

DEPARTMENT OF STATE TELEGRAM

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ACTION:

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1. Following is Mission response to reftel question 2, 3, 5, 7, and 8:

2. "Question 2. Secrecy in IAEA Agreements

The basic document for arrangements between a nation and the IAEA for safeguards under the NPT is a public document. However, various supporting documents are secret, which keeps from public view the details of how IAEA safeguards are to be applied in each case.

What can be done to get more information on these agreements into the public view so that the effectiveness of the safeguards can be judged?"

Answer 2.

The US Mission to the IAEA has been actively pursuing with the IAEA Inspectorate the possibility of obtaining

DEF 18-6 NPT

DRAFTED BY: MIAA:jMahy:paf

DRAFTING DATE 12/1/75 TEL. EXT. 4733

CONTENTS AND CLASSIFICATION APPROVED BY: Allan M. Labowitz

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Detailed information for the purpose of increasing public knowledge of actions and findings of the IAEA in implementing its safeguards. Sufficient information is being sought such that, together with an understanding of the IAEA's statutory safeguards objectives and limitations, the public will be able to assess the value of the contribution of ~~the~~ IAEA safeguards toward world peace and security. In responding to this initiative, the IAEA Inspectorate must take into account long-established principles, flowing from the Agency's Statute and its basic safeguards documents, which prohibit the Agency from communicating to any state, organization or person any information obtained by it in the implementation of its safeguards agreements. The objective of these principles has been to overcome concerns which had been expressed by many governments that proprietary or commercially sensitive information concerning industrial facilities may be divulged to competitors. IAEA documents setting forth the descriptions of facilities and detailed safeguards procedures and results have therefore been assumed to contain information ~~which~~ considered by ~~many~~ governments and plant ~~operators~~ operators as commercially sensitive.

Primarily due to US efforts, IAEA Director General and the Inspector General ~~is~~ fully appreciate the importance of the

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objective of preserving ~~x~~ and enhancing public confidence in IAEA safeguards. The Inspectorate has been studying the matter in an effort to identify the type of information which may be released for that purpose while, at the same time, taking into account legitimate/~~commercial~~^{commercial} concerns. To assist in this task, we understand that the Director General intends to obtain the views of the members of his newly-established Standing Advisory Group on Safeguards Implementation, at its initial meeting in early December, on the technical aspects involved. Most likely, the Director General will, ~~and~~ in due/~~course~~^{course,} request the Board of Governors to consider policy issues raised during the Inspectorate's study. The Mission will continue working/~~with~~^{with} the Inspectorate and in other elements of the Agency considering this matter in order to encourage the earliest possible and most effective results.

3. "Question 3. U.S. support of IAEA Safeguards:

The Astin panel in 1972 advised the Secretary of State that a weak or marginal safeguards program would probably be worse than no safeguards at all. It also noted that an effective safeguards program requires a fully adequate budget and a strong, highly competent, dedicated staff together with an effective but modest in-house research program aimed at improving safeguards technology.

(a) What is the U.S. ~~going~~^{doing} to assure the IAEA's safeguards

program will be strong enough to grapple with the problems of the nuclear future, particularly if and when plutonium becomes a regular nuclear fuel?"

Answer 3 (a).

Comment: Mission recommends this ~~xxxx~~ question be put to ERDA, ACDA and NRC, to whom the Mission and IAEA must look for support. They should provide information on how each is organized and coordinated with the others to assure a focused, coherent and effective U.S. response to the needs which have been recognized by President Ford, Secretary Kissinger and the Congress, for technical support for IAEA safeguards. The amount of effort (dollars and manhours) being spent and planned should also be stated so that Congress ~~can~~ can be aware of how seriously those U.S. agencies which have the best technical capability to help strengthen IAEA ~~xxxxxx~~ safeguards are pursuing the task. To our knowledge, the latest summary of U.S. effort appears in the paper on "IAEA Safeguards and the U.S." given at the annual meeting of the Institute of Nuclear Materials ~~Management~~ Management in New Orleans, June 20, 1975 by J. Mahy, then of ERDA/DSS. The general question of safeguards "if and when plutonium ~~xxxxxxx~~ becomes a regular nuclear fuel" is being dealt with currently by ERDA and NRC in the context of U.S. domestic requirements. The theory, systems and technology being planned and developed

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by them for domestic use are the closest to (although in some ways clearly different from) IAEA needs ~~xx~~ of any study of which Mission is aware. A continuing and well coordinated program to relate that U.S. effort to IAEA needs would be a most efficient way for the U.S. to support the technical effectiveness of IAEA safeguards.

End Comment.

"Question 3(b)
~~xxx~~ What is the present capability of the IAEA to take on safeguards of the EURATOM countries?"

Answer 3 (b): In 1973 the IAEA expected that implementation of the EURATOM-IAEA agreement pursuant to NPT would begin in late 1974 and its budget provided for additional inspectors to be hired to meet the resulting increased workload. Hiring of all the additional inspectors for that specific purpose has been deferred, however, pending the coming into force of that agreement. The established posts for the Operations Division of the Safeguards Department for CY 1975 include 74 professional and 20 clerical positions. As of November 3, 1975 46 professionals and 18 clericals~~x~~ were actually employed.

~~XXXXXXXXXX~~

The 1976 budget for the Agency assumes an increase in facilities to be safeguarded from 414 predicted in 1975 (including EURATOM facilities) to 523 in 1976. (These figures do not include facilities in the U.S. or UK.) In the entire Department of Safeguards and Inspection only one new ~~new~~ professional (director-level) position has been established for 1976. The Department is planning to handle the increasing workload as follows: (excerpt from Agency's budget for 1976/^{GC}~~GC~~ XIX 550, Section N) QUOTE N.16. Steps have been taken during the last few years to avoid a growth of the inspection effort proportional to the increase in nuclear activities ~~subject~~ subject to safeguards. This policy will be maintained during the coming period of expansion of nuclear power production and the consequential increase in the nuclear material flow and inventory. It will be implemented by the use of more sophisticated methods and instruments~~x~~, more intensive preparation and evaluation work at Headquarters, the ~~provision~~ provision of continuous technical support by the Division of Development and closer managerial ~~control~~ control of the safeguards implementation work. END QUOTE

A ~~possible~~ possible problem, indications of which have recently appeared, is the decreased response to vacancy notices

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for inspector positions at salary levels which, in the past, have been adequate to generate widespread response. A recent set of 10 vacancy notices ~~xxx~~ drew applications from 27 people, including 17 U.S. nationals. Not all of these applicants, moreover, met the Agency's minimum qualifications for the positions.

"Question 3(c)

~~xxx~~ What would be the implications for the IAEA safeguards program of the U.S. making good on its offer to place the U.S. civil nuclear industry under Safeguards?"

Answer 3 (c).

If the U.S. did not make good on its offer to allow IAEA safeguards to apply to U.S. peaceful nuclear activities, there would very likely be serious political repercussions in terms of continued support for and acceptance of effective IAEA safeguards by members of the European Community, Japan, Sweden, and other industrial ~~countries~~ countries. As recently as the September General Conference of the IAEA statements were repeated by a number of delegations indicating that adherence to NPT by their governments was based upon an expectation that the U.S. would make good on its offer.

The impact on IAEA of actually implementing the offer will depend on how many U.S. facilities the IAEA selects for inspection at any given time. In testimony given in hearings on the NPT before the Senate Committee on Foreign Relations, July 10, 11, 12 and 17, 1968 (Page 111 of the hearings

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[record) it was noted that QUOTE The U.S. offer will be fulfilled by the negotiation of a formal implementing agreement between the IAEA and the U.S. Government. That agreement would identify those activities in which the IAEA could apply its safeguards. In implementing the agreement, the IAEA will determine in which of the activities, among those listed, safeguards are to be applied. It is doubtful that the IAEA will wish to apply its safeguards to all activities listed, nor do we believe that the purpose of the U.S. offer would require that it do so. It is more likely that the IAEA would elect to apply safeguards to a representative number of U.S. activities, at least initially. END QUOTE.

During ~~sub~~ subsequent discussions among other governments interested in the U.S. offer, a formula was informally arrived at to meet their concerns whereby the IAEA would inspect only those U.S. facilities which incorporated advanced technology or were otherwise ^{important} ~~important~~ in international commercial competition.

The draft U.S./IAEA safeguards agreement, as negotiated with the IAEA Secretariat to date, provides that IAEA safeguards (including ~~x~~ inspections) will be carried out only at facilities selected by the Director General at any time from among all U.S. facilities ^{eligible} ~~eligible~~ under the offer. The Director General may also select from the remaining eligible

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facilities, those which will be subject to design review, including visits by inspectors to verify design information, and will maintain required records and submit nuclear material accountability reports to the Agency.

The Director General will doubtless consult with the interested governments (~~and~~ including the U.S.) in the course of making his selections. The Board of Governors will in its ~~annual~~ annual budget recommendations to the General Conference, take into account the Director General's recommendations. Since the U.S. offer was made to meet the concerns of other nations and to support widespread adherence to the NPT, the U.S. has taken the position that the expenses of the IAEA in implementing the offer should be included in the Agency's safeguards budget. After some years of experience with implementation of the U.S. offer, the governments which were most interested in the offer may recognize that safeguards are not, in fact, an element in the ability of their industries to compete with U.S. industry and will wish to reduce the implementation of the U.S. offer.

It should be recognized from the foregoing that the precise impact of the U.S. offer on the Agency is not predictable at this time. In its 1975-1980 budget planning document (GC (XVIII)/526), the IAEA estimated an initial need for 10 additional inspectors to begin implementation of both the

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U.S. and the UK voluntary offers. A large initial effort will be required ~~xxxx~~ to review the designs and prepare the documentation for each of the several hundred eligible U.S. facilities.

"Question 3(d)
~~xxx~~/If this is done, ~~w~~ how much of the U.S. enrichment capacity would be under IAEA safeguards?"

Answer 3 (d).

COMMENT: ERDA ~~xxxxxxx~~ should provide the answer to this question. We recall, that during consultations with the FRG, at their request, in August 1973, on the U.S. offer, Dr. A. Friedman noted that the existing U.S. gaseous diffusion plants were not included in the offer due to their national security/~~significance~~ significance. This view was also stated in State 221367 of September 17, 1975. We recall, however, that Friedman stated that the situation might be different in the case of future privately owned US enrichment plants. END COMMENT.

4. "Question 5. Physical Security and the IAEA

At the IAEA's Symposium on safeguards last week in Vienna, Inspector General Rometsch said that the IAEA can support states on ~~xxx~~ setting up their systems of physical protection, by providing guidance or technical assistance.

(a) Is this a sufficient role for the IAEA, or would the U.S. seek to modify the international Statute that established the IAEA, ~~x~~ or modify the NPT, to give the Agency a stronger

~~xxxx~~ role?"

Answer 5 (a)

The ~~physical~~ physical protection of nuclear material ~~xxxx~~ invokes much stronger concerns about national sovereignty and police powers than does nuclear material accountancy safeguards. The attitude of most (if not all) IAEA Members accordingly is that primary responsibility for physical protection is a national matter and that the IAEA should have only a limited role in this area. The possibility of IAEA ~~xxxxxx~~ enforcement of physical protection standards is clearly not acceptable to those member states. Recent consultations by the IAEA legal staff with a number of governments also revealed strong and widespread opposition to any form of IAEA verification of adherence by governments to physical security standards. Even the matter of IAEA giving specific advice in this area, at the request of a Member State, is of concern to some governments.

In part this concern stems from a desire to avoid spreading the knowledge of current physical security techniques and equipment to potential ~~xxxxxxx~~ terrorists through such activities. The Agency, however, may be able to establish and ~~xxxx~~ make available a list of experts in member countries who could give advice in specific areas of physical security.

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The general standards published by the Agency in INFCIRC/225 ("The Physical Protection of Nuclear Material") are useful to nations seeking information on the subject and can be used as a basis for international cooperation ~~xxxxxx~~ toward general uniformity/practices in physical protection.

The Agency would be able if called upon to do so, to sponsor or assist in the ~~xxxxxx~~ ^{ex} elaboration of a convention international or other/cooperative efforts in various aspects of physical protection.

^{Const} ~~xxx~~ "Question 5(b) In his paper, ~~xxxx~~ ⁷ ~~xxxx~~ /Mr. Rometsch noted that in the control of compliance with the state's regulations on physical protection, the Agency's role is limited to notify informally the state on any inadequacy found in the course of the Agency's verification activity.

Is this ~~x~~ sufficient, or should not the IAEA be required to formally report such observations by its inspectors to the United Nations, and to inform the public~~x~~?"

~~xxxx~~ Answer 5 (b)

The Agency ~~would be able if called upon to~~ has no prescribed role at this time to "control" compliance with States' regulations on physical protection. To the extent that the Agency's inspectors do informally notify a State on inadequacies found in the course of their safeguards inspections, this is done at the inspectors' personal initiative or presumably

at the informal request of the State. Inspectors are not instructed, however, in details of current physical protection practices and procedures. In the absence of such training (to ^{to} ~~which~~ which some member states would object), inspectors are unlikely to identify any but the most obvious inadequacies. Thus, it would appear that a ~~prerequisite~~ ^{prerequisite} to any effort to formalize the existing practice or to expand it, would be a decision to increase substantially the capability of the inspectorate in the subject matter. As noted in the preceding answer, such a decision would be difficult to achieve at this time, given the current attitude of the member states.

5. "Question 7. IAEA Inspection Reports

(a) To what extent are reports of IAEA inspectors available to the world public or to other ~~nations~~ ^{nations?} ~~nations?~~

Answer 7 (a)

IAEA inspector reports are not available to the "world public or to other nations."

The Agency's Statute, Article VII F, states "In the performance of their duties, the Director General and the staff...shall not disclose any industrial ~~secret~~ secret or other confidential information coming into their knowledge by reason of their official duties for the Agency..."

IAEA Safeguards agreements, other than those pursuant to

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the NPT, contain the mandatory provision in INFCIRC/66 REV. 2 para 13 QUOTE In implementing safeguards, the Agency shall take every precaution to protect commercial and ~~and~~ industrial secrets. No member of the Agency's staff shall disclose, except to the Director General and to such other members of the staff as the Director General ~~and~~ ~~xxxxxx other members of the staff xxxxx~~ may authorize to have such information by reason of their official duties in connection with safeguards, any commercial or industrial secret or any other confidential information coming to his knowledge by reason of the implementation of safeguards by the Agency. END QUOTE and para 14 QUOTE * The Agency shall not publish or communicate to any State, organization or person any information obtained by it in connection with the implementation of safeguards, except that: (a) Specific information relating to such implementation in a State may be given to the Board and to such Agency staff members as require such knowledge by reason of their ~~xxxx~~ official duties in connection with safeguards, but only to the extent necessary for the Agency to fulfill its safeguards responsibilities; (b) Summarized lists of items being safeguarded by the Agency may be published upon decision of the Board; and (c) Additional information may be published upon decision of the Board and if all States

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directly concerned agree. END QUOTE

IAEA Safeguards agreements pursuant to the NPT contain the provision in INFCIRC/153 para 5 QUOTE The Agency shall take ~~xxx~~ every precaution to protect commercial and industrial secrets and other confidential information coming to its knowledge in the implementation of the Agreement. The Agency shall not publish or communicate to any State, organization or person any information obtained by it in connection with the implementation of the Agreement, except that specific information relating to such implementation in the State may be given to the Board of Governors and to such Agency staff members as require such knowledge by reason of their official duties in connection with safeguards, but only to the extent necessary for the Agency to fulfill its responsibilities in implementing the Agreement. Summarized information on nuclear material being safeguarded by the Agency under the Agreement may be published upon decision of the Board if the States directly concerned agree.

END QUOTE

The IAEA has established a system of information security to assure that these obligations are met. An individual government ~~xxx~~ would have legitimate access to information as defined in the foregoing~~x~~ provisions, only if such

information is brought to that government's attention by virtue of its membership on the Board of Governors, as a result of an initiative by the Secretariat or in response to a request to the Secretariat by the Board. To date, no such information has been provided to or requested by the Board. (See also answer to question 2.) If the government ~~xxxx~~ is not a member of the Board ~~xxx~~ of Governors, no mechanism is provided for the receipt of such information except, presumably, as the Board may inform all members of the Agency.

~~XX~~ "Question 7(b) What is the rationale for limiting access to them?"

Answer 7(b)

The rationale for limiting access to inspection reports is twofold: (1) to protect the commercial interests which many states believe could be compromised by release of the information (e.g., information about measurement uncertainties, process losses, actual plant thruput, etc.) and (2) to enhance the diversion deterrent effect of safeguards by preserving for the Agency the important tactical advantage of concealing from potential diverters the extent of its information and specific inspection plans.

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" Question 7(c) To what extent would a U.S. policy and push to get publication adversely affect either the NPT or the IAEA? "

Answer 7(c)

A U.S. policy advocating publication of inspector reports per se would be ~~not~~ opposed by many IAEA member governments. It is extremely unlikely that the U.S. could enlist the support of sufficient IAEA members to overturn the ~~existing~~ existing policy, which it was necessary to establish at the very beginning of the concept of international safeguards. U.S. success in such advocacy would, moreover, nullify the advantage noted in 7(b)(2) above. In any event, it is not clear that release of inspector reports per se would contribute to confidence in IAEA safeguards beyond that which would be achieved with the release of information as discussed in the answer to question 2.

6. "Question 8. Degree of access of IAEA inspectors.

~~Answer 8(a)~~

~~IAEA inspectors do not routinely have full total access to all facilities which come under IAEA inspector procedures. The IAEA Statute provides that safeguards inspectors shall have access at all times to all places and data and any person~~

(a) Do IAEA inspectors have full and total access to all facilities which come under IAEA inspection procedures? If not, please explain the arrangements, whether written or oral, by which such exclusions are made."

Answer 3(a)

IAEA inspectors do not routinely have full and total access to all facilities which come under IAEA inspector procedures. The IAEA Statute provides that safeguards inspectors QUOTE ... shall have access at all times to all places and data and any person ...

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[as necessary to account for/~~*~~safeguarded nuclear material].

~~xxx material xxx~~ QUOTE However, during the drafting of the content and structure of NPT safeguards agreements (INFCIRC/153) this general right of access was modified as foreseen in the preamble of the NPT, so that, for routine inspection, the Agency would have access only to the strategic points in the facility which are to be specified in advance in agreed Subsidiary ~~xxx~~ Arrangements. The agreement further provides that (Para 76(d) of INFCIRC/153) QUOTE In the event ~~xxx~~ of the State concluding that any unusual circumstances require extended limitations on access by the Agency, the State and the Agency shall promptly make arrangements with a view to enabling the Agency to discharge its safeguards responsibilities in the light of these limitations. The Director General shall report each such arrangement to the Board. END QUOTE The extent of routine access is specified in detail in the Subsidiary Arrangements. The significant exclusions are addressed in the Agency's internal analysis of the safeguards problems for each facility under safeguards, i.e., the Safeguards Implementation Practice (SIP). A copy of IAEA's [standard outline for this ~~xxxxxxx~~ analysis is

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(FYI:

~~xxxxxxx~~ attached. Annex to Paper No. SM 201/105

"Experience in the Application of Agency Inspection Slobodan Practices" by ~~Slobodan~~ Nakicenovic, was distributed

to participants at IAEA Safeguards Symposium in

October 1975. Copies ~~have been purchased~~

~~xxxxxxx~~ are also ~~avail~~ available from Houch, ACDA or Bartels (ERDA. END FYI.)

~~xxxxxxxxxxxxxxxxxxxxxxxx~~ Access limitations

imposed on inspectors in the field without prior agreement with IAEA would be reported by the inspector to Agency Headquarters in a manner ~~xxxxxxxxxxx~~ appropriate to the situation.

"Question 8(b)

~~(b)~~ /To the extent that access is restricted, what implications arise with respect to the confidence we can have in the overall findings on the possible diversion of nuclear materials? "

Answer 8(b)

In theory, the Agency waives access only in situations where it is convinced it can meet its responsibilities for verifying non-diversion by other methods (e.g., containment, perimeter surveillance, measurements only at "key measurement points," etc.). Thus restrictions on access, per se, do not necessarily preclude effective safeguards.

Each case must be evaluated by the IAEA on its own merits. ^{Agency} ~~capable~~ inspectors are presumed to be perceptive and

have the skill to identify any anticipated problems caused by access limitations. Such problems should be spelled out in the SIPs and the Inspectorate should take whatever steps it considers necessary, in light of such limitations. The requirement, noted in the foregoing answer, that the Board of Governors be informed, provides an opportunity for governments represented on the Board to question the Secretariat concerning the effectiveness of the arrangements proposed and to call for changes believed to be necessary. There is nothing which would prevent the Board, when it is so informed, from ^{also} calling upon the Director General to keep the Board informed concerning the Inspectorate's experience with the arrangement.


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