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GC(40)/INF/9  
13 September 1996

International Atomic Energy Agency

# GENERAL CONFERENCE

GENERAL Distr.  
Original: ENGLISH

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Fortieth regular session  
Item 12 of the provisional agenda  
(GC(40)/1)

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

### **LIABILITY FOR NUCLEAR DAMAGE**

1. Attached to this document is a note prepared by the Secretariat on the state of negotiations in the Standing Committee on Liability for Nuclear Damage since the thirty-ninth regular session of the General Conference.
2. On 9 September 1996, the Board of Governors decided that this note should be transmitted, together with the summary record of its discussion on "Liability for nuclear damage", to the General Conference for its information.
3. The summary record of the Board's discussion will be issued as an Addendum to the present document.



STATE OF NEGOTIATIONS IN THE STANDING COMMITTEE  
ON LIABILITY FOR NUCLEAR DAMAGE

Note by the Secretariat

1. Since the thirty-ninth (1995) regular session of the General Conference, the Standing Committee on Liability for Nuclear Damage has held three sessions as well as several informal drafting meetings. The Committee resolved many of the outstanding issues regarding both the draft protocol to amend the Vienna Convention and the draft supplementary funding convention and was able to prepare full texts of both draft instruments.
2. On revision of the Vienna Convention, the Committee has taken a decision on the important question of maximum compensation amounts. In particular, the draft amending protocol provides that the liability of the operator may be limited to not less than 300 million SDRs or to not less than 150 million SDRs provided that the difference will be made up by public funds.
3. It was also agreed, albeit with some reservations, to insert in the revised Vienna Convention a new definition of nuclear damage and related provisions.
4. Much progress has also been made on supplementary funding. Only a limited number of issues remain in the draft convention text. In particular, the Committee is now close to reaching agreement on the fundamental issue of the structure of supplementary funding; the two alternative provisions currently being discussed follow the same basic approach as regards compensation of domestic and transboundary damage.
5. There is agreement that the required national compensation amount should be at least 300 million SDRs which will serve as the threshold for bringing the supplementary fund into operation. This amount corresponds to the limit of liability of the operator contained in the draft protocol to amend the Vienna Convention.
6. Since the two drafts significantly increase the limit of liability of the operator, the possibility of phasing-in the revised amounts is also being considered. This will allow States with lower national compensation amounts to adhere to the convention without delay.
7. In light of the considerable progress made at its last, fifteenth session, the Committee agreed to make all efforts to finalize its work during the sixteenth session so that a diplomatic conference may be convened to adopt the protocol to amend the Vienna Convention as well as the convention on supplementary funding.
8. The next (sixteenth) session of the Committee is scheduled for 14 to 18 October 1996. It will be preceded by open-ended informal consultations from 10 to 11 October.

9. In July, at the request of the Committee, the Secretariat prepared in consultation with experts a consolidated text of each draft instrument with annotations. These texts were circulated for review in the capitals prior to the sixteenth session in order to facilitate the preparation by that session of the final texts of the draft protocol and draft supplementary funding convention for submission to the diplomatic conference.

10. Attached to this note are the reports of the Committee on its fourteenth and fifteenth sessions excluding the draft texts for the two instruments under consideration and outstanding proposals and non-papers. The full reports of these sessions, as well as the Thirteenth session of the Committee are available from the Legal Division of the Agency on request.

**STANDING COMMITTEE ON LIABILITY  
FOR NUCLEAR DAMAGE**

**SCNL/14/INF.5  
1996-03-06**

**Fourteenth Session  
29 January - 2 February 1996**

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

1. The Standing Committee held its fourteenth session at the Agency's Headquarters in Vienna from 29 January to 2 February 1996, under the Chairmanship of H.E. Mr. Curt Lidgard of Sweden. H.E. Mr. Taher Shash of Egypt and Professor Jan Łopuski of Poland served as Vice-Chairmen. One position of Vice-Chairman remained vacant. Mr. Gustavo Zlauvinen of Argentina served as Rapporteur.
  
2. The representatives of the following 58 Member States participated: Argentina, Australia, Austria, Belarus, Belgium, Brazil, Bulgaria, Canada, Chile, China, Colombia, Croatia, Cuba, Czech Republic, Denmark, Egypt, Finland, France, Germany, Greece, Guatemala, Holy See, Hungary, India, Indonesia, Ireland, Israel, Italy, Japan, Republic of Korea, Lebanon, Lithuania, Luxembourg, Malaysia, Mexico, Morocco, Netherlands, New Zealand, Nigeria, Norway, Pakistan, Peru, Philippines, Poland, Romania, Russian Federation, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Thailand, Turkey, Ukraine, United Kingdom, United States and Uruguay.
  
3. Two intergovernmental organizations, namely the European Union represented by the Commission and the 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 NGOs was on the basis of the understanding reached at previous sessions of the Committee.
  
4. 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 liability regime
  5. Future programme of work
  6. Adoption of the report

5. The Committee made the following arrangements on the organization of work:

- Utmost priority should be given to revision of the Vienna Convention with a view to completing consideration of outstanding issues and drawing up the amending protocol on the basis of the texts adopted at the last session. This task was referred to the Drafting Committee.
- With regard to supplementary funding, it was agreed to resume forthwith the open-ended informal consultations on the structure of supplementary funding and related issues, including compensation amounts, in the context of the "September" draft. Effort should be aimed at the further elaboration of the elements set out in paragraph 13 of the last session's report, taking note of modifications suggested by the open-ended informal consultations held prior to the present session. At the same time, the Drafting Committee would continue examination of other outstanding issues in the "September" draft.
- It was further decided that at a later stage of the session, the Plenary would address the issue of compensation amounts in the context of the revised Vienna Convention and supplementary funding with a view to ascertaining the range within which compromise was possible.

6. The Director of the Legal Division, Mr. W. Sturms informed the Committee on the results of the open-ended informal consultations held on 25-26 January pursuant to the decision of the thirteenth session of the Committee. 28 experts from 21 States participated.

During these informal consultations, the discussions focussed on the structure of supplementary funding and resulted in clarifications and rewordings of the elements contained in the last session's report.

It had been confirmed that a common threshold for activation of the supplementary funding should be established under national legislation in the order of 300 million SDRs which was considered to be more realistic than figures referred to before. Contributions to the fund would be fixed for each Contracting Party, leading to

an open-ended total amount of the fund, and the position of non-nuclear power generating States should be taken into account. While the fund would be open ended, the potential size of 300 million SDRs would be required for the entry into force of the convention. The fund could be split into two parts which would (at least initially) be equal: one applied to domestic and transboundary damage without distinction, the other being reserved for transboundary damage. Two alternative schemes could be considered: according to one, the part applicable to domestic and transboundary damage would be fixed in size while the part devoted to transboundary damage would increase with the growth of the fund; according to the other, both parts could grow in a fixed proportion (provisionally suggested to be 50:50).

After exhaustion of the fund, a State may continue to distribute remaining national compensation amount and make it subject to reciprocity. In such a case, application of reciprocity to non-nuclear power generating States need to be clarified. Consideration could be given to allowing adherence to the convention by States having at the time of adherence lower national compensation amounts than required. Criteria for eligibility, minimum amount and a maximum time period need to be defined. The part of the fund covering domestic and transboundary damage could be proportional to the smaller size of national compensation amount, while the other part (covering transboundary damage) would be increased accordingly.

The consultations recognized that a supplementary funding scheme should accommodate regional arrangements and it was considered that States involved or contemplating such arrangements should indicate their views.

7. The Standing Committee reconvened the Drafting Committee under the chairmanship of Mr. Melchior of Denmark. The Standing Committee adopted the report of the Drafting Committee, which is contained in Annex III.

8. The Standing Committee revisited outstanding issues of principle on the revision of the Vienna Convention regarding definition of nuclear damage (coverage of environmental damage and related provisions) and amounts of compensation. The Chairman of the Committee emphasized the need for reaching solutions to fundamental issues in the Standing Committee in order to ensure success of the diplomatic

conference and reminded the Committee of the past practice of the Agency to have such conferences of short duration.

9. The delegate of Brazil brought to the attention of the Committee the conclusions of an informal meeting of the group of States parties to the Vienna Convention participating in the present session, as follows:

- (a) the Committee should not discuss supplementary funding until it finished consideration of the revision of the Vienna Convention;
- (b) the maximum compensation amount of 500 million SDRs was too high a figure;
- (c) some members of the group suggested that the amount of compensation for the revised Vienna Convention should not exceed the limits of the existing Paris/Brussels Conventions' system.

10. With regard to the definition of nuclear damage, the Committee adopted the provision regarding impairment of the environment contained in Article I.1(k)(iii) for the revised Vienna Convention. Reservations were stated by the delegations of France, Belgium, United Kingdom, Republic of Korea, Germany, Croatia, Spain, Slovak Republic, Mexico and Bulgaria.

11. The Committee adopted the provision regarding loss of profit, including loss of profit from impairment of the environment, contained in Article I.1(k)(iv) for the revised Vienna Convention. Reservations were stated by the delegations of the United Kingdom, France, Spain, Mexico, Bulgaria and the Slovak Republic.

12. The Committee adopted the provision regarding costs of preventive measures contained in Article I.1(k)(v) for the revised Vienna Convention. It was understood that reservations stated for sub-paragraph (iv) were also valid for sub-paragraph (v). The reservations of France and the Slovak Republic were only related to preventive

measures in relation to impairment of the environment.

13. The Committee adopted the provision regarding measures of reinstatement contained in Article I.1(l) for the revision of the Vienna Convention. It was understood that reservations stated on the provision in Article I.1(k)(iii) were also valid for paragraph (l). Also the delegations of Brazil and the Slovak Republic stated reservations.

14. The Committee adopted the provision regarding preventive measures contained in Article I.1(m). The reservations were stated by the United Kingdom and Spain on the provision as a whole, and by the delegations of France and the Slovak Republic in respect of the reference to impairment of the environment.

15. The Committee adopted the provision regarding the definition of nuclear incident contained in Article I.1(n) for the revision of the Vienna Convention. The delegations of Spain, Brazil, Israel, United Kingdom, Croatia, Czech Republic and Slovak Republic stated reservations with respect to the inclusion of imminent threat in the definition. A proposal to exclude nuclear damage caused by authorized releases was not supported.

16. In the discussion on the compensation amounts, the prevailing feeling was that 500 million SDRs mentioned in the revised Article V of the Vienna Convention (Article 8 of the amending Protocol) was too high to reach a consensus and should be replaced. 300 million SDRs was suggested as a figure on which compromise could be reached. It was also argued that this figure was important to fit the threshold for supplementary funding. The latter view was not shared by the delegation of the United States which pointed out that the amount of 300 million SDRs was not vital for initiating the practical operation of the supplementary funding system especially if the phasing in concept is taken into account. In the opinion of that delegation, the positive aspect of the position of the group of the States Parties to the Vienna Convention was that they sought parity with obligations recommended for the national contribution of States Party to the Paris/Brussels system (175 million SDRs).

17. Several delegations pointed out that while they recognized that 500 million SDRs was too high in view of difficult economic situations in many States Parties to

the Vienna Convention, they did not see the usefulness of replacing one figure in square brackets by another figure in square brackets. Other delegations suggested that no figure be inserted within the square brackets and that they be left blank.

18. On the other hand, a number of States Parties to the Vienna Convention indicated that since at the moment they did not have instructions regarding exact levels of compensation to be fixed under the revised Vienna Convention, any figure that would be included in the draft amending protocol should be in square brackets. It was also held by some delegations that the issue of the compensation amounts was of a political character and, therefore, it was for the diplomatic conference to decide on it rather than the Standing Committee.

19. The Committee agreed to replace 500 million SDRs in Article V.1(a) and (b) with 300 million SDRs put in square brackets as a more realistic compromise figure. While some delegations were of the opinion that the figure of 150 million SDRs in Article V.1(b) could be generally acceptable and suggested deletion of square brackets around it, the prevailing view was that the text should remain within square brackets. It was stressed by the Chairman and supported by many delegations that all delegations should come to the 15th session with instructions enabling the Committee to provide clear guidance on the amounts of compensation. The delegation of Romania stated its reservation to both figures.

20. The Irish delegation requested that an Agency paper be prepared concerning the estimated costs of a typical major nuclear accident, the insurers' coverage of damage to the operators of nuclear reactors and the annual revenue from the sales of nuclear-generated electricity. The Committee did not discuss this request and therefore no decision was taken.

21. The Committee considered the report of the open-ended informal consultations on the structure of the supplementary fund held from 25-26 January 1996 and continued as from 29 January during the 14th session of the Standing Committee. It took note of the sample calculations of contributions paper SCNL/14/INF.4 prepared by the Secretariat which showed what individual Contracting Parties would be required to pay under paragraphs 1(a) and (b) of Article 5 of the draft supplementary funding

convention. With regard to the alternatives in paragraph 3 of the report, the views were almost evenly divided. Some delegations suggested that as the supplementary funding would be financed almost entirely by nuclear power generating States, it would be realistic to work on alternative 2 which was preferred by those States. Other delegations believed it was not appropriate to distinguish between nuclear power generating States and others in this context.

22. In respect of paragraph 4, it was agreed that States have the freedom to lay down criteria for the distribution of any remaining national compensation amount. States can choose to compensate damage abroad on a reciprocity basis. The Committee discussed the question of reciprocity with regard to non-nuclear Contracting States. Some delegations supported the deletion of the square brackets and the retention of the text. On the other hand, some other delegations argued that the issue was outside the scope of the convention and suggested the deletion of the text. Due to lack of agreement, the text was retained with square brackets.

23. Paragraph 5 had not been changed during the open-ended informal consultations. It was decided to retain the existing text.

24. In paragraph 6, the second sentence was deleted. At the end of the third sentence from the end the following words were added: "provided that the rights under this convention of victims of other Contracting Parties are not derogated from". The penultimate sentence was deleted. In the last sentence the word "shall" was replaced by "should". One delegation stated its reservation with regard to the last three sentences of subparagraph 6.

25. The conclusions with regard to the open-ended consultations appear in Annex I ("Elements for the Structure of the Supplementary Fund").

26. It was agreed that the text of these conclusions would constitute the basis of drafting of convention text with respect to supplementary funding. Therefore, it was included as part of the report.

27. In connection with these conclusions, the delegations from States Parties to the Brussels Convention, the delegations from a group of non-nuclear power generating States, and the delegations of Belgium, China, Poland, Russian Federation, Slovenia, United Kingdom and United States made statements. The delegations of Australia, Ireland, Egypt and New Zealand made further statements in addition to that of the group of non-nuclear power generating States. These statements are reproduced in Annex II.

28. In considering its future programme of work, the Committee agreed that there were only a few matters to be settled finally in the draft text for a protocol to amend the Vienna Convention.

The Committee agreed that it should therefore mainly concentrate its work at the 15th session on resolving the outstanding issues of principle regarding the supplementary funding, in order to try to have a complete text of the draft supplementary funding convention by the end of that session, so that it could be given proper consideration by the Governments before the following session of the Standing Committee.

29. In light of this the Secretariat was requested to prepare, in consultation with interested experts, draft convention language of the concepts described in paragraphs 2 and 3 of the conclusions in order to facilitate discussions in the informal consultations group scheduled to meet prior to the next session.

30. The Committee decided to hold its next, fifteenth session from 6 to 10 May 1996 and to continue the open ended informal consultations, 2 and 3 May 1996.

## Annex I

**Elements for the structure of the supplementary fund**

1. Each Contracting Party shall ensure the availability under its national legislation<sup>1</sup> of an amount of at least [300] million SDRs (but see paragraph 5) for compensation of domestic and transboundary damage.

2. A supplementary fund ("the Fund") shall be made available to compensate damage suffered in the territory (as defined in existing texts) of Contracting Parties that remains uncompensated by the funds described in paragraph 1 provided under the legislation of the State which exercises jurisdiction over the nuclear installation involved in the accident ("Installation State"). The Fund shall be contributed to by fixed contributions by Contracting Parties in accordance with a formula which should take into account the position of non-nuclear States (for instance by putting emphasis on installed nuclear power-generating capacity in the territory of a State Party). The word "fixed" is taken to mean fixed contributions leading to an open-ended total amount of supplementary funding.

3.<sup>2</sup> The Fund, which shall be open-ended and which shall have reached a minimum potential size of [300]<sup>3</sup> million SDRs upon entry into force of the convention<sup>4</sup>, shall be composed as follows:

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<sup>1</sup> Subject to later discussion regarding States with no nuclear installations or with small research reactors or other types of nuclear installations.

<sup>2</sup> Certain experts are concerned over the prospect of being asked to help compensate damage in an accident State with large financial resources of its own. Many other experts believe that this problem is not of concern.

<sup>3</sup> This figure may have to be looked at again for the purpose of the entry into force.

<sup>4</sup> Consideration could also be given to a differential entry into force of the Convention and of the Fund.

Alternative 1

(a) [150]<sup>5</sup> million SDRs] funds shall be available to compensate on a non-discriminatory basis claims for damage suffered in and outside the Installation State to the extent it is uncompensated under paragraph 1 above.

(b) The remainder of this Fund, which will be at least [150]<sup>5</sup> million SDRs, shall be available only for claims for damage suffered outside the Installation State to the extent it is uncompensated by funds provided under paragraphs 1 and 3(a) above.

Alternative 2

a) [50%<sup>5</sup>] of the Fund shall be available to compensate on a non-discriminatory basis claims for damage suffered in and outside the Installation State to the extent it is uncompensated under paragraph 1 above.

b) [50%<sup>5</sup>] of the Fund shall be available only for claims for damage suffered outside the Installation State to the extent it is uncompensated by funds provided under paragraphs 1 and 3(a) above.

4. Any funds payable pursuant to paragraph 3 to an accident State whose national law provides for a higher national compensation than [300] million SDRs shall be made available as from [300] million SDRs if such State so requests and has notified the Depository of its national system at the time of its ratification/accession. [Without prejudice to the arrangements of paragraph 6, if an Installation State, after exhaustion of the funds of paragraph 3, decides on the basis of its national legislation to continue to distribute any remaining national compensation amount, it may make such distribution subject to terms and conditions to be specified in its national law, including reciprocity. In this last case non-nuclear Contracting States shall be deemed to have met the reciprocity requirement.]<sup>6</sup>

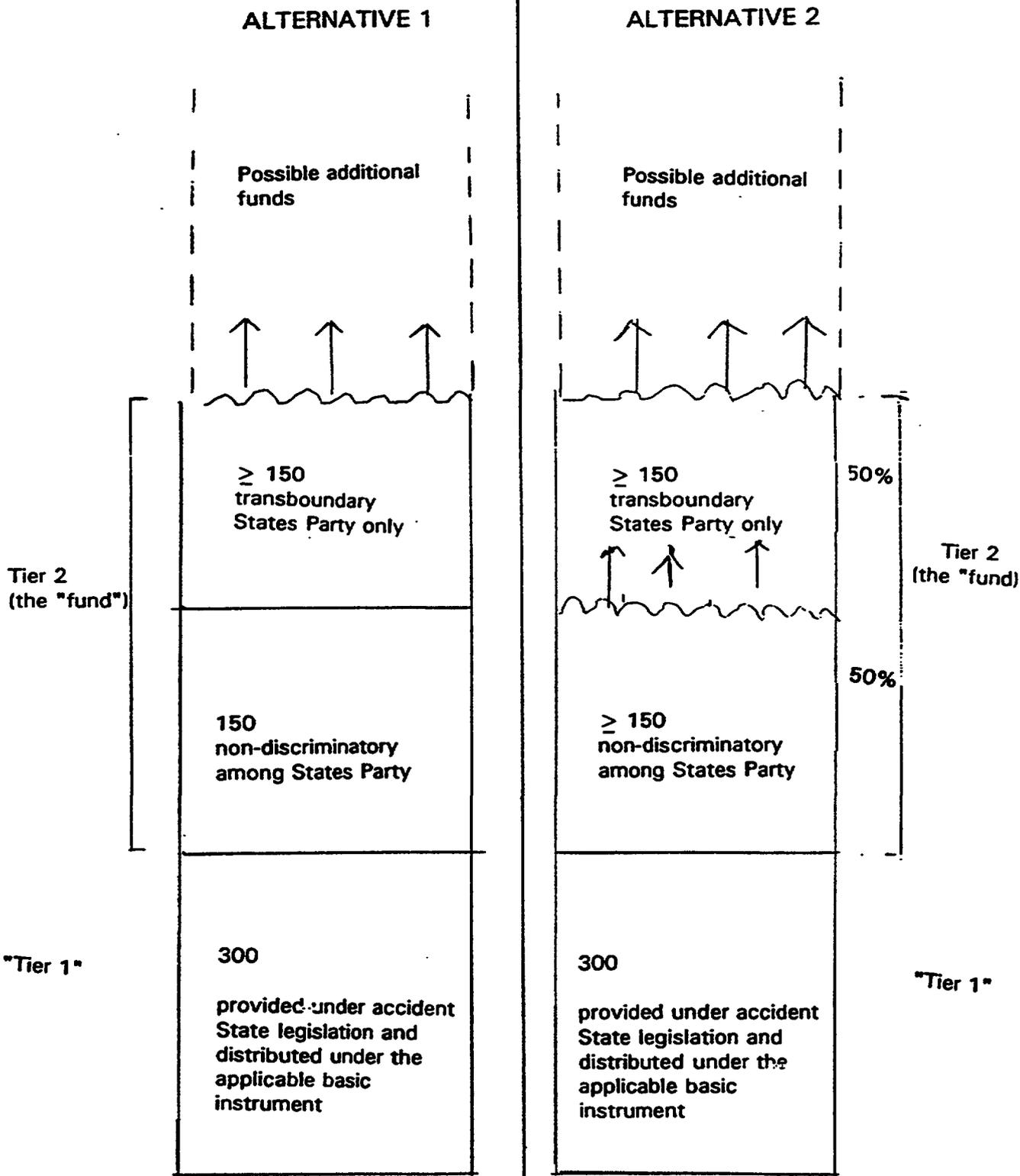
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<sup>5</sup> Subject to paragraph 5.

<sup>6</sup> Some experts thought that the funding in excess of the supplementary fund should not be subject to the provisions of the Convention.

5. Should relevant States express an interest, consideration could be given to "phasing in" the amount described in paragraph 1. Due consideration should be given to criteria for eligibility and conditions for application (minimum amount and time period, etc.) In the event that phasing in is applied, the paragraph 3(a) part of the Fund could be tied to that amount; (e.g. if the paragraph 1 amount at the time of the accident were 200 million SDRs, the paragraph 3(a) part of the Fund would be reduced to 200/300 of the amount it would otherwise have been and the (b) portion would be increased accordingly.

6. Consideration should be given to the possibility to States Parties to make use of or enter into "regional" arrangements or other multilateral or bilateral arrangements in connection with the above structure. These arrangements may be used (1) to provide all or a portion of the minimum compensation amount required by this Convention and/or (2) to provide compensation in excess of the amount provided by the Fund. The funds from such arrangements may be restricted to the members of those arrangements, provided that the rights of victims of other Contracting Parties under this Convention are not derogated from. Benefits to a Contracting Party under a regional arrangement should not reduce its benefits under the Fund and vice versa.



### **Statement by Delegations of Parties to the Brussels Supplementary Convention**

Delegations of the Parties to the Brussels Supplementary Convention held a meeting to consider the relationship between the Brussels Supplementary Convention and the September Draft. The delegations came to the following conclusions:

1. During informal consultations of the Standing Committee, questions were raised whether the new fund according to the September Draft is compatible with existing regional arrangements. In response to these questions, delegations of the Parties to the Brussels Supplementary Convention identified the following problems which should be solved in case of co-existence of the new fund and the system established by the Brussels Supplementary Convention:

- Possible conflict of obligations arising from different instruments.
- Possible difficulties arising from the fact that different instruments result in different categories of victims.
- Uncertainties about the calculation of contributions to be made by the Parties to the Brussels Supplementary Convention, taking into account various scenarios of nuclear incidents.
- Impact of these issues on the Brussels Supplementary Convention and the need to change national legislation implementing that Convention.

Due to the complexity of these issues, and due to the given timeframe, further consultations are needed and will take place.

2. Nevertheless, the delegations confirm the statement made during the Eleventh Session of the Standing Committee. In particular, they declare the readiness to replace the Brussels Supplementary Convention with another instrument, provided that new instrument guarantees benefits at least equivalent to those afforded by the Brussels Supplementary Convention.

3. The delegations reiterate their willingness to continue co-operating in the Standing Committee in order to achieve a common solution.

1 February 1996

AUSTRALIA

I would simply like now to read out a statement by a group of non-nuclear power generating States that we would wish to see reflected in the report, preferably verbatim.

A group of non-nuclear power generating States urged the rapid conclusion of these negotiations. They called on all States to consider in capitals intersessionally the acceptability of a regime in which the contributions formula was based on an amount in the range of 300 to 350 Special Drawing Rights as a minimum per unit of installed capacity and a split of 95% of the fund calculated on the basis of nuclear power generation and 5% on the basis of the United Nations rate of assessment.

They further urged States to respond positively, or to make alternative proposals, at SCNL/15.

This group noted with pleasure the broad support given to the principle that States on the minimum United Nations rate of assessment should be exempted from contributing to the regime.

1 February 1996

AUSTRALIA

We believe that considerable progress has been made at this session of the Standing Committee. For the first time in a long time, we have worked essentially off one text, which has resulted in a great improvement in what has been able to have been achieved and in our work methods. We believe it is a very positive development. That text of course is part of a package and we still view this regime, as any non-nuclear power generating State must, as a package. A non-nuclear power generating State gives up the jurisdiction of its courts in virtually all circumstances under a regime such as the supplementary funding regime and it has to ensure that it receives something of value in return. The amount remain a concern for us. In an ideal world we believe that we would start with an accurate estimation of what damage an accident may do and work backwards to calculate what contributions are necessary. Unfortunately, that is not the way that things work, and we recognize that we all work within practical parameters. However, at the end of the day, the world will have an expectation that we conclude a fund that is large enough to be adequate. One wonders in particular what people will say when we conclude a regime in which the global fund for damage is one sixth or one seventh what operators routinely insure their own facilities for and there will be questions which many of us will have to ask. The text that is currently before us is not our preferred text. Our preference would be for an unlimited liability regime. We also preferred the "umbrella" and then the "merged" texts that we have before us. But nevertheless, we, as I think many delegations have, have recognized that we must compromise in order to reach a consensus in order to conclude a convention on supplementary funding, and none of this is to detract from the fact that we believe that we have made real progress in this session, and indeed in the last session at SCNL 13. The statement we had read to us this morning by the Paris/Brussels countries obviously expresses reservations, but also holds out much which is positive. We also have had to compromise on much that we hold dear. There

are still some key questions that remain for us, particularly on the question of environmental damage and also on questions such as the contributions formula and prescription periods. We think that it is essential now that we move with haste. We think that we cannot do otherwise. In April 1996 the tenth anniversary of Chernobyl will occur. All around the world media programmes will be focussing on this event. One imagines that every current affairs programme in the world will run some sort of special on what has happened in the ten years since Chernobyl and what has been achieved or not achieved. At that point we must be able to show clear progress - that we are well on the way to concluding our negotiations with a regime that is going to protect the interests of victims. That is absolutely essential. On two minor points, we would fully endorse the comments of the representative of Egypt on the question of small research reactors and with respect to the issue of whether X bis is to remain in the documentation, we would just point out that using the rationale that has been expressed for its retention, we would also have the "merged" text, and the "umbrella" text, and any other number of proposals still in the documentation. We've made progress. We must reflect that progress by culling out of the documentation what is no longer a document we are working off, and keeping what is in the documentation the one common basis on which we have worked this week. As I said, we have work to be done. We believe that much progress, however, has been made this week, but we must proceed with haste.

1 February 1996

BELGIUM  
(original French)

We certainly do recognize the efforts made during the session in both the main working group as well as the informal working groups having to do with both the main type of financing as well as supplementary financing to the Vienna Convention, but we would like to recall the comment that we made during the 13th session that we are in an initial stage because we don't feel that the efforts achieved a sufficient degree of success for us to change our position. We also do believe that within our documentation one should keep all possible solutions, including those afforded by Article X bis as long as we have not been able to get to a solution which is a possible single solution which would be possibly afforded in an upcoming session.

1 February 1996

CHINA  
(original Chinese)

The Chinese delegation has always been concerned of following with interest the work of the Standing Committee on Liability for Nuclear Damage drafting this convention. We are pleased to note that after several years of tireless efforts in the area of revising Vienna Convention and in the area of drafting the supplementary funding convention considerable progress has been achieved. We appreciate the imagination of the authors for creating the supplementing funding system through which the victims will be compensated more adequately and effectively and at the same time it will provide more countries with opportunities to participate in the system as "Annex States". Given the fact that we are not a State Party of the Vienna Convention, therefore, when discussing the revision of the Vienna Convention, yesterday we did not speak. And now we wish to make some brief observations on the draft supplementary funding convention. First, on the limit of the compensation. In

our view, in general terms, it should not be set at too high a level in order to attract more countries to accede to this supplementary funding convention. We are also of the view that in the context of this supplementary funding convention insofar as the victims are concerned it is the national compensation amount encompassing the operator's liability and other funds, which is most important. So far as the national compensation amount is guaranteed, there should be allowed a flexibility for the operator's liability. The Contracting Party in that connection can, in accordance with their own country's specific condition and stage of national power plants development, follow their own national legislation. With regard to countries which have just taken off in their nuclear power industry, the limit should be rather low in order to avoid heavy burdens on the operators so as to promote the development of the nuclear power industry. We believe for certain countries, the Annex of the supplementary funding convention which stipulates 500 million or 150 million Special Drawing Rights are apparently too high. Secondly, on the calculation of the installed nuclear capacity, we think when we are talking about reactors when calculating on the thermal power, this calculation basis is rational, reasonable. But with regard to the reprocessing of irradiated nuclear fuel, it is irrational to fix an amount of 2000 units irrespective of the capacity of the reprocessing plants. We can image a large scale commercial thermal processing plant and a small scale reprocessing plant obviously cannot be compared in terms of their risks. Other nuclear installations, when 200 units are universally set, may encounter similar problems. Thirdly, insofar as the concept of nuclear damage is concerned, we support the views of many countries, that is, we should not include environmental impairment and restorative measures. The reasons are well known to all. We will not elaborate on them.

1 February 1996

EGYPT  
(original Arabic)

My delegation during several occasions has raised the question of nuclear research reactors taking into account the fact that some States have only research activity in the nuclear field. We are all aware of the importance of such activity to cope with the developments in this vital field. We have made it clear that there is a big difference with respect to eventual risk of the occurrence of nuclear accidents between the research reactors and the nuclear power generating reactors. This fact has been stressed by many experts. That is why we hope that the convention we are discussing right now will pay enough attention to this question and that the commitments of the nuclear power generating countries should not be on equal footing with those States which have research reactors. Such countries which have only research reactors should be equalized with non-nuclear countries. Thus, they may be encouraged, and they are numerous, to join the Convention and, thus, the objective of promoting nuclear industry could be achieved.

1 February 1996

IRELAND

I am associated with the statement that was issued on behalf of non-nuclear countries earlier. However, I have to say that the texts before us are not the preferred texts from Ireland's view in terms of potential compensation amounts. I consider that the figures of 300 SDRs and 350 SDRs by applying each installed capacity of nuclear

power plant are too low and the figure of 5% for UNRA contribution to be paid by non-nuclear States is too high. Our preference is for a very much higher figure for authorised installed capacity and we believe the nuclear industry who bear responsibility for risks involved in nuclear power are in a position to pay much higher figures. However, we have come here this week, and will come in May, to try and agree on figures that might be acceptable to everyone in order that a package including the revision of the Vienna Convention and a supplementary funding scheme would evolve.

On the subject of figures, documentation was distributed earlier this week which gave enormous costs for damages caused by nuclear accidents and it mentioned that the nuclear insurance industry offers cover for material damage far in excess of the limits now being proposed here. Are these figures correct? Is the Agency in a position to contradict them? Would it be possible for the Agency for our next meeting to prepare a paper which would give their estimate of the costs of a typical major accident, information as to what the insurance industry does provide for cover for damage to nuclear operators and the annual revenue from the sales of nuclear generated electricity per year

1 February 1996

NEW ZEALAND

I should like to be associated with the statement made earlier by the delegate of Australia.

- I agree with those who welcomed the progress achieved at this meeting, and we do feel that it is beneficial that the range of options has been narrowed down. I have to say that the package which is emerging is certainly well below our preferred option. Ideally we would have liked to have seen unlimited compensation for nuclear damage, or failing that, high levels which bear relation to actual potential cost of damage in a nuclear accident. We also hold dear the principle that non-nuclear power generating States, which do not contribute to the risk, should not have to contribute to the compensation fund and I am not authorised to suggest that we could accept any specific level of contribution.

We nevertheless think it is important to have concrete texts on which to focus at our next SCNL meeting. We recognise that compromises are important and that much has been achieved at this meeting to identify possible options. We feel that ten years after Chernobyl we are under some time pressure to bring our negotiations to an early conclusion and one which offers at least some tangible compensation for potential damage in a nuclear accident. We therefore believe it is essential to maintain this progress at our next meeting.

1 February 1996

POLAND

We consider this session as a very important one because the work on the protocol revising the Vienna Convention has been finalized. Although we cannot say that we are satisfied with the degree of protection for victims provided by the expected revised Vienna Convention, we also realize that without a compromise we could not

obtain anything. Even a not very satisfactory - from the point of view of our interests - revision of the Vienna Convention is still of considerable importance for us because it may allow us to establish treaty relations with our neighbours in the matter of nuclear liability.

As far as the convention for supplementary funding, we are happy with the progress made and we are interested in the future of this convention which would provide additional compensation for victims of nuclear incidents. It would be however difficult for us not to express our disappointment that because of the low amounts of compensation envisaged both in the revised Vienna Convention and the expected supplementary convention, the problem of compensation for nuclear damage caused by grave nuclear incidents, in particular of compensation for victims of transboundary effects of nuclear incidents will remain, to a large extent, unsolved.

1 February 1996

RUSSIAN FEDERATION  
(original Russian)

The Russian Federation accords great importance to these matters having to do with liability for nuclear facilities and our focus is on the development and the adoption of national legislation on this matter and also the gradual integration of our country into an international liability regime within this general field of nuclear damage. At the end of 1995, the Federal Assembly of the Russian Federation adopted a federal law, federal bill on the use of nuclear energy and this law lays down the legal basis and the principles governing the relations which emerge when there is use of nuclear energy and first and foremost, this focuses on the protection of the lives and health of individuals and environmental protection. We'd like to emphasize that the law regulates a wide sphere of issues within the sphere of the use of nuclear energy, including aspects such as safety and physical protection, accounting of and the control of nuclear materials, nuclear export and import. One of the chapters of the law is devoted to the regulation of liability for nuclear damage in our country. In connection with the adoption of this law, we are focussing, in practical terms, on the joining of the Russian Federation to the Vienna Convention and we are working on the legal and financial aspects bound up with joining this convention. In our country, the Federal Bill has been adopted on the radiation safety of our population, which lays down the legal basis providing for the radiation safety for our population in order to protect the health of our people. Now before the State Duma there is also a draft bill having to do with compensation of nuclear damage and nuclear insurance. Adoption of this draft bill, the basic provisions of which do correspond to international conventions in this field, would allow, we hope, for the Russian Federation to effectively participate in an international regime for liability for nuclear damage. As a temporary solution, up to now a series of bilateral agreements have been concluded on matters relating to liability on nuclear damage. As concerns the Standing Committee on Liability for Nuclear Damage, we would like to express our general satisfaction with the progress achieved with respect to the ongoing review of the Vienna Convention. At the same time, as we see it, a general international liability regime should be established which would allow for the participation of countries with a high level of development of nuclear power, such as the US and Japan, Canada, as well as other countries which are not participant States of the Paris or Vienna Conventions. We considered with interest the proposal tabled by the US, many elements of which have been reflected in the so-called "September" draft on supplementary financing. We give high marks to the work of the Standing

Committee on the universalization of the regime for liability for nuclear damage because this does indeed respond to the interests of a wide group of States and we certainly do hope that this work will be successfully completed.

1 February 1996

SLOVENIA

Our delegation would like to express our satisfaction with the achievements of this meeting and is looking forward to participating in further attempts for elaboration of such solutions in the revised Vienna Convention that will be acceptable both for the Parties to the existing Vienna Convention and for the countries attempting to join this Convention. To this effect, we think that it is of crucial importance that the discussions on the revision of the Vienna Convention allows that the position of the countries concerned by that Convention are reflected. My delegation also considers that the present draft of the convention on supplementary funding provides a sound basis for a future regime of supplementary funding, provided that all the parties participating in this regime will be placed on an equal footing. That is why my delegation considers the discussions on the revision of the Vienna Convention and on the convention on supplementary funding inseparably linked, even if the two discussions might not necessarily take place within the same circles of countries participating in the future diplomatic conference.

1 February 1996

UNITED KINGDOM

In our view there has been some very helpful work done this week in clarifying the proposal that was first put forward in November. For our part, we think it is an improvement on the proposal in Article X bis of the "September" draft. It is also very interesting this week to hear some more views, some different views, particularly from nuclear States who are not Party to any system at the moment. There is one aspect of the statement by the United States that I'd just like to pick up. And that relates to the discussions amongst the Brussels States. I think we really have to emphasize that it is a vital condition of our agreement to the structure of the proposal to have a satisfactory solution to the problems that the Brussels States have identified and may identify in the future.

The co-existence of Brussels with any other supplementary funding convention means that we have to consider double obligations, different funding obligations, and the political acceptability amongst our governments of being a member of two conventions, or indeed whether we should give up the convention that we've been party to for all these years. These are very serious matters for us and we would not wish to over-excite expectations that the work among Brussels States could be completed very quickly, or indeed could be completed before the next Standing Committee meeting.

1 February 1996

UNITED STATES

My delegation views the report of the open-ended consultations we have adopted today as containing the basis for an eventual compromise solution to the problem of supplemental funding. The system described in the report can, as far as we know at this point, accommodate any State that may wish to become a party. It contains elements designed to attract a wide variety of States and is therefore a basis for a potential convention with global application. The system described in the report is far from ideal from our point of view, but at this point in its development, we have not identified any defect that would necessarily prevent our delegation from recommending a convention based upon it favourably to my government.

We listened with care and interest to the statement this morning by the distinguished delegate of Belgium on behalf of the Brussels States. She indicated that there are problems - so far not precisely identified - in allowing the Brussels Convention and a convention based on the system described in the report to co-exist. She indicated that further consultations among Brussels States were needed and would take place in order to assess and define these problems. We hope these consultations will take place soon. We trust that any such problems that may be identified will be communicated to other interested delegations well in advance of the May SCNL meeting so that the experts here at the Standing Committee may expedite progress toward a consensus solution supported by all interested States.

**Report of the Drafting Committee****Preparation of the protocol to amend the Vienna Convention**

The Drafting Committee prepared the text (so far in the English language only) of the draft protocol to amend the Vienna Convention on the basis of the texts adopted by the Standing Committee at the last session. The draft prepared informally by the Secretariat was used by the Committee as a reference material for its work. The Committee requested the Secretariat to make translations of the draft protocol as amended, in all official languages.

It was agreed that effort should be made to complete discussions on the revision of the Vienna Convention without making it dependent on conclusion of work on the supplementary funding convention. However, if a different approach is taken on supplementary funding concerning a common provision, the draft Protocol will have to be reviewed to avoid presenting the diplomatic conference with conflicting provisions on the same subject.

The following changes were made to and decisions adopted regarding specific texts included in the draft protocol.

1. Discussion of the Preamble and Article 1 was postponed until texts in the working languages were available.
2. A proposal to discuss the substance of Article 3.2 (concept of damage) was expressed due to a wish to achieve a speedy completion of the revision of the Vienna Convention. However, the Chairman of the Drafting Committee interpreted that the decision of the plenary at its 13th session was to postpone the issue until after consideration of supplementary funding.

Some delegations interpreted that that decision had been modified by the decision taken by the plenary at its present session to give the utmost consideration to

the revision of the Vienna Convention.

3. On Article 4 (geographical scope), in view of differing views on the proposal by Spain (SCNL/13/2) regarding contiguous zone an open-ended working group was set up co-ordinated by Professor Łopuski of Poland to prepare a generally acceptable formulation. The amendments to paragraphs 3 and 4 of the Article proposed by the group (SCNL/14/5) were adopted with some changes; France confirmed its reservation to the extension of the scope of the Convention to non-Contracting States. Consequential amendment should be made in Article 15.2 of the Protocol.

4. On Article 7 (exonerations) the proposal to exclude grave natural disasters of exceptional character from the coverage of the revised Vienna Convention received no support. It was indicated that the design and safety rules on siting of nuclear installation should take into account the danger of such disasters.

5. In light of the discussion in the Plenary, the figure "500" in Article 8, paragraph 1, was replaced by "300". Similar changes were made in the other provisions containing that figure. A suggestion to replace the denominations in SDRs in Article 8 with US Dollars did not receive support.

6. In Article V.3 a proposal to delete the phrase "wherever the nuclear incident occurs" was not supported. In that paragraph, the words "to the liability of such operator and to the public funds to be made available by that Installation State" were deleted.

7. A proposal to amend the first line of Article 10.1 (Article VII.1) by the insertion after "unlimited" the phrase "or limited to an amount higher than [500] million SDRs", did not receive sufficient support since it was preferred to maintain the principle of congruence between limitation amount and financial guarantee. A joint proposal by Germany, Japan, Republic of Korea and Switzerland (amending Article 10, para. 1)(SCNL/14/12) was adopted with an amendment proposed by Argentina.

8. The delegation of Germany reaffirmed its reservation to Article 11.2 (priorities).

9. A suggestion by Israel that the word "Party" be added after "State" in Article 14 (Article XI A, paragraph a) was withdrawn for lack of support. Another suggestion to restrict the provision to persons to whom the Convention applies was withdrawn for lack of support since it was considered unnecessary to specify that persons who are not covered by the Convention will not derive any benefits thereunder.

10. Article XII of the Vienna Convention was amended (SCNL/14/11) in accordance with the decision in respect of the Annex to the supplementary funding, Article XII; see below.

11. Article 18 was deleted.

### Deliberations on the Draft Supplementary Funding Convention

#### Main Body of the Convention

1. The Drafting Committee discussed the text, except for Articles IV, V, V bis and X bis, of the draft Supplementary Funding Convention in SCNL/13/WP.2.

2. It was agreed to delete Article I(c) and footnote 2 as there is no reference to the Joint Protocol in the body of the draft Convention. It was also agreed that the square bracket should cover sub-paragraphs (g) to (j) as these definitions are considered as a package.

3. In respect of Article I(g) and (j), the Committee considered the Israeli non-paper (SCNL/14/1) concerning the definition of "incident" and "damage". According to the paper, State Parties to the Convention on the Early Notification of a Nuclear Accident have undertaken to notify any accident that has "radiological safety significance for another State". Consequently, any incident that has no "radiological safety significance" should not come under the mandate of the proposed Convention. Moreover, the only damages that should be considered in the present context are those that could be of radiological safety significance.

The idea did not receive support because incidents which have "radiological safety significance" relate to safety and prevention. That concept has no place in a

liability regime. Moreover in the interest of victims, damages from routine operations should be compensated.

On Article III.1 (Alternative I), it was decided to follow the approach proposed by an informal group co-ordinated by Professor Lopuski of Poland with a view to consider the proposal by Spain regarding the contiguous zone and to adopt the amendments contained in SCNL/14/4. However, the last part of the opening phrase in Article III.1(b) was changed to read: "excluding damage suffered in or above maritime zones established by a non-Contracting Party in accordance with international law of the sea."

A proposal to exclude nuclear incidents in non-Contracting States was not accepted in view of a previous decision not to provide for such restriction in the scope of the Convention.

4. In Article VII.2 it was decided to delete the second half of the provision starting with the words "and judgments" since the subject was covered by Article XII. It was further decided to move the remaining part of the provision to Article XII as its paragraph 8. Footnote 9 was deleted.

5. On Article VIII, the Israeli delegation, while maintaining its position on Article VIII as a whole, suggested an amendment to paragraph 1. However, the suggestion did not get sufficient support. It was pointed out that the listing was also relevant for the determination of the coverage of the convention and that similar provisions appeared in the Brussels Convention.

6. The Committee considered the report of the open-ended working group co-ordinated by Mr. Rustand (SCNL/14/6/Rev.1) on Article XI, para. 2. The proposed amendment was adopted on the understanding that it needed to be further considered whether consent will be required if the state concerned is not a party to the Supplementary Convention irrespective of whether that State is party to the Paris Convention or the Vienna Convention or is an Annex State. It was decided to defer further consideration of the text until the next session.

7. It was agreed to delete Article XII.4 (single court) since the requirement was not essential to the functioning of the supplementary funding and might contradict judicial systems of some States.

8. On Article XII.5,6, and 7, a suggestion to insert in Article XII.7 the word "specific" before the word "claim" was not accepted. As there was a difference of opinion regarding the meaning of the term "final judgment", the Secretariat was requested to prepare a revised text based on the terminology used in other international treaties. The text prepared by the Secretariat in SCNL/14/7 was accepted with drafting changes.

9. Article XIII(a) and (b) was examined by the informal group co-ordinated by Mr. Rustand of Sweden in conjunction with Article XI.2. Following this examination, it was decided to keep the provision unchanged and to remove the square brackets.

10. On Article XIV, it was agreed to remove square brackets around the article.

11. Article Y was renumbered to become Article XIV bis.

12. In Article XV, the title of the article was deleted.

13. On Chapter VII "Final Clauses" and footnote 14, the Secretariat was requested to suggest formulations to reflect in the final clauses the position of States whose national legislation was consistent with the provisions of the Annex to this convention.

14. With regard to the requirement of ratification of the Convention on Nuclear Safety, drafting proposals were suggested by Ireland (SCNL/14/2) and the Secretariat (SCNL/14/8). It was proposed to merge these proposals as follows: "shall be accepted only from a State referred to in Article XVI, provided that in the case such State has on its territory a nuclear installation as defined in the Convention on Nuclear Safety of 17 June 1994, it is a Contracting State to that Convention." It was decided to reconsider this provision in connection with the remaining issues in Chapter VII.

15. The Spanish proposal in SCNL/14/3, concerning Articles XVI, XVII, XVII bis and XVIII, was adopted.

16. On paragraph (a) of Article XIX, it was pointed out that the text is not accurate as the Convention may continue to be in force for Annex States when the Paris Convention and Vienna Convention cease to be in force. It was therefore decided to delete that paragraph.

17. It was agreed that it was premature to consider the blank spaces in Articles XVIII, XIX as well as the substance of Articles XVIII to XXV.

18. On Article XXI, the Committee considered a new text of the article set out in SCNL/14/10. Due to lack of time, it was decided to include SCNL/14/10 in the Committee's documentation and to attach a footnote in that regard to Article XXI.

#### **Annex to the Draft Supplementary Funding Convention**

1. In the introduction to the Annex it was decided to replace the reference to Article II.1 (a - c) with "Article I(a) or (b)".

2. The concept of nuclear damage and incident was not discussed. In Article 1.2 it was agreed to remove the square brackets.

3. On Article 3.3 bis, a query was raised whether in the light of previous discussions it was necessary to retain the reference to damage caused jointly by a nuclear incident and by an emission of ionizing radiation although similar provisions exist in the Vienna Convention and the Paris Convention. The representative of the British/European Insurance Committee explained that the reason for this clause was that certain types of ionizing radiation were deemed to be insignificant in effect and therefore are excluded from the strict liability regime of the international conventions. In the main these consist of natural uranium and radioisotopes in their finished and final form. The Conventions do not apply to these two sources of radioactive materials

which produce ionizing radiation. Hence this type of clause is required where an incident which occurs in a nuclear installation involves both these substances. Consequently it was decided to remove the square brackets around Article 3.3 bis.

4. On Article 3.6(c), the Committee decided to insert the figure 150 million SDRs in the blank square brackets so as to be consistent with Article 7 of the draft Protocol for the revision of the Vienna Convention.

5. It was agreed to insert a new sub-paragraph 6 bis in Article 3, the text of which should be similar to Article IV.7(b) of the Vienna Convention.

6. On Article 3 bis. 2, it was decided to remove the square brackets and to insert at the end of the text "and provided that the Installation State ensures that public funds are available to compensate for damage exceeding that reduced amount up to [300] million Special Drawing Rights" as is found in Article 8.2 of the draft protocol. Footnote 19 was deleted.

7. A proposal to delete paragraph 3 of Article 3 bis did not receive support. But it was agreed to remove the square brackets from the paragraph and to replace the words "paragraph 6 of Article IV of the Vienna Convention or paragraph 2 of Article XIII or the Vienna Convention" by "paragraph 6(c) of Article 3". In lines 4 - 5 the words "to the liability of such operator and to the public funds made available by that installation state" and footnote 20 were deleted.

8. On Article 3 ter, it was agreed to delete all the square brackets and footnote 21. The proposal in SCNL/14/12 for a rewording of paragraph 1 bis was adopted.

9. On Article 4, it was agreed to delete footnote 22.

10. On Article 4 bis, SCNL/14/9 was adopted. Footnote 23 was deleted.

11. On Article 5, as the Committee considered the text of one Article 5 adequate for the Annex, footnote 24 was deleted. On the question of the relationship of paragraph 2 to paragraph 1 in respect of time limitation, it was agreed to insert the words

"subject to legislation pursuant to paragraph 1" after the word "case" in paragraph 2. The last line of paragraph 3 was amended to read "paragraphs 1 and 2 shall not be exceeded".

12. Article 7 was amended according to SCNL/14/11.

STANDING COMMITTEE ON LIABILITY  
FOR NUCLEAR DAMAGE

SCNL/15/INF.5  
3 June 1996

Fifteenth Session  
6-10 May 1996

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

1. The Standing Committee held its fifteenth session at the Agency's Headquarters in Vienna from 6-10 May 1996, under the Chairmanship of H.E. Mr. Curt Lidgard of Sweden. H.E. Mr. Taher Shash of Egypt served as Vice-Chairman. Vice-Chairman Professor Jan Łopuski of Poland could not attend the session. One position of Vice-Chairman remained vacant. Mr. Gustavo Zlauvinen of Argentina served as Rapporteur.
2. The representatives of the following 59 Member States participated: Albania, Algeria, Argentina, Australia, Austria, Belarus, Belgium, Brazil, Bulgaria, Canada, Chile, China, Colombia, Croatia, Cuba, Czech Republic, Denmark, Egypt, Finland, France, Germany, Greece, Holy See, Hungary, India, Indonesia, Iraq, Ireland, Israel, Italy, Japan, Republic of Korea, Lithuania, Luxembourg, Malaysia, Mexico, Morocco, Netherlands, New Zealand, Nigeria, Norway, Pakistan, Peru, Philippines, Poland, Romania, Russian Federation, Saudi Arabia, Slovak Republic, Slovenia, Spain, Sweden, Thailand, Tunisia, Turkey, Ukraine, United Kingdom, United States and Uruguay. Two States, namely Bolivia and Ecuador, participated as observers.
3. Three intergovernmental organizations, namely the European Union represented by the Commission, the OECD/Nuclear Energy Agency and the World Health Organization, and two non-governmental organizations, namely British/European Insurance Committee and UNIPEDE were represented by observers, it being recognized that attendance of NGOs was on the basis of the understanding reached at previous sessions of the Committee.
4. 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 liability regime
5. Future programme of work
6. Adoption of the report

5. At the opening of the session, the Chairman of the Standing Committee brought to the attention of the Committee that the nuclear safety summit held in Moscow on 19-20 April 1996 had attached great importance to the development of the international liability regime and encouraged further progress of this Committee's work. During the summit, the Russian Federation announced that it would shortly sign the Vienna Convention. The Chairman expressed hope that this new act of support for the international liability regime by one of the major nuclear States would be followed by other adherences, in particular from among States of that region.

He also informed the Committee that a diplomatic conference held under the auspices of the IMO regarding a convention on liability and compensation for damage in connection with the carriage of hazardous and noxious substances by sea (the HNS Convention) had decided to exclude the transport of nuclear materials from the application of that convention. The conference had adopted a resolution recommending that Member States of the IAEA and IMO should work together in considering issues of liability occurring during the transport of nuclear materials not covered by the nuclear liability conventions or by the HNS Convention.

6. The Resident Representative of the Russian Federation, Ambassador O. Sokolov stated that his country had decided to sign the Vienna Convention as one of the fundamental international legal instruments in the field of liability and compensation of damage arising from incidents at civilian nuclear installations. Many of its norms were adopted in Russia's national legislation governing the utilization of atomic energy. Participation in the international regime of civil liability for nuclear damage would enable Russia to develop full scale international co-operation in the nuclear field. The decision by the Russian Federation to sign the Vienna Convention<sup>1</sup> became an important contribution to the substantial results of the Moscow summit on matters of nuclear safety.

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<sup>1</sup> On 8 May 1996, the Russian Federation signed, subject to ratification, the Vienna Convention.

7. The Resident Representative of Romania, Ambassador D. Mazilu, stated his country's position on issues discussed in the Standing Committee. He said that his country was in favour of fixing an appropriate level of compensation for nuclear damage that would encourage safe operation of nuclear facilities and in case of an accident would enable the Installation State to repair all the damage.

8. The delegate of the Philippines pointed out that his country was the only State Party to the Vienna Convention from the Asian region and it was ready to co-operate in the Committee's work.

9. The Director of the Legal Division, Mr. W.W. Sturms, informed the Committee on the results of the open-ended informal consultations held on 2-3 May pursuant to the decision of the previous session. 29 experts from 21 States and an observer from the NEA/OECD participated. A paper with the result of the meeting was available for the Committee.

The consultations had focused on the preparation of convention texts on the basis of the elements for the structure of supplementary funding set out in Annex I to the last session's report. The participants had considered and modified the draft texts for Elements 2 and 3 prepared by the Secretariat at the request of the Committee and agreed on some further draft texts for other elements.

The amended draft text for Article IV.1(a) does not indicate specific arrangements through which the national compensation amount should be made available, leaving the choice to the Installation State. Thus, regional arrangements may be used for this purpose. In the text for Article XVIII.1, the potential amount of the funding for the potential entry into force of the Convention was put into brackets since this amount was dependent on the level of contributions. According to one view, the size of the supplementary fund was essential for the entry into force as a balance to the national compensation amount; in the other view, the specific size of the fund was not necessary given the system of fixed contributions.

Footnote 2 contains a preliminary text for a two-step entry into force of the convention and the supplementary funding system. This was intended to avoid the

delay of the entry into force of the liability provisions of the convention until the necessary potential size of the funding is reached. It was argued, however, that such approach did not take into account that the system of supplementary funding was the core of the convention.

The draft text for a new sub-paragraph (c) in Article X bis.1 provided for a phasing-in system (Element 5) enabling a State to become a Party to the convention with a lower national compensation amount than the one required by Article IV. In this case, the part of the supplementary fund designated for both domestic and transboundary damage would be reduced and the part designated exclusively for transboundary damage would be increased proportionately. Should interest in such provisions be expressed in the Committee, then conditions for the application of the phasing-in system should be discussed, e.g. having a minimum amount and a transitional time period before the national compensation amount required by Article IV.1 should be reached.

With respect to the first part of Element 4, the text of Article IV.1 had been amended to specify that a State having national compensation amount higher than the one required by Article IV.1 could notify and amend at any time before an accident the level of a higher amount at which the supplementary funding should start its operation.

The draft text for insertion in Article XI.3 reflecting the second part of Element 4 provides that if a State wishes to extend compensation from its national compensation amount above the level of supplementary funding, such compensation will be outside the convention but that States Parties having no nuclear installations on their territories shall not be excluded from such further compensation on any grounds of lack of reciprocity. Adoption by the diplomatic conference of an understanding based on the same principle was suggested as another possibility.

As regards Element 6 on regional arrangements, the States Parties to the Brussels Convention indicated that they were still in the process of negotiation on this issue. For the time being, it was recognized that the draft text should be flexible to

allow coexistence of regional arrangements and the supplementary funding convention.

The draft texts were recommended for consideration by the Standing Committee without excluding the possibility of their further improvement when the informal consultations resume. Agreement by participants of the consultations to these texts was without prejudice to the eventual position of their delegations.

10. The delegate of Germany, in presenting his delegation's proposal (SCNL/15/2) said that its submission was motivated by an urgent need to reach a compromise between the basic approaches to the system of supplementary funding in the context of the "September" draft. The German delegation, while maintaining its objections in principle to the dedicated transboundary fund, recognized that for practical reasons such a fund might be justified because of the possible lateness of the presentation of claims for transboundary damage. The German proposal provided, however, an option for Contracting Parties having objections in principle to the dedicated transboundary fund. It is based on the assumption that the higher the national compensation amount, the lesser the risk that transboundary damage remains uncompensated and consequently, with a reasonably high level of the national compensation amount the dedicated transboundary fund would be superfluous. The supplementary fund could then be used as a Brussels convention type fund without discrimination among victims in and outside the Installation State.

11. It was agreed to consider the proposal by Germany (SCNL/15/2) at the informal consultations in the context of the Elements for the structure of supplementary funding.

12. The Standing Committee took up the issue of amounts of compensation for the revised Vienna Convention. It was decided to remove square brackets around the figures of 300 million SDRs and 150 million SDRs in Article V.1 (Article 8.1 of the draft Protocol).

A proposal by the delegation of Bulgaria (the statement to this effect appears in Annex II) that a phasing-in provision should be included in Article 8 of the draft

Protocol to amend the Vienna Convention was supported by a number of countries on the basis that the numbers presently proposed were too high for the time being. It was argued that such a phasing-in provision would accelerate the entry into force of the revised Vienna Convention.

13. The Committee held a preliminary discussion of the formula for calculation of contributions in Article V.3 of the draft supplementary funding convention.

The delegation of Germany, in presenting its paper SCNL/15/1, pointed out that the formula for contributions contained a number of uncertainties. In particular, it did not indicate whether shut down reactors should be counted or excluded from the contributions and in either case on what grounds. Another fundamental issue that needed consideration was how to treat reprocessing plants and other nuclear fuel cycle facilities grouped under sub-paragraphs (b) and (c) of Article V.3. Should they be taken into account, the sample calculations prepared by the Secretariat at the request of the Committee would need to be adjusted accordingly.

The Chairman informed the Committee that the issue of contributions had been taken up in the open-ended informal consultation group. Although final conclusions had not been made yet, a preferred approach was that the calculations should, in a balanced way, meet the criteria of fairness and simplicity. Accordingly, there was a strong tendency towards deleting sub-paragraph (c) regarding other installations. Discussions were centered on how to treat shut down reactors and reprocessing plants.

The Acting Director of the Division of Radiation and Waste Safety, Mr. A. Gonzalez, who provided technical advice to the Committee, said that if it were decided to include shut down reactors, reprocessing plants and other nuclear fuel cycle facilities in the calculations, access to a large amount of additional information would be needed which would require co-operation from national authorities as such information was not easily available. The present formula of Article V.3 was a subjective approximation intended to satisfy, in practical terms, the requirements of fairness and simplicity. To achieve completeness and precision, it should have to be based on radioactive inventory for each individual installation as the groups in sub-

paragraphs (b) and (c) of Article V.3 embrace a variety of installations differing in size and characteristics.

In the discussion, a prevailing feeling was in favour of excluding reactors shut down permanently from the contributions. Some delegations suggested that reprocessing plants be included on the grounds that they pose significant risk. A view was also expressed that all installations that fell within the definition of the nuclear installation in the Vienna Convention and the Annex to the supplementary funding convention should be included. The prevailing feeling was, however, that the formula for contributions should be as simple for implementation as possible. It should not necessarily include all types of installations as it was not intended for the purpose of defining liability coverage, and since operating nuclear reactors accounted for about 90 percent of the amount of contributions.

It was decided to continue consideration of the formula for contributions in the informal group co-ordinated by the Chairman.

14. The Committee, in considering the report of the open-ended informal consultations, 2-3 May 1996 on the structure of supplementary funding, agreed to delete in paragraph 2, the square brackets around the figure "300" and to reflect the proposal by Germany in SCNL/15/2 as a new paragraph applicable to both alternatives in Article X bis. A number of delegations expressed support for a provision on the phasing-in concept. The prevailing opinion was that paragraph 6 of the report concerning reciprocity should be added to Article XI.3 rather than adopted as an "understanding" to be included in the Final Act of the diplomatic conference.

The Committee decided to refer the report of the open-ended consultations, as amended, for consideration in the Drafting Committee.

15. The Committee discussed the oral report of the Chairman on the informal consultations regarding calculation of contributions under Article V.3 of the "September" draft as well as the Israeli proposal contained in SCNL/15/3 on Article V.3. There was general support for sub-paragraph (a). Views differed on the

suggestion to delete sub-paragraph (b); it was agreed to continue discussion of its text with a view to finding a more flexible formula.

The delegation of Australia proposed that contributions should not be collected from a Contracting Party if the calculated amount for its contribution is below a minimum level and it has no nuclear facilities of the type appearing in Article V.3. The proposal will form part of the documentation (SCNL/15/10).

16. The Committee discussed the figure in Article V.1(a) and agreed to continue consideration of this issue in the open-ended informal consultations. On sub-paragraph (a)(ii), a number of non-nuclear States reserved their position until agreement was reached on the inclusion of a definition of nuclear damage which covers environmental damage.

17. The Committee held a brief exchange of views on amounts and transitional time period for a phasing-in provision for the draft supplementary funding convention (Article IV.1.ter, SCNL/15/7). It was suggested that the highest possible figures representing insurable amounts be adopted and the figures of 150 to 200 million SDRs were mentioned. One delegation was of the opinion that 40 million SDRs was more realistic. With regard to the duration of the phase-in period or periods, various possibilities were mentioned. It was decided to put Article V bis in square brackets as it might no longer be relevant.

18. In the discussion on Article VIII "List of Nuclear Installations", many delegations pointed out that the list should serve the limited purpose of indicating the installations which are relevant for the purpose of calculating contributions. Some delegations argued that a comprehensive list was still desirable for transparency. It was also contended that the purpose of Article VIII would be determined by a decision on Article V.3(c). Accordingly, the Committee considered whether the provision should be maintained. Since the prevailing view was in favour of the deletion of Article V.3(c), it was so decided. Regarding the purpose of the list in Article VIII, the prevailing view of the Committee was that the list should only serve for the limited purpose above. Therefore, the Committee agreed that Article VIII.1 should be

amended accordingly. Egypt and Belgium made a reservation on the deletion of Article V.3(c) and the amendment of Article VIII.1.

19. The Committee approved the conclusions of the Drafting Committee in respect of: (a) the deletion of Article XI.2 of the September Draft; (b) amendment of the text on Geographical Scope in Article III; and (c) the proposal by Germany contained in document SCNL/15/2 as amended by the subsequent document dated 7 May 1996. The delegation of Turkey made a reservation (the statement to this effect appears in Annex II) with regard to the adoption of the German proposal. The Secretariat was requested to prepare with the assistance of delegations, a list of liability amounts of all States for the next session.

20. The Committee held a general discussion on the concept of environmental damage. It was pointed out that as environmental damage is dealt with in various ways under different legal systems, it is important for interested delegations to consult in order to determine what specific aspects of environmental damage should be protected. The delegation of the United Kingdom pointed out that there was a considerable overlap between damage to the environment and damage to property. The OECD/NEA was requested to make available relevant information on its deliberations on this subject.

21. The delegation of Luxembourg indicated the need for early agreement on the definitions of both preventive measures and the restoration of the environment. He submitted a proposal which will form part of the documentation (SCNL/15/12).

22. The Committee held a preliminary informal discussion on the amounts and percentages to be inserted in Article V.1(a). A number of States indicated that a range of 300 to 350 SDR and 10%-15% was realistic. Some other States indicated a preference for a range of 250 to 300 SDRs and 5%-20% in order to produce a fund of around 300 million SDRs. Still others indicated that 100 SDRs was more realistic in light of the state of their economy. Several non-nuclear States were of the opinion that the discussion of this subject was premature. They indicated that the percentage figures could only be considered as reference figures if the important questions of environmental damage and preventive measures had been satisfactorily resolved. It

was agreed to insert in square brackets as indicative figures, the number of 300 in Article V.1(a)(i) and 10% in Article V.1(a)(ii).

23. On the future work programme, it was agreed that in the light of the considerable progress made at the present session with regard to the revision of the Vienna Convention and supplementary funding, the Committee should make all efforts to finalize its work during the sixteenth session, with a view to convening a Diplomatic Conference to revise the Vienna Convention and to adopt a Convention on Supplementary funding. For this purpose, it was agreed to hold the sixteenth session from 14-18 October 1996, preceded by open-ended informal consultations on 10-11 October. The Secretariat was asked to prepare, in consultation with experts, tentatively in the first week of July, a consolidated text of each instrument with annotations that could be reviewed in capitals prior to the sixteenth session to facilitate production of final texts by that session.

## Report of the Drafting Committee

### Preparation of the Protocol to amend the Vienna Convention

1. The Drafting Committee adopted the texts of the Preamble and Article 1 set out in footnote 1 of the draft Protocol.
2. In accordance with the decision of the Plenary on the amounts of compensation under the revised Vienna Convention, the Drafting Committee removed the square brackets around the amounts in Articles 5.1, 7.3, 8.1, 10.1 and 15.2. It was also agreed to remove the square brackets around the amount 5 million SDRs in Article 8.1.

In Article 8 (Article V D, paragraph 4) square brackets around "one third" were removed.

3. The Committee adopted the drafting amendments to Article 19 prepared by the Secretariat in order to bring the text of the article in line with a similar article adopted for the draft supplementary funding convention.
4. With regard to Article 20, the Committee maintained for further consideration the square brackets around the number of five ratifications required to bring the Protocol into force. During a brief discussion, a view was expressed that this number was too small for an instrument on liability. On the other hand, it was argued that this figure should not be too high to avoid unnecessary delay of the entry into force of the Protocol for those States which had ratified it. It was pointed out that this would not impair the legal situation of States not party to the Protocol.
5. The delegation of the Russian Federation stated that it had difficulties with some provisions of the draft Protocol. In particular, it considered undesirable to extend the application of the revised Vienna Convention to non-Contracting States, to installations used for non-peaceful purposes, and to loss of profit, as this notion did not have a clear definition; with respect to the latter, the delegation preferred the

provision in Article I.1(k)(ii) of the Vienna Convention which referred this issue to national law. In the opinion of the delegation, the definition of "nuclear incident" should be made more precise by specifying that a grave and imminent threat of causing nuclear damage caused costs of preventive measures and further loss or damage caused by them. The delegation presented its observations in document SCNL/15/4.

### Deliberations on the Draft Supplementary Funding Convention

#### A. Informal Consultations Report

6. It was agreed to delete Alternative 2 of Article III.

7. For the purpose of clarity, it was agreed to amend the draft text for Article IV.1 as follows: in sub-paragraph (a) the words "any greater amount that it may specify" were replaced by "a greater amount that it may have specified"; in sub-paragraph (b), the word "provided" was replaced with "made available".

8. In order to indicate that an exception exists for phasing-in, the first two lines of Article IV.1(a) were amended as follows: "[Subject to Article X bis.1(c)] the Installation State shall ensure the availability of 300 ..." Square brackets indicate that a final decision has yet to be taken on the nature and location of the text reflecting the phasing-in concept.

9. On Article X bis.1, it was agreed that since the choice between the alternatives regarding the structure of supplementary funding concerned positions of principle, it should be left to the decision by the Plenary.

In sub-paragraph (b) of Alternatives 1 and 2, the text was amended by inserting after the words "nuclear damage" the phrase: "[suffered outside the territory of the Installation State as defined in Article III.1]".

10. It was agreed to insert as paragraph 2 of Article X bis the proposal by Germany (SCNL/15/2) amended as follows: "If a Contracting Party, in accordance with Article IV.1(a), has ensured the availability without discrimination of an amount not less than

[600] million SDRs, which has been specified to the Depository prior to the nuclear incident, all funds referred to in Article IV.1(a) and (b) shall, notwithstanding paragraph 1 of this article, be made available to compensate nuclear damage suffered in and outside the Installation State".

11. The Committee approved the insertion into Article XI.<sup>3</sup><sup>2</sup> of the text recommended in paragraph 6 of the open-ended informal consultations report. The Committee also approved the proposals in paragraphs 3 and 5 of the report.

12. The Committee considered the proposal by the United Kingdom to amend Articles I, IV and X bis (SCNL/15/5). Some delegations expressed a preference for Article IV in its present form. It was agreed to postpone consideration of the text in order to give delegations more time to consider it.

**B. Main Body of the Draft Supplementary Funding Convention**

13. The Committee adopted the draft preamble contained in SCNL/15/6/Rev. 1 with amendments, as follows:

"RECOGNIZING the importance of the measures provided in the Vienna Convention on Civil Liability for Nuclear Damage and the Paris Convention on Third Party Liability in the Field of Nuclear Energy as well as in national legislation on compensation for nuclear damage consistent with the principles of these Conventions;

DESIROUS of establishing a worldwide system to supplement and enhance these measures with a view to increasing the amount of compensation for nuclear damage;

RECOGNIZING further that such a worldwide liability system would encourage regional and global co-operation to promote a higher level of nuclear safety [in accordance with the principles of international partnership and solidarity];

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<sup>2</sup> As a result of other amendments in Article XI, this addition now appears in paragraph 2 of the article.

HAVE AGREED as follows:"

14. The Committee discussed the proposal by the informal group on geographical scope (Article III) co-ordinated by Mr. Gioia of Italy (SCNL/15/11). The proposal extends coverage under the Convention to damage suffered on board a ship or aircraft registered in a Contracting State, or by a national of a Contracting State in the Exclusive Economic Zone of a non-Contracting State. It adopted the recommendations, but without the suggested change to Article III.1(a) and by replacing the words "maritime territory" with "territorial sea" in the proposals in respect of Article III.1(b).

15. The Committee accepted the proposal to move Article III to after the present Article V bis in order to make clear that the geographical scope should only apply to the distribution of compensation provided by the international fund. In addition, the introduction to Article III.1 was amended as follows: The words "This Convention" should be replaced by the following text: "The funds provided for under Article IV.1(b) shall apply to nuclear damage".

16. With respect to Article IV.1 bis (a) and (b) it was agreed to remove in sub-paragraph (a) the existing square brackets and to reinsert them around the phrase "subject to the obligations of that State under other Conventions on nuclear liability". The square brackets around sub-paragraph (b) were removed and its text was amended to read "Compensation for nuclear damage in accordance with paragraph 1(b) above, shall, subject to Articles III and X bis.1(b), be distributed equitably without discrimination on the basis of nationality, domicile or residence".

17. The Committee considered the German proposal in SCNL/15/9 on reprocessing plants. The text on Article V.2 was provisionally accepted in square brackets as Article V.2(b). On Article V.3(b), the square brackets were retained without a figure, pending consultations by delegations with their technical experts. Some delegations expressed the view that there was no reason to have a figure different from that in sub-paragraph (a) of that article. On Article V.4 the words "nuclear installations" were put in square brackets as that text was based on the premise that Article V.3(c) would be retained.

*The text of a new Article V.5 was adopted with amendments, as follows:*

"5. For the purpose of calculating the contributions with respect to Article V.3,

(a) a nuclear reactor shall be taken into account from that date when nuclear fuel elements have been first loaded into the nuclear reactor. A nuclear reactor shall be excluded from the calculation when all fuel elements have been removed permanently from the reactor core and have been stored safely in accordance with approved procedures, [and a decommissioning programme has been agreed to by the authorities of the Installation State];

[(b) an installation for the reprocessing of irradiated nuclear fuel shall be taken into account from that date when irradiated nuclear fuel has been first introduced into the installation. An installation for the reprocessing of irradiated nuclear fuel shall be excluded from the calculation when all [nuclear material] [irradiated nuclear fuel] has been removed permanently from the installation and has been stored safely according to the approved procedures, [and a decommissioning programme has been agreed to by the authorities of the Installation State].]"

The additional text for Article VIII.1 was adopted in square brackets.

18. Due to the decision in the Plenary regarding Article V.1(c) and Article VIII, paragraph 2 of Article VIII was deleted and paragraph 1. of that article was amended.

19. It was also agreed to remove square brackets around the figure "1" in subparagraph (a) of Article V.3.

20. There was general support for the draft text (SCNL/15/7) for a phasing-in provision (Article IV.1 ter) prepared by an informal group co-ordinated by Mr. R. Meyer of the United States. It was agreed to include the draft text in the documentation of the Committee with some amendments, as follows: the phrase "with respect to a given Contracting Party" was inserted at the end of the opening

phrase; in sub-paragraph (a), the words "[a date]" were replaced by the phrase "[the date of the entry into force of the Convention for that Contracting Party but not later than [Z] years from the date of the adoption of the Convention.]" It was agreed that a solution should be found to the effect that a Contracting Party making use of the phasing-in system should notify to the Depository the amount mentioned in sub-paragraphs (a) and (b).

While a number of delegations preferred a single stage phasing-in system, a two-stage system was maintained for the time being as it may facilitate broader adherence to the Convention. It was pointed out that if the phasing-in provision was adopted, consequential amendments should be made in Articles XVIII "Entry into Force"; XIX "Cessation", and XXIV "Amendment by Simplified Procedure". It was felt desirable that in the Plenary delegations should indicate, at least on a preliminary basis, what amounts and the length of the transitional period (the values of "X", "Y" and "Z") would be acceptable for the practical implementation of the phasing-in provision.

21. The Drafting Committee considered the report of the informal group coordinated by Mr. Rustand of Sweden on Article XI.1 Following a discussion in the Committee, it was agreed that the amount of 300 million SDRs provided under Article IV.1(a) was not reserved for victims in Contracting Parties to the supplementary funding convention, but would be distributed according to the national law of the Installation State. Furthermore, the prevailing opinion in the Committee was in favour of deletion of Article XI.2, inter alia because it was felt that it might discourage Contracting Parties from extending coverage to non-Contracting States.

22. Article XVII.1 was edited by the insertion of commas after the words "Article XVI", "provided that" and "June 1994".

23. In Article XVII bis.1, in line 2 a comma was inserted after the words "Article XVI", and the words "and" "the conditions under" were deleted.

24. In respect of Article XXI, the Committee adopted a proposal contained in SCNL/14/10 with its paragraph 1 amended as follows:

"unless its national law is consistent with the provisions of this Convention and it has so notified the Depositary and has provided the Depositary with a copy of such legislation in one of the official languages of the United Nations. Such copy shall be circulated by the Depositary to all other Contracting Parties."

C. Annex

25. In Article 3.6(c) the square brackets around the figure "150" were deleted.

26. In Article 3 bis.1, the figure "500" was changed to "300" and the square brackets were deleted around all the figures.

27. In Article 3 bis.2, the words "of operator liability" were added in line 4 after the words "lower amount" and the square brackets around the figures were deleted. It was agreed that the same change should be made in Article 8.1 of the draft Protocol to amend the Vienna Convention.

28. In Article 3 ter.1 bis, the square brackets around the figure "300" were deleted.

29. In Article 4 bis.1, the figure "500" was changed to "300" and the square brackets were deleted.

1996-06-03

10 May 1996

BULGARIA

Our delegation participates regularly in the sessions of the Standing Committee on Liability for Nuclear Damage and follows with interest the discussions on the revision of the Vienna Convention.

We have understanding for the interest for greater guarantees for compensation of nuclear damage. We share the view that notwithstanding the reliability of equipment and operation of nuclear facilities a financial compensation will be needed in case of a nuclear incident.

We consider that the amounts under discussion in the Protocol to amend the Vienna Convention are too high for Bulgaria for the time being.

Our endeavor is to apply a national strategy leading gradually to the possibility to fulfill in good faith all obligations under the provisions of the revised Vienna Convention.

That is why we express our support for a longer period for "phasing in" in order to reach the amounts envisaged.

Our final decision on the issue of signing and acceding to the revised Vienna Convention on Nuclear Liability will to a great extent depend on the level of the starting amount for nuclear liability in the "phasing in" process as well as on the period during which it should be reached.

**TURKEY**

**Thank you, Mr. Chairman.**

**We should like to say a few words about the proposal of the German delegation presented in document SCNL/15/2, which - in our view - reflects a willingness to compromise. We thank the German delegation for having made the proposal.**

**It is stated in that document that a differentiation of the victims of a given nuclear accident according to whether they are internal or transboundary victims is arbitrary and unfair. We are not of that opinion. On the contrary, we believe that such differentiation is perfectly justified, for the following reasons.**

**Firstly, it is hard to imagine that a State would fail to assist its own nationals when they have suffered as a result of nuclear damage occurring within its territory for which complete compensation has not been provided from the resources of the civil liability regime. That is a fact, even if there is no clear legal rule obliging the State to do so. The extent of such assistance would depend on several factors, such as the economic situation of the country, its social policies, etc., and the assistance might take various forms - medical assistance, subsidies, reduced taxation, cheap loans. The same cannot be said in the case of transboundary victims; these cannot rightfully expect a foreign State to come to their aid.**

Secondly, it must be accepted that, even if the compensation regime established by the basic conventions functions as effectively as it should, transboundary victims will have more difficulty than internal ones in obtaining compensation. Claiming compensation within the legal system of a foreign country is not a simple matter. As indicated in the document submitted by the German delegation, because of the foreign element such claims might be presented late or not at all or only with difficulty.

Thirdly, transboundary victims are not those who share the benefits deriving from the development of the nuclear industry; they are merely those who bear the consequences of the nuclear accident occurring in another country.

Consequently, we believe that making a distinction between transboundary victims and national victims is justified, the wish that some financial resources be earmarked for transboundary damage deriving not only from the fact that transboundary victims may - owing to exhaustion of the funds - not receive compensation, as stated in the German delegation's document, and that the proposed solution may eliminate the drawbacks due to the essentially different situations of the victims.

Moreover, we believe that, in accordance with well established rules of international law, States have a responsibility to ensure that the nuclear activities being conducted under their jurisdiction or control do not cause transboundary damage and that States which engage in or authorize activities capable of causing damage within the territories of other States have an obligation to do everything in their power to prevent the occurrence of such damage and limit its effects.

Given the rule which we have just cited and the disadvantages faced by transboundary victims as compared with national victims, the more favourable treatment of transboundary victims would be no more than an act of fairness. Unless financial resources appropriate to the potential scale of the nuclear damage were available, the non-discrimination rule would have unfair consequences for transboundary victims. That is why we prefer our draft version of the article without the addition proposed by the German delegation. However, if a consensus in favour of inclusion of the paragraph in question emerges within the Committee, we would - in a spirit of compromise - not raise any objections.

Thank you, Mr. Chairman.

