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APPLICATION OF IAEA SAFEGUARDS IN THE MIDDLE EAST^{*/}

INTRODUCTION

1. In resolution GC(XXXV)/RES/571, the General Conference last year requested the Director General "to take such measures as are necessary to facilitate the early application of full-scope Agency safeguards to all nuclear activities in the Middle East".
2. The General Conference further requested the Director General "to prepare a model agreement taking into account the views of the States in the region, as a necessary step towards the creation of a nuclear-weapon-free zone".
3. In response to these requests, the Director General has continued his consultations with States through discussions at the Agency's Headquarters and in the region.^{1/} There continued to be agreement among all the States in question on the desirability of applying Agency safeguards to all nuclear

^{*/} This paper is a revised version of document GOV/INF/658, which was considered by the Board in June 1992. The revision takes into account views expressed during the Board's discussion.

^{1/} Talks were held with representatives of several States in Vienna; visits were paid to the Libyan Arab Jamahiriya, the Syrian Arab Republic and Egypt. During the visit of the Director General to Syria, the Government declared its intention to conclude its safeguards agreement with the Agency pursuant to Article III of NPT. The agreement entered into force on 18 May 1992.



activities in the Middle East. Opinions among States of the region continued to differ, however, as to whether this should precede or be part of a peaceful settlement in the region. Many of these States expressed the view that the application of safeguards to all nuclear facilities in the region should not await or be dependent upon a peaceful settlement; in their view, the application of safeguards would constitute a confidence-building measure that could contribute to a peaceful settlement. Another view expressed was that the primary task was to conclude a nuclear-weapon-free zone (NWFZ) agreement in the Middle East within the context of a peaceful settlement and that the safeguards issue could be appropriately considered only thereafter.

4. Several States considered that there might be a need, in a future NWFZ in the Middle East, to develop a safeguards approach tailored to the specific requirements of the region. A particular feature of that approach might be a system of mutual inspection by the parties, in addition to verification by the Agency, as a supplementary confidence-building measure.

5. "Full-scope safeguards" is a concept that connotes the safeguards verification of all present and future nuclear material in a country and a legally binding commitment that all such material shall be used only for non-explosive purposes. A model agreement for such safeguards exists in document INFCIRC/153, which was worked out for States which have adhered to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT). Other models - for instance, models providing for more far-reaching verification or for the verification of more far-reaching undertakings than those contained in NPT - are possible.

6. The evolutionary process which has resulted in broad adherence to NPT and to INFCIRC/153-type safeguards agreements in the Middle East is an important step in creating confidence. There is a consensus that this non-proliferation process will be further promoted through the establishment of a NWFZ with appropriate safeguards arrangements. It is against this background that the

request of the General Conference for a model safeguards agreement should be seen. The General Conference regarded a model safeguards agreement as an element contributing to - indeed a necessary step in - the creation of a NWFZ. However, while a model safeguards agreement taking into account the views of all States in the region would have to reflect their views as to - for instance - what nuclear activities could be accepted in the zone, no consensus view is as yet known in this matter.

7. The report of the United Nations Secretary-General on the establishment of a NWFZ in the Middle East (United Nations document A/45/435), prepared after extensive consultations in the region, points to many options and problems on which a consensus would be needed for the establishment of a NWFZ. The choices of options and the answers to problems, which in many instances will be decisive for the safeguards model agreement, can emerge only through a process of discussion. The Agency can contribute to the discussion by explaining, in contacts with the States concerned, its experience of the merits and limitations of various safeguards approaches.

8. The Director General intends to intensify his contacts with the States concerned in the coming year. The Agency might also, if it is deemed desirable, arrange seminars to familiarize Government officials in the States concerned with safeguards principles, practices and modalities in order to facilitate their choices of options. Once views are formed and some convergence of these views has taken place among the parties concerned as regards the main features of a NWFZ, the Agency would be in a better position to present a single model safeguards agreement. At the present stage, it must limit itself to describing possibilities and options. This is done below.

9. NWFZs have been established in Latin America and the South Pacific by virtue of the Treaty for the Prohibition of Nuclear Weapons in Latin America (Treaty of Tlatelolco) and the South Pacific Nuclear Free Zone Treaty

(Rarotonga Treaty) respectively.^{2/} These two precedents are of particular relevance to the examination of a verification regime for a future Middle East NWFZ: each treaty covers large inhabited areas and each is designed to ensure the total absence of nuclear weapons from the territories of the States party to it; each treaty contains a protocol providing for the nuclear-weapon States to commit themselves not to use or threaten to use nuclear weapons against any non-nuclear-weapon State party to it; and both treaties provide for Agency verification of the non-diversion of nuclear material and for the establishment of regional mechanisms to deal with compliance problems.

OBLIGATIONS TO BE VERIFIED IN A NWFZ IN THE MIDDLE EAST

10. As with the Treaty of Tlatelolco and the Rarotonga Treaty, the obligations of two groups of States must be considered in the case of a NWFZ agreement covering the Middle East: the States located in the region and the declared nuclear-weapon States (none of which is located in the region).

11. For the States located in the region, the basic obligations under a NWFZ agreement might include:

- A. an undertaking to use nuclear energy for exclusively peaceful, non-explosive purposes;
- B. an undertaking not to conduct research on, manufacture, possess, control or use nuclear weapons or nuclear explosive devices;
- C. an undertaking not to permit the deployment or testing of nuclear weapons or nuclear explosive devices anywhere in their territories;

^{2/} NWFZs have also been established in certain uninhabited areas - Antarctica (Antarctic Treaty), outer space (Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies) and the sea bed (Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea Bed and the Ocean Floor and in the Subsoil Thereof).

- D. an undertaking not to conduct research on, manufacture, possess, control or use any nuclear-weapon-usable material;
- E. an undertaking to report all imports, exports and production of nuclear material and relevant equipment and non-nuclear material;
- F. an undertaking to accept safeguards on all nuclear material and installations located in their territories or under their control, including an undertaking to facilitate prompt access by inspectors; and
- G. an undertaking to report annually on all nuclear-related research and development.

12. The obligations of the nuclear-weapon States with regard to a NWFZ in the Middle East might include:

- A. an undertaking to respect the nuclear-weapon-free status of the zone in all respects relevant to the obligations of the States party to the NWFZ agreement;
- B. an undertaking to provide assurances to all parties to the NWFZ agreement that they will not use or threaten to use nuclear weapons against any of them (negative security assurances); and
- C. an undertaking to provide assurances that if any party to the NWFZ agreement is attacked or threatened with attack by a State having nuclear weapons, they will come to the assistance of the threatened State (positive security assurances).

VERIFICATION REQUIREMENTS IN A NWFZ IN THE MIDDLE EAST

13. As can be seen from the preceding paragraphs, the obligations which might form part of a NWFZ agreement fall into three general categories: (i) those which preclude research and development on and the possession, acquisition, manufacture or stationing of nuclear weapons or nuclear explosive devices; (ii) those which preclude research and development on and the production, importing or stockpiling of weapons-usable materials (i.e. uranium enriched to 20% or more in uranium-235 and separated plutonium) and require the disclosure of all nuclear activities, including research and development, imports, exports and production; and (iii) those which require the application of safeguards to all nuclear material, installations and relevant equipment and non-nuclear material.

14. With the exception of the obligation not to permit the stationing of nuclear weapons or nuclear explosive devices in their territories, the obligations under (i) above have already been entered into by the States in the Middle East that have become party to NPT.^{3/} Not all the States in the Middle East, however, have made a binding non-proliferation commitment.

15. For those Middle East States party to NPT which have significant nuclear activities, the required comprehensive safeguards agreements have been concluded with the Agency. The remaining Middle East States party to NPT are under an obligation to conclude such agreements. These agreements cover all nuclear material in peaceful nuclear activities in the States which concluded them. However, additional assurance that no research and development related to nuclear weapons or nuclear explosive devices is taking place, or that a State has not acquired a nuclear explosive device from elsewhere, might require verification activities and access rights beyond those which are currently foreseen in existing safeguards agreements for the verification of nuclear material.

16. The obligations under (ii) above go beyond what is currently required under the Treaty of Tlatelolco and the Rarotonga Treaty. However, some of them are envisaged in the Joint Declaration for a Non-Nuclear Korean Peninsula, which provides that the Democratic People's Republic of Korea and the Republic of Korea shall not possess facilities for nuclear reprocessing and uranium enrichment. Also, the obligations under (ii) above are among the obligations prescribed with regard to Iraq in Security Council resolution 687. These obligations and others relating to weapons of mass destruction were regarded by the Security Council as "steps towards the goal of establishing in the Middle East a zone free from weapons of mass destruction". Pursuant to its mandate under the resolution to establish a

^{3/} It should be noted that States can conclude comprehensive safeguards agreements with the Agency independently of becoming party to NPT.

plan for ongoing monitoring and verification of Iraq's compliance with the resolution, the Agency has developed, and the Security Council has approved, a plan for verifying Iraq's compliance with such obligations. The plan provides for a comprehensive right of access to locations and information necessary for verifying compliance. The verification of similar obligations in a NWFZ in the Middle East would require a wider right of access to locations and information than is currently available under existing safeguards agreements.

17. Obligations under (iii) above have been entered into by some Middle East States either under their NPT safeguards agreements, which require the State to submit all nuclear material in peaceful nuclear activities to Agency verification, or under INFCIRC/66-type agreements, which require the State to submit specified facilities, material or equipment to Agency safeguards. The obligation to submit all nuclear material, facilities and relevant equipment and non-nuclear material to Agency safeguards would enable the Agency to exercise a more comprehensive right of verification than is currently available under existing safeguards agreements.

INSTITUTIONAL ARRANGEMENTS THAT MIGHT BE ESTABLISHED

18. Effective verification is an important measure of arms control agreements that aims at creating the necessary confidence. In the Middle East, with a legacy of fear and mistrust, the creation of such confidence would require verification arrangements that are far-reaching and comprehensive. NWFZs are of relevance not only to the parties directly involved, but also to States bordering the region and to the wider international community. This underscores the need for a verification regime that creates the necessary confidence among the parties to the NWFZ agreement and within the international community at large. In order to meet both regional and global concerns, verification arrangements under existing NWFZ agreements provide for international inspection through the Agency and for regional structures that may be invoked in specified circumstances.

19. Against this background, a number of institutional arrangements combining international and regional verification could be developed for a Middle East NWFZ. A first option might be to assign all routine verification responsibility to the Agency. This could be accompanied by an arrangement for designated regional personnel to participate as observers in the conduct of on-site inspections. Non-routine verification activities - i.e. verification activities triggered by special requests of (i) the party to be investigated, (ii) a party to the NWFZ agreement pursuant to its provisions or (iii) the Agency itself, owing to the impossibility of reaching conclusions regarding material, installations or equipment subject to safeguards - could be conducted by (a) the Agency alone, (b) the Agency with regionally designated observers, (c) a joint team consisting of Agency and regional inspectors, or (d) a regional inspection team in addition to and parallel with an Agency inspection team. The option is based on existing international verification arrangements as implemented by the Agency, while accommodating regional verification requirements.

20. A second option might be for all routine and non-routine verification activities to be conducted by international and regional authorities acting jointly but in a manner which enables both to reach their own independent conclusions and to give required assurances. This option would involve a formal, two-tier verification arrangement, the establishment of a regional authority and the creation of a regional inspectorate. Two examples exist of such an arrangement: the European Atomic Energy Community (EURATOM) and the Brazilian-Argentine Agency for Accounting and Control of Nuclear Materials (ABACC). In both cases, safeguards agreements with the Agency include protocols which specify in detail the scope and character of co-operation between the regional and the international verification authorities.

21. Either of these two options could, in the interests of transparency and openness, provide for quota inspections in addition to routine and special inspections. Quota inspections would be based on agreement that a certain

number of inspections may be carried out on demand each year at any location or at designated locations in the relevant State. Such inspections could be demanded by any State party to a NWFZ agreement or by the regional organization administering the agreement. It could be agreed beforehand that any inspector on a list of designated inspectors will be received and that access will be provided immediately upon request. An arrangement of this type was incorporated into the Intermediate-Range Nuclear Forces Agreement concluded in 1988 between the United States and the Soviet Union.

22. A third option might be for routine and non-routine verification activities to be carried out independently by the Agency and an inspection body created by - and responsible to - an authority consisting of the parties to the NWFZ agreement.

23. An arrangement of this type seems to be contemplated in the Joint Declaration for a Non-Nuclear Korean Peninsula. Comprehensive as it may be, however, a regional verification arrangement would probably not be regarded as a substitute for international verification. The larger concerns of the international community may well require international verification, which has the additional demonstrated advantage of being based on an existing system which draws on highly developed expertise and techniques.

24. It should be noted that, although certain matters - such as the safeguards approach for verifying the basic obligations entered into under a NWFZ agreement and the nature of the co-operation between the Agency and the regional authority - might have to be tailored to meet the particular requirements of the NWFZ agreement, the main technical features of Agency safeguards and features related to such matters as privileges and immunities, cost sharing, liability and the settlement of disputes would continue to be relevant.

25. The Director General will pursue his consultations with the States of the Middle East on the application of safeguards to all nuclear facilities in the region. Also, he will seek their views on the obligations and verification arrangements relevant to the establishment of a NWFZ in the Middle East that are discussed in this report. The model agreement referred to in resolution GC(XXXV)/RES/571, or the main features of such an agreement, would be drafted when some clarity has been obtained as regards the material obligations that are to be included in a NWFZ agreement.