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LIABILITY FOR NUCLEAR DAMAGE

The summary record of the discussion in the Board of Governors on 12 September 1990 under the item "Liability for nuclear damage" is reproduced in the Attachment.

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ATTACHMENT

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LIABILITY FOR NUCLEAR DAMAGE (GC(XXXIII)/RES/508, GOV/2463)

1. The CHAIRMAN recalled that in February the Board had decided to change the mandate of the Standing Committee on Civil Liability for Nuclear Damage, established in 1963, so that the Committee might henceforth consider not only international civil liability but also international State liability and the relationship between the two. At the same time, the informal working group, established by the Board pursuant to a request made by the General Conference in 1988, had been dissolved. The new Committee - now named "Standing Committee on Liability for Nuclear Damage" and open-ended - had met in April and the report on its meeting was attached to document GOV/2463 as part of a report which the Board might submit to the General Conference.

2. Mr. van GORKOM (Netherlands), before introducing in his capacity as Chairman of the Standing Committee its report on its first session, noted that of the various new developments to be reported the most important was the request by six parties to the Vienna Convention to the Director General to convene a revision conference in accordance with Article XXVI of the Vienna Convention. The second development was the Board's decision to convene a special conference on nuclear safety in 1991, one of the issues to be placed before it being the question of an international legal framework for dealing with nuclear accidents and incidents, an item of direct relevance to the Standing Committee. Thirdly, the final document of the Fourth Review Conference on the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) was expected to contain the following reference to liability for damage arising from nuclear or radiological accidents: "The Conference recognizes the importance of suitable arrangements providing adequate and timely compensation in case of liability for damage arising from nuclear or radiological accidents. The Conference commends the IAEA and the Nuclear Energy Agency of the OECD for their efforts to assist a further improvement in the international regime for liability in case of nuclear damage, in particular for their role in the conclusion of a joint protocol in September 1988 establishing a link between the Vienna and Paris Conventions on international civil liability. The Conference encourages the IAEA to continue its work through its Standing Committee on International Liability for Nuclear Damage to achieve early agreement on the liability issues submitted to it." In that

context, he hoped that the forthcoming session of the Standing Committee and the subsequent session to be held in April 1991 would make enough progress in preparing a revision conference to enable it to be convened with a good chance of success in the second half of 1991. He also hoped that it would be possible to find the necessary resources for such a conference.

3. Substantial progress had been made in the Standing Committee's first session. There had been a further convergence of views on civil and State liability and wide agreement on a number of important issues for strengthening the existing regime of civil liability as embodied in the Vienna Convention and, *mutatis mutandis*, the Paris Convention. In particular, there seemed to be growing agreement that the Vienna system could be strengthened through the inclusion of certain elements of State liability, notably with regard to sources of funding and procedures for the settlement of claims, although further study was clearly required on both points. There had also been valuable discussion on State liability and on a more comprehensive system of liability, including the question of prevention. While it was obvious that those and other important topics relating to State liability would require further study, there was nonetheless wide agreement on giving priority at the present stage to revising the Vienna Convention. The Standing Committee would have to respond to the request to that effect in conformity with its mandate and would now have to start the substantive preparations.

4. For the Committee's October session, he intended to propose a programme which included the establishment of a drafting committee - to work on the basis of the excellent paper prepared by the Secretariat on those elements of the Vienna Convention on which a consensus was already emerging - as well as the creation of working groups to give further study to elements of supplementary funding, State liability and procedures for the settlement of claims. If agreed upon, those elements could considerably strengthen the existing system of liability for nuclear damage, in conformity with the mandate given to the Committee by the General Conference and the Board. He also intended to propose that sufficient time be left for a consideration of other aspects of nuclear liability.

5. The Standing Committee obviously had to proceed with great caution and avoid premature conclusions. The revision conference should be carefully prepared and should not be convened until there was a good chance of success. At the same time, the Committee should be conscious of a certain sense of urgency imposed on it by the General Conference and the Board and should maintain the political momentum it had acquired.

6. It went without saying that the Board would have to be kept informed of the Committee's progress if it was to monitor the latter's work closely. To that end, he suggested that the Committee submit a further report to the Board at its February session.

7. In conclusion, he recommended the report of the Standing Committee to the Board for its consideration and hoped that the Board would decide to transmit the report to the General Conference.

8. Mr. TALIANI (Italy), recognizing the progress made with respect to the present civil liability regime, felt that the Standing Committee had not achieved the same degree of progress with respect to international State liability. There was still no consensus on the need for a comprehensive international liability regime for nuclear damage and no agreement on the kind of instrument best qualified to bring about such a regime. In view of the difficulty of accommodating elements of State liability such as prevention, information, reparation and compensation in a civil liability regime, his delegation favoured the elaboration of a new instrument covering both civil and State liability. He trusted that the Standing Committee would give those issues thorough consideration at its October session.

9. Finally, he emphasized that preparations for the conference which was to revise the Vienna Convention should not be allowed to delay the continuing work of the Standing Committee on the question of international State liability.

10. Mr. SINAI (India) pointed out that there were still many issues on which consensus had not yet been reached. Among them were the geographical scope of the conventions, i.e. whether they should be extended to nuclear damage suffered in the territory of non-contracting States, a problem which

encompassed also the question of reciprocity and the relationship between contracting and non-contracting States; the concept of nuclear damage and the extent to which it should be covered by a liability regime; procedures for claims and the question of priorities; and, finally, the possibility of State funding under a civil liability regime, and scope for State intervention in consolidating and processing claims under a civil liability regime.

11. As to the concept of nuclear damage, there seemed to be a measure of agreement that its definition in the Vienna Convention was too restrictive and should be extended to include environmental damage, preventive measures and so forth. While supporting that view, he felt that the definition should be confined to immediately visible damage, since it was not yet possible to formulate acceptable scientific criteria regarding the long-term impact of a nuclear accident. It was clear that the concept of nuclear damage would require further discussion at the next session of the Standing Committee.

12. With regard to the question of compensation, the existing limits stipulated in the Vienna Convention were undoubtedly too low. If, however, the definition of nuclear damage were not reasonably restrictive, the amount of compensation fixed in some cases might prove to be beyond the means of many countries. Also, insurance companies, especially in developing countries, might not be equipped to handle such large claims. His delegation therefore fully supported the idea of an international pooling of resources based on acceptable criteria for contributions from States.

13. Views had differed widely on the question of State liability for nuclear damage. It was clear that a civil liability regime alone might not be sufficient to cope with large-scale nuclear damage without some degree of State intervention. At its second session, therefore, the Committee should endeavour to establish a comprehensive international regime of civil liability responding to all the concerns expressed, at the same time exploring the possibility of bridging the gap between civil and State liability.

14. Despite the Committee's success in resolving some issues such as geographical scope, applicability of the conventions to military installations and the channelling of liability, there was still so much work to be done on

other problems, such as the liability of suppliers and manufacturers and the possible incompatibility of legal systems, that the establishment of a drafting committee should be postponed until further progress had been made. On a purely practical level, his own and many other delegations would lack suitably qualified personnel to serve on both the Standing and drafting committees simultaneously. The Standing Committee had been asked to report regularly to the Board so that the draft of the revised Vienna Convention might gain the widest possible acceptance within the Agency before being finalized. That being so, it was vital that broad agreement be reached on all the outstanding issues before the draft was entrusted to a drafting committee for finalization.

15. Finally, his delegation wished to recommend that the draft report contained in the Attachment to document GOV/2463 be submitted to the General Conference.

16. Mr. WALKER (United Kingdom) said that his delegation supported the transmission of the report of the Standing Committee to the General Conference. His delegation was pleased with the Committee's progress in a number of areas, especially with regard to satisfying the qualifying requirements for convening a revision conference on the Vienna Convention.

17. It was clear, however, that further, possibly lengthy, discussions would be necessary before unanimity could be reached on all the proposals made to amend the Vienna Convention. Such discussions would focus on the problem of geographical scope, the concept of damage, possibilities for wider pooling by operators and State involvement in compensation claims. The revision conference should therefore not be convened until there was a good chance of its success, and the creation of a drafting committee for such a conference should be postponed, since premature detailed drafting might delay consensus rather than accelerate it. Otherwise, drafting would have to be confined to those points on which consensus had already been reached.

18. Mr. ZOBOV (Union of Soviet Socialist Republics) said that his delegation was in favour of transmitting the report of the first session of the Standing Committee to the General Conference and noted with satisfaction

that the Committee had made substantial progress, especially regarding civil liability, where a consensus was beginning to emerge on concrete proposals for further efforts with a view to revising the Vienna Convention. Much remained to be done on a number of questions, however, before generally acceptable solutions could be found.

19. His delegation also noted that a sufficient number of requests had been received from States parties to the Vienna Convention to convene a revision conference. Such a conference should not, however, be called until the preparatory work had been completed on the elaboration of the drafts necessary for ensuring wide consensus. Experience showed that in matters such as the establishment of an effective international liability regime for nuclear damage, where the interdependence of States was now clear, the success of decisions taken could only be guaranteed if they were based on the support of a majority of the States involved.

20. The Standing Committee had also taken some first steps forward on the question of State liability. It was satisfying to note that it was using its mandate to develop an integrated approach to civil and State liability, regarding them in terms of their interrelationship. That approach should be maintained in the future, since a harmonious co-ordination of State and civil liability mechanisms would undoubtedly strengthen guarantees for the swift and just compensation of damage.

21. Mr. KANIEWSKI (Poland) said the Standing Committee's report confirmed that resolutions GC(XXXIII)/RES/508 and GC(XXXII)/RES/491 had indeed been necessary. Discussions within the original Working Group and the subsequent Standing Committee, in which Polish experts had made a significant contribution, had proved that the existing international nuclear liability regulations left many important gaps and required rapid but careful improvement. The first step in that direction could only be made through a revision of the Vienna Convention, in the process of which more States could be expected to join the Convention. Poland therefore strongly supported the proposal to convene a revision conference before the end of 1991 if possible. Furthermore, the establishment of a comprehensive nuclear liability regime incorporating elements of State liability or intervention would ultimately be

essential if countries were to adopt the sound measures which ought to be an integral part of any legal order. It would also help to win back public confidence in nuclear power, which was particularly important in view of the dangers of global warming indicated in the recent report of the International Panel on Climatic Changes (IPCC).

22. His delegation was accordingly in favour of submitting the report of the Standing Committee to the General Conference.

23. Mr. LOOSCH (Federal Republic of Germany) agreed that, despite the good progress made by the Standing Committee in its first session, a great deal remained to be done before definite conclusions could be reached and translated into convention language. Efforts should therefore be concentrated on what seemed feasible in the near future - in other words on improving the Vienna Convention while maintaining or enhancing its compatibility with the Paris/Brussels Convention systems. The basic objective, after all, was to gain the widest possible adherence to an efficient and effective regime of nuclear liability. His delegation would therefore accord priority to the improvement of the civil liability regime, keeping it separate from the longer-term task of designing an international State liability regime. Even if a State liability regime offered a better solution to the problem of nuclear liability, which his delegation very much doubted, it would still obstruct the improvement of the civil liability regime.

24. Mr. LAVIÑA (Philippines) said that his delegation had taken part in the first session of the Standing Committee and supported all the Chairman's recommendations, especially those concerning the work programme for the October session. It agreed that a working group should be set up to consider supplementary funding concepts, whether State or international, together with the concept of State liability. It was also in favour of establishing a drafting committee to work on those concepts on which consensus had already been reached.

25. Several issues, however, called for further discussion and, although the Committee's mandate included the convening of a revision conference in accordance with Article XXVI of the Vienna Convention, such a conference should not be convened until it was likely to prove successful.

26. His delegation had certain reservations concerning the part of the report which reflected the Committee's discussion of the applicability of the revised Vienna Convention to military facilities. In his view, there were inaccuracies in the account given of the discussion, but he would not go into detail until the Standing Committee reconvened in October.

27. In conclusion, he wished to join previous speakers in recommending the submission of the Committee's report to the General Conference.

28. Mr. MONDINO (Argentina) felt that the Standing Committee's report constituted a most valuable contribution to the establishment of widely acceptable legal norms to govern civil and State liability for nuclear damage, a subject crucial to the future development of nuclear activities.

29. The Committee had made considerable progress in identifying gaps in the present international civil liability regime and in examining practical proposals for the future revision of the Vienna Convention. He was optimistic that a consensus would soon emerge on the few issues on which views still differed, in particular the financial limits of liability and claims procedures.

30. It was also encouraging to note the strong support within the Committee for the idea of establishing a broad-based regime of responsibility for nuclear damage and for the elaboration of an international instrument combining civil and State liability. With sufficient care and flexibility, the Committee should succeed in tackling all the remaining issues that still stood in the way of a solution which could command wide international acceptance.

31. Argentina would continue to take an active part in the work of the Standing Committee and approved the submission of the report attached to document GOV/2463 to the General Conference.

32. Mr. VILAIN XIII (Belgium) said that, although the Standing Committee had made encouraging progress, its work was far from over. He therefore fully supported the plan outlined by the Chairman of the Committee, namely to give thorough consideration to a number of difficult issues on which agreement had not yet been reached and to endeavour to make more progress on matters of substance before embarking on the process of revising the Convention.

33. Having made that comment, he was in favour of transmitting the Committee's report to the General Conference.

34. Mr. WILSON (Australia) noted that much of the considerable progress achieved so far had been in the area of civil liability, which was quite appropriate, since all three elements of the Committee's mandate included references to civil liability.

35. However, its mandate also contained important references to international State liability. A comprehensive international nuclear liability regime would have to include principles of international State liability, and in its future sessions the Standing Committee would need to ensure that suitable emphasis was placed on matters relating to State liability, such as the identification and elaboration of State liability principles for inclusion in a comprehensive nuclear liability regime and the relationship between international State and civil liability.

36. Finally, he wished to support the transmission to the General Conference of the report attached to document GOV/2463.

37. Ms. TALLAWY (Egypt) said her delegation considered it important that there should be a global regime for liability, and crucial that a convention should be achieved which would provide adequate compensation for nuclear damage. The deliberations in the working group and subsequently in the Standing Committee had highlighted the gaps in existing regimes, and the discussions on numerous important questions should help fill those gaps in future conventions.

38. Egypt supported the Netherlands proposal to set up a drafting committee which could commence work during the next session of the Standing Committee. In the elaboration of a convention, care should be taken to ensure that the gaps in the existing system were closed and that adequate attention was paid to the various categories of damage, including damage to goods and property, to financial limits of liability and to compensation for damage to the environment. It might be easier to devise a new liability regime if some compromise could be found between those wishing to pursue the question of State liability and those who felt that only the principles of international

liability should be considered. A compromise might be possible under an approach whereby the State undertook to provide adequate compensation in the event of accidents, irrespective of their severity; indeed, the role of the State appeared to be essential in the modern world if the danger of calamitous accidents was to be confronted in a satisfactory way.

39. Her delegation agreed that the report should be transmitted to the General Conference.

40. Mr. KENNEDY (United States of America) expressed his delegation's appreciation of the report by the Standing Committee and the skilful guidance of its chairman; Mr. van Gorkom's continuation in that capacity was most welcome. Considerable progress had been made in identifying various means of filling gaps and strengthening the international civil liability regime. In spite of the many key issues which remained to be resolved, a solid foundation had been laid upon which an upgraded civil liability regime could be constructed.

41. His delegation favoured the convening of a revision conference as soon as was practicable, but believed that such a step should be taken only after the Standing Committee had completed all the necessary substantive and administrative preparations which would make a successful revision of the convention possible. Although the United States was not at present contemplating adherence to a revised civil liability regime, it urged the Standing Committee to explore flexible ways for States with different legal systems to implement the substantive obligations of any new convention. It firmly believed that public acceptance of nuclear power would depend in no small measure on an effective and credible system of liability for nuclear damage, and was therefore prepared to work positively and constructively to strengthen the existing international civil liability regime.

42. However, the United States continued to believe that efforts to establish an international instrument incorporating the principles of State liability - and indeed any detailed discussion of State liability issues - were premature. The report of the Standing Committee and the earlier report of the working group demonstrated the complexity and novelty of the issues involved in State liability. His delegation therefore urged the Standing Committee to concentrate its efforts on strengthening the civil liability

regime and to avoid lengthy, contentious and premature discussion of State liability.

43. The meetings of the Standing Committee, and ultimately any review conference convened to revise the Vienna Convention, should be scheduled in such a way as to minimize expenditure and, if possible, remain within existing resources. The Board should continue its supervision of the Standing Committee, including its scheduling of meetings, the work programme for each meeting and the Committee's general mandate.

44. Subject to those comments, his delegation concurred in recommending that the report attached to document GOV/2463 should be transmitted to the General Conference.

45. Mr. CHIKELU (Nigeria) said that the Standing Committee had clearly made significant progress towards a consensus in an important and delicate area, and with equal determination would resolve the outstanding issues in time. The Nigerian delegation also recommended that the report should be transmitted to the General Conference.

46. Mr. KHAN (Pakistan) said his delegation welcomed the suggestion that the convention should apply to all installations, both civil and military, and suggested that it might also apply to nuclear systems launched into space which would eventually fall to earth.

47. It endorsed the recommendation that the report should be transmitted to the General Conference.

48. Mr. ERRERA (France) associated himself with previous speakers in paying tribute to the Chairman of the Standing Committee and welcomed his continuation in office. Under Mr. van Gorkom's chairmanship the work would undoubtedly prosper and ultimately lead to a realistic, effective and universal civil liability regime. His delegation would continue to give the Standing Committee its full support. It recommended the transmission of the report to the General Conference.

49. Ms. GARZA SANDOVAL (Mexico) thanked the Chairman of the Standing Committee for his clear introduction and outline of the future work of the Standing Committee. Mexico had participated actively in the first session of the Committee and was fully committed to a strong and effective global system

of civil liability. However, the report made no mention of a series of comments and proposals which the Mexican delegation had made in the Committee and which had been supported by other delegations present. The proposals, submitted in writing, related to three specific areas: the geographical scope of the convention, its application to military installations and the concept of nuclear damage. The Secretariat would undoubtedly still have the texts in question, and her delegation would bring them up again in the Standing Committee.

50. With regard to the concept of nuclear damage, Mexico's view was that nuclear damage involved not just financial compensation but other forms of international co-operation as well; and that it required not only a remedy but also - indeed primarily - prevention, which in turn entailed reciprocal obligations. As to the time limit for the submission of claims, Mexico considered that there should be no limit in the case of environmental damage, which could take many years to become apparent.

51. Subject to those comments, her delegation approved the transmission of the report to the General Conference, together with the summary record of the Board's discussion on item 3 of its agenda.

52. Mr. WAGNER (Czechoslovakia) said that his delegation highly appreciated the work of the Standing Committee. It was extremely interested in the elaboration of an international instrument based on the Vienna Convention combining both civil and State liability, and fully supported the idea of convening a revision conference which would contribute to achieving that aim.

53. Czechoslovakia likewise endorsed the recommendation that the report of the Standing Committee should be transmitted to the General Conference.

54. The CHAIRMAN said that, in the light of the statements made, he assumed that the Board wished to transmit the report attached to document GOV/2463, together with the summary record of the Board's discussion thereon, to the General Conference.

55. It was so agreed.