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ADVISORY COMMITTEE ON THE PEACEFUL USES OF ATOMIC ENERGY

SUMMARY RECORD OF THE THIRTIETH MEETING (CLOSED)

Held at Headquarters, New York,  
on Wednesday, 29 May 1957, at 10.50 a.m.

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PRESENT:

Chairman:

Mr. HAMMARSKJOLD

Secretary-General

Members:

Mr. BERNARDES

Brazil

Mr. MACKAY

Canada

Mr. TURPIN

France

Mr. LALL )

Mr. RAJAN )

India

Mr. EMELIANOV

Union of Soviet Socialist  
Republics

Mr. EVANS

United Kingdom of  
Great Britain and  
Northern Ireland

Mr. WADSWORTH

United States of America

Secretariat:

Mr. BUNCHE

Under-Secretary

Mr. HILL

Deputy Under-Secretary for  
Economic and Social  
Affairs

Mr. STAVROPOULOS

The Legal Counsel

## ADOPTION OF THE AGENDA

The agenda was adopted.

CONSIDERATION OF THE QUESTION OF THE RELATIONSHIP AGREEMENT WHICH IS TO BE NEGOTIATED BETWEEN THE UNITED NATIONS AND THE INTERNATIONAL ATOMIC ENERGY AGENCY (Secretariat Working Paper drafts of 21 January and 24 April 1957, IAEA/PC/W.30(S)/Rev.1, A/3122)

The CHAIRMAN invited the Committee to consider the draft agreement of 24 April 1957, prepared by the United Nations Secretariat, in the light of the revised text drawn up by the Preparatory Commission (IAEA/PC/W.30(S)/Rev.1). The Committee's deliberations should also be guided by the Principles concerning the relationship between the Agency and the United Nations which had already been agreed upon by both the General Assembly and the Conference on the Statute of the Agency (A/3122). When the Advisory Committee had approved the text of the agreement it would be submitted to the joint meeting of the Advisory Committee and the Preparatory Commission and would subsequently be sent for approval to the General Assembly, and the General Conference of the Agency.

### Preamble

Mr. TURPIN (France) suggested that consideration of the preamble might be deferred as decisions to be taken on the subsequent articles might require alterations to the text.

It was so agreed.

### Article I (Principles)

Mr. BERNARDES (Brazil) said that the main differences between the text of paragraph 1 agreed upon by the Preparatory Commission and that submitted by the United Nations Secretariat was that the former added at the end the words "without prejudice to the rights and responsibilities of the United Nations in this field under the Charter."

Mr. HILL (Deputy Under-Secretary for Economic and Social Affairs) said that the draft of article I, paragraph 1, submitted by the Preparatory Commission, departed from the standard recognition clause in the agreements drawn up between the United Nations and the specialized agencies. The standard clause carefully

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(Mr. Hill, Deputy Under-Secretary for  
Economic and Social Affairs)

refrained from defining the agencies' responsibilities in order to avoid adding to or subtracting from what their constitutions had given them and impeding a division of responsibilities in cases where agencies' competences overlapped. The present text went beyond the text of the Statute and the relevant paragraph in the Principles (A/3122). Many of the international activities concerned with the peaceful uses of atomic energy, moreover, were and would continue to be the primary responsibility of the United Nations or the specialized agencies - a point clearly demonstrated in Annex II of the Twentieth Report of the Administrative Committee on Co-ordination (E/2931). It would seem better in practice to work out responsibilities for each of those activities in the light of common sense and the qualifications of the various bodies involved without allocating primary responsibility for all of them to a single body. The executive heads of the specialized agencies had made this point in Annex I of the ACC report just referred to. Also, the International Labour Organisation had expressed concern lest the Agency might seek to assume responsibility for the protection of the health and safety of workers in the field of atomic energy, a matter which came naturally within the jurisdiction of the ILO.

Mr. BUNCHE (Under-Secretary) said that paragraph 4 of the Principles (A/3122) did not recognize the primary responsibility of the Agency in activities concerned with the peaceful uses of atomic energy; nor did articles II and III of the Statute contain any such recognition. The introduction of the word "primarily" would only serve as an irritant to the specialized agencies. He could already say from discussions by the ACC sub-committee in Geneva that it was vigorously opposed by them.

The CHAIRMAN thought it would be wiser to adhere to the text of the Principles and not insert the word "primarily".

Mr. EVANS (United Kingdom) said his delegation would prefer to retain the word "primarily" as it reflected correctly the relationship between the specialized agencies and the new Agency. It confirmed the basic principle that the Agency did have primary though not exclusive responsibility in atomic energy matters. If the word "primarily" were omitted that basic principle would be obscured.

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Mr. WADSWORTH (United States of America) agreed with the United Kingdom representative. However, he had been impressed by the arguments put forward by Mr. Bunche and Mr. Hill and would have no objection if the interests of the specialized agencies were safeguarded by the insertion at the end of paragraph 1 of a phrase which might read "without prejudice to the rights and responsibilities of the United Nations and the specialized agencies in this field under the Charter".

Mr. BUNCHE (Under-Secretary) said that the Secretariat had very strong reservations about the use of the word "primarily". It was not true that the Agency would have the principal responsibility in all activities relating to atomic energy. For example, decisions relating to the teaching of subjects connected with atomic energy in schools would be the primary concern of UNESCO. It did seem highly inadvisable to give undisputed control of the field to the Agency.

Mr. MACKAY (Canada) thought that the conclusion drawn by Mr. Bunche went perhaps a little too far. The use of the word "primarily" could also be interpreted as a qualification. It did not mean that other bodies would be excluded from the field.

Mr. BUNCHE (Under-Secretary) replied that the term implied that the work of the specialized agencies in the field of atomic energy would be secondary to that of the Agency. Such an implication was not justified by the provisions of the Statute.

Mr. LALL (India) drew attention to the qualifying phrase "under the aegis of the United Nations as specified in this agreement". That suggested that the Agency would be primarily responsible for atomic energy matters only within the United Nations family. It did not refer to the specialized agencies and so the use of the word "primarily" was unnecessary.

Mr. BERNARDES (Brazil) favoured the retention of the word "primarily". The functions of the Agency and the specialized agencies could be delineated in greater detail in subsequent agreements between the Atomic Energy Agency and the specialized agencies.

Mr. BUNCHE (Under-Secretary) said that the relationship agreement between the Agency and the United Nations would have a dominant influence upon the relationship agreements between the Agency and the specialized agencies.

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The CHAIRMAN thought that in the text prepared by the United Nations Secretariat sufficient qualifications were made regarding the responsibility of the Agency, so that the insertion of the word "primarily" was unnecessary.

Mr. TURPIN (France) agreed that the insertion of the word "primarily" was not justified by the relevant provisions of the Statute but nevertheless felt it was useful as emphasizing the desire of the General Assembly that the Agency should be the body in which atomic research and technical activities were centralized.

The CHAIRMAN observed that the majority of the Committee favoured the retention of the word "primarily" but reserved his position on the question.

Mr. BERNARDES (Brazil) pointed out that the Commission had considered it desirable to add the word "Charter" after the phrase "purposes and principles of the United Nations" in paragraph 4.

Mr. SEAVROPOULOS (The Legal Counsel) considered the addition of the word "Charter" somewhat unusual; the customary phrase was "shall act in accordance with the Purposes and Principles of the United Nations", as stated, for example, in Article 24 of the Charter.

Mr. EWANS (United Kingdom) said that in the Charter the Purposes and Principles were already defined in Articles 1 and 2. The reference in the relationship agreement might not be quite so clear, since the latter was an independent instrument; the Commission, therefore, had wished to clarify it by adding the word "Charter".

The CHAIRMAN said that the difficulty might be overcome by putting the words "Purposes and Principles" in capital letters; the point, however, was not one of great importance.

Article I was approved.

#### Article II (Confidential Information)

Mr. BERNARDES (Brazil) proposed the addition of the words "subject to the provisions of Article IX" after the phrase "by their members or others, and" for the purpose of clarifying the text.

It was so agreed.

Article II was approved.

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Article III (Reports of the Agency to the United Nations)

The CHAIRMAN suggested that, as a compromise with the Commission's text, the first line of paragraph 1 should be amended to read "The Agency shall keep the United Nations informed".

It was so agreed.

Mr. BERNARDES (Brazil) proposed, with respect to paragraph 1 (a), the substitution of the Commission's text: "to each regular session of the General Assembly".

With respect to paragraph 1 (c), the Preparatory Commission proposed the deletion of the words "when appropriate"; certain members of the Commission had originally favoured the expression "annual reports", but had subsequently agreed on the above deletion.

It was so agreed.

Mr. BERNARDES (Brazil) proposed the addition of the words "in accordance with the principles of its Statute" at the end of paragraph 2.

Mr. TURPIN (France) said that it was a question of avoiding any specific mention of which Agency organ should take the initiative in reporting to the General Assembly or the Security Council; it might be the General Conference, or, as stated in article XII C of the Statute, the Board of Governors.

The CHAIRMAN thought that that was an internal matter for the Preparatory Commission to settle. If the inclusion of the phrase was decided upon by the Commission, he assumed that the Advisory Committee would have no objection.

It was so agreed.

Article III, as amended, was approved.

Article IV (Report of the Secretary-General of the United Nations)

Article IV was approved.

Article V (Resolutions of the United Nations)

Mr. BERNARDES (Brazil) proposed that the phrase "give prompt consideration" in paragraph 1 should be replaced by the Commission's draft.

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Mr. WADSWORTH (United States of America) said that the word "prompt" was an unfortunate one for purely mechanical reasons; a resolution might be adopted by the General Assembly but the Agency might be unable to consider it until one or other of its various organs was in session.

The CHAIRMAN suggested that a separate sentence should be added to the effect that action should be taken with all possible promptness.

It was so agreed.

Mr. EVANS (United Kingdom) stated for the record that in redrafting paragraph 1 the Commission had wished to make it clear that any resolutions relating to the Agency should be specifically referred to the Agency.

Article V, as amended, was approved.

Article VI (Exchange of Information and Documents)

Mr. BERNARDES (Brazil) proposed the deletion of the words "without prejudice to the provisions of article III of this agreement" in paragraph 1. With respect to paragraph 2, he proposed the deletion of the word "surveys" as redundant. In paragraph 3, he proposed the addition of the words "upon request" after "furnish the Agency". In reply to a question by the representative of the United States he explained that the addition was for purposes of reciprocity.

It was so agreed.

Article VI, as amended, was approved.

Article VII (Reciprocal Representation)

Mr. BERNARDES (Brazil) proposed the addition of the words "as appropriate" after "Trusteeship Council, and" in paragraph 2. In paragraph 3, he proposed that the words "its General Conference, Board of Governors, or other such organ as may be appropriate" should be replaced by "the appropriate organ or organs of the Agency".

It was so agreed.

Article VII, as amended, was approved.



Article VIII (Agenda Items)

Mr. BERNARDES (Brazil) proposed that in paragraph 2 the words "the Secretary-General ... shall bring such question or questions to the attention of the General Assembly" should be replaced by the wording in the Commission's draft "the Secretary-General ... shall include any such item or items on the provisional agenda of the General Assembly".

The CHAIRMAN said that it was not possible, under the Charter, for the Secretary-General to place himself under an obligation to include items on the agenda; he could only assume responsibility for bringing questions to the attention of the General Assembly and other United Nations organs. There should be the possibility of discussion before an item was finally adopted for inclusion in the agenda.

Mr. LALL (India) agreed with the Chairman that discretion to bring questions to the attention of the General Assembly should rest with the Secretary-General; the Committee could not go further than what was stated in the Principles (A/3122, paragraph 11).

Mr. STAVROPOULOS (The Legal Counsel), in reply to points raised by the representatives of the United Kingdom, the United States and France, said that the words "the Agency shall include any such items in the agenda" in paragraph 1 followed the formula customary in agreements between the United Nations and specialized agencies. It was not correct, however, to apply that formula to the Secretary-General, as had been done in the Commission's draft of paragraph 2; it was more appropriate to say that the latter "shall bring such question or questions to the attention of the General Assembly".

Mr. BERNARDES (Brazil) said that, in effect, the words "the Agency shall include any such items in the agenda" in paragraph 1 prejudged the Agency's rules of procedure which had not yet been agreed; in both paragraphs 1 and 2 he would prefer the expression "shall consider" to "shall include".

Mr. BUNCHE (Under-Secretary) questioned whether it was necessary or sound to think that there must be absolute reciprocity and equality between the United Nations and the Agency; in the light of the General Assembly discussion on their mutual relationship it appeared highly doubtful whether that would be possible.

Mr. BERNARDES (Brazil) said that absolute reciprocity between the two bodies was not essential but should exist whenever possible; he still thought that the words "the Agency shall include any such items in the agenda" would prejudice the Agency's rules of procedure and commit the General Conference, the Board of Governors and the Director-General to a particular course of action.

The CHAIRMAN considered that the words in question had nothing to do with procedure; they constituted a formal obligation of the kind assumed by the specialized agencies. The Committee should return to the idea that the Agency would function "under the aegis of the United Nations", as laid down in the Principles (A/3122, paragraph 4). He could not accept any change in paragraphs 1 and 2, except the addition of the phrase "as provided in its rules of procedure" after the words "the Agency shall" in paragraph 1.

Mr. MACKAY (Canada) said that paragraph 1 was satisfactory to his delegation; there was no doubt that the phrase "under the aegis of the United Nations" in the Principles implied the over-all authority of the United Nations. He also favoured the retention of paragraph 2.

Mr. LALL (India) and Mr. WADSWORTH (United States of America) expressed agreement with the position taken by the Chairman.

Article VIII was approved.

Article IX (Co-operation with the Security Council)

Mr. BERNARDES (Brazil) proposed that the words "with regard to" should be replaced by the words "in the exercise of its responsibility for".

It was so agreed.

Article IX was approved.

Article X (International Court of Justice)

Mr. STAVROPOULOS (The Legal Counsel), in support of the working draft prepared by the United Nations Secretariat, quoted Article 96 (2) of the Charter: "Other organs of the United Nations and specialized agencies, which may at any time be so authorized by the General Assembly, may also request advisory opinions of the Court . . ." Whether the authority of the General Assembly under this Article is applicable would depend on the status of the Agency. In accordance with the views so far expressed, it would seem that the authority of the Assembly is not applicable in this case. To attempt to achieve the same result by any other method might amount to rewriting the Charter in some respects and the reaction of the International Court which might have to pass on the question could not be predicted in advance.

Mr. LALL (India) recalled that, after a long discussion, the General Assembly had decided to avoid the use of the term "specialized agency" in connexion with the International Atomic Energy Agency. Moreover, the Agency's own Statute made it clear that it was not a specialized agency within the meaning of the Charter. Consequently, the Agency did not come under the provision of Article 96 of the Charter, and the Preparatory Commission's draft of article X was not legally sound. The Secretariat draft of the article, on the other hand, appeared to be adequate for all practical purposes and had the added virtue of not running counter to the Charter. He therefore supported that draft, which in any event could be reviewed later if necessary.

Mr. EMELIANOV (Union of Soviet Socialist Republics) said that his delegation had consistently taken the view that the International Atomic Energy Agency was not a specialized agency, in that it stood in a much closer relationship to the United Nations than did the specialized agencies. It was to indicate the closeness of that relationship that the phrase "under the aegis of the United Nations" had been selected. The Agency's prerogatives should in no case be less than those of the specialized agencies, and he therefore supported the Preparatory Commission's draft.

Mr. EVANS (United Kingdom) agreed with Mr. Stavropoulos' statement of the legal position. He preferred the Secretariat draft of article X, as

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(Mr. Evans, United Kingdom)

being legally sound, while the Preparatory Commission's text was of doubtful legal validity; however, if the majority favoured the latter, he would be prepared to accept it.

If the Committee were to adopt the Secretariat text and if at some future time Article 96, paragraph 2, of the Charter were to be revised to include other organizations than those now mentioned, article X of the Relationship Agreement could be revised along the lines of the Preparatory Commission's draft and of article XVII B of the Agency's Statute.

Mr. MACKAY (Canada) associated himself with those remarks.

Mr. WADSWORTH (United States of America) thought that the language of article X, while retaining the meaning of the Secretariat draft, should be brought closer to paragraph 15 of the Principles (A/3122) so as to enable the Agency itself to submit questions to the Court, after having in each case obtained the authorization of the General Assembly.

Mr. BERNARDES (Brazil) said he preferred the Preparatory Commission's draft. If the General Assembly was able, under the Charter, to give its authorization to the Agency in any specific case, it was also competent to issue a similar authorization for all future cases, and vice versa.

The CHAIRMAN stated that the Preparatory Commission's text represented a departure both from the Charter and from the Principles adopted by the General Assembly (A/3122), by both of which he was bound. He welcomed the United States representative's suggestion.

Mr. EVANS (United Kingdom) proposed that, in that event, the words "in each case" which appeared in paragraph 15 of the Principles should be omitted and a reference to the Charter should be inserted; article X of the Relationship Agreement would then not have to be revised in consequence of any future revision of Article 96 of the Charter.

The CHAIRMAN stated that the Secretariat would prepare a new draft of article X along the lines suggested by the United States and United Kingdom representatives, for consideration by the Committee at a future meeting.

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Article XI (Co-ordination)

Mr. BERNARDES (Brazil) drew attention to the following changes approved by the Preparatory Commission: the replacement, in the second sentence, of the words "whatever measures may be recommended" by the words "appropriate measures recommended"; the insertion, in the third sentence, of the words "as appropriate" before the words "of any other bodies"; and the insertion of a new penultimate sentence, reading: "The Agency may also consult with appropriate bodies established by the United Nations on matters within their competence and on which the Agency required expert advice".

The insertion of the words "as appropriate" was approved.

Mr. EMEL'YANOV (Union of Soviet Socialist Republics) proposed the insertion, in the new sentence suggested, after the words "appropriate bodies", of the illustrative phrase: "such as the United Nations Scientific Committee on the Effects of Radiation and the Advisory Committee on the Peaceful Uses of Atomic Energy".

The new sentence, with the USSR representative's insertion, was approved.

Mr. BERNARDES (Brazil) explained that the purpose of the remaining change was to safeguard the Agency's freedom of action within the limitations of its Statute.

Mr. BUNCHE (Under-Secretary) said that the word "appropriate" as used in that context appeared to be meaningless, since there was no indication who was to decide which measures were appropriate.

Mr. WADSWORTH (United States of America) suggested that both points of view would be met if the phrase "whatever measures may be recommended" were replaced simply by "measures recommended".

The United States representative's suggestion was approved.

Article XI, as amended, was approved.

The meeting rose at 12.40 p.m.