



**United Nations**

UNITED NATIONS  
CENTRE FOR DISARMAMENT  
DEPARTMENT OF  
POLITICAL AND SECURITY COUNCIL AFFAIRS  
Reference Library

A/CONF.35/DOC.15  
22 August 1968

ENGLISH  
Original: SPANISH

## CONFERENCE OF NON-NUCLEAR-WEAPON STATES

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**Geneva, 1968**

INTERNATIONAL PROGRAMME OF NUCLEAR EXPLOSIONS  
FOR PEACEFUL PURPOSES FOR THE BENEFIT OF STATES  
WHICH HAVE RENOUNCED NUCLEAR WEAPONS

MEXICO

Working Document

GE.68-15280

When the Draft Treaty on the Non-Proliferation of Nuclear Weapons was being considered in the First Committee of the United Nations General Assembly, the Mexican delegation proposed, on 16 May of this year, a series of amendments to article V concerning nuclear explosions for peaceful purposes.

The basic purposes of the Mexican proposal, which was supported by many Latin American delegations, were as follows:

(1) That the undertaking which the Parties to the Treaty should assume through that article should not merely be the very general one of "co-operating", but that of "applying the pertinent measures" to ensure the aims defined in the article;

(2) That work on preparing the "special international agreement" which would embody the statute of the "appropriate international organ" for which provision was made in the article should begin as soon as possible, the agreement so prepared being approved in due course by a body representing the world community;

(3) That the procedure of multilateral assistance through the appropriate international organ in question should be given pride of place, the resort to bilateral procedures being relegated to a secondary position; and

(4) That nuclear explosions for peaceful purposes should be carried out "under appropriate international observation".

The proposal just referred to was incorporated in all its essentials in the revised text which was to become the "Treaty on the Non-Proliferation of Nuclear Weapons" annexed to resolution 2373 (XXII), adopted on 12 June 1968.

With regard to the question of the preparation and approval of a "special international agreement" defining the functions and powers of the appropriate international body, such aspects of article V of the Treaty as may not seem sufficiently clear should be interpreted in the light of the statements made by the Co-Chairmen of the Eighteen-Nation Committee on Disarmament when they introduced and explained the scope of the revised text of the Draft Treaty before the First Committee on 31 May.

On that occasion the Soviet Union representative, who was first to take the floor, pointed out inter alia that the revised text of the Treaty specified "that negotiations with regard to States obtaining potential benefits from the peaceful applications of nuclear explosions, pursuant to a special international agreement or agreements, through an appropriate international body, should commence as soon as possible after the entry into force of this treaty".

That representative then went on to say (and this is what should be particularly stressed): "Of course, the appropriate preparatory work can be begun before the treaty actually comes into force"; and that the general principles and procedures to be incorporated in the special international agreement should be determined "with the broadest possible participation of non-nuclear States".

The United States representative, the next speaker, was as explicit as, if not more so than, his USSR colleague, for he specifically stated with regard to article V:

"It will be noted that the revised text makes it clear that States may obtain the benefits from peaceful application of nuclear explosions '... pursuant to a special international agreement or agreements, through an appropriate international body with adequate representation of non-nuclear-weapon States.'

"This language contemplates a basic agreement defining the functions of the appropriate international body and holds open the possibilities of a series of separate international agreements dealing with particular projects.

"It is important that the primary agreement -- defining the function of the international body -- be negotiated promptly. For this reason we have added the language that 'Negotiations on this subject shall commence as soon as possible after the Treaty enters into force.' We trust that this language will remove any doubts about the intention of the nuclear-weapon States which are in a position to do so to provide such services under appropriate international observation and at the earliest practical moment.

"Let me add, lest there be any doubt on this score, that the provision concerning negotiations is not intended in any way to preclude preparatory consideration of this matter before the treaty enters into force. We assume that all interested States will wish to begin studies and consultations promptly. Many States, including the United States, will promptly begin or continue studies and consultations already under way. I should also note that this subject is on the agenda of the Conference of Non-Nuclear-Weapon States."

In view of the provisions of article V of the Treaty on the Non-Proliferation of Nuclear Weapons, and in particular of the very explicit interpretive statements concerning that article's provisions made, as has just been recalled, by the Co-Chairmen of the Committee on Disarmament, who played so important a role in the drafting of the Treaty, the Mexican delegation considers that one of the most valuable contributions which the Conference of Non-Nuclear-Weapon States could make would be to prepare a preliminary draft of a special international agreement embodying the statute setting forth the structure, functions, powers and procedure of the appropriate international body which is to be the principal channel through which the States having renounced nuclear weapons will be able, in conformity with the explicit provisions of the aforementioned article V, to obtain benefits from any peaceful application of nuclear explosions on a non-discriminatory basis and in such a way that the charge to those States for the explosive devices used will be as low as possible and exclude any charge for research and development.

For it seems manifest that the use of nuclear explosive devices for peaceful purposes is destined to be of incalculable importance, especially to the developing countries; and also that the fate of the Non-Proliferation Treaty will in the final analysis depend not only on the adoption of concrete disarmament measures by the nuclear Powers, but also on the promptness and faithfulness with which those Powers fulfil the undertakings specifically assumed in the Treaty in regard to the "further development of the applications of nuclear energy for peaceful purposes" (including, of course, the benefits from nuclear explosions) ", especially in the territories of non-nuclear-weapon States", and of course "with due consideration for the needs of the developing areas of the world".

As a modest contribution to the preparatory work referred to in the foregoing, the Mexican delegation has prepared the two papers appended as annexes I and II to this working document.

The first of them contains, as its title indicates, a series of "Basic proposals for the preparation of the special international agreement provided for in article V of the Treaty on the Non-Proliferation of Nuclear Weapons".

The second annex contains preliminary draft articles - which might serve as a basis for the adoption by the Conference of a preliminary draft of the special international agreement - in which the points set forth in the first annex are considerably expanded and developed and a number of comments are added.

Since the texts of both documents can be said to be self-explanatory - particularly with the aid of the comments, only a few general considerations will be added here regarding the basic ideas which underlay the drafting of the documents:

(1) The expression "States which have renounced nuclear weapons" has been preferred to the expression "non-nuclear-weapon States Parties to the Treaty on the Non-Proliferation of Nuclear Weapons" because, being broader and more flexible, it was felt to express better what can with good reason be regarded as the ardent desire of all the peoples of the world: that this renunciation should become general, whatever may be the international contractual instrument through which it acquires mandatory status in law. For it should not be forgotten that there already exists, in the form of the Treaty for the Prohibition of Nuclear Weapons in Latin America, or Treaty of Tlatelolco, a treaty which goes even further than the Non-Proliferation Treaty, since its object is to ensure the total absence of nuclear weapons in the territories of the States Parties; nor that the African States have repeatedly expressed their intention that Africa should likewise become, through a treaty, an area free from nuclear weapons.

(2) Although, as has just been established, the aim towards which efforts should be directed is extension to all the world's States of the renunciation of nuclear weapons, it is manifest that it will unfortunately be necessary to wait quite a long time before that ideal can be achieved. Consequently, the international body through which the benefits of the peaceful applications of nuclear explosions will be made available to the non-nuclear-weapon States will have to be a body open to all nuclear-weapon States desiring to belong to it and to which, as regards non-nuclear-weapon States, all those which have renounced such weapons - but only those which have done so - will have access. Since no body satisfying this double requirement at present exists, it will be necessary, while endeavouring to avoid duplication of functions, expenditure and efforts, to establish a new one that does. It was therefore thought that the scope of the new body might be as modest as is consistent with the effective performance of its specific tasks; that although it would have complete autonomy it might function within the framework of the International Atomic Energy Agency, have the same headquarters as the Agency, and hold its plenary meetings simultaneously with the General Conference of IAEA; and that its Executive Secretary might be

assisted solely by such technical and administrative personnel as was strictly necessary, the utmost use being made of IAEA's co-operation and, in particular, of its system of Safeguards.

(3) As has just been indicated, the view has been taken that the self-governing body which would be established might function best within the framework of IAEA and in close relationship with that Agency. The reason for this is that a primary function assigned to IAEA in its Statute is "to encourage and assist research on, and development and practical application of, atomic energy for peaceful uses throughout the world". However, this is not an essential element in either the proposals or the preliminary draft drawn up by the Mexican delegation; those proposals and that preliminary draft could easily be adapted to other hypothetical situations, such as the possibility that the Conference of Non-Nuclear-Weapon States might prefer the new autonomous body to function within the United Nations system.

(4) The structure suggested for the new body's executive organ - the Governing Council - is dictated by the need to seek in that fully representative body such distribution of posts as is as well balanced as possible both geographically and with regard to levels of development, so that the organization of the Council may afford the developing non-nuclear-weapon States the utmost assurance that their requests for aid in carrying out nuclear explosions for peaceful purposes will always receive prompt, adequate, objective and even - as is greatly to be desired - generous consideration.

(5) The financial provisions of the two annexed drafts are designed to ensure not only that the provisions of article V of the Non-Proliferation Treaty concerning the charge for nuclear explosive devices will be respected, but also that the remaining charges incurred in each case will be shared equitably through the application of criteria fully taking into account the vast difference in resources between the nuclear Powers and other highly industrialized States on the one hand and on the other the developing countries which, as everyone knows, constitute the overwhelming majority of the countries of the world. To sum up: what has been sought has been to ensure that the developing countries should have access on the most favourable terms to this new form of application of nuclear energy, which will be able to contribute so much towards closing the gap between the peoples of the Northern Hemisphere and those of the Southern. It is for this same purpose that it is suggested that a Special Fund should be set up to assist States which have cogent reasons for requesting that explosions for peaceful purposes should be carried out in their territories but cannot, because of their economic situation, afford the necessary outlay.

The Mexican delegation is aware that both the annexed documents - the basic proposals and the preliminary draft articles - may exhibit some defects. It also appreciates that the suggested texts can unquestionably be improved in many ways. Nevertheless it is convinced that despite their limitations they can make a constructive contribution to the deliberations of the Conference on the item concerning the benefits of the applications of nuclear explosions to peaceful purposes, from which deliberations it is to be hoped that a preliminary draft international agreement may emerge to bring into being the appropriate international body to make those benefits available, with due consideration for the needs of the developing areas of the world, to all States which have renounced nuclear weapons or which renounce them in the future.

ANNEX I

BASIC PROPOSALS FOR THE PREPARATION OF THE SPECIAL  
INTERNATIONAL AGREEMENT PROVIDED FOR IN ARTICLE V  
OF THE TREATY ON THE NON-PROLIFERATION OF NUCLEAR WEAPONS

I

An International Programme of Nuclear Explosions for Peaceful Purposes (hereinafter called "the Programme") is instituted, its principal purpose being to ensure that States which have renounced nuclear weapons are able to obtain benefits through the Programme from any peaceful application of nuclear explosions on a non-discriminatory basis and in such a way that the charge to those States for the devices used is as low as possible and excludes any charge for research and development.<sup>1/</sup>

II

All States which have renounced nuclear weapons, and nuclear-weapon States which ratify this Agreement, shall be Members of the Programme.

For the purposes of this Agreement, "States which have renounced nuclear weapons" means States which are Parties to the Treaty on the Non-Proliferation of Nuclear Weapons or to the Treaty for the Prohibition of Nuclear Weapons in Latin America (Treaty of Tlatelolco), or which have entered into any other special or regional agreement for the prohibition of nuclear weapons in their respective territories.<sup>2/</sup>

III

The Programme shall be directed by a Governing Council which shall possess autonomy in the discharge of its functions, shall draw up its own rules of procedure, and shall be answerable solely to the Plenary Assembly of Members of the Programme, to which it shall submit periodic reports.<sup>3/</sup>

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<sup>1/</sup> See annex II, comment on article 2.

<sup>2/</sup> Ibid, comment on article 3.

<sup>3/</sup> Ibid, comment on article 11.



## IV

The Governing Council shall consist of thirty-four members. The States Members of the Programme which are nuclear Powers shall be entitled to be permanently represented on the Council. The Plenary Assembly shall elect the other members<sup>3/</sup> of the Council<sup>7</sup> in such a way that the Council shall at all times comprise, including the nuclear-weapon States represented on it, fourteen States of Africa and Asia, six of Latin America, and fourteen of the remainder of the world's States. The members elected shall hold office for a term of two years and shall be eligible for re-election for a further like term.<sup>3/</sup>

## V

The Plenary Assembly which shall be held every two years, normally at the Headquarters of the International Atomic Energy Agency and on a date coinciding with the General Conference of that Agency, shall consider the reports it receives from the Governing Council; appoint, on the recommendation of the Council itself, an Executive Secretary who shall be assisted by the technical and administrative staff strictly necessary for the discharge of his functions; and approve the regular budget of the Programme, the draft for which shall be prepared by the Council.<sup>4/</sup>

## VI

Members which require explosions of nuclear devices to be carried out for peaceful purposes shall submit the pertinent request to the Governing Council through the Executive Secretary as far in advance as circumstances require, together with such information as the Council itself shall prescribe for such cases. The explosion of nuclear devices shall be carried out under appropriate supervision by the staff designated by the Council for the purpose, and shall be subject to the application of such safeguards as it may be necessary to agree upon with the International Atomic Energy Agency.<sup>5/</sup>

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<sup>3/</sup> Ibid, comment on article 11.

<sup>4/</sup> Ibid, comments on articles 7 and 8

<sup>5/</sup> Ibid, comments on articles 24 and 25.

The charges incurred through carrying out nuclear explosions for peaceful purposes shall be apportioned as follows:

(1) In order to ensure that the cost of carrying out such explosions shall be as low as possible for States which have renounced nuclear weapons, the Members which furnish the means for the explosions shall bear the entire cost of transporting the explosive devices to the territory of the benefiting Member or Members and the cost of the engineering work carried out in preparation for the explosion or of such safety measures as cannot be adopted or implemented by the benefiting Member or Members for lack of the necessary technical facilities or knowledge;

(2) The cost of the explosive nuclear devices to the benefiting Members shall be laid down by the Programme on the basis of objective criteria and at the lowest possible level. In particular, no research or development charges for the device shall be included.

(3) Such Member or Members as carry out one or more nuclear explosions for peaceful purposes shall be liable for any damage caused thereby in the territory of the benefiting Member or Members or of third parties, and shall accordingly defray the cost of the pertinent insurance.<sup>6/</sup>

#### VIII

Benefits and services furnished through the Programme shall not constitute a means of interference by the Member or Members furnishing them in the internal affairs of the benefiting Member or Members, nor shall they be based upon or prompted by any political consideration; they shall be furnished solely to or through Governments of benefiting Members; they shall meet the real needs of the benefiting Member in the opinion of that Member's Government; they shall be furnished so far as possible in the form requested by the Government of the benefiting Member; and they shall be of the highest category as regards quality and technical competence.<sup>7/</sup>

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<sup>6/</sup> Ibid, comments on articles 27 - 29.

<sup>7/</sup> Ibid, comment on article 30.

IX

During each session of the Plenary Assembly a meeting shall be held for the purpose of receiving pledges of voluntary contributions by Member States. The amounts pledged shall constitute a special fund designed to help the States benefiting by the operations and receiving the benefits referred to in this Agreement to meet the charges accruing to them, on condition that their economic situation so warrants.<sup>8/</sup>

X

This Agreement shall enter into force on the date on which forty signatory States which have renounced nuclear weapons and at least one signatory State which is a nuclear-weapon State shall have deposited their respective instruments of ratification.<sup>9/</sup>

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8/ Ibid, comment on article 35

9/ Ibid, comment on article 39

ANNEX II

PRELIMINARY DRAFT ARTICLES FOR THE SPECIAL INTERNATIONAL AGREEMENT  
CONTEMPLATED IN ARTICLE V OF THE TREATY ON THE NON-PROLIFERATION OF  
NUCLEAR WEAPONS

Establishment of the body

Article 1

The States signatory to this Agreement institute an International Programme for Nuclear Explosions for Peaceful Purposes (hereinafter called "the Programme") in conformity with the provisions set forth in this instrument.

Comment: It is considered that "International Programme for Nuclear Explosions for Peaceful Purposes" might be a suitable name for the "appropriate international body" referred to in article V of the Treaty on the Non-Proliferation of Nuclear Weapons. Needless to say, this name can be replaced by any other deemed better.

Purpose

Article 2

The main purpose of the Programme is to ensure that States which have renounced nuclear weapons are in a position to obtain through the Programme the benefits of any peaceful application of nuclear explosions on a non-discriminatory basis and in such a way that the charge to those States for the devices used is as low as possible and excludes any charge for research and development.

Comment: In essence, the terms of the foregoing provision merely reproduce the objectives set out in article V of the Treaty on the Non-Proliferation of Nuclear Weapons for a body of this kind.

Definition

Article 3

For the purposes of this Agreement, "States which have renounced nuclear weapons" means States which are Parties to the Treaty on the Non-Proliferation of Nuclear Weapons or to the Treaty for the Prohibition of Nuclear Weapons in Latin America (Treaty of Tlatelolco), or have entered into any other special or regional arrangement for the prohibition of nuclear weapons in their respective territories.

Comment: It is considered essential to include the foregoing definition, in virtue of which the body established will logically be required to carry out its work for the benefit of States which have expressly renounced the development of nuclear explosives or the acquisition of nuclear weapons in any manner; States which have not done so would in any case be in a very different position.

Functions

Article 4

In order to achieve the purpose indicated in article 2 above, the Programme shall perform the following functions; that is to say, it shall:

(a) Ensure that the signatory States which are nuclear-weapon States take appropriate steps to make the potential benefits of any peaceful application of nuclear explosions available, through the Programme, to the States which have renounced such weapons;

(b) Foster, through the International Atomic Energy Agency and any competent organ or body of the United Nations, or through direct arrangements between any of the States signatory to this Agreement, the furnishing of technical assistance in matters relating to the benefits derived from the use of explosive nuclear devices; and

(c) Promote, in the matters referred to in sub-paragraph (b) above, the widest exchange of scientific and technical information between the States signatory to this Agreement, by requesting, and circulating among them, all information of interest in this field in a technically accessible form, taking care however that the divulging of information as aforesaid does not entail the disclosure of confidential information or of commercial or manufacturing secrets.

Comment: It seems essential to specify in the Agreement the fields of activity which the new body will cover. Generally speaking, the provisions of this new article are self-explanatory, though it should be observed with regard to sub-paragraph (b) that it has been deemed preferable to leave the development of certain technical assistance programmes to IAEA and other existing organs or bodies, which would, of course, not rule out the possibility of making the Programme responsible for certain services in matters intimately connected with nuclear explosions for peaceful purposes.

Members

Article 5

All States which have renounced nuclear weapons, and nuclear-weapon States which ratify this Agreement, shall be Members of the Programme.

Comment: This wording corresponds to the definition contained in Article 3 above.

Organs

Article 6

The organs of the Programme shall be the Plenary Assembly, the Governing Council, and the Office of the Executive Secretary.

Comment: It is necessary that the supreme authority of the Programme should be an assembly in which all the Member States are represented, and that the Programme should possess a subsidiary organ of limited size to make its work effective and flexible and a secretariat, even though very small, to supervise in practice the performance of the functions assigned to it.

Plenary Assembly

Article 7

The Ordinary Plenary Assembly shall be held every two years and an Extraordinary Plenary Assembly shall be held whenever so requested by a majority of the Members or by the Executive Secretary in consultation with the members of the Governing Council.

Comment: It is thought that a biennial Assembly would ordinarily be sufficient for planning and organizing the operation of the Programme, but the possibility is left open of holding extraordinary Assemblies in unusual cases or situations. The Ordinary Plenary Assembly might as a general rule be held at the headquarters of IAEA on a date coinciding with that Agency's General Conference.

Article 8

The Plenary Assembly shall have authority to take cognizance of any matter relating to the purposes and functions of the Programme as set out in articles 2 and 4 above.

In particular, the Ordinary Plenary Assembly shall perform the following functions in addition to those specifically assigned to it in this Agreement; that is to say, it shall:

- (a) Elect the members of the Governing Council;
- (b) Appoint the Executive Secretary;
- (c) Consider and where appropriate approve any rules, procedures and recommendations submitted to it by the Governing Council and the Executive Secretary for the performance of the Programme's functions;
- (d) Consider and where appropriate approve the rules and regulations applicable to the Programme's technical and administrative staff;
- (e) Approve the regular budget required for the due performance of the Programme's functions;
- (f) Approve such agreements on co-operation as the Executive Secretary may conclude with other international organizations; and
- (g) Approve any amendment to this Agreement.

Comment: It is customary to state that the supreme organ shall have functions in everything relating to the body concerned. It has also been considered useful to give examples relating to the main fields of activity of the Plenary Assembly.

#### Article 9

Decisions of the Plenary Assembly concerning the appointment to or removal from office of the Executive Secretary, the approval of the budget and other budgetary questions, and amendments to this Agreement, shall be made by the vote of two-thirds of the Members. Decisions on other matters, including the determination of additional categories of questions to be settled by a two-thirds majority, shall be taken by a simple majority of the Members present and voting. Each Member shall have one vote.

Comment: This paragraph sets out the minimum of questions in regard to which it seems essential that the Plenary Assembly should proceed on the basis of a qualified majority. The second part of the paragraph is based on the relevant provisions of the Charter of the United Nations and of the Statute of IAEA.

Article 10

The Plenary Assembly shall draw up its own rules of procedure and shall elect a chairman for each session.

Comment: It would not be appropriate to set down a number of points of a procedural nature in this context; as is usual in such cases, the Plenary Assembly is simply left to determine its own rules of procedure.

Governing Council

Article 11

The Governing Council shall consist of thirty-four members. The States Members of the Programme which are nuclear-weapon States shall be entitled to be permanently represented on the Council. The Plenary Assembly shall elect the other members in such a way that the Council shall at all times comprise, including the nuclear-weapon States represented on it, fourteen States of Africa and Asia, six of Latin America, and fourteen of the remainder of the world's States. The members elected shall hold office for a term of two years and shall be eligible for re-election for a further like term.

Comment: As stated earlier, it is necessary that there should be an organ which, because of its limited membership, can act more expeditiously than the Plenary Assembly. It is thought that the organ might comprise thirty-four States (among which the Members of the Programme possessing nuclear weapons would be entitled to be permanently represented), i.e. twice as many States as the General Assembly of the United Nations has vice-presidencies (see General Assembly resolution 1990 (XVIII) and rule 31 of the Assembly's rules of procedure), and that in allotting seats on the Governing Council regard should be had for the same principle as is applied in the case of the aforesaid resolution of the General Assembly; this would ensure "adequate representation" of non-nuclear-weapon States, as referred to in article V of the Treaty on the Non-Proliferation of Nuclear Weapons.



#### Article 12

Any Member of the Programme not a member of the Governing Council may participate without vote in the consideration of any question submitted to the Governing Council if the latter decides that the interests of that member are directly affected.

Comment: The purpose of this article, which is based on similar provisions of other international bodies, is to ensure that States directly concerned in a matter submitted to the Governing Council for consideration are able to place their views before the Council even if at the time they are not members of the Council.

#### Article 13

In appointing the Governing Council, the Plenary Assembly shall endeavour both to ensure adequate geographical representation and to ensure that highly-industrialized States and developing States are included in balanced proportions.

Comment: This article is complementary to article 11 in the sense that, when ensuring the "adequate representation" of non-nuclear-weapon States, measures are required to be taken to achieve a balance between industrialized States and States still developing.

#### Article 14

The Governing Council shall perform the following functions; that is to say, it shall:

(a) Study each of the projects required to be implemented through the Programme or under the latter's sponsorship or aegis, and take decisions concerning those projects;

(b) Prepare, for approval by the Plenary Assembly, the rules and procedures required to be observed by the Programme in the performance of its functions, and ensure their observance;

(c) Supervise the work of the Executive Secretary and report thereon to the Plenary Assembly;

(d) Prepare, for approval by the Plenary Assembly, the regular budget of the Programme, and approve the extraordinary items referred to in article 34 of this Agreement;

(e) Approve such specific arrangements as the Executive Secretary may conclude with any Member States for the performance of the Programme's functions.

(f) Refer to the Plenary Assembly any matter which, in the opinion of the Governing Council, affects or might improve the functioning of the Programme; and

(g) Prepare and adopt its own rules of procedure.

Comment: This article confers on the Governing Council the prerogatives felt to be necessary to ensure its maximum effectiveness and to ensure that the Programme's activities are not delayed or held over until a session of the Plenary Assembly takes place and that an Extraordinary Plenary Assembly does not have to be convened.

#### Article 15

The Governing Council shall meet in ordinary session every six months and in extraordinary session whenever so required by the Plenary Assembly or so decided by a majority of the members of the Governing Council or by the Executive Secretary.

Comment: It is considered that a half-yearly session will be sufficient as a general rule, but that provision should be made enabling extraordinary sessions to be held if and when circumstances so require.

#### Article 16

Decisions of the Governing Council other than those referred to in article 15 above shall be taken by a majority of its members present and voting. Each member shall have one vote.

Comment: This article is self-explanatory.

#### Executive Secretary

#### Article 17

The administrative function of the Programme shall be the responsibility of an Executive Secretary who shall be appointed by the Plenary Assembly for a term of four years and shall be eligible for re-election for not more than one additional term.

Comment: It is thought that the Executive Secretary should not hold office for more than eight years; he would therefore be eligible for re-election for only one additional term.

Article 18

The Executive Secretary shall be assisted by the technical and administrative staff strictly necessary for the discharge of his functions.

Comment: This provision reflects the intention to keep the staff of the Programme at the strictly essential level.

Article 19

In appointing staff to assist him, the Executive Secretary shall comply with such relevant regulation as may be approved by the Plenary Assembly and with such directives as may be notified to him by the Governing Council; however, he shall in any event take care when appointing staff as aforesaid to ensure so far as possible both a balanced geographical representation and an equitable proportion as between staff from the countries most advanced in nuclear technology, staff from highly-industrialized countries, and staff from developing countries. In recruiting staff, no account shall be taken of the contributions of Members of the Programme.

Comment: This article sets out the criteria which seem most just and equitable in the recruitment of the Programme's staff; it therefore expressly excludes the so-called "appropriate limits" system which distorts, even if only in the administrative respect, the representation of the developing countries

Article 20

The Executive Secretary shall perform the functions referred to in article 4 of this Agreement and such other functions as the Plenary Assembly and the Governing Council may assign to him, in conformity with their powers.

Comment: This article is self-explanatory.

Article 21

The seat of the Office of the Executive Secretary shall be in the City of Vienna.

Comment: The City of Vienna is suggested as the seat of the Office of the Executive Secretary because of the close and constant contact which the Programme would necessarily maintain with IAEA.

Article 22

The Executive Secretary and his staff shall enjoy in the territory of Members all the benefits which the Convention on the Privileges and Immunities of the United Nations confers on the staff of the United Nations.

Comment: Since the Programme would be an international body, it is manifest that its staff should enjoy the prerogatives enjoyed by the staff of the United Nations.

Article 23

In carrying out their duties, the Executive Secretary and his staff shall neither seek nor accept instructions from any source outside the Programme and shall refrain from acting in any manner incompatible with their status as officials of the Programme; in virtue of their responsibilities to the Programme, they shall not disclose any confidential information or commercial or manufacturing secret which may come to their knowledge through the performance of their official functions. Each Member undertakes to respect the international character of the functions of the Executive Secretary and of his staff and not to try to influence them in the performance of their functions.

Comment: This provision is analogous to those generally laid down with regard to the staff of international organizations.

Special provisions

Article 24

Members which require explosions of nuclear devices to be carried out for the implementation of projects of a civil character for peaceful purposes shall submit the pertinent request to the Governing Council through the Executive Secretary as far in advance as circumstances require, together with information on the following:

- (a) The date and exact site of the proposed explosion;
- (b) The nature and origin of the explosive device;
- (c) The specific purpose of the proposed explosion;
- (d) The anticipated power of the device;

- (e) The fullest information on possible radioactive precipitation which the proposed explosion is capable of causing and on the measures which will be taken to avoid endangering the population, flora and fauna, property and territory of the State in which the explosion would be carried out or of neighbouring States, whether through the explosion itself or through the transport of the nuclear device to the site of the proposed explosion; and
- (f) The procedures which will be observed in order to carry out international observation as referred to in article 25 below.

Comment: For both political and safety reasons, the nature of nuclear explosions, even if they are for peaceful purposes, makes it necessary for the information referred to in the above article to be available in advance, inter alia in order to facilitate arranging the necessary safeguards with IAEA.

#### Article 25

The staff appointed by the Programme shall be able to observe the preparations for and the actual implementation of the explosion of the device and shall have unrestricted access to any area near the site of the explosion for the purpose of verifying that the device and the procedures followed for its explosion conform to the information submitted pursuant to article 24 above.

Comment: The foregoing provision does not prevent IAEA from extending its safeguards, in such form as may be determined at the appropriate time, to the supervision of nuclear explosions for peaceful purposes, but it seems essential that the secretariat of the Programme should exercise at least some supervision on its own account.

#### Article 26

The explosion of nuclear devices for peaceful purposes shall be performed with means provided, through the Programme, by one or more Members to one or more other Members.

Comment: The intention of this article is to make it clear that the means for explosions may be provided by one or by more than one nuclear-weapon State and that there may likewise be one or more than one benefiting State.

#### Article 27

In order to ensure that the cost of carrying out nuclear explosions for peaceful purposes shall be as low as possible for States which have renounced nuclear weapons, the Members which furnish the means for such explosions shall bear the entire cost of transporting the explosive devices to the territory of the benefiting Member or Members and the cost of the engineering work carried out in preparation for the explosion or of such safety measures referred to in article 24 (e) of this Agreement as cannot be adopted or implemented by the benefiting Member or Members for lack of the necessary technical facilities or knowledge.

Comment: The foregoing article is self-explanatory and accords with the spirit of article V of the Treaty on the Non-Proliferation of Nuclear Weapons. In case this should not be sufficient, it should be noted that, for safety reasons, States possessing nuclear explosives would surely prefer to make themselves responsible for the tasks referred to.

#### Article 28

The cost of the explosive nuclear devices to the benefiting Members shall be laid down by the Programme on the basis of objective criteria and at the lowest possible level. In particular, no research or development charges for the device shall be included.

Comment: This reproduces what is laid down in article V of the Treaty on the Non-Proliferation of Nuclear Weapons, it being left to the Programme to determine the cost of the explosive nuclear devices objectively and realistically.

#### Article 29

Such Member or Members as carry out one or more nuclear explosions for peaceful purposes shall be liable for any damage caused thereby in the territory of the benefiting Member or Members or of third parties, and shall accordingly defray the cost of the pertinent insurance.

Comment: It is obvious that if only the nuclear-weapon States know the risks which may arise through the explosion and/or transport of nuclear devices it is reasonable that they should make themselves responsible for damage and insurance, especially as they will not at any time transfer to the benefiting States the supervision and handling of those devices.

#### Article 30

The requirements, benefits or services referred to in articles 4 and 24-27 inclusive of this Agreement shall not constitute a means of interference by the Member or Members furnishing them in the internal affairs of the benefiting Member or Members, nor shall they be based upon or prompted by any political consideration; they shall be furnished solely to or through Governments of benefiting Members; they shall meet the real needs of the benefiting Member in the opinion of that Member's Government; they shall be furnished - so far as possible in the form requested by the Government of the benefiting Member; and they shall be of the highest category as regards quality and technical competence.

Comment: The principles set forth in the preceding article are essentially those approved by the General Assembly of the United Nations in its resolution 200 (III) for the granting of technical assistance. In view of the nature of the questions dealt with in the Agreement, it has been considered advisable for these principles to be expressly incorporated in one of the Agreement's articles.

#### Article 31

The Plenary Assembly shall, upon the proposal of the Governing Council, determine the general rules which the Executive Secretary shall be required to apply in the planning, preparation and carrying out of nuclear explosions as referred to in this Agreement, and shall approve the terms on which the application of safeguards by the International Atomic Energy Agency shall be arranged.

Comment: The purpose of this article is to make provision for defining the Executive Secretary's participation in the planning, preparation and carrying out of nuclear explosions for peaceful purposes through the Programme and to make it clear that such explosions will be subject to the application of safeguards by IAEA.

#### Article 32

The Governing Council shall submit the draft regular budget of the Programme's expenditures to the Plenary Assembly; this budget shall be prepared by the Council in the light of the suggestions made for that purpose by the Executive Secretary. The draft budget shall include the ordinary items for

the maintenance of the Office of the Executive Secretary, remuneration of the basic staff, and defraying the cost of meetings and of the exchange of information between Members, and also a report on such extraordinary items as the Council may have approved for the efficient performance of the Programme's functions.

Comment: It is desirable that the regular budget should include only the basic expenditures essential to the functioning of the Programme. Additional activities would, as will be seen further on, be financed by the States directly concerned or through additional, voluntary contributions.

#### Article 33

The regular items of the budget shall be covered by the Members on a pro rata basis, in conformity with a scale to be established by the Plenary Assembly on the basis of the principles applied by the United Nations in calculating the shares to be contributed by the States Members of that Organization to its regular budget.

Comment: This article is self-explanatory.

#### Article 34

The Governing Council shall prepare, with the advice of the Executive Secretary, and approve such extraordinary items as may be necessary for carrying out projects approved by the Council. The purpose of these items shall be to meet additional expenses incurred by the Programme for such purposes as preliminary studies, safeguards of the International Atomic Energy Agency, the evaluation of the results obtained through projects as aforesaid, and providing technical assistance. The extraordinary items shall be defrayed by the Members which participate in the projects or receive the benefits. Nevertheless, the Plenary Assembly may authorize the Governing Council to meet such expenses in part or in whole from the Special Fund referred to in article 35 below. The disbursements referred to in articles 27 and 28 of this Agreement may not be included among the extraordinary items.

Comment: From every point of view it would seem equitable that the States directly concerned in a specific project, and not all the Members of the Programme, should defray the cost of the project, subject however to the reservation set forth in the following article.



#### Article 35

During each session of the Plenary Assembly a meeting shall be held for the purpose of receiving pledges of voluntary contributions by Member States. The amounts pledged shall constitute a Special Fund designed for the purpose set forth in article 34 above. The Plenary Assembly may likewise authorize the use of the aforesaid Fund to help the States benefiting by the operations and receiving the benefits referred to in this Agreement, if their economic situation so warrants, to meet the charges referred to in article 28.

Comment: It is to be hoped that States Members of the Programme will contribute voluntarily - over and above their regular contributions - to the development of the Programme's activities. These additional contributions could be made in money, in kind, or in services, and on appropriate occasions they would facilitate the implementation of projects which, because of the financial limitations of some States, would be only very remotely possible if at all.

#### Settlement of disputes

#### Article 36

Unless the Members concerned agree on some other means of settling a dispute arising between them concerning the application or interpretation of this Agreement, the question shall be submitted to the Plenary Assembly. Should the Plenary Assembly be unable to settle the dispute within a reasonable time, the dispute may be submitted to the International Court of Justice, subject to the consent of the Parties to the dispute.

Comment: The need for a provision like the one included in the above article is obvious.

#### Amendments

#### Article 37

Any Member may propose amendments to this Agreement by submitting his proposals to the Executive Secretary, who shall transmit them to all the Members not less than ninety days before the opening of the session of the Plenary Assembly at which they are to be considered.

Comment: The period of not less than ninety days prescribed for giving notice of a proposed amendment to the Agreement seems reasonable.

Article 38

Amendments which are approved by the Plenary Assembly shall enter into force on being ratified by two-thirds of the Members in conformity with their respective constitutional procedures.

Comment: In view of the Agreement's constitutional status, any amendment to it must, to be valid, be ratified by not less than two-thirds of the Members of the Programme.

Validity

Article 39

This Agreement shall enter into force on the date on which forty signatory States which have renounced nuclear weapons and at least one signatory State which is a nuclear-weapon State shall have deposited their respective instruments of ratification.

Comment: This article has been drafted in the light of the provisions of articles 2 and 3.

Authentic texts; deposit

Article 40

This Agreement, done in the Chinese, English, French, Russian and Spanish languages, shall be deposited in three equally authentic copies with ... . The Depositary or Depositaries shall notify all States qualified to become Parties to this Agreement of signatures, ratifications or any other action taken by signatory States in order to accede to it.

IN WITNESS WHEREOF the undersigned, being duly authorized for that purpose by their respective Governments, have signed this Agreement at \_\_\_\_\_, on this \_\_\_\_\_ day of \_\_\_\_\_ 196\_.