

Information Circular

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Communication dated 12 September 2022 received from the Permanent Mission of the People's Republic of China to the Agency

1. The Secretariat has received a Note Verbale dated 12 September 2022 from the Permanent Mission of the People's Republic of China to the Agency.
2. As requested, the Note Verbale, together with its attachment, is herewith circulated for the information of all Member States.



THE PEOPLE'S REPUBLIC OF CHINA
PERMANENT MISSION IN VIENNA

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The Permanent Mission of the People's Republic of China to the United Nations and other International Organizations in Vienna presents its compliments to the Secretariat of the International Atomic Energy Agency, and has the honour to request the circulation of China's working paper, as attached, on its positions on relevant AUKUS matters, including the DG's relevant report, just submitted on 9 September.

It is the hope of the China that this Verbal Note, together with the attached working paper, is duly circulated to all Member States of the Agency without delay.

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

Vienna, 12 September 2022



The Secretariat of
International Atomic Energy Agency
VIC, Vienna 1400

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Conclusion

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

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

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