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## MEASURES TO STRENGTHEN INTERNATIONAL CO-OPERATION IN NUCLEAR, RADIATION AND WASTE SAFETY

### LIABILITY FOR NUCLEAR DAMAGE

The summary record of the discussion in the Board of Governors on 9 September 1996 under the agenda sub-item "Liability for nuclear damage" and a related statement made on 10 September 1996 are reproduced in the Attachment.



**EXCERPT FROM THE RECORD OF THE BOARD'S 901st MEETING**

(b) **LIABILITY FOR NUCLEAR DAMAGE (GOV/2872)**

The CHAIRMAN said that document GOV/2872 contained the report by the Secretariat on the work of the Standing Committee on Liability for Nuclear Damage since the previous year's General Conference. The Attachment to the document contained a Note by the Secretariat on the state of negotiations in the Committee. The Appendices to the Attachment contained the reports of the Standing Committee on its fourteenth and fifteenth sessions.

Mr. GHERMAN (Romania) said that his delegation attached great importance to the question of liability for nuclear damage, since Romania wished to participate in an international liability regime. Despite the general reliability of nuclear facilities, appropriate financial compensation would be required in the event of nuclear damage. His delegation was satisfied with the achievements of the Standing Committee which had solved many of the outstanding issues and prepared consolidated texts of the draft protocol to amend the Vienna Convention and the draft supplementary funding convention. Noting that operator liability had been raised significantly to 300 million SDRs, Romania supported the phasing-in approach to that amount, as that would allow more States with lower national compensation levels to accede to the Convention. He looked forward to a successful sixteenth session of the Committee at which the final texts of the draft protocol and the draft supplementary funding convention could be agreed upon with a view to their adoption by a diplomatic conference early in 1997.

With those comments, he approved transmission of the document to the General Conference.

Mr. RYZHOV (Russian Federation) said Russia attached great importance to international co-operation on liability for nuclear damage and was endeavouring to contribute to that goal in the first place through development of national legislation with a view to the gradual integration of Russia into the international liability regime for nuclear damage. At the end of 1995, the Federal Assembly of the Russian Federation had passed a

comprehensive law on the utilization of nuclear energy whose principal aim was to protect human health and the environment and one chapter of which was devoted to liability for nuclear damage. A draft law on compensation for nuclear damage and nuclear insurance was also being considered by the State Duma, the basic provisions of which were in line with the international conventions on the subject. Russia had also signed the Vienna Convention on Civil Liability for Nuclear Damage and the ratification procedure was now under way.

The Russian Federation was generally satisfied with the progress made by the Standing Committee on revising the Vienna Convention and developing a supplementary funding convention. The Moscow Nuclear Safety and Security Summit had also commended the work of the Standing Committee. His delegation hoped that the Committee's efforts would lead to the creation of a universal liability regime for nuclear damage which would take in countries that were currently not party to either the Vienna or the Paris Conventions.

In conclusion, the Russian Federation was in favour of document GOV/2872 being transmitted to the General Conference.

Ms. OK (Turkey) noted with satisfaction that the Standing Committee had resolved many difficulties and managed to prepare full texts of both the draft protocol to amend the Vienna Convention and the draft supplementary funding convention. The Committee would hopefully complete its work at its forthcoming session so that a diplomatic conference could be held the following year to adopt the protocol.

Despite the significant increase in the amount of compensation foreseen for nuclear damage, Turkey felt it would still be insufficient in the event of serious nuclear incidents and hoped it would be increased in future. It also hoped that an equitable solution could be found to the problem of participation of non-nuclear power generating countries in the supplementary fund during the forthcoming session of the Standing Committee, and that adequate protection of victims, in particular transboundary victims, could be assured.

Ms. LAJOUS VARGAS (Mexico) welcomed the progress achieved by the Standing Committee, in particular the settling of such issues as the maximum compensation amounts, the national compensation amounts and a new definition of nuclear damage.

Likewise, the preparation of full texts of both the draft protocol to amend the Vienna Convention and the draft supplementary funding convention was a big advance.

Mexico accordingly approved transmission of document GOV/2872 to the General Conference and urged the Standing Committee to conclude its task at the sixteenth session in October so that a diplomatic conference could be convened without delay to adopt both instruments.

Mr. ADAM (Belgium) thanked the Secretariat for the document and noted its optimistic tenor. Belgium would like to share that optimism but remained concerned over certain problems that had arisen in the work on revising the Vienna Convention during the June meetings of the Standing Committee, in particular as regards the compensation amounts and the definition of nuclear damage. It would be a pity to throw away the results of long negotiations through last-minute vacillations on basic options.

With those comments, his delegation could approve transmission of the document to the General Conference.

Mr. WALKER (Australia), thanking the Secretariat for its report, agreed with its assessment that it should be possible to reach agreement on all substantive matters at the forthcoming October session of the Committee. Agreement on a comprehensive regime of compensation for damage caused by civil nuclear accidents would help maintain public confidence in the nuclear industry.

Some States had expressed their support for a phasing-in of the national compensation amounts. Significant work had been undertaken on that issue in the Standing Committee and no States had expressed opposition to such provisions. He was therefore optimistic that a solution to that issue was within reach.

However, one matter of concern to his delegation was that, four years after the adoption of the Rio Declaration on Environment and Development, some States continued to oppose the inclusion in the international nuclear liability regime of the costs of measures to remedy environmental damage. Yet the same States had agreed to the inclusion of compensation for environmental damage in other international liability regimes. He therefore urged all the States participating in the negotiations to reconsider that issue.

Mr. RITCH (United States of America) said that his delegation was greatly encouraged by the speed of recent progress. It would appear that only a few issues needed to be resolved for the Standing Committee to be able to fulfil its mandate and propose amendments to the Vienna Convention on Civil Liability for Nuclear Damage and a new supplementary funding convention. Difficult compromises had been effected on a number of fundamental issues, and compromise solutions on other issues now seemed to be within reach. The United States hoped that the Committee would complete its negotiations during its forthcoming session in October so that the Board would be able, during its December series of meetings, to convene a diplomatic conference in 1997. He urged the Board to impress on the Committee the need to conclude its task forthwith.

It had been clear since the Chernobyl accident that the international legal system governing liability for nuclear accidents had serious deficiencies. The Standing Committee had been working since 1990 to improve and broaden that system, so that nuclear safety could be improved, and the victims of any nuclear accident which might occur in the future promptly and adequately compensated. It was high time to set the seal on that endeavour.

Mr. PRETTRE (France) noted that the Standing Committee had resolved a large number of outstanding questions on both the revision of the Vienna Convention and the supplementary funding convention. The full texts of both draft instruments had been well prepared. However, there were still disagreements over essential points.

With regard to the draft protocol to amend the Vienna Convention, a decision had been taken on the maximum compensation amounts. However, some countries thought that those amounts were too high and that it would be useful to institute some form of phasing-in mechanism. The definition of nuclear damage was still the subject of reservations from a number of countries, including France on the question of environmental damage. One should not therefore be misled into thinking that agreement had been reached on that definition. Other points not mentioned in the document had still to be agreed on, including the geographical field of application, the procedure for obtaining compensation for damage, and priorities for compensation requests.

Turning to the supplementary funding convention, he observed that despite the progress which had been made there were still a large number of questions to be resolved.

Apart from the problems just mentioned concerning the definition of damage or the geographical field of application, the Committee still had to determine the structure of the supplementary fund, its implementation mechanisms, and its possible linking with the only supplementary system existing at present, namely the one instituted by the Brussels Convention to which France was a party. During the expert meetings, France had supported the principle of supplementary funding, without however accepting any provisions which would upset the present treaty system. The drafts which had been prepared during the July meeting still included a large number of alternatives on essential questions. Moreover, that meeting had been informal and all the amendments foreseen would have to be submitted to the Standing Committee for approval. The Standing Committee had resolved to make every effort to complete its work during its sixteenth session in October, but that goal seemed very optimistic.

France was ready to approve the transmission of document GOV/2872 to the General Conference, provided that the comments just made were taken into account in the accompanying Note by the Secretariat. While he hoped that the Standing Committee would continue to make progress with its work, he felt that it was premature to think about convening a diplomatic conference.

Mr. PESCI BOUREL (Argentina) thanked the Secretariat for the information contained in document GOV/2872 and commended the progress which the Standing Committee had made. He urged the Committee to conclude its work before the end of the year so that a diplomatic conference could be convened in 1997.

Mr. de YTURRIAGA (Spain) said that his delegation had taken an active part in the work of the Standing Committee and did not share the optimistic views which had been expressed as regards the early adoption of the protocol to amend the Vienna Convention and the supplementary funding convention. In that respect, he endorsed the views which had been put forward by the Governor from France.

Though much progress had been made, many amendments had been adopted only with reservations, especially those relating to the geographical scope of application and the definition of nuclear damage. Such issues could not be solved by the Standing Committee and would need to be referred to a diplomatic conference. However, despite all the various

problems, it did seem that a solution was within reach as regards the draft protocol to amend the Vienna Convention. That was not true of the supplementary funding convention. In that area there seemed to be two incompatible viewpoints. If it proved impossible to reconcile those viewpoints, it might be wise to give States a choice between the two alternatives.

Mr. MIŠÁK (Slovakia) said his delegation supported the efforts of the Standing Committee. Slovak experts had been playing an active part in the expert meetings since the Vienna Convention and the Joint Protocol had entered into force for Slovakia. All the amendments and provisions being proposed for the new Vienna Convention and the supplementary funding convention should allow for the case of States with low economic resources or whose economies were in transition. As a country associated to the European Union, Slovakia took a keen interest in legal instruments concerning civil liability, and had recently introduced its own new atomic legislation.

In conclusion, he commended the Secretariat's report on the work of the Standing Committee and expressed confidence that the Committee would be able to finalize its task in the near future.

Mr. ALLOTEY (Ghana), commending the work of the Standing Committee, expressed the hope that it would complete its task in the near future so that a diplomatic conference could be convened. His delegation supported transmission of document GOV/2872, together with the Appendices, to the fortieth regular session of the General Conference for its information.

Mr. POLUREZ (Ukraine)\* said he wished to inform the Secretariat and members of the Board that on 12 July 1996 the Parliament of Ukraine had adopted a law on the accession of Ukraine to the Vienna Convention on Civil Liability for Nuclear Damage. In a few days' time - probably during the fortieth General Conference - Ukraine would hand over the document of accession to the Director General of the Agency.

He expressed satisfaction with the progress achieved in the work of the Standing Committee on Liability for Nuclear Damage, in which an expert from Ukraine had taken

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\* Member States not members of the Board of Governors are indicated by an asterisk.

part. Finally, he joined others in supporting transmission of document GOV/2872 to the General Conference.

The CHAIRMAN, summing up the discussion, said that the Board had welcomed the progress by the Standing Committee on Liability for Nuclear Damage in resolving many of the issues before it relating both to the draft protocol to amend the Vienna Convention on Civil Liability for Nuclear Damage and to the draft supplementary funding convention.

The Board had urged the Committee to intensify its efforts with a view to the early convening of a diplomatic conference after the finalization of its work - hopefully at its sixteenth session, which was scheduled to be held in October. Member States had also been urged to provide the political impetus necessary for achieving the compromises that were essential to the success of the Committee.

With those remarks, he took it that the Board wished to transmit the material contained in document GOV/2872, together with the summary record, to the General Conference for its information.

It was so decided.

## **EXCERPT FROM THE RECORD OF THE BOARD'S 902nd MEETING**

### **LIABILITY FOR NUCLEAR DAMAGE**

Mr. de OURO-PRETO (Brazil), thanking the Secretariat for document GOV/2872, observed that while the main task of the Standing Committee on Liability for Nuclear Damage was to modernize the Vienna Convention, most of the proceedings to date seemed aimed at bringing the Convention more into line with the Paris Convention which followed a different approach. At the same time, certain innovations such as the coverage of environmental damage were facing strong resistance from countries that were not parties to the Convention.

Paragraph 2 of the Note by the Secretariat in document GOV/2872 stated that the Standing Committee had "taken a decision on the important question of maximum

compensation amounts" and quoted figures for operator liability. The wording implied that a decision had been taken on the figures mentioned; namely 300 million SDRs or 150 million SDRs plus public funds, which was not the case, the figures being merely tentative. The final decision on the amounts for compensation was a matter for a diplomatic conference, the only forum with a mandate to take such political decisions. Moreover, it was his delegation's understanding that the "phase-in" system was an essential element for acceptance of any amounts proposed for compensation. Thus, no decision on amounts could be made before agreement on that system had been reached by the Standing Committee. The figures under consideration seemed unduly high for many States parties, many of which were developing countries. The adoption of those amounts in the draft protocol to amend the Convention would probably deter many countries from acceding.

Turning to the question of the global supplementary fund, he recalled that the threshold value for bringing it into operation, a subject mentioned in paragraph 5 of the Note by the Secretariat, had also to be determined by the diplomatic conference under its mandate. There was also a practical problem to be considered, inasmuch as the threshold value was supposed to be determined by the top liability value ultimately established for the revised Vienna Convention. Some basic questions relating to the convention on supplementary funding remained unclear. One fundamental point that had to be resolved in a fair and appropriate way was the formula for contributions by parties to the convention. His Government believed that since the system of liability for nuclear damage applied essentially to countries with nuclear activities, the criteria for contributions by States parties should be based primarily on installed nuclear capacity, to ensure that States with small nuclear programmes did not have to contribute more to the supplementary fund in some cases than States with larger nuclear programmes. The remaining difficulties in achieving consensus on the draft supplementary funding convention led his delegation to propose that, if consensus could not be reached at the forthcoming session of the Standing Committee, a diplomatic conference on revision of the Vienna Convention alone should be held, if possible in 1996. There would be nothing to stop another conference being held on supplementary funding at a later date, and there should be no legal obstacles, since the mandate given to the Standing Committee was primarily, if not exclusively, for the revision of the Vienna Convention.

The revision of the Vienna Convention had been called for under Article XXVI, paragraph 1, of that instrument, under which one third of the contracting parties had to be in favour. At the time, the quorum amounted to only five States parties but the situation had now changed with the accession of many other States and it would therefore seem appropriate to reverify the quorum required, as well as the mandate to call a revision conference.

Reverting to the question of supplementary funding, he stressed the need for flexibility to allow for the combination of various mechanisms, including regional ones, having the same objective. Such a combination would need to be implemented in such a way that there was no subordination or obligatory link between regional systems and the global convention. A flexible system enabling States to provide for supplementary funding in the event of nuclear incidents in line with their national resources would encourage wide support for the philosophy of supplementary compensation and hence afford better protection for the victims.

