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Item 7(a) of the Board's provisional agenda
(GOV/2009/58)

Item 21 of the Conference's provisional agenda
(GC(53)/1) and GC(53)/1/Add.1)

Application of IAEA Safeguards in the Middle East

Report by the Director General

A. Introduction

1. General Conference Resolution GC(52)/RES/15 (2008), in operative paragraph 4, affirmed:

“the urgent need for all States in the Middle East to forthwith accept the application of full-scope Agency safeguards to all their nuclear activities as an important confidence-building measure among all States in the region and as a step in enhancing peace and security in the context of the establishment of a nuclear-weapon-free zone (NWFZ)”;

and the resolution, in operative paragraph 5, called upon all parties directly concerned:

“to consider seriously taking the practical and appropriate steps required for the implementation of the proposal to establish a mutually and effectively verifiable NWFZ in the region” of the Middle East;

furthermore, the resolution, in operative paragraph 7, called upon all States in the region,

“to take measures, including confidence-building and verification measures, aimed at establishing a NWFZ in the Middle East”.

2. In this regard, the resolution, in operative paragraph 10, reiterated the Director General's mandate from earlier resolutions of the General Conference:

“to continue consultations with the States of the Middle East to facilitate the early application of full-scope Agency safeguards to all nuclear activities in the region as relevant to the preparation of model agreements, as a necessary step towards the establishment of an NWFZ in the region, referred to in resolution GC(XXXVII)/RES/627”;

and operative paragraph 11 repeated the call from previous resolutions of the General Conference to:

“all States in the region to extend their fullest cooperation to the Director General in the fulfilment of the tasks entrusted to him” in this regard by the General Conference;

furthermore, the resolution, in operative paragraph 12, called upon:

all other States, especially those with a special responsibility for the maintenance of international peace and security, to render all assistance to the Director General by facilitating the implementation of this resolution”.

3. Resolution GC(52)/RES/15, in operative paragraph 13, requested the Director General:

“to submit to the Board of Governors and to the General Conference at its fifty-third (2009) regular session a report on the implementation of this resolution.”

4. In the context of its agenda item ‘Application of IAEA Safeguards in the Middle East’, the General Conference in 2000 adopted Decision GC(44)/DEC/12 in which the Conference requested:

“the Director General to make arrangements to convene a forum in which participants from the Middle East and other interested parties could learn from the experience of other regions, including in the area of confidence building relevant to the establishment of a nuclear weapon free zone”.

The decision also called upon:

“the Director General, with States of the Middle East and other interested parties, to develop an agenda and modalities which will help to ensure a successful forum”.

5. The Director General has consistently continued to stress the importance of the mandates entrusted to him and has sought to encourage the development and consideration of relevant new ideas and approaches that could help to move his mandates forward. This report describes the steps undertaken by the Director General in seeking to fulfil the mandates conferred by the General Conference in Resolution GC(52)/RES/15 and by Decision GC(44)/DEC/12.

B. Application of Full-Scope Agency Safeguards

6. The Director General has continued to stress the emphasis that has been placed in successive General Conference resolutions on the application of comprehensive Agency safeguards on all nuclear activities in the Middle East region.

7. All States of the Middle East region¹ except for Israel are parties to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) and have undertaken to accept comprehensive Agency safeguards. Since the last report on this agenda item,² comprehensive safeguards agreements were

¹ Algeria, Bahrain, Comoros, Djibouti, Egypt, Islamic Republic of Iran (Iran), Iraq, Israel, Jordan, Kuwait, Lebanon, Libyan Arab Jamahiriya (Libya), Mauritania, Morocco, Oman, Qatar, Saudi Arabia, Somalia, Sudan, Syrian Arab Republic, Tunisia, United Arab Emirates and Yemen (23) – *Technical Study on Different Modalities of the Application of Safeguards in the Middle East*, (IAEA Document) GC (XXXIII)/887, 29 August 1989, para. 3.

² GOV/2008/29-GC(52)/10/Rev.1 (22 September 2008).

brought into force by four States³ in the region and an additional protocol by one State⁴. Thus, as of 15 July 2009, three States of the Middle East region that are party to the NPT have yet to bring into force their comprehensive safeguards agreements with the Agency pursuant to that Treaty. One of those States⁵ has signed but not yet brought into force its comprehensive safeguards agreement, while another⁶ has had a comprehensive safeguards agreement approved by the Board of Governors but not yet signed; the remaining State⁷ has yet to take any action in this regard. Additional protocols are in force for four States⁸ of the region, while six States⁹ have signed but not yet brought into force additional protocols, and an additional protocol has been approved for two States¹⁰ in the region but not yet signed.

8. The discussions with representatives of the States of the Middle East region have shown that there still continues to be a long-standing and fundamental difference of views between Israel, on the one hand, and the other States of the Middle East region, on the other hand, with regard to the application of comprehensive Agency safeguards to all nuclear activities in the region. Israel takes the view that Agency safeguards, as well as all other regional security issues, cannot be addressed in isolation from the regional peace process and that these issues should be addressed in the framework of a regional security and arms control dialogue that could be resumed in the context of a multilateral peace process, and when phase II of the “road map” is reached.¹¹ The other States of the region emphasize that they are all parties to the NPT and maintain that there is no automatic sequence which links the application of comprehensive safeguards to all nuclear activities in the Middle East, or the establishment of an NWFZ, to the prior conclusion of a peace settlement, and that the former would contribute to the latter.¹² Thus, the Director General has not been able to make further progress in fulfilling his mandate pursuant to resolution GC(52)/RES/15 regarding the application of comprehensive Agency safeguards covering all nuclear activities in the region of the Middle East. The Director General will continue with his consultations in accordance with his mandate regarding the early application of comprehensive Agency safeguards on all nuclear activities in the Middle East region.

³ Bahrain, Comoros, Qatar, Saudi Arabia.

⁴ Comoros.

⁵ Mauritania.

⁶ Djibouti.

⁷ Somalia.

⁸ Comoros, Jordan, Kuwait and Libya.

⁹ Iran, Iraq, Mauritania, Morocco, Tunisia, United Arab Emirates.

¹⁰ Algeria, Djibouti.

¹¹ Israel's position on this matter has been elaborated further in document GOV/2004/61/Add.1-GC(48)/18/Add.1; and in the statement by the Resident Representative of Israel at the meeting of the Board of Governors on 25 September 2008 (GOV/OR.1222). The Middle East “road map to the solution of the Israeli-Palestinian conflict”, developed by the Quartet Group (of the European Union, the Russian Federation, the United Nations and the United States of America), foresees in phase II a “revival of multilateral engagement on issues including...arms control” – “A Performance-Based Road Map to a Permanent Two-State Solution to the Israeli-Palestinian Conflict”, United Nations News Centre: <http://www.un.org/media/main/roadmap122002.html>.

¹² The views of some of the other States of the region (Algeria, Egypt, Libya, and Saudi Arabia) have been elaborated further, inter alia, in their statements at the meeting of the Board of Governors on 25 September 2008 (GOV/OR.1222).

C. Model Safeguards Agreements as a Necessary Step towards a Middle East NWFZ

9. As noted by the Director General in his previous reports, most recently in GC(52)/10/Rev.1, the evolutionary process which has resulted in broad adherence to the NPT and consequently to INFCIRC/153-type comprehensive safeguards agreements in the Middle East is an important step in creating confidence regarding nuclear non-proliferation and regional security. Furthermore, the United Nations General Assembly has adopted without a vote successive resolutions supporting the establishment of an NWFZ in the Middle East.¹³ Additionally, in 1995¹⁴ and 2000¹⁵, the parties to the NPT reaffirmed their conviction that the development of NWFZs, especially in regions of tension such as the Middle East, as well as the establishment of zones free of all weapons of mass destruction, should be encouraged as a matter of priority, taking into account the specific characteristics of each region. There is, then, a continuing consensus that the global nuclear non-proliferation regime would be further strengthened through the establishment of an NWFZ in the Middle East. The requests of the General Conference for model safeguards agreements require, however, agreement among the States in the region on the material obligations that those States are prepared to assume as part of an NWFZ agreement in the Middle East region.

10. The material obligations which could form part of an eventual Middle East NWFZ agreement have been described in the previous reports of the Director General, most recently in GC(52)/10/Rev.1.

11. There still continues to be general lack of clarity on the substance and modalities of an agreement to establish a Middle East NWFZ, among the States of the region of the Middle East. The Secretariat therefore may not be in a position at this stage to embark on the preparations of the model agreements foreseen in the resolution. However, the Director General and the Secretariat will continue to consult and work with States of the Middle East region to find the common ground required to develop the model agreements as a necessary step towards the establishment of a Middle East NWFZ.

¹³ United Nations General Assembly Resolution 63/38, "Establishment of a nuclear-weapon-free zone in the region of the Middle East", adopted without a vote on 2 December 2008. The text of the resolution is available on the United Nations website at: (<http://daccessdds.un.org/doc/UNDOC/GEN/N08/473/07/PDF/N0847307.pdf?OpenElement>).

¹⁴ NPT/CONF.1995/32/DEC.2, "Principles and Objectives for Nuclear Non-Proliferation and Disarmament", paragraph 6; and NPT/CONF.1995/32/RES.1 "Resolution on the Middle East".

¹⁵ NPT/CONF.2000/28 (Part I), "The Middle East, particularly implementation of the 1995 Resolution on the Middle East".

D. Decision GC(44)/DEC/12 of the General Conference: Arrangements to Convene a Forum

12. The General Conference in 2000 adopted Decision GC(44)/DEC/12, as referred to in paragraph 4 above, in which the Conference requested the Director General, inter alia, to develop an agenda and modalities which will help to ensure a successful forum on the relevance of the experience of existing NWFZs, including confidence-building and verification measures, for establishing a nuclear-weapon-free zone in the region of the Middle East.

13. Nuclear-weapon-free zones have already been established in Latin America and the Caribbean, the South Pacific, Southeast Asia, Africa and Central Asia¹⁶, respectively, through the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (Treaty of Tlatelolco), the South Pacific Nuclear-Free-Zone Treaty (Rarotonga Treaty), the Southeast Asian Nuclear-Weapon-Free Zone Treaty (Bangkok Treaty), the African Nuclear-Weapon-Free Zone Treaty (Pelindaba Treaty) and the Treaty on a Nuclear-Weapon-Free Zone in Central Asia, as noted in the Director General's previous reports, most recently in GC(52)/10/Rev.1. These established NWFZs are of particular relevance to the examination of the material obligations to be included in the verification regime to be implemented in a future Middle East NWFZ. While the existing NWFZ treaties contain certain variations and additional rights and obligations that inter alia take into account the specific characteristics of each of the respective regions, all five NWFZ treaties cover large inhabited areas and all are designed to ensure the total absence of nuclear weapons from the territories of the States party to them; all five NWFZ treaties provide for Agency verification of the non-diversion of nuclear material¹⁷ and for the establishment of regional mechanisms to deal with compliance problems; and all five treaties contain 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 the NWFZ treaty in question.

14. In previous years, as mandated by the decision of the General Conference, the Agency had sought the views of Member States of the Middle East region with regard to developing an agenda and modalities for convening a forum in which participants from the Middle East and other interested parties could learn from the experience of other regions, including in the area of confidence-building, relevant to the establishment of a NWFZ in the Middle East region. In this regard, the Agency had circulated a proposed agenda (reproduced in document GC(52)/10/Rev.1 of 22 September 2008) and had continued to seek the views of the concerned States (as reported in documents GC(49)/18 of 1 August 2005, GC(50)/12 of 22 August 2006, GC(51)/14 of 14 August 2007, and GC(52)/10/Rev.1); however, it had not been possible for the concerned States to reach agreement on an agenda and modalities for convening a forum.

15. In light of the mandate given to the Director General, in July 2009, the Agency once again sought the views of Member States of the Middle East region on a revised agenda and modalities for

¹⁶ 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.)

¹⁷ The Central Asian Nuclear-Weapon Free Zone Treaty, under its Article 8, also requires States Party to conclude with the IAEA and bring into force an Additional Protocol to their comprehensive safeguards agreements within 18 months after the Treaty's entry into force.

convening a forum along the lines noted above – a copy of the agenda is attached as Annex 1. The Agency's letter to the Member States of the Middle East region requested their views on a proposed agenda for the forum. A copy of the Agency's letter is attached as Annex 2.

16. In response to the Agency's letter, written replies were received from two Member States of the Middle East region: Egypt and Israel – the relevant communications are reproduced in Annex 3, in the chronological order in which they were received at the Agency.

17. From the responses received, it is evident that a convergence of views is developing on convening the forum, but consensus still remains elusive regarding the agenda that a forum would need to address. The Director General will continue consultations with Member States of the Middle East and other interested States in an effort to harmonize positions on the agenda and modalities with a view to convening a successful forum as soon as practicable. The Director General will report the outcome of his consultations to next year's regular session of the General Conference.

Annex 1

FORUM on Experience of Possible Relevance to the Creation of a Nuclear-Weapon-Free Zone (NWFZ) in the Middle East

It is proposed that the Forum on the above subject be organized at the IAEA Headquarters in Vienna from 23 to 25 September 2009. The Forum, reflecting the consensus of the Agency's Member States on the importance of establishing a NWFZ in the region of Middle East, would be designed to consider the experience of Africa, Asia, Europe, and Latin America in creating regional security regimes and achieving disarmament through establishing NWFZs.

The principal focus of the Forum would be to: (i) study the lessons of other regions regarding the regional setting and context that had prevailed there before they began considering a NWFZ; (ii) review the existing multilaterally agreed principles for establishing NWFZs in populated areas of the world; (iii) review the theory and practice of establishing the four existing NWFZs; (iv) discuss with representatives from five existing NWFZs their experience in promoting, negotiating and practically implementing negotiated arrangements for NWFZs; and (v) discuss the region of the Middle East in this context.

The Forum would address the following specific topics:

1. Experience in Africa, Central and Southeast Asia, Europe, and Latin America and the Caribbean in making progress towards building cooperation, regional stability and security; arms control and disarmament agreements and identification of the required prerequisites towards this end by reaching common understandings on bilateral and regional issues of security, confidence building and cooperation; including a discussion on the track record in implementing regional verification arrangements by specifically addressing the practices of Euratom and the Brazil-Argentina Agency and control of Nuclear Materials (ABACC);
2. Principles governing the establishment of NWFZs and the conceptual framework of NWFZ treaty arrangements: (i) geographic delineation; (ii) scope; (iii) verification; (iv) security assurances and (v) other issues, such as the role of extra-regional States, the nature of the arrangements (politically/legally binding), the role of international governmental and non-governmental organizations and the public at large in promoting and supporting the arrangements; and
3. The potential relevance of such experience to the region of the Middle East.

Annex 2

Text of the Agency Letter to Member States of the Middle East region

[Despatched on 17 July 2009]

Sir/Madam,

I am writing to you concerning Agenda item 20 for the 53rd IAEA General Conference, regarding the “Application of IAEA Safeguards in the Middle East”.

At last year’s General Conference, resolution GC(52)/RES/15, *inter alia*, affirmed “the urgent need for all States in the Middle East to forthwith accept the application of full-scope Agency safeguards to all their nuclear activities as an important confidence-building measure among all States in the region and as a step in enhancing peace and security in the context of the establishment of a nuclear-weapon-free zone (NWFZ)”; and called upon “all parties directly concerned to consider seriously taking the practical and appropriate steps required for the implementation of the proposal to establish a mutually and effectively verifiable NWFZ in the region” of the Middle East.

Furthermore, the General Conference in 2000 in its decision GC(44)/DEC/12 requested “the Director General to make arrangements to convene a forum in which participants from the Middle East and other interested parties could learn from the experience of other regions, including in the area of confidence building relevant to the establishment of a nuclear weapon free zone”; and called upon “the Director General, with States of the Middle East and other interested parties, to develop an agenda and modalities which will help to ensure a successful forum”.

The Director General’s latest report on these matters was contained in document GOV/2008/29/Rev.1-GC(52)/10/Rev.1.

In previous years, as mandated by the decision of the General Conference, the Secretariat has sought the views of Member States of the Middle East region with regard to developing an agenda and modalities for convening a forum in which participants from the Middle East and other interested parties could learn from the experience of other regions, including in the area of confidence building relevant to the establishment of a nuclear weapon free zone. In this regard, the Secretariat has circulated a proposed agenda (in document GC(48)/18) and continued to seek the views of the concerned States (as reported in documents GC(49)/18, GC(50)/12, GC(51)/14 and GC(52)/10/Rev.1 respectively); however, as noted in the Director General’s latest report, thus far it has not been possible for the concerned States to reach agreement on an agenda and modalities for convening a forum.

In light of the mandate given to the Director General, as noted in the preceding paragraphs, and taking into account the views expressed by the Member States of the region of the Middle East, the Secretariat is continuing to seek views on an agenda and modalities from the States of the Middle East region about the forum. In this regard, the Secretariat is circulating a revised proposed agenda that it hopes will be acceptable to the Member States.

As the Secretariat is required to complete the preparation and distribution of official documents well in advance of the start of the General Conference, the Secretariat requests your co-operation in providing your Government’s comments preferably prior to 31 July 2009 in order to enable the Secretariat to reflect them in the Report of the Director General on the “Application of IAEA

Safeguards in the Middle East” to the Board of Governors and the General Conference in September 2009.

Accept, Sir/Madam, the assurances of my highest consideration.

Tariq Rauf
Acting Director
Office of External Relations and Policy Coordination

For the DIRECTOR GENERAL

Annex 3

**Text of the Letter from the Embassy of the Arab Republic of Egypt to
the United Nations and International Organizations Vienna**

[Received on 3 August 2009]

3 August 2009

Sir,

I wish to thank you for the Agency's letter dated 17 July 2008 regarding the "Application of IAEA Safeguards in the Middle East". I wish also to assure you of Egypt's continued support for all serious and sincere efforts aiming at the establishment of a nuclear-weapon-free-zone (NWFZ) in the Middle East, a support that has not faltered throughout several decades of persistent efforts.

As a State Party to the Treaty on the Non-Proliferation of Nuclear Weapons and a signatory to the African Nuclear-Weapon-Free-Zone Treaty (Pelindaba Treaty), Egypt has clearly demonstrated its rejection of nuclear weapons, and its conviction that they represent a major threat to peace, security and stability, particularly in the Middle East. As testified to by the outcomes of the 1995 and 2000 NPT Review Conferences, the international community shares Egypt's concern. Egypt notes, however, that while virtually all States of the Middle East are now States Parties to the NPT, Israel persists in ignoring persistent international calls for its accession to the Treaty and placement of all its nuclear facilities under full-scope IAEA safeguards. This situation is dangerous.

In this connection, I wish to recall the importance that Egypt attaches to the implementation of the Presidential Statement endorsed by the General Conference of the IAEA in 2000 (GC(44)DEC/12). This statement requested the Director General "to make arrangements to convene a forum in which participants from the Middle East and other interested parties could learn from the experience of other regions, including in the area of confidence-building relevant to the establishment of a nuclear-weapon-free-zone". It is Egypt's view that convening such a forum within the context of the IAEA would represent a useful contribution to international efforts leading to the establishment of a NWFZ in the Middle East. Regrettably, despite Egypt's flexibility, disagreements over the proposed agenda have prevented the forum from convening.

As an expression of its continued support to the Agency and the objective of ridding the Middle East of nuclear weapons, I would like to inform you of Egypt's preliminary acceptance of the agenda and modalities proposed by the Director General as contained in the Agency's letter dated 17 July, 2009. Egypt looks forward to receiving your suggestions and ideas concerning other relevant arrangements, including as regards participation in the forum and keynote speakers.

Please accept, Sir, the assurances of my highest consideration.

Sincerely yours,

[signed]

Aly Sirry
Chargé d'affaires a.i.

Text of the Letter from the Permanent Mission of Israel to the International Atomic Energy Agency and the PrepCom-CTBTO

[Received on 4 August 2009]

4 August 2009

Sir,

I am writing in response to your letter dated July 17, 2009 concerning Agenda item 21 of the 53rd General Conference.

You may recall that last year's GC resolution on the "Application of IAEA Safeguards in the Middle East" (GC52/RES/15) "calls upon all States in the region of the Middle East to comply with their international obligations and commitments relating to safeguards, and to cooperate fully with the IAEA".

As non compliance by several Middle East States with their international obligations and commitments is high on the agenda of the international community, Israel attributes utmost importance to this issue. Compliance is an essential confidence building measure on the long road to the establishment of the Middle East as a zone free of WMD and ballistic missiles. Israel trusts that the upcoming DG report on the "Application of IAEA Safeguards in the Middle East" will elaborate on this critical element.

Regarding the proposed Forum, Israel wishes to elaborate the following:

-- As reflected in Israel's response to your previous letter on the same issue (July 24, 2008), Israel supports the convening of the Forum in accordance with the terms contained in the Director General's Report (GC(48)18) of August 24, 2004. Israel is of the view that in order for the Forum to be a success, the balance reflected in the 2004 agreed terms must be preserved.

-- Israel sees merit in convening the Forum, given it will promote a shared vision on the way forward on this complex issue. Obviously, a consensual outcome on the Middle East issues in the forthcoming 53rd General Conference is indispensable in reaching our desired shared vision. As you may recall, in the past three years, consensus was unattainable in spite of efforts by Israel and others. The ability of states in the region to work together is essential for a successful Forum.

-- The "revised proposed agenda" attached to your letter of July 17, 2009 omits some vital components that were included in the agreed upon agenda of 2004 and in our view should be retained. In particular:

- A reference that "The Forum... would not be a forum for negotiation". The IAEA, as a professional organization, is not the appropriate venue to hold negotiations on this highly political issue.
- "The potential relevance of such [other free zones'] experience to the region of the Middle East" is the *raison d'être* of the Forum. Israel, therefore, requests that the same phrase is re-inserted in paragraph 2 of the "revised proposed agenda".

-- Lastly, Israel believes that it is more realistic to aim at convening the Forum in late January 2010, in line with the original proposal of 2004. We would also like to note that the dates proposed by the Secretariat fall during the Jewish holiday season.

Please accept, sir, the assurances of my consideration.

Sincerely,

[signed]

Israel Michaeli
Ambassador
Resident representative of Israel to the IAEA