able to provide only minor additional assistance each year. Since a considerable increase in technical assistance for developing Member States was required, it would be unsatisfactory to provide for financing from the Regular Budget when such financing did not contribute to any significant growth in the programme itself.

The issue was raised again during the 1979 General Conference[55]. The General Conference adopted a resolution which requested the Board of Governors to study the matter of the financing of technical assistance and to submit a comprehensive report to the General Conference at its 24th session[56].

In March 1980 the Board requested the Secretariat to prepare a report which would serve as a basis for consultations prior to the 24th General Conference session; that report[57] essentially updated the practice and situation in the financing of technical assistance since the publication of the 1974 report. The report concluded that technical assistance could not, under the Statute, be funded from the Regular Budget.

### 18.2.1. The Operational Budget

The Agency continued the practice, described in the basic book, of establishing a target for voluntary contributions to the General Fund (subsequently the Technical Assistance Fund) from which technical assistance was financed. During the period covered by the present book the target amount was increased substantially.

In addition, new administrative procedures were introduced which improved the predictability of financing for technical assistance. Prior to the revision of the Guiding Principles the target for voluntary contributions for the technical assistance programme had to be set before the Agency received or evaluated the requests for projects. Paragraph 17 of the General Operating Rules established a new timetable for the submission of requests. As a result, the Secretariat was able to make a more accurate preliminary estimate of the resources needed for carrying out provisionally evaluated requests during the following year. In addition, an increasing number of multi-year projects contributed to a firmer basis for the assessment of future programme requirements.

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[55] In a meeting of the Committee of the Whole the delegate of Peru, speaking on behalf of the Group of 77, stated that technical assistance should be financed from the Regular Budget in the same way as safeguards activities (GC(XXIII)/COM.5/OR.15, para. 24). In reply to questions posed by several delegates, the Director of the Legal Division indicated that in order to finance technical assistance from the Regular Budget the Statute would have to be amended (ibid., para. 32). Following lengthy discussion, the Committee recommended the adoption of a draft resolution relating to the financing of technical assistance; this draft resolution was then transmitted to the Plenary Session of the Conference. The draft resolution was subsequently adopted by the Conference.

[56] GC(XXIII)/624.

[57] GOV/INF/366.

There were significant increases in the funding of technical assistance during the period 1974–1979. Voluntary contributions, for example, increased from US $3 085 000 to US $8 059 000. Since 1974, pledges have reached an average of 93% of the target, and the collection rate of these pledges has been nearly 100%. Thus, the desired predictability of and increase in the level of funding was achieved to a large degree.

### 18.2.2. Gifts in kind

Gifts in kind in the form of free experts, stipends for fellowships, equipment and materials were accepted by the Director General under the Rules Governing the Acceptance of Gifts of Services, Equipment and Facilities[58]. Assistance in kind amounted to nearly US $13 million during the period 1970–1980[59]. Most of these contributions were in support of the Agency's training activities[60], and host Governments for training courses provided additional contributions in the form of free facilities and lecturers.

### 18.2.3. Technical assistance financed by the UNDP

The technical assistance which the Agency provided as executing agency for the UNDP was governed by UNDP's statutory requirements and the Revised Guiding Principles and Operating Rules[61]. As heretofore, UNDP financed projects were submitted neither to the TAC nor to the Board. However, UNDP financed assistance was shown in the annual report on the provision of technical assistance by the Agency. Major UNDP assisted projects executed by the Agency between 1970 and 1980 were also included in the Agency's report on the implementation of Article IV of the NPT to the second (1980) NPT Review Conference[62]. During that period the total UNDP funds administered by the Agency were about US $26 million[63].

#### *18.2.3.2. Regional programmes (UNDP)*

The funding of the UNDP for inter-country projects decreased substantially during the second half of the decade[64].

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[58] INFCIRC/13, Part I.
[59] This figure includes extrabudgetary resources up to 1976.
[60] For example 95% in 1979 (GC(XXIV)/INF/191, para. 40).
[61] INFCIRC/267, F.
[62] NPT/CONF.II/7, Annex E.
[63] Ibid.
[64] GC(XXIV)/INF/191, Table 3.

### 18.2.4. Developments relating to the UNDP

During the period 1970–1980 a number of developments relating to the UNDP took place which also affected the Agency. The allocation of anticipated resources by the UNDP to countries for five-year periods, as 'Indicative Planning Figures' (IPF) instead of country targets, left it to the countries to draw up their own technical assistance programmes and to establish their priorities within these figures[65]. Whether a country required technical assistance for a nuclear project therefore depended not only on the national atomic energy authorities or on the Agency but also on the assessment by a country of how best to allocate the resources it would receive from the UNDP. Nuclear energy projects thus entered into competition with other proposals.

UNDP Resident Representatives were given increased authority and they alone became responsible for authorizing the executing agencies to commit funds for project implementation[66].

The Agency was represented in various inter-Agency bodies, such as the Inter-Agency Consultative Board (IACB), the Programme Working Group (PWG), the Working Group on Administrative and Finance Matters and the Inter-Agency Study Group on Evaluation.

The 1979 United Nations Conference on Science and Technology established an 'Interim Fund' with a target figure of US $250 million for 1980/1981[67]. However, pledges to that Fund were disappointing and did not reach more than US $34 million. Again, proposals for financing from the Fund had to come from Governments through their national planning authorities and not from international organizations.

As before, the Agency sub-contracted certain parts of UNDP projects to other agencies. A new concept of 'technical co-operation among developing countries' (TCDC) was endorsed by the General Assembly in 1974[68] and a United Nations Conference on TCDC took place in 1978. This concept did not, however, affect the Agency's own programme.

### 18.2.5. The Regular Budget

Certain technical assistance costs (administrative and overhead) continued to be charged to the Regular Budget; assessed programme costs were credited to Operating Fund II (later the Technical Assistance Fund) and could thus also be used

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[65] GC(XXV)/INF/197.
[66] As of 1 January 1975 (GC(XIX)/INF/154).
[67] GC(XXIV)/INF/191.
[68] General Assembly Resolution 3251 (XXIX).

for technical assistance projects. Following the example of the UNDP, the Agency also waived the local cost contribution of 8% for its 25 least developed Member States[69].

### 18.2.6. Assisted States

The Agency also rendered assistance financed by the recipient States themselves, mainly in the form of procurement of equipment by the Agency. There were only a few projects under such 'funds-in-trust' arrangements; these projects were not submitted to the Board, but were shown in the Agency's annual report on technical assistance[70].

### 18.2.7. Other States and organizations

In addition to gifts in kind, States and organizations made extrabudgetary contributions. These funds were primarily used to finance the so-called footnote a/ projects. (These are projects which the Agency has determined to be technically sound but which cannot be financed from the resources available to the Agency. These requests are identified by a footnote a/ in the list of projects submitted by the Technical Assistance Committee to the Board.)[71] These projects and other large scale projects financed in the same manner constituted a substantial part of the Agency's technical assistance[72]. In financing such projects, certain donor countries gave preference to NPT Parties[73].

## 18.3. TYPES OF ASSISTANCE

### 18.3.1. Experts

The provision of experts continued to be one of the principal ways in which technical assistance was granted. Experts were financed under the Agency's regular technical assistance programme or through the UNDP, or were made available on a 'cost free' basis by Member States. In addition, regular staff members were more

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[69] As per General Assembly Resolution 2768 (XXVI).

[70] In 1979, for example, there were projects in five countries of a total value of US $393 500 (GC(XXIV)/INF/191, Annex I, B).

[71] See, for example, the proposed projects for 1979 in GOV/1922 and Add.1.

[72] In 1979, for example, 21% (GC(XXIV)/INF/191, paras 35-38).

[73] NPT/CONF.II/7.

often sent to States to provide assistance under short term assignments, and the total cost of the assignment was apportioned between technical assistance funds and the Regular Budget[74].

The Agency faced increasing problems in finding and placing experts, particularly for short term assignments. In spite of the increasing co-operation of Member States[75], it was often difficult to find experts for particular projects to send them to the country on time. The first problem was to find an expert who was able and willing to go to a given country for a particular time period. Once an expert was found, the recipient Government had to accept that expert for the project in question. When the recipient Government had delayed or refused acceptance and another expert had to be found, then it became very difficult to execute the project on time.

These problems were brought to the attention of Member States and efforts were made to improve the situation. An Agency Group of Experts[76] recommended that one possibility would be for the Agency to make a greater number of its personnel available to serve as experts on short term assignments. In addition, the Group suggested that the Agency should not rely solely on developed Member States, but should also utilize expertise available in developing countries and should also conclude contracts, on an experimental basis, with institutions and specialized recruitment agencies.

On the other hand, the report of the Group of Experts encouraged recipient Governments to provide more precise information, including job descriptions, in their requests in order to make the implementation of projects more efficient.

Experts were normally subject to the Service Rules Governing the Conditions of Service for Technical Co-operation Experts[77]. Staff members assigned to technical assistance missions remained subject to the Staff Regulations and Headquarters Staff Rules[78]. Outside experts recruited for very short assignment or those whose services were provided on a cost-free basis were generally given Special Service Agreements which set out the relevant terms and conditions of service. The supply of an expert to a Member State was always governed by a legal instrument.

As in the past, experts were required to submit periodic and final reports to the Agency and the recipient State. The final reports could be made available to other Governments.

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[74] The practice was as follows: The salary of a regular staff member sent on a technical assistance mission was paid from the Regular Budget for a period of up to 45 days, and the subsistence and travel costs were financed by technical assistance funds. If the assignment exceeded 45 days, then all costs for the excess period were paid from technical assistance funds.

[75] For example the USA initiated a special programme for the provision of cost-free US experts.

[76] GOV/INF/329.

[77] Issued by the Agency in January 1978, with three revisions until the end of 1980.

[78] AM.II/1.

### 18.3.2. Exchange arrangements — visiting professors

The category of visiting professor was gradually dropped from the nomenclature and programming of the Agency. Visiting professors were either considered 'experts', provided on the same basis as described in the previous section, or they were recipients of fellowships or of 'scientific visit' awards.

### 18.3.3. Equipment

The supply of equipment to Member States expanded. The initial policy of the Agency and within the United Nations system restricted the amount of equipment supplied under any one project and usually required that the services of an expert accompany any supplied equipment. This situation changed, and under the Revised Guiding Principles no special criteria were established which preclude 'equipment only' projects, particularly under the Agency's programme. Thus, a significant number of requests involved the supply of equipment. In addition to the normal Agency rules regulating the purchase of equipment, informal guidelines regarding equipment requests were formulated by the Department of Technical Assistance. For example, requests for equipment alone which did not involve the introduction of new technology or techniques in a country were likely to receive low priority for assistance, particularly from convertible currency funds.

The situation differed somewhat with regard to the use of non-convertible currency funds. As of 1978, the Agency's technical assistance programme was faced with a deficit of US $2.1 million in convertible currencies and a surplus of US $2.1 million in non-convertible currencies. The Group of Experts had suggested that greater efforts be made to inform donor countries of projects for which assistance might be made available in non-convertible currencies. Thus, from 1979 the Regular Programme identified the type of currency required to finance individual projects. In addition, certain supplier countries agreed to accept annual instalment payments for large items of equipment which would have been too expensive to finance in a single year under the Agency's Regular Programme.

### 18.3.4. Fellowships

Fellowships continued to be provided from UNDP funds and from Agency resources within its regular technical assistance programme. The two existing categories of fellowships were maintained: Type I fellowships were paid in cash from either UNDP or Agency funds; Type II fellowships were those made available by Member States.

Over the years the procedure for granting fellowships was modified slightly as follows:

(a) Applications were to be submitted on Agency forms through appropriate Government channels;
(b) The application was referred first to a technical officer and then to the area officer;
(c) The Agency officer responsible for fellowships reviewed the application, made his recommendation and forwarded to a selection panel those applications which he recommended;
(d) Those applications which received favourable support from the selection panel were then forwarded to the Director General for approval[79].

### 18.3.7. Programming missions[80]

These missions were sent by the Agency to assist Member States in planning and preparing their technical assistance requests, particularly for multi-year projects[81], and were composed primarily of staff members with varying fields of expertise. The purpose of the missions was to analyse and explore various areas related to the Agency's technical assistance programme or to Agency projects; accordingly, these missions were primarily financed under the Regular Budget. An agreement was reached with the UNDP under which one-third of the cost of these missions was borne by the UNDP.

## 18.4. REPORTS AND REVIEW

The Revised Guiding Principle No.19 requires the Board to conduct an annual review of all technical assistance provided by the Agency during the preceding year, regardless of the source of funds for technical assistance. In accordance with established practice the annual reports on the technical assistance activities of the Agency submitted by the Director General to the Board were also transmitted to the General Conference for information[82].

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[79] The Interdepartmental Committee on Technical Assistance, which formerly reviewed fellowship applications, was abolished. The Committee on Technical Co-operation, which succeeded that Committee, was to advise the Director General on general policy questions regarding fellowships (AM.I/7, Appendix I).

[80] These missions became known as programming missions because of their more restricted tasks.

[81] See Revised Guiding Principles, I.A.i(f), which provide that "If requested, the Agency shall help the Government or Governments concerned in defining the nature, extent and scope of the technical assistance being sought".

[82] For example, for 1979 in GC(XXIV)/INF/191. Note also the report for approved technical assistance projects funded during 1976–1980 (GOV/INF/379) and the reports on developing country oriented activities (e.g. GOV/INF/368).

# Chapter 19

# RESEARCH ACTIVITIES

## PRINCIPAL INSTRUMENTS

IAEA Statute, Articles III.A.1, III.A.7, IX.I.4;
Monaco Laboratory Agreement (INFCIRC/129 and Add.1);
Trieste Centre Agreement (INFCIRC/114 and Add.1);
Agreement between the Agency and UNESCO concerning the joint operation of the Trieste Centre (INFCIRC/132 with Adds 1 and 2);
The Regional Co-operative Agreement for Research, Development and Training Related to Nuclear Science and Technology (INFCIRC/167 and Adds 1-8);
The Asian Regional Co-operative Project on Food Irradiation (INFCIRC/285 and Adds);
Administrative Manual, Part I (AM.I/3, 4, 5, 6) and Part IX (AM.IX/6).

## 19.1. DIRECT RESEARCH

### 19.1.1. Headquarters and Seibersdorf Laboratories

#### *19.1.1.1. Statutory basis*

No developments or changes occurred during the period covered by this book.

#### *19.1.1.2. Establishment*

In 1971 the Board authorized initial funding for a Safeguards Analytical Laboratory (SAL) at Seibersdorf by including an appropriation in the 1972 Budget[1]. On 3 July 1973 the Agency and the Austrian Study Centre for Atomic Energy concluded an agreement for the lease of the Laboratory premises to the Agency and construction began[2]. The SAL was completed and started partial operation in 1975[3] and full operation in 1979[4].

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[1] GOV/DEC/67(XIV), No. (38).

[2] GC(XVIII)/525, para. 166. The Austrian Study Center subsequently changed its title to Austrian Research Centre Seibersdorf.

[3] GC(XX)/565, para. 83; operation started with a 'licence' from Austria limiting the amounts and types of radioactive substances which the SAL was authorized to handle.

[4] GC(XXV)/642, para. 161.

*19.1.1.3. Arrangements with Austria*

The existing lease agreements described in the basic book continued to be applied. The Seibersdorf Laboratory has not yet been formally included in the Headquarters seat, but no problems have arisen from this lack of exact status and definition vis-à-vis the Austrian authorities[5]. For the operation of the SAL the Austrian authorities issued in 1975 a limited licence as required under Austrian law for laboratories handling radioactive substances, and in 1979 a definite licence was issued. The licence was issued to the owner of the premises, the Austrian Research Centre, with a view to its subsequent 'transfer' to the Agency[6].

*19.1.1.4. Functions and activities*

As its principal function the Seibersdorf Laboratory continued to provide services and support for the programmatic activities of the Agency. With the development of programme budgeting the budget documents also showed the apportionment of the total laboratory costs to the relevant programmes and sub-programmes[7].

In 1974 the Seibersdorf Laboratory discontinued its programme of distributing standardized radioactive sources, since such services were provided adequately by national institutions or commercial firms[8].

By 1980 the Seibersdorf Laboratory reported work in chemistry, electronics and measurement, dosimetry (the Dosimetry Laboratory had also begun work at new premises in Seibersdorf), agriculture and nuclear medicine[9]. The SAL reported that 80% of its capacity was used for the provision of services for safeguards including sample analysis.

The objectives of the programme and a description of the various sub-programmes are listed in the Agency's Programme, together with the results achieved. The Administrative Manual also states the purpose and function of the Laboratory and general administrative arrangements[10].

The Medical Applications Laboratory and the Dosimetry Laboratory, which had operated in the basement of the Agency's temporary Headquarters, moved to Seibersdorf in 1979 after construction of an additional wing of the existing facilities

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[5] AM.I/6 states that the Headquarters Agreement 'applies' to the premises of the Laboratory, without clarifying the legal basis and the resulting consequences of this reference.

[6] GC(XXV)/642, para. 161. With the agreement of the Austrian authorities the Agency took over full responsibility for the operation of the SAL on 12 October 1981.

[7] See, for example, GC(XXIV)/630, Table I.5.

[8] GC(XVIII)/525, para. 78.

[9] GOV/2023, paras 92–97.

[10] AM.I/6.

was completed. This move to Seibersdorf was also prompted by the request of the Austrian authorities in connection with the Agency's move to the VIC in 1979, since they did not wish the Agency to perform such work at the VIC.

#### *19.1.1.5. Financing*

The construction of the SAL was financed through appropriations from the Regular Budget. The first US $50 000 were authorized by the Board in 1971 [11] and another US $120 000 were approved under the 1973 Regular Budget for the initial purchase of equipment[12]. The extension of the Laboratory was also financed from the Regular Budget[13].

The costs for services of the Laboratory for safeguards were charged to the safeguards component of the budget and were thus subject to the special financing formula for safeguards costs[14].

### 19.1.2. International Laboratory of Marine Radioactivity in Monaco (Monaco Laboratory)

#### *19.1.2.1. Establishment*

On 15 February 1975 the Agency, the Government of Monaco and the Oceanographic Institute in Monaco entered into a new "Agreement Concerning Development Studies on the Effects of Radioactivity in the Sea", which covered the project until 31 December 1980[15]. This agreement also provided for a broadening of activities encompassing studies on non-radioactive contamination of the marine environment[16], a new formula for contributions by both the Agency and the Government of Monaco[17] and the accommodation of fellows sponsored by other member organizations of the United Nations[18].

In September 1980 the Board, after consideration of a report by the Director General indicating that the Laboratory facilities were becoming increasingly inadequate, approved a six months' extension of the Agreement[19]. Following a

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[11] GOV/OR.438, para. 16.

[12] GOV/OR.448, para. 100. See also GOV/1554.

[13] See GC(XX)/567, Table G.1.

[14] In 1975 these costs were US $381 466.

[15] INFCIRC/129/Rev.1.

[16] INFCIRC/129/Rev.1, Article 1(f). See also GOV/DEC/77(XVI), No. (46).

[17] INFCIRC/129/Rev.1, Articles 3(d) and 4(d).

[18] INFCIRC/129/Rev.1, Article 6.

[19] GOV/DEC/108(XXIII), No. (41); the memorandum by the Director General (GOV/2002) originally proposed a two-year extension of the Agreement, but the Director General reported to the Board that the Government of Monaco had requested more time to continue discussions. Thus the Director General proposed an extension of six months as an interim measure (GOV/OR.555, para. 2). The extension was accomplished by an exchange of letters.

suggestion in the Board that the Agency study the relevance of the Laboratory's activities in the context of the overall programme of the Agency[20], the Director General convened an interdepartmental Committee of the Secretariat, with members from the Divisions of Waste Management, Radiological Protection, Isotope Hydrology and the Monaco Laboratory[21].

In February 1981 the Director General reported to the Board on the Committee's findings. The Committee recommended a three-year extension of the Agreement, with a portion of that time devoted to further study of ways to retain and optimize the Laboratory and its activities, and the remainder of the time devoted to carrying out the agreed course of action[22]. The Board approved the extension but requested that the Director General study the options available and report in June 1981[23].

### *19.1.2.2. Operation*

The activities of the Laboratory were reviewed in 1979 by a small group of international experts. Their recommendation was that major emphasis should continue to be placed on the study of radioactive contaminants, but that non-radioactive contamination should also be studied in view of the synergistic effects of radioactive and non-radioactive contaminants, and that the programme should be continued. The experts also stressed that the work done at the Laboratory was necessary for the Agency to enable it to fulfil its responsibilities under the conventions for the protection of the marine environment[24].

### *19.1.2.3. Financing*

Under the 1975 Agreement the Government of Monaco increased its annual contribution to the project to F.Fr. 320 000 for 1975; in the following years this contribution would be increased in proportion to the Agency's contribution, but the increase would be limited to 10% in any given year[25]. The value of the Agency's contributions was estimated at US $400 000 for 1975. The Agency's contribution in subsequent years was to exceed that amount only when increases would be needed

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[20] GOV/OR.555, para. 35.

[21] DGM 26/80. The Committee, chaired by Mr. Goldschmidt of France, met from 10 to 14 November 1980.

[22] GOV/2014. The Director General also reported that the Scientific Advisory Committee had endorsed the Committee's findings at its December 1980 meeting (GOV/2014, para. 8).

[23] GOV/OR.561, paras 78 and 79.

[24] GC(XXIV)/630, para. 23.

[25] INFCIRC/129/Rev.1, Article 4(d).

"to offset any general rise in the costs of goods and services or to the extent that annual programmes approved by the General Conference of the Agency might require"[26].

The Laboratory also received funding from the UNEP and UNESCO and from some Member States. For example, additional funding from the UNEP in 1973 enabled the Laboratory to begin research on non-radioactive contamination of the ocean[27]. For 1981 the UNEP pledged to contribute US $135 000 for the support of environmental protection activities and UNESCO pledged US $8000[28].

### 19.1.3. International Centre for Theoretical Physics in Trieste

#### *19.1.3.1. Establishment*

The agreement between UNESCO and the IAEA regarding the joint operation of the Centre was extended to December 1978 by an exchange of letters between the organizations[29]. Further extensions provided for joint operation until 30 December 1990[30].

The legal status of the Centre did not change as a result of the participation of UNESCO; the Centre remained part of the Agency and did not acquire a legal personality of its own. However, as a result of UNESCO's participation, a number of organizational changes were made. The Scientific Council was appointed jointly by the Directors General of the two organizations, and the Director of the Centre was appointed by the Director General of the Agency with the concurrence of the Director General of UNESCO. The scientific programme was approved by the Directors General of the two organizations. A set of procedural understandings between the organizations governed other administrative matters.

#### *19.1.3.2. Operation*

After more than ten years of Agency/UNESCO co-operation, a report was issued which describes the main activities of the Centre from 1970 to 1981[31].

The Director General has promulgated comprehensive administrative instructions covering programme activities and organizational/administrative matters. The responsibility for carrying out the scientific programme rests with the Director of the Centre; he is also responsible for its administration, under delegation of authority

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[26] INFCIRC/129/Rev.1, Article 3(d).
[27] GC(XVIII)/525, para. 77.
[28] GOV/1977, para. J/2.
[29] INFCIRC/132/Add.1; GC(XIV)/544, para. 97.
[30] INFCIRC/132/Add.2 and Add.3. GC(XXIV)/630, Table 5.
[31] INFCIRC/132/Add.2, Appendix.

from the Director General. At the Agency's Headquarters a staff member appointed by the Director General ensures administrative and policy co-ordination and acts as a contact person between the Centre and other divisions at Headquarters. Detailed delegations of authority to the Director of the Centre provided for some flexibility in the Centre's administration, while Headquarters maintained substantial control. All expenditures of the Centre must remain within the financial plan approved by the Director General[32].

The unique operating characteristics for this type of scientific institution described in the basic book were maintained, such as associate member arrangements for scientists, federated institution arrangements with other institutions and the programme of scientific meetings. The activities of the Centre were reviewed in 1974 by an ad hoc committee consisting of eminent physicists appointed by the Directors General of the Agency and UNESCO. The ad hoc committee praised the achievements of the Centre and made recommendations[33] with respect to the scientific programme, the scientific leadership, staffing problems, facilities and the Centre's budget.

*19.1.3.3. Financing*

The initial extension of the Agreement between the Italian Government and the Agency caused some financial difficulties for the Centre. The Agreement had provided for contributions by the Italian Government for a six-year period, based on the academic year, whereas the Agency's budget is based on the calendar year; this resulted in a six months' deficit for the period of 1 January through 30 June 1974[34]. The problem was resolved, however, by savings in the allocated funding and by the receipt of special contributions.

The experts who reviewed the work of the Centre in 1974 also strongly recommended that the three principal partners — the Agency, UNESCO and the Italian Government — increase their contributions so as to reduce dependence on other, less stable, sources. This report led to a substantial increase in the Agency's contribution from the Regular Budget in 1977, to US $600 000, and to considerable increases in the following years[35].

Apart from the contributions by the Italian Government, the Centre received support from numerous other sources. In 1980, for example, the Governments of Denmark, the Federal Republic of Germany, France, Japan, Sweden, the USA, the Organization of American States, WMO, UNEP, the United Nations University, the

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[32] AM.I/4.

[33] GOV/INF/293, paras 4–67.

[34] GC(XIII)/406, paras 28–33.

[35] GC(XXIV)/630, Table 5. The contribution of UNESCO was US $320 000 and that of the Italian Government was US $700 000.

United Nations Sudano-Sahelian Office, CERN, and the International Union of Geodesy and Geophysics made special contributions either in cash or in kind[36]. In 1980 the Agency's contribution from its Regular Budget was over US $900 000, and other extrabudgetary resources amounted to over US $1 300 000.

### 19.1.5. Reports on the Agency's research

The annual report on IAEA Laboratory Activities was discontinued in 1970. Information about the laboratories and research work was summarized in the Annual Report of the Agency, and the Board was kept informed by the Director General[37].

### 19.1.6. Joint FAO/IAEA Division of Isotope and Radiation Applications of Atomic Energy for Food and Agricultural Development

#### *19.1.6.1. Establishment*

This division was initially established in 1964 under the name Joint FAO/IAEA Division of Atomic Energy in Agriculture[38]. Following a review in 1966, the Division was renamed the Joint FAO/IAEA Division of Atomic Energy in Food and Agriculture. On 23 July 1979 the Directors General of the FAO and the IAEA approved the new name of the Division as given in the above title[39].

The programme of the Division was designed to foster the use of isotope and radiation techniques in Member States for research and practical applications to increase agricultural production, to reduce losses of food and to minimize the pollution of food and of the environment[40].

#### *19.1.6.2. Operation*

The Joint Division remained at the Headquarters of the Agency and organizationally within the Department of Research and Isotopes. The Director was appointed by the FAO and the Deputy Director by the Agency; these appointments must be agreed upon by both parties. The remaining staff of the Joint Division consisted of staff members of both the Agency and the FAO.

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[36] GOV/2023, para. 110. These contributions were in line with long established practices of many of these countries and organizations. See, for example, GC(XV)/459, paras 39–41.

[37] Section 32.1.1.

[38] Established pursuant to an arrangement between the Directors General of the Agency and the FAO, as foreseen in the Agreement between the IAEA and the FAO (INFCIRC/20, part VI, Article X).

[39] AM.I/3, para. 3.

[40] GC(XXIV)/630, F/7.

*19.1.6.3. Financing*

The Joint Division was financed primarily by appropriations from the Regular Budget and by contributions from the FAO[41]. Additional support came from special contributions from Member States[42].

## 19.2. RESEARCH CONTRACTS

During the period covered by this book, the Agency continued its research contract programme with the principal purpose of stimulating research in specific fields of interest to the Members of the Agency.

### 19.2.1. Policies and procedures

The basic principles of the policies and procedures for carrying out the Agency's research programme described in the basic book did not change substantially. A number of conceptual and procedural modifications were introduced, which are described in the following sections. The primary objectives of the programme were the following:

— Stimulation of increments of scientific knowledge;
— Assistance to developing countries to further the extent of their participation in nuclear research;
— Co-ordination of research between the Agency and national centres.

(a) *Types of research supported*

A review of the programme objectives in relation to which research was supported indicates that emphasis continued to be placed on projects of special benefit to developing countries in the areas of food and agriculture, life sciences and physical sciences[43]. However, the programme also provided support in fields of general interest to the Agency and its Members, for example nuclear power, the nuclear fuel cycle and nuclear safety. The expenditure for scientific and technical contracts in the safeguards field also rose significantly during the decade[44].

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[41] See, for example, GC(XXIV)/630, F/4.
[42] GC(XXIV)/630, Table 5(F).
[43] See, for example, the Annual Report for 1975 (GC(XX)/565), paras 50–80.
[44] Contracts financed from the Regular Budget in the safeguards field rose from US $100 000 in 1969 to US $565 000 in 1980.

(b) *Selection of research contractors*

The programme was not only oriented towards research topics of interest to developing countries. In making the awards of contracts, however, preference was given, wherever possible, to institutes located in developing countries. The mixture of a contract approach and a grant approach, which developed in the 1960s, continued in the 1970s. The average amount per year per contract was between US $4000 and US $5000 (with some exceptions). As before, either qualified institutions were invited by the Agency to make a proposal for a project selected by the Agency as materially assisting one of its programmes, or proposals were made by scientific institutions. For the latter case it was required that the project be compatible with "the Agency's own functions and approved programmes"[45].

### 19.2.2. Financing of research contracts

#### *19.2.2.1. From Agency resources*

The principle, decided by the Board in 1967, that all research contracts should be financed from the Regular Budget continued to be applied without modification during the period covered by this book. The two-year period for the availability of budgetary appropriations for obligations arising under research contracts was maintained in the Financial Regulations[46]. Expenditures for research contracts were no longer shown separately in the Agency's budget documents but were included in the item "Scientific and Technical Contracts of the Regular Budget"[47].

#### *19.2.2.2. From outside contributions*

A number of Member States made extrabudgetary contributions, some in substantial amounts, to support the Agency's research contract programme. These contributions, as all extrabudgetary contributions, were not shown by expenditure item but only by programme. Consequently, it is not possible to obtain from the financial tables of the budget documents the amounts devoted to the support of this programme, unless they are specifically indicated in such a document.

#### *19.2.2.3. Cost-free research*

The Agency continued its practice of placing 'research agreements', which were similar in nature to research contracts and were administered in the same

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[45] See, for example, circular letter N3.82 circ. of 10 November 1981, giving information about the research contract programme for 1982.

[46] Regulation 5.03.

[47] See, for example, GC(XXIV)/630, Table 3 (the Regular Budget, by item of expenditure).

manner but carried with them no financial contribution from the Agency. The institute concerned agreed to provide a technical report on a specified topic, and the Agency, in turn, provided formal sponsorship and thus international recognition and the possibility for the institute to participate in information exchanges and meetings with other institutes engaged in similar research.

The programme and budget documents provide information on co-ordinated research programmes in a number of areas, giving the number of research contracts and research agreements that have been awarded under the programme in question. The FAO continued to contribute to the cost of research contracts awarded by the Joint Division[48].

### 19.2.3. The annual research contract programme

The relative emphasis on subject areas and the delineation of specific topics within each area continued to be reviewed annually, though in a manner different from that in the previous period; this review was done within the Secretariat, the Agency's Scientific Advisory Committee and the Board of Governors. With the introduction of programme budgeting (Section 25.2.3) the draft budget no longer indicated the amount proposed for the Agency's research contract programme as allocated to various fields, but showed only global amounts for 'scientific and technical contracts' under the cost of the programme in question[49]. Proposals for contracts to be financed from the budget in the year in question must be submitted early in the budget year. Accordingly, late in the previous year Member States were informed of the programme objectives of the Agency in relation to which financial support under contracts could be provided. Member States were also invited to encourage national institutes to submit proposals in specified fields. These proposals were to reach the Agency not later than March of the budget year in order to enable funding from allocations for that year.

### 19.2.4. Granting of contracts

The award of research contracts continued to be the responsibility of the Director General, who also retained the authority to approve "programme planning, policies and procedures"[50]. The procedure that was followed in granting contracts did not change materially from that described in the basic book.

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[48] GC(XXIV)/630, Table F.3.

[49] See, for example, GC(XXIV)/630, Table F.11 (Food and Agriculture).

[50] AM.IX/6, Annex.

(a) The proposal for a research project must be formally submitted by the institute concerned to the Agency's Contracts Administration Section[51]. This Section handles all administrative arrangements, including those concerned with development and servicing of the contracts[52]. Such submission need not be made through governmental channels. If the Agency contacted an institute to encourage it to submit a proposal, the State was informed of these contacts. A research proposal may, however, be made to the Agency at any time. The submission should be made on a standardized Agency form[53]. If equipment is required from the Agency, a specific request has to be made[54]. The contractor also has to provide a budget estimate and to indicate that part of the research costs which has to be borne by the requesting institute.

(b) Proposals are evaluated within the Agency by a project officer who is also responsible for making a recommendation. If the recommendation is positive, it is then submitted to the interdepartmental Committee on Contractual Scientific Services (CCSS).

(c) The composition and the principal terms of reference of the CCSS have not changed; its principal tasks are: to advise the Director General on the selection of research contracts, studies and scientific services to be made under the contract, irrespective of the source of funding; to make specific recommendations on individual projects; and to standardize all contractual arrangements[55].

(d) The final decision on awarding a contract is made by the Director General.

(e) The Chief of the Contracts Administration Section signs all contracts on behalf of the Agency (the form and content of these contracts are discussed in Section 19.2.5). The practice of informing the Board of all research contracts was discontinued, and the Agency's annual reports no longer contain a list of research contracts granted during the year covered by the report.

(f) The practice of requiring progress reports and final reports from the institutes was continued. Approval of these reports by the Agency was a precondition for all payments, except for the initial instalment.

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[51] AM.IX/6, paras 9–14.

[52] The Contracts Administration Section, organizationally part of the Division of Budget and Finance, has administrative responsibility for "contracts that are research-oriented in nature" (AM.V/6, para. 12) and some co-ordinating and advisory functions in relation to all Agency agreements and contracts (except for personnel contracts). However, the precise delineation of the functions of that Section is not entirely clear from the Administrative Manual. Originally, the administration of research contracts was the responsibility of a Section in the Department of Research and Isotopes.

[53] IAEA form No. N-17/Rev.1, "Research Contract Proposal".

[54] IAEA form No. N-16, "Equipment for Research Project".

[55] AM.I/7, Appendix C.

(g) For co-ordinated research programmes the contract period was extended so that it could exceed the customary maximum total period of three years, and an award under such a programme could be up to five years.

(h) Publication, either by the Agency or by the institute, of results of work performed under the research contracts continued to be the most effective way of bringing these results to the notice of other scientists and the international scientific community.

### 19.2.5. Contractual arrangements

The contractual arrangements remained as described in the basic book. In each case, the Agency concluded a standard contract, which covered the following points:

— Nature of the research project;
— Period of the project;
— Reports to be made by the institute;
— Rights to intellectual property (copyrights and patents) and publication of results;
— Non-liability of the Agency;
— Payments by the Agency and their schedule;
— Responsibility of the contractor for equipment;
— Observance of the Agency's health and safety standards;
— Procedure for the settlement of disputes.

### 19.2.6. Technical contracts

The Agency continued its practice of concluding 'technical contracts' with international organizations and bodies such as the International Commission for Radiological Protection (ICRP), the work of which was of general importance and interest for the Agency. These contracts did not relate to a specific project but were in the form of an annual grant by the Agency to the institution concerned.

## 19.3. RESEARCH ASSISTANCE

### 19.3.1. Middle Eastern Regional Radioisotope Centre for the Arab countries

As described in the basic book, the Agency's participation in the Centre ceased in 1969.

### 19.3.2. Joint research projects

During the period covered by this book, the four co-operative arrangements described in the basic book expired and four new projects were started.

#### *19.3.2.1. NORA Project*

As noted in the basic book, the NORA Project was completed in 1968. To mark its conclusion, a seminar was held in Norway to review the project's achievements[56].

#### *19.3.2.2. NPY Project*

The Agreement between the Agency and the Governments of Norway, Poland and Yugoslavia Concerning Co-operative Research in Reactor Science[57] expired on 10 April 1971[58].

#### *19.3.2.3. IPA Project*

The Agreement for Conducting under the Auspices of the Agency a Regional Joint Training and Research Programme Using a Neutron Crystal Spectrometer expired on 31 August 1969[59].

#### *19.3.2.4. International Programme on Fruit Irradiation*

This programme was completed in 1970.

#### *19.3.2.5. International Food Irradiation Project*

In 1970, following completion of work under the International Programme on Fruit Irradiation, several Governments agreed to establish a new project on food irradiation under the joint auspices of the Agency and ENEA[60].

On 14 October 1970, the Agreement for the International Food Irradiation Project was signed by 19 Member States of the sponsoring agencies, FAO, OECD and the Agency[61]. The Agreement provided for an initial duration of five years,

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[56] GC(XIII)/404, para. 83. For the final project report see STI/DOC/10/113.
[57] GC(XIV)/430, para. 72.
[58] GC(XV)/455, para. 88; INFCIRC/145, Article XIII, Section 27.
[59] INFCIRC/56, Article X, Section 18; GC(XIII)/404, para. 83.
[60] GC(XIV)/430, para. 18.
[61] GOV/INF/232, para. 24. The WHO participates in the project in an advisory capacity (GC(XV)/455, para. 41).

commencing 1 January 1971. The Federal Republic of Germany offered Karlsruhe as the host centre and agreed to make certain services available free of charge, and the Agency agreed to contribute the services of the project leader. In informing the Board of the Agreement, the Director General noted that, apart from these contributions, the project would be financed entirely by contributions from the participating Member States[62].

The project initially focused on wholesomeness testing of food items, i.e. wheat, wheat products and potatoes, in order to confirm their acceptance by the joint WHO/FAO/Agency expert committee. By 1973, three more States had joined the project; its scope had been enlarged to include wholesomeness testing of fish. In addition, negotiations had begun for the establishment in the Netherlands of an international centre to study the technological and economic feasibility of food irradiation[63].

In 1975 the project was extended for another three years, and another Member State joined the project, the emphasis of which had shifted to wholesomeness studies for broader food categories and to food irradiation techniques[64].

In 1978 a trilateral Agreement between the FAO, the Agency and the Netherlands Ministry of Agriculture and Fisheries established an International Facility for Food Irradiation Technology[65]. A draft general standard for irradiated food and a draft code of practice for the operation of radiation facilities were prepared by the Agency for acceptance by the Codex Alimentarius Commission of the Joint IAEA/FAO Food Standards Programme[66]. These drafts were adopted by the Commission in December 1979 and were circulated in 1980 to member States of the Commission for approval[67].

In June 1980 the Director General informed the Board of progress made under the project, in which, by that time, 24 Member States were participating[68]. He reported that in the ten years of studies considerable progress had been made in the standardization of food irradiation techniques, in standards for the wholesomeness of irradiated food and in the harmonization of national legislation and regulatory procedures. This work opened the way for increased international trade in irradiated foodstuffs, and the Agency prepared model regulations for the control of and trade in irradiated food in 1979[69].

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[62] GOV/INF/232, para. 24.

[63] GC(XIX)/544, para. 66.

[64] GC(XX)/565, para. 56.

[65] GC(XXIII)/610, para. 120.

[66] GC(XXIII)/610, para. 121.

[67] GOV/INF/374, para. 6.

[68] Australia, Austria, Belgium, Brazil, Denmark, Finland, France, Federal Republic of Germany, Ghana, Hungary, India, Iraq, Israel, Italy, Japan, Netherlands, Norway, Portugal, South Africa, Spain, Sweden, Switzerland, UK and USA (GOV/INF/374).

[69] GOV/INF/374, para. 7.

*19.3.2.6. Regional Co-operative Agreement (RCA) Project*

In the final year of the IPA Project[70] the Agency, upon the recommendation of the IPA Committee[71], consulted Member States in the Asian and South Pacific Region regarding the possibility of establishing an expanded regional co-operation project to promote pure and applied research in the study of the condensed state of matter[72]. Ten Member States responded positively and an "Organizational Meeting for a Regional Co-operative Project to Succeed the IPA Project" was held in Manila from 14 to 16 March 1969. Participants in this meeting drafted a "Proposal for an Agreement between the Nations in Asia, the Pacific and the Far East to Co-operate in Research and Training Related to Nuclear Science and Technology"[73], which was circulated to Member States of the region. Several of these States responded positively[74] and made specific proposals for regional co-operative projects.

Following the Organizational Meeting, an interdepartmental Ad Hoc Working Group was established in the Agency. Part of this Group's task was the preparation of a draft agreement along the lines of the Manila proposal.

An initial draft agreement was prepared in May 1969, since several Member States had informally suggested that the project might be put to the June 1969 Board. This schedule, however, was too optimistic. A draft agreement for co-operation[75] was then circulated to interested States in April 1970, and two model project agreements were transmitted to the same States in May 1970[76].

Representatives of twelve Member States[77] met in Bangkok in July 1970 to consider subjects for regional co-operative projects as well as the draft agreements. The representatives agreed on several potential projects, but they recommended that

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[70] The Agreement for Conducting under the Auspices of the Agency a Regional Joint Training and Research Programme using a Neutron Crystal Spectrometer entered into force on 31 August 1964 for a five-year period (INFCIRC/56). For a description of the project see the basic book, Section 19.3.2.3.

[71] See "Memorandum to the Director General, IAEA, concerning the future of the India–Philippines Agency Project" from R. Ramanna, Chairman, IPA Committee, 15 May 1968, page 6.

[72] Circular letter L/704-2 of 6 September 1968 was sent to Australia, Burma, Cambodia, Ceylon, China (Republic of), Indonesia, Japan, Korea, Malaysia, Pakistan, Singapore, Thailand and Vietnam.

[73] Circulated as an attachment to two circular letters of 19 May 1969, both numbered L/704-2.

[74] The Director General's circular letter of May 1969 emphasized that the Agency would not be in a position to provide full financial support and invited interested States to offer financial and technical support. Thus the letters of response from States indicated the nature of support they were prepared to offer.

[75] The draft agreement, circulated on 30 April 1970, was prepared by the Secretariat.

[76] The argument was that the first priority would be to assist interested Member States in the development of specific multi-country nuclear science co-operation projects. A legal instrument, preferably a standard framework project agreement, would only be needed when a particular project was agreed upon by potential participating States.

[77] Australia, Ceylon, China (Republic of), India, Indonesia, Japan, Korea, New Zealand, Philippines, Singapore, Thailand and Vietnam.

the main agreement should primarily reflect the decision of States to co-operate on regional projects. Specific projects would then be the subject of separate ancillary agreements.

Revised versions of the primary Agreement were prepared by the Secretariat following the Bangkok meeting and the General Conference. There were two important issues: the potential financial implications for the Agency and the advisability of defining the geographical areas from which Member States would be eligible to become Parties to the Agreement[78].

In February 1972 the Director General communicated the final text of the Agreement to interested Member States for acceptance[79]. The Agreement entered into force on 12 June 1972, following the receipt of the second notification of acceptance[80]. By 1977, eleven Member States had become Parties to the Agreement.

The Agreement embodies the basic undertaking to co-operate in research, development and training projects within the framework of appropriate national institutions[81]. Specific projects, when agreed upon by the Agency and the Parties or by other Member States wishing to participate in such a project, were to be covered by separate agreements[82]. Under the Agreement, the Agency undertakes to support projects through its programme in accordance with the normal rules and procedures governing such assistance[83].

The 1976 Annual Meeting of the Parties to the RCA recommended that the Agreement be extended for another five years[84]. After consultation by the Agency with the Parties, a proposal for extension was circulated by the Director General on 9 August 1977. The Extension Agreement entered into force on 23 September 1977, following the receipt by the Agency of the second notification of acceptance by a Member State Party to the RCA Agreement, as provided for in the Extension Agreement. By the end of 1980, twelve Member States had notified their acceptance of the RCA Agreement as extended[85].

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[78] It was felt that the Agency should adhere to its standard practice of not defining which States were members of particular regions. Under the final text, any Member State in South Asia, South East Asia and the Pacific or the Far East could become a Party to the Agreement.

[79] See circular letter L/704-2 of 29 February 1972. The Agreement was not submitted to the Board of Governors or the General Conference, either for information or approval. The extension of the Agreement, however, was transmitted to the Board for information (GOV/INF/325).

[80] INFCIRC/167/Add.1-7.

[81] INFCIRC/167, Article I.

[82] INFCIRC/167, Article II, Section 5.

[83] INFCIRC/167, Article II, Section 7.

[84] See GOV/OR.497, para. 57, and DGM 26/77, Item 5.3.

[85] INFCIRC/167/Add.8. Bangladesh accepted the Extension Agreement on 24 March 1980.

By 1979 the RCA was obtaining financial support from the Governments of Japan and Australia[86], and other Member States were considering establishing similar regional projects[87].

### *19.3.2.7. Asian Regional Project on Food Irradiation*

In March 1980 an Agreement establishing the Asian Regional Project on Food Irradiation[88] within the framework of the RCA was concluded. The Asian Regional Project was established under Sections 4 and 5 of the RCA and covered a research and development programme on radiation effects, irradiation technology, packaging studies and economic evaluation of vegetables, fishery products and tropical fruits[89]. The Agreement entered into force on 28 August 1980. By the end of 1980, one donor Government (Japan) and eight participating Governments had become Parties to the Agreement[90].

### *19.3.2.8. International Fusion Research Council*

The International Fusion Research Council (IFRC) was established by the Agency in 1971[91]. It is composed of scientists from all countries where significant research was being done in fusion and plasma physics and it reports to the Director General in an advisory capacity.

In 1978, upon the recommendation[92] of the IFRC and with the support of Member States, the Agency arranged for a series of workshops and designated a Steering Committee, composed of representatives from Japan, the USSR, the USA and the Commission of the European Communities[93], to conduct preliminary studies for the International Tokamak Reactor (INTOR) project[94]. The project was

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[86] GC(XIV)/627, para. 24.

[87] Latin American Member States expressed interest in the development of an RCA type agreement and an informal meeting was held during the 1980 General Conference. It was suggested that in view of the existing co-operation agreement between IANEC and the Agency it might be possible to collaborate in co-sponsoring meetings, seminars or projects. The Secretariat had consultations with interested Member States to identify potential pilot projects (DGM 25/80, Item 7(ii); DGM 26/80).

[88] INFCIRC/285.

[89] Ibid., Annex.

[90] Bangladesh, Indonesia, Korea, Malaysia, Pakistan, Philippines, Sri Lanka and Thailand.

[91] GC(XV)/455, para. 53.

[92] The Director General initially sought suggestions from Member States as to how the Agency might assist in the development of fusion energy; the USSR responded with a proposal for an international project sponsored by the Agency (GOV/INF/383, para. 1).

[93] The Steering Committee members were chosen by the IFRC (GOV/INF/383, para. 4). This was in line with the oversight function of the IFRC.

[94] GC(XXIII)/610, para. 24.

designed to demonstrate the feasibility of generating electricity by thermonuclear fusion through the design, construction and operation of a fusion reactor constructed with international co-operation under the auspices of the Agency[95].

The initial workshops, in which only Japan, the USSR, the USA and Euratom participated, were held four times a year and lasted two to three weeks. Each participating country bore the costs of its attendance, the Agency provided overhead costs and some staff support[96] and published the workshop reports[97]. Phase Zero of the INTOR project, completed in 1979, resulted in the definition of a set of characteristics for a tokamak device.

In January 1980 the IFRC recommended that Phase One, the production of a conceptual design for a device, be started[98], with a scheduled completion date in July 1981.

Concurrent with the conceptual design work, the Agency and the IFRC began to discuss with the participating States arrangements for the continuation of the project.

There was general agreement among the participants that a formal administrative arrangement would be necessary if INTOR were to be built; it was agreed that the first part of the design phase (i.e. the production of reference designs for the reactor and related facilities) could be performed by mid-1982 in the context of the workshop[99]. It was also recommended that the Director General should arrange for a study, to be completed by mid-1982, of administrative arrangements for the next phase, the engineering design phase[100]. The Director General approved the one-year extension of the workshop and undertook to arrange for the study of the required administrative arrangements[101].

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[95] GC(XXIII)/610, para. 140. The Director General assigned to the IFRC oversight responsibility for the workshops.

[96] Ibid., para. 2.

[97] See, for example, STI/PUB/556.

[98] GOV/INF/383, para. 7. See GC(XXIV)/630, para. H.1.3/6.

[99] GOV/INF/383, para. 10.

[100] Ibid., para. 11.

[101] Ibid., para. 12.

# Chapter 20

# DISTRIBUTION OF INFORMATION

## PRINCIPAL INSTRUMENTS

IAEA Statute, Articles III.A.3, VIII, XIV.B.1(a);
Administrative Manual, Section AM.VII/1 (Organization of Agency meetings);
Administrative Manual, Section AM.I/4, Appendix C (The International Centre for Theoretical Physics, Scientific Meetings and Training Courses);
Administrative Manual, Section AM.VIII/6 (Services provided by the Division of Publications);
International Nuclear Information System (GOV/DEC/57(XXI) No.(12), GOV/DEC/71(XV), No.(22(a)).

During the period covered by this book, the Agency considerably expanded its activities regarding the distribution of information on all aspects of peaceful uses of nuclear energy. The principal means for the Agency to gather and distribute scientific and technical information remained the same as those indicated in the basic book:

— Scientific meetings;
— Publications;
— The Library;
— The International Nuclear Information System (INIS).

In addition, the Agency organized training courses, advisory missions, technical committees, advisory groups, panels or similar meetings to obtain or to distribute information in specific fields.

## 20.1. SCIENTIFIC MEETINGS

According to their scope and purpose the Agency's scientific meetings were again classified in three categories[1]:

(a) Conferences, covering a wide range of related subjects;
(b) Symposia, dealing with a specialized subject;
(c) Seminars, covering didactically a subject of interest to a region or a group of States.

[1] AM.VII/1, Definition.

Each Programme and Budget Document presented in an Annex a list of the scientific meetings to be held during the budget year in question and so did the Budget Documents[2]. This list was preceded by a statement that the listed meetings had been considered by the Scientific Advisory Committee (SAC) and that the Director General would select the subjects of meetings from those on the list, "within the limits of the appropriations and subject to the requirements of the programmes"[3]. Sometimes, the meetings considered by SAC to be of particular importance were indicated[4]. With the continuing refinement of the Programme and Budget Documents, references to the related programme elements were also included[5] and the introductory text was changed, stating that, subject to the financial appropriations and programme requirements, "it is planned to hold the meetings listed below"[6]. Starting with the Programme for 1981–1986, the meetings planned during the budget biennium were listed[7].

The preparatory time was about three years for Agency conferences and symposia and two years for seminars[8]. The proposed meetings were screened at the interdepartmental level and those selected were submitted to SAC. After SAC had made its recommendations and the Director General had approved, Member States, the United Nations, specialized agencies and other intergovernmental organizations were informed by circular letter of the proposed programme of meetings. Member States interested in hosting a meeting and intergovernmental organizations wishing to co-sponsor a meeting were expected to indicate their interest in doing so[9]. By approving the Agency's Programme in June, the Board in effect gave its approval to the tentative list of meetings.

The Agency has established detailed instructions for the organization of its scientific meetings, covering participation, location, scheduling, convening and financing[10]. Meetings organized by the Trieste Centre were subject to a different set of procedures[11] but were also included in the list of Agency scientific meetings.

### 20.1.2. Location

For meetings held outside Vienna, a Member State had to issue an invitation and agree to pay the extra costs of organizing the meeting away from Headquarters. Developed Member States were charged the full extra costs as calculated by the

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[2] For example GC(XVIII)/526, Annex I; GC(XIX)/550, Annexes I and II.
[3] For example GC(XIV)/433, Annex II.
[4] For example GC(XVIII)/526. Annex I.
[5] For example GC(XX)/567, Annex I.
[6] Ibid.
[7] GC(XXIV)/630, Annexes I and II.
[8] AM.VII/1, para. 7.
[9] Ibid., para. 8.
[10] AM.VII/1.
[11] AM.I/4, Scientific Meetings and Training Courses.

Secretariat after the meeting, or a lump sum negotiated with the Secretariat. Special consideration was given to the financial contribution from developing countries and the Director General could exercise discretion in charging them less than the full rate[12]. In any event, the host Government had to provide adequate premises and facilities. A standard 'Host Agreement', executed in the form of an exchange of letters, continued to provide for a specification of the categories of persons entitled to attend the meeting, the necessary privileges and immunities, including the right to enter the country and to remain there for the duration of the meeting, the issue of visas where required, the financial contribution to be made and the specification of the premises, equipment and services to be provided by the Government[13].

### 20.1.3. Participation

The categories of persons entitled to participate in Agency meetings remained the same as described in the basic book, i.e. nominees of Member States, representatives of organizations invited by the Director General, and individual scientists invited by the Director General to attend a meeting at the Agency's expense as speakers, lecturers or discussion leaders[14]. All participants must be designated through official channels or invited by the Agency. Representatives of information media could be authorized to attend a meeting, but were not permitted to take part in the proceedings.

### 20.1.4. Co-sponsorship

Co-sponsorship could either involve a co-sponsorship of Agency meetings by another organization or an Agency co-sponsorship of non-Agency meetings:

(a) *Agency meetings*

Co-sponsorship continued to imply, in principle, an equal sharing of costs. If this was not possible and if the scientific involvement of the other organization was small, then such meetings were announced as Agency meetings "convened in co-operation with ..."[15]. Except for meetings organized by the Joint FAO/IAEA Division, every proposal for co-sponsorship had to be approved by the Director General before any commitments were made. A possible co-sponsorship with the OECD/NEA was discussed at annual co-ordination meetings with that organization.

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[12] AM.VII/1, para. 17.
[13] AM.VII/1.
[14] AM.VII/1, paras 3–5.
[15] AM.VII/1, paras 15 and 16.

(b) *Non-Agency meetings*

The Agency was, in principle, reticent about co-sponsoring meetings organized by other entities where the use of its name might imply an endorsement of the meeting. Full co-sponsorship was thus limited to meetings of other United Nations organizations or organizations with which the Agency had formal and close relations. Co-sponsorship of meetings organized by Governments was to be the rare exception. Co-sponsorship required in all instances that the Agency's conditions for meetings be met. Thus the Agency was, for reasons of principle and also because of budgetary considerations, very reluctant to assume responsibility for meetings not organized by it. Again, the final decision on such participation was made by the Director General.

### 20.1.5. Financing

The costs for Agency meetings are included in the Regular Budget. With the introduction of programme budgeting (Section 25.2.3) the Budget Appropriation Section "Seminars, Symposia and Conferences" disappeared and the costs of meetings were charged to the programme in question and shown under the costs of that programme[16]. Financial considerations, including the principles under which the Agency provided travel grants and subsistence in exceptional circumstances, were set forth in the administrative instructions governing the organization of Agency meetings[17].

### 20.1.6. Reports

Until 1975, Agency meetings convened during the reporting year were listed in a comprehensive table in the Annual Report, with details on co-sponsorship, number of participants, number of countries and organizations represented and number of papers submitted[18]. After 1975, this practice was discontinued and information on meetings was included under the sections in the report dealing with the activity to which the meeting related[19].

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[16] For example GC(XXII)/600, I, Life Sciences, lists for 1977 an amount of US $56 906 as costs for scientific meetings in 1977.

[17] AM.VII/1.

[18] For example GC(XIX)/544, Annex D.

[19] For example GC(XX)/565, para. 119.

## 20.2. PUBLICATIONS

The Agency continued and expanded its publication programme as one of the principal methods of distributing information on nuclear energy. By the end of the decade, the Agency's programme comprised more than a dozen categories of publications[20]:

(a) Proceedings of large scientific meetings sponsored or co-sponsored by the Agency;
(b) Proceedings of small meetings, such as meetings of advisory groups, technical committees and consultants meetings;
(c) Safety Series, including Agency Safety Standards, Safety Guides and Recommendations;
(d) Technical Reports Series, including manuals, guides and research reports;
(e) Legal Series, including agreements, conventions, proceedings of meetings on nuclear law, and the basic book, The Law and Practices of the International Atomic Energy Agency (Legal Series No. 7);
(f) INIS Reference Series, comprising rules, standards and codes of INIS;
(g) Technical Directories, containing information on a certain subject on a world-wide basis;
(h) Safeguards Information Series;
(i) Miscellaneous publications;
(j) Periodicals, including the INIS Atomindex, Meetings on Atomic Energy and Nuclear Fusion;
(k) Documents and Reports, including IAEA-TECDOCs, reports of the Trieste Centre and Abstracts;
(l) Newsletters, including the INIS Newsletter and the Food Irradiation Newsletter;
(m) Public information activities, including the Bulletin and various leaflets;
(n) Catalogues of Agency publications.

In addition to these publications, which were available to the general public free of charge or against payment, there were publications with restricted circulation (for example reports on technical assistance missions). During the period 1970–1980 the Agency became the largest publisher in the nuclear field, printing more than twenty million pages in 1980, yielding an income of US $1.29 million during that year[21].

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[20] AM.VII/6(a).
[21] GC(XXV)/642, para. 206.

### 20.2.1. Decisions

The Publishing Services were shown under service activities in the Programme and Budget Documents[22]. The relevant section of the Documents provided, apart from a very brief indication of the principal publications, an estimate of the number of pages expected to be published during the budget year. Decisions regarding publications were entirely left to the Secretariat, with scarce comments in the Board at its annual budget discussion.

Within the Secretariat the Director General delegated authority to approve Agency publications to the interdepartmental Publications Committee, with its composition and terms of reference formulated in 1969 and reported in the basic book. At the end of each calendar year the Divisions had to submit lists of titles proposed for publication to the Committee as a planning guide for the coming year[23]. The Committee had the authority to approve manuscripts, suggest modifications to them or reject certain manuscripts.

### 20.2.2. Production

Most of the Agency's publications listed in Section 20.2 emanated from scientific meetings, panels and advisory groups and were produced by the Agency. With the enlargement of the printing facilities to serve all United Nations organizations at the VIC (see Section 12.7), all publishing and printing work was done by the Agency itself.

### 20.2.3. Distribution

Most of the Agency's publications were sales publications[24] and only a few of the publications were available free of charge[25]. The Agency's distribution policy was the following:

(a) *Entitlement to free distribution*

(i) Each Member State was entitled to receive up to five copies of each publication (with some exceptions);

(ii) United Nations organizations and other organizations were entitled to receive publications of interest to them on a reciprocal basis or at a reduced price;

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[22] For example GC(XXII)/600, Q.25.

[23] The Agency's "Guide for Originators of IAEA Publications and Technical Documents" should be followed when preparing a publication (AM.VIII/6a, Section 3).

[24] Section 20.2, categories (a) to (g).

[25] Section 20.2, most of the publications listed in categories (j) to (n).

(iii) Libraries were entitled to receive publications under exchange arrangements;
(iv) For promotion purposes;
(v) Within the Secretariat;
(vi) Agency experts in the field, contractors, etc., were entitled to receive some copies;
(vii) Certain participants in Agency meetings.

(b) *Privileged purchases*

These involved a discount of 50% (books) or 25% (periodicals) and were granted to Governments of Member States, the United Nations and international organizations, staff members, experts in the field and fellows. Participants in Agency meetings also had certain purchase privileges.

(c) *Sales*

Sales took place either through exclusive or non-exclusive sales agents, through booksellers or directly to customers.

### 20.2.4. Financing

The publications programme continued to be financed from the Regular Programme. Until 1975, income from the sale of publications could be used directly for the expansion of the publications programme[26]. The authority of the Director General to use extrabudgetary funds (i.e. funds not shown as income in the Regular Budget) was subsequently expanded by the General Conference to cover all Agency activities[27].

### 20.2.5. Languages

The administrative instructions on the Agency's publications also indicate which types of publication are to appear in which language or languages[28]. As heretofore, the Publications Committee determined the language(s) of each publication[29].

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[26] GC(XVIII)/526, Annex V.A., Regular Budget Appropriations for 1975.
[27] GC(XXII)/600, Annex VII.
[28] AM.VII/6a, Section 2.
[29] AM.VIII/6a, Section 3.

### 20.2.6. Reports

The publications that had appeared or that were planned were listed and occasionally briefly described in the Agency's Programme and Budget documents[30], but no comprehensive list of planned Agency publications was regularly presented to the Board or the Conference.

## 20.3. THE VIC LIBRARY

In preparation for the creation of the VIC Library, the Library at the Agency's Headquarters began to include the holdings of UNIDO in its machine readable list of holdings[31]. With the Agency's move to the VIC, the VIC Library was created under the administration of the Agency (under the 'Memorandum of Understanding', see Section 12.7.2(i)). The Agency assumed the responsibility for providing, on a cost sharing basis, library services for itself, for UNIDO and for the United Nations organizations located in the VIC. The Library broadened its subject coverage to meet the information needs of the United Nations organizations and began including United Nations holdings in its machine readable catalogue. With the move to the VIC, the UNIDO and Agency libraries were merged physically to provide a centralized information service for ease of access to information for users[32]. The acquisition activity was centralized by the VIC Library to take advantage of economies of scale. Subsidiary branches continued at the Seibersdorf Laboratory, at the International Centre for Theoretical Physics in Trieste and at the International Laboratory of Marine Radioactivity in Monaco. The VIC Library also provided support for INIS activities[33].

### 20.3.1. Sources of material

The sources of the Library's holdings have not changed. In addition to the Agency's own material, publications acquired by UNIDO and the United Nations organizations are available in the Library.

### 20.3.2. Users

With the move to the VIC, all organizations at the VIC and their staffs became entitled to use the Library.

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[30] For example GC(XXII)/600, C.19.
[31] GC(XVIII)/526, L.23.
[32] GC(XXIV)/630, M.2.
[33] GC(XXII)/600, L.4.

## 20.4. INTERNATIONAL NUCLEAR INFORMATION SYSTEM (INIS)

### 20.4.1. General

In 1970 the Agency embarked upon a major new collaborative project with Member States to collect and distribute information on nuclear science and technology by establishing the first computerized nuclear information system in the world with decentralized input, INIS[34]. The basic purpose of INIS was to constitute a catalogue of the literature relating to the peaceful uses of nuclear energy published throughout the world and to create a mechanism for rapid distribution of the catalogue and the literature itself[35].

Among the basic points that had to be considered in launching that ambitious project were the following:

(a) *Type of literature to be included*[36]

The scale and costs of the operation depended to a great extent on the subject scope of the literature covered. Originally it was estimated that, on the basis of the subject scope developed by a group of experts, about 85 000 new pieces of literature would be included each year. This assumption proved to be substantially correct after INIS became operational with full subject scope and after the national centres were developed to handle the required input. During the period 1970–1980 a total of about 570 000 items were included. INIS was designed to also cover literature produced in less accessible form; accordingly, a distinction was made between 'conventional' literature, which was generally available (such as books and scientific journals), and 'non-conventional' literature, which was not distributed commercially (for example seminar papers and reports). For the former type INIS provided only descriptions and citations and for the latter type it provided descriptions and the full texts.

(b) *Organization of input, processing and output*[37]

The major share of the burden in operating INIS was assumed by participating Member States, which were responsible for preparing and making the input of all literature published in their territories (estimated at 90% of the total world volume).

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[34] For the antecedents see the basic book and GOV/1319, Annex.

[35] GOV/1319. INIS was to start with new literature; no specific plans were made to include older literature, which thus remained outside the scope of INIS.

[36] GOV/1319, paras 8 and 9; a major point was, of course, whether INIS would be able to cover less readily available literature. See statement by the UK that no 'non-conventional' material had been transmitted (GOV/COM.9/OR.107). The initial Thesaurus was prepared by adapting Euratom's existing Thesaurus.

[37] GOV/1319, paras 10–13; in subsequent years, INIS Liaison Officers also had to maintain contacts with nuclear libraries in Member States (GC(XX)/567, L.32).

The Agency arranged for input of material produced by it and other international organizations. Each Member State designated, individually or regionally together with other States, one central point to handle all input with the INIS Liaison Officer in charge. Such centres also undertook limited processing of the material, in particular recording of bibliographical descriptions and of keywords in specified formats (for example on computer tape) for transmission to the Agency.

The Agency's function[38] was to process the incoming material, store it and distribute it to Member States and individual users. The Agency thus built up a comprehensive store of references on literature in the nuclear field and distributed INIS products. These products consisted of magnetic tapes or a printed bulletin (Atomindex) with bibliographic descriptions and keywords, cumulative indexes and microfiches with abstracts or full texts. In addition, the Agency performed managerial functions and arranged for co-ordination and training of staff of Member States.

(c) *Financial aspects*

The main share of work was performed by participating States, which thus absorbed, indirectly, the principal financial burden of the project. The Agency's annual share was initially around US $500 000[39] (in 1970, with INIS starting with a limited subject scope), rising to over US $3 million in 1980[40]. In view of the difficulty of estimating in financial terms the contribution by participating States it is not possible to make an assessment of the total costs of INIS. Much of the INIS output was provided to Member States free of charge or upon payment of a nominal fee (for example the cost of magnetic tapes)[41]. The main income for the Agency derived from the sale of microfiches (in 1980 about US $315 000)[42]. Such income was credited to the Regular Budget, thus reducing the assessed contributions of Member States.

(d) *Institutional arrangements*

INIS was designed to operate as a multilateral effort, with a defined distribution of rights and responsibilities between the Agency and participating Member States and organizations. The viability and eventual success of INIS depended on the willingness to participate of those Member States in which the major part of the nuclear literature was produced. When INIS was started, no multilateral agreement

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[38] GOV/1319, para. 16. The Agency trained also about 500 persons during the period 1970–1980 (GC(XX)/567, L.27).

[39] GOV/1319, para. 29.

[40] GC(XXIV)/630, Table M.5.

[41] GOV/1319, para. 32.

[42] GC(XXIV)/630, The Regular Budget, Table 4.

or other formal legal or administrative arrangement was made or proposed to ensure uniformity and completeness of coverage, to regulate the function of national or regional centres, to define the status of participating organizations and to deal with distribution rights or problems of copyright.

INIS was established as part of the Agency and therefore was covered by the Agency's legal personality[43].

### 20.4.2. Start of INIS

In 1969 the Board approved the project, but imposed restrictions[44] so as to ensure that it could exercise, at least initially, tight budgetary and operational control over INIS, particularly because of concern that the costs of INIS could become excessive. Accordingly, the Board qualified its approval of INIS with the following conditions:

(a) Operations would commence with a limited subject scope and it would be possible to develop them step by step;
(b) The progress achieved would be evaluated annually, and there would be no implied commitment with regard to the level of funds to be budgeted for INIS in each successive year;
(c) The Agency would, as far as possible, take maximum advantage of the work of other effective systems for collecting information, including the Euratom system. The Director General should, where feasible, enter into contractual arrangements to give effect to that principle;
(d) The operation of INIS would be reviewed annually by an Advisory Committee, the members of which would be appointed by the Board after receipt of nominations from the Director General;
(e) The membership of the Advisory Committee:
    (i) Would not be limited to nationals of Members serving on the Board of Governors;
    (ii) Would consist of representatives of:
        — Producers of input for INIS;
        — Administrators;
        — Users of outputs from INIS.
(f) In developing INIS, the Agency would, as far as possible, take note of the needs of developing countries.

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[43] This point was raised in 1978 when INIS (i.e. the Agency) joined the Abstracting Board of the International Council of Scientific Unions (ICSUAB). The Agency did so after clarification that the decisions and recommendations of the ICSUAB were "in no way binding on INIS policies, products or services" (letter from the President of ICSUAB to the Agency of 2 June 1978).

[44] GOV/OR.408, para. 61.

### 20.4.3. Development of INIS

After the Board had decided in 1969 that INIS should start with a limited subject scope, the system rapidly became operational so that, by June 1971, 30 States and 11 international organizations were participating[45]. An Advisory Committee, consisting of seven persons, was appointed by the Board in 1971; in this Committee, producers and users of information as well as administrators were represented[46]. On the basis of the recommendations of the Advisory Committee the Board decided in 1972 that INIS should begin to operate with full subject scope[47]. Accordingly, INIS started to operate with full coverage of nuclear science information in 1973[48], and in that year the volume of information items distributed annually grew to over 56 000[49], with 56 participating centres. In 1976 INIS counted 64 participating centres and over 60 000 items of input per year. The number of participants grew steadily[50]. By the end of the decade, 62 States and 13 international organizations were participating, 570 000 items of information were available, and co-operative and network arrangements and telecommunication connections were established with a number of organizations and commercial services[51].

INIS had also become the major user of the Agency's computer; the Atomindex — the printed version of the output computer tape — was published twice a month and in 1976 was converted into an abstracting journal. With the discontinuation of the US Nuclear Science Abstracts, the Atomindex became the world's only abstracting service on atomic energy[52].

A regional INIS centre was planned to be established in India with UNDP assistance, but this project did not materialize. Co-operation was established with UNESCO, which was developing UNISIST, a worldwide science information system[53], and also with FAO, for the purpose of producing an agricultural information system (AGRIS)[54]. A new programme of on-line information retrieval was started and workshops were organized to prepare for this new service. Agreements, inter alia with the European Space Agency (ESA) and IIASA, served to make the INIS database more easily available for on-line searches. INIS had also become the system with the greatest in-depth coverage of documents on nuclear safety and the only system with worldwide coverage of nuclear literature[55].

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[45] GC(XV)/455, para. 105.
[46] GOV/1441; GOV/DEC/65(XIV), No. (22).
[47] GC(XVI)/480, para. 107.
[48] GC(XVII)/500, para. 128.
[49] INIS charged for some of its output products.
[50] GC(XXIII)/610, paras 205–209.
[51] GC(XXV)/642, paras 202 and 203.
[52] GC(XXI)/580, para. 185.
[53] GC(XVI)/480, para. 109.
[54] GC(XVIII)/525, para. 149.
[55] GC(XXIV)/627, paras 184–188.

### 20.4.4. Terms of participation in INIS

Since its inception, INIS had operated without a general legal basis or agreement regarding the terms of participation or the financial arrangements under which Member States would supply input to, or receive information from, the system. Also, financial arrangements with other organizations for common retrieval facilities did not exist. This situation led to comments and criticism from the External Auditor, who reviewed the activities of INIS in 1979[56]. The appropriateness and extent of the exclusive channelling of the flow of information to and from INIS through INIS Liaison Officers was also questioned[57]. The need for a formal executive directive to form the legal and financial basis for the continued operation of INIS was stressed. Such a comprehensive directive did not exist. Financial, administrative and technical matters were the subject of communications from the Secretariat to INIS Liaison Officers, in the form of, for example, Circular Letters, Technical Notes, Reference Series and Newsletters, the legal status and force of which was not clear. In 1980, work was under way within the Secretariat and consultations were carried out with a view to defining participatory arrangements for INIS, but no firm proposal had been made and approved by the end of 1980[58].

### 20.4.5. Access to INIS products

Some INIS services are for Member States only, while others are also available to the general public[59].

### 20.4.6. INIS Liaison Officers

Participating Member States and international organizations have appointed INIS Liaison Officers. In almost all countries they are the heads of the centres that have responsibility for preparing the input and for distributing the output of INIS. They are responsible, together with the Secretariat, for the day-to-day operation of INIS. Co-operation and co-ordination with the Secretariat is ensured through annual consultative meetings and by means of INIS Newsletters and INIS circular letters which the Secretariat transmits to all Liaison Officers[60].

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[56] GC(XXIV)/629, Part II, paras 40–49.

[57] GC(XXIV)/629, Part II, para. 45.

[58] GC(XXV)/645, Part II, paras 28 and 29.

[59] For a general description of the status of INIS at the end of the decade see INIS TODAY: An Introduction to the International Nuclear Information System, GEN/PUB/13(Rev.1), IAEA, Vienna (1979).

[60] See, for example, GOV/INF/286, Annex I, para. 16.2, and Annex II, paras 2.3.2 and 3.6.1.

### 20.4.7. Advisory and oversight machinery

The original proposals by the Director General for INIS foresaw a flexible machinery for consultation on INIS matters, for example specialized panels, rather than a standing advisory committee of fixed membership[61]. The Board, however, in setting up INIS on a trial basis decided that the operation of INIS should "be reviewed annually by an advisory committee"[62]. The Committee, initially consisting of seven Members, was subsequently enlarged to ten and later to twelve Members[63].

Although the Board's decision provided for an annual review, the Advisory Committee met only three times in the period covered by this book[64]. The Committee not only reviewed the operation of INIS but also became, in fact, the principal advisory body to the Director General on the development and operation of INIS[65]. The Committee itself saw its mandate in very broad terms, since it considered that "policy and budgetary questions should be referred to the Advisory Committee" and that it should "report to the Board through the Director General"[66]. The terms under which the Committee was established by the Board do not provide for such a link with the Board, and the Director General continued to regard the Committee as an advisory body for himself. The Committee's reports, however, were submitted in extenso to the Board, following a specific request of the Board to the Director General to make available the first report of the Committee[67].

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[61] GOV/1319.

[62] GOV/DEC/57/(XII), No. (12).

[63] GOV/INF/286; GOV/INF/357.

[64] In 1971, 1974 and 1979.

[65] In fact, the Director General invited the Committee also to provide advice and make recommendations on INIS, thus broadening its original mandate (GOV/INF/286, Annex I, para. 1.1).

[66] GOV/INF/286, Annex I.

[67] GOV/1509 and Add.1.

# Chapter 21

# SAFEGUARDS

## PRINCIPAL INSTRUMENTS

IAEA Statute, Articles II, III.A.5, XI.F.4, XII, XIV.B.1(b), XIV.C, and also III.B.1, III.B.2, IX.H, IX.I.2;

Treaty for the Prohibition of Nuclear Weapons in Latin America (Tlatelolco Treaty) (UNTS Vol.634, p.281), Articles 5, 13, 16(1), 18(3), 19(1), 20(2), 28(1)(d) and Additional Protocol I;

Treaty on the Non-Proliferation of Nuclear Weapons (NPT) (UNTS Vol.729, p.161; INFCIRC/140), Preamble, Article III;

IAEA/UN Relationship Agreement (INFCIRC/11, Part I), Article III.2;

Revised and Provisionally Extended Safeguards Document (INFCIRC/66/Rev.2);

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 Safeguards Document) (INFCIRC/153, corrected);

Inspectors Document (GC(V)/INF/39, Annex);

Board of Governors Procedural Rule (GOV/INF/60) 11(c);

Provisional Staff Regulation (INFCIRC/6/Rev.4, AM.II/1) 1.06;

Documents and Records of the Safeguards Committee (1970) (GOV/COM.22/1 and GOV/COM.22/OR.1);

General Conference Resolutions relating to the Guiding Principles for the Assessment of Members' Contributions (GC(XV)/RES/283, GC(XX)/RES/341, GC(XXIV)/RES/376);

Revised Guiding Principles and General Operating Rules to Govern the Provision of Technical Assistance by the Agency (INFCIRC/267);

The Application of Safeguards in Relation to the Granting of Technical Assistance (GOV/1853);

Board decision of 29 June 1961 on appointment of inspectors (GC(V)/INF/39, para.2);

Safeguards Agreements:

Agency Project Agreements, such as:

- Yugoslavia: TRIGA (INFCIRC/32 and Addenda)
- Mexico: Laguna Verde (INFCIRC/203)
- Greece: GRR-1 (INFCIRC/163 and Addenda)

Safeguards Transfer Agreements, such as:

- India/USA (INFCIRC/154)
- Colombia/USA (INFCIRC/144 and Add.1)
- Austria/USA (INFCIRC/152)
- France/Japan (INFCIRC/171)
- Brazil/FRG (INFCIRC/237)
- France/Pakistan (INFCIRC/239)
- Canada/Spain (INFCIRC/247)

Unilateral Submission Agreements, such as:

- Argentina: Atucha (INFCIRC/168)
- Argentina: Embalse (INFCIRC/251)
- India: Heavy Water (INFCIRC/260)

NPT Safeguards Agreements, such as:
- Finland (INFCIRC/155)
- Mauritius (INFCIRC/190)
- Euratom Non-Nuclear-Weapon States (INFCIRC/193)
- Japan (INFCIRC/255)

Voluntary Offers (nuclear-weapon States):
- United Kingdom (INFCIRC/263)
- United States of America (INFCIRC/288)
- France (INFCIRC/290)

Tlatelolco Treaty and NPT:
- Mexico (INFCIRC/197)

Suspension Protocols, such as:
- Sweden/USA (INFCIRC/165/Mod.1);

Communications regarding export of nuclear material, equipment, other material and technology (INFCIRC/209 and Addenda, INFCIRC/254 and Addenda);
Safeguards Implementation Reports (e.g. GOV/1842, GOV/1911, GOV/1939);
Duration of Safeguards Agreements (GOV/1621);
Subsidiary Arrangements (not published).

## 21.1. INTRODUCTION

During the period under review, the safeguards activities of the Agency expanded massively so that they finally constituted, together with technical assistance, the major part of the Agency's Programme and Budget. This development was due to the entry into force of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT)[1] and the assumption of safeguards functions by the Agency as foreseen by Article III of the Treaty. The NPT required the negotiation and subsequent implementation of comprehensive Safeguards Agreements with a large number of States, including the industrialized States of Western Europe[2] and Japan[3], on the basis of a Document elaborated by a Committee of the Board, the Safeguards Committee (1970), and adopted by the Board in 1971. This Document will be referred to hereafter as the NPT Safeguards Document[4]. New Safeguards Agreements were also negotiated with three nuclear-weapon States[5]; these Agreements were to a large extent based on that Document. Important new legal requirements were also adopted by the Board for non-NPT Safeguards Agreements and were incorporated into such Agreements, which continued to be negotiated on the basis of the Revised Safeguards Document[6].

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[1] INFCIRC/140.
[2] INFCIRC/193.
[3] INFCIRC/255.
[4] INFCIRC/153.
[5] France (INFCIRC/290), the UK (INFCIRC/263) and the USA (INFCIRC/288).
[6] INFCIRC/66/Rev.2.

### 21.1.1. Definitions, distinctions and restrictions

In the course of the period 1970–1980, decisions by Agency organs and Agency practice have led to a further definition of the term 'safeguards' and resulted in a clearer understanding of their scope[7]. The separation that had already existed between safeguards and health and safety controls was made more explicit under the terms of the Revised Health and Safety Document, which provides basically for the Agency to render advice and assistance to a State in health and safety matters rather than to perform control activities[8]. The term 'Agency safeguards' came to be used exclusively in relation to the Agency's verification that nuclear material and certain non-nuclear material, facilities, equipment and technological information were not used for illicit purposes, i.e. for uses prohibited by the corresponding Safeguards Agreement. Within this general definition, certain variations existed, in particular differences between Safeguards Agreements concluded under the NPT Safeguards Document and those subject to the Revised Safeguards Document. A special category was formed by agreements with nuclear-weapon States concluded pursuant to the so-called 'voluntary offers' by these States. (See Section 21.5.3.1.) Particularly in the course of the preparation of the NPT Safeguards Document, extensive discussions took place on the proper function of Agency safeguards[9]. While these discussions and the resultant understanding were specific to the Agency's task under the NPT, they also had repercussions on the negotiation and implementation of agreements subject to the Revised Safeguards Document and on the technical provisions to implement these Safeguards Agreements, the 'Subsidiary Arrangements'[10].

#### *21.1.1.1. Prevention or verification*

Agency Safeguards Agreements consist of two broad categories: The first category comprises agreements concluded in implementation of Article III of the NPT or of Article 13 of the Tlatelolco Treaty, which are based on the NPT Safeguards Document or, more precisely, on a 'model agreement' prepared by the Secretariat[11] on the basis of the NPT Safeguards Document. Tlatelolco Treaty agreements are based (with minor modifications) on the NPT Safeguards Document, but this is not a legal requirement. Such a requirement exists, however, for non-nuclear-weapon States Party to the NPT. The second major category comprises

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[7] Note, for example, "IAEA Safeguards, an Introduction" (IAEA/SG/INF/3).

[8] INFCIRC/18/Rev.1, para. 2.2.

[9] GOV/COM.22/166; GOV/COM.22/OR, paras 1–82.

[10] These are confidential documents, negotiated between the Secretariat and Governments to implement Safeguards Agreements.

[11] GOV/INF/276.

agreements concluded pursuant to the Revised Safeguards Document. Common to all of these agreements is that the Agency has to carry out verification but does not have to apply measures to ensure physically that items under safeguards are not used or diverted in violation of the terms of a Safeguards Agreement[12]. This inherent limitation must be clearly understood in order to appreciate the utility and scope of safeguards. Safeguards have, of course, a certain deterrent effect because of the risk of early detection of a violation through verification measures[13]. In this sense, the term 'safeguards' as used by the Agency means basically measures which have the purpose of verifying the following points:

(a) Assistance obtained from or through the Agency is not used in such a way as to further any military purpose. This basic objective of safeguards has been further clarified in 1975 as precluding the use of any assistance, not only for the manufacture of any nuclear weapon but also for that of any other nuclear explosive device and for any other military purpose[14]. It was stated that this cardinal understanding applies to all agreements based on the Revised Safeguards Document, whether concluded before 1975 or after that date[15]. Safeguards are applied at the request of a State, except that for Project Agreements an explicit request is not required because the application of safeguards to them is mandatory under the Statute (Article XI.F.4).

(b) Items subject to bilateral co-operation agreements are not used in such a way as to further any military purpose. (The clarifications and specification applicable to Project Agreements regarding nuclear explosive devices apply also to safeguards for implementing such bilateral agreements.)[16] These agreements may either be trilateral, with the supplier State also becoming a Party, or bilateral. The latter agreements may also provide for certain rights of the supplier State as a non-Party[17].

(c) Nuclear material is not diverted to nuclear weapons or other nuclear explosive devices[18]. This is the basic function of the Agency under agreements concluded with non-nuclear-weapon States in implementation of Article III of the NPT. Agreements concluded under Article 13 of the Tlatelolco Treaty provide for the same safeguards objective.

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[12] See Objectives of Safeguards in IAEA document SG/INF/3, p. 13.

[13] This deterrent political effect must be distinguished from the technical objective of Agency safeguards.

[14] Section 21.5.4.1.

[15] GOV/OR.474, para. 55.

[16] In this connection, note, for example, the statements by the USA in the Board (GOV/OR.446, para. 7, and GOV/OR.467, para. 23).

[17] For example INFCIRC/224 and 251.

[18] INFCIRC/153, para. 2.

(d) Nuclear material is not removed from safeguards, except in accordance with procedures foreseen in the agreement. This is the basic objective of safeguards applied under the 'voluntary offer' agreements with nuclear-weapon States[19].

It should also be clearly understood that the objects of verification are physical items, such as materials and facilities. Verification procedures do not simply oversee the effectiveness of a national or regional control system[20]. Also, verification does not extend to technological information, patents or other intellectual property. Safeguards apply, however, to physical items produced or developed as a result of the use of specified technological information transferred, but never to information as such[21].

*21.1.1.2. Safeguards as a service function*

Except for Agency projects and the provision of technical assistance by the Agency, for which the application of safeguards is a mandatory requirement, safeguards are always applied on request[22]. Such a request may be motivated by obligations undertaken under a multilateral treaty such as the NPT and the Tlatelolco Treaty, under a bilateral agreement for nuclear co-operation, to implement a 'voluntary offer', or for other reasons. It is not up to the Agency to determine when and why such a request should be made to it or to interpret the terms of bilateral or multilateral treaties to which it is not a Party. The Agency has, however, regularly drawn the attention of non-nuclear-weapon States Party to the NPT to the time limits of Article III.4 of the Treaty. The Agency makes available its safeguards services whenever it is requested to do so. This does not, however, mean that a State can selectively determine which part of the Safeguards Document it will or will not accept[23], or which safeguards procedures should apply[24], or which items should become subject to safeguards subsequently, as a result of the derivative rules for the application of safeguards[25].

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[19] Section 21.5.3.1.

[20] This issue was discussed in the course of the negotiation of the Euratom (NNWS) Agreement. The Agency's Safeguards Documents do not contain technical procedures to verify another safeguards system.

[21] Section 21.13.1.

[22] Statute Article III.A.5.

[23] Such an argument might conceivably have been made in relation to INFCIRC/66/Rev.2, but not in relation to the NPT Safeguards Document.

[24] All the safeguards procedures of INFCIRC/66/Rev.2 are invariably included by reference in the Safeguards Agreements.

[25] Occasionally referred to as 'contamination' principle.

*21.1.1.3. Safeguards and arms control*

Safeguards are not a disarmament measure, i.e. an activity to reduce or abolish existing nuclear weapon stocks or to prevent the manufacture of nuclear weapons by nuclear-weapon States (i.e. to curb 'vertical proliferation'). Rather, safeguards, as a verification measure, play an essential role in international efforts to limit the further spread of nuclear weapons to non-nuclear-weapon States ('horizontal proliferation')[26]. The original purpose of safeguards was to verify that international nuclear trade and co-operation would not be abused for the manufacture of nuclear weapons or other nuclear explosive devices, i.e. that no military use of any kind would be furthered by such co-operation[27]. This original purpose is still maintained in countries which receive external supplies and which are not Party to the NPT. However, the predominant portion of the Agency's safeguards activities[28] results from its verification task under the NPT, which is an arms control Treaty.

The question has occasionally been posed whether safeguards could constitute a precedent for verification in other fields of arms control or in disarmament. By 1980 the problem of other arms control measures had not arisen concretely, but, conceivably, some elements of safeguards could serve as useful examples for verification in certain other fields, for example a cut-off of the production of fissile material for nuclear weapons or the conversion of nuclear material in military warheads to peaceful uses.

### 21.1.2. Safeguards politics

With the entry into force of the NPT and the assumption by the Agency of verification functions under that Treaty it became inevitable that the political controversies regarding the NPT also affected the Agency. Since the Agency Statute does not distinguish between nuclear-weapon States and non-nuclear-weapon States, this distinction is based on a definition in the NPT[29]. A number of Member States of the Agency with important nuclear programmes have not become Party to that Treaty[30] and some have voiced reservations with regard to the NPT or opposed it. This situation has, however, not prevented consensus regarding the verification task to be assumed by the Agency and agreement on the NPT Safeguards Document by the Safeguards Committee (1970).

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[26] Agency safeguards are the only institutionalized, international verification system.

[27] Almost all supplier States required governmental undertakings to that effect.

[28] Note the statistics in the Safeguards Implementation Reports (e.g. GOV/1911) and the Agency's Annual Reports (e.g. GC(XXIV)/627).

[29] The NPT Article IX(3) contains the definition of 'nuclear-weapon State' solely for "the purposes of the Treaty".

[30] Argentina, Brazil, India, Israel, Pakistan, South Africa.

The basic book lists some safeguards issues under this section. In discussing these issues and some others, a fundamental distinction among these issues must be noted. There are issues of a political nature that are within the exclusive domain of States, for example whether safeguards are required only in certain States and not in others, and the purpose of applying safeguards in States with a military nuclear programme. These 'political issues' or problems of 'safeguards politics', while being important for an understanding of the international environment in which safeguards have to operate, are outside the competence of the Agency Secretariat. On the other hand, numerous issues of safeguards policy (rather than politics) had to be addressed by the Agency and these continue to affect the implementation of safeguards. Some of these issues have been listed in the basic book (Section 21.1.2), and most of the problems have been resolved[31]. These problems will be discussed in subsequent sections in order to permit a very general comparison between the current situation and the problems as they appeared at the end of the 1960s.

## 21.2. STATUTORY PROVISIONS

With regard to the Statute the situation has not changed from that described in the basic book. The Statutory amendments adopted during the decade 1970–1980 did not affect the safeguards part[32]. No development took place and no decision was taken by the General Conference or the Board of Governors which would require addition to or amendment of the information given in this section in the basic book.

## 21.3. TREATIES PROVIDING FOR AGENCY SAFEGUARDS

Obligations by States undertaken in bilateral or multilateral treaties have been the prime motivation for States to request and accept the application of Agency safeguards. In fact, only three States, France, the UK and the USA, had by 1980 accepted the application of Agency safeguards without a corresponding treaty obligation and made 'voluntary offers' to submit to these controls[33]. However, in the case of the UK and the USA, the requests for the application of Agency safeguards stemmed from unilateral declarations made in connection with the NPT — declarations that had effect under international law[34].

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[31] Many of these points were addressed by the Safeguards Committee (1970).

[32] Section 5.3.

[33] Section 21.5.3.1.

[34] There were differences in announcing the offer, but both offers were subsequently formally confirmed within the Agency (GOV/1383).

### 21.3.1. Bilateral agreements

Bilateral co-operation agreements and the safeguards requirements contained in them have been the prime motivating factor for non-nuclear-weapon States not Party to the NPT to request the application of Agency safeguards. The terms of these bilateral agreements have therefore also influenced the relevant Safeguards Agreements concluded under the Revised Safeguards Document. This concerns, in particular, three general conditions for nuclear exports agreed to by the Nuclear Suppliers Group[35]:

(a) Safeguards should apply in connection with the transfer of relevant technological information in the nuclear field[36];
(b) Safeguards Agreements should make it explicit that safeguarded items must not be used for any nuclear explosive device, whether labelled military or peaceful[37];
(c) Safeguards on items should continue as long as these items are useful for any nuclear activity, and the duration of Safeguards Agreements should be linked with the lifetime of such items[38].

Bilateral co-operation agreements between States no longer provided for bilateral safeguards by the supplier State to be subsequently transferred to the Agency; rather, these agreements contained understandings that all items concerned would have to be ab initio subject to Agency safeguards[39]. As a further development, some co-operation agreements have included provisions to the effect that bilateral safeguards requirements were satisfied by the comprehensive NPT Safeguards Agreement if the recipient State had become a Party to such an Agreement[40]. Since NPT Safeguards Agreements automatically lapse when a State ceases to be a Party to the NPT[41], provisions for fall-back safeguards (Agency or bilateral) have been included in a number of these bilateral co-operation agreements[42]. In a number of cases, national export policies and non-proliferation requirements have also resulted in re-negotiation of bilateral co-operation agreements and the corresponding Safeguards Agreements[43].

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[35] Section 21.6.
[36] Section 21.13.1.
[37] Section 21.5.4.15.
[38] Section 21.5.4.14.
[39] Instead, these agreements provide in a number of instances for bilateral 'fall-back' safeguards.
[40] These bilateral agreements continue to contain, however, a peaceful, non-explosive use undertaking.
[41] INFCIRC/153, para.26.
[42] See also Section 21.5.7.
[43] For example in relation to the co-operation between Canada and Argentina. Canada officially communicated its revised export policy to the Agency (INFCIRC/243).

### 21.3.2. Multilateral agreements

In the period 1970–1980, no new multilateral treaty requiring the application of Agency safeguards was negotiated. The two multilateral treaties already referred to in the basic book — the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) and the Treaty for the Prohibition of Nuclear Weapons in Latin America (Tlatelolco Treaty) — became and remained the two multilateral instruments in relation to which the Agency implemented safeguards functions.

#### *21.3.2.1. European security control*

The agreement for co-operation in the application of safeguards between the Agency and the NEA (formerly ENEA) of the OECD, foreseen by Article 16(b) of the European Security Control Convention, was not concluded[44]. The OECD/NEA played no role in the application of Agency safeguards during the period 1970–1980; in fact, the OECD/NEA suspended the application of the Convention in view of the comprehensive safeguards applied by the Agency.

#### *21.3.2.2. Latin American denuclearization*

In addition to the Articles of the Tlatelolco Treaty quoted in the basic book (Articles 1, 5, 7, 12, 13, 16, 18, 19 and 28), which are of relevance to Agency safeguards and other control activities, the Additional Protocol I to the Treaty also provides for the conclusion of Safeguards Agreements because the Parties to that Protocol have also undertaken to apply Article 13 of the Treaty in respect of the territories within the Treaty area for which they have responsibility. That Protocol relates to States situated outside the Treaty area which have international de jure or de facto responsibility for territories within the Treaty area. These are the following States:

(a) The Netherlands in respect of Surinam and the Netherlands Antilles;
(b) France in respect of French Guyana, Martinique and Guadeloupe;
(c) The UK in respect of the Falkland Islands (Islas Malvinas);
(d) The USA in respect of the Canal Zone in Panama, Guantánamo, the Virgin Islands and Puerto Rico.

Article 1 of the Protocol provides that such States undertake to apply "the statute of denuclearization in respect of war-like purposes", as defined in Articles 1, 3, 5 and 13 of the Tlatelolco Treaty, in territories for which, de jure or de facto, they are internationally responsible and which lie within the limits of the geographical zone established by that Treaty. Under Additional Protocol II the nuclear-weapon States undertake to respect fully "the statute of denuclearization"

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[44] Section 21.3.2.1 of the basic book.

of Latin America. While that Protocol contains no safeguards requirements, nuclear-weapon States made statements interpreting the definition of 'nuclear weapons' appearing in Article 5 of the Treaty when they signed or ratified the Protocol[45]. The essence of these statements is that any type of nuclear explosive device would fall under the definition of 'nuclear weapon' in Article 5 of the Treaty. China, France, the UK, the USA and the USSR have signed and ratified Additional Protocol II.

As of the end of 1980, the Netherlands had concluded Safeguards Agreements in respect of Surinam and the Netherlands Antilles in implementation of the obligations undertaken by the Netherlands under Additional Protocol I[46]. The Agreement in respect of Surinam was later terminated in view of the independence achieved by Surinam, and replaced by an Agreement with Surinam only. At the end of the period 1970–1980, 25 Latin American States had signed the Treaty and 22 States had become a Party to it; 24 States had ratified it, but Brazil and Chile had done so without the waiver provided for under Article 28 of the Treaty regarding the conditions for the entry into force of the Treaty. Argentina signed, but did not ratify the Treaty[47]. Cuba neither signed nor ratified the Treaty.

21.3.2.2.1. Implementation by the Agency

The Agency did not assume any verification functions under the Tlatelolco Treaty except for the application of safeguards pursuant to Article 13 of the Treaty; such safeguards were applied under a series of bilateral agreements concluded with the States concerned[48]. The regional organization OPANAL, established by the Treaty, did not establish its own system to control compliance with those obligations which are not verified through the safeguards system of the Agency[49] (principally the undertaking by the Parties not to acquire or to introduce nuclear weapons in the area). The Agency concluded a standard relationship agreement with OPANAL (see Section 12.5.3.9) but did not enter into any other arrangements with that organization regarding the control system to be applied under the Treaty[50]. OPANAL negotiated, however, a number of Safeguards Agreements with the Agency under negotiating powers conferred specifically upon OPANAL by some Latin American States[51].

The Safeguards Agreements concluded by the Agency with States Party to the Tlatelolco Treaty can be grouped into four broad categories:

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[45] The USSR also communicated its statement to the Agency (INFCIRC/262).

[46] INFCIRC/229 and 230.

[47] See IAEA Bulletin, Vol.22, Nos 3/4, p.81.

[48] The Treaty also provides for the option to conclude multilateral agreements with the Agency.

[49] Articles 12–15 of the Treaty.

[50] Under Article 19 of the Treaty, OPANAL may conclude agreements with the Agency that may "facilitate the efficient operation of the control system established by the Treaty".

[51] The Agreements in question were, however, concluded between the Agency and the State.

(1) The original Agreement with Mexico of September 1968, which was based on the Revised Safeguards Document. That Agreement was suspended in 1972 and was superseded by the conclusion of a combined NPT and Tlatelolco Safeguards Agreement[52].

(2) Agreements to cover both the NPT and the Tlatelolco Treaty[53]. These Agreements are based on the NPT Safeguards Document, with minimum formal modifications to cover also the relevant terms of the Tlatelolco Treaty (Title, Preamble and Duration of the Agreement). In no instance did the Agency conclude two separate agreements with States Party to the NPT and to the Tlatelolco Treaty.

(3) Agreements to cover the NPT, with a Protocol stating that the NPT Agreement also satisfies the requirements of the Tlatelolco Treaty[54].

(4) Agreements with States not Party to the NPT but Party to the Tlatelolco Treaty. These Agreements were concluded with Colombia[55] and Panama[56]. In these Agreements, additions were made relating to the export of nuclear material and to the possibility of withdrawal of nuclear material for non-explosive military purposes (Article 14 of the NPT Safeguards Document). Under Article III(2) of the NPT, Parties to the Treaty are not to provide nuclear material, certain equipment or other material to non-nuclear-weapon States for peaceful purposes unless the nuclear material is subject to safeguards. The Tlatelolco Treaty does not contain an analogous clause. When the draft Agreement with Panama was first put to the Board, with the standard text and with changes only in the Title, the Preamble and the duration clause, it had to be withdrawn as a result of dissatisfaction voiced in unofficial consultations[57]. The revised version of the Agreement put to the Board[58] included important changes and additions:

   (a) The option to use nuclear material for military non-explosive purposes and to request the non-application of safeguards under Article 14 of the NPT Safeguards Document was not included in view of the fact that the Parties to the Tlatelolco Treaty have undertaken to use nuclear material for peaceful purposes only[59].

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[52] INFCIRC/118 and 197.

[53] For example with El Salvador (INFCIRC/235).

[54] For example with Uruguay (INFCIRC/157 and 160).

[55] INFCIRC/306.

[56] INFCIRC/316.

[57] GOV/OR.464, paras 71-72.

[58] GOV/1634, Mod.1.

[59] This interpretation of the Tlatelolco Treaty is not without ambiguity because the obligation of the Parties regarding peaceful uses is qualified by references to nuclear weapons. This issue would come up if a Party to the Tlatelolco Treaty intended to build a nuclear propelled military vessel or to use nuclear material for other non-explosive military purposes.

(b) A new Article, relating to transfers outside Panama, was added. Such transfers were only permitted if the material in question was returned to the Supplier State and if any special fissionable material produced was either retained in or returned to Panama or was subject to safeguards in the recipient State. Further transfers of such nuclear material to a third State would also require the application of safeguards. These provisions are modelled after the terms of paragraph 28 in the Revised Safeguards Document and are stricter than those of Article III(2) of the NPT, which requires the application of safeguards only for exports to non-nuclear-weapon States for peaceful purposes.

With these changes, the Board then accepted the Agreement, and the 1979 Agreement with Colombia contains the same terms regarding international transfers. In the Board discussion of the Panamanian Agreement, the Governor from the Federal Republic of Germany stated that his Government had considered the question of whether the Agreement could properly be based on the NPT Safeguards Document and that it had decided "that it could approve the Agreement with Panama in view of the fact that the Tlatelolco Treaty had objectives similar to those of the NPT" [60].

The large majority of Safeguards Agreements with Latin American States cover the obligations under both the NPT and the Tlatelolco Treaty. They contain provisions in accordance with Article 14 of the NPT Safeguards Document for procedures to be followed if nuclear material is to be withdrawn from safeguards for military non-explosive uses. However, this option remains inoperative as long as a State is also Party to the Tlatelolco Treaty, provided that Article 1 of the Tlatelolco Treaty is interpreted as requiring permanent peaceful use of nuclear material subject to the Safeguards Agreement.

### *21.3.2.3. General non-proliferation*

The basic book describes some of the problems which the Agency would have to face in assuming the safeguards functions foreseen for it under the NPT[61]. All the problems mentioned in the basic book were addressed in the course of the discussions leading to the adoption of the NPT Safeguards Document[62] by the Board. These problems and the way in which they were resolved are described in detail in the following sections.

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[60] GOV/OR.467, para. 25.

[61] Basic book, Section 21.3.2.3, paras (i)–(v).

[62] INFCIRC/153.

21.3.2.3.1. Statutory authority to apply safeguards

When preparatory work started on the legal instruments which the Agency would have to conclude in order to enable it to carry out its safeguards functions, a very basic issue arose: Were the relevant terms of the NPT — which in turn determined the obligation of its Parties to negotiate Safeguards Agreements with the Agency — compatible with the Statute? Or, seen from the Agency's perspective, did the Agency have statutory authority to apply safeguards in connection with the NPT? In comments on an initial unofficial working draft of an NPT Safeguards Agreement sent out by the Director General on 11 March 1970[63], some Member States answered the above question in the affirmative[64]. Other States pointed out that the terms, objectives and principles of the NPT did not always coincide with those of the Agency[65]. While there was not a single comment which challenged the statutory authority of the Agency to assume safeguards functions under the NPT, many States stressed that the application of NPT safeguards would have to be in accordance with the Statute[66].

When the Director General presented his first report to the Board, "Safeguards Agreements in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons", in May 1970, he announced[67] that a note would be forthcoming on the statutory authority of the Agency to apply safeguards in connection with the NPT. This note of 3 June 1970, with the title "The Statute of the Agency and the Safeguards Required under the Treaty of the Non-Proliferation of Nuclear Weapons"[68], pointed to the mandatory requirement of the Statute in relation to Agency projects[69]. In that case, Agency safeguards must be designed to ensure that material and other items made available by or through the Agency "are not used in such a way as to further any military purpose"[70]. However, the Director General continued, there was no requirement that safeguards applied at the request of the Parties to a multilateral or bilateral arrangement must be designed to achieve the same objective as safeguards applied to Agency projects. The fact that hitherto the safeguards objective of Unilateral Submission Agreements or Safeguards Transfer Agreements had coincided with that of Agency Project Agreements was not a mandatory consequence of the Statute but resulted either from the terms of the request by the State concerned or from those of the nuclear co-operation agreements in

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[63] Circular letter SAF/112.

[64] For example India and Turkey.
For comments by Governments see GOV/COM.22/2 and Addenda.

[65] Ibid.

[66] Ibid.

[67] GOV/COM.22/3, para. 3(b).

[68] GOV/COM.22/4.

[69] Ibid., para. 5.

[70] Statute Article XI.F.

question. The Director General also stressed that, under the NPT, safeguards applied only to peaceful activities, that Article XII of the Statute foresaw Agency rights and responsibilities to the extent relevant to an arrangement, and that NPT Safeguards Agreements defined which of these rights and responsibilities would be relevant in the NPT context. As a supporting argument the Director General referred to Article III.B.1 of the Statute and to the fact that, at the end of May 1970, 98 States had signed the NPT, 76 of which were Members of the Agency. In conclusion, the note unequivocally stated that "... the Statute, as now worded, thus provides the Agency with the legal authority to apply safeguards to achieve the objective foreseen in Article III.1 of the NPT, namely to verify that there is no diversion of nuclear material to nuclear weapons or other nuclear explosive devices, and to conclude the necessary agreements to that effect". When, in June 1970, the Safeguards Committee (1970) had its first, general debate[71], it also considered this note by the Director General. Some speakers, for example from the Netherlands and the United Arab Republic, stressed the complementary nature of the Statute and the NPT, and that there was no contradiction between the Statute and the NPT[72].

21.3.2.3.2. The NPT Review Conferences in 1975 and 1980

*21.3.2.3.2.1. The first (1975) NPT Review Conference.* Article VIII (3) of the NPT states that "Five years after the entry into force of this Treaty, a conference of the Parties to the Treaty shall be held in Geneva, Switzerland, in order to review the operation of this Treaty with a view to assuring that the purposes of the preamble and the provisions of the Treaty are being realized".

Preparatory work for the Conference was carried out by a Committee composed of NPT Parties which either were members of the Agency's Board or were represented at the Conference of the Committee on Disarmament (CCD)[73]. Under the Rules of Procedure, the Director General or his representatives were entitled to attend the meetings of the Plenary and of the Main Committees, to receive the Conference documents and to submit material to the Conference, both orally and in writing[74].

**21.3.2.3.2.1.1. The Agency's participation in the first NPT Review Conference**

(a) *Agency representation and services*

The General Assembly had requested the United Nations Secretary-General to render the necessary assistance and to provide such services as are required by the

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[71] GOV/COM.2/OR.1-4.
[72] GOV/COM.22/OR.3, para. 8; GOV/COM.22/OR.2, para. 16.
[73] Final Report of the Preparatory Committee (NPT/CONF/3).
[74] Rules of Procedure (NPT/CONF/23), Rule 44.3.

Conference[75]. Accordingly, the United Nations was in charge of servicing the Conference. The Agency seconded a number of officials for the Conference who served as Secretariat for Main Committee II (which was charged with reviewing the implementation of Articles III, IV and V, and Preambular paragraphs 6 and 7). Agency representatives attended all sessions of the Preparatory Committee and of the Conference itself.

(b) *Documentation*[76]

At the invitation of the Preparatory Committee, the United Nations, the Agency and OPANAL submitted working papers to the Conference. The Agency prepared an analytical and technical report on its activities under Article III (Safeguards), and working papers on its activities under Article IV (Peaceful Nuclear Co-operation) and Article V (Nuclear Explosions for Peaceful Purposes). A paper on Articles IV and V was also submitted by the United Nations.

(c) *Agency report on Article III*[77]

The report dealt with Agency safeguards under the NPT, made a brief comparison with non-NPT safeguards, discussed financing of safeguards and some legal aspects, and gave financial and statistical data on the situation as of 31 December 1974. Moreover, it reproduced communications received in relation to exports of nuclear material (Section 21.6.1.1.3); a brief discussion of physical protection measures and a somewhat speculative note on the implementation of Statute Article XII.A.5 completed the report.

(d) *Agency report on Article IV*[78]

The Agency report on Article IV described the Agency's activities between 1964 and 1974, relating to technical assistance, exchange of equipment and material, exchange of scientific and technical information, and international co-operation between States and organizations.

(e) *Agency report on Article V*[79]

The Agency report on Article V described the history of the Agency's work on peaceful nuclear explosions, starting with the establishment of an ad hoc committee by the Board in 1969.

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[75] The United Nations Secretary-General at the Conference was Ambassador Pastinen from Finland; the Conference Secretariat consisted of officials of the United Nations and of the Agency.

[76] The Agency's reports were prepared under the authority of the Director General and transmitted to the Preparatory Committee for publication as Conference documents.

[77] NPT/CONF/6/Rev.1.

[78] NPT/CONF/11 and Add.1.

[79] NPT/CONF/12 and Corr.1.

(f) *United Nations report on Articles IV and V*[80]

The United Nations report on the two Treaty articles dealt with the 1968 Conference of non-nuclear-weapon States, General Assembly actions and resolutions and the work of the CCD in relation to these Articles.

(g) *OPANAL report on the Tlatelolco Treaty, and on Article VII and related provisions of the NPT*[81]

In its report, OPANAL also covered the question of Agency safeguards. It discussed, in particular, the doubts that had been expressed about whether the Agency had authority to conclude with a State not Party to the NPT but a participant in the Tlatelolco Treaty a Safeguards Agreement similar to the NPT Safeguards Agreements. OPANAL reported that these doubts had arisen in connection with the Agreement with Panama, but that they had been resolved by some modifications to the standard text of the NPT Safeguards Agreements (see Section 21.3.2.2.1).

#### 21.3.2.3.2.1.2. Results of the first NPT Review Conference relating to the Agency

The final declaration of the Conference[82] treated separately Articles III, IV and V. The outcome of the Conference was quite positive for the Agency, so that the Director General could, at a meeting of the Board in June 1975, "... record the praise which the Agency had received for its contribution to the Conference and for the quality of the documentation it had submitted" [83].

The Conference took note of the Agency's safeguards activities and expressed its strong support for safeguards. With regard to safeguards, the Conference made a number of recommendations to the Agency and the NPT Parties[84]:

- To strengthen common export requirements and to require full-scope safeguards as a condition for exports to non-Parties. (However, the first Conference fell short of recording an interpretation of Article III(2) in that sense or of reaching a consensus in that respect.);
- To reduce further the share of developing countries in safeguards costs;
- To increase the number of safeguards inspectors from developing countries.

Moreover, the Conference urged that further steps be taken for the physical protection of nuclear material, "including principles relating to the responsibility of

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[80] NPT/CONF/10.

[81] NPT/CONF/9. The document also discusses a number of basic issues of the Tlatelolco Treaty and indicates the declarations made by Parties or Signatories in connection with the Tlatelolco Treaty or Additional Protocols I and II.

[82] Reproduced also as Agency document GOV/INF/296.

[83] GOV/OR.478, para. 6.

[84] See the Final Declaration with respect to these Articles.

States, with a view to ensuring a uniform, minimum level of effective protection for such material''; also, that all States should enter into international agreements to ensure such protection. This was the first time that a conference of States took the position that internationally binding agreements were required in this field.

With regard to Article IV, the Conference reaffirmed that nothing in the Treaty should be interpreted as affecting the inalienable right of the Parties to develop nuclear energy for peaceful purposes without discrimination and in accordance with Articles I and II of the Treaty. The Conference thus confirmed the existing non-proliferation regime, built upon Treaty undertakings and verification by Agency safeguards. The Conference did not decide or recommend that international collaboration in certain stages of the fuel cycle should be restricted so as to prevent even Treaty Parties from gaining access to plutonium or highly enriched uranium or the technology to obtain these materials[85].

In its review of Article V the Conference noted the relationship of arms control measures and peaceful applications of nuclear explosions, a matter which was discussed by the CCD[86] and which falls outside the competence of the Agency[87]. The Agency was considered to be the international body through which potential benefits from peaceful applications of nuclear explosions could be obtained by any non-nuclear-weapon State[88] and the Agency should play the central role in this matter. The Conference, while noting that the technology of nuclear explosions for peaceful purposes was still under development and that important legal issues had not yet been examined, urged the Agency nonetheless to expand its work in that area.

In retrospect, this recommendation for an expansion of the Agency's activities relating to nuclear explosions for peaceful purposes is difficult to understand. Environmental opposition was already visible; the economic benefits of that technology were doubtful, at best; the nuclear-weapon States, which were the potential suppliers of these services, had not pursued earlier projects for practical application of this technology; and legal issues and problems of liability remained to be solved (Section 17.5).

An examination of the implications of the results of the first NPT Review Conference for the Agency's programme shows that most of the recommendations were already being complied with[89]. The Conference thus confirmed the Agency's work, and there was little need for the Agency to start new projects or to redirect existing activities.

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[85] Subsequent changes of export policies by supplier States were thus seen as a departure from the terms of the NPT and from the consensus embodied in the Final Declaration.

[86] Pursuant to General Assembly Resolution 3261 D(XXIX).

[87] The Agency's work on peaceful nuclear explosions did not cover this aspect.

[88] The Conference thus took the position that non-Parties should also benefit from Article V of the NPT.

[89] GOV/INF/306.

*21.3.2.3.2.2. The second (1980) NPT Review Conference.* In accordance with the terms of the NPT and following a recommendation by the first NPT Review Conference, the second NPT Review Conference took place from 11 August to 7 September 1980 in Geneva. The organizational aspects were the same as those of the first Conference, with the United Nations being primarily responsible and with substantial Agency participation. A Committee, composed of those NPT Parties which either were serving on the Agency's Board or were members of the Committee on Disarmament, was again in charge of the preparations. This second Conference took place in a changed nuclear, economic and political environment. Nuclear energy was going through a difficult phase; a nuclear accident had occurred in a nuclear power reactor in the USA (Three Mile Island); nuclear suppliers had tightened the export policies for sensitive technologies also in relation to NPT Parties, practically leading to an embargo on the transfer of certain fuel cycle technologies[90]; bilateral co-operation agreements had to be re-negotiated; uncertainties persisted about the back-end of the fuel cycle, coupled with growing environmental concern; astronomical interest rates made private investment in capital intensive nuclear plants unattractive; and there was no visible progress in nuclear disarmament. All these events occurred outside the Agency. Many of them affected heavily the Agency's promotional role and showed the potential conflict of that role with the emerging 'non-proliferation regime' (which could be defined as including national policies and international arrangements *in addition to* the NPT to prevent the acquisition of nuclear weapons capability by any non-nuclear-weapon State, whether a Party to the NPT or not).

**21.3.2.3.2.2.1. The Agency's participation in the second NPT Review Conference**

(a) *Agency representation and services*

Agency assistance to and involvement in the Conference did not differ markedly from those during the first Conference.

(b) *Documentation*

The Agency again submitted reports on its activities under Articles III, IV and V; the United Nations submitted, among others, a background paper on Articles IV and V; and OPANAL submitted a memorandum on the Tlatelolco Treaty.

(c) *Agency report on Article III*[91]

The Agency's report covered the period from 1975 through 1979. It provided information on the status of the NPT, on NPT Safeguards Agreements and non-NPT

[90] INFCIRC/254.
[91] NPT/CONF.II/6 and Addenda 1 and 2.

Safeguards Agreements, on safeguards coverage, on technical safeguards matters and on safeguards costs. Also discussed were non-proliferation related developments, such as the guidelines for nuclear exports, the studies for an international plutonium storage (IPS) scheme, an international spent fuel management (ISFM) scheme, the work and results of the International Fuel Cycle Evaluation (INFCE) and the physical protection of nuclear material.

(d) *Agency report on Article IV*[92]

This report referred to the Agency's main programmes in relation to international nuclear co-operation and provided information on export related activities of major nuclear suppliers. It is perhaps the clearest existing summary on the Agency's work in this field for the period 1970–1980.

(e) *Agency report on Article V*[93]

Since the Agency's work on nuclear explosions for peaceful purposes was, in effect, finished as of 1977, the report updated the information presented at the first NPT Review Conference for the years 1976/1977.

(f) *United Nations report on Articles IV and V*[94]

The United Nations document gave brief information on General Assembly resolutions and statements in the Assembly relevant to these Articles. Of greater interest for the Agency's work was the report on Article V, which included the discussion of the topic of peaceful nuclear explosions by the CCD. In that forum, many representatives had stated that, in their view, a peaceful nuclear explosion programme would result in nuclear weapons capability, that nuclear weapons and peaceful nuclear explosions had common technical characteristics and that interest in conducting nuclear explosions for peaceful purposes had decreased. It was also pointed out that peaceful nuclear explosions must yield to a comprehensive test ban and that States should refrain from developing nuclear explosives for any purpose.

(g) *OPANAL report*[95]

The Secretary-General of OPANAL again provided a report on the Tlatelolco Treaty and its implementation.

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[92] NPT/CONF.II/7.
[93] NPT/CONF.II/8.
[94] NPT/CONF.II/4.
[95] NPT/CONF.II/9.

### 21.3.2.3.2.2.2. Results of the second NPT Review Conference relating to the Agency

The second NPT Review Conference did not agree on a final declaration. The main reason for this failure was the inability of the Conference to reach a consensus on a text on nuclear disarmament. A text on the implementation of Articles III, IV and V, although practically agreed upon by a representative group of countries (the 'Friends of the President'), could therefore not be formally issued as a Conference document[96]. While this text therefore attained no official status, it probably represents a fairly reliable indication of the results of the discussion.

With the above formal reservation, the main conclusions of the Conference relating to the Agency can be described as follows:

The Conference emphasized the key role of safeguards and noted with satisfaction that no diversion of nuclear material had been detected. The statement by the Conference that "the conclusion and implementation of agreements in accordance with IAEA document INFCIRC/153" fully met the undertaking under NPT Article III(1) constitutes an important Treaty interpretation in the sense that no further obligations had been assumed by NPT Parties under Article III(1) (such as participation in the IPS scheme). Regarding the application of safeguards, the need for equal treatment of non-nuclear-weapon States Party to the NPT and States not Party to the NPT was again emphasized, but no agreement could be reached that full-scope safeguards should be a precondition for nuclear exports to non-Parties. In a generally very positive assessment of Agency safeguards, a number of specific suggestions were made, such as on implementation, development, staffing and financing.

Regarding Article IV, the Conference did not conceal its criticism of the Nuclear Suppliers Group and of the tightened export conditions, and noted the disagreement among Conference participants in that regard. The introduction of new non-proliferation measures in addition to Agency safeguards was viewed by some countries as an impediment to the full implementation of NPT Article IV. The Committee on Assurances of Supply (CAS) was seen as an important vehicle to develop as wide a consensus as possible. The idea of a Special Fund within the Agency to finance technical assistance for NPT Parties was supported, as were other Agency projects, such as the study on spent fuel management.

The Conference's statements on the feasibility, benefits and utility of nuclear explosions for peaceful purposes represented a sober recognition of reality. The potential benefits of these explosions had not been demonstrated, and the nuclear-weapon States had practically ceased work in this field by 1980 and had not made

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[96] For a text see "Nuclear Supply and Non-Proliferation: The IAEA Committee on Assurances of Supply", a report for the Congressional Research Service by Charles N. Van Doren (Report No. 83-202S, Appendix K).

available to the Agency any information for the past few years. Interventions at the Conference pointed to the connection between peaceful nuclear explosions and nuclear weapons testing, to the need for "nuclear explosions for peaceful purposes to be an integral part of the proposed ban on nuclear testing" [97], and to the conviction that all nuclear explosions for peaceful purposes should be banned as long as it was impossible to distinguish between peaceful and military devices.

When the Director General reported to the Board on the main results of the Conference he could rightly say that, despite the absence of a final declaration, "... almost uniformly favourable views had been expressed with regard to the Agency and its programmes" [98]. The Conference endorsed and supported ongoing Agency activities, but did not provide stimuli for new or expanded Agency programmes. These came rather from INFCE and from the concern about nuclear safety, which had already been highlighted by the Three Mile Island nuclear accident.

## 21.4. SAFEGUARDS INSTRUMENTS ADOPTED BY THE BOARD

The most important additional safeguards instrument approved by the Board during the period covered by this book is the document entitled "The Structure and Content of Agreements between the Agency and States Required in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons" [99]. As distinct from the safeguards instruments approved earlier, this document constitutes a complete self-contained draft agreement.

### 21.4.4. The 'model' NPT Safeguards Agreement

#### *21.4.4.1. Development*

On 6 April 1970 the Board established a Committee, open to all Members of the Agency, "... to advise the Board as a matter of urgency on the Agency's responsibilities in relation to safeguards in connection with the Treaty, and in particular on the content of the agreements which will be required in connection with the Treaty" [100]. This Committee met from 12 June 1970 to 10 March 1971. It prepared

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[97] See also the statements in the CCD on peaceful nuclear explosions (for example by Sweden, CCD/PV/729).

[98] GOV/OR.555, paras 72–78.

[99] INFCIRC/153, usually referred to as the 'Blue Book'. (Some minor printing errors were corrected in a successive version; they did, however, not change the contents of the document.) The corrected version was issued as INFCIRC/153 (corrected).

[100] For the text of the resolution see GOV/INF/222.

the complete draft of a model NPT Safeguards Agreement and also recommended to the Board a formula for calculating the division of safeguards costs among Member States of the Agency[101]. All the decisions of the Committee were taken by consensus, as was the adoption of the three reports by the Committee to the Board[102].

*21.4.4.2. Preparatory work for the Committee*

The Director General's circular letter of 11 March 1970[103] contained a draft model agreement as an annex. That draft was the result of unofficial discussions between the Secretariat and Finland on an NPT Safeguards Agreement. While the draft took account of developments since the adoption of the Revised Safeguards Document and the particular scope of NPT safeguards, it was still based on the Revised Safeguards Document. An explanatory memorandum was circulated a few days later. The extensive comments received (31 States commented) clearly indicated that a completely new approach was required and that an NPT Agreement would have to differ substantially from the then current INFCIRC/66 type Safeguards Agreements, regarding both some fundamental provisions and the technical procedures. All the comments received, but not the initial draft agreement which stimulated these comments, were put before the Board[104]. At the request of the Board the Director General submitted an initial document[105] to the Committee; this document consisted of three parts:

— An Introduction;
— Obligations of a general nature (Part I);
— Safeguards procedures and principles of application (Part II).

Thus, the subsequent general structure of the NPT Safeguards Agreements was already becoming apparent from the Director General's initial report. The whole matter was, understandably, very urgent in view of the deadline given in the NPT for starting negotiations of Safeguards Agreements with the Agency. As the NPT entered into force on 5 March 1970, the non-nuclear-weapon States Party to the NPT on that date were required to initiate negotiations by 1 September 1970[106].

The early negotiating history of the NPT shed little light on how the Agency's NPT safeguards system should be conceived. Additions to the Treaty text in the later negotiating stages are, however, of considerable relevance. This applies, in

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[101] GOV/1451 and Corr.1.
[102] GOV/1420, GOV/1444, GOV/1451 and Corr.1.
[103] SAF/112.
[104] GOV/COM.22/2 and Addenda.
[105] GOV/COM.22/3.
[106] Article III(4).

particular, to the principle, incorporated in the Preamble, of safeguarding effectively the flow of nuclear material at certain strategic points. Moreover, in 1970 an important part of the nuclear facilities in Member States were not under Agency safeguards[107] and the Agency had no experience in safeguarding sensitive nuclear facilities, such as reprocessing plants, enrichment plants or facilities for the manufacture of nuclear fuel containing plutonium, and it was these types of facilities which could present the most immediate concerns for proliferation. On the other hand, there was experience in safeguarding research reactors[108], light water reactors and some on-load power reactors. Furthermore, extensive technical safeguards development work had been performed and an internal Secretariat working group had made considerable technical and legal preparations in 1969 and 1970. Most importantly, three groups of safeguards consultants, appointed by the Director General, were looking at technical problems. Their recommendations[109] had a decisive influence on formulating the NPT safeguards approach.

The Director General's initial report[110] contained important propositions and statements, for example that safeguards need not cover the obligations under Article III(2) of the Treaty; that States should maintain a national system of accounting and control for safeguarded nuclear materials; and that appropriate procedures should be applied when nuclear material was to be transferred from peaceful activities to military activities not proscribed by the Treaty, but that processes which only changed the chemical or isotopic composition of bulk material, such as conversion, reprocessing and enrichment, were not intrinsically military, regardless of the intended subsequent use of the material in question. The latter two points are of cardinal importance for an effective safeguards system. Under this concept a non-nuclear-weapon State Party to the NPT could not have a complete unsafeguarded 'military' fuel cycle, nor was it sufficient to give a simple declaration to withdraw from safeguards material for non-proscribed military uses such as nuclear propulsion of warships.

To facilitate the work of the Committee, two further papers of a legal nature were prepared on the following topics:

— The statutory authority of the Agency to apply safeguards in connection with the NPT[111];
— Questions of the responsibility for damage arising out of the application of safeguards under the NPT[112].

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[107] In particular facilities in the Member States of Euratom.
[108] Annual Report for 1970/1971 (GC(XV)/455), Table 22.
[109] GOV/INF/212, Annex.
[110] GOV/COM.22/3.
[111] GOV/COM.22/4.
[112] GOV/COM.22/27.

*21.4.4.3. The Committee and its work*

The Safeguards Committee (1970) was open to all Member States of the Agency. It met under the chairmanship of Ambassador Waldheim (Austria), with Ambassador Quartey from Ghana and Professor Straub from Hungary serving as Vice-Chairmen. The Director General's initial report constituted a convenient and practical point of departure for the Committee's work and also a focal point for Governments to submit proposals and amendments. After a few days of comparatively short general debate and statements, the Committee started substantive detailed discussions on Part I[113]. Thus the Committee started de facto negotiation at a very early stage of its meetings. Work done by the Committee and tentative agreements reached were included in progress reports by the Director General[114]. Subsequently, the texts were consolidated and, with additions and editorial changes by the Secretariat, issued as reports by the Director General[115]. These documents in turn formed the basis for further comments and amendments by Member States. Problem areas which presented particular difficulties were postponed and taken up separately, such as the question of safeguards on international transports of nuclear material[116] and the question of the frequency and intensity of inspections[117]. Agreement on a formula for sharing safeguards costs[118] constituted a precondition for most developing States to join in the consensus of the Committee, and the adoption by the Board of the text proposed by the Committee was linked with an understanding on sharing the costs of safeguards among Member States of the Agency (see Section 21.9)[119]. The successful outcome of the Committee's work within a short time span is an impressive achievement in view of the complicated technical task it had to face, the new problems it encountered, the lack of practical experience by the Agency with a system proposed by the Committee and the possible risks for the nuclear industry in developed States resulting from intrusive safeguards. In addition, it had become clear that the text elaborated would equally be used as a basis for negotiations with Euratom and its non-nuclear-weapon States, i.e. as the basis for a multiple type Safeguards Agreement (originally, there were suggestions that a separate model might be drawn up for agreements with groups of States).

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[113] GOV/COM.22/OR.6 ff.
[114] For example GOV/COM.22/38 and related documents.
[115] For example GOV/COM.22/62 and related documents.
[116] GOV/COM.22/63.
[117] Then covered by GOV/COM.22/121.
[118] GOV/COM.22/145 and Addenda, GOV/COM.22/156 and Corr.1.
[119] GOV/OR.436, para. 75, GOV/1451 and Corr.1., GOV/1459 and Mod.1.

*21.4.4.4. Form of and Parties to NPT Safeguards Agreements*

NPT Safeguards Agreements may be classified as Unilateral Submission Agreements[120]. The fact that the obligation to negotiate and conclude such an Agreement stems from a multilateral treaty, the NPT, does not change this classification. Except for the Agreements with Members of Euratom, NPT Safeguards Agreements were concluded, in all instances, as bilateral Agreements between the Agency and the State concerned. The Euratom non-nuclear-weapon State (NNWS) Safeguards Agreement took the form of a multilateral Agreement between the Agency, Euratom and its non-nuclear-weapon States. With the enlargement of Euratom, its new NNWS Members adhered to the Agreement through a simple procedure: notification by the State and by Euratom of the Director General, with no further approval by the Board required[121]. The Euratom (NNWS) Agreement will remain in force as long as all non-nuclear-weapon States of Euratom are Parties to the NPT; should one such State withdraw from the NPT, the Agreement would require an amendment to the effect that it continues to be in force for the remaining States. Agreements with France and with the UK are trilateral in nature, the Agency, the State and Euratom being Parties. Under its internal law, Euratom had to become a Party to the Agreements because the States had relinquished to Euratom, under the Treaty of Rome, part of their national competence in the nuclear energy field[122]. Accordingly, Euratom itself had to assume under the Agreement with the Agency certain obligations and had become the beneficiary of rights, particularly with regard to the implementation of safeguards and the co-ordination of both control systems.

*21.4.4.5. Contents of NPT Safeguards Agreements*

The principal novel features of NPT Safeguards Agreements are described in the following sections.

21.4.4.5.1. Basic undertaking

In contrast to Safeguards Agreements based on the Revised Safeguards Document, NPT Safeguards Agreements do not contain a substantive undertaking by the State to the Agency for the peaceful or non-explosive use of nuclear material under safeguards[123]. The NPT itself already contains an obligation by non-nuclear-weapon States not to manufacture or otherwise acquire nuclear weapons or other

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[120] Section 21.5.2.
[121] INFCIRC/193, Article 23.
[122] On safeguards see Article 77 ff. of the Treaty.
[123] INFCIRC/153, para. 1.

nuclear explosive devices[124]. Under Article III(1) and (4) of the NPT, each non-nuclear-weapon State Party to the Treaty has undertaken to accept safeguards and to conclude a Safeguards Agreement with the Agency. The Director General's initial informal draft agreement contained a basic undertaking similar to that in agreements based on the Revised Safeguards Document, but modified to meet NPT language. However, a number of States objected, pointing out that under the NPT they were not required to assume an obligation of that nature towards the Agency, because they had already given such an undertaking towards the other Parties to the Treaty[125]. Indeed, including an obligation of that type in the Safeguards Agreement might have had important consequences in the event that the Board determined non-compliance, because in some instances the Board might then have determined a violation of the NPT[126]. Accordingly, the Agreements contain an undertaking by the State to accept safeguards and to provide for the right and obligation of the Agency to ensure that safeguards are applied, as set forth in the Agreement[127]. It should be noted that the Agency's rights and obligations were drawn up in such a way as to reflect also the situation of Euratom, where two safeguards systems are concurrently applied, because the Agency has to 'ensure' that safeguards are applied as set forth in the Agreement[128].

Naturally, the nature and extent of the basic undertaking are very strongly linked with the cardinal point of whether the safeguards required by the NPT are compatible with the Statute, i.e. the question of whether the Statute required an undertaking for the peaceful use of safeguarded material under all Safeguards Agreements. While there is a difference in language between the Statute and the NPT, a closer analysis reveals that NPT safeguards should also ensure the peaceful use of all nuclear material while under safeguards. The following arguments might be borne in mind in this connection: The Statute requires non-military use of items subject to a Project Agreement (Statute Articles III.A.5 and XI.F.4) as long as these items are usable in a nuclear activity; safeguards have to apply to such material or items 'in perpetuity'. Under the NPT, safeguards have to apply to all nuclear material of a non-nuclear-weapon State in all peaceful nuclear activities. This means that all material under safeguards must be in peaceful use; if it is intended to use such material in a non-proscribed military activity (for example a military nuclear propulsion), prior arrangements must be made with the Agency for the non-application of safeguards[129]. In other words, while the application of safeguards under the NPT

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[124] Article II.

[125] GOV/COM.22/2 and Addenda.

[126] In case the Board determines non-compliance with an obligation which is substantially the same as that in Article II of the NPT.

[127] INFCIRC/153, paras 1 and 2.

[128] This particular wording was suggested by Belgium in the Committee.

[129] INFCIRC/153, para. 14.

involves nuclear material accounting as well as containment and surveillance measures but not verification of a particular use of the nuclear material, it is also clear that such material must be in peaceful use. On the other hand, the Board had decided that under all non-NPT Safeguards Agreements safeguarded items must not be used for any nuclear explosive device, whether labelled military or peaceful. The above situation leads to the conclusion that, de facto, the basic proscriptions in respect of nuclear material subject to safeguards under NPT and non-NPT Agreements are the same *as long as the material is under safeguards.* Differences exist, of course, in the coverage of safeguards, territorial scope, termination, suspension, etc., but these do not result in a substantive difference in the basic undertakings in respect of NPT and non-NPT safeguards.

21.4.4.5.2. Items covered

An important limitation of NPT Safeguards Agreements must be noted. Under the NPT, only nuclear material is required to be subject to safeguards. However, the Agency has rights in respect of nuclear facilities, because a precondition for safeguarding nuclear material in facilities is knowledge by the Agency of the design features of facilities relevant to safeguards, and the Agency has also the right to inspect operating records of nuclear installations[130]. In distinction, non-NPT Safeguards Agreements may provide for safeguards on nuclear material, nuclear facilities, equipment and certain non-nuclear material, such as heavy water. Moreover, these Agreements may apply also to the use of certain technological information[131].

As a result of this distinction, a Safeguards Agreement must be negotiated before a nuclear facility is exported by a State Party to the NPT to a non-nuclear-weapon State not Party to the NPT, unless an existing Safeguards Agreement with the importing State already covers such a transaction. A State Party to the NPT thus has the responsibility to ensure that a Safeguards Agreement with sufficient coverage is in place before the export and that the Agency receives the required initial reports so that it can apply safeguards in relation to the export.

The situation is different for exports to non-nuclear-weapon States Party to the NPT. While the exporting State has to give advance notification of exports of nuclear material above a certain quantity, it has no obligation to notify the Agency of exports of equipment or even of complete nuclear facilities.

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[130] INFCIRC/153, paras 42–48 and para. 54(b).

[131] Section 21.13.1.

21.4.4.5.3. Territorial scope

NPT Safeguards Agreements are open-ended, i.e. they cover all present and future nuclear material in peaceful activities within the territory of a State, under its jurisdiction or control anywhere. No complicated rules are thus required to ensure complete coverage and the application of safeguards to subsequent generations of produced nuclear material[132].

21.4.4.5.4. Starting point of safeguards

Under the Revised Safeguards Document the starting point of safeguards did not become an issue because it depended on the State's request. Moreover, nuclear material was generally not supplied in the form of ore concentrate or 'yellow cake' (except for a sale from Niger to Pakistan), but in the form of natural or enriched uranium or fuel elements[133]. Such material had already gone through some stages of the nuclear fuel cycle and it was clear that this material fell under the statutory definition of nuclear material, which, in turn, forms part of the definitions in the Revised Safeguards Document[134]. A new situation arose under the NPT for those countries which were producers of source material and which, previously, had not submitted indigenous material to safeguards. The NPT uses the term 'source material', but does not contain a definition thereof. Article XX of the Agency Statute contains the following definitions:

> "1. The term 'special fissionable material' means plutonium-239; uranium-233; uranium enriched in the isotopes 235 or 233; any material containing one or more of the foregoing; and such other fissionable material as the Board of Governors shall from time to time determine; but the term 'special fissionable material' does not include source material.
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> "2. The term 'uranium enriched in the isotopes 235 or 233' means uranium containing the isotopes 235 or 233 or both in an amount such that the abundance ratio of the sum of these isotopes to the isotope 238 is greater than the ratio of the isotope 235 to the isotope 238 occurring in nature.
>
> "3. The term 'source material' means uranium containing the mixture of isotopes occurring in nature; uranium depleted in the isotope 235; thorium; any of the foregoing in the form of metal, alloy, chemical compound, or concentrate; any other material containing one or more of the foregoing in such concentration as the Board of Governors shall from time to time determine; and such other material as the Board of Governors shall from time to time determine."

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[132] INFCIRC/153 does not contain any derivative rules on safeguards.

[133] The Document was not applied to indigenous activities producing source material.

[134] INFCIRC/66/Rev.2, Definitions.

These definitions were incorporated into the NPT Safeguards Agreements, with the clarification that the term 'source material' would not apply to ore or ore residues[135]. Also, under such Agreements, safeguards do not apply to source material used in mining or ore processing activities. However, even with this clarification and understanding, problems arose, with regard to:

— Whether the input of ore concentrate into a conversion plant could be verified so as to establish a meaningful material balance of the plant and to ensure adequate verification of the plant output[136];
— Whether it would not be more economic to spend the limited financial resources of the Agency on those stages of the nuclear fuel cycle which handled nuclear material of a type presenting proliferation risks[137].

Accordingly, a solution had to be found to satisfy the NPT terms requiring safeguards on all nuclear material in all peaceful nuclear activities (and which would be in accordance with the definitions of the Statute) and which would not result in disproportionate costs for safeguarding nuclear material of low strategic value. The solution found represents a compromise:

While, before the starting point of safeguards, all nuclear material (as defined) is nominally subject to safeguards, it is not subject to any regular nuclear material accounting or verification. The only requirement is a notification of export of material for nuclear purposes to a non-nuclear-weapon State as well as notification of import of such material, but these notifications are not verified by the Agency[138]. After the starting point of safeguards, all nuclear material becomes subject to full safeguards procedures and verification once it leaves the process stage or the plant where it has been produced. This starting point of safeguards should not be confounded with the injunction on the Agency to concentrate verification procedures on sensitive stages of the fuel cycle. The formula for frequency and intensity of routine inspections takes account of that injunction through a complicated formula[139].

#### 21.4.4.5.5. Exemption, suspension, termination and non-application of safeguards

In addition to the provisions allowing the Agency to exempt nuclear material from safeguards or to suspend or terminate safeguards on such material, NPT Safeguards Agreements contain one novel provision, dealing with the situation when

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[135] INFCIRC/153, para. 112.
[136] A conversion plant is a 'facility' as defined in INFCIRC/153, para. 106.
[137] See INFCIRC/153, para. 6(c).
[138] Ibid., para. 34(a)(b).
[139] Ibid., paras 78–82.

a State wishes to withdraw nuclear material from a peaceful nuclear activity and to use it in a military activity not prohibited by the NPT (e.g. military nuclear propulsion). Under the NPT, no consent is required from the Agency for such use, since this is a right of the State concerned, and the same applies under the NPT Safeguards Agreements. However, it had also become clear that a simple declaration that material would henceforth cease to be under safeguards would be inconsistent with credible verification and effective safeguards[140]. Moreover, the NPT was frequently criticized because of an alleged loophole, namely that nuclear material could disappear from safeguards by a unilateral declaration of intended use in a military non-explosive nuclear activity. Accordingly, a formula was negotiated which took account of both points of concern:

— The NPT Safeguards Document recognizes that the use of safeguarded material in a military nuclear activity not proscribed by the Treaty is a matter of discretion for the State concerned;
— However, the NPT Safeguards Document requires prior arrangements with the Agency, identifying the circumstances and the period of non-application of safeguards before such use.

It was also made clear that each such arrangement would be put before the Board for approval[141]. Moreover, to ensure that nuclear material subject to a 'non-military use' undertaking given to the Agency or to a third State would not be used in a military activity, the State would have to satisfy the Board that no such condition was attached to the material in question. Nuclear material supplied under a Project Agreement or transferred from another State under a co-operation agreement on the peaceful uses of nuclear energy could thus never be withdrawn from a peaceful activity. An interesting legal point should be noted in this connection: Should such a request be made to the Agency, the Board might have to interpret the terms of a nuclear co-operation agreement if the two States disagreed, unless the material were covered by a safeguards transfer agreement (which contains such an undertaking towards the Agency). The requesting State would thus have to demonstrate to the Board that the material in question was not subject to an earlier Safeguards Agreement with the Agency (which required peaceful use) and that the terms of a co-operation agreement did not prohibit the intended military use.

### 21.4.4.5.6. Unified Inventory

The Inventory provisions could be substantially simplified because only nuclear material is subject to safeguards. Furthermore, no special rules are required

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[140] See, for example, the comments by Yugoslavia (GOV/COM.22/OR.25, para. 13).

[141] Note the exchange of letters between the Director General and the Government of Australia (GOV/INF/347).

to bring nuclear material under safeguards because all nuclear material in all peaceful nuclear activities of the State is covered.

Under agreements governed by the Revised Safeguards Document, safeguarded items may appear on the inventories of several agreements. This might be the case, for example, if special fissionable material had been produced in fuel supplied by State X which in turn had been used in a reactor supplied by State Y. These rules on the derivative scope of safeguards have led to very complicated situations and to problems of attribution of nuclear material or other items to particular Safeguards Agreements or bilateral co-operation agreements. Supplier States have normally reserved the right to obtain copies of Inventories. While supplier States wanted to obtain assurances from the Agency that items required to be safeguarded under their co-operation agreements were in fact covered, the Agency tried to avoid this complicated book-keeping operation and attribution. Moreover, it might be argued that it was not the task of the Agency to provide information to satisfy the requirements of bilateral agreements.

Under NPT Safeguards Agreements a unified Inventory of all nuclear material subject to safeguards, regardless of its origin, has to be maintained. It is up to recipient States to demonstrate, if required, to supplier States that nuclear material received from these States or derived from such imported material is under Agency safeguards[142].

### 21.4.4.5.7. Transfer of nuclear material

NPT Safeguards Agreements identify the point at which the responsibility for nuclear material transferred internationally passes from one State to another[143]. In principle, it is up to the two States concerned to determine the point at which the exporting State ceases to have responsibility for the material in question. No lacuna can exist because it is always the exporting State that retains responsibility until the importing State has assumed responsibility or until the nuclear material has arrived at its destination in the importing State. As a point of clarification, it is made explicit that the Flag State of an aircraft or a ship has no responsibility merely by virtue of the transport of material on such a ship or aircraft. Also, no responsibility falls on a transit State because of the mere fact that nuclear material passes over or through its territory. Notifications of export of nuclear material for nuclear purposes have also to be made before the starting point of safeguards; furthermore, the Agency must be kept informed of nuclear material exported from a non-proscribed military activity[144].

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[142] INFCIRC/153, para. 41.
[143] Ibid., para. 91.
[144] Ibid., para. 14(b).

21.4.4.5.8. Safeguards procedures

As distinct from agreements subject to the Revised Safeguards Document, NPT Safeguards Agreements are self-contained documents, and all the safeguards measures are spelled out in the Agreement without reference to any other safeguards document. However, provisions of the Statute and of the Privileges and Immunities Agreement are incorporated in these Agreements by reference. The main provisions and some of the principles of implementation are set out in Part I of the Agreement, and the general safeguards procedures to be applied for the implementation of Part I are set out in Part II of the Agreement. The 'Subsidiary Arrangements' are to contain the details of implementation.

21.4.4.5.9. Changes in safeguards procedures

NPT Safeguards Agreements contain general safeguards procedures for nuclear material of any composition and for any type of nuclear installation. Accordingly, there is no possibility for a discrepancy between a general document and individual agreements. The situation is thus different from that under the Revised Safeguards Document. Should a Government wish to amend its Agreement, then the usual amendment procedures, set out in the Agreement, would apply[145].

21.4.4.5.10. Collateral obligations of and restrictions on the Agency

These obligations and restrictions are set out in full in the NPT Safeguards Agreements themselves. They have been amplified as compared with agreements concluded pursuant to the Revised Safeguards Document[146].

21.4.4.5.11. Inspections and inspectors

All the applicable provisions are set out in full in the NPT Safeguards Agreements, except that the relevant parts of the Agreement on the Privileges and Immunities of the Agency are incorporated by reference. States which are not Party to this Agreement must apply at least equivalent provisions, although it is not spelled out in the agreements what these provisions shall be[147].

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[145] INFCIRC/153, para. 23. The Agency has been very reluctant to make any changes to the model Agreement. Major additions, such as to the Euratom (NNWS) Agreement (INFCIRC/193) and the Agreement with Japan (INFCIRC/255), were incorporated in a separate protocol.

[146] INFCIRC/153, paras 4–6, 8.

[147] Ibid., para. 10.

21.4.4.5.12. Sanctions

The statutory provisions regarding non-compliance have been made explicit as applying only in instances where the Agency is not able to verify that there is no diversion including misuse of nuclear material for nuclear weapons or other nuclear explosive devices[148]. Moreover, the language of these provisions seems to imply that the Board has a certain discretion to make the reports under Statute Article XII.C and to take the other measures set forth in the Statute. The inability of the Agency to perform verification may have a number of causes, for example:

— Insufficient resources of the Agency;
— Technical inability (for example lack of appropriate instruments) to safeguard a certain type of nuclear installation;
— Inability of the State and of the Agency to agree on sharing costs for certain actions of the operator of a nuclear facility required by an inspector or for services needed by an inspector;
— Delays in accepting inspectors proposed by the Agency;
— Incomplete or late reporting on nuclear material movements, in particular on exports of nuclear material;
— Removal of nuclear material for purposes not explained;
— Refusal to grant access to nuclear material (possibly also for legitimate reasons, e.g. safety).

Many situations involving non-compliance might be conceived and some could result in the inability of the Agency to verify non-diversion, although only a few situations would constitute non-compliance within the meaning of the Statute. Under the NPT Safeguards Agreements, in addition to actual diversion, all acts of non-compliance resulting in the inability of the Agency to verify non-diversion of nuclear material could trigger sanctions as foreseen in the Statute. The authority of the Board to call upon a State to take the required actions to ensure verification of non-diversion is specifically recognized. Such an appeal by the Board would probably precede a determination by the Board that the Agency is unable to perform adequate verification.

21.4.4.5.13. Financial matters

NPT Safeguards Agreements contain a clause on the distribution of costs[149] and indicate in general terms the type of costs to be borne by the Agency and those to be borne by the State. (See also Section 21.9.) Non-Member States have to

[148] INFCIRC/153, para. 19.
[149] Ibid., para. 15.

reimburse the Agency for the full cost of safeguards[150]. Furthermore, NPT Safeguards Agreements contain two Articles on liability, one covering third party liability for nuclear damage[151] and the other covering the principle that claims of one Party against the other Party shall be 'settled' in accordance with international law[152].

21.4.4.5.14. Duration of agreements

The duration of agreements is linked with participation of a State in the NPT. Should a State withdraw from the NPT, the respective agreement would lapse automatically upon the effective date of withdrawal[153]. Such a situation, should it ever occur, would in many instances result in reinstatement of safeguards under earlier agreements.

21.4.4.5.15. Suspension of other safeguards agreements with the Agency

The principle that the application of safeguards under other agreements has to be suspended forms part of the NPT Safeguards Agreements. It should be noted that these other Safeguards Agreements are not suspended as such, but that they remain in force and only the application of safeguards under them is suspended[154].

21.4.4.5.16. Inspections

The purposes, scope, frequency and intensity of and access for inspections are described in detail in NPT Safeguards Agreements. In particular, the maximum frequency and intensity of inspections are defined, basically by using the new concept of 'man-year of inspection' rather than simply establishing the number of visits by inspectors as is done under agreements based on the Revised Safeguards Document[155].

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[150] INFCIRC/153, para. 15(b). As of 1980, there was no non-nuclear-weapon State Party to the NPT with nuclear activities which was not a Member of the Agency.

[151] Ibid., para. 16.

[152] Ibid., para. 17.

[153] NPT Article X requires a notice of three months for withdrawal.

[154] Except in connection with Project Agreements and Unilateral Submission Agreements, an additional legal instrument, usually in the form of a 'Suspension Protocol', is required to record the consent of the other Party to the suspension of the earlier Safeguards Agreement.

[155] The actual estimated routine inspection effort (ARIE) is normally included in the Subsidiary Arrangements (Facility Attachments).

21.4.4.5.17. Statements on the Agency's verification activities

The Agency is under the obligation to transmit to the State concerned statements on the inspection results after each inspection and on its conclusions regarding its verification activities after the physical inventory of nuclear material has been checked[156].

21.4.4.5.18. International transfers

The Agency is not required to apply the principle of pursuit of nuclear material, i.e. verification that international transfers to non-nuclear-weapon States are only made if Agency safeguards are applied in the recipient State to the items transferred[157], because the obligation of NPT Parties under Article III(2) of the Treaty is not subject to verification by the Agency. While the Agency cannot veto a particular export, it has the possibility to verify material before export or immediately upon import. To that effect, advance notifications of shipments of material above a certain quantity are required. Even if the material is not subject to safeguards in the recipient State, the Agency must receive confirmation of receipt by this State.

21.4.4.5.19. Provisions of special legal interest

The basic features of NPT Safeguards Agreements have been briefly indicated in the above sections. Some provisions which may be of special legal interest are further discussed in the following sections.

*21.4.4.5.19.1. Preamble.* The Safeguards Committee (1970) did not propose a text for a Preamble. A standard Preamble is used which contains only the minimum references to the relevant terms of the NPT and the Statute. There are four exceptions to the above practice:

— The Agreement with the non-nuclear-weapon States which are Members of Euratom;
— The Agreement with Japan;
— The Agreements with nuclear-weapon States;
— The Agreements with States Party to the Tlatelolco Treaty.

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[156] INFCIRC/153, para. 90. These statements are made after internal evaluation of inspection reports.

[157] It has not been clarified whether the transfer restrictions in 'suspended' Safeguards Agreements (para. 28 of INFCIRC/66/Rev.2) remain in force or not. The practice has apparently been to regard them also as suspended.

*21.4.4.5.19.2. Settlement of disputes.* Agreements foresee compulsory arbitration if the Parties cannot settle their differences by another agreed procedure, but there are a few exceptions to this principle. For example, the Agreement with Czechoslovakia[158] provides that differences shall be settled in accordance with international law. In this connection it should be noted that any dispute with regard to a finding by the Board that the Agency is unable to verify that there is no diversion of nuclear material falls outside the competence of the arbitral tribunal or of any other body called upon to adjudicate a dispute. This provision seems to give one Party, the Agency, the unilateral power to decide the most important issue of the Agreement, namely a possible case of diversion of nuclear material. This exception is, however, a direct consequence of Statute Article XII.C, which confers upon the Board the authority to make a finding of non-compliance. Under the Statute the Board has ultimate responsibility in that area, and a finding by the Board under paragraph 19 of the Agreement, with the political consequences flowing from it, cannot be overruled or replaced by a decision of an arbitral body[159].

*21.4.4.5.19.3. Amendment of the NPT Safeguards Agreement.* Some agreements provide that amendments to Part II of the NPT Safeguards Agreement might be made through a simplified procedure, without specifying, however, what this procedure could be. On the side of the Agency, amendments would have to be authorized by the Board[160], which could either approve the text of an amendment or authorize the Director General to negotiate and conclude the amendment. The Board has not established a general simplified procedure for the Agency for amending Part II. This possibility was therefore foreseen in the Agreement, not so much in the interest of the Agency but rather in the interest of a State should its constitutional treaty making process allow such a possibility. So far, there has been no instance where an NPT Safeguards Agreement has been amended.

*21.4.4.5.19.4. Objective of safeguards.* Agreements concluded under the Revised Safeguards Document do not specify the technical objective to be achieved through the Agency's verification measures. NPT Safeguards Agreements state this objective in terms of a mixture of political aims and technical parameters[161]. Two of these technical parameters, 'significant quantity' and 'timely detection', are referred to in these Agreements, but are not quantified in them. The Standing Advisory Group on Safeguards Implementation (SAGSI) made recommendations on these parameters,

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[158] INFCIRC/173.

[159] This principle was strongly opposed by Italy (GOV/COM.22/140; GOV/COM.22/169; GOV/OR.436, paras 19–25).

[160] The Director General has no delegated authority to make amendments.

[161] The technical objectives were not quantified when the NPT Safeguards Document was negotiated. Such quantification was only made years later upon the advice of SAGSI (Section 21.12.7).

which were then put to the Board and approved by it for application by the Agency. The third technical parameter, the level of confidence which the Agency sets for its verification goals, was also developed by SAGSI and in addition is used by the Agency in evaluating the achievement of its safeguards goals and in the safeguards statements it submits to the States where safeguards are applied[162]. From the type of safeguards measures set forth in the Agreement it is clear that the Agency does not verify a particular declared use of the nuclear material in question[163]. Agency safeguards are designed to verify that nuclear material is accounted for and that nuclear material remains in peaceful activities and is not removed therefrom for any purpose, except in accordance with procedures set forth in the Agreement. Nuclear material accountancy, complemented by containment and surveillance, are the safeguards measures used to achieve that objective[164].

*21.4.4.5.19.5. National (State) system of nuclear materials accounting and control (SSAC) and national inspection.* The SSAC, to be established under the NPT Safeguards Agreements, need not comprise national inspection[165]. However, such a system may include inspection by national authorities, particularly in order to ensure that nuclear material accountancy at a nuclear facility is being performed correctly[166]. National inspections are normally not taken into account in scheduling Agency inspections or in determining the Agency inspection effort, except that, generally, the Agency's verification activities have to take account of the effectiveness of the national system[167].

In addition to the Safeguards Agreements to which Euratom is a Party (which provide for inspections by Euratom), the Agency's Safeguards Agreement with Japan takes account of Japan's national system, which includes inspections by the Government[168]. Furthermore, it should be noted that the Agency is to perform independent verification of the findings of the SSAC and not merely verification that a national or regional system functions effectively. This is evident from the discussion in the Safeguards Committee (1970) and also from the terms of the NPT Safeguards Document[169]. NPT Safeguards Agreements do not contain procedures

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[162] These technical parameters determine the intensity of inspections, the frequency of inventory taking, the type and method of containment and surveillance, and other crucial safeguards measures. For their definition see "IAEA Safeguards Glossary" (IAEA/SG/INF/1).

[163] However, it is evident that nuclear material to be safeguarded must be in a peaceful nuclear activity (INFCIRC/153, paras 1 and 2).

[164] Although it has been argued that the Agency has to verify peaceful use under non-NPT Agreements, there are apparently no criteria to define such use and to determine compliance.

[165] INFCIRC/153, para. 32.

[166] Ibid., para. 32(g).

[167] Ibid., para. 81(b).

[168] For example INFCIRC/193 and 255.

[169] INFCIRC/153, para. 7.

for verifying that an SSAC is in place and functioning, but they contain procedures for independent verification by the Agency of the results (findings) of the national or multinational system[170].

## 21.5. SAFEGUARDS AGREEMENTS

### 21.5.1. Requirement to conclude Safeguards Agreements

There has been no change in the statutory principles for concluding Safeguards Agreements as discussed in the basic book. Two multilateral treaties, the NPT and the Latin American Tlatelolco Treaty, require the conclusion of Safeguards Agreements; the relevant Articles of these instruments are discussed in the basic book. With the Board's decision regarding the application of safeguards to technical assistance projects, the statutory provisions regarding Agency projects have been extended to technical assistance administered by the Agency (Section 18.1.2).

### 21.5.2. Types of Safeguards Agreements

The basic book briefly describes various types of Safeguards Agreements which had been or were being developed. In many instances these descriptions remain accurate, although in some cases the terminology has changed. Also, new types of agreements have been developed:

(a) *Project Agreements*, as described in the basic book, relate to the implementation of Statute Article XI and follow the structure set out in Article XI.F. In a number of agreements, safeguards provisions were set out separately in an Annex. However, in recent agreements and particularly upon the development of combined supply and project agreements, it had become common practice to include safeguards provisions in the agreement itself, often by reference to the provisions of an already existing Safeguards Agreement[171] (which may be of any of the types listed below).

(b) Only a few new *Safeguards Transfer Agreements*, as described in the basic book, were concluded[172] because most of the early bilateral co-operation agreements, which provided for the application of national safeguards, had already been the subject of transfer agreements. In the case of the Canada/India Agreement for Co-operation, the Agency agreed 'to implement'[173], in accordance with the

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[170] These findings relate to nuclear material accounting. In some instances an SSAC also ensures that physical security measures are applied; such measures are, however, not verified by the Agency.

[171] See, for example, INFCIRC/266, Part II, Article III (Project Agreement with Peru).

[172] See, for example, INFCIRC/165 (Safeguards Transfer Agreement between Sweden, the USA and the Agency).

[173] INFCIRC/211, Part I, Section 3.

Safeguards Transfer Agreement, the relevant provisions of the Co-operation Agreement[174]. In this particular case the Agency did not incorporate the relevant procedures of the Revised Safeguards Document by reference, but applied procedures agreed to by the Governments, with a number of additions. Safeguards requirements of new bilateral co-operation agreements were more and more satisfied through the conclusion of trilateral Safeguards Agreements, with no transfer of existing bilateral safeguards rights. In some instances, unilateral submission agreements, with involvement and rights of the supplier State, were also concluded to meet the terms of co-operation agreements[175].

(c) *Trilateral Safeguards Agreements* are agreements to which a supplier State, a recipient State and the Agency are Parties, but which do not involve the transfer of national safeguards rights. These agreements, the first of which were in the process of negotiation in 1969–1970, were denominated 'Safeguards Execution Agreements' in the basic book. That term, however, is no longer in use. These agreements are formulated on the basis of the Revised Safeguards Document[176].

(d) *Unilateral Safeguards Submission Agreements*, as noted in the basic book, relate to the submission by a State of part or all of its nuclear activities to safeguards. Given this general description, there are several types of unilateral submission agreements:

(i) Unilateral Safeguards Submission Agreements based on the Revised Safeguards Document are bilateral agreements in which a State submits part or all of its nuclear activities to safeguards. None of the agreements concluded during the 1970s covers de jure all nuclear activities of a State. All agreements concluded either relate to a particular transaction[177] or cover a bilateral co-operation agreement[178].

(ii) NPT Safeguards Agreements, concluded on the basis of the NPT Safeguards Document by non-nuclear-weapon States pursuant to obligations undertaken in that Treaty, are (normally) bilateral agreements between the State concerned and the Agency. They cover "all source and special fissionable material in all peaceful nuclear activities within the territory of the State, under its

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[174] INFCIRC/211, Parts II–V. Operations under this Agreement in India were in fact superseded by the conclusion of a Safeguards Agreement covering the supply of heavy water from the USSR for the Rajasthan Station (INFCIRC/260). In Canada, safeguards on the Douglas Point Nuclear Power Station were replaced by safeguards under Canada's NPT Safeguards Agreement (INFCIRC/164).

[175] For example with Argentina in connection with the Argentina/Canada Agreement for co-operation (INFCIRC/251).

[176] See, for example, INFCIRC/244 (Agreement between France, South Africa and the Agency).

[177] See, for example, INFCIRC/252 (Agreement between the Democratic People's Republic of Korea and the Agency for the Application of Safeguards in respect of a Research Reactor Facility).

[178] See, for example, INFCIRC/251 (Agreement between Argentina and the Agency for the Application of Safeguards in connection with a Co-operation Agreement between Argentina and Canada).

jurisdiction or carried out under its control anywhere'' [179]. There is one multipartite agreement in this category, i.e. the Agreement between the Agency, Euratom and its non-nuclear-weapon States[180]. In addition, Euratom is also Party to the Voluntary Offer Agreements with France[181] and the UK[182].

(iii) Voluntary Offer Agreements are agreements concluded by a nuclear-weapon State (which may or may not be a Party to the NPT) under which part of that State's nuclear activities is submitted to safeguards. The Voluntary Offer Agreements are based on the NPT Safeguards Document, with modifications to take account of the offer and its particular nature and of the fact that the State is a nuclear-weapon State[183].

(iv) Tlatelolco Safeguards Agreements, concluded by States pursuant to obligations under Article 13 of the Tlatelolco Treaty, are bilateral agreements by which all nuclear activities of the States are submitted to safeguards. These agreements were concluded on the basis of the NPT Safeguards Document, with appropriate modifications to reflect the provisions of the Tlatelolco Treaty[184]. In cases where a State is Party to both the NPT and the Tlatelolco Treaty, only one Safeguards Agreement is normally concluded to cover both Treaties[185]. In relation to the Tlatelolco Treaty the Safeguards Agreements concluded to implement Additional Protocol I of the Treaty should also be mentioned[186]; these Agreements are also based on the NPT Safeguards Document.

(v) Fuel Cycle Safeguards Agreements would be bilateral agreements between non-nuclear-weapon States not Party to the NPT or the Tlatelolco Treaty, and the Agency, providing for full-scope safeguards. The model for such an agreement was prepared by the Secretariat in 1976 at the request of the Board[187], but, as of 1980, no agreement of this type had been concluded. The model is based on the NPT Safeguards Document[188].

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[179] INFCIRC/153, para. 2.

[180] INFCIRC/193.

[181] INFCIRC/290.

[182] INFCIRC/263.

[183] See INFCIRC/263, 288, 290.

[184] There are two such Agreements, one with Panama (INFCIRC/316) and one with Colombia (INFCIRC/306).

[185] See, for example, the Agreement with Ecuador (INFCIRC/231).

[186] These are the Agreements with the Netherlands in respect of Surinam (INFCIRC/230) and the Netherlands Antilles (INFCIRC/229).

[187] GOV/DEC/88(XIX), No. (11); see also GOV/OR.486, paras 29 and 32.

[188] With substantial additions to the NPT Safeguards Document, for example in respect of the basic obligation, coverage and duration. The 'model' agreement was apparently not considered an attractive alternative to the other types of Safeguards Agreements based on INFCIRC/66/Rev.2.

## 21.5.3. Form of and Parties to Safeguards Agreements

Safeguards Agreements continued to be concluded as bilateral or trilateral legal instruments, with the exception of the Euratom (NNWS) Agreement to which Euratom and all of its non-nuclear-weapon States are Parties. The terminology of describing Safeguards Agreements has somewhat changed from that used in the basic book (Section 21.5.2). The Voluntary Offer Agreements with three nuclear-weapon States concluded during the decade 1970–1980 include some novel features; these points are discussed in the following sections.

### *21.5.3.1. Safeguards Agreements with nuclear-weapon States*

The concept of nuclear-weapon State (NWS) derives from the NPT[189]. Under the NPT, a nuclear-weapon State is defined as a State which had manufactured and exploded a nuclear weapon or other nuclear explosive device prior to 1 January 1967[190]. This definition was designed to freeze the situation as it existed prior to the entry into force of the Treaty[191]. A State which has manufactured and exploded a nuclear device only after that date is, for the purposes of the NPT, a non-nuclear-weapon State[192]. India, which is not a Party to the NPT, would, for the purposes of the NPT (in relation to exports from NPT Parties), still be regarded as a non-nuclear-weapon State although it exploded a nuclear device in May 1974. In terms of the NPT there are five nuclear-weapon States: China, France, the UK, the USA and the USSR. Three of these States are Party to the NPT: the UK, the USA and the USSR, and their Governments also act as Depositaries for the Treaty[193].

Although nuclear-weapon States are not required to accept safeguards under the NPT (only non-nuclear-weapon States are under this obligation), the UK and the USA made voluntary offers, prior to the entry into force of the Treaty, to accept safeguards. France, which is not a Party to the NPT, also made an offer to accept Agency safeguards and also concluded a Safeguards Agreement with the Agency. The USA was the first country that made such an offer in December 1967. The offer made by President Johnson was later confirmed by Presidents Nixon and Ford. The main purpose of the offer, as stated, was to dispel concerns that safeguards under

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[189] The distinction between nuclear-weapon States and non-nuclear-weapon States does not derive from the Statute or any constituent instrument of another international organization.

[190] The NPT explicitly limits the definition of nuclear-weapon State to "the purposes of the Treaty" (Article IX(3)). The Treaty does not contain a definition of non-nuclear-weapon State. By inference, all States which are not nuclear-weapon States would be non-nuclear-weapon States. NPT Parties have apparently also agreed to apply this distinction to non-Parties when making nuclear exports (Article III(2)).

[191] The Treaty entered into force on 5 March 1970.

[192] Whether or not a Party to the Treaty.

[193] Article IX(2).

the NPT would interfere with the peaceful nuclear activities of a country[194]. Also, the USA was not asking any country to accept safeguards that it was unwilling to accept itself. Under the offer, the Agency would be permitted to apply safeguards to all nuclear activities in the USA, excluding only those with direct national security significance. The UK made a similar offer a few days later, also in December 1967[195]. The purpose of the UK offer was to assist in the negotiation of NPT safeguards; to this end, the UK would be prepared to accept Agency safeguards in the UK, subject to exclusion for national security reasons only. France, although not a Party to the NPT, also negotiated a Safeguards Agreement with the Agency, the stated purpose of which was to encourage the acceptance of Agency safeguards by an even greater number of States[196]. France did not submit all nuclear installations to safeguards subject to exclusion for national security reasons only, since the French offer covered only those facilities which might be designated by France. The second purpose of the French offer was clearly to facilitate the arrangements for France to reprocess foreign spent fuel for which Agency safeguards had to apply in France[197].

The principal purposes of Agency safeguards as applied in nuclear-weapon States are the following:

(a) To further the acceptance of Agency safeguards by other States;
(b) To counter the argument of discrimination between nuclear-weapon States and non-nuclear-weapon States in the safeguards area.

Three supplementary purposes of Agency safeguards in nuclear-weapon States should also be noted:

(a) To obtain cross-information on international transfers between nuclear-weapon States and non-nuclear-weapon States[198];
(b) To obtain experience in safeguarding facilities of advanced design;
(c) To permit the suspension of safeguards under existing Safeguards Agreements (for example covering foreign fuel sent for reprocessing to a nuclear-weapon State) by bringing material subject to such agreements (or an equivalent quantity) under one comprehensive agreement concluded pursuant to the offers.

The principal differences in the Safeguards Agreements between nuclear-weapon States and non-nuclear-weapon States concern their coverage and the terms of the basic obligation. Under agreements with nuclear-weapon States the Agency

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[194] President Johnson made the offer in a speech commemorating the 25th anniversary of the first sustained nuclear chain reaction.

[195] Statement in the House of Commons by the Minister of State for Foreign Affairs.

[196] INFCIRC/290, Preamble.

[197] For example spent fuel containing uranium of US origin.

[198] For example to confirm the arrival of shipments from a non-nuclear-weapon State.

is to verify that nuclear material from civil activities is not withdrawn from safeguards except in accordance with procedures set forth in the Agreement[199]. Nuclear-weapon States may withdraw nuclear material from safeguards or remove facilities from the lists transmitted to the Agency.

While there is a basic difference in scope and purpose between NPT Safeguards Agreements and Voluntary Offer Agreements, the safeguards procedures under the latter are those set forth in the NPT Safeguards Document and are thus the same as those for non-nuclear-weapon States[200]. Euratom is a Party to the Agreements with France and the UK, and Protocols to these Agreements provide for the co-ordination of the Euratom system with the Agency's safeguards system[201]. In view of the great safeguards effort and expenses that would be required to perform verification on all material in all nuclear facilities offered for submission to safeguards by the three nuclear-weapon States, the Agency has selected only a few facilities under the offers, using criteria approved by the Safeguards Committee (1970)[202]. In principle, these were facilities for which the Agency wished to obtain experience and develop safeguards techniques. Even though the Agency has applied safeguards only to a fraction of the facilities covered by the offers, the purpose and utility of Agency safeguards in nuclear-weapon States has frequently been questioned, particularly in view of the substantial expenditures required for such application[203]. On the other hand, there is no doubt that the voluntary offers have contributed substantially to the acceptance of safeguards in industrial non-nuclear-weapon States.

It should be noted that there are three nuclear-weapon States which are Parties or signatories to Additional Protocol I of the Tlatelolco Treaty[204]. The UK is a Party and France and the USA are signatories. Under the terms of Article 1 of the Protocol, Parties undertake to conclude Safeguards Agreements pursuant to Article 13 of the Tlatelolco Treaty in respect of territories in the Treaty area for which they are internationally responsible. It has not been clarified whether the Voluntary Offer Agreements with France, the UK and the USA also cover these territories[205]. There are apparently no nuclear activities in these territories, but the obligation to conclude

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[199] It would also have been possible to include a basic undertaking not to divert nuclear material, *while under safeguards*, to nuclear weapons or other nuclear explosive devices, or an undertaking to use such material for peaceful purposes only, or a similar obligation.

[200] Note, however, the US Agreement regarding "Transitional Subsidiary Arrangements" (INFCIRC/288, Protocol).

[201] See INFCIRC/263 and 290.

[202] The facilities selected have been included in the relevant tables in the Annual Reports. See, for example, the report for 1980 (GC(XXV)/642, Table 14).

[203] Compare, therefore, the modest amounts that were foreseen for the application of safeguards under the voluntary offers.

[204] See Section 21.3.2.2.

[205] The US Agreement applies to facilities "within the United States" (INFCIRC/288, Article 1(a)).

a Safeguards Agreement is not dependent on the existence of nuclear activities in a State or territory[206]. However, neither the offers nor the terms of the Agreements refer to the Tlatelolco Treaty.

The main aspects of the individual Agreements with France, the UK and the USA are described in the following sections.

### *21.5.3.2. The Agreement with the UK*

The Agreement with the UK was the first Voluntary Offer Agreement concluded by the Agency[207]. In negotiating the Agreement, a number of basic questions had to be considered:

(a) Did the basic document for negotiating agreements with non-nuclear-weapon States also constitute an appropriate basis to negotiate an agreement with a nuclear-weapon State?
(b) What changes needed to be made to take account of the status of the UK as a nuclear-weapon State and the nature of its offer?
(c) What would be Euratom's role under the Agreement?
(d) How could the desired equality in the application of safeguards in non-nuclear-weapon States be achieved without committing the Agency to large additional costs?

The NPT Safeguards Document proved to be an adequate basis for negotiating the Agreement with the UK. In fact, it was considered very desirable to use that text so as to ensure equality and consistency with regard to non-nuclear-weapon States in the application of safeguards, if not in coverage[208]. The changes to the standard text therefore only concern the basic undertaking[209], as well as the conditions for bringing nuclear material under safeguards and for removing it therefrom[210], but not the verification procedures[211]. The basic undertaking of the UK consists of three elements: (i) to accept the application of safeguards on all nuclear material in

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[206] This interpretation has been applied in respect of non-nuclear-weapon States under Article III of the NPT. There is a large number of NPT Safeguards Agreements with States that have no nuclear activity whatsoever.

[207] INFCIRC/263.

[208] The Agreement with the UK was welcomed as a further step to reduce the inequality between nuclear-weapon States and non-nuclear-weapon States (Japan, GOV/OR.489, para. 42).

[209] Article 1(a)–(c).

[210] Removal from safeguards may occur by removing a facility (or part thereof) from the list or by removing nuclear material from the plant. Additions to or deletions from the list require advance notification; if nuclear material is withdrawn from safeguards, advance notification and the normal Inventory change reports are required (Articles 14, 63 and 92(J)).

[211] Inspection procedures and intensity are the same as for non-nuclear-weapon States. The Agency's actual inspection effort is to take account of the characteristics of all facilities on the list and not only of those designated by the Agency for inspection (Article 81(c)).

all facilities (or parts thereof) in the UK, subject to exclusions only for national security reasons; (ii) to submit only a list of such facilities (or parts thereof); and (iii) not to remove material from such facilities except in accordance with the procedures of the Agreement. The basic undertaking is of a procedural nature, relating to the removal of nuclear material from safeguards, and is not a substantive, peaceful, non-explosive use undertaking[212].

The mechanism for bringing nuclear material and facilities under the Agreement is straightforward: The Agency will receive a list of such facilities and all the necessary information on their design, and records will be maintained and reports made to the Agency on all nuclear material in these plants[213].

The offer required a heavy negotiating effort because appropriate Subsidiary Arrangements had to be negotiated for all facilities submitted to safeguards[214]. Though the Agency was free to designate those facilities which it wished to inspect[215] and could thus control its expenditures for inspections, it could not control the expenditures required to negotiate Subsidiary Arrangements and to process the information received[216]. In selecting the facilities in question the Agency was to be guided by the principle that "facilities of advanced design incorporating new technology and those which [are] sensitive in terms of international competition" should be designated[217]. Euratom was to play the same role as under the Euratom (NNWS) Agreement, except that Euratom would, under its normal statutory authority and responsibility, also inspect those facilities which were not selected by the Agency. The notification provisions of international transfers of nuclear material refer to the communication which the UK made to the Agency on that subject in 1974[218]. The Agreement entered into force on 14 August 1978.

### *21.5.3.3. The Agreement with the USA*

To implement the US offer of December 1967, an Agreement was negotiated and approved by the Board in September 1976[219]. The US offer excluded nuclear activities "with direct national security significance"[220]. The basic principle of the

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[212] Facilities excluded for "national security reasons" are apparently not the same as military plants. It must be assumed, however, that the activities in the facilities on the list concern non-military, non-explosive applications of nuclear energy.

[213] INFCIRC/263, Articles 1(b), 42–69.

[214] Agreement on records and reports is laid down in so-called Facility Attachments.

[215] INFCIRC/263, Article 78(a).

[216] The additional expenditure was estimated to be of the order of US $50 000 for the first year of operation. This figure apparently did not take into account the expenditures for negotiation, examination of design information, processing of information and other ancillary costs.

[217] GOV/1795, para. 5.

[218] INFCIRC/207.

[219] GOV/DEC/90(XIX), No. (39).

[220] GOV/1383, Annex.

Agreement is similar to that of the earlier UK Agreement: The USA has to provide a list of eligible facilities to the Agency; removals from or additions to the list are at the discretion of the USA[221]. Nuclear material may also be freely transferred from or to the facilities, subject to advance notification (in certain cases) and reporting. The US Agreement differs from the UK Agreement in that the Agency may designate two categories of facilities:

(a) Facilities containing nuclear material to which it wishes to apply full safeguards procedures, including inspection. For these, the usual Facility Attachments would be negotiated[222];
(b) Facilities which would be subject to submission and verification of design information, maintenance of records and submission of reports, but not inspection[223]. For those facilities, so-called Transitional Facility Attachments would be concluded.

The Agency is free to select facilities for either category and to switch between these categories. The only limitation is that the Agency has to "avoid discriminatory treatment as between US commercial firms similarly situated", i.e. it has to adhere to the principle of rotation of facilities[224]. In addition, the selection criteria would be the same as those for the UK Agreement[225]. The basic undertaking is also of a procedural nature and conforms to that in the UK Agreement. The equality of treatment compared with non-nuclear-weapon States is stressed, since the Agency is to implement safeguards "by the same procedures" followed in these States. Notifications of exports are the subject of arrangements with the Agency, including those set forth in the US communication to the Agency of 1974[226].

A point of legal interest arose in the Board's discussion of the US Agreement, namely whether the statutory provisions relating to non-compliance and to the authority of the Board to make such a determination of non-compliance were also applicable to an Agreement of that type, i.e. an Agreement which did not include a non-military use undertaking[227]. This point was not debated, but it appears from the language of the Statute that the Board would have sufficient legal authority should the situation arise.

With the conclusion of the US Agreement it became desirable to suspend the implementation of other Safeguards Agreements in the USA, i.e. to apply a principle similar to that included in agreements with non-nuclear-weapon States[228]. In

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[221] INFCIRC/288, Article 1(b).
[222] Ibid., Article 2(b).
[223] Ibid., Protocol, Article 2.
[224] GOV/1806, para. 8; INFCIRC/288, Article 2(c).
[225] GOV/1806, para. 9.
[226] INFCIRC/288, Article 89(a), which refers to INFCIRC/207.
[227] GOV/OR.490, paras 49 and 61.
[228] INFCIRC/153 (corrected), para. 24.

contrast to the latter agreements, which cover all nuclear material, in agreements with nuclear-weapon States the Agency has to apply the 'equivalence principle' in the event of suspension of an agreement. Under this principle there shall be at all times safeguarded nuclear material "... at least equivalent in amount and composition to that which would be subject to safeguards in [the USA]" under these suspended agreements[229]. This could mean, in theory, that a continuing assessment and comparison of the two categories of nuclear material would have to be made, i.e. of material under the Voluntary Offer Agreements and material on which safeguards were suspended. The designation of facilities with a large inventory of nuclear material or of storage facilities containing plutonium would, of course, ensure that there would always be sufficient material under safeguards. The initial additional costs were estimated to be of the order of US $150 000 per year[230]. The Agreement entered into force in December 1980[231].

### *21.5.3.4. The Agreement with France*

In December 1977, France and Euratom started negotiations with the Agency on a Voluntary Offer Agreement[232]. France apparently had two motivations for concluding an Agreement with the Agency: to encourage the acceptance of Agency safeguards by more States[233] and to permit the application of Agency safeguards to nuclear material transferred to France (for example in the form of natural uranium or spent fuel for chemical reprocessing) under one comprehensive agreement[234]. Since France is not a Party to the NPT, no references to this Treaty have been included in the Agreement[235]. The Agreement specifies principles for bringing nuclear material and facilities under safeguards which are different from those in the UK Agreement and those in the US Voluntary Offer Agreement. In view of the nature of the offer there is no reference to exclusion of material and facilities from the offer for national security reasons. Accordingly, the decision to offer nuclear material within facilities for inspection is at the exclusive discretion of France.

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[229] INFCIRC/288, Article 22; INFCIRC/263, Article 23; INFCIRC/290, Article 23. The Agreements with France and the UK apply this principle also to future bilateral supply agreements, dispensing with the need to conclude further individual Safeguards Agreements just to suspend them in favour of the Voluntary Offer Agreements.

[230] GOV/1806, para. 11.

[231] INFCIRC/288, Add.1.

[232] GOV/1875, para. 2.

[233] INFCIRC/290, Preamble.

[234] Note, for example, the comment by Argentina (GOV/OR.511, para. 17); see also the suspension clause in the Agreement (INFCIRC/290, Article 23). However, France did not officially state the second objective.

[235] The term non-nuclear-weapon State (which derives from the NPT) is, however, used in the Preamble.

Further, France offered certain, but not necessarily all, nuclear material in facilities to be put on a list[236]. Under the Agreement there may thus be mixtures of safeguarded and unsafeguarded material in a plant[237]. France may remove facilities from the list and make additions thereto; this is in both instances subject to advance notice[238]. Nuclear material may also be 'withdrawn' from the scope of the Agreement[239]. Although only nuclear material designated by France is subject to safeguards, the Agency has the right to obtain complete design information on each facility appearing on the list and not only information for those areas within a plant which contain nuclear material designated (unless only parts of a facility were put on the 'Facilities List')[240]. The basic undertaking is of the same nature as that in the UK and US Agreements[241]. The safeguards procedures and co-ordination arrangements with Euratom follow closely those of the UK Agreement, with minor variations in the Protocol[242]. When the Agreement with France was put before the Board, the Director General pointed out that the rules and methods for calculating the inspection effort in the case of the French Agreement would be different from those in the case of the Euratom (NNWS) Safeguards Agreement, in view of the technological developments and experience gained since 1972[243]. The Agency may designate any of the facilities on the list for inspection[244] and France is to provide information to the Agency on all nuclear material designated by it[245]. The authority of the Board to determine non-compliance is restricted to material subject to Agency verification by inspection (similar to the UK Agreement)[246] and so is the authority of the Board to order interim measures. It follows that obligations in respect of nuclear material or facilities not selected by the Agency for inspection are not

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[236] INFCIRC/290, Article 1.

[237] The UK Agreement and the US Agreement cover all nuclear material in the facilities offered; consequently, there can be no mixtures of safeguarded and unsafeguarded material in such a facility. See also Article 23(c) of the French Agreement.

[238] INFCIRC/290, Article 1(b).

[239] INFCIRC/290, Article 14. Withdrawal apparently means physical removal and not simply designation of the material as not being any more under safeguards (see definition of 'inventory change', which means an increase or a decrease of nuclear material in a material balance area (INFCIRC/290, Article 92(2)(J)).

[240] INFCIRC/290, Articles 42–45.

[241] Ibid., Article 1(a).

[242] For example Protocol Article XII.

[243] GOV/OR.511, para. 5.

[244] INFCIRC/290, Article 78(a).

[245] This requires the maintenance of records and the submission of reports by France on all such material. The provisions on notifications of international transfers refer to nuclear material transferred from or to a facility (or part thereof) on the list, i.e. these notifications are not restricted to designated nuclear material (INFCIRC/290, Article 91). On the other hand, it appears that only designated nuclear material comes within the scope of the Agreement (Article 14).

[246] INFCIRC/290, Articles 18 and 19; INFCIRC/263, Articles 18 and 19.

enforceable through Board decisions but only through arbitration[247]. This is in contrast to the US Agreement, which provides for overall authority of the Board to determine non-compliance[248] and to order interim measures[249]. The expenditures for the first year of operation were estimated to be of the order of US $50 000[250]. The Agreement entered into force in September 1981[251].

### 21.5.4. Contents and scope of Agreements under the Revised Safeguards Document

The contents of NPT Safeguards Agreements has already been described in Section 21.4.4. Since these are standardized agreements following a single model, their content is practically identical with that of the general document approved by the Board[252].

Other agreements which are based on the Revised Safeguards Document but which contain special features are discussed in Sections 21.5.3 and 21.11.3.3. During the period 1970–1980, developments regarding agreements based on the Revised Safeguards Document relate, in particular, to the following points:

— The undertaking against military use;
— The rules on the primary and the derivative scopes of safeguards;
— The inventory of safeguarded items;
— The application of safeguards in relation to transferred technological information;
— The application of safeguards to heavy water and to other 'trigger items';
— The duration of Safeguards Agreements;
— The application of safeguards in relation to technical assistance projects;
— International transfers;
— Suspension of Safeguards Agreements.

Since the content of Safeguards Agreements and their scope (Sections 21.5.4 and 21.6 of the basic book) are interlinked, new developments are discussed in the following sections, except for safeguards in relation to technical assistance, which are discussed in Section 18.1.2. The following sections therefore also deal with developments in relation to problems discussed in Section 21.6 of the basic book.

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[247] The same applies under the UK Agreement.
[248] INFCIRC/288, Article 18.
[249] Ibid., Article 17.
[250] GOV/1875, para. 7.
[251] INFCIRC/290.
[252] Following a suggestion made in the Board, the Secretariat transformed the NPT Safeguards Document (INFCIRC/153) into a model Agreement (GOV/INF/276).

*21.5.4.1. Non-explosive use of nuclear material*

The NPT and the related Safeguards Agreements prohibit the use of nuclear material under safeguards for any nuclear explosive device, whatever its purpose, and the Safeguards Agreements contain explicit provisions to that effect. Non-NPT Safeguards Agreements continued to include an undertaking that items subject to safeguards must "... not be used in such a way as to further any military purpose ..."[253].

As early as March 1972 the USA put on record in the Board two inherent understandings applicable to all US Co-operation Agreements and the related Safeguards Transfer Agreements: These understandings were, first, that the guarantees with respect to any items precluded their use "... for any nuclear explosive device", and, second, that Safeguards Agreements would continue to ensure verification that safeguarded material would not be used for any such device[254]. It was not until February 1975 that the Board was formally seized with an interpretation of the 'peaceful use' undertaking. In connection with a Safeguards Agreement with Spain which contained the standard undertaking, Spain announced that it would transmit an interpretative letter of that undertaking to the Director General, confirming that the undertaking "... included the obligation, in particular, not to divert [the nuclear material] to nuclear weapons or other nuclear explosive devices"[255]. The Director General placed on record "that an invariable and cardinal obligation involved in that undertaking was also that the nuclear materials should not be used for the development, manufacture or testing of nuclear explosive devices of any kind"[256]; that Agency safeguards had from the outset been intended to ensure compliance with that obligation; and that, in future, the agreements themselves would contain such a clause[257]. The USSR, as the supplier of the enriched uranium to Spain, subsequently confirmed that the exchange of letters should be "regarded as part of the agreement"[258]. All subsequent non-NPT Safeguards Agreements contain explicit undertakings against any explosive use of safeguarded items. Also technical assistance agreements preclude the use of the assistance provided for any such purpose[259].

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[253] For example INFCIRC/292, Section 1 (Agreement with Argentina of 23 October 1973).

[254] GOV/OR.446, para. 7; that interpretation was repeated in the Board on 12 June 1974 (GOV/OR.467, para. 23).

[255] GOV/OR.474, para. 55.

[256] Ibid., para. 60.

[257] An interesting point was made in this connection by Switzerland referring to 'micro-explosions' for energy generation (GOV/OR.474, paras 63 and 64). It was subsequently confirmed by the Director General and by the USA that the devices which might be used for such 'micro-explosions' would not constitute nuclear explosive devices within the meaning of NPT or Agency Safeguards Agreements (GOV/OR.481, para. 103).

[258] GOV/1723, para. 2; GOV/OR.475, para. 11.

[259] Revised Guiding Principles (INFCIRC/267), I(1)(i).

In this context, the Board's discussion of the Indian underground nuclear explosion of 18 May 1974 should be noted[260]. In particular, it was stated that there was hardly any distinction between a "so-called peaceful nuclear device and a nuclear weapon"[261], that it would be necessary "to re-examine, strengthen and improve international measures to contain the proliferation of nuclear technology which could lead to the development of weapons"[262] and that the Agency's technical assistance should not in any way promote proliferation[263]. The discussion also brought to light the different positions of Canada and India regarding the interpretation of the peaceful use undertaking given by India to Canada in the Co-operation Agreement[264].

### *21.5.4.2. Items under safeguards*

The basic book discussed the rules defining the items that are to come under safeguards, conditions for exemption from or suspension of safeguards and termination of safeguards. These rules and conditions are substantially different for NPT Safeguards Agreements and Agreements based on the Revised Safeguards Document. The present section covers non-NPT Agreements.

As indicated in the basic book, a distinction has to be made between items which were subject to the full safeguards procedures (i.e. records, reports, inspection) and items which were covered by the Safeguards Agreement but which were not subject to verification; this distinction has continued to exist. The previous, formal distinction between items 'subject to safeguards' and 'safeguarded' items (to indicate the difference between items covered by the safeguards system, in the concrete case by the Safeguards Agreement, and items subject to verification) has largely disappeared. The attachment/application duality inherited from the First Safeguards Document continued de facto only in respect of two types of nuclear material: nuclear material which was exempted from safeguards and nuclear material for which safeguards were suspended[265]. By analogy, the concepts of exemption and suspension were also applied to certain non-nuclear material used in the nuclear fuel cycle, in particular heavy water[266].

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[260] GOV/1683; GOV/OR.469, paras 38–103.

[261] Pakistan, GOV/OR.469, para. 39.

[262] Australia, ibid., para. 72.

[263] Japan, ibid., para. 72.

[264] Ibid., para. 59 and paras 86–100. Canada had supplied the reactor (which produced the plutonium for the device) without safeguards in the mid-1950s, under the Colombo Plan, subject to a peaceful use undertaking by India.

[265] These two categories are listed in the Inactive Part (Part III) of the Inventory of items subject to a Safeguards Agreement.

[266] The relevant procedures for doing so were established in the Subsidiary Arrangements.

The basic undertaking not to use items for the manufacture of any nuclear weapon or to further any other military purpose or for the manufacture of any other nuclear explosive device applies to all nuclear material subject to a Safeguards Agreement[267]. Also the authority of the Board regarding non-compliance extends to all such material[268], whether subject to verification or not. All the remaining provisions of a Safeguards Agreement do not apply to items exempted from safeguards or to items on which safeguards have been suspended. This duality relating to items covered by a Safeguards Agreement must be clearly distinguished from the question of temporary or permanent application of safeguards on some items[269] (depending on their origin or on the rules for bringing items under a Safeguards Agreement); the principle according to which non-safeguarded items come under safeguards by virtue of having been in defined contact with safeguarded items has occasionally been referred to as 'contamination principle'.

Another, related, problem concerns the link between the termination of safeguards and the duration of Safeguards Agreements. The evolution of this concept in the light of paragraph 16 of the Revised Safeguards Document is discussed in Section 21.5.4.14.

The categories of items that might become subject to safeguards remained the same as described in the basic book, with the addition of plants for the production of heavy water. This expansion of the scope of Agency safeguards resulted from the necessity to safeguard such a type of plant in view of transfers of heavy water under bilateral co-operation agreements requiring the application of safeguards. Five categories can therefore be distinguished:

— Nuclear materials;
— Nuclear facilities and certain components thereof;
— Heavy water production plants;
— Non-nuclear materials;
— Specialized equipment.

### 21.5.4.2.1. Nuclear materials

The Board did not add any material to the categories of special fissionable material (Statute Article XX.1) or source material (Statute Article XX.2). Pursuant

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[267] France/South Africa Safeguards Transfer Agreement (INFCIRC/244, Article 2).

[268] Ibid., Article 22.

[269] Such items are either listed in the Main Part or in the Subsidiary Part of the Inventory (e.g. INFCIRC/244, Articles 6(a)(b), 8, 9, 11, 12). The Subsidiary Part of the Inventory lists facilities or equipment that may come under safeguards temporarily; nuclear material or heavy water is never listed in that part of the Inventory because, once such material comes under safeguards, it remains under safeguards throughout its lifetime.

to the definition of 'nuclear material' in the Safeguards Agreements concluded, " 'nuclear material' means any source or special fissionable material as defined in Article XX of the Agency's Statute".

21.5.4.2.2. Nuclear facilities

The existing definition in the Revised Safeguards Document was expanded in the Safeguards Agreements[270] by adding critical facilities, separate storage installations and "any location where nuclear material in amounts greater than one effective kilogram is customarily used" to the definitions in the Revised Safeguards Document. This definition is in substance identical with that developed under the NPT Safeguards Document (which, however, uses the term 'facilities')[271].

21.5.4.2.3. Heavy water production plants

The Revised Safeguards Document does not contain safeguards provisions relating to such a type of plant, but some Safeguards Agreements have used a definition of 'facility' which covers nuclear facilities and heavy water production plants[272]. The Board has not approved a definition of such a type of plant or a definition of heavy water. However, it may be inferred from the 'trigger list' that supplies of facilities or of equipment for the production of heavy water, deuterium and deuterium compounds using the ion exchange process, the electrolytic process and the hydrogen distillation process would require the application of safeguards[273]. In some cases this enlarged definition was included in an agreement, although the body of the agreement itself contained only safeguards provisions relating to nuclear material and nuclear facilities[274].

In one Agreement, which specifically covered the supply of heavy water, the term 'facility' included "a plant for the upgrading of heavy water or a separate storage installation for heavy water"[275] so as to also bring a facility for upgrading heavy water (i.e. increasing its deuterium content after its use in a reactor) under safeguards.

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[270] INFCIRC/244, Article 1(c).

[271] INFCIRC/153, para. 106.

[272] For example INFCIRC/251, Section 1(b).

[273] INFCIRC/254, Annex A (the 'trigger list'). It should be noted that INFCIRC/209, Memorandum B, on which the 'trigger list' is based, does not include heavy water production plants.

[274] For example INFCIRC/248, Section 1(b). The practice of including definitions in Agreements was not consistent. In one case, at least, the Agreement did not contain definitions of facilities and equipment although these terms appear in the body of the Agreement (USA/Israel/Agency, INFCIRC/249).

[275] INFCIRC/260, Section 1(a).

By 1980, no facilities for the production or processing of other non-nuclear materials (e.g. graphite) used in the fuel cycle were included in the 'trigger list' or brought under safeguards.

21.5.4.2.4. Replicated facilities and equipment

By the mid 1970s, a new problem relating to safeguards for facilities, including major critical components thereof, had to be covered: the construction and operation of indigenous facilities by recipient countries using technological information transferred for, or together with, imported facilities. Three basic problems had to be considered in this connection:

(a) What would be the critical criteria for a facility to be considered 'of the same type' as an imported plant or a plant constructed with imported technology;
(b) During what time period would such replication have to occur;
(c) Who would determine whether such a facility was replicated from transferred technological information or built by the use of indigenous technology.

Discussions of these problems have taken place within the nuclear suppliers group since 1975 in connection with questions relating to the export of nuclear technology. The so-called London Guidelines cover only replicated facilities for reprocessing, enrichment and heavy water production[276]. The Safeguards Agreements incorporating the replication principle covered two further stages of the nuclear fuel cycle, namely the production of nuclear material compounds of nuclear purity and the construction of reactors[277].

(a) *Technical criteria.* The London Guidelines[278] and the Safeguards Agreements[279] provide that a facility is of the 'same type' if its design, construction or operating processes are based on the same or essentially the same physical or chemical processes. The Guidelines also contain an indication of such processes in respect of facilities for enrichment, reprocessing and heavy water production[280].

(b) *Time period.* There is, in principle, no time limit for the requirement to submit replicated facilities to safeguards[281]. However, with the passage of time and the spread of technology it has become more and more difficult to prove that a facility has been constructed using imported technology. On the other hand, indigenous facilities using processes which are essentially the same as those which

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[276] INFCIRC/254, para. 6(b).
[277] INFCIRC/237, Article 3(2).
[278] INFCIRC/254, Appendix, para. 6(a).
[279] For example INFCIRC/237, Article 3(2).
[280] INFCIRC/254, Annex A, para. 5.
[281] Ibid., para. 6; INFCIRC/237, Article 2(2).

are the subject of imported technology can legitimately be presumed to use such technology. Accordingly, the London Guidelines and most of the relevant Safeguards Agreements have established the irrefutable legal presumption that any such facility which was being constructed or first operated within twenty years after the transfer of technology did utilize imported technology[282]. In one Agreement — the France/Pakistan/Agency Agreement covering the construction of a spent fuel reprocessing facility — that period was to be agreed upon by the two Governments and had to be communicated to the Agency[283]. No such communication was made, apparently because the project was cancelled. A Safeguards Agreement covering the transfer of two power reactors did not refer to replicated facilities because it was apparently considered technically unlikely that an imported power reactor could be duplicated[284]. Another Agreement provides for a twenty-year period, with the starting point as set forth in the Guidelines, and for the identification of the physical and chemical processes and their notification to the Agency[285]. The responsibility for notification rested, in principle, with the recipient State, with or without some involvement of the supplier State[286]. The principles for replicated facilities were also applicable to specified equipment; the time limits and notification rights and obligations followed those for facilities.

(c) *Right to identify replicated facilities.* Under the London Guidelines it is up to the recipient, or the supplier State in consultation with the recipient, to identify replicated facilities[287]. Although the Agency may receive under the Safeguards Agreement in question a description of the technological information (but not the information itself), it is not up to the Agency to determine whether a facility should come under safeguards or not. Some Safeguards Agreements provide for notification of the Agency by the recipient country, and the Agency is also to be informed promptly of any disagreement between supplier and recipient regarding whether notification of a particular facility or equipment is required[288]. Under one agreement it is stated that the Agency has the authority to determine whether notification of a facility is required if the supplier and the recipient country cannot reach agreement[289].

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[282] There are nuances regarding the starting point of the twenty-year period. It may start on the date when the Agency is informed of the first transfer of technology (as is the case under INFCIRC/237) or on the date when another facility utilizing imported technology commences operation (INFCIRC/254, Annex A, para. 6). In the second case the twenty-year period begins later and may extend considerably beyond the twenty-year period from the first transfer of technology.

[283] INFCIRC/239, Article 5(c).

[284] France/South Africa/Agency (INFCIRC/244).

[285] INFCIRC/247, Section 14.

[286] INFCIRC/247, Section 15(b); INFCIRC/250, Section 9.

[287] INFCIRC/237, Article 1(g).

[288] INFCIRC/237, Article 6(2).

[289] INFCIRC/251, Section 12(c).

21.5.4.2.5. Non-nuclear materials

Despite the absence of provisions in the Revised Safeguards Document, certain non-nuclear materials have been under safeguards and covered by Safeguards Agreements, namely heavy water and nuclear grade graphite. While these materials cannot be used to produce a nuclear explosive device and do not have military significance as such, they are employed in natural uranium fuelled reactors as moderator or reflector material. A country would not require enriched uranium to operate such a reactor, and natural uranium is apparently a commodity that is not too difficult to obtain and that is very often mined in the country itself. It is therefore necessary to safeguard this non-nuclear material in order to ensure that all plutonium produced by its use comes under safeguards. This is why such material has frequently been referred to as 'trigger material'. External supplies of such material, often made in connection with a reactor transaction, have therefore been subject to safeguards. Safeguards have, however, only been applied to heavy water, although the definitions in some agreements would also include nuclear grade graphite and Zircaloy. Agreements covering such non-nuclear material do not contain a definition of heavy water or graphite. The term 'specified material' is also used, meaning "any material which is especially prepared ... for the processing, use or production of special fissionable material"[290].

Under the NPT, exports for peaceful use of specified material to non-nuclear-weapon States may not be made unless the resulting nuclear material is subject to Agency safeguards. The NPT thus transformed a practice based on national policies into a binding commitment. A representative group of NPT Parties agreed that such specified materials include heavy water and nuclear grade graphite, established a definition of these terms and informed the Director General in 1974[291]. Technical assistance in the field of heavy water production may also require the application of safeguards if this assistance makes a substantial contribution to the project[292]. A Safeguards Agreement concluded specifically in connection with the supply of heavy water sets forth the principles for the application of safeguards, with Subsidiary Agreements having to "include any necessary arrangements for the application of safeguards to heavy water ..."[293]. Under another Agreement it is provided that the Subsidiary Arrangements shall include "... any necessary procedures for maintaining and verifying the correctness of the Inventory with respect to ... specified

[290] INFCIRC/237, Article 1(b).
[291] INFCIRC/209, Memorandum B.
[292] INFCIRC/267, Annex, paras 1-5.
[293] INFCIRC/260, Section 13(a).

materials''[294]. The principles of the verification procedures for heavy water are on the same lines as those for nuclear material (provision of records, reports, inspection).

21.5.4.2.6. Specialized equipment

Safeguards had to take account of the fact that, in many instances, special equipment and components were transferred, rather than complete nuclear facilities. Accordingly, it also became necessary to cover such special equipment (again as 'trigger items') so as to ensure that any nuclear facilities incorporating such equipment and any nuclear material produced by the use of such equipment became subject to safeguards. The export policy of some States became a binding international commitment under Article III(2) of the NPT, requiring safeguards in the recipient non-nuclear-weapon State on nuclear material produced by the use of such equipment. As in the case of non-nuclear material, the main suppliers Party to the NPT provided a definition when they communicated their interpretation of Article III(2) of the NPT to the Director General[295]. These communications, in the form of similar (or identical) letters to the Director General[296], interpret the term ''equipment ... especially designed or prepared for the processing, use or production of special fissionable material''[297] in Article III(2) of the NPT. The designation of the equipment includes three categories: equipment in reprocessing plants, equipment in fuel fabrication plants and their essential components, and equipment for isotope separation[298]. Clarifications regarding the 'trigger list' were also provided[299]. The London Guidelines also contain an equipment list[300] which expands the NPT 'trigger list' by adding plants and associated equipment for the production of heavy water, deuterium or deuterium compounds. The clarifications regarding equipment for enrichment mention major critical components for the four known enrichment processes[301].

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[294] The Federal Republic of Germany/Brazil/Agency Safeguards Agreement (INFCIRC/237, Article 14.2). This text, which avoids the term 'safeguards', was chosen at the request of the Governments to take account of their view that the Agency could apply safeguards properly only to nuclear items but not to 'trigger items'.

[295] INFCIRC/209.

[296] INFCIRC/209 and Addenda.

[297] The wording of the NPT is technically deficient because it does not include, for example, equipment for a natural uranium fuel fabrication plant. The communications, however, include any type of fuel fabrication plant. Similarly, Article III(2) does not refer to facilities (although these would include equipment) nor does it include transfers of technological information.

[298] INFCIRC/209, Memorandum B.

[299] Ibid., Annex.

[300] INFCIRC/254, Annex A.

[301] Gaseous diffusion, centrifuge, jet nozzle and vortex; laser separation equipment is not specifically mentioned, but is not excluded.

*21.5.4.3. Circumstances and relations resulting in safeguards*

The following sections describe developments in relation to points discussed in Section 21.6.2 of the basic book, to the extent that they relate to non-NPT Safeguards Agreements. They cover conditions for bringing items under safeguards by the direct right to apply safeguards and the application of derivative rules, as well as conditions for the cessation of safeguards.

21.5.4.3.1. Supply of items under a Project Agreement

Under Article XI.F of the Statute, any project for which the Agency provides assistance must be subject to safeguards. This means that not only items actually supplied through the Agency but also nuclear facilities which form part of the project must be controlled. For example, the supply of nuclear fuel for a research reactor requires that the reactor also comes and remains under safeguards, regardless of whether the fuel was used up and was subsequently replaced by fuel obtained bilaterally or produced indigenously. Despite paragraphs 19 and 20 of the Revised Safeguards Document, which refer to principal nuclear facilities supplied *under* a Project Agreement, the Board's consistent practice has been to require safeguards on the project as a whole. The distinction between supplied nuclear facilities and existing nuclear facilities forming part of the project becomes irrelevant when the State concerned concludes an NPT Safeguards Agreement. In such cases, Project Agreements no longer contain safeguards provisions (except for the basic undertaking), but instead refer to the NPT Safeguards Agreement[302]. The same practice has been adopted in respect of Master Agreements for the supply of small quantities of nuclear material[303].

21.5.4.3.2. Submission to safeguards

As distinct from NPT Safeguards Agreements under which all nuclear material in all peaceful activities of a State is controlled, non-NPT Safeguards Agreements continued to cover only items submitted to safeguards and items that had become subject to safeguards according to rules for derivative safeguards. However, the distinction between these two categories of nuclear material largely disappeared. In addition to nuclear facilities and nuclear material, heavy water[304] and specialized equipment were also submitted to safeguards. Moreover, facilities (including major

[302] For example the Agreement with Mexico (INFCIRC/203, Article IV(2)).
[303] For example the Agreement with Iraq (INFCIRC/195, Article X).
[304] For example under INFCIRC/260.

components) designed, constructed or operated on the basis of transferred technological information (including replicated facilities) were treated in the same manner as facilities or major components supplied in the form of hardware[305].

21.5.4.3.3. Derivative right to apply safeguards

Rules establishing a derivative right to apply safeguards (often referred to as 'contamination') were incorporated into the Safeguards Agreements. As pointed out above, such material remained under safeguards in the same way as material in respect of which a primary right to apply safeguards existed. This principle evolved over the years, with the result that previously unsafeguarded material which comes into contact with a facility or material under safeguards remains under safeguards regardless of whether it has actually been improved or not[306].

21.5.4.3.4. Produced material

Any nuclear material produced by the use of any safeguarded item (facilities, nuclear material, heavy water) or of transferred technological information comes under safeguards. The desideratum in paragraph 16 of the Safeguards Document for indefinite duration of safeguards on produced special fissionable material became a legal requirement in all Agency agreements concluded after February 1974. Moreover, safeguards continue to apply to all safeguarded items as long as these are usable for any nuclear activity relevant from the point of view of safeguards[307].

21.5.4.3.5. Processed nuclear material

Some agreements provide that, regardless of whether nuclear material is improved or not in the course of its processing in a safeguarded plant, it becomes subject to safeguards and is to remain under safeguards in the same way as produced material[308]. Under some other agreements, only material which had been processed in a facility that was permanently under safeguards[309] (for example a transferred facility or a facility built or operated by the use of transferred technological information or incorporating equipment and therefore listed in the Main Part of the Inventory) was to remain under safeguards after its removal from the facility.

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[305] INFCIRC/237.
[306] INFCIRC/251, Sections 2 and 9(a).
[307] INFCIRC/251, Sections 20(b) and (c).
[308] INFCIRC/237, Article 47(1)(iv).
[309] INFCIRC/251, Section 2(c).

21.5.4.3.6. Substituted nuclear material

Previously unsafeguarded nuclear material could be used permanently or temporarily to replace safeguarded material, whereby the latter ceased to be under safeguards. Such substituted nuclear material was then listed in the Main Part of the Inventory and the original material was removed from the Inventory[310].

21.5.4.3.7. Mixtures of safeguarded and unsafeguarded nuclear material

Previously unsafeguarded facilities became subject to safeguards while they contained, used, processed or produced safeguarded nuclear material[311]. Any previously unsafeguarded material which was processed or used in such a facility also became subject to safeguards and remained so under some agreements, even after its removal from the facility[312]. The provisions of the Revised Safeguards Document allowing termination of safeguards on unsafeguarded material after its separation from safeguarded material were not applied in all circumstances. The provisions of the Revised Safeguards Document on mixtures of safeguarded and unsafeguarded nuclear material were included in all Safeguards Agreements as part of the safeguards procedures[313]. Some agreements are not free from ambiguity because they do not specifically deal with that point.

*21.5.4.4. Facilities containing safeguarded material*

Under the relevant terms of the Safeguards Agreements, transfers of safeguarded nuclear material to a non-safeguarded facility may only be made after a design review of the facility has taken place and after Subsidiary Arrangements have been concluded in respect of that facility. No transfer may take place until the Agency has issued a confirmation to that effect[314].

*21.5.4.5. Facilities containing non-nuclear material or incorporating equipment*

The rules for nuclear material were also applied to non-nuclear material and specified equipment. The principle that a facility must be safeguarded as long as it *incorporates* any safeguarded equipment and non-nuclear material (see

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[310] INFCIRC/250, Section 5(a)(v).

[311] During this period, facilities were listed in the Subsidiary Part of the Inventory (e.g. INFCIRC/251, Section 9(b)).

[312] INFCIRC/251, Section 9(a)(iv)).

[313] INFCIRC/66/Rev.2, Annex I, para. 6(b), and Annex II, paras 10 and 11.

[314] INFCIRC/251, Section 16.

Section 21.6.2.2.7 in the basic book) was further tightened by requiring that any facility was subject to safeguards as long as it *contains* any safeguarded equipment and material[315].

### *21.5.4.6. Cessation of the right to apply safeguards*

The rules for the cessation of the right to apply safeguards have remained as reported in the basic book, except for the rules relating to the application of safeguards to previously unsafeguarded material (restoration of the status quo ante) and the principles for the duration and termination of Safeguards Agreements. (See Sections 21.5.4.10 and 21.5.4.14.)

The basic undertaking regarding non-military use continues to apply even to exempted material and to material on which safeguards have been suspended pursuant to paragraph 24 of the Revised Safeguards Document, i.e. to all items required to be listed in the Inventory[316].

### *21.5.4.7. Exemption of nuclear material from safeguards*

Standard exemption provisions, incorporating by reference paragraphs 21, 22 and 23 of the Revised Safeguards Document, were included, where relevant, in all Safeguards Agreements. The principles for exemption of nuclear material from safeguards were applied, mutatis mutandis, to heavy water.

### *21.5.4.8. Suspension of safeguards*

Paragraphs 24 and 25 of the Safeguards Document were incorporated by reference in most Safeguards Agreements. Under some Safeguards Transfer Agreements the consent of the supplier State was also required in order to suspend safeguards[317].

### *21.5.4.9. Termination of safeguards*

Paragraphs 26 and 27 of the Revised Safeguards Document were incorporated by reference in some but not all Safeguards Agreements. As regards termination of safeguards on items other than nuclear material, a typical clause reads as follows: "Nuclear facilities, specified equipment and specified material listed in the Main

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[315] INFCIRC/251, Section 9(b)(i).
[316] See INFCIRC/251, Section 2.
[317] INFCIRC/251, Section 18.

Part of the Inventory shall be deleted from the relevant Part of the Inventory as and when the Agency determines that such [items] have been consumed, are no longer usable for any nuclear activity relevant from the point of view of safeguards or have become practicably irrecoverable"[318]. Accordingly, the provisions of paragraph 26(c) of the Revised Safeguards Document were applied mutatis mutandis to such items. Some Safeguards Agreements do not allow termination of safeguards for previously unsafeguarded material as a result of its removal from a safeguarded plant and also exclude the possibility of terminating safeguards by substituting other unsafeguarded material for it[319].

### *21.5.4.10. Restoration of the status quo ante*

The provisions in the Revised Safeguards Document allowing termination of safeguards for material which had only come under safeguards because of its use in a safeguarded facility or because of its mixture with safeguarded material were further restricted in the relevant agreements. Nuclear material which was produced, processed or used in a facility incorporating supplied equipment or components came under safeguards and had to remain under safeguards[320]. Some agreements no longer distinguished between material produced, processed or used in a supplied facility or in a facility that was only temporarily under safeguards[321]. The only case permitting a restoration of the status quo ante was storage of unsafeguarded material in a safeguarded plant. Such material might be temporarily under safeguards while in the plant; after its removal, safeguards would terminate. However, it should be noted that a number of Safeguards Agreements are not explicit regarding the status of previously unsafeguarded material while being stored in a safeguarded facility and would seem to permit simultaneous storage of safeguarded and unsafeguarded material in a plant[322].

### *21.5.4.11. Consumption*

The rules in paragraph 26(c) of the Revised Safeguards Document regarding termination of safeguards for nuclear material were also applied, mutatis mutandis, to other safeguarded items (see Section 21.5.4.13).

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[318] INFCIRC/237, Article 28.
[319] INFCIRC/251, Section 20.
[320] INFCIRC/251, Section 2(c).
[321] Ibid.
[322] INFCIRC/250.

*21.5.4.12. Substitution*

Most Safeguards Agreements permit termination of safeguards through substitution of equivalent unsafeguarded material for safeguarded material. In some cases the supplier State did not agree to such substitution, and the possibility of substitution was not provided for in these agreements[323].

*21.5.4.13. Out-of-State transfers*

If safeguarded items are transferred within a State, they remain subject to the same Safeguards Agreement (although they may also thereby come under another agreement). If safeguarded items are transferred to a location or facility within a State which is not yet under safeguards, then design information on the facility must be provided, and a records and reports system must be agreed upon, i.e. Subsidiary Arrangements must be in place to permit the application of safeguards before the transfer is allowed. To that effect, the Agency is to receive advance notification of the transfer and has to confirm that the necessary arrangements have been concluded[324].

The case of transfers from one State to another is different. A distinction must also be made between the consent of the supplier State that may be required (which is normally not a matter of concern to the Agency) and the safeguards conditions that must be complied with. In all instances safeguards terminate or are suspended under the original agreement because the agreement can obviously only be implemented in a State Party to the agreement. The transfer provisions relating to nuclear material have been made equally applicable to other items (heavy water, equipment and facilities)[325]. Moreover, if technological information which has been externally obtained and which is covered by safeguards is to be transferred to a third State, then arrangements must be in place to apply safeguards in connection with the use of the information (i.e. not to the information as such)[326]. Five different examples of international transfers can be distinguished:

(a) *Transfers back to the supplying State.* If material has not been improved, the agreements do not require any arrangements, and safeguards terminate[327]. (If the material has been improved, see (c) below.)

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[323] INFCIRC/251, Section 20.
[324] Ibid., Section 11(a).
[325] INFCIRC/251, Section 15.
[326] INFCIRC/250, Section 11(c).
[327] INFCIRC/66/Rev.2, para. 28(a).

(b) *Suspension of safeguards during a temporary transfer.* Substituted material may be placed under safeguards by the transferring State or by the recipient State[328].

(c) *Transfers to a third State.* Such transfers may require the conclusion of a new Safeguards Agreement or of new Subsidiary Arrangements (or the extension of existing arrangements). If transfers are made to a facility that is already under safeguards, no additional arrangements are normally required. In any event, the Agency must make a determination regarding whether it can apply safeguards at the destination and issue a confirmation to that effect, before the transfer may take place[329]. The same principle applies to transfers to the original supplier if the material was improved under safeguards.

(d) *Transfers of technological information.* These transfers would require arrangements to ensure the application of safeguards in connection with the use of such information. It must be assumed that in such instances a new Safeguards Agreement is required in order to identify clearly the items that would come under safeguards as a result of the transfer[330]. In the period 1970–1980, there was no case where technological information was further transferred to a third State.

(e) *Consent of the supplier State.* While bilateral transfer restrictions are normally a matter in which the Agency is not involved, some agreements provide for a role of the Agency in relation to the supplier State. For example, the Agency may have to inform the supplier State of its ability to apply safeguards in the recipient State, or a joint notification by both States may be required for transfers of items belonging to sensitive technological areas, or of certain categories of nuclear material, such as uranium enriched to more than 20% or other special fissionable material[331].

The London Guidelines require the consent of the original supplier to retransfers and the acceptance of the conditions of the original transfer by the recipient of a retransfer[332].

There was no instance when the Agency accepted another safeguards system as being equivalent to its own system so as to relinquish its responsibility in favour of another authority. In fact, the relevant Article 28(d) of the Revised Safeguards Document was not included in any Safeguards Agreement.

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[328] INFCIRC/66/Rev.2, para. 25.
[329] INFCIRC/250, Section 11(b).
[330] Except, possibly, for transfers to a Party to an NPT Safeguards Agreement.
[331] INFCIRC/237, Article 10.
[332] INFCIRC/254, Appendix, para. 10.

*21.5.4.14. Termination of Safeguards Agreements*

In 1973, significant initiatives were introduced by the Director General relating to the duration of Safeguards Agreements. In a memorandum to the Board[333] he proposed that all Safeguards Agreements covering external supplies should henceforth reflect two concepts:

— The duration of the agreement should be related to the period of actual use of safeguarded items;
— The provisions for terminating agreements should require that the rights and obligations of the Parties would continue to apply to supplied nuclear material and special fissionable material produced, processed or used in or in connection with supplied items until the Agency had terminated safeguards on such material.

Furthermore, the Director General proposed that the termination provisions on facilities, equipment and non-nuclear material should follow those on nuclear material.

The proposals by the Director General were intended to lead to a greater degree of standardization, to make the application of paragraph 16 of the Revised Safeguards Document concerning continued application of safeguards on produced special fissionable material mandatory, and to ensure that items supplied bilaterally and nuclear material derived therefrom would be covered by safeguards during their lifetime. After prolonged and occasionally controversial discussion in September 1973, the Board decided in February 1974 that the two concepts should normally be reflected in all new non-NPT Safeguards Agreements; if no agreement could be reached in negotiations on the termination provisions, the Director General would put the matter before the Board.

Already before the Board's decision, Safeguards Agreements contained a provision to the effect that the Agreement "... shall remain in force until such time as safeguards on all nuclear material listed in the Main Part of the Inventory have been terminated" [334]. Another earlier Agreement provided for a partial continuation of safeguards on nuclear material produced under the Agreement[335]. The relevant termination clauses were further developed to refer explicitly to subsequent generations of produced special fissionable material[336]. The only case which the Director General had to put before the Board related to the termination provisions of a Safeguards Agreement with Argentina, covering the Canadian supplied Embalse

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[333] GOV/1621.

[334] INFCIRC/202, Section 10. Such a clause continued to be used in some Agreements concluded after the Board's decision, which covered only external supplies and nuclear material derived therefrom.

[335] INFCIRC/211, Section 27.

[336] INFCIRC/221, Section 24.

reactor on which no agreement could be reached in the negotiations[337]. In the event, a compromise on a fairly complicated formula could be developed which provided for a minimum duration of the Agreement of 15 years and for continuation of safeguards for nuclear material being under safeguards on the date of termination and for nuclear material that might be produced later from such material or from the reactor[338].

The possible use of transferred technological information, after termination of the Safeguards Agreement, for the construction of an indigenous nuclear facility by the recipient State, also had to be addressed. Accordingly, Safeguards Agreements provide for their own reinstatement if the recipient State were to construct a nuclear facility by the use of technological information received[339] or if such information were used to design, construct or operate a facility or specified equipment[340].

The original decision of the Board of February 1974 was thus further developed in practice to cover not only special fissionable material but also source material and to take account of Safeguards Agreements that dealt with the transfer of technological information. The London Guidelines also provide that items on the 'trigger list'[341] may only be transferred when the duration and coverage provisions are in conformance with the Agency's guidelines[342] and that, furthermore, there must at all times be in effect a Safeguards Agreement permitting the Agency to apply safeguards in connection with the use of transferred technology[343].

### *21.5.4.15. Use of safeguarded items for a military purpose*

The use of safeguarded items for a military activity or the development of a nuclear explosive device or any other violation of a Safeguards Agreement by a State do not result in the termination of the Safeguards Agreement. Also, Safeguards Agreements do not continue to provide, as did some earlier agreements, that the Agency could be relieved of its undertaking to apply safeguards[344]. The Revised Safeguards Document and the agreements under it also provide for the possibility of terminating safeguards on source material to be used for non-nuclear purposes[345]. However, such non-nuclear uses might also involve military activities, for example

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[337] GOV/1694, 1701, 1708; GOV/OR.471, paras 39–70; GOV/473, paras 2–20.

[338] INFCIRC/224.

[339] INFCIRC/233, Section 30.

[340] INFCIRC/237, Article 28(2); also INFCIRC/239, Article 28, INFCIRC/247, Section 34.

[341] INFCIRC/254, Annex A.

[342] GOV/1621.

[343] INFCIRC/254, Appendix, para. 6(b).

[344] The Agency's undertaking is not unconditional; it shall apply safeguards "... to ensure, as far as it is able", that no safeguarded items are used for any illicit purpose (INFCIRC/247, Section 9).

[345] INFCIRC/66/Rev.2, para. 27.

the production of high-penetration ammunition, balance weights for military aircraft and shielding for tanks or armoured vehicles. No such case has arisen yet, but it would appear that safeguards could be terminated once the material has been transformed into an alloy or a compound which would make it practicably irrecoverable for any fuel cycle activity[346]. Subsequent use of the nuclear material for military non-nuclear activities would not be in contravention of the Safeguards Agreement because safeguards had been terminated before the non-nuclear military use of the material.

*21.5.4.16. Right to take into account*

As discussed in the basic book, the Revised Safeguards Document does not contain any general provision allowing the Agency to take into account the application of safeguards to unsafeguarded facilities in the State concerned. The Agency's control system is thus dependent on initial notifications by the State where safeguards are to be applied. In relation to international transfers and the supply of technological information, supplier States have retained or obtained certain notification and information rights (in addition to the notifications to be made pursuant to NPT Safeguards Agreements)[347]. Three States, the UK, the USA and the USSR, informed the Agency in 1974 that they would henceforth notify the Agency of exports and imports "... in the interest of assisting the Agency in its safeguards activities"[348]. Such information helps the Agency to corroborate notifications and reports made by the States where safeguards are applied in respect of transfers to and from these three States. The Agency's Safeguards Implementation Reports (SIR) have referred to known unsafeguarded nuclear activities in non-nuclear-weapon States in connection with the application of safeguards in these States under Safeguards Agreements based on the Revised Safeguards Document (see Section 21.13.3.2). Under the Revised Safeguards Document the actual frequency of inspections of a reactor must take into account "whether a State possesses irradiated fuel reprocessing facilities"[349], but no quantification or numbers are attached to this statement of principle.

## 21.5.5. Evolution

The development of NPT Safeguards Agreements is discussed in Section 21.4.4. Agreements based on the Revised Safeguards Document have incorporated new concepts, which were required by the Board (such as the principles for

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[346] Also, by analogy, INFCIRC/153, para. 35.
[347] For example INFCIRC/247, Sections 15(a), (c), and 18.
[348] INFCIRC/207.
[349] INFCIRC/66/Rev.2, para. 58.

the duration of Safeguards Agreements) or by supplier States as part of their nuclear export policy (e.g. the London Guidelines) and which reflected new safeguards techniques (e.g. containment and surveillance) or the need to cover items other than nuclear material (e.g. technological information); these developments are discussed elsewhere in this Chapter.

### 21.5.6. Negotiation and conclusion

The practice of negotiation and conclusion of Safeguards Agreements remained essentially the same as described in the basic book. The texts of all Safeguards Agreements, except for Project Agreements and agreements covering small quantities of nuclear material, were submitted to the Board for approval. In the case of standard NPT Safeguards Agreements this was done in many instances by indicating only the deviations from, and the choice of alternatives in, the standard text[350].

### 21.5.7. Ancillary instruments

In connection with the negotiation of NPT Safeguards Agreements, a number of separate protocols to some of these agreements were negotiated (see Section 21.5.7.4). Furthermore, standard Subsidiary Arrangements to implement the relevant provisions of NPT Safeguards Agreements were drafted by the Secretariat. On the basis of these drafts, Subsidiary Arrangements under specific agreements were negotiated.

#### *21.5.7.1. Safeguards letters*

No new safeguards letters of the type mentioned in the basic book were negotiated because the Agency's safeguards system was completed and the NPT Safeguards Document constituted, for all intents and purposes, the templete of a complete, self-contained agreement. Accordingly, there was no longer the need to cover future contingencies that might require new safeguards procedures. The existing letters with Japan and Finland were also suspended as a result of the suspension of the underlying agreements pursuant to the suspension clause in the NPT Safeguards Agreements[351].

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[350] GOV/INF/276.

[351] For Japan, see INFCIRC/255, Article 23. For Finland, see INFCIRC/155, Article 23.

*21.5.7.2. Supplementary Agreements*

No new Supplementary Agreements of the type mentioned in the basic book were concluded. The Supplementary Agreements with the UK terminated because the underlying agreement, the Bradwell Submission Agreement, expired[352] and, together with its Supplementary Agreement, was superseded by another agreement[353].

*21.5.7.3. Subsidiary Arrangements*

All Safeguards Agreements negotiated provide for the conclusion of so-called 'Subsidiary Arrangements'. Subsidiary Arrangements made under agreements based on the Revised Safeguards Document concern 'the implementation' of the safeguards procedures[354]. However, they have also covered a number of other matters. Subsidiary Arrangements were not submitted to the Board. They were normally concluded by means of an exchange of letters between the Head of the Safeguards Department and the Governmental representative. The Subsidiary Arrangements under the Euratom Safeguards Agreements were concluded by exchanges of letters between the Director General and the Commissioner concerned. Subsidiary Arrangements are confidential because they often contain information of a sensitive nature on nuclear installations (e.g. plant design, description of processes). Efforts have been made to standardize these Arrangements and to negotiate comprehensive Subsidiary Arrangements to cover overlapping agreements. In respect of NPT safeguards, the negotiation of Subsidiary Arrangements has become a major task for the Secretariat.

*21.5.7.4. Protocols*

During the period covered by this book a number of protocols were concluded. These instruments cover different subjects. With the exception of Suspension Protocols, they were made in connection with NPT Safeguards Agreements. Some of the protocols were only of a transitory nature, others form an integral part of the Safeguards Agreement in question. A separate category is formed by the Suspension Protocols, which are independent legal instruments, i.e. agreements.

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[352] INFCIRC/86, Section 21.

[353] See basic book, Section 21.5.7.2.

[354] See, for example, the Agreement between Australia, Japan and the Agency (INFCIRC/173, Section 24).

(a) Protocol on safeguards expenses

Such Protocols were made in respect of NPT Safeguards Agreements concluded between 20 April and 27 September 1971 and related to safeguards costs (Article 15 of the Agreements)[355]. On the former date the Board endorsed[356] the arrangements proposed by the Safeguards Committee (1970) for financing of safeguards (Section 21.9). Since the corresponding scale of contributions could only be approved by the General Conference at its 15th Regular Session in September 1971, both Parties agreed that Article 15 "shall become authentic and definitive" once the Conference had fixed the scale to give effect to the special financing arrangements. This was done at the Conference on 27 September 1971[357].

(b) Protocol to NPT Safeguards Agreements with States having no nuclear activity

A large number of States Party to the NPT have no significant nuclear activity. Although there was initially some doubt as to whether they would be under the obligation to conclude a Safeguards Agreement under Article III, the NPT was apparently interpreted as requiring the conclusion of Safeguards Agreements even with these States, although no formal decision by NPT Parties in this respect is recorded. In order to avoid a situation where such States would be required to take legislative and administrative measures to implement the Agreement, the Protocol provides that implementation of the Agreement shall be held in abeyance (except for certain notification requirements) until the country starts nuclear activities or possesses quantities of nuclear material above the exemption limits or nuclear material in a facility[358]. The conclusion of such a type of Protocol is optional and depends on the preference of the State concerned. The text of the Protocol was not developed by the Safeguards Committee (1970), but was subsequently developed by the Secretariat[359]. In the early 1970s the full text of such Protocols was submitted to the Board together with the Agreement in question[360]. Later, the Board was merely informed that a Protocol of this type would also be concluded[361].

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[355] See, for example, the NPT Safeguards Agreement with Austria (INFCIRC/155).

[356] GOV/DEC/66(XIV), No. (31).

[357] GC(XV)/RES/283.

[358] See, for example, the Agreements with Nepal (INFCIRC/186) and the Maldives (INFCIRC/253). Agreements with non-Member States stipulate also that the arrangements to implement Article 15 (providing for reimbursement of safeguards costs to the Agency) shall be agreed upon "when it becomes necessary" (see INFCIRC/253, Protocol, Article II).

[359] See the draft Agreement with Ireland (GOV/1511).

[360] For example GOV/1512 and GOV/1517.

[361] For example GOV/1814; the text of the standard Agreement with the text of the Protocol was issued as GOV/INF/276.

(c) Protocols on accession to the Euratom (NNWS) Agreement

Denmark, Ireland and Norway were candidates for membership in Euratom when they concluded their NPT Safeguards Agreements[362]. Denmark and Ireland had already signed a Treaty of accession to Euratom, but had not yet ratified it, while Norway was contemplating steps to become a Member. These States negotiated with the Agency Protocols to their NPT Safeguards Agreements providing for the replacement of these Agreements by the Euratom (NNWS) Safeguards Agreement, should they become Members and once the Euratom (NNWS) Agreement had entered into force[363]. In the event, Norway did not become a Member of Euratom, while Denmark and Ireland did become Members. The Danish and Irish NPT Safeguards Agreements were accordingly replaced[364] by the Euratom (NNWS) Agreement on 21 February 1977, the date of entry into force of the latter.

(d) Protocol to the NPT Safeguards Agreement with Euratom and its non-nuclear-weapon States

This Protocol amplifies the Agreement and contains provisions for the co-ordination of the safeguards systems of Euratom and the Agency in implementing Part II of the Agreement. The Protocol forms an integral part of the Agreement and therefore has the same legal standing as the Agreement[365].

(e) Protocols to the Voluntary Offer Agreements with France and the UK

These Protocols[366] have the same legal status and purpose as the Protocol referred to in (d) above.

(f) Protocol to the NPT Safeguards Agreement with Japan

Japan had requested the same treatment as Euratom States[367] and did set up a national nuclear material accounting and control system including national safeguards inspection[368]. Provisions for the co-ordination of Japan's system with the Agency's safeguards system are the subject of a Protocol to the Agreement, forming an integral part of the Agreement[369].

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[362] INFCIRC/176, INFCIRC/177 and INFCIRC/184.

[363] See the Protocols to the above Agreements.

[364] However, the Agreement with Denmark still applies to the Faroe Islands. Upon Greenland's secession from Euratom in 1985, that Agreement re-entered into force also with regard to Greenland (see INFCIRC/176 and Mod.1, and notes thereto).

[365] INFCIRC/193, Article 26.

[366] INFCIRC/263 and INFCIRC/290.

[367] Statement of the Governor of Japan (GOV/OR.451, paras 33 and 34).

[368] INFCIRC/255, Article 2, and Protocol, Articles 9–17.

[369] INFCIRC/255, Article 26.

(g) Protocol with Uruguay in connection with Article 13 of the Tlatelolco Treaty

Uruguay and the Agency concluded a Protocol providing that safeguards under the NPT Safeguards Agreement are also to apply in connection with the Tlatelolco Treaty[370] and containing the understanding that a new agreement to implement Article 13 of the Tlatelolco Treaty would be negotiated should the NPT Safeguards Agreement cease to be in force. This method for covering the safeguards requirements of the Tlatelolco Treaty and the NPT was not further pursued with other Latin American States Parties to both Treaties[371]. In these other cases the Safeguards Agreements refer to both the NPT and the Tlatelolco Treaty, dispensing with the need for a Protocol[372].

(h) Suspension Protocols

In view of the comprehensive coverage of NPT Safeguards Agreements, these Protocols provide for the suspension of the 'application of safeguards' under other agreements[373]. If such other agreements are between the same Parties, i.e. the Agency and the State, no further legal instruments are required to achieve that effect[374]. However, when a third State is a Party to a Safeguards Agreement, as in the case of Safeguards Transfer Agreements and Trilateral Safeguards Agreements, the consent of that State is required for suspending the implementation of these agreements[375]. Such a consent is embodied in a trilateral legal instrument, the so-called 'Suspension Protocol'[376]. It should be noted that these Protocols do not suspend the trilateral agreements but only their safeguards implementation. In particular, the undertaking against military use remains in force. In addition, these Protocols — which are in fact new trilateral agreements — contain a number of other provisions, depending on the arrangements between the States concerned. For example, in the case of trilateral agreements to which the USA is a Party, the

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[370] INFCIRC/160, Add.1. The text of the Protocol was not submitted to the Board, but it was negotiated by the Director General pursuant to the authority he received from the Board to conclude additional arrangements with Uruguay in respect of Article 13 of the Tlatelolco Treaty (see GOV/1483).

[371] One of the reasons was apparently that it created the impression that the NPT took precedence over the Tlatelolco Treaty.

[372] See, for example, the Agreements with Mexico (INFCIRC/197) and Peru (INFCIRC/273).

[373] INFCIRC/153 (corrected), Article 24.

[374] This is the case with Project Agreements and Unilateral Submission Agreements.

[375] The provision in INFCIRC/153 that the application of safeguards "shall be suspended" is a desideratum for, and not binding on, third States Party to Safeguards Transfer Agreements.

[376] This generic term covers a variety of instruments with differing contents. Common to all of them is that they do not suspend the earlier agreement but only the safeguards implementation under it. It is not entirely clear which provisions relating to safeguards remain operative and which are suspended (for example provisions relating to non-compliance, settlement of disputes), and there has been no occasion to test the extent of the suspension.

Protocols contain a reaffirmation that NPT safeguards shall be applied to nuclear materials subject to the co-operation agreement and that Article 14 of the NPT Safeguards Agreement cannot be invoked in respect of nuclear material subject to the co-operation agreement[377].

#### *21.5.7.5. Exchange of letters by France and Iraq relating to Iraq's NPT Safeguards Agreement*

France and Iraq notified the Agency of an exchange of letters on 11 September 1976 relating to their co-operation agreement and Iraq's NPT Safeguards Agreement[378]. This exchange provided for the conclusion of a Trilateral Safeguards Agreement should the NPT Safeguards Agreement lapse and, in addition, for a partial continuation of the NPT Safeguards Agreement should the Trilateral Agreement not enter into force three months before the NPT Agreement expires. To that effect the Governments agreed that "... those provisions of the Iraq–IAEA Agreement which concern safeguards shall continue to be applied in order to ensure fulfilment of the commitments entered into under Article III.1.C of the Franco–Iraqi Agreement until the entry into force of the trilateral agreement". Either of the Governments may then notify the Agency of the items which must come under safeguards.

The Agency is not a Party to that exchange of letters and has not formally accepted the obligation to perform the interim activities foreseen for it. In the event of termination of the Iraqi NPT Safeguards Agreement, negotiations would have to take place to determine which terms of the Agreement remained operative.

## 21.6. SAFEGUARDS AND NUCLEAR EXPORTS

This section of the basic book discusses the scope of Agency safeguards in relation to the Revised Safeguards Document. That Document was not amended during the period covered by the present book. The developments relating to the scope of Agency safeguards are discussed in Section 21.5.4 (contents and scope of Agreements under the Revised Safeguards Document).

The present section is devoted to the topic of nuclear exports and their influence on the Agency's safeguards regime.

During the 1970s, significant developments occurred in relation to nuclear export policies of supplier States. Informal arrangements among these States resulted to some extent in common export criteria and requirements, and a number of States

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[377] For example INFCIRC/152/Mod.1 and INFCIRC/161/Mod.1.

[378] For the text, see INFCIRC/172/Add.1.

unilaterally imposed more stringent export conditions, going beyond the criteria for which it had been possible to achieve inter-State consensus[379]. All these measures were based on the concern that nuclear exports and international co-operation could lead to proliferation of nuclear weapons or the acquisition of 'nuclear weapons capability' by non-nuclear-weapon States. Most of these restrictions are a matter of inter-State relations in the nuclear field. There are, however, a number of areas in which new export norms also affected the Agency and its programme, in particular:

(a) The application of safeguards;
(b) The role of the Agency in the development of and participation in new international institutional arrangements (such as international storage of separated plutonium and of spent fuel, or an international fuel bank);
(c) The problem of potential 'discrimination' among Agency Member States, some of which received preferential treatment with regard to nuclear supplies and assistance while others did not[380];
(d) Conditions for supplies of nuclear material, equipment and facilities to the Agency or through the Agency[381];
(e) Requirements for physical security measures, based on the Agency's recommendations[382];
(f) The Agency's role in the context of the International Fuel Cycle Evaluation (INFCE) and the establishment and terms of reference of the Committee on Assurances of Supply (CAS).

Why have the export policies of suppliers developed and changed? There is no single answer to this question, but a number of interrelated concerns and events may be cited in this connection[383]:

(a) The primary concern probably stemmed from the recognition that unrestricted nuclear supplies could lead to the acquisition by non-nuclear-weapon States of 'nuclear-weapons capability'. There is no definition of this term and it does not appear in the NPT, but, generally, this concept is understood as enabling a State to develop or manufacture a nuclear explosive device on short notice, provided it has access to sufficient quantities of weapons grade nuclear material. To check this concern, restrictions were imposed on the export of 'weapons grade' nuclear

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[379] Note, for example, the communication by Canada regarding its new nuclear export policy (INFCIRC/243).

[380] See in this connection the discussion on technical assistance and safeguards (Chapter 18).

[381] Note, for example, the amendments to the US Agreement for Co-operation with the Agency (INFCIRC/5, Mods 1 and 2) and the Master Contract for the supply of nuclear material (INFCIRC/210).

[382] INFCIRC/225/Rev.1.

[383] For a comprehensive discussion, see Simone Courteix, Exportations nucléaires et non-prolifération, Economica, Paris (1978).

material (and also 'weapons usable' nuclear material)[384], and on equipment and technical know-how for processes by which such material could be obtained (reprocessing of spent fuel and enrichment). In the above context, we should note the Indian nuclear explosion of May 1974[385] and a major reorientation of US policy, resulting in deferral of commercial reprocessing and plutonium recycling, and in legislation cutting off military and economic assistance to any non-nuclear-weapon State acquiring reprocessing or enrichment plants.

(b) The need to reach a uniform understanding on the interpretation and application of Article III(2) of the NPT and the discussions within the 'Zangger Committee' (named after its Chairman, Prof. C. Zangger, of Switzerland)[386].

(c) The possibility of internationalizing certain stages of the fuel cycle and/or of providing for attractive alternatives to the reprocessing of spent fuel.

(d) The development of international guarantees for nuclear supplies subject to agreed non-proliferation criteria, leading to the establishment of the Committee on Assurances of Supply (CAS) whose origin can be traced back to INFCE and to the guidelines by the Nuclear Suppliers Group (the so-called 'London Club').

(e) The recognition of the need for physical security of nuclear material and nuclear installations and for protective measures to meet minimum international standards.

(f) Efforts to upgrade and further develop safeguards, in particular as regards:

(i) Coverage (partial versus full-scope safeguards);
(ii) Clarification of their scope, i.e. verification that nuclear items under safeguards are not diverted to any nuclear explosive device, whether labelled military or peaceful;
(iii) Assurance of adequate duration of Safeguards Agreements;
(iv) Measures to improve safeguards effectiveness.

### 21.6.1. Safeguards and supplier policies

The application of Agency safeguards has become a common requirement for nuclear exports for peaceful purposes. This applies not only to the traditional suppliers but also to new suppliers which have emerged (e.g. the transfer of a

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[384] Again, there is no definition of this term, although it had been used often.

[385] For the discussion in the Board, see GOV/OR.469, paras 38-103.

[386] These discussions took place outside the Agency, but their results were communicated to the Agency (INFCIRC/209 and Addenda).

research reactor from Argentina to Peru)[387]. All Parties to the NPT are bound by Article III(2), requiring Agency safeguards in respect of their exports for peaceful purposes to non-nuclear-weapon States; in addition, the 'London Guidelines', to which France (not a Party to the NPT) has also subscribed, provide for the application of Agency safeguards. Some States will export only if all present and future nuclear activities in the recipient country are subject to safeguards (i.e. de jure full-scope safeguards); other States deem de facto full-scope coverage sufficient. Bilateral safeguards are only foreseen as a backup measure in the event of non-application of Agency safeguards, but not as the basic safeguards measure. Accordingly, the traditional 'Safeguards Transfer Agreement' (with agreed bilateral safeguards being then transferred to the Agency) has lost importance. Bilateral safeguards requirements were in most instances satisfied by the existence of a comprehensive agreement concluded under the NPT or the Tlatelolco Treaty. If such a comprehensive agreement did not exist, a new agreement, based on the Revised Safeguards Document, of a bilateral or trilateral nature, was concluded. Bilateral Safeguards Agreements frequently provide for certain rights of the supplier State, although that State is not a Party to the Agreement[388].

### *21.6.1.1. Export under the NPT*

#### 21.6.1.1.1. Safeguards requirements

Article III(2) of the NPT requires the application of safeguards in relation to exports by Parties to the NPT. That Article reads as follows:

> "Each State Party to the Treaty undertakes not to provide: (a) source or special fissionable material, or (b) equipment or material especially designed or prepared for the processing, use or production of special fissionable material, to any non-nuclear-weapon State for peaceful purposes, unless the source or special fissionable material shall be subject to the safeguards required by this Article".

Important limitations of these provisions should be pointed out:

(a) Only exports for peaceful purposes to non-nuclear-weapon States are covered. Article III(2) of the NPT does not deal with exports to nuclear-weapon States, nor does it cover exports for military purposes compatible with the NPT (exports not related to nuclear explosive devices, e.g. for military nuclear propulsion).

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[387] INFCIRC/266.

[388] Note, for example, INFCIRC/250 and 251.

(b) Compliance with these export obligations is not verified through the application of safeguards. It should be noted, however, that NPT Safeguards Agreements deal with international transfers of nuclear material (transfer of responsibility for material shipped internationally, advance notification of exports and imports, verification by the Agency)[389].

21.6.1.1.2. Comprehensive or partial safeguards

The negotiating history of the NPT does not clarify whether the "safeguards required by this Article" mean safeguards of the NPT type or whether they include also other safeguards applied by the Agency. The question was, however, discussed by NPT Parties at the first NPT Review Conference (1975), and the Final Declaration of that Conference[390] contains the following statements:

"The Conference urges that:

(a) In all achievable ways, common export requirements relating to safeguards be strengthened, in particular by extending the application of safeguards to all peaceful nuclear activities in importing States not Party to the Treaty;
(b) Such common requirements be accorded the widest possible measure of acceptance among all suppliers and recipients;
(c) All Parties to the treaty should actively pursue their efforts to these ends."

"The Conference takes note of:

(a) The considered view of many Parties to the Treaty that the safeguards required under Article III(2) should extend to all peaceful nuclear activities in importing States;
(b) (i) The suggestion that it is desirable to arrange for common safeguards requirements in respect of nuclear material processed, used or produced by the use of scientific and technological information transferred in tangible form to non-nuclear-weapon States not Party to the Treaty;
(ii) The hope that this aspect of safeguards could be further examined."

[389] INFCIRC/153, paras 91–97.
[390] GOV/INF/296.

The second NPT Review Conference (1980) could not agree on a Final Declaration in view of lack of agreement on a text dealing with nuclear disarmament. An informal paper, though not an official Conference document, was circulated on the last day of the Conference. That document was produced by a representative group of States and reads:

> "The Conference believes that all non-nuclear-weapon States not Parties to the Treaty should submit all their source or special fissionable material in all their nuclear activities to IAEA safeguards, with a view to preventing diversion of nuclear material to nuclear weapons or other nuclear explosive devices, and appeals to such States to do so.
>
> The Conference urges that States Parties to the Treaty participate actively in joint efforts with States concerned to adopt as a common requirement for the international exchange of nuclear materials and equipment, that non-nuclear-weapon States not Party to the Treaty accept the same safeguards obligations as have been accepted by non-nuclear-weapon States Parties to the Treaty."

It follows from the above statement and from a number of statements at both NPT Review Conferences that, as a matter of law, such comprehensive safeguards are not required by the NPT. Nonetheless, a number of States have adopted the policy (and possibly the legal interpretation) that there must be no exports unless all nuclear activities in the recipient non-nuclear-weapon State are under Agency safeguards.

#### 21.6.1.1.3. Exports requiring safeguards

The general and also imprecise export provisions in Article III(2) of the NPT led to unofficial consultations at a very early date and to the establishment of an ad hoc committee (the 'Zangger Committee') to work out a list of nuclear exports falling under that Article (the so-called 'trigger list', because export of such items would trigger Agency safeguards on nuclear material). The work of the Zangger Committee resulted in a common approach, which was communicated in some 20 similar letters to the Agency's Director General in 1974[391]. These letters were later amended to specifically include additional items related to enrichment technology[392]. While these letters show a number of variations and nuances, their principal tenor is to notify the Director General — with the request to inform all Member States — that these States had adopted common 'export procedures', in fact

[391] INFCIRC/209.

[392] These latter communications were made in the early 1980s.

had agreed on common minimum export standards to implement Article III(2) of the NPT. In addition to defining the non-nuclear material and equipment that would fall under Article III(2), the letters go beyond the requirements of that Article by also covering source material produced, processed or used by the use of exported items. Moreover, undertakings are required from the recipient State that nuclear material will not be diverted to any nuclear explosive device and that Agency safeguards to that end will apply to the nuclear material in question. Finally, another potential loophole in Article III(2) was plugged by the stipulation that re-exports could only be made subject to safeguards in the recipient State.

The NPT and the 'trigger list' require safeguards only in relation to nuclear material. This presented no problems in States with an NPT or Tlatelolco Safeguards Agreement. In respect of other States the Agency continued its practice of concluding Safeguards Agreements which provided for safeguards not only on nuclear material but also on non-nuclear material (e.g. heavy water), equipment and facilities, for listing these items in the relevant parts of the Inventories and for applying verification measures to them[393].

In 1975 the Agency adopted the policy of making it explicit in Safeguards Agreements based on the Revised Safeguards Document that the use of safeguarded items for "any nuclear explosive device" was precluded. Accordingly, the communications did not raise any new problems in this regard.

### 21.6.2. The London Guidelines and the Agency

#### *21.6.2.1. Development*

In 1975 a group of seven principal nuclear suppliers[394] started consultations with a view to tightening proliferation related export controls by agreeing on common criteria for exports to all non-nuclear-weapon States so as to insulate these criteria from commercial competition. The Nuclear Suppliers Group met in closed sessions in London (therefore it is also occasionally referred to as the 'London Club') and not within the framework of the Agency. Its composition was different from that of the Zangger Committee, because France joined the Group and some members of the Zangger Committee decided to stay outside the Group[395]. The initial membership of the Group was successively enlarged and comprised 15 States by the end of 1977[396]. The Group did not include some recipient States that would be

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[393] For example INFCIRC/237.

[394] The first proposal for the formation of such a group came from the USA. The initial members were Canada, the Federal Republic of Germany, France, Japan, the UK, the USA and the USSR.

[395] Austria, Denmark, Hungary, Ireland, Luxemburg and Norway.

[396] With the addition of Belgium, the CSSR, the German Democratic Republic, Italy, the Netherlands, Poland, Sweden and Switzerland. Australia and Finland sent communications to the Agency that they would follow the Guidelines.

particularly affected by the new restrictions. The secrecy surrounding the discussions of the Group, the exclusion of many recipient countries and the tightening of export controls, which were seen by a number of recipient, developing States as an impediment to their nuclear programme, drew heavy criticism at sessions of the Agency's General Conference and in other fora[397].

The main triggering factors for the London talks were the Indian nuclear explosion of May 1974[398] and concern that unrestricted supply of reprocessing and enrichment technology would lead to the acquisition of nuclear weapons' capability by additional States[399]. In this connection, two particular supply arrangements negotiated in the mid 1970s caused preoccupation: the Agreement between the Federal Republic of Germany and Brazil, covering the export of complete fuel cycle technology[400], and the intended supply of a reprocessing plant by France to Pakistan[401].

The results of the Nuclear Suppliers Group meetings were communicated to the Agency in January 1978 in a series of similar letters to the Agency's Director General[402]. Initially, the idea of a multilateral Suppliers Treaty was considered[403], but this idea was soon discarded and the following legal form was chosen[404]:

(a) The engagements would be laid down in a 'Gentlemen's Agreement';
(b) The understandings would be included in a series of unilateral declarations of national policy to the Agency[405];
(c) Participants were free to require additional conditions;
(d) Changes in the Guidelines would require unanimous consent[406].

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[397] The 1977 Persepolis Conference on the Transfer of Nuclear Technology and the 1977 Agency Conference on Nuclear Power and its Fuel Cycle.

[398] The plutonium for the device came from a reactor supplied by Canada which was, however, not subject to Agency safeguards; see also the discussion in the Board of June 1974, GOV/OR/469, paras 38–103.

[399] The term 'nuclear weapons capability' is not defined in the NPT or in any other international legal instrument. It may signify: the possession of nuclear material of weapons grade in sufficient quantity; the facilities to produce such material; or the technology to design, construct and operate such facilities, coupled with access to nuclear material.

[400] The negotiations with Brazil and the Federal Republic of Germany were held while the London talks took place.

[401] The plant was never constructed, although a Safeguards Agreement had been negotiated to cover the transaction (INFCIRC/239).

[402] INFCIRC/254 and Addenda.

[403] This would have created a cartel under an international treaty.

[404] Each State adhered to the criteria as a matter of 'national policy', although the Guidelines were the subject of formal diplomatic communications among the initial seven members.

[405] INFCIRC/254, Letters I–XII.

[406] INFCIRC/254, Appendix, para. 16.

While the Group adopted, in principle, the 'trigger list' of the Zangger Committee[407], its work was not specifically linked with the NPT or its implementation. The principle agreed to in respect of the NPT was that formal Treaty undertakings, verified by the Agency, would be the measure to check nuclear proliferation[408]. Supplies to non-Parties would require acceptance of certain obligations and of Agency safeguards by the recipients[409]. The non-proliferation regime under the NPT was thus not based on preventing physical access by non-nuclear-weapon States to nuclear technology, but on a set of legal obligations and verification measures by the Agency. The Guidelines of the Group introduced multilaterally a new qualitative dimension in international non-proliferation efforts by limiting international co-operation in certain sensitive areas of the nuclear fuel cycle[410]. It should be noted that the Guidelines also apply to exports to NPT Parties[411] and not only to non-Parties, as does the 'trigger list' of the Zangger Committee.

### *21.6.2.2. Content*

The London Guidelines, circulated as an official Agency document[412], stated a number of new requirements by suppliers, particularly in the safeguards field. In other areas, the Guidelines and action by States to implement them would substantially influence the Agency's programme. Some points of the Guidelines concerned exclusively matters between supplier States and recipient States[413].

#### 21.6.2.2.1. Agency safeguards

The London Guidelines affected only Safeguards Agreements based on the Revised Safeguards Document, but not NPT Safeguards Agreements[414]. Since the Guidelines had in all their important aspects already been agreed upon in 1975, their official communication in 1978 often restated only what had already become the Agency's practice.

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[407] Compare INFCIRC/254/Annex 1 with INFCIRC/209.

[408] I.e. Agency safeguards under Article III and international observation of peaceful nuclear explosions under Article V.

[409] Article III(2).

[410] Reprocessing of spent reactor fuel; uranium enrichment; heavy water production.

[411] INFCIRC/254, Appendix, para. 1.

[412] As requested in the relevant letters.

[413] These are not discussed in this section, but see INFCIRC/254, Appendix, paras 7–10.

[414] There is the, probably hypothetical, question of the applicability of the Guidelines in the event of termination of an NPT Safeguards Agreement.

(a) *Transfer of technology*[415]. Facilities for reprocessing, enrichment or heavy water production that utilize supplied technology or that are derived from supplied facilities or components require safeguards. Moreover, all facilities of these types (even if not based on supplied technology) constructed in the recipient country during an agreed period (which should be at least 20 years after the start of operation of a facility using supplied technology) have to come under safeguards. Legally, there would be the presumption, which cannot be rebutted, that those facilities too were based on supplied technology. The supplier State would have certain rights in identifying facilities using supplied technology.

The trilateral Safeguards Agreement between the Agency, Brazil and the Federal Republic of Germany of 1975 was the first Safeguards Agreement to contain elaborate provisions relating to supplied technology[416]. All subsequent non-NPT Safeguards Agreements, except those covering only nuclear material, contain clauses relating to supplied technological information. Agency practice then went further than the Guidelines by also covering transferred technology for other fuel cycle facilities, such as reactors. The definition of 'technology' in the Guidelines was also amplified in Safeguards Agreements.

(b) *Duration of Safeguards Agreements.* As early as 1974, the Board had approved a new concept for the duration of Safeguards Agreements based on the Revised Safeguards Document[417]. Termination of an agreement would not terminate the application of safeguards on items under safeguards on that date (including nuclear material produced, processed or used in or by the use of such items). Termination would only mean that no new supplied items could be brought under the agreement. The Board's decision left room for exceptions[418] to be brought before the Board, but the Guidelines make the application of the above principle mandatory for all supplies[419]. While the terms 'termination' and 'duration' have been used, the Safeguards Agreement in question remains in force except that, by agreement of the Parties, some of its terms become inoperative. The same legal effect could of course be achieved by not making any new transfers from the supplier State. In that sense and legally the terms 'termination' and 'duration' do not quite convey the substance of the concept[420].

(c) *Prohibition of nuclear explosives.* Items on the 'trigger list' should only be transferred upon "formal governmental assurances from recipients excluding uses which would result in any nuclear explosive device"[421]. The Guidelines do not

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[415] The term is defined in INFCIRC/254, Annex A, Part B.
[416] INFCIRC/237.
[417] GOV/1621; GOV/OR.458, paras 5-51; GOV/OR/459, paras 1-2; GOV/OR/464, paras 1-3.
[418] GOV/OR/464, paras 1-3.
[419] Exceptions require consultation with the other 'parties' (sic) to this understanding.
[420] GOV/1621, Annex.
[421] INFCIRC/254, Appendix, para. 2.

state whether these assurances should be given to the exporting State or to the Agency in a Safeguards Agreement. In this connection it should be recalled that all Agency Safeguards Agreements concluded since 1975 invariably prohibit the use of safeguarded items for any nuclear explosive device.

(d) *Supporting activities.* Among the supporting activities to which the members of the Nuclear Suppliers Group committed themselves are three of safeguards relevance[422]:

— Support for effective Agency safeguards;
— Encouragement of plant design and construction facilitating the application of safeguards;
— Co-ordinated action and response in the event of illegal termination or violation of safeguards by the recipient[423].

21.6.2.2.2. Influence on other Agency programmes

(a) *Physical security.* Physical protection measures should apply to all items on the 'trigger list' as agreed among suppliers, and these measures should also form the subject of an agreement between supplier and recipient States[424]. In this connection the Agency's document "The Physical Protection of Nuclear Material"[425] has been referred to as a "useful basis for guiding" recipient States in designing a physical security system. It should be noted, however, that the agreed criteria in Annex B to the Guidelines cover only nuclear material but not other items on the 'trigger list'[426]. Although not required by the Guidelines, it has become the Agency's practice since 1977 to include a clause relating to physical protection in all Safeguards Agreements based on the Revised Safeguards Document[427].

(b) *Multinational facilities.* The agreed restraint in transferring sensitive technology should, in part, be implemented through supplier involvement or "other multinational participation" in facilities of a certain type. Suppliers should also promote international (including Agency) activities concerned with "multinational regional fuel cycle centres"[428].

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[422] INFCIRC/254, Appendix, paras 12, 13, 14.

[423] The oblique reference to Statute Article XII in para. 14(c) is not clear; probably the possibility of a joint embargo is to be considered.

[424] INFCIRC/254, Appendix, para. 3(b).

[425] INFCIRC/225/Rev.1.

[426] INFCIRC/254, Appendix, Annex B.

[427] See, for example, INFCIRC/250.

[428] The Agency's study on regional fuel cycle centres had already been published in 1977: Regional Fuel Cycle Centres, Basic Studies, 1977 Report of the IAEA Study Projects, two volumes. For the discussion of the legal-institutional aspects see Vol. 2, Section 6, p. 65 ff.

(c) *Weapons usable material.* The London Guidelines introduce the new category of 'weapons usable material'. This is not a term under the Statute and no definition is provided in the Guidelines. By inference, it may be assumed that uranium enriched to over 20% (high enriched uranium) falls in that category, unless higher enrichment makes it a 'weapons grade' material[429]. If enrichment facilities are to produce uranium enriched to over 20%, the consent of the supplier is required, and the Agency should be advised[430]. The Agency's role and legal responsibility in relation to such type of notification are not specified, in particular regarding whether it should perform verification functions in this respect. Safeguards do not verify whether a particular facility operates as agreed between supplier and recipient. Moreover, under the relevant terms of the Safeguards Agreements, the Agency cannot communicate such information to the supplier or make it public in any other way[431]. Legally, it would thus appear that a separate agreement would be required if the Agency were to carry out any activities in this connection. Technically, it is feasible to verify through safeguards that an enrichment plant operates in a manner so as to produce only low enriched uranium. In fact, nuclear material accountancy requires verification of enrichment levels. The special provisions for uranium enriched to over 20% have also influenced other Agency programmes, such as that dealing with the core conversion of research reactors, and supply arrangements with the USA.

### *21.6.2.3. Additional national requirements*

In informing the Agency of their adherence to the Guidelines, a number of States made specific allowance for additional national export requirements. Three States, in particular, gave notice that they would export only when all nuclear activities in the recipient country were under Agency safeguards[432]. Other States made policy statements to the same effect, such as Canada in 1974 and 1976[433], and Australia in 1977 and 1980. The US President Ford's nuclear policy statement of 1976[434] and President Carter's statement on nuclear power policy of 7 April 1977, followed by the adoption of the Nuclear Non-Proliferation Act of 1978, should be recalled in this connection.

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[429] It is not a term used in the Safeguards Agreements or in any other official Safeguards Documents.

[430] INFCIRC/254, Appendix, para. 8.

[431] Note INFCIRC/153, para. 5, and the similar obligation under INFCIRC/66/Rev.2.

[432] INFCIRC/254, letters from the CSSR, the German Democratic Republic and Poland.

[433] INFCIRC/243.

[434] See the publication referred to in footnote 383.

## 21.7. SAFEGUARDS PROCEDURES

This section discusses developments regarding agreements concluded under the Revised Safeguards Document. Article XII of the Statute outlines the rights and responsibilities which the Agency is to have when it applies safeguards. The safeguards procedures become binding to the extent that they are incorporated in a Safeguards Agreement[435]. Four of these statutory provisions form the essential elements of the Agency's safeguards system — design review, records, reports and inspections — and they have been further developed in the Agency's Safeguards Documents. These provisions are called the principal safeguards procedures under these Documents. A fifth set of safeguards procedures, which has been developed through practice and which also forms part of Safeguards Agreements, consists of containment and surveillance.

The Agency's verification process can also be described according to its stages[436]:

(a) Provision of information by a State;
(b) Verification of that information and collection of information by the Agency;
(c) Evaluation of both categories of information by the Agency to determine whether the information obtained from the State is complete, accurate and valid.

### 21.7.1. Principal procedures

The principal safeguards procedures described in this section in the basic book (design review, records, reports and inspections) continued to be incorporated by reference into all Safeguards Agreements.

A typical provision in a non-NPT Safeguards Agreement reads as follows: "The safeguards procedures to be applied by the Agency are those specified in the Safeguards Document ..."[437]. Four additional points had to be covered in the Safeguards Agreements:

(a) The type of legal instrument to specify in detail how the procedures would be applied to a concrete situation (Subsidiary Arrangements);
(b) The authorization to agree on additional procedures not forming part of the Revised Safeguards Document, as might result from technological developments;

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[435] INFCIRC/66/Rev.2, para. 4.
[436] IAEA Safeguards, An Introduction (IAEA/SG/INF/3).
[437] For example INFCIRC/244, Article 17.

(c) The application of containment and surveillance measures, which are also not referred to in the Revised Safeguards Document;
(d) Procedures to enable the Agency to verify non-nuclear material, facilities and specified equipment[438].

*21.7.1.1. Subsidiary Arrangements*

All Safeguards Agreements provide for the conclusion of this type of legal instrument. Subsidiary Arrangements normally consist of a general part, applicable to all nuclear activities in a State, and a series of attachments for individual facilities and locations. Since the existence of such arrangements is an indispensable pre-condition for the application of safeguards to a specific installation, they should be in place before any transfers of safeguarded items to a previously unsafeguarded facility[439] or before an initial import of a nuclear facility or components therefor[440]. Subsidiary Arrangements may also include additional safeguards procedures, providing for the application of containment and surveillance measures and for verification in respect of non-nuclear material and equipment. Moreover, they may include time limits for notification of items to be covered as a result of the transfer of technological information[441].

*21.7.1.2. Additional safeguards procedures*

The Revised Safeguards Document provides for general safeguards procedures applicable to all types of nuclear facilities and for special procedures. Such special procedures have been developed for all principal nuclear facilities except for uranium enrichment plants. Some Safeguards Agreements also specifically cover such categories of nuclear installations[442]. If such facilities were transferred or if they were constructed or operated by the use of imported technological information, special procedures for them would have to be developed and included in the Subsidiary Arrangements. Such special procedures, agreed on a case by case basis, would not have to be submitted to the Board because the Subsidiary Arrangements are negotiated between the Secretariat and the Governmental authorities concerned, without involvement of the Board.

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[438] In order to avoid the term 'safeguards' in relation to such items, other terminology has been used, for example "procedures necessary for maintaining and verifying the correctness of the inventory" (INFCIRC/237, Article 15(2)).
[439] For example INFCIRC/247, Section 19.
[440] INFCIRC/244, Section 17.
[441] INFCIRC/247, Section 15(b).
[442] INFCIRC/237, Articles 3 and 10; INFCIRC/247, Section 14(a).

*21.7.1.3. Containment and surveillance instruments*

Containment and surveillance make use of physical barriers in a plant (walls, containers) or provide for the installation of Agency instruments and devices (seals, cameras, fuel bundle counters) to restrict or control movement of or access to nuclear material[443]. The use of such safeguards procedures may reduce considerably the required inspection effort[444] and result in less intrusive verification methods. On the other hand, plant operators may be reluctant to permit the installation of permanent surveillance devices at certain points of the facility, for a number of reasons. Such equipment and devices are the property of the Agency and their installation must be compatible with the terms of the agreement and the Subsidiary Arrangements. The Agency can thus only install devices in agreement with the State (the installation is often done by the operator of the facility, upon reimbursement of the costs by the Agency) and might have to face compensation claims and liability if its equipment were to cause damages or interruption of plant operations.

*21.7.1.4. Non-nuclear material and equipment*

The Revised Safeguards Document does not contain procedures to safeguard such items. Since these items may trigger safeguards on nuclear material, they must be verified so as to ensure that nuclear facilities incorporating or using such items, or nuclear material produced, processed or used by or in connection with them, come under safeguards. Procedures similar to the safeguards procedures (including provisions for exemption, suspension and termination) have only been developed in respect of heavy water[445]. Equipment and plant components, to the extent that they are separately subject to verification, require different and simpler procedures (e.g. periodic checks that the equipment is in its stated place, and notification and verification of the equipment that has become unsuitable for further use).

### 21.7.2. Ancillary procedures

*21.7.2.1. Deposit with the Agency of excess produced fissionable material*

The Statute foresees supplementary safeguards measures, i.e. the deposit of excess produced fissionable material; these measures have, however, not been implemented. The relevant provisions have not been developed in the Revised

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[443] For a definition of these terms, see IAEA Safeguards Glossary (IAEA/SG/INF/1, Rev.1).

[444] For example, only seals and films may need to be checked for a spent fuel storage pond instead of the fuel elements themselves; installation of a camera may dispense with the requirements for continuous human observation.

[445] See INFCIRC/254, Section 2.2.1, for a definition of heavy water. Nuclear grade graphite has not come under safeguards although it is also a non-nuclear material on the 'trigger list'.

Safeguards Document nor is there any Safeguards Agreement which refers to them. There are many reasons why they have been left dormant: The number of power reactors has not grown as anticipated; reprocessing of spent reactor fuel has been done only in a few States and has, up to 1980, not yielded large quantities of excess plutonium under safeguards; the reluctance by States to submit plutonium to the physical control of an international body; technical and legal problems of transport and the construction of storage installations; physical security; and environmental concerns. The Agency did embark on a study of an international scheme for the international storage and management of plutonium (IPS), which was still in progress at the end of the period covered by this book (Section 21.13.4).

#### *21.7.2.2. Storage in sealed facilities*

The special provisions in the Revised Safeguards Document relating to sealed storage of large quantities of source material[446] have not been applied, nor have procedures been developed for such a situation. However, with the development of containment and surveillance methods there should be no technical or legal problem to apply safeguards to such installations.

#### *21.7.2.3. Restrictions on transfers*

The transfer restrictions of the Revised Safeguards Document have no longer been included by reference in Safeguards Agreements. Instead, specific provisions have been agreed upon, relating to transfers out of the State, transfers within the State and notification of intended transfers. The transfer restrictions cover nuclear material, facilities, equipment, non-nuclear material and technological information. The principles that evolved are as follows:

(a) Any transfer out of the State (except retransfers to the original supplier) requires the application of safeguards in the recipient State. Moreover, in some instances the Agency had to confirm its ability to apply safeguards[447], in other cases transfers could only be effected if Subsidiary Arrangements were in place[448]. If technological information is to be transferred, the Agency has to confirm that it has made arrangements to apply safeguards in connection with

[446] INFCIRC/66/Rev.2, paras 61–65.
[447] INFCIRC/247, Section 18.
[448] INFCIRC/237, Article 10(2).

the use of such information[449]. The additional transfer restrictions of the London Guidelines[450] are not subject to Agency verification, although under the Guidelines the Agency is to be advised of certain operating conditions of nuclear facilities[451].

(b) Any transfer within the State requires that Subsidiary Arrangements be in place for the destination[452]. Such Subsidiary Arrangements could be specifically designed to implement the Safeguards Agreement in question or they could already exist in respect of another Safeguards Agreement. In the latter case the item becomes subject to safeguards under two or more Agreements[453].

(c) All transfers require sufficient advance notification so as to enable the Agency to negotiate, if necessary, a new Safeguards Agreement or to conclude additional Subsidiary Arrangements[454]. Transfers may not take place unless the Agency is able to continue to apply safeguards. The actual transfer is then recorded and reported under the agreed records and reports system.

### *21.7.2.4. Sanctions*

The basic book raised and discussed a number of issues relating to the imposition of sanctions in the event of non-compliance with a Safeguards Agreement. As yet, no violation has occurred that was serious enough to be reported formally as a case of non-compliance to the Director General and by him to the Board (the Director General, however, advised the Board on one occasion in 1981 that the Secretariat was no longer able to verify the absence of diversion, unless certain safeguards equipment was installed in an on-load reactor). The practice reported in the basic book, that the Safeguards Agreements modified somewhat the statutory requirement of obligatory reports by the Board, was continued[455]. The authority of the Board to take binding interim decisions concerning the implementation of the agreements was recognized in all Safeguards Agreements, and only financial matters were excepted[456]. Actions by the Board relating to non-compliance have not been

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[449] INFCIRC/247, Section 18.

[450] INFCIRC/254, paras 7–10.

[451] For example, the Agency is to be advised of the consent of the supplier if an enrichment facility is to produce uranium enriched to over 20% (INFCIRC/254, para. 8).

[452] For example INFCIRC/244, Article 12.

[453] This overlapping and dual (or sometimes triple) coverage created substantial problems when Agreements contained different requirements. One way to overcome this problem was the negotiation of comprehensive Subsidiary Arrangements to cover all nuclear activities in the country.

[454] INFCIRC/237, Articles 10 and 11; INFCIRC/247, Article 18.

[455] INFCIRC/247, Section 30(a).

[456] For example INFCIRC/237, Article 24.

specifically excluded from the competence of arbitrate tribunals, as was the case for the Mexican Submission Agreement[457].

*21.7.2.5. Sampling*

With the application of safeguards to facilities handling nuclear material in bulk form, sampling and analysis of samples became an important safeguards tool. However, none of the agreements concluded under the Revised Safeguards Document explicitly confers upon the Agency the right to have samples taken and shipped to its own laboratories or to national institutions in Member States. Thus the brief reference in the Revised Safeguards Document that routine inspections may include, as appropriate, sampling of nuclear material constitutes the only legal authority to agree in the Subsidiary Arrangements on the necessary details. These arrangements contain inter alia statistical sampling plans and set forth the conditions for taking additional samples, as well as financial matters (the Agency pays for the value of the material, for packaging and transport, but not for the sampling as such). Transport of samples has to conform to national and international transport regulations. While there have been occasional difficulties in the shipment of samples, there has been no case where these difficulties precluded the effective application of safeguards. In some instances samples were analysed at the Agency's request and under its supervision in laboratories attached to the facility inspected, and the Agency paid for such services.

## 21.8. INSPECTION PROCEDURES

The basic book described inspection procedures under the Revised Safeguards Document and the Inspectors Document. The legal conditions for such inspections have not changed and remained as described in the basic book. The following sections describe the inspection regime under NPT Safeguards Agreements.

The general considerations discussed in the basic book apply equally to NPT Safeguards Agreements. As indicated above, the relevant provisions are set forth in extenso in the Agreements and not by reference to another document. The provisions governing inspections have been considerably amplified; in addition, the Agreements with Japan and with Member States of Euratom provide for the co-ordination of national or multilateral inspection activities with those of the Agency[458].

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[457] INFCIRC/118; however, all NPT Safeguards Agreements exclude decisions of the Board relating to non-compliance from the competence of the arbitral tribunal (INFCIRC/153, para. 22).

[458] INFCIRC/255, INFCIRC/193, INFCIRC/263, INFCIRC/290.

### 21.8.1. Selection of inspectors

#### *21.8.1.1. Appointment*

No major developments took place during the decade. The period of appointment of inspectors was somewhat changed[459]. In the Board there were constant reminders of the need to employ more inspectors from developing countries[460] and of the need to appoint inspectors with suitable language qualifications[461]. However, it was also stressed that it was necessary to have inspectors from industrialized countries which carry the main burden of inspections under NPT Agreements[462]. In September 1980 the Director General first proposed to the Board the use of General Service staff members as assistant inspectors, and the Board had a first, preliminary discussion without taking action[463].

The training courses for new inspectors, which were instituted during the 1960s, were considerably amplified and became a routine feature of inspectors' training.

#### *21.8.1.2. Designation*

The procedures for designating inspectors have not changed significantly during the period in question. As a new feature, NPT Safeguards Agreements provide for the possibility of temporary designations of inspectors for limited purposes. Such temporary designations are only allowed for verification of design information and for certain ad hoc inspections, in particular for verification of the initial report of nuclear material present in a State[464].

A problem of great concern became apparent in the late 1970s, namely that of rejection of inspectors on other than technical grounds[465].

### 21.8.2. Visits of inspectors

Under NPT Safeguards Agreements the maximum routine inspection effort (MARIE) is one inspection per year for small facilities or for locations outside facilities handling small quantities of nuclear material. For all other facilities the

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[459] See Section 24.6.4.

[460] For example GOV/OR.511, para. 27; /OR.544, paras 36–41.

[461] In particular Spanish (GOV/OR.501, paras 12, 13; GOV/OR.511, para. 28).

[462] GOV/OR.516, /OR.544, paras 36–41.

[463] GOV/1999/Rev.2, GOV/OR.555, paras 39–71, GC(XXII)/600, K., Safeguards.

[464] INFCIRC/153, para. 85.

[465] GOV/957, GOV/OR.539, paras 58–61. For example, some countries accepted only nationals from Parties to the NPT or from countries where safeguards were applied.

MARIE is not determined by the maximum permissible number of visits, as is the case under the Revised Safeguards Document, but by the use of the concept of 'man-year of inspection' or 'man-day'. This calculation yields the maximum permissible routine inspection effort. However, the actual inspection effort deployed by the Agency has been significantly smaller and is usually indicated in the Subsidiary Arrangements as an estimate of the actual routine inspection effort (ARIE). There is thus a significant difference in the permissible inspection frequency and intensity between NPT Safeguards Agreements and Agreements based on the Revised Safeguards Document.

It should also be noted that under NPT Safeguards Agreements the verification of design information for facilities is not regarded as an inspection activity and is not taken into account for the purpose of determining the routine inspection effort, although such verification is performed by Agency inspectors[466]. This takes account of the fact that, under Article III of the NPT and under the implementing Safeguards Agreements, only nuclear material is subject to safeguards and inspection but not facilities.

A new concept, that of 'ad hoc' inspections in relation to the initial report of nuclear material and also in respect of international transfers, has been introduced[467]. Compared with agreements based on the Revised Safeguards Document the scope of special inspections has also been broadened[468]. Thus, inspections are considered special not only when they are additional to the routine inspection effort but also when they involve access to information or locations in addition to those agreed to in the Subsidiary Arrangements. This latter addition was required in view of the stringent access definition for Agency inspectors under NPT Safeguards Agreements[469].

### *21.8.2.1. Notice by the Agency*

The notice requirement for agreements based on the Revised Safeguards Document has not changed. NPT Safeguards Agreements have introduced a new regime, that of the right to perform unannounced inspections on the basis of the principle of random sampling. Such inspections have to take account of the operational programme of a facility — an injunction obviously required to perform a meaningful inspection under a safeguards system which is based on the verification of the operator's nuclear material accounting. The period of notice required for

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[466] INFCIRC/153, paras 42–48.
[467] Ibid., para. 71.
[468] Ibid., para. 73.
[469] Ibid., paras 76 and 77.

announced inspections has also been modified. For instance, the period of notice for inspection of facilities or for locations handling plutonium or uranium enriched to more than 5% is only 24 hours[470].

*21.8.2.2. Discrete, continuous and resident inspections*

NPT Safeguards Agreements do not specify the Agency's right of access at all times as does the Revised Safeguards Document. However, the formula for calculating the MARIE clearly leads in many instances, in particular for reprocessing facilities and other plants handling large quantities of sensitive nuclear material in bulk form, to such an inspection regime[471].

Under agreements based on the Revised Safeguards Document it had still not been possible to agree on the assignment of resident inspectors, nor did the Agency establish safeguards field offices under such agreements.

21.8.2.2.1. Safeguards offices

In September 1980 the Agency established its first field office in Toronto, Canada. Also, arrangements were made with Japan for the assignment, on a long term basis, of inspectors for this country, and a safeguards office was set up in Tokyo[472]. The reasons for establishing offices in these countries were twofold: the existence of facilities requiring continuous inspection and the large distance of these countries from Vienna. It was possible to achieve considerable savings in costs and a more economic use of staff time[473]. Inspectors could thus spend twice as much time at facilities. The necessary details were set forth in letters; the premises for these offices were obtained by the Agency on commercial terms.

*21.8.2.3. Specification of tasks*

The scope and purposes of inspections have been further specified under NPT Safeguards Agreements; to permit the actual implementation of these inspection rights, additional arrangements and further understandings are required; these are normally included in the Subsidiary Arrangements[474].

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[470] INFCIRC/153, paras 83 and 84.

[471] Ibid., para. 80.

[472] GC(XXV)/642, para. 16.

[473] It was planned that each office should have six inspectors. Savings were estimated at US $500 000 per year (GOV/INF/344; GOV/1885, Annex V).

[474] NPT Safeguards Agreements can thus not be implemented fully without an agreement on records, reports, inventory frequency, containment and surveillance measures, etc. Pending the conclusion of the Subsidiary Arrangements, the Agency can, however, perform ad hoc inspections (INFCIRC/153, para. 71(a)(b)).

21.8.2.3.1. Access

One of the novel features of NPT Safeguards Agreements concerns stringent definitions of the access rights of Agency inspectors. The wide access rights under the Statute, providing potentially for access at all times to all places and to any person dealing with materials and facilities, have been rigidly restricted. One of the means of restricting access is set out in the Preamble and in Article III(3) of the NPT, namely the principle of safeguarding the nuclear material flow at certain 'strategic points'. This principle has been implemented, inter alia, through limiting access for routine inspections to strategic points and to records[475]. Moreover, in unusual circumstances further access limitations may be agreed upon, provided that alternative arrangements are made with the Agency so that it can perform its verification task[476]. So far, no such limitations have been requested by a State and no alternative access arrangements have been negotiated.

If, on the other hand, further access is required for special inspections to permit the Agency to fulfil its responsibilities under the agreement, the Agency may request access to additional locations and additional information. Such additional access is subject to approval by the State, although the Board may call upon the State to take action without delay if the Board considers this essential and urgent[477].

*21.8.2.4. Duties and rights of and restrictions on inspectors*

In principle, inspectors have the same general rights and duties under NPT Safeguards Agreements as under non-NPT Safeguards Agreements (Section 21.8.2.4 in the basic book).

*21.8.2.5. Reports and statements*

The reports and statements to be made after inspections, internally and to the State concerned, differ substantially between the two types of agreement. Under NPT Safeguards Agreements the State receives a statement on inspection results at agreed intervals[478], actually after each inspection. The second, more important type of statement is made after each physical inventory verification by the Agency[479]. Only at that time would any discrepancies between the quantities of nuclear material

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[475] INFCIRC/153, para. 76(c). The concept of 'strategic points' was designed to avoid access to process stages. For some facilities requiring verification of nuclear material flow the concept proved impractical and was modified in agreement with the State.

[476] INFCIRC/153, para. 76(a). Such arrangements must be reported to the Board.

[477] INFCIRC/153, para. 77.

[478] INFCIRC/153, para. 90(a).

[479] INFCIRC/153, para. 90(b).

actually present and those listed in the books become apparent and would the Agency be able to draw its conclusions in respect of nuclear material balances. These statements, which the Director General makes to the States under the NPT Safeguards Agreements, are of a technical and not a political nature. After each inspection the inspectors make an internal inspection report, which then goes through a formal process of evaluation by the Department of Safeguards[480]. The statements to the States must be distinguished from the periodic reports which the Director General makes to the Board on safeguards implementation — the annual Safeguards Implementation Report (SIR). Moreover, there are of course also reports which the Director General would have to make to the Board if actions by a State were so essential and urgent as to permit effective verification, or if the Agency's ability to verify non-diversion were put into jeopardy[481].

*21.8.2.6. Co-ordination of inspection activities*

The NPT Safeguards Agreements with Japan and the non-nuclear-weapon States of Euratom, as well as the Voluntary Offer Agreements with France and the UK provide for co-ordination of national or multinational inspection with the inspection activities of the Agency. Some aspects of these arrangements are discussed in connection with these Agreements[482].

*21.8.2.7. Subsidiary Arrangements*

The NPT Safeguards Agreements specify in great detail the safeguards procedures, but their detailed application requires further arrangements. These Subsidiary Arrangements are subordinate to the Agreements and, as a subordinate legal instrument, must not derogate from the principal instrument. In addition, they may regulate and define matters not specifically covered by the Agreement, and this has also been the practice.

Subsidiary Arrangements consist of a General Part, applicable to all safeguarded activities in a State, and to a series of attachments, one attachment for each nuclear facility, and one or more attachments for other locations where nuclear material is present. Subsidiary Arrangements are confidential documents because

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[480] Evaluation is performed in the Department of Safeguards and involves an independent assessment of safeguards effectiveness. The evaluation programme was initiated in 1977 (GC(XXII)/600, K., paras 80–85). The Department of Safeguards is the only part of the Secretariat that performs an independent evaluation of part of its own activities.

[481] The Director General would make these reports either on the basis of the Safeguards Agreement (e.g. INFCIRC/153, paras 18 and 19) or pursuant to his general obligations to the Board under the Statute (Article III.B).

[482] See Section 21.11.

they may contain proprietary or commercially important information. The NPT Safeguards Agreements contain general guidance on the contents of the Subsidiary Arrangements and set a rigid and tight time frame for the conclusion of such Arrangements. Development of a model document for such Arrangements was therefore an urgent matter for the Secretariat, to cope with the tremendous amount of negotiation that had to be conducted. Since the terms of the Subsidiary Arrangements determine key measurement points, actual inspection intensity, frequency of physical inventories and other matters which have a substantial impact on the plant operation and its costs, their negotiation involves delicate issues and has been a matter of great sensitivity to States.

The deadline for the conclusion of Subsidiary Arrangements set forth in paragraph 40 of the NPT Safeguards Document may be extended by agreement of the Parties. In several instances the Director General has found it necessary to put the matter of extension to the Board of Governors, in particular for the Subsidiary Arrangements under the Euratom (NNWS) Safeguards Agreement[483].

## 21.9. FINANCIAL QUESTIONS

### 21.9.1. Costs of safeguards

Safeguards costs rose from US $1 272 000, budgeted for 1970, to US $21 740 000 under the adjusted safeguards budget for 1980, all under the Regular Budget. These figures do not include extrabudgetary resources available through special contributions by Member States. The 1980 figure includes costs for supporting services by other Departments of an amount of nearly US $4 000 000[484].

With the coming into force of the NPT and the assumption by the Agency of the safeguards functions under Article III of the Treaty, the financial aspects of safeguards had to be considered in a new light. First of all, it was predictable that the costs of safeguards under the Treaty would considerably exceed those of the safeguards carried out previously. Second, for various reasons and in particular because of the opposition to the Treaty by several important Member States of the Agency, it was problematic to consider NPT safeguards as an Agency activity the costs of which must necessarily be borne by all Member States in accordance with their assessment rates in respect of the Agency's regular budget. Thus, new questions arose with regard to the distribution of safeguards costs between the Agency and the States where safeguards are applied, and the distribution of those costs assumed by the Agency among its Member States.

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[483] See Section 21.11.3.3.8.

[484] Compare GC(XIV)/433, Table 2, with GC(XXIV)/630, Tables 1, 2 and L.1.

The financial implications of Agency safeguards under the NPT was a matter of great concern and importance for the Safeguards Committee (1970). Indeed, agreement on the sharing of safeguards costs was a pre-condition for the Committee to reach a final consensus on its reports to the Board and on the text of the NPT Safeguards Document. To facilitate discussion by the Committee, the Director General prepared a note on legal considerations with regard to the financing of safeguards[485]. Three separate but interrelated issues were considered:

(a) What are safeguards costs?
(b) How should safeguards costs be divided between the Agency and the State (operator)?
(c) How should the Agency's safeguards costs be distributed among its Member States?

### *21.9.1.1. What are safeguards costs?*

Safeguards activities involve not only the work of the Department of Safeguards but also that of other Divisions of the Secretariat. The main issue during the period 1970–1980 was the allocation of costs for these supporting services to the safeguards part of the budget and their inclusion in the special formula for financing of safeguards costs. The budget for 1971 identified only the costs of the Department of Safeguards[486]. Subsequently, costs of safeguards related activities of other Departments were also considered safeguards costs, i.e. the relevant costs of laboratory services, legal services and computer services[487]. This budgeted transfer of costs increased to US $1 366 000 in 1977, with a total budgeted for the Department of US $7 910 000. In 1980 the costs for supporting services came close to US $4 000 000[488].

There was continuing pressure to add further categories of supporting services to the safeguards component of the budget, particularly in view of the high operating costs expected for the VIC, leading also to the transfer of costs of conference services for safeguards meetings[489].

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[485] GOV/COM.22/39; further notes were prepared by the Director General pursuant to specific requests by the Committee (GOV/145 and Add.1–5).

[486] GC(XIV)/433, Table 13.

[487] GC(XVIII)/526, M., Safeguards, indicates a budgeted amount of US $519 000 for such costs of safeguards related activities in 1975; in addition, linguistic services and printing and publishing amounted to US $69 000 for that year.

[488] GC(XX)/567, N., Safeguards, and GC(XXIV)/630, L.1.

[489] GC(XXIV)/630, L., Safeguards. In a note to the Safeguards Committee (1970) the Director General had already identified the primary supporting services for safeguards: legal services, computer services and analytical laboratory services (GOV/COM.22/145/Add.3).

*21.9.1.2. Allocation of safeguards costs between the State and the Agency*

The Safeguards and Inspectors Documents relating to non-NPT Safeguards Agreements do not contain guidance for the distribution of costs, so that the financial provisions of Safeguards Agreements concluded under them remained as described in the basic book[490]. The NPT Safeguards Document contains the following provision:

"FINANCE

"15. The Agreement should contain one of the following sets of provisions:

"(a) An agreement with a Member of the Agency should provide that each Party thereto shall bear the expenses it incurs in implementing its responsibilities thereunder. However, if the State or persons under its jurisdiction incur extraordinary expenses as a result of a specific request by the Agency, the Agency shall reimburse such expenses provided that it has agreed in advance to do so. In any case the Agency shall bear the cost of any additional measuring or sampling which inspectors may request;

or

"(b) An agreement with a Party not a Member of the Agency should, in application of the provisions of Article XIV.C of the Statute, provide that the Party shall reimburse fully to the Agency the safeguards expenses the Agency incurs thereunder. However, if the Party or persons under its jurisdiction incur extraordinary expenses as a result of a specific request by the Agency, the Agency shall reimburse such expenses provided that it has agreed in advance to do so." [491]

These alternative provisions, under which the Agency is to bear all the expenses it incurs in implementing NPT safeguards in Member States and is to charge such costs in relation to non-Member States, constitutes in effect an interpretation of Article XIV.C of the Statute, although in the sense already tentatively decided earlier by the Board[492]. This interpretation, which was intensely disputed in connection with the adoption of the NPT Safeguards Document[493], means that the Statute does not require the Agency to recover costs for safeguards carried out in respect of Safeguards Agreements concluded under the NPT or the Tlatelolco Treaty, whether these costs are considered as relating to a Multilateral Submission Agreement (because of the nature of the Treaty in question) or to a series of

[490] INFCIRC/66/Rev.2 and GC(V)/INF/39, Annex.
[491] INFCIRC/153 (corrected), para. 15.
[492] Basic book, Section 21.9.1 (note 503).
[493] For example GOV/OR.436, paras 9–10; GC(XV)/COM.1/OR.15, para. 4.

Unilateral Submission Agreements (because of the form in which the Safeguards Agreements are made with the Agency). Incidentally, this statutory interpretation has, in effect, also been accepted by the General Conference, which, in each of its three successive resolutions adopting new assessment arrangements relating to the safeguards component of the Regular Budget, provided that this component should merely exclude amounts recovered from non-Member States[494]. It should also be noted that with this interpretation of the Statute, i.e. that the recovery of expenditures under Article XIV.C is not obligatory, it would not be necessary to make such charges even in respect of non-Member States. The recovery of safeguards costs from non-Member States is based on a policy decision by the Board. Pursuant to the above-quoted provision, the respective standard clauses have been inserted in NPT Safeguards Agreements with Member States and non-Member States[495] following exactly the provisions of the NPT Safeguards Document.

A controversy arose about the attribution of safeguards costs under the Safeguards Agreements concluded with those nuclear-weapon States which had offered to submit their peaceful nuclear activities to Agency safeguards in order to make participation in the NPT more attractive to non-nuclear-weapon States. The opponents to the principle that the Agency should bear the costs of such safeguards argued that the safeguards in question were not provided for in the Treaty, that they served no useful purpose in a State having a separate, uncontrolled weapons programme, and that the costs of carrying out such controls would, because of the extensive civil programmes of the countries concerned, be much higher than those carried out in non-nuclear-weapon States[496]. Nevertheless, the Board agreed to include in the Agreements with the nuclear-weapon States provisions identical with those in the Agreements with non-nuclear-weapon States and based on paragraph 15(a) of the NPT Safeguards Document[497].

Estimates of the amounts that the Agency is expected to receive under Safeguards Agreements with non-Member States appear annually in the document by which the Director General presents the draft scale of assessments to the General Conference[498]. Although neither this document nor that on the Agency's accounts[499] (which shows the total actual receipts under this heading) indicated which non-Member States made these payments, it was clear, from an examination

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[494] GC(XV)/RES/283, operative para.(c); GC(XX)/RES/341, para.3; GC(XXIV)/RES/376, para.3.

[495] INFCIRC/177, Article 15, and INFCIRC/277, Article 15.

[496] For example GOV/OR.436, para.12.

[497] INFCIRC/263 (Article 15), INFCIRC/288 (Article 15) and INFCIRC/290 (Article 15).

[498] For example GC(XIV)/634, Appendix, para.1, showing US $110 000 estimated for 1981.

[499] For example GC(XXIV)/629, Schedule F, showing that in 1979 a total of US $82 557 was received under "Amounts recoverable under safeguards agreements with Non-member States", against an advance estimate of US $60 000.

of the list of safeguarded facilities set out in the Annual Reports[500], that a large portion should be attributed to Taiwan — which had no NPT Safeguards Agreement but where the Agency carried out safeguards pursuant to several other Safeguards Agreements[501].

The questions of how safeguards costs should be distributed between the Agency and the State (operator) concerned and of the interpretation of paragraph 15 of the NPT Safeguards Agreement were first raised in the summer of 1978 by Euratom. In response to a specific request of Euratom, the Secretariat transmitted a statement to Euratom on the principles that had been followed in implementing paragraph 15 of the Agreement for all Parties to such an Agreement. The Secretariat's statement on the matter is the first general statement of the Agency on the problem[502]. The basic principles were stated to be as follows:

(a) The responsibilities of the State (or of Euratom) included all obligations undertaken in the Agreement and in the Subsidiary Arrangements. All activities which the State or Euratom have agreed to undertake to enable the Agency to discharge its verification task are covered by the term 'responsibilities' in paragraph 15 and, accordingly, their costs have to be borne by the State or by Euratom. The term 'ordinary expenses' therefore includes all costs arising from the discharge of obligations under the Agreement and from those included in the Subsidiary Arrangements, including the Facility Attachments[503];

(b) Accordingly, 'extraordinary expenses' would be those costs which arise for a State (operator) from the performance of an action taken at the specific request of the Agency or of an inspector, which action would be in addition to the activities agreed to and foreseen in the Subsidiary Arrangements;

(c) A particular point was made by the Director General on the interpretation of the term 'additional sampling and measurement', for which activities the Agency has to pay. It was stated that 'additional sampling and measurement' would involve operations in addition to measurement and sampling specified in the Subsidiary Arrangements. A possible interpretation, namely that 'additional sampling and measurement' meant activities in addition to those required by the operator for operational purposes at the plant, was not confirmed by the Director General[504];

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[500] For example GC(XXIV)/627, Tables 12.A, B and C.

[501] Section 6.2.1, para. (a)(vi).

[502] GOV/1923, see also GOV/1934.

[503] Because the Subsidiary Arrangements implement obligations undertaken under the Agreement.

[504] The term 'additional sampling' was not clarified in the discussions of the Safeguards Committee (1970).

(d) Furthermore, it was stressed that such sampling would have to be done at the specific request of an inspector on the spot and not as part of a general sampling plan. The Agency would pay for the value of material it removed (and for shipment of the material to a laboratory for analysis) as well as for the cost of packaging[505].

The matter was further discussed by the Board in March 1979, and the Director General referred on this occasion to his earlier note on the subject. His position was endorsed by several Governors; one Governor objected, while another Governor requested that the Agency inform all operators of how it intended to apply paragraph 15 of the Agreement[506]. However, the Board did not take a decision on this matter. On several occasions thereafter the Governor from the Federal Republic of Germany stated the need for a general document indicating clearly the Agency's policy in regard of safeguards costs, but the Board did not pursue the issue of costs nor did it request the Director General to prepare such a general document on cost allocation.

While the above principle of cost sharing is based on the text of NPT Safeguards Agreements, it might, to some extent, also apply to Agreements subject to the Revised Safeguards Document in view of the similarity of the financial clauses under both types of Agreement. However, the Board's discussion and the statements by the Director General did not address Agreements under the Revised Safeguards Document.

*21.9.1.3. Distribution of safeguards costs within the Agency*

From Section 21.9.1.2 it follows that the Agency is to assume the bulk of NPT related safeguards expenses, i.e. all expenses except those it incurs in applying safeguards in non-Member States (for which it is reimbursed) and expenses incurred by Member States in implementing their own responsibilities under Safeguards Agreements (which are borne by the States). The question then arises of how the Agency's share should be distributed among Member States. This general question can be analysed in terms of several issues:

(a) *Should certain Member States be shielded from bearing their normal budget share of the Agency's safeguards costs?*

Two different groups of Members advanced special claims for shielding from NPT safeguards costs: the developing States and some Member States not Party to the NPT. The former group based its claim principally on the general recognition

[505] GOV/1923.
[506] GOV/OR.530, paras 3–40.

in the United Nations system that the developing States should be provided with the maximum of assistance and should be burdened with the minimum possible costs; however, it could also be argued that the Agency's normal scale of assessments already adequately took into account the diminished ability of these States to pay. On the other hand, the States not Party to the NPT argued that, as they had decided not to participate in the NPT, it was improper to impose on them costs derived directly from the implementation of that Treaty[507]. The counter-argument was that the Treaty, promulgated by the General Assembly, was for the general benefit of the world community and that any financial arrangements within the Agency that would especially favour non-participants would discourage States from becoming Parties.

Although the shielding of one of these groups by no means excluded the possibility of also shielding (on the same basis or on a different one) the other group, the Board, on the recommendation of its Safeguards Committee (1970), which had extensively considered the question[508], decided in favour of protecting solely the poorer Members of the Agency[509]. Therefore, the criterion for such shielding was established as "per capita net national product"[510] (see Section 25.3.1.1.3). A formula based on that criterion was first adopted in 1971; in 1980 this formula was made slightly more restrictive to include fewer shielded States. At that time a subsidiary criterion was added, which was based on the total national product[511]. Over the years, between two thirds and three fourths of the Agency's membership has qualified for shielding (for example, 74 out of 110 in 1981)[512].

(b) *Extent of shielding of Member States*

While it was generally agreed that shielding should refer particularly to the NPT related expenditures, the formulas adopted covered all safeguards expenses of the Agency. In 1971 a set of three formulas was introduced in respect of each shielded Member State. One of these formulas was designed to ensure that in the long term the Member's share of safeguards costs would rise no faster than its share of the other expenses of the Agency. The other formulas were intended to ensure that in the short term the safeguards costs would be apportioned to the Member at least at half the rate applicable to other expenses but not below the 1971 (pre-NPT) level[513].

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[507] See, for example, GOV/OR.436, para. 11.

[508] See GOV/1451 and GOV/COM.22/OR, paras 79–82.

[509] GOV/DEC/66(XIV), Nos (30) and (31).

[510] GC(XV)/RES/283, operative para. (c)(ii).

[511] GC(XXIV)/RES/376, para. 3(b) ("except the ten Members with the highest base rates of assessment" — which are derived from the GNP).

[512] For example GC(XXIV)/634, Appendix, para. 5.

[513] GC(XV)/RES/283, operative para. (c)(i).

In 1976, after these elaborate formulas had been used for five years and before the long term alternative calculation could take effect in respect of any of the shielded States (which would probably have occurred by 1978 or 1979)[514], the General Conference, on the basis of a Board proposal that took into account a recommendation of the first NPT Review Conference[515], decided to freeze, at the levels of 1976, the annual dollar contribution of each shielded State to the safeguards component of the budget[516]. In 1980 the Board, at the request of the General Conference[517], gave further consideration to this question and in particular to a proposal of the developed (non-shielded) States to increase the flat amounts set in 1976 by 60% in order to take into account the intervening inflation and currency realignments[518]. However, no agreement could be reached on that proposal, which was then dropped on condition that the shielded States in turn would drop their proposal for extending items to be included under the special safeguards assessment scheme[519].

(c) *To what costs should the special safeguards assessment regime apply?*

In 1970 the Board decided, in anticipation of the issues discussed here, to segregate all safeguards expenses and to include them in a separate Section of the budget[520]. That Section of the 1971 Regular Budget[521] therefore included all the direct costs of the Department of Safeguards and Inspection which previously had been divided among a number of objects of expenditures (e.g. salaries and wages, common staff costs)[522]; however, no attempt was made to attribute to safeguards any expenses incurred for safeguards by other Secretariat units, such as the Legal Division. In 1972, the first year for which the safeguards assessment scheme became operational, the calculations were based on the similarly prepared budget for that year[523].

However, in 1973 an additional amount of US $300 000 was included in respect of services provided by the Legal Division, by the Laboratory and by the Computer Service[524]. In subsequent years it was no longer necessary to make such

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[514] The long term calculation would have charged shielded Members for safeguards at a rate of 16.9% of the non-safeguards costs — the rate that prevailed in 1971. By 1976 the current rate had risen only to 25.3%, but by 1978 it had reached 34.8%, more than double the initial rate; thus, at that stage, this formula would have become operative rather than the short-term one-half rate formula.

[515] NPT/CONF/35/I, Annex I; GOV/INF/306, Article III, para. 7.

[516] GC(XX)/RES/341, para. 3(a).

[517] GC(XX)/RES/341, para. 4.

[518] GOV/1993, para. 3(a).

[519] GOV/OR.554, paras 1–4.

[520] Basic book, Section 21.9.1 (final para.); GC(XIII)/405, paras 6–7 and 11.

[521] GC(XIII)/405, The Budget, Part II.C.12 (paras 94–124), and Annex III.A, para. 1, Section 12.

[522] See basic book, Section 25.2.3, para. (b).

[523] GC(XV)/463, Annex, para. 1, based on GC(XV)/460, Annex VII.A, para. 1.

[524] GC(XVI)/486, Appendix, para. 1, based on GC(XVI)/485, Annex V, para. 1.

special additions because the budget document was rearranged so as to take the reallocation of a number of cost elements into account in respect of all programmes[525]. From 1974 on, for the purpose of the special assessment calculation, the contingency Section of the Regular Budget (which was to cover unpredictable budget increases)[526] was divided into the safeguards and the non-safeguards components in proportion to the direct costs included in these components[527].

Certain shielded States had previously voiced some dissatisfaction with this method of cost attribution. It then became an important factor in the debates, both in the Board and in the Conference, on the 1980 review and revision of the arrangements for safeguards financing. The shielded States demanded that the safeguards costs to which the special assessment regime applied should be expanded to include an appropriate share of the costs of the Agency's administration and general services (including the Headquarters operating costs at the new VIC)[528]. At the request of the Board, this question was studied by the Secretariat, a group of experts and the External Auditor. In this study, any further reattribution of costs was not considered desirable, for a number of reasons: the accepted accounting practices; consistency with the accounting practices of other United Nations system organizations (a consistency which it had taken years of consultation to achieve); the absence of sufficient factual bases for further reattribution of costs; and management considerations, under which the costs should not be attributed to programmes whose supervisors have no responsibility for or control over the expenditures in question[529]. Though the proponents of more comprehensive attributions were not completely satisfied with these reasons, they agreed to set aside their proposals in return for a continued flat freeze of the safeguards costs assessed on the shielded States, without any inflation adjustment[530].

(d) *Method of shielding*

All safeguards costs are included in the Regular Budget, with the contributions of Member States assessed according to a scale adopted by the General Conference under Statute Article XIV.D. Therefore, it seemed best to introduce any desired shielding through some modification of the assessment formula. The simplest solution would have been to adopt a dual system of assessment (along the lines soon

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[525] For example GC(XVII)/505, para. A.4 and Table E.13.1.

[526] See Section 25.2.4.1.3.

[527] For example GC(XVII)/507/Mod.1, Appendix, para. 1. Since not all the contingent financing was required in 1974, the unused amount was 'returned' in making the calculation for 1975; GC(XVIII)/528, Appendix, para. 1.

[528] GOV/OR.552, paras 3, 6–7, 10–12; GC(XXIV)/COM.5/OR.20, para. 38; /OR.21, paras 1–2.

[529] GOV/INF/369, /371, /375.

[530] GOV/OR.554, paras 1–4; GC(XXIV)/COM.5/OR.20, paras 38–39; GOV/OR.21, paras 1–7.

thereafter adopted by the United Nations General Assembly in relation to several Middle East peace-keeping operations), but this was considered as not being in accordance with the Statute calling for 'a scale' and 'the scale'. Consequently, a method was developed, and adopted by the General Conference on the recommendation of the Board, pursuant to which separate scales are applied to the safeguards components and the non-safeguards components of the Regular Budget; the resulting separate amounts for each Member are then added, and a new scale is derived from the sum of these totals for all Members. The operation of this scheme is described in greater detail in Section 25.3.1.1.3.

Several conceptual objections to this scheme were raised. The main point was that the scheme sought to accomplish indirectly what could not be done directly, namely the use of separate scales for different components of the budget, where only one is permissible, and doing this through a device whereby it is necessary first to determine the required contribution of each Member and then to derive an assessment scale from those figures, rather than to establish a scale and, by applying it to the estimated expenditures, to derive therefrom the amount of each Member's assessed contribution[531]. Indeed, the objection to this scheme by France was so strong that, for some years, France declined to pay that amount of its assessed contributions which it had calculated constituted the additional safeguards costs assigned to it as a non-shielded State by means of what it considered to be an improper scheme[532].

A formal objection was also raised, namely that the establishment of the scale of contributions is a responsibility of the General Conference, as to which the Board has no statutory competence[533]. Initially, some wording was sought for conveying the Board's proposals to the Conference in such a way as not to offend this principle[534], but this issue was not one that caused concern for the Conference; indeed, in subsequent years the Conference actually requested the Board to review this aspect of the assessment system in specified years[535].

### *21.9.1.4. Costs for services*

Inspectors need the co-operation of the State and of the operator in carrying out their tasks and often they also need services or other assistance (e.g. electricity for an Agency instrument, transportation). The Subsidiary Arrangements (Facility Attachments) give an indication of which items are to be included in the term

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[531] GC(XV)/COM.1/OR.95, para.3.
[532] GC(XV)/COM.1/OR.95, para.4.
[533] Section 25.3.2.
[534] GOV/OR.436, paras 51, 54–56, 63–65.
[535] GC(XX)/RES/341, para.4; GC(XXIV)/RES/376, para.4.

'services' (for which the Agency has to pay) and which actions are the responsibility of the operator (for which the operator has to pay), as well as of the rates at which the Agency may be charged for services.

### 21.9.2. Liability

Paragraph 17 of the NPT Safeguards Document provides as follows:

"INTERNATIONAL RESPONSIBILITY

"17. The Agreement should provide that any claim by one party thereto against the other in respect of any damage, other than damage arising out of a nuclear incident, resulting from the implementation of safeguards under the Agreement, shall be settled in accordance with international law."

Consequently, every NPT Safeguards Agreement includes an Article to this effect[536]. This provision, which evidently applies both to claims relating to physical damage or injury suffered (excepting those arising out of a nuclear incident, to which paragraph 16 of the Document applies) and to claims relating to damage resulting from disclosure by the Agency of protected information, has not been tested in practice.

#### *21.9.2.1. Physical damage*

Paragraph 16 of the NPT Safeguards Document provides as follows:

"THIRD PARTY LIABILITY FOR NUCLEAR DAMAGE

"16. The Agreement should provide that the State shall ensure that any protection against third party liability in respect of nuclear damage, including any insurance or other financial security, which may be available under its laws or regulations shall apply to the Agency and its officials for the purpose of the implementation of the Agreement, in the same way as that protection applies to nationals of the State."

Consequently, every NPT Safeguards Agreement includes an Article to this effect[537]. This provision is derived from that already used in certain non-NPT Safeguards Agreements, as described in this section of the basic book.

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[536] For example the NPT Safeguards Agreement with Libya (INFCIRC/282), Article 17.
[537] Ibid., Article 16.

*21.9.2.2. Disclosure of confidential information*

Paragraph 8 of the NPT Safeguards Document provides that, in general, the Agency will require only the minimum amount of information needed by it to carry out safeguards, and specifically that:

> "In examining design information, the Agency shall, at the request of the State, be prepared to examine on premises of the State design information which the State regards as being of particular sensitivity. Such information would not have to be physically transmitted to the Agency, provided that it remained available for ready further examination by the Agency on premises of the State". [538]

In addition, paragraph 9 provides in the relevant part that:

> "The visits and activities of Agency inspectors shall be so arranged as to ... ensure protection of industrial secrets or any other confidential information coming to the inspectors' knowledge."

The above terms are essentially a restatement of a clause already included in agreements made under the Revised Safeguards Document. The protection of industrially sensitive information or information of commercial value was of key importance for industrially developed non-nuclear-weapon States. To guarantee such protection, the NPT Safeguards Document contains several important additional provisions which are designed to ensure that the Agency and Agency inspectors obtain such information as is required for safeguarding nuclear material while minimizing disclosure of information on plant design and operations.

Access of inspectors during routine inspections is limited to the strategic points agreed upon between the Agency and the State. Access to other parts of the plant may only be obtained in agreement with the State. Furthermore, a State may require the Agency to examine design information of particular sensitivity on its premises, with no need to transmit such information physically to the Agency. This means, for instance, that in addition to the design information available at the plant a set of sensitive design information documents may be kept at the Mission of a State in Vienna. Moreover, in unusual circumstances the State may require further limitations on access, provided other alternative arrangements are made to enable the Agency to fulfil its responsibilities.

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[538] The Safeguards Committee (1970), which drew up this provision, was also concerned that there should be a legal obligation to protect confidential information (e.g. design information on nuclear facilities) in the period before the Safeguards Agreement enters into force, but considered that this could be ensured by means of an exchange of letters between the Director General and the State concerned (GOV/1451, para. 9).

The Department of Safeguards further developed its system of controlling the movement and storage of documents received from States or from controlled facilities so as to minimize the possibility of industrial secrets or any other confidential information being revealed to unauthorized persons within or outside the Agency. In the Safeguards Implementation Reports to the Board[539] (which are circulated to all Member States), care is taken not to include confidential information, or to express information in such a way that it cannot easily be related to any particular State or facility.

## 21.10. SETTLEMENT OF DISPUTES

The dispute settlement procedures to be included in NPT Safeguards Agreements were among the matters examined in detail by the Board's Safeguards Committee (1970) in formulating the NPT Safeguards Document. The principal issue was one already mentioned in the basic book, i.e. the extent to which the Board could and should yield to any ad hoc tribunal with regard to certain decisions relating to the implementation of safeguards[540]. It was the position of certain States, in particular Italy, that the Board as the organ of one of the Parties to a Safeguards Agreement could not impartially and definitively decide disputes about implementing such Agreements[541]. However, the great majority of the Committee and the Board considered that certain determinations by the Board, in particular regarding whether the Agency can continue to certify the absence of diversion and regarding the actions to be taken if the Board cannot certify non-diversion, must not be reviewed by an arbitral tribunal, since they constitute political decisions.

Consequently, the following provisions were included in the NPT Safeguards Document and are correspondingly also reflected in all NPT Safeguards Agreements:

> "MEASURES IN RELATION TO VERIFICATION OF NON-DIVERSION
>
> "18. The Agreement should provide that if the Board, upon report of the Director General, decides that an action by the State is essential and urgent in order to ensure verification that nuclear material subject to safeguards under the Agreement is not diverted to nuclear weapons or other nuclear explosive devices the Board shall be able to call upon the State to take the required action without delay, irrespective of whether procedures for the settlement of a dispute have been invoked.

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[539] Section 32.2.9.

[540] Basic book, page 622, first paragraph.

[541] See, for example, GOV/OR.431, para. 17; GOV/COM.22/140 and 169; GOV/OR.436, paras 19–25. For the language at issue, see the first sentence of para. 22 of INFCIRC/153.

"19. The Agreement should provide that if the Board upon examination of relevant information reported to it by the Director General finds that the Agency is not able to verify that there has been no diversion of nuclear material required to be safeguarded under the Agreement to nuclear weapons or other nuclear explosive devices, it may make the reports provided for in paragraph C of Article XII of the Statute and may also take, where applicable, the other measures provided for in that paragraph. In taking such action the Board shall take account of the degree of assurance provided by the safeguards measures that have been applied and shall afford the State every reasonable opportunity to furnish the Board with any necessary reassurance.

"INTERPRETATION AND APPLICATION OF THE AGREEMENT AND SETTLEMENT OF DISPUTES

"20. The Agreement should provide that the parties thereto shall, at the request of either, consult about any question arising out of the interpretation or application thereof.

"21. The Agreement should provide that the State shall have the right to request that any question arising out of the interpretation or application thereof be considered by the Board; and that the State shall be invited by the Board to participate in the discussion of any such question by the Board.

"22. The Agreement should provide that any dispute arising out of the interpretation or application thereof except a dispute with regard to a finding by the Board under paragraph 19 above or an action taken by the Board pursuant to such a finding which is not settled by negotiation or another procedure agreed to by the parties should, on the request of either party, be submitted to an arbitral tribunal composed as follows: each party would designate one arbitrator, and the two arbitrators so designated would elect a third, who would be the Chairman. If, within 30 days of the request for arbitration, either party has not designated an arbitrator, either party to the dispute may request the President of the International Court of Justice to appoint an arbitrator. The same procedure would apply if, within 30 days of the designation or appointment of the second arbitrator, the third arbitrator had not been elected. A majority of the members of the arbitral tribunal would constitute a quorum, and all decisions would require the concurrence of two arbitrators. The arbitral procedure would be fixed by the tribunal. The decisions of the tribunal would be binding on both parties." [542]

[542] INFCIRC/153, paras 17-22.

It should be noted that:

(a) The function of the Board under paragraph 18 is specifically related to the continued ability of the Agency to ensure verification. The Board thus has the authority to request a State to take the required measures without delay. It should be noted that many Agreements based on the Revised Safeguards Document confer upon the Board the authority to make binding interim decisions pending the final settlement of a dispute[543] — an authority not provided for in the NPT Safeguards Agreements.

(b) In relation to paragraph 19, the emphasis is again placed on the Agency being able to perform its verification task and to certify the absence of diversion. Accordingly, the Board may take the actions foreseen by Article XII.C of the Statute not only when inspectors have detected discrepancies or anomalies and reported 'non-compliance' but also when the Director General reports to the Board the inability of the Agency to certify the absence of diversion because a State has not fulfilled its obligations under the Agreement. The Agency would not have to prove that diversion has actually taken place, which would often not be possible, for example if inspectors were not issued entry visas or were denied access to records or nuclear material.

(c) Paragraph 20 is derived from paragraph 12 of the Revised Safeguards Document discussed at the beginning of this section in the basic book.

(d) Paragraph 21 adds a new element; this is not contained in the previous Safeguards Documents, but (as mentioned in the basic book) is in fact already allowed by Procedural Rule 11(c) of the Board; however, the NPT Safeguards Document, unlike this Rule, is not restricted to Member States.

(e) The first sentence of paragraph 22 defines the scope of the disputes that may be submitted to an arbitral tribunal, so as to specifically exclude findings and decisions of the Board under paragraph 19.

(f) The remaining parts of paragraph 22 call for a fairly standard arbitral arrangement, along the lines discussed in Section 27.2.2.1 in the basic book.

## 21.11. INTERACTION WITH OTHER SAFEGUARDS SYSTEMS

The principal development in the interaction of the Agency's system with another system happened with the conclusion of the Safeguards Agreement between the initially five (by 1980 nine) non-nuclear-weapon States of Euratom, Euratom itself and the Agency[544], and of the Safeguards Agreements with France[545] and

[543] For example INFCIRC/237.
[544] INFCIRC/193.
[545] INFCIRC/290.

the UK[546] to which Euratom is also a Party. This interaction can be described as a collaboration between the two organizations in applying both safeguards systems, leading to a reduction of the Agency's inspection effort while ensuring the capability and authority of the Agency for independent verification. The co-ordination of safeguards activities between the two organizations is described in Section 21.11.3.3, which discusses also some specific points of legal interest.

### 21.11.1. Overlapping

No developments need be reported under this section.

### 21.11.2. Supersession

No general developments need be reported. However, the Agency assumed safeguards functions in relation to two bilateral Agreements by partially implementing safeguards agreed to between the Governments concerned, as described in the following section.

#### *21.11.2.1. Transfer of control*

The Agency has not transferred its control rights to any Government or international organization, but has agreed to implement bilateral safeguards under Agreements with Canada and India[547], and with the USA and India[548]:

(a) *The 1971 Canada/India Agreement*

Under the Agreement, the Agency agreed to implement the relevant provisions of the bilateral co-operation Agreement between Canada and India in accordance with exchanges of letters between the Governments[549]. These letters, attached to the Agreement, provide for control by India of the Douglas Point Nuclear Power Station in Canada and control by Canada of the Rajasthan Nuclear Power Station in India. The control measures include records, reports and bilateral inspections. These bilateral rights were assumed by the Agency, with additional provisions added in the Safeguards Agreement to adjust the substance of the bilateral Agreement to the Agency's safeguards system. The application of the Safeguards Agreement in Canada was suspended upon the entry into force of the Canadian NPT Safeguards

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[546] INFCIRC/263.
[547] INFCIRC/211.
[548] INFCIRC/154.
[549] INFCIRC/211, Section 3.

Agreement on 21 February 1972[550]. The application of the Safeguards Agreement in India was superseded in practice upon the conclusion of a Safeguards Agreement covering the supply of heavy water from the USSR for the reactor[551]. The latter Agreement is entirely based on the Revised Safeguards Document and no longer incorporates bilaterally agreed safeguards provisions.

(b) *The 1971 USA/India Agreement*

Under the Agreement, "the Agency shall have the rights and obligations of the United States under paragraphs B and C of Article VI of the Agreement for co-operation ..."[552]. The Agency shall also apply these provisions mutatis mutandis to the production of special fissionable material as might be transferred to the USA.

The above Agreements are the only Safeguards Agreements transferring bilateral safeguards rights to the Agency. No further Agreements of that type have been concluded.

*21.11.2.2. Reliance on other systems*

The Agency has not recognized another safeguards system under paragraph 28(d) of the Revised Safeguards Document, nor has the Agency relinquished its functions in favour of multinational or national systems.

*21.11.2.3. Delegation of control*

The Agency has not delegated any of its safeguards functions to a national or regional system. The arrangements for co-ordination with Japan and Euratom are described below.

### 21.11.3. Special relations

*21.11.3.1. Co-operation*

Co-ordination in the application of safeguards takes place with national systems of accounting and control and with the Euratom safeguards system (Section 21.11.3.3.2), as provided for in the NPT Safeguards Agreements and the Subsidiary Arrangements concluded under them.

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[550] INFCIRC/164; however, no formal Suspension Protocol was concluded to record India's agreement to that suspension.

[551] INFCIRC/260.

[552] INFCIRC/154, Section 12.

*21.11.3.2. Special tasks*

The Organization for the Prohibition of Nuclear Weapons in Latin America (OPANAL), established under the Tlatelolco Treaty, has not set up any controls duplicating the safeguards of the Agency, nor has the Agency been asked to assume functions going beyond the application of safeguards in States Party to the Treaty. Consequently, there has been no practical need for the Agency to consider if and to what extent it could assume special tasks.

*21.11.3.3. Verification*

While the Safeguards Agreements concluded by the Agency with Euratom provide for a co-ordination of both safeguards systems, the Agency has not 'delegated' safeguards functions to the Euratom system. Rather, the Agency and Euratom co-operate so that the Agency can reach its own independent conclusions. Conceptually, the application of Agency safeguards in Euratom countries is not distinct from that in other States, since the Agency does not verify the operation and methodology of the Euratom system. It has therefore also not been necessary for the Agency to develop special procedures for secondary control functions by which the Agency would verify the Euratom system.

21.11.3.3.1. Requirements under the NPT

Although the NPT does not specifically mention Euratom or Euratom safeguards, it provides that the Agency may conclude Safeguards Agreements with States "either individually or together with other States". The declared purpose of the possibility of concluding a multipartite agreement was to enable Euratom non-nuclear-weapon States to conclude an agreement jointly with the Agency to which Euratom as an international organization could also be a Party. The statement of the USA on the Agency–Euratom relationship in implementing Article III of the NPT is of particular relevance. The statement was repeated in the Agency's Board of Governors when the Euratom (NNWS) Agreement was approved[553]:

(1) "First, there should be safeguards for all non-nuclear-weapon parties of such a nature that all parties can have confidence in their effectiveness. Therefore, safeguards established by an agreement negotiated and concluded with the International Atomic Energy Agency in accordance with the Statute of the IAEA and the Agency's safeguards system must enable the IAEA to carry out its responsibility of providing assurance that no diversion is taking place.

[553] GOV/1560; GOV/OR.451, para. 37.

(2) "Second, in discharging their obligations under Article III, non-nuclear-weapon parties may negotiate safeguards agreements with the IAEA individually or together with other parties; and, specifically, an agreement covering such obligations may be entered into between the IAEA and another international organization, the work of which is related to that of the IAEA and the membership of which includes the parties concerned.

(3) "Third, in order to avoid unnecessary duplication, the IAEA should make appropriate use of existing records and safeguards, provided that, under such mutually agreed arrangements, the IAEA can satisfy itself that nuclear material is not diverted to nuclear weapons or other nuclear explosive devices."

21.11.3.3.2. The NPT Safeguards Document and the Euratom (NNWS) Agreement

The possible Agency/Euratom relationship did not play a major role in elaborating the text of the NPT Safeguards Document and no second model was developed for groups of States. In fact, there is only one specific provision, included at the suggestion of Belgium, which implies that safeguards other than those of the Agency may also play a role under NPT Safeguards Agreements. Under paragraph 2, "the Agency has the right and obligation *to ensure that safeguards will be applied,* in ..."[554]. It could also be argued that the term 'effectiveness' in para. 81(b) (in distinction to the term 'technical effectiveness' in para. 7) required the Agency to take the multilateral character of a regional safeguards system into account. It should also be noted that in the Agreements with Euratom the term 'technical effectiveness' was changed to 'effectiveness'. When the Board authorized the Director General to negotiate NPT Safeguards Agreements by using the NPT Safeguards Document, the Board did not establish a special regime for Euratom non-nuclear-weapon States nor did the Board issue any special negotiating instructions to the Director General.

21.11.3.3.3. Negotiations with Euratom

The negotiations started in autumn 1971, after the Euratom Commission had obtained a mandate from the Council of Ministers, and finished in spring 1972; the Euratom (NNWS) Agreement was signed on 5 April 1973 and entered into force on 21 February 1977. For the reasons indicated in Sections 21.11.3.3.7 and

[554] INFCIRC/153, para. 2. This text is based on a Belgian proposal in the Safeguards Committee (1970) (GOV/COM.22/10).

21.11.3.3.8, the negotiation of the Subsidiary Arrangements, General Part, and the negotiation of the Rules and Methods for calculating the inspection effort took place at the same time as the negotiation of the Agreement[555].

21.11.3.3.4. Parties to the Euratom (NNWS) Agreement

The initial signatories of the Agreement were the seven non-nuclear-weapon States that were Members of Euratom at the time of signature, i.e. Belgium, Denmark, the Federal Republic of Germany, Ireland, Italy, Luxemburg and the Netherlands, as well as Euratom and the Agency. Denmark and Ireland were not yet Members of Euratom when they joined the NPT. Both had concluded the standard NPT Safeguards Agreement[556] with the Agency, with the addition of a protocol providing that their NPT Safeguards Agreement would be replaced by the Euratom (NNWS) Agreement when they had become Members of Euratom and when the Euratom (NNWS) Agreement had entered into force. The Euratom (NNWS) Agreement entered into force for these seven States on 21 February 1977, because Denmark and Ireland had also become Members of Euratom between the signature and the entry into force of the Agreement. Norway, which had also signed a Treaty of Accession to Euratom, had concluded a similar protocol. In the event, Norway did not become a Member of Euratom so that the protocol did not take effect. Membership of additional States is to take place in accordance with a special accession clause in the Agreement, which provides for a double notification to the Agency: The State has to notify the Agency that the necessary internal procedures for the entry into force of the Agreement have been completed, and Euratom has to notify the Agency that it will be in a position to apply its safeguards for the purposes of the Agreement in the new Party to the Agreement[557]. In this manner it is ensured that there would be no lacuna in the implementation of safeguards in States subsequently becoming Party to the Agreement.

Euratom is a Party to the Agreement in its own right, i.e. as a supranational organization having legal personality under international law, and is not merely acting on behalf of its Members[558]; the relevant obligations and rights under the Agreement therefore devolve directly on Euratom.

21.11.3.3.5. Structure of the Euratom (NNWS) Agreement

The basis for negotiations with Euratom was the NPT Safeguards Document approved by the Board, and this was the only document which the Director General was authorized to use in negotiations for all non-nuclear-weapon States. It soon

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[555] GOV/1560.
[556] INFCIRC/176; INFCIRC/184.
[557] INFCIRC/193, Article 23.
[558] INFCIRC/193, Preamble.

became clear in the course of the negotiations that the co-ordination of the safeguards system of the two organizations required extensive additions to that text. To accommodate these detailed provisions it was agreed to conclude a Protocol[559] so as to keep the changes to the main Agreement to a minimum and to preserve the integrity of the text of the main Agreement. The Protocol constitutes an integral part of the Agreement. The relationship between the States and Euratom under the Euratom Treaty and the relevant regulations of Euratom in the field of safeguards do not affect their obligations towards the Agency under the Agreement[560]. The Agreement is open ended in the sense that all future Members of Euratom which are non-nuclear-weapon States may become Parties[561].

21.11.3.3.6. Basic relationship and scope of co-ordination

Under the Euratom (NNWS) Agreement the basic undertaking of the States and the right and obligation of the Agency to verify non-diversion remain the same as in the standard NPT Safeguards Agreements. The Agency does not accept conclusions reached by the Euratom system, but verifies the 'findings' of that system, as it does those of a national system of accounting and control[562]. While making full use of the Euratom system, the Agency must arrive at its own, independent conclusion that there is no diversion of nuclear material[563]. It is important to note that the Agency does not verify the Euratom system (nor does the Agency verify national systems). The procedures under the Agreement would have had to be quite different if they had been intended to enable verification of another safeguards system by the Agency. The technical element of the Euratom safeguards system that was particularly relevant for the co-ordination arrangements under the Agreement was the existence of its own inspection system. Inspections are not required by a national system under the Agreement[564]. Efforts by Euratom to have the supranational character of its safeguards system specifically recognized in the Agreement were only partly successful; the main criterion is that the Agency is to take into account the technical effectiveness of the Euratom system[565]. The Agreement recognizes that the Euratom system is a full fledged safeguards system and assigns to Euratom

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[559] The Protocol forms an integral part of the Agreement and has the same legal status as the Agreement itself (INFCIRC/193, Article 26).

[560] For example Euratom Regulation 3227/76.

[561] INFCIRC/193, Article 23.

[562] Ibid., Article 3(b).

[563] Also, the Agency's verification statements are the same as those for individual States, except that they are transmitted to Euratom (INFCIRC/193, Article 90(b)).

[564] INFCIRC/153, para. 32.

[565] The Agreement, however, does not use the term 'technical effectiveness' but only 'effectiveness' (INFCIRC/193, Articles 3 and 81(b)). The inspection co-ordination provisions in the Agreement refer exclusively to technical criteria (Article 13 of the Protocol).

an important role in the joint application of safeguards under the Agreement. Euratom plays a dual role under the Agreement: On one hand, Euratom acts as a supranational organization and, as such, performs jointly with the Agency the verification tasks under the Agreement[566]. On the other hand, Euratom has established itself as the communication link between the Agency and the operators or States[567], and has assumed rights and functions normally reserved for a State under NPT Agreements (for example to veto the designation of an Agency inspector)[568]. Euratom may also act in the interest of its Member States; for instance, it can initiate consultations with the Agency if it considers that the inspection effort is unduly concentrated on particular facilities[569].

The territories of the States Party to the Agreement are treated as a single area for safeguards purposes; moreover, transfers to other Members of Euratom are not subject to advance notification or ad hoc inspections, in view of the common market in Euratom ensuring unrestricted movement of nuclear material among its Members[570].

### 21.11.3.3.7. Inspection regime

The co-ordination of inspection activities constitutes the most significant new element; inspection mode and inspection intensity were problems arduously discussed in the course of the negotiations and they continued to constitute the most sensitive issues in negotiating Subsidiary Arrangements and in the subsequent implementation of safeguards in practice. The most important principles of the Protocol regarding inspections are the following[571]:

(a) The Agency is to take account of the inspection effort of Euratom;
(b) So-called 'rules and methods' (part of the Subsidiary Arrangements) were elaborated to implement the inspection criteria of the Agreement and to form the basis for determining the actual inspection effort by both organizations in respect of each facility;
(c) Estimates of the actual inspection effort are to be laid down in the Subsidiary Arrangements and will, under certain conditions, constitute the maximum effort permitted;
(d) Agency inspections will be carried out simultaneously with Euratom inspections;

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[566] Agency inspections always take place together with Euratom inspections (Article 14(a) of the Protocol).
[567] This point has led to occasional problems in the field.
[568] INFCIRC/193, Article 85.
[569] Ibid., Article 82.
[570] Ibid., Articles 93 and 95.
[571] Protocol Articles 10-24.

(e) Since Euratom will normally perform more inspections and since its inspection effort will be larger than that of the Agency, the Agency is not to take part in all Euratom inspections;
(f) Observation by the Agency of Euratom inspection activities is a recognized inspection mode for the Agency.

Together with the Protocol and the General Part of the Subsidiary Arrangements, some examples for Facility Attachments and the so-called 'rules and methods' were negotiated. However, neither the Agency nor Euratom had any experience as to how these arrangements might work in practice. Moreover, at that time the control system of Euratom was very different from the system required by the Agreement. It took Euratom years to adapt its own system and to establish a new system[572]. This explains in part why it took Euratom nearly four years after signature of the Agreement to put it into effect. Important issues were not settled during the negotiations, and later these issues gave rise to protracted discussion when the concrete safeguards arrangements were negotiated. This concerned in particular the question of 'participation', 'observation' and the establishment of 'joint inspection teams'. All Parties recognized that a permanent co-ordination machinery would be required to ensure a successful start and subsequent effective implementation of this new enterprise; to this effect, a Liaison Committee was established in which the Agency and Euratom, but not the States, participate[573].

### 21.11.3.3.8. Implementation of the Euratom (NNWS) Agreement

For the implementation of the Euratom (NNWS) Agreement by the Agency and by Euratom and its Members, extensive preparations were necessary. These preparations and negotiations were complicated by a number of factors:

(a) The number and nature of nuclear installations in Euratom Member States (many of a type not yet safeguarded by the Agency);
(b) The need for Euratom to change its safeguards system so as to meet the requirements of the Agreement;
(c) The novel problems encountered in co-ordinating the two safeguards systems and striking a delicate balance between the functions of the two organizations;
(d) The Agency's need to achieve fully the technical safeguards objectives while avoiding unnecessary duplication of work and burden on the operator;
(e) Some technical assumptions made and some understandings reached at the time of negotiation of the Agreement were found to be invalid;

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[572] The 1959 system of Euratom was replaced on 1 January 1977 by a new Regulation (3227/76), which finally enabled Euratom to discharge its responsibilities under the Agreement.

[573] Article 25 of the Protocol; the High-level Liaison Committee became in fact the body to decide major policy issues.

(f) Some essential safeguards criteria, in particular the detection time to be used for calculating inspection frequency, were only quantified[574] after the negotiation of the Agreement, but before or during the negotiation of the Facility Attachments;

(g) Differences arose concerning the interpretation of some terms in the Protocol relating to the co-ordination of inspection activities.

The Agreement entered into force on 21 February 1977[575]. Some problems had by that time already become apparent and it was suggested in the Board that the Director General should report to the Board in June 1977 about the implementation of the Agreement. Soon after the entry into force of the Agreement, substantial and, to some extent, unexpected difficulties arose in drawing up the Facility Attachments thereunder[576]. The four years between negotiation of the Agreement and its entry into force had not been used to complete the arrangements. Euratom's new safeguards regulation, which was to replace the regulations that had existed since 1959, only took effect in January 1977[577]. On the Agency's side, important development work had to be done on the quantification of critical safeguards criteria[578]. It was not surprising, therefore, that the first extension of the 90 day period set forth in the Agreement for the completion of the Subsidiary Arrangements to 22 August 1977 was almost a routine matter, and this extension was made by the Director General on his own authority without consulting the Board. In his first report to the Board the Director General informed it of the problems the Secretariat had encountered in the negotiations[579]. From June 1977 to June 1979 the Euratom (NNWS) Agreement figured regularly on the agenda of Board meetings, with two additional, special sessions of the Board devoted to consideration of the Agreement.

Pending the negotiations of the Subsidiary Arrangements, the Agency received accounting reports and performed ad hoc inspections[580]. A suggestion that the Euratom Agreement should be discussed as part of the general report on safeguards

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[574] These parameters were based on the recommendations of SAGSI.

[575] GOV/OR.493, para. 8; INFCIRC/193/Add.1.

[576] Facility Attachments form part of the Subsidiary Arrangements. Parties to the Agreement "shall make every effort to achieve their entry into force within 90 days of the entry into force of the Agreement" (INFCIRC/193, Article 40). An extension of that period shall require 'agreement' between the Parties. It is not clear, however, from the text whether this imposes an absolute time limit for the negotiation of such Arrangements, because what is required is only that the Parties make 'every effort' to achieve the entry into force of the Arrangements within a certain time limit.

[577] Regulation 3227/76. Under this Regulation, Euratom has to specify for each facility 'particular safeguards provisions'. These are based on the Euratom Treaty and not on the Agreement with the Agency. They are closely related with the Facility Attachments, but are not identical with them.

[578] In particular concerning detection times, significant quantities and confidence levels (INFCIRC/153, objective of safeguards, paras 28–30; IAEA Safeguards, An Introduction, p. 14).

[579] GOV/OR.500, paras 7–12.

[580] Pursuant to Article 71 of the Agreement; no routine inspections were yet carried out because these require a Facility Attachment.

implementation[581] was not supported by the Board[582], and Governors who were concerned about the delay began to stress that a similar degree of assurance was required under all NPT Safeguards Agreements[583]. Another suggestion, that the Director General should communicate on the Agreement only with the Euratom Commission but not with the States Party to the Agreement, was not considered to be in accordance with the Agreement[584]. An important new inspection arrangement, the organization of joint Euratom/Agency inspection teams, which was later employed for various categories of sensitive installations, was agreed upon, first for a chemical reprocessing plant[585]. In February 1978, one year after the entry into force of the Agreement and after three extensions of the time limit, no Facility Attachment had yet been concluded. While co-operation between inspectors in the field was good, the difficulties on technical approaches and points of principle persisted[586].

While allusions to non-compliance and violations of the NPT had been made previously[587], political pressures became stronger, and the USSR threatened to bring the matter before a higher body responsible for international peace and security[588]. After a further extension of the time limit, the Board met in a special session in April 1978. At that meeting the Director General presented the first written report, which showed the magnitude of the effort required[589] and pointed to some of the open issues[590]. Further reports were issued by the Director General[591], but the agreed time limits for completing the negotiations[592] could not be adhered to. One of the most difficult problems proved to be the specification of the inspection activities which Agency inspectors were to carry out other than through 'observation' of the inspection activities of Euratom inspectors[593]. Also the issue of participation of Agency inspectors in some Euratom inspections touched upon the cardinal requirement for the Agency to achieve the safeguards objective by independent

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[581] In June 1977 the Director General submitted a first report on safeguards implementation covering 1976 (the Special Safeguards Implementation Report for 1976, GOV/1842).

[582] GOV/OR.506, paras 21 and 22.

[583] For example Australia; GOV/OR.506, para. 24.

[584] Interpretation by the Director, Legal Division, of Article 20 of the Agreement (GOV/OR.506, para. 20).

[585] GOV/OR.505, para. 13; joint teams are not provided for in the Agreement.

[586] GOV/OR.511, paras 54–64.

[587] GOV/OR.505, paras 115–120.

[588] GOV/OR.511, para. 91. The language of the intervention by the USSR suggests that the United Nations Security Council was referred to.

[589] Over 200 Facility Attachments were required to implement fully the Agreement (GOV/1884, para. 2).

[590] GOV/1884, para. 7.

[591] GOV/1902, 1910 and 1918, which gave a detailed account of the situation. See also GOV/OR.514, paras 3–78; GOV/OR.515, paras 48–77; GOV/OR.523, paras 3–45.

[592] GOV/1902, para. 3.

[593] INFCIRC/193, Protocol, Article 14; GOV/1918, paras 6–12; GOV/OR.523, paras 3–9.

verification[594]. Additional notes by the Director General to the Board contain important understandings and interpretations regarding the thorny problems of 'observation' and 'participation'[595]. In the course of the negotiations of Facility Attachments, Euratom raised the question of cost sharing between the States (operator) and the Agency. The Agency's general interpretation of the relevant Article of NPT Safeguards Agreements[596] (which is the same in the Euratom Agreement and is very similar in non-NPT Agreements), which was communicated to Euratom, was also put before the Board[597]. Finally, in June 1979, the Director General could report to the Board that "the end of a long road was in sight"[598] and that he could also note significant progress in the negotiations[599].

### 21.11.3.3.9. The Agreement with Japan

When the Euratom (NNWS) Agreement was before the Board for approval, the Governor from Japan pointed out that the substance of the Agreement should be equally applicable to Agreements concluded with individual States and that the extent and substance of the Agency's verification activities should be determined by the technical effectiveness of a national system[600]. Japan also favoured the establishment of a technical committee within the Agency to ensure "general, objective and uniform interpretation and implementation of safeguards agreements"[601].

Japan established a national system which also included inspection. Accordingly, an Agreement was negotiated which follows closely the Euratom (NNWS) Agreement. When the Agreement with Japan was put before the Board[602] the Director General emphasized that technical considerations had been taken into account in negotiating the inspection co-ordination arrangements[603]. The Agreement with Japan[604] consists of the Agreement proper and a Protocol, with a number of improvements compared with the Euratom (NNWS) Agreement to take account

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[594] GOV/1918, paras 13–15.

[595] GOV/1923, paras 15–28; GOV/1934, Annexes I–III, Appendices I–II.

[596] INFCIRC/153, Article 15.

[597] GOV/1923, Annex A. There was substantive discussion in the Board on the question of cost sharing. Some Governors agreed with the Director General's approach; one Governor (Argentina) disagreed (GOV/OR.530, para. 32).

[598] GOV/OR.535, para. 3.

[599] GOV/1952; negotiations had practically been concluded on 203 Facility Attachments, with 11 Attachments for special types of installations still to be made; these installations presented complex technical problems.

[600] GOV/OR.451, paras 33 and 34.

[601] GOV/OR.451, para. 32. This Committee (SAGSI) was established in 1975.

[602] GOV/1727.

[603] GOV/OR.477, para. 1.

[604] INFCIRC/255.

of the technical developments and experience gained in implementing the Euratom (NNWS) Agreement. Japan is thus in a special position compared with the other non-nuclear-weapon States Party to the NPT.

## 21.12. SAFEGUARDS FUNCTIONS OF AGENCY ORGANS

The safeguards functions of Agency organs remained the same as described in the basic book. The development of the NPT Safeguards Document and of the special arrangements for financing are described elsewhere.

### 21.12.1. Promulgation of the Safeguards and Inspectors Documents

No developments.

### 21.12.2. Conclusion of Safeguards Agreements

The negotiation of Safeguards Agreements continued to be performed by the Secretariat without prior information of, or authority by, the Board. Although in the case of Project Agreements the Director General may request the approval of the Board prior to submission of the proposed text, he does not request the Board's approval of a Safeguards Agreement until the negotiations of the text are concluded[605]. Because NPT Safeguards Agreements are virtually identical, the full text was no longer submitted to the Board. Instead, a brief Annex to the Board document outlined those provisions which differed from the standard agreement[606] and gave an indication of the choice of alternative formulations. Other Safeguards Agreements, whether in trilateral or bilateral form, were always submitted to the Board with a full draft text. The texts of the Agreements were generally accompanied by an explanatory note from the Director General[607].

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[605] One notable exception occurred during the negotiation of the Agreement between the Agency and Argentina for the application of safeguards to the Embalse Reactor Facility (INFCIRC/224). In that case, the Director General submitted the draft Agreement to the Board, noting that it had not been possible to reach agreement on provisions relating to the duration of the Agreement and on the continued application of safeguards in accordance with the criteria set forth in document GOV/1621. In approving GOV/1621, the Board had stated that its concepts should be included in future agreements; if, in negotiations, agreement could not be reached, the matter should be referred to the Board. In the Embalse case the Board reaffirmed the criteria in GOV/1621 and requested the Director General to continue negotiations. The Board later approved a complete draft text incorporating the principles of GOV/1621 (see GOV/DEC/83(XVIII), No. (8)).

[606] GOV/INF/276.

[607] It is interesting to note that the Board was equally anxious to indicate those provisions which should not be considered as establishing a precedent. See, for example, the Board discussions relating to the approval of the first Cuban Safeguards Agreement (GOV/OR.547, paras 2-22).

When submitting agreements to the Board, the Director General, according to the traditional formula, requested the Board's approval for him "to conclude and subsequently to implement the draft agreement". As discussed in the basic book, the Director General made all arrangements and decisions relating to the entry into force of Agreements; in certain cases, however, the Board took a particular interest in subsequent events such as the conclusion of Subsidiary Arrangements and requested the Director General to report on progress in these matters. There was also an increasing tendency of the Board to indicate that certain items should be covered by the Subsidiary Arrangements. The general practice, however, was for the Director General to negotiate and conclude Subsidiary Arrangements without referral or detailed reporting to the Board.

### 21.12.3. Implementation of safeguards

The normal implementation of Safeguards Agreements was left entirely to the Director General. However, he kept the Board informed by oral reports and through the annual Safeguards Implementation Report (SIR), which discusses all major problems regarding the implementation of safeguards that have arisen during the reporting period.

### 21.12.4. Inspection procedures

The practice that only those Agency officials who have been approved by the Board may act as inspectors has remained unchanged. The arrangements for co-ordination of Agency inspections with those of Euratom and Japan required special arrangements regarding the number, timing and scope of these co-ordinated inspections. Regarding the Agreements with Euratom, inspections were performed by joint teams in a number of instances.

### 21.12.5. Sanctions

The responsibilities of the respective Agency organs with regard to sanctions, as discussed in the basic book, have not changed.

### 21.12.6. Settlement of disputes

During the period covered by this book the dispute settlement clause in Safeguards Agreements has never been invoked. It therefore remains unclear which organ of the Agency (the Director General or the Board) must decide whether a formal dispute exists and whether the convening of an arbitral tribunal should be requested; it is also not clear who should designate the arbitrator on behalf of the

Agency and who should call on the designated officials to appoint arbitrators who are not otherwise designated or elected. The situation in respect of the NPT Safeguards Document has not changed.

### 21.12.7. The Standing Advisory Group on Safeguards Implementation (SAGSI)

In February 1975 the Director General informed the Board that he would establish a standing Group of Experts to advise him on safeguards[608]. This announcement was linked with the conclusion of the NPT Safeguards Agreement with Japan, which had earlier suggested that such a group be created[609]. The Group was composed of ten experts appointed by the Director General with a broad mandate, namely to assess the technical objective of Agency safeguards; to assess the effectiveness and efficiency of specific safeguards methods; to advise on safeguards techniques; and to recommend areas for further work. Questions could be submitted to the Group by the Board, by the Director General or by members of the Group[610]. The Group was established in 1975 and started work in December of that year. In the course of the years, SAGSI became more and more the body that was to develop and sanction the quantification of the technical safeguards criteria, which had not been done when the Safeguards Committee (1970) developed the NPT Safeguards Document[611]. In this respect, SAGSI's work had a critical and almost decisive influence on the implementation of Safeguards Agreements[612]; this was particularly apparent in connection with the negotiation with Euratom on Subsidiary Arrangements[613] and in the evaluation of the safeguards effectiveness and the achievement of the objectives prescribed by the Agreements.

## 21.13. MISCELLANEOUS*

In this section, different subjects are treated which are not directly related with each other. These subjects are new and have not been discussed in the basic book. The following topics are discussed:

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[608] GOV/OR.475, paras 33-35.

[609] Japan immediately welcomed the formation of the Group, in which it had a "special interest", since "it had just completed consultations with the Secretariat" on an NPT Safeguards Agreement (GOV/OR.475, para.36).

[610] Agency document AG-43/1 of 24 October 1975.

[611] The Federal Republic of Germany raised the problem of the relationship of SAGSI's recommendations with the definitions in the NPT Safeguards Document, but the Board did not pursue the issue (GOV/OR.516, para.8; see also GOV/OR.511, paras 73-74).

[612] For example SAGSI's provisional guidelines on detection times (GOV/OR.511, paras 8-11).

[613] See, for example, GOV/OR.547, paras 9 and 15.

* Section 21.13 of the basic book deals with safeguards and peaceful nuclear explosions. Peaceful nuclear explosions are discussed in Section 17.5 of the present book.

— Safeguards and technological information
— Inventory of items under safeguards
— Reports on Agency safeguards
— International storage and management of plutonium.

### 21.13.1. Safeguards and technological information

The Revised Safeguards Document does not cover the application of safeguards to bilateral transfers of technological information in the nuclear field. The NPT Safeguards Document does not have to deal with this problem because all nuclear material in all peaceful nuclear activities is subject to safeguards, and no additional mechanism is required to trigger safeguards on such material. Suppliers of hardware in the form of facilities, components and equipment have always transferred large quantities of documentation, such as plans and operating manuals. It was not until the mid-1970s that Parties to bilateral co-operation agreements or to specific supply arrangements requested the Agency to apply safeguards in connection with such transfers[614]. The first such Agreement concerned the application of safeguards to a reprocessing plant for spent fuel supplied by France to the Republic of Korea[615]. When that Agreement was discussed in the Board, a number of issues of principle were raised[616]:

(a) *Compatibility with the Agency's safeguards system*

This new concept resulted in a debate of whether such a function for the Agency was compatible with the Statute and with the safeguards system. It was proposed to establish a committee of supplier States and recipient States to study the matter, particularly in view of the proposed definition of technological information; this committee should then report to the Board.

Neither the argument of incompatibility nor the proposal to establish a committee was accepted by the Board, which approved the Agreement after a lengthy debate[617]. In introducing the draft, the Director General pointed out that the Agency would not be involved in the identification of the technological information and that safeguards would not apply to the information as such but only to physical items resulting from the transferred information.

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[614] Statute Articles III.A.5 and XII constitute broad authority for the Agency to perform such a task. Paragraph 15(b) of the Revised Safeguards Document refers specifically to bilateral or multilateral arrangements for the transfer of information, but does not contain any safeguards procedures with regard to technical information.

[615] INFCIRC/233.

[616] GOV/OR.482, paras 4–37.

[617] GOV/OR.482, para. 37.

(b) *Definition of technological information*

Under the France/Korea Agreement, 'specified information' is information, designated by France alone, "... on the design, construction or operation of nuclear facilities or specified equipment or on the preparation, use or processing of nuclear material or specified material"[618]. Some subsequent Safeguards Agreements maintained the principle that it was up to the supplier State to designate the information[619], and other Agreements contained an elaborate definition[620]. A further element was added so as to cover information derived from transferred hardware[621] and to exclude from the definition information already available to the public[622].

(c) *Communication to the Agency*

The Agency was not to receive copies of the information. This is quite understandable because, apart from the volume of information that the Agency would have to handle, commercially sensitive and industrially important items form part of such information, which the Agency would have to protect[623]. Under some Agreements the Agency is to receive an identification of the physical or chemical processes characterizing a facility or a piece of equipment[624], or a description of the information in certain areas of nuclear co-operation[625]. The Agency is also required to establish and maintain a list (similar to the Inventory of items under safeguards) containing a description of such transferred information of which it is notified[626].

(d) *Use of the information*

In principle, it is up to the recipient Government to notify the Agency of any facility or equipment that should come under safeguards because it has been designed, constructed or operated on the basis of supplied information[627]. Under some Agreements the supplier State also has a role; for example, it will receive copies of Inventories of safeguarded items and of the list kept by the Agency

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618 INFCIRC/233, Section 1(f).
619 INFCIRC/237, Article 1(d); INFCIRC/239, Article 1(b).
620 INFCIRC/247, Section 1(c).
621 Ibid.
622 INFCIRC/237, Article 1(d); INFCIRC/239, Article 1(b).
623 INFCIRC/66/Rev.2, para. 13.
624 INFCIRC/247, Section 14(b).
625 INFCIRC/237, Article 3(1).
626 INFCIRC/251, Sections 10 and 12(f) and (g).
627 INFCIRC/237, Article 6(2); INFCIRC/244, Article 5(c).

containing a description of the information[628]. Furthermore, the supplier State may notify the Agency unilaterally of facilities which, in its view, should be safeguarded because they use transferred technology[629], or the supplier State may make joint notifications with the recipient State[630]. The Agency normally has no competence to decide or to demand that a particular item should come under safeguards. However, under the Agreement with Argentina in connection with its co-operation Agreement with Canada the Agency may be required to make such a determination if the Governments of the supplier State and the recipient State cannot reach an agreement on whether a joint notification should be made or not[631].

(e) *Replicated facilities and equipment*

Any equipment or facility which is derived from transferred technological information must be reported to the Agency and must come under safeguards, regardless of the time that has elapsed between the transfer of the information and the construction of a facility. Moreover, starting with the Safeguards Agreement between Brazil and the Federal Republic of Germany, all Agreements contain an irrebuttable legal presumption in respect of facilities constructed or operated within 20 years after the transfer of information[632]. If such plants employ chemical or physical operating processes which are the same as those contained in the transferred information or which are based on the same principles, they are 'deemed' to be derived from transferred information, even if these processes have actually been indigenously developed or adapted[633].

(f) *Retransfer of information*

Transfer of information to third countries requires prior arrangements by the Agency to safeguard the items derived from the use of such information[634].

The London Guidelines contain a definition of the 'technology'[635] and explanations of what should fall under the term 'facilities of the same type'[636]. The Guidelines also require that the period of application of safeguards to such facilities should be at least twenty years[637]. The Revised Guiding Principles and General

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628 INFCIRC/237, Article 7(3).
629 INFCIRC/247, Section 15(c).
630 INFCIRC/251, Section 12.
631 Ibid.
632 INFCIRC/237, Article 3(2); GOV/OR.484, paras 28–79.
633 For example INFCIRC/247, Section 14(a).
634 INFCIRC/237, Article 10(3); INFCIRC/247, Section 18.
635 INFCIRC/254, Annex A, Part B.
636 Ibid.
637 Ibid., Note.

Operating Rules to Govern the Provision of Technical Assistance by the Agency also require the application of safeguards in relation to the transfer of information in certain 'sensitive technological areas'[638], excluding information freely available to the public or obtained from generalized arrangements for the transfer of information.

### 21.13.2. Inventory of items under safeguards

Non-NPT Safeguards Agreements provide for detailed requirements for items to come under safeguards and for the conditions under which they may be removed from safeguards. In practice, rules which are completely different from those in the Revised Safeguards Document[639] have been developed to bring items under safeguards. This was largely due to the nature of the bilateral transactions involved, the expansion of the safeguards system to cover also 'trigger items' (equipment and non-nuclear material) and the effect of the 'contamination' principle. In order to document the formal distinction between items which are 'permanently' under safeguards and items which are only temporarily under safeguards, and the distinction between items to which safeguards procedures are actually applied and items that are not subject to such procedures, these items are listed under various categories of an Inventory. The State receives copies of such Inventories, usually at intervals of 12 months, and also whenever it requests such copies, so that there is always clarity about items on the Agency's books and about their status and location, as well as the quantities and composition of nuclear material and the like. Some Agreements foresee that the supplier State may also obtain copies of Inventories even if that State is not a Party to the Safeguards Agreement[640]. Two clarifications of a principal nature should be made:

(a) The Inventories do not have a constituent character but only a declaratory one. The rights and obligations of the Parties exist irrespective of whether an item is actually listed[641].
(b) The basic undertaking concerning peaceful, non-explosive use applies to all items on the Inventory, even those not subject to verification procedures by the Agency[642].

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[638] INFCIRC/267, Annex.

[639] INFCIRC/66/Rev.2, para. 19.

[640] For example Canada in relation to the Agreement between the Agency and Argentina (INFCIRC/251, Section 8).

[641] Some Agreements refer to "items required to be listed in the Inventory"; other Agreements identify separately the items to which the basic obligation of the State applies and which are subject to safeguards (e.g. INFCIRC/237, Articles 2 and 4).

[642] INFCIRC/237, Article 2.

The rationale for dividing the Inventory into three parts is the following:

(i) Items which are permanently under safeguards have to be included in the Main Part of the Inventory[643]; these items will remain under safeguards until they are terminated or suspended, or until an exemption is granted;
(ii) Facilities and equipment which are temporarily under safeguards, while they contain, use or process safeguarded nuclear material, non-nuclear material or equipment, have to be listed in the Subsidiary Part of the Inventory. (Nuclear or non-nuclear material would never be listed in that part.) As soon as the safeguarded items are removed from the facility or equipment, the facility or equipment is deleted from the Inventory and safeguards cease to apply[644].
(iii) Nuclear and non-nuclear material which is exempted from safeguards or for which safeguards are suspended has to be listed in the Inactive Part of the Inventory. The principal purpose of keeping a record of such material is to ensure that such material remains within the quantitative limits for exemption and suspension[645].

Items falling under points (i) and (ii) are subject to verification; in the application of safeguards no distinction is made between the two categories. Material[646] falling under point (iii) is not subject to verification nor do the transfer restrictions of the Agreement apply to exempted material[647]. The interaction of Safeguards Agreements leads to situations where the same item may appear on the Inventories of several Agreements (and in different parts of such Inventories), with all the attendant problems[648].

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[643] Also referred to as Principal Part, Part I, or similarly.

[644] INFCIRC/237, Article 7(1)(b).

[645] INFCIRC/66/Rev.2, paras 21, 24, 25. Limits for non-nuclear material were included in the Subsidiary Arrangements.

[646] Exemption and suspension applies, by definition, only to material; accordingly, no equipment or facilities are listed in the Inactive Part of an Inventory.

[647] Such transfers will not re-establish the exemption quota unless the exemption was lifted and the material was again listed in the Main Part of the Inventory and then transferred. Similarly, termination of safeguards on such material requires prior de-exemption.

[648] For example, if nuclear material supplied by State A is processed in a facility supplied by State B and subsequently used in a reactor supplied by State C, this results in complicated book-keeping situations, possibly leading to conflicting obligations and unnecessary duplication. Furthermore, supplier States have often required, for their own domestic political or legal reasons, an identification of material supplied by them. This is obviously an impossible task for the Agency to perform as the material progresses through the fuel cycle. (The 'equivalence' principle has to some extent mitigated this difficulty.) Under NPT Safeguards Agreements a unified Inventory of nuclear material regardless of origin is to be maintained (INFCIRC/153, para. 41), thus obviating these difficulties.

## 21.13.3. Reports on Agency safeguards

### *21.13.3.1. Annual Reports*

The Annual Reports of the Agency have contained to an increasing degree information on the application of Agency safeguards and tables with quantitative information[649]. These tables give detailed information on the status of Safeguards Agreements, as well as quantities of nuclear material under safeguards and nuclear facilities under safeguards. As of 1977, these reports have repeated the conclusion contained in the reports on safeguards implementation (first the Special Safeguards Implementation Report and then the Safeguards Implementation Report) that there had been no diversion[650].

### *21.13.3.2. Report on Safeguards Implementation*

One of the first tasks of the Standing Advisory Group on Safeguards Implementation (SAGSI) concerned the question of a comprehensive report by the Director General to the Board on the implementation of safeguards. A prototype of such a report was prepared for 1975[651]. In February 1976 the Director General informed the Board of his intention to submit regular reports on safeguards[652].

After the outline of such a report[653] was considered and welcomed by the Board, the first Special Safeguards Implementation Report to cover the Agency's safeguards operations in 1976 was issued[654]. The Report contained the principal conclusion of the Secretariat "... that in none of the 41 States in which inspections were carried out was there any diversion of a significant quantity of safeguarded nuclear material and the Secretariat is confident that in these States there was no diversion at all". This general affirmation appeared, with refinements and qualifications in somewhat different terms, in all subsequent reports[655].

The reports not only provide information on safeguards implementation but also contain general information, main conclusions and recommendations, as well as findings relevant to different categories of States and facilities with extensive information on the inspection effort deployed. In drawing up the reports, care was taken not to divulge protected information and there was no identification of States or

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[649] For example the Annual Report for 1980 (GC(XXV)/642), paras 9–16, 174–200, Tables 7–14.

[650] For example GC(XXII)/597, para. 170.

[651] GC(XXI)/580, para. 580.

[652] GOV/OR.486, paras 36–38.

[653] GOV/1823.

[654] GOV/1842. The reports were subsequently renamed Safeguards Implementation Reports (SIR), apparently to take account of their periodic nature.

[655] For example GOV/1911, Section 1.1; GOV/1939, Section 1.1.

facilities by name. Nevertheless, it was not difficult to deduce from the information given and from its combination with other publicly available information the facilities and countries where problems had occurred and the situation in individual countries. The reports also showed a general tendency to apply the technical criteria of NPT Safeguards Agreements to non-NPT Agreements, which led to occasional criticism in the Board[656]. Moreover, the reports also began to refer to problems of unsafeguarded facilities in some non-nuclear-weapon States and in States Party to the NPT, and to the capability of some such States of making 'nuclear weapons material'[657]. A proposal to declassify and distribute the Safeguards Implementation Report as a General Conference document[658] was not acted upon by the Board. The reports discuss not only technical problems and findings but also points of legal and general character, for example those relating to the designation of inspectors[659].

### 21.13.4. International storage and management of plutonium (IPS)

In 1976 the Secretariat began studies on an international programme for plutonium storage. Such a scheme was designed to implement Article XII.A.5 of the Statute, which foresees the deposit with the Agency of any excess of special fissionable material produced under safeguards[660]. This Article, which forms part of the statutory safeguards provisions, has been left dormant and none of the Safeguards Documents and Safeguards Agreements contains provisions for its implementation.

With the increasing expectation that spent nuclear fuel would be reprocessed[661] and that extracted plutonium would have to be stored in large quantities, concerns regarding nuclear proliferation and safeguards increased[662]. A number of Governments were also interested in the potential use of plutonium as reactor fuel. Such a scheme for international plutonium storage could thus be seen as an extension of the safeguards system of the Agency.

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[656] GOV/OR.523, para. 52.

[657] GOV/1939, Foreword; the term 'nuclear weapons material' is not explained, nor does it appear in the "Glossary of Safeguards Terms" (IAEA/SG/INF/1, Rev.1).

[658] GOV/1881.

[659] GOV/1982.

[660] Article XII.A.5 foresees for the Agency a role going far beyond that in the current safeguards system, which is a verification system rather than a system providing for physical control of nuclear material by the Agency.

[661] With the forecasts of a growing nuclear power development, a possible shortfall of uranium was expected. For a number of countries, reprocessing was also a preferable solution to close the back end of the fuel cycle, rather than long term storage of spent fuel.

[662] In 1976, 11 775 kg of plutonium, contained in irradiated fuel, and 2778 kg of plutonium in other form was under safeguards (GC(XXII)/580, Table 9). By 1979, these quantities had risen to about 60 000 kg and 8000 kg, respectively (GC(XXV)/642, Table 8).

Initially, the Secretariat studies, performed with the help of consultants, covered organizational and institutional aspects of storage of plutonium and of spent fuel. The studies were regularly mentioned in the Annual Reports for 1976[663] and 1977[664], but they were still internal studies of the Secretariat. The results of these studies were circulated to Governments in a single document on 13 July 1978, with a request for comments. Subsequently, the two topics were separated, since their legal and statutory bases, their organizational and institutional aspects and the technical problems involved were quite different.

In 1978, work began at the level of Governmental experts. In September 1978 the Director General called for a first such meeting, "... to begin preparation of proposals for the establishment of schemes for the international management and storage of plutonium in implementation of Article XII.A.5 of the Agency's Statute". It should be noted that the scope of the project, which concerned initially only the storage of 'excess' plutonium, was considerably broadened to become a scheme for the 'storage and management' of plutonium[665].

Experts from 22 countries and from the Commission of the European Communities attended the meeting. The Expert Group created four sub-groups:

— A technical advisory group on operational and technical aspects of IPS[666];
— A technical advisory group on research and development uses of separated plutonium in the context of IPS[667];
— A working group on safeguards and IPS to examine the operational interface between IPS and safeguards[668];
— A working group on plutonium buffer stocks[669].

The Expert Group and its working groups met in May 1980. Short statements on the work of the Group were regularly included in the Annual Reports of the Agency[670]. The General Assembly of the United Nations also supported studies on multinational fuel cycle centres and IPS[671].

Until the end of 1981 the costs of the IPS programme were paid by voluntary contributions from 11 countries. As of 1982 the costs of the IPS programme were included in the Regular Budget.

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[663] GC(XXI)/580, para. 20.

[664] GC(XXII)/597, para. 25.

[665] Article XII.A.5 of the Statute foresees only arrangements for storage of excess plutonium and not an operative role for the Agency as is implied by the term 'management'. However, Article III.A of the Statute would, in view of its very broad terms, appear to constitute additional authority for such an enlarged scheme.

[666] Documents published under the symbol IAEA-IPS/TAGA/...

[667] Documents IAEA-IPS/TAGB/...

[668] Documents IAEA-IPS/WGS/...

[669] Documents IAEA-IPS/WGPBS/...

[670] See GC(XXIII)/610, para. 12; GC(XXIV)/627, para. 18.

[671] See, for example, General Assembly Resolutions 32/87 and 33/3.

At the end of the period covered by this book, the work of the Expert Group was still in progress.

## 21.14. ORGANIZATION OF THE DEPARTMENT OF SAFEGUARDS

By the end of 1980 the Department of Safeguards had the structure shown in Fig. 1. This structure should be seen within the framework of the safeguards oriented activities of other Departments of the Agency, as illustrated in Fig. 2.

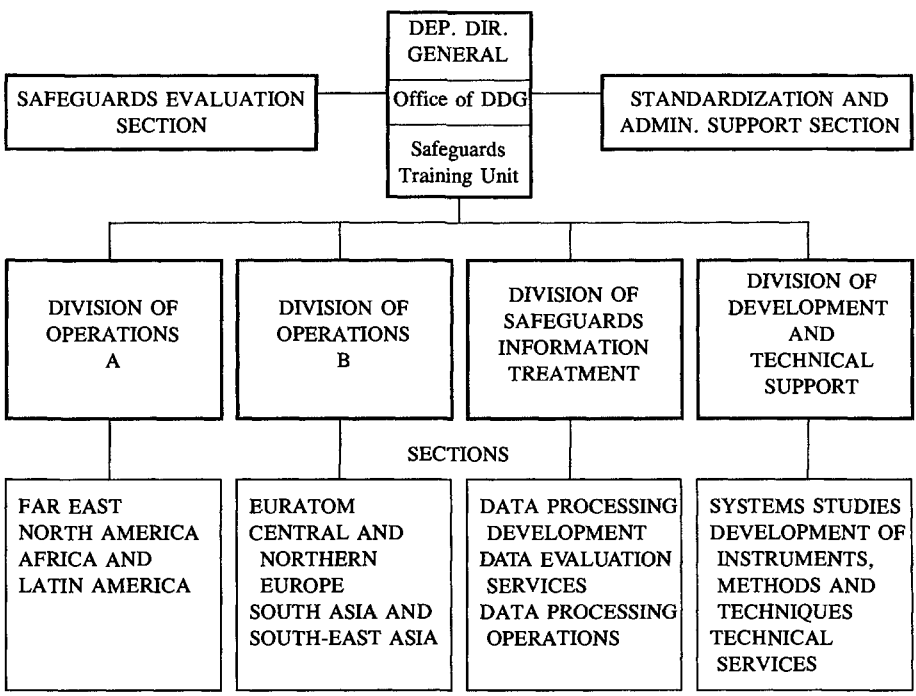


*FIG. 1. Organizational structure of the Department of Safeguards.*

During the period 1970–1980 the Department of Safeguards (in 1970 still referred to as the Department of Safeguards and Inspection) underwent a number of structural and organizational changes. These changes resulted from the expansion of safeguards activities, particularly in connection with the NPT, the need for an internal mechanism to evaluate the effectiveness of safeguards, the greatly increased volume of information items to be handled and the desirability to clarify the position

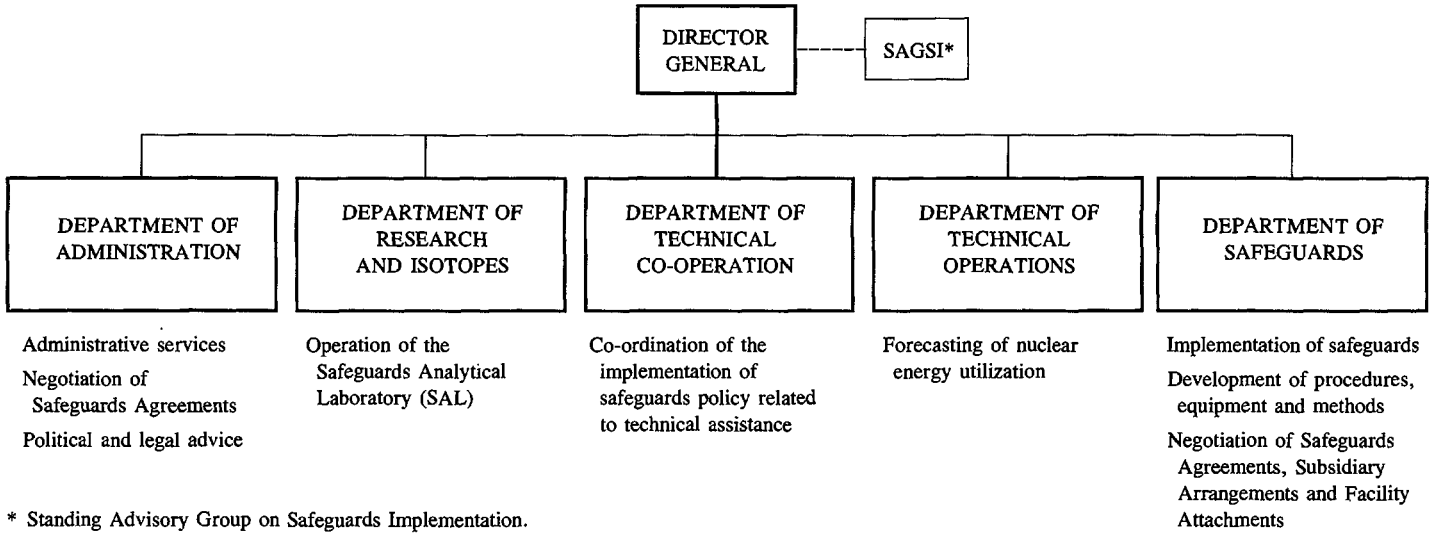


*FIG. 2. Organizational structure of the IAEA and the safeguards oriented activities of its Departments.*

of the Department of Safeguards within the Agency. The growth of the safeguards activities is illustrated in Figs 3–7. Further information can be found in the Agency's Annual Reports and the Safeguards Implementation Reports.

These structural and organizational changes were not only technically important (regarding, for example, whether Divisions should be organized according to types of nuclear installations to be covered or whether geographical criteria should be used) but also, understandably, politically sensitive.

Therefore, the Director General chose an unusual way of obtaining advice and political support on these matters by appointing two ad hoc high-level panels. The most important changes resulting from the meeting of the first group in 1974[672] were the following:

(a) The name of the Department was changed to Department of Safeguards (so as to avoid emphasis on the inspection aspect of safeguards) and its Head was designated Deputy Director General for Safeguards (previously 'Inspector General'). The latter change was apparently designed to document the equality of the Department Head with other Deputy Directors General.
(b) The operational functions were clearly separated from research and development work.
(c) A small ad hoc evaluation group was established to evaluate information on particular installations, to perform independent control and to review the statements on the Agency's verification activities[673].

Suggestions on data processing work, on physical security and on administrative matters completed the report of the first group of experts.

The tasks of the group were deemed so important that the Director General also informed the General Conference of its work[674].

A second group of high-level experts met in 1977[675] and suggested major reorganizations to cope with the growing workload, so that by the end of 1977 the Department consisted of two Divisions of Operations (organized according to geographical criteria), a Division of Information Treatment, a Division of Development and Technical Support (to take account of the increasing use of instruments) and a Section for the evaluation of safeguards effectiveness[676]. This structure was maintained until the end of the decade.

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[672] Report of a Group of Experts to Advise on the Structure of the Department of Safeguards and Inspection (GOV/INF/297).

[673] INFCIRC/153, para. 90.

[674] GC(XVIII)/OR.168, para. 76; see also GOV/OR.495, para. 17.

[675] GOV/INF/322.

[676] GC(XXII)/297, para. 216; Organizational Chart. In order to always have the possibility of an internal review of a determination by the Department of Safeguards of non-compliance, the Director General also decided that the Head of the Department would not be designated as Acting Director General during the absence of the Director General (a function assumed in rotation by the other four Deputy Directors General).

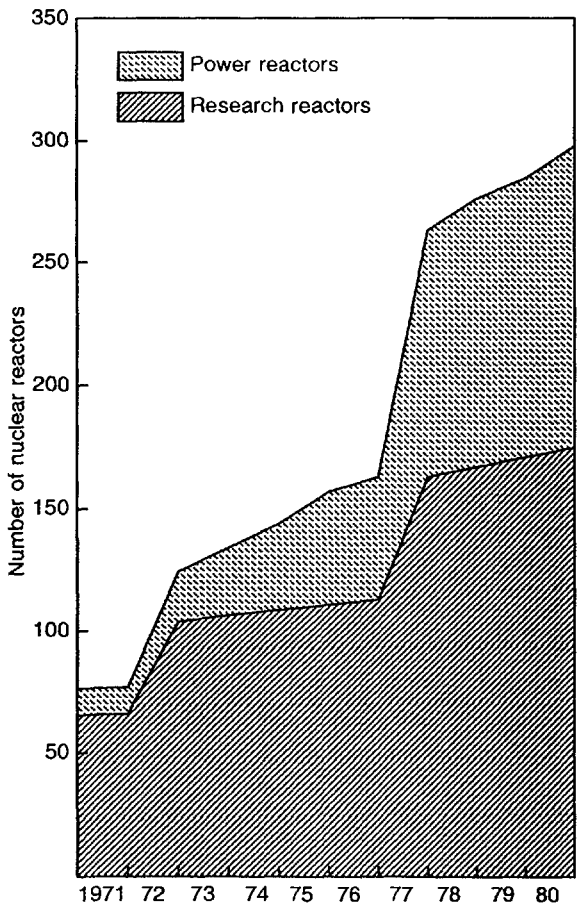


*FIG. 3. Number of nuclear reactors under safeguards.*

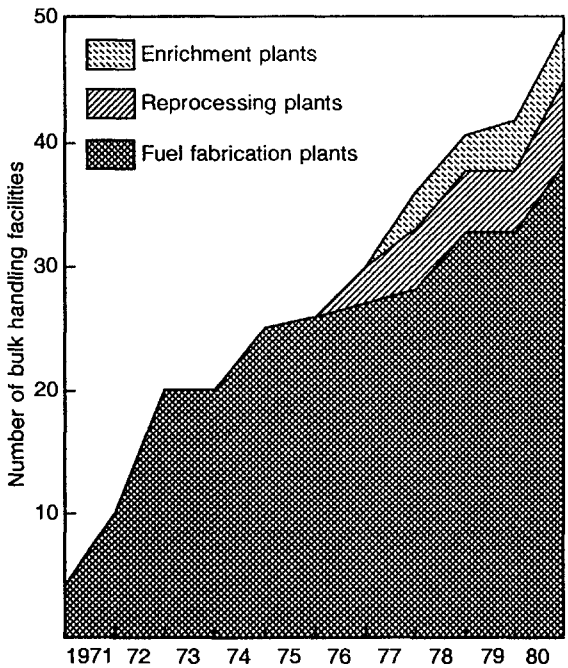


*FIG. 4. Number of bulk handling facilities under safeguards.*

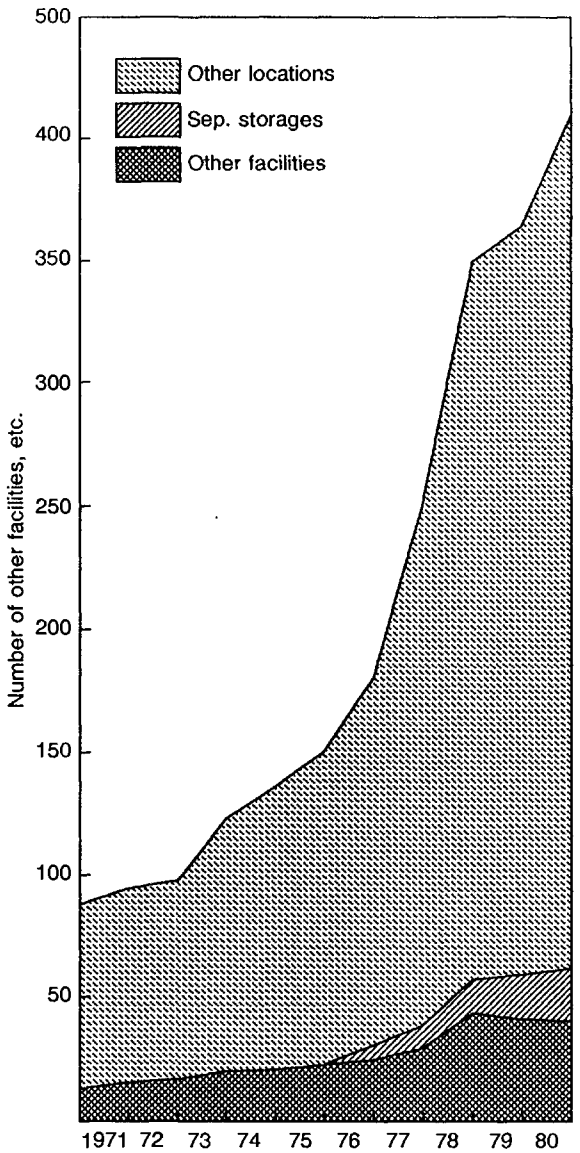


*FIG. 5. Number of separate storage facilities, other facilities and other locations under safeguards.*

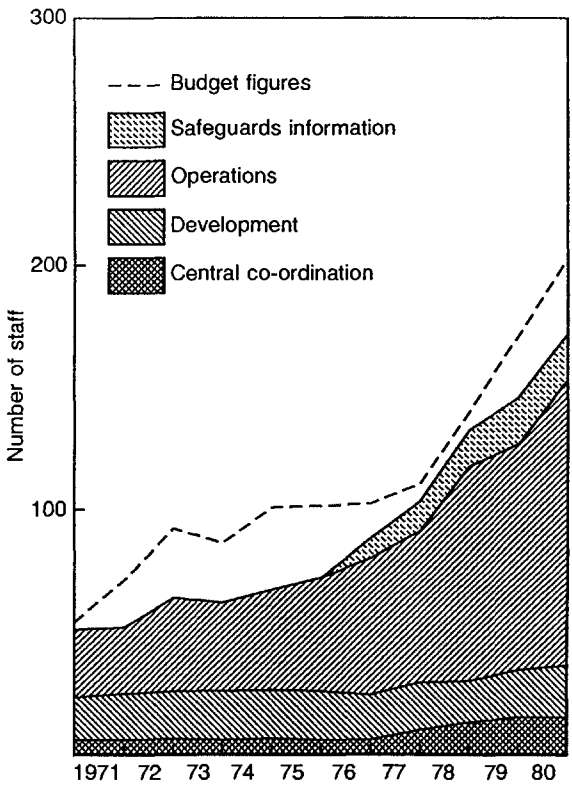


*FIG. 6. Increase in the number of Professional staff in the Department of Safeguards.*

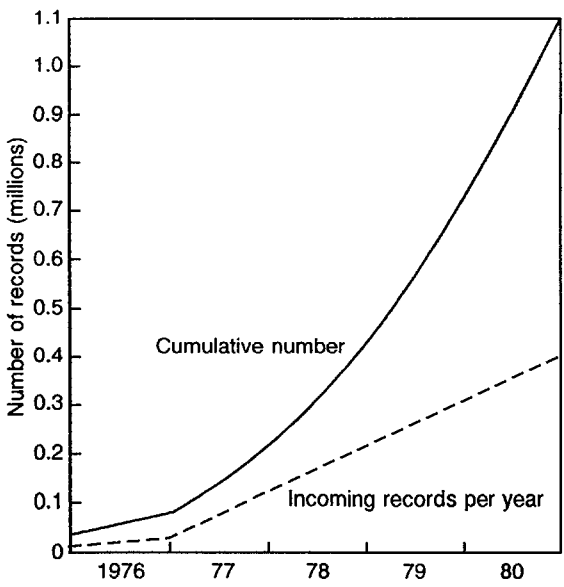


*FIG. 7. Increase in the workload of the Division of Safeguards Information Treatment.*

# Chapter 22
# HEALTH AND SAFETY

## PRINCIPAL INSTRUMENTS

IAEA Statute, Articles III.A.6, IX.1.3, XI.E.3, XII.A.1, 2, 5, 6, XII.B, X.C, and probably XI.F.4(b), XII.A.4, 7, XIV.B.1(b), XIV.C;
The Revised Health and Safety Document (INFCIRC/18/Rev.1);
Inspectors Document (GC(V)/INF/39, Annex);
Privileges and Immunities Agreement (INFCIRC/9/Rev.2);
Agency Safety Standards, for example:
- Basic Safety Standards for Radiation Protection (Safety Series No.9, STI/PUB/147);
- Regulations for the Safe Transport of Radioactive Materials (Safety Series No.6, STI/PUB/517);
- Safe Handling of Radionuclides (1973 edition) (STI/PUB/1);

The Revised Guiding Principles and General Operating Rules to Govern the Provision of Technical Assistance by the Agency (INFCIRC/167) I, 1(h);
Project Agreements and similar Agreements, for example:
- Malaysian research reactor and fuel (INFCIRC/287), Articles VIII, XIII.1, Annex A;
- Master Agreement for Assistance in Furthering Projects by the Supply of Materials (e.g. with Brazil (INFCIRC/147)), Article X;
- Regional Co-operative Agreement for Research, Development and Training Related to Nuclear Science and Technology (INFCIRC/167), Section 5(ii);
- Agreement Establishing the Asian Regional Co-operative Project on Food Irradiation (INFCIRC/285), Article VII;
- Supplementary Agreements for the Provision of Technical Assistance by the Agency (standard form), Article II;
- Research contracts (standard form);

The Agency's Radiation Protection Rules and Procedures (AM.X/1).

## 22.1. BASIC PROVISIONS

### 22.1.1. The Statute

During the period 1970–1980, no amendments to the Statute were made which affect the Agency's health and safety regime or its authority to establish safety standards and to provide for the application of these standards to its own operations, to Agency projects or to arrangements between States, nor did any of the organs of the Agency establish interpretations of the Statute which would require amending the information given in the basic book.

## 22.1.2. The Health and Safety Document

### *22.1.2.1. Development and revision*

The original Health and Safety Document of 1960 was not revised until 1975, and the new text was approved by the Board in February 1976[1]. The new Document has the same title as the previous one, "The Agency's Safety Standards and Measures". The revision was done "... on the basis of experience gained from applying those [i.e. the existing] measures to projects carried out by Members under agreements concluded with the Agency..."[2]. Preparatory work for the revision was carried out within the Secretariat, starting in the early 1970s[3]. Consultations with Governors on the general approach were initiated in June 1975[4], and in September 1975 a preliminary draft was issued for comment[5]. No comments were received, and in February 1976 the Board approved the Director General's proposal without discussion[6]. In submitting the revised Health and Safety Standards and Measures to the Board, the Director General emphasized that they were "consistent with the statutory requirements relating to the safety aspects of the Agency's own operations and of operations carried out by Member States that make use of the Agency's assistance in one way or another"[7].

### *22.1.2.2. Provisions*

As was the case with the original Health and Safety Document, the revised version does not touch upon the application of the safety standards and measures to the Agency's own operations. The Document defines, but does not establish as such, the Agency's safety standards; these are to be promulgated by the Board. Although the text refers frequently to the "Agency's safety measures" there is no definition of what these measures should comprise and how they should be established. The text of the original Document was substantially revised and the Appendix thereto deleted. The most significant change was the deletion of former Section VI, "Inspection by the Agency", and its replacement by a Section on "Safety Missions". As

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[1] GOV/DEC/88(XX), No. (12).
[2] INFCIRC/18/Rev.1, Note.
[3] GC(XVIII)/525, para. 9.
[4] GOV/INF/300, para. 2.
[5] GOV/INF/300, Annex.
[6] GOV/1773, GOV/OR/486, paras 1–2.
[7] GOV/1773, para. 2. This sentence was apparently intended to paraphrase a portion of Article III.A.6 of the Statute. The Director General's proposal did not indicate whether consultations (or collaboration) with organs of the United Nations or with specialized agencies had been carried out, as required by Statute Article III.A.6.

a result of that change the Agency could be considered as having waived its statutory right of carrying out routine verification of Agency assisted operations through health and safety inspections, since the obligatory character of routine inspections under the original Document was replaced by the advisory nature of safety missions to be carried out in agreement with the State. It should be noted that no corresponding change was made to the Inspectors Document, which thus still covers safeguards and health and safety inspections. However, in the light of the terms of the revised Health and Safety Document the relevant provisions in the Inspectors Document have, at least for agreements concluded after 1976, become partly inoperative[8]. Accordingly, distinct health and safety regimes governed, in theory, Agency assisted projects, depending on the date of conclusion of the relevant agreements. Under agreements concluded before 1976 the Agency is authorized to carry out routine and special inspections; under agreements concluded in 1976 and in the following years incorporating the revised Health and Safety Document, the Agency may send safety missions, but only in agreement with the State concerned; there were only two exceptions, which are discussed below. However, it should be recalled that no health and safety inspections at all were carried out by the Agency since the early 1960s under pre-1976 Project Agreements.

Apart from this fundamental change in the Agency's verification rights, a series of other important revisions were made. The new definition of 'safety standards' clearly establishes as their purpose "to protect man and the environment against ionizing radiation"[9]. The reference to the environment must be seen in connection with the general trend in the Agency's programme following the 1972 United Nations Conference on the Human Environment in Stockholm to address environmental questions. To facilitate comparison with the definitions in the original Health and Safety Document the important new basic definitions are given below[10].

> "The Agency's safety standards mean safety standards established by the Agency under the authority of the Board of Governors. Such standards comprise:
>
> (a) The Agency's basic safety standards for radiation protection, which prescribe maximum permissible doses and dose limits;
> (b) The Agency's specialized regulations, which are safety prescriptions relating to particular fields of operation; and

[8] The provisions of the Inspectors Document "are not mandatory, and they will only be given legal effect by the entry into force of the particular agreement which incorporates them". (GC(V)/INF/39, Annex, para. 3.)

[9] INFCIRC/18/Rev.1, para. 1.1.

[10] INFCIRC/18/Rev.1, para. 1.2.

(c) The Agency's codes of practice, which establish for particular activities the minimum requirements which, in the light of experience and the current state of technology, must be fulfilled to ensure adequate safety. Codes of practice are, as appropriate, supplemented by safety guides recommending a procedure or procedures that might be followed in implementing them."

"Safety measure means any action, condition or procedure to ensure the observance of safety standards".

There is one definition which overlaps with a similar definition in the revised Safeguards Document and the NPT Safeguards Document, namely that of 'nuclear facilities'. For the purposes of safeguards, nuclear facilities also include locations where nuclear material in amounts greater than a certain quantity is customarily used, as well as research and development facilities[11]. Under the Health and Safety Document, the definition is valid only for facilities forming part of the nuclear fuel cycle; thus, installations concerned with 'raw material', such as mines and mills, are excluded[12]. On the other hand, the application of safety standards is also required for certain types of devices and for certain radioactive material even below the quantitative limit for the application of safeguards. The terms 'standards' and 'measures' appear in the Statute, and their current definition is different from that in the original Health and Safety Document. It is obvious, however, that these statutory terms can be given a dynamic interpretation in the light of technical development and increasing concern about the protection of man and the environment. Accordingly, this difference between the original Health and Safety Document and the revised one need not create legal concern or doubt[13].

In Part II of the new Document (General) there is no reference to verification measures similar to those forming part of safeguards procedures (e.g. examination of records, submission of reports and performance of inspections). Emphasis is now placed on the task of the Agency to evaluate national standards and measures and to perform safety missions in order to assist States. Part III states briefly the requirement to provide the Agency with certain types of information. Part IV states, in terms somewhat different from those in the original Document, the basic conditions for the application of safety standards and safety measures. Again, these conditions apply only to 'Agency assisted operations', i.e. basically to Agency projects and technical assistance[14]. No reference is made to the application of these standards

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[11] See the definition of 'facility' in INFCIRC/153 (corrected), para. 106, and the definitions of 'principal nuclear facilities' and 'research and development facilities' in INFCIRC/66/Rev.2, paras 78 and 81.

[12] Health and Safety Document, Section 1.4.

[13] INFCIRC/18, I.1 and I.3.

[14] Statute Articles III.A.6 and XI.F.4, and the Revised Guiding Principles and General Operating Rules to Govern the Provision of Technical Assistance by the Agency (INFCIRC/267).

and measures to the Agency's own operations or to bilateral or multilateral operations if this is requested by the States concerned[15]. The Document also provides that the Agency may waive the application of its safety measures if the radiation hazard is minimal. In contrast to the provisions in the original Document, the Board of Governors does not retain specific authority to agree to a waiver of the application of these standards if the Agency's assistance is not 'substantial'. In fact, the concept of substantial assistance has completely disappeared from the Document. Presumably, this change was also due to the changed role of the Agency in health and safety matters, with new emphasis being placed on advice and assistance rather than verification, the conviction that it is in the primary interest of a State to ensure protection of its population and its environment against ionizing radiation, and the principle that all responsibility for safety is to be assumed by the State concerned[16]. Part V (Safety Missions) completely replaces the previous Part VI (Inspection by the Agency). In principle, safety missions have the purpose of providing advice and assistance and not of carrying out verification of compliance, and such missions may only be sent in agreement with the State concerned. There are only two instances[17] in which the Agency may send safety missions to a State without prior consent, namely:

— Upon notification of a major incident by a State;
— At the request of the Board of Governors.

The new Document provides that such compulsory missions are to be sent in accordance with the relevant provisions of the Statute. This unclear provision has been amplified by the footnote "See Article XII.A.6". The legal meaning of this footnoted reference is difficult to discern, but it was somewhat clarified when the draft Document was put before the Board. In his submission to the Board the Director General emphasized that the draft Document was "consistent with the statutory requirements relating to the safety requirements of the Agency's own operations and of operations carried out by Member States that make use of the Agency's assistance in one way or another"[18]. This statement apparently meant that the statutory provisions on inspections applied also to compulsory safety missions — a point left undetermined in the Document itself. The Director General also stressed that the approach taken was consistent with the Agency's approach in establishing safety codes and guides for nuclear power plants, the emphasis being on the help that the Agency should provide to Members in resolving safety issues when establishing and operating nuclear facilities.

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[15] Although foreseen by Statute Article III.A.6.
[16] INFCIRC/18/Rev.1, para. 4.1.
[17] INFCIRC/18/Rev.1, para. 5.2.
[18] GOV/1773, para. 2.

The Director General also drew attention to the concept of safety missions, without indicating that these would, in fact, replace inspections[19]. No explanation of the legal basis for relinquishing an important part of the statutory authority of the Agency was given nor was it requested by the Board. Also, no analysis was provided of the mechanism that would trigger those mandatory safety missions which could be undertaken upon the request of the Board. However, the ambiguity regarding the inspection rights of the Agency had apparently caused concern when the draft Document was first circulated for comments[20]. A statement was added to the Director General's memorandum to the Board, to the effect that the concept of safety missions would "not, however, preclude the Agency's right of inspection to the extent relevant to an operation involving the Agency's assistance, in accordance with the relevant provisions of the Statute"[21]. However, the Agency can only perform inspections for health and safety purposes if it is authorized to do this under the relevant agreement with a State. The above statement may, therefore, be somewhat misleading because inspections cannot be performed on the basis of the Statute alone. As a second important step the Director General proposed that 'safety measures', i.e. the implementation procedures to ensure the observance of safety standards, need no longer be approved by the Board, in view of their subordinate character[22]. There was no discussion in the Board on these points[23].

In Project Agreements and Supply Agreements for nuclear material concluded after 1976 the Governments concerned agreed to apply the safety standards and measures defined in the new Document, as well as standards "as might be established by the Agency from time to time". Accordingly, under the new Agreements, Governments agreed in advance to abide by standards that the Agency might establish in the future without the need to amend the Agreement. Under one Agreement, the Master Agreement with New Zealand for the Supply of Materials of 17 April 1980, the Agency has the right to carry out 'special inspections' upon request of the Board or in the case of a major incident[24]. The Agreement with New Zealand is the only new Agreement which refers to special inspections. A different health and safety regime applies, for example, under the Asian Regional Co-operative Project on Food Irradiation of 23 May 1980, which contains a simple statement to the effect that the Agency and each Party shall ensure the application of the relevant Agency health and safety standards and measures "in accordance with the applicable laws and regulations of each Party concerned"[25]. The Project and Supply Agreement

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[19] GOV/1773, para. 2.
[20] GOV/INF/300.
[21] GOV/1773, para. 2.
[22] GOV/1772, para. 3.
[23] GOV/OR/486, paras 1–2.
[24] INFCIRC/286, Article X.
[25] INFCIRC/285, Article VII.

with Malaysia of 22 September 1980 concerning assistance for a research reactor project[26] lists in an Annex the safety standards and measures to be applied, with mandatory application of the Agency's Basic Safety Standards for Radiation Protection[27] and the Agency's Regulations for the Safe Transport of Radioactive Material[28]. The Agreement provides for safety missions, but not for inspections. The Peruvian Project Agreement of 9 May 1978[29] contains similar provisions.

After 1976 the regime relating to advice on, and verification of, health and safety matters under agreements concluded by the Agency shows the following pattern:

(a) Health and safety 'inspections' may be performed under agreements incorporating the 'old' Health and Safety Document;
(b) Safety missions may be sent in agreement with the State concerned, and safety missions not requiring the agreement of the State may be sent upon instruction of the Board or upon notification of a major incident under agreements incorporating the revised Health and Safety Document;
(c) Both safety missions and special inspections may be performed under the Master Agreement with New Zealand.

#### *22.1.2.3. Legal status*

The revision did not change the legal status of the Health and Safety Document; in this respect it is similar to the Revised Safeguards Document (but not the NPT Safeguards Document, which has a different status). Although the revised Health and Safety Document contains predominantly procedural guidance and requirements for the negotiation of health and safety clauses in Project Agreements, some provisions of the Document itself have also been included by reference in such Agreements.

### 22.1.3. The Inspectors Document

The revision of the Health and Safety Document was not accompanied by corresponding changes in the Inspectors Document. There is a dual system of health and safety controls since 1976, resulting from the survival of the original Document through references to it in Project Agreements concluded before 1976 that remained in force after 1976. The dispositions relating to inspectors in Project Agreements concluded after 1976 refer only to safeguards inspectors but not to health and safety

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[26] INFCIRC/287.
[27] Safety Series No.9, STI/PUB/607.
[28] Safety Series No.6, STI/PUB/866.
[29] INFCIRC/266.

missions (with the exception of special inspections under the Master Agreement with New Zealand, which incorporates the Inspectors Document by reference as part of the health and safety regime)[30].

### 22.1.4. The Privileges and Immunities Agreement

The Privileges and Immunities Agreement has no longer been referred to in Project Agreements in connection with health and safety controls or advisory missions (with one exception, namely the Master Agreement with New Zealand). Under the Privileges and Immunities Agreement the additional privileges and immunities of its Article VII are only granted to officials of the Agency exercising functions of an inspector under Article XII of the Statute or those of a project examiner under Article XI thereof. However, the reference to Article XII.A.6 in a footnote in the revised Health and Safety Document, as well as the legislative history of the revised Health and Safety Document might be regarded as constituting a sufficient basis to consider at least the members of compulsory safety missions as inspectors in terms of the Statute and, therefore, entitled to the additional immunities under the Privileges and Immunities Agreement[31].

## 22.2. AGENCY SAFETY STANDARDS

### 22.2.1. Functions and definitions

The revised Health and Safety Document also changed the definition of the Agency's safety standards while maintaining their division into three categories:

(a) Basic safety standards
(b) Specialized regulations
(c) Codes of practice.

The revised Health and Safety Document attempts to clarify, as did the original Document, the distinction between standards and measures. 'Standards' are norms established by the Agency under the authority of the Board of Governors[32], and their application to assisted operations is mandatory[33]. 'Safety measures' are procedures to ensure that the standards are observed[34]. The Agency itself does not generally prescribe the safety measures to be applied to assisted operations

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[30] INFCIRC/286, Article X.2.
[31] GOV/1773, para. 2.
[32] INFCIRC/18/Rev.1, para. 1.2.
[33] Statute Article XII.A.2.
[34] INFCIRC/18/Rev.1, para. 1.3.

but evaluates the adequacy of planned safety measures by a State. If these are not adequate, the Agency may require additional measures. It also provides advice and assistance to a State in connection with these measures, through safety missions[35].

### 22.2.2. Formulation

#### *22.2.2.1. Legal requirements*

In the revised Health and Safety Document, even the few oblique references appearing in the original Document on consultation and collaboration with other international bodies in establishing Agency safety standards are deleted[36]. However, the Agency continued its close collaboration with other organizations in developing these standards. The final text of the revision of the Agency's Basic Safety Standards for Radiological Protection was not only based on recommendations by the ICRP but it was also agreed upon by ILO, the OECD/NEA and WHO. Such agreement by other organizations is not called for by the Statute, which provides only for consultation and collaboration, but it enhances the utility and acceptability of the standards, "which are intended to serve as broad guidelines for competent authorities of Member States"[37].

#### *22.2.2.2. Competent organs*

Under the new Health and Safety Document the Board continues to be the competent Agency organ to establish safety standards or to modify them[38]. The responsibility for establishing and modifying safety measures has been delegated by the Board to the Director General, as he had proposed[39].

##### 22.2.2.2.1. The General Conference

The Annual Reports by the Board of Governors to the General Conference regularly described the activities of the Agency in establishing safety standards[40]. During the 1970s there was not a single instance where such standards were submitted to the Conference for action, nor did the Conference pass any resolution or take a decision recommending these standards to the Agency's Members for application.

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[35] INFCIRC/18/Rev.1, para. 5.1.

[36] The original Basic Safety Standards of the Agency were based on the recommendations of the ICRP (see also INFCIRC/18, para. 37).

[37] GC(XXV)/642, para. 94.

[38] INFCIRC/18/Rev.1, para. 1.2.

[39] GOV/1773, paras 3–4; safety measures were considered to be 'subordinate'.

[40] See, for example, GC(XXV)/642, paras 94 and 96.

22.2.2.2.2. The Board of Governors

The Board has maintained its exclusive role and authority in approving safety standards. As in previous instances these standards and definitions were approved as proposed by the Director General, without amendment and even without substantive discussion[41]. The preparation of these standards involved experts from Member States and international organizations, and there was neither a reason nor an incentive for the Board to engage in a searching technical discussion.

22.2.2.2.3. The Secretariat

The function which the Secretariat exercised in the formulation and preparation of safety standards has remained basically unchanged. The previous involved procedure that was necessary for making even limited modifications to safety standards was considerably simplified. The Board granted the Director General the authority, which he had requested, to make 'changes of detail' on his own authority[42]. There is, however, no definition of such 'changes of detail'.

*22.2.2.3. Outline of procedure*

No uniform procedural pattern in the development or revision of Agency safety standards can be discerned. The Director General continued to decide, almost entirely on his own, which standards to establish or revise. However, the growing international concern regarding the protection of the environment and the control of pollution (see Section 22.2.4.5), the activities of other organizations and of States in these areas, and, last but not least, the Three Mile Island nuclear accident were important stimuli during the 1970s for the Agency to act.

The various steps and methods for initiation of, development of and approval for drafting or revising of Agency safety standards as described in the basic book have not significantly changed.

*22.2.2.4. Examples of procedure*

The complex and long procedure for developing standards, described in the basic book, has given way to a much shorter and simpler process for revising the existing regulations.

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[41] See, for example, GOV/DEC/92(XX), No. (9).

[42] See, for example, GOV/DEC/89(XX), No. (33)(c).

22.2.2.4.1. Basic Safety Standards

The Basic Safety Standards cover fundamental legal requirements and provide guidance on limiting radiation doses. The Standards serve as guidelines to Member States in establishing regulations for the protection of workers and the general public[43].

In 1977 the Agency started a joint effort with ILO, the OECD/NEA and WHO to revise its 1967 edition of the Basic Safety Standards in order to take account of the revised recommendations of the ICRP, issued in 1977[44]. An expert group, convened under the auspices of the four organizations, prepared a first draft in 1977, which was circulated to Member States in 1978. A revised draft was prepared in 1978 and circulated in 1980. Agreement on the final text was reached in December 1980[45] and the Board approved the revised Standards in September 1981[46]. The objective of the Standards, which are written in regulatory form, is "to provide guidance on the protection of man from undue risks of the harmful effects of ionizing radiation while still allowing beneficial practices involving exposure to radiation"[47].

This revision of the Basic Safety Standards was also essential for the updating of other subsidiary standards in the Agency's Safety Series. The Standards provide that for "IAEA operations or operations undertaken with the assistance of IAEA, WHO and ILO, the publication should be applied in the light of relevant national rules and regulations".

Because of this joint effort and the recommendations for their application the Basic Safety Standards have been widely accepted and incorporated into national laws.

22.2.2.4.2. Transport Regulations

As reported in the basic book, a second review of the Transport Regulations, which had already been revised in 1964, started in 1969. By that time the Regulations had been adopted by almost all international organizations concerned with transport and by many Member States as a basis for their own regulations. Member States

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[43] GC(XXV)/642, para. 94.

[44] ICRP Publication 26 (1977).

[45] GOV/2044.

[46] GOV/DEC/113(XXIV), No. (57). The Board authorized the Director General: (a) to promulgate the standards to be applied to the Agency's own operations or operations assisted by it; and (b) to recommend to the Agency's Member States that these standards be taken into account in the formulation of national regulations and in carrying out other regulatory activities.

[47] GOV/2044, Appendix.

were consulted about the difficulties they had encountered in applying the Regulations, and panels of experts meeting in 1970 and 1971 prepared a revision of the Regulations. Member States were invited to comment on the text, and the result of this comprehensive review was submitted to the Board for approval in 1972[48].

The revised Regulations were prepared in regulatory form so as to make it easier to use them and to facilitate their incorporation into other regulatory documents[49]. Also, material of an advisory nature was prepared, to be included in a volume that was to be added to the Regulations.

The Board approved the revised Regulations without discussion in September 1972. The Director General was authorized to promulgate them as part of the Agency's Safety Standards and to recommend to Member States and appropriate international organizations that the revised Regulations be used as a basis for national or international regulations, codes of practice and recommendations. The Director General was also authorized to promulgate 'changes of detail' to keep the Regulations technically up to date[50].

A number of panels worked together to revise the advisory material and to set out the principles underlying the Regulations. A Standing Advisory Group on the Safe Transport of Radioactive Materials (SAGSTRAM) was set up, which met twice. The Agency also started to collect information on the global volume of traffic in radioactive materials by all modes of transport and on accidents that might have occurred[51].

### 22.2.3. List of safety standards and related documents

As of 31 December 1980, the Agency had published documents relating to health and safety in the following series:

(a) Standards
- — Basic Standards
- — Specialized Regulations
- — Codes of Practice.

(b) Related instruments
- — Manuals and Guides
- — Notes and Addenda to Safety Standards
- — Reports.

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[48] GOV/1529 and Corr.1 and 2.
[49] GOV/1529, Annex.
[50] GOV/DEC/73(XV), No.(52).
[51] GOV(XXI)/627, para. 82.

### 22.2.4. Legal status

The general considerations set out in the basic book remained valid during the period covered by the present book. No development took place and no decision was taken by any of the Agency's organs which would require any change in the general legal status of the Agency's Safety Standards and related material as described in the basic book. Three types of situations can be distinguished:

(a) The Agency's own activities, to which all relevant standards must be applied. The Director General issued administrative instructions[52], called Radiation Protection Rules and Radiation Protection Procedures, to ensure that the Agency's Safety Standards and Guides contained in various manuals were applied to the Agency's own operations. These Rules also indicated those standards, guides and manuals that were considered as being 'of relevance'.
(b) Agency assisted operations (projects, technical assistance, joint research projects), which invariably require an agreement providing for the application of Agency standards.
(c) National laws and regulations, and regulations by other international organizations, for which the Agency's standards may serve as a model or as material to be incorporated.

#### *22.2.4.1. Agency activities*

The Agency's own technical operations, to which safety standards have to apply, have significantly expanded during the 1970s. By the end of 1980, the following locations were provisionally approved[53] for performance of work involving the use of ionizing radiation and/or radioactive materials:

(a) The General Laboratory in Seibersdorf;
(b) The Safeguards Analytical Laboratory (SAL) in Seibersdorf;
(c) The Hydrology Laboratory in the VIC;
(d) The Medical Applications Laboratory in Seibersdorf;
(e) The Dosimetry Laboratory in Seibersdorf;
(f) The Medical Services in the VIC;
(g) The Safeguards Instrumentation Laboratory in Seibersdorf;
(h) The Health Physics Laboratory in Seibersdorf;
(i) The International Laboratory of Marine Radioactivity in Monaco.

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[52] AM.X/1.

[53] AM.X/2/1; final approval was subject to the acceptance by the Director General of the final safety analysis report.

The Agency's Safety Standards and Guides were applied to its own operations on Agency premises[54]. Moreover, they were designed also to protect persons for whose radiation protection the Agency was responsible and who were assigned by the Agency to work on non-Agency premises[55] (e.g. safeguards inspectors when performing verification at national nuclear installations)[56].

For transport of radioactive materials to and from the Agency's premises and between Agency laboratories, the Radiation Protection Procedures require the application of the Agency's Regulation for the Safe Transport of Radioactive Materials[57]. The Radiation Protection Rules and Procedures were approved by, and issued under the authority of, the Director General[58]. A Secretariat Radiation Protection Committee, which also included a representative of the Legal Division and of the Staff Council, was functioning as the principal permanent advisory body to the Director General on radiation protection matters. The Committee was also charged with carrying out a biannual review and, if necessary, proposing amendments to the Rules and Procedures[59]. Apart from this general mandate the Committee had to evaluate the safety analysis report which has to be made for each location where radiation work is undertaken and which has to be approved by the Director General.

#### 22.2.4.1.1. Applicable Safety Standards

On all premises which are fully under the control of the Agency, whether it owns them or not, the Agency has full authority and responsibility to ensure that its Safety Standards are applied[60]. These Standards are complemented by the recommendations given in the various manuals in the Agency's Safety Series and by specific Radiation Protection Procedures. The method of making them applicable was through general administrative instructions published in the Agency's Administrative Manual[61].

By the end of 1980, there were eleven publications in the Agency's Safety Series containing standards, guides and manuals which were specifically stated to be 'of relevance'[62], depending on the nature of work carried out at a particular

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[54] Agency premises may be situated within or outside its Headquarters Seat; the determining factor for the application of safety standards is that these premises are under the effective control of the Agency.

[55] The Agency recognized that work outside Agency premises might take place under conditions not fully meeting the requirements for the Agency's own premises (AM.X/2, Introduction).

[56] Agency safeguards inspectors have thus to comply with the Agency's rules *and* with national regulations on health and safety. See Section 22.2.4.1.2.2.

[57] AM.X/2/IV, Agency Safety Series No.6 and No.37.

[58] AM.X/1, Rule 4.04.

[59] Ibid., Rule 4.03.

[60] Ibid., Rule 2.01.

[61] AM.X, Radiation Protection, 15 December 1980.

[62] AM.X/1, Introduction, footnote 2.

location. General safety and security measures (relating, for example, to the prevention of fires or explosions) have not become part of the Agency's Safety Standards, but they also constitute an integral part of the radiation protection system of the location concerned.

22.2.4.1.2. Locations

*22.2.4.1.2.1. Agency premises.* The term 'Agency premises'[63] includes all locations which are under the control of the Agency pursuant to a Headquarters Agreement or a similar instrument with a Government (the Headquarters Seat, the Monaco Laboratory). Moreover, the term also covers installations which have been recognized de facto by the Austrian Government as being part of the Headquarters Seat, i.e. the Seibersdorf Laboratory. Also included are the premises of the Medical Services, which are housed at the VIC in the area common to the organizations and are operated under the responsibility of the Agency.

*22.2.4.1.2.2. Non-Agency premises.* Non-Agency premises are not under the control of the Agency, but under the control of a Government, a national or international organization, or a private institution where persons for whose radiation protection the Agency is responsible perform work on behalf of the Agency[64]. The most frequent case is the application of safeguards by inspectors carrying out verification functions at fuel cycle facilities and research and development installations. In principle, the laws, regulations and procedures agreed to by the Agency and the State concerned must be followed. In the absence of an agreement, persons who perform work on behalf of the Agency on non-Agency premises are required to follow the Agency's Radiation Protection Rules and Procedures if the local conditions do not meet Agency requirements. The Subsidiary Arrangements to Safeguards Agreements provide that Agency inspectors are to comply with the health and safety rules of the respective facility and that the Agency is to be informed of the health and safety rules applicable at a particular plant.

22.2.4.1.3. Transport and shipment

Particularly because of the growing safeguards responsibilities of the Agency, the quantities and types of radioactive materials shipped to and from the Agency's laboratories in Seibersdorf have substantially increased. Accordingly, procedures

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[63] Within these premises or locations all areas are classified in accordance with the safety analysis report. These areas may again be subdivided into special zones.

[64] Individuals for whose protection the Agency is responsible must comply "with any radiation protection laws, regulations and procedures which the State and the Agency have agreed should be applicable" (AM.X/1, Rule 3.01).

have been established to cover the transport of such material by the Agency itself (for example using an Agency car for transport from a commercial carrier to Seibersdorf and vice versa) as well as receipt and dispatch of such material by the Agency. The Agency must ensure not only that its own regulations are observed (in particular its Transport Regulations) but also that the legal requirements of countries on the itinerary are observed[65].

22.2.4.1.4. Persons concerned

The Agency has assumed radiation protection responsibility for all persons on Agency premises, whether they are staff members or not, including visitors.

The Agency has also recognized that it has such responsibility on non-Agency premises for persons in a contractual relationship with it and who were assigned by the Agency to work on such premises. These persons include staff members, technical co-operation experts and individuals covered by Special Service Agreements with the Agency[66].

*22.2.4.2. Quasi-Agency activities*

The research contract programme is designed to stimulate research in specific fields of interest to the Agency and is thus covered by the general terms of Article III.A.1 of the Statute, authorizing the Agency "to encourage and assist research on ... atomic energy for peaceful uses throughout the world". Research contracts were concluded with scientific institutions in Member States[67], and the Governments of the States concerned were informed of the contracts. Research contracts provide that "the contractor shall observe any pertinent health and safety regulations that are applicable to the Agency's own operations and are communicated to the contractor, except as otherwise agreed by exchange of letters"[68]. The prevailing practice described in the basic book continued, and the Agency has never verified compliance with this undertaking.

*22.2.4.3. Agency projects*

The application of safety standards to Agency projects, as well as some developments during the period under review are discussed in Section 22.3.

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[65] AM.X/2/IV; shipments should conform to the Agency's regulations, legal conditions of countries on the itinerary and international regulations applicable to the means of transport.

[66] AM.X/1.

[67] AM.IX/6.

[68] Research Contract form N-39 A (Feb.1970), Article VII(d).

*22.2.4.4. Other national and international projects*

There has been no case where the Agency was requested to apply its Safety Standards to any arrangement for which it did not provide any assistance.

*22.2.4.5. Protection of the environment*

With the growing concern of States and international organizations regarding the protection of the environment it was natural, and indeed inevitable, that the activities of the Agency in the health and safety field would expand considerably. Protection of persons against the noxious effects of ionizing radiation was no longer considered sufficient, the problem having attained much broader dimensions, coupled with acute awareness and sensitivity of the public. The United Nations and other organizations started extensive activities in the environmental field and, therefore, jurisdiction and responsibilities had to be delineated and the Agency's competence defined and ensured. This was particularly important because it became clear that the future of nuclear power depended to a large degree on its compatibility with policies ensuring a sound and intact environment and with public perception that this was indeed the case.

Already in its 1969/1970 report to ECOSOC the Agency included a special addendum on "Nuclear energy and the environment" [69].

The Annual Reports to the General Conference for 1969/1970 [70] and for 1970/1971 [71] stated that special attention had been given to "the problem of radioactive environmental pollution". In August 1970 a Symposium on Environmental Effects of Nuclear Power Stations was held in co-operation with the USAEC. The 1971 General Conference was informed by the Director General that, as nuclear power continued to expand, its effects on the environment were being carefully assessed [72]. The representative of the United Nations drew the attention of the Conference to the fact that the problem of the environment had attracted more and more attention in United Nations circles in recent months [73]. At that time the Agency was also considering two projects:

(a) The establishment by the Agency of an international register of substantial releases of radioactive wastes into seas and oceans;
(b) The establishment within the Agency of a central repository, in co-operation with WHO, of data on releases into the environment in connection with civil uses of nuclear energy.

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[69] INFCIRC/139/Add.1.
[70] GC(XIV)/430, para. 74.
[71] GC(XV)/455, para. 96.
[72] GC(XV)/OR.144, paras 14–17, with some details on Agency activities.
[73] GC(XV)/OR.144, para. 4(a).

The Annual Report for 1971/1972 generally listed the Agency's activities in the health and safety field under the heading "Environmental Operations" and pointed to the expansion of the Agency's activities in that area[74].

Of major concern for the Agency at that time was its role and its degree of participation in the 1972 United Nations Conference on the Human Environment in Stockholm. As early as 1971 and subsequently in February 1972[75] the Director General informed the Board of the Agency's interest and participation in the preparatory work for the Conference and suggested topics to be discussed by the Conference, including proposals for an international register of significant radioactive releases. In March 1972 the Board decided that the Agency should take the leading role in preparing safety standards for the dispersion of radioactive waste into the environment[76].

The Agency participated in the preparations for the Stockholm Conference and took an active part in the Conference itself[77]. This Conference had a major impact on the Agency's programme and was one of the factors leading to an expansion of the Agency's activities in respect of the environment.

Beginning with 1973 the Agency extended its programme[78] relating to the environment. This programme consists of four major components:

(a) An expanded programme on nuclear safety and environmental protection;
(b) The assumption of the responsibilities foreseen for the Agency under the 1972 Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter (the London Dumping Convention);
(c) Co-operation with the United Nations Environment Programme (UNEP);
(d) Expansion of the activities of the Monaco Laboratory to cover non-radioactive pollution of the marine environment.

The proposed terms of reference of the Governing Council of the UNEP included broad overall competence "to provide policy guidelines for the direction and co-ordination of environmental programmes within the United Nations system". The Executive Director should "... co-ordinate environmental programmes within the United Nations system, to keep under review their implementation and assess

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[74] GC(XVI)/480, paras 91–104.

[75] The Agency prepared jointly with WHO a number of papers for the Conference and contributed to other basic papers for the Conference. The Agency also participated in the ACC Functional Group on the Human Environment. See, in particular, GOV/INF/240, paras 3–8, and GOV/INF/240/Add.1, paras 12–18.

[76] GOV/DEC/71(XV), No.(26)(a).

[77] GOV/INF/256.

[78] GOV/1583.

their effectiveness"[79]. Earlier, the Agency's Board had taken the view that no new international machinery was required with regard to the impact of nuclear energy on the environment[80], but the United Nations General Assembly did not except nuclear energy from the competence of the UNEP[81].

The expansion of the environmental programme for 1973 required additional funds. In soliciting special extrabudgetary contributions for 1973 the Director General acted on the basis of the authorization of the General Conference for him to use special contributions or revenues from other sources extraneous to the Regular and Operational Budgets for 1973 for services provided to Member States and international organizations[82]. Special voluntary contributions were thus solicited and obtained to provide interim financing for an activity which was intended to become a regular component of the Agency's programme. From 1974 on, this activity was financed under the Regular Budget, with additional support from the UNEP.

### 22.2.4.5.1. The Stockholm Conference

The 1972 United Nations Conference on the Human Environment (the Stockholm Conference) had important consequences for the Agency in the programmatic field. The recommendation of the Conference to establish a United Nations Environment Programme with overall co-ordinating functions for environmental programmes within the United Nations system raised problems of collaboration, competence and jurisdiction in a field that was vital for the future of nuclear energy, namely waste disposal and releases of radioactivity into the environment. The suggestion of the Agency to develop, together with WHO, a registry for releases of significant quantities of radioactive materials into the biosphere received support from the Conference. Efforts to prepare a comprehensive international Convention for the control of dumping of radioactive wastes and other radioactive matter into the ocean were intensified and the Conference recommended that such a Convention be concluded before the end of 1972[83]. The Conference adopted the Declaration on the Human Environment[84].

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[79] GOV/INF/256, para. 5.

[80] INFCIRC/146, para. 45.

[81] There was no instance of the Governing Council of the UNEP addressing policy guidelines to the Agency, as it could do under its terms of reference. The UNEP started collaboration with the Agency by contributing to projects of interest to the Programme.

[82] GC(XVI)/RES/292, para. 2(a).

[83] The Director General's Report to the Board on the results of the Conference (GOV/INF/256).

[84] For the text of the Declaration and related material, see UN Document A/CONF.48/14.

### 22.2.4.5.2. The Agency's role under the Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter (the London Dumping Convention)

The participants of intergovernmental meetings in 1972 in Reykjavik and in London had prepared draft texts of a Convention to control dumping of wastes and other harmful matter into the ocean. On the basis of this preparatory work a Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter (the London Dumping Convention)[85] was adopted at a meeting of Governments held in London from 30 October to 13 November 1972. This Convention provides for a dual role of the Agency:

(a) To define high level radioactive wastes or other high level radioactive matter, which may not be dumped. Article IV.1.a of the Convention prohibits the dumping of wastes and other matter listed in Annex I of the Convention. Item 6 of that Annex reads as follows:

> "High-level radioactive wastes or other high-level radioactive matter, defined on public health, biological or other grounds, by the competent international body in this field, at present the International Atomic Energy Agency, as unsuitable for dumping at sea."

(b) To make recommendations regarding special permits for dumping of other radioactive wastes and radioactive matter. Article IV.1.b of the Convention provides that a special permit is required for the dumping of wastes or other matter listed in Annex II of the Convention. Item D of Annex II reads as follows:

> "Radioactive wastes or other radioactive matter not included in Annex I. In the issue of permits for the dumping of this matter, the Contracting Parties should take full account of the recommendations of the competent international body in this field, at present the International Atomic Energy Agency."

The Director General interpreted the Board's decision of March 1972, that the Agency should take a leading role in the elaboration of standards for the dispersion in the environment of radioactive wastes from peaceful uses of nuclear energy[86], as authorizing him to accept the responsibilities under the Convention. The Convention does not stipulate how the Agency should carry out this task. Once the Agency had established the definition and recommendations, the acceptance of the technical

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[85] INFCIRC/205.

[86] GOV/DEC/71(XV), No.(26).

definition and recommendations would be considered at consultative meetings of the Parties to the Convention. The definition of high level radioactive wastes and other high level radioactive matter, prepared by the Agency, was thus subject to formal acceptance by the Parties.

The second task of the Agency was the making of recommendations to the Parties; these recommendations would, however, not have a binding effect under the Convention.

To carry out both tasks the Agency convened a group of experts in 1973. In June 1973 the Director General was already in a position to issue a document for the Board containing a provisional definition and recommendations for the issue of special permits[87]. On the basis of comments received, this document was revised by the Secretariat[88] and put before the Board for action in June 1974. The Board deferred action, and a further revision by a working group was made in July 1974. The revised definition and recommendations were still provisional, but they were considered as meeting, for the time being, the requirements of the Convention.

In September 1974[89] the Board authorized the Director General to transmit the provisional definition and recommendations to the Government of the United Kingdom, which, at that time, was performing Secretariat functions under the Convention[90]. This was done on the understanding that the provisional definition and recommendations should not in any way be construed as encouraging dumping and that they would be subject to periodic review and revision; the first such review was to start in early 1975. On 6 December 1974 the Director General made the communication in question to the United Kingdom[91].

The Convention entered into force in 1975. The First Consultative Meeting of the Contracting Parties, held in September 1976, accepted the Agency's provisional definition and the recommendations as operative under the Convention and at the same time requested that the Agency improve them further in accordance with comments made during this meeting[92]. By that time, the Intergovernmental Maritime Consultative Organization (IMCO) had become the Secretariat of the Convention; IMCO was requested by the Meeting to study, in collaboration with the Agency, the OECD/NEA and other international organizations, the question of notification and prior consultation procedures with regard to the dumping of radioactive wastes as provided for under the Convention.

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[87] GOV/1622.

[88] GOV/1679.

[89] For the discussion in the Board, see GOV/OR/467, paras 44–54; GOV/OR/468, paras 1–40; GOV/OR/469, paras 12–37.

[90] GOV/DEC/181(XVII), No. (54).

[91] INFCIRC/205, Add.1.

[92] GOV/1820, Annex.

Since 1967, a number of ocean dumping operations had been carried out by some Western European countries under the auspices and supervision of the OECD/NEA. As a consequence of the entry into force of the Convention, the OECD/NEA took steps to redefine its role with regard to dumping and proposed that a consultation and surveillance mechanism be set up for sea dumping by OECD Member States[93].

The expanded role proposed for the Agency by the First Consultative Meeting and the initiative by the OECD/NEA raised the question of the extent to which the Agency should become involved "in establishing standards, guidelines, recommended practices and procedures, prior notification and consultation procedures, and surveillance services for sea dumping either within the perview of the London Convention or in collaboration with such international organizations as OECD/NEA"[94]. Another question that arose at the Meeting was the increasing degree of involvement of the Agency, going much beyond its initial specific task of preparing a definition and recommendations under the Convention.

The process of reviewing the provisional definition and recommendations was started in February 1975, and a number of consultants' meetings were held from 1976 to 1977. An Advisory Group, consisting of legal and technical experts from 23 countries in which IMCO, the OECD/NEA and UNEP also participated, met in February 1978 to review the provisional definition and recommendations on the basis of the conclusions of the consultants' groups which had considered both the oceanographic and radiological aspects. The groups of radiological and oceanographic experts had come to the conclusion (which was then endorsed by the 1978 Advisory Group) that the total quantities of radionuclides dumped per unit of time, i.e. the release rate, was the relevant factor, rather than the concentration implied by the terms 'high level radioactive wastes or other high level radioactive matter'. This led to the conclusion that there were no 'high level' radioactive wastes that would be intrinsically unsuitable for dumping and that the relevant criterion for control was the release rate. It was recognized, however, that such an approach would not be compatible with the Convention, as worded, and the Advisory Group suggested that the Convention Parties might reconsider the wording of Paragraph 6 of Annex I; this would involve an amendment to the Convention. The Director General stated that he intended to have the matter brought before the third Consultative Meeting of the Parties in October 1978. The Board authorized the Director General, in June 1978, to transmit the revised definition and recommendations to IMCO[95], but no longer classified the definition and recommendations as provisional. IMCO was requested to put the definition and recommendations before the third Consultative Meeting and

[93] GOV/1820.
[94] GOV/1820, para. 6.
[95] GOV/OR.521, paras 32–50.

to inform the Meeting that these should not in any way be regarded as encouraging dumping, and that they would be subject to review and revision by the Agency as and when appropriate in the light of technological developments and increased scientific knowledge.

22.2.4.5.3. The Agency's role under other international conventions

The London Dumping Convention encourages States to enter into regional agreements supplementary to the Convention for the Protection of the Marine Environment (Article VIII). The Convention for the Protection of the Mediterranean Sea against Pollution of 16 February 1976 (the Barcelona Convention) charges the Agency to define 'high- and medium- and low-level' radioactive wastes or matter which must not be dumped into the Mediterranean Sea area pursuant to Article 4 of the first Protocol (Paragraph 7 of Annex I to the first Protocol). Also, as in respect of the London Convention, the Agency was to make recommendations to the Parties to the Barcelona Convention regarding permits for the dumping of radioactive wastes or other radioactive matter that were not included in Annex I. The UNEP assumed Secretariat duties for the latter Convention and the Agency closely co-ordinated its tasks under the two Conventions[96].

*22.2.4.6. National legislation*

The Agency has continued its practice of recommending that the Agency's safety standards shall "... be used as the basis for national and international regulations, codes of practice and recommendations..."[97].

As regards safety codes a slightly different language was used, for example "... the code shall be taken into account in the formulation of national regulations, recommendations, codes of practice..."[98].

The Agency Safety Standards were written in regulatory form so that they could be easily incorporated or transformed into national regulations[99]. Because such standards have been developed with the participation of experts from Member States and international organizations and circulated to Member States for comment before their adoption, they have been widely accepted as a basis for national legislation. The Agency provided to a number of countries advisory services in nuclear law, including health and safety aspects[100], conducted an international seminar on

[96] GOV/1820, paras 8 and 9.

[97] For example in respect of the Transport Regulations (GOV/DEC/73(XV), No. (52)).

[98] GOV/1783, para. 6(b).

[99] Note, for example, the Regulations for the Safe Transport of Radioactive Materials (Safety Series No. 6).

[100] For example in 1979 to Indonesia, Malaysia and Yugoslavia (GC(XXIV)/627, para. 193).

nuclear law and safety regulations[101], and provided advice and assistance in health and safety matters to Member States[102]. All these activities promoted the national acceptance of the Agency's Safety Standards and related recommendations.

*22.2.4.7. Decisions by international organizations*

When the Board adopted the revised Transport Regulations it authorized the Director General to recommend them to international organizations "as the basis for international regulations" [103]. In fact, by mid-1980, the Transport Regulations had been adopted by all international organizations in the transport field and had been incorporated into international regulations and conventions governing the carriage of goods by air, land and water[104]. The Transport Regulations have thus provided a sound basis for ensuring that transport of radioactive material was internationally regulated in a comprehensive and adequate manner with respect to different modes of conveyance.

Two specific points warrant further discussion:

(a) The relationship of the Transport Regulations to measures for the physical protection of nuclear material;
(b) A proposed international convention for radioactive transport.

Both the Transport Regulations and the Physical Protection Convention apply to the carriage of nuclear material. Legally, there is a basic difference between them. Once the Transport Regulations are adopted within a national legal context, they are to a large extent self-executing and can be applied as such. This is not the case with the Convention, which merely sets out the levels of protection to be applied and the categories of nuclear material for that purpose[105]. Detailed requirements to put the terms of the Convention into effect are to be determined by national legislation. Requirements for physical protection of nuclear material in transit have been the object of the recommendations by the Agency[106]. These are, of course, not a substitute for safety measures, but they are complementary to them. Nonetheless, there may be areas where the Transport Regulations and physical protection requirements are in conflict, for example the labelling and marking of packages or the display of

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[101] GC(XXIV)/627, para. 192.

[102] Listed in the Annual Reports under "Nuclear Safety and Environmental Protection" (e.g. GC(XXV)/642, para. 99).

[103] GOV/DEC/73(XV), No. (52).

[104] Secretariat note to an "Advisory Group on Comprehensive Review and Revision of the Regulations for the Safe Transport of Radioactive Materials" (Vienna, September 1980, AG-266, paper No. (22), II).

[105] Annexes I and II to the Physical Protection Convention.

[106] INFCIRC/225/Rev.1.

placards on vehicles carrying radioactive material. For reasons of physical protection, such shipments should be as inconspicuous as possible. Since many Agency agreements provide for the application of the Agency's Safety Standards as well as of its physical protection recommendations, difficulties in complying with the obligations under both documents could result. While no concrete problem arose, the problem of finding a co-ordinated approach to the two areas continued to exist.

The question of an international convention for the transport of radioactive material which should give increased legal effect to the Agency's Transport Regulations has been raised from time to time[107]. There are separate international conventions and regulations, depending on the means of conveyance, such as:

(a) The Convention on International Civil Aviation (the Chicago Convention) with its "Dangerous Goods Annex";
(b) The Restricted Articles Regulations (RAR) of the International Air Transport Association (IATA);
(c) The International Regulations concerning the Carriage of Dangerous Goods by Rail (RID), set out in Annex I to the International Convention concerning the Carriage of Goods by Rail (CIM);
(d) The European Agreement concerning the International Carriage of Dangerous Goods by Road (ADR);
(e) The International Maritime Dangerous Goods Code established by IMCO.

The desirability of establishing such a convention was discussed, inter alia, when an Advisory Group in 1977 considered the future programme of the Agency on the safe transport of radioactive materials[108]. The conclusion of the Group was that the desired purpose of achieving greater harmonization in the interpretation and application of the Agency's Regulations would be served better through increased co-ordination and co-operation between the Agency and international and regional organizations than by the elaboration of a convention[109]. Embarking upon the process of framing another convention would neither respond to a pressing need nor reflect a practical approach[110].

In this context it should be noted that the question of a 'super-convention' to cover the transport of dangerous goods by all modes of transport was considered in 1979 within the United Nations Committee of Experts on the Transport of Dangerous

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[107] Secretariat note referred to in footnote 104.

[108] AG-126, 28 March to 1 April 1977.

[109] In particular ICAO, IATA, IMCO, Central Office for International Railway Transport (OCTI), Central Commission for Navigation of the Rhine (CCNR), the European Economic Community (EEC), the United Nations Economic Commission for Europe (ECE).

[110] Moreover, there would be great legal difficulties in excluding radioactive transport from the existing, long standing conventions.

Goods and was to be further discussed by this body. In the opinion of the majority of the Group of Rapporteurs of the Committee, the Convention should include radioactive materials[111].

## 22.3. APPLICATION OF SAFETY STANDARDS TO AGENCY PROJECTS

The Agency's philosophy in health and safety matters and in the implementation of its Statutory responsibilities shifted from the tutelary approach advocated in the basic book to a role of providing assistance and advice to its Member States. Under the revised Health and Safety Document, "... the Agency's principal objective is to provide practical guidance and effective assistance to its Members in the safe use of atomic energy for peaceful purposes" [112]. Nonetheless, the Agency has retained the responsibility of evaluating the health and safety standards and measures proposed for projects and has reserved the right to make a determination regarding the adequacy of the safety measures provided for before it gives its consent to the start of assisted operations[113]. Unlike the first Health and Safety Document, the revised Document states that it is immaterial whether the Agency's assistance is small in relation to the overall dimensions of a project[114]. The type of standards and measures to be applied and the Agency's functions depend only on the potential hazard of the assisted operation.

### 22.3.1. Reactor projects

#### *22.3.1.1. Evaluation*

Under the revised Health and Safety Document a State requesting assistance from the Agency must provide it with information consisting roughly of three categories:

(a) The type of safety standards the State proposes to apply to the operation. Almost invariably, the applicable Agency standards were accepted by the State[115].

(b) Information on the operation, so that the Agency can determine whether the project requires safety measures at all[116].

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[111] Secretariat note (p.5) referred to in footnote 104.

[112] INFCIRC/18/Rev.1, para.2.2.

[113] Ibid., para.4.8.

[114] Compare INFCIRC/18, para.14(a), with INFCIRC/18/Rev.1, para.2.6(a).

[115] INFCIRC/18/Rev.1, para.3.1(b); see Section 22.3.1.2.

[116] Ibid., para.3.1.

(c) Information on the planned safety measures so as to ensure the observance of the standards agreed with the Agency. Such information is required if the Agency concludes that the operation is of a type that calls for safety measures (i.e. if the operation involves a nuclear facility, or a device or radioactive material which may present a radiation hazard). This information has to contain the name of the administrative organization in the State that deals with safety matters and ensures the safety of the operation, and a safety analysis report or similar document for the project[117]. This information provides the basis for the Agency to determine whether the planned safety measures are adequate and effective[118].

After evaluation of the information by the Secretariat and, if necessary, the dispatch of a safety mission, and upon the conclusion that the proposed standards and measures are adequate, the Director General submits a brief document to the Board. In this document he indicates in general terms the safety standards to be applied (usually those of the Agency); that sufficient information had been submitted in accordance with Statute Article XI.A and E, and his evaluation that "the project appears sound, meets the requirements of the Statute and merits the Board's approval" [119]. Occasionally, a statement on the adequacy of funds, the availability of trained personnel and the results of Agency missions[120] are added.

In respect of two projects relating to the establishment of nuclear power plants (Mexico and Yugoslavia) the Director General added further comments because safe operation of such large scale plants, which were yet to be built, obviously posed problems of a character and magnitude different from those for research reactor projects. He pointed out that design, construction and operation of the reactor would be subject to surveillance by a national body, independent of the operator, and also that further information on the activities of that body would be analysed to ensure that the positive assessment which the Agency had made continued to apply[121].

### *22.3.1.2. Project Agreements*

The revised Health and Safety Document also requires that the following three points be covered in Project Agreements[122]:

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[117] INFCIRC/18/Rev.1, para. 4.7.

[118] Ibid., para. 4.8.

[119] GOV/1808, para. 6.

[120] For example the power reactor project with Mexico (GOV/1651 and GOV/1651/Mod.1). In connection with that project the Director General informed the Board that the Agency had sent three siting missions to Mexico and "should not need to incur substantial expenditure in order to check the application of the health and safety measures envisaged" (GOV/OR.462, para. 22).

[121] GOV/1651, GOV/1674, GOV/1681.

[122] INFCIRC/18/Rev.1, paras 4.4 and 5.4.

(a) A specification of the safety standards to be applied to the project;
(b) The application of the Agency's safety measures;
(c) Arrangements for Agency safety missions.

During the period under review the Board approved a number of projects relating to training or research reactors and to additional supplies of fuel for such reactors. The Agency also provided assistance for two power reactor projects, the Laguna Verde Nuclear Power Plant in Mexico[123] and the Krsko Nuclear Power Plant in Yugoslavia[124]. In the case of several training and research reactors a short paragraph in the Agreement provided that the "health and safety measures applicable to the project shall be those set forth in Agency document INFCIRC/18" [125].

In other instances the Project Agreement provided that the "health and safety measures specified in the Annex shall apply" [126] or that the "safety standards and measures specified in the Annex to this Agreement shall apply to the project" [127]. The latter text is preferable because it specifically refers to the safety standards.

The language in these Annexes was changed slightly after the revised Health and Safety Document was published, and thereupon included the following points[128]:

(a) A reference to the revised Health and Safety Document;
(b) An indication of the applicable safety standards and a promise of an 'endeavour' by the State to follow the Agency's Codes of Practice;
(c) The obligation to submit a detailed safety analysis report and a listing of the activities that should be given more coverage in the report. The assisted operation may only start after the Agency has made a favourable evaluation and given its consent. The same principle was to apply to substantial modifications to the activities evaluated by the Agency;
(d) The obligation to submit the reports specified in the Health and Safety Document;
(e) Arrangements for safety missions;
(f) Provisions dealing with changes in the safety standards and measures.

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[123] INFCIRC/203 and Add.1.
[124] INFCIRC/213.
[125] INFCIRC/143, Section 11.
[126] INFCIRC/203, Article V.
[127] INFCIRC/266, II, Section 7. The related Supply Agreement provides that the safety standards and measures of the Project Agreement were to apply to the nuclear material subject to the Supply Agreement (INFCIRC/266, I, Section 13).
[128] INFCIRC/287, Annex.

The body of the Project Agreements contained a number of additional provisions, such as:

(a) The power of the Board to make binding interim decisions also on health and safety matters, pending the settlement of a dispute by arbitration[129]. Some agreements did not, however, include such a provision[130].
(b) In the case of Parties to an NPT Safeguards Agreement the safeguards article of the Project Agreement referred to the former Agreement, coupled with a statement that its articles are to apply to Agency inspectors[131]. Such reference would lead to problems of interpretation should a dispute arise, because NPT Safeguards Agreements no longer incorporate the Inspectors Document by reference. In such cases there was also no reference to the Privileges and Immunities Agreement.

*22.3.1.3. Implementation*

The trend towards reduction of the Agency's verification in respect of projects has continued, for the reasons described in the basic book. There was no formal, legal distinction in the status and authority (but obviously in the functions) between the various types of safety missions that the Agency performed. These missions were termed siting missions, safety review missions, safety missions, safety assessment missions, evaluation missions, etc. However, two Annual Reports, those for 1976 and 1977[132], referred to missions to perform verification of the safe operation of research reactors. There was no instance when a safety mission was dispatched to an assisted project at the request of the Board or upon notification of a nuclear accident.

### 22.3.2. Non-reactor projects

There was no assistance to fuel cycle facilities other than power and research reactors. The supply of nuclear material in small quantities for other purposes was not governed by Project Agreements but by special arrangements for the supply of nuclear material.

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[129] This was a continuation of the existing practice; see INFCIRC/143, Section 18; INFCIRC/162, Article X.

[130] The Master Agreements for the Supply of Nuclear Material, presumably in view of the small quantities of material involved.

[131] INFCIRC/203, Article VI.

[132] GC(XXI)/580, para. 78, and GC(XXII)/597, para. 23.

*22.3.2.1. Joint projects*

During the period under review, two new joint projects were started with the participation of the Agency:

(a) *The Regional Co-operative Agreement for Research, Development and Training related to Nuclear Science and Technology (RCA)*

This Master Agreement provides for Subsidiary Agreements to cover co-operative projects as might be undertaken by interested Parties. Such Agreements must "... provide for the application of the health and safety measures specified in Agency document INFCIRC/18" [133].

(b) *The Agreement establishing the Asian Regional Co-operative Project on Food Irradiation*

This Agreement provides that the "Agency and each Party shall ensure the application to the activities carried out under the Project of the relevant safety standards and measures as provided by the Agency, in accordance with the applicable laws and regulations of each Party concerned" [134].

*22.3.2.2. Supply of nuclear material*

The Master Agreements concluded for the supply of small quantities of nuclear material contained health and safety provisions as described in the basic book. In addition, these Agreements stipulated that the conditions of shipment of nuclear material by the recipient Government "... shall conform as far as possible to the Agency's Transport Regulations" [135]. In one case it was agreed that "... unless otherwise provided for in the Supplemental Agreement each project shall be subject to the health and safety provisions specified by the Government" [136], with the proviso that these national provisions shall conform to those set forth in the Agency's Basic Safety Standards.

The health and safety provisions in the Master Agreement with New Zealand [137] provide for the following points:

(a) The application of the revised Health and Safety Document;
(b) The application of safety standards as established in accordance with that Document and as these may be revised from time to time;

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[133] INFCIRC/167, Section I(ii).
[134] INFCIRC/285, Article VII.
[135] INFCIRC/286, Article VII.
[136] INFCIRC/150, Article X.
[137] INFCIRC/286.

(c) The obligation of the Government to submit reports on any major incident and copies of reports on verification by the Government;
(d) The right of the Agency to carry out special inspections in accordance with paragraph 5.2 of the revised Health and Safety Document. (What was meant, apparently, was that the Agency had the right to carry out special safety missions, since the term inspection no longer appears in the Document.)

None of the Supplementary Contracts concluded under the Master Agreements provide for safety standards different from those of the Agency.

*22.3.2.3. Supply of equipment*

No project type agreements were concluded for equipment supplies.

*22.3.2.4. Technical assistance*

Under the Revised Guiding Principles and General Operating Rules to Govern the Provision of Technical Assistance by the Agency, the "Agency's Safety Standards and Measures shall be applied, where relevant, to operations making use of technical assistance provided" [138]. This general principle, which is qualified by the words "where relevant", was given effect by the use of equally sweeping language in the Revised Supplementary Agreements (which complement the instruments concluded with the UNDP), as follows:

> "The Government shall apply to the operations making use of the technical assistance provided to it pursuant to this Agreement the Agency's Safety Standards and Measures defined in document INFCIRC/18/Rev.1 and the applicable safety standards as they are established in accordance with that document and as they may be revised from time to time" [139].

Similarly, under the Agency's agreements for the provision of technical assistance, "The Government shall apply to the operations covered by this Agreement all pertinent Agency safety standards. The reports specified in paragraphs 4.9 and 4.10 of Agency document INFCIRC/18/Rev.1 shall be submitted to the Agency as appropriate" [140]. The omission of the reference to advisory missions was apparently intended to dispense with this possibility, and no advisory mission for health and safety purposes has been reported to have taken place for a technical assistance project.

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[138] INFCIRC/267, A.1(b).
[139] Article II of the Standard Form.
[140] Para. 2 of the Agreement with Kenya.

*22.3.2.5. Peaceful nuclear explosions*

The Guidelines for the International Observation by the Agency of Nuclear Explosions for Peaceful Purposes[141] do not cover health and safety aspects. Since the Agency's activities relating to peaceful nuclear explosions have been practically discontinued, it would be a matter of conjecture to discuss a possible role of the Agency in that field. A contingency to develop and apply safety standards could arise if any such project involving a peaceful explosion were assisted as an Agency Project. However, if the Agency merely performed observation functions, then its tasks and responsibilities would be strictly those required by the observation agreement.

## 22.4. HEALTH AND SAFETY INSPECTIONS

### 22.4.1. Requirements

As discussed in Section 22.1.2, the revised Health and Safety Document no longer refers to inspections and has instead introduced the concept of advisory missions. This Document also does not distinguish between routine and special missions (similar to routine and special inspections) nor does it specify the maximum number of such missions. The only difference between these types of missions relates to their voluntary character (i.e. missions requiring the agreement of the State) or involuntary character (i.e. missions not requiring such agreement)[142]. However, this distinction is rather hypothetical, because all missions require arrangements with, and the collaboration of, the State. There has been no instance where a dispute arose about the visit of an Agency safety mission, nor has such a mission ever been carried out under adversary conditions. Invariably, the visits by Agency staff have been described as advisory missions[143], regardless of whether they were performed under the original Health and Safety Document or the revised one.

### 22.4.2. Corps of inspectors

The Agency did not appoint staff members as health and safety inspectors and there was no need to follow the formal designation procedure set out in the Inspectors Document for members of advisory missions. Through desuetude the relevant

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[141] INFCIRC/169.

[142] INFCIRC/18/Rev.1, 5.1-5.4.

[143] Note the Annual Reports for 1970-1980; only the Annual Report for 1977 (GC(XXII)/597, para. 23) mentions that "... the Agency's regular safety inspections of research reactors continued ...", but this statement is probably due to a drafting error.

provisions in the Inspectors Document have become inoperative, and the Director General, with the tacit approval of the Board, has discontinued exercising verification and control rights even under those agreements which explicitly provide therefor.

### 22.4.3. Visits by inspectors

The Agency's Radiation Protection Rules and Procedures are to ensure that the Agency's Safety Standards and Guides are applied to the Agency's own operations[144]. They thus constitute the counterpart to a State's administrative system and organizational rules of ensuring safety of operations involving a radiation hazard. These rules and procedures do not provide for verification or inspections to ensure their observance; they assign to the person in charge of a laboratory and to the Radiation Health and Safety Officer primary responsibility to ensure compliance[145]. Although research contracts require that work performed under them be carried out in conformity with the Agency's standards[146], this obligation is not verified through inspections. Safety missions have been sent to nuclear installations covered by Project Agreements, but also to facilities for which the Agency did not provide assistance[147].

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[144] AM.X/1, Introduction.

[145] Procedures, 8 and 10.

[146] Para. VII(c).

[147] For example GC(XXIII)/610, para. 22; GC(XXIV)/627; para. 79; GC(XXV)/642, para. 99.

# Chapter 23
# MULTILATERAL CONVENTIONS

## PRINCIPAL INSTRUMENTS

Vienna Convention of Civil Liability for Nuclear Damage (IAEA Legal Series No.4, p.3);
Resolution of the Board Concerning Maximum Limits for the Exclusion of Small Quantities of Nuclear Material from the Application of the Vienna Convention (GOV/DEC/100(XXI), No. (56));
[Brussels] Convention on the Liability of Operators of Nuclear Ships (IAEA Legal Series No.4, p.36);
[Brussels] Convention Relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material;
Report of the Advisory Group on Physical Protection, March 1977 (A.G.-117, Section III(9));
Convention on the Physical Protection of Nuclear Material and Final Act of the Meeting of Governmental Representatives to Consider the Drafting of the Convention (INFCIRC/274/Rev.1);
General Conference Resolution on the Physical Protection of Nuclear Material (GC(XIX)/RES/328);
General Conference Resolution on the Physical Protection of Nuclear Facilities, Materials and Transports (GC/(XXI)/RES/350).

The multilateral agreements discussed in this chapter in the basic book and those discussed in the present book have the common characteristic of seeking to regulate or standardize internationally some aspects of the peaceful uses of nuclear energy. Other multilateral agreements to which the Agency is a Party or in the development of which the Agency played a role, for example project agreements, are not discussed here, but in the chapter dealing with the subject in question.

## 23.1. CIVIL LIABILITY FOR LAND BASED ACTIVITIES AND TRANSPORT

### 23.1.4. Vienna Conference — The Vienna Convention on Civil Liability for Nuclear Damage

The Vienna Convention entered into force on 12 November 1977, following the fifth ratification by a State as required by the Convention. As of December 1980, ten States had ratified or acceded to the Convention and three additional States were signatories[1].

[1] At the end of 1980, Argentina, Bolivia, Cameroon, Cuba, Egypt, Niger, Peru, the Philippines, Trinidad and Tobago and Yugoslavia were Parties to the Convention. Colombia, Spain and the UK were signatories. The Convention is reproduced in Legal Series No. 4 (STI/PUB/430).

The Optional Protocol concerning the Compulsory Settlement of Disputes remains open for signature and is not yet in force, since only one State has ratified it and two ratifications or accessions are required for its entry into force[2]. The UK has signed the Protocol.

No major supplier State has yet become a Party to the Convention and five of the Parties have no nuclear energy programme. While the Convention did not have any appreciable effect as an international treaty, many of its principles have been incorporated in national legislation in the field of nuclear liability. The Convention has thus substantially contributed to a harmonization of nuclear law.

Although the Vienna Convention only entered into force in 1977, it had become apparent earlier that there could be potential difficulties from the simultaneous application of the Paris Convention and the Vienna Convention. This concerned, in particular, the designation of the liable operator (the principle of 'channelling' all liability to the operator of a nuclear installation might lead to a situation where different operators might be liable under the two Conventions for the consequences of the same nuclear incident), as well as questions of jurisdictional competence and problems relating to the territorial scope of the Convention[3]. The Agency Secretariat worked on these problems in 1973 together with the OECD/NEA Secretariat[4].

In 1974, a working group of the Standing Committee considered a draft protocol to alleviate the problems created by the existence of two Conventions with essentially identical provisions, with a view to submitting it to the Standing Committee at its next meeting. This matter was, however, not taken up at the 1978 meeting of the Standing Committee[5].

### 23.1.5. Standing Committee

No change was made in the composition of the Standing Committee. It held two series of meetings, in June 1971[6] and in January 1978[7]. Following its 1971 series of meetings the Committee made recommendations to the Director General for a revision of the limits of small quantities of nuclear material to be excluded from

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[2] The Philippines has ratified the Protocol.

[3] See GC(XVII)/500, para. 157.

[4] See GC(XVIII)/525, para. 176.

[5] See the report on the fourth series of meetings of the Standing Committee, CN-12/SC-4/5, of 26 January 1978.

[6] For the report on the meeting, see document CN-12/SC/20 of 15 September 1971.

[7] For the report on the meeting, see document CN-12/SC-4/5.

the application of the Convention. The Committee also discussed problems raised by the divergencies between international conventions on third party liability for nuclear damage and maritime conventions on third party liability[8].

At its 1978 series of meetings the Committee prepared a draft resolution for the Board which took account of the revision of the Agency's Transport Regulations in 1973[9], as well as of the revision, in October 1977[10], by the OECD/NEA Steering Committee of its 1964 decision on the exclusion of small quantities of nuclear substances from the application of the OECD Convention on Third Party Liability in the Field of Nuclear Energy (the Paris Convention). The 1967 revision of the Agency's Transport Regulations did not substantially affect the Board's decision of 1964 on the exclusion of small quantities. The 1973 revision, however, resulted in incompatibility of the Regulations with the 1964 Board decision[11].

### 23.1.6. Board of Governors

As reported in the basic book, the Board had in 1964 adopted a resolution relating to the establishment of maximum limits for the exclusion of small quantities of nuclear material from the application of the Vienna Convention pursuant to Article 1.2(a) thereof[12]. The resolution and the Annex thereto did not establish general quantitative limits, but rather permitted exemption for nuclear materials, up to a certain limit, transported or used outside a nuclear installation, provided that the Agency's Regulations for the Safe Transport of Radioactive Materials were observed. Because of the revision of the Agency's Transport Regulations in 1973 the Annex attached to the 1964 Resolution had become outdated. As a result, the Standing Committee, at its 1978 series of meetings, prepared a draft resolution[13], which was then approved by the Board on 14 September 1978[14]. The Annex to the Resolution was based on the 1973 Revised Edition of the Agency's Transport Regulations[15] and also ensured continued compatibility in this area between the Vienna Convention and the Paris Convention[16].

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[8] GC(XV)/455, para. 143; CN-12/SC/17.

[9] GOV/1913, Appendix; see also Section 22.2.2.4.2.

[10] GOV/1913, para. 3.

[11] GOV/1913, paras 2–3.

[12] The text of the resolution is reproduced in GOV/DEC/37(VII), No. (61).

[13] CN-12/SC-4/5.

[14] The text of the resolution is reproduced in GOV/DEC/100(XXI), No. (56).

[15] STI/PUB/323.

[16] GOV/1913, para. 3; the OECD/NEA Steering Committee took a substantially identical decision in October 1977.

## 23.2. CIVIL LIABILITY OF OPERATORS OF NUCLEAR SHIPS

### 23.2.10. Diplomatic Conference — The Brussels Convention on the Liability of Operators of Nuclear Ships

The Convention, although ratified by Portugal and the Netherlands and acceded to by Madagascar and Zaire, had not entered into force by the end of 1980 because it had not been ratified by a State operating, or having authorized the operation of, a nuclear ship under its flag. However, a number of bilateral arrangements were concluded between States to regulate some issues dealt with in the Convention and in line with the terms of the Convention.

## 23.3. WASTE DISPOSAL INTO THE SEA

Although no international agreement was negotiated on this subject under the auspices of the Agency, the Agency assumed several responsibilities for radioactive matters under the 1972 London Dumping Convention[17] and the 1976 Barcelona Convention[18]. The Agency's activities in this area are described in Sections 22.2.4.5.2 and 22.2.4.5.3.

## 23.4. EMERGENCY ASSISTANCE

As reported in the basic book, in 1967 the Board of Governors invited Member States to consider the conclusion of agreements on the basis of a model bilateral agreement between States which had been developed by the Secretariat. This model agreement was circulated to Member States, but, by the end of 1980, no State had concluded an agreement based upon it.

Following the Three Mile Island nuclear accident in the USA in 1979 there was, however, renewed and increased interest in international co-operation in the event of nuclear accidents. In June 1979 the Board approved the Director General's recommendations to include in the Agency's nuclear safety programme activities regarding the exchange of nuclear safety information and mutual emergency

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[17] See, for example, the Fifth Consultative Meeting of Contracting Parties to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matters, 22–26 September 1980, LDC V/INF.2.

[18] For the texts of the Convention and of the Final Act of the Diplomatic Conference see the Conference of Plenipotentiaries of the Coastal States of the Mediterranean Region for the Protection of the Mediterranean Sea, Barcelona, 2–16 February 1976 (UNEP, 1976). The Conference was organized by the UNEP; for its proceedings see UNEP documents UNEP/CONF.1/...

assistance for radiation accidents[19]. Further interest in the subject was shown at the 1980 Stockholm Conference on Current Nuclear Power Plant Safety Issues, where many delegates supported the international harmonization of nuclear safety standards, possibly within the context of an international agreement.

## 23.5. NUCLEAR INSURANCE

No developments.

## 23.6. TRANSPORT OF NUCLEAR MATERIALS

### 23.6.1. Civil liability in the field of maritime carriage of nuclear material

An international Diplomatic Conference on Maritime Carriage of Nuclear Substances took place in Brussels from 29 November to 3 December 1971. At this Conference, organized jointly by the Agency, the IMCO and the OECD/NEA, the text of a Convention on Civil Liability in the Field of Maritime Carriage of Nuclear Material was elaborated[20]. The Convention excludes liability for damage resulting from nuclear incidents of persons liable under international conventions or national law if the operator of a nuclear installation is liable under the Vienna Convention or the Paris Convention (Article 1). Such exclusion applies also if an operator is liable under national law, provided this law is at least as favourable for persons suffering damage as the provisions of the Paris or the Vienna Conventions. The Convention does not apply to nuclear propelled ships (Article 3) and supersedes, among the Parties to it, other conventions in the field of maritime carriage to the extent that there is conflict (Article 4). Thus, in the Convention the principle of channelling the liability for nuclear incidents to the operator of a nuclear installation is extended to the field of maritime carriage of nuclear substances. As of the end of 1980, eight States had become Parties to the Convention (the Federal Republic of Germany, France, Denmark, Italy, Norway, Spain, Sweden and the Yemen). The possibility of liability falling on the carrier had apparently proven to be a serious obstacle for the shipment of nuclear material[21].

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[19] GOV/DEC/103(XXII), No.(27). See also GOV/1948.

[20] See International Legal Conference on Maritime Carriage of Nuclear Substances, 1971 (IMCO, London, 1972), containing the text of the Convention and the Final Act of the Conference. For the proceedings of the Conference see IMCO documents LEG/CONF.3/...

[21] An Agency/NEA Symposium on Maritime Carriage of Nuclear Material, held in June 1972 in Stockholm, discussed technical and legal aspects, including consequences of the legal situation created by the adoption of the 1971 Brussels Convention (GC(XVI)/480, para. 145).

## 23.7. PHYSICAL PROTECTION OF NUCLEAR MATERIAL

During the period 1970–1980, Member States became increasingly concerned about the physical protection of nuclear material. Within the Agency, guidelines on the standards for the protection of such material had been agreed upon[22]. These guidelines were incorporated by reference in Safeguards Agreements with the Agency. The next step was to seek agreement among States to ensure that appropriate measures be taken to protect material, both in domestic use and storage and in international transport, at agreed levels.

### 23.7.1. The Secretariat

The question of an international convention on physical protection was first discussed within the Secretariat in 1974. Following increasing interest in such a convention by Member States, the Secretariat initiated a study on the establishment of international legal instruments on the physical protection and safe transport of nuclear materials.

### 23.7.2. The General Conference

The idea of an international convention received further support at the first NPT Review Conference in May 1975[23] and at the 19th General Conference in September 1975[24]. There was broad support for the development of a convention which would focus on the physical protection of nuclear material during international transport[25].

### 23.7.3. The Advisory Group on Physical Protection of Nuclear Material

In early 1977 an Advisory Group on Physical Protection of Nuclear Material, established by the Director General[26], recommended that he should initiate steps for the preparation of a convention on the protection of nuclear material during international transport[27]. On the basis of the Group's report, the Director General

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[22] See the Agency's recommendations reproduced in INFCIRC/225/Rev.1.

[23] Final Declaration of the Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT/CONF/30/Rev.1).

[24] GC(XIX)/RES/328.

[25] "Analysis of Attitudes of Member States expressed at the NPT Review Conference in May 1975 and in official statements or consultations during the General Conference of the IAEA in September 1975" (Secretariat note by W. Morawiecki of 17 October 1975).

[26] The Advisory Group was composed of representatives from thirteen Member States.

[27] Report of the Advisory Group on Physical Protection, March 1977 (document A.G.-117, Section II(a)).

established a Secretariat working group to prepare background papers and draft texts, and also made preliminary arrangements for a meeting of consultants in June 1977 to consider the drafts[28].

### 23.7.4. Working draft prepared by the USA

Before the Agency began with the preparation of a draft text, the USA informally presented a draft to the Director General for consideration by Member States; as a consequence, the Secretariat did not prepare a draft text. The USA also requested that a diplomatic conference be convened early in 1978. Pending a decision on this proposal, the US text was circulated to Member States in June 1977[29]. Following consultations with interested Governments the meeting, which had been scheduled for June 1977, was cancelled; the 1977 General Conference passed a resolution[30] endorsing the adoption of a convention. A meeting of legal and technical experts to review the US draft after the 1977 General Conference was agreed upon. Original plans for a diplomatic conference were abandoned as being too cumbersome and expensive, and the Director General, taking into account the views of Member States, convened for October 1977 a meeting of Governmental Representatives under the auspices of the Agency and invited all Member States to participate in that meeting[31].

### 23.7.5. Meeting of Governmental Representatives

Representatives of 58 States and of Euratom participated in one or more sessions of the Meeting of Governmental Representatives to Consider the Drafting of a Convention on the Physical Protection of Nuclear Material, which took place at Agency Headquarters from 31 October to 10 November 1977, from 10 to 20 April 1978, from 15 to 16 February 1979 and from 15 to 26 October 1979. Informal consultations took place in Vienna from 4 to 7 September 1978 and from 24 to 25 September 1979.

The Meeting established separate Working Groups on technical issues and on legal issues, and later a Working Group on the scope of the Convention[32]. In the later stages a Drafting Committee composed of 15 members was also set up.

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[28] Letter of 29 April 1977 from the Acting Director General.

[29] Circular Letter SAF/421, 16 June 1977.

[30] GC(XXI)/RES/350.

[31] Circular letter SAF/412 of 8 August 1977.

[32] The membership of the Working Groups was open ended, although it was suggested by the Chairman that a maximum of 15 States should participate in each Group. Non-member observers were also permitted to attend (CPNM/27, p.21-22).

Secretariat services were provided by the Agency. At its first session, the Meeting adopted the Rules of Procedure of the Board of Governors, 'as appropriate', as its Rules of Procedure[33].

The first draft considered by the Meeting was the US text that had been circulated to Member States by the Director General. Following a general debate, the Working Groups on legal issues and on technical issues met, and a plenary session was held later to consider the reports of the two Groups. In subsequent sessions of the Meeting, a first discussion on all draft articles, the preamble and the final provisions was completed.

Two major issues remained unsolved until the closing days of the final session of the Meeting in October 1979, i.e. the scope of the Convention and the participation of Euratom.

From the beginning of the negotiations, two different positions had been taken on the issue of scope. One position was that the Convention should apply only to material in international transport and the other was that the Convention should apply also to material in domestic use, storage and transport[34]. A special Working Group on scope was established, but it did not reach a consensus, and in September 1978 informal consultations were held in Vienna. A "Memorandum to the Meeting of February 5 through 16, 1979"[35] was adopted by the representatives at the September consultations. Although the representatives agreed that there were differing views on the substantive scope, the most significant paragraph of the Memorandum noted that:

> "... the most urgent matter is that of physical protection of nuclear material in international transport and, for this reason, the Convention at this stage should concern the international transport of nuclear material. Nevertheless, the importance of physical protection of nuclear material in domestic use, storage and transport should be referred to in the Preamble. Moreover, the provisions on mutual co-operation and assistance in the protection and recovery of nuclear material, the penal provisions and the provisions on extradition and jurisdiction ... should also apply to nuclear material in domestic use, storage and transport."

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[33] Draft Rules of Procedure (CPNM/4) had been prepared by the Legal Division for the Meeting, but, upon a motion by the representative from Ecuador, the Rules of Procedure of the Board of Governors (GOV/INF/60) were adopted instead, subject to modifications regarding the number of Vice-Chairmen (the Meeting elected three instead of two), the election of a rapporteur and the preparation of a report (the Board Rules provide for neither), the elimination of summary records (as normally required under Board Rules 55 and 56) and the taking of decisions only by consensus (the Board Rules permit voting).

[34] See, for example, CPNM/27, p.3.

[35] CPNM/53.

This general approach was the one included in the final text. Thus, the penal provisions were made applicable to all nuclear material, whereas other regulatory provisions deal only with material in international transport.

As a result of the compromise reached on scope, the sole point outstanding at the close of the February 1979 session concerned the participation of Euratom in the Convention. The Commission negotiating on behalf of Euratom had been granted special status to participate without a vote in the February 1979 meeting. Throughout the discussions Euratom contended that it was entitled to become a Party to the Convention because of the responsibilities allocated to Euratom under the Treaty establishing it[36]. This position was strongly supported by a decision of the European Court of Justice, which held that participation in the Convention by the Member States of Euratom without the participation of Euratom itself would contradict the Euratom Treaty[37].

However, a number of Government representatives participating in the discussion had difficulties with the idea of Euratom becoming a Party. The question was raised as to how the responsibilities shared by the Member States of Euratom and Euratom itself would be allocated between them and what practical procedures would be developed to enable other Parties to the Convention to deal with such an allocation. Some States had difficulty in envisioning how certain formal aspects of the proposed Convention, such as those relating to reservations, would apply to Euratom. Other States were of the opinion that international organizations could not become Parties to such an international agreement. Thus, the Member States of Euratom and the Commission were faced with the task of drawing up a mandate for the participation of Euratom.

The practical difficulty with the decision of the European Court of Justice was that it did not clarify the actual distribution of powers and functions under the Convention between Euratom and its Member States. The Court noted that this area of ambiguity was to be resolved internally by Euratom. This explains to a large

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[36] Under its Co-operation Agreement with the Agency, Euratom has been granted observer status for 'appropriate' meetings held by the Agency, and has been allowed to attend and participate in the annual sessions of the General Conference, without the right to vote (INFCIRC/25/Add.5, Part II, Article 2).

[37] Court of Justice of the European Communities, Ruling of the Court, Decision Number 1/78, 14 November 1978 (Draft Convention of the International Atomic Energy Agency on the Physical Protection of Nuclear Materials, Facilities and Transports). Following the first Meeting of Governmental Representatives, Belgium submitted a request to the Court for rulings on five points of law, which the Court reformulated into two basic questions: (a) Given the distribution of powers under the Treaty between Euratom and its Member States, could one or more of these States become Parties to the Convention without Euratom also becoming a Party?; (b) If Euratom were to become a Party to the Convention, would it have the necessary powers to ensure the implementation of relevant provisions of the Convention? The Court held that, in view of the responsibilities of Euratom with respect to the export and import of nuclear material, the application of safeguards and the ownership of special fissile material, Member States of Euratom could only become Parties to the Convention if Euratom itself also became a Party and if it would be able to fulfil the obligations allocated to it under the proposed Convention.

extent the long and difficult discussions which then ensued among the Member States of Euratom. By the end of May 1979, it had become apparent that a mandate for Euratom would not be agreed upon by the Member States of Euratom in time for the scheduled June sessions, and thus the sessions were cancelled[38].

In September 1979 the necessary mandate was received by the Commission from the Council of Ministers[39] and informal consultations were held to produce draft language for inclusion in the Convention itself[40]. The actual text of the Convention was, however, only agreed upon on the final day of the negotiations in October 1979[41]. The relevant provisions, which are discussed in Section 23.7.6, also enable other regional or international organizations to become Parties to the Convention.

A final note should be added about some procedural arrangements for the negotiation of the Convention. The negotiations were more informal than those in the case of most multilateral treaties; the negotiations were not conducted in the context of a plenipotentiary diplomatic conference; the Meeting of Governmental Experts was convened by the Director General to "consider the drafting" of a Convention and not necessarily to produce an agreed text; no Credentials Committee was established; and decisions were taken by consensus and no resolutions were adopted by the Meeting[42].

On the whole, this informality was productive; at times, however, progress was delayed by it. Some representatives raised questions regarding whether the forum was appropriate for the negotiation of a Convention, and other representatives insisted that they were serving only in an advisory capacity and did not have the necessary authority to negotiate an agreement. These issues were reflected particularly in the prolonged discussions on whether the meeting should adopt a Final Act to record its results.

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[38] In February 1979, Euratom had not yet received a mandate from its Member States for full participation in the Convention. Since this was the major stumbling block to the conclusion of the Convention, the Chairman of the Meeting held consultations with participating States in early June and, as a result, cancelled the session scheduled for June 1979.

[39] The Council of Ministers granted the mandate on 18 September 1979; the mandate did not specify the division of competence between Euratom and its Member States.

[40] At the time of the consultations, Euratom was more explicit than it had been previously in explaining its role and responsibilities vis-à-vis its Member States (CPNM/82). The participants in the consultations produced a draft text which, upon their request, was transmitted by the Director General to IAEA Member States, with the hope of reaching final agreement at the October 1979 session of the Meeting (CPNM/82).

[41] CPNM/Daily Report/22, p. 5-6.

[42] This practice does not follow the pattern for the majority of multilateral treaties negotiated under the auspices of the United Nations or its specialized agencies. In these cases the final stages of negotiations are normally conducted in plenipotentiary conferences with the attendant formalities. See Report of the United Nations Secretary-General, Review of the Multilateral Treaty Making Process (UN Document A/35/312).

The Drafting Committee was not established until February 1979[43]. The Committee consisted of the following Members, appointed by the Chairman after consultations: Australia, Brazil, Canada, Chile, Czechoslovakia, Egypt, Federal Republic of Germany, France, Italy, Japan, Mexico, Qatar, Tunisia, USA and USSR[44]. The Convention is authentic in six languages; the Arabic and Chinese texts were prepared by the Agency after the Meeting and were not considered by either the Committee or the Plenary.

Following the adoption of the text by the Plenary, the Final Act was opened for signature on 26 October 1979 and was signed by representatives of 53 States; some States signed later. At the time of the adoption and signature of the Final Act a number of delegations raised questions regarding the nature of the authorization required to sign the Final Act. The Legal Adviser of the Agency, in a prepared statement, indicated that no special credentials were required for the signature of the Final Act, since that signature only affirmed that the "paper signed contained a proper record of the proceedings and results of the Meeting"; therefore, signature of the Final Act would not signify any Governmental commitment to accept the Convention, but would require the delegations to submit the text attached to the Final Act to their authorities[45].

### 23.7.6. The Convention on the Physical Protection of Nuclear Material

The Convention was opened for signature on 3 March 1980 at the Headquarters of the Agency in Vienna and at the Agency's Liaison Office at the Headquarters of the United Nations in New York[46], and was to enter into force following the twenty-first ratification by a State[47].

The Convention consists of 23 Articles and two Annexes[48] and deals primarily with the protection of nuclear material during international transport, although several of its articles also concern the protection of nuclear material

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[43] CPNM/Daily Report/11.

[44] CPNM/68.

[45] CPNM/93.

[46] The final clauses of the Convention provide for only one original of the Convention, but permit signature in both New York and Vienna. Consultations with the United Nations Office of Legal Affairs indicated that it would be unusual for the Secretary-General to perform depositary functions in regard to an instrument for which he was not the depositary. As a result, signatures in New York were received by the IAEA Liaison Office at the United Nations Headquarters. The Liaison Office held a certified copy of the text and a set of blank signature pages, which, when signed, were sent to the Agency in Vienna.

[47] As of 31 December 1980, only Sweden had ratified the Convention.

[48] The text of the Final Act and the Convention is reproduced in INFCIRC/274/Rev.1. The two Annexes incorporate material from INFCIRC/225/Rev.1, which relates to levels of protection to be applied to nuclear material in international transport and to the categorization of nuclear material according to plutonium content.

in domestic use, storage and transport. For the purpose of the Convention, 'international nuclear transport' means:

> "the carriage of a consignment of nuclear material by any means of transportation intended to go beyond the territory of the State where the shipment originates, beginning with the departure from a facility of the shipper in that State and ending with the arrival at a facility of the receiver within the State of ultimate destination."[49]

The principal obligation of each Party is to take steps to ensure that, during international transport, nuclear material is protected at the agreed standards (i.e. the levels set forth in an Annex to the Convention) as long as the material is within its territory or on board of a ship or aircraft under its jurisdiction[50]. No Party may export or import nuclear material or allow its transit through its territory unless it has received assurances (the relevant Article 4 of the Convention does not specify who has to provide these assurances) that the nuclear material will be protected at the agreed standards during international transport[51]. A Party must also apply the agreed levels of protection to material which, during transit from one part of its territory to another, will pass through international waters or airspace[52]. The Party responsible for receiving the assurances described above must provide advance notice of the transfer to the States through whose territory the nuclear material will pass[53].

In the event of theft, robbery or any threat thereof, the Parties are obliged to co-operate and to provide assistance to any requesting State, even if this State is not a Party to the Convention, in the protection and recovery of such material[54]. In this regard, all States may benefit from the Convention.

An important provision obliges the Parties to make certain acts criminal offences under their national laws and to make them punishable by penalties which take into account the grave nature of the offences. These acts include robbery, embezzlement and extortion in relation to nuclear material, and unlawful acts involving nuclear material which cause or are likely to cause "death or serious injury to any person or substantial damage to property"[55].

The Convention also sets out conditions under which a State must take measures to establish jurisdiction over these offences:

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[49] Article 1(c).
[50] Article 3.
[51] Article 4, paras (1), (2), (3).
[52] Article 4, para. (4).
[53] Article 4, para. (5).
[54] Article 5.
[55] Article 7.

(a) When an offence is committed within its territory or on board a ship or aircraft registered in that State;
(b) When the alleged offender is a national of that State;
(c) When the alleged offender is present within that State's territory and is not extradited.

In addition, a State may establish jurisdiction over these offences when it is involved in international nuclear transport as the exporting State[56].

The Convention provides for the participation of regional and international organizations, including Euratom, under the following terms:

"(a) This Convention shall be open for signature or accession by international organizations and regional organizations of an integration or other nature, provided that any such organization is constituted by sovereign States and has competence in respect of the negotiation, conclusion and application of international agreements in matters covered by this Convention.
(b) In matters within their competence, such organizations shall, on their own behalf, exercise the rights and fulfil the responsibilities which the Convention attributes to States Parties.
(c) When becoming Party to this Convention such an organization shall communicate to the depositary a declaration indicating which States are members thereof and which articles of the Convention do not apply to it.[57]
(d) Such an organization shall not hold any vote additional to those of its Member States."[58]

The Agency is assigned several functions under the Convention. Under Article 5(1), the Parties must make known to each other, directly or through the Agency, their central authority responsible for the physical protection of nuclear material and for co-ordinating recovery and response operations in the event of its removal or loss. Article 5(3) foresees an intermediary role for the Agency in encouraging co-operation and consultation among the Parties regarding the design, maintenance and improvement of systems of physical protection of nuclear material in international transport. The Agency serves as a repository of all laws and regulations which give effect to this Convention in States Party to it[59]. The Agency is the depositary of the Convention and is required to notify all States of communications in relation to the Convention[60].

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[56] Article 8.
[57] Euratom complied with this requirement when signing the Convention.
[58] Article 18.
[59] Article 14.
[60] Article 22.

### 23.7.7. Board of Governors and General Conference

As in the case of the Vienna Convention on Civil Liability for Nuclear Damage, the Board of Governors took no substantive decisions in connection with the formulation or approval of the Convention on the Physical Protection of Nuclear Material. The Board was, however, periodically informed by the Director General of progress in the negotiations.

Apart from the two resolutions of general support passed by the General Conference in 1975 and 1977[61], the Conference did not play a role in the development of the Convention. The Final Act of the Meeting of Governmental Representatives recommended that the text of the Convention be transmitted for information to the 23rd General Conference of the Agency (1979). Accordingly, this text was brought to the attention of the Conference by the Director General[62] and circulated as an Information Circular[63].

### 23.7.8. Conclusions

The negotiation of the Convention on the Physical Protection of Nuclear Material broke significant new ground. It demonstrated not only the value of using the Agency as a forum for negotiations but also demonstrated that the structure of a meeting of Governmental Representatives, which was less formal than a full diplomatic conference, permitted valuable flexibility in the discussions. The Convention requires action by States under their internal criminal legal system, which is usually considered a sensitive domestic matter. Non-Parties may also benefit from certain provisions of the Convention. Finally, the Convention, by providing for the participation of certain regional or international organizations together with States, acknowledges an important new reality. By assigning functions to the Agency in addition to its depositary role it reaffirms the substantive role of the Agency in that field.

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[61] GC(XIX)/RES/328, GC(XXI)/RES/350.
[62] GC(XXIII)/OR.209, para. 90.
[63] INFCIRC/274.

# Part E
# ADMINISTRATION

# Chapter 24

# STAFF ADMINISTRATION

## PRINCIPAL INSTRUMENTS

IAEA Statute, principally Article VII, but also Articles IX.I.5, XI.D, XII.B, XIV.B.1(a), XV.B, and Annex I, para. C.5(d);

General Principles to be Observed in the Provisional Staff Regulations of the Agency (GC.1(S)/RES/13);

Provisional Staff Regulations (INFCIRC/6/Rev.5; AM. II/1);

Staff Rules (AM. II/1);

Special Staff Rules for Short-term Staff (AM. II/12);

Service Rules Governing the Conditions of Service of Technical Co-operation Experts (unnumbered special publication);

Collection of Personnel Practices (Pers. Prac.);

Administrative Manual, Part II;

Provisional Travel Rules (AM. III/1);

Administration of the Provisional Staff Regulations, the Staff Rules and the Staff Rules for Short-term Staff (AM. II/2);

Relationship Agreement with the United Nations (INFCIRC/11, Part I.A), Article XVIII;

Statute and Rules of Procedure of the International Civil Service Commission (ICSC/1);

Board Regulation adopted pursuant to Statute Article VII.B regarding appointments of Heads of Division and above (GOV/DEC/1(I), No.(57));

Board Decision on the appointment of safeguards inspectors (GOV/DEC/23(IV), No. (144)(e); GC(V)/INF/39, para. 2);

Consultants, Persons on Sabbatical Leave, Seconded Experts and Trainees (AM. II/11);

Headquarters Agreement (INFCIRC/15/Rev.1, Part I), in particular Article XV, and Supplemental Agreements relating to social security arrangements for staff members (ibid., Part V) and to the Commissary (ibid., Part IV);

Agreement on the Privileges and Immunities of the IAEA (INFCIRC/9/Rev.2), in particular Articles VI and VII;

Agreement for the Admission of the IAEA to the United Nations Joint Staff Pension Fund (UNJSPF) (INFCIRC/11, Part III) and Special Agreement Extending Jurisdiction of the Administrative Tribunal of the United Nations to the IAEA with respect to UNJSPF Regulations (INFCIRC/11/Add.1);

UNJSPF Regulations and Rules (JSPB/G.4/Rev.10 and /Amend.1);

Joint Committees and Advisory Panels (AM. II/13);

Statutes of the Staff Association of the IAEA (AM. II/14, Annex I);

Rules of Procedure of the Staff Assembly (AM. II/14, Annex II);

Rules of Procedure of the Staff Council (AM. II/14, Annex III);

Financial Rules of the Staff Council (AM. II/14, Annex IV);

Rules Regarding the Commissary at the Vienna International Centre (VIC Commissary Information Circular, 1 July 1982) (AM. VIII/11);

Rules of the Catering Service at the Vienna International Centre (VIC Catering Service, Information Circular No.8, 1 July 1982);

Rules for the Administration of the IAEA Staff Welfare Fund (unnumbered paper dated 1981-11-12).

## 24.1. LEGAL INSTRUMENTS

### 24.1.3. Staff Regulations[1]

*24.1.3.2. Development*

24.1.3.2.3. Amendments

The Provisional Staff Regulations were amended nine times during the period covered by the present book[2]. Almost all the amendments related to the levels of various emoluments or to the conditions for their payment and followed precisely the corresponding decisions made by the General Assembly in respect of the United Nations Staff Regulations and recommended by the Assembly for adoption by the other organizations following the United Nations common system of staff administration[3]. However, one amendment permitted the adjustment of the Dependency Allowance for Professionals on the same basis as that for other staff[4], and one set of minor amendments was supplementary to the removal of sexually discriminatory provisions from the Staff Rules[5].

24.1.3.2.4. 'Provisional' status

For the reason indicated in the basic book, after nearly a quarter of a century the Agency's Staff Regulations were still denominated as 'provisional'.

### 24.1.4a. General Conference decisions

In the report of the Board to the General Conference on its review of the Staff Regulations in relation to the Conference's resolution on Staffing of the Agency's Secretariat, calling for an increase in the proportion of staff from developing areas[6], the Board stated that the Director General was also required to comply with directives issued by the General Conference, such as that contained in the above mentioned resolution[7]. This statement reflected a political rather than a strictly legalistic perception of the Director General's obligations in view of Statute Article VII.

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[1] INFCIRC/6/Rev.5, also included in AM.II/1.

[2] GOV/DEC/67(XIV), No. (51); /79(XVII), No. (18); /81(XVII), No. (60); /84(XVIII), No. (19); /86(XVIII), No. (52); /92(XX), No. (18)(a); /99(XXI), No. (79)(a); /102(XXII), No. (15); /111(XXIV), No. (19).

[3] Section 24.2.2.

[4] GOV/1689; GOV/DEC/81(XVII), No. (60).

[5] Section 24.7.5; GOV/1762; GOV/DEC/86(XVIII), No. (52).

[6] GC(XXV)/RES/386.

[7] GC(XXVI)/668, paras 5–6.

## 24.1.5. Staff Rules

### *24.1.5.2. Types of Staff Rules*

#### 24.1.5.2.1. General[8]

During the period covered by the present book, the Director General promulgated several times amendments to the Staff Rules which he had formulated in consultation with representatives of the staff, normally in the Joint Advisory Committee (JAC). Usually, such amendments were first announced in a SEC/NOT and were later incorporated in the Administrative Manual.

One significant set of changes, adopted on the basis of the recommendations of a Working Group, involved the elimination from the Staff Rules of provisions that stipulated differential treatment based on sex[9].

On two occasions, amendments of Staff Rule 5.02.2(B) were approved by the Board[10], since they provided for the introduction of new scales of staff assessment[11], a matter which the Board had reserved to itself in the Provisional Staff Regulations[12].

#### 24.1.5.2.2. Staff Rules for short-term staff

During the period covered by the present book, the Staff Rules for short-term staff were revised with effect from 1 December 1969 and were in part amended in 1974 and 1981[13].

#### 24.1.5.2.3. Staff Rules for technical assistance experts

In January 1975 the former Staff Rules Governing the Conditions of Service of Technical Co-operation Experts were replaced by Service Rules Governing the Conditions of Service of Technical Co-operation Experts, which have since been updated from time to time to keep their substantive provisions (especially the emolument levels) on a par with those established for United Nations staff by the General Assembly and the Secretary-General, and with those established for Agency staff by the Board of Governors and the Director General.

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[8] The general Staff Rules are set out, together with the Staff Regulations, in AM.II/1.

[9] SEC/NOT/426; GC(XIX)/544, para. 160. The changes principally involved provisions relating to dependency benefits that had been based on the assumption that in a married couple the husband was the principal bread-winner, on whom his wife was likely to be dependent, but that the husband of a working wife was unlikely to be dependent on her unless he was disabled.

[10] GOV/DEC/92(XX1), No.(18)(b); GOV/DEC/111(XXIV), No.(19)(b).

[11] Section 24.4.2.

[12] Staff Regulation 5.02(b).

[13] AM.II/12, including Annexes I and II and Appendices A and B.

Unlike the previous Staff Rules for technical assistance experts, which, like other Staff Rules, are issued under, and are subject to, the Staff Regulations, the Service Rules constitute a self-contained instrument, designed to be "consistent with the principles expressed in the Staff Regulations", but promulgated by the Director General pursuant to his authority "as chief administrative officer of the Agency" [14]. The Service Rules also reflect a conclusion of the General Conference that the conditions of service of technical co-operation experts employed by the Agency should be reconciled with those of experts employed by the United Nations and the specialized agencies, regardless of the programmes for which the experts were engaged[15].

The Service Rules have not been incorporated into the Administrative Manual.

### 24.1.6. Administrative instructions

The SEC/NOT/... series continued to be the principal vehicle for conveying administrative instructions to the staff. Most of these instructions continued to be of a transitory character or constituted reminders of standing instructions[16]. The administrative instructions that were meant to endure were for the most part incorporated in the Administrative Manual or, if they were of less importance, in the Collection of Personnel Practices[17].

The Administrative Manual constitutes the permanent collection of "information about the policies that have been adopted to govern the activities of the Secretariat and about the procedures used to put those policies into effect" [18]. The Manual is issued under the authority of the Director General by the DDG for Administration, with the preparatory work assigned to the Office of Internal Audit and Management Service[19]. Part II of the Manual contains sections on Personnel Administration and Staff Welfare, including the Provisional Staff Regulations, the several sets of Staff Rules[20], instructions for the administration of these Regulations and Rules[21], the terms and conditions for the engagement of consultants and experts, etc.[22], and detailed provisions concerning certain special benefits or procedures.

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[14] Service Rules Governing the Conditions of Service for Technical Co-operation Experts (unnumbered special publication, latest version dated April 1981), Preamble, para. 2.

[15] Ibid., para. 4.

[16] See AM. Introduction, para. 16.

[17] Section 24.1.7.

[18] AM. Introduction, para. 1.

[19] AM. Introduction, paras 1–3.

[20] Except for those for technical co-operation experts; see the basic book, Section 24.1.5.2.3.

[21] AM.II/2.

[22] AM.II/11.

Consequent on the establishment of a number of joint services at the VIC[23], several series of VIC Information Circulars have been issued, each in respect of a particular service. These circulars in effect correspond to the SEC/NOT/... series of the Agency, containing both ephemeral material and permanent instructions relevant to all international officials at the VIC, including those of the Agency[24]. Some of these series were numbered, while others were not. Some indicated specifically the authority under which they were issued[25], while for others this was implicitly the authority responsible for the joint service in question. Since, for the most part, these circulars did not impose rules directly on staff members, but rather indicated the conditions for the availability of services, the question of the legal enforceability of the provisions of the circulars has rarely arisen and has therefore not yet been fully resolved[26].

### 24.1.7. Established policies and practices

For a number of years the Agency has maintained a Summary of Rulings, which was not generally available and which recorded personnel practices that had been established in applying certain Staff Regulations and Rules. After these had been reviewed by a Working Group of the JAC, the Director General, as of 1 July 1979, amended certain Staff Rules and other parts of the Administrative Manual to incorporate certain established practices and arranged for the issuance of a Collection of Personnel Practices setting out other significant practices[27]. This Collection "does not establish any entitlement for individual staff members but represents an authoritative source of official personnel practices as applied in implementing the Staff Regulations and Rules" [28]. Personnel practices are established by the Director of Personnel after appropriate consultations with the Director of Budget and Finance

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[23] Sections 12 and 28.

[24] For example the Rules Regarding the Commissary at the Vienna International Centre and the Rules of the Catering Service at the Vienna International Centre, both issued on 1 July 1982.

[25] The VIC Commissary Rules, for example, were originally promulgated on 9 July 1981 by the Acting Director General of the Agency, while the 1 July 1982 revision was 'agreed between' the Director General of the Agency and the Executive Director of UNIDO.

[26] The question has arisen in connection with the parking fees imposed by UNIDO, as manager of the VIC Garage, on users from all the organizations at the VIC. The question would not arise in connection with the penalty clauses in Article IV of the VIC Commissary Rules, because those were issued under the authority of the Agency's Director General, since the Commissary is an operation run by the Agency. The fact that the Agency issued a separate Notice to the Staff (SEC/NOT/867) directing "Agency staff in their capacity as users of the VIC facilities" to comply with the Rules of the Catering Services at the VIC that were issued under the authority of the Executive Director of UNIDO suggests some doubt about their automatically binding effect on the Agency's staff.

[27] SEC/NOT/669.

[28] SEC/NOT/669, para. 3; Pers. Pract., Introduction, para. 2.

and the Director of the Legal Division, as well as the Chairman of the Staff Council; important practices require the approval of the Director General or of the DDG for Administration[29].

As of 1 July 1980, the Collection of Personnel Practices contained entries relating to some twenty Staff Regulations and Rules and ten Travel Rules, and also reproduced provisions from certain SEC/NOTs[30] that were considered to be of continuing interest, but of insufficient importance to be incorporated in the appropriate Rules.

### 24.1.8. Arrangements with specialized agencies

The Procedural Arrangements for the Implementation of the Agreement between the IAEA and UNESCO Concerning the Joint Operation of the Trieste Centre, relating to the Selection, Appointments, Promotion and Termination of Staff, have been included in the Administrative Manual[31].

## 24.2. CONFORMITY TO THE UNITED NATIONS COMMON SYSTEM

### 24.2.1. Legal basis

The legal basis for the Agency's conformity to the United Nations common system of staff administration has been considerably strengthened by the Agency's acceptance, as of 1 July 1979, of the Statute of the International Civil Service Commission (ICSC).

The ICSC Statute was approved by the United Nations General Assembly in December 1974[32], after extensive consultations, including, inter alia, the Administrative Committee on Co-ordination (ACC), on which the Agency is represented through its Director General, and the Federation of International Civil Servants Associations (FICSA), of which the Agency Staff Association is a member. The function of the ICSC is to regulate and co-ordinate the conditions of service of the United Nations common system in respect of the United Nations and of those specialized agencies and other international organizations which participate in the

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[29] SEC/NOT/669, para. 5; Pers. Pract., Introduction, para. 4.

[30] For example Pers. Pract. on Staff Rule 1.05.1, reproducing part of SEC/NOT/586.

[31] AM.I/4, Appendix F.

[32] UNGA resolution 3357(XXIX), Annex. The text of the ICSC Statute is reproduced in United Nations document ICSC/1, which also sets out the Rules of Procedure of the ICSC. The ICSC Statute also appears in the Agency documents GOV/INF/289, Annex G, and GOV/1928, Annex.

system and accept the Statute[33]. The ICSC replaced the former International Civil Service Advisory Board (ICSAB), which had similar, but far less extensive and only advisory, functions.

Although the General Assembly invited all organizations, such as the Agency, following the common system (in 1974 exactly a dozen, in addition to the United Nations) to participate in and contribute to the work of the ICSC, the Director General initially decided to delay acceptance of the Statute of the ICSC to obtain information on the activities of the ICSC and to determine whether these activities would be compatible with the statutory authority of the Board and the Relationship Agreement with the United Nations[34]. However, even before the Agency formally accepted the ICSC Statute, it fully participated in and contributed (also financially) to the work of the ICSC since its inception[35]. In February 1979 the Board decided, on the recommendation of the Director General, to authorize him to accept the ICSC Statute[36].

Under its Statute, the ICSC has various functions and powers. In particular, on some matters (for example the remunerations of Professional staff members)[37] the ICSC makes recommendations to the United Nations General Assembly (which then takes its own decisions and usually recommends that the other common system organizations do likewise). On some matters (for example salary scales of local staff, standards of recruitment, career development, common staff regulations)[38] the ICSC makes recommendations to the participating organizations (each of which is free to accept, reject or modify these recommendations); furthermore, the ICSC may establish or determine certain matters (for example rates of allowances and benefits; standards of travel; classification of duty stations for Post Adjustment purposes; salary scales for locally recruited staff, under specified conditions; job classification standards for certain categories of staff)[39], with binding effect on the participating organizations. It was presumably the latter item that aroused the concern of the Director General, since the ICSC could make significant determinations that could, on one hand, affect the Agency's budget and, on the other hand, require amendments to the Staff Regulations, for example whenever the ICSC changed an emolument scale that happened to be incorporated in the Agency's Staff Regulations. Actually, there are relatively few instances to which the latter item applies[40], because, with

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[33] ICSC Statute, Article I.1–2.

[34] GOV/INF/289, para. 9; GOV/1928, para. 1.

[35] GOV/1928, para. 2. United Nations documents (annual reports of the ICSC to the General Assembly) A/31/30, para. 3; A/32/30, para. 1; A/33/30, para. 1. See, however, note 101.

[36] GOV/1928, para. 5; GOV/OR.528, paras 18–23; GOV/DEC/102(XXII), No. (16).

[37] ICSC Statute, Article 10(b) and (d).

[38] ICSC Statute, Articles 12(a), 14–15; see also Article 16.

[39] ICSC Statute, Articles 11(b)–(c), 12(b), 13.

[40] For example the change in the conditions of entitlement to an Assignment Allowance (ICSC/CIRC/GEN/39), which required a change in Annex IV to the Staff Regulations (GOV/2013, paras 4, 12–13, 15(d)), accomplished by GOV/DEC/111(XXIV), No. (19)(d).

regard to most provisions of the Regulations, the ICSC can only make recommendations, either directly to all organizations or via the United Nations General Assembly. Since Article VII.E of the Agency Statute does not specify precisely which regulations the Board must adopt directly and for which it may delegate its authority (as it has done, especially to the Director General), and in view of the provisions in the statutorily authorized Relationship Agreement for the United Nations and the Agency to develop "common personnel standards"[41], it would seem that no effective legal challenge could be mounted against the Agency's acceptance of the ICSC Statute. A fortiori, there is no legal difficulty concerning the authority of the ICSC in areas in respect of which the Board had delegated authority to the Director General, an authority which the Board has now in part delegated to the ICSC.

### 24.2.2. Method of securing conformity

The Agency's participation in the ICSC also provided a somewhat more effective mechanism for ensuring the Agency's conformity to the common system. Aside from the instances in which the ICSC can make determinations that must be complied with by the Director General or even the Board, the recommendations of the ICSC, which were arrived at after extensive consultations with CCAQ and FICSA (in both of which the Agency is represented), carried so much authority that, if they were endorsed by the General Assembly, the Board generally had no difficulty in accepting them with a minimum of debate[42].

Aside from the consequences of the Agency's participation in the ICSC, there was another factor that tended to bring the Agency into closer conformity to the common system. This was the coexistence, within the VIC, of the Agency, UNIDO and a number of smaller United Nations organs, all of which are directly bound by the Staff Regulations and Rules of the United Nations. Since the highly undesirable consequences of any significant deviation in the staff administration practices of closely related organizations located within one complex of buildings were generally recognized, considerable efforts were made to avoid any significant discrepancies. These efforts involved consultations between the executive heads (or rather the heads of administration) of the organizations within the VIC, contacts between the respective staff associations, formation of joint organs or delegations (for example with the ICSC, regarding Vienna related problems)[43], and the governmental representation

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[41] INFCIRC/11, Part I, Article XVIII.1. See generally the basic book, Sections 12.2.1 and 24.2.1. See, however, the USSR argument against any legal obligation to conform to the United Nations common system (GOV/COM.9/OR.105, paras 13, 28), and the Director General's reply (ibid., para. 28).

[42] For example GOV/OR.521, para. 51; GOV/OR.528, para. 17; GOV/OR.562, paras 1-7.

[43] Such joint approaches are provided by the ICSC Rules of Procedure (UN document, ICSC/1) 36(2) and 37(1)(b).

on the Agency's Board of Governors as well as on UNIDO's Industrial Development Board. These constituted additional factors tending to push the competent Agency organs to accept ICSC recommendations that had become binding for UNIDO and other United Nations organs.

### 24.2.3. Results

The various indications in the basic book of the extent to which the Agency conforms to the common system largely remained valid during the period covered by the present book. Indeed, these points became somewhat clearer owing to the activities of the ICSC in respect of Professional Post Adjustments and local salary scales, and owing to the pressure on the Agency, the United Nations and UNIDO to conform their personnel practices in Vienna.

The informally prepared "Comparison of the Staff Rules and Regulations of the IAEA with those of other International Organizations within the United Nations Common System"[44] concluded that although there were similarities between the regulations and rules of the various organizations, "the UN Common System does not provide a sufficient basis for ensuring uniform and consistent conditions of service". In particular, it was noted that the administration of the Agency had broader discretionary powers than the other organizations in the interpretation of regulations and rules, and that in some of the other organizations there was a wider scope of personal development and improvement of professional qualifications. Whatever the validity and relevance of the conclusions of this study, it would appear that the principal conclusion is hardly justified by the generally rather trivial deviations in the texts of the regulations and rules that were disclosed by this quite extensive study.

### 24.2.4. Participation in developing the system

Aside from continuing to participate in the various inter-organizational organs referred to in the basic book, the Agency started participation in the work of the ICSC. The administration (through the ACC) and the staff representatives (through FICSA) were consulted about the composition of the ICSC[45]. Executive heads and staff representatives have the right, separately but preferably together with their counterparts from other organizations, to present facts and views to the ICSC[46]. Normally, the Agency's administration co-ordinates its position with the positions of other organizations through the Consultative Committee on Administrative

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[44] Undated, informal document available in the VIC Library. It was prepared by three staff members, evidently around 1973–1974.

[45] ICSC Statute, Article 4(1).

[46] ICSC Statute, Article 28(2); ICSC Rules of Procedure 37–38.

Questions (CCAQ), but it is also represented separately at sessions of the ICSC. The staff is normally represented through FICSA, though on local issues it may present its own case, perhaps jointly with the Staff Associations of UNIDO and of the United Nations Office Vienna (UNOV). Comments on the recommendations of the ICSC are presented to the Fifth Committee of the United Nations General Assembly by the United Nations Secretary-General on behalf of the ACC and by FICSA on behalf of the participating staff associations.

Because of the increase in the number of organizations participating in the United Nations Joint Staff Pension Fund, the Agency's representation on the 21-member UNJSP Board has been reduced from two members to one member; on the 9-member Standing Committee the Agency continued to be represented by one member (still together with IMO, ITU and WMO)[47].

## 24.3. CLASSIFICATION AND GRADING OF EMPLOYEES

### 24.3.1. Persons subject to the Staff Regulations

#### *24.3.1.1. The Director General*

The conferment of the title "Director General Emeritus of the International Atomic Energy Agency" on Dr. Sigvard Eklund[48] did not result in a continuation of his status as a member of the Secretariat and did not establish any employment relationship with the Agency.

#### *24.3.1.2. Regular staff members*

##### 24.3.1.2.1. Professional and higher categories

In 1976 the Director General gave Mr. D.A.V. Fischer, the Director of the Division of External Relations, the ad personam title of Assistant Director General[49] — a rank not provided for in the Staff Regulations, but evidently meant to be placed between that of Deputy Director General and that of Director[50]. On Mr. Fischer's retirement in 1981, the title was not retained for his successor.

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[47] Rules of Procedure of the UNJSPF, JSPB/G.4/Rev.10, Annex II, Appendices 1–2.

[48] GC(XXV)/RES/392.

[49] SEC/NOT/469.

[50] In the annual staff list, Mr. Fischer was indicated as ADG (e.g. INFCIRC/22/Rev.19, p.8), though in the tables of that list he appeared as a D-2 (ibid., Annex I, Tables 1–2), his permanent grade. Though he received the emoluments of a DDG (no ADG scale was ever established), in the manning tables in the budget he continued to be listed as a Director (D) (e.g. GC(XXIII)/612, Annex V, Table 1).

Although in the Agency (unlike the United Nations), D-1 grade officers are given the title 'Director'[51], the Director General once, unsuccessfully, requested authority to upgrade, on an ad personam basis, three officers, who had been for a long time P-5s, to D-1s, but with the title (as in the United Nations) 'Principal Officer'[52].

24.3.1.2.2. General Service category and other categories for mainly locally recruited staff

*24.3.1.2.2.1. General Service category (GS-3 to GS-8).* In Vienna the General Service levels continue to range from GS-3 to GS-8[53], but in Trieste the range was from G-A through G-B, from G-0 to G-8[54], and in Monaco it was from G-2 to G-8[55].

The possibility of securing coverage by the Austrian Social Security system instead of through the UNJSPF has been somewhat extended[56].

*24.3.1.2.2.2. Maintenance and Operative Service category (M-2 to M-7).* The obligation of non-Austrians in the Maintenance and Operative Service category to participate in the UNJSPF has been somewhat relaxed[57].

*24.3.1.4. Technical co-operation experts*

Since, under the 1975 Service Rules Governing the Conditions of Service for Technical Co-operation Experts[58], the latter are no longer governed by the Provisional Staff Regulations, they are no longer — as explicitly stated in the Service Rules — members of the Agency Secretariat[59]. Consequently, these experts will be discussed in a new section (Section 24.3.3.1).

## 24.3.2. Special categories of staff

*24.3.2.2. Inspectors*

With the increase in the safeguards work of the Agency, which was largely due to the coming into force of the NPT, a large number of staff members (in 1982 nearly 200) in the Operations Division of the Department of Safeguards were assigned

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[51] Staff Regulations, Annex II, para. A.1
[52] GC(XXI)/582, para. 15.
[53] AM.II/1, Appendix B.
[54] AM.II/1, Appendix B(1).
[55] AM.II/1, Appendix B(2).
[56] Sections 24.5.2 and 24.5.3.
[57] Staff Rule 8.01.3(D).
[58] Section 24.1.5.2.3.
[59] See footnote 14.

full time to inspections and to inspection related work. These staff members therefore now constitute a staff of inspectors.

Unlike most members of the Agency's technical staff, who are rarely retained for more than four years, many inspectors who perform satisfactorily are, after two initial two-year appointments, offered a series of five-year appointments[60]. Also, special training courses have been developed for inspectors[61].

Initially, all inspectors were in the Professional or higher categories. In 1981 the Board authorized the Director General to use qualified General Service staff members approved by the Board "for complementary inspection purposes" [62].

### 24.3.3. Persons not subject to the Staff Regulations

During the period covered by the present book, the Agency has considerably refined and structured its relation with persons in various categories who perform tasks for it and/or receive payments from it, but who are not considered as staff members. This became necessary because of the ever increasing number of such persons and the larger variety of arrangements under which they came to be associated with the Agency.

#### *24.3.3.1. Technical co-operation experts*

As pointed out in Section 24.3.1.4, the technical co-operation experts, who used to be staff members serving under a special set of Staff Rules, were placed in 1975 outside of the Secretariat. Their status is now determined by a set of Service Rules Governing the Conditions of Service for Technical Co-operation Experts[63]. As defined in these Rules, these experts are individuals who are internationally recruited for technical co-operation projects in the field. Not included in this group are persons working primarily at an established Agency office, staff members in the General Service and the Maintenance and Operative Service categories, staff members of the Agency who are assigned to technical assistance or UNDP projects, 'associate experts' provided by a Government to the Agency to work together with technical co-operation experts, persons who have Special Service Agreements (SSAs), or persons who take part in the programme for the provision of operational, executive and administrative (OPEX) personnel[64]. They are classified into persons

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[60] Section 24.6.4.
[61] Section 24.8.5.
[62] GOV/DEC/111(XXIV), No. (16).
[63] See footnote 14.
[64] Rules 200.1 and 200.2(b).

appointed for less than one year and thus deemed to have short-term status (STEX) and persons appointed (for one or more terms) for a period of one to five years and thus deemed to have intermediate-term status (ITEX)[65].

Technical co-operation experts receive emoluments and social benefits that correspond substantially to those of staff members. In particular, the experts having intermediate-term status are enrolled in the UNJSPF. However, they are not covered by most of the joint staff-administration machinery relating to the promotion, disciplining and appeals of staff members[66]; therefore, disciplinary questions may be submitted to an ad hoc machinery, and appeals against administrative decisions must be submitted to such a machinery[67].

Technical co-operation experts are not listed in the annual staff list nor are Member States notified under Section 17 of the Agency's Agreement on the Privileges and Immunities that these experts are 'Officials' within the meaning of Article VI; rather, they are considered to be 'Experts on Missions for the Agency' within the meaning of Article VII.

### *24.3.3.2. Consultants*

The sections of the Secretariat Instructions and the Administrative Manual on The Engagement and Conditions of Service of Consultants were replaced in 1975 by a new section of the Administrative Manual with the title Consultants, Persons on Sabbatical Leave, Seconded Experts and Trainees[68]. This section defines consultants as outside specialists "engaged to perform under contract a defined task within a specified period of time"[69].

Consultants are employed under Special Service Agreements. They receive a fee on either a lump-sum basis or a daily basis, the latter generally being established on the basis of the level of staff members (from P-3 to DDG) with whom they can be compared. They are not enrolled in the UNJSPF or reimbursed for payments to any other social security scheme, but they are compensated for service incurred injuries[70].

Consultants, as well as the other persons discussed in Sections 24.3.3.3 to 24.3.3.5, are subject to the provisions of Staff Regulations 1.03 to 1.07, which specify some of the principal restraints on international officials[71].

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[65] Rule 200.2(f)(i)-(ii).
[66] Section 24.10.2.
[67] Rules 211.1 and 212.1 and 2.
[68] AM.II/11.
[69] AM.II/11, para. 2.
[70] AM.II/11, paras 9, 10(a), 14-25, Annex I.
[71] AM.II/11, para. 6. GOV/INF/358, para. 2.

*24.3.3.3. Persons on sabbatical leave*

Persons working for the Agency while on sabbatical leave from another employer are governed by the same section of the Administrative Manual as are consultants. They are defined as scientists on sabbatical leave from their university or other institution who work under contract on a specific subject of interest to the Agency[72]. Such persons, who normally continue to receive compensation from the Government or institution that employs them, receive a monthly allowance from the Agency, but no social benefits except compensation for service incurred injuries. Their rights and obligations are defined by a special type of SSA (Type SL)[73].

*24.3.3.4. Seconded experts*

The respective section of the Administrative Manual defines 'seconded experts' as persons "whose services are loaned to the Agency by a Member Government or an institution in a Member State to perform a defined task within a specific period of time"[74]. Such persons, who are expected to continue to receive their normal emoluments from their employer, do not receive any salary from the Agency but may receive a subsistence allowance. They also do not receive compensation for service incurred injuries because their regular employer is expected to provide the necessary coverage. Their rights and obligations are defined in a Letter of Acknowledgement, signed by the expert and by a representative of the Agency, as well as in a Memorandum of Understanding between the Agency and the Government[75].

*24.3.3.5. Trainees*

Trainees are either employees of a Member Government or employees of an institution who are assigned, at their Government's request, to a Division of the Agency where they can perform work in line with their own career; or they are students from a Member State who want to spend a limited period of time at the Agency performing work of interest to them and of use to the Agency[76].

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[72] AM.II/11, para. 3.

[73] AM.II/11, paras 9, 10(a), 26–29, Annex I. .

[74] AM.II/11, para. 4.

[75] AM.II/11, paras 9, 10(b), 30–32. In a note issued by the Director General he indicated that, as of 1 May 1979, there were 34 such experts serving in the Secretariat, half of them in the Department of Safeguards (GOV/INF/358); the latest staff list indicated that, as of 1 January 1982, there were six cost-free experts on appointments of at least six months (INFCIRC/22/Rev.21, Annex II).

[76] AM.II/11, para. 5.

Since trainees benefit personally from their assignment at the Agency, they normally receive no compensation from it[77].

*24.3.3.6. Other persons not subject to the Staff Regulations*

As indicated above, both the Service Rules for Technical Co-operation Experts and the respective sections of the Administrative Manual specifically exclude certain categories of persons from their coverage:

(a) Fellows, who are in no sense employees of the Agency, but, unlike trainees, are purely beneficiaries of an educational programme[78].

(b) Persons attending Agency meetings, training courses or study tours, who, unless they are employed as consultants, receive either no compensation at all or merely a reimbursement for certain travel and related costs incurred.

(c) Employees of contractors working for the Agency, whose individual rights are based entirely on their arrangements with their employers. The Agency, however, may arrange for them to receive limited privileges and immunities while they are performing work in a field that is of benefit to the host Government.

(d) 'Associate experts' provided by Governments, free of charge to the Agency under a bilateral agreement, who work together with technical co-operation experts from the same country but who are employed by the Agency.

(e) Operational, executive and administrative (OPEX) personnel provided by the Agency to a Government under an arrangement, as is customary in the United Nations system, whereby a foreign expert is employed by the Government in a particular domestic post and is paid by the Government as a national would be; the Agency supplements this compensation so that it corresponds to that of an international official. The expert is also protected by privileges and immunities provided for in an agreement between the Agency and the Government.

### 24.3.4. Retired staff members

Persons who have retired or who have separated from the Agency on any other basis retain no legal ties with the Agency, except that their immunities for official acts continue under the auspices of the Agency, as does their obligation of discretion in matters of official business[79].

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[77] AM.II/11, paras 9, 10(c), 33–34.

[78] Section 18.3.4.

[79] INFCIRC/9/Rev.1, Section 18(a)(i); INFCIRC/15/Rev.1, I, Section 38(a); Staff Regulation 1.06.

The pensions earned on the basis of service with the Agency are paid by the UNJSPF or by the Austrian Pension system.

Retired international officials in Vienna, especially those of the Agency and UNIDO, have formed the Group of Retired IAEA and UN Staff in Austria, which, however, is not formally affiliated with the Federation of Associations of Former International Civil Servants (FAFICS). This Group receives some informal support from the Agency. Retired staff members have almost unlimited access to the VIC[80]; also, retired staff members and their dependants or survivors may continue to participate in health insurance schemes available to staff members[81]. Retired Agency staff members are also eligible for loans from the Staff Welfare Fund[82].

## 24.4. REMUNERATION OF STAFF MEMBERS

### 24.4.1. Salary

#### *24.4.1.1. Professional and higher categories*

During the period covered by the present book, much more frequent changes in base salaries, in the Post Adjustment scheme and especially in the actual Post Adjustment levels became necessary, generally owing to the high rate of inflation in most of the countries relevant to the determination of the emoluments payable under the United Nations common system of staff administration. In respect of Vienna, these frequent changes were mainly due to the major shifts in the exchange rate between the US dollar (the currency in which Professional salaries are determined) and the Austrian Schilling (the currency in which most staff members are actually paid): from about 1:26 throughout 1969 to 1:12.5 in early 1981 to 1:17 in mid-1982.

Another relevant factor was the establishment of the ICSC, which has significant responsibilities with regard to determining, for the common system as a whole and therefore in collaboration with all organizations participating in the system and with their staff representatives, the emolument levels, particularly for the Professional and higher categories. The Agency's participation in the work of the ICSC, originally merely de facto, but since 1979 de jure, facilitated the Board's concurrence regarding the frequent emolument changes (for the most part increases in US dollar terms) that were required.

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[80] SEC/NOT/699. In particular, they have access to the facilities of the Catering Service (see Rules of the Catering Service at the VIC, Rule 2.01(a)).

[81] Staff Rule 8.03.2; SEC/NOT/190.

[82] Rules of the IAEA Staff Welfare Fund, paras 25–26; see also para. 1.

24.4.1.1.1. Base salary

The Board has continued to maintain the base salary (as well as the other principal emoluments) of the Professional staff of the Agency at the same level as had been established for United Nations staff by the General Assembly and recommended by it for application to the staff of all organizations following the common system. This required the following adjustments during the period under review:

(a) In June 1971 the Board approved new base salary scales, which incorporated two classes of Post Adjustment, and increased the resulting gross salary scales by 8% [83];
(b) In February 1974 the Board approved the incorporation of five classes of Post Adjustment into the base salary scales — a change which had no substantial effect on the actual salaries or on the Agency's budget but which tended to rectify a situation where nearly one half of the net emoluments of Professionals was in the form of Post Adjustments [84];
(c) In February 1975 the Board increased the net base salary scales by 6% [85];
(d) In February 1977 the Board, in conformity with decisions of the General Assembly taken in response to the first comprehensive review of the United Nations salary system, carried out by the ICSC, incorporated another five Post Adjustment classes into the base salaries and made some other minor adjustments [86];
(e) In February 1981 the Board approved the incorporation of 30 Post Adjustment index points into the base salaries [87].

24.4.1.1.2. Post Adjustment

During the period covered by the present book, the Post Adjustment system of the United Nations and thus that of the Agency experienced considerable strain and underwent consequent changes. These were occasioned by the several violent fluctuations in the exchange rates between the US dollar and other currencies, such as the Austrian Schilling. It should be pointed out that the Post Adjustment system was originally designed primarily to compensate for differences between the cost of living in the base city of the common system (changed in 1973 from Geneva to New York) in a specified base month (changed in 1973 from January to December 1969) [88] and the current cost of living at a given duty station. Thus, once a

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[83] GOV/1435; GOV/DEC/67(XIV), No. (51); INFCIRC/6/Rev.2/Mod.2.
[84] GOV/1646; GOV/DEC/79(XVII), No. (18); INFCIRC/6/Rev.2/Mod.4.
[85] GOV/1718; GOV/DEC/84(XVIII), No. (18); INFCIRC/6/Rev.3.
[86] GOV/1818; GOV/DEC/92(XX), No. (18); SEC/NOT/524 and /529; INFCIRC/6/Rev.4.
[87] GOV/2013; GOV/DEC/111(XXIV), No. (19)(a); INFCIRC/6/Rev.5.
[88] GOV/1646, para. 3.

particular Post Adjustment had been set so as to equate the purchasing power of international officials at a given duty station with that in the base city, changes in this Post Adjustment would normally only have to be made whenever the cost of living at the duty station changed substantially (i.e. by at least 5%). (Changes in the cost of living in the base city would not require an adjustment at other duty stations, since the comparison was always with the cost of living as of a given base month.) However, since the purchasing power at a given duty station must be measured in terms of the local currency, while Professional salaries are denominated in US dollars, some adjustment in the amount of US dollars payable must be made whenever the exchange rate between these two currencies changes, in order to maintain at an even level the number of currency units for the local currency at a duty station. In practice, this adjustment is also made through the Post Adjustment system[89], faute de mieux because this system is not well suited for this purpose. While during the 1950s and 1960s local inflation required the granting of an additional 5% Post Adjustment step every few years, or possibly every year, a major realignment in exchange rates might require addition or subtraction of five or even many more Post Adjustment steps in a given year, sometimes within a period of a few months.

There were at least four types of distortion of the Post Adjustment system as a result of the violent fluctuations in the currency exchange rates during the 1970s and early 1980s. These distortions and the corrective measures taken were as follows:

(a) The Post Adjustment, which originally was meant to be a necessary but still secondary element in the overall emoluments scheme, became the predominant factor and for some time exceeded the base salary in Vienna (and especially in Geneva). To counteract this development, more and more 'classes' and later 'index points' of Post Adjustment had to be incorporated into the base salaries. Naturally, each such adjustment in the base salaries also required a corresponding change in the Post Adjustment scale, since for each amount of base salary for a particular grade and step there had to be two corresponding amounts (one at the dependency rate and one at the single rate) of Post Adjustment, determined as fractions of the base salary.

(b) For Professionals with dependants, the Post Adjustment system only provided for a 4.3% increase for every 5% increase in the cost of living. While this 86% indexing could still be justified in respect of pure cost of living changes (on the grounds that few employees and even fewer public officials were entitled to full cost of living protection), adjustments due to currency fluctuations were less justified. Furthermore, the reduction in the purchasing power of Professional salaries became

[89] GOV/1494.

more and more pronounced as the Post Adjustments constituted a higher and higher percentage of the total emoluments. In 1977 the scales were reconstructed, to provide for approximately 89% indexing for P-1 staff and about 82.5% indexing for DDGs[90].

(c) The above described effect was even more pronounced in respect of Professionals without dependants, who only received a 2.9% increase for every 5% increase in the cost of living. While this 58% indexing constituted only a minor inequity as long as the Post Adjustments were only a small portion of the total emoluments, the discrepancy to the disadvantage of Professionals without dependants became more and more marked at higher and higher Post Adjustment steps and became a cause of genuine dissatisfaction. In 1974 this situation was temporarily corrected through the granting of a special supplementary Post Adjustment to staff members without dependants serving at posts with eight or more Post Adjustment steps (i.e. with at least 40% nominal adjustment)[91]. In 1977 the scales were entirely reconstructed so as to provide for the same percentage Post Adjustments related to net base salaries[92] (which themselves were set so as to take account of the difference between staff members with dependants and staff members without dependants).

(d) Since the original Post Adjustment scheme provided for an adjustment whenever there was a shift in the purchasing power equivalent to 5% of the base salary, as the Post Adjustments increased and the base salary constituted a much decreased portion of the total emoluments, the requirement of a 5% increase in the base salary was fulfilled more and more rapidly as the prices increased or the exchange rates changed (i.e. with twenty 5% Post Adjustment steps, the Post Adjustment was about equal to the base salary, which thus constituted only 50% of the total emoluments; at that point a 2.5% increase in the total emoluments would be equivalent to a 5% change in the base salary). As a result, the higher the Post Adjustments were, the more frequently they had to be adjusted — often on a monthly basis — leading to confusion and dissatisfaction of the staff (particularly when reductions were called for) and unduly complicating the preparation of payrolls. The cure recommended by the ICSC and adopted by the United Nations General Assembly and the Agency's Board was to adopt an index point system designed to require a 5% change in the total emoluments before a Post Adjustment change was made[93]. The new system, while being adequate to accomplish the purpose it was designed for, had the disadvantage of being much more complicated and incomprehensible to the

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[90] GOV/1818, para. 6(d); GOV/DEC/92(XX), No. (18)(a); INFCIRC/6/Rev.4; SEC/NOT/529, Annexes II-III.

[91] GOV/1712; GOV/DEC/88(XIX), No. (14); INFCIRC/6/Rev.3/Mod.1.

[92] GOV/1818, para. 6(d); GOV/DEC/92(XX), No. (18)(a); INFCIRC/6/Rev.4; SEC/NOT/524, para. (b).

[93] GOV/1891; GOV/DEC/99(XXI), No. (49); INFCIRC/6/Rev.4/Mod.1; SEC/NOT/602.

staff and was thus less capable of satisfying staff members that they were actually being protected from fluctuations of the purchasing power; moreover, adjustments required by currency fluctuations often resulted in fractional Post Adjustment classes, the use of which further complicated the system and tended to nullify the use of the ever larger steps.

From the point of view of the Agency, there was yet another difficulty. As reported in the basic book, each adjustment had to be approved by the Board, which generally did so retroactively, with effect from the date on which the rise in the cost of living index required the attainment of another step. Adjustments were, however, required more and more frequently. Moreover, adjustments that were meant to counteract exchange rate fluctuations had in principle to be introduced immediately, so that the monthly payments of salaries plus Post Adjustments in Austrian Schillings should not vary (and should not have to be adjusted upwards or downwards later) because of fluctuations in the exchange rate. In September 1973 the Board consequently agreed[94] that henceforth the Post Adjustments should be made automatically as required by the ILO, and the Board need merely be kept informed[95].

With the establishment of the ICSC, the definitive determination of the amount of Post Adjustment payable from time to time at each duty station was assigned to the ICSC[96].

*24.4.1.2. General Service and Maintenance and Operative Service categories*

Since the emoluments of the non-Professional staff are established in the local currency, they are not directly affected by exchange rate fluctuations. Thus, except for the somewhat more frequent and larger adjustments due to the higher rate of inflation during the 1970s even in Austria, there were no major substantive changes in the scheme for establishing these emoluments.

24.4.1.2.1. Base salary

During the period covered by the present book, general surveys, resulting in the establishment of revised base salary scales for General Service staff and for Maintenance and Operative staff, were carried out in 1971[97], 1973[98], 1977[99] and 1981[100]. The first three of these surveys were carried out jointly with UNIDO,

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[94] GOV/1626, paras 5, 6(b); GOV/OR.458, paras 66–75; GOV/DEC/77(XVI), No.(48)(b).

[95] For example GOV/INF/274, informing the Board of the five different Post Adjustments prevailing in Vienna from January through May 1974; since then, addenda have been issued to this document approximately every six months.

[96] ICSC Statute, Article 11(c).

[97] GOV/1507.

[98] GOV/1647.

[99] GOV/1917.

[100] GOV/2052, paras 4–9 and /Corr.1.

according to the practice already established for the 1968 survey; the latest survey was the first one carried out by the ICSC under Article 12.1 of its Statute[101]. In each case the results of the survey indicated a need to adjust the salary scales upward (and also to make some adjustments within both salary scales), and in all cases the Board approved the resulting new scales[102].

Interim adjustments, according to a procedure and formula approved by the Board in 1967 and 1969 and described in the basic book, were made for the General Service and the Maintenance and Operative Service categories, each on 11 separate occasions from 1 January 1970 to 1 January 1981[103] (in addition to the four adjustments consequent on the general surveys). Initially, these interim adjustments took place once a year, as of 1 January, if a change of at least 5% was indicated — which was always the case. Later, as the inflation accelerated, the adjustments were made as soon as a change of at least 5% was indicated and confirmed during a three-month waiting period. Thus, originally, changes were always carried out jointly for the General Service category and the Maintenance and Operative Service category, but the dates of adjustment no longer necessarily coincided when they depended on the changes in the separate indices relevant to these two categories. One adjustment, made as of 1 January 1975, did not reflect a change in the indices, but rather a general income tax reduction in Austria which by itself was of a magnitude that would trigger an adjustment; therefore, this adjustment was carried out immediately (indeed just one month before the General Service scale had to be adjusted in the usual way)[104]. In each case the Board took action to approve the change, generally retroactively, with little or no debate[105].

In connection with the general survey carried out by the ICSC in 1981, the ICSC also recommended two slight changes in respect of future interim surveys, namely the abolition of the previous three-month waiting period after the quantitative requirements had been met, and a reduction of the extent to which the Austrian price and wage indices are taken into account in adjusting for the effect of the Austrian income tax progression[106]. After initially postponing consideration of this proposed change, the Board approved it in February 1982[107].

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[101] ICSC/R.303, reproduced as GOV/2052, Attachment. Although the ICSC had already been approached to carry out the 1977 survey, it declined to do so because the Agency had not yet accepted its Statute.

[102] GOV/DEC/71(XV), No.(25); GOV/DEC/79(XVII), No.(19); GOV/DEC/100(XXI), No.(59); GOV/DEC/113(XXIV), No.(59)(a).

[103] GOV/1378, /1434, /1574, /1624, /1703, /1714, /1743, /1767, /1768, /1794, /1801, /1840, /1855, /1966, /2009 and Add.1.

[104] GOV/1714.

[105] For example GOV/DEC/61(XIII), No.(21), and GOV/DEC/110(XXLV), No.(9).

[106] ICSC/R.303 (GOV/2052, Attachment), paras 28–30; GOV/2052, paras 13–16; GOV/2065, paras 4–8 and Annex.

[107] GOV/DEC/113(XXIV), No.(60); GOV/DEC/115(XXV), No.(17).

At the time when the Director General presented the results of the first ICSC survey to the Board, together with the ICSC recommendations regarding interim adjustments, he also requested the Board to delegate to him the authority to make such adjustments, on the understanding that the Board would be kept informed[108]. The Board approved this delegation in February 1982[109]. The first such adjustments were made by the Director General, according to the revised formula, with effect from 1 February 1982 for General Service staff and from 1 April 1982 for Maintenance and Operative staff[110].

24.4.1.2.2. Non-Resident's Allowance

The Austrian Schilling amount of the Non-Resident's Allowance (AS 26 000) has remained unchanged. At the end of the 1970s, this amount corresponded to a considerably higher US dollar amount than in 1960 (when the current Schilling amount was established), but the considerable increases in the General Service salary scale in the interim reduced the relative value of the Allowance and thus the discrimination between local staff and non-local staff. This reflected the fact that the 'best prevailing rates' of income in Vienna were no longer considerably lower than those prevailing in other Western European countries.

24.4.1.2.3. Language Allowance

Following the decision of the General Conference to add Arabic to its official and working languages[111], Arabic was added to the languages in respect of which a Language Allowance may be paid[112].

### 24.4.2. Staff assessment

At their introduction in 1964, the staff assessment rates constituted a single scale, applicable to staff members in the Professional and higher categories, as well as to General Service staff and Maintenance and Operative staff, regardless of whether or not the staff member had any dependants. Thus, unlike many national income tax systems, the staff assessment system did not allow for relief for those who carried the burden of dependants; instead, staff members with dependants received a flat Dependency Allowance. In 1977, the Board, following an action taken by the General Assembly on the recommendation of the ICSC, temporarily left unchanged

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[108] GOV/2052, para. 17; GOV/2065, para. 9.
[109] GOV/DEC/115(XXV), No. (16).
[110] GOV/INF/416.
[111] GC(XXV)/RES/390.
[112] SEC/NOT/857.

the staff assessment scale for General Service staff and Maintenance and Operative staff, but introduced a new set of scales for staff in the Professional and higher categories, which differentiated between staff with dependants and staff without dependants by setting for the latter a net base salary that was 91–94% of the salary of the former[113]. The simultaneous abolition of payments for a dependent spouse resulted in a system in which, for the staff affected, the income benefit for those with dependants became roughly proportional to the base salary level. As of 1 January 1981, again following an action taken by the General Assembly on the recommendation of the ICSC, the staff assessment rates for staff in the Professional and higher categories were once more changed, without, however, altering the pattern set in 1977[114]. As of 1 July 1981, the assessment scale for General Service staff and Maintenance and Operative staff was also revised to conform to a recommendation of the ICSC, which was implemented, again on the recommendation of the ICSC, at the time of the introduction of a revised salary scale[115]; however, unlike the scale for Professionals, that for lower categories of staff did not differentiate with respect to the dependency status of the staff member, nor was the new scale identical with that for the Professional and higher categories.

As was true during the period covered by the basic book, the changes in the staff assessment scales did not have any direct effect on the staff members nominally subject to the assessments. In practice, it was always the net base salaries that were set, and the gross salaries were manipulated so as to achieve the desired net salaries when these were subjected to the specified assessment rates. Indeed, one of the principal purposes of changing the staff assessment scales was to bring about consequential changes in the gross salaries, since the pensionable remuneration was related to the gross salaries.

As in the previous period, staff assessment calculations in the Agency did not constitute part of payroll accounting or of budgeting.

### 24.4.3. Dependency Allowance

Several important changes in respect of the Dependency Allowance have occurred during the period under review. For the Professional and higher categories, with regard to whom the rates and procedures established for the United Nations common system are followed, the principal change was the abolition of the allowance for a dependent spouse in 1977 and the introduction of a differentiated set of rates of staff assessment, resulting in an 'allowance' that was roughly proportional to the

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[113] GOV/1818, para. 6(c) and Annex II; GOV/DEC/92(XX), No. (18)(b); SEC/NOT/529.

[114] GOV/2013; GOV/DEC/111(XXIV), No. (19)(b).

[115] GOV/2052, paras 10–12 and Annex 2; GOV/DEC/113(XXIV), No. (59)(b). For the reasons explained in Section 24.4.7, this scale was introduced subject to a transitional period.

base salary (constituting 6–9% thereof). In addition, a similar differentiation between staff members with dependants and staff members without dependants was introduced in the Post Adjustment scheme (which also has single rates and dependency rates) and in the Repatriation Grant. Furthermore, an allowance became payable for dependent children and, if there was no dependent spouse, for a dependent parent or sibling[116]. For General Service staff and Maintenance and Operative staff the staff assessment remained undifferentiated by dependency status, no Post Adjustment was payable (but a differentiated Repatriation Grant might be payable), and the amounts of allowances payable for a spouse, children or a secondary dependant were set in the Staff Rules and conformed to 'best prevailing' local rates[117].

As of 1 January 1975, the Board introduced a Staff Regulation whereby the Director General may "adjust the amount of a dependency allowance with a view to avoiding duplication of benefits and achieving equality between a staff member who receives a dependency allowance solely from the Agency and one who receives such an allowance from another source"[118]. The Director General thereupon promulgated a Staff Rule[119] whereby the amount of any child's allowance "payable from a public source outside the Agency in respect of a child recognized by the Agency as a dependant" was to be deducted from any Dependency Allowance or net salary bonus resulting from the differentiated staff assessment. This Rule, applicable to all categories of staff, was principally designed to neutralize the effects of the Austrian 'Familienbeihilfe' and of the corresponding French and Italian allowances payable monthly to local staff in Vienna, Monaco and Trieste.

With regard to the Dependency Allowance and the other payments for which the existence of recognized dependants is significant, detailed definitions of various types of dependants are given in the Staff Rules[120].

### 24.4.4. Education Grant

The amount of the Education Grant has been increased several times during the period covered by the present book, and the conditions of eligibility have been somewhat liberalized, almost completely in conformity with changes adopted or recommended from time to time by the organs of the United Nations common system[121]. In particular, a special grant has been introduced for disabled children[122].

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[116] Staff Regulation 5.03; Staff Rule 5.03.1(A).
[117] Staff Rule 5.03.1(B) and Appendices B, B(1), B(2) and C.
[118] GOV/DEC/81(XVII), No. (60); Staff Regulation 5.03(c).
[119] Staff Rule 5.03.1(C).
[120] Staff Rule 5.03.2.
[121] Staff Regulation 5.04; Staff Rule 5.04.1.
[122] Staff Regulation 5.04(c); Staff Rule 5.04.2.

## 24.4.5. Payments relating to commencement or termination of service

### *24.4.5.3. Repatriation Grant*

The Repatriation Grant used to be payable to any staff member whom the Agency was liable to repatriate (i.e. transport to some country other than the final duty station), regardless of whether the staff member was actually repatriated, and even in cases where the staff member did not leave the final duty station. Following a recommendation of the ICSC, made in response to a request by the General Assembly, the Director General as of 1 July 1979 imposed a requirement that the Grant would only be payable to staff members presenting "evidence of relocation away from the country of the last duty station", with the type of evidence considered acceptable being specified[123]. However, also following the recommendation of the ICSC, the above requirement was made inapplicable to staff members already in service, to the extent that they already had accrued service time that would qualify them for the Repatriation Grant or for some portion of it[124].

### *24.4.5.4. Termination Indemnities*[125]

As of 1 July 1977, the Board amended the provisions relating to Termination Indemnities so as to introduce, inter alia, the possibility of increasing, in respect of a staff member whose termination was considered by the Director General to be "in the interest of the good administration of the Agency" and who agreed to such termination, the normally payable Termination Indemnity by 50%[126]. This provision, adapted from a Staff Regulation long in force in the United Nations[127], made it possible to encourage staff members whose work was unsatisfactory to leave (giving them a 'gilded' if not a 'golden' handshake). Of course, since fewer and fewer Agency staff members served on permanent or long term contracts, this provision was less necessary in the Agency than in the United Nations.

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[123] SEC/NOT/664, paras (a)-(h).

[124] SEC/NOT/664, para. (d). The Agency, like the specialized agencies following the United Nations common system, but unlike the United Nations itself, did not cancel this saving clause as required by the General Assembly of the United Nations Secretary-General (UNGA resolution 34/165, para. II.3; UN Administrative Instruction ST/AI/269); these decisions by the General Assembly and the Secretary-General led to a litigation in the United Nations Administrative Tribunal (*Mortished versus The Secretary-General of the United Nations*, UNAT Judgment No. 273) and even to an advisory opinion of the International Court of Justice (*Advisory Opinion on Application for Revision of Judgment No. 273 of the United Nations Administrative Tribunal, 1982 I.C.J. Reports*, p.325); it appears that, as a consequence, a clause along the lines adopted by the Agency must be upheld.

[125] The Agency's obligation to pay a termination indemnity was the subject of an appeal to the Administrative Tribunal of the International Labour Organisation (ILOAT) in which the Agency prevailed (*In re Kotva*, ILOAT Judgement No. 180).

[126] GOV/DEC/92(XX), No. (18)(a); Staff Regulations, Annex I, para. (d).

[127] UN Staff Regulation 9.3(b).

### 24.4.6. Reimbursement of income taxes

The Agency's income tax reimbursement system has continued to follow substantially that of the United Nations, being altered from time to time whenever that of the senior organization changed. In particular, the Agency has adopted the formula prevailing in the United Nations since 1970, whereby the amount to be reimbursed is the difference between the amount of tax that is actually due (on the understanding that the staff member has done his utmost to minimize his tax liability) and the amount of tax that would be due only on the outside income of the staff member (including any income of his spouse if the tax return is a joint one), with all exemptions and deductions that appear on the actual tax return also being used to calculate the tax due on the notional return[128], i.e. the notional tax return differs from the actual tax return only in that the former excludes all items of Agency emoluments. This formula is designed to put staff members subject to income tax into the position which they would have if the national authorities concerned would accept the generally tax immune nature of international emoluments. The effect of this formula is particularly favourable for those who have considerable outside income; on the other hand, it is less favourable for those who have large deductions, since under the United Nations/Agency formula the benefit of these deductions accrues entirely to the reimbursing organization[129].

On the other hand, unlike the United Nations, the Agency does not reimburse any portion of the US Social Security Tax[130], even to the extent that this tax exceeds the amount which a person working for an employer who does not enjoy tax immunity would pay[131]. (Under US law, US citizens who are employees of international organizations and who earn income in the USA are taxed at the higher self-employment rate, because the organization, as employer, cannot be required to pay the normal employer's share of the tax.) This, however, is a matter of minimal significance to most Agency staff, since the tax is only payable by US citizens while they work in the USA for an international organization.

Although the Agency has still not established a Tax Equalization Fund such as has been pioneered by the United Nations[132] and copied by a few of the specialized agencies (FAO, WHO), in 1974 the Agency entered into a tax reimbursement

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[128] Staff Rule 5.02.1(B).

[129] An alternative tax reimbursement system is that used, inter alia, by the World Bank, in which the reimbursement is based entirely on the tax due on the income earned from the international organization, taking into account only the minimum standard exemptions and deductions, or some other, standard higher amount (e.g. the average deductions taken on similar size returns). This formula is unfavourable for those with a large outside income, but very favourable for those with exceptionally large deductions.

[130] Staff Rule 5.02.1(C)(1).

[131] UN Secretariat Instruction.

[132] UN Financial Regulation 5.2(c); UN Financial Rule 105.2-5.

Agreement with the USA[133] under which the latter directly refunds to the Agency the taxes that the Agency has been required to reimburse to those of its staff members financed from the Regular Budget[134]. In October 1981 the USA denounced this Agreement as of the end of the year, as well as Agreements with a number of other international organizations, and proposed the immediate conclusion of a new, more restrictive agreement. After this issue was taken up by CCAQ, the USA postponed the effective date of the denunciation for a year. During that year, all the organizations represented in the ACC agreed to make a joint approach to the USA, rejecting the proposed new agreement and proposing some liberalizations to be introduced in respect of the existing agreements.

### 24.4.7. Reduction of remunerations

From time to time, situations arise which ordinarily would lead to some reduction of a particular element of remuneration or to some increase in the difficulty of qualifying for it. With few exceptions, the Agency has in such instances made some special arrangements to avoid any actual diminution of payments made to staff members. A few examples are given below:

(a) When the new staff assessment rates for the Professional and higher categories were introduced in 1977 and the Dependency Allowance for a dependent spouse was abolished, the Agency, following the recommendation of the ICSC and the example of the General Assembly, introduced temporary transitional payments to staff members whose remuneration would otherwise be reduced. These transitional payments were gradually eliminated as other increases in remunerations raised the diminished payments to at least their original levels. Similarly, when the gross salary and thus the pensionable remuneration was reduced as a result of the reduced staff assessment scale, the previous level of pensionable remuneration was maintained[135].

(b) When in 1981 the staff assessments of General Service staff were reduced on the recommendation of the ICSC, the Board also followed the recommendation

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[133] Exchange of Letters between the Agency's Director General and the US Resident Representative, 7 and 28 August 1974; UNTS Vol. 979, R. No. 14244.

[134] This restriction corresponds to that applicable in respect of the United Nations Tax Equalization Fund, since the restriction applies only to the Regular Budget. Thus, under either scheme, the USA does not reimburse the organization concerned for taxes reimbursed to staff members financed by any form of voluntary contribution.

[135] GOV/1818, para. 7; GOV/DEC/92(XX), No. (18)(c); SEC/NOT/525, paras 5-8.

of the ICSC that any pensionable remunerations that would be reduced should be maintained at their previous levels until they were surpassed as a result of subsequent salary revisions[136].

(c) Staff Rule 5.03.1 provides that the Dependency Allowances for Professionals, which are specified in US dollars but paid in local currency, should in no case be less (but can be more) than the local currency equivalent at the date of the establishment of the specified dollar amounts.

(d) In establishing the new requirement in respect of the Repatriation Grant, the rights 'accrued' by staff members already in service were specifically preserved[137].

Thus, practically the only instance in which a reduction in the net emoluments is possible under the Staff Regulations and Rules would be a reduction in the Post Adjustment for Professionals due to a reduction in the cost of living index at the duty station[138], or a reduction in the salary scales for General Service staff or Maintenance and Operative staff due to a reduction in the local cost of living and the wage/salary indices. However, these are merely theoretical possibilities in an age of constant inflation.

The precautions taken by the Agency to avoid any reduction in the general emolument levels or even in any particular emoluments reflect the general practice of the United Nations common system organizations, frequently expressed in recommendations of the ICSC. Although the motivation for these measures is rarely expressed explicitly, the following factors are evidently taken into account:

(1) From the point of view of staff-administration relations it is evidently considered highly desirable to avoid any, even temporary, reduction in emoluments;

(2) From a legal point of view, several different (but often not carefully distinguished) arguments of varying persuasiveness may be presented in opposition to particular proposed reductions — arguments that find certain support in the jurisprudence of the two Administrative Tribunals of the United Nations common system, and in particular in some early judgements of the Administrative Tribunal of the International Labour Organisation (ILOAT):

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[136] GOV/2052, para. 12; GOV/DEC/113(XXIV), No. (59)(c).

[137] SEC/NOT/664, para. (d).

[138] It should be noted that a reduction of the Post Adjustment due to an increase in the US dollar/Austrian Schilling rate (a not infrequent occurrence) does not, by definition, result in any significant change in emoluments expressed in Schillings.

(a) Staff members may claim, in some instances, to have a specific contractual right, from which the Agency may not derogate — though generally such rights do not exist in respect of impersonal conditions of employment (such as salary and emolument scales), since Letters of Appointment always reserve the right of the Agency to amend the Staff Regulations and Rules[139];

(b) Staff members may claim to have an 'acquired right' (more properly it should be denominated an 'acquired expectation') regarding certain prevailing standards of employment, essentially on the grounds that these constituted fundamental conditions at the time when the staff member accepted or renewed employment with the Agency; the Agency cannot derogate from these standards by relying on the formal ground that it has reserved the power to amend the Staff Regulations and Rules;

(c) Staff members may, somewhat more reasonably, claim to have an 'acquired right' regarding certain emoluments in the sense that they had already been earned by past periods of employment, even though they had not yet been paid or may not even yet have become actually payable (for example an emolument due on separation); such claims are specially relevant in respect of UNJSPF benefits.

## 24.5. SOCIAL SECURITY

### 24.5.2. United Nations Joint Staff Pension Fund

#### *24.5.2.2. Coverage*

The basic principles of coverage of Agency staff members by the UNJSPF did not change during the period covered by this book. However, as pointed out in Section 24.5.3, the exception from participation in the UNJSPF for those covered by the Austrian Social Security System has been considerably broadened, thus correspondingly reducing the number of participants in the UNJSPF[140].

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[139] Staff Regulation 13.01 provides that "these Staff Regulations may be supplemented or amended by the Board of Governors without prejudice to the acquired rights of members of the Secretariat"; similar restrictions appear in Article 26 of the ICSC Statute and in Article 50(b) of the UNJSPF Regulations. Examples of such 'acquired rights' (regarding to which a substantial literature has evolved, particularly in recent years) are given in paragraphs (b) and (c) of the text.

[140] The Agency's system of permitting certain staff members to opt for the Austrian Social Security system has been strongly criticized by the Secretary of the UNJSP Board.

*24.5.2.3. Pensionable remuneration*

During the period covered by the present book, the Agency, through its Director General, has continued to follow precisely the decisions of the competent United Nations common system organs relating to the setting of levels of the pensionable remuneration of staff members. From time to time, the Board has been informed of significant developments[141].

During this period the General Assembly, on the advice of the UNJSP Board, the ACC and later also the ICSC, made a number of changes in the UNJSPF scheme, to help adapt it to the strains of extensive and uneven inflation throughout the world and the irregular and considerable fluctuation in exchange rates. Especially because of the considerable drop in the value of the US dollar, on the basis of which all accounting, of contributions as well as of benefits, of the Pension Fund was being done, the local currency value of pensions in Europe, including Austria, was reduced nearly by half. The various successive adjustments that were introduced culminated in 1981 in a significantly revised system, which differentiates between pensionable remunerations for contribution purposes and pensionable remunerations for benefit purposes; this is done differently for international staff (Professional and higher categories) and for local staff (General Service and Maintenance and Operative Service categories).

Only pensionable remunerations for contribution purposes have to be defined in the Agency's Staff Rules[142], since the remunerations for benefit purposes depend entirely on the provisions governing the Pension Fund and do not affect the Agency directly. While for local staff the amount of pensionable remunerations for contribution purposes remained the sum of the gross salary and any Non-Resident's and Language Allowances, for staff in the Professional and higher categories this amount constituted a complex modification of the former WAPA system (gross base salary plus the Weighted Average of Post Adjustments), also taking into account changes in the Consumer Price Index for the USA[143].

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[141] For example GOV/INF/380, para. 15.

[142] Until 1981 the UNJSPF preserved the principle that every participating organization was free to set pensionable remunerations according to its own rules and as specified in the participant's terms of appointment (JSPB/G.4/Rev.10, Article 1(p)); in practice, however, all the participating organizations conformed to the patterns established from time to time by the United Nations General Assembly on the recommendation of the organs of the common system. As of 1 January 1981, the 'pensionable remuneration' is defined in the UNJSPF Regulations and is thus binding on all the participating organizations (JSPB/G.4/Rev.10/Amend.1, Articles 1(p) and 55).

[143] JSPB/G.4/Rev.10/Amend.1, Article 55. IAEA Staff Rule 8.01.2(A)(1).

*24.5.2.4. Participation in organs of the UNJSPF*

The formula defining the composition of the Agency's Staff Pension Committee has not changed. As pointed out in Section 24.2.4, the Agency's representation in the UNJSP Board has been reduced because of an increase in the number of participating organizations without any increase in the size of the Board.

### 24.5.3. Austrian Social Security system [144]

In 1973 an Agreement between the International Atomic Energy Agency and the Republic of Austria concerning Social Security for Officials of that Organization was concluded[145], which replaced the two earlier agreements relating to that subject. The new instrument was designed to make certain that all Agency officials employed in Austria who for some reason were excluded from the UNJSPF and did not participate in a non-Austrian scheme will participate in the Austrian health, accident, pension and unemployment insurance schemes; it should also be possible for officials participating in the UNJSPF to secure coverage by the Austrian health and unemployment insurance schemes. In addition, provisions facilitating transfers between the two systems were included in this Agreement[146].

Staff Rule 8.01.3 specifies which Agency staff members must, or may, participate in the Austrian Pension Insurance Scheme. In particular, these include all persons who are ineligible to participate in the UNJSPF and who are not included in any other national scheme, all Maintenance and Operative staff, for whom participation is compulsory if they are Austrian or stateless and voluntary otherwise, and all Austrian or stateless General Service staff who wish to accumulate up to 15 years' coverage in the Austrian scheme[147]. Staff Rule 8.01.4 defines the pensionable remuneration for the purpose of the Austrian scheme as the gross base salary plus the Language Allowance, up to the maximum allowed by this scheme[148].

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[144] ILOAT examined aspects of the arrangements relating to the participation of staff members in the Austrian Social Security system in two cases, one of which had been preceded by an unsuccessful attempt to litigate the question in an Austrian court (the case referred to in note 125 and *In re Jakesch,* ILOAT Judgement No. 187).

[145] INFCIRC/15/Rev.1, Part V.

[146] It should be noted that these arrangements do not constitute an agreement between the Austrian Government and the UNJSPF, concluded under Article 13 of its Regulations, under which the Fund could make direct transfers of money to the Austrian pension system. Instead, under the IAEA/Austria Agreement, it is left to the official himself to use funds that he receives on withdrawing from the UNJSPF to purchase coverage in the Austrian pension scheme (INFCIRC/15/Rev.1, Parts III and V).

[147] The Secretary of the UNJSP Board pointed out that this arrangement is especially unfavourable to his Fund, depriving it of participants whose contribution would be particularly useful to its actuarial soundness (JSPB/30/R.19/Add.1, paras 8–11).

[148] From time to time, as these maxima change, Agency staff members are informed of the newly applicable amounts (see SEC/NOT/631).

### 24.5.4. Other coverage

The Agreement relating to the Monaco Laboratory provides that locally recruited administrative and technical personnel employed by the Agency for the Laboratory are, if possible, to continue participating in national social security schemes[149].

### 24.5.7. Other insurance schemes

The Agency has made arrangements for staff members to secure Group Life Insurance, to purchase Travel Insurance for emergency private travel, and to include family and household members in their health insurance[150].

The Agency also has, at its own cost, secured Supplementary Death and Disability Insurance for staff members covered by Appendix D to the Staff Rules in order to protect them (or their dependants) in situations in which death or injury is not connected with service and to give additional protection in those situations in which it is[151].

## 24.5a. WORKING TIME

No section on this subject was included in the basic book because the Agency's practices regarding both working hours and leave appeared to conform in all significant respects to those of the United Nations common system. While this is still largely true, the Agency has in the meantime introduced some interesting and promising innovations, such as flexible working hours, part-time work and sabbatical leave, which appear worthy of note, in particular because other organizations are likely to adopt some of them. In order to place these in context, however, it seems necessary to outline first the standard arrangements in this area.

Staff Regulation 1.02 provides that "the whole time of staff members shall be at the disposal of the Director General". The provisions described here indicate how this apparently somewhat forbidding and old-fashionedly paternalistic injunction is implemented in practice.

### 24.5a.1. Working hours

#### *24.5a.1.1. Normal working hours*

Staff Regulation 1.02 also provides that "the Director General shall establish the normal working week". He has done so by means of Staff Rule 1.02.1(A), which

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[149] INFCIRC/129/Rev.1, Article 11(b).
[150] AM.II/17.
[151] SEC/NOT/619 and /644.

sets the normal working week at 40 hours, i.e. eight hours per day from Monday through Friday. The normal working hours at Headquarters are from 8.30 to 17.30, with a one-hour lunch break[152]; different hours are generally set for the summer months[153]. The system of flexible working hours, described in Section 24.5a.1.3, permits significant deviations from that schedule and even from the rigid time allotments.

Different schedules are established at other Agency offices, by the heads thereof, with the approval of the Director General. Exceptions may be made by designated supervisors[154].

For technical co-operation experts in the field, the senior officer at each post (normally the UNDP Resident Representative) establishes work schedules "with due regard to local conditions and practices" [155].

*24.5a.1.2. Overtime*

Staff Rule 1.02.1(B) requires staff members to work beyond the normal hours whenever they are requested to do so. Staff in the Professional and higher categories are expected to do so without any special compensation, though they may be granted some time off at the Director General's discretion for substantial or recurrent periods of overtime[156]. General Service staff and Maintenance and Operative staff who are required to work overtime are normally to be granted compensatory time off, at either equivalent rates or time-and-a-half rates, depending on when the overtime was performed. If no such compensatory time off can be granted by the middle of the following month, then an overtime payment is made in accordance with formulas set out in the Staff Rules[157].

*24.5a.1.3. Flexible working hours*

During the last three months of 1973 a system of flexible working hours (sometimes called 'flex-time') was introduced on a cautious, experimental basis, for a few volunteering Divisions and other units of the Secretariat[158]. A joint staff–administration Task Force on Flexible Working Hours was set up to monitor the experiment, secure staff reactions and formulate the rules governing first the experimental regime and then the definitive regime. After the experimental period

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[152] AM.II/5, para. 2.
[153] For example SEC/NOT/859.
[154] AM.II/5, paras 3–5.
[155] Staff Rule 201.3(a).
[156] Staff Rule 1.02.2(E).
[157] Staff Rule 1.02.2(A)–(D).
[158] SEC/NOT/311 and /318; GOV/1660, para. 154.

had been extended several times, each time with the participation of more and more Secretariat units, and after two referenda had been held, the Director General introduced the system generally and definitively as of January 1976[159]. The opposition to the scheme, which came mainly from the Professional staff[160], appeared to be based largely on the dislike of time-clocks and possibly on a concern about the availability of colleagues (in particular assistants) during any part of the day.

The present rules[161], which have evolved somewhat since the definitive introduction of the system, and in view of the occurrence of various types of violations and abuses[162], provide in essence for the following points:

(a) All staff members must be present (except during a one-hour lunch break and for other specified reasons) during the 'core time', from 9.30 to 16.00 (15.30 on Fridays). The 'flexible period' is from 7.30 to the beginning of the core time and from the end thereof to 18.30; during this time, staff members are free to be present or not, but they may have to co-ordinate in this regard with close collaborators and must arrange that essential functions within each Division are fully operative during the standard working hours.
(b) The normal working week is 40 hours. The minimum working day is 5.5 hours.
(c) Accumulated credit hours are normally to be taken off during the flexible period, but, if this is not possible, full or half days of compensatory leave may be taken. Generally, up to 8 hours of excess time or deficit time may be carried forward to the following month.
(d) Special provisions define overtime and specify credit time for duty travel and sick leave, and for other unusual situations.
(e) Staff members are required to use time cards for checking in and out at the beginning and the end of the working day and before and after any break for private purposes.

*24.5a.1.4. Part-time work*

Part-time work had previously been allowed infrequently and on an ad hoc basis. In 1970 the Director General, on the advice of the JAC, decided in principle that such arrangements could be made[163]. Some time later, the introduction of

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[159] SEC/NOT/350, /359, /363, /366, /376, /435, /438 and /441.

[160] The first referendum, in June 1974, showed that 50.4% of the total staff were in favour and 32.8% opposed, with 16.8% abstaining (SEC/NOT/359). The second referendum, in September 1975, showed that 150 Ps and 431 GSs were in favour, 157 Ps and 104 GSs opposed, with 28 Ps and 32 GSs abstaining or not voting (SEC/NOT/438).

[161] SEC/NOT/755, as modified by SEC/NOT/824; AM.II/5, Annex I.

[162] SEC/NOT/451, /486, /519, /526 and /634.

[163] SEC/NOT/477.

relevant rules was announced[164]. The UNJSPF Regulations and Rules were amended to permit participation of part-time staff members in the Pension Fund as of 1 January 1975[165]. The Administrative Manual prescribes how General Service and Maintenance and Operative posts may be designated as part-time jobs[166], and the Staff Rules indicate the modalities of such employment and in particular that it is expected to be on a half-time basis[167].

### 24.5a.2. Holidays

#### *24.5a.2.1. Agency holidays*

The Staff Rules allow the Director General to designate holidays[168]. On this authority he annually designates eight days, of which seven days are common to all duty stations and one day varies with the country of assignment[169].

#### *24.5a.2.2. National holidays*

The Staff Rules permit each staff member to observe his/her national day as a holiday or to take off some other day if he/she requests this or if the exigencies of the service demand it[170].

### 24.5a.3. Leave

Over the years, most of the various leave entitlements have been somewhat liberalized, usually to achieve greater equality among staff members of different categories and types of appointment.

#### *24.5a.3.1. Annual leave*

The Staff Regulations allow staff members in the Professional and higher categories to earn annual leave at the rate of six weeks (or 30 working days) per year (or 2.5 working days per month) and leave it to the Director General to prescribe

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[164] SEC/NOT/549.

[165] UNJSPF Regulations (JSPB/G.4/Rev.10), Supplementary Article A, and Annex I, para. (f).

[166] AM.II/3, paras 49–51.

[167] Staff Rules 1.02.1(A), 3.03.2(F), 3.03.3(A)(1)(e), 4.06.5(B), 5.01.1, 5.01.2, 5.01.7(F), 5.03.1(B), 7.04.1(C), 7.04.2(A)(5).

[168] Staff Rule 1.07.1(c).

[169] For example SEC/NOT/826, Official Holidays in 1982. In making the first such designations, for 1958, the Director General set out the principles to be observed in selecting the holidays (SEC/INS/45, para. 3).

[170] Staff Rules 1.02.1(D) and 201.3(c).

the annual leave entitlement of other categories[171]. The Director General has prescribed the same amount of annual leave for General Service staff and Maintenance and Operative staff[172]. However, daily short-term staff members are not eligible for annual leave[173].

Not more than 60 days (two years' worth) of leave may be accumulated and carried over from year to year[174]. If this leave is unused at the time of separation, up to 60 days of leave may be converted into a lump sum payment[175].

### *24.5a.3.2. Home leave*

'Home leave' is actually not a period of leave, but a payment made to staff members to facilitate periodic visits by themselves and their families to the home country. The only actual leave (i.e. time) element is the travel time (normally for travel by air) granted for both legs of the journey[176].

Entitlement to home leave is normally accrued for every two years of service in a country outside the one of which the staff member is a national. All staff members in the Professional and higher categories as well as internationally recruited General Service staff members are eligible for home leave, except for General Service staff members from outside the general geographic region of the duty station (unless their Letter of Appointment specifically provides for entitlement to home leave)[177].

### *24.5a.3.3. Sick leave*

A staff member, regardless of category, who has a permanent appointment or who has completed three years of continuous service is entitled to up to 9 months of sick leave at full pay and 9 months at half pay in any period of four consecutive years. Smaller amounts are granted to persons serving on shorter appointments[178].

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[171] Staff Regulation 7.01.

[172] Staff Rule 7.01.1(A). For the first several years of the Agency, the Director General only allowed 2 days per month (or 24 working days per year) for General Service and Maintenance and Operative staff.

[173] Staff Rule for Short-term Staff 7.01.01(A).

[174] Staff Rule 7.01.1(C).

[175] Staff Rule 4.06.2.

[176] Staff Rule 7.02.1(M); SEC/NOT/660.

[177] Staff Rule 7.02.1.

[178] Staff Rule 7.04.1(B); Staff Rule for Short-term Staff 7.04.01(A).

*24.5a.3.4. Maternity leave*

A staff member who will have served continuously for 10 months[179] at the expected time of her confinement may take maternity leave from a date 8 weeks in advance of that time and must take 8 weeks of leave after her confinement, all at full pay[180]. Thereafter, some time off is allowed for nursing[181].

Following maternity leave, staff members may be granted special leave without pay, without first having to exhaust their annual leave entitlement[182].

*24.5a.3.5. Special leave for training purposes*

During the period covered by the present book, the Agency has introduced various types of special leave for training purposes[183]:

(a) *Sabbatical leave*

Senior staff members (P-5 or above) with at least seven years of service with the Agency (during which they have not taken more than two months of special leave for training purposes) and who can normally expect to serve with the Agency for at least five more years after returning from sabbatical leave may be granted 6–12 months of leave to undertake advanced studies, research or practical work, in disciplines relating to their present or imminent functions, at a university, a research institute or, exceptionally, an appropriate private organization. Full or partial pay and other financial aid may be granted, on the recommendation of the Joint Committee to Consider Appointments, Promotions or Extensions of Professional Staff[184].

(b) *Study leave*

Under slightly less stringent conditions, staff members may be granted one to six months of special leave for study purposes, together with appropriate financial assistance. Applications therefor are considered by the Study Leave and Training Committee[185, 186].

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[179] The Agency's very first case in ILOAT lasted for the length of this period, which originally was, provisionally, set at 12 months (*In re Wawrik*, ILOAT Judgement No. 41, XLIII ILO Off. Bull. 468–471).

[180] Staff Rule 7.04.2(A)(1)–(2).

[181] Staff Rule 7.04.2(D).

[182] Staff Rule 7.03.1(B).

[183] Under the general authority of Staff Regulation 7.03 and Staff Rule 7.03.1(A).

[184] Originally SEC/NOT/593, and now incorporated in AM.II/6, paras 2–6, 20–25.

[185] The composition and terms of reference of this Committee are set out in AM.II/13, para. 14.

[186] AM.II/6, paras 7–11, 20–25.

(c) *Training courses, seminars or symposia*

Staff members at all levels may, under specified conditions, be granted special leave, with full or partial pay, to attend courses, seminars or symposia at qualified and recognized institutions, on the recommendation of the Study Leave and Training Committee[187].

*24.5a.3.6. Other special leave*

Special leave, with full, partial or no pay, may also be granted for other purposes deemed valid by the Agency[188].

## 24.6. LENGTH AND TENURE OF STAFF APPOINTMENTS

### 24.6.1. Permanent appointments

*24.6.1.2. Staff Regulations*

Even though no permanent appointments have been granted since the mid-1960s[189], Staff Regulation 3.03(d) remains unchanged in providing for this possibility.

On the basis of a long established United Nations Staff Regulation, one additional ground of terminating the appointment of a permanent staff member has been added to Staff Regulation 4.01(b)[190]: "in the interest of good administration of the Agency", but only if agreed to by the staff member concerned[191].

*24.6.1.4. Stated policy*

The Annex to the Administrative Manual section on Recruitment, Transfer, Promotion, Reclassification, Establishment and Assignment, which presents the Policies for Appointments, Promotions, Extensions and Reclassifications in the Professional Category, states that staff members may "exceptionally [be granted] a

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[187] AM.II/6, paras 13–17, 20–25.

[188] Staff Regulation 7.03 and Staff Rule 7.03.1(A)–(B). The first draft of the basic book was largely written during four months of unpaid special leave granted by the Agency.

[189] The Joint Inspection Unit (JIU) Report on Personnel Policy Options states that the Agency has not granted any permanent contracts to Professionals since 1965 (UN document A/36/432/Add.1, Annex VIII, heading 1).

[190] Erroneously stated as Regulation 4.02(b) in this section in the basic book.

[191] Staff Regulation 4.01(b)(iv). Under paragraph (d) of Annex I to the Staff Regulations, a Termination Indemnity up to 50% higher than the normal one may be paid in order to induce the staff member to agree to the termination.

permanent contract if continuity of his/her service is in the best interest of the Agency, having regard also to [the statutory restriction]" [192]. The fact that, in practice, no such contracts are granted is not stated anywhere in this codification of the relevant Agency policy. Similarly, the related Annex on the Principles for the Appointment and Promotion of General Service and Maintenance and Operative Staff mentions the possibility of granting probationary appointments leading to permanent ones[193], but, aside from emphasizing the gravity of this step, does not mention that the Agency has discontinued doing so, even for these categories.

In 1977 the Director General explained to the Board "his policy of achieving and continuing turnover of professional staff so as to ensure a constant infusion of fresh ideas, especially in the scientific and technical areas" [194]. However, he did not explicitly mention permanent appointments.

Finally, it might be noted that the former Joint Committee to Consider Promotion and Permanent Appointments of Professional Staff has been renamed the Joint Committee to Consider Appointments, Promotions and Extensions of Professional Staff[195].

#### *24.6.1.6. Results of the policy*

On 1 January 1982 the Agency had about 600 Professional staff members, of whom 491 held posts subject to geographical distribution; of these, only 36 (or 7%) still held permanent contracts[196].

### 24.6.3. Probationary appointments

The Staff Regulations and Rules relating to probationary appointments have not been changed during the period covered by the present book. In addition, the 1980 Principles for the Appointment and Promotion of General Service and Maintenance and Operative Staff specifically provide for the possibility of granting such appointments[197].

Nevertheless, since a probationary appointment is intended as being merely a prelude to a permanent one and since permanent appointments are in practice no longer granted, the probationary appointment has fallen into desuetude.

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[192] AM.II/3, Annex I, para. 16.

[193] AM.II/3, Annex II, Part C.

[194] GOV/OR.496, para. 45.

[195] AM.II/13, Part I.

[196] INFCIRC/22/Rev.21, Annex I, Table 2.

[197] AM.II/3, Annex II, Part C; paragraph 8 specifies that probationary appointments should only be granted after the completion of at least three years (two years in the basic book) of satisfactory service.

### 24.6.4. Fixed-term appointments

The Policies for Appointments, Promotions, Extensions and Reclassification in the Professional Category stated that initial appointments are to be ones for a fixed term of a maximum duration of 2 years. These appointments might be extended for a period not exceeding 2 years. Thereupon, Professional staff members might be granted contracts of 5 years' duration (which presumably could be renewed, though this is not stated), but such contracts were normally offered only to safeguards inspectors, language staff and a few administrators; alternatively and exceptionally, a third and absolutely final 2-year term might be granted[198]. After losing an appeal in the Administrative Tribunal, the Agency has evidently discontinued its former practice of permitting many Professional staff members to serve for a total period of just under 5 years[199].

For General Service staff and Maintenance and Operative staff the policy statement indicated that, if no Manning Table position existed and recruitment was for a conference, symposium or similar meeting, only a short-term contract subject to the Staff Rules for Short-Term Staff was to be granted; if a Manning Table position existed or was contemplated and if the candidate possessed the qualifications required therefor, he/she was to receive a contract not exceeding 2 years initially; if he/she did not fully possess the necessary qualifications, he/she was to receive a contract for up to 6 months, which might be renewed only once to enable him/her to attain the required standard[200]. The length of further contracts was not specified anywhere. However, the practice appears to have been that locally recruited staff was appointed initially for 3 months, then for 1 year and then for another 2 years, and thereafter the contract could be renewed for periods of 3–5 years. Non-locally recruited staff was appointed initially for 1 year, then for 2 years, and then the contract could be renewed for periods of 5 years.

Laboratory technicians were normally appointed for an initial trial period of 6 months[201], whereupon the further contract renewals presumably followed the general pattern described above.

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[198] AM.II/3, Annex I, paras 15–17. The Director General announced that in 1976, probably a typical year, there was a turnover of about 20% of the Professional staff (GOV/OR.496, para. 45), suggesting an average term of 5 years. The Staff List of 1 January 1982 shows that of the 491 Professionals occupying posts subject to geographical distribution, 211 (or 43%) had contracts of 5 years or longer (INFCIRC/22/Rev.21, Annex I, Tables 1, 3).

[199] *In re Meyer*, ILOAT Judgement No. 245; Section 27.4.3, Case (4). The reason for this practice (and perhaps even for the present practice of retaining most Professional staff members for only 4 years) could be sought in the UNJSPF Regulations. These regulations originally provided that officials serving for less than 5 years only become Associate Participants on whose behalf the employing organization only pays a 4.5% contribution (instead of 14%), and later provided that if an official separates after less than 5 years of contributory service the Pension Fund refunds to the organization half of its 14% contribution (JSPB/G.4/Rev.10, Article 26).

[200] AM.II/3, para. 34.

[201] AM.II/3, Appendix D, para. 3.

The latest version of the Service Rules Governing the Conditions of Service for Technical Co-operation Experts (Section 24.1.5.2.3) no longer provided for contracts of five or more years (i.e. 'long-term status').

### 24.6.9. Secondment

Staff members serving with another international organization and appointed to a post in the Agency, or vice versa, were transferred, seconded or loaned in accordance with the CCAQ sponsored Inter-Organization Agreement Concerning Transfer, Secondment or Loan of Staff[202].

Although it is not clearly specified anywhere, the Agency apparently did not grant secondments to Government employees, but, even though these employees were recruited with the approval of the Government, the Agency considered them as being directly appointed[203].

## 24.7. RECRUITMENT

### 24.7.2. Staff Regulations and Rules

The principal requirements for the employment of staff resulting from the Statute and from the Staff Regulations are summarized in the Introduction to the Policies for Appointments, Promotions, Extensions and Reclassifications in the Professional Category[204].

### 24.7.3. Policy on geographical distribution

#### *24.7.3.1. Overall composition*

Complaints about the overall distribution of the Agency's non-linguistic Professional staff being unduly weighted in favour of the developed countries were expressed with increasing frequency; similar complaints were also made in other worldwide international organizations. When the General Assembly, after extensive consideration, adopted in 1980 a revised formula for the desirable composition of the United Nations staff, together with detailed recruitment procedures[205], members of the Board suggested that the Director General should examine this resolution with

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[202] AM.II/3, para. 35.

[203] Theodor Meron, *In re Rosescu* and the Independence of the International Civil Service, Am. J. Int. Law **75** (1981) 910–925.

[204] AM.II/3, Annex I, para. 1(a)–(f).

[205] UNGA resolution 35/210, Sections II and II and Annex, reproduced in GOV/INF/390, Appendix and Annex.

a view to the application of pertinent parts of it to the Agency[206]. The Director General responded in 1981 with a report on "Representation of the Developing Countries and of Women on the Staff of the Agency"; in this report he noted that the Agency (similarly to other medium sized organizations following the United Nations common system of personnel administration) allocated posts "solely on the basis of the financial contributions to the organization's budget" [207]. In practice, the Agency apparently attempted to maintain the number of nationals of Member States occupying posts subject to geographical distribution within a range defined as ±25% of an 'entitlement'; this range was obtained by multiplying the number of posts by the base scale of assessments[208] for the State concerned, provided every Member State was 'entitled' to at least one post; for the two largest contributors (USA and USSR[209]) the range established was between the 'entitlement' and 25% less than the entitlement.

In 1981 the General Conference adopted a resolution on "Staffing of the Agency's Secretariat" [210] in which it recalled recent relevant General Assembly resolutions, noted that "of the senior and policy-making staff in the Agency few are from the developing areas of the world as compared with those from developed areas", reaffirmed that all posts at all levels (including that of the Director General) "should be considered open to qualified candidates from all Member States", requested the Director General to take immediate steps to increase substantially the number of staff members from developing areas, at all levels but particularly the "senior and policy-making" ones, so as to "rectify the existing imbalance over the course of the next four years" (i.e. by the time the term of the Director General expired), and further requested the Board to report at the next session of the Conference and the Director General to report annually. The Board, in its report on the relevant Staff Regulations, mainly pointed out that the reduction of any imbalance in the composition of the staff was merely a question of how the Director General exercised his extensive discretion in regard to recruitment, and that he was bound to do so subject to directives from the Board or the Conference, such as the directive contained in the 1981 resolution[211]. The Director General, in his first report on the subject, indicated that, as an initial measure, the vacancy announcement period had

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[206] GOV/OR.562, paras 31-35.

[207] GOV/INF/390, paras 4(ii) and 6.

[208] Section 25.3.1.

[209] As in other worldwide international organizations, the USSR was actually represented in the Agency considerably below its desirable range (only 45 Professionals out of a total of 491 subject to geographical distribution on 1 January 1982 (INFCIRC/22/Rev.21, Annex I, Table 1)). Some reasons for this are discussed by A.Z. Rubinstein, in The Soviets in International Organizations, Princeton University Press (1964) 254-288.

[210] GC(XXV)/RES/386.

[211] GC(XXVI)/668.

been extended in order to facilitate responses from developing countries; it was also planned to introduce training courses for junior Professionals from developing countries and to develop statistical methods for analysing progress in this area[212].

*24.7.3.2. The senior staff*

The 1981 resolution of the General Conference referred to in the previous section especially addressed the imbalance in the senior staff of the Agency[213].

As of 1 January 1982, one out of five DDGs and seven (including one from Israel) out of 25 D-1s and D-2s came from developing countries[214].

*24.7.3.3. The inspectorate*

During the period covered by the present book, the number of inspectors (for the most part Professionals and a few General Service staff)[215] increased to some 200, thus constituting the largest single group of Agency staff members assigned to a particular type of task. Because of the potential political delicacy of this assignment, it is not surprising that, from time to time, concern has been expressed about the composition of this group or about particular nationalities represented in it[216].

The Director General pointed out that he would resist any strict balancing in recruitment, particularly in safeguards, between developed and developing countries, among geographical regions or by language competence[217].

### 24.7.4. Recruitment practices

The practices of the Agency with respect to recruitment are set out in the Administrative Manual, in the section on Recruitment, Transfer, Promotion, Reclassification, Establishment and Assignment, and in two Annexes thereto relating respectively to Professional staff and to General Service and Maintenance and Operative staff[218]. The Manual describes in some detail the standards and procedures for recruitment, including the distribution of vacancy announcements and the appointment procedures.

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[212] GOV/2095 and /Add.1; GC(XXVI)/672.

[213] GC(XXV)/RES/386, paras (g), 1 and 3.

[214] INFCIRC/22/Rev.21, Annex I, Table 1.

[215] Section 21.8.1.1.

[216] See, for example, the protest by North Korea against the appointment of yet another South Korean inspector (GOV/OR.555, paras 39–40).

[217] GC(XXII)/OR.200, para. 23.

[218] AM.II/3 and Annex I–II.

It appears that the Agency recruited Professional staff members exclusively from among Government nominees[219]. Generally, all posts were advertised, except those of Department Heads and their personal staff[220]. Decisions regarding appointments were made as follows:

(a) For DDGs and Ds by the Director General in consultation with the Board[221];
(b) For P-5s and P-4s, in posts other than 'language posts', by the Director General, at the request of the Division Director endorsed by the Department Head and on the advice of the Joint Committee to Consider Appointments, Promotions and Extensions of Professional Staff[222];
(c) For P-5s and P-4s, in language posts, by the Director General, at the request of the Division Director endorsed by the Department Head and on the advice of the Joint Advisory Panel on Professional Staff in the Translation Sections, Interpretation Service and the Editing Unit[223];
(d) For P-3s to P-1s by the Director of Personnel, at the request of the Division Director endorsed by the Department Head, if the advice of the Joint Committee or the Joint Advisory Panel, as appropriate, was unanimous; otherwise by the Director General[224];
(e) For G-8s to G-6s by the DDG for Administration, at the request of the Division Director and on the advice of the Advisory Panel on General Service and Maintenance and Operative Staff[225];
(f) For G-5s, M-7s and M-6s by the Director of Personnel, at the request of the Division Director and on the advice of the Advisory Panel[226];
(g) For G-4s and below, and M-5s and below, by the Director of Personnel, at the request of the Division Director[227].

### 24.7.5. Recruitment of women

As in the other United Nations common system organizations, concern has been expressed in the Agency during the past decade about the relatively low percentage of women in Professional and higher posts.

In 1974 a Working Group of the JAC was established to consider the elimination of provisions for differential treatment based on sex from the Staff Regulations

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[219] AM.II/3, para. 12, final sentence; see also paras 3, 13, 31 and 32. The practice of requiring Government approval on initial recruitment is legally distinguishable from requiring such approval for the renewal of the appointment of a staff member, which ILOAT held objectionable in *In re Rosescu*, ILOAT Judgement No. 431, ILOAT 45th Ordinary Session (Section 27.4.3, Case (5)).

[220] AM.II/3, para. 13.

[221] AM.II/3, para. 24.

[222] AM.II/3, paras 25, 26, 28; AM.II/13, Part 1.

[223] AM.II/3, paras 25, 27, 28; AM.II/13, Part 7.

[224] AM.II/3, paras 25–28.

[225] AM.II/3, paras 29–30; AM.II/13, Part 8.

[226] AM.II/3, paras 29–30.

[227] AM.II/3, paras 29–30.

and Rules. On the advice of the JAC, the Director General, as of 1 July 1975, promulgated a number of changes to that end in the Staff and Travel Rules, which had formerly assumed that the wife of a staff member was dependent on him (thus entitling him to certain benefits), while making no such assumption about the husbands of staff members; for the most part, 'spouse' was substituted for 'wife', thus ensuring for married female staff members the same benefits that married male staff members had enjoyed[228]. In September 1975 the Board made a number of corresponding changes in Annexes III–V of the Staff Regulations[229].

In June 1975 the Board, taking into account the International Women's Year proclaimed by the General Assembly, unanimously adopted a resolution requesting the Director General "to give special consideration to the appointment of qualified women to policy-making and other professional posts on the staff of the Secretariat, bearing in mind the provisions of Article VII of the Statute" [230].

In 1976 the first female safeguards inspector was appointed[231].

In 1980 the Joint Inspection Unit submitted a progress report on the "Status of women in the Professional category and above" in the organizations following the United Nations common system, in which it showed that from 1977 to 1979 the proportion of female staff in the Agency had remained almost unchanged (decreasing from 11.2% to 10.9%), that the 1979 figure was the lowest one among the figures for the eleven organizations covered by the report and that the highest female official in all those years had been a P-5 [232]. The Joint Inspection Unit reported that the Agency had explained its failure to set any target figures (as had been done by a few of the other organizations) by asserting that "almost the entire Agency staff was drawn from national administrations; these have very few women employed and are reluctant to lose them to the Agency" [233]. The Joint Inspection Unit also pointed out that the documents and literature related to the recruitment of Agency staff were non-discriminatory, that training programmes were open to men and women, that vacancy notices stated "it is important that applications for this post be received from suitably qualified women as well as men", and that 24% of the members of some 12 personnel advisory and administrative bodies were women[234].

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[228] SEC/NOT/426.

[229] GOV/1762; GOV/DEC/86(XVIII), No. (52).

[230] Proposal by the USA (GOV/1749 and /Add.1); GOV/OR.480, paras 29–49; GOV/DEC/85(XVIII), No. (43).

[231] GC(XXI)/580, para. 194.

[232] UN document A/35/182, Annex II(A–C). Indeed, in all the years of the Agency's operation, there had only been one other female P-5. With few exceptions, most of the female Professionals in the Agency were not recruited as such, but were promoted, mostly in the administrative services (Finance, Personnel) from GS grades (see INFCIRC/22/Rev.21, which shows both the entry grade and the then current grade for all staff).

[233] UN document A/35/182, Table 1.

[234] UN document A/35/182, Tables 2, 3 and 5.

The 1981 report by the Director General in relation to the overall policy on geographical distribution nominally also referred to women, but in effect hardly addressed that part of the subject[235].

## 24.8. CAREER RELATED MEASURES

### 24.8.2. Promotions

During the period covered by the present book, the criteria and procedures for the promotion of staff at all levels have been codified in the section of the Administrative Manual on Recruitment, Transfer, Promotion, Reclassification, Establishment and Assignment, and in the several Annexes and Appendices thereto[236]. The general principles set out in the Manual were as follows:

(a) A post at the level to which the promotion was to be carried out had to be available. This required:

  (i) that the staff member be occupying a post classified higher than his grade, or, if the post is double (or linked) graded, that he occupy the post at the lower level; or

  (ii) that the staff member's post be reclassified, which implies that the duties of the post must have changed; the procedures for reclassification of posts (which for Professional posts requires budgetary action by the Board and the General Conference) are also set out in the same Manual section[237]; or

  (iii) that the staff member be transferred to another post with a higher grade, which requires the approval of the Director General in the case of Professional posts[238].

(b) Particular minimum requirements regarding education, post-education experience and time-in-grade in the current post must be fulfilled.

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[235] GOV/INF/390, para. 11.

[236] AM.II/3, paras 36–42; Annex I, paras 9–14; Annex II, paras 11–16; Appendix A; Appendix C; Appendix D (second part); Appendix E. See also SEC/NOT/844.

[237] In particular, AM.II/3, paras 43–45, Annex I, paras 18–21, and Annex III. See the debate in the Board and its Administrative and Budgetary Committee on the Director General's proposal to reclassify, temporarily, three P-5 posts to the D-1 level or to the new P-6 level (GOV/COM.9/OR.126, paras 52, 65, 126–127; /OR.128, paras 5–11; GOV/OR.496, para. 47; /OR.497, para. 47).

[238] AM.II/3, para. 36.

(c) The Joint Committee or the Joint Advisory Panel, which was also competent for appointments, had to be consulted, normally in the course of an annual review of all eligible staff members, and a decision had to be taken by the competent authority (the Director General for Professional staff), unless the promotion was actually merely an adjustment of grade after recruitment at a lower level because of the temporary failure to meet some requirement of the vacancy notice.

### 24.8.3. Step-in-grade increases

The procedure for withholding a step increment has been codified in the Collection of Personnel Practices[239]. In particular, it is required that the staff member be informed in advance of such withholding, in writing, and of the reasons therefor.

In 1982 the Director General proposed to the Board the introduction of up to three longevity increments in the form of additional step increments for staff members who had been at the normal top step of their grade for at least three years, to be awarded after the completion of at least 15, 20 and 25 years of satisfactory service[240].

### 24.8.4. Awards

In 1982 the Director General announced to the staff that he would henceforth grant each year five Distinguished Service Awards to recognize:

(a) A singularly outstanding scientific achievement;
(b) A particular contribution to the Agency's programme;
(c) Exceptional dedication and initiative;
(d) Continuously outstanding work performance.

Each award consists of US $1000 in cash, a medal and a citation, to be announced at an appropriate ceremony[241].

### 24.8.5. Career development

Because of the relatively short time that most Professional staff members spend and are expected to spend at the Agency, little effort at systematic career development was made by the Agency (with the exceptions noted below)[242], even though

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[239] Pers. Pract. on Staff Rule 5.01.3(A) and (B).
[240] GOV/2094.
[241] SEC/NOT/868.
[242] See N.A. Graham and R.S. Jordan, The International Civil Service, Changing Role and Concepts, Pergamon Press, Oxford (1980) 96-98.

the organizations following the common system were becoming increasingly conscious of the importance of this aspect of personnel administration[243].

On the advice of the Joint Advisory Committee, a programme of in-service training was started late in 1978, first in the form of an expansion of the courses for newcomers organized on a monthly basis by the Division of Personnel for all new staff members (except those in the Maintenance and Operative Service category)[244].

An elaborate training programme for safeguards inspectors has been developed because, on one hand, the task of a safeguards inspector is not one for which training or experience can be secured elsewhere and because, on the other hand, safeguards inspectors are among the few Professionals who can expect a fairly long tenure at the Agency[245]. A special Safeguards Training Unit has been established[246].

In addition, computer and library courses, primarily addressed to the users of these services, have been organized by the competent units[247].

Account should also be taken of the several types of special leave for training purposes instituted during this period.

### 24.8.6. Disciplinary measures

Staff Regulation 11.01 authorizes the Director General to impose disciplinary measures on a staff member whose conduct is unsatisfactory and to summarily dismiss a staff member for serious misconduct. Staff Rule 11.01.1 lists as possible disciplinary measures written censure, suspension without pay, demotion or dismissal for misconduct, or summary dismissal. Under this Rule, all of these measures require prior reference to a 'Personnel Advisory Panel' (i.e. the Joint Disciplinary Committee)[248], except for summary dismissal or suspension without pay for a period of up to two weeks. Under Rule 11.01.2, the Director General may also suspend a staff member with or without pay, pending investigation of suspected serious misconduct, which suspension is not considered a disciplinary action; if the investigation results in summary dismissal, it may be made effective as of the date

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[243] See, for example, ICSC Statute, Article 14(d).

[244] SEC/NOT/613 and /706, p.1.

[245] See C. Büchler, International Safeguards Inspector: A Profession with a Future? (mimeographed paper, 1979).

[246] Programme of In-service Training 1980 (SEC/NOT/706).

[247] Ibid.

[248] AM.II/13, Part 13. The Committee also must be consulted in the case of a termination for conduct inconsistent with the standards of integrity required by the Statute or for failure to disclose on recruitment relevant facts anterior to the appointment; these terminations are not, however, disciplinary measures.

of suspension; if there is no summary dismissal (but, for example, merely dismissal for misconduct or termination for failure to meet the required standards of conduct), the staff member must be paid for the period of suspension[249].

Fortunately, there were not many cases in which any of these measures had to be applied, and, for the most part, only subaltern staff members were involved. One different instance must, however, be recorded. In the wake of the 1981 bombardment by Israel of an Agency safeguarded Iraqi reactor, a P-3 safeguards inspector, employed since 1978, left Vienna and travelled to the USA; from there he cabled his resignation and immediately thereafter testified before the Senate Foreign Relations Committee, to the effect that the Israeli attack was justified because, as a result of various defects in the Agency's safeguards system (of which he said he had become aware in his capacity as an inspector), the Agency would have been unable to ensure that no diversion could take place from that reactor or that such diversion could be detected in time. The Director General, who had just assured the Board and later the United Nations Security Council in the opposite sense, refused to accept the resignation (which had not been submitted within the notice period required by Staff Regulation 4.04) and summarily dismissed the staff member for serious misconduct, including the transmission of a confidential document to the US Mission[250]. No other punitive measures were considered practicable or were attempted. Subsequently, a reminder of obligations under Staff Regulations 1.01 and 1.03–06 was circulated to all staff[251].

## 24.9. CONTRACTUAL INSTRUMENTS

### 24.9.1. Staff members

#### *24.9.1.1. Letters of Appointment*

##### 24.9.1.1.1. Requirements and practices

As of 1982, the Agency used standard Letters of Appointment, which were usually transmitted with a covering note (regardless of whether or not the recipient was in Vienna) calling attention to the most important provisions, especially those concerning duration and tenure:

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[249] Staff Regulation 11.01 and Staff Rule 11.01.1 have existed since the beginning of the Agency; Staff Rule 11.01.2 was introduced during the period covered by the present book (SEC/NOT/310).

[250] GOV/OR.571, paras 18–19. During the subsequent debate, a number of Governors commented on this matter.

[251] SEC/NOT/800.

(a) Initial fixed-term appointment (usually two years) (printed form marked with the letter F);
(b) Extension of initial fixed-term appointment (EX);
(c) Long-term (i.e. 5-year) extension of a fixed-term appointment (EXL);
(d) Final extension of a fixed-term appointment (EXS), which stated (both in the Letter of Appointment and in the covering note) that "This is the final extension of your fixed-term appointment which shall not be extended, renewed or converted to another type of appointment";
(e) Daily short-term appointment, for Professionals (Da) or for General Service staff (D), which appointments differed only in their premature termination clause;
(f) Monthly short-term appointment (M).

### 24.9.2. Other employees

#### *24.9.2.1. Special Service Agreements and other instruments*

Various types of Special Service Agreements (SSAs) continued to be used by the Agency for persons employed to perform a particular task to be carried out during a specified period (printed form SL), or as required for the project (but not beyond a stated deadline) (Ca), or for a particular short mission (SME), or for persons largely assimilated to staff members (no printed form used).

Although technical co-operation experts were no longer considered members of the Secretariat, they for the most part (except for those serving on SSAs) received Letters of Appointment[252], of either of the following types:

(a) For short-term project personnel (STEX);
(b) For intermediate-term project personnel (ITEX).

Seconded experts received and signed a Letter of Acknowledgement, which referred to an arrangement between the Agency and the expert's Government (usually set out in a Memorandum of Understanding).

#### *24.9.2.2. Oath of service and other undertakings*

Certain SSAs (for example the SME type) continued to contain the lengthy formula quoted in the basic book. However, the SL and Ca forms described in the previous section merely stated, under "Status of the Subscriber":

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[252] Pursuant to Rule 203.1 of the Rules of Service Governing the Conditions of Service for Technical Co-operation Experts.

"The subscriber shall not be considered in any respect as being a staff member of the Agency. Nevertheless, he undertakes to adhere to the provisions of Regulations 1.03 to 1.07 of the Staff Regulations of the Agency as reproduced on the reverse side of this agreement."

The SSA for assimilated staff members merely stated that:

"The subscriber shall be considered as an official of the Agency as far as privileges and immunities are concerned."
"In the performance of his duties, the subscriber shall observe the provisions of Article I of the Staff Regulations and Staff Rules of the Agency."

The cited Article includes the oath of service of staff members.

The Service Rules Governing the Conditions of Service for Technical Co-operation Experts require an oath or a declaration (Rule 201.2), the text of which is identical with that required of staff members, except that the words "an international civil servant" are substituted by the words "a Technical Co-operation Expert" in the text set out in Section 24.9.1.2 in the basic book.

The Letter of Acknowledgement for a seconded expert merely requires him to perform his services and to regulate his conduct "in accordance with such directions and instructions, which are consistent with his relationship with the Agency, as may be given him by ... the Director General of the Agency". He also has to undertake not to disclose industrial secrets or other confidential information and "to exercise the utmost discretion in regard to all matters of official business" (see Staff Regulation 1.06).

## 24.10. ADMINISTRATION OF THE STAFF REGULATIONS AND RULES

### 24.10.1. General delegations

The title of the section on delegation in the Administrative Manual was changed to "Administration of the Provisional Staff Regulations, the Staff Rules and the Staff Rules for Short-term Staff"[253]. The provisions of this section continued to be substantially the same as those stated in the basic book, although some more details were added as well as a part relating to the Staff Rules for Short-term Staff.

[253] AM.II/2.

## 24.10.2. Committees and other bodies

### *24.10.2.1. Joint Advisory Committee*

The Joint Advisory Committee remained the principal organ of staff–administration consultations[254]. It met eight to nine times a year, but most of its work was carried out through six subcommittees (e.g. on health and life insurance; on working hours (including flex-time); on training and career development; on the conditions of employment of safeguards inspectors)[255].

In 1973 a joint session of the Joint Advisory Committees of the Agency and UNIDO established a working group for a comprehensive salary survey for General Service staff and Maintenance and Operative staff[256].

### *24.10.2.2. Personnel Advisory Panels*

These Panels no longer exercised any function in respect of disciplinary measures, this having become solely the function of the Joint Disciplinary Committee[257].

#### 24.10.2.2.1. Joint Committee to Consider Appointments, Promotions and Extensions of Professional Staff

The new name of this Committee (compare with the basic book) reflects the fact that permanent contracts were no longer granted[258]. This Committee dealt with all the subjects specified in its title[259].

#### 24.10.2.2.2. Joint Advisory Panel on Professional Staff in the Division of Languages, the Interpretation Section and the Editing Unit

The new name of this Panel merely reflects the revised titles of various Secretariat units. There was no substantial change in its composition or terms of reference[260].

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[254] The staff representatives on the JAC are the Chairman and two Vice-Chairmen of the Staff Council, and their Alternates are three of the other five Officers of the Staff Council (AM.II/14, Annex I, Article 18(1), (4)).

[255] See Section III of each annual Report of the Staff Council to the Ordinary Staff Assembly (e.g. SA(XXIV)/1).

[256] SEC/NOT/309.

[257] Basic book, Section 24.10.2.6.

[258] Section 24.6.1.4.

[259] AM.II/13, Part 1; AM.II/3, paras 26 and 38.

[260] AM.II/13, Part 7; AM.II/3, para. 27.

24.10.2.2.3. Joint Advisory Panel on General Service and Maintenance and Operative Service Staff

The addition of 'Joint' to the name of the Panel merely brought it in line with the names of the other Personnel Advisory Panels.

*24.10.2.7. Study Leave and Training Committee*

This new Committee is composed of two members appointed by the Director General and one member nominated by the Staff Council. The Committee elects its own Chairman, and its Secretary is appointed by the Director of Personnel, who chooses him from the staff of his Division in consultation with the Committee[261].

The Committee's task is to review requests for study leave[262] or special leave for attending training courses, seminars or symposia[263] (but not for sabbatical leave) and to report to the Director of Personnel. The reviews of the Committee are to take into account particular factors set out in its terms of reference. After the training is completed, the Committee has to make a review of the actual utility thereof to the Agency.

## 24.12. THE STAFF ASSOCIATION

### 24.12.1. Staff Regulations and Rules and administrative instructions

Part II of the Administrative Manual now contains an extensive section on the Staff Association[264], starting with a short description[265], followed (as a series of Annexes) by:

(a) Statutes of the Staff Association of the IAEA
(b) Rules of Procedure of the Staff Assembly
(c) Rules of Procedure of the Staff Council
(d) Financial Rules of the Staff Council.

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[261] AM.II/13, Part 14.
[262] Section 24.5a.3.5(b).
[263] Section 24.5a.3.5(c).
[264] AM.II/14.
[265] Though, on its face, this introductory description, whose provenance is not indicated, would seem to have no normative force, portions of it are specifically referred to in the Statutes of the Association (e.g. Article 22(2) refers to para. 7 of the Introduction).

### 24.12.2. Statutes of the Staff Association

The Statutes of the Staff Association have been amended three times[266] during the period covered by the present book. These changes affected its organs and internal procedures, but not its functions.

In June 1981 the Chairman of the Staff Council requested to be admitted to meetings of the Board of Governors for agenda items that might be of concern to the staff, relying on the circumstance that the United Nations General Assembly had just decided to give a limited hearing to representatives of FICSA and of the United Nations staff as a whole in the Fifth (Administrative and Budgetary) Committee of the Assembly[267]. The Director General thereupon provided the Board with a paper presenting information about the access of staff representatives to the governing bodies of other international organizations[268].

Unlike the staff of several other international organizations, the Agency's staff has not gone on strike or engaged in any job action, except for a 1 hour stoppage of work in November 1974 in connection with pension matters. The Staff Council assisted a former staff member in pursuing an appeal in ILOAT[269].

The 1980 amendment to the Statutes abolished the provision for associate membership and instead made it possible, but optional, for members of the staffs of other international organizations within the United Nations system working with the Agency's Secretariat under the authority of the Director General as members of an inter-organizational joint activity (for example the Joint FAO/IAEA Division) to become members of the Agency's Staff Association[270]. However, there seems to be no possibility for technical co-operation experts, whose Service Rules provide that they are not members of the Secretariat[271], to become members of the Staff Association, either automatically or facultatively.

### 24.12.3. Organs of the Staff Association

#### *24.12.3.1. Referenda*

The texts of referenda must now be formulated by the Statutes and Arbitration Board[272].

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[266] By referenda in March 1971, July 1979 and November 1980.
[267] UNGA resolutions 34/220 and 35/213, reproduced in GOV/INF/393.
[268] GOV/INF/393.
[269] The Rosescu case. See Section 27.4.3, Case (5), and SC(XXII)/1, paras 7–12.
[270] AM.II/14, Annex I, Article 4(2)–(3).
[271] Sections 24.3.1.4 and 24.3.3.1.
[272] AM.II/14, Annex I, Article 25(2)(c).

*24.12.3.3. Electoral Units and Sections*

In 1982 there were 23 Electoral Units, each consisting of about 70 members but no less than 45 members[273], and grouped into five Sections (created by the 1971 amendment of the Statutes)[274].

The generally disregarded requirement that Electoral Units be convened at least every two months has been deleted.

*24.12.3.4. Staff Council*

The functions of the Staff Council have been considerably reduced through the institutionalization of its Officers. All that remained was to elect three of the eight Officers (the Chairman and two Vice-Chairmen), to designate staff representatives to joint bodies and standing committees, to group the staff into Electoral Units and Sections, to adopt the programme of activity and the budget, and to carry out any functions not entrusted to the Officers[275].

*24.12.3.5. Chairmen of the Electoral Units*

The Chairmen of the Electoral Units can no longer approve the composition of the Electoral Units, but rather make recommendations to the Staff Council regarding the grouping of staff into Electoral Units and Sections[276].

*24.12.3.6. Polling Officers*

The Polling Officers have been entrusted with the additional function of conducting elections to the Statutes and Arbitration Board[277].

*24.12.3.8. Officers of the Staff Council*

The 1971 amendment of the Statutes changed the composition and considerably enhanced the importance of the Officers of the Staff Council. There are now a Chairman and two Vice-Chairmen, elected by the Staff Council, and five other Section Representatives, each elected by the Unit Representatives and Alternates of a Section; from among the five Section Representatives, the Officers elect a Secretary

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[273] AM.II/14, Annex I, Article 22.
[274] AM.II/14, para. 7, referred to in Annex I, Article 22(2).
[275] AM.II/14, Annex I, Article 13(2).
[276] AM.II/14, Annex I, Articles 22(2) and 13(2).
[277] AM.II/14, Annex I, Article 25(7)–(8).

and a Treasurer. The Chairman and the two Vice-Chairmen are also the Staff Council's representatives on the JAC, and the three Section Representatives who do not serve as Secretary or Treasurer are their alternates[278].

The Officers "act on behalf of the Council". They propose to the Council a programme of activity and a budget, implement these when they are approved and deal with other matters at the request of the Council[279].

*24.12.3.9. Statutes and Arbitration Board*

The 1979 amendment of the Statutes established a Statutes and Arbitration Board (SAB), consisting of three members and an alternate who have recognized knowledge and experience in Staff Association matters, with at least one of the members having legal experience. Members are elected for rotating terms of three years, serving a maximum of six years; the alternate is elected annually[280]. The functions of the SAB[281] are as follows:

(a) To provide, at the request of almost any other organ of the Association, an advisory opinion on the interpretation of the Association's Statutes and Rules;
(b) To advise the Council on whether the rules of clubs and societies comply with the Association's Statutes and Rules;
(c) To arbitrate on disputes concerning the interpretation or application of the Association's Statutes and Rules "when requested to do so by an aggrieved party";
(d) To review all proposed changes in the Association's Statutes and Rules and to make recommendations to the Council "for changes necessary to ensure internal consistency and unambiguity".

### 24.12.4. Joint representation within the VIC

In October 1980 the Agency and UNIDO Staff Councils convened a VIC Staff Assembly — the only one during the period covered by this book — which discussed a number of issues of common interest[282].

The Assembly also recommended the establishment of a VIC Staff Committee, principally to represent the common interest of the staff on the Tripartite Committee[283] that had been established by the Agency, the United Nations and

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[278] AM.II/14, Annex I, Article 18(1)-(4).
[279] AM.II/14, Annex I, Article 18(6).
[280] AM.II/14, Annex I, Article 25(1), (6)-(8).
[281] AM.II/14, Annex I, Article 25(2).
[282] The records of that Assembly and the texts of the two resolutions adopted (on shorter working hours and parking) are set out in VIC Staff Union circular VIC/SA.1.
[283] Section 12.7.2.1.

UNIDO to settle the arrangements for moving to the VIC. However, although the Tripartite Committee kept functioning for some time after the completion of the move to the VIC and dealt with a number of questions of potential interest to the staff, it never accepted staff representation before it ceased functioning sometime in 1981. On the basis of the recommendations made by a joint working group, a VIC Staff Committee was established in 1981, consisting of two representatives and an alternate each of the Agency, UNIDO and UNOV Staff Associations, with an observer from the UNRWA (International) Staff Association invited as appropriate.

## 24.13. SPECIAL STAFF SERVICES

The principal development concerning the special services that the Agency provides for its staff was that these services have more and more become joint efforts of the principal intergovernmental organizations in Vienna. This trend started with the establishment of UNIDO in Vienna in the late 1960s, and naturally became stronger after the Agency, UNIDO and other United Nations units (those now joined under the direction of UNOV, as well as UNRWA) moved their operations to the VIC in 1979. As a result, various arrangements for the joint operation of services or for the operation of services for the joint benefit of several organizations have evolved.

A staff-administration Joint Committee for the Reappraisal of Staff Activities operated in the Agency. A number of changes in the services referred to below have been consequent on its work.

### 24.13.1. Commissary

In 1972 a new and revised Supplemental Agreement to the IAEA Headquarters Agreement on the Establishment of an Agency Commissary entered into force[284].

On the basis of the Memorandum of Understanding concluded on 31 March 1977 between the United Nations, UNIDO and the Agency[285], the operation of the Commissary on behalf of all international organizations at the VIC was assigned to the Agency; the Commissary is located in premises that constitute part of the 'common area' of the VIC[286].

On 9 July 1981 the Acting Director General of the Agency promulgated a set of VIC Commissary Rules[287], which were replaced one year later by a set of Rules Regarding the Commissary at the Vienna International Centre, agreed upon between

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[284] INFCIRC/15/Rev.1, Part IV. See also GOV/INF/389.

[285] Section 28.2.4.7.1.

[286] Sections 28.2.4.7.2 and 28.2.4.7.3.

[287] VIC Commissary Information Circular dated 16 July 1981.

the Director General of the Agency and the Executive Director of UNIDO[288] after having been formulated by a joint working group on which the staffs of both organizations and of UNOV were represented; neither set of Rules was submitted for approval to the Agency's Board of Governors. Under the Rules, the Commissary continues as "an integral part of the IAEA's Secretariat and [has] no legal personality of its own"[289]. The Rules provide for the Right and Conditions of Access (Article II — based on the provisions of the 1972 Supplemental Agreements between Austria and, respectively, the IAEA and UNIDO), Entitlements and Restrictions on Purchases (Article III — expressed roughly as a percentage of net base salary, taking into account the number of dependants, with special restrictions on liquor and tobacco), and penalties for violations (Article IV — mostly partial or temporary deprivation of Commissary access or entitlements). Furthermore, the Rules (Article V) provide for the establishment of a Commissary Advisory Committee, consisting of two representatives each of the administrations and the staffs of the IAEA and UNIDO, as well as of the staff of other United Nations units at the VIC, and one representative of the missions[290]. The pricing of goods (Article VI) is to be such that all operational expenses of the Commissary are met (there being no rent); a special mark-up may be placed on certain goods (liquor and tobacco) to finance staff welfare activities, the proceeds of which are divided equally between the IAEA and the United Nations/UNIDO Staff Welfare Funds.

### 24.13.2. Catering Services

The 1977 tripartite Memorandum of Understanding assigns the management of the Catering Services at the VIC to UNIDO. These services, which are at present provided through a commercial caterer, include a cafeteria, restaurant, bar and several snack-bars, plus a number of automatic vendors.

On 1 July 1982 the Executive Director of UNIDO promulgated Rules of the Catering Service at the Vienna International Centre[291], which were formulated in consultation with the Director General of the Agency (in effect in parallel with the Commissary Rules). These Rules specify, inter alia, Rights and Conditions of Access (Article II) and Pricing (Article V); both the Commissary Rules and the Catering

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[288] VIC Commissary Information Circular dated 1 July 1982; AM.VIII/11.

[289] AM.VIII/11, Rule 1.03.

[290] For the text of the report of the Committee for 1980, see Report of the 23rd Staff Council, SA(XXIV)/1, paras 98–110; see also paras 111–112 for the supplementary report of the IAEA Staff Representatives on the Committee.

[291] VIC Catering Service Information Circular, No. 8, dated 1 July 1982. Its application to the Agency's staff was affirmed by SEC/NOT/867.

Rules provide for the Catering Service to purchase goods from the Commissary at c.i.f. prices. A Catering Advisory Committee is provided for (Article III)[292], the composition of which mirrors that of the Commissary Committee.

### 24.13.3. Staff Welfare Fund

The principal function of the Staff Welfare Fund, to channel funds from the special Commissary mark-up into selected staff and staff assistance activities, has remained unchanged. On the advice of the Joint Committee for the Reappraisal of Staff Activities, the Director General in January 1982 incorporated the Staff Assistance Fund into the Staff Welfare Fund (from which it had been entirely financed) and combined their governing organs into a new Staff Welfare Committee, consisting of two administration representatives and three staff representatives, plus a secretary/member appointed by the Committee with the approval of the Director General[293]. The Fund is operated according to the Rules for the Administration of the Staff Welfare Fund, formulated by the Director of the Legal Division and approved by the Director General in consultation with the Staff Council[294].

The Fund, which is operated as a trust fund by the Agency, has, according to its Rules, three functions:

(a) To provide interest-free loans or grants to individual staff members in situations where help cannot be obtained from other sources; this use has priority over other uses.
(b) To provide loans, with or without interest, or grants in support of activities of potential benefit to the staff of the Agency as a whole (including the activities of the Staff Council); such assistance is granted in accordance with Guidelines appended to the Rules.
(c) To provide interest-bearing loans to staff members (including retired ones) for specified purposes[295] — in effect the usual functions of a credit union and those previously performed by the Staff Assistance Fund; these loans are solely secured by the emoluments of staff members, and the loans must normally be repaid on separation.

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[292] For the 1980 report of the Joint Catering Advisory Board, the predecessor of the present Committee, see SA(XXIV)/1, paras 113–120.

[293] SEC/NOT/840. AM.II/13, Part 5.

[294] SEC/NOT/840, second sub-para. (b). The only text of the Rules is the one dated 1981-11-17.

[295] The interest charged in 1982 was a mere 6% (previously 4%) — SEC/NOT/840. The amount of permissible loans depended on the purpose: up to AS 20 000 for a general purpose loan and up to AS 120 000 for the purchase of a building site or a primary residence (see IAEA Staff Welfare Fund: Interest-Bearing Loans — General Information, 15 July 1982).

### 24.13.4. Staff Assistance Fund

As reported in the previous section, the Staff Assistance Fund was incorporated into the Staff Welfare Fund in January 1982.

### 24.13.5. Country Club

The extensive studies by the Joint Committee for the Reappraisal of Staff Activities did not lead to a new project, and the IAEA Country Club remained substantially unchanged and at the same location. Staff members of the Agency and of Missions accredited to it could become members, and staff members of UNIDO, UNOV and UNRWA and of Missions accredited to them were eligible to become associate members (with slightly higher fees).

### 24.13.6. Kindergarten

The Kindergarten was discontinued in 1979 after the move of the Agency to the VIC because the former location was no longer convenient[296]. A working group of the Joint Advisory Committees of the Agency and the United Nations/ UNIDO considered the possibility of establishing another Kindergarten in or near the VIC.

### 24.13.7. Housing

The Joint Housing Committee continued with unchanged composition and terms of reference[297].

In 1970 the Agency procured furnishings for a limited number of apartments in the Hofzeile, to be made available to fixed-term staff in order to avoid the need to pay the costs of transporting household goods[298].

In 1977 a Joint Housing Service was established, under the auspices of the Agency, to assist staff members of all the organizations now at the VIC, as well as of the International Institute for Applied Systems Analysis (IIASA), in securing accommodation[299].

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[296] SC(XXII)/1, para. 6.
[297] AM.II/13, Part 6.
[298] GC(XV)/459, para. III.15.
[299] SEC/NOT/555.

### 24.13.8. Miscellaneous staff activities

As of 1982, about two dozen recognized clubs[300] were available to IAEA staff members. Although a few of these clubs were apparently restricted to members of the IAEA staff, most clubs, whether called "IAEA ... Club", "UN ... Club" or "VIC ... Club", or merely "... Club", were open to staff members of (and often also to members of Missions accredited to) all the international organizations at the VIC.

Clubs recognized by the Staff Council's Staff Activities Committee were eligible to receive grants or loans for capital expenses (but generally not for operating costs) from the Staff Welfare Fund[301]. These clubs also had access to the facilities of the VIC Recreation Area, located in the common area of the VIC. The legal status of these clubs was not clarified, in particular the question of whether they would have legal personality under Austrian law. This should not merely be a theoretical question, in view of the extensive activities of some of the clubs and the transactions carried out by them.

Each year the Agency, through a number of its sports and games clubs, participated in the Inter-Agency Games organized by the several United Nations related organizations in Europe[302].

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[300] See the list in the July 1981 issue of the IAEA Staff News (No. 142).

[301] SA(XXIV)/1, para. 147. See Appendix to the Rules of the IAEA Staff Welfare Fund on Guidelines for Handling Requests for Financial Assistance for Agency Clubs and Activities and the Staff Council.

[302] SA(XXIV)/1, para. 149.

# Chapter 25
# FINANCIAL ADMINISTRATION

## PRINCIPAL INSTRUMENTS

IAEA Statute Article XIV, but also Articles V.E.5, V.E.8, XI.B, XI.F.3, XIII, XVIII.E and XIX.A, and Annex I, paras B, C.5(a), (b);
Financial Regulations (INFCIRC/8/Rev.1 and /Rev.1/Mod.1);
Interim Financial Rules (AM.V/3);
Financial Regulations and Rules: Delegations of Authority (AM.V/4);
Board Procedural Rules 18, 34, 36(a) (GOV/INF/60, October 1976 edition);
General Conference Rules 67, 69(a), 94 (GC(XIX/INF/152);
UN Relationship Agreement (INFCIRC/11, Part I.A), Articles XII.3, XVI;
Annual General Conference Resolutions:
- Regular Budget appropriations (e.g. GC(XXIV)/RES/373);
- Technical Assistance Fund Allocation (e.g. GC(XXIV)/RES/374);
- The Working Capital Fund (e.g. GC(XXIV)/RES/375);
- Scale of Assessment of Members' Contributions (e.g. GC(XXIV)/RES/377);
- The Agency's Accounts (e.g. GC(XXIV)/RES/372);

Biennial Programme and Budget Document (e.g. GC(XXIV)/630);
The Agency's Accounts (e.g. GC(XXIV)/629);
Revised Arrangements for the Assessment of Members' Contributions (GC(III)/RES/50; GC(XXI)/RES/351; GC(XXIV)/RES/376);
Rules Regarding the Acceptance of Voluntary Contributions of Money to the Agency (INFCIRC/13, Part II; AM.V/8, Part II);
Establishment of the Working Capital Fund (GC.1(S)/RES/7);
Revised Guiding Principles and General Operating Rules to Govern the Provision of Technical Assistance by the Agency (INFCIRC/267), paras 5, 6, 9, 13–17, 20–24;
Exchange of letters concerning the US Safeguards Support Program (letters of 4 and 11 May 1977);
Agreement with Sweden for Co-operation in the Provision of Assistance to Developing Countries (INFCIRC/138);
Agreement with the GSU on the Improvement of Tsetse Fly Control/Eradication by Nuclear Techniques (19 September 1974);
Standing Interdepartmental Committees of the Secretariat:
- Contract Review Committee (AM.1/7, Appendix B);
- Travel Co-ordination Committee (AM.1/7, Appendix G);
- Investment Committee (AM.1/7, Appendix K);

Supplemental Agreement with Austria on Currency Exchange Facilities (INFCIRC/15/Rev.1, Part II).

## 25.1. BASIC DOCUMENTS

### 25.1.1. Statutory provisions

No developments.

## 25.1.2. The Financial Regulations[1]

### *25.1.2.1. Development*

Only a single amendment to the Financial Regulations was adopted during the period covered by this book: a formal change in Regulation 7.03[2] to take account of the change of terminology in the annual assessment resolutions[3], according to which the contributions to the Working Capital Fund were henceforth to be based on the 'base rates of assessment', which correspond to the former 'scale of assessments'[4].

In 1969 the External Auditor suggested a minor amendment to Regulation 6.06, to clarify the treatment of unpaid supplementary assessed contributions[5]. The Board did not act on this proposal[6].

## 25.1.3. The Financial Rules[7]

### *25.1.3.1. Development*

The Financial Rules are still denominated as 'interim'. In the period covered by this book they were amended twice[8], on both occasions to increase the monetary limits below which no competitive tenders need be secured. In spite of Financial Regulation 10.01(a), these changes were not submitted to the Board for approval.

## 25.1.4. Other instruments regarding Agency finances

### *25.1.4.4. Scale of assessed contributions*

As described in Section 25.3.1.1.2, during the period covered by this book the General Conference altered the arrangements for the assessment of contributions originally set out in the Guiding Principles for the Assessment of Members' Contributions and adopted several successive sets of Revised Arrangements for this purpose.

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[1] INFCIRC/8/Rev.1 and /Rev.1/Mod.1; AM.V/2. The suspension, for two years running, of Financial Regulations 5.02 and 5.03 is referred to in Section 25.2.4.1.1.

[2] INFCIRC/8/Rev.1/Mod.1.

[3] Section 25.3.1.1.2.

[4] Section 25.4.3.

[5] GC(XIII)/406, Part II, paras 14-15.

[6] Because of the relative infrequency of supplementary assessments (Section 25.3.4.4), the problem foreseen by the External Auditor, while being real, has not become significant.

[7] AM.V/3.

[8] Rule 3.02.

*25.1.4.9. Interim Financial Instructions*

During 1974 and 1975 the Division of Budget and Finance prepared, for internal use, about a dozen Interim Financial Instructions[9] on various types of financial procedures, such as the preparation of certain reports, the making of special types of payments, and accounting for particular transactions. Each Instruction fully explained, with complete references and citations, the background of its subject and specified in detail any steps to be taken. This series of Instructions was not, however, extended or kept up to date after February 1975, and the Instructions previously issued appear to have fallen into desuetude.

*25.1.4.10. Proposed Accounting Manual*

For a number of years Egypt and several other States have been urging the Secretariat[10], with the endorsement of the External Auditor[11], to establish an Accounting Manual — in particular for the purpose of refining the distribution of costs among programmes.

## 25.2. THE BUDGET

### 25.2.1. The 'two-budget' system

The fundamental structure of the Agency's two-budget system, which is anchored in Statute Article XIV.B.2, was maintained during the period covered by the present book. Although pressures from developing countries regarding the transfer of as many expenditures as possible from the Operational Budget to the Regular Budget continued and some consequent changes took place, no really determined assault was mounted against the dual scheme, either through a frontal attack attempting to eliminate the statutory distinction or through any massive erosion of the established boundaries.

(a) *Technical assistance*

As a consequence of the developments sketched in this section in the basic book, in particular under the headings (iii) and (iv), the situation in 1980 relating to the financing of technical assistance (for example as reflected in the 1981–1986

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[9] Instructions relating to the following matters were issued: General Financial Administration, Finance and Accounts, Special Accounts and Trust Funds, and Contracts and Agreements.

[10] The Accounting Manual was first proposed in GOV/COM.9/OR.134, para. 22; thereafter it was mentioned frequently, for example in GOV/1947, para. 2; GOV/OR.531, paras 9,10; GOV/1989, para. 3.

[11] GOV/COM.9/OR.134, para. 50.

Programme and the 1981 Budget)[12] was that the Regular Budget carried all expenses of administering technical assistance projects[13]. These expenses included the operations financed by unrestricted voluntary contributions[14], the operations financed by restricted contributions or by contributions in kind by Member States[15] and the operations financed by the UNDP[16]. On the other hand, both the UNDP and the Swedish International Development Authority (SIDA) paid programme support costs that were credited to the miscellaneous income of the Regular Budget[17]. The costs borne by the Regular Budget included those for the preparation of the requested technical assistance to Member States, but not the costs of the assistance actually provided[18].

One indication that this distribution scheme is justifiable is that, when the USA, persuant to internal legislation, temporarily required from international organizations to which it paid assessed contributions certifications that none of these contributions were being spent for the furnishing of technical assistance[19], the USA accepted a letter stating that "while the technical assistance furnished by the Agency is financed by voluntary contributions of Member States, certain overhead costs, primarily salaries of Agency staff members at headquarters who administer the technical assistance programme, are financed through the Regular Budget".

From time to time the desirability to finance the technical assistance programme from the Regular Budget was expressed in the annual debate on the target for voluntary contributions[20]. But, since this alternative source of financing was yielding larger and larger amounts, with increasing reliability[21], no serious attempt was made to carry out this change.

(b) *Laboratory expenses*

Within three years of the decision referred to in the final paragraph under heading (ii) of this section in the basic book, the remaining parts of the laboratory expenses that had been charged to the Operational Budget were deleted from it in two tranches of about US $60 000 each[22], so that, starting with the 1972 Budget, all laboratory expenses were charged fully to the Regular Budget[23]. Although,

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[12] GC(XXIV)/630.
[13] Ibid., the Programme Budget, Programme A.
[14] I.e. those financed from the Technical Assistance Fund (Sections 18.2.1 and 25.2.4.2.2).
[15] GC(XXIV)/630, Table 5, Section A. Sections 18.2.2, 18.2.7 and 25.7.
[16] GC(XXIV)/630, Table 5, Section A. Sections 18.2.3 and 25.7.1.1.
[17] Ibid., Table 4, Miscellaneous income (1).
[18] GOV/INF/366 (reproduced as GC(XXIV)/631, Annex), paras 6–8.
[19] Section 25.3.3.2.1.
[20] For example GOV/COM.9/OR.141, para. 2; GC(XXIV)/631/Rev.1, para. 3.
[21] Section 25.5.3. GOV/INF/366, para. 17.
[22] GC(XIV)/433, para. V.7.6; GC(XV)/460, para. V.7.4.
[23] GC(XV)/460, Table 26, Source of Funds.

possibly, this final transfer could have been justified in terms of further changes in the nature of the work of the laboratory, entirely devoting it to tasks of interest to the membership as a whole, no attempt at such a justification was made. The only question that was raised in connection with the final transfer was whether it was opportune to do so in a year in which, as a result of the generally difficult economic conditions, other large increases were foreseen for the Regular Budget[24].

However, during the Agency's second decade, another relevant and significant development occurred. In effect, the Agency all but adopted a three-budget (or rather a tripartite budget) system, with the following elements:

(i) Regular Budget
(ii) Technical Assistance Fund
(iii) Extrabudgetary operations.

Of these elements, the second one is, as explained in Section 25.2.4.2, merely a stripped-down version of the former Operational Budget, from which all operations except technical assistance projects financed from unrestricted monetary contributions (and a minor amount of miscellaneous income) have been eliminated. The new element, the 'extrabudgetary' one, consists of a miscellany of operations, some being supplementary to particular Regular Budget items and some supplementary to items financed from the Technical Assistance Fund, all of which are financed from a variety of tied contributions from Member States and from other international organizations. The principal characteristic of this part of the 'budget', which is discussed further in Section 25.2.4.3, is that it is not shaped by the same mechanism as are the other two parts of the budget. Though the extrabudgetary resources are taken into account in formulating the six-year programmes as well as the annual Regular Budgets (for example, the size of the appropriation for technical assistance administration reflects the size of the programme that is to be financed by the Technical Assistance Fund and by extrabudgetary resources), the amounts of these resources are not subject to decisions of the Board or of the General Conference, except in part and indirectly. Rather, these amounts reflect the independent decisions of a few Member States or of other international organizations (primarily the UNDP, but also the OECD/NEA, UNEP, UNU and UNESCO)[25], which are based sometimes on particular long term or short term agreements with the Agency (e.g. for the financing of the Trieste Centre[26] and the Monaco Laboratory[27]), sometimes on an informal agreement among Member States perhaps reflected in a Board resolution (such as agreements relating to the establishment of INFCE[28] or the supplementary

[24] GOV/COM.9/OR/107, paras 1 and 4.
[25] See GC(XXIV)/630, Table 5.
[26] Section 19.1.3.3.
[27] Section 19.1.2.3.
[28] GOV/DEC/96(XXI), No.(9)(b); /97(XXI), No.(20); 102(XXII), No.(12)(c).

Nuclear Safety Programme[29]), and sometimes on the decisions of other international organizations in carrying out their technical assistance[30] or research activities[31].

### 25.2.2. The budget making process

#### *25.2.2.1. The Secretariat*

The principal change in the procedures by which the Secretariat prepares the budget was that the Preparatory Committee on the Programme and Budget fell into desuetude[32]. Instead, the proposed budget for each Division was discussed by the DDG for Administration and the Director of the Division of Budget and Finance with the Director of the Division and the Head of the Department concerned. The conclusions emerging from these meetings were then passed by the DDG for Administration to the Director General for his final decision.

The Committee of the Whole Board on the Tentative Budget Proposals was not convened again after the initial 1967 meeting mentioned in the basic book. However, preliminary budget forecasts were distributed to members of the Board in November of the year prior to the one in which the budget was to be considered, and again in February of the year in which it was considered[33], to enable the Governors to make preparations for the session of the Administrative and Budgetary Committee in May, and evidently also to enable representatives to obtain information and to make preliminary suggestions to the Secretariat.

#### *25.2.2.2. The Board*

As described in Section 8.4.5.2, the membership of the Administrative and Budgetary (A&B) Committee of the Board gradually increased during the period covered by this book, so that it has become, though only provisionally regarding its form, a Committee of the Whole. Otherwise there was no significant change in the procedure by which the Committee and subsequently the Board consider the proposed budget, except that certain ancillary reports, such as the list of currently budgeted staff positions that are filled or vacant, have since 1971 no longer been prepared routinely[34].

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[29] GOV/DEC/103(XXII), No. (27).
[30] Sections 18.2.3 and 25.7.1.1.
[31] Section 19.2.
[32] Although still provided for in the Administrative Manual (AM.I/7, Appendix D).
[33] GOV/COM.9/OR.138, para. 34.
[34] GOV/COM.9/OR.105, para. 3.

A formal decision by the Board[35] requests the Director General to submit the budget (or, in alternate years, the six-year programme plus the next year's budget) to the General Conference in its name, on the basis of the draft he had prepared, but taking into account the comments thereon made in the A&B Committee and the Board (but rarely any amendments formally adopted by the Board), and recommending a total amount for the Regular Budget, a target for voluntary contributions to the General Fund/Technical Assistance Fund, and the level of the Working Capital Fund (i.e. the amounts that constitute the essential elements of the three resolutions which the General Conference will be asked to adopt and the drafts of which will appear at the end of the budget document)[36]. The first of these figures is the one prepared by the Director General in his draft of the budget document[37], which figure is occasionally slightly changed owing to decisions of the Board; the second and third figures are left blank in the Director General's draft[38], and are normally approved by the A&B Committee or, if it is unable to do so by consensus, by the Board itself.

### *25.2.2.3. The General Conference*

Financial Regulation 3.03 requires that the "estimates initially submitted by the Board shall be transmitted to all Member States at least six weeks before the opening of each regular session of the General Conference". Since the Board considers the budget at its June session and the Conference normally meets in September, the Regulation can conveniently be complied with by issuing the budget document during July. However, three times during the period covered by this book, the Board found it necessary, at the request of the Director General, to increase its budget estimates at its September session just before the Conference was convened; these revisions were conveyed to the Conference in modifications of the original budget document[39]. In no case was any objection raised on the basis of the quoted Regulation, and the Conference in each case adopted a Resolution incorporating the revised figures[40]. One legal argument that might be made in favour of this procedure is that the Regulation lays down a time requirement merely for the estimates initially submitted by the Board. However, in the context of Regulation 3.02, it would appear that the word 'initially' merely distinguishes a normal submission by the Board from a submission made in response to a recommendation of the

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[35] For example GOV/DEC/107(XXIII), No.(31).
[36] For example GC(XXIV)/630.
[37] For example GOV/1977, para.32 and Annex VI.A.
[38] For example GOV/1977, paras 40 and 41, and Annex VI.B–C.
[39] GC(XVII)/505/Mod.1; GC(XXI)/582/Mod.1; GC(XXIII)/612/Mod.1.
[40] GC(XVII)/RES/304; GC(XXI)/RES/347; GC(XXIII)/RES/365.

Conference returning an unapproved budget. A probably better legal argument is that the Financial Regulations, having been adopted by the Board, can be suspended by it, and that the Board must be assumed to have done so tacitly when, because of necessity, it acts contrary to a Regulation[41].

Since the replacement of the Programme, Technical and Budget Committee of the General Conference by the Committee of the Whole[42], it is this plenary body which annually discusses the draft budget and the three related resolutions proposed by the Board. This discussion, which also takes place in the Board and in its A&B Committee, covers principally questions relating to the overall size and growth of the budget as well as the balance among its main elements, in particular comparing technical assistance with safeguards and 'administrative' expenses with 'operational' ones[43]. No special discussion takes place on the three resolutions, which are usually approved as a unit at the end of the Committee's debate[44], this approval being a mere formality.

In the Plenary, the Chairman of the Committee of the Whole reports briefly on the main trends of the discussion in the Committee[45], whereupon, generally without any debate and without a vote, the three resolutions are approved[46].

Although the Conference's consideration of the budget does not have any immediate effect on the amounts included in the approved resolutions or on the programme and budget document on which they are based, the widely shared views expressed during the debate in the Committee of the Whole are taken into account by the Director General in formulating the next budget (an exercise that starts only a few weeks after the end of the Conference) and by the Board and its A&B Committee in their consideration of these proposals in the following spring.

### 25.2.3. Form and legal status

Since the 16th General Conference (1972), the title of the budget document submitted by the Board in even numbered years (X) was "The Agency's Programme for (X+1)-(X+6) and Budget for (X+1)"; in the following year the title of the document was "The Agency's Budget for (X+2)". During the period covered by this book, a number of major changes in format have been made, which have resulted in a substantial change in the budget document over the decade:

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[41] Basic book, Section 25.1.2.3, para. (b).
[42] Sections 7.3.3.4 and 7.3.5.2/3.
[43] For example GC(XXIV)/COM.5/OR.19, paras 10–72.
[44] For example GC(XXIV)/COM.5/OR.19, paras 71–72.
[45] For example GC(XXIV)/OR.227, paras 22–26.
[46] For example GC(XXIV)/OR.227, para. 35.

(a) In respect of the Budget for 1971, the presentation was for the first time entirely on a programme basis (in respect of safeguards, this change had been made in the previous year), in conformity with a recommendation of the United Nations General Assembly's Ad Hoc Committee of Experts to Examine the Finances of the United Nations and the Specialized Agencies[47]. The budget was thus divided into 9 parts (including one for contingencies), including some 17 subparts; with relatively minor changes this organization has been maintained.

(b) In the 1973–1978 Programme and the 1973 Budget an attempt was made to split up programmes into clearly identifiable components, in particular individual 'projects'[48].

(c) In the 1975–1980 Programme and the 1975 Budget an attempt was made to apportion the cost of certain service activities (linguistic and document services) to the various programmes[49].

(d) In the 1978 Budget the extrabudgetary resources were included in a table showing the programmes (classified as in the Regular Budget) for which these expected resources were to be utilized[50].

(e) In the 1980 Budget the practice of apportioning service costs to programmes was extended to further cost elements[51]. Also, in the light of the more and more extensive services that the Agency was performing, against reimbursement, for UNIDO and for the other United Nations units at the VIC, a new programme with the title "Cost of work for others" was introduced[52]. Finally, although 1980 was the second year of a budget biennium, preliminary estimates for 1981 were included in the budget tables[53].

(f) In the 1981–1986 Programme and Budget and the 1981 Budget, preliminary estimates were included not only for 1982, the second year of the budget biennium (as had been the custom), but also for 1983[54]. The former General Fund and Operating Fund II were merged into a new Technical Assistance Fund; the former Operating Fund I was in effect included in the tabulations of all Extrabudgetary Resources, which in turn were combined with the Regular Budget and the Technical Assistance Fund into a Consolidated Budget[55].

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[47] GC(XIV)/433, para. I.4.
[48] GC(XVI)/485, paras I.3–6.
[49] GC(XVIII)/526, para. 3.
[50] GC(XXI)/582, paras 3–4.
[51] GC(XXIII)/612, para. 4.
[52] Ibid., para. 5.
[53] Ibid., para. 6.
[54] GC(XXIV)/630, para. 1.
[55] Ibid., paras 3–6. Sections 25.2.4.2.2 and 25.2.4.3.

Starting with the Agency's Programme for 1981-1986 and the Budget for 1981[56], the structure of this type of biennial document was therefore as follows:

(i) *Introduction*

(A) General;
(B) Format: Comments on innovations in the programme and budget document;
(C) Programme trends: Discussion of the principal changes with regard to the programmes for previous years;
(D) Adjustments made in the budget estimates and the manning table for 1980: Explanations of the changes that had been made, for various reasons, in the approved budget for the current year (which adjusted budget forms the point of departure of the estimates for the following year);
(E) The Regular Budget for 1981: Explanation of the budget total and of various other figures that appear in the draft resolution on the Regular Budget[57];
(F) Target for voluntary contributions to the Technical Assistance Fund: The target proposed by the Board;
(G) Working Capital Fund: The level of the Fund recommended by the Board;
(H) Report on the budget to the General Assembly of the United Nations: A routine statement that the budget will be reviewed by ACABQ, which will report on the administrative aspects thereof to the General Assembly.

(ii) *Budget Tables*

(A) The Consolidated Budget — 1981: showing in parallel columns, for each of the 17 programmes and the 5 types of sources of funds, the Regular Budget, the Technical Assistance Fund, Extrabudgetary Resources (monetary — by contributors) and overall totals;
(B) The Regular Budget — by programme: showing in successive columns, for each programme, the 1980 Adjusted Budget, the 1980 to 1981 dollar and percentage differences due to price increases and to programme changes, and in total, the resulting 1981 Estimates, and the 1982 and 1983 Preliminary Estimates;

[56] GC(XXIV)/630.
[57] Ibid., Annex VI.A.

(C) The Regular Programme — by item of expenditure: showing, in the same successive columns as in the previous table (though also including a column for 1979 actual obligations), expenditures broken down by items somewhat as in the pre-1971 budgets;

(D) Summary of income: showing the 1979 Actual Budget, the 1980 Adjusted Budget, the 1980 to 1981 differences, the 1981 Estimates, and the 1982 and 1983 Preliminary Estimates, as well as the various sources from which the Regular Budget is financed: assessed contributions; cash surplus from previous years; income from work for other organizations; income attributable to specific programmes; miscellaneous income not attributable to specific programmes;

(E) Extrabudgetary resources 1979–1981: showing for each of those three years, by programme, the amounts received or expected from various international organizations and Member States.

(iii) *The Programme Budget*

For each of the 19 'programmes' (i.e. the 17 programmes appearing in the Regular Budget tables, plus two programmes, Laboratory and Service Activities, the costs of which are entirely allocated among the others), the following items are presented — all tables and figures being restricted to Regular Budget funds, though the narrative accounts sometimes refer to operations carried out by using the Technical Assistance Fund or extrabudgetary resources (thus presenting, for certain programmes, such as technical assistance and the Trieste Centre[58], an incomplete and somewhat confusing picture):

(A) Costs of the Programme: a table showing the 1979 Actual Budget, the 1980 Adjusted Budget, the 1980 to 1981 differences due to price increases and to programme changes, and in total, the 1981 Estimates, the 1982 and 1983 Preliminary Estimates, and the Regular Budget costs divided by object of expenditure (including those transferred from or to other programmes);

(B) Summary of Manpower: a table showing posts at each grade level for each of the years indicated in (A);

(C) Changes in Costs and Manpower: a narrative explanation of proposed changes in costs and staffing;

(D) Objectives of the Programme: a very brief narrative summary;

[58] For the Trieste Centre (but not for other programmes) a complete financial picture is presented in Annex V of the document (see para. (iv)(D) of the text), though without any detailed narrative explanation such as for the Regular Budget portion (about one third of the total) under Programme J of the Programme Budget.

(E) Structure of the Programme: a summary total showing the 1981 Estimates, and the 1982 and 1983 Preliminary Estimates of the manpower requirements and total costs of every 'sub-programme';

(F) For each 'sub-programme', the following is presented (where there are no sub-programmes, this information appears for the programme as a whole):

(1) Objective: a very brief narrative;

(2) Outline for 1981-1986: a very brief narrative account of the work to be accomplished over the next six years;

(3) Structure: a table showing, for each 'programme component', the expected 1981 manpower requirements and the costs, by main object of expenditure;

(4) For each 'programme component', the following is presented (where there are no components, this information appears for the sub-programme or the programme as a whole):

— Objective;
— Results to date;
— Planning for 1981–1982;
— Outline of changes during 1983–1986;
— Co-operation with other organizations: a list of intergovernmental, non-governmental and national authorities, etc., with which work on that component is to be co-ordinated.

(G) Supplementary Tables (where applicable):

(1) Co-ordinated research programmes;

(2) Summary of "Programme Products Resulting from Meetings", showing for each scheduled meeting of a technical committee, of an advisory group or of consultants the intended product (e.g. report, guidebook, manual, etc.), the expected users, the type and year of the meeting, the year in which the product is to be issued, and the relevant paragraph in the Programme Budget narrative;

(3) Technical Committees and Advisory Groups that are to meet in 1981 and in 1982.

(iv) *Annexes*

(A) List of Conferences, Symposia and Seminars in 1981 and 1982 respectively, citing for each the paragraph in the Programme Budget narrative;

(B) Organizational Chart of the Secretariat;

(C) The Manning Table:
  (1) Manning Table for 1981: table by grade and Division (1461 posts);
  (2) Summary of Manpower by Grade of Posts and by Department: table showing the established posts for 1979, the 1980 Budget, the 1980 Adjusted Budget, the 1980 to 1981 differences, the 1981 Estimates, and the 1982 and 1983 Preliminary Estimates;
  (3) New Posts for 1981: table by Grade and Division;
  (4) Additional Professional posts in 1981: narrative justification for every proposed new Professional post (15);
  (5) Additional GS posts in 1981: narrative justification for every proposed new General Service post (18);
  (6) Reclassification of existing posts: table showing posts to be reclassified;
  (7) Reclassification of Professional posts in 1981: narrative justification for every proposed reclassification of a Professional post (7);
  (8) Adjusted Manning Table for 1980: table by Grade and Division (1428 posts);
  (9) Proposed changes in 1980: table, followed by narrative explanation of the transfer (without reclassification) of 41 posts within the Secretariat;
  (10) Preliminary Manning Table for 1982: table by Grade and Division (1502 posts);
  (11) Preliminary Manning Table for 1983: table by Grade and Division (1530 posts).

(D) International Centre for Theoretical Physics — summary by items of expenditure: the same table as in the Programme Budget (see para. (iii)(A) above), except that it includes also the expenditures to be met by using extrabudgetary resources;

(E) The three draft resolutions:
  (1) Regular Budget Appropriations for 1981, in paragraph 1 of which the 17 'programmes' indicated in the Budget Tables (see para. (ii)(A) above) are grouped under 9 'Sections', to each of which a specific US dollar amount is appropriated;
  (2) Technical Assistance Allocation for 1981;
  (3) The Working Capital Fund in 1981.

For the second year of a budget biennium a greatly abbreviated document is prepared, which nominally refers only to the budget of the following year[59].

[59] Though, as mentioned in para. (e) in the text, starting with the 1980 Budget a preliminary estimate for the following year has been included (GC(XXIII)/612, para. 4); this would then correspond to the second year for which Preliminary Estimates were presented for the first time in the 1981-1986 Programme and the 1981 Budget (GC(XXIV)/630, para. 1).

However, its structure is similar to that outlined above and in particular consists mainly of a Section with the title "The Programme Budget". In that Section the tables are structured essentially in the same way as for the first year of a budget biennium, but the narrative passages are much briefer, dealing in general only with proposed departures from the corresponding passages of the Programme Budget (which are explicitly indicated) considered in the previous year.

Thus, the 'programmes' are now thoroughly integrated into the budgets, both when a six-year programme is presented in connection with the first year of a budget biennium and when merely the budget for the second year of such a biennium is submitted.

Unlike all previous budget documents, the document for 1972 did not contain a recommendation from the Board that the Conference should adopt or accept its budgetary proposals. In the Agency's Programme for 1973–1978 and the Budget for 1973, the Board requested the Conference "to approve its budgetary and programme recommendations for 1973"[60]; a similar request (also referring to 'programme') appeared in the Agency's Budget for 1974. However, thereafter the Board merely requested the Conference to adopt the draft resolutions set out in the final annex to the document[61].

The two principal budget resolutions annually adopted by the General Conference are still substantially the same as those described in paras (i) and (ii) of this section in the basic book, except that:

(A) The Regular Budget resolution since the one for 1968 also included an authorization for the Director General to incur certain additional expenditures, provided that these are entirely covered by special income, which is characterized, since the resolution for 1971, as "revenues arising out of sales, work performed for Member States or international organizations, research grants, special contributions or other sources extraneous to the Regular Budget for [the year in question]"[62].

(B) In 1980 the title of the Operational Budget resolution was changed to "Technical Assistance Fund Allocation for 1981"; under this resolution, merely the total of the target set for voluntary contributions plus any other income expected to accrue to the Fund were allocated to it[63].

Since the resolutions adopted in respect of the 1975 Budget[64], the footnotes to the preambular paragraph referring to the Board's budgetary recommendations have, instead of referring to the entire document setting out the budget or the programme

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[60] GC(XIV)/485, para. I.1.
[61] For example GC(XXIV)/630, para. 1.
[62] For example GC(XIV)/RES/264, para. 5(a); GC(XXIV)/RES/379, para. 3(a).
[63] GC(XXIV)/RES/374.
[64] GC(XVIII)/RES/314, 315.

and budget, generally referred to a particular table thereof, setting out respectively the Regular Budget and the Operational Budget. This change does not appear to have been a deliberate one, decided by the Board or the Conference, but has merely reflected a desire by the Secretariat to make the citations in question more precise. Nevertheless, the change eliminated a possible argument that could have been made previously, namely that the Conference acts on the budget document as a whole.

During the period covered by the present book, there was no essential change in the extent to which, or the intention with which, the Conference considers and acts on the budget document submitted to it. Also there was no explicit consideration of this question or of the legal status of the budget document during this period. Consequently, the status of this document remains the same as discussed in the basic book.

### 25.2.4. Administration

The differences between the administration of the Regular Budget and that of the former Operational Budget (the present Technical Assistance Fund), as discussed in the basic book, remained largely the same during the period under review, although the uncertainty regarding the receipt of voluntary contributions has been reduced. As discussed in Sections 25.2.1 and 25.7, the extrabudgetary operations have become a more and more significant part of the Agency's programme. In the financial administration of these operations the Director General is largely free of constraints, except for those prescribed by the donors of the resources.

#### *25.2.4.1. The Regular Budget*

##### 25.2.4.1.1. Timing of expenditures

Although the problem of unliquidated obligations by the end of a year did not become as acute as it was in the early days of the Agency[65], the External Auditor continued to keep the matter under observation[66].

Because of the delays in the completion of the VIC, the appropriation made in the Regular Budgets for 1978 and 1979 to cover costs in connection with the Agency's transfer to its permanent Headquarters[67] could not be fully spent in those fiscal years. Consequently, in both years the Board waived the application of Financial Regulations 5.02 and 5.03 in respect of the amounts so appropriated[68], to make it possible for the Director General to obligate and expend them later.

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[65] See this section in the basic book.

[66] For example in the Accounts for 1979, GC(XXIV)/629, Part II, paras 12–18.

[67] GC(XXI)/RES/347, para. 1, Section 9; GC(XXII)/RES/357, para. 1, Section 9.

[68] GOV/DEC/93(XX), No. (25)(b); GOV/DEC/104(XXII), No. (52).

In a determined effort to enable the Agency to maintain the original level of its Working Capital Fund in spite of ever growing Regular Budgets, in recent years most of the major contributors have made an effort to pay their assessed contributions early in the year, so that overly great reliance on that Fund should not be required[69].

As described in Sections 25.2.4.1.3 and 25.3.4.3, from 1968 to 1978 the Agency has not distributed any cash surplus, since such surplus has always been reappropriated either for supplementary or for normal Regular Budget appropriations for later years.

25.2.4.1.2. Transfers within the budget

Although Financial Regulation 3.05 describes the types of divisions to be made in the budget estimates, these divisions are practically no longer in use. Instead, the Programme Budget is divided into 19 programmes, which in turn are divided into sub-programmes, which are again divided into components[70]. The budget table itself lists 17 of these 19 components (with the entire costs of two components being redistributed among some of the other 17 components)[71], and in most years one more component is added, as a global contingent item in order to anticipate possible necessary cost increases in the substantive 'programmes'[72]; only for the purpose of the Regular Budget resolution are the programmes grouped into nine or ten 'Sections'[73].

Since, as discussed in the basic book, the Director General's authority to make transfers within a budget Section has never been questioned, this authority permits him to make transfers between components of the same sub-programme, between sub-programmes of the same programme, and even between different programmes grouped in the same budget Section. Thus, in the annual report on Budgetary Performance, included each year in the Agency's Accounts[74], the Director General indicates and explains only the expenditures for each budget Section, without presenting much information on the programmes, sub-programmes and components of the Programme Budget.

The Director General's authority to make, with the approval of the Board, transfers between Sections of the budget has been annually reiterated in each Regular Budget resolution, as described in the basic book[75]. In addition, the General

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[69] Section 25.4.3.
[70] Section 25.2.3, paras (iii), (iii)(F) and (iii)(F)(4).
[71] Section 25.2.3, para. (ii)(A).
[72] Section 25.2.4.1.3.
[73] Section 25.2.3, para. (iv)(E)(1).
[74] Section 32.2.4.
[75] For example GC(XXIV)/RES/373, para. 3(b).

Conference has in almost every year included a contingent item in the Regular Budget, providing that the amount thereof must not be spent, except with the approval of the Board and sometimes only for particular contingencies[76]. Finally, in several years the Conference made supplementary appropriations, which were always expressed as a global amount to be applied to the entire Regular Budget[76]. Consequently, the Board's annual authorization of the Director General to make transfers between Sections of the Regular Budget (usually adopted at the pre-Conference September session of the Board) contained in most years several elements[77]:

(a) An authorization to make transfers from any budget Section, or specifically from the contingent Section, to other Sections, up to amounts specified for each such Section;
(b) If a supplementary appropriation is also anticipated, then the above authorization may be coupled with one for the distribution of the supplementary amount among the budget Sections, up to specified amounts for each Section;
(c) In addition, a residual authority is usually granted to the Director General to make further transfers (in principle from any Section, but actually usually from any amount left undistributed in the contingency Section) to other Sections, provided such transfers into any Section do not exceed a specified amount (in the later years covered by this book, usually US $20 000).

25.2.4.1.3. Supplementary budgets and contingent appropriations

The period covered by this book was one of considerable economic and monetary uncertainties. There were major realignments among the world's currencies, and in particular between the US dollar, in which the Agency's accounts are kept, appropriations are made, and assessments and most voluntary contributions are collected[78], and the Austrian Schilling, in which a large part of the Agency's expenditures (in particular most staff costs)[79] are incurred. At the beginning of the 1970s the long established US $/AS rate was about 1/26; by early 1980 it had fallen to less than half — thereby in effect nominally doubling about three fourths of the Agency's

[76] Section 25.2.4.1.3.
[77] For example GOV/DEC/86(XVIII), No. (53)(a)-(b)(ii); GOV/DEC/104(XXII), No. (51)(a)-(c).
[78] Financial Regulations 3.05, 6.05, 11.02.
[79] The emoluments of General Service staff and of Maintenance and Operative staff are denominated in the local currency, i.e. in Austrian Schillings, for all staff except that outside Austria (e.g. in Trieste). The salaries and most emoluments of staff in the Professional and higher categories are denominated in US dollars, but the Post Adjustment (Section 24.4.1.1.2) is adjusted whenever there is a change in the US $/local currency rate, so as to maintain substantially unchanged the amount of local currency received by these staff members.

budget. Sometimes, the rate changed by several points over a period of only a few months, which resulted in major upward or downward changes in the US $ equivalent of Schilling expenditures. As a result, precise budgeting, which the Agency was beginning to accomplish by the end of the 1960s, became more and more difficult. To respond to the need for the Director General always to have sufficient resources to carry out the programme on which the approved budget was based, in the period 1970–1980 two devices were used frequently which had only rarely been applied during the period covered by the basic book, namely contingent appropriations and supplementary budgets.

Contingent appropriations were included in the Regular Budgets for each year, except for 1973, 1977 and 1981. The title of the respective budget Section for 1969–1971 was "Contingent extraordinary expenditures"[80]; that for 1972 was "Adjustments to staff emoluments, including common staff costs"[81]; that for 1974 was "Contingent financing"[82]; since then the title was "Reserve funds for the adjustment of programme cost estimates"[83]. For all of these, the approval of the Board was required for any expenditures from this budget Section[84]. Generally, the Board's authority was not qualified, but for 1969 and 1970 a determination had to be made of the "need for additional extraordinary expenditures"[85], and for 1974 and 1975 the Board's authority could be exercised "solely for compensating for changes in currency exchange rates"[86]. In each year, when the authority was granted the Board used it to release substantially all the contingent funds available[87].

In the years 1971, 1973, 1975 and 1977–1979 (including two of the years for which no contingent appropriations were made), supplementary appropriations were approved by the General Conference[88] according to the procedure described in the basic book. It should be noted that the Board's recommendation to the Conference was in each instance made just before the beginning of the session[89], presumably on

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[80] For example GC(XII)/RES/242, para. 1, Section 12.

[81] GC(XV)/RES/280, para. 1, Section 9.

[82] GC(XVII)/RES/304, para. 1, Section 9 (Sub-sections A and B; the only difference between the two sub-sections is that the Board had decided on the amount of US $2 100 000 (Sub-section A) at its June session and had recommended the addition of US $2 500 000 (Sub-section B) in September.

[83] For example GC(XXIII)/RES/365, para. 1, Section 10. The bracketed words appeared only once, in respect of the Budget for 1979 (GC(XXII)/RES/357, para. 1, Section 10), and do not appear to have had any legal significance.

[84] For example GC(XXIII)/RES/365, para. 4.

[85] For example GC(XII)/RES/242, paras 3–4.

[86] For example GC(XVII)/RES/304, para. 3.

[87] For example GOV/DEC/104(XXII), No. (51)(b) and (c).

[88] For example for 1979, by GC(XXIII)/RES/364.

[89] For example GC(XXIII)/618, issued on 3 December 1979, the day before the opening of the 23rd General Conference. This also necessitated the proposal of an additional item for the provisional agenda (since the budget for the current year could not otherwise have been considered by the Conference), which the Board requested on the same day (GC(XXIII/617).

the ground that the requirement of a six-weeks' notice in Financial Regulation 3.03 would not apply to supplementary estimates under Regulation 3.04; alternatively, the argument regarding suspension of the Financial Regulations, discussed in Section 25.2.2.3, might also be applied here.

In adopting supplementary appropriations, the Conference has only once (in 1973)[90] coupled these with an immediate supplementary assessment (Section 25.3.4.4). Instead of this, in each case (and also in 1973) some combination[91] of the following sources of financing was specified in the appropriation resolution:

(a) The actual cash surplus from the last but one fiscal year[92];
(b) The estimated cash surplus from the last year[93];
(c) Contributions by new Member States[94];
(d) Other miscellaneous income in addition to the amount estimated for the original budget[95];
(e) Funds released by a reduction of the Working Capital Fund[96];
(f) Funds temporarily withdrawn from the Working Capital Fund, to be restored in the next year, either by an increase in the assessment for the year (in 1972)[97] or merely from unspecified amounts of money to become available in the next year (in 1978)[98].

### *25.2.4.2. The Operational Budget/Technical Assistance Fund*

#### 25.2.4.2.1. Authority to implement the Operational/Technical Assistance Programme

During the period covered by this book, the Operational Programme was implemented through the Operational Budget, substantially as described in the basic

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[90] GC(XVII)/RES/301, para. 2(e).

[91] The supplementary appropriation resolutions specify precise dollar amounts for each of the sources of income they list, which together add up to the total amount of supplementary appropriation; however, a final provision of this part of the resolution generally authorizes the use of additional amounts from some of the same sources, as long as the total amount used does not exceed the appropriated amount (e.g. GC(XIX)/RES/324, para. 2(d)). The purpose of this catch-all sub-paragraph is to make sure that if more income than expected should be available from one of the indicated sources and less than expected from another one, then there is sufficient authority to use all the actually available and required funds.

[92] For example GC(XVII)/RES/301, para. 2(a).

[93] Ibid., para. 2(b).

[94] Ibid., para. 2(d). Such payments are of course routinely included in miscellaneous income (Section 25.3.3.1.1), but in 1973 the Conference had just approved the membership of the German Democratic Republic (GC(XVII)/RES/296), from which a substantial contribution was due for the current year since it had actually deposited its instrument of acceptance immediately.

[95] For example GC(XVII)/RES/301, para. 2(c).

[96] For example GC(XV)/RES/278 and /279, para. 2(c).

[97] GC(XV)/RES/279, paras 2(d) and 3.

[98] GC(XXI)/RES/346, paras 2(c) and 3.

book. Starting with the 1981 Budget, the scope of the relevant resolution was reduced so that it covered only that part of the Agency's technical assistance programme which is financed from unrestricted voluntary contributions (i.e. the former Operating Fund II). The other part of the former Operational Programme (formerly covered by Operating Fund I) has, at the suggestion of the External Auditor[99], been transferred to the expanding field of 'extrabudgetary operations' (see new Section 25.2.4.3). That change is one of form rather than of substance, because, at least since 1971, specific contributions and other miscellaneous income have been sufficient to cover the budgeted Operating Fund I expenditures[100] (only for the Monaco Laboratory and the Trieste Centre, since the expenses for the Agency's Seibersdorf Laboratory were charged entirely to the Regular Budget). All unrestricted voluntary contributions have since then been dedicated to the technical assistance programme.

During the decade 1970–1980 the discipline of Member States in contributing to the General (now Technical Assistance) Fund has steadily improved, so that by 1980 it was possible to rely on the receipt of about 93% of the target[101]. Thus, as the total of the contributions to be received became more certain during the year, it became possible to eliminate the procedures designed to permit running adjustments to programme implementation, as well as adjustments between the formerly always too optimistic budget estimates and the amounts available from the actual, considerably lower, contributions. However, one problem has not been eliminated, namely that every year the amounts that would be required to implement all acceptable projects were considerably higher than the amounts budgeted and actually available[102].

Probably as a result of the decreasing need to monitor the flow of voluntary contributions available for technical assistance, as of 1972 the Board no longer adopted in each February session a decision to allocate funds for the Operational Programme of the current year[103]. These allocations, which were directed by the Board, were in any event of doubtful validity, since the General Conference resolutions, which these Board decisions were designed to implement, had by their own

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[99] GC(XXIV)/629, Part II, paras 17–20; GC(XXIII)/611, Part II, para. 26; GC(XXIV)/629, Part II, para. 25.

[100] See GC(XIV)/433, Part IV, Table 3.

[101] GOV/INF/366 (reproduced as GC(XXIV)/631, Annex), para. 17.

[102] GOV/COM.8/72, Table 2, showing in Parts I and II the number of experts and equipment projects for which funds were available, as well as the so-called 'footnote a/' projects, for which resources are only to be provided in substitution for other approved projects or if additional funds become available. For 1981 these figures were respectively US $8 631 300 and 2 331 600; thus, even if the target for voluntary contributions were to be fully met, funds would only be available for some 79% of the acceptable projects.

[103] The last such allocation was made by the Board at its February 1971 session (GOV/DEC/65(XIV), No. (10)).

terms already allocated the full budgeted amounts to the two Operating Funds[104]. The resolution adopted by the 24th General Conference allocated a specified amount (the sum of expected miscellaneous income and the target for voluntary contributions) "for the Agency's technical assistance programme for 1981", without indicating any particular fund (though the resolution had the title "Technical Assistance Fund Allocation for 1981")[105]. Thus, the Director General was authorized to implement technical assistance projects approved by the Board (in practice by its Technical Assistance Committee) up to the amount of the specified sum. If there was a shortfall, which was likely, the Director General decided which project must absorb the impact (though some projects are likely to be dropped in any event, for other reasons).

25.2.4.2.2. The General Fund and the Operating Fund

The Board has not yet considered what changes, if any, in the Financial Regulations are implicit in its decision[106] to combine the General Fund and the Operating Fund II into a single fund (the Technical Assistance Fund) in the annual budget document and in the resolution proposed by it to the Conference on the technical assistance programme. Therefore, it is not certain whether, for accounting purposes, the General Fund (which is derived from Statute Article XIV.F and is provided for in Financial Regulation 7.09)[107] and the two-part Operating Fund (Financial Regulation 7.07) will be preserved, or whether it will be replaced by a Technical Assistance Fund and perhaps one or more funds for the extrabudgetary operations. In any event, the intention seems to be that the Operating Fund II/ Technical Assistance Fund should be credited with all unrestricted voluntary contributions and with the investment income generated by the assets of the Fund (equivalent to its unliquidated obligations and unobligated balances — see Section 25.2.4.2.3), and that all other monetary contributions should be credited to some other fund or funds.

25.2.4.2.3. Timing of expenditures

The Revised Guiding Principles for technical assistance confirm the practice whereby the Technical Assistance Committee reviews, usually in December, the requests for assistance to be provided in the next year from the Agency's own resources (i.e. the Operating Fund II/Technical Assistance Fund) for experts and

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[104] In connection with the 1971 allocation referred to in note 103, see, for example, GC(XIV)/RES/265, para. 3.

[105] GC(XXIV)/RES/374, para. 3.

[106] GC(XXIV)/630, paras 3–4 and Annex VI.B.

[107] For a complete account of the establishment and funding of the General Fund, see Interim Financial Instruction (Section 25.1.4.9) No. IV-03-1.

equipment, and in effect authorizes the start of implementation, subject to Board approval, at its first subsequent session (normally in February)[108]. The Director General has been authorized in the meantime to implement the fellowship and training activities included in the programme[109]. The Revised Guiding Principles also provide for the setting aside of a 'reserve fund'[110], which must not exceed 2.5% of the available funds and which was actually set at US $250 000 for both 1980 and 1981[111]. From this fund the Director General could finance projects that were submitted too late for regular approval, with up to US $25 000 for each project.

The Revised Guiding Principles also permit, and indeed encourage, the commitment of funds for multi-year projects[112]. When such a project is first approved, the amount required for future years is indicated, and care is taken that the total for all of these projects is considerably less than the funds expected to be available for these years[113]. Once a multi-year project is approved, the Director General considers himself authorized to enter into commitments covering also portions of the programme to be implemented in future years, for example by ordering equipment that it may take several years to obtain, or which must be paid for from several years' worth of allocations. Nevertheless, in each subsequent year the components of multi-year projects for that year are submitted for review to the Technical Assistance Committee[114], sometimes with indications of proposed increases, decreases or other changes.

During the period covered by this book, increasing concern was expressed about the growth in the earmarked but unobligated funds in the Operating Fund II, corresponding to approved projects the implementation of which has not yet started[115]. This growth was probably due to a number of factors:

(a) The general growth of the technical assistance programme;
(b) The growing complexity of projects, with resulting delays in the start of their implementation;

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[108] INFCIRC/267, para. 17.

[109] Ibid., para. 16.

[110] Ibid., part II.B (paras 21–22).

[111] GOV/DEC/111(XXIV), No. (12)(c).

[112] INFCIRC/267, paras 9 and 15.

[113] For example GOV/COM.8/72, para. 2 (earmarked in 1981 for 1982: US $2 637 400; for 1983: US $423 000). See especially GOV/COM.8/64, paras 3–5, containing the Director General's explanations when multi-year projects were introduced for the first time.

[114] INFCIRC/267, para. 15.

[115] For example GOV/OR.487, paras 70–71; GC(XX)/COM.5/OR.3, para. 5; GOV/COM.9/OR.126, paras 1–50 (passim); GOV/1835, para. 2. In June 1977 the Director General announced the establishment of an expert group to study the problem of the delivery of technical assistance with special reference to the large unobligated balances by the end of the year (GOV/OR.487, paras 31–32). Several months later, Chile prepared a detailed study, including mathematical analyses, of unliquidated obligations and unobligated balances in Operating Fund II (GOV/INF/327).

(c) The submission and processing of applications for technical assistance before the recipient country was fully ready for the project;
(d) The increasing difficulty in recruiting certain types of experts;
(e) The accumulation of non-convertible currencies from the voluntary contributions, which could not easily be used in the implementation of most projects so that the unobligated funds consisted disproportionately of such currencies, while convertible currencies were sometimes slightly over-obligated.

The Revised Guiding Principles introduced two measures to alleviate the situation referred to in the last paragraph:

(i) The Director General was required to distinguish, in his proposals for implementing the technical assistance programme, between projects expected to be implemented with convertible currencies and projects expected to be implemented with non-convertible currencies[116]. Thus the Board would not approve more projects than could be implemented by the use of the available convertible currencies.
(ii) The possibility of committing funds for multi-year projects[117] made it easier to utilize non-convertible currencies from States with planned economies[118].

Finally, the Revised Guiding Principles also codify the Director General's authority to cancel a project, after consultation with the Government concerned, and to reallocate the funds therefor if such funds have not been obligated within two years of the project's approval by the Board[119].

*25.2.4.3. Extrabudgetary operations*

25.2.4.3.1. Types of resources

Extrabudgetary resources may consist of cash resources and of contributions by Member States in kind, such as cost-free experts and consultants, stipends for fellowships and training courses. Contributions in kind are not included in the budget documents and the value of such resources is only estimated.

Starting with the 1978 Budget[120], but far more extensively in the 1981-1986 Programme and the 1981 Budget[121], the respective documents took into account the 'extrabudgetary' resources of the Agency and the operations carried out with them.

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[116] INFCIRC/267, para. 14.
[117] Ibid., paras 9 and 15.
[118] See GOV/COM.8/64, para. 5.
[119] INFCIRC/267, para. 24. For a list of projects cancelled in 1979, see GC(XXIV)/INF/191, Annex VI.B.
[120] GC(XXI)/582, paras 3-4 and Table 2.
[121] GC(XXIV)/630, para. 3 and Tables 1 and 5.

These resources, which are more fully discussed in Section 25.7, include items such as the following:

(a) Financing by the UNDP of technical assistance of country and regional projects[122], but not including the corresponding support costs, which are accounted for in the Regular Budget[123];
(b) Financing by Member States of approved 'footnote a/' technical assistance projects for which Agency funds are not available[124];
(c) Contributions by Member States to special Agency activities, such as the Supplementary Safety Programme (NUSS)[125], the Plutonium Management Study (IPS)[126] and the Spent Fuel Management Study[127];
(d) Contributions by Member States to activities administered by the Agency on their behalf, such as the International Nuclear Fuel Cycle Evaluation (INFCE)[128];
(e) Payments by Member States or international organizations for research carried out by the Agency or carried out for the Agency by research contractors[129];
(f) Contributions by the respective host State, by other Member States and by international organizations to the Trieste Centre[130] and the Monaco Laboratory[131];
(g) Contributions by Member States to safeguards research[132].

It should be noted that not all types of resources that are used by or in connection with Agency programmes, in addition to assessed and unrestricted voluntary contributions, are accounted for as extrabudgetary resources. In particular, the following types of income are included in the budget (and are thus intrabudgetary):

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[122] Sections 18.2.3 and 25.7.1. Somewhat confusingly, even though the contributions of the UNDP to country and regional projects were treated as 'extrabudgetary resources' in programme and budget documents (e.g. GC(XXIV)/630, Table 5), they were consistently distinguished from those resources in reports on technical assistance (e.g., GC(XXIV)/INF/191, Part II.B and C, Part IV, Tables 1, 4, 7, 8).

[123] For example GC(XXIV)/630, Table 4, Miscellaneous income (b).

[124] Sections 18.2.7 and 25.7.4. For a list showing the 'footnote a/' projects made operational in 1979 and indicating the donors to each such project, see GC(XXIV)/INF/191, Annex VII.

[125] GOV/1948.

[126] Section 21.13.

[127] Section 25.7.4.

[128] Section 25.7.4.1.

[129] Sections 12.2.3.6 and 19.2.

[130] Section 19.1.3.3.

[131] Section 19.1.2.3.

[132] For example Section 25.7.4.4.

(i) Miscellaneous income arising from the Agency's substantive programmes[133], for example the sale of publications[134] and of INIS materials[135], payments for work performed by the Laboratories[136], amounts recovered under Safeguards Agreements with non-Member States[137], and UNDP[138] and SIDA[139] 'programme support costs';

(ii) Income from work for other organizations, i.e. services (data processing, printing, medical, library) performed for various United Nations organs which share the VIC with the Agency[140];

(iii) Miscellaneous income not arising from a particular activity, for example investment income[141] and gain on currency exchanges.

Except for investment income attributable to the assets of the Operating Fund II/Technical Assistance Fund, which is credited to the technical assistance programme, all such income is credited to the Regular Budget.

Finally, certain types of resources are not accounted for in the budget, but they are mentioned peripherally:

— Contributions in kind[142];
— The FAO contributions to the FAO/IAEA Joint Division[143];
— Technical assistance financed by recipient States[144].

From this listing it will appear that the distinction between intrabudgetary and extrabudgetary funds, and between the latter funds and those not accounted for is not clear-cut. Thus, all unrestricted voluntary contributions are credited to the technical assistance programme, but restricted voluntary contributions are credited to extrabudgetary operations; payments for research performed by the Agency may be treated as miscellaneous income to the Regular Budget (which serves to reduce the contributions assessed on Member States) or as extrabudgetary income (used to expand a particular activity). When a Member State makes available a person to

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[133] For a complete listing, see GC(XXIV)/630, Table 4, line (b).

[134] Section 20.2.4.

[135] Section 20.4.1.

[136] Section 19.1.1.5.

[137] Section 21.9.1.2. INFCIRC/153, para. 15(b).

[138] Section 25.7.1.

[139] Section 25.7.4.2.

[140] Section 12.7.2.2.

[141] Section 25.7.5.

[142] GC(XXIV)/630, Table 1, footnote a. A complete tabulation of such contributions appears in the Accounts (e.g. those for 1979; GC(XXIV)/629, Part V, Schedule G, showing a total of US $9 575 225, some 11% of the total resources listed there).

[143] GC(XXIV)/630, Table F.3 (showing about US $900 000 budgeted for 1981).

[144] For example GOV/COM.8/69, Table C, Part B (showing a total of available funds of US $6 951 000, but not indicating the period for which this figure is applicable).

perform a particular task, this represents a contribution in kind and is not accounted for; when a State nominates a person for a post and reimburses the Agency for the resulting costs, this represents an extrabudgetary contribution.

Similarly, it is not possible to distinguish between budgetary and extrabudgetary resources by the types of activities to which they relate. Indeed, as the Consolidated Budget[145] shows, every extrabudgetary resource is attributed to a Programme that is also provided for in the Regular Budget. Thus, for example, the administrative costs of technical assistance are financed from the Regular Budget, while particular projects are financed from the Technical Assistance Fund or from extrabudgetary revenues (UNDP projects or contributions by Member States) or from completely non-budgetary resources (e.g. gifts in kind or self-financed projects).

25.2.4.3.2. Authority to carry out operations

The authority to accept various types of extrabudgetary resources is discussed in Section 25.5.4. The present section deals with the authority to utilize such resources.

Article III.A.1–7 of the Statute provides authority for the Agency to carry out various types of activities and services. The specific authority for the Director General to engage in particular extrabudgetary operations derives from a provision which has appeared, substantially unchanged since the Budget in respect of 1976, in the Regular Budget Appropriations annually adopted by the General Conference. In the 1980 Resolution, the authorization reads as follows:

"The General Conference ... Authorizes the Director General:

> "(a) To incur expenditures additional to those for which provision is made in the Regular Budget for 1981, provided that the relevant emoluments of any staff involved and all other costs are entirely financed from revenues arising out of sales, work performed for Member States or international organizations, research grants, special contributions or other sources extraneous to the Regular Budget for 1981;" [146]

For several years before 1976 the same provision was included, but restricted "in respect of the Laboratory, the expanded programme on nuclear safety and environmental protection, publications, research contracts and services provided to Member States or international organizations ..." [147]. Still earlier, the provision was applicable only to the issue of publications[148].

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[145] GC(XXIV)/630, Table 1.
[146] GC(XXIV)/RES/373, para. 3(a).
[147] For example GC(XVIII)/RES/314, para. 4(a).
[148] Basic book, Section 20.2.4.

Until 1981, a similar provision also appeared in the resolution on Operational Budget Allocation, but it was restricted to expenditures incurred for the Monaco Laboratory and the Trieste Centre[149]. This provision was not included in the corresponding resolution for 1981[150], since that was restricted to the Technical Assistance Fund. The Monaco Laboratory and the Trieste Centre were relegated partly to Regular Budget status and partly to extrabudgetary status[151].

There is a certain ambiguity in the current provisions (and their immediate predecessor), namely regarding the question of what the "sources extraneous to the Regular Budget for 1981" are, in particular whether this means sources of a type not listed in respect of the Regular Budget in the relevant budget document[152] or whether it means amounts of the same type but in excess of the amounts of the budget estimates. Neither alternative is quite satisfactory. Under the first alternative, receipts from any additional publications sold or from Laboratory services performed (sources mentioned in the budget document) could only be used to increase the miscellaneous income but not the relevant operations. Under the second alternative, the amount of miscellaneous income would necessarily remain limited to the budgeted amount (since any excess would be credited to extrabudgetary operations); however, the Conference has time and again pointed out that the miscellaneous income may have been understated and has therefore disposed of any excess[153].

Given this general authorization from the General Conference, proposed to the latter by the Board, the question is whether the Director General requires, in the light of Statute Article VI.F, any further specific authorization from the Board to carry out particular activities. Without attempting to give a general response to this question, it should be noted that for most extrabudgetary activities such authorization exists:

(a) In respect of technical assistance, the Revised Guiding Principles specifically provide for the Agency to act as an executing agency for the UNDP (a major source of extrabudgetary resources), or as "an intermediary for providing technical assistance on behalf of the Government of any Member of the Agency or of any other State Member of the United Nations or of any specialized agency in accordance with an agreement concluded with the Government concerned"[154] (it is not stated that such agreements must be approved by the Board). Incidentally, most technical assistance projects financed by another State are 'footnote a/' projects[155] which had been approved by the Board or by its Technical Assistance Committee.

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[149] For example GC(XXIII)/RES/366, para. 5.
[150] GC(XXIV)/RES/374.
[151] GC(XXIV)/630, paras 6–7.
[152] Ibid., Table 4.
[153] For example GC(XXII)/RES/356, para. 2(b).
[154] INFCIRC/267, para. 6; see also paras 4 and 10.
[155] Section 18.2.7.

(b) The Monaco Laboratory and the Trieste Centre are operated under agreements approved by the Board[156].

(c) For certain activities, special authorization was granted, for example for INFCE[157] and for NUSS[158].

(d) Certain activities were mentioned in a budget document presented by the Board to the General Conference: international plutonium storage[159], international spent fuel management[160] and public health acceptance and regulatory aspects of food irradiation[161].

25.2.4.3.3. Timing and other conditions of expenditures

Neither the Financial Regulations nor any other generally relevant Agency instrument specifies how and when extrabudgetary resources are to be spent. Financial Regulation 7.08 requires, in respect of Operating Fund I (through which the Monaco Laboratory and the Trieste Centre used to be partially financed), accounting procedures "based on sound commercial practices".

Generally, the provision of extrabudgetary resources is subject to regulations of the donor. This is particularly true when the source is another international institution, such as the UNDP, in which case it may also be assumed that its financial practices are, if not identical with, at least compatible with, those of the Agency. Some major donor States also have very precise procedures for releasing funds to international organizations. In all such transactions the Director General would attempt to minimize the Agency's financial risk and exposure, in particular by assuring himself that, before the funds are obligated, the extrabudgetary source has become correspondingly obligated to the Agency and that, before the funds are expended, an equivalent amount has been received by the Agency[162].

In some instances the procedures for spending extrabudgetary resources are specified in an agreement with the donor, such as in the Agreement concluded with Sweden Relating to Co-operation in the Provision of Assistance to Developing Countries[163]. However, except if there is an agreement approved by the Board or if there is at least Board approval of the project for which the funds are to be spent (as for 'footnote a/' technical assistance projects), the Board exercises little control over extrabudgetary operations.

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[156] Sections 19.1.2.1 and 19.1.3.1.
[157] GOV/DEC/96(XXI), No. (9); /97(XXI), No. (20); /102(XXII), No. (12).
[158] GOV/DEC/103(XXII), No. (27).
[159] GC(XXIV)/630, paras P.5/12-14.
[160] Ibid., paras P.5/15-20.
[161] Ibid., para. F.6.2/1.
[162] See, for example, GC(XXIV)/630, Section 2(a) and (b).
[163] INFCIRC/138, Article II (Sections 2-7).

## 25.3. ASSESSMENT OF CONTRIBUTIONS

### 25.3.1. Scale of assessment

#### *25.3.1.1. Rules*

25.3.1.1.2. Guiding Principles adopted by the General Conference

During the period covered by this book, the General Conference changed its Guiding Principles for the Assessment of Members' Contributions four times. Three of these changes constituted successive variants of a quite drastic alteration in the entire assessment system, designed to shield the poorer Member States from the impact of NPT related increased safeguards costs. The fourth change was a formal amendment that was merely designed to conform to a change adopted by the United Nations General Assembly in relation to the United Nations scale.

As noted in Section 21.9, the Board, especially through its Safeguards Committee (1970), gave intensive consideration in 1970 and 1971 to ways of preventing that the increases in the costs of the safeguards responsibilities which the Agency would incur under a host of new NPT related Safeguards Agreements would have to be borne by its less developed Members. Taking into account the considerations set out in Section 21.9, the Board in April 1971 approved[164] a recommendation to the General Conference for a special system of assessing safeguards costs; the Director General was requested to incorporate this system into a draft resolution for consideration by the General Conference[165]. The essence of the system was that the contributions of shielded States to the safeguards expenditures of the Agency would be assessed in one of two ways (depending on which gives the lower amount):

(a) At half of the rate of assessment for non-safeguards expenses;
(b) At the full rate of this assessment, but applied to only 16.9% of the non-safeguards expenses (a figure corresponding to the ratio of non-safeguards expenses to safeguards expenses in 1971, i.e. before there were any such NPT related expenses); in no case should the assessment be less than that for safeguards expenses in 1971.

The intention of this complex formula was clear. If the safeguards of the Agency would increase faster than its other operations, as was to be expected, then the contributions of the shielded States to the safeguards expenses of the Agency should be limited in accordance with the overall growth of the Agency's activities

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[164] GOV/DEC/66(XIV), No.(31).
[165] GC(XV)/462.

(the 16.9% rule). As long as the safeguards costs did not rise so rapidly, the contributions of these States to the costs would be at half the rate applicable for other operations. To prevent an immediate reduction in assessments through the application of this formula, at least the existing level of the contributions to safeguards would be maintained. To the extent that the contributions of the shielded Member States were thus reduced, the shortfall would be paid for by the non-shielded States in proportion to their rates of assessments for non-safeguards expenses.

In spite of the legal and policy objections of France[166], supported by two other States, the 14th General Conference (1971) adopted the resolution[167] presented by the Director General and immediately applied the new principles to the scale of assessment adopted for 1972[168]. At the specific request of the Board, the Conference resolution also noted the understanding that these new arrangements could not be invoked as a precedent for other financial arrangements, either within the Agency or in other international organizations[169].

In February 1976 the Board reviewed the system it had proposed to the General Conference in 1971, taking into account a recommendation of the first (1975) NPT Review Conference that measures should be sought which would restrict to appropriate limits the respective shares of the safeguards costs of developing countries[170]. On the basis of this review, the Board proposed[171] to the General Conference a slightly revised shielding system; this system would freeze at the 1976 levels the amount of the assessed contributions to the safeguards expenses of each qualified shielded State. This proposal was incorporated in a draft resolution formulated by the Director General[172], which the 19th General Conference (1976) adopted[173]. The Conference immediately included that principle in the resolution fixing the 1977 scale of assessment[174]. The former resolution provided that the new arrangements be reviewed by the Board in 1980.

In 1977 the Director General drew the attention of the General Conference[175] to a decision, taken several years ago by the United Nations General Assembly, to abolish the 'per capita' ceiling on contributions[176], according to which no Member State could be assessed at a higher per capita rate than that of the largest contributor (the USA). This ceiling had been adopted in the light of the conditions prevailing

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166 GC(XV)/COM.1/OR.95, paras 2-4.
167 GC(XV)/RES/283.
168 GC(XV)/RES/284.
169 GC(XV)/RES/283, preambular para. (b).
170 NPT/CONF/35/I, Annex I, under "Review of Article III"; GOV/INF/306, Article III, para. 7.
171 GOV/DEC/88(XIX), No. (18).
172 GC(XX)/569.
173 GC(XX)/RES/341.
174 GC(XX)/RES/342.
175 GC(XXI)/586.
176 UNGA/RES/3228(XXIX).

in the immediate post-war years when the USA was by a wide margin the richest country, both in an absolute sense and in a relative sense, and was designed to prevent a situation whereby some other State might be assessed at a higher per capita rate than that of the USA. It was, however, considered to be no longer appropriate by the mid-1970s, when a number of States were approaching and even surpassing the USA in the per capita national product. As pointed out in paragraph (d) of Section 25.3.1.1.3 in the basic book, this ceiling had never been applied in the Agency (a situation which continued during the period covered by the present book), mainly because the United Nations scale, on which the Agency's scale was based, already took account (until 1977) of the per capita limitation. The 21st General Conference (1977) accepted, without debate, the Director General's recommendation to modify the Guiding Principles by abolishing the per capita ceiling[177].

In 1980 the Board reviewed, as required by the 1976 resolution, the arrangements for financing of safeguards. The principal issues were the proposal of the larger contributors that the 1976 levels of safeguards contributions of the shielded States should be increased by 60% in order to take account of the intervening inflation and currency realignments, and the proposal of the shielded States that the safeguards costs should in future include an appropriate share of the general and administrative expenses of the Agency. In the end, the only adjustment that was proposed in respect of the 1976 formula was to restrict somewhat more the definition of shielded States, so that the ten largest contributors would be excluded from them[178], and to reduce somewhat the national product per capita cut-off (see paragraph (3) of the following section)[179]. After an inconclusive debate relating mainly to the question of what additional expenses should properly be allocated to safeguards[180], the Conference accepted this revised formula[181], requested the Board to review it in 1983, and applied it in adopting the scale of assessment for 1981[182].

As a result of these successive decisions, the scales of assessment for 1981 and for subsequent years were determined on the basis of General Conference Resolution GC(III)/RES/50, as amended by GC(XXI)/RES/351 and as modified in their application by GC(XXIV)/RES/376.

25.3.1.1.3. Method of establishing the scale of assessment

In the years since 1971 the following calculations have been made to establish the scale of assessment of contributions to the Regular Budget:

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[177] GC(XXI)/RES/351.

[178] The only effect of this limitation was to exclude Spain, the tenth highest contributor.

[179] GOV/DEC/107(XXIII), No.(30); GC(XXIV)/633.

[180] GC(XXIV)/COM.5/OR.20, paras 38–39; /OR.21, paras 1–7.

[181] GC(XXIV)/RES/376.

[182] GC(XXIV)/RES/377.

(1) *Dividing the Regular Budget into 'non-safeguards' and 'safeguards' components*

A division of all assessable expenses (i.e. of the Regular Budget, with some reduction for income items) into a non-safeguards component and a safeguards component was required. These components were defined as follows:

> "Each Member's contribution towards the Agency's Regular Budget shall comprise a non-safeguards component and a safeguards component, corresponding respectively to that Member's assessment in respect of:
>
> "(a) Non-safeguards expenses, which shall include all expenses required to be apportioned among Members in accordance with Article XIV.D of the Statute except safeguards expenses; and
>
> "(b) Safeguards expenses, which shall include all expenses relating to the Agency's safeguards activities." [183]

This division was generally made by attributing to 'non-safeguards expenses' the total of all budget Sections, with the exception of the Section on "Safeguards", and also that part of the Section for contingencies (previously "Contingent financing" and more recently "Adjustment of programme cost estimates") which corresponds to the ratio of non-safeguards expenses to safeguards expenses, and deducting therefrom the estimates of miscellaneous income, excepting income expected to arise from payments by non-Member States for safeguards. Correspondingly, 'safeguards expenses' consisted of the total of the Safeguards Section of the budget and a proportionate part of the Section for contingencies, with deductions of the payments expected from non-Member States for safeguards[184]. It should be noted that in the 1975 Budget and in subsequent budgets the Safeguards Section included not only the expenses incurred by the Safeguards Department but also those incurred by other Secretariat units in providing library, legal, data processing, linguistic, printing, publishing and conference services for safeguards[185].

The shielded States have repeatedly demanded, both in the Board and in the Conference, that portions of the budget Sections for "Executive management and administration" and for "General services" (which includes the costs of operating the Agency's parts of the VIC) be attributed to safeguards. These proposals have been resisted, both on the ground of principle (indicating a concern about dividing the Agency's operations too thoroughly into two separate parts) and because of accounting considerations[186].

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[183] For example GC(XXIV)/RES/376, para. 1.

[184] For example GC(XXIII)/613/Mod.1, Appendix, para. 1. In some years, other adjustments were called for, such as for contingent amounts taken into account in the previous year but not actually used (e.g. GC(XVIII)/528, Appendix, para. 1).

[185] See, for example, GC(XXIII)/612, Table K.1. Section 25.2.3, paras (c) and (e).

[186] Section 21.9.1.3.

The ratio between the safeguards component and the non-safeguards component is an important element in determining the final scale of assessment. When the Board occasionally found it necessary to make late adjustments in its budget proposals to the General Conference[187], a recalculation of the entire draft scale of assessment became necessary[188].

(2) *Establishing the 'base rates' of assessment*

The three resolutions providing for the revised assessment arrangements all rely on a concept referred to as 'base rates of assessment'. This concept corresponds precisely to the former 'scale of assessment' and is established in accordance with the guidelines specified for such scales in GC(III)/RES/50, as amended by GC(XXI)/RES/351[189]. The steps required to establish the base rates are therefore essentially the same as those described in this section in the basic book, with the following modifications, resulting for the most part from changes in the United Nations assessment practices rather than from any changes directly relevant to the Agency:

(a) For each Member of the Agency assessed by the United Nations at the minimum rate (which the General Assembly reduced, in two steps, from 0.04% to 0.01%) the Agency base rate is established at the United Nations level. In the scale adopted for 1981, 28 of the 110 Member States were at this rate[190].

(b) The assessment of the 'Member bearing the highest rate of assessment' (i.e. the USA) is then determined. Following the adoption of the US legislation reducing the authorization for the payment of assessed contributions to the administrative budgets of most international organizations to 25% of these contributions, the United Nations General Assembly reduced the American rate of assessment to that figure, utilizing the contributions of the two newly admitted German States to compensate for the difference[191]. The Agency attempted to follow suit; it did so (even though the American legislation specifically excepted contributions to the Agency from the stated limit)[192] because it was bound to follow the United Nations scale as closely as possible by Article XIV.D of its Statute, the Guidelines adopted by the Conference and General Assembly recommendations. However, the Federal Republic of Germany had already been a Member of the Agency and its contributions had therefore long been taken into account. Therefore, only a smaller reduction of

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[187] Section 25.2.2.3, first paragraph.
[188] For example GC(XXIII)/613/Mod.1.
[189] For example GC(XXIV)/RES/376, para.2.
[190] GC(XXIV)/634, Appendix, paras 2–3 and Table 1.
[191] UNGA/RES/2691 B(XXVII).
[192] UNGA/RES/2691 B(XXVII).

the US base rate could initially be accomplished by utilizing contributions from new Member States (principally the German Democratic Republic) and the proportionate part of the triennial increases in the percentage contributions of some other Member States due to increases in their national incomes, because the overriding principle had to be observed that a reduction of the rate of the highest contributor should not be achieved at the cost of actually increasing the rate of any other Member[193]. Only three years later was it possible, by utilizing the contributions of some additional new Members and the contributions of other Member States that were further increased owing to increases in their national incomes, to reduce the US base rate to 25% [194], at which it has rested since 1978.

(c) The rate of contributions of the Members not covered by (a) or (b) is then established by multiplying for each State its United Nations rate by a uniform coefficient, determined by dividing the balance of the United Nations scale (i.e. 100%, less the total of the United Nations percentages of the (a) and (b) States established for the previous year) by the balance of the IAEA scale (100%, less the total of the IAEA percentages of the (a) and (b) States)[195]. As long as the Federal Republic of Germany was not a member of the United Nations but was a Member of the Agency, this coefficient was always less than unity, ranging for the period up to 1974 from 0.9054 to 0.95996; however, when the Federal Republic of Germany joined the United Nations and its contribution was taken into account in the United Nations scale, the ratio increased above unity to 1.035121 [196] and by 1978 it reached 1.073425. Since then, it has decreased to 1.011096 (in 1981) because of the fact that the members of the United Nations which are not Members of the Agency are mostly the least developed of the developing States and thus are assessed only at a minimum rate, while Switzerland (with a relatively high contribution) continues to be assessed as a Member of the Agency but not of the United Nations.

(d) Until 1977 a check was made of the Members covered by (c) to determine whether the per capita contribution of any of them exceeded that of the USA. This was never the case and, consequently, no further adjustments in the base rate of assessment had to be made on account of the per capita limit rule; this rule was abolished in 1977 [197].

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[193] These points and the resultant calculations are discussed at length in the 1974 Memorandum by the Director General proposing the scale of assessment for the following year (GC(XVIII)/528, Appendix, paras 2–7).

[194] GC(XXI)/583, Appendix, paras 2–6.

[195] For example GC(XXIV)/634, Appendix, para. 3.

[196] GC(XVIII)/528, Appendix, paras 4 and 9.

[197] GC(XXI)/RES/351.

(3) *Establishing the list of shielded States*

The 'shielded States' are defined in the successive resolutions which the Conference adopted upon being urged by the Board. According to the original definition, these were the States having a per capita net national product of less than one third of the corresponding product of the group of ten Member States having the highest such product. States which do not wish to be listed as 'shielded States' are not to be included[198]. The 1980 amendment lowered the cut-off level by increasing from ten to fifteen the number of States whose average per capita net national product sets the standard. Furthermore, the ten States having the highest base rate of assessment are automatically excluded from the category of 'shielded States'[199]. The list of States is therefore established as follows:

(a) The Director General annually establishes a tentative list on the basis of the criteria specified in the Conference resolution. The resolution charges him to determine the per capita net national product of Member States by examining the documents used by the Committee on Contributions of the United Nations General Assembly; in practice, the basic data for these calculations are provided by the Secretariat of that Committee.

(b) The tentative list is then sent to all Member States, with the request that States included therein which do not wish to appear in the final list should notify the Director General by a given date. Hungary gave such notification for certain years[200], and consequently this State was not included in the definitive lists on the basis of which the assessments from 1972 to 1977 were calculated[201]. Iran also made such notifications in respect of 1976 and 1977.

(c) The definitive list is then communicated to the Board in order to enable it to keep the list under review, as required by each of the pertinent Conference resolutions[202]. The Board has so far never commented on any of these lists. The number of States on the list ranged from 70 in 1973 (with 31 Members not on the list) to 84 (26) in 1978; the slight restrictions included in the Revised Guiding Principles adopted in 1980 merely resulted in a reduction of the number of States on the list from 77 (33) to 74 (36).

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[198] GC(XV)/RES/283, para. (c)(ii), and GC(XX)/RES/341, para. 3(b).

[199] GC(XXIV)/RES/376, para. 3(b).

[200] GOV/INF/277, para. 3.

[201] Hungary has not excluded itself from the list since 1976 and is thus now a shielded State. However, it is still assessed at a slightly higher rate for safeguards costs than it would have been if it had never been excluded, because the shielding formula freezes the contributions of shielded States at the 1976 levels (text, heading (4), para. (b)). For example, in the 1981 scale (GC(XXIV)/RES/377), Greece, with a base rate of 0.35%, has an overall assessment rate of 0.25719; Hungary, with a base rate of only 0.33%, has an overall rate of 0.26457.

[202] For example GOV/INF/376.

(4) *Calculation of safeguards expenses to be borne by shielded States*

(a) From 1972 to 1976 this calculation was made by establishing for each shielded State three separate amounts:

(i) The amount of the contribution of the State to safeguards in 1971 (obtained by applying its 1971 assessment rate to the 1971 safeguards budget of US $1 885 000) or, if the State was admitted to membership later, the amount which States with the same base rate contributed in 1971;

(ii) The amount of the contribution of the State to safeguards in the year for which the scale was being calculated, if the State was assessed for safeguards costs at half of its base rate of assessment;

(iii) The amount of the contribution of the State to safeguards in the year for which the scale was being calculated, if the safeguards costs continued to constitute only 16.9% of the non-safeguards expenses (as was the case in 1971)[203].

Once these amounts had been determined for each shielded State, the following of these amounts was selected: the lesser of (ii) and (iii), except if (i) was larger than either of these amounts, in which case that amount was chosen. For 1972, all shielded States were at the minimum (i) level[204]; for 1973, one State (Saudi Arabia) had its contribution determined by calculation (ii)[205]; for 1974, only 13 States were left in category (i) and the other 58 States had moved to category (ii)[206]; however, for 1976 (the last year for which such a calculation was made), all minimum contributors had reverted to category (i) status, 39 shielded States were in category (ii) and no State was in category (iii)[207].

(b) For 1977 and the subsequent years, the level of the safeguards contributions of the shielded States was frozen at the 1976 levels. If a State which had previously not been shielded was added later to the list of shielded States, its safeguards contribution was frozen at the level it had reached in the last year before it was shielded; the contributions of newly admitted States were at the level which they would have reached in 1976 if they had been Members then (a calculation made using "the Agency's established method of computation"[208]).

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[203] For example GC(XV)/463, Appendix, paras 4–5 and Table 2.

[204] Ibid.

[205] GC(XVI)/486, Appendix, Table 2 and para. 5.

[206] GC(XVII))/507/Mod.1, Appendix, Table 2.

[207] GC(XIX)/551, Appendix, Table 2. Calculation (iii) would have become applicable by 1978 if the original formula had been maintained.

[208] GC(XX)/RES/341, paras 3(a), (c) and (d), retained in GC(XXIV)/RES/376. For the application of this rule, see, for example, GC(XXIV)/634, Appendix, para. 4 and Table 2.

(5) *Calculation of safeguards expenses to be borne by non-shielded States*

Once the total of the safeguards expenses to be borne by the shielded States is established, it is subtracted from the total amount of safeguards expenses determined in step (1). The remaining safeguards expenses are then divided among the non-shielded States in proportion to the base rates of their contribution. For this purpose, each such State's base rate is multiplied by an appropriate coefficient, which rose from 1.0391744 in 1972 to 1.19964 in 1978 (a year in which there were 84 shielded States and 26 others). In 1981 the coefficient dropped to 1.09776 (for the 36 non-shielded States in this year). This adjusted rate is then multiplied by the remaining safeguards expenses in order to establish the safeguards costs to be borne by each non-shielded State[209].

(6) *Calculation of the scale of assessment*

(a) For each Member State its contribution to non-safeguards expenses is calculated by multiplying the amount of these expenses (as determined in step (1)) by that State's base rate of assessment.

(b) For each Member State its total contribution to the Regular Budget is then calculated by adding its contribution to non-safeguards expenses (step (6) (a)) to the contribution to safeguards expenses (step (4) or (5)).

(c) For each Member State its percentage contributions to the total expenses of the Agency are then determined in order to obtain a five decimal point figure for the scale of assessment. For 1978, these percentages ranged from 0.01643% for States assessed at the minimum rate (those with a base rate of 0.02%) to 25.7449% for the USA (base rate of 25.00%)[210].

Thus, in effect, the scale of assessment is determined backwards, by first establishing how much each State has to pay and then determining a percentage scale that yields the required amounts from the total Regular Budget estimates. (The principal constitutional objection by France against the entire system introduced in 1971[211] was based on this conceptual inversion.)

### 25.3.2. Procedure for establishing the scale of assessment

The draft scales, even under the revised arrangements for assessment, are prepared by the Director General and presented by him directly to the General Conference. The Board has still no function in preparing these scales; however, the following points should be noted:

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[209] For example GC(XXIV)/634, Appendix, para. 5 and Table 3.
[210] For example GC(XXIV)/634, Appendix, para. 6 and Table 4.
[211] GC(XV)/COM.1/OR.95, para. 3.

(a) The Board, acting, at least in part, on requests by the Conference, originated the proposals on which the revised assessment arrangements, as well as several later modifications thereof, were based[212]. The propriety of doing this and the form in which the Board might do it were issues raised when the first proposals were made in 1971[213].

(b) The Board occasionally advised the Director General as to which assessment system he should follow in preparing a draft scale of assessment, suggesting that he should take into account the Board's proposals even before these had been acted upon by the Conference[214].

(c) In principle, the Board has to 'review' the list of shielded States, though the purpose of this procedure required by the Conference is not entirely clear[215]. In practice, the Board has never commented on the draft list prepared by the Director General.

Since 1971 the draft scales prepared by the Director General contain two figures for each State, both of which are approved by the Conference: the 'base rate' and the 'resulting scale of assessment'[216]. Though the base rates are primarily intermediate figures used in arriving at the scale of assessment, they also have some independent functions — such as establishing the amounts of advances to the Working Capital Fund[217] and the amounts of voluntary contributions expected from each Member[218] — and it is presumably for this reason that the Conference is asked to approve also the base rate scale.

Since the abolition of the Programme, Technical and Budget Committee of the Conference[219], the Director General's proposed scales, as well as any proposed changes in the system of assessment, are referred to the Committee of the Whole[220]. During the period covered by the present book, there has never been any debate in either the Committee or the Plenary on the scales as such, though there have been brief discussions on the proposed changes in the system of assessment[221].

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[212] This is recognized, for example, in preambular para. (b) of GC(XXIV)/RES/376, as well as in operative para. 4, which requests the Board to review the arrangements in 1983.

[213] GOV/OR.436, paras 51, 54–56, 63–65. Section 21.9.1.2, final paragraph.

[214] For example GOV/DEC/107(XXIII), No. (30), para. 2.

[215] Section 25.3.1.1.3, heading (3), para. (c).

[216] For example GC(XXIV)/RES/377, para. 1 and Annex.

[217] Financial Regulation 7.03 (as amended by GOV/DEC/70(XV), No. (10)).

[218] GC(V)/RES/100, as amended by GC(XV)/RES/285. The scale of assessment is used for the computation of cash surpluses and, if required, for supplementary assessments. Iran notified the Agency and was not shielded in 1976 and 1977.

[219] Section 7.3.3.4.

[220] Section 7.3.5.2/3.

[221] For example GC(XXIV)/COM.5/OR.20, paras 38–39; /OR.2, paras 1–7.

### 25.3.3. Problems in establishing the scale of assessment

#### *25.3.3.1. General problems*

##### 25.3.3.1.1. New Members

The basic provisions for assessing the contributions of new Members have not been changed from those described in the basic book. However, because of the introduction of the new assessment scheme, the standard annual assessment resolution now contains the following provision: "... in the event of a State becoming a Member of the Agency during the remainder of the current year or in the following year, it shall be assessed as appropriate: ... For a contribution or contributions towards the Agency's Regular Budget in accordance with the principles the Conference has established for that purpose" [222]. This formulation has the incidental advantage of avoiding the difficulty referred to in the basic book in relation to the previous standard resolutions.

Since 1973 this provision has also been included in every resolution approving an application for membership[223]. In this context, however, the provision may prove inadequate. Instead of referring in general terms to the year in which a State becomes a Member (as does Financial Regulation 6.08), the resolution adopted in respect of a particular State refers to the year in which that resolution was adopted and to the following year — even though it is possible for a State to deposit its instrument of acceptance of the Statute much later. A new Member will be included in the scale of assessment only in the year in which it actually becomes a Member (or in the following year, if membership is perfected after 31 July, i.e. too late for inclusion in the draft scale). This addition to the standard membership resolution is thus not clear in view of the considerations just mentioned. The Financial Regulations require a State to make a contribution for the year in which it becomes a Member "as determined by the General Conference" [224].

In the final paragraph of this section in the basic book it is pointed out that, under Financial Regulation 6.08, a State joining the Agency on 31 December must be assessed as if it had been a Member for the entire year. However, when this situation actually arose through Mauritius depositing an instrument of acceptance of the Statute on 31 December 1974, the Director General, calling attention to Financial

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[222] For example GC(XVI)/RES/295, para. 2(b).

[223] For example for the German Democratic Republic, GC(XVII)/RES/296, para. 2(b).

[224] Financial Regulation 6.08. Presumably, the purpose of the addition to the membership resolutions was to comply also with General Conference Procedural Rule 97 (now Rule 94, GC(XIX)/INF/152), the difficulty concerning which is explained in this section in the basic book.

Regulation 6.08 (but not to the equally relevant Conference Resolutions[225] or Rules of Procedure[226]), informed the Board and expressed the opinion "that it would be unreasonable in the circumstances to assess Mauritius for a contribution in respect of 1974. This is particularly the case because Mauritius ... would have a rate of 0.04% in respect of 1974 but will have the reduced rate of 0.02% for 1975". The Director General therefore informed the Board, but not the General Conference, that he considered it appropriate to assess Mauritius only from 1 January 1975[227].

*25.3.3.2. Problems relating to particular States*

25.3.3.2.1. United States of America

As discussed in Section 25.3.1.1.3, the USA still constitutes a special assessment category, i.e. that of the 'Member bearing the highest rate of assessment', and special arrangements relating to it were required until its base rate of assessment was reduced to 25.00% for 1978 and subsequently. However, since the USA is a non-shielded State, its rate of contribution to the safeguards component of the Regular Budget is naturally higher than 25% (in recent years it was higher by approximately 10% — i.e. a rate of about 27.5%, but for 1978 it was higher by nearly 20% — i.e. a rate of nearly 30%)[228], so that its overall rate of contributions has continued to be above 25.00% (ranging between 25.7449% and 26.2894%)[229] even after its base rate was set at 25.00%. The US domestic legislation, which set the 25% limit in contributions to the assessed budgets of the United Nations and the specialized agencies, specifically excepted the Agency[230], so that no problem under the internal law of the USA has arisen in respect of its contributions to the Agency.

25.3.3.2.2. China

As noted in Section 6.2.1, in 1972, the year after the Board expelled the representatives of Taiwan, the Director General included China in the draft scale of assessments presented to the Conference, but without any assessment figure[231]. Though some Members protested at the General Conference against this apparent

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[225] Assessment resolution for 1974 (GC(XVII)/RES/308, para.2(b)); resolution admitting Mauritius to membership (GC(XVIII)/RES/309, para.2(b)); and assessment resolution for 1975 (GC(XVIII)/RES/317, para.2(b)).

[226] GC(XIX)/INF/152, Rule 94.

[227] GOV/INF/291.

[228] The rate for 1981 was 27.44400% (GC(XXIV)/634, Appendix, Table 3).

[229] The rate for 1981 was 25.74494% (ibid., Table 4, final column).

[230] The 'Helms Amendment', which raised potential problems about the US contribution, but not about its rate of assessment, is discussed in Section 25.3.5.6.

[231] GC(XVI)/486, Appendix, Table 1, note c/.

exemption of China on the ground of its non-participation[232], the Conference adopted the scale as proposed[233]. When it became apparent that the People's Republic of China would not continue participation in the Agency, China was no longer included in the scales in subsequent years[234].

25.3.3.2.6. Bangladesh and Pakistan

In the course of 1971, Bangladesh attained independence from Pakistan — a Member of the Agency. Bangladesh itself applied for membership in 1972; this application was approved at the beginning of the 16th General Conference[235] and was perfected on the very next day. Although, therefore, Bangladesh was not included in either the 1972 scale or the 1973 scale, it was assessed for those years, as required by the provision referred to in Section 25.3.3.1.1; the Director General set the base rate for those years at the lowest then prevailing rate (0.04%)[236]. In proposing the scale for 1974, account was taken of the 0.15% rate which the United Nations General Assembly had by then established for 1973 for Bangladesh (as a non-member of the United Nations)[237]. Pakistan, however, did not request or receive any reduction for 1972 and 1973 or for 1974; only the scale for 1975 (based on a newly adopted United Nations scale) reduced the rate for Pakistan, taking account of the separation of its Eastern provinces[238]. However, in establishing how much Bangladesh and Pakistan were respectively assumed to have contributed to the safeguards costs in 1971, the actual assessed contribution of Pakistan for that year was divided between the two States in proportion to their respective base rates[239].

## 25.3.4. Assessment procedures

*25.3.4.2. Currency of contributions*

The currency instabilities prevailing during the 1970s and, in particular, the approximate halving of the conversion rate of the US dollar (in which almost all contributions were received) to the Austrian Schilling (in which about three quarters of

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[232] GC(XVI)/COM.1/OR.98, paras 76–82; GC(XVI)/OR.158, paras 45–46.

[233] GC(XVI)/RES/295, Annex.

[234] For example GC(XVII)/RES/308, Annex.

[235] GC(XVI)/RES/287, para. 2 of which for the first time contained an explicit provision concerning the payment of contributions for 1972 and 1973 (an early version of the one discussed in the second paragraph of Section 25.3.3.1.1).

[236] As appears from GC(XVII)/504, Part IV, Schedule C, note b/, and GC(XVIII)/527, Part IV, Schedule C, note a/.

[237] GC(XVII)/507/Mod.1, Appendix, Table 1.

[238] Compare the Table mentioned in footnote 237 with the corresponding Table in GC(XVIII)/528.

[239] GC(XVIII)/528, Appendix, Table 3, note b/.

the Regular Budget expenses were paid) in the course of the period under review resulted, by itself, in an apparent doubling of the budget[240]. Consideration has therefore been given to assessing the contributions in Austrian Schillings[241]. However, no formal proposal to this effect was made during this period.

### *25.3.4.3. Distribution of surpluses*

Although there was no change in the Financial Regulation requiring cash surpluses to be distributed among Member States, as described in the basic book, this provision was systematically overridden in most of the later years of the period covered by this book. The reason for this was, first, to enable the adoption of supplementary appropriations[242] without the need of supplementary assessments. Then, the surpluses were used even in connection with original appropriations for later years[243], to make it possible to reduce the corresponding assessments — evidently on the ground that, once an assessment is paid, it is best to use it fully, even if this is done in a different year, rather than to distribute it and to levy larger new assessments later. Therefore, the Conference has sometimes called for the use of the provisional cash surplus of the year just past, sometimes for the use of the cash surplus of the previous year, sometimes for the use of the final cash surplus of the year before that (i.e. just before the money would have been allocated back to the Member States) and sometimes for the use of the cash surplus of all of these years[244]. When this practice was introduced, legal objections were raised in view of the contrary provision in Financial Regulation 7.02 and the expectations which Members could base on this provision[245]. However, the practice has not been seriously challenged and has by now become so well established that, in the years 1968–1978, no surpluses remained for distribution. The effect of this procedure is a very slight shift in the relative financial burden among Members, since, instead of making a supplementary assessment in accordance with the scale applicable to the current year, a cash surplus is used that would otherwise be allocated to Member States in accordance with the scale prevailing for the year in which the surplus was accrued.

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[240] Section 25.2.4.1.3.

[241] For example the proposal by the Director General that Members might pay part of their contribution in the currency of the host State (GC(XXII)/OR.200, para. 22), and the supplementary suggestion by the Director of the Division of Budget and Finance that the budget might be drawn up half in US dollars and half in Austrian Schillings (GC(XXII)/COM.5/OR.8, paras 38, 40); only a few Members commented on this (ibid., para. 37; /OR.9, para. 40).

[242] For example GC(XV)/RES/279, para. 2(a).

[243] For example GC(XX)/RES/338, paras 3(a)–(d).

[244] Ibid.

[245] For example GOV/COM.9/OR.155, para. 12; /OR.120, para. 11. In the Board's Administrative and Budgetary Committee, several Governors proposed that the Financial Regulation be amended (ibid., paras 12, 15, 17), while others expressed opposition (para. 21) or caution (paras 22–24).

*25.3.4.4. Assessments for supplementary appropriations*

Although supplementary appropriations were required in six of the ten years covered by the present book, it was only once (in 1973) that the General Conference required a supplementary assessment[246]. Instead, in each case (including 1973, in which the supplementary assessment constituted only a residual source of funds) the appropriation resolution specified one or more of the sources of financing listed at the end of Section 25.2.4.1.3. The effect of relying on these alternative sources is, in addition to avoiding an undesirable second assessment during the fiscal year, a slight shift in the financial burden among Member States. Instead of using the scale of assessment for the year for which the supplementary appropriation is adopted, the scale of some previous year (if cash surpluses are used) or that of a subsequent year (if the Working Capital Fund is temporarily depleted or reduced) becomes applicable; however, since both the membership and the scale of assessment are relatively invariant from year to year, this shift has no significant effect.

After the first supplementary assessment was authorized in 1966[247], the External Auditor suggested that Financial Regulation 6.06 be amended to allow the consolidation, in subsequent years, of the amounts outstanding from a supplementary assessment with those from the regular assessment for that year[248]. However, the Board did not act on this suggestion.

*25.3.4.5. Obligation of ex-Members*

As recorded in the basic book, when Honduras withdrew from the Agency in 1967, negotiations were initiated for it to pay off its outstanding obligations for assessed contributions. As of the end of 1979, about one third thereof was still outstanding[249], and this balance was paid in full in 1981. Also, Nicaragua, which withdrew from the Agency in 1970 and rejoined the Agency in 1976, paid, before its membership application was considered by the Board, its entire outstanding assessed contributions. As noted in Section 6.1.3, a proposal that the outstanding obligations of Honduras and Nicaragua be written off was discouraged by the Legal Adviser, on the ground that, if they should apply for re-admission, the Board and the General Conference would have difficulty in finding them able and willing to carry out their obligations under the Statute if they had not fully paid their past obligations.

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[246] GC(XVII)/RES/301, para. 2(e).

[247] GC(X)/RES/209, para. 3.

[248] GC(XIII)/406, Part II, paras 14–15.

[249] Compare GC(XIII)/406, Part IV, Schedule B.1 (showing an original debt of US $16 504), with GC(XXIV)/629, Part V, Schedule B.1 (showing a remaining debt of US $5353).

It should be noted that the outstanding obligations of China, for assessed contributions for the time before and immediately after the Board expelled the representatives of Taiwan, were rescinded[250]. In accordance with what was done in other United Nations organizations, the amount payable by Taiwan was transferred to a special account. This account was then closed by transferring to it undistributed budgetary surpluses.

### 25.3.5. Penalty for non-payment

#### *25.3.5.3. Deprivation of franchise in the General Conference*

The procedures, recorded in the basic book, concerning the loss of franchise in the General Conference due to the non-payment of assessed contributions, continued, in principle, to be followed[251]. The Director General's periodic reports, by which the Board was previously kept up to date regarding the status of contributions, were discontinued[252], and, since 1976, the communications to the General Conference on this status have been in the form of Information Documents[253] to emphasize that no Conference action is expected.

Seriously delinquent States, whose number generally varies between five and ten, are only rarely represented at a Conference. Consequently, there was no need to put into practice the procedures for depriving them of their votes. In no instance was there an open challenge to such a deprivation[254] or a proposal to restore the right to vote of any delinquent State.

#### *25.3.5.4. Deprivation of franchise in other organs*

The question of the right of a delinquent State to vote in other organs arose in the Board of Governors in connection with a roll-call vote on the Revised Guiding Principles and General Operating Procedures to Govern the Provision of Technical

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[250] GC(XVIII)/527, Part III, paras 12–13, and Schedules F.2 and 3. Section 6.2.1, para. (a)(iii). This 'precedent' was later cited in connection with proposals to write off the obligations of Honduras and Nicaragua (GOV/COM.9/OR.120, paras 5–7).

[251] In reply to a specific question, the Secretariat in 1976 gave assurances that the procedures for depriving delinquent States of their votes continued to be implemented (GOV/COM.9/OR.123, para. 12). It appears that, several years earlier, one representative expressed doubts that this was being done (GC(XVIII)/COM.2/OR.69, para. 16).

[252] Section 32.1.1.

[253] For example GC(XXIV)/INF/194.

[254] In a brief discussion in the former Administrative and Legal Committee of the General Conference, the representative of Costa Rica spoke against the principle of deprivation of votes in the Conference (GC(XVIII)/COM.2/OR.69, para. 18).

Assistance by the Agency. Peru was not called to participate in the vote. In reply to a question by Peru the Legal Adviser confirmed that Peru had not been called in view of arrears in the payment of its financial contributions to the Agency[255].

### *25.3.5.5. Other penalties*

The question has been raised several times whether Members delinquent in paying their assessed contributions (occasionally reference has also been made to pledged voluntary contributions) should continue to receive technical assistance[256]. The Secretariat once pointed out that for States delinquent in paying the costs for local programmes an embargo would be placed on further technical assistance[257], but the question of delinquencies in assessed contributions was not addressed.

### *25.3.5.6. Intentional withholding of contributions*

There appear to have been hardly any instances in which Members withheld part or all of their assessed contributions deliberately, or threatened to do so, because of some disagreement regarding a budgetary item or the method of assessment. Of course, unless a State or the Director General clearly announced such action or intention, a minor withholding of contributions would not become apparent for many years. This is so because Financial Regulation 6.06 requires that any contributions be automatically credited first to outstanding obligations to the Working Capital Fund and then to the oldest assessment due, regardless of any contrary intention expressed by the paying Member. Thus, an annual withholding of a small amount would only appear as an ever growing cumulative deficit that would be indistinguishable from a deficit resulting from a delay in payment of the full current assessment.

Neither the Statute nor any other legal instrument makes any special provision concerning withholdings. In this connection, two points should be noted:

(a) The General Conference could presumably not, under Statute Article XIX.A, find that a Member's failure to pay is due to conditions beyond its control, if the withholding is notoriously deliberate;

(b) While a mere inability to pay could presumably not be interpreted as a persistent violation of the Statute, which could lead to suspension from the privileges and rights of membership under Statute Article XIX.B, intentional withholdings might attract such a penalty.

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[255] GOV/OR.529, paras 5–15.

[256] GOV/COM.9/OR.109, para.4; /OR.112, para.5; /OR.120, para.4; /OR.129, para.32; GC(XVIII)/COM.2/OR.69, para. 12.

[257] GC(XVIII)/COM.2/OR.69, para. 15.

When the 15th General Conference (1971) considered the adoption of the new assessment arrangements designed to shield most of the Members from the full impact of the increasing NPT related safeguards costs[258] and required the remaining Members to bear these costs whether or not they were NPT Parties, the French representative stated that he considered that these arrangements violated Articles XIV.C and D of the Statute and that therefore his delegation would not consider itself bound by such a decision and "would determine, in a pragmatic manner, its contributions to the safeguards budget"[259]. For some years thereafter, small but ever increasing deficits appeared in the French contributions[260]. However, at the 19th General Conference (1975) the French representative announced that, while maintaining the reservation regarding the method of assessment (France was by then relying more and more on the Agency's safeguards services and intended to continue to do so), it would pay its entire share of the Agency's safeguards budget from 1975 onwards[261]. As a matter of fact, thereafter France entirely paid up its past deficit[262].

On 20 November 1978 the Resident Representative of the USA informed the Director General that the US legislation appropriating funds to pay his Government's assessed share of the 1979 Agency Budget provided "that no part of these funds may be made available for the furnishing of technical assistance by the United Nations or any of its specialized agencies"[263]; he therefore requested assurances "that none of the funds contributed by the United States Government will be used to fund technical assistance activities by [the] Agency". The Director General replied on 24 November 1978 in a letter, making the following points:

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[258] Sections 21.9.1.2 and 25.3.1.1.2.

[259] GC(XV)/COM.1/OR.95, para. 4.

[260] Compare the successive Accounts:

| *Year* | *Document* | *Outstanding for France* |
|---|---|---|
| 1971 | GC(XVI)/485 | — |
| 1972 | GC(XVII)/504 | US $13 614 |
| 1973 | GC(XVIII)/527 | US $31 114 |
| 1974 | GC(XIX)/549 | US $56 914 |
| 1975 | GC(XX)/566 | — |

[261] GC(XIX)/COM.5/OR.2, para. 26.

[262] See GC(XX)/566.

[263] The legislation referred to was the so-called 'Helms Amendment'. The US administration interpreted this restriction as preventing the payment of any contribution to any organization as long as the organization spent any assessed funds for technical assistance, even if such expenditures were entirely covered by the contributions of other members; the United Nations Secretary-General in effect concurred in this interpretation, by indicating that no assessed contributions could be accepted subject to any restriction as to how they could be spent. The USA also considered that the law did not permit it to pay a proportionally reduced assessment (i.e. a withholding of merely the 'technical assistance portion' of the US contribution). The restrictive legislation was repealed several months later, and only then did the USA resume its payments to the organizations affected.

(i) The IAEA is not a specialized agency and thus the legislation in question would not appear applicable to it[264].

(ii) While the technical assistance furnished by the Agency is financed by voluntary contributions of Member States, certain overhead costs, primarily salaries of Agency staff members at Headquarters who administer the technical assistance programme, are financed through the Regular Budget[265].

(iii) It would not be in accordance with either the Statute of the Agency or the Financial Regulations promulgated thereunder for Member States to impose conditions or restrictions on their assessed contributions to the Agency's Budget. Any limitation or condition imposed by Member States on the use of these monies would not be acceptable to the Agency under principles of law common to international organizations in general.

This response was evidently considered satisfactory by the American authorities because, unlike in respect of the United Nations and a number of specialized agencies, the USA kept paying its assessed contributions to the Agency even while the legislation in question was still in force.

It should be noted that South Africa, which ceased paying the assessed contributions to the United Nations as soon as the General Assembly declined to accept the credentials of its delegation, has not done so in the case of its contributions to the Agency when it was treated similarly by the General Conference[266], but has fully and currently paid its contributions for 1979 and 1980[267].

## 25.4. THE WORKING CAPITAL FUND[268]

### 25.4.3. Size and source of financing

As provided in Financial Regulation 7.03, the amount of the Working Capital Fund is determined "from time to time by the Board of Governors, with the approval of the General Conference". The practice of the Board to make this determination annually (as part of its budget proposal to the Conference) and to secure each year the agreement of the Conference, as reported in the basic book, has continued. Until

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[264] Section 12.1.
[265] Section 25.2.1.
[266] Sections 6.3.3 and 7.3.5.4.
[267] GC(XXIV)/INF/194, Annex, Table 1.
[268] For example GC(XV)/RES/282, para. 1(a).

1971 the Conference purported to 'decide' the amount of the Fund[269], but in 1972 a more appropriate formulation was found and has been used since, whereby the Conference 'approves' a particular level, i.e. that determined by the Board[270].

As pointed out in the basic book, the size of the Working Capital Fund of US $2 000 000, which was originally proposed by the Preparatory Commission as an amount corresponding to about half of the initial Administrative Budget, was maintained in subsequent years, in spite of the rapid increase in the dollar size of the Regular Budget. In 1971 the Board did not wish to fill a deficit in the Budget by means of a supplementary assessment, and part of the required funds was secured by reducing the level of the Working Capital Fund to US $1 700 000 (thus releasing US $300 000)[271]. Though the formal justification for the reduction of the Fund was that the Agency currently had at its disposal sufficient liquid funds as long as Members continued to pay their assessments promptly[272], some Governors expressed legal and policy doubts about using this amount to finance part of the 1971 deficit, since the Fund was constituted by advances from Member States made for an entirely different purpose (to preserve the liquidity, though not necessarily the solvency, of the Agency)[273]. In 1972 the Board, with the approval of the Conference, restored the level of the Fund to US $2 000 000[274], rejecting (on the ground that large contributors had undertaken to pay their assessments promptly) a proposal by the Director General[275] to increase the level to US $2 500 000. The restoration of the size of the Fund to its original level had to be financed by the Member States in connection with the assessed contributions required for the 1973 Budget. The ultimate effect of these transactions was therefore merely to postpone by over a year the obligation of States to cover this part of the 1971 deficit and to change the scale of the assessed contributions from that for 1971 (which should normally have been used for a 1971 supplementary appropriation) to that for 1973. The Working Capital Fund has since remained at US $2 000 000; by 1981 this constituted a mere 6.2% of the Regular Budget.

As pointed out in the basic book, advances to the Working Capital Fund by Member States are assessed on the basis of the same scale as that adopted by the Conference for the Regular Budget. When the principles on which that scale is established annually were changed in 1971 in order to make special arrangements

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[269] For a complete account of the establishment, funding and utilization of the Working Capital Fund until mid-1974, see Interim Financial Instruction, No. IV-04-1.

[270] For example GC(XVI)/RES/294, para. 1. The changed language originated with a draft prepared by the Director General (GOV/1526/Add.1/Mod.1, para. 3) and appears in the Board's proposal to the Conference (GC(XVI)/485, Annex V.C.).

[271] GC(XV)/RES/278 and /279, para. 2(c).

[272] GC(XV)/457, para. 3.

[273] GOV/COM.9/OR.105, paras 12, 21–23; GOV/OR.437, paras 83–84. This point was not raised in the brief General Conference consideration (GC(XV)/COM.1/OR.93, paras 11–18).

[274] GOV/DEC/72(XV), No. (31); GC(XVI)/485, paras I.29–30.

[275] GOV/1526/Add.1/Mod.1.

for the financing of safeguards[276], the Board amended Financial Regulation 7.03 by including a reference to the new "base rate of assessment provided for in sub-paragraph (b) of the operative paragraph of Resolution GC(XV)/RES/283"[277], which was determined on exactly the same basis as the former 'scale of assessment'.

### 25.4.4. Uses

#### *25.4.4.1. Authorization and actual uses*

The principal and indeed the only real use of the Working Capital Fund has remained the provision of temporary financing of Regular Budget expenditures before sufficient assessed contributions are received. However, since the Fund represents an ever decreasing and now very small fraction of the Regular Budget, the Agency's liquidity early in each fiscal year is ensured rather by the readiness of most major contributors to pay their contributions at the beginning of the year[278]. Indeed, it was the promise and the actual practice of such prompt payments that has made it possible to maintain the Fund at its initial level[279].

In 1971, in order to help finance the same supplementary budget appropriation for which the Fund was reduced by US $300 000, the General Conference also authorized the temporary withdrawal of an additional US $280 000 from the Fund. Since the Fund was automatically replenished in 1972 to its then authorized level of US $1 700 000, Member States were required to pay US $280 000 in the course of 1972 in accordance with the base rate of assessment for that year[280], rather than having been supplementarily assessed in the latter part of 1971 according to the scale for that year. In 1977 a similar temporary withdrawal of US $880 000 was authorized, to be restored to the Fund in the next year "by the transfer of monies that might become available for that purpose"[281].

The annual resolution specifying the use to which the Fund may be put still authorizes the Director General to make advances of up to US $25 000 for temporary self-liquidating projects, and of US $50 000 for providing emergency assistance to Member States in connection with radiation accidents[282]. These limits

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[276] Sections 21.9.1.2 and 25.3.1.1.2.

[277] GOV/1489 (the Director General's proposal, with explanation); GOV/DEC.70(XV), No.(10); INFCIRC/8/Rev.1/Mod.1. The text of this Regulation has since remained unchanged, even though it now refers to a Conference resolution that was superseded twice; an up-to-date reference would read "provided for in operative paragraph 2 of Resolution GC(XXIV)/RES/376".

[278] Many of the larger contributors pay their contribution in quarterly or semi-annual instalments and are responsive to requests from the Division of Budget and Finance when particularly timely payment is required.

[279] GC(XVI)/485, para.I.30.

[280] GC(XV)/RES/279, paras 2(d) and 3.

[281] GC(XXI)/RES/346, paras 2(c) and 3.

[282] For example GC(XXIV)/RES/375, para.3(a)-(b).

have not been changed since the time when they were established in the early days of the Agency. There was no need to rely on the authorization for emergency assistance during the period covered by this book; the other authorization was used briefly, from 1970 to 1974, to make advances (initially amounting to US $5387) for buying furniture for some apartments for staff members[283].

The US advance to the Working Capital Fund has been used as the device through which the USA is debited for, and then refunds to the Agency, tax reimbursements paid by the latter to staff members on whose Agency salaries an American income tax is imposed[284].

#### *25.4.4.2. Proposed uses*

In 1971 the Director General, in connection with his proposal to reduce temporarily the size of the Working Capital Fund, indicated that it might be necessary to use the Fund for additional purposes, mentioning the possibility of temporarily financing the Operational Programme until sufficient voluntary contributions are received in the course of each year[285]. This tentative proposal, which was similar to one rejected by the governing organs in the early days of the Agency[286], was never formally considered by the Board.

## 25.5. VOLUNTARY CONTRIBUTIONS

### 25.5.1. Legal instruments

#### *25.5.1.2. Rules on voluntary contributions*

Neither the Rules Governing the Acceptance of Gifts of Services, Equipment and Facilities[287] nor the Rules Regarding the Acceptance of Voluntary Contributions of Money to the Agency[288] were changed since they were originally adopted.

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[283] GC(XV)/459, Part IV, Statement II. Interim Financial Instruction No. IV-04-1, Annex I, para. 43.

[284] Interim Financial Instruction No. IV-04-3, paras 8–10. This very temporary use of the Fund is never reflected in the annual Accounts, since care is taken to receive all US refunds due before the books are closed at the end of the fiscal year.

[285] GOV/1453, para. 5.

[286] See this section in the basic book.

[287] INFCIRC/13, Part I; AM.V/8, Part I.

[288] INFCIRC/13, Part II; AM.V/8, Part II.

No significant issue regarding either set of Rules has arisen during the period covered by this book. The applicability of the Rules on Voluntary Contributions to various types of restricted contributions is discussed in Section 25.5.4[289].

### 25.5.2. Solicitation for unrestricted monetary contributions

The principal and still the only general solicitation by the Agency for voluntary contributions is that made for unrestricted donations to the Operational (now Technical Assistance) Fund, i.e. for technical assistance. The steps discussed in the basic book are still the ones taken for this purpose, though a number of significant changes in detail have occurred.

The target for pledges of voluntary contributions is still established annually by the General Conference on the recommendation of the Board[290]. After having been maintained at a level of US $2 000 000 for almost a decade, the target was raised to US $2 500 000 for 1971, "bearing in mind the need to adjust it periodically in the future"[291]. For 1972 the target was raised to US $3 000 000 — a level maintained for three years. Since 1975 the target has been raised annually[292], reaching US $13 000 000 for 1981. Preliminary indications were given that the targets for 1982 and 1983 would respectively be US $16 000 000 and US $19 000 000[293]. This considerable nominal increase has been justified largely on the ground of fluctuations in exchange rates. Other justifications are the increasing needs of the developing countries and the obligation of States Party to the NPT, if they are able to do so, to assist other States pursuant to Article IV of the Treaty. The proposed level of the target is almost annually the subject of intense debate. These discussions take place initially in the framework of the May session of the Board's Administrative and Budgetary Committee, the first organ in which the target is considered each year and whose recommendation, when a target has been agreed upon, prevails in the Board and in the Conference. Occasional suggestions have been made to defuse this debate by tying each year's target to some other figure, i.e. a certain percentage

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[289] The Revised Guiding Principles for Technical Assistance, which specifically refer to both sets of Contribution Rules, seem to suggest that the acceptance of special fissionable and source materials is not covered by the Rules concerning Services, Equipment and Facilities, but is governed entirely by Statute Article IX (INFCIRC/267, para. 5); indeed, nuclear materials (actually any materials) would not seem to be encompassed by the language of these Rules.

[290] The recommendation of the Board appears in the introduction to the budget document and in the second draft resolution annexed thereto (e.g. GC(XXIV)/630, para. 40, and Annex VI.B); the Conference decision results from its adoption of that resolution (e.g. GC(XXIV)/RES/374, para. 1).

[291] GOV/DEC/62(XIII), No. (29).

[292] Although the target for 1978 was set at US $7 000 000 (against US $6 000 000 for 1977), the Board (GC(XXI)/582, para. 27) and the Conference (GC(XXI)/RES/348, para. 5) also made an appeal "for additional voluntary contributions in the amount of US $500 000"; these contributions, however, were not included in the Operational Budget Allocations for 1978 (GC(XXI)/RES/348, para. 3).

[293] GC(XXIV)/631/Rev.1, para. 5 (where these were referred to as 'indicative planning figures').

increase over the previous target, or a set percentage of the total Regular Budget or of the safeguards component thereof (so as to maintain a particular balance between these two aspects of the Agency's activities)[294].

In 1971 the Conference amended[295] its 1961 resolution by requesting developed Members to contribute at least the same percentage of the target as that of their assessed contributions to the Regular Budget (other States are requested to make at least token contributions)[296]. Thus, the 1971 resolution refers to the base rate of assessment instituted by the Conference in 1971 in connection with its new scheme of assessing contributions for safeguards costs[297]. In its annual resolution on the Operational Budget (in 1980 changed to Technical Assistance Fund) allocation, the Conference called upon all Members to make contributions in accordance with the 1971 resolution[298].

The method of solicitation is still that established at the 8th General Conference (1964): Before each Conference, each Member is informed of the proposed pledge target and of its 'quota'; these amounts and the pledges actually received are indicated in a document issued on a daily basis throughout the session of the Conference[299]. When the appropriate agenda item is considered on the last day of the Conference, the President merely announces the totals of pledges so far received and comments on the likelihood of the target being met[300]. No other action on the item is taken during the Conference, but the Secretariat keeps receiving further pledges until the end of the year in question (some fifteen months later)[301] and even thereafter[302].

### 25.5.3. Receipt of unrestricted monetary contributions

During the 1970s the response of Members to solicitations for unrestricted contributions has steadily improved. Even though there were regular increases in the target, the percentages thereof that have been pledged have also increased, almost without any set-backs, to nearly 95% for 1980[303]. For some years these good

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[294] See, in particular, GC(XXII)/COM.5/OR.8, paras 23–58 (especially para. 24), and /OR.9, paras 1–47 (especially para. 42).

[295] GC(XV)/RES/286.

[296] GC(V)/RES/100.

[297] Sections 21.9.1.2 and 25.3.1.1.2.

[298] For example GC(XXIV)/RES/374, para. 4.

[299] For example GC(XXIV)/635 and /Rev.1–4.

[300] For example GC(XXIV)/OR.227, paras 18–19.

[301] The Accounts for the year in question show, in successive columns, for each Member, its base rate, its consequent share (quota) of the target, the amount actually pledged, the amount actually paid (by the end of the year) and the amount outstanding (difference between pledge and payment), plus the amount outstanding for prior years and in total (e.g. GC(XXIV)/629, Part V, Schedule C).

[302] GOV/INF/366 (reproduced as GC(XXIV)/631, Annex), para. 17.

[303] GC(XXV)/INF/197, Annex IV.

overall returns were achieved because of especially high contributions by some developed States[304]. More recently, the good returns have been due to the almost universal participation of these States and of many developing States at their quota levels[305].

The actual collection of the pledges made has been close to 100%, with about 98% received in the respective year[306]. The question of whether there is a legal obligation to comply with a pledge has never been raised formally[307].

As a consequence of these developments, unrestricted voluntary contributions have become an assured and steadily growing source of revenue for the Agency's technical assistance programme. As the Secretariat pointed out[308], the predictability of the level of funding has enabled the Agency to meet the Board's desire to give emphasis to the integrated, multi-year programmes called for by the Revised Technical Assistance Guiding Principles[309]. Though serious differences persist (and are regularly ventilated) with regard to the amount of the target, these differences are resolved through essentially the same political process as that which determines the level of the Regular Budget. This flow of funds, though legally not guaranteed, is, through the realities of intergovernmental relationships, in practice just as assured as formally assessed contributions. Indeed, a nominally compulsory process might actually yield fewer funds, because the present method is one that satisfies those States which, for policy or legal reasons[310], consider that the financing of technical assistance projects must remain, at least in form, voluntary.

The largest voluntary contributor, in absolute amounts, continued to be the USA, regarding unrestricted funds as well as other contributions in cash and kind[311]. At the beginning of the period covered by this book, the unrestricted monetary contributions were still, as described in the basic book, based on somewhat complicated matching formulas (for example, pledges were made corresponding to

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[304] For 1974 a special request was issued to Members that could do so to contribute above these quotas (GC(XVII)/505, para. A.10). Only once did the pledges exceed the target. This occurred in 1974 when pledges were offered totalling 102.8% of the target of US $3 million. This was caused by the fact that the German Democratic Republic joined the Agency after the scale was approved, and pledged and paid a voluntary contribution for 1974.

[305] For example GC(XXIV)/629, Part V, Schedule C.

[306] GC(XXIV)/629 and GC(XXIV)/631.

[307] A voluntary contribution of US $10 000, which had been pledged by the Republic of China (Taiwan) for 1972 and was unpaid at the time of the Board's expulsion of the representative of Taiwan, was evidently written off in the course of 1973 (compare GC(XVII)/504, Part IV, Schedule D, with GC(XVIII)/527, Part IV, Schedule B.2).

[308] GC(XXIV)/631.

[309] INFCIRC/267, para. 9.

[310] For the USA, see note 263.

[311] See, for example, the table "Resources made Available to the Agency by Member States during 1979 Including Contributions in Cash and in Kind" (GC(XXIV)/629, Part V, Schedule G).

the base rate 'quota', but were limited so as not to exceed a specified percentage — typically 40% — of all contributions received)[312]. As of 1974, these cash pledges became simply the pledges of the quota amount, without any matching feature.

### 25.5.4. Other monetary contributions

Towards the end of the period covered by this book, the Agency had come to rely more and more on extrabudgetary resources to supplement the operations financed by its two principal sources of revenues — assessed contributions and unrestricted voluntary monetary contributions. Many, though not all, such extrabudgetary resources can, but need not necessarily, be characterized as 'voluntary contributions' or at least as 'contributions'. In recent years a certain ambiguity has crept into the Agency's use of these terms[313].

In the statutory sense, voluntary contributions (see Articles V.E.8 and XIV.E–G) must be received in accordance with rules and limitations approved by the General Conference and must be placed in a general fund, which may be used in accordance with the determination of the Board of Governors, with the approval of the General Conference. As noted in the basic book, the General Conference did adopt such rules[314], and Financial Regulation 7.09 established the General Fund into which any voluntary contributions made to the Agency are to be placed. Thus, for monetary contributions received by the Agency the following points are noted:

(a) Voluntary contributions must be received in accordance with the Rules Regarding the Acceptance of Voluntary Contributions of Money to the Agency, which, inter alia, require that any restricted contribution be referred by the Director General to the Board for a decision regarding its acceptance. Of the many restricted contributions received by the Agency during the later years covered by this book, mostly from Member States but also from other international organizations, none have been expressly referred to the Board for acceptance. However, in most instances the Board may

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[312] For example GC(XVI)/480, Annex E, Table 3, note e/. The matching feature, with its various limitations and interpretations referred to in the basic book, continued to lead to anomalies and distortions (e.g. those mentioned in the 1968 and 1969 Accounts, GC(XIII)/406, Part III, paras 20–21; GC(XIV)/435, Part III, paras 18 and 20).

[313] See, for example, Schedule G in the Accounts for 1979 (GC(XXIV)/629, Part V), "Resources made Available to the Agency by Member States during 1979 Including Contributions in Cash and in Kind", which includes column headings such as "Voluntary contributions (General Fund)", "Special contributions (INFCE)" (even though these were characterized as "voluntary contributions" in the Director General's proposals to the Board (GOV/1862, para. 7; GOV/1868, para. 11)), and "Other voluntary contributions".

[314] INFCIRC/13, Part II.

be held to approve acceptance in some other way, in particular by approving in advance the special solicitation (e.g. for INFCE[315] or for 'footnote a/' technical projects)[316] in response to which the contribution was offered.

(b) The contributions must be placed, at least transitionally, into the General Fund, as required by Statute Article XIV.F and by Financial Regulation 7.09. In recent years this was not done in respect of restricted contributions, which were placed directly either into Operating Fund I (for use of the Trieste Centre or the Monaco Laboratory) or into some special account established under Financial Regulation 7.10[317]. The 1980 decision by the Board to merge the General Fund and the Operating Fund II into a new Technical Assistance Fund[318] has formalized the prevailing practice (although these changes were not immediately incorporated into the Financial Regulations).

(c) The use of voluntary contributions placed in the General Fund requires the approval of the General Conference[319]. While there can be no doubt that, in a general sense, the Conference has approved the Board's stewardship of the monetary contributions to the Agency, no specific approval was given in respect of the restricted contributions received. However, such approval might be implied from the fact that the Conference has authorized the Board to accept restricted contributions and has therefore given the Board authority to comply with such restrictions and thus to carry out the programmes for which the contributions were made.

It is thus possible to argue that there has been compliance with statutory and regulatory requirements governing voluntary contributions in respect of all restricted monetary contributions received by the Agency. However, the Agency's treatment of such contributions is more consistent with another possible approach, namely to consider that the restricted contributions are not voluntary contributions in the statutory sense, but rather payments made for goods received from the Agency or services performed by it, or payments made pursuant to explicit or implicit agreements with the Agency. Such an interpretation can be applied, with varying sense, to situations such as the following:

(i) The 'voluntary contributions' received from over 30 Members to cover the costs of the Agency's servicing of INFCE, an activity initiated and carried out by a number of States[320];

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[315] Section 25.7.4.1.
[316] Sections 18.2.7 and 25.7.4.2.
[317] See, for example, the Accounts for 1979 (GC(XXIV)/629, Part V), III.A.
[318] GC(XXIV)/630, paras 3–6.
[319] Statute Article XIV.F; Financial Regulation 6.11.
[320] Section 25.7.4.1.

(ii) The contributions received from a few States to cover the costs of at least the initial years of studying the proposed international plutonium storage scheme (designed to explore the implementation of Statute Article XII.A.5)[321] and the planned international spent fuel management[322]. Both projects originated at the request of particular Members;

(iii) Contributions received for NUSS — from the beginning a fully integrated Agency programme[323];

(iv) Contributions received from the host States of the Trieste Centre[324] and the Monaco Laboratory[325] under the agreements establishing these institutes, as well as from other States and from international organizations, whether or not pursuant to an agreement;

(v) Contributions received from Member States to carry out 'footnote a/' technical assistance projects[326] (which are first approved by the Agency and then proposed to potential donors) or to carry out projects at the request of a donor State[327];

(vi) Contributions received from certain Member States to carry out particular research relating to food and agriculture[328], to safeguards[329] or to other matters.

Distinctions among these contributions can obviously be made according to the extent to which a particular programme is for the direct benefit of the donor State, or for the benefit of the membership as a whole, or for the benefit of the Agency as an institution. There are also a number of intermediate situations, such as when a Member supplies funds for technical assistance to a specified State or when the support is for an Agency programme that is of particular interest to only part of the membership. In any event, the distinctions do not appear to be so fundamental as to require the characterization of certain of these contributions as 'voluntary' in the statutory sense. Consequently, their treatment outside of this category would appear to be acceptable. Therefore, these various contributions are described further in Section 25.7, as are other types of resources for extrabudgetary activities.

Finally, it should be noted that during the period covered by the basic book a special effort was often made to characterize the funds received from Members (e.g. the agreed host State contributions to the Trieste Centre and the Monaco

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[321] Section 25.7.4.4.6.
[322] Section 25.7.4.4.
[323] Section 25.7.4.1.
[324] Section 19.1.3.3.
[325] Section 19.1.2.3.
[326] Sections 18.2.7 and 25.7.4.2.
[327] As permitted by the Revised Technical Assistance Guidelines, INFCIRC/267, para. 6.
[328] Section 19.3.2.4.
[329] Section 25.7.4.4.1.

Laboratory) as voluntary, even if the normal usage of this term was strained, in order to qualify for the matching US contributions[330]. Once the USA stopped matching restricted contributions, and later did away with the matching principle[331], the reason for using these strained interpretations, which were commented on in the basic book, disappeared.

### 25.5.5. Contributions in kind

No particular issues concerning the receipt of contributions in kind arose during the period covered by this book. As reported in the basic book, such contributions are not taken into account in the budget[332] but are recorded in a table in the annual Accounts[333]. Since such contributions are, by their nature, restricted, they can often be treated as being interchangeable with restricted monetary contributions, i.e. if there were any difficulty in accepting the offer of a particular item or service under the Rules to Govern the Acceptance of Gifts of Services, Equipment and Facilities[334] it would generally be possible to substitute for it a financial contribution tied to the purchase of the item or the securing of the service in question.

## 25.6. LOANS

### 25.6.2. Loans incurred

During the period covered by this book, the Agency did not incur any loans from other intergovernmental organizations, Governments or other public bodies, or on the public financial markets, nor was any consideration given to any such transactions. However, in 1973 the Agency purchased, partially on a credit equivalent to about US $600 000, a large computer installation[335]; no specific authorization was secured from the Board, although it had approved the 1973–1976 Programme and the 1973 Budget in which the acquisition of the installation in question was mentioned[336] and was specifically informed of the proposed purchase[337].

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[330] Basic book, Section 25.5.3, note 400.

[331] Section 25.5.3, last paragraph.

[332] Though a footnote reference to this type of resource is made (e.g. GC(XXIV)/630, Tables 1 and 5, footnote a).

[333] For example GC(XXIV)/629, Part V, Schedule G.

[334] INFCIRC/13, Part I; AM.V/8, Part I.

[335] GC(XVIII)/527, Part III, para. 15, and Part IV, Statement I.B (Long-Term Liability).

[336] GC(XVI)/485, para. V.12.15.

[337] GOV/OR.453, paras 27–30; /OR.454, para. 64.

## 25.7. OTHER RESOURCES AND EXTRABUDGETARY ACTIVITIES

During the period covered by this book, the Agency had increasingly institutionalized its reliance on 'extrabudgetary' resources. This term covers at present a variety of restricted contributions by a number of international organizations as well as by Member States[338].

Because of the increasing importance and the greater variety of these resources, as well as of the uses to which they are put, the following sub-sections have been somewhat expanded and varied with regard to those in the basic book.

### 25.7.1. International organizations

#### *25.7.1.1. United Nations Development Programme*

The UNDP (whose EPTA and Special Fund branches were combined in 1972) was by far the largest source of extrabudgetary funds for the Agency[339]; in 1979, about 23% of the resources for technical assistance administered by the Agency came from this source. It was still true that the Agency's organs had no direct influence on the size of these programmes, which were therefore not included in either the Regular Budget or the Operational/Technical Assistance Budget. However, since the 1981 Budget, an estimate of UNDP funding has been included in the Consolidated Budget[340].

The administrative overhead costs (AOS), paid by the former EPTA, and the former Special Fund (EOAC payments) have been replaced by the 'programme support costs', which are now paid by the UNDP. All of these payments are credited as miscellaneous income to the Regular Budget[341] and are thus not available for an expansion of the actual programme delivered to States. Since such support costs are credited to the miscellaneous income, they reduce the overall assessments for Member States. For a number of years the Agency received merely the standard 14%

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[338] An abbreviated list of expected contributions and objects of contributions in 1981 appears in "The Consolidated Budget 1981" (GC(XXIV)/630, Table 1). A more detailed list, including also the years 1979 and 1980, appears in the table of Extrabudgetary Resources 1979-1981 (GC(XXIV)/630, Table 5). Neither of those tables includes gifts in kind. More complete data (including gifts in kind) on each contributor are given in the annual Accounts (e.g. GC(XXIV)/629, Part IV, Statements IV-XIV, and Part V, Schedule G).

[339] As indicated in note 122, it is not clear in the Agency's terminology whether UNDP contributions are to be considered as 'extrabudgetary resources' or as belonging to another special category.

[340] GC(XXIV)/630, Tables 1 and 5.

[341] GC(XXIV)/629, Part IV, Statements IV.A-B, and Part V, Schedule F. The US $549 400 paid by the UNDP constituted about 18% of the total Regular Budget expenditures for administering the entire technical assistance programme. For some of the budgetary changes that the Agency had to make on the abolition of the EAOC payments, see GC(XVII)/505, para. A.12.

(of the value of UNDP projects administered) paid by the UNDP to the larger executing agencies, but, as of 1978, the Agency, largely under the prodding of its External Auditors[342], established that it qualified for the higher payments[343], based on actual administrative costs incurred, which the UNDP allows for organizations that administer programmes of less than US $10 000 000 per year.

*25.7.1.2. Other international organizations*

Co-operation between international organizations occasionally takes the form of financial support by one organization of certain projects of another organization, or the joint support of a particular operation by several organizations[344].

Section 19.1.2 describes the increasing financial participation of the UNEP in the Monaco Laboratory, which also receives contributions made by UNESCO. Section 19.1.3 describes the joint operation by the Agency and UNESCO of the Trieste Centre, to which, aside from the host State and other Members, UNU and UNEP also contribute minor amounts.

The joint FAO/IAEA Division[345] does not involve any direct budgetary interaction between the two organizations, since the FAO pays directly certain costs of the Division, principally those of the staff which it provides[346].

Certain organizations, in particular the UNEP and the OECD/NEA, made payments to the Agency for carrying out or arranging for particular research or studies in fields such as nuclear power and nuclear safety[347]. The UNEP and the World Bank provided financial support for a study of regional fuel cycle centres[348]. Both the World Bank and the Inter-American Development Bank contributed to the Trust Fund for a Market Survey for Nuclear Power in Developing Countries[349].

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[342] GC(XXI)/581, Part II, paras 12–14; GC(XXII)/598, Part II, paras 14–16; GC(XXIII)/611, Part II, paras 16–22.

[343] In 1978, the first year for which such extra payments were received, these additional payments amounted to US $418 860, thus almost doubling the amount of US $448 646 that would have been received on the standard basis (14% of US $3 204 614) (GC(XXIII)/611, Part II, paras 21–22; Part IV, Statements IV.A–B).

[344] The miscellaneous contributions received or expected by the Agency in 1979–1981 for most of the programmes described in this section are listed in GC(XXIV)/630, Table 5. The Agency itself provides financial assistance, by means of 'technical contracts', to ICRP and ICRU, two international non-governmental organizations.

[345] Section 12.3.4.1.

[346] GC(XXIV)/630, Table F.3. Section 25.2.4.3.1.

[347] See, for example, GC(XVIII)/525, para. 142, and GC(XIX)/544, para. 95. Since 1974 (see GC(XIX)/549, Part IV, Statements VI.A–B) the Accounts have annually reported on a Special Account for UNEP supported projects.

[348] GC(XX)/565, para. 17.

[349] Section 25.7.4.1.

The IANEC made special cash contributions to technical assistance, and a number of other intergovernmental and non-governmental organizations made contributions in kind for this purpose[350].

### 25.7.2. Charges for furnishing services or materials

The Board has still not established any 'scale of charges' as foreseen by Statute Article XIV.E.

### 25.7.3. Sale of publications and of INIS materials

As noted in Section 25.2.4.3.2, the legal structure of the present extensive extrabudgetary operations of the Agency actually grew out of the provisions relating to the production and sale of certain publications, as described in Section 25.7.3 in the basic book.

The estimate of income from publications of the Agency[351], and of income from INIS[352] and CINDA publications[353], was included in the miscellaneous income of the Agency "attributable to specific programmes"[354]. Although this income was mentioned in the Programme Budget[355], it was not directly taken into account in adjusting the costs of the Information and Technical Services Programme.

### 25.7.4. Support of Member States for particular programmes

During the period covered by this book, there was a significant increase in the financing of particular Agency activities by certain Member States through special or otherwise restricted contributions. Some of these contributions represented collective efforts by a few Members or by many Members to initiate and perhaps maintain particular programmes endorsed by the Board but for which no funds had been (and perhaps were unlikely to be) included in the budget. Some of the contributions represented individual efforts to finance particular Agency activities which were considered by the donor to be of special importance.

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[350] GC(XXIV)/INF/191, Annex I.
[351] Section 20.2.4; estimated at US $700 000 for 1981.
[352] Section 20.4.1; estimated at US $340 000 for 1981.
[353] Estimated at US $20 000 for 1981.
[354] GC(XXIV)/630, Table 4, Part (b).
[355] For example GC(XXIV)/630, para. M/5 (INIS only).

*25.7.4.1. Collective projects*

From time to time the General Conference calls for, or the Board decides on, a particular new activity to be initiated before adequate budgetary provisions therefor can be made (a process which, because of the budget cycle, takes from 7 to 15 months). To make this possible, the Board has several times authorized the solicitation or at least the acceptance of special voluntary contributions from Member States or international organizations. In some instances it was intended that such contributions should cover the entire costs of the activity; in other instances it was intended that these contributions should merely bridge the gap until funds become available from future budgets. Of course, the absorption of such contributions into the budget requires sufficient interest by the membership as a whole, while financing by special contributions requires a rather more intensive interest on the part of particular donors.

In response to the interest in a survey of the market for nuclear power expressed by the 15th General Conference (1971)[356], the Secretariat prepared a programme of such studies[357]; financing of this programme was provided by special contributions from several Member States and international organizations to an Agency trust fund established for this purpose[358].

Soon after the conclusion of the 1972 United Nations Conference on the Human Environment in Stockholm, the Director General convened a group of consultants; they advised the Agency to initiate an Expanded Programme on Nuclear Safety and Environmental Protection. In presenting this Programme to the Board[359] the Director General said that, since in the 1973 Budget no funds were available for this purpose, he had approached several Member States and they had agreed to make special contributions. He proposed to use these contributions pursuant to the standing authority the General Conference had given him to expand Regular Budget activities using revenues extraneous to the Budget[360]. (This annually renewed provision was mentioned in Section 25.2.4.3.2 as the principal authority for most extrabudgetary activities.) Instead of establishing a separate account for these donations, the Director General included them as 'additional special income' in the Administrative Fund[361].

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[356] GC(XV)/RES/285.

[357] GC(XVI)/480, para. 10.

[358] GC(XVIII)/527, Part IV, Statement VI (showing contributions by the Federal Republic of Germany, by three US Government agencies, the IBRD, the IADB and the Agency itself) and Schedule E.

[359] GOV/1583.

[360] GC(XVI)/RES/292, para 3(a).

[361] GC(XVIII)/527, Part IV, Statement I.A, note c/, para. (b). This Statement does not indicate the identity of the donors, which are listed in the Annual Report (GC(XVII)/500, para. 9).

[362] GOV/1862.

In the very first document on the proposed International Nuclear Fuel Cycle Evaluation (INFCE) presented to the Board[362], the Director General pointed out that, if the Agency were to participate in this project and were to incur extra expenses, it would be necessary to rely on 'extrabudgetary contributions', since no funds had been included in the coming (1978) Budget. He therefore requested authority to receive voluntary contributions for this purpose in a special account[363]; he repeated this suggestion in his second document on INFCE[364]. The Board approved this proposal[365]. In his next document, the Director General presented cost estimates for 1978 (US $864 000)[366], and the Board authorized him to proceed on that basis[367]. The Director General thereupon addressed a circular letter to all Members, requesting them to pledge voluntary contributions[368]. At the beginning of 1979 (the Budget for which also included no item for INFCE costs) the Director General informed the Board of the revised estimates for the total costs until the end of the project (US $1 303 000)[369], and of the pledges (US $1 007 848) and payments (US $773 634) already received[370], and secured the Board's approval to proceed on the understanding that additional pledges and payments would be received[371]. After the Director General presented his final statement, showing revised cost estimates of US $1 375 000[372], the Board authorized him to seek additional voluntary contributions and to close the special account as soon as possible[373]. By the end of 1979, more than 30 Members had made contributions[374].

Soon after the Three Mile Island accident in the spring of 1979, the Director General convened a group of experts to advise him on the implications of this accident for the Agency's programme. The main recommendation of the group was to initiate a supplementary nuclear safety programme; the Director General proposed to start this programme immediately, using for it voluntary contributions, while means for its continuation were to be included in the 1980 Budget[375]. The Board

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[363] GOV/1862, para. 7.

[364] GOV/1868, para. 11.

[365] GOV/DEC/96(XXI), No. (9)(b).

[366] GOV/1877, paras 5–7.

[367] GOV/DEC/97(XXI), No. (20).

[368] This was coupled with a suggestion that these contributions be at least equal to the base rate of assessment applied to the estimated expenditure.

[369] GOV/1924, para. 11.

[370] GOV/1924/Mod. 1.

[371] GOV/DEC/102(XXII), No. (12).

[372] GOV/1971, para. 9.

[373] GOV/DEC/106(XXIII), No. (14). This special account was settled financially in 1980 (GC(XXV)/645, Part V, Statement XIII).

[374] GC(XXIII)/611, Part V, Schedule G; GC(XXIV)/629, Part V, Schedule G.

[375] GOV/1948, para. 15. The Director General referred specifically to the 1972 precedent whereby the Agency established its Expanded Programme on Nuclear Safety and Environmental Protection, mentioned earlier in this section.

agreed to the implementation of the programme in 1979 by the use of voluntary contributions, but requested a further report on the financial arrangements to be made thereafter[376]. The supplementary nuclear safety programme was maintained throughout 1980 by voluntary contributions, but it was included in the 1981 Regular Budget and in the estimates for 1982[377].

Although there were other instances in which Member States contributed to specific projects, these projects were not specifically approved by the Board; also, no separate trust fund or other special account was set up for such purposes. Rather, these contributions were placed in individual accounts established in respect of each donor (see Section 25.7.4.4).

### *25.7.4.2. Technical assistance projects*

During the period covered by the basic book, the Secretariat, in presenting its annual evaluation of the technical assistance requests for experts and equipment to be provided from the Agency's own resources, had already pointed out that some of these projects were technically sound, but that their implementation should be deferred until funds could be earmarked for a number of other projects that were of presumably higher priority[378]. In 1967 the Board recommended that the list of such projects be brought to the attention of the technically advanced Members with the request that they consider the possibility of providing, in one way or another (i.e. through contributions in cash or in kind), the assistance required[379]. When the Technical Assistance Committee considered this recommendation, it suggested[380] that the Members to which such requests were addressed should be furnished with summary descriptions of the projects involved and that two or more Members might each contribute to the assistance required for a particular project. Therefore, starting with the Programme for 1968, lists of the so-called 'footnote a/' projects (after the symbol by which these are marked in the summary schedule of recommended projects, to indicate that, if they are approved, no immediate funding is available for them) were circulated to those Member States which might be able and willing to provide the assistance required or the funding for them.

On this basis, an ever increasing number of projects were implemented each year with the special assistance of one or more States. If such assistance is provided in kind, then its monetary value is recorded in the various reports on technical

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[376] GOV/DEC/103(XXII), No. (27). Consequently, a special account was established, which is reflected in the 1979 Accounts (GC(XXIV)/629), Part IV, Statement XIV; Part V, Schedule G identifies the ten Members that made contributions in 1979.

[377] GC(XXIV)/630, para. 15.

[378] Basic book, Section 18.2.1, para. (E).

[379] GC(XI)/362, para. 15(c).

[380] GOV/1252, para. 3.

assistance delivered[381] and in a Schedule in the Accounts showing the resources received from each Member State[382]. If the assistance is provided in cash, similar records are kept. In addition, a special account is established for each contributing State (if the State also makes cash contributions to other programmes, all of its contributions for technical assistance are included in the same account)[383], and for each 'footnote a/' project thus implemented the sources of the funds for the experts or equipment supplied are indicated[384]. In other words, special contributions made by Member States for particular technical assistance projects are not pooled (as are those discussed in the previous section) but are maintained in an account of the donor until the money is actually spent.

This partial bilateralization of the technical assistance delivered through the Agency is explicitly recognized by the Revised Guiding Principles for Technical Assistance:

(a) The eligibility of States for technical assistance from funds provided for a special project or programme by other Member States is to be governed by the agreement with the State providing the funds (such agreements must be compatible with the Statute)[385];

(b) The Agency is authorized to act as an intermediary for providing technical assistance on behalf of any Member of the Agency or of the United Nations or of a specialized agency, in accordance with an agreement concluded with the Government concerned[386].

These provisions go beyond the mere receipt of funding for 'footnote a/' projects and include projects that have in effect been evaluated only by the donor State itself. Presumably, however, the Agency would not implement a project, even by the use of specially dedicated funds, which it considers technically unsound.

When the Agency implements 'footnote a/' projects by the use of funds of a donor State, it does not charge the latter for the administrative overhead costs, which are thus borne by the Regular Budget; however, if the project is one which the Agency is merely administering on behalf of the donor, the latter is required to bear the overhead costs[387].

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[381] For example GC(XXIV)/INF/191, Part II.C and Annex I.A.

[382] For example GC(XXIV)/629, Part V, Schedule G.

[383] For example GC(XXIV)/629, Part IV, Statement XII (columns for Argentina, Belgium, Denmark and Japan), and Statements VI–XI (programme activities supported respectively by SIDA, the Federal Republic of Germany, USA, USSR, Canada and Australia).

[384] For example GC(XXIV)/INF/191, Annex VII.

[385] INFCIRC/267, para.4. The text of such an Agreement with Canada, on the basis of which assistance is provided to 'footnote a/' projects, is set out in GOV/INF/318. This Agreement, like the offers of some other donors (see, for example, the similar US offer in GOV/INF/321), is restricted to projects in States Party to the NPT, since the donors are thereby fulfilling obligations under Article IV of the NPT.

[386] INFCIRC/267, para.6.

[387] See, in respect of SIDA, GOV/COM.9/OR.134, paras 79 and 87.

*25.7.4.3. Host State contributions*

Under the Agreements establishing the Trieste Centre and the Monaco Laboratory, the respective host States, Italy and Monaco, are required to provide a substantial part of the financial resources for operating these facilities. These Agreements have been revised and extended from time to time. On these occasions, revisions were frequently introduced in the financing required from the States concerned. These contributions are recorded in the Statements relating to these two projects[388] and in the Schedule showing all the contributions by Members[389].

The arrangements under which Agency meetings are held outside Vienna required that the respective host States finance the additional costs thereby incurred by the Agency[390]. These provisions, incidentally, also apply to General Conference sessions[391]. Consequently, the Host Agreement relating to each such meeting requires the State concerned to make the appropriate payment to the Agency. For many years, a special Schedule in the Accounts showed all such obligations, indicating which had been met and which were still outstanding[392]. Even though this Schedule no longer appears in the Accounts, such payments are still required and are being made. However, strictly speaking, such payments are not accounted for as extrabudgetary resources or as miscellaneous budgeted income, but they constitute direct reductions in the costs of meetings.

*25.7.4.4. Individual projects*

A trend subsidiary to the general trend towards increased reliance by the Agency on extrabudgetary funds should also be noted, namely the growing number of projects carried out by the Agency which are financed by the donor Member State and therefore are, at least nominally, administered on behalf of it. At the end of the period covered by the basic book, only two States financed such projects, each under a particular programme — the USA[393] and Sweden[394]. By the end of the period covered by the present book, these two States were financing a large array of programmes and projects. There were also programmes financed by Australia, Canada, Japan and the USSR, and a joint programme on Plutonium Management financed by three Members, as well as support for technical assistance programmes.

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388 For example GC(XXIV)/629, Statement III.B.
389 Ibid., Schedule G.
390 Sections 20.1.2 and 20.1.5.
391 Section 7.3.2.3.
392 For example GC(XX)/566, Part IV, Schedule F.7.
393 Basic book, Section 25.7.4.1; this book, Section 25.7.4.4.1.
394 Basic book, Section 25.7.4.2; this book, Section 25.7.4.4.2.

It is not possible to generalize the way in which projects that receive outside financing are initiated. In some instances they are proposed by the Agency to one or more Member States; in other cases, one or more Members propose a project to the Agency and offer to provide the financing for it; and in some instances a project develops out of contacts between the Agency and national representatives, with no definitive record of the origin of the initiative. Whether or not a project is of interest to the Agency is determined by the Director General under the annual authorization he receives from the General Conference to carry out extrabudgetary programmes[395]. Because of the absence of Board action, the publicly available documentation on these projects is generally very limited, consisting mostly of short passages in the Annual Report and perhaps oblique references in the Budget. Often the best information is obtainable from the Accounts, since a special account is set up in respect of each donor State, with sub-accounts for each programme supported[396].

In principle, each project support arrangement is based on an agreement between the Agency and the donor State. However, in some instances the agreement is merely set out in the correspondence relating to an individual project. A large Agency programme may also be covered by an overall agreement, and individual projects or items are then agreed to by subsidiary correspondence. For example, the latter approach is used when a Member State agrees to provide a given amount to support the Agency's research contract programme; individual projects are then proposed to the Member State, which informs the Agency of its acceptance.

Assistance may range from unrestricted payments (to be spent in any way to support an agreed project) to (more frequently) closely restricted payments (e.g. the emoluments of, or a fellowship for, a particular person, or travel funds to enable particular officials to attend a certain meeting), or gifts in kind (such as a piece of equipment or the use thereof, or the services of a particular expert). In many instances there is a mixture of the latter two types of gifts; for example, the services of an expert are provided as a gift in kind (i.e. his normal emoluments are paid by his Government) and a restricted payment grant is given for his travel costs and his per diem.

Each of the following sections relates to a country that has supported one or more special projects (except for technical assistance projects), indicating their titles and any special features.

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[395] Section 25.2.4.3.2.

[396] For example GC(XXIV)/629, Part IV, Statements VI–XII. These special accounts include the contributions made for 'footnote a/' technical assistance projects, but not the contributions for collective projects such as INFCE or for projects performed in the capacity of a host State.

25.7.4.4.1. United States of America

The Master Contract Establishing a Joint Research Contract Programme between the Agency and the USAEC, described in the basic book (Section 25.7.4.1), expired in 1969.

In 1975 the USA resumed special contributions to various programmes, which gradually increased in number[397]:

(a) Joint research (1975–1977)
(b) Safeguards (1977–...)
(c) Medfly (Mediterranean fruitfly) (1977–1979)
(d) Resources evaluation (1977–1979)[398]
(e) Risk assessment (1977–...)
(f) Medical (1977–...)
(g) Tsetse fly (1977–1979)
(h) Nuclear fuel (1978–...)
(i) Spent fuel storage (1979–...)
(j) Core conversion (1979–...).

The Safeguards Programme ((b) above), which supports various research and other projects designed to strengthen the Agency's technical and administrative ability to carry out safeguards, in effect constitutes a portion of a much larger programme, the US "Programme for Technical Assistance to IAEA Safeguards" (POTAS), which was designed by the Office of Safeguards and Security of the US Department of Energy in consultation with the Agency. In 1977, 98 technical tasks were identified, to which 112 others were added by the end of 1979, while 24 tasks were deleted. Annually updated lists and descriptions of these tasks were prepared in the form of successive Programme Plans. Pursuant to a 1977 exchange of letters between the US Mission and the Agency[399], an exchange of letters took place specifying the nature of each task to be implemented and the estimated costs. To meet these costs, the USA deposits a sum in advance into an Agency account, which is replenished as necessary. The exchange of letters also specifies procedures for changing projects and for the accounts which the Agency is to keep, and for the use of US flag carriers as far as possible for all travel. It should be noted that the programmes referred to in the subsequent sections and which are supported by Australia, Canada, the Federal Republic of Germany and the USSR are not

[397] For a financial summary of the 1979 programmes, see GC(XXIV)/629, Part IV, Statement VIII.B.

[398] In 1979 the support of this programme was assumed by the OECD/NEA.

[399] Letter on behalf of the Resident Representative, dated 4 May 1977; response by the Director of the Division of Budget and Finance, dated 11 May 1977.

directly related with the US programme or with each other, but are merely co-ordinated, through the Secretariat of the Agency, with the Agency's own safeguards development programme. Each programme is implemented on a basis similar to that for the US programme, though not quite as elaborately.

25.7.4.4.2. Sweden

The projects implemented under the Agreement between the Agency and the Swedish International Development Authority (SIDA)[400] have gradually expanded from merely 'footnote a/' technical assistance projects and include the following:

(a) International Centre for Theoretical Physics (Trieste Centre):
  (i) Winter College (1971–1977)
  (ii) Associate Members (1971–1977)
  (iii) Asian Course on Theoretical Physics (1974–1976)
  (iv) Summer College (1976)
  (v) General (1978–...).
(b) Fellowships (1970–...).
(c) Training courses (1970–...).
(d) Research contracts (1972–...).
(e) Bangladesh Institute of Nuclear Agriculture (1974–...).
(f) Nuclear Research in Agriculture in India (1978–...).

The two last projects are each based on a trilateral Agreement between the Agency, SIDA and respectively Bangladesh or India, defining in detail the project, its financial requirements, and the 'Organization of the Project' indicating the contributions to be made by the Government, by SIDA and by the Agency (i.e. by the Agency on behalf of SIDA), as well as certain formal matters relating to the Agreement.

In 1979 Sweden also participated in the Plutonium Management Programme initiated by the UK in 1978 (Section 25.7.4.4.6)[401].

25.7.4.4.3. Federal Republic of Germany

Since 1971, the Federal Republic of Germany, for the most part through its Gesellschaft für Strahlen- und Umweltforschung mbH (GSU), has supported a variety of projects, under the heading of Joint Co-ordinated Research Programmes[402]:

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[400] INFCIRC/138. Basic book, Section 25.7.4.2. For a financial summary of the 1979 programmes, see GC(XXIV)/629, Part IV, Statement VI.B.

[401] GC(XIX)/629, Part IV, Statement XII.

[402] Ibid., Statement VII.B.

(a) Protein (1971–...)
(b) Nitrogen (1975–...)
(c) Tsetse fly (1975–...)
(d) Food irradiation (1975–...).

Later, other programmes were added:

(e) Safeguards (1978–...)
(f) Core conversion (1979–...).

The tsetse fly programme was carried out pursuant to an Agreement between the Agency and the GSU, on the Improvement of Tsetse Fly Control/Eradication by Nuclear Techniques, signed on 19 September 1974, and extended in 1979 until 31 December 1982. This instrument, as well as assistance from Belgium and the UK, in turn enabled the Agency to enter into an Agreement with the Government of Nigeria concerning Co-operation on the Development of the Sterile Male Technique for Control or Eradication of the Tsetse Fly, signed on 3 January 1977.

25.7.4.4.4. Union of Soviet Socialist Republics

In addition to a Special Fellowship Programme which the USSR has been supporting since 1967, with contributions in non-convertible currencies, a Safeguards Programme has been supported by the USSR since 1977 with similar contributions[403].

25.7.4.4.5. Canada

Since 1978 Canada has also been supporting a Safeguards Programme[404].

25.7.4.4.6. United Kingdom

In 1978 the UK initiated a project for a group of experts to prepare proposals for an International Plutonium Management Programme in implementation of Statute Article XII.A.5[405].

25.7.4.4.7. Australia

In 1978 Australia started supporting a Safeguards Programme[406]. In 1979 it also became a Donor Government under a project concluded under the RCA Agreement[407].

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[403] GC(XIX)/629, Statement IX.B.
[404] Ibid., Statement X.B.
[405] GC(XXIV)/630, para. P.5/12.
[406] GC(XXIV)/629, Part IV, Statement XII.
[407] Ibid., Statement XI.B.

25.7.4.4.8. Japan

In 1979 Japan became a Donor Government under a project concluded under the RCA Agreement[408]. In 1980 it became a Donor Government of the Asian Regional Co-operative Project on Food Irradiation[409].

27.7.4.4.9. Netherlands

In 1979 the Netherlands started supporting the International Plutonium Management Programme, which had been initiated by the UK in 1978[410].

### 25.7.5. Investment income

In 1969 a Reserve for Fluctuation of Bonds was established, to which some of the unusually high interest income earned in that year was credited, to protect the Agency against potential losses in case it would be required to sell, before maturity, those of its long term bonds whose value had decreased[411].

In 1980 an Investment Committee was established as a new Secretariat Standing Interdepartmental Committee[412]. The Secretariat's investment practices and philosophy (actually only as related to short-term investments) were communicated to the Board during the same year[413].

## 25.8. FINANCIAL CONTROLS

### 25.8.2. External Auditor

*25.8.2.2. Appointment*

During the period covered by this book, the External Auditor has always been appointed for two-year terms. Until the 19th General Conference (1975) the Auditor General of Czechoslovakia had been repeatedly reappointed to this office; at that Conference, an official from the Netherlands was appointed.

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[408] GC(XXIV)/629, Statement XII.

[409] INFCIRC/285.

[410] GC(XXIV)/629, Part IV, Statement XII.

[411] GC(XIV)/435, Part III, paras 11 and 16. For the state of that reserve at the end of 1979, see GC(XXIV)/629, Part IV, Statement I.B.

[412] AM.I/7, Appendix K.

[413] GOV/INF/371. There was a brief discussion of this in the Administrative and Budgetary Committee of the Board, GOV/COM.9/OR.138, paras 15 and 19.

*25.8.2.3. Functions*

No change in the functions of the External Auditor was made during the period covered by this book.

Under his authority to make observations on financial matters and on the financial consequences of administrative practices, the External Auditor has addressed subjects such as the following and submitted comments to the governing organs of the Agency:

(a) The possibility of the Agency qualifying for higher reimbursement of overhead costs by the UNDP, if the Agency could determine the actual costs it incurred[414];
(b) A proposal to change the financial presentation in the Accounts and possibly in the Budget, and to consider amending the Financial Regulation therefor, in order to present more clearly the total financial operations relating to the Trieste Centre and the Monaco Laboratory. This proposal resulted in the abolition of Operating Fund I and the merger of the General Fund and the Operating Fund II[415];
(c) The accounting for safeguards costs and non-safeguards costs[416];
(d) Internal control weaknesses of the automated payroll–personnel system[417], the Internal Audit Office[418] and the administrative support functions of the Trieste Centre[419].

In 1977 the new External Auditor announced that he had started, in addition to auditing the Accounts, a limited review of the procedures, internal controls and administrative practices of the Agency's activities[420]. Over the next few years, he made extensive comments on several aspects of the administration of the payroll–personnel system[421] and of the technical assistance programme[422], the International Centre for Theoretical Physics[423] and the International Nuclear Information System (INIS)[424]. Although, in general, Governors welcomed this initiative of the External

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[414] Section 25.7.1.1.
[415] GC(XXII)/598, Part II, paras 17–20; GC(XXIII)/611, Part II, paras 35–38.
[416] GC(XXII)/598, Part II, paras 21–25.
[417] Ibid., para. 27.
[418] GC(XXIII)/611, Part II, para. 5.
[419] GC(XXIX)/629, Part II, paras 33–35.
[420] GC(XXI)/581, Part II, paras 16–17.
[421] GC(XXII)/598, Part II, paras 26–31.
[422] GC(XXIII)/611, Part II, paras 27–34.
[423] GC(XXIV)/629, Part II, paras 26–39.
[424] Ibid., paras 40–49.

Auditor[425] and often endorsed particular suggestions[426], some Governors felt that in commenting on technical assistance the External Auditor had entered into policy areas reserved for the governing organs[427].

In addition to making proposals to be considered by the governing organs, the External Auditor frequently made suggestions directly to the Secretariat, the more important ones of which he then also briefly reported to the Board. For example, in 1980 he reported[428] that he had made proposals regarding the handling of income tax reimbursements[429], the accounting for Value Added Tax refunds[430] and the presentation of the Annual Report on Budgetary Performance[431].

Finally, certain tasks were assigned or problems addressed to the External Auditor:

(i) In respect of each of the General Conference sessions held away from Vienna, the Conference Agreements provided that the reimbursements to the Agency of additional costs incurred[432] would be certified by the External Auditor — a task which he then carried out[433].

(ii) He was asked to comment on the Agency's reply to the UNEP concerning the possible maintenance of excessive cash balances in respect of projects carried out by the Agency for that organ[434].

(iii) He was asked to comment on proposals to attribute certain administrative costs to safeguards[435].

(iv) He was asked to advise on whether the replacement of certain furnishings in the VIC should be considered as routine maintenance, chargeable to the Agency, or as a major item, chargeable at least in part to the Austrian Government[436].

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[425] GOV/COM.9/OR.126, paras 30–32; GOV/1989, para. 4. It might be recalled that in 1969 the Administrative and Budgetary Committee itself had asked the then External Auditor to undertake such studies (GOV/COM.9/OR.97, paras 10–13).

[426] For example GOV/COM.9/OR.134, para. 45; GOV/COM.9/OR.138, para. 11.

[427] GOV/COM.9/OR.134, para. 35.

[428] GC(XXIV)/629, Part II, para. 24.

[429] Section 24.4.6.

[430] Section 28.2.4.3.

[431] Section 32.2.4.

[432] Section 7.3.2.3.

[433] GC(XVII)/504, Part II, paras 8–9; GC(XXI)/581, Part II, paras 22–24; GC(XXIV)/629, Part II, paras 51–52.

[434] GC(XXI)/581, Part II, paras 18–21.

[435] The response of the External Auditor appears in GOV/INF/375.

[436] Section 28.2.4.7. GC(XXIV)/629, Part II, para. 22.

*25.8.2.4. Reporting practice*

The Administrative and Legal Committee of the General Conference, referred to in paragraph (c) of this section in the basic book, has been replaced by the Committee of the Whole[437].

### 25.8.3. Joint Inspection Unit

At the end of the period covered by the basic book, the Joint Inspection Unit (JIU) was established by the United Nations General Assembly. The Agency participated in it informally, and the Board took no further decision on the matter after it had requested the Director General to take part in the consultations concerning the establishment of the Unit[438]. Thereafter, the Board was from time to time informed of changes or proposals concerning the structure or status of the Unit, and Governors were requested to inform the Director General of any comments they might have[439], and consequent brief discussions took place in the Board[440]. The Secretariat has never hidden its lack of enthusiasm for the Unit, principally on the ground that few of its studies were relevant to the Agency while the costs charged to the Agency were steadily mounting[441]. However, a number of Governors, principally from the major contributors, who also were the principal sponsors of the Unit in the General Assembly, have supported it in the Agency as a useful device to bring outside management expertise to bear on the affairs of the Agency or on United Nations system activities of interest to the Agency.

The United Nations General Assembly definitively approved the Statute of the JIU in December 1976[442], with effect from 1 January 1978, and invited organizations within the United Nations system to accept it. The Agency continued to participate in the JIU on an informal basis until September 1978, when the Board considered the Statute on the basis of a brief Memorandum by the Director General[443]. The Board authorized[444] the Director General to continue the existing

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[437] Sections 7.3.3.4 and 7.3.5.2/3.

[438] GOV/DEC/49(X), No. (48), para. 4.

[439] GOV/INF/251 and GOV/INF/304.

[440] GOV/OR.448, paras 108-112; /OR.486, para. 43.

[441] The costs of the JIU are divided among the participating organizations in proportion to their total expenditures from all sources (i.e. budgetary and extrabudgetary) (see GC(XII)/406, Part III, para. 49). The growth of the Agency's contribution does not reflect an increase in the Agency's proportionate share, but rather the steadily higher expenses of the Unit, particularly after it received its own Secretariat and later was also increased in size.

[442] UNGA/RES/31/192, Annex; GOV/INF/317, Annex P.

[443] GOV/1916; GOV/OR.524, paras 71-83.

[444] GOV/DEC/100(XXI), No. (60).

relationship with the JIU and to accept its Statute, on condition that the JIU would not become a subsidiary organ of the legislative bodies of the Agency[445]. Account was taken of the special nature of the Agency's relationship with the United Nations (i.e. that the General Assembly is to concern itself solely with the administrative part and not with the operational part of the Agency's activities)[446] and of the special confidentiality requirements relating to safeguards[447].

Since during the experimental period of the JIU until the adoption of its definitive Statute the question of the treatment of its reports by the competent organs of the participating organizations was very much at issue[448], an account of the Agency's practices in this respect is of some interest. The first set of reports that the Agency received, none of which were addressed particularly to it but some of which contained items of interest, were summarized in the Director General's periodic report to the Board for January–April 1969, together with his comments thereon; in a note, Governors were informed that they could request copies of the complete report[449]. In November 1969 the Director General announced that he intended "to circulate, with such comment as he may find it desirable to make, only those of JIU's reports that are of direct concern to the Agency. Such other reports as JIU communicates to the Director General from time to time will be brought to the attention of the Board through the medium of information papers, and will be available to Governors on request."[450] In September 1970 the Director General distributed, together with a copy of the Unit's annual report, a note to each Governor, commenting briefly on a report of interest to the Agency (concerning programming and

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[445] Article 1(2) of the JIU Statute provides that: "The Unit shall be a subsidiary organ of the legislative bodies of the organizations [that accept the Statute]". A number of the specialized agencies objected to this provision on the ground that their constitutional instruments did not provide for the establishment of such organs, and consequently they accepted the Statute with a reservation to this provision. The Director General's reluctance regarding this point was, however, not based on any constitutional ground, but on the concern that, as an Agency organ, the Unit "would have the broadest inspection, investigation and evaluation powers over all programmes and activities" (GOV/1916, para. 3); after an inconclusive discussion, the Board agreed to this reservation (GOV/OR.524, paras 72, 76–83).

[446] Basic book, Section 12.2.1.2.

[447] GOV/1916, paras 5 and 7.

[448] The JIU Statute deals with this question in its Article 11(4). The Unit and the General Assembly pointed out that reports of direct concern to a particular organization should be transmitted to and considered by its competent legislative/governing body reasonably promptly, together with comments of the executive head. The executive heads, acting through their collective body, the ACC, tried to preserve considerable freedom of action regarding the method and timing of the presentation of JIU reports and of their comments thereon to their own governing bodies.

[449] GOV/INF/208, paras 61–70.

[450] GOV/INF/216, para. 2. Soon thereafter, the Director General's periodic reports were discontinued, and this vehicle was therefore no longer available for summarizing and commenting on relevant JIU reports.

budgeting throughout the United Nations system)[451] and annexing a list of all 1968 and 1969 reports, and some from 1970. In February 1971 the Director General circulated to the Board the full text of the first report that related directly to an Agency operation[452], adding both the text of the Secretariat's comments addressed to the JIU and some further explanatory comments addressed to the Board[453]. In October 1971 a list of 1970 and 1971 JIU reports was circulated to the Board, mentioning one further report addressed especially to the Agency[454], which was still under study[455]. This pattern of an annually issued list, calling attention to any reports of at least peripheral concern to the Agency (i.e. those dealing with general aspects of certain practices in the United Nations system, for example regarding personnel and programming), has been maintained[456]. Up to the end of 1980, no further reports of direct interest to the Agency were issued.

### 25.8.4. Other control devices

#### *25.8.4.1. Competitive bidding*

During the period covered by the present book, the monetary limits below which no competitive tenders need be secured have twice been increased by amending Interim Financial Rule 3.02. In addition, an Administrative Manual Section on Contracts and Invitations to Bid was issued, giving more detailed instructions on the implementation of Article III of the Financial Rules[457].

For some years after UNIDO became established in Vienna, UNIDO's local procurement operations were carried out for it by the Agency. For this purpose, a UNIDO official was added to the Agency's Contract Review Committee when UNIDO transactions were considered[458].

#### *25.8.4.2. Travel*

The Director General's Annual Report to the Board on staff travel was discontinued in 1971[459].

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[451] JIU/REP/69/7.

[452] JIU/REP/70/5-5, Report on IAEA Activities in Certain Central American Countries.

[453] GOV/INF/234.

[454] JIU/REP/71/1-1, Observations on the work of the IAEA in Burma.

[455] GOV/INF/244.

[456] See, for example, GOV/INF/257, 270, 281, 302. For some reason, the reports for July 1977 to June 1978 are also listed in the 1979 Annual Report (GC(XXIII)/610, para. 221).

[457] AM.VI/1 (TS/77, 30 January 1976).

[458] GC(XV)/460, Annex VI, para. 4.

[459] GOV/COM.9/OR.105, para. 3.

*25.8.4.3. Miscellaneous statements*

The Director General's Annual Reports to the Board on filled and vacant posts, on the employment of consultants and on outstanding obligations were all discontinued in 1971 in the course of a systematic reduction of the number of papers produced by the Secretariat[460]. However, the External Auditor continued to examine the propriety of the unliquidated obligations carried from one year to the next, and made a report to the Board[461].

[460] GOV/COM.9/OR.105, para. 3.

[461] For example GC(XXIV)/629, Part II, paras 12–18.

# Part F
# LEGAL MATTERS

# Chapter 26

# AGREEMENTS

## PRINCIPAL INSTRUMENTS

IAEA Statute, mainly Articles XI.F, XV.C, XVI and XXII.B, but also Articles III.D, V.E.6 and 7, IX.A, XII.A.6 and C, XIII, XIV.B and C, XIX.B and Annex I, paras C.6 and 7;
United Nations Relationship Agreement (INFCIRC/11, Part I.A), Articles XX, XXI, XXII, XXIV;
Regulations for the Registration of Agreements (INFCIRC/12);
Rules for the Registration of Agreements (promulgated by the Director General in 1958);
Agreements Registered with the International Atomic Energy Agency (Legal Series No. 3);
Administrative Instruction on Agency Agreements and Contracts (AM.V/6).

The Agency's treaty practices have not changed significantly during the period covered by the present book. Consequently, this chapter contains mostly some illustrations of previously recorded procedures.

In the day-to-day legal practice of the Agency, resort was frequently taken to the Vienna Convention on the Law of Treaties, which was used as a convenient manual of the law affecting the Agency's treaties with States and other organizations, as well as other treaties of interest to the Agency to which only States are Parties[1].

## 26.2. TYPES OF AGREEMENTS

In addition to the classification of the Agency's agreements given in the basic book and followed in the present book, attention is called to a categorization in the list of Agreements Registered with the International Atomic Energy Agency[2] and to the less well articulated categorization in the INFCIRC Index[3].

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[1] The provisions of the Vienna Convention on the Law of Treaties are not applicable to agreements to which the Agency is a Party, since the Convention is explicitly limited to inter-State treaties (Articles 2(1)(a) and 3). The provisions of the Convention may, however, be applicable to inter-State agreements of which the Agency is only the depositary — if the provisions relating to the timing of the participation of the States concerned in the Convention and the agreements in question are fulfilled (Article 4 of the Convention). Nevertheless, the Convention is considered to express, for the most part, generally accepted principles of international law.

[2] IAEA Legal Series No. 3 (e.g. eighth edition, 1981), Part III and the Annex thereto.

[3] INFCIRC/1/Rev.7, under 'Agreements'.

## 26.2.1. Agreements with States

### *26.2.1.6. Technical assistance*

Early in the 1970s, after the merger of the former Expanded Programme of Technical Assistance (EPTA) and the Special Fund (SF) by the United Nations into the United Nations Development Programme (UNDP), the EPTA Standard Agreement was abandoned[4] and replaced by the UNDP Revised [Basic] Standard [Technical Assistance] Agreement (RSA). While these instruments were not concluded explicitly on behalf of the participating agencies, they still included the basic terms for the provision of assistance financed by the UNDP but administered by these agencies. Indeed, the Agency itself relied on the new agreements because it incorporated into its standard form agreement for the furnishing of technical assistance under its own programme a reference to the RSA[5]. A space for the date on which the State concerned would become a Party to the RSA[6] was left free. Naturally, the clause was deleted if the State did not become a Party to the RSA (which, of course, did not change the force of the incorporation by reference). Generally, no indication was given of any differences between the text of the agreement to which the State became a Party and the text of the Revised Standard Agreement[7], leaving it somewhat ambiguous which of the two applied.

The Standard Agreements on Operational Assistance, which had been concluded by the Special Fund on behalf of, inter alia, the Agency, were also abandoned in the early 1970s[8].

### *26.2.1.7. Safeguards Agreements*

The predominant type of Safeguards Agreement concluded during the period covered by the present book was the NPT Safeguards Agreement. This type of agreement was also used to cover safeguards obligations under the Tlatelolco

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[4] The last such agreement concluded by the UNDP Resident Representative on behalf of all co-operating agencies, including the IAEA, that was registered by the Agency (IAEA Reg. No. 982) was the Agreement with Bhutan, which was signed and entered into force on 21 February 1973.

[5] TAB/R.251/Rev.1.

[6] For example the Agreement for the Provision of Technical Assistance to the Government of Kenya (No. TA/AGR/KEN/8), signed on 12 September and 8 November 1978 (IAEA Reg. No. 1324). Paragraph 2 of the Agreement merely states that Kenya became a Party to the Revised Standard Agreement on 11 November 1964.

[7] See, however, the Agreement for the Provision of Technical Assistance to the Government of Bangladesh (No. TA/AGR/BGD/9), signed on 22 November 1978 and 18 January 1979 (IAEA Reg. No. 1334), in which a specific reference is made to the document (UNDP/ADM/LEG/11) in which the Standard Agreement with Bangladesh is set out.

[8] The last such agreement registered by the Agency was that with Gabon (IAEA Reg. No. 1057), which was signed and entered into force on 15 December 1973.

Treaty[9]. These agreements may in their form be considered as unilateral submission agreements. The safeguards procedures set forth in these agreements as well as in all other types of Safeguards Agreements were further specified in Subsidiary Arrangements; there is, however, no public record of these Arrangements (i.e. their texts are not published and they are not registered with the Agency or the United Nations, nor are they mentioned in any published reports)[10].

The Suspension Protocols are a special type of legal safeguards instrument that has been introduced consequent on the conclusion of the full-scope Safeguards Agreements of the NPT and Tlatelolco types. By these Protocols the Agency and a State, which had concluded a full-scope agreement, agreed with a third State, with which they had earlier concluded a trilateral Safeguards Agreement (usually a Safeguards Transfer Agreement), to suspend the application of safeguards under the trilateral agreement as long as the bilateral full-scope agreement remained in force[11].

#### *26.2.1.8. Joint programmes and activities*

The principal new agreement to be mentioned under this heading is the Regional Co-operative Agreement for Research, Development and Training Related to Nuclear Science and Technology (RCA)[12], and a number of Co-operative Project Agreements were also concluded under this Agreement[13].

### 26.2.2. Agreements with intergovernmental organizations

#### *26.2.2.1. Relationship and co-operation*

During the period covered by the present book, co-operation agreements were concluded with four regional organizations in addition to those mentioned in the basic book[14].

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[9] Section 21.5.

[10] Section 21.5.7.

[11] For a particularly complex set of such agreements, see INFCIRC/68/Mod.1 for the Suspension Protocol in relation to the Thailand/USA Safeguards Transfer Agreement (INFCIRC/68); the Protocol was concluded after the entry into force of the NPT Safeguards Agreement with Thailand (INFCIRC/241). When the Thailand/USA bilateral Co-operation Agreement, which underlay the Safeguards Transfer Agreement, was superseded by another bilateral Agreement, the former Safeguards Transfer Agreement and the Suspension Protocol relating thereto were terminated by another Protocol (INFCIRC/242).

[12] INFCIRC/167.

[13] For example the Agreement Establishing the Asian Regional Co-operative Project on Food Irradiation of 23 May 1980 (INFCIRC/285).

[14] INFCIRC/25/Add.3-5. Section 12.5.2.

*26.2.2.2. Administration*

A Memorandum of Understanding on Co-operation was concluded between the Agency and the United Nations Disaster Relief Co-ordinator (UNDRO)[15]. This is an administrative arrangement concluded with a subsidiary United Nations organ under the authority of the United Nations/IAEA Relationship Agreement.

Two administrative arrangements without an underlying relationship agreement were concluded. These are the Agreement for the Operation of a Joint Housing Service, concluded in 1977 between the Agency, UNIDO and the International Institute for Applied Systems Analysis (IIASA)[16], and the 1979 Agreement which supersedes the 1977 Agreement and to which the Organization of Petroleum Exporting Countries (OPEC) also became a Party[17].

### 26.2.5. Agreements concluded under the auspices of the Agency

*26.2.5.1. Conventions*

The Convention on the Physical Protection of Nuclear Material[18] was concluded under the sole auspices of the Agency during the period covered by the present book. Though the Convention is open to signature or accession "by international organizations and regional organizations of an integration or other nature (sic)"[19], the Agency itself, which might be considered as falling within that definition, has taken no steps to become a Party to this Convention; however, the Agency carries out the functions of a depositary.

## 26.3. SPECIAL FORMS OF AGREEMENTS

### 26.3.1. Trilateral agreements

(a) *Supply arrangements*

As is evident from the projects described in Chapter 17, the Agency's role as a broker of nuclear materials and facilities diminished further during the period covered by the present book. Consequently, trilateral supply agreements were entered into very infrequently.

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[15] Section 12.2.3.5.
[16] IAEA Reg. No. 1267 (5 September 1977),
[17] IAEA Reg. No. 1353 (21 May 1978).
[18] INFCIRC/274/Rev.1.
[19] INFCIRC/274/Rev.1, Article 18(4)(a).

(b) *Safeguards transfers*

Responsibility for the application of safeguards under most bilateral agreements for nuclear co-operation had already been transferred to the Agency and, thus, relatively few trilateral Safeguards Transfer Agreements were concluded. A number of trilateral Suspension Protocols were concluded, under which the safeguards required by a Transfer Agreement were suspended in view of the comprehensive safeguards applied by the Agency under an NPT or Tlatelolco Safeguards Agreement (Section 26.2.1.7).

(c) *Special Fund 'Plans of Operation'*

In view of the merger of the EPTA and the SF into the UNDP, no trilateral Plans of Operation were concluded since 1975[20].

(d) *Host agreements*

Agreements for the conduct of training courses, seminars and other types of meetings were concluded between the Agency, the host State and the host institution. Under these agreements the latter undertakes to supply the necessary physical facilities and possibly some personnel. The State undertakes to provide for privileges and immunities as well as for other assurances that fall within the competence of the Government[21], such as those concerning the furnishing of visas.

### 26.3.2. Multilateral agreements

The principal continuing multilateral programme which the Agency initiated during the period under review was that covered by the RCA[22]. This Agreement is open to any Member State in the areas of South Asia, South East Asia and the Pacific, and the Far East[23]. The RCA entered into force for the Agency[24] and for

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[20] The last such agreement was the Plan of Operation for a UNDP project in Yugoslavia (96-YUG-74-025-A-01/18), which entered into force on 22 May 1975 (IAEA Reg. No. 1163).

[21] For example the Agreement between Ireland, Trinity College and the Agency of 28 July 1978, concerning an Interregional Training Course on Nuclear Electronics, Dublin, 19 June to 8 September 1978.

[22] INFCIRC/167.

[23] For the definition of these areas, see Section 8.2.2.4.6.

[24] The RCA nowhere states explicitly that the Agency is a Party, but this appears from the structure of the Agreement and from the various non-depositary obligations placed on the Agency. In registering the Agreement with itself (IAEA Reg. No. 918) and with the United Nations the Agency listed itself as a Party.

India and Viet-Nam on 12 June 1972, when notifications of acceptance were received from these two States, and later for other States when these notified their acceptance[25].

Under the RCA, various Project Agreements have been concluded. Each Agreement contains the obligations for the Participating Governments, for Donor Governments and for the Agency; each Government was required to indicate whether it wished to become a Participant or a Donor. The Agreements entered into force when at least one Donor Government and two Participating Governments notified their acceptance[26].

### 26.3.3. Master Agreements

The following Master Agreements were concluded by the Agency:

(a) The EPTA Standard Agreements, which had been concluded with States by the UNDP on behalf of all organizations (including the IAEA) furnishing UNDP assistance, were superseded by the Revised Standard Agreements, to which only the UNDP and the State concerned are Parties.

(b) Master Agreements for Furthering Projects by the Supply of Materials are bilateral agreements between the Agency and a recipient State, setting forth the general conditions for future supplies of fissionable and other materials by or through the Agency. A Supplementary Agreement would be concluded for each transaction[27].

(c) The Master Contract for Sales of Research Quantities of Special Nuclear Materials between the Agency and the USA was superseded on 14 June 1974 by the similar Master Agreement Governing Sales of Source, By-Product and Special Nuclear Materials for Research Purposes[28].

(d) The Master Contract for US Financing of Agency Research, which had been renewed until 30 June 1969[29], was not extended further.

(e) The RCA is a Master Agreement pursuant to which Project Agreements[30] can be concluded for various purposes between different combinations of Parties to that Agreement (though the Agency itself is a Party to each Project Agreement).

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[25] INFCIRC/167, Sections 9–10.

[26] For example the Agreement of 23 May 1980 Establishing the Asian Regional Co-operative Project on Food Irradiation, INFCIRC/285, Articles II, III and XI.

[27] For example the Master Agreement with New Zealand of 17 April 1980 (INFCIRC/286).

[28] INFCIRC/210, Section 17.3.

[29] INFCIRC/89/Add.1.

[30] For example INFCIRC/285.

### 26.3.4. Umbrella agreements

Several Project Agreements were concluded which apply not only to the items supplied under a single, simultaneously concluded Supply Agreement but also to additional assistance that might be supplied later under further such Agreements[31]. Such Project Agreements are therefore of the nature of umbrella or framework agreements.

Full-scope Safeguards Agreements of the NPT and Tlatelolco types should not be considered as umbrella agreements because they apply automatically to all nuclear materials and facilities in the State concerned (with a few rigidly defined exceptions). In umbrella agreements, notification by the State of additional materials and facilities (for example imported ones), while being necessary for effective control, is not a legal prerequisite for an item to come under safeguards as it is in Safeguards Transfer Agreements.

### 26.3.5. EPTA Standard Agreement

As pointed out above, the EPTA Standard Agreement (including the OPEX and later OPAS variants) was phased out during the period covered by the present book. The Revised Standard Agreement (RSA) of the UNDP is conceptually different, since it is not concluded in the name of the Agency. The Agency incorporated the RSA, concluded by the UNDP with a particular State, or the model RSA in general, into each technical assistance agreement concluded by it (Section 26.2.1.6).

### 26.3.6. Model agreements

The most important model agreement adopted during the period under review, and the only such text ever prepared by a Board Committee and sanctioned by the Board, is the "Structure and Content of Agreements between the Agency and States Required in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons" (the NPT Safeguards Document)[32] on which all NPT, Tlatelolco and NPT/Tlatelolco Safeguards Agreements are based. The language of that Document is such that a minor adjustment of the wording of each paragraph (and the choice of some options specifically foreseen in the Document) makes it possible to formulate a complete agreement. If, for special reasons, minor departures from the

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[31] For example the Project Agreement of 1 March 1972 for Assistance by the Agency to Greece in Continuing a Reactor Project (INFCIRC/163, Part II), for which supplies have been provided under the trilateral Title Transfer Agreement of 1 March 1974 (INFCIRC/163/Add.1), a bilateral Transfer Agreement of 12 October 1977 (INFCIRC/163/Add.2) and a Third Title Transfer Agreement of 15 December 1977 (INFCIRC/163/Add.3).

[32] INFCIRC/153.

standard text were required in respect of a particular State, these deviations could conveniently be identified and presented to the Board for approval. Indeed, the Director General presented to the Board a model agreement[33] based on the NPT Safeguards Document. This model agreement had blanks or alternative paragraphs (each explained by a footnote), indicating the several options allowed by the Document.

## 26.4. PARTICULAR PROVISIONS AND DEVICES

### 26.4.2. Incorporation by reference

The types of legal instruments routinely incorporated into agreements by reference, as reported in the basic book, have been changed in several regards:

(a) Neither the NPT Safeguards Document nor the Inspectors Document were incorporated into NPT or Tlatelolco Safeguards Agreements, since the NPT Safeguards Document constitutes a complete self-contained text, covering both the general safeguards provisions and the provisions relating to the designation and visits of inspectors.

(b) The Agency's Health and Safety Standards were incorporated into Project Agreements and other agreements more selectively, in view of the great number and diversity of these Standards and the need to specify more precisely which ones, or which part of particular ones, were applicable to a given project[34].

(c) Instead of the EPTA Standard Agreement, the RSA of the UNDP was incorporated into technical assistance agreements with the Agency, either in the specific form in which the RSA was concluded with the State concerned or in the form of the model text[35].

(d) The provisions on settlement of disputes in NPT Safeguards Agreements were sometimes incorporated into later Project Agreements with the same State[36].

(e) Bilateral Supply and Co-operation Agreements were incorporated by reference into trilateral Supply Agreements to which the Parties to the bilateral Agreement were also Parties[37].

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[33] GOV/INF/276.

[34] For example INFCIRC/203, Part II, Annex.

[35] Section 26.2.1.6.

[36] For example INFCIRC/203, Part II, Article VIII/1.

[37] For example the second Agreement for the Supply of Uranium Enrichment Services for a Nuclear Power Facility in Mexico (INFCIRC/203/Add.1), which incorporates provisions from the Co-operation Agreement between the Agency and the USA, and provisions from a long term, fixed commitment contract that was to be concluded between appropriate agencies of the Mexican and US Governments.

### 26.4.3. Designation of applicable law

The NPT Safeguards Document, and therefore all NPT and Tlatelolco Safeguards Agreements, provide that:

(a) Any protection against third party liability in respect of nuclear damage available under national law is to apply to the Agency and to its officials in implementing the Safeguards Agreement[38];
(b) Any claims by one party against another party, except in relation to a nuclear incident, "shall be settled in accordance with international law"[39]. This means that claims are not subject to domestic law but to public international law.

### 26.4.4. Liability, disputes and authentic languages

Almost all agreements contain a disputes clause and many agreements also contain a liability clause. These are discussed in Chapters 27 and 29, respectively. The languages of agreements are discussed in Chapter 33.

### 26.4.5. Parties to agreements

The possibility of concluding agreements with a 'group of Members' is briefly discussed in the basic book; however, during the period covered by it, no such agreements had been entered into. During the period covered by the present book, several agreements have been concluded with Euratom[40]. In the NPT and the NPT related Safeguards Agreements to which Euratom and some of its Members are Parties[41], the role of Euratom is clearly distinguished from that of States. The precise delineation of the respective obligations and rights of the States and of Euratom is principally a matter of the internal law of Euratom and is in many instances not clearly set out in agreements.

The NPT and Tlatelolco Safeguards Agreements relating to the Netherlands Antilles and to Surinam were concluded by the Agency with the Kingdom of the Netherlands, which is "according to its Charter, ... responsible for the external

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[38] INFCIRC/153, para. 16.

[39] INFCIRC/153, para. 17.

[40] In particular, the Co-operation Agreement (INFCIRC/25/Add.5, Part II); see also the contract of 14 and 24 November 1969 for the performance of preparatory work for INIS (IAEA Reg. No. 693).

[41] The NPT Safeguards Agreement with Belgium, Denmark, the Federal Republic of Germany, Ireland, Italy, Luxembourg, the Netherlands and Euratom (INFCIRC/193), and the Agreement for the Application of Safeguards in Connection with the NPT with the United Kingdom and Euratom (INFCIRC/263), and the Agreement with France and Euratom (INFCIRC/290).

relations of its constituent parts''[42]. Both Agreements distinguish, article for article[43], between obligations to be fulfilled or rights to be enjoyed by the Kingdom of the Netherlands and those which appertain to the Netherlands Antilles or to Surinam.

The several host agreements referred to in Section 26.3.1 were concluded between the Agency, a State and a private or public institution in that State[44].

### 26.4.6. Provisional application

On signing the extension of the NPY Agreement, Norway made a declaration, which was accepted by the Agency, that ''pending the approval of the said Agreement by the Parliament of the Kingdom of Norway, all terms and conditions of the said Agreement shall be provisionally applied by the Government of the Kingdom of Norway as if the said Agreement were in full force and effect.''[45]

## 26.5. FORMALITIES RELATING TO AGREEMENTS

### 26.5.2. Form of conclusion and entry into force

#### *26.5.2.1. Concurrent approval*

The several Co-operation Agreements concluded during the period covered by the present book between the Agency and other intergovernmental organizations entered into force on signature rather than automatically on the approval by the designated organs of the two organizations[46]. This procedural change may in part be due to the difficulties associated with the practice of concurrent approval described in the basic book. This practice, which seemed appropriate for the somewhat comparably structured organizations of the United Nations system, also appeared less suitable when it was applied to differently constituted regional organizations. Moreover, these Agreements were submitted to the governing organs for approval before signature.

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[42] INFCIRC/229 and /230, first paragraph of the Preamble.

[43] Compare Article 15 with INFCIRC/153, para. 15 (method of financing, which is different for Member States and non-Member States).

[44] For example the Memorandum of Understanding Concerning an Interregional Course in the Use of Radioisotopes and Radiation in Animal Science and Veterinary Medicine, Ithaca, New York, 20 July to 4 September 1970, concluded between the Agency, the USA and the Cornell University (IAEA Reg. No. 753).

[45] INFCIRC/145, Part II.

[46] For example the Co-operative Agreements with OPANAL (INFCIRC/25/Add.4) and with Euratom (INFCIRC/25/Add.5, Part II).

*26.5.2.2. Signature of agreements*

The practice, reported in the basic book, of having agreements which entered into force on signature but which could not be signed simultaneously (they were signed first by the other Party and last by the Agency) was discontinued[47]. The reason for discontinuation evidently was that the texts for signature were in most instances prepared by the Agency, and the official who dispatched the communication wished to carry forward the action as far as possible. Presumably, it was also hoped to save time and to discourage the other Party from proposing further changes by confronting it with a paper on which the Agency had visibly completed consideration. The principal disadvantage of the new arrangement, namely that the Agency may not know currently when it becomes bound by a new agreement, was considered to be more a theoretical difficulty than a practical one.

26.5.2.2.1. Signature for the Agency

The practice whereby EPTA Standard Agreements were signed, inter alia, for the Agency by a UNDP Resident Representative was discontinued, since the UNDP RSAs are signed only on behalf of the UNDP[48].

The Agency's own practices with regard to presenting full powers remained as described in the basic book. Ostensible authority was normally sufficient for officials negotiating, adopting or authenticating a text, although, within the Agency, the responsibility for such treaty acts was often specifically allocated in writing by the Director General.

26.5.2.2.2. Signature for a State

The Agency's practice relating to the full powers it required from the representatives of States signing an agreement did not change substantially and thus continued to conform to the provisions of Article 7 of the 1969 Vienna Convention on the Law of Treaties.

*26.5.2.3. Signature subject to ratification*

The NPT Safeguards Document provides that Agreements concluded in accordance with its provisions are to "enter into force on the date on which the Agency receives from the State written notification that the statutory and constitutional

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[47] See the Date of Signature column of the eighth edition of Agreements Registered with the International Atomic Energy Agency (IAEA Legal Series No. 3, pp. 192–195), where the Agency consistently appears as the first signatory of bilateral or trilateral agreements.

[48] Section 26.2.1.6.

requirements for entry into force have been met''[49]. Though most NPT and Tlatelolco Safeguards Agreements therefore contain a corresponding formula[50], some provide for entry into force directly on signature[51].

*26.5.2.4. Signature followed by further arrangements*

The procedure discussed in this section in the basic book, as explained there, was abandoned and was not resumed during the period covered by the present book. A somewhat different procedure was followed in respect of at least one agreement: The entry into force of a Protocol concluded between the Agency and two Member States was made dependent on the entry into force of a new bilateral agreement between those States; the two States undertook to notify the Agency within one week of that event, whereby the Agency came to know of the date of entry into force of the Protocol to which itself was a Party[52].

*26.5.2.5. Adoption by the Agency followed by acceptance by States*

The practice described in this section in the basic book was followed by the Agency in respect of the RCA[53] and the Project Agreements concluded pursuant to it[54]. These Project Agreements were not submitted to the Board for approval, but were promulgated by the Director General after consultation with the States principally concerned.

**26.5.2a. Reservations**

The Agency's experience with reservations is limited because reservations were only most rarely utilized in connection with the bilateral and limited multilateral (e.g. trilateral) agreements to which the Agency became a Party. Indeed, when Morocco presented an instrument of ratification of its NPT Safeguards Agreement, adding three observations which the Agency originally interpreted as reservations, the Agency refused to accept that instrument until the Government had indicated that it did not intend to make formal reservations[55].

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[49] INFCIRC/153, para. 25.

[50] For example INFCIRC/258(Jordan), Article 24.

[51] For example INFCIRC/261(Ethiopia), Article 24.

[52] INFCIRC/242, para. 6.

[53] INFCIRC/167.

[54] For example INFCIRC/285.

[55] INFCIRC/228. Letter by Morocco of 13 May 1974; letter by the Legal Division of 27 August 1974; letter by Morocco of 8 January 1975; letter by the Director General of 28 February 1975 (announcing acceptance of the ratification and entry into force on 18 February 1975).

The Agreement on the Privileges and Immunities of the Agency, of which the Director General is the depositary, explicitly permits States to make reservations, and a number of reservations have indeed been made[56]. Nevertheless, as reported in Section 28.3.3, the Director General has occasionally delayed acceptance of an instrument containing reservations, with a view to dissuading the State from insisting on them, particularly when these reservations seemed incompatible with Article XV of the Statute.

### 26.5.2b. Amendment of agreements

Though many of the Agency's agreements have been amended, few agreements contain any explicit provisions as to how this is to be done. Normally, amendments were set out in legal instruments that had equal dignity as the original one, and the method of their approval and entry into force corresponded to that of the original instrument[57].

A number of Safeguards Agreements specifically foresee the possibility of amendment. The practice described in the basic book was continued in respect of Safeguards Transfer Agreements. Some of these Agreements provide that, if the Board should amend the Revised Safeguards Document, then the Governments concerned may demand a corresponding amendment in the Safeguards Agreements to which they are Parties[58]. Other Agreements merely require the Agency to react to such a governmental demand by entering into negotiations concerning a possible change[59]. The provision of the NPT Safeguards Document is as follows:

> "Amendment of the Agreement
>
> "23. The Agreement should provide that the parties thereto shall, at the request of either of them, consult each other on amendment of the Agreement. All amendments shall require the agreement of both parties. It might additionally be provided, if convenient to the State, that the agreement of the parties on amendments to Part II of the Agreement could be achieved by recourse to a simplified procedure. The Director General shall promptly inform all Member States of any amendment to the Agreement."

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[56] INFCIRC/9/Rev.2, Section 38; see /Add.2 for the texts of reservations.

[57] For example the Co-operation Agreement between the Agency and the US Department of Agriculture of 2 October 1974, concerning research on biology and control of tsetse flies (IAEA Reg. No. 1113), amended on 5 December 1978 (IAEA Reg. No. 1328). In some instances a bilateral provision incorporated into a trilateral agreement, such as a Supply Agreement, was used to modify a previous bilateral agreement, such as a Project Agreement (e.g. INFCIRC/203/Add.1).

[58] For example INFCIRC/297, Section 32.

[59] For example INFCIRC/298, Section 31.

There is no indication in the Document, or in the proceedings of the Committee which formulated it, what types of 'simplified procedures' were contemplated. Many NPT and Tlatelolco Safeguards Agreements refer to the possibility of amendment[60], but no Agreement specifies any particular procedure to be followed. The normal procedures for amending an NPT Safeguards Agreement would require that (after Board approval had been secured) a text setting out the agreed amendment be signed by both Parties and that the State notify the Agency that all domestic legal requirements for its entry into force had been fulfilled. The primary simplification that appears possible would therefore involve the internal constitutional procedures of the State.

### 26.5.2c. Termination of agreements

Some Agency agreements specify a particular duration[61]; some agreements provide for a term which coincides with that of another agreement (to which the Agency may or may not be a Party)[62]; some agreements provide for termination at the request of any Party[63]; and many agreements have no termination provision at all[64].

Special consideration is given to the termination of Safeguards Agreements, and these are discussed in Section 21.6. The NPT Safeguards Document provides that Agreements concluded pursuant to it are "to remain in force as long as the State is party to the [NPT]" [65]. In this connection it should be recalled that any Party to the NPT may withdraw therefrom by giving three months' notice to the other Parties and to the Security Council, explaining what "extraordinary events, related to the subject matter of this Treaty", "have jeopardized its supreme interests" [66]. A

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[60] For example, the NPT and Tlatelolco Safeguards Agreement with Costa Rica (INFCIRC/278, Article 24(c)) provides that: "Amendment to Part II of this Agreement may, if convenient to Costa Rica, be achieved by recourse to a simplified procedure"; the NPT Safeguards Agreement with Libya (INFCIRC/282, Article 23(c)) provides, even less restrictively but no more usefully, that: "Amendments to this Agreement shall enter into force in the same conditions as entry into force of the Agreement itself or in accordance with a simplified procedure". Finally, the NPT Safeguards Agreement with Indonesia (INFCIRC/283, Article 24(c)) has the same initial clause but omits the last seven words referring to the simplified procedure.

[61] For example the RCA (INFCIRC/167), which in Section 11 specifies a five-year term, which has since been extended.

[62] Safeguards Transfer Agreements normally specify coincidence with the underlying bilateral Co-operation Agreement (e.g. INFCIRC/144, Section 33, which also permits any Party to terminate the Agreement on 6 months' notice to the other Parties). Each NPT Safeguards Agreement is set to terminate with the State's participation in the NPT.

[63] For example INFCIRC/144, Section 33.

[64] For example most Project and Supply Agreements, such as those concluded with Indonesia for the continuation of a Research Reactor Project (INFCIRC/136).

[65] INFCIRC/153, para. 26.

[66] INFCIRC/140, Article X.1.

special situation arose in respect of Viet Nam. The Republic of Viet Nam, after becoming a Party to the NPT, entered into an NPT Safeguards Agreement[67]. After the Socialist Republic of Viet Nam (which succeeded the former Republic of Viet Nam as a Member of the Agency) notified one of the depositaries to the NPT that it did not consider itself bound by the treaties and agreements signed by "the former Saigon administration", this depositary informed the Agency that it had removed this State from the list of Parties to the Treaty. The Agency then considered that the respective Safeguards Agreement had also ceased to be in force[68].

### 26.5.3. Depositary practice

During the period under review, the Agency became the depositary of two more Agreements:

(a) The RCA and Project Agreements concluded pursuant thereto, such as that of 23 May 1980 establishing the Asian Regional Co-operative Project on Food Irradiation;
(b) The Convention on the Physical Protection of Nuclear Material[69].

None of these Agreements states expressly that the Agency or its Director General are to act as depositary, but the assignment of functions makes it clear that they are to act in such a capacity[70].

### 26.5.4. Responsibility within the Secretariat

The assignment of primary responsibility for the performance of the Agency's functions in respect of treaties and other agreements to the Legal Division, as described in the basic book, remained substantially unchanged[71].

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[67] INFCIRC/219.

[68] INFCIRC/274/Rev.1.

[69] The Physical Protection Convention refers repeatedly to a 'depositary', without expressly identifying that institution, except by the provision in Article 23 that the original of the Convention shall be deposited with the IAEA Director General. Article 18(1) provides that the Convention is to be open for signature at the Headquarters of the Agency in Vienna and at the Headquarters of the United Nations in New York. After consultations with the United Nations Legal Counsel, it was decided that this clause would be interpreted as providing for signature at the Agency's Liaison Office in New York instead of considering the United Nations or its Secretary-General as a partial depositary.

[70] AM.V/6.

[71] INFCIRC/12.

## 26.6. REGISTRATION OF AGREEMENTS

### 26.6.1. Registration with the Agency

#### *26.6.1.1. Legal provisions*

There was no change in any of the legal provisions regulating the registration of agreements with the Agency.

#### *26.6.1.2. Implementation*

##### 26.6.1.2.1. Agreements subject to registration

Although there was no change in the Regulations for the Registration of Agreements[72], the Agency started to register agreements with non-Member States, possibly because a number of these are NPT Safeguards Agreements[73] which have been formally approved by the Board, and their omission from the list of registered agreements would not be readily understood[74]. Some agreements with institutions or other private Parties have also been registered[75].

As of May 1979 the Agency discontinued registration with it of agreements relating to Agency courses, seminars, working groups, etc., on the ground that these legal instruments, which constituted about one third of the 1500 agreements so far registered, were of a rather ephemeral character and were often concluded most informally through correspondence[76], and information about them could always be obtained from the Agency's Registry Services.

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[72] For example the NPT Safeguards Agreements with Nepal (INFCIRC/186; IAEA Reg. No. 719) and Swaziland (INFCIRC/227; IAEA Reg. No. 1178). See also the NPT Safeguards Agreements relating to the Netherlands Antilles and Surinam (INFCIRC/229 and /230; IAEA Reg. Nos 1167 and 1168); regarding these Agreements the Netherlands is listed as the contracting Party with the Agency.

[73] The former EPTA Basic Standard Agreements, to which the Agency was a Party, were always registered, even if the State Party thereto was not a Member State (e.g. the EPTA and OPAS Agreements with Somalia, IAEA Reg. Nos 58 and 347). The ostensible reason for doing so was the fact that a number of other United Nations system organizations were also Parties to the same Agreement. Though these Agreements hardly constituted treaties among the organizations, it was still felt that they could be registered under category (b) of the list in this section in the basic book.

[74] For example with the Austrian Gesellschaft für Strahlen- und Umweltforschung (IAEA Reg. Nos 814, 0-1112, 0-1138, 1330).

[75] See IAEA Legal Series No. 3, eighth edition (Vienna, 1981), Part III, p. 213, footnote **. This change was made following the adoption by the United Nations General Assembly of Resolution 33/141A, amending Article 12 of the Regulations to Give Effect to Article 102 of the Charter.

[76] Basic book, Section 26.5.2.6.

26.6.1.2.3. Procedures

The authenticated copies of registered agreements were no longer kept available in the Legal Division of the Agency; only an unauthenticated copy of each agreement was maintained there. For reasons of space and security, the authenticated copies were, after processing, transferred to the Archives Section.

26.6.1.2.4. Publication

The list of Agreements Registered with the International Atomic Energy Agency, first published in 1965, was updated and reissued, in cumulative form, approximately every two years[77]. Over the years this list has been complemented with a number of useful research aids, such as extensive cross-referencing and explanatory footnotes, and tables showing for every State each Agreement (classified under 22 headings) to which it is a Party, and similarly so for each organization or other Party (under six headings).

The inclusion of information about the registration system in the Board's Annual Reports to the General Conference, as required by Article VII of the Regulations for the Registration of Agreements, was discontinued after a period of nominal observance.

## 26.6.2. Registration with the United Nations

No change has taken place in the Agency's practice of registering or filing and recording Agreements with the United Nations.

The United Nations Secretariat has not made use of the possibility (under a 1978 amendment to the Regulations governing the United Nations registration practices[78]) of not publishing in extenso bilateral Agreements between the Agency and States which appear in the Agency's INFCIRC series, such as the NPT Safeguards Agreements, apparently because of their political importance.

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[77] IAEA Legal Series No. 3. The eighth edition (STI/PUB/583) was published in 1981 and contains a definitive list of agreements from 1957 through 1978 and a provisional list (for the most part still without registration numbers) from 1979 through 1980.

[78] UNGA resolution 33/141A.

# Chapter 27

# SETTLEMENT OF DISPUTES

## PRINCIPAL INSTRUMENTS

IAEA Statute, Articles XI.F.6 and XVII;
United Nations Charter, Article 96(2);
United Nations Relationship Agreement (INFCIRC/11, Part I.A, Articles X.1, XVIII.2(d));
Resolution of the United Nations General Assembly authorizing the IAEA to request advisory opinions of the International Court of Justice (UNGA/RES/1146(XII));
NPT Safeguards Document (INFCIRC/153, paras 20–22);
Inspectors Document (GC(V)/INF/39, Annex, para. 14);
Disputes Provisions in Agency Agreements with Member States: Supply Agreement (for example in relation to a Mexican power reactor, INFCIRC/203, Part I, Article VII);
Project Agreement (for example in relation to a Mexican power reactor, INFCIRC/203, II, Article VIII);
Safeguards Transfer Agreement (for example Switzerland/USA, INFCIRC/161, Sections 29 and 30);
Master Agreement for supply of material (for example with Iraq, INFCIRC/195, Article XIII);
NPT Safeguards Agreement (for example with Australia, INFCIRC/217, Sections 20–22);
Headquarters Agreement (INFCIRC/15/Rev.1, Part I, Sections 50 and 51) and related Agreements (INFCIRC/15/Rev.1/Add.1, Parts III, IV, V, VII);
Privileges and Immunities Agreement (INFCIRC/9/Rev.2, Sections 33 and 34);
Optional Protocol to the Vienna Convention on Civil Liability for Nuclear Damage (IAEA Legal Series No. 4);
Convention on the Physical Protection of Nuclear Materials (INFCIRC/274/Rev.1, Article 17);
Provisional Staff Regulations (INFCIRC/6/Rev.4; AM.II/1, Regulations 12.01 and 12.02);
Staff Rules (AM.II/1, Rules 12.01.1, and 12.02.1 and Appendix D, Articles 40–45);
Special Agreement Extending the Jurisdiction of UNAT to IAEA with Respect to Applications of Staff Members of IAEA Alleging Non-observance of the Regulations of UNJSPF (INFCIRC/11/Add.1).

## 27.1. STATUTORY PROVISIONS

In the period under review, no developments occurred and no action was taken by States or by the organs of the Agency which would require updating of the information provided in the basic book.

## 27.2. DISPUTES PROVISIONS IN AGREEMENTS WITH AND BETWEEN MEMBER STATES

### 27.2.1. Reference to the International Court of Justice

#### *27.2.1.1. For decision*

In accepting the Privileges and Immunities Agreement, three more States, namely the German Democratic Republic, Mongolia and Poland, made reservations

regarding Section 34 of the Agreement similar to that of the USSR referred to in the basic book. In addition, Romania made a general reservation regarding the entire section, and Indonesia and Morocco also specified that the submission of disputes to the International Court of Justice (ICJ) required the agreement of the Parties thereto[1].

Article 17 of the Convention on the Physical Protection of Nuclear Materials provides:

> "1. In the event of a dispute between two or more States Parties concerning the interpretation or application of this Convention, such States Parties shall consult with a view to the settlement of the dispute by negotiation, or by any other peaceful means of settling disputes acceptable to all parties to the dispute.
> "2. Any dispute of this character which cannot be settled in the manner prescribed in paragraph 1 shall, at the request of any party to such dispute, be submitted to arbitration or referred to the International Court of Justice for decision. Where a dispute is submitted to arbitration, if, within six months from the date of the request, the parties to the dispute are unable to agree on the organization of the arbitration, a party may request the President of the International Court of Justice or the Secretary-General of the United Nations to appoint one or more arbitrators. In case of conflicting requests by the parties to the dispute, the request to the Secretary-General of the United Nations shall have priority.
> "3. Each State Party may at the time of signature, ratification, acceptance or approval of this Convention or accession thereto declare that it does not consider itself bound by either or both of the dispute settlement procedures provided for in paragraph 2. The other States Parties shall not be bound by a dispute settlement procedure provided for in paragraph 2, with respect to a State Party which has made a reservation to that procedure.
> "4. Any State Party which has made a reservation in accordance with paragraph 3 may at any time withdraw that reservation by notification to the depositary."[2]

Under this provision it would appear that, as between Parties which had not made a reservation in respect of paragraph 2, the Party acting first in respect of a dispute can choose either arbitration or an ICJ proceeding, and the other Parties are bound by this decision. Of the 26 States that signed and the one State that ratified the Convention by 31 December 1980, five States had made reservations in respect of Article 17(2) by that date[3]. Upon signature, Euratom made the following

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[1] INFCIRC/9/Rev.2/Add.3; Section 28.3.3.
[2] INFCIRC/274/Rev.1, Article 17.
[3] France, German Democratic Republic, Hungary, Poland, USSR (INFCIRC/274/Rev.1/Add.1).

declaration in respect of Article 17: "Furthermore, the Community declares that because under Article 34 of the Statute of the International Court of Justice only States may be parties in cases before the Court, it can only be bound by the arbitration procedure set out in Article 17(2)."[4]

*27.2.1.2. For an advisory opinion*

The reluctance of the Agency to rely on the ICJ advisory opinion procedure for the purpose of settling disputes is illustrated by comparing the disputes clauses of the respective Headquarters Seat Agreements concluded by the United Nations and the Agency with the Austrian Government on 19 January 1981[5]. Though the substantive provisions of the two Agreements correspond entirely, the disputes clauses are significantly different: The disputes clause concerning the United Nations consists of a standard three-Party arbitration clause, supplemented (as in the UNIDO Headquarters Agreement) by a provision under which either the Secretary-General or the Government may ask the General Assembly to request an advisory opinion on any legal question arising in the course of an arbitral proceeding, which opinion is to be observed by the Parties and taken into account by the arbitral tribunal. The Agreement concerning the Agency[6] merely incorporates by reference the disputes provision of its Headquarters Agreement, i.e. an arbitration clause. The Agreement between Austria, the United Nations and the Agency regarding the common Headquarters area of the two organizations contains a standard arbitration clause with no provision for an advisory opinion[7].

## 27.2.2. Arbitration

*27.2.2.1. Standard provisions*

As indicated in Section 21.10, NPT Safeguards Agreements are required to include an arbitration clause, basically of the standard forms described in the basic book. The extent to which arbitration clauses in these Agreements deviate from those standard forms is described in the following sections.

Each Revised Supplementary Agreement Concerning the Provision of Technical Assistance by the IAEA contains the following provision:

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[4] INFCIRC/274/Rev.1/Add.1.
[5] Section 28.2.4.7.3.
[6] INFCIRC/15/Rev.1/Add.1, Part III, Article XIII.
[7] INFCIRC/15/Rev.1/Add.1, Part IV, Article II.

"ARTICLE VI

"Settlement of Disputes

"Any dispute concerning the interpretation or application of this Agreement which cannot be settled by negotiation or another agreed mode of settlement shall be submitted to arbitration at the request of either Party to this Agreement. Each Party shall appoint one arbitrator, and the two arbitrators so appointed shall elect a third, who shall be the Chairman. If within thirty days of the request for arbitration either Party has not appointed an arbitrator or within fifteen days of the appointment of the second arbitrator the third arbitrator has not been elected, either Party may request the Secretary General of the United Nations to appoint an arbitrator. The arbitral procedure shall be established by the arbitrators, and the expenses of the arbitration shall be borne by the Parties as assessed by the arbitrators. The arbitral award shall contain a statement of the reasons on which it is based and shall be accepted by the Parties as the final adjudication of the dispute."[8]

27.2.2.1.1. Scope

For the reasons indicated in Section 21.10, the scope of the arbitration clause in NPT Safeguards Agreements excludes certain findings and actions of the Board relating to the possible diversion of nuclear materials. The restriction typically reads as follows:

"Any dispute arising out of the interpretation or application of this Agreement, except a dispute with regard to a finding by the Board under Article 19 or any action taken by the Board pursuant to such a finding, which is not settled by negotiation or another procedure agreed to by ... and the Agency shall, at the request of either, be submitted to an arbitral tribunal ..."[9]

27.2.2.1.2. Constitution of the tribunal

In the NPT Safeguards Agreement concluded with Euratom and its non-nuclear-weapon States, the composition of the arbitral tribunal is specified as follows:

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[8] The standard model text was circulated to Member States by circular letter of 24 April 1979 (see Section 18.1.5.2.1).

[9] INFCIRC/282, Article 22.

> "The Community and the States shall designate two arbitrators and the Agency shall also designate two arbitrators, and the four arbitrators so designated shall elect a fifth, who shall be the Chairman. If, within thirty days of the request for arbitration, the Community and the States, or the Agency, have not designated two arbitrators each, the Community or the Agency may request the President of the International Court of Justice to appoint these arbitrators. The same procedure shall apply if, within thirty days of the designation or appointment of the fourth arbitrator, the fifth arbitrator has not been elected." [10]

In the NPT Safeguards Agreements with certain States, the reference to the United Nations Secretary-General has been substituted for that to the President of the ICJ as the designated appointing authority[11]. As indicated above, the Revised Supplementary Technical Assistance Agreements always refer to the United Nations Secretary-General.

In the trilateral Headquarters Seat Agreement covering the common areas of the VIC, the three-member tribunal is to be constituted as follows:

> "... one to be chosen jointly by the executive heads of the Organizations [the United Nations and the Agency], one to be chosen by the Federal Minister for Foreign Affairs of the Republic of Austria and the third, who shall be chairman of the tribunal, to be chosen by the first two arbitrators. Should the first two arbitrators fail to agree upon the third within six months following the appointment of the first two arbitrators, such third arbitrator shall be chosen by the President of the International Court of Justice at the request of either Organization or the Government." [12]

This arrangement assumes that the two organizations will always be able to agree on a common arbitrator; should this not be the case, the President of the ICJ would not have the competence to make such a designation, since this is not provided for in the Agreement. The same applies if the Austrian Foreign Minister does not appoint an arbitrator. The organization of the arbitration could thus be blocked if the Parties failed to appoint either of the first two arbitrators. This provision therefore suffers from the same defect as the treaties to which the Advisory Opinion of the ICJ in the case of the *Peace Treaties* is related (*ICJ Reports* 1950, pp. 65, 121, 221).

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[10] INFCIRC/193, Article 22.

[11] For example the NPT Safeguards Agreement with Hungary (INFCIRC/174, Article 22).

[12] INFCIRC/15/Rev.1/Add.1, Part IV, Article II. This provision is also incorporated by reference into the exchanges of letters relating to the Common Fund Agreement (see footnote 15 and the related text).

27.2.2.1.3. Operation of the tribunal

In the NPT Safeguards Agreements the arbitral clause does not include any provision concerning the remuneration of the members of a tribunal, but otherwise it contains the usual provisions concerning majority voting, the procedural competence and the binding effect of the judgements of the tribunal[13].

As indicated in Section 27.2.2.1, the disputes clause of the Revised Supplementary Technical Assistance Agreements requires explicitly that arbitral awards contain a statement of the reasons on which they are based.

*27.2.2.2. Variants on the standard provisions*

27.2.2.2.1. Interim decisions

Paragraph 18 of the NPT Safeguards Document requires that certain decisions of the Board be complied with by the State concerned, "without delay, irrespective of whether procedures for the settlement of a dispute have been invoked". These decisions, however, are not the same as those noted in Section 27.2.2.1.1, which are entirely excluded from the scope of the arbitration clause. These interim decisions are designed to ensure that the Agency's verification is not impeded while a disputes procedure is under way.

27.2.2.2.3. Incorporation by reference

The Headquarters Seat Agreement[14] relating to the Agency's permanent Headquarters incorporates by reference the disputes clause of the Headquarters Agreement. The related trilateral Common Fund Agreement[15] incorporates the arbitration provisions of the Headquarters Agreements of UNIDO and the Agency, but it is supplemented by two exchanges of letters[16] between the Austrian Government and the respective organizations, nominally interpreting but in effect modifying these disputes provisions, so as to create separate regimes for trilateral and for bilateral disputes, all expressed by incorporating clauses from other agreements among the Parties.

## 27.2.4. Safeguards tribunal

In the Secretariat's commentary on the very first draft of the NPT Safeguards Document, reference was made to the possibility of establishing a safeguards

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[13] For example INFCIRC/174, 193 or 282, Article 22.

[14] INFCIRC/15/Rev.1/Add.1, Article XIII. Section 28.2.4.7.3.

[15] INFCIRC/15/Rev.1/Add.1, Part V, Article 6. Section 28.2.4.7.4.

[16] For the Agency's letter, see INFCIRC/15/Rev.1/Add.1, Part VII.

tribunal[17], while the United Kingdom tentatively suggested the creation of a 'standing arbitral machinery'[18]. In the Secretariat's paper for the Safeguards Committee (1970) on the "International Responsibility of the Agency in Relation to Safeguards", the possibility of a 'permanent international tribunal' was mentioned, or of a 'commission of enquiry' that could have permanent or ad hoc status[19]. However, none of these suggestions was incorporated in the NPT Safeguards Document.

### 27.2.5. Applicable law

None of the disputes provisions discussed in the basic book and, except as noted here, none of those agreed to since, specify what law is to be applied by the organ charged with settling a dispute relating to the Agency.

Paragraph 17 of the NPT Safeguards Document provides that claims for damages, except those arising out of a nuclear incident, resulting from the implementation of NPT Safeguards "shall be settled in accordance with international law". The origin of this provision may be traced to a note by the Director General on the "International Responsibility of the Agency in Relation to Safeguards", which suggests that Safeguards Agreements "specify the law applicable to the determination of questions relating to the Agency's responsibility, namely, international law"[20].

### 27.2.6. Requirements to include disputes provisions

In addition to Statute Article XI.F.6, which requires the inclusion of disputes provisions in Project Agreements[21], and paragraph 22 of the NPT Safeguards Document, which establishes even more specific requirements in respect of NPT Safeguards Agreements[22], several other instruments require or foresee the inclusion of such provisions in certain types of agreements:

(a) The RCA requires that subsidiary agreements relating to co-operative projects "provide for the settlement of disputes"[23].

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[17] GOV/COM.22/3, Part I, para. 11, Comment A.
[18] GOV/COM.22/2, Part 12, para. 9, extracted in GOV/COM.22/6, Part C, para. 11.
[19] GOV/COM.22/27, para. 31(a) and (c).
[20] GOV/COM.22/27, para. 34(c).
[21] Basic book, Section 27.1.3.
[22] Section 21.10.
[23] INFCIRC/167, Section 5(iv).

(b) The Guidelines for the International Observation by the Agency of Nuclear Explosions for Peaceful Purposes foresee that Observation Agreements concluded in implementation of the Guidelines will contain "an appropriate disputes clause" [24].

## 27.3. DISPUTES WITH PRIVATE PERSONS

Article XI of the Headquarters Seat Agreement, signed on 19 January 1981, provides:

> "Whenever the Agency has concluded an insurance contract to cover its liability for damages arising from the use of the Headquarters area and suffered by juridical or physical persons who are not officials of the Agency, any claim concerning the Agency's liability for such damages may be brought directly against the insurer before Austrian courts, and the insurance contract shall so provide." [25]

Austrian insurance law provides that legal actions may, in certain instances, be instituted directly against the insurance company. Article XI ensures that this will be the case if claims are made against the Agency, thus dispensing with the requirement to consider a waiver of the Agency's immunity.

### 27.3.1. Research and other contracts

The practice described in the basic book has not changed substantially.

### 27.3.2. Disputes with staff members and technical co-operation experts

The provisions and practice with regard to staff members reported in the basic book have not changed. Since technical co-operation experts are no longer considered staff members it has become necessary to create new provisions or to extend the existing provisions to deal with disputes between them and the Agency.

#### *27.3.2.1. Joint Appeals Committee or ad hoc machinery*

Rule 212.1 of the Service Rules Governing the Conditions of Service for Technical Co-operation Experts[26] provides as follows:

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[24] INFCIRC/169, para. 31.

[25] INFCIRC/15/Rev.1/Add.1, Part III, Article XI.

[26] Unnumbered IAEA document, dated January 1978, and partially revised on 1 July 1979, 1 January 1980 and 1 November 1980.

"Rule 212.1 — Appeals

"In case of any appeal against an administrative decision alleging the non-observance of terms of appointment, including all pertinent Regulations and Rules, or against disciplinary action the Director General shall establish, on an ad hoc basis, administrative machinery to advise him."

Thus, technical co-operation experts may not appeal to the Joint Appeals Committee established for the regular staff of the Agency pursuant to Staff Rule 12.01.1 unless the Director General designates the Committee on an ad hoc basis to hear such an appeal.

*27.3.2.2. Administrative Tribunal of the ILO*

Rule 212.2 of the Service Rules Governing the Conditions of Service for Technical Co-operation Experts[26] allows these experts to appeal, like other Agency staff members, to the ILO Administrative Tribunal (ILOAT) against administrative decisions and disciplinary actions. In the light of Rule 212.1 referred to above, there is no requirement of prior reference to the Joint Appeals Committee. However, pursuant to Article VII.1 of the ILOAT Statute, the expert would have to attempt to resort to the ad hoc machinery provided for in that Rule.

Under the revised financial arrangements agreed to between the ILO and the 18 other intergovernmental organizations that have submitted to its Administrative Tribunal, defendant organizations are, as of 1977, charged approximately US $800 for each case brought against them (principally to cover the honoraria of the judges), plus a share of some of the administrative expenses of the Tribunal, which are to be divided among the organizations in proportion to the number of their staff members eligible to appeal to the Tribunal. For 1979 this share amounted to some Sw F7000 for the Agency (5.3% of the total, on the basis of 1537 officials). No charges are levied on applicants, whether their appeal is successful or not.

*27.3.2.4. Advisory Board on Compensation Claims*

Under Rule 208.5(a) of the Service Rules Governing the Conditions of Service for Technical Co-operation Experts[26], short-term experts are compensated for service incurred injuries under a scheme that does not involve the Advisory Board on Compensation Claims (ABCC); however, according to Rule 208.5(b), intermediate-term experts are compensated in accordance with Appendix D to the Service Rules, which is substantially identical with Appendix D to the Staff Rules and provides for the same competence of the ABCC.

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[26] Unnumbered IAEA document, dated January 1978, and partially revised on 1 July 1979, 1 January 1980 and 1 November 1980.

## 27.4. PRACTICE

No dispute with or among States or with contractors arose during the period covered by this book and none was referred to a procedure for settlement of disputes.

### 27.4.3. Disputes involving staff members

A number of cases were referred to the Joint Appeals Committee during the period covered by this book. The Committee has functioned as provided for in Staff Rule 12.01.1 and, unlike in the United Nations, no particular complaints about it have been voiced by the staff or its representatives.

Five cases relating to the Agency were decided by the ILOAT during the period under review. In three of these cases the Agency prevailed, in two cases the applicant staff member prevailed. The ILOAT decided as follows:

*Case (1)*

The Agency was not required under Annex I[27] to the Staff Regulations and Rules to pay a termination indemnity to a staff member who, on retirement at age 62 (after having served two years beyond the normal retirement age), was eligible to receive a reduced but permanent pension from the Austrian Pension Scheme to which the Agency had made the employer's contributions on his behalf[28]. On a preliminary procedural point, the ILOAT refused to dismiss the case, which had first been filed mistakenly with UNAT, as having been filed out of time with itself, on the ground that the applicant could reasonably have been confused as to which of the two tribunals to address in respect of this matter, especially as the disputed decision had not indicated what means of appeal were available[29].

*Case (2)*

The request of a staff member to the Agency to arrange for participation in the Austrian Pension Scheme[30] had formally been refused many years before his retirement. Upon retirement, he attempted to sue the Agency in the Vienna Labour Court but lost there because of the Agency's immunity[31]. He could not appeal

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[27] The Tribunal referred to para. 3(g) of Annex I, which has now been replaced by para. (e)(vi) of the same Annex.

[28] Section 24.5.3.

[29] *Kotva versus IAEA*, ILOAT Judgement No. 180, summarized in 1971 UN Juridical Y.B., p. 178.

[30] Section 24.5.3.

[31] An official request for a waiver was addressed to the Agency by the Austrian Foreign Ministry on 27 May 1971 (Z1.24.377-Prot/71), which the Agency declined on 11 June 1971 in a note verbale explaining the means of appeal (including ILOAT) available to staff members desiring to challenge administrative decisions.

to the ILOAT because the latter did not have competence to hear appeals against judgements of Austrian courts, and the Director General's earlier decision was at that stage no longer appealable[32].

*Case (3)*

In respect of a new appeal directed against both the IAEA and the FAO by the applicant in the fourth case referred to in the basic book, the various allegations concerning the Agency and related to that earlier appeal were found irrelevant to the new appeal, and therefore he could not prevail against the Agency (or, on other grounds, against the FAO)[33].

*Case (4)*

When a staff member had been granted a series of fixed-term appointments whose cumulative length was four years, eleven months and eighteen days, and thus was thirteen days less than the period for which he would have been entitled to a vested UNJSPF pension, the Agency, even though it had not violated any contractual right or legitimate expectation of the applicant and had not misused its authority, nevertheless had to grant an extension of at least thirteen days, since failing to do so would cause great harm to the staff member while doing so would cause no demonstrable harm to the Agency[34,35].

*Case (5)*

When the Agency, before implementing a tentative decision to extend for five years a safeguards inspector's appointment[36], consulted his Government and, on being informed that the latter, without stating a reason, did not desire the extension, extended the appointment for only eight months, it had thereby misused its authority

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[32] *Jakesch versus IAEA,* ILOAT Judgement No. 187, summarized in 1972 UN Juridical Y.B., p. 141.

[33] *Silow versus IAEA and FAO,* ILOAT Judgement No. 204, summarized in 1973 UN Juridical Y.B., p. 116. This was only one of a series of appeals that the same applicant had filed, the first of which was the one referred to in the basic book (ILOAT Judgement No. 142, cited in note 127); somewhat later he sued FAO on partly similar or related grounds, and lost (ILOAT Judgement No. 151). His next suit was against ILO, to require it to cause its Tribunal to reverse the earlier judgements in favour of the Agency and the FAO, which the Tribunal refused to consider on the ground that the applicant had never been an ILO staff member (and thus could not appeal against ILO) and that the earlier judgements were not appealable (ILOAT Judgement No. 171). Following the appeal referred to in the text, the applicant filed two more appeals against FAO, which the Tribunal dismissed in summary proceedings (ILOAT Judgements Nos 205 and 206).

[34] *Meyer versus IAEA,* ILOAT Judgement No. 245, summarized in 1974 UN Juridical Y.B., p. 136.

[35] However, it should be noted that, at that time, if a Pension Fund participant withdrew with less than five years of contributory service, the employing organization received a refund of one half of the 14% contribution it had made on his behalf.

[36] According to the Agency's stated policy relating to inspectors (basic book, Section 24.6.4, end of first paragraph).

by automatically subordinating its own decision to retain the staff member to a Member State's unexplained request against such retention. Though the ILOAT did not order the reinstatement of the applicant or full compensation for the period of the lost appointment, it awarded compensation for damages incurred at an amount of US $50 000, plus costs[37].

### 27.4.4. Disputes in national courts

The Agency has never agreed to the submission of any dispute to a national court, either with respect to some future controversies or with reference to any current matter. In one suit brought against the Agency by a former staff member before the Vienna Labour Court, the Agency's immunity from suit was recognized[38]. It should, however, be noted that under Article XI of the Headquarters Seat Agreement quoted in Section 27.3, the Agency will have to agree to have its liability for accidents arising from the use of the Headquarters area litigated by insurance companies covering the liability for such accidents. This provision does not, however, require a waiver of the Agency's immunity.

Again, there were several suits in Austrian courts in which staff members litigated certain questions relating to the Headquarters Agreement:

(a) A staff member with diplomatic status had his immunity upheld. In a civil suit by his landlord, the court held that, since the plaintiff had not sought to have the immunity waived, the question of the Agency's duty to do so did not arise[39].

(b) As described in Section 28.2.6, the Agency financed the unsuccessful conduct of one suit challenging the applicability of the real estate acquisition tax to Agency officials with diplomatic status.

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[37] *Rosescu versus IAEA*, ILOAT Judgement No. 431, summarized in 1980 UN Juridical Y.B., p. 175.

[38] The court proceeding is mentioned in para. D of the ILOAT Judgement referred to in footnote 32.

[39] *Melanie Höfer versus Arthur Walligura*, Judgement of 9 October 1969 by the Bezirksgericht Wien für Zivilrechtssachen, summarized in 1969 UN Juridical Y.B., p. 235. On 19 February 1970, the Austrian Foreign Ministry formally requested that the defendant be induced to settle his dispute with the plaintiff, or that his immunity be waived (Z1.70.412-VR/70); the Agency answered on 13 April 1970 that, while the Director General would be prepared to waive the immunity of the staff member if such a step were requested pursuant to Section 40 of the Headquarters Agreement, he understood that negotiations were still proceeding between the Parties. The case was settled out of court.

# Chapter 28

# PRIVILEGES AND IMMUNITIES

## PRINCIPAL INSTRUMENTS

IAEA Statute, Article XV and Annex I, para. C.6;
Headquarters Agreement with Austria, and the supplemental agreements thereto (INFCIRC/15/Rev.1 and /Add.1);
Agreement on the Privileges and Immunities of the IAEA (INFCIRC/9/Rev.2 and /Add.3);
NPT Safeguards Document (INFCIRC/153, para. 10);
Inspectors Document (GC(V)INF/39, Annex, paras 13 and 14);
International Organizations Immunities Act of the USA (59 Stat. 669 (1945) and Executive Order No. 10727 (22 F.R. 7099 (1957));
Agreement with Italy for the Establishment of an International Centre for Theoretical Physics at Trieste (INFCIRC/114, Article III);
Monaco Laboratory Agreement (INFCIRC/129/Rev.1, Article 11);
Guidelines for the International Observation of Nuclear Explosions (INFCIRC/169, para. 30);
Project and Supply Agreements (e.g. Master Agreement with Iraq for the Supply of Materials, INFCIRC/195, Article X);
Safeguards Agreements (e.g. Canada NPT Safeguards Agreement, INFCIRC/164, Article 10);
Costa Rica NPT and Tlatelolco Safeguards Agreement (INFCIRC/278, Article 10);
Sweden/USA Safeguards Transfer Agreement (INFCIRC/165) Section 25;
Argentina Embalse Safeguards Agreement (INFCIRC/224) Section 20;
Technical Assistance Agreements (e.g. the Revised Standard Agreement with Thailand, TAB/R.251/Add.44, Article V.1);
Provisional Staff Regulations (INFCIRC/6/Rev.4; AM.II/1, 1.10);
Headquarters Regulations (AM.I/11);
Commissary Regulations (AM.VIII/11, Annex I);
Explanatory summary "Privileges and Immunities of the Staff" (AM.II/10).

## 28.1. STATUTORY PROVISIONS

There were no developments that would require amendment or additions to the information given in the basic book.

## 28.2. THE HEADQUARTERS AGREEMENTS

### 28.2.2. Negotiation of the Headquarters Agreement

The Agreement Amending the Headquarters Agreement with Austria[1], referred to at the end of this section in the basic book, was signed on 4 June 1970

[1] The text of the Amending Agreement is set out in INFCIRC/15/Mod.2; the Headquarters Agreement, as amended, is set out in INFCIRC/15/Rev.1, Part I.

and entered into force on 1 October 1971 by an exchange of notes on that date, certifying that all Austrian constitutional requirements had been complied with. Neither the Board nor the General Conference took any action on that Agreement.

### 28.2.3. Provisions of the Headquarters Agreement

The Headquarters Agreement was modified by the provisions of the 'Amending Agreement' discussed in Section 28.2.2 in the basic book.

### 28.2.4. Supplemental Agreements

During the period covered by the present book, a number of supplemental agreements to the Headquarters Agreement were partially or completely renegotiated. However, no supplemental agreement was concluded on any subject that is not already covered by such an agreement mentioned in the basic book, except for the arrangements relating to the permanent Headquarters of the Agency. Save as indicated below, none of these agreements was submitted to the Board.

#### *28.2.4.1. Currency exchange facilities*

The Supplemental Agreement on Currency Exchange Facilities has not been changed[2].

#### *28.2.4.2. Temporary Headquarters seat*

During the period of construction of the VIC, which was to become the Agency's new Headquarters, the Agency's staff and its space requirements continued to increase. Since it proved impractical and too expensive to expand the premises of the New Grand Hotel by adding two additional floors[3], the Government, in compliance with another provision of the Temporary Headquarters Seat Supplemental Agreement[4], provided a number of additional premises. Before the move to the VIC the Agency was thus occupying space in the Kärntnerstrasse (the New and Old Grand Hotels), the Hofburg, the Mahlerstrasse, the Annagasse, the Traungasse, the Wasagasse, the Berggasse and the Rennweg[5]. Except for the New Grand Hotel,

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[2] The text of the Supplemental Agreement is set out in INFCIRC/15/Rev.1, Part II.

[3] See the Temporary Headquarters Seat Supplemental Agreement (INFCIRC/15/Rev.1, Part III), Art. XII.

[4] Ibid., Art. XIII. As noted in the basic book (see note 78 to Chapter 28) the Austrian Government subsequently made another pledge to provide additional facilities free of charge until the VIC was completed (GOV/INF/174/Add.1, para. 16).

[5] The size of the Agency's premises in six buildings, about 18 months before the move, is mentioned in GOV/INF/343, para. 8. The total number of premises which the Agency actually occupied before the move to the VIC is given in the Circular on Timetable for the Move to VIC (SEC/NOT/663).

which was the subject of the original Temporary Headquarters Seat Supplemental Agreement, none of the other premises were covered by such an agreement concluded under Section 3 of the Headquarters Agreement.

The Supplemental Agreement covering the New Grand Hotel appears to have lapsed, by mutual agreement, as soon as the Agency vacated that building in October 1979 by transferring its operations to the VIC, although no formal action was taken to terminate the Agreement[6].

### *28.2.4.3. Turnover taxes*

After Austria adopted (with effect from 1 January 1973) a Value Added Tax (VAT) system to replace its former turnover tax system, steps were taken to replace the former Supplemental Agreement on Turnover Taxes (as amended) by a new agreement. After extensive negotiations the new Supplemental Agreement was concluded by an exchange of letters on 22 January 1975 and entered into force on 1 February 1975, but with retroactive effect from 1 January 1973[7].

Under the new Supplemental Agreement, the Agency is reimbursed for the value added taxes it has paid, on the basis of lists of goods delivered and services rendered (including rentals) during successive six-month reporting periods. The former provision concerning running accounts was omitted, but the minimum limit on transactions for which reimbursement can be claimed was lowered drastically from AS 20 000 (about US $800 when negotiated) to AS 1000 (about US $50 when negotiated). In respect of goods purchased for sale in the Commissary, tobacco products were added to the list of goods on which taxes are reimbursed[8].

### *28.2.4.4. Commissary*

The Supplemental Agreement on the Establishment of an Agency Commissary, which had originally entered into force for an experimental period of one year and which had been explicitly extended twice (until 31 December 1961 and 31 December 1964), and later continued to remain in force by mutual understanding, was thoroughly amended on the basis of negotiations conducted in parallel with those for the establishment of a UNIDO Commissary. The revised Supplemental Agreement[9]

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[6] The Agency apparently did not give the formal six-months written notice provided for in Article XI of the Supplemental Agreement.

[7] INFCIRC/15/Rev.1, Part VI; on that date the Austrian VAT system was introduced.

[8] For the corresponding provisions regarding the reimbursement of value added taxes by Belgium, see the circular of the Belgian Ministry of Finance referred to in Section 28.3.6.1, para. (a); for the provisions regarding the United Kingdom, see the Supplemental Agreement referred to in Section 28.3.6.2.

[9] INFCIRC/15/Rev.1, Part IV.

extends and makes more explicit the list of persons who have access to the Commissary, extends the list of items that it may carry, and limits more precisely the purchase rights of Agency officials of Austrian nationality and of those Agency officials who do not have diplomatic status.

As reported in Section 24.13.1, the Agency was implementing this Supplemental Agreement by operating the VIC Commissary established under that Agreement, as well as the substantially similar one between UNIDO and Austria.

*28.2.4.5. Social Security*

The two Supplemental Agreements Concerning Social Insurance of Officials of the Agency and Concerning the Regulation of Pension Insurance for Officials of the Agency (as amended) were both superseded by the comprehensive Supplemental Agreement Concerning Social Security for Officials of the IAEA[10], which was signed on 7 August 1973 and entered into force on 1 July 1974, sixty days after an exchange of notes between the Austrian Government and the Agency. The substantive provisions of the new Agreement are discussed in Section 24.5.3.

*28.2.4.6. Definition of Agency officials*

The 1964/1965 exchange of letters extending the definition of Agency officials was not incorporated into the "Amending Agreement" and thus is still in force as a separate legal instrument modifying the Headquarters Agreement[11].

*28.2.4.7. Permanent Headquarters seat*

The penultimate paragraph of Section 28.2.4.2 in the basic book mentions the offer of a permanent Headquarters seat by the Austrian Government and its tentative acceptance (subject to further negotiations) by the Board[12].

The arrangements for the construction of the VIC, which was initially planned to become the permanent Headquarters of the Agency and of UNIDO and later also became the seat of a number of other United Nations organs, continued throughout the 1970s. An international architectural competition, organized by the Government,

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[10] INFCIRC/15/Rev.1, Part V.

[11] See INFCIRC/15/Rev.1, Part I, footnote 3.

[12] GOV/DEC/49(X), No.(57). The Austrian offer of a permanent Headquarters seat had only been announced in an oral statement in the Board (GOV/OR.380, para. 102 (21 February 1967)), but later it was described in greater detail (GOV/INF/174 and /Add.1). Initial consideration of this offer took place at a meeting of the Board's Committee to Advise the Director General on Permanent Headquarters, which had been established in the very first days of the Board and was briefly reactivated for this purpose (GOV/COM.2/6; GOV/COM.2/OR.2); later, this offer was discussed in the Board itself (GOV/1215; GOV/OR.380, paras 68–93; /OR.381, paras 1–21).

resulted in the submission of some 280 designs, of which, in a first phase in July 1970, four designs were selected as the best ones; prizes were also awarded to five further competitors[13]. After the Agency and UNIDO had called the attention of the Austrian authorities to the understanding that the organizations would be consulted in the final selection, the report of the jury that had made the initial awards was formally transmitted to the organizations with a request for their comments. The Agency and UNIDO responded with a joint report on 10 September 1970, proposing certain improvements to the four leading projects. Thereupon, the Austrian authorities requested the organizations to prepare a list of modifications that would render acceptable the project submitted by Mr. Johann Staber of Austria (the fourth place finisher of the 'best' designs). After agreement on these modifications had been reached between the organizations and an Interministerial Committee of the Government, the latter selected the Staber project on 18 December 1970[14]. The Agency and UNIDO then appointed liaison officers as well as a Joint Liaison Officer for the areas of joint and common interest (including the proposed Conference Centre) as their spokesmen vis-à-vis the Austrian authorities[15].

The planning for the construction as well as the technical installations and equipment of the VIC and later for its occupation was complicated by several changes in the estimates made by the two organizations, and especially by the Agency, regarding their space needs during the coming decade. At the time of the Austrian offer in 1967 the Agency had a staff of 850, and it was estimated that this figure would rise to 1200 within a decade. By 1969, after the United Nations General Assembly had approved the Non-Proliferation Treaty, the estimated figure was 1900. However, by 1972 it was clear that the Agency was actually expanding more slowly than had been expected, and the expansion rate had dropped even further by 1976. Late in 1977 new projections were made, taking into account the growth of the Agency's safeguards, technical assistance, nuclear safety, environmental protection and information activities, many of which were being financed from previously

[13] SEC/NOT/183. These awards were made by an international jury of architects appointed by the Austrian Government.

[14] GOV/INF/232/Add.1; GOV/OR.435, paras 56–57; GC(XV)/455, para. 140. The competition took place in two separate stages. Despite this, the first-stage winner asserted, even before a decision had been taken in the second stage, that his design should have been automatically selected on the basis of the award by the international jury. The second-stage decision was made by an Austrian committee composed of senior cabinet ministers, presided over by the Federal Chancellor. Several years later an Austrian parliamentary commission investigated the circumstances of the award.

[15] SEC/NOT/233. The Joint Liaison Officer, Dr. Emanual Treu, had previously been the Austrian representative in the consultations leading to the selection of the Staber project. When an Austrian parliamentary commission later summoned him to the parliamentary hearings mentioned in footnote 14, the question arose whether the international organizations, in whose employment he then was, should waive his immunity; they decided to do so for those activities which he had performed as an Austrian official.

unavailable extrabudgetary resources[16]. These changes in estimates were initially reflected in changes in the design requirements of the VIC (finally, the size of the project was fixed at about twice that offered by the Austrian Government, but it was still somewhat short of the maximum projection of the international organizations). Later, as the actual buildings took shape, it was still uncertain what portion of these buildings the Agency would occupy[17]. Originally, two out of the six office towers were reserved for the Agency plus, for joint activities, somewhat less than half of two other towers and of the Conference Building. By the mid-1970s the Agency had, with the agreement of the Austrian authorities, offered one of its towers to the United Nations for temporary occupancy[18]. The latter accepted this offer[19], and a major effort was made by the United Nations to select units that might be transferred from New York or Geneva to Vienna. However, on the basis of the 1977 projections, the Agency pointed out that it was interested in taking immediate possession of both of its towers, and the agreements described below were thus concluded on this basis.

The basic arrangements concerning the ownership and operation of the VIC are relatively simple. The Centre was constructed by a company established by the Austrian Government and the City of Vienna[20], in consultation with the Agency and the United Nations (principally UNIDO), and the Government rented it to the organizations for 99 years, for a symbolic annual rental of AS 1 each. Fixed installations (such as the heating and air conditioning plant, elevators, telephone exchanges, mail and document conveyance systems and permanent wiring) were provided by the Government, while other equipment and furniture (such as that for simultaneous interpretation, the Restaurant, the Joint Medical Unit and the Library, and particularly that for offices) had to be provided by the organizations[21]. Moreover, the occupancy by the two organizations and by various United Nations units of both the separate and the joint areas of the VIC required the solution of a number of problems and questions, including the following, which proved to be especially difficult or controversial:

(a) Which activities could be carried out jointly by the two principal tenant organizations, and the mechanisms for such joint operation[22];

(b) The delimitation of the areas to be occupied separately by each organization and of those to be occupied jointly by the organizations[23];

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[16] See the summary of the estimates given in GOV/INF/343, paras 1 and 3–5.

[17] Ibid., para. 3.

[18] See the 1973 letter from the Director General to the United Nations Secretary-General.

[19] UNGA/RES/3529(XXX), preamble; UNGA/RES/31/194, para. 1.

[20] The "Internationale Amtssitz und Konferenzzentrum Wien, A.G. (IAKW)", a company established especially for this purpose.

[21] GOV/INF/307, para. 10.

[22] Section 12.2.

[23] Section 28.2.4.7.2.

(c) The question of whether, and under what conditions, the organizations could sublet part of their premises to other entities, such as Missions of Member States[24], other intergovernmental organizations[25] and commercial enterprises serving the organizations or their staffs[26];
(d) The conditions under which the organizations could carry out alterations;
(e) Liability for accidents within the VIC[27];
(f) How to reduce and how to distribute the very high operating costs of the VIC; these costs resulted in part from its design features, the generous space allocation and the initial low rate of occupancy[28];
(g) The allocation of the costs of various elements of maintenance[29];
(h) The responsibility of the Austrian Government for providing ancillary infrastructures, such as the transportation network leading to the VIC[30] and to the planned Austrian International Conference Centre[31].

The solution of these problems required extensive negotiations and the conclusion of a series of agreements, which are described in the following sections.

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[24] This was proposed in the Administrative and Budgetary Committee (GOV/COM.9/OR.132, para. 74; GOV/INF/343, para. 20). No further consideration appears to have been given to this proposal.

[25] Section 28.2.4.7.3, para. (b).

[26] Ibid., para. (c).

[27] Ibid., para. (h).

[28] The initial Austrian offer had strongly suggested that the operating costs of the VIC would be lower because of the modern design of the building and because the formerly scattered premises were now on a single site (GOV/1215, para. 10). Only after the construction of the VIC was substantially advanced was it realized that the operating costs would be substantially higher than those incurred by the Agency and UNIDO at their temporary Headquarters (GOV/COM.9/OR./25, paras 7 and 8; GOV/INF/307, paras 14–15). From then on, this matter gave rise to considerable debate and ineffective attempts at mitigation (e.g. GOV/COM.9/OR./32, paras 62–82).

[29] Section 28.2.4.7.3, para. (e), and Section 28.2.4.7.4. The Austrian position was set out in the letter of 20 September 1978 from the Federal Chancellor (reproduced in GOV/INF/360, para. 12). The Board considered this question intensively (see GOV/INF/360, paras 7–17; GOV/OR.538, paras 4–50; GOV/1965; GOV/OR.542, paras 3–28; GOV/DEC/106(XXIII), No.7; GOV/1992; GOV/OR.549, paras 49–85; GOV/OR.555, paras 83–102; GOV/2006 and /Add.1; GOV/OR.557, paras 18–21; GOV/OR.558, paras 1–58); the principal preoccupations were to keep the organizations', and particularly the Agency's, share of these costs as low as possible and to avoid the possibility of unpredictably large expenses.

[30] See the initial offer (GOV/INF/174/Add.1, paras 8–10). The VIC was completed more than half a decade later than the very first estimates were made (1972). The completion of the transportation network was delayed even longer. Part of the reason for the delay was the collapse, in 1976, of the bridge across the Danube near the VIC (the 'Reichsbrücke'), the principal existing route to the Centre.

[31] See the initial offer (GOV/INF/174/Add.1, paras 21–22). Later, the Government said that the Conference Centre had not actually been part of the offer to the Agency and UNIDO because the Conference Centre would be purely an Austrian project (GOV/COM.9/OR.125, paras 8 and 12). The Cabinet's decision to proceed with the Conference Centre was finally taken in May 1980, and work started later that year.

28.2.4.7.1. Common Services Agreement

This Agreement, the development and provisions of which are described in Section 12.2, was concluded on 31 March 1977 between the United Nations, UNIDO and the Agency[32]. It specifies particular services to be operated by one of these organizations on behalf of the others and how each such 'common' service is to operate. Though Austria is not a Party to this Agreement, it has at least indirect significance with regard to the agreements relating to the VIC because most of the common services are carried out in those parts of the VIC which are jointly used by the Agency and the United Nations/UNIDO.

28.2.4.7.2. Headquarters areas

The VIC was formally handed over to the United Nations and the Agency on 23 August 1979. During the subsequent months, UNIDO and the Agency moved their staffs, furnishings and operations from their former temporary premises in Vienna to their new permanent Headquarters, and various United Nations units were moved in from other cities. These transfers were largely completed by November 1979.

At the time of the formal transfer of occupancy, no agreement had yet been concluded between Austria and the international organizations concerning the terms of their occupancy of the VIC. However, the negotiations that had been held some time earlier demonstrated that complete agreement could not be reached rapidly. Consequently, at the request of the Government, the following three Supplemental Agreements were concluded for the sole purpose of defining, within the meaning of Section 3 of the respective Headquarters Agreements with the Agency and UNIDO, the several Headquarters areas within the VIC complex:

(a) The Agreement between the Austrian Government and the Agency (dated 20 September 1979), defining as Agency Headquarters area Towers A and B within the VIC;
(b) The Agreement between the Austrian Government and the United Nations (dated 28 September 1979), defining as United Nations/UNIDO Headquarters area Towers D and E within the VIC;

[32] Originally, UNIDO was a subsidiary organ of the United Nations, without independent legal personality. Negotiations were started in 1975 for an intergovernmental treaty under which UNIDO would be reconstituted as a specialized agency of the United Nations; the Constitution of UNIDO was finally agreed to in April 1979. Pending its entry into force, UNIDO was granted considerable administrative autonomy. Consequently, it was decided that in the interorganizational arrangements UNIDO should appear as a separate Party. In agreements with the Government of Austria, either the United Nations or UNIDO appears as the Party, taking into account that the United Nations is the parent organization but that the non-UNIDO operations of the United Nations are, in sum, much less extensive than those of UNIDO and that the former are all covered in Austria by the UNIDO Headquarters Agreement.

(c) The Agreement between the Austrian Government, the Agency and the United Nations (dated 28 September 1979), defining as common area for the organizations, and accordingly subject to both the Agency and the UNIDO Headquarters Agreements, the rest of the VIC complex, in particular Towers F and G, the Conference Building Tower (C), and the garage and the landscaped areas.

28.2.4.7.3. Headquarters seats

After prolonged negotiations among the Austrian Government, the United Nations, UNIDO and the Agency, three substantially identical Supplemental Headquarters Seat Agreements to the United Nations/UNIDO and Agency Headquarters Agreements were concluded, relating respectively to the three Headquarters areas mentioned above. The two Supplemental Headquarters Seat Agreements dealing with the separate areas of the organizations are substantially identical, and the Supplemental Agreement concerning the common areas merely incorporates by reference the provisions of the other two Agreements.

The principal provisions of the three Supplemental Headquarters Seat Agreements[33] are the following:

(a) The Austrian Government leases to the organization(s) the respective Headquarters areas for a period of 99 years from 1 October 1979, for a rental of AS 1 per annum each.
(b) The organizations may, "after consultation with the Government", make available space in their Headquarters areas to international governmental and non-governmental organizations for purposes connected with the activities of the Agency/United Nations.
(c) The organizations may let space in their Headquarters areas to any physical or juridical person providing services to the organizations or their staffs, if this is acceptable to the organizations and the Government, on condition that the rent charged is based on commercially prevailing rates and is transferred to the Government, except to the extent that it represents maintenance and operating costs.
(d) The organizations may carry out alterations to the building or to facilities at their own expense and without the right to reimbursement; however, for any alteration that may result in a structural change or in a change of the architectural appearance the consent of the Government is required.

[33] INFCIRC/15/Rev.1/Add.1.

(e) From 1 October 1979 onwards, the organizations are responsible for the orderly operation and adequate maintenance of the buildings and facilities, including minor repairs and replacements. Repairs and replacements necessitated by force majeur or by faulty construction are the responsibility of the Government. The arrangements for financing the cost of major repairs and replacements are to be regulated by a separate agreement[34].

(f) The organizations are to make arrangements for the entry of persons authorized by the Government to inspect the buildings and facilities.

(g) The security services of the organizations and of the Government are to cooperate closely and the organizations are required to consult the Government in the preparation of their security regulations and procedures.

(h) The third party liability insurance policies secured by the international organizations must provide that suits may be brought directly against the insurer before Austrian courts for claims against the organizations[35].

28.2.4.7.4. Major repairs and replacements

With respect to the financing of major repairs and replacements at the VIC, each of the Headquarters Seat Agreements foresees the conclusion of a special agreement. Such an agreement was concluded in the form of a single tripartite Agreement between the United Nations, the Agency and the Austrian Government, i.e. the Agreement Regarding the Establishment and Administration of a Common Fund for Financing Major Repairs and Replacements at the VIC[36]. Because of its potentially major financial implications the Agreement was the subject of extensive negotiations over a period of about two years. A tripartite Joint Committee was established which was to determine what repairs or replacements are 'major' within the meaning of the Headquarters Seat Agreements and how these should be carried out. The cost of such repairs was to be shared equally by the three Parties, subject to an annual limit of US $225 000 for each organization. To facilitate budgeting, a Common Fund was to be built up, with contributions from each Party at a rate of US $33 333 per annum. The annual ceiling on the contributions of the organizations was to be reviewed at five-year intervals and the arrangements concerning the Fund itself were to be reviewed after ten years (when an amount of US $1 000 000 would be reached).

Under the Common Fund Agreement the 'main elements' of the buildings, facilities and installations to which that Agreement applies are to be entered in a provisional list, which is subject to change from time to time[37]. This Provisional

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[34] In respect of the separate agreement, see Section 28.2.4.7.4.

[35] See Section 27.4.4.

[36] The draft of the tripartite Agreement is set out in GOV/2006, Appendix II; the text of the signed legal instrument appears in INFCIRC/15/Rev.1/Add.1.

[37] Ibid., Article 2(2).

List, in the establishment of which all Parties to the Agreement secured extensive advice from outside experts, constitutes the subject of a Protocol to the Common Fund Agreement[38]. No accord could be reached between the organizations and the Government about whether the carpeting and window blinds should be included in the List; accordingly, it was agreed that the organizations would address a letter to the Government stating their views on this matter[39].

The three Supplemental Headquarters Seat Agreements, the Common Fund Agreement, the Protocol thereto and the connected letter were all signed on 19 January 1981, after the Board had approved those relating to the Agency[40]. The Common Fund Agreement and the instruments relating thereto entered into force as of 1 January 1981. The Supplemental Headquarters Seat Agreements entered into force on the first day of the third month following governmental notification to the organizations that the necessary constitutional requirements for entry into force had been fulfilled, i.e. on 1 October 1981.

### 28.2.5. Administrative arrangements and internal regulations

No Headquarters Regulations in addition to those under Nos 1 and 2[41] have been issued, nor have these Regulations been changed. However, several months after the Board had adopted them the Austrian Foreign Ministry informed the Agency that it considered Regulation No. 1 to be compatible with Section 8(a) of the Headquarters Agreement only insofar as the Regulation related exclusively to the execution of functions with which the Agency itself was charged (presumably medical activities carried out pursuant to the Statute) and not to the provision of medical services normally rendered by doctors or nurses (for example to the staff)[42]. The Agency's reply[43] pointed out that its Regulation No. 1 was derived directly from United Nations Headquarters Regulation No. 2[44], adopted under the Headquarters Agreement with the USA, and that it had evidently been adopted with a view to application to medical services. Nevertheless, the Agency undertook to consult with the Austrian authorities on questions that might arise in the implementation of this

[38] For the draft of the Protocol, see GOV/2006, Appendix III; the text of the signed instrument appears in INFCIRC/15/Rev.1/Add.1.

[39] For the draft of the Agency's letter, see GOV/2006/Add.1/Rev.1, Annex.

[40] No explicit legislative approval by the United Nations was required, but the Fifth Committee of the General Assembly and ACABQ were kept informed of the proposed agreements and of some of the developments that led to their conclusion.

[41] The texts of these Regulations appear in AM.I/11.

[42] Note Verbale, 3 November 1970 (Z1.76.064-VR/70).

[43] Note Verbale, 21 December 1970 (S/825, L/211).

[44] UNGA/RES/604(VI), Annex, Regulations Nos2 and 3.

Regulation. The Foreign Ministry replied[45] that, in view of the Agency's undertaking to consult with the Austrian authorities, it would not pursue the matter, even though it considered the legal position in its earlier note to be correct.

The 1972 Supplemental Agreement relating to the Commissary repeats the provision of the earlier Agreement concerning the issue of regulations. Because of the substantive differences between the old Agreement and the new one, revised Regulations Concerning the Agency's Commissary were issued with effect from 1 April 1972[46]. These Regulations were not changed when the Agency assumed responsibility of operating the joint Commissary at the VIC, but were replaced in 1982 by a new set of Rules[47].

### 28.2.6. Differences of interpretation

During the period under review, there was no need to resort to the formal procedure for the settlement of disputes arising under the Headquarters Agreement.

The difficulties about reciprocity, referred to in the basic book, were eliminated as a result of Article V(2) of the Agreement Amending the Headquarters Agreement[48]. The appointment of Austrian nationals as Resident Representatives or the provision for them to serve on the staffs of Permanent Missions was still firmly resisted by the Austrian authorities, on the basis of the Vienna Convention on Diplomatic Relations[49].

The situation regarding a 'Church Tax' remained substantially the same as reported at the end of this section in the basic book. On 5 September 1969 the Austrian Foreign Ministry responded to an earlier note verbale of the Agency[50] and informed[51] the latter that the Finance Office (Finanzkammer) of the Roman Catholic Archdiocese of Vienna and the Lutheran Church Council (Evangelischer Oberkirchenrat) had, while duly reserving their legal positions, declared that they would refrain from insisting on compulsory contributions in respect of foreign members of the staff of the Agency, so that such officials might decide voluntarily what contributions to make; the staff was informed of this communication[52]. However, the ecclesiastic authorities apparently did not generally instruct their local

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[45] Note Verbale, 3 March 1971 (Z1.6073-VR/71).

[46] AM.VIII/11, Annex I, 23 February 1973 (TS/59).

[47] Section 24.13.1.

[48] Now incorporated into INFCIRC/15/Rev.1, Part 1, Section 43(d).

[49] For example, before including in 1974 the names of two Austrian members of the Costa Rican Mission to the Agency in the booklet "Organisations internationales à Vienne", the Austrian Foreign Ministry insisted on assurances from the Ambassador that these members of his staff would not claim any privileges and immunities as such.

[50] Note Verbale, 20 November 1968 (L/225-1).

[51] Note Verbale, 5 September 1969 (Z1.104.562-VR/69).

[52] SEC/NOT/186 ("Church Contributions in Austria").

tax offices to refrain from making requests for contributions to the officials concerned. As a result, the Agency has from time to time been asked by staff members to intervene on their behalf against such requests[53]. Such interventions have been made on behalf of non-Austrian staff members and have been effective. Austrian staff members who requested such assistance were informed that the arrangement with the ecclesiastic authorities did not apply to them and that any request for reimbursement of their payments by the Agency[54] would be refused on the ground that under Austrian law these payments were not taxes and could be avoided by leaving the church in question.

Another issue led to a suit in the Austrian courts. Under Austrian law, a tax is imposed on the transfer of real estate. When a number of Agency officials of diplomatic status joined a consortium that purchased a piece of property under a contract providing that the purchasers would bear all taxes and costs, the tax authorities first tried unsuccessfully to collect the tax from these officials. Thereupon, the authorities imposed the tax on the seller, who agreed to file an appeal if this was financed by others. The Agency agreed to do so in order to settle a matter of principle under the Headquarters Agreement. The Austrian Federal Administrative Court decided[55], taking into account Section 39(c) of the Headquarters Agreement (under which the officials enjoyed "the same privileges, immunities, exemptions and facilities as the Government accords to members, having comparable rank, of the staffs of chiefs of diplomatic missions accredited to ... Austria") and the relevant provisions of the 1961 Vienna Convention on Diplomatic Relations, that the tax in question was imposed on the transaction and not on diplomatic staff as such. Accordingly, the Government could collect this tax from any Party to the transaction not shielded by immunity, regardless of who would, by contract, ultimately bear the burden of the tax.

## 28.3. AGREEMENT ON THE PRIVILEGES AND IMMUNITIES OF THE AGENCY

### 28.3.3. Acceptances and reservations

From 1 November 1969 to 31 December 1980, 14 Member States became Parties to the Agreement on the Privileges and Immunities of the Agency by

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[53] Note for file, U. Schiller, 25 June 1973.
[54] Section 24.4.6.
[55] Verwaltungsgerichtshof Z1.934/75, 8, Decision of 17 September 1976.

depositing an instrument of acceptance with the Director General[56]; thus the total number of States Parties rose to 49. Of the new Parties, nine made use of the right to make reservations (bringing the total of such States to 24); one of these States later withdrew some of its reservations[57]. There were instances in which the Director General persuaded a State either to withdraw particularly objectionable reservations it had proposed to present or to withhold the instruments of acceptance containing these reservations[58]. In deciding whether or not to object to particular reservations, the Secretariat consulted with the United Nations Legal Counsel and in particular took into account the position of the Administrative Committee on Co-ordination with regard to similar reservations to the Convention on the Privileges and Immunities of the Specialized Agencies.

In addition to the reservations referred to in the basic book, new ones have been made with respect to the following sections of the Privileges and Immunities Agreement:

Section 2(b)

Indonesia, Morocco: In acquiring and disposing of real property the Agency shall act with due regard to national laws and regulations

Section 18

Indonesia: Not applicable to Indonesian nationals serving in Indonesia except for privileges following from Article XV of the Statute (e.g. immunity in respect of official acts).

Morocco: Not applicable to Moroccan nationals serving in Morocco.

Section 18(a)(ii)

Singapore: Not applicable to citizens.

Turkey: Not applicable to nationals stationed in Turkey, who must file annual tax returns.

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[56] On 13 September 1972, Cuba deposited with the United Nations Secretary-General an instrument of acceptance of the Convention on the Privileges and Immunities of the Specialized Agencies, in which it listed the IAEA as one of the agencies to which it was prepared to apply the Convention (see letter by Stavropoulos to Eklund, 3 October 1972 (LE 221/1(3-2)); the listing of the IAEA was omitted from the official UN Circular of 13 October 1972 (C.N.186.1772.TREATIES-2). Both the United Nations and the Agency thereupon informed the competent Cuban authorities that this Convention could not be extended to the IAEA; instead, action could be taken to accept the similar Privileges and Immunities Agreement of the Agency; however, up to the end of 1980, Cuba had not accepted this Agreement.

[57] The relevant information up to 1 October 1981 (including the texts of reservations) is set out in INFCIRC/9/Rev.2/Add.4. A recent list of the Parties (but without the texts of reservations), appears in the IAEA Legal Series No.3.(10th edition), under Agency Registration No.44.

[58] During the period under review, Australia was persuaded not to deposit an instrument of acceptance with numerous reservations; during the previous period, Italy was similarly persuaded.

Section 19

Turkey: Subject to national legislation.

Section 20

Luxembourg: Not applicable to Deputy Directors General.

Section 26 (in connection with Section 34)

German Democratic Republic, Mongolia, Poland, Romania: Not obliged to submit to the jurisdiction of the ICJ.

Section 34

German Democratic Republic, Mongolia, Poland, Romania[59]: Not obliged to submit to the jurisdiction of the ICJ; no acceptance of the binding effect of advisory opinions.

Indonesia, Morocco: Disputes are to be submitted to the ICJ only with the agreement of the Parties in respect of a particular dispute.

All except one of these reservations follow the pattern of those referred to in the basic book. This new reservation (Indonesia's and Morocco's reservations with reference to Section 2(b)) also does not seem to have practical implications. If the Agency were to establish any operation in these States for which the acquisition of real property would be required, this would in any case be done on the basis of a special agreement and not on the basis of the Agreement on Privileges and Immunities.

### 28.3.4. Status of the Agency as a Party

The seven arguments listed in this section in the basic book for the proposition that the Agency is a Party to its Privileges and Immunities Agreement should be supplemented by an important additional agrument, since Article 39 of the Agreement explicitly provides that "the Agreement shall continue in force as between the Agency and every Member which has deposited an instrument of acceptance ...". The Agreement may thus be considered as constituting a series of bilateral treaties between the Agency and each accepting Member State.

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[59] The Romanian reservation can be interpreted much more broadly, since it states that "... Romania does not consider itself bound by the provisions of Section 34, ...".

### 28.3.5. Application of the Agreement in non-Party States

Even two decades after the promulgation of the Agreement on the Privileges and Immunities of the Agency, less than half of the Members of the Agency had become Parties to it. Consequently, the devices described in this section in the basic book, and in particular the incorporation of the Agreement by reference into all agreements under which the Agency carried out significant functions, had to be utilized often.

#### *28.3.5.1. Safeguards and health and safety controls*

The provisions of the Inspectors Document continued to be applied to non-NPT Safeguards Agreements as described in the basic book[60]. The NPT Safeguards Document provides as follows with respect to the Safeguards Agreements to be concluded in relation to Article III of the NPT:

> "PRIVILEGES AND IMMUNITIES
>
> 10. The Agreement should specify the privileges and immunities which shall be granted to the Agency and its staff in respect of their functions under the Agreement. In the case of a State party to the Agreement on the Privileges and Immunities of the Agency,*) the provisions thereof, as in force for such State, shall apply. In the case of other States, the privileges and immunities granted should be such as to ensure that:
>
> (a) The Agency and its staff will be in a position to discharge their functions under the Agreement effectively; and
> (b) No such State will be placed thereby in a more favourable position than States party to the Agreement on the Privileges and Immunities of the Agency.
>
> *) Reproduced in document INFCIRC/9/Rev.2."

Pursuant to this provision, the following two types of clauses have routinely been included in NPT Safeguards Agreements[61]:

[60] See, for example, the Project Agreement relating to the fabrication of fuel elements for Argentina (INFCIRC/250, Section 17). In some cases the incorporation of the Inspectors Document is more indirect, by referring to another agreement which itself incorporates the Privileges and Immunities Agreement, for example the Project Agreement relating to the Romanian TRIGA reactor (INFCIRC/206, Part II, Section 9), which refers to the Romanian NPT Safeguards Agreement (INFCIRC/180, Article 10).

[61] Section 21.5.5.

(a) *With States Parties to the Privileges and Immunities Agreement*

"(X) shall apply to the Agency (including its property, funds and assets) and to its inspectors and other officials, performing functions under this Agreement, the relevant provisions of the Agreement on the Privileges and Immunities of the International Atomic Energy Agency." [62]

If the State had accepted the Privileges and Immunities Agreement with reservations, and if these are made applicable in respect of the Safeguards Agreement, then the following phrase is added at the end of the above provision: "as accepted by (X)". [63]

(b) *With States not Parties to the Privileges and Immunities Agreement*

"(Y) shall accord to the Agency (including its property, funds and assets) and to its inspectors and other officials, performing functions under this Agreement, the same privileges and immunities as those set forth in the relevant provisions of the Agreement on the Privileges and Immunities of the International Atomic Energy Agency." [64]

The only case in which an NPT Safeguards Agreement did not incorporate the Privileges and Immunities Agreement concerned the Agreement with Austria, which provides as follows:

"Austria shall apply to the Agency (including its property, funds and assets) and to its inspectors and other officials, performing functions under this Agreement, the relevant provisions of the Agreement between the Republic of Austria and the International Atomic Energy Agency regarding the Headquarters of the International Atomic Energy Agency. Inspectors and other

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[62] For example Jamaica (INFCIRC/265, Article 10). Incidentally, the same formula was used in two such Agreements with the Netherlands (a Party to the Privileges and Immunities Agreement) in respect of NPT safeguards to be carried out in the Netherlands Antilles and in Surinam (INFCIRC/229 and 230), obliging the Netherlands, rather than the two constituent parts for whose foreign relations it is responsible, to apply the relevant provisions of the Privileges and Immunities Agreement to Agency inspectors.

[63] See, for example, the NPT Safeguards Agreement with Romania (INFCIRC/180, Article 10). However, some States that had made reservations to the Privileges and Immunities Agreement have not insisted on this, for example Hungary (INFCIRC/174, Article 10) or the United Kingdom (INFCIRC/263, Article 10), and (as discussed at the end of the second paragraph of Section 28.3.5 in the basic book) their reservations thus presumably do not apply in respect of these Safeguards Agreements.

[64] For example Costa Rica (INFCIRC/278, Article 10). The use of this formulation was expressly decided by the Board in respect of the first such Safeguards Agreement with a State not Party to the Privileges and Immunities Agreement (GOV/OR.441, paras 8–11). The Agreement with Libya, which contains a clause that is otherwise in the indicated form, has an additional text, i.e. "which, in principle, is identical to the Convention on the Privileges and Immunities of the United Nations".

officials shall, moreover, so far as is necessary for the effective exercise of such functions, be immune from personal arrest or detention, and all their papers and other official material shall be inviolable." [65]

*28.3.5.2. Technical assistance*

The new UNDP Basic Standard Agreement, which superseded the EPTA Revised Basic Agreement, has the same provision as the latter (quoted in the basic book) with regard to the Agency's privileges and immunities.

*28.3.5.4. Special agreements*

The Guidelines for the International Observation by the Agency of Nuclear Explosions for Peaceful Purposes under the Provisions of the Treaty on the Non-Proliferation of Nuclear Weapons or Analogous Provisions in Other International Agreements provide, with respect to the Agency observers who are to perform functions pursuant to those Guidelines, that:

"Agency observers shall be granted the privileges and immunities necessary for the performance of their functions. Suitable provisions shall be included in each observation agreement, in so far as relevant to the execution of that agreement, from among the provisions of the Agreement on the Privileges and Immunities of the International Atomic Energy Agency, excepting Articles V and XII thereof, provided that all parties to the observation agreement so agree" [66].

No agreements pursuant to the Guidelines have been concluded.

*28.3.5.5. Agreements concluded by other organizations*

When the United Nations arranged for a conference or other meeting to which Agency officials were invited or in which they might participate, it occasionally provided in the agreement concluded with the host State that the privileges and immunities of such officials shall be those specified in the Agency's Privileges and Immunities Agreement. Otherwise, the privileges and immunities of such officials were based, mutatis mutandis, on the United Nations Convention.

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[65] INFCIRC/156, Article 10.
[66] INFCIRC/169, para. 30.

## 28.3.6. Implementing instruments

### *28.3.6.1. Domestic*

Section 38 of the Privileges and Immunities Agreement provides in the relevant part that "It is understood that, when an instrument of acceptance is deposited on behalf of any State, that State will be in a position under its own law to give effect to the terms of this Agreement". As a consequence, the Agency was not directly concerned with the domestic steps taken by Member States to implement the Agreement because it could assume that these steps were adequate. In most instances, domestic legislation was not adopted with special reference to the Agency, but rather with reference to intergovernmental organizations such as the United Nations and its specialized agencies, the privileges and immunities of which are substantially identical with those of the Agency; at most, such legislation had, if narrowly drawn, to be especially extended to the Agency[67].

For these reasons, the Agency was generally not informed, and thus might remain ignorant, of any national laws, regulations or other dispositions relating to its privileges and immunities. The few instances in which it has been informed of such provisions include the following:

(a) In 1970 the Belgian Ministry of Finance issued a circular covering the implementation of the sales tax provision of the Agreement (Section 9) with respect to the Belgian value added tax[68].
(b) With its instrument of acceptance of the Agreement, Mauritius enclosed a copy of the order made in respect of the Agency under legislation specifying the privileges and immunities of international organizations[69].

### *28.3.6.2. Supplemental agreements*

In one instance a State Party to the Privileges and Immunities Agreement concluded a supplemental agreement with the Agency concerning the implementation of a particular provision of the Agreement. This occurred when the United Kingdom, prior to introducing a value added tax, concluded agreements with a number of international organizations to which it was obliged to reimburse sales taxes. The

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[67] See also the basic book, Chapter 28, note 116, for a reference to the Indian legislation.

[68] Belgian Ministry of Finance Circular, Circ. No. 67/1970.

[69] Order under Section 19 of the International Organizations and Conferences (Privileges and Immunities) Act, 1970 (Government Gazette [of Mauritius], Government Notice No. 33 of 1975).

supplemental agreement with the Agency, referring to Section 9 of its Privileges and Immunities Agreement, was concluded by an exchange of letters on 22 August 1974 and entered into force on 24 July 1975, the date on which the relevant British legislation came into effect.

## 28.4. RELIANCE ON OTHER PRIVILEGES AND IMMUNITIES

### 28.4.1. In national laws

#### *28.4.1.1. In the USA*

The practice of incorporating the US Act into agreements between the Agency and the USA was continued[70].

#### *28.4.1.2. In Austria*

Aside from the Headquarters Agreement and the Supplemental Agreements thereto, several provisions of Austrian law were promulgated that provide additional rights or at least additional sources of rights relevant to the Agency:

(a) Law of 14 December 1977 on the Privileges and Immunities of International Organizations[71];
(b) Regulations covering the Privileges and Immunities of Permanent Observer Missions to International Organizations[72].

In addition, non-Austrian staff members enjoy certain exemptions from the Austrian inheritance tax[73].

### 28.4.2. In other international agreements

There have been no relevant developments during the period covered by this book.

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[70] See, for example, the Israel/USA Safeguards Transfer Agreement (INFCIRC/249), Section 26.
[71] BGBl Nr. 677/1977.
[72] Verordnung der Bundesregierung vom 17 Oktober 1978: Einräumung von Privilegien und Immunitäten an Ständige Beobachtermissionen bei internationalen Organisationen, BGBl Nr. 211/1978.
[73] DGM 28/80, para. 6(ii), Nov. 1980.

## 28.5. WAIVER OF IMMUNITY

During the period under review, the Agency has apparently only once received a formal request to waive the immunity from civil suit of a staff member enjoying diplomatic status. The Agency replied that consideration of a waiver was not yet opportune, since negotiations were still proceeding between the Parties[74]. In one instance, the functional immunity of an Agency driver involved in a serious accident was waived in respect of a potential criminal proceeding. Originally, the Austrian authorities had disputed the staff member's immunity on the ground of his Austrian nationality[75], but the charges were subsequently dropped and no suit was brought.

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[74] Section 27.4.4, para. (a).

[75] On 24 December 1970 the Agency in a note verbale requested that its staff member's functional immunity be recognized, since the accident had occurred in the course of duty. In its reply of 14 January 1971 the Austrian Foreign Ministry denied the immunity, on the ground that, as an Austrian citizen, the official could not enjoy even functional immunity under the Headquarters Agreement (Z1.126.171—Prot/70). On 21 January 1971 the Agency responded, arguing that Austria should observe the principle of non-discrimination by nationality in implementing the Headquarters Agreement, thus disputing the Foreign Ministry's interpretation. In a spirit of comity the Agency agreed to waive the official's immunity without prejudice to the legal question.

# Chapter 29
# LIABILITY

## PRINCIPAL INSTRUMENTS

Headquarters Agreement with Austria (INFCIRC/15/Rev.1, Part I), Section 46;
The Agency's Health and Safety Measures (Revised) (INFCIRC/18/Rev.1), para.4.1;
General Supply Agreements:
- With the USSR (INFCIRC/5, Part I), Article 7;
- With the UK (INFCIRC/5, Part II), para.(5);
- With the USA (INFCIRC/5, Part III), Article III;

Supply Agreements, such as:
- For the transfer of a training reactor and fuel (e.g. between the Agency, Argentina and the Federal Republic of Germany, INFCIRC/143, Sections 7, 8 and 14);
- For the transfer of title to leased fuel (e.g. to Greece, INFCIRC/163, Sections 3 and 4);
- Master Agreement with the USA governing sales of nuclear material for research purposes (INFCIRC/210), para.4;

Co-operative research projects such as:
- Regional Co-operative Agreement (RCA) for Research, Development and Training related to Nuclear Science and Technology (INFCIRC/167), Section 5;
- Agreement establishing the Asian Regional Co-operative Project on Food Irradiation (INFCIRC/285), Article IX;

Safeguards Agreements, such as:
- NPT Safeguards Agreements (e.g. with Hungary, INFCIRC/174, Articles 16, 17, 86);
- Safeguards Transfer Agreements (e.g. Agency/USA/Sweden, INFCIRC/165, Section 28(c));
- Unilateral Submissions (e.g. with Argentina relating to the Atucha power reactor, INFCIRC/168, Section 22);

Technical Assistance:
- Agreement with the UNDP (e.g. with Colombia, United Nations Treaty Series, Vol.936, p.218), Article X(2);

Revised Supplementary Agreement with the Agency (e.g. with Bangladesh, Agency Reg.No.0-1372), Article V;
Technical Assistance Agreement (e.g. with Kenya, TA/AGR/KEN/8), para.6;
EPTA Revised Standard Agreement (TAB/R.251/Rev.1), Article I, 6;
Executing Agency Agreement with the Special Fund (INFCIRC/33), Article III and Appendix; Article II.2;
Staff Rules (AM.II/1) 8.04.1, 13.03.4, 13.03.5;
Research Contracts (Form N-39, A/Rev.1, September 1974), Article V.

## 29.1. GENERAL

The general considerations set out in the basic book continued to apply, subject to the additional information in the following sections. No case was adjudicated in court, under arbitration or in any other forum established by an agreement to which

the Agency is a Party, which would have tested the conditions for and the extent of the Agency's liability. The major new developments that occurred related to the application of safeguards — an activity which expanded rapidly during the decade. Since safeguards are always carried out under an agreement with the State or States concerned, liability clauses have been included in these legal instruments.

In concluding agreements the Agency was concerned to regulate the following four points with respect to liability:

(a) To ensure that any claim against the Agency would be handled by an international forum, such as arbitration, rather than a domestic court, since the latter would have required a waiver of immunity[1];
(b) To provide that any claims against the Agency or made by it be governed by public international law rather than domestic law;
(c) To obtain, to the extent possible, protection and benefits available under national third-party nuclear liability regimes;
(d) To exclude specifically any warranty or liability in the performance of services for or the provision of assistance to Member States in the nuclear field.

The above points applied principally to liability that might arise under agreements and contracts, including cases where a State espouses claims of its nationals against the Agency. The Agency's obligation in the Headquarters Agreement[2] and the Privileges and Immunities Agreement[3] to establish appropriate methods for settling disputes of a private character could be invoked for civil claims, whether or not these are based on a contract with the Agency.

## 29.2. ARRANGEMENTS LEADING TO POSSIBLE LIABILITY

### 29.2.1. Supply of nuclear items

#### *29.2.1.1. General Supply Agreements*

The General Supply Agreements with the USSR and the UK of 1959 were not amended and remained in force[4]. The Co-operation Agreement with the USA was amended twice, but neither amendment affected the liability clauses as described in the basic book. In 1974 the Agency concluded with the USA a Master Agreement

[1] So far, the Agency has never submitted to the jurisdiction of a national court.
[2] INFCIRC/15/Rev.1, IA, Section 46.
[3] INFCIRC/9/Rev.2, Section 23.
[4] INFCIRC/5.

governing the sales of nuclear material for research purposes[5]. Under this Agreement, no responsibility shall rest with the US Government, or the vendor of the material, or the operator of a facility of the vendor; furthermore, no warranty is given that materials sold will not result in any injury or damage when used for the requested purpose[6].

*29.2.1.2. Particular supply contracts*

The Supply Agreements for transfer of nuclear material, facilities and services through the Agency continued to contain exculpatory clauses, with the purpose of exempting the Agency from any liability for the transaction. For example, in connection with the transfer of a research reactor and fuel from the Federal Republic of Germany to Argentina through the Agency, the following was agreed[7]:

> "Neither the Agency nor any person acting on its behalf shall at any time bear any responsibility towards Argentina or any person claiming through Argentina for the safe handling and the use of the supplied reactor and the fuel material."

The supplier country, the Federal Republic of Germany, also declined responsibility by means of the following provision:

> "After acceptance of possession by Argentina pursuant to Sections 3 and 5(b) neither Germany nor any person acting on its behalf shall bear any responsibility for the safe handling and the use of the supplied reactor and the fuel material."

The agreement for the supply of enrichment services to Mexico provided:

> "It is recognized that in extending its assistance for the project the Agency is not hereunder providing any guarantees or assuming any financial responsibility in connection with the supply of enrichment services by the Commission to Mexico."[8]

In other instances the Agency transferred its responsibility towards the supplier to the recipient, as follows:

> "After acceptance of possession pursuant to Section 3(c) the Agency shall assume full responsibility to the Commission for the fuel material, and Romania shall be equally responsible to the Agency."[9]

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[5] INFCIRC/210.
[6] Ibid., para. 4.
[7] INFCIRC/143, Sections 7 and 8.
[8] INFCIRC/203, Article II (2).
[9] INFCIRC/206, Section 8.

In another instance, two suppliers and the Agency shielded themselves from potential liability by agreeing with the recipient country as follows:

> "Neither the Government of the United States of America nor the Agency warrants the suitability or fitness of the supplied material for any particular use or application."
> and
> "Neither the Government of the Argentine Republic, the Government of the United States of America nor the Agency shall at any time bear any responsibility towards the Government of Peru or any person for the safe handling and use of the supplied material or for any claims arising out of the transport, handling or use of the supplied material by the Government of the Republic of Peru." [10]

### 29.2.2. Safeguards

The question of the international responsibility of the Agency was discussed in some detail by the Safeguards Committee (1970) when it developed the NPT Safeguards Document (see Section 21.9.2). Basically, two situations were envisaged that could lead to claims against the Agency[11]:

(a) Activities by the Agency within the territory of a State, involving the possibility of an accident resulting in damage to persons or property. This could arise, in particular, from actions of Agency inspectors but also owing to Agency equipment being installed at a nuclear facility.
(b) Damage suffered as a result of divulgence of commercial and industrial secrets and other confidential information obtained by the Agency in applying safeguards.

All NPT Safeguards Agreements contain Agency undertakings relating to the conduct of inspections and the protection of information[12], which, when breached, would entitle the State to claim compensation for damage from the Agency should such damage result from the breach of an obligation. However, the agreements do not specify what, if any, compensation is due under such circumstances, nor do they indicate the conditions under which the Agency would be liable (for example when the act is that of an official imputable to the Agency, if the liability would be based on fault or would arise irrespective of negligence). The Agreements provide only that:

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[10] Agreement between Argentina, Peru, the USA and the Agency, INFCIRC/266, Sections 8 and 9.
[11] GOV/COM.22/27.
[12] For example INFCIRC/174, Articles 5, 8 and 86.

> "Any claim against the Agency or by the Agency against [the State] in respect of any damage resulting from the implementation of safeguards under this Agreement, other than damage arising out of a nuclear incident, shall be settled in accordance with international law." [13]

This provision would not preclude the possibility of claims for nuclear damage being governed by domestic law. This exception was made because it was considered that the Agency should benefit from domestic legislation in the field of nuclear liability which channels all third party claims to the operator. A clause on third party nuclear liability was also included, as follows:

> "[The State] shall ensure that any protection against third party liability in respect of nuclear damage, including any insurance or other financial security, which may be available under its laws and regulations shall apply to the Agency and its officials for the purpose of the implementation of this Agreement, in the same way as that protection applies to nationals of [the State]." [14].

Non-NPT Safeguards Agreements also contain provisions on international responsibility and nuclear liability on the same lines[15]. The nuclear liability clause was slightly modified in agreements with the USA; in this case, it refers to the Price-Anderson Act, i.e. specific legislation existing in the USA[16].

In addition, the finance clause in Safeguards Agreements provides an exception to the principle that each Party bears its own expenses by stipulating that this "... shall not prejudice the allocation of expenses attributable to a failure by a Party to comply with this Agreement" [17].

### 29.2.3. Health and safety controls

The Revised Health and Safety Document provides, as did the first Document, that:

> "In the application of the Agency's standards and measures to an assisted operation, all responsibility for safety shall be assumed by the State, and the Agency shall incur no liability whatsoever." [18]

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[13] For example the Agreement with Hungary (INFCIRC/174), Article 7.
[14] Ibid., Article 16.
[15] For example the US/Swiss/Agency Safeguards Agreement (INFCIRC/161).
[16] INFCIRC/288, Article 15.
[17] INFCIRC/161, Article 15. The same provision appears also in non-NPT agreements.
[18] INFCIRC/18/Rev.1, para.4.1.

With the disappearance of provisions for health and safety inspections in the revised Health and Safety Document and their replacement by provisions for safety missions, members of such missions have, except perhaps for missions performed under Article XII.6 of the Statute, a status different from that of inspectors. Members of safety missions are no longer described as Agency inspectors, and any coverage as might exist for inspectors would thus not extend to members of safety missions, at least not to those of a routine character.

### 29.2.4. Technical and other assistance

The UNDP Technical Assistance Agreements contain a liability clause, which is practically identical with those in the EPTA Revised Standard Agreement and the Special Fund Agreements, requiring the Government to bear all risks of operations, to deal with all claims and to hold the Agency and its personnel harmless, except for gross negligence and wilful misconduct[19].

The Agency's (Revised) Supplementary Agreements (required by the Revised Guiding Principles for Technical Assistance by the Agency) provide in the Article on transfer of title to equipment and material that, after transfer of title, the Government "shall assume full and exclusive responsibility and all liabilities for the handling, use, maintenance, storage and disposal of such equipment and materials"[20]. A similar clause appeared in Technical Assistance Agreements concluded before the Revised Guiding Principles took effect[21]. As stated in the basic book, the reason for these liability provisions, which shield the Agency and its agents from any liability, is that technical assistance is provided for the benefit of the recipient Government.

### 29.2.5. Project and joint programme agreements

Project agreements do not contain a liability clause, because liability and warranty are regulated in the related supply agreement.

Under the Asian Regional Co-operative Agreement (RCA), further agreements are to be concluded for specific co-operative projects. These additional agreements are also to "specify the liability of the Parties thereto"[22]. Thus the Agreement establishing the Asian Regional Co-operative Project on Food Irradiation concluded under the RCA provides that:

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[19] Agreement between the Government of Colombia and the UNDP of 29 May 1974 (936 UNTS, 218), Article X.2.

[20] Revised Supplementary Agreement concerning the Provision of Technical Assistance by the International Atomic Energy Agency to the Government of Bangladesh (Agency Reg. No. 0-1372), Article V.

[21] For example the Agreement with Kenya (Agency Reg. No. 1324), para. 6.

[22] INFCIRC/167, Section 5(v).

"Neither the Agency nor any Government making contributions ... shall be held responsible towards the Participating Governments or any person claiming through them for the safe implementation of the Project."[23]

### 29.2.6. Research contracts

The revised research contract forms[24] contain the same clause as earlier contracts, exculpating the Agency for any liability as might arise out of the conduct of the research. Also, the contractor agrees to hold the Agency harmless for any damages it might be required to pay to third parties.

### 29.2.7. Occupation of property, Agency services and employment of staff

The premises which the Agency occupies for its Headquarters seat, for its laboratories and for the Trieste Centre and the Monaco Laboratory are not the property of the Agency. These buildings were put at the disposal of the Agency by or through host Governments, free of charge or for a symbolic rent. The premises of the safeguards field offices in Toronto and Tokyo were rented on commercial terms and were not put at the Agency's disposal by the Governments concerned[25]. Since the Agency is in exclusive control of all these premises, it may become liable to third parties and visitors for injuries or damage suffered by them. These matters have not been specifically regulated under the agreements, and domestic law would presumably determine under what circumstances the Agency might become liable. In that respect the Agency would be in the same position as the owner or tenant of premises in the country concerned, except that the Agency's immunity would bar legal action in local courts unless the Agency waived its immunity.

The revised Commissary Regulations have done away with the clause included in the previous regulations which severely limited the Agency's liability towards Commissary customers[26].

Compensation of staff for death, injury or illness incurred in the course of duty is governed by the Staff Rules, which provide for compensation by the Austrian Social Security System for staff participating in that system and, for non-participants, compensation in accordance with Appendix D to the Staff Rules[27]. Moreover, the

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[23] INFCIRC/285, Article IX.

[24] N-39, A/Rev.1, Sep. 1974.

[25] Section 21.8.2.2.1.

[26] AM.VIII/11. The legal status of the Commissary remained the same. It is part of the Agency and has no legal personality of its own; any liability as might rise towards customers, suppliers or third parties would fall upon the Agency.

[27] AM.II/1, Staff Rule 8.04.1.

Agency has contracted additional commercial insurance to cover death or disability of staff resulting from accidents[28]; this coverage is not limited to accidents attributable to the performance of official duties. Staff members are also entitled to obtain compensation, subject to exclusions and limitations, for loss of, or damage to, personal effects attributable to the performance of official duties[29].

Staff may be required to compensate the Agency for financial losses resulting from negligence or violation of regulations or administrative instructions[30].

## 29.3. INSURANCE

To the extent that the Agency could not shield itself from potential liability through contractual arrangements, it has purchased commercial insurance, where available. Commercial insurance was also obtained to cover its liability towards its own staff for death, injury or illness attributable to the performance of official duties (Appendix D to the Staff Rules).

The Agency contracted insurance to cover its liability for damage and personal injury to third parties that might result from the operation of the Seibersdorf laboratories, at the amounts prescribed by the Austrian Nuclear Liability Law (Atomhaftpflichtgesetz)[31]. When the amounts set forth in this Law were adjusted, the Agency increased its coverage accordingly. However, when these amounts were raised to US $14 000 000, the Agency had difficulties in obtaining insurance for that amount. As of 1980, the Agency's insurers were only able to provide coverage for US $7 500 000. That insurance also covered the Agency's nuclear liability for other activities and outside Austria, for example in connection with the application of safeguards. In 1980 the Agency tried unsuccessfully to obtain short-term coverage for up to US $100 000 000 in connection with safeguards verification of the inventory of spent fuel at the KANUPP reactor in Pakistan. Although increased coverage for that amount could not be obtained, the Agency went ahead with inspection and inventory verification.

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[28] AM.II/7, paras 61-71, Supplementary Death and Disability Insurance (SDDI).
[29] AM.II/1, Rule 13.03.5.
[30] AM.II/1, Rule 13.03.4.
[31] Federal Law of 29 April 1964, as amended (BGBl. 117).

# Chapter 30

# EMBLEM, SEAL AND FLAG

In the period under review, no developments took place which require reporting in this chapter.

# Chapter 31
# PATENTS AND COPYRIGHTS

## PRINCIPAL INSTRUMENTS

IAEA Statute, Articles VII.F, VIII.B, XI.F.5;
*Headquarters Agreement with Austria (INFCIRC/15/Rev.1, Part I), Sections 16 and 18;*
Provisional Staff Regulations (INFCIRC/6/Rev.4), 1.06, 1.07;
Project and Supply Agreements, such as:
Turkey Sub-critical Assembly Project Agreement (INFCIRC/212, Part II), Article VI;
New Zealand Master Project Agreement (INFCIRC/286, Part I), Article XII;
Standard Research Contract, clause: "Rights to Intellectual Property and Publication";
Universal Copyright Convention, Protocol No. 2 (216 UNTS 133, at 190).

## 31.1. PATENTS

### 31.1.4. Patent provisions in agreements with Member States

No significant change has occurred in the patent provisions included in agreements between the Agency and Member States. In recent Project Agreements, the former separate clauses, requiring the transfer of information and regulating the claims that the Agency might have to inventions or discoveries, have been combined as follows, without any change in substance from the former provisions:

> "Pursuant to Article VIII.B of the Statute of the Agency, the Government shall make available to the Agency without charge all scientific information developed as a result of the assistance extended by the Agency. The Agency does not claim, on the basis of its participation resulting from this Agreement and the Supplementary Agreements thereto, any right in any inventions or discoveries arising from projects involving the supplied material. The Agency may, however, be granted licences under any patents upon terms to be agreed." [1]

The nature of the projects assisted by the Agency during the period under review did not lead to the development of scientific or technical information from which patentable inventions or discoveries could result.

[1] New Zealand Master Project Agreement (INFCIRC/286, Part I), Article XII.

The Agreement relating to the principal joint programme initiated during the period covered by this book, the Regional Co-operative Agreement (RCA) for Research, Development and Training Related to Nuclear Science and Technology[2], does not contain any clause relating directly or indirectly to patents. The subsidiary agreements, covering individual co-operative projects, could contain such provisions, but the subject is not explicitly listed among those which such agreements must cover[3]. Indeed, there is no clause on the subject in the Agreement relating to the Asian Regional Co-operative Project on Food Irradiation[4].

### 31.1.5. Research contracts and the evolution of the Agency's patent policy

The Agency's patent policy during the period under review has not changed from that described in the basic book. Though the Master Contract for US Financing of Agency Research is no longer in force[5] and no comparable general agreement has been concluded with the USA or with other donors of funds for research, the Agency's research contracts still contain the general waiver and publication clauses originally evolved in response to the requirements of the Master Contract. Since 1970 these clauses have been worded as follows:

"IV. RIGHTS TO INTELLECTUAL PROPERTY AND PUBLICATION

"(c) All results of the research project, including any inventions or discoveries arising out of it, shall be made available for the development and practical application of atomic energy for peaceful uses throughout the world. To accomplish this purpose the Agency and the Contractor shall co-operate by prompt and extensive publication and by other appropriate means to prevent restriction of the free use of such results. The Agency or the Contractor or persons under the control of either may obtain any patent or similar protection for such results, provided that the owner of such patent undertakes to make the invention freely usable in the territory of all Members of the Agency, without charge or any other restriction. The Agency and the Contractor shall assist each other in obtaining any patent or similar protection that either may wish to obtain under the above conditions; supplementary arrangements may be made to avoid any conflicting applications for such patents.

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[2] INFCIRC/167 and /Add.8.
[3] INFCIRC/167, Section 5.
[4] INFCIRC/285.
[5] Section 19.2.2.2.

"(d) The Contractor undertakes to take necessary steps to ensure that every person who takes part in the research project is fully informed of the provisions contained in paragraphs (a), (b) and (c) of this clause and agrees to be bounded thereby."[6]

### 31.1.6. Protective clauses

The NPT Safeguards Document (and therefore the NPT Safeguards Agreements based thereon) contains provisions similar to, and in part even more severe than, those in the Revised Safeguards Document, to ensure that the carrying out of the Agency's controls does not result in any prejudice to commercially valuable information. In particular:

(a) The Agency is to take "every precaution to protect commercial and industrial secrets and other confidential information". The Agency is not to publish or make available within the Agency any information obtained in connection with the implementation of safeguards except as specifically required in carrying out such operations[7];
(b) The Agency is to "require only the minimum amount of information consistent with carrying out its [safeguards] responsibilities"; if the State concerned so requests, the Agency shall examine particularly sensitive design information only on the premises of the State and such information need not be transmitted to the Agency[8];
(c) The visits and activities of Agency inspectors shall be arranged so as, inter alia, "to ensure protection of industrial secrets or any confidential information coming to the inspectors' knowledge"[9].

### 31.1.7. Disposition of particular inventions

During the period under review, one invention made in connection with the Agency's activities raised questions relating to patentability that were considered by the Agency. An Austrian company had developed, under contract with the Agency, a video camera to be used for safeguards surveillance. That company presented an application for an Austrian patent on a device that would make it possible for the camera to take pictures at measured intervals; with this device, film and power could be saved by shutting down the camera during a substantial fraction of the time it was

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[6] See Contract Form N-39/Rev.1.
[7] INFCIRC/153, para. 5.
[8] INFCIRC/153, para. 8.
[9] INFCIRC/153, para. 9.

employed. The Agency, judging that the patent would restrict the development of safeguards techniques, opposed this application with the Austrian Patent Office on the following grounds:

(a) The supply of several models of the camera by the company to the Agency without restrictions regarding its use, and the extensive display of these models within the Agency and at various meetings (including a General Conference) amounted to prior publication, precluding a subsequent application for a patent;
(b) The development of a special device for the camera did not amount to an invention, but merely to utilization of the existing art;
(c) The listing, with the approval of the Agency, of one of its staff members as a co-inventor precluded the contractor from securing a patent that excluded the Agency, since all inventions developed by staff members automatically belong to the Agency under Staff Regulation 1.07.

Subsequently, on the basis of an Agreement[10] negotiated with the company concerned, the Agency withdrew its objections and permitted the patent to be granted[11], on the condition that it receive and have recorded in the patent an unlimited, non-exclusive and irrevocable licence, free of charge. This compromise was reached in order to avoid the costs of further litigation on an issue of limited importance to the Agency.

## 31.2. COPYRIGHTS

There were no developments that would require amendments of or additions to the material contained in this section of the basic book. The Agency continued its practice of requiring the assignment of exclusive copyrights from its staff members[12], consultants[13], participants in Agency meetings whose papers were published by the Agency as part of the proceedings of the meetings[14], and persons engaged to prepare a manuscript or translation for the Agency under contract[15].

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[10] Agreement between the IAEA and Psychotronic, signed respectively on 21 May and 6 June 1980.

[11] Austrian Patent No. 361 933 for a "Videorekorderanordnung" granted on 24 February 1981 to Psychotronic Elektronische Geräte Gesellschaft, on the basis of application No. A7266/77 of 11 October 1977.

[12] Provisional Staff Regulation 1.07.

[13] Section 31.2.4 of the basic book.

[14] AM.VIII/6(a), para. 5; AM.VII/1, para. 43.

[15] Section 31.2.4 of the basic book.

The Agency's standard research contracts also continued to include an exclusive assignment in respect of the reports required to be submitted to the Agency by the contractor[16]. It was also the author who was responsible for obtaining the necessary permission for the Agency to reproduce, translate or use material from sources already protected by copyrights. Furthermore, in respect of material prepared by an author who was under contractual relation with a Government, the Agency would obtain copyrights, as a publisher, only to the extent permitted by national legislation[17].

With the move to the VIC, the Agency made the consequent amendment to the note under © required by the Universal Copyright Convention: ''Permission to reproduce or translate the information contained in this publication may be obtained by writing to the International Atomic Energy Agency, Wagramerstrasse 5, P.O. Box 100, A-1400 Vienna, Austria''. It appears, however, that requests for translation and publication in languages in which the Agency was not publishing had to be made to the Agency through governmental channels and not directly[18]. In this case, the Agency would not accept any liability arising from the translation and publishing, and this had to be stated in the publication, together with the proper acknowledgement of the source, i.e. the Agency[19].

[16] Section 31.2.4 of the basic book.
[17] AM.VIII/6(a), para. 6(e) and (f).
[18] AM.VIII/6(a), para. 5.
[19] Ibid.

# Part G
# PROCEDURES

# Chapter 32
# REPORTS

## PRINCIPAL INSTRUMENTS

IAEA Statute, Articles III.B.4, III.B.5, V.E.4, V.E.6, VI.J, IX.G, XII.C, XVI.B.1;
Relationship Agreement with the United Nations (INFCIRC/11, Part I.A) Article III;
General Conference Rules of Procedure (GC(VII)/INF/152) 10, 12(g);
Board Rules of Procedure (GOV/INF/60 (Oct. 1976 edition)) 15(e), 18;
The Agency's Annual Reports to United Nations Organs (GC(XV)/RES/274);
Financial Regulations (INFCIRC/8/Rev.1; AM.V/2) 9.10, 12.04;
Provisional Staff Regulation (INFCIRC/6/Rev.4; AM.II/1) 13.02;
The Special Safeguards Implementation Report (GOV/DEC/92(XX), No. (11)).

## 32.1. PERIODIC GENERAL REPORTS

### 32.1.1. Periodic Reports of the Director General to the Board

In order to simplify the array of periodic reports within and by the Agency, the Board accepted in February 1971 [1] a proposal by the Director General[2] to delete the requirement in Procedural Rule 8(a) of the Board[3] for him to submit to the Board "two reports each year on developments in the Agency's work". The Director General pointed out that significant information contained in the reports that he had been submitting (originally bimonthly, then quarterly and finally twice a year) could be included in the Board's Annual Report to the General Conference (Section 32.1.2). The Secretariat's draft of that report, submitted to the Board for its approval, could contain such information. The last such periodic report by the Director General was consequently submitted to the Board in February 1971 [4].

Since the Director General's regular reports to the Board were abolished, they did no longer constitute a vehicle for communicating data concerning certain of the special items or actions that are mentioned in this section in the basic book. To some extent, these data were then included in summary form in the Board's Annual Report or in other types of regular or ad hoc reports submitted to the Board or published

[1] GOV/DEC/65(XIV), No. (12)(a); GOV/OR.434, paras 24–51.
[2] GOV/OR.434, paras 24–30.
[3] The amendment was originally set out in a document with the symbol GOV/INF/60/Mod.3 and was then incorporated in GOV/INF/60 (October 1976 edition).
[4] GOV/INF/232 and Add.1.

by the Agency[5]. The reduction in reporting reflects the fact that these items of information and actions are of a routine nature and that they are numerous, which made individual listing unnecessary and impractical.

### 32.1.2. The Board's Annual Report to the General Conference

The Board's Annual Report to the General Conference was subject to several significant changes during the period under review.

In 1971 the General Conference decided, on the recommendation of the Board[6] following a proposal by the Director General[7], that the Annual Reports to the Conference should henceforth also constitute the Agency's reports to the United Nations General Assembly (Section 32.1.4) as well as to ECOSOC (Section 32.1.5)[8]. Starting with the first Annual Report subsequent to this decision (that for 1971/1972), these reports contained a number of introductory paragraphs, drawing the attention of the two principal United Nations organs to matters of special interest to them in these reports, in particular to those passages designed to respond to special concerns that had previously been expressed by these organs, especially if they were set out in resolutions specifically addressed to the Agency[9].

In June 1976 the Director General presented to the Board the draft of an Annual Report covering the calendar year 1975, instead of one that would, as usual, have covered the period 1 July 1975 to 30 June 1976; since the first half of the period of the draft report had already been covered by the preceding Annual Report, the activities of that overlapping period were only mentioned succinctly. The principal justification given for the proposed change was to make it easier to compare the work

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[5] With regard to the various types of information referred to in this section of the basic book, the situation is as follows: (a) Attendance by members of the Secretariat at outside meetings: No longer published. (b) Supply of small quantities of nuclear materials under the authority delegated to the Director General: Mentioned in Annual Reports for some years, with less and less detail (compare the Annual Report for 1972/1973 (GC(XVII)/500, Table 10) with the Report for 1976 (GC(XXI)/580, para. 60)), and finally entirely omitted. Incidentally, this information can be obtained from the annually issued list of nuclear materials supplied by the Agency (INFCIRC/40/Rev. ...). (c) Safeguards inspection carried out: Summary (but not individual) information was transferred to the annual Safeguards Implementation Reports to the Board (Section 32.2.9). (d) Advances from the Working Capital Fund: Since these are unusual transactions, the Board was normally notified of them in connection with some proposal relating to the finances of the Agency (for example to request a supplementary appropriation from the General Conference). (e) Short-term investment of funds: No longer reported to the Board. (f) Actions relevant to the Agency taken by United Nations organs (for example the Joint Inspection Unit) or other international organizations: Information transmitted to the Board in special action or information documents (e.g. GOV/INF/377).

[6] GC(XV)/467.

[7] GOV/OR.4324, paras 24–30.

[8] GC(XV)/RES/274.

[9] For example Annual Report for 1971/1972 (GC(XVI)/480, paras 15–20); Annual Report for 1979 (GC(XXIV)/627, paras 29–32).

done during the period covered by the Annual Report with the Programme and the Budget, which have always been on a calendar year basis; actually, a report on budgetary performance during 1975 was included for the first time in a draft Annual Report[10]. In general, Board members welcomed this change, and it was adopted[11]; ever since, the Annual Reports have been on a calendar year basis. As a result, the draft reports presented by the Secretariat to the Board as of 1976 covered a period that was entirely completed, which made it unnecessary to update the draft report between its preparation during the spring, its consideration during the Board's session in June and its final issue. However, this also meant that the report was almost nine months out of date by the time it was considered by the General Conference late in September, and was even longer out of date by the time it was taken up by the General Assembly later in the autumn; by the time the report came before ECOSOC, about 19 months had passed after the end of the period covered by it. To some extent, the Director General therefore supplemented the Annual Reports in his oral presentations to these organs.

Over the years, ever longer portions of the Introductions, as well as of some of the specialized sections (particularly those dealing with nuclear power) became more general in nature, describing no specific Agency activities but rather the general state of nuclear power in the world[12].

Although the Annual Reports used to contain, in compliance with Statute Article VI.J, at least brief descriptions of each 'Agency project' approved during the reporting period, this practice was discontinued[13].

Over the years, a certain pattern regarding the formats of the Annual Reports has been established, with gradual changes as the emphasis of the Agency's work shifted or as the interconnections between various types of activities appeared to be more or less significant. In 1977 the following structure was introduced, which was followed until the end of the period under review:

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[10] Indeed, the report on Budgetary Performance, which had previously always been included in the Accounts of the Agency (Section 32.2.4), remained in the definitive report (GC(XX)/565, paras 150–239). However, because of objections expressed in the Board, this information was again included in the Accounts in subsequent years.

[11] GOV/OR.487, paras 20–68.

[12] For example the Annual Report for 1976 (GC(XXI)/580, paras 1–6) and the Annual Report for 1979 (GC(XXIV)/627, paras 1–8 and 50–55).

[13] Starting with the late 1960s, less and less information about "Agency projects" (see Chapter 17) as such was included in the Annual Reports; however, up to and including the Annual Report for 1973/1974, a table appeared each year reporting on the "Supply of nuclear materials" (GC(XVIII)/525, Table 12). This table included supplies for reactor projects and supplies of small quantities of nuclear material approved by the Board or by the Director General under his delegated authority. See also Section 32.2.2 in the basic book.

INTRODUCTION

THE AGENCY'S ACTIVITIES
- Technical assistance and training[14]
- Nuclear power and reactors
- Nuclear safety and environmental protection
- Food and agriculture
- Life sciences
- Physical sciences
- The Laboratories
- International Centre for Theoretical Physics
- Safeguards
- Information and technical services

ADMINISTRATION

The greater overall standardization of the Annual Reports and their coverage of full budget years has made them more useful for systematically following and analysing the work of the Agency.

The nature of the debate in the General Conference on the Annual Reports has not changed. However, as mentioned in Section 7.3.5.1, the Director General discontinued making a statement at the end of the general debate in which he commented on questions raised in connection with the report.

### 32.1.3. Statement of the Director General to the General Conference

Although the Director General in his statements to the General Conference also had to update the Board's Annual Report for a period of over eight months, this did not affect their basic format and coverage. In fact, the Director General did not make a point-by-point updating, but concentrated on particularly significant events that had occurred during this period and on the main points and trends of the Board's report[15].

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[14] As pointed out in the Annual Report for 1972/1973 (GC(XVII)/500, para. 26), all technical co-operation activities were covered in this section of the Report, even if the work had principally been performed by a Division of the Agency that was responsible for an activity listed elsewhere in the Report. It should also be noted that this section of the Annual Report merely constituted a summary of the Annual Report on technical assistance (Section 32.2.1).

[15] For example GC(XXIV)/OR.219, paras 30–75.

### 32.1.4. Annual Report of the Agency to the United Nations General Assembly

As already mentioned, the General Conference decided in 1971 that the statutory Annual Report it received from the Board would also constitute, without any addition, the Agency's report to the United Nations General Assembly[16]. This decision eliminated the need to prepare, as had been the practice since the 4th General Conference, a supplement to the Annual Report, covering the period between the end of its span (in 1971 this was still 30 June) and the adjournment of the Conference.

The implications of eliminating the updating supplement to the Annual Report changed considerably a few years after the 1971 decision, namely when the period of the Annual Reports became the calendar year. Originally, by the time when the General Assembly considered the Agency's report, the Annual Report was only some three months out of date; as of 1975, each Annual Report was over nine months out of date when it was considered by the Assembly. In particular, no information could be included about actions taken by the most recent General Conference. Therefore, any significant developments during the calendar year in question and in particular those occurring at the Conference were mentioned by the Director General in his oral presentation to the General Assembly.

The submission of the Agency's report to the General Assembly normally took place only after the adjournment of the General Conference[17]. However, after the adoption of the 1971 resolution, the General Conference no longer took action on the subject of any of the Agency's reports to the United Nations. This implied that the Conference's approval of each such report, required by Statute Article V.E.7, was considered to have been given in general, and in advance, by the 1971 resolution.

On a number of occasions the General Assembly requested information or reports from the Agency. Whenever possible, these requests were answered by the inclusion of the required information in the next Annual Report of the Agency, together with a direct reference to the request[18], unless the nature or the bulk of the response made it inconvenient to accommodate it in the Annual Report (for example in relation to the Assembly's request to provide relevant data to UNSCEAR for the latter's reports on radiation exposures).

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[16] Section 32.1.1. GC(XV)/RES/274.

[17] This was not possible in 1979, when the 23rd General Conference was held in New Delhi, in December; consequently, the Annual Report was transmitted to the General Assembly with a note stating that it was being circulated at that stage merely on a provisional basis, pending its consideration by the General Conference.

[18] For example the Annual Report for 1977 (GC(XXII)/597), paras 25–26, and the Annual Report for 1971/1972 (GC(XII)/480), paras 16–18.

### 32.1.5. Annual Report of the Agency to ECOSOC

The resolution adopted by the General Conference which contained a decision in respect of the report to the General Assembly also contained an identical decision in respect of the reports to be submitted to ECOSOC[19]. This meant that instead of the annually prepared special reports, covering a period from 1 April to 31 March for consideration at the summer session of ECOSOC, the latter received, as of 1972, the Annual Reports that had been prepared for the period 1 July to 30 June, which ended about 12 months before the session of ECOSOC[20].

Before making this change in reporting, the Director General advised the United Nations Secretary-General (for information of ECOSOC's Committee for Programme and Co-ordination (CPC)) of the proposed new reporting arrangements. The Director General then informed the Board[21], before the Board's proposal was submitted to the General Conference[22], that consultations had taken place (and that apparently no objection had been raised). The Director General also informed the Board (but neither he nor the Board informed the General Conference) that he would update the report, either orally or in a written statement to the Secretary-General for submission to the CPC.

As in respect of the reports submitted to the General Assembly, the General Conference, after adopting its 1971 resolution, took no further decisions in respect of individual Annual Reports for ECOSOC. Such supplementary data as were submitted were prepared by the Director General on his own authority, without consideration either by the Conference or the Board, and were not circulated as an Agency document. In approving this procedure, no member of the Board or the Conference appears to have raised the point of whether the Board was required to prepare these reports or whether the Conference was required to approve them in accordance with Statute Articles VI.J and V.E.6, though this was a question to which considerable attention had been devoted in the early days of the Agency. However, as pointed out in the basic book, a strong argument could be made for the proposition that in respect of the reports to ECOSOC no particular formalities were required.

As in respect of the General Assembly, the reporting schedule changed considerably as a result of the Board's decision in 1975 to put the Annual Reports on a calendar year basis. Thus, by the time this report reached ECOSOC, about $1\frac{1}{2}$ years had passed after its closing date.

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[19] GC(XV)/RES/274.

[20] The last such report was therefore that for 1 April 1970 to 31 March 1971 (INFCIRC/146).

[21] GOV/OR.441, paras 2–3.

[22] GC(XV)/467.

Aside from eliminating all the work required in preparing a separate report for ECOSOC, the new procedure also eliminated the previous seven-step authorization procedure described in the basic book, which had to be repeated annually in respect of each report to the Council.

In the summer of 1977, ECOSOC decided to discontinue the submission of analytical summaries of the reports of the specialized agencies and to replace them with a system-wide study of specific sectors of United Nations activities involving a number of specialized agencies. The resulting reports would be submitted annually by the Administrative Committee on Co-ordination (ACC) to ECOSOC's CPC. Accordingly, no further Annual Reports from the Agency to ECOSOC were required[23].

## 32.2. ROUTINE SPECIALIZED REPORTS

### 32.2.1. Annual Report on technical assistance

The revised Guiding Principles and General Operating Rules to Govern the Provision of Technical Assistance by the Agency, adopted by the Board in 1979, no longer provided for the Director General to submit to the Board a report on the basis of which it could carry out its required annual review of technical assistance, even though the former provision requiring the Board to carry out that review has been maintained[24]. Nevertheless, the Director General, even after the adoption of the revised Guiding Principles, in 1980 prepared a report in the usual format on "The Provision of Technical Assistance by the Agency with Special Reference to 1979"[25], with the usual coverage (which was not changed substantially during the period covered by this book). This report was, as usual, considered by the Board and then transmitted at its request to the 24th General Conference for information[26].

### 32.2.3. List of agreements registered

The 1981 edition of Agreements Registered with the International Atomic Energy Agency[27] contains a cumulative definitive list of legal instruments through

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[23] ECOSOC resolution 2098(LXIII); see also GOV/INF/335.
[24] INFCIRC/267, para. 19.
[25] GOV/1981, attachment.
[26] GC(XXIV)/INF/191.
[27] Legal Series No. 3, eighth edition (STI/PUB/583).

1978 and a provisional list for 1979–1980. In addition, it includes a set of cross-reference tables with respect to the definitive part of the list to facilitate locating agreements by Party or by subject matter (Section 26.6.1.2.4).

### 32.2.4. Accounts

The legal basis for and the general structure of the annual accounts have not changed significantly over the decade. In 1975, as an experiment, the section on Budgetary Performance was transferred to the Annual Report[28] (which had just been placed on a calendar year basis for the express purpose of facilitating comparison with the budget). However, this innovation was not generally welcomed by the Board[29] and in subsequent years this section was returned to the Agency's Accounts[30]. This facilitates the annual examination of the Accounts by the Programme and Budget Committee of the Board; this examination was done by the Committee at the time when it considered the draft budget for the following year[31].

### 32.2.7. Membership list

The last version of the formerly annually updated and reissued document on "Action taken by States in Connection with the Statute" appeared in 1972[32].

### 32.2.8. Technical activities

The two series of reports on the Agency's laboratory activities[33] and on its research contracts[34], which had formerly appeared annually in the Technical Reports Series, were both discontinued, as an economy measure by the Director General[35].

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[28] GC(XX)/565, paras 150–239.

[29] GOV/OR.487, paras 23–24, 28, 34, 57 and 61.

[30] For example The Agency's Accounts for 1976 (GC(XXI)/581, Part V).

[31] Section 25.2.2.2.

[32] The latest such list presented information received up to 30 November 1972 (INFCIRC/42/Rev.8).

[33] The last report on IAEA Laboratory Activities was the seventh (1970), covering activities during 1969 (Technical Reports Series No. 103, STI/DOC/10/103).

[34] The last report on IAEA Research Contracts was the fourteenth (1974) (Technical Reports Series No. 154, STI/DOC/10/154). According to the Agency's Publications Catalogue, microfiche copies of complete final research reports may be purchased from the INIS Section.

[35] GOV/OR.434, para. 26; GC(XV)/455, para. 65.

### 32.2.9. Safeguards Implementation Reports

In February 1976 the Director General informed the Board that he proposed to submit to it periodic reports containing information on the implementation of safeguards[36]. Previously he had referred the question of the appropriate contents of the proposed Special Safeguards Implementation Reports to the Standing Advisory Group on Safeguards Implementation (SAGSI), which considered the matter at three series of meetings from December 1975 to October 1976. In February 1977 the Director General presented to the Board, for its consideration and approval, a paper indicating the proposed structure, format and content of the Special Safeguards Implementation Report (SSIR)[37]. After a brief discussion, during which some suggestions were made[38], the Board approved the proposed report[39].

On the basis of the approved scheme, a Special Safeguards Implementation Report covering the year 1976 was issued for the June 1977 session of the Board. The name of the report was changed to Safeguards Implementation Report (SIR) to emphasize its periodic and routine nature. In each subsequent year such a report was issued, accompanied by confidential supplements containing technical and statistical data[40]. The reports were designed to complement the considerably briefer and more

[36] GOV/OR.486, para. 37. (In connection with this and the following footnotes, see also Section 21.13.3).

[37] GOV/1823.

[38] GOV/OR.495, paras 19–30.

[39] GOV/DEC/92(XX), No. (11).

[40] The numbers of the reports and of the records of their discussion by the Board are as follows:

| Year covered | Report* | Document GOV/... | Technical and Statistical Supplement IAEA/STR-... | Discussed in GOV/OR. ... | paras... |
|---|---|---|---|---|---|
| 1976 | SSIR | 1842 | 65 | 500 | 2–55 |
| | | | | 505 | 70–141 |
| | | | | 506 | 1–38 |
| 1977 | SIR | 1897 + Corr. 1 | 68 | 516 | 1–43 |
| | | 1911 | | 523 | 46–59 |
| | | | | 524 | 1–40 |
| 1978 | SIR | 1939 + Corr. 1 | | 535 | 18–32 |
| | | | | 536 | 18–66 |
| 1979 | SIR | 1982 | | 550 | 59–73 |
| | | | | 551 | 1–57 |
| 1980 | SIR | 2028 | | 568 | 28–91 |

* The scheme originally approved by the Board was for the issue of "Special Safeguards Implementation Reports" (SSIRs), and the 1976 report was issued under this title. However, for subsequent years the word 'Special' was omitted, and no explanation was given therefor, though this had been requested by at least one Governor (GOV/OR.516, para. 8).

superficial accounts of safeguards included in each Annual Report covering the same period and considered by the Board at the same session. Over the years the form of the SIRs has evolved considerably, reflecting in part the growth and development of the safeguards system and in part suggestions expressed by Governors in connection with previous reports. In addition, a systematic attempt was made to emphasize each year a different aspect of safeguards implementation of particular concern at the time. While preserving, at least nominally, the anonymity of the individual States (which could not always be guarded completely in view of the well known characteristics of the nuclear programmes of most of the leading States), the reports discussed the special features of safeguarding for each type of facility in the context of various types of national nuclear programmes. They also indicated the basis on which the annually repeated conclusion of 'no diversion' had been reached and the special problems that had arisen in respect of particular facilities or States, and proposed solutions. From time to time, the reports mentioned questions which the Director General had submitted or intended to submit to SAGSI, or on which special comments were desired by Board members.

## 32.3. EXTRAORDINARY REPORTS

During the period under review there was no occasion to make any special report under this section regarding a violation of Safeguards Agreements or an act of non-compliance within the meaning of Statute Article XII.C.

# Chapter 33
# LANGUAGES

## PRINCIPAL INSTRUMENTS

IAEA Statute, Article XXIII;
General Conference Rules of Procedure (GC(XIX)/INF/152 and Mod.1), 86–88;
Board Rules of Procedure (GOV/INF/60 (October 1976 edition)), 51–54;
Staff Rules (AM.II/1), 5.01.7;
Secretariat Instruction on "Correspondence and Communications" (AM.VIII/2), para. 16;
Protocols to Relationship Agreements (for example that concluded with the United Nations, INFCIRC/11, Part 1.B);
NPT Safeguards Document (INFCIRC/153), paras 52 and 60;
Policy on languages of publication (GC(IV)/116), para. 377.

## 33.2. THE REPRESENTATIVE ORGANS

In 1981 the General Conference amended its Rules of Procedure by adding Arabic to the lists of its official and working languages[1]. It did so on the proposal of Syria, which pointed out that the 14 Member States having Arabic as their official language consistuted as large a group as the States having any of the five previously accepted official languages of the Conference (only Spanish being as well represented), and that the populations and areas of these States were considerable. Syria also pointed out that a number of other United Nations related organizations had already taken similar action[2]. The Committee of the Whole of the General Conference heard a statement on the financial implications[3], as well as on undertakings of certain Arab States to bear part of the cost of initiating this service[4].

The Meeting of Governmental Representatives to Consider the Drafting of a Convention on the Physical Protection of Nuclear Material[5] used English, French, Russian and Spanish[6], which are also the languages of the Final Act[7], though (as mentioned in Section 33.4) the Convention itself is in six authentic languages.

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[1] GC(XXV)/RES/390; GC(XIX)/INF/152/Mod.1.

[2] GC(XXV)/650 and /Corr. 1–2.

[3] One-time capital costs of US $16 000 (e.g. for typewriters and dictionaries) and annual costs of US $276 000 (in constant dollars); GC(XXV)/COM.5/OR.25, para. 63.

[4] GC(XXV)/COM.5/OR.25, paras 64–65, 67–68. The question was not debated in the Plenary; GC(XXV)/OR.237, paras 89 and 104.

[5] Section 23.7.5.

[6] As provided by the draft rules of procedure of the Meeting (CPNM/4), which were not formally adopted.

[7] The languages of the Final Act (INFCIRC/274/Rev.1, second part) are not specified therein.

In 1980 the Secretariat started to provide interpretation also for informal meetings of Member States[8], presumably in those of the working languages of the General Conference or the Board which are required for the meetings.

## 33.3. THE SECRETARIAT

Under its Rules of Procedure, the Staff Council could conduct its business "in any of the working languages of the Agency and in German"[9], and the records of its meetings had to be drawn up in English and in German[10].

During the period covered by the present book, some Member States objected to the predominant anglophone nature of the Secretariat[11]. This objection was raised especially in respect of Agency inspectors, with several Spanish speaking States insisting that it was improper to propose and send to these countries officials who do not speak Spanish[12]. However, the Agency did not establish any formal linguistic requirements for recruitment, though vacancy notices indicated the languages required for particular posts.

A Language Allowance continued to be paid to General Service and Maintenance and Operative staff members for the knowledge of additional official languages[13].

## 33.4. AGREEMENTS

The Agency continued to conclude bilateral agreements in as few languages as possible. Though generally these agreements were either in English or French, or included these languages, agreements were also concluded in Russian[14] or Spanish[15] only.

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[8] DGM 30/80, item 4, para. 1.

[9] AM.II/14, Annex III, Rule 7.

[10] AM.II/14, Annex III, Rule 8.

[11] See letters from France of 13 June 1969, 20 January 1970 and 23 March 1971, and the Agency's reply of 17 March 1970. See also letter from Spain of 2 July 1975 protesting that vacancy notices for Agency experts to be assigned to Spanish speaking areas were not published in Spanish.

[12] See letter from Spain of 19 December 1974 and the Agency's negative response of 12 March 1976. See also the Argentine protest recorded in GOV/OR.535, para. 32.

[13] Staff Rule (AM.II/1), 5.01.7. This rule had also existed during the period covered by the basic book (see Section 24.4.1.2.3) and corresponds substantially to similar rules in other United Nations common system organizations. The Staff Rule itself does not define 'official languages', but presumably means those of the Board or the General Conference.

[14] For example NPT Safeguards Agreement with Bulgaria (INFCIRC/178, final paragraph).

[15] For example Safeguards Agreement with Cuba relating to a nuclear power plant (INFCIRC/281, final paragraph).

The multilateral Convention on the Physical Protection of Nuclear Material was signed in Arabic, Chinese, English, French, Russian and Spanish, and was stated to be 'equally authentic' in all of these languages[16]. Since Arabic and Chinese were not languages of the Meeting of Governmental Representatives during which the Convention was drafted, the versions in these languages were prepared later by the Secretariat (actually the United Nations) and were then distributed, first for information and then in certified form, together with the versions in the other four languages[17].

## 33.5. REPORTING REQUIREMENTS

The NPT Safeguards Document states substantially the same linguistic requirements as the Revised Safeguards Document[18]. In particular, reports are to be made in either English, French, Russian or Spanish, unless otherwise specified in Subsidiary Arrangements[19]. There is no such requirement in respect of the records to be kept, but the State must make appropriate arrangements to facilitate their examination by inspectors if the records are not in one of these four languages[20].

Under the standard Agency Research Contract form the reports of the Contractor are to be submitted "in the English, French, Russian or Spanish language"[21].

## 33.6. PUBLICATIONS

In connection with INIS, the Agency basically was not charged to carry out translations[22]. Abstracts may be submitted in any language(s), as long as at least one of them is English, French, Russian or Spanish; the submission of one version

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[16] INFCIRC/274/Rev.1 (first part), Article 23.

[17] Circular letter SAF/412, 25 February 1980. The Arabic and Chinese translations were prepared by the United Nations Secretariat in New York because the Agency did not have translation services in these languages. At the signature of the Final Act on 26 October 1979 the French representative made a general reservation regarding the French text of the Convention. Subsequently, France and the Secretariat agreed on a number of non-substantive changes, which were then incorporated into the French text of the Convention (letters from the French Resident Representative of 20 November 1979 and 30 January 1980). At the final session of the Meeting it had been agreed that the Secretariat could make such changes on the advice of the French Government. A grammatical error in the Russian designation of States was subsequently corrected by the Secretariat (see Agency's circular letter of 8 April 1980).

[18] INFCIRC/66/Rev.2, paras 34 and 38.

[19] INFCIRC/153, para. 60.

[20] INFCIRC/153, para. 52.

[21] Agency Research Contract form (N-39A (Feb. 70)), para. III.

[22] GOV/1319, para. 17.

in the language of the original document is encouraged[23]. The INIS Atomindex reproduced the text of every abstract in English, as well as any available French, Russian or Spanish version[24]. The INIS Thesaurus was prepared in English and French; German and Russian versions were prepared by the respective national centres[25]. All data stored on magnetic tape and distributed as such or on an 'on-line' basis were in English. 'Non-conventional documents' (i.e. those from non-published sources) were accepted in any language, but were merely reproduced in full and made available on microfiche.

## 33.7. TECHNICAL MEETINGS

Technical meetings in principle used the four working languages of the Board. However, interpretation into all four languages was foreseen only for conferences and symposia, and even there it was attempted to determine whether, on the basis of the expected participation, it was possible to omit those languages that were not needed[26]. Efforts were made to conduct seminars[27], meetings of advisory groups and technical committees[28], as well as research co-ordination meetings[29] in one language only, which usually was English[30]. Papers and abstracts could be submitted in any of the four languages, but the Agency normally prepared only an English translation of the abstract.

Substantially the same principles were applied to the meetings of INFCE, which the Agency arranged on behalf of the participants. The plenary meetings were conducted in all four languages[31]; Working Group reports were prepared in English only, with summary reports in all four languages[32].

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[23] IAEA-INIS-4 (Rev.1) (Instructions for Submitting Abstracts), para. 16.

[24] INIS Today (IAEA Publ. No. GEN/PUB/13/Rev.2), p. 24.

[25] Ibid., p. 22.

[26] AM.VII/1, Annex I, para. 37. In a letter dated 31 August 1973 Spain protested against a 'rule' whereby Spanish interpretation is only provided for symposia if at least 90 days' notice is given of the attendance of Spanish speaking participants.

[27] AM.VII/1, Annex I, para. 37.

[28] AM.VII/1, Annex II, paras 28–29.

[29] AM.VII/1, Annex III, para. 14.

[30] The interpretation services actually to be provided for Agency meetings were listed in column (6) of the Secretariat's monthly working document entitled "Schedule of Meetings Planned by the International Atomic Energy Agency".

[31] See Information Handbook prepared for the Opening Conference of INFCE, p. 8.

[32] INFCE/PC/1/13, p. 2.

# ANNEX

# BIBLIOGRAPHY*


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