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Sub-item 12(d) of the provisional agenda
(GC(XXXVI)/1001)

**MEASURES TO STRENGTHEN INTERNATIONAL CO-OPERATION
IN MATTERS RELATING TO NUCLEAR SAFETY AND
RADIOLOGICAL PROTECTION**

(d) LIABILITY FOR NUCLEAR DAMAGE

The summary records of the discussion in the Board of Governors on 19 June 1992 on the item "Liability for nuclear damage" are reproduced in the Attachment.

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EXCERPT FROM THE RECORD OF THE BOARD'S
SEVEN HUNDRED AND EIGHTY-SIXTH MEETING

LIABILITY FOR NUCLEAR DAMAGE (GC(XXXV)/RES/553, paragraph 11; GOV/2590)

146. The CHAIRMAN said that the present item had been placed on the agenda in pursuance of resolution GC(XXXV)/RES/553, in which the General Conference had requested the Board of Governors and the Director General to report to it on the implementation of that resolution. Since the previous session of the General Conference, the Standing Committee on Liability for Nuclear Damage had held two sessions and an intersessional meeting. Document GOV/2590 contained reports of the Standing Committee on those two sessions as well as a draft report which the Board could submit to the General Conference.

147. Mr. HASHIMI (Pakistan) said that his country was not a party to either the Vienna Convention on Civil Liability for Nuclear Damage or the Paris Convention on Third Party Liability in the Field of Nuclear Energy. However, it had participated in the meetings of the Standing Committee on Liability for Nuclear Damage in order to follow its work and to be informed of the outcome, with a view to possible accession. It noted that there were still many differences of opinion between Member States, particularly with regard to the inclusion of military facilities, the procedure for the settlement of claims, and supplementary funding. His delegation intended to continue participating in future meetings of the Standing Committee and to await the outcome of the revision conference on the Vienna Convention.

148. Mr. LOOSCH (Germany) said it was well known that his country gave particular attention to the problem of civil liability for nuclear damage. It was very important that the largest possible number of countries should adhere to one of the two conventions. It was also very important to arrange for appropriate coverage in each case.

149. His delegation was rather disappointed at how little progress had been made on basic issues at the most recent meeting of the Standing Committee on Liability for Nuclear Damage, probably because there had been too much work on text rather than substance. There were a number of issues on which a political approach would need to be adopted in order to reach a conclusion on the substance before proceeding to a complicated legal transformation of the progress achieved into amendments or other changes to the conventions. The drafting work should therefore be carried out only after progress had been made on the important points. His delegation feared that continuing the procedure followed thus far would prevent conclusions being reached in the following year. The Standing Committee's reports clearly showed that any progress towards a convention on State liability would require a long time; it was therefore unrealistic to expect quick results from those discussions.

**EXCERPT FROM THE RECORD OF THE BOARD'S
SEVEN HUNDRED AND EIGHTY-SEVENTH MEETING**

**LIABILITY FOR NUCLEAR DAMAGE (GC(XXXV)/RES/553, paragraph 11, GOV/2590)
(resumed from meeting 786)**

1. Mr. TREMEAU (France) thanked the Chairman of the Standing Committee on Liability for Nuclear Damage for the report published after the Committee's fifth session, held in April 1992.
2. The draft report on nuclear liability attached to document GOV/2590 was an excellent summary of the Standing Committee's activities, but seemed excessively optimistic about the possibility of submitting draft amendments to the Vienna Convention to a revision conference in 1993. Furthermore, although the Standing Committee had managed to draft some texts that could serve as a basis for further work, the vagueness of those texts weakened the meaningfulness of the consensus which had been reached thus far on them.
3. Despite long discussions, no compromise had yet been reached on the issue of military installations, and several options remained open with regard to the settlement of disputes. There was also a wide range of opinion concerning compensation for environmental damage. France and the United Kingdom had made a proposal concerning a system of supplementary funding for compensation beyond the financial capacity of the operator which, after what had seemed to be a favourable reception, was still under discussion.
4. The next meeting of the Committee was to take place in October 1992, and before that occasion drew too close the delegation of France wanted to recall its strong reservations concerning State liability. At the present stage, it reserved its position on the usefulness of establishing an international authority to deal with all problems of liability.

5. Mr. BALANESCU (Romania) noted with satisfaction the steady increase in the level of participation at meetings of the Standing Committee on Liability for Nuclear Damage, which demonstrated Member States' increasing interest in the issue and also bore witness to the specific and detailed nature of the discussions. Romanian experts had participated in the Standing Committee for the past two years, in view of the importance of the issue as a whole, the fact that the first Romanian nuclear power plant was expected to come into operation at the end of 1994, and also the general situation in the region, where there were several nuclear plants of various types, some of which were not performing well in terms of nuclear safety.

6. He noted the progress made by the Standing Committee and its timetable of work. In view of the complexity of the problem, the Committee's work should be carried out in accordance with the arranged programme of meetings. His delegation agreed that the reports on the last two sessions of the Committee, together with the summary of the Board's present discussions, should be transmitted to the General Conference.

7. Mr. ROSALES ARIAS (Cuba) said that a revised convention should be based on a realistic approach which took account of the positions expressed by delegations at the various meetings. The revised convention should come to grips with the issue of State liability, take account of the special features and legal systems of the regions represented, and accept the principle that nuclear damage from civil or military installations should be dealt with in the same way. His delegation approved the report contained in document GOV/2590 for transmission to the General Conference.

8. Mr. PENG (China) appreciated the progress made by the Secretariat and the Standing Committee, which had now set a timetable for its future work objectives. The forming of draft amendments could be regarded as a normal part of the preparations for the convening of a revision conference on the Vienna Convention. It was important that international conventions on liability for nuclear damage should have as wide a basis of support as possible - a point that had to be taken into account in preparing specific proposals for revision.

9. Mr. WILSON (Australia) said that his delegation had taken a keen interest in the activities of the Standing Committee on Liability for Nuclear Damage. He was concerned that some States wished certain important issues, such as compensation for environmental damage, unlimited operator liability and State liability, to be dropped from the Committee's agenda.
10. The revised convention on civil liability for nuclear damage should be applicable to military installations, and victims of accidents at those installations should be compensated at the same level as if the Vienna Convention had applied. The definition of the concept of nuclear damage had been an outstanding issue for some time and should be finalized as soon as possible to provide a better understanding of the other problems being considered by the Committee. He encouraged all delegations to give it careful and prompt consideration.
11. Australia continued to believe that an international tribunal with mandatory jurisdiction should be set up to handle the settlement of claims. Although that view was not widely supported, the alternative proposal of establishing a personal claims commission required careful examination in view of the flaws which Australia felt it contained. *optional* S
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12. His country continued to support the concept of State liability for nuclear damage, and had proposed the addition of a new Article XA to the Vienna Convention which would ensure that victims of nuclear accidents were fully compensated by obliging States to fill any funding gaps not adequately covered by the operator liability or insurance arrangements. Operator liability should as a matter of principle be unlimited in amount but linked to compulsory limited insurance or other financial security. The Committee would also have to consider very carefully the issue of channelling of liability.
13. With those comments, his delegation agreed that document GOV/2590 should be forwarded to the General Conference.
14. Mr. AGRELL (United Kingdom) said his delegation also agreed that the report on liability for nuclear damage should be transmitted to the General Conference. His country maintained its commitment to establishing an effective system of compensation for nuclear damage based on international

conventions and ratified by as many States as possible, particularly those with nuclear power programmes. That goal could in fact be achieved if clear policy goals were kept in mind and efforts were made to ensure that any proposals made were practicable.

15. Civil liability of the operator, strict, channelled and subject to a limit, was the proper basis for future work, and it would be helpful to draw on experience gained with the Paris and Brussels Conventions. Although progress had been made towards rationalizing proposals for further discussion, some complex issues remained to be resolved. He naturally hoped that the Standing Committee would make rapid progress with the preparations for a diplomatic conference, but it was much more important to produce good proposals than to produce them rapidly.

16. The CHAIRMAN, summing up the discussion on sub-item 3(c), said that a number of members had referred to the importance they attached to strengthening the existing nuclear liability regime, a contribution to which had already been made by the adoption of the Joint Protocol relating to the Application of the Vienna Convention and the Paris Convention, and had expressed the hope that further progress in the Standing Committee's work would make it possible for a revision conference on the Vienna Convention to be held in 1993.

17. He assumed that the Board wished to submit to the General Conference the draft document attached to document GOV/2590, together with the summary record of the present discussion.

18. It was so decided.

19. Mr. TREMEAU (France) said that the Chairman's summary did not entirely take into account the position expressed by the French delegation - in particular its view that the document betrayed excessive optimism concerning the possibility of submitting draft amendments to the Vienna Convention to a revision conference in 1993.

20. The CHAIRMAN pointed out that the comments of the French delegation would be reflected in the summary record.