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## THE CONVENTION ON NUCLEAR SAFETY<sup>\*/</sup>

### Report by the Director General

#### Introduction

1. In February 1994, the Board of Governors decided to request the Director General to convene a diplomatic conference in June 1994 for the purpose of adopting a Nuclear Safety Convention. This decision was based on recommendations made by the Director General to the Board following the finalization of a draft text of a Convention by a group of legal and technical experts set up by the Board in 1992. The General Conference had discussed matters relating to the Convention at its thirty-fifth, thirty-sixth and thirty-seventh regular sessions, and in resolution GC(XXXVII)/RES/615 it stressed "the desirability of a diplomatic conference early in 1994". In particular, the Board authorized the Director General to proceed on the understanding:

- "(i) that a diplomatic conference [would] be convened for 14-17 June 1994 for the purpose of adopting the Nuclear Safety Convention,
  - the duration of the conference being limited to four days and
  - invitations being sent to all States,
- (ii) that the draft Nuclear Safety Convention to be submitted to the diplomatic conference [would] be the comprehensive draft text prepared by the Group of Experts,
- (iii) that an informal open-ended meeting of Member States [would] be held late in March or early in April.....
- (iv) that the costs of organizing the diplomatic conference and the preparatory meeting referred to above [would] be met from the Agency's Regular Budget for 1993 within the framework of the 1993 deferred programme activities, and

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<sup>\*/</sup> The Convention on Nuclear Safety will be opened by the Director General for signature at 11 a.m. on Tuesday, 20 September in room J241-1 on the first floor of the Austria Center Vienna.

- (v) that the Convention [would] be opened for signature at the thirty-eighth (1994) regular session of the General Conference."

### **The Diplomatic Conference**

2. Pursuant to the Board's decision, the Director General convened an informal open-ended meeting of Member States for 28-29 March. The meeting participants discussed draft Provisional Rules of Procedure prepared by the Secretariat and made a number of proposals regarding matters such as the number of officers to be elected by the Conference. By a Note Verbale dated 8 April 1994, the Secretariat invited States to designate representatives to a Conference of Plenipotentiaries convened for 14-17 June at the Agency's Headquarters to consider and adopt a Nuclear Safety Convention. Attached to the invitation were: the provisional agenda of the Conference; the provisional Rules of Procedure of the Conference; and the text of the draft Nuclear Safety Convention.

3. The Conference was opened on 14 June by the Director General acting as Temporary President of the Conference. The Conference elected Mr. W. Hohlefelder (Germany) as President of the Conference and Vice-Presidents from Algeria, Argentina, Indonesia, Japan, Pakistan, the Russian Federation, Spain and the United States of America. The Conference also elected Mr. L. Högberg (Sweden) as Chairman of the Committee of the Whole, Mrs. T.M. Machado Quintella (Brazil) as Vice-Chairperson of the Committee of the Whole and Mr. A. Gopalakrishnan (India) as Chairman of the Drafting Committee.

4. Eighty-four States participated in the Conference. The Agency, UNESCO, OECD/NEA and the Commission of the European Union attended as observers.

5. On 17 June the Conference adopted the Convention on Nuclear Safety without a vote<sup>1/</sup>. The Final Act of the Conference was signed by representatives of 71 States.<sup>2/</sup>

### **Role of the Agency under the Convention**

6. Article VI.F of the Agency's Statute provides that the Board of Governors "shall have authority to carry out the functions of the Agency in accordance with this Statute". It was accordingly for the Board to approve the acceptance by the Agency of the role assigned to it by the Convention.

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<sup>1/</sup> The text of the Convention has been issued in Agency document INFCIRC/449 for the information of Member States.

<sup>2/</sup> The Final Act and other Diplomatic Conference documents, including the Report of the Plenary, will be published in the Agency's Legal Series. See also document INFCIRC/449/Add.1.

7. As regards the contents of the Convention, the text provides that it shall apply to "nuclear installations", defined as "land-based civil nuclear power plants". The obligations of the Contracting Parties are based to a large extent on the principles contained in the Safety Fundamentals document "The Safety of Nuclear Installations".<sup>3/</sup> They include in particular the obligation to establish and maintain a legislative and regulatory framework for nuclear installations and the obligation to implement a number of measures, based on general safety considerations, regarding - for example - the availability of financial and human resources, the assessment and verification of safety, quality assurance, and emergency preparedness. Other obligations concern technical aspects of the safety of nuclear installations, including siting, design, construction and operation.

8. For the Agency, the most relevant feature of the Convention is that it provides for an obligation of the Contracting Parties to submit reports on the implementation of the Convention for review at meetings of the Contracting Parties.

9. Specifically, the Convention provides that after its entry into force the Contracting Parties shall hold, at regular intervals, meetings for the purpose of reviewing national reports to be submitted by each Contracting Party on the measures taken by it in fulfilling its obligations under the Convention. The Agency would provide the secretariat for these meetings.

10. The Convention also provides that the Director General of the Agency shall be the Depository of the Convention.<sup>4/</sup>

### **Secretariat functions**

11. As regards the specific functions to be entrusted to the Agency, Article 28 of the Convention provides that:

"1. The International Atomic Energy Agency (hereinafter referred to as the "Agency") shall provide the secretariat for the meetings of the Contracting Parties.

"2. The secretariat shall:

(i) convene, prepare and service the meetings of the Contracting Parties;

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<sup>3/</sup> Published by the Agency (as Safety Series No. 110) last year after the Board had approved it for publication at the recommendation of NUSSAG.

<sup>4/</sup> In its Preamble, the text of the Convention recalls other conventions adopted under the auspices of the Agency: the Convention on the Physical Protection of Nuclear Material (1979), the Convention on Early Notification of a Nuclear Accident (1986) and the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency (1986).

- (ii) transmit to the Contracting Parties information received or prepared in accordance with the provisions of this Convention.

The costs incurred by the Agency in carrying out the functions referred to in sub-paragraphs (i) and (ii) above shall be borne by the Agency as part of its regular budget.

"3. The Contracting Parties may, by consensus, request the Agency to provide other services in support of meetings of the Contracting Parties. The Agency may provide such services if they can be undertaken within its programme and regular budget. Should this not be possible, the Agency may provide such services if voluntary funding is provided from another source."

12. The meetings of the Contracting Parties referred to above are provided for in Article 20 ("Review meetings"), paragraph 1 of which provides that:

"1. The Contracting Parties shall hold meetings (hereinafter referred to as "review meetings") for the purpose of reviewing the reports submitted pursuant to Article 5 in accordance with the procedures adopted under Article 22."

13. The Convention also provides, in Article 21, a timetable for the review meetings:

"1. A preparatory meeting of the Contracting Parties shall be held not later than six months after the date of entry into force of this Convention.

"2. At this preparatory meeting, the Contracting Parties shall determine the date for the first review meeting. This review meeting shall be held as soon as possible, but not later than thirty months after the date of entry into force of this Convention.

"3. At each review meeting, the Contracting Parties shall determine the date for the next such meeting. The interval between review meetings shall not exceed three years."

14. The Rules of Procedure and Financial Rules for the review meetings would be prepared and adopted by consensus at the preparatory meeting of the Contracting Parties.

15. In view of the above provisions, the tasks to be carried out by Agency in providing the secretariat for the review meetings would be, for each such meeting: (i) to convene and service the meeting (e.g. send out invitations, reserve meeting rooms and organize the reproduction and distribution of documents; and (ii) to prepare the meeting and circulate information (e.g. papers) to participants. In addition, the Agency might be asked to provide other services in support of meetings of the Contracting Parties.

16. The issue of languages of meetings of the Contracting Parties has to be addressed separately. Article 26 provides that:

"1. The languages of meetings of the Contracting Parties shall be Arabic, Chinese, English, French, Russian and Spanish unless otherwise provided in the Rules of Procedure.

"2. Reports submitted pursuant to Article 5 shall be prepared in the national language of the submitting Contracting Party or in a single designated language to be agreed in the Rules of Procedure. Should the report be submitted in a national language other than the designated language, a translation of the report into the designated language shall be provided by the Contracting Party.

"3. Notwithstanding the provisions of paragraph 2, if compensated, the secretariat will assume the translation into the designated language of reports submitted in any other language of the meeting."

17. It follows from the above that the Agency would arrange for the translation of reports into the languages of meetings of the Contracting Parties - or into the designated language - only "if compensated", i.e. only if funds were made available by the Contracting Parties for this specific purpose.

### Financial implications

18. The Diplomatic Conference also adopted without a vote, in the form of an Annex to the Final Act, a document entitled "Some clarification with respect to procedural and financial arrangements, national reports and the conduct of review meetings, envisaged in the Convention on Nuclear Safety". In that document it is stated that "all provisions in the Rules of Procedure and the Financial Rules should be in strict conformity with the provisions of the Convention." It is also stated that "All costs to the secretariat, referred to in Article 28 of the Convention, should be kept to a minimum. The Agency should be requested to provide other services in support of the meeting of the Contracting Parties, only if such services are deemed essential."

19. When estimating, in the light of this "clarification", the possible costs to the Agency of providing the secretariat for meetings of the Contracting Parties, one has to bear procedural and timing considerations in mind:

20. As regards procedural considerations, in paragraph 2 of Article 28 it is stated that:

"The costs incurred by the Agency in carrying out the [secretariat] functions ... shall be borne by the Agency as part of its regular budget."

Also, paragraph 3 of Article 28 provides that:

"The Contracting Parties may, by consensus, request the Agency to provide other services in support of meetings of the Contracting Parties. The Agency may provide such services if they can be undertaken within its programme and regular budget. Should this not be possible, the Agency may provide such services if voluntary funding is provided from another source."

Any costs to be incurred by the Agency in order to assist Contracting Parties in implementing the Convention would therefore have to be either provided for through the usual, statutory budget proposal, approval and adoption procedures of the Agency or covered through voluntary funding in accordance with the established rules applicable to such funding.

21. As regards timing considerations, Article 31 provides that the Convention "shall enter into force on the ninetieth day after the date of deposit with the Depositary of the twenty-second instrument of ratification, acceptance or approval, including the instruments of seventeen States, each having at least one nuclear installation which has achieved criticality in a reactor core." As provided in Article 21, the preparatory meeting would be held not later than six months after the date of entry into force of the Convention. Tentative indications of the date of entry into force should be available by the end of 1996. At present, the number of Contracting Parties to be invited to the envisaged meetings, the languages to be used and other points necessary for budgeting purposes cannot reasonably be established.

22. As soon as the approximate date of entry into force can be foreseen (on the basis of the instruments of ratification received by the Depositary), the Secretariat would prepare - for inclusion in the next programme and budget - an estimate of possible costs to the Agency based on the then prevailing costs of translation, interpretation and other services.

23. The question of possible costs to the Agency will therefore be kept under review and brought before the Board when appropriate.

#### **Depositary function**

24. As stated in paragraph 10 above, the Convention provides that the Director General of the Agency shall be the Depositary of the Convention. The duties listed in Article 34 are those usually performed in connection with the Depositary function, which is essentially the notification of legally relevant events to Contracting Parties. The costs associated with this function could be absorbed by the Secretariat, which is already performing similar duties in respect of other Conventions.

**ACTION TAKEN BY THE BOARD**

25. On Monday, 12 September the Board of Governors approved - subject to the Convention's entry into force - the role conferred on the Agency by the Convention (see para. 6 above) and requested the Director General to assume the depositary function provided for in the Convention (see para. 24 above).

