International Atomic Energy Agency

GENERAL CONFERENCE

GC(XXXIV)/931
17 September 1990

GENERAL Distr.
Original: ENGLISH

Thirty-fourth regular session
Sub-item 10(b) of the provisional agenda
(GC(XXXIV)/914)

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

(b) Liability for nuclear damage

Report by the Board of Governors

1. In resolution GC(XXXIII)/RES/508, adopted at its last regular session, the General Conference took note of the report by the Board of Governors on liability for nuclear damage pursuant to its resolution GC(XXXII)/RES/491 and requested the Board to present a further report on this matter to its thirty-fourth session.

2. In February 1990, the Board, having considered the report on the second session of the Working Group established in response to resolution GC(XXXII)/RES/491, decided to dissolve the Working Group and to assign its mandate to a Standing Committee on Liability for Nuclear Damage.*/ In particular, the Standing Committee has been requested to:

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

---

*/ The new Standing Committee replaced the Standing Committee on Civil Liability for Nuclear Damage established by the Board of Governors in 1963 to deal with issues relating to the Vienna Convention on Civil Liability for Nuclear Damage.

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

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

The Standing Committee is open to all Member States of the Agency, and other States and interested organizations may be invited by the Standing Committee to be represented by observers at its meetings. It will meet as appropriate and report to the Board periodically on the progress of its work.

3. On 12 September 1990, the Board had before it the report of the Standing Committee on its first session, held from 23 to 27 April 1990, and decided to transmit that report (see the Appendix to this document) to the General Conference together with the summary record of the Board's discussion*/.

---

*/ The summary record will be transmitted to the Conference in an addendum to the present document.

Standing Committee on Liability
for Nuclear Damage

First Session
Vienna, 23-27 April 1990

2 May 1990

Report of the Standing Committee on Liability for Nuclear Damage

1. The Board of Governors established on 21 February 1990 an open-ended Standing Committee on Liability for Nuclear Damage. */

2. The Standing Committe was assigned the following mandate:

The Standing Committee shall:

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

(ii) keep under review problems relating to the Vienna Convention on Civil Liability, and advise States Party to that Convention on any such problems; and

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

B. be open to all Member States of the Agency and that other States and interested organizations may be invited by the Standing Committee to be represented by observers at meetings of the Committee; and

C. meet as appropriate and report to the Board periodically on the progress of its work.

---

*/ By adopting the mandate of the new Standing Committee the Board decided to dissolve the Working Group on Nuclear Liability, established by the Board in February 1989.

3. The Standing Committe held its first session at the Agency's Headquarters in Vienna from 23 to 27 April 1990.

4. Representatives of the following fifty-seven Member States participated in the meeting: Argentina, Australia, Austria, Belgium, Bolivia, Brazil, Bulgaria, Byelorussian SSR, Canada, Chile, China, Colombia, Cuba, Czechoslovakia, Denmark, Egypt, Finland, France, German Democratic Republic, Germany, Federal Republic of, Greece, Hungary, India, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Israel, Italy, Japan, Republic of Korea, Luxembourg, Mexico, Morocco, Netherlands, Nigeria, Norway, Pakistan, Peru, Philippines, Poland, Portugal, Romania, Saudi Arabia, Spain, Sudan, Sweden, Switzerland, Thailand, Tunisia, Turkey, Ukrainian SSR, USSR, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela, Yugoslavia.

5. Four intergovernmental organizations, namely Asian-African Legal Consultative Committee, Commission of European Communities, OECD/NEA, UNEP, and two non-governmental organizations, namely European Insurance Committee and Greenpeace International, were represented by observers. The Special Rapporteur of the International Law Commission, Ambassador J. Barboza also attended the meeting. One delegation expressed reservation on the participation of Greenpeace International at the current session of the Standing Committee under rule 50 of the Provisional Rules of Procedures of the Board of Governors. In its view Greenpeace International does not have sufficient competence in the subject matter under consideration by the Standing Committee.

6. The Standing Committee elected the Resident Representative of the Netherlands to the IAEA, H.E. Ambassador L.H.J.B. van Gorkom as Chairman, H.E. Ambassador Taher Shash of Egypt, Dr. P.S. Rao* of India, Prof. Jan Lopuski of Poland as Vice-Chairmen, and H.E. Mr. Alejandro San Martin Caro of Peru as Rapporteur.

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

(1) Election of officers

* The election of Dr. P.S. Rao as Vice-Chairman was for this session only.

(2) Existing conventions on international civil liability for nuclear damage: proposals for future review

(i) geographical scope

(ii) application to non-peaceful uses of nuclear energy

(iii) concept of nuclear damage

(iv) reparation

(v) exoneration

(vi) channelling of liability

(vii) financial limits of liability

(viii) nature of the unit of account in the Vienna Convention

(ix) time limit for submission of claims

(x) claims procedures, including absence of provisions for determining compensation priorities

(xi) review and revision procedure

(xii) incompatibility with certain legal systems

(xiii) state funding under international and civil liability regimes

(xiv) obligations of States corresponding to their involvement in nuclear energy

(xv) other issues

(3) International State liability for nuclear damage

(i) need to establish a comprehensive international liability regime

(ii) concept of international State liability

(iii) non-peaceful uses of nuclear energy

(iv) settlement of claims for nuclear damage

(v) type of international instrument to be concluded

(vi) other issues

(4) Relationship between international civil and State liability regimes

(5) Future programme of work

(6) Adoption of the Report

8. Two informal meetings on "a system of pooling by operators" and "supplementary state funding" and on "relationship between civil and State liability" were held under the chairmanship of H.E. Ambassador Taher Shash of Egypt and Prof. Jan Lopuski respectively. Summaries of discussions in these two groups are reproduced in Annex I and II hereto.

9. Existing Conventions on International Civil Liability for Nuclear Damage

The Committee focused its discussion of this item on specific proposals for the future review of the Vienna Convention. It was understood however that most of the proposals may apply mutatis mutandis to the Paris Convention. The discussion was based, inter alia, on background documents prepared by the Secretariats of the IAEA and the NEA.

(i) Geographical scope

It was suggested that express provision be made as to the territorial scope of the revised Vienna Convention. In that context it was also suggested to extend the Convention to nuclear damage suffered in the territory of non-Contracting States. To this end the following proposal was made:

"This Convention shall be applicable -

(a) to nuclear damage suffered in the territory of a Contracting Party or on or over the high seas regardless of where the nuclear incident causing that damage occurred*; and

(b) to nuclear damage suffered in the territory of a non-Contracting State which is caused by a nuclear incident occurring in the territory of a Contracting Party [unless otherwise provided by the legislation of the Installation State] [; however a Contracting Party may subject the application of this sub-paragraph to the requirement that the non-Contracting State shall afford reciprocal benefits]."

This proposal was widely supported. Views differed however on the question of reciprocity and on the discretionary nature of the

---

* [In considering the scope of this provision it should be noted that it follows from the definition of "operator" [Article I 1(c)] that liability under the Vienna Convention will only arise where the installation of the operator is located in a Contracting Party.]

extension of the scope of the Convention to damage suffered in the territory of a non-Contracting State. In that context, the following text was favoured by one delegation as an alternative to the second paragraph of the proposal:

> "2. A Contracting Party may, in respect of operators of nuclear installations situated in its territory, extend the application of the Convention to nuclear damage suffered in the territory of a non-Contracting State which is caused by a nuclear incident occurring in the territory of a Contracting Party [and may subject such extension to a requirement that the non-Contracting State shall afford reciprocal benefits]."

There was general agreement that the notion of "reciprocity" and the relationship between Contracting and non-Contracting States required further study. It was suggested that it would not be appropriate to require reciprocity from a State without a nuclear industry. It was also proprosed that the phrase "on or over the High Seas" should be replaced by "in areas beyond the limits of national jurisdiction". The view however was expressed that the phrase "on or over the High Seas" is in conformity with international law. It was agreed that this was also considered to require further study.

(ii) Application to military facilities

The suggestion was made to refer to the applicability of the revised Vienna Convention to military installations in an unambiguous manner. To this end the following proposal was made:

"1. This Convention shall apply to all nuclear installations, including military installations.

2. A Contracting Party may, however, provide that the Convention does not apply to military nuclear installations situated on its territory, provided that it -

(a) shall ensure that nuclear damage caused by nuclear incidents at such installations or involving nuclear

material coming from or originating in such installations is compensated under conditions which are at least as favourable to persons suffering damage as those established by this Convention; and

(b) shall not, except in respect of measures of execution, invoke any jurisdictional immunities under rules of national or international law in actions brought against it in accordance with sub-paragraph (a) of this paragraph."

The proposal received wide support. With regard to paragraph 2(b), suggestions were made to delete the phrase "except in respect of measures of execution" and the word "jurisdictional". The view was further expressed that the Convention should apply to military nuclear installations in whatever territory they were located. The inclusion of military installations under the scope of the Vienna Convention was regarded by one delegation as inappropriate in view of the fact that such installations are run by governments, and therefore non-insurable, as well as the classified nature of such installations.

(iii) Concept of nuclear damage

Two possible approaches were considered feasible. The first one would be to provide a general definition of nuclear damage, which would leave it to the competent court to decide whether damage in any given case constituted nuclear damage under the Convention. The alternative approach would be to provide a more detailed definition of nuclear damage. In connection with the concept of nuclear damage the following proposal was made:

(k) "Nuclear damage" means -

(i) loss of life or personal injury;

(ii) loss of or damage to property, including loss of profit;

(iii) loss or damage by contamination to the environment, provided that compensation for impairment of the environment other than loss of profit from such impairment shall be limited to costs of reasonable

measures of reinstatement actually undertaken or to be undertaken; and

(iv) the cost of reasonable measures taken by any person after a nuclear incident has occurred to prevent or minimize damage referred to in (i), (ii) and (iii) of this sub-paragraph and further loss or damage caused by such measures,

which arises out or results from -

the radioactive properties or a combination of radioactive properties with toxic, explosive or other hazardous properties of nuclear fuel or radioactive products or waste in, or of nuclear material coming from, originating in, or sent to a nuclear installation; or

other ionizing radiation emitted by any source of radiation inside a nuclear installation.

(l) "Nuclear incident" means any occurrence or series of occurrences having the same origin which causes nuclear damage or creates a grave and imminent threat of causing such damage."

This proposal was supported by a large majority as a good basis for the discussions. There was broad agreement that any definition of nuclear damage should include loss of life and personal injury, property damage, loss of profit, and damage to the environment. One delegation expressed the view that damage to the environment should not be dealt with in the Vienna Convention in view of the difficulty of defining such damage and of the risk of scattering the limited resources available to compensate death, personal injury and direct property damage. One other delegation shared the latter concern. With regard to the text of the proposal, it was considered that the notions referred to in k(ii) loss of profit, k(iii) reinstatement and k(iv) reasonable measures required further reflection. It was suggested that a reference to economic loss, not tied to property damage, was preferable. It was also suggested that the formulation of k(iii) was too limited. Damage to environmental assets was mentioned. A proposal was made to include in k(iii) a reference to damage caused by irradiation. The question of chronic low level damage was also mentioned. Another proposal in this respect was to add a definition of measures of reinstatement: "measures of reinstatement means any appropriate

and reasonable measures aiming to reinstate or restore damaged or destroyed natural resources or where appropriate or reasonable to introduce the equivalent of these resources into the environment."

(iv) Reparations

It was decided to discuss this in conjunction with the issue of limits of liability.

(v) Exoneration

The suggestion was made to delete Art. IV.3(b) from the Vienna Convention so as to exclude all natural disasters as a cause for exoneration. The suggestion was widely supported, although one delegation expressed reservation to it. The European Insurance Committee representative stated that insurance coverage may not always be available for natural disasters. It was also suggested that any retained exoneration should be conditional upon the operator taking all reasonable precautionary measures.

(vi) Channelling of liability

Wide support was expressed for maintaining the exclusive liability of the operator on the understanding that the option of recourse was already foreseen in certain circumstances under the Vienna Convention. Some delegates referring to the special situation of developing countries expressed the view that recourse should always be available against manufacturers, suppliers and carriers through contractual arrangements. Reference was also made to the notion of economic channelling as an alternative to that of legal channelling. In this regard, one delegation suggested further study of the concurrent or alternative use of economic channelling along with legal channelling as a means of guaranteeing the set amount of financial cover. On the other hand, the point was made that channelling was contrary to the principle of liability under civil law.

(vii) Financial limits of liability

There was general agreement that the basic objective of the

revised Convention should be the provision of adequate and prompt compensation through simple procedures. Some support was expressed for the idea of unlimited liability. It was pointed out however that the focus should be on adequate financial coverage as unlimited liability without such financial coverage might prove illusory. In that light it was suggested that a liability limit be established, with the possibility for individual Contracting States to provide by national legislation a higher financial limit or unlimited liability. Note was taken of the recent recommendation of the NEA Steering Committee to the Contracting Parties to the Paris Convention to endeavour, to the extent possible, to establish the maximum liability of the nuclear operator of not less than 150 million Special Drawing Rights. There was general agreement that financial coverage should be provided through a multitier system. In that context, reference was made to coverage through (1) private insurance, (2) pooling of funds by operators, and (3) state funding by the Installation State and through an international funding system. One delegation also proposed to give priority to restitution in kind. Another delegation stressed the utility of setting a total amount of financial protection which States could be authorized to satisfy by any combination of means.

(viii) Nature of the unit of account in the Vienna Convention

There was agreement that the Special Drawing Rights (SDRs) of the International Monetary Fund should be used as the unit of account in the revised Convention.

(ix) Time limit for submission of claims

There was wide agreement on the need to distinguish between damage to property on the one hand and loss of life and personal injury on the other. While the ten year limit for damage to property was considered adequate, there was wide agreement on the need to extend the current period with regard to loss of life and personal injury. There was broad support for the proposal to extend that limit to thirty years while at the same time avoiding that payment of early claims be jeopardized by claims filed during the extended period.

The following amendment to Article VI.1 of the Vienna Convention was proposed:

"1. Rights of compensation under this Convention shall be extinguished if an action is not brought within -

(a) with respect to loss of life and personal injury, 30 years after the date of the nuclear incident;

(b) with respect to any other damage, 10 years after the date of the nuclear incident. If, however, under the law of the Installation State the liability of the operator is covered by insurance or other financial security or by State funds for a longer period, the law of the competent court may provide that rights of compensation against the operator shall only be extinguished after a period of up to such longer period. [Such extension of the extinction period shall in no case affect rights of compensation under this Convention of any person who has brought an action for loss of life or personal injury against the operator before the expiry of 30 years.]

[2. Actions for compensation brought after a period of 10 years after the date of the nuclear incident shall in no case affect the rights of compensation under this Convention of any person who has brought an action for loss of life or personal injury or any other damage against the operator before the expiry of that period.]"*/

In conjunction with the extension of the time limit, the introduction of a mandatory discovery rule was agreed upon. The view was also expressed that in determining an extension of the time limit, account should be taken both of the date of discovery of the personal injury by the victim or his successor and of the date

---

*/ The bracketed provisions in paragraphs 1(b) and 2 are alternatives. Paragraph 1(b) is intended to protect only loss of life or personal injury. This follows the current approach of the Vienna Convention. Paragraph 2 covers all damage for which claims are made within 10 years. This is intended to avoid the payment of early claims being penalized by the introduction of later claims during the extended period.

of discovery of the nuclear incident by the same. It was further proposed to establish a separate time limit for environmental damage; periods of thirty and thirty-five years were suggested. The view was expressed however that it might be difficult in practice to distinguish between property damage and damage to the environment. The view was also expressed that if a distinction between time limits with regard to different categories of damage is to be made, and if the concept of limited liability is to be retained, the establishment of separate funds for the different categories of damage might prove necessary. To avoid such a consequence, it was proposed to establish a time limit of 30 years for all categories of damage.

In view of the fact that there is currently no coverage available to insure against claims filed beyond the current ten year period, it was noted that such coverage may have to be provided through state guarantees and social security schemes.

(x) Claims procedures, including absence of provisions for determining compensation priorities

In order to facilitate the settlement of claims the proposal was made to amend Article XI of the Vienna Convention by adding the following:

> "4. If a Contracting Party, on the territory of which nuclear damage resulting from a nuclear incident on the territory of another Contracting Party has occurred, makes a formal request to this effect not later than three months after the incident the other Contracting Party shall initiate consultations with all States where damage resulting from the incident has occurred in order to establish a Claims Commission to have - to the exclusion of any other fora - jurisdiction over all actions under Article II. The Claims Commission should in its decisions apply the present Convention and all other relevant provisions of international law as well as the national law applicable by the courts under para. 1. The composition of the Claims Commission, its procedure as well as the administrative and budgetary

modalities of its functioning shall be agreed upon by the Contracting Parties involved in the consultations. If all Contracting Parties involved in the consultations agree it can also be decided not to establish Claims Commissions and to follow the procedure under para. 1-3.

5. If the Contracting Parties involved in the consultations under para. 4 do not reach full agreement within twelve months after the incident any of these Contracting Parties can request the President of the International Court of Justice to establish the Claims Commission and to nominate its Chairman and other members. If established by the President of the International court of Justice the Claims Commission shall consist of three persons including the Chairman who are not nationals of the Contracting Party where the nuclear incident occurred or of States where nuclear damage resulting from the incident was suffered, one member national of the Contracting Party where the nuclear incident occurred and one member national of a Contracting Party where nuclear damage resulting from the nuclear incident was suffered. The Claims Commission thus established will adopt its own procedure. In performing its functions it will receive administrative and budgetary support from the International Atomic Energy Agency, the modalities of such support to be decided upon by the competent organs of the Agency. The decisions taken by the Claims Commission over actions under Article II shall provide for the relevant procedural costs to be reimbursed to the Agency.

6. In cases where Claims Commissions established under paras. 4 or 5 provide for compensation payments the Contracting Party on the territory of which the nuclear incident has occurred is responsible under this Convention for the timely settlement of such payments."

It was agreed that further study of the proposal was required, possibly in the context of the discussion of international state liability. Many questions related to the proposal were identified as requiring further scrutiny, including those relating to applicable law, procedures to be followed, subrogation of claims,

damage during transport, and the distinction between transboundary damage and other damage.

In this context two other proposals designed to merge civil and State liability approaches were made. Under one proposal claims would be settled through an international claims settlement tribunal, rather than through domestic courts, while applying the same primary rules which govern civil liability for nuclear damage (definition of nuclear damage; financial and time limits; exoneration, etc.). Under the second proposal, claims would be settled either through the normal civil procedures or through an international claims settlement tribunal. The Contracting Parties would be free under this proposal to decide on the procedure they would want to use for victims under their jurisdication.

With respect to the settlement of claims, the view was expressed that priority should be given to those concerning personal injury. To that end, it was proposed to amend Article VIII of the Vienna Convention as follows:

> "1. Subject to paragraph 2 of this Article and the other provisions of this Convention, the nature, form and extent of the compensation, as well as the equitable distribution thereof, shall be governed by the law of the competent court.
>
> 2. Where the damage to be compensated under this Convention exceeds, or is likely to exceed, the maximum liability of the operator established pursuant to Article V, the funds will be distributed as follows:
>
> (a) if the claims are exclusively in respect of loss of life or personal injury or exclusively in respect of any other damage, such claims shall be reduced proportionately;
>
> (b) if the claims are in respect of loss of life or personal injury and in respect of any other damage, [x proportion] of the total sum distributable shall be appropriated preferentially to meet claims in respect

of loss of life or personal injury and, if insufficient, shall be distributed proportionately between the claims concerned; the remainder of the total sum distributable shall be distributed proportionately among the claims in respect of any other damage and the unpaid balance of the claims in respect of loss of life and personal injury."

The proposal was regarded as meriting further discussion. It was suggested that prioritization of claims would not be necessary if the social security system of the State provides coverage for loss of life and personal injury. To that end the following additional paragraph was proposed:

(c) "Loss of life or personal injury" referred to in paragraph (b) above refers only to loss of life or personal injury in respect of persons who are not covered by a national or public system of medical insurance, a social security scheme or other scheme covering employment related accidents or diseases ("workmen's compensation").

It was further suggested that the setting of priorities might be facilitated by the establishment of a single forum with respect to any given nuclear incident. To that end the following addition to Article XI of the Vienna Convention was proposed:

"4. The Contracting Party whose courts have jurisdiction shall ensure that only one of its courts shall have jurisdiction in relation to any one nuclear incident."

(xi) Review and revision procedures

The Secretariat was requested to prepare for the next session of the Standing Committee proposals for a simplified procedure for making adjustments of a technical nature and for the updating of the liability limits in a revised Convention.

(xii) Incompatibility with certain legal systems

No views were expressed on this issue.

(xiii) State funding under international and civil liability regimes

Broad support was expressed for the suggestion that any civil liability regime should provide for additional state funding to supplement that of the operator in cases where the damage could exceed the level of the operator's liability or financial resources. The view was also expressed however that States without nuclear installations should not have to participate in any such funding scheme.

(xiv) Obligations of States corresponding to their involvement in nuclear energy

The view was expressed that the meaning of "involvement in nuclear energy" requires further clarification.

(xv) Other issues

The inclusion of a dispute settlement provision in a revised Vienna Convention was suggested. Some attention to the difficulty of the establishment of causality was also regarded to be useful.

10. International State liability for nuclear damage

11. Relationship between international civil and State liability regimes

The Standing Committee considered international State liability for nuclear damage and the relationship between international civil and State liability regimes simultaneously.

(i) Need to establish a comprehensive international liability regime

Wide support was expressed for the need to establish a comprehensive international regime of liability for nuclear damage. The view was expressed that the existing civil liability regime would be inadequate in a number of situations, particularly in the event of a major catastrophe, damage to the environment and where resort to local remedies is inpracticable.

A number of delegations suggested that a clearer understanding is required for the meaning of "a comprehensive international liability regime". A view was expressed that a comprehensive regime of nuclear liability rests on the principles reflected in paragraph 21 of the Stockholm Declaration and that a comprehensive regime should reflect operator States' duties to prevent transboundary nuclear damage and to ensure the availability of compensation for the victims of such damage.

The view was expressed on the other hand that a revised international civil liability regime could accommodate the above concerns. It was important in this view to focus primarily on reforming the existing system both with regard to the substance and to the procedure before embarking on a new system. The need for and the scope of a new system could only be assessed after the completion of this task.

(ii) Concept of international State liability

The view was expressed that liability included a State's obligation to prevent transboundary nuclear damage and to cooperate with any victim State. In addition, the focus should also be on other measures of reparation other than compensation, such as restitution, which may be more appropriate in certain instances, for example, in the case of environmental pollution or damage to natural resources. On the other hand, it was suggested that the focus of the Standing Committee be limited at this stage to the possible development of a comprehensive compensation regime.

(iii) Military uses of nuclear energy

The view was expressed that military activities including, inter alia, nuclear weapon tests, accidents involving nuclear weapons and nuclear material for other military purposes, should be covered by the comprehensive nuclear liability regime.

(iv) Settlement of claims for nuclear damage

The view was expressed that the inadequacy of the procedures for the settlement of claims is one of the major defects of the existing civil liability regime, the improvement of which could result from the establishment of a State liability regime. In that respect proposals were made to establish an international claims settlement tribunal or claims commissions. The need for a single forum which would apply uniform rules for settling all types of claims was stressed. The proposal was also made to conclude an additional protocol to the Vienna Convention to provide an alternative means for the settlement of claims on an inter-State basis. On the other hand, doubt was expressed to the need for establishment of such bodies.

(v) Type of international instruments to be concluded

Three types of instruments for establishing an international State liability regime were suggested for consideration:
(a) a separate instrument dealing solely with State liability issues;
(b) an instrument covering all aspects of liability - both civil and State;
(c) an instrument covering all aspects of civil liability including the financial participation of States.

There was broad support for the development of an international instrument to combine both civil and State liability. There was also broad support for the conversion of the Vienna Convention into the type of instrument mentioned in (c).

(vi) Other issues for consideration

It was suggested that the establishment of a disputes settlement mechanism under a State liability regime be considered.

(vii) Relationship between international civil and State liability

The view was expressed that a system of State liability could be incorporated with the system of civil liability in a single

instrument. It was stated, however, that it was premature to define the exact relationship between the two systems until agreement is reached on the definition of nuclear damage, the applicable substantive rules and procedures to be followed.

12. Future programme of work

It was decided to hold the second session of the Standing Committee from 15 October to 19 October 1990.

13. Adoption of the Report

ANNEX I

Summary of Discussions
in the Informal Working Group
on "a system of pooling by operators"
and "supplementary State funding"

1. The Informal Working Group met under the Chairmanship of Ambassador Shash (Egypt) on 25 April 1990 to discuss two questions, namely "a system of pooling by operators" and "supplementary State funding".

2. There was wide agreement that a system of pooling of funds by operators of nuclear installations would increase funds available for compensation for nuclear damage. Such a system could supplement operator's compensation in the event that an individual capacity to pay has been exhausted, and possibly compensate victims of a nuclear accident in cases where the operator has been exonerated from liability or where the damage cannot be attributed to a particular operator.

3. A number of specific ideas were advanced.

A view was expressed that a certain degree of confidence among operators, which involves both political and technological factors such as adoption of similar safety standards, may be a prerequisite for participation in a pool. Acceptance of the Agency Revised NUSS Codes and OSART was mentioned as a possible step in this direction.

4. Differing approaches were proposed with regard to possible participants in the pooling system. The opinion was expressed that since any nuclear installation poses a potential risk of causing nuclear damage, all operators of nuclear installations should contribute to the pool. On the other hand, it was argued that only operators of those installations which pose a risk of causing damage in excess of the operator's liability, e.g. power reactors, should participate. The view was expressed that operators of military installations should also participate in the pooling system. Others stressed the need for a mechanism to encourage participation by operators not subject to the conventional liability regime. There was wide support for a suggestion

that funds from the pooling system should be used to compensate damage caused by any accident involving a nuclear installation irrespective of whether the operator of that installation is a participant in the pool.

5. Views differed as to whether the pooling system should be voluntary or mandatory. However, in either case, the role of governments was recognized in setting sufficiently high limits of liability to encourage participation in the system, in licencing installations, and in the promulgation of national legislation.

6. Different views were expressed as to whether the pool should be funded on the basis of deferred or advance payments.

7. Differing views were also expressed on the geographical scope of the pooling system. The point was made that a regional approach would be beneficial only to operators in certain regions. However, doubt was expressed regarding the feasibility of establishing a worldwide industry pooling system due to factors of such as confidence. On the other hand, it was pointed out that confidence among operators of different countries should not be understated.

8. A view was expressed that an international system of pooling would only be viable if States were to participate. Such a system could be operated either regionally or worldwide depending on the magnitude of damage caused by a nuclear accident.

9. On the question of "supplementary State funding", there was general agreement that the system of the Brussels Supplementary Convention might provide a model useful in revision of the Vienna Convention. The view was also expressed that the possibility of setting up an international fund should be explored.

10. There was general agreement in the Informal Working Group that these and other suggestions should be examined in greater detail at the second session of the Standing Committee.

ANNEX II

Summary of Discussions
in the Informal Working Group on
"The Relationship between the Civil and State Liability Regimes"
26 April 1990, 10:25 a.m. - 1:05 p.m.

1. The Informal Working Group met on 26 April 1990 under the chairmanship of Professor Lopuski (Poland) to discuss the relationship between civil and State liability regimes.

2. With regard to the question whether the same substantive rules should apply under both civil and State liability regimes, the view was expressed that there is a general convergence in the two regimes as to the applicable substantive law. However, there was wide agreement on the need to focus on gaps in the existing law, such as the concept of nuclear damage, and on claims in case of damage to the environment. There was also broad agreement on the need to focus on issues of procedure where the existing civil liability regime could be considered to be inadequate. Reference was made in that respect to a number of proposals to improve the procedural aspects of the civil liability regime.

3. One delegation, amending an earlier proposal which suggested the establishment of an international tribunal instead of domestic court procedures, presented a proposal for a single domestic court to handle claims from individuals or other entities which had sustained damage against the operator or additionally the installation State under the civil liability regime and/or from the victim State against the installation State under the State liability regime, with the possibility of resort to an international tribunal. A number of problems with the proposal were identified - appeals, execution of arbitral awards, and State as operator, prevention of damage. However, the delegation regarded its proposal as a general outline within which the problems raised may be further discussed. Reference was also made to another proposal to establish international claims commissions.

4. The view was also expressed that the substantive law applicable in the case of a State liability regime is more inclusive and covers the duty of the state to prevent, inform, repair and co-operate. A number of views were expressed that the group should focus at this stage on compensation and reparation issues without prejudice to the possibility of future work on other aspects of liability.

5. With regard to the question of the relationship between civil and State liability and whether a new instrument on the State liability is needed, there was a general feeling that it was premature at this stage to express definitive views and that this question should be addressed after agreement is reached on the substantive and procedural law applicable in a comprehensive liability regime. The view was expressed that a revised civil liability regime would exhaustively address all areas under consideration and all practical means for paying for damage claims; thus, there is no need for a State liability system.

ANNEX III

STATEMENT BY MEXICO ON BEHALF OF THE STATES PARTY TO THE VIENNA CONVENTION

The delegations of the States Parties to the Vienna Convention wish to express their satisfaction for the progress made by the Standing Committee during its first session, to improve the regime of civil liability with a view to establishing a comprehensive regime combining both civil and State liability for nuclear damages.

At the same time they wish to express their support for the convening of a Revision Conference, and call on other participating delegations to recommend to their respective governments to notify as soon as possible their approval of the convening of the said Conference.