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COMMITTEE OF THE WHOLE

RECORD OF THE SIXTY-EIGHTH MEETING

Held at the Austria Center Vienna,  
on Tuesday, 18 September 1990, at 11.35 a.m.

Chairman: Mr. NEWLIN (United States of America)

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[\*] GC(XXXIV)/914.

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The composition of delegations attending the session is given in document  
GC(XXXIV)/INF/287/Rev.2.

ELECTION OF VICE-CHAIRMEN AND ORGANIZATION OF WORK

1. The CHAIRMAN, after thanking the General Conference for the confidence it had placed in him by electing him as Chairman of the Committee of the Whole, suggested that the Committee begin with the election of Vice-Chairmen. Following consultations, Mr. Jurza (Czechoslovakia) and Mr. Mannan (Bangladesh) had been suggested for those posts. If there were no objections, he would take it that the Committee wished to elect Mr. Jurza and Mr. Mannan as Vice-Chairmen.

2. It was so decided.

3. The CHAIRMAN said that, although the General Committee had not yet met to discuss the agenda for the current session, the General Conference had agreed that the Committee of the Whole should embark on an initial discussion of items 10 to 18 of the provisional agenda contained in document GC(XXXIV)/914, items that were before the Conference pursuant to past resolutions or decisions of the Conference, or pursuant to the Statute.

4. He proposed that the Committee begin with item 10, "Measures to strengthen international co-operation in matters relating to nuclear safety and radiological protection".

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

(a) REPORT ON THE IMPLEMENTATION OF RESOLUTION GC(XXXIII)/RES/508  
(GC(XXXIII)/RES/508; GC(XXXIV)/919; GC(XXXIV)/INF/282)

(b) LIABILITY FOR NUCLEAR DAMAGE (GC(XXXIII)/RES/508; GC(XXXIV)/931,  
931/Add.1, 931/Add.1/Corr.1)

5. The CHAIRMAN said he understood a number of Member States were working on the text of a draft resolution for submission under sub-items 10(a) and (b). Pending its submission, the Committee might have a general discussion on the various matters covered by those two sub-items.

6. The Committee had before it, in document GC(XXXIV)/919, a report by the Board of Governors and the Director General pursuant to operative paragraph 9 of resolution GC(XXXIII)/RES/508. Document GC(XXXIV)/INF/282 comprised a report concerning the Agency's NUSS Codes submitted by the Director General pursuant to operative paragraph 4 of the resolution. Finally, document GC(XXXIV)/931 contained a report by the Board of Governors, to which was attached a report of the Standing Committee on Liability for Nuclear Damage. The summary record of the Board's discussion on that subject at its 735th meeting was contained in document GC(XXXIV)/931/Add.1, to which a Corrigendum had been issued.

7. Mr. van GORKOM (Netherlands), speaking as Chairman of the Standing Committee on Liability for Nuclear Damage, and in that capacity introducing its report on its first session said he had a number of new developments to report, the most important of which was the formal request to the Director General from six parties to the Vienna Convention to convene a revision conference in accordance with Article XXVI of that Convention. The Standing Committee, in compliance with its mandate, would now have to take up the substantive work involved in preparing the revision conference, and he hoped that sufficient progress would be made at its sessions in October 1990 and April 1991 to enable a conference to be convened, with a good chance of success, in the second half of 1991. He also hoped that the necessary resources could be found for such a conference. He urged the Board and the General Conference to continue to make all the necessary resources available for the Standing Committee, including those required for interpretation and translation.

8. Another important development was the Board's decision to convene a special conference on nuclear safety in 1991. One of the subjects examined at that conference would be the international legal framework for dealing with nuclear accidents and incidents, an item of direct relevance to the work of the Standing Committee.

9. As the report on the first session indicated, good progress had been made. There had been a further, though not full, convergence of views on civil and State liability and a fair degree of consensus on a number of issues of importance for improving the existing civil liability regime embodied in

the Vienna Convention and, mutatis mutandis, the Paris Convention. In particular, there seemed to be growing agreement that the Vienna liability regime could be strengthened by the inclusion of certain elements of State liability, notably with regard to sources of funding and procedures for the settlement of claims, although further study was clearly required on both points. There had also been valuable discussion on State liability and on a more comprehensive system of liability, including the questions of prevention, information and co-operation. While those and other important topics relating to State liability would obviously require further study, there was wide agreement on giving priority at the present stage to revising the Vienna Convention.

10. For the Committee's second session in October 1990, he intended to propose a work programme which included the establishment of a drafting committee - to work on the basis of an excellent paper prepared by the Secretariat on those elements of the Vienna Convention on which a consensus was already emerging - and the creation of working groups to give further study to elements of supplementary funding, State liability and procedures for the settlement of claims. If agreed upon, those elements would considerably strengthen the existing system of liability for nuclear damage, which was in line with the mandate given to the Committee by the General Conference and the Board. He also intended to propose that time be set aside for the consideration of other aspects of nuclear liability.

11. The Standing Committee should proceed with great care and avoid premature conclusions. The revision conference should be carefully prepared and should not be convened until there was a good chance of success. At the same time, the Committee should be conscious of a certain sense of urgency imposed on it by the General Conference and the Board, and should maintain the political momentum it had acquired. The Board would, of course, have to be kept informed of the Committee's progress, and he therefore suggested that the Committee submit a further report to the Board at its February 1991 session.

12. Mr. ORNSTEIN (Argentina) said the report by the Standing Committee was an invaluable contribution towards the establishment of broadly accepted legal standards on liability for nuclear damage, which was of vital importance

for the future development of activities in the nuclear field. The Standing Committee had made substantial progress in identifying the gaps in existing legislation relating to international civil liability and in analysing specific proposals for the revision of the Vienna Convention. His delegation was optimistic that a consensus could soon be achieved on the few points on which views still differed. The extensive support within the Standing Committee for the establishment of a broad regime of liability for nuclear damage and for the elaboration of an international instrument combining civil liability with State liability was encouraging. Although much remained to be done before a solution that would be widely accepted by the international community was devised, his delegation was confident that that could be achieved by following the course already adopted and using prudence and flexibility.

13. Mr. LAVIÑA (Philippines) said his country was a party to the Vienna Convention and supported the convening of a revision conference. He was therefore glad to hear that the Standing Committee's programme for its October 1990 session included the establishment of a drafting group to consider elements on which a consensus was emerging and of working groups to consider supplementary funding and State liability. He was optimistic that sufficient progress would be made at the Committee's April 1991 session to enable the revision conference to be held in the second half of 1991, but cautioned that no decision to hold such a conference should be taken until there was ample evidence of its chances of success.

14. Mr. PILAT (United States of America) welcomed the report on the implementation of resolution GC(XXXIII)/RES/508 contained in document GC(XXXIV)/919, as it gave a clear overview of the Agency's activities in the fields of nuclear safety and radiological protection. The Agency could take pride in its many accomplishments in those fields and particularly in the increased use being made by the international community of the Operational Safety Review Team (OSART) programme. Two OSART missions had already visited the United States. The Assessment of Safety-Significant Events Team (ASSET) and Radiation Protection Advisory Team (RAPAT) programmes were of significant benefit to many Member States, and the Agency's aid in emergency situations had been exemplary.

15. His country was firmly committed to the principle that nuclear safety was the responsibility of individual operators and Member States, but believed the Agency could nevertheless continue to play an important role in co-ordinating international efforts. The report indicated many areas where the Agency's programmes could be extended in the future, but the call for an expansion of certain activities merely emphasized the need to set priorities and reduce or eliminate less important tasks. In several technical areas discussed in the report, bilateral activities and international ones such as those of the World Association of Nuclear Operators (WANO) were adequate and no substantive involvement by the Agency was required.

16. While OSART, ASSET and RAPAT activities should receive high priority, care must be taken to ensure that they were not viewed by Member States as the Agency's stamp of approval on their nuclear programmes. The work on issues such as plant ageing, the man-machine interface, fire protection and safety backfitting could be expanded prudently, taking into account existing bilateral and multilateral programmes. The Agency should help disseminate the information emerging from those activities to Member States that had no other access to it and were unable to undertake independent technical studies.

17. The definition of safety requirements for future power plants was basically the responsibility of national authorities. Regulatory criteria were being developed in Member States that engaged in advanced reactor studies, and those should be reflected in the Agency's activities.

18. In promoting regulatory consistency, in order to raise standards in national nuclear safety practices, the Agency must take care to ensure that inappropriate or insufficiently rigorous safety levels were not sanctioned. Its role as a channel for information on high quality regulatory practices and standards should ensure that that did not happen.

19. The Agency was in a position to provide practical advice and disseminate information on the approaches and technical solutions to nuclear waste management, particularly the management of low-level wastes, developed in a number of Member States. It should take into account the work already done under other multilateral programmes and co-operate with other bodies that sponsored international meetings and activities.

20. While his delegation strongly supported the Agency's nuclear safety programme, it wished to stress that at a time of constricted budgets, increases in certain safety activities could be made only through increased efficiency or reductions in other areas. Should the General Conference endorse the report on the implementation of resolution GC(XXXIII)/RES/508, that must not be construed as approval for an expanded programme.

21. Turning to the report by the Standing Committee on Liability for Nuclear Damage, he observed that although many difficult questions remained to be resolved, the Standing Committee had made great strides in identifying gaps in the international civil liability regime and in suggesting steps to strengthen it. He welcomed the convening of a revision conference of the Vienna Convention, although that step should be taken only after the Standing Committee had completed all the preparations necessary for its success. The United States was not at present contemplating adherence to a new international civil liability regime, but it urged the Standing Committee to explore flexible ways for States with different legal systems to implement the substantive obligations of a revised Convention. The Standing Committee should concentrate its efforts on strengthening the international civil liability regime and should avoid premature, contentious and time-consuming discussion of State liability issues.

22. Mr. ALLAM (Egypt) said that his country had taken an active part in the Standing Committee and had made a number of important proposals on various aspects of liability, highlighting the weaknesses of existing regimes. The question of compensation was closely linked to that of liability and it was therefore important for both matters to be covered in any new convention. States had an essential role to play in ensuring that the provisions of any new convention were respected. The Agency should therefore aim at achieving a consensus on a practical approach to the matter of compensation by States causing nuclear damage. Finally, Egypt fully endorsed the report submitted by the Board of Governors.

23. Mr. MALU wa KALENGA (Zaire) said that only an international strategy could ensure safety excellence worldwide and reassure those who were sceptical about nuclear power, and that his delegation was therefore pleased

that the Secretariat was encouraging the international community to work together in tackling such major challenges as the development of the highest possible international safety standards consistent with the latest technology. Document GC(XXXIV)/919 referred to the Agency's intention to adopt a dynamic approach, particularly in advancing operational safety, promoting regulatory consistency and defining safety requirements for future installations. However, it was not clear to him what that approach really involved, since the Secretariat's proposals consisted merely of extending and strengthening existing programmes, which, though excellent, would not produce the qualitative leap in nuclear safety that was required to reassure international opinion. What was needed was a radical change in the design concept of nuclear reactors, and emphasis should therefore be placed on developing advanced, inherently safe reactors. He now welcomed the Agency's plans to arrange for an exchange of information on advanced reactor concepts through various forums, but urged it to adopt a more dynamic and aggressive approach. He hoped that those efforts would not be hindered by the present budgetary restrictions.

24. Mr. VERBEEK (Netherlands) said that the Agency traditionally played a key role in multilateral co-operation in nuclear safety matters. Its role had increased significantly over the past four years, and it would need to expand even further in the future. In document GC(XXXIV)/919 the Director General had proposed a strategy for enhanced international co-operation. As one of the sponsors of a draft resolution to be circulated soon on a number of nuclear safety-related matters, his country fully endorsed that strategy, the elements of which were contained in paragraph 87 of the report.

25. There were other elements, however, which the Committee might also usefully consider. One of the essential tasks of the conference on nuclear safety proposed for 1991 would be to undertake a comprehensive review of nuclear safety and radiological protection, which should help governments, other policy-makers and the general public in formulating their views on whether nuclear power was an option for the present or the future, or whether it was no option at all. Depending on the success of that conference, it might be useful to hold similar meetings on a more regular basis, since it was very important to organize good public presentations of nuclear safety issues.

26. More attention should also be given to scientific and technical co-operation in nuclear safety matters. The establishment of a co-ordinated technical co-operation programme in that area, in addition to the more specific and practically-oriented programmes, would be welcome. The creation of an international centre for education and training in that area should also be considered.

27. His delegation had consistently spoken in favour of more binding international nuclear safety norms and, although much had already been achieved in that regard, still more was possible and desirable. One of the next steps should be to establish fundamental nuclear safety and radiation protection principles, and his delegation was eagerly awaiting the outcome of the work of the advisory group dealing with proposals to that end.

28. The future of nuclear power would be determined not just by existing technology but also by technological advances in reactor safety. Some thought should be given to ways of co-ordinating information exchange on such technical developments and even to practical co-operation. One possibility would be for the Agency to set up a co-ordinating committee for research and development in nuclear and radiological safety.

29. Mr. FU (China) said his country had no difficulty in approving the report on the implementation of resolution GC(XXXIII)/RES/508 and was satisfied with the Agency's efforts over the past few years, particularly following the Chernobyl accident, to strengthen international co-operation in nuclear safety and radiological protection. A major challenge facing the nuclear industry at present was to build public confidence. The activities described in paragraph 21 of the report would undoubtedly contribute to the safe operation of nuclear power stations and thereby enhance public confidence, and therefore deserved to be given priority. The proposals set forth in Section IV.2 - including the safety reassessment and modification of older reactors - and the Agency's evaluation of the consequences of the Chernobyl accident were of great significance for nuclear safety. Chinese experts and laboratories were willing to make a contribution to those activities and three Chinese experts had already been accepted by the Agency to participate in them. The Agency was facing a dilemma in wishing to increase its nuclear safety programme at a time of limited resources. It

should therefore use its limited human and financial resources for the most urgent issues and give priority to activities relating to operational safety and accident management.

30. Mr. HOGG (Australia) was pleased to note that the Agency had continued to maintain its central role in international co-operation in the field of nuclear safety. It was extremely important, however, that a balance be maintained between the Agency's nuclear safety activities and its statutory and other responsibilities. The most effective means of determining the appropriate balance was the normal programme and budget process, which involved considerable consultation and exchange of views with Member States.

31. The Standing Committee on Liability for Nuclear Damage had made good progress in reviewing existing liability regimes and identifying principles involving State liability which might be reflected in a new comprehensive treaty. However, there were a number of matters which needed to be addressed, particularly in the context of both State and civil liability. It was to be hoped that the Standing Committee would devote some time to issues of State liability when it met in October.

32. His delegation approved the reports on the implementation of resolution GC(XXXIII)/RES/508 and on liability for nuclear damage contained in documents GC(XXXIV)/919 and GC(XXXIV)/931, respectively.

33. Mr. von PREUSCHEN (Federal Republic of Germany) commended the Standing Committee for its report. His delegation would like to see further improvement in the nuclear liability regime and was fully prepared to co-operate with other delegations to that end. The last meeting of the Standing Committee had indicated a general trend towards improving international civil liability and incorporating certain features which would increase financial coverage and ease procedures for submitting claims to national courts. His delegation endorsed the comprehensive report on the implementation of resolution GC(XXXIII)/RES/508. The Agency was to be commended for its excellent work in the field of nuclear safety, which promoted confidence between States. The conference on nuclear safety planned for 1991 would undoubtedly confirm the progress made in that field and propose further action to be implemented in the coming decade.

34. Mr. PAPANIMITROPOULOS (Greece) expressed his support for the conclusions contained in Section V of the report on the implementation of resolution GC(XXXIII)/RES/508 and for the strengthening of the Agency's safety services. Greece had received a RAPAT mission some two years previously and expected to receive a Waste Management Advisory Programme (WAMAP) mission early in 1991. It welcomed the convening of a conference on nuclear safety in 1991 and hoped that the necessary financial resources would soon be made available.

35. With regard to nuclear liability, his delegation shared the wish of the Chairman of the Standing Committee to speed up the preparatory work for the revision conference of the Vienna Convention and expressed the hope that both aspects of liability would be examined.

36. Mr. AL-MATOOQ (Iraq) said that the Standing Committee had made significant progress towards reaching a compromise between the different views on liability. However, a consensus on State liability might not be achieved in the near future, and it was to be hoped that agreement could at least be reached on the question of civil liability. The link between civil and State liability was apparent in the legislation of many States, and the Agency should work towards removing any obstacles to an agreement. It should identify the principles to be incorporated in a revision of the Vienna Convention in order to ensure the broadest possible basis for compensation.

37. Mr. ZEILEISSEN (Austria) said that the Standing Committee on Liability for Nuclear Damage was to be commended for its ability to accommodate a wide range of views. He hoped that the Committee would succeed in establishing a regime which was based on the present contractual system but incorporated in it elements of stronger State involvement in the substantive and procedural aspects of international liability. In that way, the present regime could be improved to the extent his country considered necessary to satisfy current requirements.

38. Mr. WEI (Belgium) said that the success of a conference to revise the Vienna Convention depended on sound preparation, since a considerable number of major issues were yet to be resolved. Furthermore, in the interests of achieving practical as well as theoretical success, it was essential not

only to elaborate a consistent and sound legal text, but also to ensure that as many States as possible signed the revised convention, especially those which were not yet parties to either the Paris or Vienna Convention.

39. Mr. LAMPARELLI (Italy), welcoming the report contained in document GC(XXXIV)/919, expressed support for many of the high-priority measures identified in paragraph 87 thereof. Some of those measures, however, should be consolidated and implemented through regional programmes in order to achieve greater effectiveness and economy.

40. He regretted that no agreement had yet been reached on making some of the proposed measures mandatory and suggested that, as an alternative, the Agency might offer complete safety review packages for States or groups of States with similar installations. Such packages might include, for example, OSART, ASSET, Engineering Safety Review Service (ESRS) and Waste Management Assessment and Technical Review Programme (WATRP) missions, together with workshops on the International Nuclear Events Scale (INES) and the Incident Reporting System (IRS). Also, the Agency should continue to convene meetings of senior regulatory officials from countries with similar installations to discuss the uniform application of safety standards. His delegation had repeatedly pointed out that the voluntary nature of those missions and the Nuclear Safety Standards (NUSS) Codes was a shortcoming which might prevent those measures from obtaining the desired results. A further attempt, however, to persuade Member States with nuclear programmes to make full use, on a voluntary basis, of the tools developed by the Agency was worth pursuing.

41. A comprehensive system of international guarantees should be established in the field of nuclear safety. While States alone were responsible for enforcing safety standards, more needed to be done at the international level. In particular, it was essential to encourage the simplification and harmonization of national procedures and to create mechanisms for the continuous assessment of the quality of national safety regimes, primarily through the implementation of adequate quality assurance programmes. The Agency should also be empowered to carry out safety assessments similar to OSART and RAPAT missions at its own discretion, and not just at the request of a Member State.

42. As was evident from the report contained in document GC(XXXIV)/931, some progress had been made in improving the present civil liability regime. However, there was clearly a need for more detailed study of other aspects deserving the Standing Committee's attention. Agreement on a more comprehensive regime of international liability still seemed to be a distant goal and in view of the difficulty, or even impossibility, of accommodating elements of State liability such as prevention, information, reparation and compensation in a civil liability regime, his delegation favoured the elaboration of a new instrument covering both civil and State liability.

43. He wished to stress that the preparations currently under way for a conference to revise the Vienna Convention should not be allowed to delay the work of the Standing Committee on the question of international State liability.

44. Mr. GUZMAN MARTINEZ (Cuba) said that the report contained in document GC(XXXIV)/919 provided a good outline of the strategic responses which the Agency should make in order to ensure that satisfactory levels of nuclear safety were attained. The strengthening of national radiation protection infrastructures was one of the most essential elements of the proposed strategy, since it provided a focal point for several of the measures planned and was one of the main objectives of international co-operation. The Agency should therefore step up its efforts to develop mechanisms that would ensure satisfactory nuclear safety and radiation protection systems in developing countries. Operational safety reviews, radioactive waste management and disposal and the assessment of safety significant events should also receive greater attention.

45. Ms. KINSKY (France) observed that the international nuclear community was in agreement about certain broad principles. First, nuclear safety was a matter of global importance: the consequences of a serious nuclear accident knew no frontiers and the question of safety was a major factor influencing public acceptance of nuclear energy. Second, the international community had a responsibility to work together to ensure that all countries maintained the highest and strictest safety standards possible, whatever the type of technology concerned. Third, international solidarity and co-operation did not in any way detract from the responsibility of

national authorities and operators, who alone were empowered to take and implement decisions. The international community had a duty to assist them to the best of its abilities and it was in that area that the Agency, by virtue of its universality, could play a leading role.

46. International co-operation should not be confined to the safety of major installations but should also extend to experimental reactors and radiation protection. In that connection, France attached great importance to the RAPAT and WAMAP programmes and to training. Helping the developing countries to get to grips with newly acquired technology was an essential part of international solidarity.

47. Her delegation had drawn attention on previous occasions to the risk of comparing the nature and aims of the Incident Reporting System (IRS), an analytical tool, with those of the International Nuclear Event Scale (INES), a communication tool. The efficacy of the IRS was totally dependent on a free and frank exchange of information between experts, which was in turn dependent on confidentiality. As in the case of safeguards information, publication of IRS reports would be greatly detrimental to the quality of the exchange, while being of little benefit to the public. INES, on the other hand, had been conceived for the sole purpose of communicating information to the media and the public.

48. The dynamic approach to nuclear safety the Agency was proposing in document GC(XXXIV)/919 seemed to cover the current concerns of the international community. Before it could be endorsed, however, more detailed analysis was needed of the relative roles which the Agency, other international organizations and national bodies might play in that programme. More information was also needed on how it would fit into the Agency's medium-term plan and its overall programme priorities.

49. The Agency seemed to be the best forum available for Member States to share their experience in maintaining a high level of safety at nuclear power plants throughout their lifetime. France had met with its European Community partners and also Sweden and Finland to consider that subject, and a consensus was now emerging on a scheme for the periodic safety review of operating plants. Another subject under consideration was the maintenance and safety of reactors after shutdown. In 1991 France was to receive an OSART mission that

would focus on maintenance and training at its Blayais plant, and in 1992 a further OSART mission would visit the Fessenheim plant for the purpose of examining the results of the ten-year review of the first of the country's 900 MW(e) power plants.

50. Her delegation had received the report circulated by the member countries of the Council for Mutual Economic Assistance (CMEA) on scientific and technical co-operation in the development and safety of nuclear power and looked forward to learning about the new possibilities which would undoubtedly be opening up in those areas. It also expressed its support for the two projects to evaluate the radiological consequences in the USSR of the Chernobyl accident and to assess the safety of 230-model WWER 440 reactors. France would continue to lend its active support to both initiatives.

51. Turning to the question of liability for nuclear damage, her delegation had no difficulty in approving the report contained in document GC(XXXIV)/931. Her country's views on the priority to be accorded to improving the present civil liability regime and securing the widest possible adherence to the Vienna Convention were well known.

52. Mr. McRAE (Canada) said that his country was committed to the establishment of an effective universal liability regime for transboundary damage resulting from nuclear accidents and believed that significant progress towards that goal could be made by improving the existing international civil liability regime. Accordingly, it fully supported efforts to improve the Vienna Convention. Canada was not yet convinced, however, that it would be possible to develop a civil liability regime able to attract universal adherence and to ensure prompt and adequate compensation for the victims of transboundary nuclear damage. Moreover, such a regime might not satisfactorily cover the important duty of States to take the best available measures to prevent such damage.

53. The primary concern of the Standing Committee should now be to prepare for the revision of the Vienna Convention. However, the Standing Committee should continue to study elements of international State liability - in particular those related to the duty of prevention - and the relationship

between State and civil liability. Also, it should proceed carefully and avoid premature conclusions. Finally, he welcomed the suggestion by Ambassador van Gorkom that the Standing Committee report to the Board after its next session.

54. Mr. BILEGAN (Romania) said that, since the revolution in his country the previous year, his Government had taken a number of steps in the nuclear energy field. First, it had normalized relations with the Agency and laid the foundation for future co-operation with all Agency Member States. Second, it had adhered to the Conventions on Early Notification of a Nuclear Accident and on Assistance in the Case of a Nuclear Accident or Radiological Emergency. Third, it was participating actively in the deliberations aimed at drawing up an international convention on civil liability in the event of a nuclear accident. Finally, it had received a variety of Agency missions relating to nuclear safety and was preparing for further such missions. A pre-OSART mission would be visiting the Cernavoda nuclear power plant during the present month.

The meeting rose at 1 p.m.