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(GC(XXXVIII)/1)

## LIABILITY FOR NUCLEAR DAMAGE

### Report by the Board of Governors

1. Over the past few years, the question of liability for nuclear damage has been under consideration both in the Board and in the General Conference, which has adopted a number of resolutions regarding it, the latest being resolution GC(XXXVI)/RES/585 adopted in 1992.

2. In February 1990, the Board established the Standing Committee on Liability for Nuclear Damage with a mandate - 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.

The Standing Committee reports to the Board periodically on the progress of its work.

3. Since the thirty-seventh (1993) regular session of the General Conference, the Standing Committee has held two sessions, during which it focused on ways to expedite the completion of preparatory work for establishing a worldwide liability regime. Given the broad area of agreement already existing on proposals for revision of the Vienna Convention, attention was paid mainly to the feasibility of achieving concomitant results in elaborating a supplementary funding convention. To that end, the Standing Committee explored new approaches to the structure of compensation under both conventions and, in the light of the progress made, reviewed priorities in the preparatory work.

4. In that context, the Standing Committee made a comparative assessment of the two alternative systems for a supplementary funding convention set forth in the "levy" and the "pool" drafts. As there was no general agreement in favour of either system, consultations have been undertaken to reach a compromise between them. However, it has not yet proved possible to merge the two systems.

5. In view of the uncertain prospects for progress on the basis of the "levy" and "pool" systems, the Standing Committee attached much interest to a proposal for a new approach made jointly by Denmark and Sweden. This joint proposal envisages the inclusion in the revised Vienna Convention of provision for a sufficiently high level of compensation by the installation State which would serve as a threshold for a supplementary compensation scheme. As there was a strong feeling in the Standing Committee that this approach would improve the Vienna Convention and also constitute a basis for resolving the stalemate on supplementary funding, the Standing Committee examined in detail the adjustments that would be required in the Vienna Convention as a consequence of the joint proposal and its implications for a system of supplementary funding.

6. It was generally felt that the structure of compensation envisaged in the joint proposal could be compatible with a supplementary funding scheme, which - according to the prevailing view - should be embodied in a separate, universal convention additional to the regime of the Vienna and Paris Conventions. Since, with the joint proposal, the

installation State tier would be included in the basic convention and so far no agreement could be reached on a tier of joint contributions by operators, the prevailing feeling was in favour of giving consideration to a supplementary funding scheme with collective contributions by States Parties only. Some delegations were of the opinion, however, that the possibility of joint contributions by operators should not be dismissed and that the Committee should remain seized of relevant proposals. Also, an objection was raised to separation of public funds under the installation State tier and collective contributions in two different instruments.

7. A number of delegations linked their positions on the joint proposal to the amounts of compensation that would be provided for. According to one view, the effect of State funding would be diminished if it were provided below the insurance market capacity available to cover the operator's liability. On the other hand, it was argued that, since the insurance market capacity differs from country to country, large amounts might be unaffordable for countries in a difficult economic situation, which would thus be prevented from joining the new liability regime. Several Latin American delegations announced their intention to study the possibility of a regional supplementary funding system that might be compatible with a global one.

8. With regard to the priorities in the preparatory work and its timetable, some delegations felt that, while the joint proposal created favourable conditions for rapid progress in revising the Vienna Convention, the elaboration of a new approach to supplementary funding would require more effort. It was therefore suggested by them that the two issues be decoupled, so that a separate diplomatic conference on revision of the Vienna Convention might be held first, work on supplementary funding being pursued afterwards. The prevailing view was, however, in favour of continuing parallel consideration of the two issues. It was argued that the introduction in the Vienna Convention of the structure of compensation envisaged by the joint proposal would still need to be backed up by supplementary funding and that, given the interdependence between the positions of a number of delegations on the two issues, their separation would entail additional preparatory work on amendments to the Vienna Convention.

9. In the light of the above considerations, the Standing Committee has not yet recommended a date for a diplomatic conference. Instead, it has decided to continue work on revising the Vienna Convention and elaborating a supplementary funding convention in an integrated manner. It is understood, however, that, at a later stage, the Standing Committee will decide in the light of the progress made whether the two resulting instruments should be referred to the same diplomatic conference.

10. In order to expedite preparatory work, an intersessional (informal) meeting was held in May which considered draft texts for a convention on supplementary funding, in particular, a new draft convention prepared at the request of the Standing Committee by the Secretariat in consultation with interested experts, taking into account the Brussels Supplementary Convention and the "levy" and "pool" drafts. The meeting recommended the draft text of a convention on supplementary funding as amended by it as a basis for further consideration by the Standing Committee.

11. Also, the intersessional meeting received a new proposal of one delegation for a draft convention on supplementary compensation for transboundary nuclear damage from a nuclear incident at a civil nuclear power plant. As that proposal differs substantially from the approach followed thus far, it has been referred to the Standing Committee for discussion of the matters of principle involved. The aforementioned delegation explained that under the envisaged convention all States would be eligible to take part in the supplementary compensation system. While establishing a few basic criteria for participation (for example, the principle of operator channelling), it leaves it largely to domestic legislation to lay down how those criteria should be met. According to the proposal, international resources would be focused on transboundary damage, the Installation State being responsible for providing compensation to its own citizens. The proposal is aimed at establishing a universal system that provides for the legal predictability necessary for the free flow of nuclear technology and services, especially those related to safety. It is intended not to supplant but to complement the efforts of the Standing Committee to improve the liability system of the Vienna Convention and the Paris Convention.

12. The Standing Committee will hold its next session from 31 October to 4 November 1994.

13. On 8 June 1994, the Board had before it the report of the Standing Committee on its ninth session (7-11 February 1994). It decided to transmit that report (see the Appendix to this document\*) to the General Conference.

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\* The Appendix contains the report of the Standing Committee on its ninth session, with Annex 1 containing the report of its Drafting Committee. Attachments I and II to Annex 1 (see page 13), as well as Annexes II and III (see page 8) which are referred to in the Appendix but are not reproduced in this document are available from the Legal Division on request. Reports on the Standing Committee's eighth session and the intersessional meeting referred to above are also available on request.



STANDING COMMITTEE ON  
LIABILITY FOR NUCLEAR DAMAGE

SCNL/9/INF.5  
4 March 1994

Ninth Session  
Vienna, 7-11 February 1994

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## REPORT OF THE STANDING COMMITTEE ON LIABILITY FOR NUCLEAR DAMAGE

1. The Standing Committee held its ninth session at the Agency's Headquarters in Vienna from 7-11 February 1994, under the Chairmanship of H.E. Mr. Curt Lidgard of Sweden. Professor Jan Łopuski of Poland served as Vice-Chairman. Vice-Chairman Ambassador Shash of Egypt could not attend the session. Mr. Gustavo Zlauvinen of Argentina served as Rapporteur. As one position of Vice-Chairman remained vacant, the Chairman requested the members of the Asian Group to nominate a candidate.

2. The representatives of the following 57 Member States participated in the meeting: Algeria, Argentina, Australia, Austria, Belgium, Belarus, Brazil, Bulgaria, Chile, China, Croatia, Cuba, Czech Republic, Denmark, Egypt, Estonia, Finland, France, Germany, Greece, Holy See, Hungary, India, Indonesia, Ireland, Israel, Italy, Japan, Republic of Korea, Kuwait, Lebanon, Luxembourg, Malaysia, Mexico, Netherlands, New Zealand, Nigeria, Norway, Pakistan, Peru, Philippines, Poland, Romania, Russian Federation, Saudi Arabia, Slovenia, South Africa, Spain, Sudan, Sweden, Switzerland, Tunisia, Turkey, Ukraine, United Kingdom, United States, Uruguay.

One non-member State, namely the Solomon Islands, participated as an observer.

3. Six intergovernmental organizations, namely the Asian-African Legal Consultative Committee, 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 UNIPEDA were represented by observers, it being recognized that attendance of NGO's was on the basis of the understanding reached at previous sessions of the Committee.

4. The Standing Committee held 4 plenary meetings on 7, 9, 10 and 11 February

5. At the first plenary meeting the 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 and its relationship to the international civil liability regime
5. Future programme of work
6. Adoption of the report

6. Further, the Committee considered item 1 of its agenda, "Organization of Work". It was held that in view of substantial results achieved by now on the revision of the Vienna Convention, it was crucial to ensure commensurate progress on the question of supplementary funding. Therefore, it was agreed to concentrate attention at the present session on the proposals relating to that question. Later, if necessary, depending on the progress in their consideration, a decision could be taken as to whether time should also be allocated to other outstanding issues of revision of the Vienna Convention, it being understood that, as before, proposals on State liability would be dealt within that context.

Since the "levy" and "pool" draft conventions had already been thoroughly discussed and in view of the lack of progress in the efforts to bridge the two drafts, it was agreed that at this session the emphasis would be placed on the approach set out in the joint Danish-Swedish proposal (SCNL/8/2/Rev.1) and the related Polish proposals (SCNL/5/1 and SCNL/IWG.2/1). As this involved matters of principle, deliberations should be first held in plenary so that a choice could be made concerning the system of supplementary funding which could be taken as a basis for further consideration. It was also agreed that in light of the outcome of those deliberations and with a view to expediting its work, the Committee would decide whether the linkage between the revision of the Vienna Convention and supplementary funding should be maintained or consideration of the two issues should be decoupled.

7. In this connection, the Chairman identified the following options for consideration: (a) to adopt the approach set out in the joint Danish-Swedish and Polish proposals providing for insertion in the Vienna Convention of an Installation State tier; (b) to decouple the question of supplementary funding and pursue the revision of the Vienna Convention without any provisions on supplementary funding. If option (a) were adopted, the Committee would have further to decide whether it should be



accompanied by a convention on supplementary funding providing only for collective contributions by States, or if the question should be left until after the revision conference.

8. In accordance with the adopted working arrangements, the Committee, at the same plenary meeting, held a general debate on the system of compensation contained in the joint Danish-Swedish and Polish proposals. The question was considered in conjunction with suggestions set out in the Note (SCNL/9/INF1) prepared by Mr. Melchior, Chairman of the Drafting Committee, pursuant to the decision of the eighth session of the Committee, concerning adjustments that would be needed if the joint Danish-Swedish proposal were to be implemented as well as its implications for a system of supplementary funding.

9. The delegate of Bulgaria introduced his non-paper (SCNL/9/1) on the structure of the international civil liability regime. In particular, he stressed that priority should be given to enhancing safety and held that allocation of large funds for liability might become a restrictive factor in upgrading safety. Further, the liability regime should not place unequal and heavy financial burdens on certain operators or Installation States. The universal liability regime should be a major objective. Such regime could be built on a basic convention defining main elements of civil liability and envisaging a generally acceptable amount of operator's liability, e.g. 15 million SDRs, which could be increased to 300 million SDRs through a supplementary funding convention. To stimulate peaceful use of atomic energy in developing countries and in countries with economies in transition, the amount of liability under the Vienna Convention should not exceed that in the Paris Convention. The delegation of Bulgaria preferred a separate supplementary funding convention but would also accept a comprehensive instrument providing for operator's liability and all tiers of supplementary funding. The system of supplementary funding could be implemented in the form of a fund administered by the IAEA and collectively financed by all operators and States parties in whose territory installations were situated. He pointed out that consensus on major issues of principle should be achieved in the Standing Committee before their submission for consideration in the Drafting Committee.

10. The delegate of Australia, in stating his country's general approach to an international liability regime, underscored the need to ensure full compensation of nuclear damage wherever suffered, including environmental, by establishing unlimited or sufficiently high liability of the operator with residual liability of the Installation State. This approach is based on the "polluter pays" principle and Principle 21 of the Stockholm Declaration. The limits of operator's liability and Installation State guarantees being discussed in the Committee would need significant backup from international supplementary funding. Arguments that low liability levels could encourage adherence to the revised Vienna Convention were, in his view, misconceived as there would be little value in a regime having broad adherence but providing very low amounts of compensation. In this regard, proposals in paragraph 10 of the Note of the Chairman of the Drafting Committee (SCNL/9/INF1) to lower the liability levels of the joint Danish-Swedish proposal to a total of 250 million SDRs could not be supported.

As positions on revision of the Vienna Convention and supplementary funding were interdependent, the delegation of Australia did not support "decoupling" negotiations on the two issues. At the same time it did not object to inclusion of all supplementary funding tiers in the revised Vienna Convention; such a system could draw largely on the "levy" draft. The delegation of Australia considered it a matter of principle that non-nuclear States should be exempted from contributing to a compensation system.

11. The ideas expressed by the delegate of Bulgaria and those expressed by the delegate of Australia were supported by a number of delegations. However, a number of other delegations pointed out that many of those ideas concerned matters of principle which had been thoroughly discussed at previous sessions.

12. The prevailing feeling in the Committee was in favour of going through an in-depth examination of the joint Danish-Swedish proposal which, in the opinion of a number of delegates, had a potential of resolving the differences on the question of supplementary funding. This was on the understanding that a number of delegates in principle preferred either the "levy" or "pool" draft, but since the prospect of reconciling

them remained uncertain, they were prepared to study the joint proposal in an attempt to reach a compromise. Some of them pointed out that the joint proposal could be viable only if the amounts of compensation were sufficiently high. Therefore, their position on this proposal would, to a large extent, depend on whether consideration was given to figures mentioned in the original proposal or the lower amounts suggested in Mr. Melchior's Note. Some delegations expressed the opinion that although they were in favour of the insertion of an Installation State tier in the Vienna Convention, this idea was not adequately reflected in the joint Danish-Swedish proposal.

13. In light of the discussion, the Committee decided to refer, as a matter of priority, the joint Danish-Swedish proposal together with the Note of Mr. Melchior for consideration by the Drafting Committee which was re-established under his chairmanship.

14. The Standing Committee, at its second and third plenary meetings on 9 and 10 February 1994, considered the report of the Chairman of the Drafting Committee on the progress made in examining the joint Danish-Swedish proposal together with suggestions set forth in Mr. Melchior's Note (SCNL/9/INF.1). It also exchanged views on the question of priorities between issues on its agenda, i.e. revision of the Vienna Convention and establishment of a supplementary funding system.

15. In opening the debate, the Chairman of the Standing Committee drew attention to the issue of amounts of compensation that could be contemplated since the choice of a system of compensation would be, to a large extent, influenced by the amounts involved. Since international contributions would be proportional to the agreed amounts of liability and additional funding of the Installation State, higher amounts may not necessarily mean a heavier burden, but actually suit the interests of countries in difficult economic situations.

16. Most delegations expressed support for the Danish-Swedish proposal as a viable attempt to facilitate general agreement in the absence of consensus on the "levy" and "pool" drafts. Differing views were expressed however, as regards the amounts of compensation mentioned in it. Some delegates argued that amounts mentioned in the Note could diminish the effect of State funding because they were lower than the

present insurance market capacity which was in the order of 250 million SDRs. On the other hand, it was pointed out that the insurance market capacity was not uniform in different countries and therefore higher amounts, although they could be supported in principle, might prevent some countries from joining the regime. Attention was also drawn to the fact that if amounts of compensation in the basic convention proved to be too modest, they could later be increased through a simplified adjustment procedure. So the aim was to find a compromise solution which would encourage the broadest possible adherence.

There was a generally held view that the Danish-Swedish proposal could be compatible with a supplementary funding convention.

17. There was general agreement in the Committee on the urgent need for speedy completion of its task. In view of the lack of substantial progress on a convention on supplementary funding, some delegations were in favour of giving priority to finalization of work on revision of the Vienna Convention so that consideration of a supplementary funding system could be resumed thereafter. In their opinion, such course of action had good prospects for success if the work on revision of the Vienna Convention were based on the Danish-Swedish proposal.

18. On the other hand, the prevailing view was in favour of continuing parallel consideration of the two instruments. A number of delegations, while agreeing that the Danish-Swedish proposal as amended in the Drafting Committee was a good basis for agreement on revision of the Vienna Convention, pointed out that amounts of compensation envisaged in it were insufficient and should be backed up by a supplementary funding scheme. In view of this, efforts should be taken to pursue vigorously the work on the two instruments so that amendments to the Vienna Convention and a supplementary funding Convention could be adopted at one diplomatic conference.

19. As regards the supplementary funding scheme, the prevailing view was that it should be in the form of a separate universal convention additional to the regime of the Vienna and Paris Convention. Since the Danish-Swedish proposal stipulates the inclusion of the Installation State tier, a supplementary funding convention could most

probably provide for collective contributions by States parties. Some delegations were of the opinion that genuinely non-nuclear States should be exempted from contributing to this scheme, but the prevailing feeling was that all States parties should take part in the solidarity funding scheme on the understanding that adjustment criteria could be established to ensure differentiation, inter alia, on the basis of risk. It should use the principles of the basic conventions and, in terms of structure, it could follow the Brussels Supplementary Convention with appropriate adjustments. Although some delegations thought that, at present, there were no real prospects for agreement on industry pooling, some other delegations felt that this option should not be ruled out and, therefore, relevant proposals should be kept before the Committee.

20. One delegation expressed objections to separation of public funds provided by the Installation State funding and collectively by States parties in two different instruments. In its view, a supplementary funding convention should include both tiers of public funding in addition to compensation provided under the civil regime. It should be modelled on the Brussels Supplementary Convention. As an alternative solution, the delegation suggested opening of the Brussels Supplementary Convention to all States.

21. Several Latin American delegations stated that in the light of lack of progress on the discussions of global supplementary funding, their countries have the intention to continue regional consultations and to study the possibility of establishing a regional supplementary funding system. The delegation of Brazil circulated a statement which reflected the idea of such approach based on common juridical, technical and economic perceptions concerning civil liability and other fields related to peaceful uses of nuclear energy. This statement also drew attention to the fact that difficulties may arise for some countries in the region due to the magnitude of public funds that may be needed and their immobilization. The delegation stated also its intention to bring to the Committee's attention any conclusion of the regional consultation. Such regional solution may be compatible with a global system of supplementary funding.

22. In light of the debate, the Committee decided to include, for further consideration, the Danish-Swedish proposal as amended by the Drafting Committee in the basic text for the revision of the Vienna Convention.

It was also decided to continue integrated consideration of the revision of the Vienna Convention and elaboration of a supplementary funding convention on the understanding that, at a later stage, the Committee would set the priorities in light of the progress made and decide whether both instruments could be referred to the same diplomatic conference.

In the preparation of the supplementary funding convention the Committee will draw inspiration from the system of the Brussels Supplementary Convention as well as take into account the "levy" and "pool" drafts.

23. The Standing Committee at its fourth meeting on 11 February 1994 took note of the Drafting Committee report which is reproduced as Annex I to this report.

24. The Committee decided to hold from 9-13 May 1994 an intersessional working group without interpretation to consider draft texts for a convention on supplementary funding. The Committee requested the Secretariat, in consultation with interested experts, to prepare a draft text on the basis of conclusions made by the Committee and views expressed by delegations at this session, as well as proposals which they may communicate to the Secretariat shortly thereafter. Such a draft should contain alternative draft provisions on issues on which there were alternative views or proposals which received sufficient support in the Committee.

One delegation stated that although it was agreeable to holding informal consultations to try to advance the work on revision of the Vienna Convention, it could not, on the other hand, accept that an intersessional working group be held without interpretation. Also, it was against giving priority to examination of the supplementary funding convention over revision of the Vienna Convention.

25. The Committee decided to hold its tenth session from 31 October to 4 November 1994.

#### DOCUMENTATION OF THE STANDING COMMITTEE

1. Annex I - Report of the Drafting Committee with Attachments I and II
2. Annex II - Proposals before the Standing Committee
3. Annex III - Papers provided by Organizations (observers)

## Report of the Drafting Committee

1. The Drafting Committee held 6 meetings from 7 to 11 February 1994.
  
2. As requested by the Standing Committee, most attention was devoted to the joint Danish-Swedish proposal (SCNL/8/2/Rev.1) together with suggestions put forward in the Note by Mr. Melchior (SCNL/9/INF.1) concerning textual adjustments for the Vienna Convention consequential to the joint proposal and its implications for a system of supplementary funding. Also, the Drafting Committee considered the following proposals submitted at this session: SCNL/9/2 and SCNL/9/3 by Australia; SCNL/9/4 by Poland; SCNL/9/6 by the United Kingdom. Deliberations focused on drafting aspects without prejudice to preferences of delegations on the substance of issues discussed.

The Committee adopted a number of draft texts for inclusion in its documentation as a basis for further consideration.

3. With respect to alternatives suggested in paragraph 13 of the Note on the issue of geographical scope (reciprocity as regards compensation from public funds) a number of delegates preferred alternative B which allows the exclusion of compensation from public funds of damage in non-nuclear States which are not party to the Convention. It was argued that such approach was consistent with the international law of treaties regarding third States and that requirement of participation in the Convention would serve as an incentive for broad adherence. Some of these delegations were also in a position to accept alternative A as well.

The prevailing view was, however, in favour of alternative A which does not withhold benefit of additional compensation from non-nuclear States that are not contracting parties. In this connection, it was pointed out that as those States did not pose a nuclear risk there was no justification to require their participation in the liability regime. Desirability to prevent claims by such States and their citizens under general rules of civil or international public law without principle of channelling was also considered essential.

4. There was general agreement that introduction of Installation State funding pursuant to the joint Danish-Swedish proposal would require additional provisions regarding the case where nuclear damage caused by one incident involves liability of two or more operators (paragraph 2 of the Note). In light of different views expressed on the possible content of such a provision, it was agreed that the text suggested in the Note required modification. An informal drafting group coordinated by Mr. Camcigil of Turkey was set up by the Committee to prepare a new text, taking also into account the proposal made by Australia (SCNL/9/3). The draft text prepared by the group (SCNL/9/7) for Article II.3(a) was considered partially by the Committee. In the absence of interpretation, further discussion of that proposal as well as consideration of the proposal by the Group for an amendment Article II.4 were considered by an extended working group. That group recommended adoption by the Drafting Committee of the texts (SCNL/9/7) with one modification in Article II.3(a).

5. The Committee agreed with the suggestion contained in paragraph 3 of the Note that no changes were required in Article VII.1 of the Vienna Convention if the joint Danish-Swedish proposal were adopted. A restructuring of that article proposed by Poland (SCNL/9/4) in order to differentiate explicitly between the Installation State guarantee of operator's insurance and provision of public funds to compensate damage above the required level of insurance up to the limit of his liability, after a detailed discussion, was deemed not necessary. There were also objections to insertion of an explicit reference to pooling of operators as a possible means of financial security.

6. There was no support for deletion of "option b" from Article V in the joint Danish-Swedish proposal. A number of delegations indicated that "option a" was already contained in "option b" since "option b" allows national law to fix the operator's liability at [500] million SDRs and that "option a" did not properly reflect the insertion of an Installation State tier in the Vienna Convention. However, the prevailing view was in favour, at least for the time being, of maintaining both options in Article V of the joint proposal.

7. Differing views were expressed on the suggestion to add a sentence in Article X of the Vienna Convention regarding the right of recourse (paragraph 5 of the Note). Some delegations found the text of the suggested addition ambiguous and, therefore,



they preferred that of Article 5(a) of the Brussels Supplementary Convention for its clarity. A view was also expressed that the provision in question should specifically indicate that the Installation State was entitled to the right of recourse to the extent that public funds had been provided. On the other hand, some delegations were prepared to go along with the text proposed in the Note, possibly with some drafting alterations. It was pointed out in this connection that the objective of the proposed addition was to make a specific reference that contractual right of recourse by the operator under the Convention might, by contract, also apply to public funds provided by the Installation State. Such provision would be in line with the existing principle of the Vienna Convention; on the other hand, granting the right of recourse to the Installation State would amount to a serious departure from that principle.

As the prevailing opinion was in favour of the basic idea spelt out in the text suggested in the Note, an informal drafting group was set up, coordinated by Mr. McRae of the United States to prepare, in light of the discussion a text that could meet with general agreement. The informal drafting group proposed an amendment to the text in the Note which was adopted by the Committee.

8. The Committee agreed with the change in paragraph 2 of Article VIII of the basic draft texts regarding priorities as suggested in paragraph 6 of the Note, as well as with the conclusion in paragraph 7 of the Note that no express provision was required on interest and costs relating to funds provided by the Installation State as this matter could be left to the national law.

9. With respect to the issue of advance payments by the State of the competent court when it is not the Installation State, some delegates were concerned that the provision in paragraph 1 of the text in paragraph 8 of the Note would place a heavy burden on the jurisdiction State. An objection of principle was expressed by one delegate to the provision on the grounds that the problem of advance payments would not exist if supplementary funding were provided by an international fund, the establishment of which was suggested by that delegate. Several delegates were opposed to extending to non-nuclear States the obligation to advance funds although they did not question the principle of advance payments, cf. proposal SCNL/9/2 . After discussion, the Committee agreed that the rule should be optional and be adopted, with

appropriate modification of the proposed text.

10. Although certain comments were made as regards the principle and the text of the provision regarding the right of intervention in the proceedings by the Installation State (e.g. to add flexibility, to bring it textually in line with the relevant provision in Article 11(b) of the Brussels Supplementary Convention), the Committee adopted the provision in paragraph 2 of the text in paragraph 8 of the Note.

11. The Committee did not support inclusion in the revised Vienna Convention of the provision in paragraph 9 of the Note regarding the date on which amounts of compensation expressed in the national law in SDRs should be converted into the national currency. Taking into account differing views regarding such a date, and given complex financial implications of its determination in the Convention, it was found advisable that this issue should be governed by the national law.

12. The extended working group (cf. paragraph 4 above) considered and recommended to the Committee, for adoption, the draft provision proposed by the United Kingdom (SCNL/9/6) to replace the provision in paragraph 3 of the original Danish-Swedish proposal.

13. The Committee was informed by the delegation of the United States that the process of finalization of their position as to whether the Vienna Convention should allow that country to deviate from the concept of absolute liability was still underway. The United States delegation intended to submit, possibly at the next session, a proposal in that regard. It was agreed to maintain that delegation's paper on "economic channelling" in the Committee's documentation.

14. The Committee held a brief discussion of the proposal made by the Spanish delegation (SCNL/8/9, meeting report page 101) but due to lack of time, it was decided to come back to it at a subsequent session.

15. At its sixth meeting on 11 February 1994, the Drafting Committee adopted the draft texts recommended by the extended working group to amend Article II.3(a) and 4 in the Vienna Convention and Article V.3 in the Danish-Swedish proposal. The

Committee also adopted the suggestion in paragraph 4 of the Chairman's Note.

16. Due to lack of time, the Committee was not in a position to continue consideration of the proposals outstanding from previous sessions.

**DOCUMENTATION OF THE DRAFTING COMMITTEE**

1. Attachment I - Revision of the Vienna Convention
  - A. Draft texts adopted as basis for further consideration ("Basic Texts")
  - B. Proposals
  
2. Attachment II - Supplementary Funding
  - A. "Levy" text
  - B. "Pool" text
  - C. Proposals

