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

(d) LIABILITY FOR NUCLEAR DAMAGE

Report by the Board of Governors and the Director General

1. In resolution GC(XXXV)/RES/553, adopted at its last regular session, the General Conference took note of the report submitted by the Board of Governors on the question of liability for nuclear damage (in document GC(XXXV)/964) and reiterated the priority it attached to the consideration of all aspects of this question, especially in the light of the requests from Parties to the Vienna Convention on Civil Liability for Nuclear Damage to convene a revision conference; further, the General Conference requested the Board and the Director General to present a report on the implementation of resolution GC(XXXV)/RES/553 to it at its thirty-sixth session.

2. In February 1990, the Board established the Standing Committee on Liability for Nuclear Damage and requested it, in particular, to:

(i) consider international liability for nuclear damage, including international civil liability, international State liability, and the relationship between international civil and State liability;

(ii) keep under review problems relating to the Vienna Convention on Civil Liability for Nuclear Damage and advise States party to the Convention on any such problems; and

(iii) make the necessary substantive preparations and administrative arrangements for a revision conference to be convened in accordance with Article XXVI of the Convention on Civil Liability for Nuclear Damage.

3. Since the thirty-fifth regular session of the General Conference, the Standing Committee has held two sessions and also an intersessional meeting, during which it concentrated on the consideration of proposals relating to the revision of the Vienna Convention and the establishment of a system of supplementary compensation. The Committee made substantial progress in the adoption, for further consideration, of draft texts for amending the Vienna Convention; on some fundamental issues, such as application of the Convention to military installations and procedures for the settlement of claims, alternative proposals remain before the Committee, but the number of options has been substantially reduced. On the question of supplementary compensation, two Member States proposed an alternative system to that set out in the draft convention on supplementary funding initially prepared by the Secretariat.

4. On the question of international State liability and its relationship to civil liability, differences of principle remained within the Committee. There was some support for proposals to incorporate elements of State liability and responsibility under public international law into an enhanced nuclear liability regime; on the other hand, objections were raised to those proposals on the grounds that the concept of State liability was not yet sufficiently defined in international law. In addition, there was a strong feeling in the Committee that priority should be given to achieving an improved civil liability regime within the framework of which provision could be made, *inter alia*, for the financial involvement of States in compensation for nuclear damage exceeding the operator's liability.

5. Given the progress achieved so far, there was a broad feeling in the Standing Committee that efforts should be intensified with a view to reaching agreement on draft amendments for submission to a revision conference, possibly in 1993.

6. The Standing Committee noted that the symposium "Nuclear Accidents - Liabilities and Guarantees", being organized jointly by the International Atomic Energy Agency and the OECD/Nuclear Energy Agency and to be hosted by Finland in Helsinki from 31 August to 3 September 1992, could provide a venue and an opportunity for holding consultations on issues where differences of substance remained.

7. The Standing Committee will hold its next session from 12 to 16 October 1992, at which time a decision may be taken on holding an intersessional meeting, provisionally scheduled for 7 to 11 December.

8. During the reporting period, an important step was made in the strengthening of the existing nuclear liability regime, with the entry into force, on 27 April 1992, of the Joint Protocol relating to the Application of the Vienna Convention and the Paris Convention. The Joint Protocol has established a bridge between the two Conventions by extending the benefits of each Convention to the Parties of the other; also it avoids the simultaneous application of the two Conventions to the same incident. At present, ten States are Party to the Joint Protocol: Cameroon, Chile, Denmark, Egypt, Hungary, Italy, the Netherlands, Norway, Poland and Sweden.

9. On 19 June 1992, the Board had before it the reports of the Standing Committee on its fourth and fifth sessions (2 to 6 December 1991 and 30 March to 3 April 1992). The Board decided to transmit those reports (see the Appendices to this document*) to the General Conference together with the summary record of the Board's discussion (to be issued in an Addendum to the present document).

*The Appendices reproduce the reports of the Standing Committee, with Annexes containing the reports of its Drafting Committee. Draft texts for the revision of the Vienna Convention adopted by the Drafting Committee for further consideration, written proposals submitted by delegations and other relevant material are not reproduced in this document; they are available from the Legal Division upon request.

Standing Committee on Liability
for Nuclear Damage

SCNL/4/INF.6
12 December 1991

Fourth Session
Vienna, 2-6 December 1991

Report of the Standing Committee on Liability for Nuclear Damage

1. The Standing Committee held its fourth session at the Agency's Headquarters in Vienna from 2-6 December 1991. At its first meeting, the Committee elected the Resident Representative of Sweden, H.E. Mr. Curt Lidgard, as Chairman of the Committee and the delegate of Peru, Mr. Paul Paredes Portella, as Rapporteur. H.E. Mr. Taher Shash of Egypt, H.E. Mr. Nelson Laviña, Resident Representative of the Philippines, and Professor Jan Lopuski of Poland served as Vice-Chairmen.
2. Representatives of the following 55 Member States participated in the meeting: Argentina, Australia, Austria, Belarus, Belgium, Brazil, Bulgaria, Canada, Chile, China, Cuba, Czechoslovakia, Denmark, Egypt, Finland, France, Germany, Greece, Hungary, India, Indonesia, Iraq, Ireland, Israel, Italy, Japan, Republic of Korea, Lebanon, Luxembourg, Malaysia, Mexico, Morocco, Netherlands, Nigeria, Norway, Pakistan, Peru, Philippines, Poland, Portugal, Romania, Saudi Arabia, Spain, Sweden, Switzerland, Thailand, Tunisia, Turkey, Ukraine, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela, Yugoslavia and Zaire.
3. Two intergovernmental organizations, namely the European Communities represented by the Commission and OECD/Nuclear Energy Agency and three non-governmental organizations, namely British/European Insurance Committee, Greenpeace International and UNIPEDE were represented by observers. One delegation maintained its prior reservation with regard to participation by Greenpeace International. It was also pointed out by some delegations that while they welcomed participation of NGOs in view of their positive contribution to the work of the Committee, the observers should exercise a certain restraint in the public reporting on the proceedings in view of the sometimes delicate nature of the negotiations.

4. At its opening meeting, the Standing Committee adopted the following agenda:

1. Election of officers
2. Organization of work of the session
3. Proposals for the revision of the Vienna Convention on Civil Liability for Nuclear Damage -
(Report of the third session of Standing Committee; Reports of the first and second meetings of Intersessional Working Group)
4. Draft International Convention on Compensation for Nuclear Damage Supplementary to the Vienna Convention and Paris Convention -
(Report of the second meeting of Intersessional Working Group)
5. International State liability and its relationship to international civil liability regime -
(Report of the third session of Standing Committee)
6. Future programme of work
7. Adoption of the Report

5. The Committee devoted three plenary meetings to consideration of several basic questions of principle on which alternative approaches were maintained by the Committee, with a view to determining the options on the basis of which its work could proceed and to providing guidance to the Drafting Committee accordingly. These questions were as follows: application of the revised Vienna Convention to military nuclear installations; procedures for settlement of claims under the revised Vienna Convention; a system of additional compensation of nuclear damage to supplement liability of the operator; and international State liability and its relationship to the civil liability regime under the revised Vienna Convention.

(a) On the issue of military installations, two questions were addressed by the Committee: the general question as to whether the revised Vienna Convention should apply to military installations and the question of the possibility to make reservations to the application of the Vienna Convention to military installations situated in the territory of a Contracting Party but operated under the authority of a non-contracting State. The discussion was based on the relevant draft texts adopted by the Drafting Committee and contained in Annex I to the report of the third session, the proposal

protection to victims of nuclear incidents, a revised Vienna Convention should not be restricted to limitations inherent in operator's liability but should rather expand the scope to include provision of compensation from public funds and other new elements proposed in the Committee. Several delegations pointed out, however, that at the last meeting the Committee had expressed preference for dealing with the provision of compensation from public funds in a separate supplementary convention.

7. The Standing Committee decided that in order to use the time available during this session in the most efficient way, it would concentrate on the revision of the Vienna Convention where sufficient ground for further progress existed. Subject to the time required for that question, time might also be allocated to the items of supplementary funding and international State liability and its relationship to the civil liability regime. In order to facilitate convergence of opinion and the drafting process, the Committee recommended that, where necessary, interested delegations should undertake informal consultations on issues on which differences of substance remained. There was a prevailing feeling in the Standing Committee that certain issues of principle, e.g. amounts of supplementary compensation, should be further discussed in the Committee, although ultimately be dealt with at the diplomatic conference.

8. Finally, at the first plenary meeting, the Standing Committee reconvened the Drafting Committee. The delegate of Denmark, Mr. Torben Melchior, was elected as its Chairman. The Committee was requested to focus on consideration of proposals for the revision of the Vienna Convention, both outstanding issues on which agreement had not been reached before and new proposals put forward during this session. It was urged that the Drafting Committee should concentrate on preparation of specific draft amendments to the Vienna Convention in the form appropriate from a technical legal point of view for submission to a diplomatic conference.

9. The Standing Committee, at its meeting on 3 April 1992, took note of the Report of the Drafting Committee which is reproduced as an annex to this Report.

10. The Standing Committee decided to enclose with the report papers provided by intergovernmental and non-governmental organizations relevant to the work of the Committee. They are reproduced in Appendices I & II.

A view was expressed that documents circulated by NGOs should not be included in the report, but that the issues raised by these documents could be taken into account by the Committee in its work.

11. The Committee decided to convene its sixth session from 12-16 October 1992, it being understood that, at that time a decision could be taken on holding an intersessional meeting, provisionally scheduled for 7-11 December.

The Committee noted that the symposium "Nuclear Accidents - Liabilities and Guarantees" organized jointly by OECD/NEA and the IAEA, and hosted by Finland in Helsinki from 31 August to 3 September 1992, could provide a venue and an opportunity for holding bilateral and multilateral consultations in preparation for the next session of the Committee.

DOCUMENTATION OF THE STANDING COMMITTEE

1. Annex - Drafting Committee Report with Attachments I,II and III, pp. 5-77
2. Appendix I (papers provided by IGOs) p. 78
3. Appendix II (papers provided by NGOs) pp. 79-84

compensation should apply to both transboundary damage and damage suffered within the territory of the Installation State itself. The discussion was based on the alternative approaches envisaged in the draft Convention recommended by the second meeting of the Intersessional Working Group, a new proposal presented by France and the United Kingdom, and proposals submitted by Poland and Turkey at the above-mentioned meeting.

Many delegations favoured that a separate instrument should be elaborated for the supplementary compensation system. With regard to the second question, the delegates expressed different opinions. While the mandatory system of pooling attracted most support, there was also support for a system based on voluntary pooling arrangements on a regional or global level. On the last issue, the majority favoured coverage of both types of nuclear damage referred to above.

The Committee agreed that all proposals merited a detailed consideration in the Drafting Committee. The Committee also emphasized that consideration of the issue of supplementary funding would be facilitated if delegations addressed the issue of specific maximum amounts of compensation that could be provided under a system of supplementary funding.

(d) On international State liability and its relationship to civil liability the Standing Committee addressed one question as to whether elements of State liability should be introduced in the revised Vienna Convention. The Standing Committee discussed the issue on the basis of proposals submitted by Australia, Italy and Turkey, taking also into account alternative approaches suggested in proposals envisaging various forms of State involvement to guarantee or supplement compensation provided by the operator. There was certain support for the view that elements of State liability and responsibility under public international law (e.g. the duty to prevent, minimize and repair transboundary nuclear damage, and to co-operate with other States to that effect, to ensure appropriate safety standards at its nuclear installations) should be incorporated in the revised Vienna Convention or in a separate instrument. However, there was a strong feeling to give priority to the improvement of the civil liability regime under the Vienna Convention and, inter alia, to a financial involvement by States in the compensation of nuclear damage exceeding the operator's liability. The concept of State

liability, in the view of some delegations, was not yet sufficiently defined in public international law and was being considered in the International Law Commission.

In light of the discussion, the Standing Committee suggested that authors of the proposals relating to State liability and other interested delegations might consult among themselves with a view to developing a joint approach taking into account the opinions expressed in the deliberations; the resulting proposal would be submitted to the Drafting Committee for consideration.

6. At its third meeting, the Standing Committee reconvened the Drafting Committee under the Chairmanship of Mr. Wouter Sturms of the Netherlands, to consider outstanding issues referred to it by the Standing Committee as well as the draft texts recommended for the revision of the Vienna Convention by the second meeting of the Intersessional Working Group (21-25 October 1991). The report of the Drafting Committee is reproduced as an annex to this report.

7. As requested by the Drafting Committee (see paragraph 5 of its report), the Standing Committee considered the status of the proposals prepared by the relevant informal working groups on: the application of the Vienna Convention to military nuclear installations, and the definition of installation State in relation to installations used for non-peaceful purposes (SCNL/4/8); State responsibility and State involvement in prevention, mitigation and compensation of nuclear damage (SCNL/4/6 and SCNL/4/7); procedure for settlement of claims.

There was wide interest in the proposal contained in SCNL/4/8 which was considered by many delegations as a good basis for further consideration. Several delegations, however, pointed out that any solution should not hamper adherence to the revised Vienna Convention. Some delegations reiterated their view that if this matter were to be dealt with it should be in a separate instrument such as an optional protocol.

On the proposals contained in SCNL/4/6 and SCNL/4/7, some delegations expressed their concern that any further discussion of these proposals would jeopardize the possibilities of reaching agreement on the more important remaining questions, i.e. the very important question of

supplementary funding. In the view of some of these delegations they contained unacceptable concepts of State liability and should not continue to be considered. In this connection, several delegations suggested that for future work priority should be given to exhaustive examination of proposals on supplementary funding for compensation of nuclear damage. On the other hand, others considered that these proposals provided a useful basis for further consideration of the question of compensating victims.

In light of deliberations, the Standing Committee decided to attach the above proposals as well as the proposal for settlement of claims to this report for further consideration. They are reproduced in Attachment I hereto.

8. Further, the Committee decided, with a view to facilitating future discussions, to attach to this report outstanding proposals from its previous session and the second meeting of the Intersessional Working Group, which had not been dealt with at the present session. They are reproduced in Attachment II.

9. The Committee decided to convene its fifth session from 30 March to 3 April 1992.

Report of the Drafting Committee

1. The Drafting Committee held 5 meetings on 3-5 December 1991 and considered the outstanding issues referred to it by the Standing Committee as mentioned in paragraph 6 of its report.
2. The Committee considered specific proposals by Egypt and Germany concerning the application of the revised Vienna Convention to military installations as well as the related proposals by Australia and the Philippines regarding the definition of the installation State in respect of military installations. There was general agreement that the proposal by Germany provided a good basis for reaching compromise, despite different views expressed on some of its details. In light of this, the Committee decided that an informal group of interested delegations, co-ordinated by the delegate of Germany, should meet with a view to elaborating, on the basis of that proposal and comments made on it, draft texts that could meet with general acceptance as a basis for further consideration.
3. On the question of supplementary funding, the Committee discussed in detail a new proposal made by France and the United Kingdom submitted during the present session of the Standing Committee and continued consideration of other alternative proposals submitted previously by Poland and Turkey.

The system envisaged by the joint French-United Kingdom proposal provides for a four-tier system of contributions. In addition to the funds to be provided under the Paris and Vienna Conventions, other funds should be provided by the operator through his own commercial arrangements (second tier). If those additional funds prove not to be sufficient, the Installations State should provide additional compensation (third tier). Only after exhaustion of these three tiers a final tier consisting of contributions by all Contracting Parties should be made available (fourth tier).

The Committee registered wide interest in this proposal and decided that it should be annexed to the report for further work (reproduced as Appendix B hereto). Concern was, however, expressed that under the system the funds available would not be sufficient to compensate the victims adequately.

In this connection, it was pointed out that consideration of the issue of supplementary funding would be facilitated if delegations addressed the issue of specific maximum amounts of compensation that could be provided under a system of supplementary funding.

The Committee agreed to adopt for further consideration the changes to the Secretariat text of the draft Convention on Supplementary Funding recommended by the second meeting of the Intersessional Working Group and the amendment proposed by the Philippines to Article 1(e) (reproduced as Appendix A hereto).

There was little support in the Committee for the structure of legislation suggested in the proposal by Poland. However, the element of that proposal concerning voluntary pooling of States attracted certain attention, and the Committee decided to annex that part of the proposal to its report for further consideration (reproduced as Appendix C hereto).

There was likewise little support expressed for the proposal of Turkey. Therefore, the Committee decided not to include that proposal in its documentation for future work.

4. A new proposal of an informal working group on the question for the procedure for the settlement of claims was discussed. A number of delegations expressed their support for this proposal subject to further drafting improvements. Some other delegations reiterated their view that there was no need for a provision for a claims commission. It was agreed to refer the decision on the presentation of the proposal in the documentation to the Standing Committee.

5. Due to lack of time, the Committee was unable to discuss the proposals prepared by informal working groups at the request of the Standing Committee on the issue of State liability, and on the issue of the application of the Vienna Convention in respect of military installations and the definition of the Installation State. The Committee agreed to refer these proposals to the Standing Committee for decision on their status.

6. For the reason stated above, the Committee was unable to discuss other outstanding proposals and recommended that they be attached to the report of the Standing Committee for further consideration.

Standing Committee on Liability
for Nuclear Damage

SCNL/5/INF 4
10 April 1992

Fifth Session
Vienna, 30 March - 3 April 1992

Report of the Standing Committee on Liability for Nuclear Damage

1. The Standing Committee held its fifth session at the Agency's Headquarters in Vienna from 30 March - 3 April 1992, under the Chairmanship of H.E. Mr. Curt Lidgard, Resident Representative of Sweden. H.E. Mr. Taher Shash of Egypt, H.E. Mr. Nelson Laviña, Resident Representative of the Philippines, and Professor Jan Lopuski of Poland served as Vice-Chairmen. Mr. Paul Paredes of Peru served as Rapporteur.
2. Representatives of the following 54 Member States participated in the meeting: Algeria, Argentina, Australia, Austria, Belarus, Belgium, Brazil, Bulgaria, Canada, Chile, China, Cuba, Czechoslovakia, Denmark, Egypt, Finland, France, Germany, Greece, Hungary, India, Indonesia, Iraq, Ireland, Israel, Italy, Japan, Republic of Korea, Lebanon, Luxembourg, Malaysia, Mexico, Morocco, Netherlands, Nigeria, Norway, Pakistan, Peru, Philippines, Poland, Portugal, Romania, Russian Federation, Spain, Sweden, Switzerland, Thailand, Tunisia, Turkey, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela and Yugoslavia.
3. Two intergovernmental organizations, namely the European Communities represented by the Commission and OECD/Nuclear Energy Agency and three non-governmental organizations, namely British/European Insurance Committee, Greenpeace International and UNIPEDE were represented by observers, it being recognized that attendance of NGOs was on the basis of the understanding reached at the fourth session of the Committee.

4. At its opening meeting the Standing Committee adopted the following agenda:

1. Organization of work
2. Proposals for the revision of the Vienna Convention on Civil Liability for Nuclear Damage
3. Supplementary funding for compensation of nuclear damage
4. International State liability for nuclear damage and its relationship to the international civil liability regime
5. Future programme of work
6. Adoption of the report

5. At the same meeting, the Committee considered item 1 of its agenda "organization of work". There was a broad feeling that the Standing Committee should intensify its efforts with a view to agreement on texts for submission to a revision conference in 1993. It was noted in this connection that the Secretariat had made, within available budgetary resources, administrative arrangements for holding such a conference, as well as meetings of the Standing Committee required for completion of the preparatory work.

6. In the discussion, the view was expressed that in making the political choice between the establishment of a very high amount of compensation for nuclear damage in the new liability regime and broad participation of States in such a regime, the latter should be preferred. Several delegations suggested that the Committee should first focus on the question of the revision of the Vienna Convention where there is a broad area of agreement, since on the question of supplementary funding substantial further progress would be difficult to achieve until important issues that required political decisions were resolved.

The view was expressed that a separate diplomatic conference might be necessary for the adoption of a supplementary funding convention after the Vienna Convention has been revised. Several delegations, while sharing the view that priority should be given to the revision of the Vienna Convention, stated that this question should be considered in conjunction with other issues in the mandate of the Standing Committee. A view, supported by a number of delegations, was stated that, in order to provide adequate

presented by Germany at the second meeting of the Intersessional Working Group, as well as related proposals concerning definition of Installation State presented at the same meeting by Australia and the Philippines.

While some delegations maintained in general their prior reservations to extending the scope of application of the Vienna Convention to such installations, many delegations felt that installations used for both peaceful and military (non-peaceful) purposes should be covered, as a matter of principle, by the revised Vienna Convention. It was also agreed that exclusion from that coverage could be allowed, provided that in the event of nuclear damage caused by an incident involving military installations, compensation would be made on conditions as favourable as under the Vienna Convention. A point was made in this connection that the preceding rule should apply only to financial aspects of compensation. Some delegations, while not objecting in principle to inclusion of military installations in some system of compensation of nuclear damage, preferred that the question of military installations should be dealt with in an optional protocol to the Vienna Convention in order to facilitate the widest possible adherence to the Convention.

No conclusions were made with regard to the question of allowing a Contracting Party to exclude unconditionally from the scope of application of the Vienna Convention military installations which are situated within its territory but operated under the authority or control of a non-contracting State. It was recognized in this connection that the conclusion of a bilateral agreement between the host Contracting Party and the non-contracting State having authority or control over the military installation was a possible means to reconcile the interests and responsibilities involved.

The Standing Committee requested the Drafting Committee to continue consideration of specific texts relating to military installations referred to above in light of the comments made by delegates in the plenary.

(b) On the question of procedure for settlement of claims, the Standing Committee had before it the draft text recommended by the first meeting of the

Intersessional Working Group with an amending proposal by Austria and the Netherlands which suggested the establishment at the request of States involved of a mandatory international tribunal, alternative proposals presented at the second meeting of the Intersessional Working Group by Egypt, Israel and the Netherlands envisaging the establishment of an optional claims commission, as well as a proposal to establish an investigation commission submitted by Turkey at the same meeting. An aide-memoire on this subject was made available to the Committee by Greenpeace International. In addressing the above-mentioned proposals, the Standing Committee sought to ascertain which of the alternative approaches it could recommend to the Drafting Committee for inclusion in draft texts for revision of the Vienna Convention.

Several delegations expressed preference for the establishment of a mandatory international tribunal with exclusive jurisdiction. At the same time, there was substantial support for the idea of establishing an ad hoc claims commission, and the proposals submitted by Egypt, Israel and the Netherlands. On the other hand, some delegates maintained their reservations to the establishment of any type of international judicial bodies to consider claims for compensation of nuclear damage for a number of reasons (e.g. constitutional limitations of their respective States, establishment of several such bodies would lead to conflict of competence and jurisdiction), and favoured the maintenance of the current provision of the Vienna Convention which recognized the jurisdiction of national courts.

The proposal by Turkey concerning an investigation commission was not discussed due to lack of time.

The Standing Committee agreed that an informal working group of interested delegations co-ordinated by the delegation of the Netherlands should meet in an attempt to elaborate a compromise single draft text for an optional claims commission for consideration by the Drafting Committee.

(c) On the issue of supplementary funding for compensation for nuclear damage, three major issues were discussed by the Standing Committee, namely the question whether the supplementary compensation system should be part of the revised Vienna Convention or provided for in a separate instrument; whether the systems of contributions by operators and by States should be of a mandatory or voluntary nature; and finally whether the supplementary

Report of the Drafting Committee

1. The Drafting Committee held seven meetings from 30 March to 2 April 1992. As requested by the Standing Committee, it focused its efforts on consideration of item 2 of the agenda, the question of the revision of the Vienna Convention. The deliberations were based on the draft texts adopted for future consideration by the Committee at previous meetings as contained in its report at the third session, special regard being given to the draft texts in square brackets, proposals by delegations reproduced in the report of the fourth session of the Standing Committee, and proposals submitted at this session by Germany/Sweden (SCNL/5/5), Poland (SCNL/5/1) and Turkey (SCNL/5/4). Also, papers were made available to it by the OECD/Nuclear Energy Agency (SCNL/5/2), British/European Insurance Committee (SCNL/5/3) and Greenpeace International.

It was agreed that preferences expressed by delegations in the Committee relate to the drafting aspects of the proposals regardless of their positions on the substance.

2. The Committee discussed in detail the proposal prepared at the fourth session of the Standing Committee by an informal working group (SCNL/4/8, p. 38 of report of fourth session) concerning the application of the revised Vienna Convention to non-peaceful installations and the definition of the Installation State. On the understanding that some delegations maintained their reservations of principle about application of the revised Vienna Convention to non-peaceful installations, the Committee, in maintaining the alternatives of paragraph 2, agreed on a drafting change in alternative 2 of that paragraph. As discussion was inconclusive on alternative provisions set out in paragraph 3, it was agreed that an informal group of interested delegations, co-ordinated by the delegation of Germany, would meet in an attempt to prepare, on the basis of two alternatives (with drafting changes in alternative 2 agreed by the Committee), a draft text that could get general acceptance. It was also decided to refer to this group the issue of the definition of Installation State so that a compromise text could be elaborated

based on the draft text prepared by the informal working group at the previous session and the proposal of Australia contained in the report of the third session (Annex III). As the informal working group could not forward new drafts, it was agreed to revert to this issue at the next session.

3. On geographical scope of application, it was agreed to maintain, unchanged, the draft text adopted at the third session (page 1 of Annex to report of third session), note being taken that some delegations maintained reservations on the substance of the whole provision and that some other delegations favoured deletion of paragraph 3 as being overly restrictive. The proposal by Turkey (SCNL/5/4) suggesting drafting changes to the text was discussed but did not receive sufficient support.

4. It was also decided to maintain, for the time being, the draft text adopted at the third session on the concept of nuclear damage (Annex to report of the third session, pp. 2-3). At the same time, it was registered that some delegations confirmed their previous reservations to the present definition of nuclear damage. Some other delegations stated that coverage of environmental damage needed further examination, especially in the context of its insurability and rules on priorities of compensation, before a definite position could be taken on the provision in paragraph (iii). Differing views were expressed on the provision in paragraph (iv) concerning pure economic loss. While some delegations considered that provision overly broad and, therefore, favoured retention of the qualification set out in square brackets, some other delegations thought that such qualification should be deleted. It was also pointed out that the issues of environmental damage and pure economic loss were being considered in other international fora and that future deliberations in this Committee could benefit from their work.

5. The Committee had a brief exchange of views on the issue of priorities in settlement of claims. Although a number of delegates supported the draft text appearing in the report of the third session, there was also a strong feeling that it was premature to take a decision on this draft before the definition of nuclear damage had been agreed. The Committee decided to retain, as is, the above-mentioned draft text.

6. The Committee addressed the issue of updating the liability limit on the basis of the draft text included in its report at the third session, and the proposals by China and Japan (report of the fourth session, pp. 47 and 53). While there was a general agreement on the desirability, in principle, of establishing a simplified procedure for updating the liability limit, differing views were expressed as to its content. Several delegations favoured the approach taken in the draft text prepared by the Secretariat on the basis of the provisions prepared by UNCITRAL and recommended by the UN General Assembly in 1982 for use in international conventions containing limitation of liability provisions. On the other hand, several delegations thought that a more flexible and simple provision should be elaborated. The prevailing view in the Committee was that States Parties which objected to an amended limit established through simplified updating procedures should have the possibility to remain party to the Convention without adhering to that limit. In such case, it was felt that the principle of reciprocity should apply. It was agreed that the draft text contained in the Committee's report should be reformulated in this respect to incorporate general approaches and elements of the proposals by China and Japan, and the Secretariat was requested to prepare a revised draft text.

It was also felt desirable to include some provisions regarding criteria qualifying the application of a simplified procedure for updating, although differing views were expressed on the need for and the substance of such criteria. According to some delegations, such safeguards were required only in case the amendment would be applicable to all States Parties. There was a general feeling that the issue of a simplified updating procedure as a whole required further examination. In this connection, one delegation pointed out that the need for the introduction of many criteria, in substance qualifying the applications of a procedure for updating the limit of liability different from that provided for in Article XXVI of the existing Convention for its revision, makes it not meaningful to have such a provision.

As requested, the Secretariat prepared a new draft text on this issue. It was briefly commented upon by the Committee, whereupon it was decided to include in it paragraph 4 from the original Secretariat text as an alternative, and to attach the modified draft text in square brackets to this report as a basis for further consideration.

7. The Committee adopted, for future consideration, the proposal by Germany and Sweden (SCNL/5/5) regarding actions on behalf of persons suffering nuclear damage.

8. There was little support in the Committee for the proposals (appearing in the report of the fourth session) concerning deletion of the provision on the exclusion of small quantities of nuclear material (Australia, report of the fourth session, p. 42), channeling of liability (Australia, report of the fourth session, p. 43), financial limits of liability (Thailand, report of the fourth session, pp. 55-57), time limits for submission of claims (Australia, report of the fourth session, p.44) and establishment of a single forum (Egypt, Israel, report of the third session). Therefore, they were removed from the documentation. The Committee decided to postpone consideration of the proposal by the United States on application of strict liability (report of the fourth session, pp. 62-64) at the request of that delegation, pending the provision by the delegation of information on a review currently being undertaken in the U.S. on the application of strict liability in State law.

Likewise, little support was expressed for the draft provisions on breakability of limitation of liability and direct action set out in square brackets in the Committee's report at the third session, and, therefore, they were removed from draft texts adopted as a basis for future work.

9. Differing views were expressed on the proposal of Turkey (SCNL/4/2, report of the fourth session, pp. 58-61) concerning the establishment of an investigation commission. A number of delegations questioned the appropriateness of establishing an international commission with such competence as this would be inconsistent with the jurisdiction of national courts. The cost factor was also pointed out. At the same time, there was support for keeping the idea contained in the proposal by Turkey. It was suggested in this connection that elements of this proposal might be merged with the proposal of establishing an optional claims commission which was before the Committee. It was agreed to keep the proposal of Turkey in the Committee's documentation.

Due to lack of time, the Committee did not discuss the proposals on the establishment of an optional claims commission (Netherlands, SCNL/4/5, report of the fourth session, p. 37), the establishment of a mandatory international tribunal (Austria/Netherlands, report of the fourth session, p. 46 and Annex VI of report of first intersessional working group), and dispute settlement (report of the fourth session, Attachment 1, p. 41).

10. The Committee addressed the issues raised in the paper circulated by the British/European Insurance Committee (SCNL/5/3) regarding general administrative expenses in handling claims which would result from a major nuclear incident. There was a general view that the concerns of insurers expressed in the paper were taken care of in the context of the Vienna Convention since such costs should be covered by insurance premiums. It was, however, recognized that a potential problem could arise in the supplementary compensation system providing for tiers of State funding, if insurers were requested to act beyond their normal coverage. But in such a situation, the issues that might arise could be settled on a contractual basis between insurers and authorities concerned. The Committee agreed that this problem should be kept in sight in its future work, and since it had been discussed in the International Nuclear Law Association, the delegations who had been involved offered to provide the Committee with the documentation available.

11. The Committee showed interest in the issues raised by the paper presented by OECD/NEA (SCNL/5/2) concerning potential radiological risks that might be posed by fusion reactors when they were developed. It was agreed to give, in a future session, further consideration to this matter. The British/European Insurance Committee, which had carried out a study on fusion reactors in the context of liability, offered to make that study available to the Committee (SCNL/5/7).

12. Due to lack of time, the Committee was unable to consider the questions of supplementary funding and international State liability (agenda items 3 and 4). It was agreed that the proposals relating to these questions which were reproduced in the report of the fourth session or submitted at this session would be included in the Committee's documentation.

13. The draft texts included in the Committee's documentation are reproduced in Attachment I to this report. Proposals submitted during this session which have not been dealt with appear in Attachment II.

The Committee agreed that inclusion of draft texts in its documentation as a basis for further consideration was without prejudice to the right of delegations to submit alternative proposals.

DOCUMENTATION OF THE DRAFTING COMMITTEE

1. Attachment I - Revision of the Vienna Convention
 - A. Draft texts adopted for further consideration, pp. 11-23
 - B. Proposals, pp. 24-42
2. Attachment II - Supplementary Funding
 - A. Draft International Convention on Compensation for Nuclear Damage Supplementary to the Vienna Convention and the Paris Convention, pp. 43-61
 - B. Proposals, pp. 62-75
3. Attachment III - State liability
 - Proposals, pp. 76-77