LEGAL SERIES No.2

CIVIL LIABILITY FOR NUCLEAR DAMAGE

OFFICIAL RECORDS

INTERNATIONAL
CONFERENCE,
VIENNA, 29 APRIL-19 MAY 1963

INTERNATIONAL ATOMIC ENERGY AGENCY, VIENNA, 1964

CIVIL LIABILITY FOR NUCLEAR DAMAGE

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The Agency's Statute was approved on 23 October 1956 by the Conference on the Statute of the IAEA held at United Nations Headquarters, New York; it entered into force on 29 July 1957. The Headquarters of the Agency are situated in Vienna. Its principal objective is "to accelerate and enlarge the contribution of atomic energy to peace, health and prosperity throughout the world".

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LEGAL SERIES No. 2

CIVIL LIABILITY FOR NUCLEAR DAMAGE

OFFICIAL RECORDS
OF THE
INTERNATIONAL CONFERENCE ON
CIVIL LIABILITY FOR NUCLEAR DAMAGE
HELD BY THE
INTERNATIONAL ATOMIC ENERGY AGENCY
IN VIENNA, 29 APRIL - 19 MAY 1963

INTERNATIONAL ATOMIC ENERGY AGENCY
VIENNA, 1964

International Conference on Civil Liability for Nuclear Damage, Vienna, 29 April - 19 May 1963.
Official records ... held by the International Atomic Energy Agency ... Vienna, the Agency, 1964.
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CIVIL LIABILITY FOR NUCLEAR DAMAGE - OFFICIAL RECORDS,
IAEA, VIENNA, 1964
STI/PUB/54

INTRODUCTORY NOTE

These Official Records of the Conference contain the summary records of the plenary meetings and of the meetings of the Committee of the Whole, the text of the Convention, the Optional Protocol, the Final Act, the resolutions adopted by the Conference and the reports of the committees and sub-committees, as well as all other documents which were submitted to the plenary and the Committee of the Whole. These Official Records also contain a complete index of documents relevant to each Article of the Convention according to its number in the final text.

The history of the preparatory studies and documents is summarized on pages 39, 40 and 65-86.

The symbols of International Atomic Energy Agency documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to an International Atomic Energy Agency document.

The summary records of the plenary meetings and of the meetings of the Committee of the Whole contained in this volume were originally circulated in mimeographed form as documents CN-12/OR/1 to 7 and CN-12/CW/OR.1 to 24 respectively. As printed in this volume they include the corrections to the provisional summary records that were requested by the delegations and such drafting and editorial changes as were considered necessary.

These official records are available in English, French, Russian and Spanish.

EDITORIAL NOTE

The material incorporated in the Proceedings published by the International Atomic Energy Agency is edited by the Agency's editorial staff to the extent considered necessary for the reader's assistance. For the sake of speed of publication the present Proceedings have been printed by composition typing and photo-offset lithography. Within the limitations imposed by this method, every effort has been made to maintain a high editorial standard.

The use in these Proceedings of particular designations of countries or territories does not imply any judgement by the Agency as to the legal status of such countries or territories, of their authorities and institutions or of the delimitation of their boundaries.

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SUMMARY RECORDS OF THE COMMITTEE OF THE WHOLE

DECISION 24 (GOV/DEC/26(V)) OF THE BOARD OF GOVERNORS CONVENING THE CONFERENCE

International Conference on Civil Liability for Nuclear Damage

The Board

(a) Authorizes the Director General to convene an international conference in [Vienna][1] early in 1963 to conclude a convention on civil liability for nuclear damage, together with such ancillary instruments as might prove necessary, on the understanding that he would in the meantime reconvene the inter-governmental committee constituted by [an earlier resolution of the Board];

(b) Requests him to invite all Members of the Agency to participate in the conference, and the United Nations, the specialized agencies and other interested international organizations in relations with the Agency to be represented by observers thereat; and

(c) Authorizes him to take all further steps that might be required in connection with the preparation and work of the conference.

286th meeting
5 March 1962

[1] The Board decided in June 1962 that the Conference should meet in Vienna.

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Rapporteur:	Mr. C.A. Dunshee de Abranches (Brazil)

Committee on Final Clauses:

Chairman:	Mr. J. de Erice (Spain)
Members:	Brazil, Colombia, Czechoslovak Socialist Republic, Ghana, Indonesia, Japan, Lebanon, Morocco, Netherlands, Spain, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America.

Drafting Committee:

Chairman:	Mr. J.P.H. Trevor (United Kingdom)
Members:	Mr. M. Lagorce (France), Mr. K. Farkas (Hungary), Mr. M. Nacht (Israel), Mr. G. Arangio Ruiz (Italy), Mr. D.M. Cabrera Macía (Mexico), Mr. U. Nordenson (Sweden), Mr. S.N. Bratusj (Union of Soviet Socialist Republics), Mr. E.E. Spingarn (United States of America);

Credentials Committee:

Chairman:	Mr. T.G. de Castro (Philippines)
Members:	Argentina, Australia, Bulgaria, El Salvador, Lebanon, Philippines, Union of Soviet Socialist Republics, United States of America.

Sub-Committee of the Committee of the Whole on Exclusion of Materials:

Chairman:	Mr. E.K. Dadzie (Ghana)
Members:	Brazil, Czechoslovak Socialist Republic, Ghana, India, Japan, Sweden, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America.

Sub-Committee of the Committee of the Whole on Relations with other International Agreements

Chairman:	Mr. K. Petrželka (Czechoslovak Socialist Republic)

Members: Belgium, Brazil, Czechoslovak Socialist Republic, France, Federal Republic of Germany, India, Japan, Netherlands, Philippines, Romania, Sweden, Switzerland, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America.

Sub-Committee of the Committee of the Whole on Execution of Judgments

Chairman: Mr. E. Zaldivar (Argentina)

Members: Argentina, Belgium, Brazil, Italy, Japan, Netherlands, Norway, Romania, Turkey, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America.

SECRETARIAT OF THE CONFERENCE

Legal Secretariat:

Mr. F. Seyersted	Representative of the Director General, Director of the Legal Division
Mr. K. Wolff	Executive Secretary of the Conference, Legal Division
Mr. R. Rainer	Assistant Executive Secretary, Legal Division
Mr. R. Gorgé	Senior Officer, Legal Division
Mr. B. Pissarev	Senior Officer, Legal Division
Mr. J. Salmon	Consultant
Mr. P.C. Szasz	Professional Officer, Legal Division
Mr. P. Tacar	Professional Officer, Dept. of Administration, Liaison and Secretariat
Mr. J. Endisch	Consultant

Scientific Secretary:

Mr. G.W.C. Tait	Senior Officer, Division of Health, Safety and Waste Disposal

AGENDA [1]

1. Opening of the Conference by the Director General
2. Election of the President
3. Adoption of the agenda
4. Adoption of the rules of procedure
5. Election of Vice-Presidents
6. Election of the Chairman of the Committee of the Whole
7. Organization of work
8. Appointment of the Credentials Committee
9. Appointment of the Drafting Committee
10. Consideration of the question of civil liability for nuclear damage
11. Adoption of a convention and any other instruments and of the Final Act of the Conference
12. Signature of the Final Act and of the convention and other instruments

[1] Adopted by the Conference at its first plenary meeting

RULES OF PROCEDURE *

CHAPTER I

REPRESENTATION AND CREDENTIALS

Composition of delegations

Rule 1

The delegation of each State participating in the Conference shall consist of accredited representatives and such alternate representatives and advisers as may be required.

Alternates or advisers

Rule 2

An alternate representative or an adviser may act as a representative upon designation by the Chairman of the delegation.

Submission of credentials

Rule 3

The credentials of representatives and the names of alternate representatives and advisers shall be submitted to the Executive Secretary if possible not later than twenty-four hours after the opening of the Conference. The credentials shall be issued either by the Head of the State or Government, or by the Minister for Foreign Affairs.

Credentials Committee

Rule 4

A Credentials Committee shall be appointed at the beginning of the Conference. It shall consist of nine members who shall be appointed by the Conference on the proposal of the President. It shall examine the credentials of representatives and report to the Conference without delay.

Provisional participation in the Conference

Rule 5

Pending a decision of the Conference upon their credentials, representatives shall be entitled provisionally to participate in the Conference.

CHAPTER II

OFFICERS

Elections

Rule 6

The Conference shall elect a President and two Vice-Presidents, and such other officers as it may decide.

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* Adopted by the Conference at its first plenary meeting (see paragraph 38 of the official records of that meeting), with the exception of paragraph 1 of Rule 33, which was adopted at the 3rd plenary meeting.

President

Rule 7

The President shall preside at the plenary meetings of the Conference.

Rule 8

The President, in the excercise of his functions, remains under the authority of the Conference.

Acting President

Rule 9

If the President is absent from a meeting or any part thereof, he shall appoint a Vice-President to take his place.

Rule 10

A Vice-President acting as President shall have the same powers and duties as the President.

Replacement of the President

Rule 11

If the President is unable to perform his functions, a new President shall be elected.

The President shall not vote

Rule 12

The President, or Vice-President acting as President, shall not vote, but shall appoint another member of his delegation to vote in his place.

CHAPTER III

SECRETARIAT

Duties of the Secretary-General and the Secretariat

Rule 13

1. The Secretary-General of the Conference shall be the Director General of the International Atomic Energy Agency. He, or his representative, shall act in that capacity in all meetings of the Conference and its committees.

2. The Secretary-General shall appoint an Executive Secretary of the Conference and shall provide and direct the staff required by the Conference and its committees.

3. The Secretariat shall receive, translate, reproduce and distribute documents, reports and resolutions of the Conference; interpret speeches made at the meetings; prepare and circulate records of the public meetings; have the custody and preservation of the documents in the archives of the International Atomic Energy Agency; publish the reports of the public meetings; distribute all documents of the Conference to the participating Governments and generally perform all other work which the Conference may require.

Statements by the Secretariat

Rule 14

The Secretary-General or any member of the staff designated for that purpose may make oral or written statements concerning any question under consideration.

CHAPTER IV

CONDUCT OF BUSINESS

Quorum

Rule 15

A quorum shall be constituted by the representatives of a majority of the States participating in the Conference.

General powers of the President

Rule 16

In addition to exercising the powers conferred upon him elsewhere by these rules, the President shall declare the opening and closing of each plenary meeting of the Conference; direct the discussions at such meetings; accord the right to speak; put questions to the vote and announce decisions. He shall rule on points of order and, subject to these rules of procedure, have complete control of the proceedings and over the maintenance of order thereat. The President may propose to the Conference the limitation of time to be allowed to speakers, the limitation of the number of times each representative may speak on any questions, the closure of the list of speakers or the closure of the debate. He may also propose the suspension or the adjournment of the debate on the question under discussion.

Speeches

Rule 17

No person may address the Conference without having previously obtained the permission of the President. Subject to rules 18 and 19, the President shall call upon speakers in the order in which they signify their desire to speak. The Secretariat shall be in charge of drawing up a list of such speakers. The President may call a speaker to order if his remarks are not relevant to the subject under discussion.

Precedence

Rule 18

The Chairman or Rapporteur of a committee, or the representative of a sub-committee or working group, may be accorded precedence for the purpose of explaining the conclusion arrived at by his committee, sub-committee or working group.

Points of order

Rule 19

During the discussion of any matter, a representative may rise to a point of order, and the point of order shall be immediately decided by the

President in accordance with the rules of procedure. A representative may appeal against the ruling of the President. The appeal shall be immediately put to the vote and the President's ruling shall stand unless overruled by a majority of the representatives present and voting. A representative rising to a point of order may not speak on the substance of the matter under discussion.

Time-limit on speeches

Rule 20

The Conference may limit the time to be allowed to each speaker and the number of times each representative may speak on any question. When the debate is limited and a representative has spoken his allotted time, the President shall call him to order without delay.

Closing of list of speakers

Rule 21

During the course of a debate the President may announce the list of speakers and, with the consent of the Conference, declare the list closed. He may, however, accord the right of reply to any representative if a speech delivered after he has declared the list closed makes this desirable.

Adjournment of debate

Rule 22

During the discussion of any matter, a representative may move the adjournment of the debate on the question under discussion. In addition to the proposer of the motion, two representatives may speak in favour of, and two against, the motion, after which the motion shall be immediately put to the vote. The President may limit the time to be allowed to speakers under this rule.

Closure of debate

Rule 23

A representative may at any time move the closure of the debate on the question under discussion, whether or not any other representative has signified his wish to speak. Permission to speak on the closure of the debate shall be accorded only to two speakers opposing the closure, after which the motion shall be immediately put to the vote. If the Conference is in favour of the closure, the President shall declare the closure of the debate. The President may limit the time to be allowed to speakers under this rule.

Suspension or adjournment of the meeting

Rule 24

During the discussion of any matter, a representative may move the suspension or the adjournment of the meeting. Such motions shall not be debated, but shall be immediately put to the vote. The President may limit the time to be allowed to the speaker moving the suspension or adjournment.

Order of procedural motions

Rule 25

Subject to rule 19, the following motions shall have precedence in the following order over all other proposals or motions before the meeting:

(a) To suspend the meeting;
(b) To adjourn the meeting;
(c) To adjourn the debate on the question under discussion;
(d) For the closure of the debate on the question under discussion.

Basic proposal

Rule 26

The draft articles adopted by the Intergovernmental Committee on Civil Liability at its session in October 1962 (Doc. CN-12/2) shall constitute the basic proposal for discussion by the Conference.

Other proposals and amendments

Rule 27

Other proposals and amendments shall normally be introduced in writing and handed to the Executive Secretary of the Conference, who shall circulate copies to the delegations. As a general rule, no proposal shall be discussed or put to the vote at any meeting of the Conference unless copies of it have been circulated to all delegations not later than the day preceding the meeting. The President may, however, permit the discussion and consideration of amendments, or motions as to procedure, even though these amendments and motions have not been circulated or have only been circulated the same day.

Decisions on competence

Rule 28

Subject to rule 19, any motion calling for a decision on the competence of the Conference to discuss any matter or to adopt a proposal or an amendment submitted to it shall be put to the vote before the matter is discussed or a vote is taken on the proposal or amendment in question.

Withdrawal of motions

Rule 29

A motion may be withdrawn by its proposer at any time before voting on it has commenced, provided that the motion has not been amended. A motion which has thus been withdrawn may be reintroduced by any representative.

Reconsideration of proposals

Rule 30

When a proposal has been adopted or rejected it may not be reconsidered unless the Conference, by a two-thirds majority of the representatives present and voting, so decides. Permission to speak on the motion to reconsider shall be accorded only to two speakers opposing the motion, after which it shall be immediately put to the vote.

Invitations to technical advisers

Rule 31

The Conference may invite to one or more of its meetings any person whose technical advice it may consider useful for its work.

CHAPTER V

VOTING

Voting rights

Rule 32

Each State represented at the Conference shall have one vote.

Required majority

Rule 33

1.* Decisions of the Conference on all matters of substance shall be taken by a two-thirds majority of the representatives present and voting.

2. Decisions of the Conference on matters of procedure shall be taken by a majority of the representatives present and voting.

3. If the question arises whether a matter is one of procedure or of substance, the President of the Conference shall rule on the question. An appeal against this ruling shall immediately be put to the vote and the President's ruling shall stand unless overruled by a majority of the representatives present and voting.

Meaning of the expression "Representatives present and voting"

Rule 34

For the purpose of these rules, the phrase "representatives present and voting" means representatives present and casting an affirmative or negative vote. Representatives who abstain from voting shall be considered as not voting.

Method of voting

Rule 35

The Conference shall normally vote by show of hands, but any representative may request a roll-call. The roll-call shall be taken in the English alphabetical order of the names of the States participating in the Conference, beginning with the delegation whose name is drawn by lot by the President.

Conduct during voting

Rule 36

After the President has announced the beginning of voting, no representatives shall interrupt the voting except on a point of order in connection with the actual conduct of the voting. The President may permit representatives to explain their votes, either before or after the voting, except when the vote is taken by secret ballot. The President may limit the time to be allowed for such explanations.

Division of proposals and amendments

Rule 37

A representative may move that parts of a proposal or of an amendment shall be voted on separately. If objection is made to the request for division,

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* This paragraph was adopted by the Conference at its third plenary session (see paragraph 69 of the official records of that meeting).

the motion for division shall be voted upon. Permission to speak on the motion for division shall be given only to two speakers in favour and two speakers against. If the motion for division is carried, those parts of the proposal or of the amendment which are subsequently approved shall be put to the vote as a whole. If all operative parts of the proposal or of the amendment have been rejected, the proposal or the amendment shall be considered to have been rejected as a whole.

Voting on amendments

Rule 38

When an amendment is moved to a proposal, the amendment shall be voted on first. When two or more amendments are moved to a proposal, the Conference shall first vote on the amendment furthest removed in substance from the original proposal and then on the amendment next furthest removed therefrom, and so on until all the amendments have been put to the vote. Where, however, the adoption of one amendment necessarily implies the rejection of another amendment, the latter amendment shall not be put to the vote. If one or more amendments are adopted, the amended proposal shall then be voted upon. A motion is considered an amendment to a proposal if it merely adds to, deletes from or revises part of that proposal.

Voting on proposals

Rule 39

If two or more proposals relate to the same question, the Conference shall, unless it decides otherwise, vote on the proposals in the order in which they have been submitted.

Elections

Rule 40

All elections shall be held by secret ballot unless otherwise decided by the Conference.

Rule 41

1. If, when one person or one delegation is to be elected, no candidate obtains in the first ballot a majority of the representatives present and voting, a second ballot restricted to the two candidates obtaining the largest number of votes shall be taken. If in the second ballot the votes are equally divided, the President shall decide between the candidates by drawing lots.

2. In the case of a tie in the first ballot among three or more candidates obtaining the largest number of votes, a second ballot shall be held. If a tie results among more than two candidates, the number shall be reduced to two by lot and the ballotting, restricted to them, shall continue in accordance with the preceding paragraph.

Rule 42

When two or more elective places are to be filled at one time under the same conditions, those candidates obtaining in the first ballot a majority of the representatives present and voting shall be elected. If the number of candidates obtaining such majority is less than the number of persons or delegations to be elected, there shall be additional ballots to fill the re-

maining places, the voting being restricted to the candidates obtaining the greatest number of votes in the previous ballot, to a number not more than twice the places remaining to be filled; provided that, after the third inconclusive ballot, votes may be cast for any eligible persons or delegation. If three such unrestricted ballots are inconclusive, the next three ballots shall be restricted to the candidates who obtained the greatest number of votes in the third of the unrestricted ballots, to a number not more than twice the places remaining to be filled and the following three ballots thereafter shall be unrestricted, and so on until all the places have been filled.

Equally divided votes

Rule 43

If a vote is equally divided on matters other than elections, the proposal shall be regarded as rejected.

CHAPTER VI

COMMITTEES

Creation of Committees

Rule 44

The Conference shall establish a Committee of the Whole and such other committees as it deems necessary for the performance of its functions. Each committee may set up sub-committees or working groups.

Representation on the Committee of the Whole

Rule 45

Each State participating in the Conference may be represented by one person on the Committee of the Whole. It may assign to that Committee such alternate representatives and advisers as may be required.

Drafting Committee

Rule 46

The Conference shall appoint, on the proposal of the President, a drafting committee which shall consist of nine members. This committee shall give advice on drafting as requested by other committees and by the Conference, and shall co-ordinate and review the drafting of all texts adopted.

Officers

Rule 47

Each committee and sub-committee shall elect its own officers unless otherwise decided.

Quorum

Rule 48

A majority of the representatives on a committee or sub-committees shall constitute a quorum.

Officers, conduct of business and voting in committees

Rule 49

The rules contained in chapters II, IV and V above shall be applicable, mutatis mutandis, to the proceedings of committees and sub-committees, except that decisions of committees and sub-committees shall be taken by a majority of the representatives present and voting, but not in the case of a reconsideration of proposals or amendments in which the majority required shall be that established by rule 30.

CHAPTER VII

LANGUAGES AND RECORDS

Official and working languages

Rule 50

English, French, Russian and Spanish shall be the official and working languages of the Conference.

Interpretation from a working language

Rule 51

Speeches made in any of the working languages shall be interpreted into the other three working languages.

Interpretation from other languages

Rule 52

Any representative may make a speech in a language other than the official languages. In this case he shall himself provide for interpretation into one of the working languages. Interpretation into the other working languages by the interpreters of the Secretariat may be based on the interpretation given in the first working language.

Summary records

Rule 53

Summary records of the plenary meetings of the Conference and of the meetings of the Committee of the Whole shall be kept by the Secretariat. They shall be distributed as soon as possible to all representatives, who shall inform the Secretariat within five working days after the circulation of the summary record of any changes they wish to have made.

Language of documents and summary records

Rule 54

Documents and summary records shall be made available in the working languages.

CHAPTER VIII

PUBLIC AND PRIVATE MEETINGS

Plenary meetings and meetings of the Committee of the Whole

Rule 55

The plenary meetings of the Conference and the meetings of the Committee of the Whole shall be held in public unless the body concerned decides otherwise.

Meetings of committees or working groups

Rule 56

As a general rule meetings of other committees, sub-committees and working groups shall be held in private.

CHAPTER IX

OBSERVERS FOR INTERNATIONAL ORGANIZATIONS

Rule 57

Observers for international organizations invited to the Conference may, upon the invitation of the President or Chairman, as the case may be, participate in the deliberations without the right to vote, and submit written statements, on questions within the scope of their activities.

PROPOSAL RELATIVE TO RULES OF PROCEDURE

(DOCUMENT CN-12/8, 28 March 1963, Original: Russian)

USSR: Proposal to Rule 33 of the Provisional Rules of Procedure

By a note of 18 February 1963 the Permanent Representative of the Union of Soviet Socialist Republics to the Agency transmitted the following communication:

"The Soviet delegation to the forthcoming International Conference on Civil Liability for Nuclear Damage has asked me to propose that decisions on matters of substance should be taken at the Conference by a two-thirds majority. Its reasons for this proposal are as follows:

Firstly, decisions on matters of substance are taken by a two-thirds majority in United Nations organs. The exception is the Security Council, where the unanimous vote of all permanent members of the Council is required for the taking of decisions.

Secondly, the procedure for taking decisions by a two-thirds majority has usually been applied at all diplomatic conferences which have been held in recent years. For example it was applied at the International Conference of Plenipotentiaries on Diplomatic Intercourse and Immunities, held in Vienna, and at the Geneva Conferences on the Law of the Sea. Rules of procedure under which decisions on matters of substance are taken by a two-thirds majority are also to be used at the International Conference of Plenipotentiaries on Consular Intercourse and Immunities which is to open in March this year in Vienna.

Thirdly, the IAEA, on whose initiative the Conference is being convened, itself adheres to the rule that decisions on important matters should be taken by a two-thirds majority of the delegations present and voting. This is stated quite unequivocally in the Rules of Procedure of the General Conference (Rule 69) and the Provisional Rules of Procedure of the Board of Governors (Rule 36).

I should be grateful if you will bring to the attention of the other delegations taking part in the Conference the Soviet delegation's proposal that decisions on matters of substance should be taken by a two-thirds majority, together with what has been said above in its support."

DRAFT CONVENTION ON MINIMUM INTERNATIONAL STANDARDS REGARDING CIVIL LIABILITY FOR NUCLEAR DAMAGE

As revised by the Intergovernmental Committee on Civil Liability for Nuclear Damage at its second series of meetings, October 1962,

and

REPORT OF THE COMMITTEE

(CN-12/2)

REPORT OF THE INTERGOVERNMENTAL COMMITTEE ON CIVIL LIABILITY FOR NUCLEAR DAMAGE

Covering its Second Series of Meetings, Vienna, 22-27 October 1962

Introduction

1. This report consists of three parts:
   - I. General observations on the work of the Committee and the draft Convention;
   - II. The text of the articles adopted by the Committee together with relevant observations and reservations;
   - III. New articles, final clauses and other proposals not decided upon by the Committee.

I

GENERAL

1. The Intergovernmental Committee, composed of representatives of Argentina, Brazil, Canada, the Czechoslovak Socialist Republic, Finland, France, the Federal Republic of Germany, India, Japan, Poland, the Union of Soviet Socialist Republics, the United Arab Republic, the United Kingdom of Great Britain and Northern Ireland and the United States of America, held its second series of meetings in Vienna from 22 to 27 October 1962 inclusive. Austria, Italy, Norway and Sweden were represented by observers. The International Labour Organisation (ILO), the European Nuclear Energy Agency of the Organisation for Economic Co-operation and Development (ENEA), the Inter-American Nuclear Energy Commission (IANEC), the International Air Transport Association (IATA) and the International Union of Aviation Insurers (IUAI) were also represented by observers. Mr. Ruegger, the Chairman of the Panel of legal experts which initially prepared the text of a draft convention, and Mr. Belser, Director of the Centre d'Etudes de la

Commission Permanente du Risque Atomique, Zurich (CERA), also attended the meeting. Mr. Suontausta, the representative of Finland, again acted as Chairman of the Committee.

2. On the basis of the draft elaborated at its first series of meetings in May 1961 and of the comments received from Governments[1], the Committee prepared a revised draft Convention on Minimum International Standards Regarding Civil Liability for Nuclear Damage. The Convention on Liability of Operators of Nuclear Ships signed at Brussels on 25 May 1962 and the Convention on Third Party Liability in the Field of Nuclear Energy elaborated within the framework of the Organisation for European Economic Co-operation (OEEC)[2] and signed at Paris on 29 July 1960 were also taken into account in the Committee's deliberations.

3. After decision in substance in the Committee, the text of the articles was considered by a drafting committee under the chairmanship of Mr. Trevor of the United Kingdom and composed of the representatives of France, India, the Union of Soviet Socialist Republics, the United Arab Republic, the United Kingdom and the United States of America. The full Committee did not have time to consider the final drafts so elaborated by the drafting committee. The final drafting therefore remains the responsibility of the drafting committee only.

4. The Committee was unable in the time at its disposal to consider the final clauses and certain of the new articles which had been proposed in document CN-12/1, pages 87 ff., or during the meetings of the Committee. On some of these subjects it had a brief discussion of main principles; the Committee decided that all these articles should be reproduced in full in this report as they had been proposed.

5. The Committee agreed to present to the Conference one single text. The divergent opinions which had resulted in the adoption of alternative texts for Article IV, paragraph 1, and Article VIII at the first series of meetings of the Committee are now reflected in the comments to these articles below in part II.

II

TEXT OF ARTICLES ADOPTED BY THE COMMITTEE

and

OBSERVATIONS* AND RESERVATIONS* WITH REGARD TO SPECIFIC ARTICLES

ARTICLE I

Paragraph 1

"Nuclear fuel" means any material which is capable of producing energy by a self-sustaining process of nuclear fission.

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[1] Agency document CN-12/1 and Add. 1.

[2] OEEC publication No. 12.680 of 29 July 1960.

* These Observations and Reservations are printed in italics following the Article or Paragraph to which they refer.

Paragraph 2

"Radioactive products or waste" means any radioactive material produced in, or any material made radioactive by exposure to the radiation incidental to the production or utilization of nuclear fuel, but does not include radioisotopes outside a nuclear installation which are employed or intended to be employed for medical, scientific, agricultural, commercial or industrial uses.

6. The Committee recorded its understanding that the exception regarding certain types of radioisotopes should apply only to radioisotopes having reached the final stage of fabrication so as to be usable for the purposes indicated in this paragraph without any further processing. This understanding was to be reflected in the Secretariat's commentary on the Convention.

Paragraph 3

"Nuclear material" means

(a) nuclear fuel, other than natural uranium and depleted uranium, capable of producing energy by a self-sustaining process of nuclear fission outside a nuclear reactor by itself or in combination with some other material;

(b) radioactive products or waste.

Paragraph 4

"Nuclear reactor" means any structure containing nuclear fuel in such an arrangement that a self-sustained chain process of nuclear fission can occur therein without an additional source of neutrons.

Paragraph 5

"Nuclear installation" means

(a) any nuclear reactor other than one with which a means of transport is equipped for use as a source of power, whether for propulsion thereof or for any other purpose;

(b) any factory using nuclear fuel for the production of nuclear material, or any factory for the processing of nuclear material, including any factory for the reprocessing of irradiated nuclear fuel;

(c) any place where nuclear material is stored, other than a place of storage incidental to the carriage of such material;

provided that the Installation State may determine that several nuclear installations of one operator located at the same site shall be considered as a single nuclear installation.

7. The definition of "nuclear installation" includes, in the Committee's opinion, factories for the fabrication of nuclear material and isotope separation plants (sub-paragraph (b)). The Secretariat's commentary was to reflect the Committee's opinion.

8. The delegate of the United States of America recorded his Government's objection to the proviso at the end of this paragraph, since it might be used, by lumping installations together, to decrease the protection of the public, in particular if a low limit of liability is adopted under Article IV.

Paragraph 6

"Operator", in relation to a nuclear installation, means the person designated or recognized by the Installation State as the operator of that installation.

Paragraph 7

"Installation State", in relation to a nuclear installation, means the Contracting Party on whose territory that installation is situated or, if it is not situated on the territory of any State, the Contracting Party by which or under the authority of which the nuclear installation is operated.

Paragraph 8

"Nuclear incident" means any occurrence or series of occurrences having the same origin which causes nuclear damage.

Paragraph 9

"Nuclear damage" means loss of life, any personal injury or any loss of or damage to property which arises out of 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, or originating in, or sent to, a nuclear installation. Any other loss or damage so arising or resulting shall be included only if and to the extent that the law of the competent court so provides.

Paragraph 10

"Person" means any individual or partnership, or any public or private body whether corporate or not, including a State or any of its constituent sub-divisions.

Paragraph 11

"Law of the competent court" means the law of the court having jurisdiction under this Convention, including any rules of such law relating to conflict of laws.

ARTICLE I A

This Convention shall not apply to nuclear incidents that occur or to nuclear damage that is suffered in the territory of a non-contracting Party, unless the law of the Installation State so provides.

9. The Committee decided that the Article dealing with the territorial application of the Convention (Article X in document CN-12/1) should be inserted before Article II.
10. The delegate of Brazil abstained from voting on this Article because he felt that such a provision would have no effect in international law.
11. The delegate of the Federal Republic of Germany felt that the law of the competent court should be decisive for any extension of the territorial application of the Convention, and not the law of the Installation State.
12. The delegate of India proposed the deletion of the words "... unless the law of the Installation State so provides", because the limited liability fund should only be used to compensate damage suffered on the territory of Contracting States.

ARTICLE II

Paragraph 1

Subject to the provisions of Article I A, the operator shall be liable for any nuclear damage caused by a nuclear incident:
(a) In his nuclear installation.
(b) Involving nuclear material coming from or originating in his nuclear installation, and occurring
  (i) before liability with regard to nuclear incidents caused by such material has been assumed pursuant to the express terms of a contract in writing by the operator of another nuclear installation or the operator of any nuclear reactor with which a means of transport is equipped for use as a source of power, whether for propulsion thereof or for any other purpose; or
  (ii) in the absence of such express terms, before such operator has taken charge of the nuclear material; or
  (iii) before the nuclear material is unloaded from the means of transport by which it has arrived in the territory of a non-contracting Party, if it has been sent to a person within the territory of that non-contracting Party.
(c) Involving nuclear material sent to his installation, and occurring
  (i) after liability with regard to nuclear incidents caused by such material has been assumed by him from the operator of another nuclear installation or the operator of a nuclear reactor with which a means of transport is equipped for use as a source of power, whether for propulsion thereof or for any other purpose, pursuant to the express terms of a contract in writing with that operator;
  (ii) in the absence of such express terms, after he has taken charge of the nuclear material; or
  (iii) after the nuclear material is loaded on the means of transport by which it is to be carried from the territory of a non-contracting Party, if it has been sent from a person within the territory of that non-contracting Party to the operator under a contract with him.

13. The delegates of the Federal Republic of Germany and the United Arab Republic felt that liability should pass to another operator under sub-

paragraphs (b) and (c) only upon his taking the nuclear material in charge and that the possibility of such passing of liability by contract should be eliminated.

Paragraph 2

The Installation State may provide by legislation that, under such terms as may be specified therein, a carrier of nuclear material or a person handling radioactive waste may, at his request and with the consent of the operator concerned, be designated as operator in the place of that operator in respect of such nuclear material or radioactive waste respectively. In such case for all the purposes of this Convention such carrier or such person shall be considered as an operator of a nuclear installation in the territory of that State.

14. The Committee recorded its understanding that the term "radioactive waste" used in this paragraph is not identical with the term "radioactive products or waste" as defined in Article I, paragraph 2.

Paragraph 3

Where nuclear damage engages the liability of more than one operator and the damage attributable to each operator is not reasonably separable, the operators involved shall be jointly and severally liable for such damage. Where, however, the nuclear damage is caused by a nuclear incident occurring in the course of carriage of nuclear material on one and the same means of transport or located in one and the same place of storage incidental to carriage, the total liability shall not exceed the highest individual amount applicable pursuant to Article IV. In neither case shall the liability of one operator exceed the amount applicable with respect to him pursuant to Article IV.

15. The second sentence contains the case previously covered by Article IV, paragraph 3, which the drafting committee decided to transfer to this paragraph. It was, however, not clear to the drafting committee whether the limitation of the total liability to the highest individual amount should apply in all cases of transport or only when damage was not reasonably separable (the first sentence). The majority of the drafting committee felt that this provision should apply in all cases of transport.

Paragraph 4

Subject to the provisions of paragraph 3, where several nuclear installations of one and the same operator are involved in one nuclear incident such operator shall be liable in respect of each nuclear installation involved up to the limit laid down in Article IV.

16. The delegate of the Czechoslovak Socialist Republic, supported by the delegate of the United Arab Republic, was of the opinion that any such pro-

vision would depend on the minimum amount of liability to be adopted by the Conference.

Paragraph 5

Except as otherwise provided in this Convention no person other than the operator shall be liable for nuclear damage.

Paragraph 6

The law of the Installation State may determine that, in addition to the operator, other persons shall also be liable, if

(a) the total liability of all persons thus liable for the same nuclear damage is limited so as not to exceed the limit of liability established in conformity with Article IV; and

(b) the liability of all such persons is covered by the financial security maintained pursuant to Article VI.

17. The delegates of France and the United Kingdom objected to the principle stated in this paragraph.

Paragraph 7

Direct action shall lie against the person providing financial security in accordance with Article VI, if the law of the competent court so provides.

18. The delegate of the United States of America was in favour of deleting this paragraph. If any such provision were to be included, it should refer to the law of the Installation State and the provision should be drafted on the lines of Article XVIII of the Brussels Convention.

ARTICLE II A

The operator liable in accordance with this Convention shall provide the carrier with a certificate issued by or on behalf of the insurer or other financial guarantor furnishing the security required pursuant to Article VI. The certificate shall state the name and address of that operator and the amount, type and duration of the security, and these statements may not be disputed by the person by whom or on whose behalf the certificate was issued. The certificate shall also indicate the nuclear material in respect of which the security applies and shall include a statement by the competent public authority of the Installation State that the person named is an operator within the meaning of this Convention.

19. The representative of the Federal Republic of Germany noted that the statement of the competent public authority contained in the certificate could not determine the operator actually liable for a nuclear consignment, and therefore could not eliminate possible difficulties that might arise from the concept embodied in Article II, paragraph 1 (b).

20. The delegate of the United Arab Republic reserved his position on this Article.

ARTICLE III

Paragraph 1

The operator shall be absolutely liable for any nuclear damage upon proof that such damage has been caused by a nuclear incident.

Paragraph 2

If the operator proves that the nuclear damage resulted wholly or partly from the fault of the person suffering the damage the competent court may, in accordance with the provisions of its law, relieve the operator wholly or partly from his liability to such person.

Paragraph 3

Except insofar as the legislation of the State whose court is competent may provide to the contrary with respect to a nuclear incident directly due to an act of armed conflict, invasion, civil war, insurrection, or a grave natural disaster of an exceptional character, the operator shall not be exonerated from liability under this Convention for nuclear damage.

21. The delegate of Brazil was of the opinion that no exoneration should be permitted for grave natural disasters.
22. The delegate of the United Arab Republic indicated his preference for the text of Article VIII of the Brussels Convention.
23. The delegate of Japan thought that the law of the Installation State and not the law of the competent court should be decisive in the granting of exonerations.
24. Some members of the drafting committee suggested that the text of Article VIII of the Brussels Convention should be adopted, with the proviso that national law could provide exonerations from liability in the case of grave natural disasters, although the full Committee had not decided that there should be an automatic exoneration in cases of acts of war, hostilities, civil war or insurrection as under the Brussels Convention.
25. The Committee asked that the Secretariat's commentary on this paragraph contain language similar to the Exposé des Motifs of the corresponding article of the Paris Convention (paragraph 48 of the Exposé des Motifs).

Paragraph 4

Whenever both nuclear damage and damage other than nuclear damage have been caused by a nuclear incident or jointly by a nuclear incident and one or more other occurrences, such other damage shall, to the extent that it is not reasonably separable from the nuclear damage, be deemed, for the purposes of this Convention, to be nuclear damage caused by the nuclear incident. Where, however, damage is caused jointly by a nuclear incident

covered by this Convention and by an omission of ionizing radiation not covered by it, nothing in this Convention shall limit or otherwise affect the liability, either as regards any person suffering nuclear damage or by way of recourse or contribution, of any person who may be held liable in connection with the emission of ionizing radiation not covered by this Convention.

Paragraph 5

No liability shall arise under this Convention for nuclear damage
(a) to the nuclear installation itself or to any property on the site of that installation which is used or to be used in connection with that installation; or
(b) to the means of transport upon which the nuclear material involved was at the time of the nuclear incident; any Installation State may, however, provide by legislation that this exception shall not apply; provided that in no case shall the inclusion of damage to the means of transport result in reducing the liability of the operator in respect of other nuclear damage to an amount less than US $... million.

26. The delegates of France, the Federal Republic of Germany and the United Kingdom recorded their objection to the wording of the final part of sub-paragraph (a). They thought that the concept of on-site property should include "property held by the operator or in his custody or under his control in connection with and at the site of, his installation".

ARTICLE IV

Paragraph 1

The liability of the operator may be limited by the Installation State to not less than US $... million for any one nuclear incident.

27. The delegate of the Czechoslovak Socialist Republic recorded that this paragraph should also provide that the Installation State may, in addition to or instead of the limitation per incident, limit the liability of the operator to a certain amount with respect to nuclear incidents occurring in a nuclear installation per year. He therefore was in favour of maintaining the text of Article IV, paragraph 1, Alternative "A", as set forth in document CN-12/1.
28. The delegate of India felt that the Installation State may be at liberty to establish, in addition to the per incident system, a per installation system, and was therefore in favour of maintaining the text of Article IV, paragraph 1, Alternative "A", as set forth in document CN-12/1, with the deletion of the words "or instead".
29. The delegate of India was in favour of establishing different limits for various types of nuclear damage and reserved his right to raise the matter at the International Conference.
30. The Committee decided to leave the amount open for determination by the International Conference. The delegates of India, the Czechoslovak

Socialist Republic and the Union of Soviet Socialist Republics were in favour of a low limit. The latter proposed US $5 million and the delegate of the Czechoslovak Socialist Republic proposed a limit which should not exceed that amount. The delegate of Japan favoured a low limit for small installations. The delegate of Brazil was in favour of a limit of US $5 million and of including this amount in the draft text to serve as guidance for the Conference. The delegates of Canada and the United States of America were in favour of a high limit, but the delegate of Canada thought that a distinction should be made between the limit of liability under the Convention and the amount of insurance which the operator would have to bear. The delegate of the United States of America expressed the need for realistic coverage and pointed to the US $ 100 million figure in the Brussels Convention, and to the US $ 70 million figure which the EURATOM countries were prepared to undertake individually on their own to supplement the Paris Convention. The delegate of the United Kingdom was of the opinion that the amount should be decided by the Conference but that the amount contained in the Brussels Convention could not serve as a guide for this Convention.

31. The delegate of Japan recorded that, whatever amount is laid down in paragraph 1, the Installation State should be entitled to go below that limit if the technical conditions of a given installation so permit.

32. The delegate of the United Arab Republic recorded that the Convention should provide for the establishment of an international guarantee fund, so as to enable States to meet their liability up to the amount to be specified in this paragraph.

Paragraph 2

Any Contracting Party on whose territory there is a nuclear installation may subject the transit of nuclear material through its territory to the condition that any limit of liability in respect of such material be increased, if it considers that such limit does not adequately cover the risks of a nuclear incident involving such material in the course of its transit through its territory; provided that if such Contracting Party has established a limit pursuant to paragraph 1, this limit shall not be exceeded.

33. The delegates of the Czechoslovak Socialist Republic, Poland and the Union of Soviet Socialist Republics proposed the deletion of this paragraph.

34. The previous draft contained a proviso that "the provisions of this paragraph shall not apply to carriage by sea or by air where there is a right of entry in cases of urgent distress under international law". This sentence was deleted by a vote of 8 members against 4. In connection with this decision the following statements were made:

(a) The delegate of the United Kingdom was not able to accept deletion of this proviso which, as proposed by the United Kingdom and other States, ought also to include reference to the right of innocent passage (see CN-12/1, p. 45).

(b) The delegates of France, the Federal Republic of Germany and India were in favour of the proviso.

(c) The delegate of the United Arab Republic was opposed to any reference to the right of innocent passage.

(d) The delegate of the United States of America proposed that this paragraph should provide that:

"The provisions of this paragraph shall also apply to carriage by sea or by air without regard to the normal right of innocent passage and of entry in cases of urgent distress under international law or agreement."

However, he considered that the deletion of the sentence accomplished the same result as the sentence he had proposed.

(e) The delegate of Japan reserved his position on this question.

(f) The delegates of the Czechoslovak Socialist Republic and of Poland had voted for the deletion of the proviso because they were in favour of deletion of the entire paragraph.

(g) The delegate of the Union of Soviet Socialist Republics had voted for the deletion of the proviso, partly because he was for deletion of the entire paragraph and partly because the proviso touched upon matters of international law which should be dealt with by other types of international agreements.

35. At the proposal of the delegate of the United States of America the Secretariat was requested to prepare for the Conference an exposé on the subject of innocent passage and entry in cases of urgent distress.

Paragraph 3

Any limits of liability which may be established in conformity with this Article shall not include any interest or costs awarded by a competent court in actions for compensation of nuclear damage.

36. Paragraph 3 of Article IV of the previous draft has been transferred to Article II, paragraph 3 of the new text.

New Proposals

37. The delegate of the Federal Republic of Germany reserved his right to put forward at the International Conference a revision of the proposal contained on p. 89 of document CN-12/1 (para. 4), which would indicate specific provisions of the Convention which could be derogated from in case of State intervention above the limit laid down in Article IV.

38. There were various proposals before the Committee to define the unit of account for the amount to be inserted in Article IV, paragraph 1, but the question was left open for decision by the Conference after it had decided what currency it would utilize.

ARTICLE V

Paragraph 1

Rights of compensation under this Convention shall be extinguished if an action is not brought within ten years from 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 State indemnification for a period longer than ten years the law of the competent court may provide that rights of compensation against the operator shall only be extinguished after a period which may be longer than ten years, but shall not be longer than the period for which his liability is so covered under the law of the Installation State. However, such extension of the extinction period shall in no case affect the right 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 the aforesaid period of ten years.

39. The delegate of India proposed to add to the final sentence the words "... loss of or damage to property".

Paragraph 2

Where nuclear damage is caused by nuclear material which was stolen, lost, jettisoned or abandoned, the period established under paragraph 1 shall be computed from the date of the theft, loss, jettisoning or abandonment as the case may be.

Paragraph 3

The law of the competent court may establish a period of extinction or prescription of not less than three years from the date on which the person suffering nuclear damage has knowledge or ought reasonably to have knowledge of the damage and of the operator liable for the damage, provided that the period established under paragraphs 1 or 2 shall not be exceeded.

Paragraph 4

Any person suffering nuclear damage who has brought an action for compensation within the period applicable under this Article may, in the event of any aggravation of the damage, bring a new action before expiry of that period, if final judgement has already been entered, or amend his claim, even after expiry of that period, provided that final judgement has not been entered.

40. The delegates of Canada and the United Kingdom objected to allowing new actions within the period of prescription, if final judgement has already been entered.

ARTICLE VI

Paragraph 1

The operator shall be required to maintain insurance, or other financial security covering his liability for nuclear damage, in such amount, of such type and in such terms as the Installation State shall specify. The Installation

State shall ensure the payment of claims for compensation for nuclear damage established against the operator by providing the necessary funds to the extent that the yield of insurance or the financial security is inadequate to satisfy such claims, but only up to the limit established in conformity with Article IV, if any.

41. The delegate of Japan recorded his understanding that the second sentence would not require a State to include funds in advance in its budget.

Paragraph 2

However, nothing in paragraph 1 shall require a Contracting Party or any of its constituent sub-divisions, such as States, Republics or Cantons, to maintain insurance or other financial security to cover their liability as operators.

42. The delegate of the United States of America proposed to substitute "Provinces" for "Republics".

Paragraph 3

The sums provided by insurance, by other financial security or by State indemnification in conformity with paragraph 1 shall be exclusively available for compensation due under this Convention.

ARTICLE VII

Paragraph 1

Where provisions of national or public health insurance, social insurance, social security, workmen's compensation or occupational disease compensation systems include compensation for nuclear damage, rights of beneficiaries of such systems and rights of recourse by virtue of such systems shall be determined by the law of the Contracting Party in which such systems have been established, or the regulations of the intergovernmental organization having established such systems, provided that in no event shall the liability of the operator pursuant to Article IV be exceeded.

43. The observer from the International Labour Organisation (ILO) pointed out that it was not clear from the text whether employees who were covered by social security schemes, which in many countries afforded insufficient coverage, would forfeit their rights for compensation under this Convention.

Paragraph 2

(a) If a person who is a national of a Contracting Party, other than the operator, has paid compensation for nuclear damage under an International Convention or under the law of a non-contracting Party, such person shall, up to the amount which he has paid, acquire by

subrogation the rights which the person so compensated would have enjoyed under this Convention. However, no rights shall be so acquired by any person to the extent that the operator has a right of recourse or contribution against such person under this Convention.

(b) Nothing in this Convention shall preclude an operator who has paid compensation for nuclear damage out of funds other than those provided pursuant to paragraph 1 of Article VI from recovering from the person providing financial security under paragraph 1 of Article VI or from the Installation State, up to the amount he has paid, the sum which the person so compensated would have obtained under this Convention.

(c) In this paragraph the expression "a national of a Contracting Party" shall include a Contracting Party or any of its constituent subdivisions or a partnership or any public or private body whether corporate or not established in the territory of a Contracting Party.

44. The delegate of India was opposed to the inclusion of this paragraph.

ARTICLE VIII

The operator shall have a right of recourse only:

(a) If the nuclear incident results from an act or omission done with intent to cause damage, in which event recourse shall lie against the individual who has acted, or omitted to act, with such intent.

(b) If recourse is expressly provided for by contract.

(c) If and to the extent that the operator is liable pursuant to paragraph 2 of Article IV for an amount over and above the amount established with respect to him pursuant to paragraph 1 of Article IV, in respect of a nuclear incident occurring in the course of transit of nuclear material, carried out without the operator's consent, against the carrier thereof, except where such transit is for the purpose of saving or attempting to save life or property or is caused by circumstances beyond the carrier's control.

45. This Article (document CN-12/1, p. 62, Alternative "A") was adopted by a vote of 8 in favour and 4 against.

46. The delegate of Japan was in principle in favour of the present text, but did not participate in the voting since he was in favour of a right of recourse of the operator, in case of fault or negligence, against certain categories of persons other than those who had furnished services, equipment or materials to the operator.

47. The delegates of Argentina, Brazil, India and the United Arab Republic were in favour of the previous Alternative "B" which read:

> *"Operators shall have a right of recourse against any person who has manufactured materials or equipment for, or who has furnished materials, equipment or services in connection with the design, construction, repair or operation of a nuclear installation, or who has transported or stored nuclear material, for fault of such person."*

48. The observer from ILO stated that he had doubts as to whether sub-

paragraph (b) should be applicable to contracts concluded between the operator and his employees, since employees did not have the necessary independence in the conclusion of such contracts.

49. The delegates of the Union of Soviet Socialist Republics and the United Arab Republic reserved their position on sub-paragraph (c).

ARTICLE IX

Paragraph 1

Except as otherwise provided in this Article, jurisdiction over actions for compensation for nuclear damage under paragraphs 1, 2, 6 and 7 of Article II shall lie only with the courts of the Contracting Party on whose territory the nuclear incident occurred.

50. The drafting committee was of the opinion that paragraph 1 of the previous text could be omitted without changing the substance of Article IX, in view of the changes made to previous paragraph 2 by the drafting committee pursuant to the adoption by the full Committee of an oral Swedish amendment that that paragraph should not be confined to nuclear consignments.

Paragraph 2

Where the nuclear incident occurred on the territory of more than one Contracting Party or outside the territory of any Contracting Party, or where the place of the nuclear incident cannot be determined with certainty, jurisdiction over actions for compensation for nuclear damage shall lie with the courts of the Installation State of the operator liable.

Paragraph 3

Where two or more operators are jointly liable for nuclear damage, and under paragraph 2 jurisdiction would be with the courts of more than one Installation State, jurisdiction shall lie

(i) with the courts of that Installation State in which the incident partly occurred, or

(ii) if there is no such State, or there is more than one, with the courts of that Installation State in whose territory the means of transport carrying the nuclear material was registered, or

(iii) if there is no such State with jurisdiction under sub-paragraph (ii) or there is more than one such State, the courts of the Contracting Party which is determined ..... to be the most closely connected to the matters at issue.

51. The delegate of India felt that this paragraph should only apply in cases of nuclear incidents occurring in the course of carriage of nuclear material. The delegates of Canada, the Federal Republic of Germany, India and the United States of America, however, stated that it should have general application.

52. The delegates of the United Arab Republic and the Union of Soviet Socialist Republics were opposed to sub-paragraph (iii).
53. The United Kingdom had proposed (see CN-12/1, Add. 1, p. 21) that the determination of the competent court under sub-paragraph (iii) should be made by the President of the International Court of Justice. The delegate of the Union of Soviet Socialist Republics opposed this proposal. The delegates of the Czechoslovak Socialist Republic and Poland were of the opinion that the President of the International Court of Justice should only have the power to determine the competent court if the Contracting Parties involved agreed in each particular case to confer this power upon him. The Committee agreed to leave this question for the Conference to decide.
54. It was the understanding of the Committee that the term "court" would also include administrative authorities, charged with taking decisions in matters arising from this Convention.

New Proposal

55. The delegate of the United States of America, supported by the delegate of India, submitted the following proposal for a new paragraph to be added to Article IX:

> *"The Installation State shall take appropriate measures to ensure that the sums provided by insurance, by other financial security, or by State idemnification shall be available for the satisfaction of judgements for nuclear damage."*

The United States delegate proposed this paragraph on the assumption that there would be no provision on the execution of judgements in the Convention.

Paragraph 4

The courts having jurisdiction may take appropriate measures to receive the testimony in other Contracting Parties on whose territory parties or witnesses reside, and may take any other feasible measures to lighten the burden of litigation in such cases.

ARTICLE X

(Execution of Judgements)

56. The Committee decided to transfer Article X of the previous draft to the beginning of the Convention as a new Article I A. Instead, the new Article on execution of judgements (see below part III) might be inserted here.

ARTICLE XI

This Convention and the national law applicable thereunder shall be applied without any discrimination based upon nationality, domicile or residence.

57. The delegate of the United States of America proposed an additional paragraph, permitting a Contracting State to apply the Convention only to litigation to which a foreign national is a party (see below part III). The delegate of the Federal Republic of Germany repeated his reservation mentioned in paragraph 37 above; he referred to Article 15(b) of the Paris Convention.

ARTICLE XII

If any action is brought against a Contracting State as an operator liable under this Convention, such Contracting State may not invoke any jurisdictional immunities before the court competent pursuant to Article IX, except in respect of measures of execution.

58. The delegates of the Czechoslovak Socialist Republic and the Union of Soviet Socialist Republics proposed the deletion of this Article.
59. The delegates of India and the United Arab Republic, supported by the delegate of Brazil, proposed that a Contracting Party may not invoke any jurisdictional immunity if an action is brought against it as a manufacturer or furnisher liable under the Convention.

ARTICLE XIII

The Contracting Parties shall take appropriate measures to ensure that compensation for nuclear damage, interest and costs awarded by a court in connection therewith, insurance and reinsurance premiums and sums provided as insurance, reinsurance, other financial security or State indemnification pursuant to this Convention, shall be freely transferable into the currency of the Contracting Party on whose territory the damage is suffered, and of the Contracting Party on whose territory the claimant is habitually resident, and, as regards insurance or reinsurance premiums and payments, into the currencies specified in the insurance or reinsurance contract.

60. The delegate of the Czechoslovak Socialist Republic proposed deletion of this Article as being superfluous.

ARTICLE XIV

61. The Committee decided that this Article should appear after Article II as new Article II A.

ARTICLE XV

Each Contracting Party agrees to furnish to the Director General of the International Atomic Energy Agency for information and for dissemination to the other Contracting Parties copies of their laws and regulations relating to matters covered by this Convention.

III

NEW ARTICLES, FINAL CLAUSES AND OTHER PROPOSALS NOT DECIDED UPON BY THE COMMITTEE

1. Execution of Judgements

Canada:

"1. Where any final judgement, including a judgement by default, is entered by a court of a Contracting State in which damage occurred and which is competent to pronounce judgement pursuant to paragraph 2 of Article IX of this Convention, that judgement shall, upon compliance with the formalities required by the laws of the Installation State, be enforceable in the Installation State and the merits of the case shall not be the subject of further proceedings and shall not be reopened in proceedings for execution.
"2. Notwithstanding the provisions of paragraph 1 of this Article, the court in the Installation State to which application for the execution of a judgement referred to in that paragraph is made may refuse to issue execution until final judgement has been given on all actions filed in the State in which damage occurred, if the operator who is liable proves that the total amount of compensation which might be awarded by such judgements might exceed the applicable limit of liability under the provisions of this Convention."

Japan:

"A final judgement entered by a court having jurisdiction under this Convention shall be recognized in the territory of any other Contracting State, except:
(i) where the judgement was obtained by fraud; or
(ii) the operator was not given a fair opportunity to present his case."

United States of America:

"1. A final judgement entered by a court having jurisdiction under Article IX shall be recognized in the territory of any other Contracting State, except where the judgement is not in accord with fundamental standards of justice.
"2. A final judgement which is entitled to recognition shall, upon being presented for enforcement in accordance with the formalities required by the law of the Contracting State where enforcement is sought, be enforceable to the same extent as if it were a judgement of a court of that State.
"3. The merits of a claim on which the judgement has been given shall not be subject to further proceedings."

62. The Committee recommended by 8 votes against 3 that the Convention should contain an article on the execution of judgements, but left it for the Conference to decide upon the text although the delegate of Brazil recorded his view that the Committee should itself adopt a text. The Committee thus took no position on the proposals made in the written comments by the Governments of Austria, Denmark, Sweden and the United Kingdom (docu-

ment CN-12/1, pp. 69-71), or on the new proposals made during the meetings of the Committee by the delegations of Canada, Japan and the United States of America. These proposals are all reproduced on the opposite page.
63. The delegates of Brazil, the Czechoslovak Socialist Republic and the Union of Soviet Socialist Republics emphasized that any clause on execution of judgements should contain a provision to ensure respect for the "ordre public" of the country where execution was sought.
64. The delegate of the United States of America considered that no clause on enforcement of judgements was necessary but, if a clause were to be inserted, he was in favour of the text proposed by his delegation.

2. Relation with Other International Agreements

Federal Republic of Germany:

"Nothing in this Convention shall affect the application of the rules of any international agreement in the field of transport in force or open for signature, ratification or accession at the date of this Convention, or the application of any provisions of national law based on or equivalent to such rules."

Sweden:

"Nothing in this Convention shall affect the application of the rules of any international agreement in the field of transport, being in force or open for signature, ratification or accession at the date of this Convention, or the application of any provisions of national law based on or equivalent to such rules."

United Kingdom:

"No person other than the operator specified in this Article shall be liable for nuclear damage. This provision shall not affect the application of any international agreement in the field of transport in force or open for signature, ratification, or accession at the date of this Convention."

United States of America:

"1. As between States which ratify this Convention or accede to it, this Convention shall supersede any international convention or agreement between these States which is in force, open for signature, ratification or accession at the date on which this Convention is opened for signature, but only to the extent that such convention or agreement is in conflict with the Convention; provided, however, that this shall not apply to the Paris Convention of July 29, 1960, on Third Party Liability in the Field of Nuclear Energy and the supplementary Brussels Convention of
1962.
"2. Nothing in this Article shall affect the obligations of Contracting States to non-contracting States arising under any international convention or agreement."

65. The Committee agreed to leave the question of the relation between the present Convention and other international agreements for decision by the Conference. Thus it took no decision with regard to the proposal submitted by the Government of the Federal Republic of Germany in its written comments (CN-12/1, p. 88) and a proposal submitted by the delegation of the United States of America during the meetings of the Committee (superseding the proposal as contained in document CN-12/1, p. 89), both of which are reproduced above. Nor did the Committee discuss the proposals made on this subject by the Governments of Sweden and the United Kingdom in their written comments on Article II (CN-12/1, pp. 27 and 31), as reproduced above.

66. The delegates of the Federal Republic of Germany and the United Kingdom were in favour of a provision similar to that of Article 6(b) of the Paris Convention. They were not in a position to accept a clause based on Article XIV of the Brussels Convention.

67. The delegates of the Czechoslovak Socialist Republic and the Union of Soviet Socialist Republics opposed the proviso proposed by the United States of America that the new convention should not supersede regional conventions on civil liability for nuclear damage. The delegate of Japan reserved his position on this proviso.

68. The delegates of India and Japan felt that any clause on supersession should not affect bilateral agreements.

69. Reference is also made to the written comments of the Governments of France, the Federal Republic of Germany, the Netherlands and the United States of America in document CN-12/1, pp. 88 to 89.

3. Non-Application of the Convention to Nationals

United States of America:

"Nothing in this Convention shall preclude a Contracting State from applying the Convention only to litigation in which a foreign national is a party."

70. The delegate of the United Kingdom recorded his objection to the United States proposal.

71. The delegate of the United Arab Republic supported the proposal, but suggested replacing "foreign national" by "foreign element".

72. The majority of the other members of the Committee reserved their position.

4. Continuation of Protection

United States of America:

"Notwithstanding the termination of this Convention or the termination of its application to any Contracting State pursuant to Article , the provisions of this Convention shall continue to apply:

(a) with respect to any matters pending under the Convention at the time of such termination and involving such Installation State or any operator within its territory, and

(b) with respect to, and for the life of, any nuclear installation as defined in Article I, paragraph 5(a) or (b), which was licensed by or begun in such Installation State during the period of the duration of this Convention."

73. The delegate of India supported sub-paragraph (a) of the United States proposal, but could not agree to sub-paragraph (b).
74. The delegate of the Czechoslovak Socialist Republic objected to sub-paragraph (b).
75. The delegates of Canada and the Federal Republic of Germany agreed with the principle contained in the proposal, but reserved their position on the wording.

5. Other Proposals

76. The Committee did not have time to consider the following proposals which had not been submitted in the form of draft articles or textual amendments:

(a) India (CN-12/1, Add. 1, p. 23)
(b) Turkey (CN-12/1, Add. 1, p. 24)
(c) The oral proposals by the delegates of Canada and India that the Convention should contain a provision on dealing with the situation if the liability fund were already exhausted and further claims were brought within the period of limitation.

6. Final Clauses

77. The Committee did not consider the final clauses and decided merely to transmit to the Conference the relevant proposals that had been made. The proposals made by Governments are reproduced below. The Secretariat had prepared in advance for the Committee draft final clauses to cover those points on which no proposals had been made in the written comments of Governments as contained in document CN-12/1, pp. 89-90. The relevant parts of the Secretariat draft are reproduced below.

United Kingdom:

"1. This Convention shall apply to the metropolitan territories of the Contracting Parties.
"2. Any Signatory or Contracting Party may, at the time of signature or ratification of or accession to this Convention or at any later time, notify the Director General of the International Atomic Energy Agency that this Convention shall apply to those of its territories, including the territories for whose international relations it is responsible, to which this Convention is not applicable in accordance with paragraph 1 of this Article and which are mentioned in the notification. Any such notification may in respect of any territory or territories mentioned therein be withdrawn by giving twelve months' notice to that effect to the Director General of the International Atomic Energy Agency.
"3. Any territories of a Contracting Party, including the territories for whose international relations it is responsible, to which this Convention

does not apply shall be regarded for the purposes of this Convention as being a territory of a non-contracting State."

United States of America:

Article

Any dispute between two or more Contracting States concerning the interpretation or application of this Convention that cannot be settled through diplomatic channels shall, unless the States agree on the use of a different method of pacific settlement, be submitted at the application of any one of the States to the International Court of Justice.

Article

This Convention shall be open for signature by the States represented at the Diplomatic Conference on Minimum International Standards regarding Civil Liability for Nuclear Damage of May , 1963.

Article

This Convention shall be ratified and the instruments of ratification shall be deposited with the Director General of the International Atomic Energy Agency.

Article

1. This Convention shall come into force three months after the deposit of instruments of ratification by at least five States.
2. This Convention shall come into force, in respect of each State which ratifies it after its entry into force as provided in paragraph 1 of this Article, three months after the date of deposit of the instrument of ratification of that State.

Article

1. States Members of the United Nations, Members of the specialized agencies and of the International Atomic Energy Agency not represented at the Diplomatic Conference on Minimum International Standards regarding Civil Liability for Nuclear Damage of May , 1963, may accede to this Convention.
2. The instruments of accession shall be deposited with the Director General of the International Atomic Energy Agency.
3. The Convention shall come into force in respect of the acceding State three months after the date of deposit of the instrument of accession of that State, but not before the date of entry into force of the Convention as established by Article ____

Article

1. This Convention shall remain in effect for a period of ten years as from the date of its coming into force. Any Contracting State may, by giving twelve months' notice to the Director General of the International Atomic Energy Agency, terminate the application of this Convention to itself at the end of the period of ten years.
2. This Convention shall, after the period of ten years, remain in force for a period of five years for such Contracting States as have not terminated its application in accordance with Section 1 of this Article, and thereafter for successive periods of five years each for such Contracting States as have not terminated its application at the end of ore of such periods by giving twelve months' notice to that effect to the Director General of the Agency.
3. A Conference shall be convened by the Director General of the Agency in order to consider revisions to this Convention:
   (a) after a period of five years as from the date of its coming into force, or
   (b) at any other time, if one-third of the Contracting States express a desire to that effect.

Article

The Director General of the International Atomic Energy Agency shall notify the States represented at the Diplomatic Conference on Minimum International Standards regarding Civil Liability for Nuclear Damage of May , 1963, and the States acceding to this Convention, of the following:

1. Signatures, ratifications, and accessions received in accordance with Articles _____
2. The date on which the Convention will come into force in accordance with Article _____

Article

The present Convention shall be registered by the Director General of the International Atomic Energy Agency pursuant to Article 102 of the Charter of the United Nations.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, whose credentials have been found in order, have signed this Convention.

DONE in Vienna, this day of May, one thousand nine hundred and sixty-three, in the English, French, Russian and Spanish languages in a single copy, which shall remain deposited in the archives of the International Atomic Energy Agency, which shall issue certified copies.

SECRETARIAT DRAFT

Article A - Settlement of Disputes

1. Any dispute between two or more Contracting Parties concerning the interpretation or application of this Convention which cannot be settled

through negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice.

2. Each Contracting Party may at the time of signature, ratification or accession declare that it does not consider itself bound by paragraph 1. The other Contracting Parties shall not be bound by that paragraph in relation to any Contracting Party which has made such a reservation.

Article B - Parties to the Convention

This Convention shall be open for signature by.....

Article C - Ratification

This Convention shall be ratified and the instruments of ratification shall be deposited with the Director General of the International Atomic Energy Agency.

Article D - Accession

1. This Convention shall be open for accession by.....
2. The instruments of accession shall be deposited with the Director General of the International Atomic Energy Agency.

Article E - Entry into Force

1. This Convention shall come into force [upon] [.... months after] the deposit of the ..... instrument of ratification or accession.
2. After its entry into force, this Convention shall come into force in respect of each State which subsequently ratifies or accedes to it [upon] [.... months after] the date of deposit of the instrument of ratification or accession of that State.

Article F - Notification

The Director General of the International Atomic Energy Agency shall notify the States invited to the International Conference on Civil Liability for Nuclear Damage and the States which have acceded to this Convention of the following:

1. Signatures, ratifications and accessions received in accordance with Articles B, C and D.
2. Reservations entered in accordance with Article A and withdrawals thereof.
3. The date on which the Convention will come into force in accordance with Article E.
4. Denunciations received in accordance with Article _____

5. Requests for the convening of a revision conference pursuant to Article _____

Article G

The original of the present Convention in the English, French, Russian and Spanish languages shall be deposited with the Director General of the International Atomic Energy Agency, who shall send certified copies thereof to all States entitled to sign or accede to the Convention.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, authorized thereto by their respective Governments. have signed the present Convention.

DONE AT VIENNA, on .....

7. Title of the Convention

78. The delegate of Brazil considered that the present title was broader than the scope of the future convention, and that a more precise title should be found, since the convention dealt only with certain types of "nuclear damage".

8. Preamble

United States of America:

"The Contracting Parties,

"Having recognized the desirability of establishing some minimum international standards to provide financial protection against damage resulting from certain peaceful uses of nuclear energy without exposing the nuclear industry to an unreasonable or indefinite burden of liability,

"Have decided to conclude a Convention for that purpose, and thereto have agreed as follows:"

79. The Secretariat, in its above-mentioned document on final clauses, had proposed the following Preamble:

"The Contracting Parties have agreed as follows:"

ARTICLE-BY-ARTICLE COMMENTS ON THE DRAFT INTERNATIONAL CONVENTION ON MINIMUM INTERNATIONAL STANDARDS REGARDING CIVIL LIABILITY FOR NUCLEAR DAMAGE*

(CN-12/3)

(Prepared by the Secretariat of the Agency)

Outline of Preparatory Work

1. In December 1958 the Director General of the International Atomic Energy Agency instituted a Panel of Experts to advise him on the problem of civil liability for nuclear hazards. The Panel convened for three series of meetings, the first from 23 to 28 February 1959, the second from 11 to 22 May 1959 and the third from 20 August to 1 September 1959.
2. The Panel prepared the draft of a convention in this field. The draft text, together with a commentary thereon elaborated by the Secretariat and approved by the Panel, and the Panel's report, were transmitted to all Member States with a request to communicate their views to the Director General by 31 July 1960. The comments received were again circulated to the Governments of all Member States with a request for submission of additional comments.
3. On 1 February 1961 the Agency's Board of Governors set up an Intergovernmental Committee, consisting of representatives of the following 14 Member States: Argentina, Brazil, Canada, Czechoslovak Socialist Republic, Finland, France, Federal Republic of Germany, India, Japan, Poland, Union of Soviet Socialist Republics, United Arab Republic, United Kingdom of Great Britain and Northern Ireland and United States of America. The Intergovernmental Committee was entrusted with the task of considering the draft convention prepared by the Panel of legal experts, as well as the comments thereon received from Governments, and of preparing a revised draft convention.
4. The Committee met from 3 to 13 May 1961 in Vienna, and elaborated a revised text which was again circulated to Member Governments with a request for observations. This text, together with the comments received, is reproduced in Conference documents CN-12/1 and CN-12/1/Add. 1.
5. On 5 March 1962 the Board of Governors decided to convene an international conference early in 1963 for the negotiation and conclusion of the Convention, and to reconvene the Intergovernmental Committee before the Conference. The Intergovernmental Committee met accordingly for a second

* These comments relate to the draft Convention as established by the Intergovernmental Committee at its second meeting in October 1962, set out in document CN-12/2. This text constitutes the basic proposal submitted to the International Conference on Civil Liability for Nuclear Damage. The final text of the Convention as adopted by that Conference on 19 May 1963 differs, of course, from the text in document CN-12/2. In the text of the present comments, reference is made, in square brackets, to the corresponding articles of the final text of the Vienna Convention, as well as other appropriate indications relating to the final text.

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session from 22 to 27 October 1962 to examine the draft prepared by it at its first meeting in the light of the comments submitted thereon. In the course of its deliberations it also took into account the Convention on Liability of Operators of Nuclear Ships, adopted by the Diplomatic Conference on Maritime Law at Brussels on 25 May 1962. The report on the second meeting, as well as the revised text of the draft convention, are contained in Conference document CN-12/2.

6. The present article-by-article commentary is based upon the commentary referred to in paragraph 2, but has been revised to take into account the many important alterations which have been made since the draft left the Panel stage and was considered by Governments. The commentary does not reflect the observations made by Governments and by the members of the Intergovernmental Committee; these are reproduced in documents CN-12/1, CN-12/1/Add. 1 and CN-12/2.

Background and Scope

7. The peaceful utilization of nuclear energy involves hazards which, because of their potential magnitude and their peculiar characteristics, are not fully provided for by the rules of civil law devised for conventional risks. Special hazards may arise whenever a large-scale emission of ionizing radiation is possible. Large-scale emissions may originate in a reactor installation, or may occur in the production, reprocessing, carriage and disposal as waste, of nuclear fuels capable of spontaneous criticality.

8. It is thus desirable that special legislation be devised to provide rules and procedures to ensure the maximum possible financial protection for the public, without exposing the operating, manufacturing and transportation industries to an unreasonable or indefinite burden of liability and to the risk of harassing litigation with respect thereto. Such special legislation has been enacted or is planned in a number of countries. A regional Convention, aiming at unifying the rules on third party liability for nuclear damage in Western Europe, was signed on 29 July 1960 by almost all Members of the Organisation for European Economic Co-operation, and a supplemental Convention thereto was signed on 31 January 1963.

9. National and regional solutions are, however, not sufficient to cope with all aspects of nuclear hazards, as damage attributable, for instance, to radioactive fall-out or to contamination of water bodies may occur at a considerable distance from the place where the original discharge of ionizing radiation took place. Moreover, as a consequence of the geographical location of the operating and manufacturing industries as it is at present and may be expected to be in the future, the malfunctioning of a nuclear installation could, directly or indirectly, involve industries in several countries. In addition, there are the hazards inherent in international transportation of fuels capable of criticality outside an installation, in particular of irradiated fuel elements and of other radioactive products and waste. Under existing rules regarding jurisdictional competence and choice of law, a single incident might give rise to suits in several States, and the courts seized of these suits might apply different laws to similar claims arising out of the same incident. Such a multiplicity of different laws applied by a multiplicity of competent courts, and the ensuing legal uncertainty, makes it dif-

ficult to provide adequate financial protection for the public. Industries would thus also be exposed to unforeseeable risks of liability. To obtain adequate insurance coverage for nuclear risks it will in many instances be necessary to draw upon the insurance capacity of more than one insurance market by international co-insurance or reinsurance arrangements. These arrangements presuppose a minimum of legal uniformity, and co-ordination of the various national rules governing liability and jurisdiction with respect to the risks to be covered.

10. Only an international convention, adopted on a universal basis, can provide effective rules regarding civil liability for nuclear hazards. Such an international convention should comprise not only States in which nuclear energy is at present or will in the future be utilized, but also other States on whose territory nuclear damage might be suffered in view of the potential magnitude of nuclear hazards, and States in which a supplying industry is expected to develop.

11. The Convention commented on in this document has two principal objectives: first, to enumerate the minimum international standards which must be adopted with regard to civil liability for nuclear damage and secondly, to designate the State which shall have exclusive legislative and jurisdictional competence over claims arising out of a given nuclear incident.

12. The Convention does not, except with respect to legislative and jurisdictional competence, purport to create a new and uniform civil law applicable to nuclear hazards. It lays down flexible formulae adaptable to a variety of legal systems and to different social and economic concepts. It is not intended that the Convention should in every aspect replace existing national or regional legislation in the field of nuclear liability. Further national legislation remains necessary within the framework of the flexible formulae contained in this Convention.

13. The Convention only covers damage caused by the operation of fixed nuclear installations and the transportation of hazardous fuels and products and the civil liability to which they may give rise. It does not cover hazards caused by a nuclear reactor with which a means of transport is equipped. In this connection it is recalled that the Diplomatic Conference on Maritime Law adopted on 25 May 1962 a Convention on Liability of Operators of Nuclear Ships which, to some extent, was inspired by the draft Convention to which the present commentary relates.

14. The Convention does not cover criminal liability for nuclear damage, nor a State's responsibility incurred under its own public law, under general principles of international law or by virtue of special international agreements. In view of the special concepts and social functions which underlie criminal law and the rules regarding State responsibility, it was not considered desirable to deal with them in a convention drawn up for the specific purpose of establishing certain minimum international standards in the field of civil liability.

15. Reference is made in the following comments to the corresponding articles of the two already existing conventions referred to above, namely the Convention on Liability of Operators of Nuclear Ships, adopted by the Diplomatic Conference on Maritime Law at Brussels on 25 May 1962 (hereinafter referred to as the "Brussels Convention") and the Convention on Third Party Liability in the Field of Nuclear Energy, adopted by the member

countries of the former OEEC at Paris on 29 July 1960 (hereinafter referred to as the "Paris Convention").

ARTICLE I

[numbering of paragraphs has been changed]

Definitions

16. In general it should be noted that the definitions adopted are interconnected and some of the definitions are used as a predicate for others.

"Nuclear fuel", "Radioactive products or waste", "Nuclear material"

17. The above three definitions define various categories of materials and are partly overlapping because the same material might fall within more than one definition. These different definitions were drafted in order to take into account the specific hazardous properties of various materials, and the degree of risk involved depending on the use or location of these very same materials. The corresponding provisions of the Brussels Convention are Article I (5) (nuclear fuel) and (6) (radioactive products or waste), and of the Paris Convention Article 1 (a) (iii) (nuclear fuel), (iv) (radioactive products or waste) and (v) (nuclear substances).

18. The definition of "nuclear material" is exclusively conceived for radioactive materials being in the course of transport and therefore excludes materials which, in view of their less dangerous nature, are not considered to warrant specific rules for their transport. Thus, fuel in the form of natural and depleted uranium, and certain types and uses of radioisotopes are exempted. For the same reasons it was not considered necessary that the system of the Convention should cover certain types of radioisotopes when located outside a nuclear installation.[1] The exemption clause in the definition of "radioactive products or waste" regarding these types of radioisotopes is intended to apply only to radioisotopes having reached the final stage of fabrication so as to be usable, without any further processing, for the purposes indicated in Article I (2).

19. For the purposes of this Convention it is not necessary that the fuels constitute or approach a critical mass, i.e. the form and amount required to cause a divergent chain reaction. Among the risks inherent in transportation, storage or disposal as waste must be counted the risk that such a critical mass be attained when several consignments come accidentally into contact with one another. If it is true that by appropriate transportation, storage and waste disposal practices nuclear incidents can be avoided, the low or non-existent risk factor should be reflected in low or nominal insurance charges. It is obvious, however, that such incidents must be covered by the Convention should they nevertheless occur.

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[1] [In the final text, such radioisotopes are also excluded if inside a nuclear installation]

"Nuclear reactor"

20. The definition corresponds almost word for word to Article I (10) of the Brussels Convention. The Paris Convention does not contain such a definition. The term "nuclear reactor" only covers fission devices and excludes fusion reactors. It was considered impossible to cover the latter since their hazard factor was still unknown. Subcritical assemblies are also excluded.

"Nuclear installation"

21. The corresponding definition of the Paris Convention appears in its Article 1 (a) (ii).

22. This definition is intended to cover all potential fixed sources of ionizing radiation capable of causing large-scale nuclear damage. It helps to identify the person liable for nuclear damage and is, if a per installation limit of liability is chosen, important in the computation of the limit of liability.

23. The risk of large-scale damage being caused by ionizing radiation is present whenever nuclear fuels undergo or are capable of undergoing a sustained divergent chain reaction. Accordingly, the definition includes facilities in which criticality is attained deliberately (reactors) and those in which there exists a risk of unintended criticality (facilities in which nuclear materials are produced or fabricated by using nuclear fuel, where they are processed or reprocessed, or any place where such nuclear materials are stored).

24. Large-scale damage attributable to ionizing radiation may also be caused by direct exposure to radioactive products or waste which present no danger of criticality, or by exposure to or ingestion of substances or organisms which have been contaminated by radioactive products or waste. The definition therefore also includes facilities in which sufficient amounts of radioactive products are located so that they present a risk of large-scale damage.

25. Sub-paragraph (b) is intended to include separation plants in which nuclear material (e.g. enriched uranium) is fabricated by using nuclear fuel (e.g. natural uranium) as a starting point. It does not, however, cover such devices as cyclotrons or accelerators in which nuclear material may be produced in very small quantities. It also covers any facilities such as plutonium and isotope separation plants and facilities for the fabrication of radioisotopes (e.g. cobalt-60 bombs for therapeutical use).

26. Places of storage incidental to transportation are not considered nuclear installations; the purpose of this exception is to preserve, wherever possible, uniformity of law with respect to nuclear consignments. The concept of storage incidental to transportation is not further defined; whether storage is or is not incidental to transportation will generally depend upon whether or not, as a matter of fact and under the terms of the contract of carriage, the particular consignment retains its identity while in storage.

27. The proviso to paragraph 5 permits the Installation State to declare that several facilities shall be considered as being a single installation if they belong to one and the same operator and are located on the same site. This is in keeping with the scheme of the Convention whereby for purposes

of determining the limits of liability no importance is attached to the individual hazard coefficient of a given installation. The fact that an installation consists of several facilities does not appear to be of material importance to the risk of off-site damage attributable to a single incident. Conversely, it is conceivable that by pooling their warning, safety and waste disposal facilities the overall hazard coefficient of a combined nuclear site can be reduced. If the conditions of identity of site are not fulfilled, the operator will be cumulatively liable as provided for in Article II (4).

"Operator"

28. The corresponding provisions are to be found in Article I (4) of the Brussels Convention and Article 1 (a) (vi) of the Paris Convention.
29. This definition identifies the person who is liable for nuclear damage. In most instances a person will have been authorized to operate a nuclear installation. If, however, no express authorization has been given, the law of the Installation State will - by a special provision or by the application of general principles - identify the person who will be considered the operator. This person may be the owner, the possessor of the installation or the person who has de facto control over it. It should be noted that pursuant to Article II, 2 the Installation State may designate a carrier or persons handling radioactive waste as an "operator" in respect of nuclear material.

"Installation State"

30. The term "Installation State" is necessary to designate the State that has legislative competence with regard to nuclear damage. Reactors and other nuclear installations may conceivably be operated outside the territory of any State - e.g. on the High Seas or in the Antarctic regions. It is therefore provided that any State which operates or which has authorized such installations shall be considered the Installation State.
31. International nuclear installations, such as the Joint Institute in Dubna and the European Company for the Chemical Processing of Irradiated Fuels (EUROCHEMIC) are, in the absence of provision to the contrary in the convention setting up the Company or Organization or in any agreement concluded with the host State, subject to the law of the State where the installation is located in respect of civil liability. This State will then be the Installation State for the purposes of the Convention. There are also international organizations operating laboratories or research institutes which, at least for the time being, are not equipped with reactors, such as the European Organization for Nuclear Research in Geneva, and the International Atomic Energy Agency near Seibersdorf, Austria. As long as these establishments are not equipped with reactors or do not store nuclear materials, they do not constitute nuclear installations as defined in Article I (5) and the Convention therefore does not apply to them.

"Nuclear incident", "Nuclear damage"

32. The corresponding provisions are Article I (7) and (8) of the Brussels Convention and Article 1 (a) (i) of the Paris Convention.

33. The special rules of the Convention are necessarily only applicable with respect to damage which, as compared to that resulting from conventional industrial activities, is of an extraordinary nature and cannot be covered by conventional insurance arrangements. Damage of an extraordinary nature is likely to occur whenever there is exposure to ionizing radiation. The extraordinary nature of this damage may reside not only in its magnitude, but in the fact that ionizing radiation is capable of producing distant, delayed or indirect effects.

34. In many cases it will, however, be difficult to determine whether and to what extent a given injury or damage has been caused by ionizing radiation, by the toxic properties of nuclear fuels (e.g. plutonium) or radioactive products, by an explosion in a nuclear installation or by the heat released in the course of the incident. In order to avoid any difficult litigation on that point, it is provided that any damage due to toxicity, heat or to an explosion shall be considered "nuclear damage" if it arises in combination with radioactive properties of certain materials. It will thus not be necessary, in order to benefit from the provisions of the Convention, for the claimant or defendant to prove that the particular damage for which compensation is claimed was due to ionizing radiation alone. On the other hand, damage caused by an event occurring in a nuclear installation, but not resulting from radioactive properties or from a combination of such properties with other hazardous properties, is not covered by the Convention, and compensation therefore must be sought according to ordinary rules of civil law.

35. The definition of "nuclear damage" covers personal injury or material damage caused by:

(a) nuclear fuel or radioactive products or waste in a nuclear installation;
(b) nuclear material outside a nuclear installation, including notably material in the course of transport to or from a nuclear installation and the escape of volatile fission products and liquids of a cooling system through leakage.

36. The Convention governs civil claims related to nuclear damage attributable to a nuclear incident covered by it. No compensation may be obtained in civil proceedings except in conformity with the standards laid down in the Convention. On the other hand, the question of whether damage other than death, personal injury, loss of or damage to property give rise to civil liability, and the related question of who may claim compensation, are left to the applicable national law. This concerns principally such items as moral damages and indirect damage or loss of profits. It does not appear necessary or indeed feasible to establish uniform international rules for such items. The scope of civil remedies is intimately tied to the general legal concepts and traditions of each country, and varies with the social function reserved to such remedies. Thus, in some legal systems no civil compensation or only qualified compensation is allowed for indirect damage (e.g. for loss of profits, or for damage to fisheries), for damage provable only on a statistical basis, or for damage also attributable to the victim's negligence. Under the Convention this question remains governed by the applicable national law, so that no court will, for instance, be required to grant compensation for moral or indirect damage if that is contrary to its own law. It should be noted, however, that while national legislation

may deny recovery for certain types of damage, the responsibility of the State might nevertheless be engaged under general rules of public international law for any damage caused in another State for which compensation has not been paid.

"Person"

37. This definition is identical with that set out in Article I (3) of the Brussels Convention and tends to be as wide as possible in order to overcome differences as regards the concept of a person under different national laws.

ARTICLE I A (formerly Article X)

[This Article has been eliminated]

Incidents or Damage in Non-Contracting States

38. The Convention is applicable, in principle, only to nuclear incidents which occur and to damage suffered on the territory of Contracting Parties, or outside the territory of any State (e.g. on the High Seas) if the operator liable is subject to the Convention. However, the law of the Installation State may extend the application of the Convention to incidents and to damage occurring in non-contracting States. It may, without violating the Convention, provide that claims resulting from an incident occurring on the territory of a Contracting Party shall be governed by the Convention (e.g. be included in the limit of liability) even though the damage is suffered in a non-contracting State. Installation States may also wish to extend the application of the Convention to incidents occurring in non-contracting States in the course of international transportation to or from Contracting States. Such extensions of the rules of the Convention can of course be binding only upon the courts of a Contracting State in which suits for such foreign damage might be brought, or where execution of judgements may be sought because the defendant has assets there. Within these limits, such extension would generally protect operators, by eliminating the possibility that actions be filed against them on the basis of ordinary tort law.

ARTICLE II

Operator's Liability

39. The provisions corresponding to paragraph 1 of this Article are Article II (1) and (4) of the Brussels Convention and Articles 3 and 4 (a) to (c) of the Paris Convention.

40. In order to facilitate, for the victims, the filing and litigation of claims, and for the persons liable the purchase of financial coverage for their liability, the Convention channels liability for nuclear damage to one person with respect to each incident. This person is the operator of the nuclear installation concerned, who shall always be liable for incidents occurring in his installation.

41. With respect to nuclear incidents involving nuclear material located outside his installation and originating in or destined for his installation, the passing of liability is determined in sub-paragraphs (b) and (c) of paragraph 1. In the course of the discussion of this problem in the Intergovernmental Committee three possibilities were advanced:

(a) Liability passes to another operator principally at the time provided for by contract between the operators concerned. Only if there is no such contractual arrangement does the liability pass when the other operator has taken charge of the material. This solution was adopted by a majority of the Intergovernmental Committee and appears in the present text.
(b) Liability passes only to another operator when he has taken charge of the material.
(c) Liability passes only if the sending operator has concluded an agreement in writing with the receiving operator determining time or place of the passing of liability.

42. The formula appearing in the text is intended to leave the question of transfer of liability mainly to the terms of the agreement between the operators concerned. Once liability has been shifted, the receiving operator will be considered the only "operator" for all the purposes of the Convention, and the State which has designated or authorized the receiving operator to act as operator will be the Installation State and its law will govern the liability. It should be noted that not only carriage of nuclear material to another "operator" as defined in the Convention is covered, but also transport of such material to the operator of a reactor with which a means of transport is equipped. If such a means of transport is a nuclear ship covered by the Brussels Convention, the passing of liability will put into operation the provisions of the latter Convention, provided that such material is intended to be used as fuel for the ship reactor (Article I (5), Brussels Convention). In all other cases of liability being assumed by an operator of a nuclear reactor with which a means of transport is equipped, the general rules of tort liability will apply and neither the present nor the Brussels Convention will apply unless such operator is designated as an operator under paragraph 2 of Article II. In the case of transport of spent fuel elements of a mobile reactor to an installation covered by this Convention (e.g. a reprocessing plant) the present Convention becomes applicable once liability has been assumed by the operator of such plant.

43. When nuclear material originating in a non-contracting State is sent under contract to an installation located in a Contracting State, the operator of the receiving installation is liable for the consignment under the Convention, once it has been loaded on the means of transportation. Conditions as to packaging, selection of the means of transport etc. in the contract will enable the operator to ensure that the material is safely transported. If the materials are sent to a non-contracting State from a Contracting State, the operator sending them remains liable until the materials are unloaded from the means of transportation. But also in these cases the general principle of the territorial application of the Convention prevails, and the system established by the Convention will not apply to a nuclear incident occurring, or to nuclear damage suffered in the territory of non-contracting States,

unless the contrary is provided for by the Installation State. The operator will, however, be liable for incidents occurring or damage suffered on the High Seas, cf. Article I A.

Other Persons Liable

44. There are two possible exceptions to the principle that the operator is exclusively liable. First, it may be provided in the legislation of the Installation State that a carrier or persons handling radioactive waste be liable in lieu of the operator of a nuclear installation (Article II (2)). This substitution must have been requested by the carrier or waste disposal "operator" concerned and must have the consent of the operator otherwise liable. The carrier or waste disposal "operator" will then be liable for nuclear material transported or disposed of as waste and will be considered the "operator" for all purposes of the Convention and in all Contracting States. In many cases specialized carriers or waste disposal firms will have more experience and be better equipped than the operator to handle and control such material, and will thus be in a better position to assume responsibility for transport and waste disposal operations. For that reason they will often be in the best position to obtain insurance coverage. Since such a choice depends upon a number of variable factors and international transportation practices, it was not considered feasible or desirable to devise a rigid formula for designating the person liable.

45. Whereas the substitution of carriers and waste disposal "operators" completely exonerates the operator of an installation from liability, the Convention also foresees the possibility that other persons may be liable in addition to the operator (Article II (5) and (6)).[2] This is the second exception to the principle of channelling all liability to one person. This possibility has been provided for since in some States the "channelling system" may contradict traditional legal principles and, with respect to nuclear consignments, may run counter to existing international agreements in the field of transportation. It corresponds in substance to the solution adopted by the Paris Convention (Article 6 (b) and Annex I, Reservation No. 1).

46. It is clear, however, that, in admitting the unlimited liability of persons other than the operator, an unreasonable burden to the supplying industry would result. Hence, the law of the Installation State may impose liability upon other persons only on the condition that the limit of liability as fixed in the Convention is not exceeded, and that the persons liable are covered by the operator's financial security. Although liability is thus not legally channelled exclusively to the operator, it remains economically channelled to him (coverage system). No additional financial burden for the supplying industry would result. The question of whether the liability of these persons will be absolute or based on fault will be governed by the law of the Installation State and not by the Convention; liability may therefore in many cases be predicated upon fault. In all cases, however, the operator remains absolutely liable. The "coverage system" corresponds e.g. to the system

[2] [Paragraph (6) has been eliminated]

adopted under the United States Atomic Energy Act and to the reservations made by some States to Article 6 (a) of the Paris Convention.

Joint Liability

47. Article II (3) provides that, whenever several operators are liable for nuclear damage and the part of the total damage caused by each of them individually is not separable, they shall be jointly and severally liable for the full amount. The provisions regarding joint and several liability are a direct consequence of the absolute nature of liability for nuclear damage. They are devised in the interest of the public, which should not be compelled to proceed separately against every person liable. On the other hand, any operator who has been held liable for more than the proportion of the damage attributable to him is not prevented by the Convention from seeking contribution from any other operator whose installation has contributed to causing the damage. This question is not regulated in the Convention and has to be decided in conformity with the law applicable in relation to the operators involved.

48. The second sentence of paragraph 3 is designed to apply where several consignments are involved in one or more incidents occurring simultaneously or successively. If the consignments are located in the same vehicle or in the same place of storage, it will be difficult to determine whether any particular consignment triggered off the incident, and whether or to what extent any of the consignments caused damage. Under the general rules of the Convention the persons responsible for each consignment would be jointly and severally liable if the damage attributable to each operator is not separable, and the total amount of compensation would be the sum of the individual limits of liability. This would impose a heavy risk on the insurance market and might discourage specialized transportation practices. For that reason it is provided that liability for such joint or cumulative damage will be limited to the highest individual limit. On the question of whether this provision applies even if the share of the damage for which each operator involved is liable is separable or not separable, reference is made to paragraph 15 of the Report of the second series of meetings of the Intergovernmental Committee (CN-12/2).

49. Article II (4) also imposes joint and several liability for damage caused cumulatively by several sources of ionizing radiation, even if the radiation released from one source alone would not have caused damage. This provision imposes an absolute duty of care with respect to accidental or to planned releases of ionizing radiation from sources covered by the Convention (e.g. disposal of waste in a body of water).

Direct Action against Insurer

50. In some States legislation has been developed whereby insurers can be sued directly by the persons who have suffered damage for which the insured is liable. Since such a system does not prejudice the interests either of the plaintiffs or of the defendants, the Convention expressly permits States to retain or to adopt it.

ARTICLE II A

[Now Article III]

Certificate

51. In order to facilitate the transport of radioactive materials, especially in the case of transit through a number of countries, the operator liable shall provide the carrier with a certificate, issued by or on behalf of the insurer or other financial guarantor. This certificate will also make it easier to obtain proof for litigation arising from a nuclear incident. (An identical provision is contained in Article 4 (d) of the Paris Convention.)

ARTICLE III

[Now Article IV]

Liability without fault

52. This paragraph establishes the principle of strict liability of the operator for nuclear damage. The same principle is established under the Brussels Convention (Article II (1)) and the Paris Convention (Article 3).

53. The activities covered by the Convention are inherently of a hazardous nature, so that such a principle appears to be morally and practically justified. The requirement that fault or negligence on the part of the defendant be proved would impose a heavy burden upon the claimants without giving the defendant or his financial guarantor any corresponding practical advantage. The factual issues concerning fault or absence of fault might give use to intricate litigation and questions of a technical nature which courts are ordinarily not equipped to solve. In many legal systems, the principle of strict liability has been adopted with respect to certain industrial activities. In others the burden of proof has been reversed. The practical results of these various systems are usually the same. In the interest of legal certainty a simple and uniform rule to that effect has been adopted in the Convention.

54. It is still necessary to establish proof of causation by a nuclear accident before recovery can be had under this Convention (see also Article II (1), Brussels Convention). However, all matters regarding the submission and adequacy of proof are left to the law of the competent court. This means that courts or legislators may, if they consider it necessary in cases where the relationship between cause and effect cannot be established with absolute certainty (e.g. where damage is provable only on a statistical basis), establish reasonable inferences or presumptions to lighten the burden of proof imposed upon the claimant.

55. The question of whether contributory negligence of the person suffering damage should be permitted as a defence is deliberately left to the law of the competent court. (See also Article II (5) of the Brussels Convention and paragraph 48 of the Exposé des Motifs of the Paris Convention.) It may be that some defence of contributory negligence would be necessary, not only in the interest of the defendant, but also in the interest of claimants

who were not contributorily negligent or at fault. In the absence of a defence of contributory negligence the latter might, on distribution of the proceeds of a limited liability fund, have to rank equally with those who, through fault of negligence, either caused the incident or permitted their injuries to become aggravated (e.g. a victim who negligently failed to submit to medical treatment). In view of the great differences existing as to the concept and scope of these special defences it was not considered advisable or desirable to establish uniform international rules in this field but to permit the application of national legal concepts.

No Exonerations

56. The absolute liability of the operator is not subject to the classic exonerations for tortious acts, force majeure, acts of God or intervening acts of third persons, whether or not such acts were reasonably foreseeable and avoidable. In so far as any precautions can be taken, those in charge of a nuclear installation are in a position to take them, whereas potential victims have no way of protecting themselves.

57. The only exonerations lie in the case of damage caused by a nuclear incident directly due to certain disturbances of an international character such as acts of armed conflict and invasion, of a political nature such as civil war and insurrection, or grave natural disasters of an exceptional character, which are catastrophic and completely unforeseeable, on the grounds that all such matters are the responsibility of the nation as a whole. No other exonerations are permitted. It is provided, however, that a State may, by national law, even further restrict the exonerations.

Damage caused jointly by an Occurrence not covered by the Convention and by a Nuclear Incident

58. Where nuclear damage and other damage is caused by a nuclear incident alone or jointly by a nuclear incident and by another occurrence, and the part of the non-nuclear damage is not separable, the whole damage will be covered by the Convention and the operator will be liable for the entire damage. A similar provision is contained in Article IV of the Brussels Convention. This is an additional protection for parties suffering damage and avoids complicated recourse and cross-actions.

59. Where it is shown that nuclear damage was caused jointly or cumulatively by a nuclear installation or consignment and by another source of ionizing radiation not covered by the Convention, the Convention does not affect the liability of persons responsible for such source. The possibility of joint damage is very real. The source of ionizing radiation not covered by the Convention may be a natural one (radiation in certain mines; cosmic radiation), an installation in a non-contracting State, a nuclear ship, a nuclear weapon, or facilities such as fluoroscopes or therapeutic devices not covered by the Convention. These sources may, however, have exposed the victim of a nuclear incident to such a dose of radiation that, together with the radiation caused by the nuclear incident, nuclear damage is produced or aggravated. It would seem unduly harsh not only to defendants covered by the Convention, but also to victims who had not been exposed to non-

convention sources of radiation, if liability for the entire damage were imposed upon the operator covered by the Convention and had to be satisfied from his limited liability fund. Nor should there be any conflict between the Convention and the Brussels Convention.

Damage to the Nuclear Installation

60. Whereas damage to the nuclear installation and to property used in connection therewith is also considered nuclear damage, the operator cannot obtain a share from the limited liability fund as compensation for such loss. The Convention does not apply to claims for compensation of damage to on-site property. Here the normal rules of tort law are applicable. Article II (3) of the Brussels Convention similarly provides that the nuclear ship and equipment shall not be covered by the operator's liability. See also Article 3 (b) (i) of the Paris Convention.

Damage to the Means of Transport [3]

61. Similarly there is no recovery under this Convention for damage to the means of transport. Contracting States may, however, under their legislation, permit owners of the means of transport on which the nuclear material was carried at the time of the incident to claim reparation for damage to the means of transport from the operator liable. There is of course no claim against the operator if he himself is the owner of the vehicle, since he could not sue himself.

ARTICLE IV

[Now Article V]

Limitation of Liability

62. One of the principal postulates of any legislation regarding nuclear damage is that the aggregate amount of civil liability for nuclear hazards should be kept within limits for which financial coverage can be obtained. The purpose of such a limitation is on the one hand to protect industry against the risk of incurring liability in excess of its financial capacity. The limitation of liability is to a certain extent counter-balanced by the absolute nature of the operator's liability and the requirement that his liability be covered by adequate financial security. It should be noted that the Convention as such does not limit the liability of the operator, it only authorizes the Installation State to do so.

63. The Convention is designed to establish minimum standards with respect to the limitation of liability in amount. These minimum international standards are fixed, i.e. they do not vary according to the individual hazard coefficient of the particular installation or consignment. A variable ceiling

[3] The explanation given in this paragraph was contested at the Conference (CN-12/CW/OR. 12 para. 52) and the problem involved gave rise to lengthy discussions. See CN-12/CW/OR/12, paras. 41 to 65; CN-12/CW/OR. 19, paras. 38, and 40 to 78; CN-12/OR/7, paras. 125 to 130, CN-12/OR/7, paras. 1 to 6.

of liability may be feasible on a national level, especially if coupled with provisions whereby excess liability will be borne by the State, but on an international level a flexible system would presuppose a central hazards-evaluation authority. The fixed system adopted in this paragraph avoids that complication and presents the advantage of simplicity. It may compel the operator of a low-risk installation or consignment to maintain financial security for a relatively high amount, but his liability may be guaranteed by the State in the full amount or beyond a certain sum. Where this is not the case it may be assumed that the insurance premium for low-risk installations would be reduced proportionately.

Limitation per Incident or per Installation

64. The limitation of the operator's liability in amount may be set on a "per incident" or "per installation" basis. If under a pure "per installation" system several nuclear incidents occur in one nuclear installation, the first incident may absorb all or a great part of the limited liability fund. Although a series of incidents occurring in the same installation may be considered rather hypothetical, injured parties of later incidents might be left uncompensated. In the case of nuclear consignments such an eventuality is not so unlikely. On the other hand, a "per incident" system always assures a certain minimum of liability regardless of the number of incidents.

65. In the present text the "per incident" system has been adopted. A "per incident" limit has also been chosen under the Paris Convention (Article 7) and the Brussels Convention (Article III (1) which contains a fixed limit of $100 million). Such "per incident" limit applies both for fixed installations and for nuclear materials in the course of transport.

Transit of Nuclear Material

[Now Article IV; para.2 has been deleted]

66. Since the limit of liability set forth in the Convention is only a minimum, Contracting States may establish different limits of liability and the situation may arise when, in the case of transport of nuclear materials, the liability of foreign operators responsible for such materials is less than that of the operators from the country through which the material passes. In order to avoid that the public in this country should enjoy a lower degree of protection for such consignments, compared with that of its own country, transit States may require that the limit of liability of the operator liable be increased during transit. In such a case the special dangers of the nuclear substances in question have to be taken into account and a higher limit shall not exceed the amount established by the State through the territory of which the material in question passes. The draft does not contain an exception for cases of entry in urgent distress, innocent passage, or when there is a right to fly over or land on the territory of a Contracting State, as does the Paris Convention (Article 7 (f)).

Interest and Costs

67. Any litigation costs or interest awarded by a court will have to be paid over and above the limit of liability to be established under this Convention. This provision ensures that the amount provided for in this Article is only available for compensation of nuclear damage and is not absorbed by costly litigation. Similar provisions are contained in Article 7 (g) of the Paris Convention and Article III (1) of the Brussels Convention.

ARTICLE V

[Now Article VI]

Limitation in Time

68. Rights of compensation against operators lapse ten years after the date on which the nuclear incident occurred. The Convention permits the Installation State to establish a longer period before which rights of action are extinguished, provided that the liability of operators is covered for the longer period by additional financial guarantee, since the rights of other persons injured who have already filed an action cannot be curtailed by the extension of the ten-year period. (See also Article V (1) of the Brussels Convention and Article 8 of the Paris Convention.)

69. Nuclear injuries frequently produce delayed effects. Not all such latent damage will manifest itself within ten years. However, that period represents a reasonable compromise. It covers most latent injuries with respect to which causation can be established with some degree of certainty, and does not expose the insurers to incalculable risks. As for damage which manifests itself later, some States may wish to cover the damage directly, or by indemnifying the operator.

70. With respect to nuclear incidents caused by hazardous materials involuntarily removed from the possession of the person liable (loss, theft) or jettisoning at sea, the ten year minimum is computed from the time when the loss, theft, or jettisoning occurred, and not from the time of the nuclear incident. The term "jettisoning" means abandoning in distress, and not voluntary dumping of nuclear material. Similar provisions are contained in Article V (2) of the Brussels Convention and in Article 8 (a) of the Paris Convention.

71. States are free to establish a period of prescription computed from the time when the damage and the person liable was known or should have been known to the claimant. Whereas the ten-year period is a period of extinction after which the right itself lapses, the two-year period can either be a period of extinction or prescription (i.e. a period after which no action can be filed, but the right itself does not yet extinguish). Similar provisions are contained in Article V (3) of the Brussels Convention and in Article 8 (a) of the Paris Convention. Proceedings may also be brought by a person who suffers an aggravation of the damage for which he has already brought an action for compensation within the period applicable, even if final judgement has already been entered (under Article V (4) of the Brussels Convention and Article 8 (d) of the Paris Convention this may only be done if final judgement has not been rendered).

ARTICLE VI

[Now Article VII]

Financial Security

72. The requirement that all liability for nuclear damage be covered by adequate financial security and that the State provide for any resulting deficit by indemnification of the operator represents one of the principal features of the Convention. Similar provisions are contained in Article 10 (a) of the Paris Convention and in Article III (2) of the Brussels Convention.

73. Security is necessary to protect claimants against the possible insolvency of a defendant. The duty of obtaining financial security is incumbent upon the operator. The duty of ascertaining that adequate and effective financial security is maintained within the limits laid down in Article IV is incumbent upon the Installation State of the operator liable. Subject to that obligation arising under the Convention, it is left to that State to determine what type of security shall be furnished and on what terms (including the modalities of cancellation, renegotiation, notice of claims, etc.). Financial security may be for example in the form of insurance, of a bank guarantee or of any pledge of the State. It must be adequate and effective, and it must be maintained exclusively for the purpose of covering any and all liability which the person to whom the security is granted might incur under the Convention.

74. If the yield of the financial security is insufficient to satisfy claims, the Installation State has to take measures to ensure payment, but only up to the limit of liability established in conformity with Article IV.

75. Where nuclear installations are directly operated by a Contracting State or by a sub-division of it, such as Cantons, States, Republics or any other partly sovereign political units in a federal system of government, the Convention does not require that financial security be furnished. It is considered that the direct responsibility of the State is equivalent to any such security. However, this exemption from the obligation of maintaining financial security does not extend to nuclear installations operated by State-owned enterprises which have a separate legal personality. A similar provision is contained in Article III (3) of the Brussels Convention.

76. The financial security can only be used to compensate victims for nuclear damage under this Convention, and the operator cannot use these sums to cover any obligations other than those arising under the Convention. It is thus ensured that the whole amount is available for compensation of injured parties. A similar provision is contained in Article 10 (c) of the Paris Convention.

ARTICLE VII

[Now Article IX]

Social Security - Recourse against the Operator

77. In many countries persons suffering personal injury will receive compensation through the social security system established by their Govern-

ments. It is left to the Contracting Party in or by which these systems are established to decide whether the rights of such persons vis-à-vis the operator will be curtailed or abolished or whether they can claim compensation from the operator in addition to social insurance benefits, and whether the social security institutions concerned may also have a right of recourse against the operator for compensation furnished to persons injured. Similar provisions are contained in Article VI of the Brussels Convention, and in Article 6 (h) of the Paris Convention. The provision does not only cover employees of the operator but also any other person covered by a public or national social security system. Intergovernmental organizations frequently establish their own social insurance or security systems for their officials which like other aspects of the relationship of employment and of the internal law of the organization, are not subject to the law of the Host State or of any other State. It is therefore necessary to refer to these systems in addition to those of States.

78. Paragraph 2 (a), like Article XI (5) (a) of the Brussels Convention permits any person who has had to furnish compensation with respect to nuclear damage covered by the Convention pursuant to the law of a non-contracting State or an international convention to acquire by subrogation the rights of the persons thus compensated. This does not allow recovery for damage sustained in or caused by an incident which occurred in a non-contracting State. Such damage is excluded under Article I A unless the law of the Installation State provides to the contrary. Paragraph 2 (a) would apply in the event that a supplier, a carrier or even the operator himself were sued in a non-contracting State in which he has assets. Such suits might be filed to circumvent the provisions of the Convention and the paragraph is designed to prevent this. The right of subrogation is not acquired by persons against whom the operator has a right of recourse under the Convention.

79. Paragraph 2 (b) conforms to Article XI (5) (c) of the Brussels Convention. An operator who has settled claims out of funds other than those provided by his financial guarantor e.g. out of his own financial resources, is entitled to reimbursement from his insurance or the Installation State. The amount of such reimbursement cannot exceed the amount which the person injured would have obtained as his share under the Convention. If the operator therefore makes any such settlement he will have to be careful not to pay more than he would receive from his financial guarantor.

ARTICLE VIII

[Now Article X]

Recourse Actions by Operators

80. The operator or other persons liable under the Convention may have to furnish compensation for damage caused by nuclear incidents which may have been due wholly or partly to the fault of others. In such instances the operator would generally have a recourse claim in tort against that other person.

81. Unlimited retention of such recourse actions, which under existing law can generally be based on a tort theory or on implied terms of a contract,

does not appear desirable. Apart from differences of interpretation of the term "tort" in various legal systems, it could only generate onerous and perhaps abusive litigation, which in turn would hinder the development of nuclear industry without extending any additional protection to the public. Indeed, if suppliers, sub-suppliers, and carriers were all exposed to the risk of recourse litigation, the "channelling principle" would be of no effect and they would justifiably seek to protect themselves by insurance or other financial security. This would result in a pyramiding of insurance coverage and costs with respect to any nuclear installation or consignment and might thus also affect the flow of reinsurance coverage on an international level. For these reasons the text permits recourse actions by operators only in three specific situations, namely where recourse liability is expressly assumed by contract, where damage is caused intentionally by the individual sued, and in case of transit of nuclear material through a State which applies a higher limit under Article IV (2)[4] if the transport has been made without his consent. This solution of the recourse problem corresponds to that adopted in the Paris Convention, Article 6 (f), and in the Brussels Convention, Article II (6).

82. With these exceptions, any recourse actions based on tort are precluded. It will not be possible for the operator to turn against suppliers or carriers with whom he is not, or has not been, in a contractual relationship. Sub-suppliers are thus not exposed to the risk of litigation under this paragraph under normal rules of tort law. On the other hand, any operator may request that the person from whom he purchases nuclear material or equipment, or the carrier to whom he entrusts a nuclear consignment for which he is liable, shall assume recourse liability under the specific terms of a contract. Such recourse liability may be unlimited (i. e. subject only to the limits in time and in amount of the operator's liability) or be qualified in its terms or amount. Indeed, the Installation State may make it mandatory before any equipment is imported, or before any nuclear consignment is transported, that the supplier or the carrier assume recourse liability therefor. The same principle applies to the relationship between principal supplier and sub-supplier; the principal supplier who has assumed or who expects to assume recourse liability under his contract with the operator may demand that the sub-supplier from whom he had purchased the equipment guarantee him by contract against recourse liability. The result of such a system is that each participant in a nuclear project or activity will know precisely what his duties and obligations are with respect to the other participants, so that maximum economy can be attained regarding the distribution of insurance coverage.

83. Nothing, of course, precludes a State from taking criminal sanctions against persons who cause nuclear damage by an intentional or negligent act or omission. Since the operator is under an obligation to cover his liability by insurance or other adequate financial security, a right of recourse would, it appears, in practice not be of financial significance for him. However, it was felt necessary for reasons of public policy to retain in section (a) a right of recourse where the nuclear incident is caused by an intentional

[4] As a consequence of eliminating para. 2 of Article IV, para. (c) of Article VIII has also been eliminated.

act of the individual (i.e. the physical person) sued. Damage to the nuclear installation and to property of the operator on the site thereof is not subject to the system of the Convention, cf. Article 3 (b) (i) of the Paris Convention. The normal rules of tort law apply to such damage, which may enable the operator e.g. to sue suppliers under the principle of products liability.
84. This Article does not affect any rights of recourse of operators against persons who are responsible for a source of ionizing radiation not covered by the Convention (Article III (4)) where the damage was contributed to by such other source or any rights of operators for recourse against other operators in case of their joint liability (Article II (3)).

ARTICLE IX

[Now Article XI]

Competent Courts

85. Article IX is one of the fundamental provisions of this Convention. Under existing law the same nuclear incident could give rise to a variety of civil proceedings in different courts (e.g. the courts of any place where damage was suffered; the courts of the plaintiff's residence). This would not only add to the cost of litigation but would greatly hinder the equitable distribution of compensation in the event that the sum required to compensate all persons having suffered nuclear damage exceeded the limit of liability. The system contained in the Convention according to which only minimum norms are established and the greatest freedom of action is left to national legislation is workable only if it is predicated upon the clear designation of the State that will have exclusive legislative and jurisdictional competence. The State which has jurisdictional competence under this Article may not by means of "renvoi" provide that courts of another State be competent to hear actions for nuclear damage.
86. The Convention concentrates, in principle, all jurisdictional competence over suits for compensation arising out of a nuclear incident in one court which is a court of the State where the nuclear incident occurred. Except when nuclear consignments are concerned, it is therefore the operator's Installation State that has exclusive jurisdictional competence even where damage is sustained in another State (Article 13 (a) of the Paris Convention). The competence rule applies to the following types of claims:

(a) claims by persons suffering nuclear damage against the operator (Article II (1));
(b) claims by persons suffering nuclear damage against carriers or waste disposal operators if such suits have been permitted by the Installation State (Article II (2));
(c) claims against other persons liable if the Installation State chooses the "coverage system" (Article II (6));
(d) direct actions against the financial guarantor if so permitted by the law of the competent court (Article II (7)).

For other types of claims such as recourse actions or actions for contribution between several operators, national law and not the Convention will govern questions of competence.

87. Paragraphs 2 and 3 of the Article contain special rules which provide for the exclusive competence of one court also in cases where a court which is competent in accordance with paragraph 1 cannot be found or where several courts would be competent. This may in particular be the case should incidents occur during transport of nuclear material.

ARTICLE XI

[Now Article XIII]

Non-Discrimination

88. The aim of this Article is that all persons suffering nuclear damage shall receive equal treatment. The obligation does not extend, however, to additional benefits (e.g. compensation above the limit set forth in the Convention) which a State may grant.

ARTICLE XII

[Now Article XIV]

Waiver of Sovereign Immunity

89. In many countries a governmental agency will operate nuclear installations. In order not to preclude persons suffering nuclear damage from suing for compensation in such cases, it is provided that no jurisdictional immunity may be invoked by a governmental agency or a State. Similar provisions are contained in Article X (3) (first sentence) of the Brussels Convention and in Article 13 (f) of the Paris Convention.

ARTICLE XIII

[Now Article XV]

Transfer of Compensation - Insurance Premium

90. Actions for nuclear damage are concentrated in the State where the nuclear incident occurred. It is important to secure transferability of any compensation also to injured parties who are nationals of or resident in other States than the State of the forum. In addition to the obligation of Contracting States to make it possible for transfers of compensation to be made to States where nuclear damage was suffered and to States where claimants are resident, the transferability of insurance premiums and of sums provided as financial coverage is also necessary, and is therefore included in the Article. It should be noted that insurance or reinsurance premiums and payments can also be changed into currencies of other States, if this is allowed for in the insurance or reinsurance contract. A similar provision is contained in Article XII (2) of the Brussels Convention. Article 12 of the Paris Convention provides for free transfer between the monetary areas of the Contracting Parties.

ARTICLE XV

[Now Article XIX (2)]

Information

91. Since to a great extent the Convention leaves matters covered by it to national legislation, knowledge of these laws and regulations is necessary. In particular, such knowledge may prove to be indispensable for international transportation. A system of collection and dissemination of such laws and regulations, to be administered by the Agency, is therefore provided for.

NOTE ON INNOCENT PASSAGE

(CN-12/7, 29 March 1963, Original: English)

INCREASE OF LIMIT OF LIABILITY DURING INNOCENT PASSAGE AND UPON ENTRY IN DISTRESS AND TRANSIT BY AIR

(Article IV (2) of the Draft Convention on Civil Liability)
Note by the Secretariat of the International Atomic Energy Agency

I

GENERAL

1. On the proposal of the delegate of the United States of America, the Intergovernmental Committee on Civil Liability for Nuclear Damage, at its meeting in October 1962, requested the Secretariat of the Agency to prepare a study on the subject of innocent passage and entry in cases of urgent distress, in particular in relation to the right of Contracting States to increase the limit of liability for shipments of nuclear materials through their territory. The aim of this study should be to assist the International Conference on Civil Liability for Nuclear Damage when discussing this question in connection with Article IV (2) of the Draft Convention. Since the original draft of Article IV (2) (document CN-12/1) referred to transit by air as well, this matter is also briefly considered.

2. The limit of liability as established by an Installation State for its operators (Article IV (1) of the Draft Convention, document CN-12/2) applies wherever the incident occurs. Under Article IV (2) an exception to this principle is possible, since any Contracting State may subject the transit of nuclear material through its territory to the condition that the limit of liability in respect of such material be increased up to the limit fixed by the transit State, if it considers that the limit set by the liable operator's State does not adequately cover the risks of a nuclear incident in the course of transit.

3. Paragraph 2 of Article IV of the original text as set forth in document CN-12/1 contained a proviso which stated that

> "The provisions of this paragraph shall not apply to carriage by sea or by air where there is a right of entry in cases of urgent distress under international law."

Comments on this text received from Governments between January and May 1962 included proposals that:

(i) The scope of the proviso should be widened to exclude application of the paragraph also in cases where a right of innocent passage was being exercised. [1]

(ii) The proviso should be entirely eliminated.[2]

(iii) The proviso should be replaced by a text which would make paragraph 2 applicable regardless of any special rights arising in cases of distress and innocent passage.[3]

(iv) The transit State should have the right to increase liability in all circumstances, and even beyond any limits which might have been established within its own territory.[4]

4. After consideration at its meeting in October 1962 of paragraph 2 of Article IV as it appeared in document CN-12/1, the Intergovernmental Committee, by 8 votes to 4, decided to delete this proviso. The delegates of France, the Federal Republic of Germany and India were in favour of the proviso in its original form. The delegate of the United Kingdom, in supporting inclusion of the proviso, insisted that it should also cover innocent passage. The delegate of the United Arab Republic opposed any reference to the right of innocent passage.

Of those who were against inclusion of the proviso, the delegates of the Czechoslovak Socialist Republic, Poland and the Union of Soviet Socialist Republics were of the opinion that the whole of paragraph 2 should be deleted. The delegate of the Soviet Union further considered that the proviso touched upon matters of international law which should be dealt with by other types of international agreement.[5] The delegate of the United States of America maintained his views as set forth in paragraph 3 (iii) above, and proposed the following text:[6]

> "The provisions of this paragraph shall also apply to carriage by sea or by air without regard to the normal right of innocent passage and of entry in cases of urgent distress under international law or agreement."

He considered that deletion of the proviso in its original form had the same result as the provision he proposed.

5. The OEEC Convention on Third Party Liability in the Field of Nuclear Energy, signed on 29 July 1960 at Paris, provides as follows in Article 7(f):

> "The provisions of paragraph (e) of this Article [increase of limit of liability] shall not apply
>
> (i) to carriage by sea where, under international law, there is a right of entry in cases of urgent distress into ports of such Contracting Party or a right of innocent passage through its territory; or
>
> (ii) to carriage by air where, by agreement or under international law,

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[1] Denmark, Norway, United Kingdom

[2] Israel, Monaco, United States of America

[3] United States of America

[4] China

[5] See generally document CN-12/2, paragraph 34.

[6] CN-12/2, paragraph 34 (c).

there is a right to fly over or land on the territory of such Contracting Party."

The Exposé des Motifs to that Convention, in its paragraph 32, states:

"It was recognized, however, that a right of entry in case of urgent distress into the ports of States and a right of innocent passage through territorial seas is granted under international law and that by agreement or under international law there may be a right to fly over or land on the territory of States; hence the provisions of Article 7 (e) do not apply to a transit by sea or by air in these cases [Article 7 (f)] ,"

Since the Convention on Liability of Operators of Nuclear Ships, signed on 25 May 1962 at Brussels, provides a uniform limitation of US $100 million, the problem under consideration does not arise under that Convention.

Problem under consideration

6. The questions at issue appear to be:

(a) Can passage of a ship transporting nuclear material be considered "innocent", and who is to decide this question in case of doubt?

(b) If such passage is considered innocent, is the coastal State entitled under general international law (cf. Articles 15-17 of the Convention on the Territorial Sea and the Contiguous Zone of 1958) to impose as a condition for its exercise that the limit of liability for nuclear material carried aboard ship be increased?

(c) Can a State under general international law require that the limit of liability be increased as a condition for entry into territorial and internal waters in cases of urgent distress?

(d) Is the transit State entitled under international law to raise the limit of liability as regards transit of nuclear materials by air?

II. INNOCENT PASSAGE

General Principles

7. It was recognized early in the evolution of international law that a coastal State's control over foreign merchant vessels in its territorial waters is subject to the right of such vessels to innocent passage.[7] This privilege obviously restricts to some extent the freedom of a State to exert exclusive control over what is acknowledged to constitute part of its territory.

Right of Innocent Passage under the Convention on the Territorial Sea and the Contiguous Zone of 29 April 1958

8. The relevant provisions of this Convention are Articles 14 to 17, which are reproduced in the Annex to this study, especially Articles 14 (4), 15 (1) and 17, which read:

[7] Colombos, The International Law of the Sea (5th edition 1962), Section 144, and the authorities there cited.

ARTICLE 14

4. Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State. Such passage shall take place in conformity with these articles and with other rules of international law.

ARTICLE 15

1. The coastal State must not hamper innocent passage through the territorial sea.

ARTICLE 17

Foreign ships exercising the right of innocent passage shall comply with the laws and regulations enacted by the coastal State in conformity with these articles and other rules of international law and, in particular, with such laws and regulations relating to transport and navigation.

Meaning of Innocent

9. The developments leading up to the present definition of innocent passage contained in Article 14 (4) of the above-mentioned Convention may help to throw some light on the question at issue. The rules prepared by the International Law Commission provided that passage is innocent as long as the ship "... does not use the territorial sea for committing any acts prejudicial to the security of the coastal State" or to other rules of international law.[8] Under Article 3 of the 1930 Hague draft, passage was not considered innocent if the territorial sea is used for the purpose of performing any act prejudicial to the security, the public policy or the fiscal interests of the coastal State.[9]

10. Hyde remarks that a reason for exclusion of a vessel from the use of the marginal sea would be conduct essentially injurious to the safety and welfare of the littoral State, which must be accorded the right to determine when acts of a passing ship lose their innocent character, since the territorial sovereign must be the judge of what violates its own rights or interests.[10] One writer[11] takes the view that the law of the transit State would be decisive on the question of the innocent character of passage and continues to say that "a ship carrying a merchandise whose transit is prohibited in a littoral State is not on innocent passage in her territorial sea, while the same ship with the same cargo may be considered on innocent passage in the territorial sea of another State who has not prohibited transit of the carried cargo". On the other hand, the Italian delegate remarked in the discussions of the First Committee of the 1958 Geneva Conference on the Law of the Sea that

[8] This provision was changed, at the proposal of the US delegate, to the more general term appearing now in the Geneva Convention (Article 15 (4)).

[9] Hackworth I, p. 649.

[10] Hyde, International Law Chiefly as Interpreted and Applied by the United States, I, p. 646.

[11] A. Khoskish, The Right of Innocent Passage (Geneva 1954), p. 36.

> "the codification of the regime of the territorial sea must safeguard the right of innocent passage and make provision for the legal status of ships in the territorial sea. Where interests of the coastal State and those of navigation clashed, precedence had to be yielded to the latter; whenever a doubt arose, an interpretation favourable to the freedom of navigation should prevail."[12]

In the opinion of other delegates, however, it was up to the coastal State to investigate and decide whether passage was innocent or not; sovereignty was the rule and passage the exception.[13]

Rights of Coastal States and Duties of Ship

11. While it is acknowledged that a coastal State may not impose tolls or duties on a ship in innocent passage, the extent to which a coastal State may exercise its control and jurisdiction during such passage is not entirely clear. Generally it had been said that

> "the international right of passage in no way diminishes the inherent right of every State to take such measures ..... as it may judge necessary for the protection of its own interests, and a voyage ceases to be innocent if its purposes involve any violation of these interests."[14]

12. Efforts were made to define and codify the rights of the coastal State and the duties of vessels relating to innocent passage at the Hague Conference in 1930, and at the Geneva Conference on the Law of the Sea in 1958. Article 5 of the Hague draft stated that

> "the right of passage does not prevent the coastal State from taking all necessary steps to protect its territorial sea against any act prejudicial to the security, public policy or fiscal interests of the State ....",

and Article 6 would have required that

> "foreign vessels exercising the right of passage shall comply with the laws and regulations enacted in conformity with international usage by the coastal State ...."

and then enumerated examples of the particular types of regulation which a State might impose, viz. those relating to safety of traffic, pollution control, protection of marine products, fishing, and the conduct of hydrographical surveys.

13. The question of passage of certain goods was mentioned in paragraph 19 of the basis of discussion submitted to the 1930 Hague Conference, which reads: "(2) Le droit de passage inoffensif s'entend aux personnes et aux

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[12] United Nations Conference on the Law of the Sea, Official Records, Vol. II, p. 13. See also the statements of the delegates of the United Kingdom (p. 9) and Israel (p. 35).

[13] Statements by the delegates of Yugoslavia (ibid., p. 23) and Bulgaria (ibid., p. 58).

[14] Smith, Law and Customs of the Sea (3rd edition, 1959), p. 47.

marchandises", and the draft text prepared by the Rapporteur of the Committee of Experts set forth, more fully: "Le droit de libre passage comporte le droit de passage des personnes et des marchandises indépendamment de l'accès du territoire étranger fermé."[15] Thus, the question of innocent passage of cargo of a certain type and the extent to which the laws of the coastal State had to be complied with was not solved in the Hague draft. The Second Committee of the Hague Conference observed in connection with Article 3 that import and transit regulations might be covered by the terms "security, public policy, fiscal interests".[16] The Portuguese delegate asked the Committee to declare that ships in innocent passage should be subject to all regulations of the coastal State, whatever these regu ations were. This proposal was, however, not accepted.[17]

14. The text adopted by the International Law Commission at its eighth session[18] followed, in general, the pattern of the Hague draft. The International Law Commission did not, however, include in its Article 18 reference to the fields of control specified in Article 6 of the Hague draft, having encountered difficulties in making an exhaustive itemization, and indicated that this question should continue to be governed by general rules of law.[19]

15. In its commentary to the draft articles, the International Law Commission thought it useful to quote some examples of fields of control of the coastal State, which were mentioned at its seventh session, viz.

(a) The safety of traffic and the protection of channels and buoys.
(b) The protection of the waters of the coastal State against pollution of any kind caused by ships.
(c) The conservation of the living resources of the sea.
(d) The rights of fishing and hunting and analogous rights belonging to the coastal State.
(e) Any hydrographical survey.

At the eighth session it was proposed to add the use of the national flag, use of routes prescribed for international navigation and observance of rules relating to the security and customs and health regulations.[20]

16. At the discussions of the First Committee of the 1958 Geneva Conference, the delegate of France, M. Ruedel, stated that the classical type of safety regulations governing the movement of ships carrying explosive, toxic or otherwise dangerous goods would obviously prove inadequate for nuclear-powered ships. Ultimately the question would be governed by a special convention, but in the meantime the coastal State should be expressly authorized to take measures necessary to ensure safety.[21] This was the reason for the new paragraph he had proposed to Article 17[22] but which was rejected by 23 votes to 16 with 25 abstentions.[23] He did not, however, men-

[15] Cited in Gidel, Le droit international public de la mer, III, p. 211.

[16] ibid., p. 212.

[17] Gidel, Le droit international public de lar mer, III, p. 221.

[18] Yearbook of the International Law Commission, 1956, II, pp. 273-274.

[19] See Article 18, and comment thereon, ibid., p. 274.

[20] ibid., p. 274.

[21] United Nations Conference on the Law of the Sea, Official Records, Vol. II, p. 79.

[22] ibid., p. 212 (the new paragraph, however, only covered the case of a ship proceeding through territorial waters to a port of the coastal State).

[23] ibid., p. 100.

tion the case of ships transporting nuclear material. The Geneva Convention, however, contains in its Article 14 (5) and 23 special rules for specific types of ships which present particular problems to the coastal State.
17. The rights of the coastal State are more extensive in the case of vessels proceeding to internal waters than in the case of ships proceeding from one part of the high seas to another, cf. Article 16 (2) of the Geneva Convention.

III. ENTRY IN DISTRESS (INVOLUNTARY ENTRANCE)

18. In contradistinction to the right of innocent passage which may only be exercised through the territorial waters of a State, the right of entry in distress permits a ship also to enter a port or other parts of the internal waters. In order to exercise this right, it has been required "that the necessity must be urgent and proceed from such a state of things as may be supposed to produce, on the mind of a skilful mariner, a well-ground apprehension of the loss of vessel and cargo or of the lives of the crew."[24] The rule based on circumstances of force majeure extends also to ships seeking refuge for vital repairs or a strict necessity of provisioning.[25]
19. The governing principle of international law is the subjection of foreign private vessels in internal waters to the local law.[26] A foreign vessel forced into port by stress of weather or by inevitable necessity is not regarded as subject to the local jurisdiction and goods on board are not subject to payment of duties.[27] Such immunity may, however, not be complete, and if, for example, a ship has required salvage assistance, the salvor may sue for compensation. Jessup says that "there is one condition under which a foreign vessel in territorial waters may claim as of right an entire immunity from local jurisdiction. The condition is that such presence in territorial waters be due to force majeure."[28]

IV. FLYING OVER OR LANDING ON THE TERRITORY OF A TRANSIT STATE

20. The rights of aircraft to fly over or land on the territory of a transit State are defined in the Convention on International Civil Aviation, signed at Chicago on 7 December 1944 (ICAO document 7300/2). Those provisions of this Convention which might have a bearing on the increase of liability in case of transit are Article 5, first sentence, and Article 35, paragraph (b), first phrase, which read as follows:

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[24] The New York, [1818] 3 Wheat. 59.

[25] Jessup, The Law of Territorial Waters and Maritime Jurisdiction, p. 194.

[26] Briggs, The Law of Nations, p. 348 and the authorities there cited.

[27] Hyde I, para. 224.

[28] Jessup, The Law of Territorial Waters and Maritime Jurisdiction, pp. 194-208.

ARTICLE 5

Each contracting State agrees that all aircraft of the other contracting States, being aircraft not engaged in scheduled international air services, shall have the right, subject to the observance of the terms of this Convention, to make flights into or in transit non-stop across its territory and to make stops for non-traffic purposes without the necessity of obtaining prior permission, and subject to the right of the State flown over to require landing.....

ARTICLE 35

.....

(b) Each contracting State reserves the right, for reasons of public order and safety, to regulate or prohibit the carriage in or above its territory of articles other than those enumerated in paragraph (a) [munitions of war or implements of war, whose carriage may be absolutely prohibited] :.....

21. It follows from the principle of a State's "complete and exclusive sovereignty over the air space above its territory" as stated in Article 1 of the Aviation Convention, that aircraft in exercising transit flights under Article 5 must comply with local laws and regulations[29] and the same appears to apply to scheduled flights under bilateral agreements.[30]

V. IMPLEMENTATION OF OBLIGATION TO INCREASE LIABILITY

22. The question remains, of course, what practical means the coastal State has to check whether ships passing through the territorial sea and aircraft in transit carry nuclear materials, and whether and by what means the request to increase liability could effectively be transmitted to the operator liable and be carried out in cases of entry in distress or unforeseen changes of itinerary, in particular in air transport, and how such increase of liability could be reflected in the insurance contracts.

VI. CONCLUSION

Innocent Passage

23. None of the rules elaborated by the 1930 Hague Conference, nor the International Law Commission draft, nor the 1958 Geneva Conventions, contain specific provisions as to whether or not passage of ships carrying a particular type of cargo, such as nuclear material, is to be considered innocent. The answer must therefore depend, in the first line, upon an inter-

[29] Bin Cheng, The Law of International Air Transport, Stevens, Oceana, 1962, pp. 122, 195.
[30] ibid., p. 381.

pretation of the words "peace, good order and security" in Article 14 (4) of the Convention on the Territorial Sea. The travaux préparatoires as cited in Part II above, may throw some light on the interpretation, but do not deal with the specific problem of dangerous goods. Nor do leading writers pronounce themselves upon the question whether the mere fact that a vessel carries hazardous material excludes it from enjoyment of the right of innocent passage.

24. Divergent opinions were advanced at the Geneva Conference as to whether or not the coastal State has a right to determine unilaterally if passage is innocent. However, no relevant proposals were advanced and the Convention contains no provisions on this subject.

25. As regards the rights of the coastal State and the duties of the ship, no itemization of such duties and rights was considered possible by the International Law Commission, and attempts to codify them have only resulted in general reference to compliance with laws enacted by the coastal State in conformity with international law and, in particular, with such laws relating to transport and navigation (see Article 17, cf. Article 15 (1)). Enumerations in the travaux préparatoires of fields in which the coastal State is entitled to enact regulations do not contain references to special kinds of goods, but such enumerations were not intended to be exhaustive. In the case of a ship bound for the internal waters of a State, this State has wider powers since it also has the right to take steps to prevent breaches of any condition to which access to its internal waters is subject (cf. Article 16 (2)).

Entry in Distress

26. Whereas it is recognized that the exercise of the right of innocent passage might be subject to compliance with certain conditions, no such conditions have been mentioned by any of the authorities cited in this document in connection with entry in distress of a ship. Furthermore, to the knowledge of the Secretariat no attempt has ever been made to define the extent of this right in an international instrument or to codify the conditions of its exercise. The concomitant right to jurisdictional immunity, even in internal waters, seems to carry minor importance in relation to the Draft Convention on Civil Liability, since Article IX (1) thereof provides for the exclusive competence of the courts of the State where the incident occurred (which will then be the coastal State).

Transit by Air

27. International law does not restrict the right of the transit State to apply its law to aircraft in transit. The application of Article IV (2) of the Draft Convention on Civil Liability to aircraft in transit would thus conform to the rules of general international law.

ANNEX

Convention on the Territorial Sea and the Contiguous Zone, 29 April 1958

ARTICLE 14

1. Subject to the provisions of these articles, ships of all States, whether coastal or not, shall enjoy the right of innocent passage through the territorial sea.
2. Passage means navigation through the territorial sea for the purpose either of traversing that sea without entering internal waters, or proceeding to internal waters, or of making for the high seas from internal waters.
3. Passage includes stopping and anchoring, but only in so far as the same are incidental to ordinary navigation or are rendered necessary by force majeure or by distress.
4. Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State. Such passage shall take place in conformity with these articles and with other rules of international law.
5. Passage of foreign fishing vessels shall not be considered innocent if they do not observe such laws and regulations as the coastal State may make and publish in order to prevent these vessels from fishing in the territorial sea.
6. Submarines are required to navigate on the surface and to show their flag.

ARTICLE 15

1. The coastal State must not hamper innocent passage through the territorial sea.
2. The coastal State is required to give appropriate publicity to any dangers to navigation, of which it has knowledge, within its territorial sea.

ARTICLE 16

1. The coastal State may take the necessary steps in its territorial sea to prevent passage which is not innocent.
2. In the case of ships proceeding to internal waters, the coastal State shall also have the right to take the necessary steps to prevent any breach of the conditions to which admission of those ships to those waters is subject.
3. Subject to the provisions of paragraph 4, the coastal State may, without discrimination amongst foreign ships, suspend temporarily in specified areas of its territorial sea the innocent passage of foreign ships if such suspension is essential for the protection of its security. Such suspension shall take effect only after having been duly published.
4. There shall be no suspension of the innocent passage of foreign ships through straits which are used for international navigation between one part of the high seas and another part of the high seas or the territorial sea of a foreign State.

ARTICLE 17

Foreign ships exercising the right of innocent passage shall comply with the laws and regulations enacted by the coastal State in conformity with these articles and other rules of international law and, in particular, with such laws and regulations relating to transport and navigation.

SUMMARY RECORDS OF THE PLENARY MEETINGS

FIRST PLENARY MEETING

Monday, 29 April 1963, at 10.45 a.m.

Temporary President: Mr. HALL, Acting Director General
President : Mr. LOKUR (India)

OPENING OF THE CONFERENCE BY THE ACTING DIRECTOR GENERAL
[Agenda item 1]

1. The TEMPORARY PRESIDENT, after extending a general welcome to all those attending the Conference, expressed the Director General's regret that he could not be present, owing to a long-standing earlier engagement.
2. On Dr. Eklund's behalf, he declared the Conference open and invited all present to observe one minute of silence dedicated to prayer or meditation.
3. All present rose and stood in silence for one minute.
4. The TEMPORARY PRESIDENT said that although the safety record of nuclear industry was excellent, legislators would be failing in their responsibilities if they did not provide for remedial measures necessary in case of accidents, as they did in the case of other hazardous activities undertaken on their territory. In addition to the special domestic legislation that many States had already been led to enact with regard to civil liability for nuclear damage, international agreements on the subject had recently been concluded, such as the Convention on Liability of Operators of Nuclear Ships, signed at Brussels on 25 May 1962 (the Brussels Convention), and the Convention on Third Party Liability in the Field of Nuclear Energy, signed at Paris on 29 July 1960 by the 16 member countries of the Organisation for European Economic Co-operation (the Paris Convention). In view of the development of peaceful uses of atomic energy, it appeared urgent that a uniform legal framework should be established on a world-wide level if international co-operation was not to be hampered by complexity and uncertainty in respect of civil liability for persons suffering damage as well as for operators of nuclear installations, carriers and suppliers. It was hoped that the Conference would succeed in elaborating a suitable international instrument and thus help the Agency to perform its important task of accelerating and enlarging the contribution of atomic energy to peace, health and prosperity throughout the world.
5. He had pleasure in inviting Ambassador Waldheim, the personal representative of the Austrian Federal Minister for Foreign Affairs, to address the Conference.
6. Mr. WALDHEIM said that Dr. Kreisky, the Federal Minister for Foreign Affairs, had asked him to convey his deep regret that he had been

unexpectedly prevented from personally addressing the Conference, and to welcome delegates on behalf of the Austrian Government.

7. On several occasions the Agency had pointed out that the development of peaceful uses of atomic energy depended not only on technical assistance but on the establishment of basic legal standards in the various fields of application of atomic energy. Although some of those fields could be covered by national legislation, others, including the transport of nuclear materials, the disposal of radioactive wastes and, in particular, civil liability for nuclear damage, called for international agreement. The Austrian Government therefore believed that the adoption of an international convention on minimum international standards regarding civil liability for nuclear damage was of considerable importance. It was true that, so far, the rate of nuclear incidents had been surprisingly low, indeed far lower than the rate of incidents in conventional non-nuclear plants; it was also reasonable to hope that safety techniques would improve along with general technical progress. Nevertheless, the competent authorities of a country engaging in nuclear activities were under a moral obligation to safeguard the rights of possible victims of a nuclear incident. In view of the wide disparity of national legislation the Conference had a difficult task before it, especially since it would at the same time have to take into account the economic foundations of atomic energy, so as to achieve an equitable and balanced solution that was in the interests of the atomic industry as well as of the population at large.

ELECTION OF THE PRESIDENT

[Agenda item 2]

8. The TEMPORARY PRESIDENT invited nominations for the office of President of the Conference.

9. Mr. GIBSON BARBOZA (Brazil) proposed Mr. Lokur (India) for the office of President of the Conference. It was only fitting that a conference of such importance for the future of juridical and nuclear science should choose as its president an outstanding international personality, respected and admired, who was one of the architects of the draft convention on which its work would be based.

10. Mr. BRAJKOVIĆ (Yugoslavia) seconded the nomination of Mr. Lokur, whose personal qualities, distinguished record and wide experience in international affairs would help to ensure the success of the Conference.

11. Mr. VILKOV (Union of Soviet Socialist Republics) and Mr. MAURER (United States of America) supported the nomination of Mr. Lokur.

12. Mr. Lokur (India) was elected President by acclamation, and took the Chair.

13. The PRESIDENT thanked delegates for the honour they had done to him and to his country. The Acting Director General had ably stressed the urgency of establishing minimum rules regarding civil liability for nuclear damage. Although on many problems it was unlikely that all delegates would see eye to eye, they should nevertheless work with an open mind and be prepared to accept compromise solutions. Since a number of States were about to legislate on the subject of civil liability for nuclear damage it was of great importance to lay down the main guiding principles on a world-wide

level as early as possible. The Conference should therefore resolve that it would produce at the end of its work a text ready for signature.

14. The International Atomic Energy Agency had gone to considerable trouble to facilitate the difficult task before the Conference. He hoped that, working on the basis of the draft convention to whose preparation so much care and thought had been devoted, the Conference would be able to finish its task within the time allotted to it.

15. He wished in conclusion to express on behalf of all delegates his gratitude to the Government of Austria for the facilities it had extended and for its warm welcome and good wishes.

QUESTION OF PARTICIPATION IN THE CONFERENCE

16. Mr. VILKOV (Union of Soviet Socialist Republics) objected to the presence at the Conference of a representative of the Chiang Kai-shek clique, whereas the many millions of people in the Chinese People's Republic were not represented. That quite abnormal situation violated the principle of universality. To be successful the Conference must be really universal. He also drew attention to the absence of the German Democratic Republic, the Korean People's Republic and the People's Republic of Viet-Nam. Like the Chinese People's Republic, some of those States had achieved great success in the peaceful use of nuclear energy and their experience would have made a valuable contribution to the work of the Conference.

17. Mr. CHANG (China) regretted that the Soviet delegate had struck a discordant note by introducing political propaganda. The Conference had been convened in accordance with a decision adopted by the Agency's Board of Governors on 5 March 1962. The Republic of China was a Member of the Agency and had been invited in that capacity. His Government's lawful position had been studied and confirmed by the General Assembly of the United Nations. Moreover, the present Conference was a technical conference and was no place for political propaganda, which could only cause confusion.

18. Mr. MAURER (United States of America) said the remarks of the Soviet delegate were out of order. The question had already been decided in March 1962 by the Board of Governors. All Members of the Agency had been invited. Since that did not include the Chinese People's Republic or any of the other States mentioned, but did include the Republic of China, the Government of that country alone was qualified to represent China at the Conference.

19. Mr. DADZIE (Ghana) regretted the absence of the Chinese People's Republic and of the other countries mentioned by the Soviet delegate. The very nature of the subject demanded universal participation but the absence of certain States would leave a loophole in whatever convention was finally produced. If the convention was to achieve the full effect anticipated, all nations without distinction must be allowed to participate. Universality was the finest of the principles in the United Nations Charter. Although Article IV A of the Statute restricted membership of the Agency to Members of the United Nations and the specialized agencies, Article IV B was flexible enough to admit to membership all the States that had been left out.

20. Mr. GASIOROWSKI (Poland) also regretted the absence of the Chinese People's Republic and the other States referred to, and pointed out that if the vast problem of the use of nuclear energy was to be solved there must be friendly co-operation among nations, and all nations directly concerned must be allowed to participate in the solution of the problem. It was necessary not only to find a satisfactory solution but also to ensure the universal application of that solution. It would be difficult to achieve those aims in the absence of the Chinese People's Republic. He was convinced that the peaceful collaboration of all nations was essential for human progress and for the very survival of the world in the atomic age.

21. Mr. PETRŽELKA (Czechoslovakia) shared the views expressed by the delegates of the Soviet Union, Ghana and Poland and added that the exclusion of the four States in question was a survival of the cold war and was detrimental to the prestige and effectiveness of the Conference.

22. Mr. PHUONG (Viet-Nam) congratulated the President on his unanimous election by the Conference, and emphasized the admiration his country felt for India's efforts to ensure peaceful co-existence. He also recognized, however, the trials and tribulations which faced India in pursuing that policy. Viet-Nam, too, believed in universality and sought peaceful relations with other countries. At the same time it could not tolerate any denial of the principles of self-determination and non-intervention in the affairs of other States. He regretted that certain delegates were not only wasting the time of the Conference but were also causing confusion by implying that there were two States in Viet-Nam. The Geneva Agreement of 1954 had made it clear that there was only one State, the State he represented.

23. Mr. RAO (India) recalled that ever since the establishment of the Chinese People's Republic in October 1949 his Government had been consistently friendly to that State. It had been among the first to grant it official recognition and had, since 1950, sponsored its membership of the United Nations. In 1954 it had relinquished all extra-territorial rights in Tibet. Despite India's friendly attitude, China had occupied large parts of Indian territory and had refused to define its conception of the border. It had made new and increasing claims and in October and November 1962 had been guilty of premeditated aggression. Despite China's blatant violation of international law his Government wished the Chinese People's Republic to be represented in the United Nations, hoping that China would thereby be made to accept its obligations under the Charter. That was not, however, a matter for the present Conference. The Board of Governors had decided in March 1962 to invite the Members of the Agency and the decision could not now be called in question.

24. The PRESIDENT said that the statements made would be placed on record.

ADOPTION OF THE AGENDA
[Agenda item 3]

25. The provisional agenda (CN-12/5) was adopted unanimously.

ADOPTION OF THE RULES OF PROCEDURE
[Agenda item 4]

26. The PRESIDENT said the provisional rules of procedure (CN-12/6) were based on the Rules of Procedure adopted on 5 March 1963 by the United Nations Conference on Consular Relations. The only substantive changes were the elimination of the General Committee and the limitation of the number of Vice-Presidents to two. In addition, the Conference would have to decide, in regard to rule 33 of the provisional rules of procedure, whether or not decisions of the Conference on all matters of substance should be taken by a two-thirds majority of the representatives present and voting.

27. Mr. MAURER (United States of America), noting that the Government of the Union of Soviet Socialist Republics had proposed a two-thirds majority for all decisions on matters of substance (CN-12/8), urged that the Conference should adhere to the simple-majority procedure used with success at the Brussels Conference in accordance with the fifty-year old tradition of the Diplomatic Conference on Maritime Law. There were also numerous precedents for that procedure in United Nations practice. Should the Conference decide to discuss the proposal by the Soviet Government at the present stage, his delegation would be compelled to express its disagreement. Since no decisions on matters of substance would have to be taken by the Conference as yet, his delegation moved that the debate on the question raised in document CN-12/8, and in paragraph 1 of rule 33 of the provisional rules of procedure, be adjourned for about two weeks, until such time as the final text of the draft convention, as prepared by the Drafting Committee, was before the plenary Conference for consideration. Delegations would then be able to see the situation in better perspective.

28. Mr. RUEGGER (Switzerland) supported the United States motion.

29. Mr. PETRŽELKA (Czechoslovakia) said that in his view the Soviet proposal was an integral part of the rules of procedure and could not be discussed separately.

30. Mr. VILKOV (Union of Soviet Socialist Republics) requested that the decision on his Government's proposal should not be deferred since it had a bearing on the discussion of the draft convention itself. It was essential that the Conference should know in advance what the required majority would be: if it were to be decided immediately that decisions on all matters of substance should be taken by a two-thirds majority, delegates would seek compromise solutions in an effort to attain such a majority. To postpone a decision as to the required majority until the end of the Conference might mean either that the Conference would fail to achieve any result or that it would be forced at the last minute, in order to obtain some kind of agreement, to agree that decisions on matters of substance should be taken by a simple majority.

31. The Agency was not bound by the same traditions as the Brussels Conference: on the contrary, it adhered to the rule that decisions on important matters should be taken by a two-thirds majority of the delegations present and voting, as stated in the Rules of Procedure of the General Conference (Rule 69) and the Provisional Rules of Procedure of the Board of Governors (Rule 36). The same procedure had usually been applied at diplomatic conferences held in recent years, including the four conferences convened by

the United Nations on codification of the law of the sea, diplomatic relations and consular relations. It was no accident that a two-thirds majority had been required at those conferences. In the case of an international convention binding on States, it was not enough that it should be given formal approval: it was necessary that its provisions should be adopted by as large a majority as possible so that its provisions would be widely acceptable. Experience had shown that a convention adopted by a conference in which the decisions had been taken by a simple majority might remain ineffective because it would not be ratified by many States. The Brussels Convention was one that had undergone that fate: the fact that it had not yet been ratified by a single State showed that the Brussels Conference had not drafted a generally acceptable text.

32. He would request the President to put to the vote immediately the proposal by the Government of the Soviet Union that decisions on matters of substance should be taken by a two-thirds majority.

33. After further discussion, in the course of which Mr. GASIOROWSKI (Poland) and Mr. GHELMEGEANU (Romania) expressed the view that it would create a difficult and indeed unprecedented situation if the Conference had to begin its work with no definite rule on the vital matter of voting, the PRESIDENT put to the vote the United States motion to defer consideration of rule 33, paragraph 1, of the provisional rules of procedure and of the proposal by the Government of the Soviet Union (CN-12/8).

34. After a show of hands, he declared the motion carried by 26 votes to 16.

35. Mr. DADZIE (Ghana) asked by virtue of what rule the President regarded the motion as having been carried.

36. The PRESIDENT said that since the rules of procedure had not yet been adopted the President was deemed to have the power to take a decision. He had therefore decided to accept the majority view that consideration of rule 33, paragraph 1, and of the Soviet proposal should be deferred.

37. He proposed that the provisional rules of procedure (CN-12/6) should be adopted with the exception of rule 33, paragraph 1, which would be considered at a later stage.

38. The proposal was adopted unanimously.

ELECTION OF VICE-PRESIDENTS
[Agenda item 5]

39. The PRESIDENT invited nominations for the two Vice-Presidents.

40. Mr. RUEGGER (Switzerland) nominated Mr. Dadzie (Ghana), whose brilliant career and wide experience as a representative of his Government at many international meetings qualified him to give able support to the President.

41. Mr. NISHIMURA (Japan) seconded that nomination.

42. Mr. SUONTAUSTA (Finland) nominated Mr. Petrželka (Czechoslovakia), whose distinguished record with the Agency and elsewhere eminently fitted him for the office of Vice-President.

43. Mr. de CASTRO (Philippines) seconded that nomination.

44. Mr. Dadzie (Ghana) and Mr. Petrželka (Czechoslovakia) were elected Vice-Presidents by acclamation.

ELECTION OF THE CHAIRMAN OF THE COMMITTEE OF THE WHOLE
[Agenda item 6]

45. The PRESIDENT invited nominations for the office of Chairman of the Committee of the Whole.
46. Mr. CHOONHAVAN (Thailand), seconded by Mr. GHELMEGEANU (Romania), proposed Mr. McKnight (Australia),
47. Mr. McKnight (Australia) was, by acclamation, elected Chairman of the Committee of the Whole.

ORGANIZATION OF WORK
[Agenda item 7]

48. The PRESIDENT invited the Conference to consider the memorandum by the Secretariat concerning the preparation, method of work and procedures of the Conference (CN-12/4 and Add. 1) and proposed that the method of work and procedures outlined therein should be adopted.
49. The proposal was adopted unanimously.

APPOINTMENT OF THE CREDENTIALS COMMITTEE
[Agenda item 8]

50. The PRESIDENT proposed that a Credentials Committee should be appointed and should consist, as at the sixth regular session of the General Conference, of representatives of the following States: Argentina, Australia, Bulgaria, El Salvador, Iraq[1], Lebanon, Philippines, the Union of Soviet Socialist Republics and the United States of America.
51. The Credentials Committee was appointed with the membership proposed by the President.

The meeting rose at 12. 55 p. m.

SECOND PLENARY MEETING

Friday, 3 May 1963, at 10.45 a.m.

President: Mr. LOKUR (India)

APPOINTMENT OF THE DRAFTING COMMITTEE
[Agenda item 9]

1. The PRESIDENT recalled that under Rule 46 of the Rules of Procedure the Conference had to appoint a drafting committee of nine members on the

[1] It subsequently appeared that Iraq was not represented at the Conference, and it was accordingly unable to take any part in the work of the Credentials Committee.

proposal of its President. In view of the large number of delegates who had had experience in drafting and were willing to serve on the drafting committee, his choice had been difficult. Moreover, it was necessary that the four official languages should be represented. After careful consideration he proposed that the drafting committee should consist of one member from each of the following delegations: Argentina, France, Israel, Italy, Hungary, Mexico, the United Kingdom of Great Britain and Northern Ireland, the United States of America and the Union of Soviet Socialist Republics.

2. Mr. ZALDIVAR (Argentina) regretted that his delegation was compelled to decline the honour of being appointed to the drafting committee.

3. The PRESIDENT regretted that Argentina was unable to serve on the committee and proposed Sweden instead.

4. The Drafting Committee was appointed with the membership proposed by the President, subject to the substitution of Sweden for Argentina.

APPOINTMENT OF THE COMMITTEE ON FINAL CLAUSES

5. The PRESIDENT proposed that the Conference appoint a committee on final clauses, responsible for formulating the final clauses, the preamble and the Final Act, and consisting of one member from each of the following delegations: Brazil, Colombia, the Czechoslovak Socialist Republic, Ghana, Indonesia, Japan, Lebanon, Morocco, Netherlands, Spain, the United Kingdom of Great Britain and Northern Ireland, the United States of America and the Union of Soviet Socialist Republics.

6. The Committee on Final Clauses was appointed with the membership proposed by the President.

The meeting rose at 10. 55 a. m.

THIRD PLENARY MEETING

Tuesday, 14 May 1963, at 10 a. m.

President: Mr. LOKUR (India)

ADOPTION OF THE RULES OF PROCEDURE (resumed)

1. The PRESIDENT reminded the Conference that the provisional rules of procedure (CN-12/6) had been adopted at the first plenary meeting with the exception of Rule 33, paragraph 1, consideration of which had been postponed[1]. He invited the Conference, therefore, to discuss the two proposals which had been made in connection with that rule: the proposal by the delegation of the Soviet Union that decisions of the Conference on all matters of substance should be taken by a two-thirds majority of the delegates present and voting (CN-12/8); and the proposal, made orally at the first plenary

[1] 1st plenary meeting, paras. 26-38.

meeting by the United States delegation, that the Conference should take all its decisions by a simple majority. At the end of the discussion he would put the proposal by the Soviet Union to the vote first. If the Soviet proposal was not accepted, he would then put the United States proposal to the vote.

2. Mr. VILKOV (Union of Soviet Socialist Republics) said that the Soviet proposal had been submitted before the opening of the Conference. His delegation regretted that the Conference had not, as was customary, decided on the method of voting at the outset. It was unprecedented that an international conference should work for over two weeks with no rule to guide it on that point.

3. It was the practice of the General Conference and the Board of Governors of the Agency, as of the United Nations and most of its organs and specialized agencies, to take decisions on important matters by a two-thirds majority of the delegations present and voting, and there was no reason to change that practice. It would indeed be unfortunate if a decision by the present Conference to depart from the Agency's customary practice was taken as a precedent for the future.

4. As he had pointed out at the opening plenary meeting[2] it was no accident that a two-thirds majority had been required at the four codification conferences held in recent years by the United Nations. Like the present Conference, those conferences had been engaged not in making mere formal recommendations, but in drafting international agreements on the basis of which States had to assume international obligations. Formal approval was therefore not enough: it was necessary that the text adopted should reflect the widest possible measure of agreement, which could be achieved only if the adoption was by an adequate and not by a bare majority. Experience had shown that a convention adopted by a simple majority might not be generally acceptable, with the result that it remained a dead letter for want of ratifications. That had been the fate of the Brussels Convention. The conference which had drafted that convention had decided, in accordance with the traditional practice of the Diplomatic Conference on Maritime Law, to dispense with rules of procedure altogether and had taken all its decisions by simple majority. Although there had been more justification on that occasion, insofar as tradition was being followed, the procedure had proved mistaken. The Brussels Conference had realized before the conclusion of its work that the results achieved were unsatisfactory and it had decided to set up a Standing Committee to improve the Brussels Convention and to prepare new draft articles. In order to avoid a repetition of that unfortunate experience, his delegation proposed that the present Conference should adopt the articles of the convention it was drafting, and the convention itself, by a two-thirds majority, thus ensuring that it would produce an acceptable, effective international instrument which would increase the Agency's authority and represent a real step forward in the development of the peaceful uses of atomic energy.

5. Mr. MAURER (United States of America) considered that the simple majority procedure should be adopted both on grounds of principle and in accordance with precedent.

6. In principle, the presumption in any democratic assembly must be in

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[2] Loc. cit., para. 31.

favour of decision by simple majority unless strong reasons militated against it. It had become clear from the closeness of the voting on certain issues in the Committee of the Whole that considerable difficulties would be encountered if a procedure other than that of a simple majority were to be adopted. For example, the United States had proposed that the Convention should come into effect when it had been ratified by five States: the only other proposal had been that ten ratifications should be required. The Sub-Committee on Final Clauses was in fact recommending that the number should be five. If a two-thirds majority were required for the adoption of the Convention it would be possible, on the assumption that 56 States took part in the vote, for 19 States to thwart the will of 37, whereas five ratifications would suffice to bring the Convertion into force. The United States delegation considered that such a situation would be most undesirable, and its views in the matter were not altered by the fact that it found certain provisions approved by the Committee of the Whole by a simple majority very difficult to accept.

7. In regard to precedents, the Diplomatic Conference on Maritime Law had been operating on a simple-majority rule for more than 50 years and had produced a series of conventions which in the main had not remained dead letters but had entered into force successfully with a large number of ratifications. It was much too early, and took no account of the constitutional processes of many countries, to argue that the Brussels Convention was a failure because it had not been ratified after one year, which was a very short time in the life of nations. Two years after its adoption the Vienna Convention on Diplomatic Relations, 1961, had been ratified by only five States, whereas 22 ratifications were needed to bring it into force. Was it too a failure?

8. It was untrue to state that all conferences held under the aegis of the United Nations had required a two-thirds majority: he mentioned eight at which the simple-majority procedure had been used with success. It was also not entirely true to say that a two-thirds majority was required on matters of substance in all United Nations organs. In fact, with the exception of such questions as the maintenance of international peace and security, decisions were taken by the General Assembly for example by a majority of delegations present and voting. The General Conference of the Agency also took decisions by simple majority, except in the case of a few matters such as those with financial implications.

9. The practice of the United Nations and the General Conference of the Agency was not, however, very relevant to the discussion. A two-thirds majority might be justified in the case of certain decisions by those bodies which would be legally or morally binding on Governments, The present Conference was not deciding on proposals which would be binding on Governments but was drafting a convention to which a country might adhere or not as it chose. Nor was it considering a text with high political content, involving questions of sovereignty and sensitive political issues, as had the United Nations diplomatic conferences for which a two-thirds majority might be considered proper. The present Convention was, in a sense, in the field of private international law, and was essentially the very type of convention which could be safely based on majority rule.

10. Mr. ZALDIVAR (Argentina) requested that decisions on all matters of

substance should be taken by a two-thirds majority in accordance with the practice of the United Nations, the specialized agencies and the Agency, a practice from which there was no reason to depart. The Brussels Conference had shown the error of adopting the simple-majority procedure. Provisions adopted by a very small majority with a large number of members abstaining could satisfy no one, and that was apparently the case with the Brussels Convention, although his delegation did not wish to disparage the work which had gone into its preparation. If the present Convention were to lay down a number of general principles on which a large group of States was in agreement it was obvious that it would at least provide a framework within which bilateral agreements could be concluded.

11. Mr. GHELMEGEANU (Romania) said that the importance and complexity of the questions which the Conference had to decide was demonstrated both by the number of times roll-call votes had been requested, both in the Committee of the Whole and in the sub-committees, and also by the requests which had been made to reopen discussion on questions already decided. The present Conference could not be compared from the point of view of procedure with certain committees and sub-committees functioning under the aegis of the United Nations to which the United States delegate had referred as having adopted a simple majority procedure. The present Conference was not a regional meeting or one dealing with a limited subject, but was drafting an international agreement of lasting and universal importance. It was therefore essential that the Conference should agree to take its decisions by a two-thirds majority, as a guarantee that the Convention would be acceptable to as many States as possible.

12. Mr. BOULANGER (Federal Republic of Germany) opposed the Soviet proposal. It might lead to frequent and lengthy discussions on what matters were, in fact, of substance, when time was already running short.

13. His delegation fully agreed with the Soviet delegate that an international convention binding on States should be adopted by as large a majority as possible. It could not agree, however, that the failure of the Brussels Convention to date had been caused by the procedure followed at the Brussels Conference. The Brussels Convention had in fact been adopted by a two-thirds majority. The real reason for its non-ratification seemed to be that, in order to enter into force, it must be ratified by at least one State which had licensed a nuclear ship: as long as the only States which had nuclear ships had not even signed the Brussels Convention, it was obviously of little use for other nations to ratify it.

14. In the United Nations and the Agency the two-thirds majority rule applied mainly to decisions on problems of a political nature or such as had financial implications. It was quite justifiable for decisions binding on States in matters of politics or money to be taken by a two-thirds majority. It was, however, quite different in the case of the present Conference, which was trying to reach agreement on a certain unification of civil law in very much the same way as the Diplomatic Conference on Maritime Law had been doing for several decades. The minority should not be allowed to subject the majority to their veto and prevent them from having their convention if they so wished. The adoption of the two-thirds rule could mean the difference between the success and failure of the Conference. His delegation wished

to see the Conference succeed and would therefore vote against the Soviet proposal and in favour of the United States proposal.

15. Mr. RAO (India) supported the Soviet proposal. It must be remembered that the Conference was not drafting a resolution or recommendation but an international multilateral convention to which sovereign States were required to become parties. New States in Asia and Africa wishing to establish reactors would be extremely reluctant to surrender even a small part of their sovereignty by becoming parties to a convention decided for them by what, taking abstentions into account, might even be a minority of the nations represented at the present Conference. The two-thirds majority rule was the only safeguard for the minority, as well as allowing the majority view to be expressed. Fifty-one per cent of the members should not be allowed to impose their will on the other 49 per cent.

16. There was no reason to change the two-thirds rule, which had worked very well at the four United Nations codification conferences and had raised no insuperable difficulties. There might perhaps have been some justification for changing the rule if the Draft Convention had been prepared by a panel of legal experts - although the United Nations conferences on diplomatic and consular relations had, in fact, adopted the two-thirds rule in dealing with drafts prepared by the International Law Commission. The present Convention had, however, been established by an intergovernmental committee on which the views of Governments had been represented. He would earnestly appeal to the United States delegate to withdraw his proposal.

17. Mr. CARRAUD (France) said that his delegation would vote in favour of the Soviet proposal. The two-thirds majority rule was supported by precedent, and its application would help the Conference to achieve its aim, which was not to produce a perfect draft designed to meet every possible contingency but to establish minimum standards such as would form a sound basis for future development in what was an almost uncharted field. His delegation would prefer a comparatively vague text accepted by a large majority to a detailed convention adopted by a small majority, which might result in the withdrawal of the defeated States from future co-operation. A text adopted by a two-thirds majority would have far greater authority and appeal than the same text adopted by a simple majority.

18. Mr. GIBSON BARBOZA (Brazil) said that, in his delegation's view, a two-thirds majority should be required for approving the various articles and the Convention as a whole.

19. His delegation had serious misgivings in regard to the happenings of the past two weeks. Only six of the Latin American States were represented in the Conference, and only 13 of the Afro-Asian States. Almost all the articles approved so far by the Committee of the Whole had obtained only very small majorities, with far too many abstentions. That might be the easiest way of drafting a convention but it was not the wisest: the Conference might well find itself at the end with a convention but not enough Contracting Parties to make it of really world-wide scope. In his delegation's view, to adopt the simple-majority rule for the final approval of the various articles would only serve to bring into being a convention that established a kind of restricted club. It had been said that the Sub-Committee on Final Clauses had recommended that five ratifications should suffice to bring the Convention into effect. Unless delegates thought not only in terms of bring-

ing the Convention into effect but also in terms of making it an instrument to which the largest possible number of States could adhere, it would be better to conclude bilateral or restricted multilateral agreements between individual States.

20. It had also been said that the Conference was not drafting a convention of binding effect. It would, however, be the only instrument of its kind at the disposal of States, and should therefore represent a consensus of opinion, which could be arrived at only by compromise.

21. Mr. ZALDIVAR (Argentina), speaking on a point of order, moved the closure of the debate in accordance with Rule 23 of the Rules of Procedure.

22. Mr. THOMPSON (United Kingdom) and Mr. PETRŽELKA (Czechoslovakia) opposed the motion.

23. The PRESIDENT put the motion to the vote.

24. There were 2 votes in favour and 39 against, with 7 abstentions. The motion was rejected.

25. Mr. BASSOV (Byelorussian Soviet Socialist Republic) said that in an age of technical advance technical factors exercised a growing influence on international relations and on the rules of international law. The problems confronting the Conference were new and extremely complex and solutions could only be found in an atmosphere of mutual respect and willingness to compromise. The rules which the Conference was drawing up would apply throughout the world; they should therefore be authoritative decisions and not merely formal decisions adopted by an accidental majority.

26. The United States delegate had said that the Brussels Convention had been adopted by a simple majority, but the Brussels Conference had not been convened by the International Atomic Energy Agency, which applied the two-thirds majority rule. Therefore the procedure of the Brussels Conference could not be taken as a precedent. The German delegate had argued that the application of the two-thirds rule would prolong the work of the Conference, but the important point was to produce a successful convention which would satisfy as many countries as possible and not to repeat the failure of the Brussels Convention. He accordingly supported the Soviet proposal.

27. Mr. KONSTANTINOV (Bulgaria) agreed with the arguments of those delegates who were in favour of the two-thirds majority rule, traditional in the International Atomic Energy Agency as well as in the United Nations family as a whole.

28. In nearly all international organizations, financial questions were subject to a two-thirds majority vote; but the present Convention would impose on Contracting Parties far heavier financial obligations - with regard to the financial security to cover the liability of operators - than any of the internal financial obligations they assumed in connection with international organizations. He could not imagine that many States would be willing to accept such provisions unless they had been approved by a large majority of the States represented at the Conference.

29. Mr. THOMPSON (United Kingdom) said he thought that the Soviet delegation had made a very strong case for the retention of the two-thirds majority rule, but he was not happy about the Soviet delegate's reference to the Brussels Convention. The Brussels Convention was not a corpse and might astonish the mourners by coming to life. It was true that there had been a

simple-majority rule at the Brussels Conference, but the Brussels Convention as a whole, and all its articles except one, had in fact been adopted by majorities of more than two thirds.

30. The Soviet delegate had pointed to the Standing Committee set up after the Brussels Conference as evidence of the failure of that Convention. It had been proposed that a similar standing committee should be set up after the present Conference. He hoped that did not necessarily mean that the present Convention would be a bad one.

31. The adoption of a two-thirds rule would make it possible for a small group of States to prevent there being a convention at all.

32. If both the Soviet and the United States proposals were rejected by the Conference, the United Kingdom would submit a compromise proposal calling for a two-thirds majority in a vote on the Convention as a whole and a simple majority in the vote on the separate articles. The merit of that idea was that delegations were apt to be more conscious of the particular difficulties presented by individual articles. At international conferences it was seldom that one got a convention with which one could agree entirely; but delegations often found it possible to vote for a convention even though it contained individual points with which they could not agree.

33. Mr. KORCHAK (Ukrainian Soviet Socialist Republic) said that the Conference should adhere to the rules of procedure customarily adopted by the Agency. It had been argued that, as time was short, it should adopt a procedure which might prove more expeditious; to act on such a basis would be to reduce the authority of the Convention. He supported the Soviet proposal.

34. Mr. PETRŽELKA (Czechoslovakia) said that if the Convention were to become an effective instrument and an important contribution to international private law, both it and its articles must be adopted by a two-thirds majority. He was surprised that a procedure which had been followed in regard to almost all international conventions should be called in question at all.

35. Certain delegations had argued that the simple-majority rule was democratic. But the two-thirds majority rule was also democratic. If not, it would follow that all the conventions that had been adopted since 1956 were undemocratic. A two-thirds majority rule had been generally adopted since 1956 because in that year a number of new States with widely differing legal systems had become Members of the United Nations.

36. The procedure for making a convention dealing with international private law applicable in domestic law differed widely from country to country, and presented many constitutional problems. States would only be willing to undertake the obligations involved if the Convention had originally been adopted by a large majority. The United States delegate had said that the Convention would be merely of a technical character, but a convention which formed a part of international law could not be regarded as merely technical. The danger was that the Convention would remain a dead letter unless States with widely differing legal systems were ready to accept it. It was the acceptability of the Convention that should be the prime consideration.

37. The United Kingdom delegate had said that he would submit an alternative proposal if both the Soviet and the United States proposals were rejected; but the vote on those proposals would be subject to a simple majority and it was scarcely possible that both would be rejected.

38. Mr. DADZIE (Ghana) said that he was strongly in favour of the two-thirds majority rule. While simple-majority rule might be suitable for regional conventions for the purposes of a limited number of States, a convention adopted by a simple majority would lack the necessary authority for an international convention of world-wide scope.

39. It was not better to have a convention supported by a few States than no convention at all. That had not been the object of the Conference, but rather, if possible, to produce a universal convention which all States would support; and if that were not possible, then at least a convention supported by a two-thirds majority. The two-thirds majority rule was in accordance with past precedent and his delegation saw no reason for departing from it.

40. Mr. RUEGGER (Switzerland) said that the present Conference was concerned with the codification of international law and it might therefore seem logical to apply the procedural rules traditional in such conferences. But even at previous conferences - for example at the Vienna Conference on Consular Relations - the two-thirds majority rule had not been taken for granted and certain delegations had queried it.

41. In discussing political questions the two-thirds majority rule was undoubtedly necessary, and had also the advantage of protecting minorities. But in the codification of law it had certain drawbacks: the balance of an article might be upset if one of its provisions were eliminated through failure to obtain the requisite two-thirds majority; in the same way a convention as a whole might be distorted if some of its articles were so eliminated. Many delegates who had followed the process of the codification of international law since the beginning thought that the two-thirds majority rule had not proved satisfactory in practice and that in that field at least there was a case for changing the rule. The Swiss delegation had unofficially expressed the opinion that the question should be referred to the International Law Commission. Although the rule had worked satisfactorily at some conferences, at others - such as the 1958 Conference on the Law of the Sea - its working had been criticized. The question was far from being definitely settled one way or the other.

42. Only part of the international community would be immediately concerned by the Convention under discussion; others would gradually be affected by it as atomic industry expanded. It might be logical if the former States were to conclude a convention acceptable to themselves. The latter, as they became familiar with the problem, could work for the convention's modification and extension.

43. He supported the United Kingdom proposal; in fact, he went further and suggested that there should be separate votes on the voting procedure for the Convention as a whole and for the separate articles.

44. Mr. BRAJKOVIC (Yugoslavia) said that he agreed with the reasons given by the Soviet delegation in favour of the two-thirds majority rule but not with the statements concerning the "failure" of the Brussels Convention; the failure to ratify that Convention could not be attributed to the adoption of a simple-majority rule but to other factors outside the scope of the discussion. His delegation would vote for the two-thirds majority rule insofar as it applied to the Convention as a whole.

45. Mr. PAPATHANASSIOU (Greece) agreed with the German delegation that the application of the two-thirds majority rule to separate articles

might lead to practical difficulties, and therefore supported the United Kingdom proposal. He urged the Soviet and United States delegations to withdraw their proposals in favour of the compromise suggested by the United Kingdom as that might be the only way out of the impasse.

46. Mr. GUDENUS (Austria) also supported the United Kingdom proposal.

47. Mr. PHUONG (Viet-Nam), speaking as representative of an underdeveloped country, pointed out that the Intergovernmental Committee which had drawn up the text of the Draft Convention had fourteen members, of whom only two or three represented underdeveloped countries, although such countries formed a majority of the Members of the International Atomic Energy Agency.

48. Moreover, out of the Agency's 81 Members, only 57 were represented at the Conference. To adopt the simple-majority rule would imply that 29 countries could adopt a convention open to accession by all Members of the Agency; that would be an intolerable situation. The two-thirds majority rule, on the other hand, would ensure that a minority of the Agency's Members could not take decisions binding on countries which had not even taken part in the Conference.

49. Finally, he agreed with the French delegate that the Conference seemed to be losing sight of the fact that the future Convention should lay down minimum standards. He thought that the Conference had perhaps been too ambitious in trying to extend its legislation over too many fields and in going into excessive detail. It would have been better if the Convention had been regarded as providing merely a framework or set of guiding lines designed to facilitate the development of domestic law in the field of nuclear damage.

50. He supported the proposal for a two-thirds majority, but if it were not adopted, he would vote in favour of the United Kingdom's compromise proposal.

51. Mr. KIM (Republic of Korea) said that he supported the United States proposal for the simple reason that if a two-thirds majority were required, it would be doubtful if any of the articles could be adopted, and the work of the Conference would then prove to have been futile. If the proposal for the simple-majority rule were not adopted, he would vote for the United Kingdom proposal.

52. Mr. GASIOROWSKI (Poland) said that the provisional rules of procedure prepared by the Secretariat (CN-12/6) were the fruit of long experience and had proved successful at many international conferences, and there was no reason to depart from them.

53. It had been said that the simple-majority rule was democratic. Did that mean that the United Nations was not democratic? The fact that the simple-majority rule prevailed in the internal affairs of democratic States did not mean that it should necessarily be extended to international affairs. Until recently, the rule at international conferences had been unanimity: for example, the Hague Conventions of 1899 and 1907 on the Codification of International Law had been adopted unanimously; and the same rule had applied in both the Council and the Assembly of the League of Nations. Since the Second World War, the unanimity rule had given place to the rule of a qualified majority.

54. The argument that the application of that rule might lead to the distortion of the Convention or of an article by the elimination of one of its

provisions applied equally to the simple-majority rule, under which an article or a paragraph might also be defeated. In any case, the main value of the two-thirds majority rule was symbolical rather than practical: it encouraged compromise and would enhance the authority of the Convention.

55. The United States delegate had cited a number of international conferences at which the simple-majority rule had been adopted, but the present Conference could not be compared with purely technical conferences; it dealt with extremely complex and entirely new problems and it was essential to have the maximum safeguards. It was especially important that in an atomic conference held in the atomic age the spirit of co-operation and goodwill should prevail.

56. Mr. JARVIS (Canada) supported the arguments of the United States and German delegates in favour of the simple-majority rule. The questions before the Conference were extremely novel and technical and delegations often had great difficulty in deciding on which side the balance of convenience or of right lay. The adoption of the two-thirds rule might lead to endless arguments as to whether a given question was one of substance, form or procedure. He therefore thought that for the practical needs of the Conference itself it was essential that the simple-majority rule should be adopted.

57. Mr. ROGNLIEN (Norway) supported the United Kingdom proposal and the Swiss suggestion for a separate vote on the voting procedure for the Convention as a whole and for the individual articles. His delegation would vote against both the Soviet and the United States proposals.

58. Mr. FERRÓ (Hungary) agreed with the arguments of the Czechoslovak delegate. The purpose of the Conference was not that the Draft Convention should remain a draft but that it should become an effective instrument of international law. He firmly supported the two-thirds majority rule.

59. Mr. PETRŽELKA (Czechoslovakia) asked how the United Kingdom proposal could be reconciled with Rule 33 of the Rules of Procedure. That rule differentiated between matters of substance and matters of procedure. If the separate articles were to be adopted by a simple-majority vote, did that mean that they were to be regarded as matters of procedure? If not, did it imply that the Conference would have to amend Rule 33? In any case, the proposal was not a compromise, as it would still mean enforcing the will of a small majority on the minority. He urged the President not to put the United Kingdom proposal to the vote, but to adhere to the provisions of Rule 39 of the Rules of Procedure, which had already been adopted.

60. Mr. MAURER (United States of America) said that he wished to make clear the United States position. Although his delegation preferred its own proposal, if that were defeated he would support the United Kingdom proposal.

61. Mr. VILKOV (Union of Soviet Socialist Republics) asked why the United States proposal had not been submitted in writing.

62. He thought that the United States suggestion that the Conference should be regarded as "technical" created a dangerous precedent. There was no clear criterion for deciding what was technical and what was not, and a question which at one stage appeared to be technical might later be seen to have political or legal repercussions. If a different voting procedure were to be applied to technical questions, some delegations might be tempted

to describe their proposals as technical so that the normal rules of procedure should not apply.

63. The United States delegate had argued that the Convention could well be adopted by a simple majority since only those States who wished to need accede to it; but such a procedure savoured of a Diktat addressed to countries which did not agree with some of the provisions and, more especially, to those countries which were not represented at the Conference. The aim of the Conference was to produce a convention which would be acceptable to as many countries in the world as possible. The Convention should safeguard the rights and interests of the underdeveloped countries and not be adopted by a chance majority which might represent only the somewhat egocentric interests of a small number of States.

64. The argument that the adoption of a two-thirds majority rule would result in the failure of the Conference could be applied to any conference whatever. But other conferences had adopted the rule and had not been failures. In view of the work that was being done in the Committee of the Whole, he was inclined to be optimistic, but even assuming the worst - that certain articles did not get a two-thirds majority - all that would happen would be that other compromise solutions would have to be put forward and discussed. There was nothing tragic or surprising about that: the same thing occurred at all conferences.

65. He could not regard the United Kingdom proposal as a compromise. He had never heard that any such proposal had ever been made at any previous international conference - which was hardly surprising in view of its illogicality. It was hardly likely that a two-thirds majority could be found for the Convention as a whole if many of its articles had been adopted by a simple majority and were therefore unacceptable to a number of delegations. In any case, a two-thirds majority for the Convention would not give the Convention the necessary authority if the various articles had been approved only by simple majorities.

66. Moreover, the United Kingdom proposal could not be reconciled with Rule 33 of the Rules of Procedure as it stood at present. But if the Conference were to amend Rule 33, would a simple majority or a two-thirds majority be required? It was obvious that the whole discussion would start all over again and the Conference would never get round to discussing matters of substance.

67. He urged delegates to support the Soviet proposal, which was both logical and practical.

68. The PRESIDENT put to the vote the Soviet proposal (CN-12/8) that Rule 33, paragraph 1, of the Rules of Procedure should read "Decisions of the Conference on all matters of substance shall be taken by a two-thirds majority of the representatives present and voting".

69. There were 25 votes in favour and 16 against, with 8 abstentions. The proposal was adopted.

The meeting rose at 1. 5 p. m.

FOURTH PLENARY MEETING

Saturday, 18 May 1963, at 9.45 a.m.

President: Mr. LOKUR (India)

REPORT OF THE CREDENTIALS COMMITTEE

1. Mr. de CASTRO (Philippines), Chairman of the Credentials Committee, presented its report (CN-12/16), which was self-explanatory.
2. Mr. ŠEVČIK (Czechoslovakia) said he could only vote for the report on condition that it was placed on record that his delegation did not recognize as having been issued by the lawful Government of China the credentials issued by a group of persons who represented no one but themselves.
3. Mr. VILKOV (Union of Soviet Socialist Republics) associated himself with what had been said by the delegate of Czechoslovakia. The reasons for the Soviet delegation's attitude in the matter had been given at the first plenary meeting.[1]
4. Mr. BASSOV (Byelorussian Soviet Socialist Republic) and Mr. GASIOROWSKI (Poland) associated themselves with the views expressed by the delegates of Czechoslovakia and the Soviet Union.
5. Mr. CHANG (China) deplored the fact that certain delegations had introduced political propaganda into the work of the Credentials Committee. He was glad that justice and good sense had prevailed and that the Committee had taken a wise decision which made it possible for his delegation to vote for its report.
6. Mr. MAURER (United States of America) supported the Credentials Committee's report and considered that the action it had taken regarding the representation of China was entirely correct. The question of participation in the Conference had been settled by the Board of Governors, which had decided to send invitations to all Members of the Agency. Since the Republic of China was a Member of the Agency, it alone was qualified to represent China at the Conference.
7. Mr. THOMPSON (United Kingdom) said his delegation would vote for the Credentials Committee's report solely on the basis that the credentials submitted by the delegates attending the Conference were in order. Its vote should not be regarded as in any way constituting an expression of view as to the legal or other status of the authorities by whom those credentials had been issued.
8. *The report of the Credentials Committee (CN-12/16) was approved.*

CONSIDERATION OF ARTICLES APPROVED BY THE COMMITTEE OF THE WHOLE

9. Mr. DUNSHEE de ABRANCHES (Brazil), Rapporteur of the Committee of the Whole, said that the Committee had carefully examined every article in the Draft Convention prepared by the Intergovernmental Committee

[1] 1st plenary meeting, para. 16.

(CN-12/2), together with well over two hundred amendments. The texts approved by the Committee of the Whole in principle had been referred to the Drafting Committee, and the articles provisionally adopted by the Drafting Committee were contained in the addenda to document CN-12/17. Those articles were provisional only in that the Drafting Committee had not yet had time to check the concordance of the English, French, Russian and Spanish versions. The final text of the articles adopted by the Drafting Committee would be available later in the day.

10. The PRESIDENT, after paying tribute to the Committee of the Whole and the Drafting Committee, said that in the circumstances he would regretfully have to ask delegations to vote for the time being on the provisional text and the amendments to it, on the understanding that if the text of a particular provision were not modified by the Drafting Committee, such vote would be regarded as final. If the text were modified by the Drafting Committee, he would draw the Conference's attention to the change and put the provision as modified to a fresh vote.

Article I (CN-12/17/Add. 1)

11. Mr. ARANGIO RUIZ (Italy), presenting his amendment to paragraph 1(a) (CN-12/14/Rev. 1), said that the statutes of most international organizations contained an explicit provision to the effect that they should enjoy legal personality within the territory of the host State. He thought it was self-evident that to the extent that international organizations did enjoy such personality and could therefore act as operators under the law of the host State, they should be brought within the scope of the definition in paragraph 1(a).

12. He stressed that the Italian amendment left entirely on one side the possibly controversial question of the international personality of international organizations. Its sole purpose was to make explicit what was already probably implicit in paragraph 1(a), and if it were agreed in principle, it might be left to the Drafting Committee to decide the most appropriate form of words.

13. Mr. GHELMEGEANU (Romania) said that international law, like the United Nations Charter, recognized two types of international organization, intergovernmental organizations and non-governmental organizations. Since it was not clear whether the Italian amendment extended to the second type as well as to the first, he would be bound to oppose it.

14. Mr. TAGUINOD (Philippines) said he had no objection to the amendment in principle, but thought it might be better to defer the question until the Standing Committee whose establishment was proposed in the seven-nation draft resolution (CN-12/15/Rev. 1) had carried out its study of "problems arising in connection with the application of the Convention to a nuclear installation operated by, or under, the auspices of an intergovernmental organization".

15. Mr. VILKOV (Union of Soviet Socialist Republics) said that the Committee of the Whole had never discussed the question whether an intergovernmental organization could act as operator within the meaning of the Convention. He was therefore in agreement with the Philippine delegate.

16. Mr. GASIOROWSKI (Poland) also agreed with the Philippine delegate, especially bearing in mind that the Brussels Conference, after lengthy

debate, had decided against including a provision bringing international organizations within the scope of the Brussels Convention.

17. Mr. ARANGIO RUIZ (Italy) pointed out that the question discussed at the Brussels Conference had been quite different, namely whether international organizations could be assimilated to licensing States for the purpose of the Brussels Convention. That was a very complex question and a number of serious difficulties arose in connection with it. His amendment was entirely innocent of any such implications, and whether it was adopted or not would make no difference to the way in which his Government interpreted paragraph 1(a).

18. The PRESIDENT put the first alternative form of the Italian amendment (CN-12/14/Rev. 1) to the vote.

19. There were 21 votes in favour and 10 against, with 16 abstentions. The amendment was adopted, having obtained the required two-thirds majority.

20. Mr. VILKOV (Union of Soviet Socialist Republics) said that as a result of the vote, he wished to make it clear that it was the Soviet Government's view that in the event of an international organization acting as operator - within the meaning of the Convention - in any State where it was recognized as enjoying legal personality, liability in respect of any resulting nuclear damage would rest with that State itself, and with it alone.

21. Mr. STEPHENSON (South Africa), presenting his amendment to paragraph 1(d) (CN-12/18), pointed out that under Article I A the Convention might apply to nuclear incidents or nuclear damage within the territory of a non-contracting State if the law of the Installation State so provided. It was possible that, at some future date, portable reactors of the type to which the United States delegate had referred in the Committee of the Whole[2] would operate on the territory of a non-contracting State. His delegation accordingly proposed that "Installation State" should be defined in paragraph 1(d) as meaning the Contracting Party within whose territory the nuclear installation was situated or, if it was not situated "within the territory of any such State", the Contracting Party by which or under the authority of which the nuclear installation was operated. That definition would allow the Convention to be applied in the case of an incident caused by an installation operated by a Contracting State, but which occurred in a non-contracting State.

22. The PRESIDENT put the South African amendment (CN-12/18) to the vote.

23. There were 18 votes in favour and 3 against, with 24 abstentions. The amendment was adopted, having obtained the required two-thirds majority.

24. Mr. ENGLISH (United States of America) presented his delegation's amendment to paragraph 1(j)(i) (CN-12/28). It introduced nothing revolutionary and was intended merely to clarify the text. The United States was testing trailer-mounted mobile reactors which could be quickly moved in case of need to provide sources of power and heat at permanent, semi-permanent and temporary locations. It was intended to make them available for disaster relief in the United States and foreign countries which wished to have them and it was anticipated that in the next few years a considerable number would be in operation throughout the world. The reactors would

[2] 2nd meeting, para. 9.

be mobile solely for purposes of transport and would operate only in a stationary condition. The fact that they could be transported should not exclude them from the Convention. It was therefore proposed to substitute for the words "any nuclear reactor other than one with which a means of transport is equipped for use as a source of power" the words "any nuclear reactor other than one with which a means of sea or air transport is equipped for use as a source of power".

25. Mr. THOMPSON (United Kingdom) supported the amendment. When the preliminary work for the Conference had been done there had been no indication that such installations would be likely to exist.

26. Mr. HARDERS (Australia) and Mr. JARVIS (Canada) agreed that such reactors were clearly coming into being and should be covered by the Convention.

27. Mr. GHELMEGEANU (Romania) opposed the amendment.

28. Mr. LYTKIN (Union of Soviet Socialist Republics) preferred the clearer definition in the Drafting Committee's text. There were at present no such mobile reactors. In any case they would begin to operate only when they reached the intended site and could therefore be considered as stationary reactors, like any other reactor covered by the Convention.

29. The PRESIDENT put the United States amendment (CN-12/28) to the vote.

30. There were 33 votes in favour and 11 against, with 5 abstentions. The amendment was adopted, having obtained the required two-thirds majority.

31. Mr. SCHEFFER (Netherlands) said that his delegation's amendment to paragraph 1(j)(iii) (CN-12/32) must be considered in relation to its proposal (CN-12/31) to delete the last part of Article II, paragraph 1, beginning with the words "provided that if nuclear damage is caused by...".

32. The original definition of nuclear installation (CN-12/2) had included, in paragraph 5(c), any place where nuclear material was stored, "other than a place of storage incidental to the carriage of such material", so that the operator of such a place of storage could not be considered as an operator within the meaning of the Convention. Under the text of paragraph 1(j) (iii) as adopted by the Drafting Committee, however, he might be so considered, notwithstanding the proviso to Article II, paragraph 1. In the view of his delegation it would be better to delete that proviso, as it had proposed, and to restore to Article I the original reference to a place of storage incidental to the carriage of nuclear material.

33. Mr. GOSS (United Kingdom) believed that it had not been the intention of the Committee of the Whole that the reference should be removed from Article I, and supported the amendment.

34. Mr. SANALAN (Turkey) opposed the amendment, which would have a restrictive effect contrary to the interests of possible victims.

35. Mr. ZALDIVAR (Argentina) said that he could not accept the amendment because the phrase "incidental to the carriage" admitted of different legal and technical interpretations.

36. Mr. TRESSELT (Norway), Mr. STEINWENDER (Austria) and Mr. ŠEVČIK (Czechoslovakia) supported the amendment.

37. Mr. SPLETH (Denmark) supported the amendment, but considered that even if it was adopted the proviso to Article II, paragraph 1 should be retained.

38. Mr. STEPHENSON (South Africa) suggested that the same consideration in regard to temporary storage would apply to factories (paragraph 1(j)(ii)), and that the Drafting Committee should therefore consider the desirability of making the proposed reference applicable to the whole of paragraph 1(j).
39. Mr. SCHEFFER (Netherlands) said, in reply to the delegate of Turkey, that there was no intention of weakening the protection for possible victims. The proposed amendment was intended solely to make it clear where the liability lay.
40. In regard to the point raised by the South African delegate, he considered that since the amendment related only to carriage, it could not be applied to any other part of paragraph 1(j).
41. Mr. TREVOR (United Kingdom), Chairman of the Drafting Committee, explained that the Drafting Committee had recognized that there should be no liability where storage was incidental to the carriage of nuclear material, but had considered that the question was satisfactorily covered by Article II, paragraph 1. If, however, the Conference wished to make it perfectly clear that temporary storage installations should not be considered as nuclear installations within the meaning of the Convention it should vote in favour of the Netherlands amendment.
42. The Drafting Committee considered that the point raised by the South African delegate was covered in the present draft.
43. The PRESIDENT put the Netherlands amendment to paragraph 1(j)(iii) (CN-12/32) to the vote.
44. There were 31 votes in favour and 8 against, with 9 abstentions. The amendment was adopted, having obtained the required two-thirds majority.
45. The PRESIDENT put to the vote Article I, as amended.
46. There were 47 votes in favour and none against, with 2 abstentions. Article I was adopted, as amended, having obtained the required two-thirds majority.
47. Mr. VILKOV (Union of Soviet Socialist Republics) said that his delegation's vote in favour of Article I did not mean that it had voted for the Italian amendment (CN-12/14/Rev. 1). The Government of the Soviet Union did not consider itself bound by the Conference's decision, by adopting that amendment, to add to paragraph 1(a) a reference to international organizations enjoying legal personality under the law of the Installation State.
48. Mr. PETRŽELKA (Czechoslovakia) and Mr. GHELMEGEANU (Romania) associated their delegations with that reservation.

Article I A

49. Mr. ARANGIO RUIZ (Italy) introduced his delegation's proposal (CN-12/12) to add a proviso to Article I A to the effect that any compensation payable in respect of nuclear incidents occurring or nuclear damage suffered within the territory of a non-contracting State should not result in reducing the compensation available for nationals of the Contracting States to less than US $ 5 million. By giving unlimited discretion to the law of the Installation State, Article I A as it stood might open the way to undue extension of the Convention's benefits to nationals of non-contracting States not having their habitual residence in the territory of a Contracting State. An agreement

on such extension between a Contracting State and a non-contracting State would operate directly in favour of the nationals and residents of the non-contracting State, and indirectly in favour of the nationals of the Contracting State concerned, but to the detriment of the nationals and residents of other Contracting States. In addition, to allow non-contracting States to benefit from the provisions of the Convention would reduce their interest in becoming parties to it.

50. The delegation of India had introduced an amendment in the Committee of the Whole[3] with the intention of limiting the discretion of the Installation State. The amendment now introduced by the Italian delegation had the same aim but different wording, designed to avoid the objections by some delegates to the concept of "priority" for nationals and residents of the Contracting States.

51. Mr. RAO (India) said that he had explained his delegation's objections to the principle of Article I A in the Committee of the Whole. It would be an extraordinary situation to extend the benefits of the Convention to a non-contracting State without subjecting it to duties and obligations. That would provide no incentive for a non-contracting State to accede to a convention. Moreover, the article was not in conformity with the general rules of treaty law. International law did not recognize as a general principle that a treaty stipulation in favour of a third State could with legal effect be invoked by that State.

52. It was extraordinary that the Conference should propose under the Final Clauses to restrict the accession of States to the Convention and at the same time should be prepared to extend its benefits to the non-contracting States who were not allowed to become parties.

53. If the Italian amendment were not adopted, his delegation would request a separate vote on the words "unless the law of the Installation State so provides or except as provided in Article I B". Should that request not be accepted, his delegation would vote against Articles I A and I B.

54. Mr. DONATO (Lebanon) endorsed those views.

55. Mr. DUNSHEE de ABRANCHES (Brazil) opposed Article I A for the reasons given by his delegation in the Committee of the Whole[4]. It was contrary to international law that the benefits of the Convention should be applied to non-contracting States. Although the Italian amendment was intended to improve the situation, his delegation would vote against it as inadequate.

56. Mr. VILKOV (Union of Soviet Socialist Republics) agreed that Article I A was unprecedented and in flagrant opposition to the generally acknowledged principles of international law. The Italian amendment did not alter the principle and his delegation could not support it.

57. Mr. MAURER (United States of America) said that an incident might occur for which US $ 5 million was not enough to provide compensation. If non-contracting States were entitled to benefit, the compensation available to victims in Contracting States would be reduced still further. If Article I A were retained in its present form, an Installation State would be

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[3] 3rd meeting, paras. 48 and 49.

[4] 3rd meeting, para. 50.

compelled to provide additional funds to meet such a contingency. His delegation therefore supported the amendment.

58. The PRESIDENT put the Italian amendment (CN-12/12) to the vote.

59. There were 23 votes in favour and 19 against, with 5 abstentions. The amendment was not adopted, having failed to obtain the required two-thirds majority.

60. Mr. RAO (India) recalled that he had requested a separate vote on the last part of Article I A.

61. Mr. ARANGIO RUIZ (Italy), Mr. DADZIE (Ghana) and Mr. de ERICE (Spain) supported the proposal for a separate vote on those words, which, in their view, should be deleted.

62. Mr. MAURER (United States of America) opposed a separate vote.

63. Mr. SPLETH (Denmark), opposing a separate vote, considered that it would be better to have no provision at all than Article I A without the words which it had proposed to delete.

64. The PRESIDENT put to the vote the Indian motion for division of the vote on Article I A, in accordance with Rule 37 of the Rules of Procedure.

65. There were 26 votes in favour and 19 against, with 5 abstentions. The motion was carried.

66. After some discussion as to the order in which the two parts of Article I A should be voted on, the PRESIDENT put to the vote first the second part, reading "unless the law of the Installation State so provides or except as provided in Article I B".

67. There were 19 votes in favour and 23 against, with 6 abstentions. The second part of Article I A was rejected.

68. The PRESIDENT put to the vote the first part of Article I A.

69. There were 24 votes in favour and 21 against, with 4 abstentions. The first part of Article I A was not adopted, having failed to obtain the required two-thirds majority.

Article I B

70. Mr. RAO (India) felt that Article I B should be deleted. It had been dependent on Article I A and served no useful purpose since the latter had been deleted. Indeed it would only lead to confusion.

71. Mr. DADZIE (Ghana), Mr. ZALDIVAR (Argentina) and Mr. SPAČIL (Czechoslovakia) agreed that Article I B should now be deleted.

72. Mr. MAURER (United States of America) said that even in the absence of Article I A it was still possible as a matter of international treaty law to assume that the Convention applied as between Contracting States and it was possible for a country to take the view that it was under no obligation to extend the provisions of the Convention to nationals of non-contracting States or to incidents on such States' territory.

73. Mr. McKNIGHT (Australia) felt that Article I B should be maintained even if Article I A had been deleted. He drew attention to instances where it could apply to the advantage of the Contracting States.

74. Mr. SCHEFFER (Netherlands), Mr. de ERICE (Spain) and Mr. THOMPSON (United Kingdom) agreed that the article in question was still useful for the reasons indicated by the Australian delegate.

75. Mr. NORDENSON (Sweden) said that the Convention governed in principle all nuclear incidents and nuclear damage caused by installations in Contracting States. The competent court would decide in each specific case, according to the rules of international law, how far the Convention was applicable. He felt that Article IB should be retained as it prescribed the compulsory rule of international law. If it were deleted certain situations would not be covered by the Convention.

76. Mr. STEINWENDER (Austria) shared the views of the Swedish delegate and would vote in favour of Article I B.

77. The PRESIDENT put Article I B to the vote.

78. There were 25 votes in favour and 16 against, with 7 abstentions. The article was not adopted, having failed to obtain the required two-thirds majority.

Article II (CN-12/17/Add. 2)

79. Mr. TRESSELT (Norway) presented the Norwegian amendment (CN-12/24) to paragraph 1(b)(iii), which merely referred to the person operating the reactor without giving any further clarification. In the opinion of his delegation it should be clearly stated that liability could only be transferred to a person who was covered by financial security and proper legal safeguards, i. e. authorized by law.

80. The PRESIDENT put the Norwegian amendment (CN-12/24) to the vote.

81. There were 21 votes in favour and 7 against, with 20 abstentions. The amendment was adopted, having obtained the required two-thirds majority.

82. Mr. SCHEFFER (Netherlands) withdrew his proposal for deletion of the proviso to paragraph 1 (CN-12/31) in favour of the Norwegian amendment (CN-12/26), which he considered more precise.

83. Mr. TRESSELT (Norway) stated that the purpose of the proviso was clearly to ensure that where a nuclear consignment was sent from one operator to another only the operators would be liable for any nuclear damage caused. Nevertheless that idea was not stated in the Drafting Committee's text. That text did not provide for what happened when the consignment was taken in charge during carriage by the operator of a storage installation or when it left such an installation. He believed his amendment eliminated the doubt existing on both points. Although the matter might be solved in a fair manner by the competent court in accordance with the national legislation he felt that since the present Convention contained much detailed information on many subjects it should be as specific as possible in the present paragraph.

84. Mr. TREVOR (United Kingdom), Chairman of the Drafting Committee, stated that, after long and careful consideration, the Drafting Committee had been unable to find a clear wording that would cover all possible situations. Actually there was only one possibility not covered by the Drafting Committee's text, namely where an operator had taken charge of a nuclear consignment without making the necessary contractual arrangements; and the Committee did not think that would give rise to any difficulty in practice.

85. Mr. TRESSELT (Norway) said it was a principle of the Convention that

a third party should not be liable in any circumstances. The amendment was necessary to safeguard that principle.

86. Mr. SEVČIK (Czechoslovakia) said he could not support the Norwegian amendment, which would complicate the text of the Convention unnecessarily. There was, moreover, a discrepancy between it and Article III. Article III laid down absolute liability for nuclear damage but if the Norwegian amendment were accepted it might make liability subject to proof of nuclear damage.

87. Mr. SPLETH (Denmark) thanked Mr. Trevor for his explanations and fully supported the Drafting Committee's text.

88. The PRESIDENT put the Norwegian amendment to the proviso at the end of paragraph 1 (CN-12/26) to the vote.

89. There were 3 votes in favour and 33 against, with 9 abstentions. The amendment was rejected.

90. After some discussion, Mr. TRESSELT (Norway) withdrew the Norwegian amendment to paragraph 6 (CN-12/25) on the understanding that the Drafting Committee would consider further whether the text could not be simplified and clarified so as to avoid any possible impression that an operator could be exonerated even if liable under his national law.

91. Mr. MAURER (United States of America) moved that a separate vote be taken on the second sentence of paragraph 5. The matter had been considered important enough for reference to the Sub-Committee on Relations with Other International Agreements and should now be considered on its own merits. It was only due to special circumstances that the sentence in question had not been made a separate article.

92. Mr. ALLOTT (United Kingdom) opposed the motion for a separate vote, which would place his delegation and many others in considerable difficulty.

93. Mr. VILKOV (Union of Soviet Socialist Republics) felt that it would be very difficult to treat the two sentences separately and therefore also objected to a separate vote.

94. Mr. ZALDIVAR (Argentina) felt that two different questions were involved and supported the motion for a separate vote.

95. The PRESIDENT put to the vote the United States motion that the second sentence of paragraph 5 be voted on separately.

96. There were 18 votes in favour and 19 against, with 9 abstentions. The motion was rejected.

97. The PRESIDENT put to the vote Article II, as amended.

98. There were 44 votes in favour and none against, with 1 abstention. Article II was adopted as amended, having obtained the required two-thirds majority.

99. Mr. MAURER (United States of America) said his delegation had voted in favour of Article II as a whole, but strongly objected to the second sentence of paragraph 5, which it considered inconsistent with the Convention and detrimental to the interests of victims, operators and transport undertakings.

100. Mr. SPAČIL (Czechoslovakia) said he had voted in favour of Article II on the understanding that the reference to Article I A in paragraph 1 would be deleted by the Drafting Committee.

101. Mr. EDLBACHER (Austria) associated his delegation with the statement of the United States delegate, since paragraph 5 set out the principle

of channelling but did not give Contracting States an opportunity to establish strict conditions regarding the liability of third parties.

102. Mr. GIBSON BARBOZA (Brazil) also associated his delegation with the statement by the United States delegate.

Article II A

103. The PRESIDENT put Article II A, to which there were no amendments, to the vote.

104. ***There were 37 votes in favour and none against with 8 abstentions. Article II A was adopted, having obtained the required two-thirds majority.***

Article III (CN-12/17/Add. 3)

105. Mr. SCHEFFER (Netherlands), introducing his amendment (CN-12/34), said that, in his view, the inclusion of the concept of gross negligence would have undesirable and unforeseen consequences in cases where the persons concerned could not be covered by insurance. He felt that the concept of gross negligence was against the whole principle of the Convention.

106. Mr. PECK (United States of America) agreed that the concept of gross negligence should be deleted and that the liability of the operator should only be affected by the wilful act or omission of the victim. As it stood, the text was inconsistent with the principle of absolute liability contained in the Convention. His delegation therefore supported the Netherlands proposal.

107. Mr. MAURER (United States of America), supported by Mr. STEPHENSON (South Africa), wondered if the best solution might not be to have a separate vote first on the words "either from the gross negligence of the person suffering the damage or" and then on the paragraph as a whole.

108. Mr. ZALDIVAR (Argentina) felt that a question of substance was involved and that a vote should be taken as to the principle of including or deleting the concept of gross negligence.

109. Mr. GIBSON BARBOZA (Brazil) pointed out that the order of voting might affect the result and proposed that the Conference vote first on the Netherlands amendment.

110. Mr. SPAČIL (Czechoslovakia) pointed out that a two-thirds majority would be necessary for adoption of the Netherlands amendment. In the case of the United States proposal the Conference would have to decide first as to whether a separate vote should be taken on the words in question and then, if it so decided, vote first on those words and then on the paragraph as a whole, a two-thirds majority being required for both votes.

111. Mr. RAO (India) asked the Chairman of the Drafting Committee to explain the meaning of the phrase "if its law so provides" in paragraph 2 of Article III. Did that phrase, which had not been used in the original text or in the amendments, mean that countries should apply the Article only if national legislation existed, or did it mean that they were under an obligation to enact new legislation if they ratified the Convention?

112. Mr. TREVOR (United Kingdom), Chairman of the Drafting Committee, replied that the words in question had been inserted after careful con-

sideration by the Drafting Committee, which understood that the intention was to leave the matter flexible. Each country was free to take such action as it thought fit according to the present state of its national legislation or to take advantage of the provision by enacting further legislation. No country would be obliged to enact new legislation if it ratified the Convention.

113. Mr. SCHEFFER (Netherlands) withdrew the Netherlands amendment (CN-12/34) in favour of the United States proposal for a separate vote on the words "either from the gross negligence of the person suffering the damage or" in paragraph 2.

114. Mr. THOMPSON (United Kingdom) stated that his delegation had objected to the addition of the idea of gross negligence to the original text but now preferred to retain the Drafting Committee's text.

115. Mr. de ERICE (Spain) agreed with what had been said by the Brazilian delegate. If the Netherlands amendment were voted on first it would require a two-thirds majority, whereas if the words "either from the gross negligence of the person suffering the damage or" were voted on first, those words would require a two-thirds majority. The Spanish delegation was in favour of retaining those words. He therefore reintroduced the Netherlands amendment and would vote against it.

116. Mr. RAO (India) and Mr. SCHEFFER (Netherlands) asked whether it was permissible to introduce an amendment and vote against it.

117. The PRESIDENT said that there was no objection under the Rules of Procedure to submitting an amendment and voting against it. He put the Netherlands amendment (CN-12/34), as reintroduced by Spain, to the vote.

118. There were 13 votes in favour and 26 against, with 7 abstentions. The amendment was rejected.

119. Mr. MAURER (United States of America) renewed his proposal for a separate vote on the words referred to.

120. Mr. de ERICE (Spain) pointed out that the United States proposal amounted to the reconsideration, within the meaning of Rule 34, of a proposal already voted on. The rejection of the Netherlands amendment reintroduced by his delegation, meant that the proposal to delete the reference to gross negligence had been rejected and he therefore thought that a two-thirds majority would be necessary before a separate vote could be taken.

121. The PRESIDENT ruled that, since the Netherlands amendment had been rejected, there was no question of reconsideration. The Conference was now voting on the Drafting Committee's text and every delegate was entitled to request a separate vote.

122. Mr. SPAČIL (Czechoslovakia) and Mr. VILKOV (Union of Soviet Socialist Republics) opposed the proposal for a separate vote.

123. The PRESIDENT put to the vote the United States proposal that there should be a separate vote on the words "either from the gross negligence of the person suffering the damage or" in paragraph 2 of Article III.

124. There were 17 votes in favour and 23 against, with 7 abstentions. The proposal was rejected.

125. Mr. McKNIGHT (Australia) wished it to be placed on record that the Committee's discussions on paragraph 5 of Article III would be of no aid whatever in interpreting the paragraph, since the Committee had been more or less equally divided between two opposite views.

126. Mr. THOMPSON (United Kingdom) associated himself with the statement of the Australian delegation regarding paragraph 5.
127. Mr. MAURER (United States of America) felt that the discussions on the former text of paragraph 5 were not relevent to the paragraph's present meaning, since the paragraph now had a new introductory phrase.
128. Mr. de CASTRO (Philippines) said that in his delegation's view paragraph 7(b) in the Drafting Committee's text would in effect nullify paragraph 1 of Article IV.
129. Mr. TREVOR (United Kingdom), Chairman of the Drafting Committee, said that the Committee had not been able to give full consideration to the sub-paragraph in question and that some of the members felt it did not reflect the substance of the amendment on which it was based. The sub-paragraph would therefore have to be redrafted and he proposed that the vote be deferred.
130. It was so agreed [5].
131. Mr. GIBSON BARBOZA (Brazil) stated that when Article III was voted on, his delegation would request a separate vote on paragraph 3(b). He felt that the exception in that sub-paragraph would be open to wide interpretation which might be detrimental to victims of nuclear damage.

The meeting rose at 1.5. p.m.

FIFTH PLENARY MEETING

Saturday, 18 May 1963, at 3.20 p.m.

President: Mr. LOKUR (India)
(for part of the meeting) Mr. DADZIE (Ghana)

CONSIDERATION OF ARTICLES APPROVED BY THE COMMITTEE OF THE WHOLE (continued)

Article IV

1. Mr. STEPHENSON (South Africa), introducing his amendment to paragraph 2(b)(CN-12/20), said his delegation considered it desirable to omit the reference to the limit established by the Contracting Party, and that for three reasons. Firstly, the provision would result in discrimination against an Installation State, which was more restricted in its capacity to increase the limit than a non-installation State; an Installation State would be restricted to the $ 5 million limit, whereas a non-installation State could increase the limit to $ 10 million,, and the premiums concerned would be almost doubled. Secondly, limits would vary in an Installation State where there was more than one installation. For example, South Africa was about to set up a 20-megawatt research reactor and another very small one in a

[5] Consideration of Article III was resumed at the 7th plenary meeting (paras. 1-14).

university; the limits for those installations would naturally differ, and the sub-paragraph did not make clear whether the smallest or the largest limit was the one to which the liability could be increased for the transport of nuclear material through South Africa. Thirdly, the sub-paragraph was based on the axiom that the transport risks of the biggest operator were less than the installation risks of the smallest operator. That was an irrational view, for a reactor might be situated in a remote part of the country where the possibility of off-site damage would be almost negligible, whereas transport risks were greater, since the material would pass through thickly populated areas.

2. His delegation also proposed deletion of the last part of paragraph 2(b), where it was said that any higher limit established by virtue of paragraph 1 should not exceed $ 10 million. That figure might prove inadequate for States with large ports, for example for the United Arab Republic, where property in the region of the Suez Canal would, if damaged in a full-scale incident, probably cost over $ 100 million. On the other hand, increasing the limit to, say, $ 70 million might lead to a situation where States would hold others to ransom with regard to nuclear material passing through their territory.

3. Any fixed limits were therefore objectionable, and the only reasonable solution was to establish a sliding scale, which might be done by an expert group under the Board of Governors. If the Conference were to decide that it would be desirable for the Board of Governors to establish a committee responsible for the exclusion of small quantities of materials from the scope of the Convention, it would only be a logical development to ask that committee to establish specific criteria to govern maximum permissible increases in limits of liability. The committee would not need to establish specific quantities for each area, but it could certainly work out certain proportions, such as the value of property within a fifty-mile radius of certain points, with 50 per cent added value for damage to human beings; and the parties would be left to settle on the amount of damage within that formula. In modern times, when cost accountants were able to determine overheads and reductions with great accuracy, it was anomalous for the Conference to speak in terms of imaginary figures and global amounts. The South African proposal provided a means of relating those figures to reality.

4. Mr. SPAČIL (Czechoslovakia) said that, while his delegation had some sympathy with the South African amendment, it believed that the inherent risk involved in the transport of nuclear material was in fact less than that entailed by the operation of installations; for one thing, nuclear materials in transit never represented more than a small proportion of the critical mass. He doubted, moreover, whether the Board of Governors and its proposed expert committee would be in a position to go into sufficient detail to establish a scale which would reflect the real risk of transport.

5. Mr. ZALDIVAR (Argentina) said that he too was unable to support the South African amendment. For better or worse, paragraph 2 laid down a definite limit for the increase of liability and, when the Convention was ratified, operators and insurers must know what that limit was. The South African amendment introduced an element of uncertainty, particularly in leaving the decision to the Board of Governors, whose membership changed every year.

6. Mr. RAO (India) agreed that it would be better to leave the decision to the Contracting Party, and not to the Board of Governors, which might not have at its disposal all the data necessary for a decision.

7. He asked the South African delegate to explain the meaning of the last phrase of his amendment. The words "the territory through which it will be carried" might refer to the territory of a non-contracting State or that of a Contracting State, which latter, under the general rules of international law, might not allow such carriage unless the principle of sub-paragraph (a) were observed. Nor was it clear whether the committee set up by the Board of Governors was to be given powers to appraise the natural features of territory through which the materials might be carried with a view to determining possible damage.

8. Mr. STEPHENSON (South Africa) pointed out that the Czechoslovak delegate had failed to take into consideration the importance of the location of a nuclear reactor, whatever the danger of its criticality might be. If it were situated in a sufficiently remote area, there was no danger of off-site damage, and damage to on-site property was excluded from the Convention.

9. In reply to the Argentine representative's argument that the situation would be uncertain owing to changes in the membership of the Board of Governors, his delegation had secured an assurance from the Drafting Committee that sub-paragraph (a) was meant to cover only the limit of liability for a specific consignment. There was no intention of allowing one State to impose an arbitrary standing limit on another.

10. Finally, in reply to the Indian delegate, he pointed out that, in view of the provisions of sub-paragraph (a), the phrase in question could apply only to the territories of the Contracting Parties. The expert committee would not be a fact-finding body, but would simply establish a formula on the basis of which damage caused by specific incidents might be calculated.

11. Mr. VILKOV (Union of Soviet Socialist Republics) said that his delegation had obtained an expert opinion on the technical aspects of the question. The conclusions of the experts were that risks from nuclear installations were greater than those involved by transport of materials and that, if $ 5 million was taken as a minimum limit, there were no grounds whatsoever for establishing a higher limit for the transport of nuclear material. The Soviet delegation had accordingly voted in favour of the United Kingdom proposal to delete paragraph 2 in the Committee of the Whole, and, although it shared some of the misgivings of the South African delegation, it would not vote for the amendment because it was based on the same erroneous premises as paragraph 2 itself. He requested a separate vote on that paragraph.

12. Mr. RAO (India) thanked the South African delegate for his clarification, but pointed out that no rule of international law provided for the inherent right of transit through the territory of another State; such transit must be regulated by the country through whose territory the material was to pass, and that State was therefore entitled to subject the transit of nuclear materials to certain conditions in order to protect its citizens. Accordingly, he could not agree that decisions on increasing the limit of liability should be left to the Board of Governors. On the other hand, the matter should not be left to the arbitrary decision of the country of transit, and it was justifiable to lay down a set limit for the increase of liability, to avoid later misunderstandings. Moreover, if the Board of Governors decided to increase

the limit in excess of $10 million, the State concerned might not be in a position to pay. The whole question might be reconsidered at a revision conference, but a specific limit should be set for the time being.

13. The PRESIDENT put to the vote the South African amendment (CN-12/20).

14. There were 5 votes in favour and 33 against, with 7 abstentions. The amendment was rejected.

15. Mr. SCHEFFER (Netherlands), introducing his amendment to paragraph 2(b) (CN-12/36), observed that the Committee of the Whole had adopted the figure of $10 million without discussion. The Netherlands delegation considered that the figure was somewhat low and that the same protection should be afforded to possible victims of incidents arising from the transit of nuclear materials as in the case of other forms of international carriage. Moreover, since many countries intended to enact legislation for a higher limit than $10 million, it seemed advisable to allow for that possibility by raising the limit to $15 million.

16. Mr. RAO (India) considered that the proposed figure was absolutely arbitrary. The limit could not be governed by national law or capacity to pay: there must be an objective criterion.

17. Mr. SCHEFFER (Netherlands) said that all the figures cited during the Conference were more or less arbitrary, since fortunately no very serious nuclear incidents had yet taken place. His delegation had proposed the figure of $15 million to take into account the wish expressed by a number of delegations to set the limit higher than $10 million.

18. Mr. RAO (India) said that, since the Netherlands delegation had no specific reason for proposing its figure, he would prefer to abide by the Drafting Committee's text.

19. Mr. DADZIE (Ghana) endorsed the Indian delegate's view.

20. Mr. MAUSS (France) said he could support the Netherlands amendment as a compromise solution of a difficult problem.

21. The PRESIDENT put to the vote the Netherlands amendment to paragraph 2(b) (CN-12/36).

22. There were 17 votes in favour and 23 against, with 7 abstentions. The amendment was rejected.

23. Mr. SCHEFFER (Netherlands), introducing his amendment to paragraph 2(c) (CN-12/35), said that the exemption in respect of special cases of transit was not clear enough and went too far. The term "innocent passage" without any qualification was too broad, and his delegation had therefore proposed including the words "through the territorial sea"; in order to clarify the the provision, it had grouped innocent passage and overflight together. It had also thought it necessary to limit entry in the internal waters and landing from the air to cases of urgent distress.

24. Mr. GHELMEGEANU (Romania) opposed the Netherlands amendment. The provision had gone through four stages. The Intergovernmental Committee's text had rightly contained no reference to innocent passage, overflight or landing; it had then been proposed to provide for right of innocent passage in the territorial sea; the wording proposed by the Drafting Committee mentioned innocent passage and landing from the air without any qualification; and now the Netherlands amendment went to the extreme of allowing not only innocent passage through the territorial sea, but entry in the internal waters.

25. Under international law and the existing international agreements on the territorial sea, innocent passage was subject to the sovereignty of each State. Article 14, paragraph 4, of the Convention on the Territorial Sea and the Contiguous Zone provided that passage was innocent so long as it was not prejudicial to the peace, good order or security of the coastal State; it was therefore for the coastal State itself to ensure the security of its territorial sea, and a ship carrying nuclear materials could not automatically be deemed to enjoy the right of innocent passage. That was further confirmed by Article 16, paragraph 1, of the same Convention, which provided that the coastal State might take the necessary steps in its territorial sea to prevent passage which was not innocent. It was therefore for the signatory States of that Convention to determine whether or not passage was innocent: the Conference was not competent to make any decision on the matter. The same applied to the case of overflight and especially to the right to enter the internal waters of a State. The Netherlands amendment was therefore both redundant and dangerous.

26. Mr. RAO (India) considered that the Netherlands amendment, though it somewhat improved the Drafting Committee's text, still went beyond the scope and intention of the Convention. Innocent passage was most commonly concerned with passage through the territorial sea, but the limits of the territorial sea had not been defined at either of the Conferences on the Law of the Sea; "innocent passage" was therefore an imprecise term. On the other hand, overflight was clearly defined in the 1944 Chicago Convention on International Civil Aviation, and there was no need to mention it in the present instrument.

27. He asked for a separate vote on paragraph 2(c).

28. Mr. GASIOROWSKI (Poland) said the logical conclusion from paragraph 2, taken as a whole, was that a State should examine each individual case to decide whether the risks were greater or less in some cases than in others and should be able to fix a higher or lower limit accordingly. That opened the door to unlimited discrimination.

29. In principle all States had the right of innocent passage, which the coastal State was obliged to recognize; but under paragraph 2(c) innocent passage covered transport of nuclear materials, which was obviously contrary to customary international law. The Brussels Conference had been held with the purpose of making special provisions for nuclear ships, but its provisions would be nullified by the implication that the carriage of nuclear material could be included in innocent passage.

30. A somewhat similar situation arose with regard to overflight. Under Article 5 of the Chicago Convention, and a corresponding provision in the parallel convention regulating scheduled international air services, each Contracting State agreed that all aircraft of the other Contracting States should have the right to make flights into or in transit non-stop across its territory. The idea that that right should extend to aircraft carrying nuclear material was quite unacceptable.

31. The Netherlands amendment went even further than the Drafting Committee's text, by admitting the right of States to enter the internal waters of another State. He would therefore vote against that amendment and against paragraph 2 as a whole.

32. Mr. VILKOV (Union of Soviet Socialist Republics) pointed out that the

right of innocent passage applied to the passage of ships but said nothing about their cargoes and, since the Conference was dealing with cargoes, there was no direct connection with the right of innocent passage as such.

33. Mr. MAURER (United States of America) said that the idea in everyone's mind was to leave the law on the subject unchanged and that idea was best expressed in the Drafting Committee's text. He disagreed with the reference to internal waters in the Netherlands amendment, since the right of entry in cases of urgent distress applied only to the territorial sea. He asked for a separate vote on the words "and in no case shall exceed US $10 million" in paragraph 2(b) because he considered that there had not been enough discussion of the figure in the original debate.

34. The PRESIDENT put the Netherlands amendment to paragraph 2(c) (CN-12/35) to the vote.

35. There were 7 votes in favour and 28 against, with 12 abstentions. The amendment was rejected.

36. Mr. MAURER (United States of America), asking for his proposed vote on paragraph 2(b) to be taken first, said that he was opposed to a separate vote on paragraph 2 as proposed by the Soviet delegate since paragraphs 1 and 2 formed a complete whole.

37. Mr. THOMPSON (United Kingdom) and Mr. SPAČIL (Czechoslovakia) were in favour of a separate vote on paragraph 2, but opposed the United States motion for a separate vote on part of paragraph 2(b) since paragraph 2 formed a complete whole.

38. The PRESIDENT put to the vote the Soviet delegate's motion for a separate vote on paragraph 2.

39. There were 27 votes in favour and 12 against, with 8 abstentions. The motion was carried.

40. Mr. DONATO (Lebanon) supported the United States motion for a separate vote on the last clause of paragraph 2(b). While it was true that paragraph 1 fixed a minimum limit, paragraph 2 should not fix a set maximum.

41. Mr. RAO (India), *on a point of order*, said that the vote on the Netherlands amendment to paragraph 2(b) had settled the question of a figure so that if there was a further vote, it could only be by way of reconsideration of the previous vote.

42. The PRESIDENT ruled against the point of order raised by the Indian delegate and put to the vote the United States motion for a separate vote on the last clause of paragraph 2(b).

43. There were 21 votes in favour and 23 against, with 4 abstentions. The motion was rejected.

44. Mr. THOMPSON (United Kingdom) and Mr. MAURER (United States of America), objecting to the Indian motion for a separate vote on paragraph 2(c), said that sub-paragraphs (a), (b) and (c) constituted a whole. In their view, sub-paragraphs (a) and (b) would only be satisfactory if qualified by sub-paragraph (c).

45. The PRESIDENT put the Indian motion to the vote.

46. There were 10 votes in favour and 19 against, with 18 abstentions. The motion was rejected.

47. Mr. MAURER (United States of America) asked permission to discuss the merits of paragraph 2.

48. Mr. PETRŽELKA (Czechoslovakia), on a point of order, said that since voting had started interventions could only be on points of order.

49. The PRESIDENT upheld the Czechoslovak delegate's point of order and put Article IV, paragraph 2 to the vote.

50. There were 32 votes in favour and 17 against, with 7 abstentions. Paragraph 2 was not adopted, having failed to obtain the required two-thirds majority.

51. Mr. MAURER (United States of America) and Mr. JARVIS (Canada) said that they would vote against Article IV since the rejection of paragraph 2 had removed a vast amount of the substance of the Article. They wished to record that they found the figure in paragraph 1 unrealistic in view of the potential damage caused by a nuclear incident. They hoped that States would individually raise the limit.

52. The PRESIDENT put to the vote Article IV, as amended, i.e. with the exclusion of paragraph 2.

53. There were 38 votes in favour and 8 against, with 1 abstention. Article IV was adopted, as amended, having obtained the required two-thirds majority.

Article V

54. The PRESIDENT put Article V to the vote.

55. There were 46 votes in favour and none against, with 1 abstention. Article V was adopted, having obtained the required two-thirds majority.

Article VI

56. Mr. TREVOR (United Kingdom), Chairman of the Drafting Committee, said that the reason for the Argentine proposal for the insertion of "provinces" had been appreciated, but the word had been omitted since all constituent sub-divisions were covered by the words "such as" and it had been felt that the express mention of provinces would throw doubt upon the meaning of "constituent sub-divisions".

57. Article VI was adopted unanimously.

58. Mr. PAPATHANASSIOU (Greece) wished to record that his delegation's vote in favour of Article VI was not to be interpreted as a renunciation of the right to make the necessary provisions to ensure reciprocity in the field of rights and obligations arising out of paragraph 1 of that Article.

Article VI A

59. Mr. MAURER (United States of America) wished to record his understanding that, where the limit of $5 million was not exceeded, the Article did not authorize a State to reduce compensation claimed whether for damage to persons or to property.

60. The PRESIDENT put Article VI A to the vote.

61. There were 44 votes in favour and 1 against, with 3 abstentions. Article VI A was adopted, having obtained the required two-thirds majority.

Article VII

62. Mr. ARANGIO RUIZ (Italy), introducing his amendment (CN-12/29), said that the text proposed by the Drafting Committee permitted an Installation State to legislate as it thought fit, provided that the limit laid down by virtue of Article IV was not exceeded. He pointed out that that might lead to discrimination against victims, since it could be taken that Article XI did not apply.

63. Mr. ENGLISH (United States of America) supported the amendment, since Article VII was not intended to permit derogation from the Convention, merely to allow social benefit schemes to claim where necessary.

64. The PRESIDENT put the Italian amendment (CN-12/29) to the vote.

65. There were 30 votes in favour and 3 against, with 12 abstentions. The amendment was adopted, having obtained the required two-thirds majority.

66. Mr. de CASTRO (Philippines), on a point of order, said that the deletion of Articles I A and I B implied the deletion of the words "or under the law of a non-contracting State" from paragraph 2.

67. Mr. TREVOR (United Kingdom), Chairman of the Drafting Committee, said that that was not the case since Article I A dealt with the question of extending application of the whole Convention whereas Article VII, paragraph 2, dealt only with specific cases.

68. The PRESIDENT put to the vote Article VII as amended.

69. There were 47 votes in favour and none against, with 1 abstention. Article VII was adopted, as amended, having obtained the required two-thirds majority.

Article VIII

70. Mr. GIBSON BARBOZA (Brazil), introducing the 12-nation amendment (CN-12/22), said that although the principle of right of recourse embodied in that amendment had been extensively discussed in the Committee of the Whole, it had failed to win the support of a majority. However, the sponsors considered that principle to be so essential to the Convention that they felt compelled to reintroduce the matter. It had been argued that a right of recourse was contrary to the principle of absolute liability of the operator and to the principle of channelling. But nothing in the proposed amendment derogated from the liability of the operator in respect of the victim of a nuclear accident. It had also been claimed that a right of recourse would hamper the development of the nuclear energy industry. In the sponsors' view, it would merely impose some limitation on the absolute freedom of manufacturers and suppliers from liability. The purpose of the Convention was not, as the opponents of recourse were arguing, to protect the victim and help the nuclear industry, but to protect the victim without hampering the industry. Those opponents seemed concerned mainly with the financial interests of manufacturers and suppliers, but surely those interests were not paramount. It should also be borne in mind that there would be very few instances in which the operator would be able to prove fault on the part of manufacturers or suppliers and hence there was no justification for setting aside the universally accepted principle of right of recourse.

71. Mr. TAGUINOD (Philippines) said his Government strongly supported the 12-nation amendment. He disagreed that the right of recourse would interfere with the development of the atomic energy industry. Account had to be taken not only of the interests of that industry in the more developed countries, where most of the manufacturers and suppliers of equipment were located, but also of the need to promote the industry in the developing countries. Considering the high initial costs of setting up power reactors, operators in developing countries would be discouraged if, owing to the absence of a right of recourse, they also had to assume the burden of liability for faulty material. It would be argued that the operator could take out insurance to cover such loss. But why should not such insurance be borne by the manufacturer, supplier or carrier? As regards the principle of absolute liability of the operator, surely that did not mean that the operator had no recourse against persons at fault in a nuclear incident.

72. Mr. THOMPSON (United Kingdom) said that the question of recourse had already been fully debated in the Committee of the Whole and his delegation had been deeply impressed by the sincerity of those who advocated extensive rights of recourse. Nevertheless, he felt that the sponsors of the 12-nation amendment had not taken full account of its implications. The Conference seemed to be in general agreement as far as the rights of victims were concerned, and those rights were unaffected by the present argument. The cleavage seemed to be between those countries which were the principal suppliers of equipment and transport services and those which, for the time being, were compelled to depend on them in those respects. It was not true, however, that the former were concerned mainly with the interests of suppliers. They, like the sponsors of the amendment, were interested in the achievement of cheap, efficient nuclear power which could be used for the good of all mankind; and the key figure in the production of such power was the operator, who should not be penalized but encouraged in every way. Under the Convention, the operator was made absolutely liable. The normal method of covering his liability was by insurance. If recourse actions were permitted, not only the operator but also the manufacturer of a reactor would have to take out insurance for the whole life of the reactor. Similarly, subcontractors who supplied materials and components to reactor manufacturers would have to insure against possible liability in respect of claims for negligence. The position would be even more difficult in the case of parts supplied by persons who had not known that they were intended for a reactor. Such persons would not be able to insure but might be held liable and subject to recourse actions by operators.

73. The cost of pyramiding of insurance would inevitably have to be charged into the cost of equipment and could only be borne by the operator, the very person whom the sponsors of the 12-nation amendment were interested in helping. Only the insurers stood to benefit by such a provision, but they had, in fact, been amongst the first to recognize the importance of channelling all liability to the operator. Moreover, they had voluntarily given up their rights to proceed against manufacturers and others in respect of damage to the installation itself. Such damage could amount to sums far in excess of the limit of liability in respect of third-party damage - a nuclear power

station in the United Kingdom might have to be covered by insurance for £ 50 million. The willingness of insurers to deny themselves the right of recourse was an indication of the importance of channelling liability.

74. There was no reason for assuming that manufacturers of equipment and suppliers of materials were irresponsible. They had every incentive to produce first-class work and they were subject to close scrutiny by their customers and by insurers. To change the pattern of liability that had been built up over the last decade could only lead to chaos. The proposed amendment represented a tremendous danger not only to the more advanced countries but also to the developing ones.

Mr. Dadzie (Ghana) took the Chair.

75. Mr. McKNIGHT (Australia) said that his delegation was submitting its amendment (CN-12/33) in an attempt to bridge the widely divergent views of the supporters of Article VIII as it stood (with recourse being limited to two cases) and the sponsors of the 12-nation amendment (providing only for a right of unlimited recourse against suppliers). The Australian amendment retained the two cases in the basic text but added a third case providing for recourse against suppliers. It should be noted that the right was limited to recourse against suppliers and that transport had been excluded. It also placed a financial limit on the supplier's liability which could easily be covered by insurance. The Australian delegation felt that the supplier should bear some liability for his workmanship. As regards the argument that the matter could be settled by contract, it doubted whether the operator had much chance of obtaining satisfactory provisions by such a method.

76. Mr. THOMPSON (United Kingdom) said that his delegation recognized the good intentions of the Australian amendment but would not be able to support it either. In fact, it could not sign a convention which included either of the two alternatives under consideration.

77. Mr. de ERICE (Spain) emphasized that the right of recourse was limited to cases of fault on the part of the manufacturer or supplier. It would be an extraordinary act of injustice not to provide for such a right in the case of recognized fault. The problem involved was not one of economics but of justice, equity and reason. If the operator were deprived of that right he would himself become a victim.

78. Mr. SPINGARN (United States of America) said he was emphatically opposed to both amendments, adoption of which would seriously hamper the atomic energy industry because suppliers would be extremely reluctant to do business under such risky conditions. Adoption of either amendment could only result in a proliferation of insurance costs. Yet the very purpose of developing nuclear reactors was to drive power costs down. The additional costs could only delay the advent of nuclear power.

Mr. Lokur (India) resumed the Chair.

79. Mr. ŠEVČIK (Czechoslovakia) said that he sympathized with the purpose of the two amendments but drew attention to the effects which the additional insurance fees would have on the costs of material. Manufacturers would be expected to assume liability for the entire life of their equipment. Surely,

very few of them would agree to that. The only solution was to channel all liability to the operator, who, after all, was the one who needed the equipment.

80. Mr. SPLETH (Denmark) associated himself with the statements of the United Kingdom, United States and Czechoslovak delegates.

81. The PRESIDENT put the 12-nation amendment (CN-12/22) to the vote.

82. There were 17 votes in favour and 23 against, with 5 abstentions. The amendment was rejected.

83. The PRESIDENT put the Australian amendment (CN-12/33) to the vote.

84. There were 5 votes in favour and 21 against, with 19 abstentions. The amendment was rejected.

85. The PRESIDENT put to the vote Article VIII.

86. There were 28 votes in favour and 12 against. with 6 abstentions. Article VIII was adopted, having obtained the required two-thirds majority.

87. Mr. GIBSON BARBOZA (Brazil) said that it was very regrettable that Article VIII had been adopted as it stood, since no real right of recourse was provided either in paragraph (a) or in paragraph (b). Many countries would find it difficult to accede to the Convention for that reason.

88. Mr. ZALDIVAR (Argentina) said that as a result of the vote an unlawful principle had been accepted, and for that reason the Argentine delegation was not now in a position to sign the Convention, and it would be difficult for Argentina to sign in the future. His delegation felt that the only protection afforded by the Article as adopted was to industrial interests, not to victims.

The meeting rose at 6. 55 p. m.

SIXTH PLENARY MEETING

Sunday, 19 May 1963, at 11. 20 a. m.

President: Mr. LOKUR (India)

CONSIDERATION OF ARTICLES APPROVED BY THE COMMITTEE OF THE WHOLE (continued)

1. The PRESIDENT said that the final text prepared by the Drafting Committee for Articles I to VIII appeared in document CN-12/42, and that for Articles IX to XXVIII inclusive, together with the title and the preamble, in document CN-12/41.

Article I (resumed) (CN-12/42)

2. Mr. TREVOR (United Kingdom), Chairman of the Drafting Committee, said that the Drafting Committee had encountered considerable difficulty in regard to the incorporation of the South African amendment to paragraph

1(d) (CN-12/18), which had been adopted at the fourth plenary meeting[1]. As a result of the subsequent rejection of Article I A, there was no reference in the Convention to incidents in non-contracting States, except as introduced by the South African amendment. If the amendment were incorporated, consequential alterations would be required throughout the draft. It would, moreover, be in direct conflict with Article II, paragraph 1, according to which liability ceased when nuclear material was unloaded in a non-contracting State. He therefore moved that the Conference should reconsider the South African amendment.

3. The PRESIDENT put to the vote the motion for reconsideration. Under Rule 30 of the Rules of Procedure a two-thirds majority was required.

4. There were 36 votes in favour and 2 against, with 3 abstentions. The motion was carried, having obtained the required two-thirds majority.

5. Mr. STEPHENSON (South Africa) withdrew the amendment (CN-12/18).

Article IX (CN-12/41)

6. Mr. TREVOR (United Kingdom), Chairman of the Drafting Committee, explained that the delegate of Norway, who was unfortunately unable to be present, had accepted the explanation of the Drafting Committee that, in its view, there was no need for specific reference to Article VII, paragraph 2, in paragraph 1 of Article IX. He had therefore withdrawn his proposal to add such reference (CN-12/30).

7. Mr. ARANGIO RUIZ (Italy), introducing the proposal to delete paragraph 3(b) (CN-12/21), said that while agreeing basically with the intention, which was to achieve a single jurisdiction, his delegation felt that the provision as it stood might lead to difficulties more serious than those it was intending to avoid. Indeed, until an agreement was reached by the Contracting Parties concerned, there would have to be a standstill on all claims, no legal proceedings being allowed to start before any court. International practice did not seem to justify the optimistic assumption that the Contracting Parties could not fail to reach an agreement in view of the necessity to provide for a settlement of the claims. The most simple issues were often not settled reasonably by agreement, in spite of the most obvious interest of the States involved and of their nationals in reaching a settlement. Even if an agreement were ultimately reached, negotiations might last too long for a standstill on all claims to be acceptable in the meantime for the victims.

8. One solution would have been to add to the present text a provision along the lines suggested by the United States delegation in the Committee of the Whole[2], entrusting some international institution with the settlement of the conflict. In view of the rejection of that suggestion, however, his delegation submitted that it would be more practical to delete paragraph 3(b), thus leaving the settlement of the conflict of jurisdiction to general rules and practice.

9. The Italian delegation was fully aware of the fact that that was not an ideal solution since, unless the conflict were settled in time, the out-come might be the co-existence for a time of two or more conflicting court de-

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[1] 4th plenary meeting, paras. 21 to 23.

[2] CN-12/CW/13.

cisions, but it felt that such a result would still be preferable to a total standstill on claims for compensation.

10. If the paragraph was not deleted, it should at least be redrafted in such a way as to allow the courts either to proceed pending agreement, or to proceed if an agreement was not reached within a given period.

11. Agreement on jurisdiction as envisaged in paragraph 3(b) might be not only politically difficult, in that it would involve more or less justifiable reasons of prestige, but also technically difficult: the agreement was apparently to be an inter-executive agreement, but it was not always constitutionally possible for Governments to decide upon their courts' competence or jurisdiction merely by the action of the executive.

12. Mr. ZALDIVAR (Argentina) strongly supported the proposal to delete paragraph 3(b), the inclusion of which might make it impossible to apply the Convention.

13. Mr. ULMAN (United States of America) agreed that in its present form paragraph 3(b) was quite impracticable and that its deletion would be beneficial.

14. The PRESIDENT put to the vote the Italian proposal to delete paragraph 3(b) (CN-12/21).

15. There were 18 votes in favour and 19 against, with 11 abstentions. The proposal was rejected.

16. Mr. ARANGIO RUIZ (Italy) said that, as a consequence of the rejection of his delegation's proposal, he would request that a separate vote be taken on paragraph 3(b).

17. Mr. DUNSHEE de ABRANCHES (Brazil), introducing his amendment (CN-12/37), said that the amendment submitted by his delegation in the Committee of the Whole had not been put to the vote for procedural reasons[3]. His present amendment recognized the principle that there must be international judicial assistance, but stated it in terms which were more in accordance with the legislation of States than the present text, which would make it difficult for many States to accede to the Convention.

18. To state, as in the existing text, that appropriate measures should be taken to obtain the testimony of parties or witnesses residing within the territory of another Contracting Party, and that "any other feasible measures to lighten the burden of litigation" might be taken by the court having jurisdiction, was too far-reaching and might be dangerous. It was enough simply to state that the court having jurisdiction might take appropriate measures to obtain evidence in the territory of another Contracting Party.

19. It would also be preferable to provide that the request should be presented in accordance with the formalities required by the law of the Contracting Party where the taking of evidence was sought, rather than that measures should be taken only with the Contracting Party's "consent".

20. Mr. de ERICE (Spain) supported the Brazilian amendment, which would introduce the principle of locus regit actum into the Convention.

21. Mr. ZALDIVAR (Argentina) hoped that those delegations which, like his own, had opposed paragraph 4 in the Committee of the Whole, would be able to accept the amendment as a compromise solution.

22. Mr. THOMPSON (United Kingdom) said that his delegation maintained

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[3] 19th meeting, para. 10.

its objection to paragraph 4 for the reasons given in the Committee of the Whole[4] and would request a separate vote on it.

23. Mr. ULMAN (United States of America) supported the present text of paragraph 4. The "consent" of the Contracting Party obviously covered the idea in the Brazilian amendment that the request should be "presented in accordance with the formalities required by the law of the Contracting Party": the formula in the amendment might not be adequate, however, since the consent of the State itself might be required under certain legal systems.

24. Mr. VILKOV (Union of Soviet Socialist Republics) asked whether the court having jurisdiction would itself go to the territory of the other Contracting Party, or whether it would simply request the assistance of courts in that territory.

25. Mr. DUNSHEE de ABRANCHES (Brazil) replied that as far as European States were concerned, the question was regulated by the Hague Conventions, which provided that a competent court wishing to obtain evidence submitted a request, through the Ministry of Foreign Affairs, which was transmitted, by the Ministry of Foreign Affairs of the country in which the evidence was to be obtained, to the appropriate court. That court then endeavoured to obtain the necessary evidence.

26. Mr. PETRŽELKA (Czechoslovakia) opposed the Brazilian amendment. The principle of locus regit actum could not be fully applied since it would be going too far to deprive States of their sovereign right to give their consent. The present text of paragraph 4 was, in his view, completely in accordance with generally accepted international practice.

27. Mr. RAO (India) supported the amendment, which represented a great improvement on the present text.

28. Mr. DADZIE (Ghana), supporting the amendment, welcomed the exclusion of the vague reference to "feasible measures to lighten the burden of litigation". It was implied in the phrase "in accordance with the formalities required by the law", used in the amendment, that the Contracting Party's consent was required.

29. Mr. SCHEFFER (Netherlands) said that, although the amendment was an improvement on the present text, his delegation would vote against it, and would support the United Kingdom proposal for a separate vote on paragraph 4. It was not desirable to include a provision concerning procedure in the Convention and there was, moreover, no need to make special provision for "appropriate measures to obtain evidence in the territory of another Contracting Party" since it would always be possible to take such measures.

30. Mr. PHUONG (Viet-Nam) supported the amendment, which would help to speed up litigation so that victims would receive their compensation more quickly.

31. The PRESIDENT put the Brazilian amendment (CN-12/37) to the vote.

32. There were 15 votes in favour and 13 against, with 19 abstentions. The amendment was not adopted, having failed to obtain the required two-thirds majority.

33. Mr. OHTA (Japan) asked whether the Chairman of the Drafting Committee could explain the meaning of the phrase "partly outside the territory of any

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[4] 18th meeting, para. 32.

Contracting Party, and partly within the territory of a single Contracting Party" in paragraph 3(a).

34. Mr. TREVOR (United Kingdom), Chairman of the Drafting Committee, replied that in Article I, paragraph 1(l), "nuclear incident" was defined as any occurrence or series of occurrences having the same origin which caused nuclear damage. Paragraph 3(a) was intended to govern, for example, the case of a series of occurrences on a ship, the first of which took place on the high seas and the others in the territorial sea of a Contracting Party.

35. The PRESIDENT asked if there was any objection to the Italian motion for a separate vote on paragraph 3(b).

36. Mr. NORDENSON (Sweden) opposed the motion. It would make paragraph 3 quite unworkable if either sub-paragraph (a) or sub-paragraph (b) were to be adopted in isolation.

37. Mr. ARANGIO RUIZ (Italy) was confident that if sub-paragraph (b) were deleted the Drafting Committee would still be able to establish a satisfactory text for the remainder of paragraph 3.

38. Mr. HENAO-HENAO (Colombia) and Mr. DADZIE (Ghana) supported the motion for a separate vote on sub-paragraph (b), which, in their view, should be deleted.

39. The PRESIDENT put to the vote the motion for a separate vote on paragraph 3(b).

40. There were 20 votes in favour and 22 against, with 7 abstentions. The motion was rejected.

41. Mr. MAURER (United States of America) objected to the United Kingdom motion for a separate vote on paragraph 4. Article IX contained closely knit provisions and should stand or fall as a whole. The centralization of jurisdiction should be accompanied by the provision in paragraph 4, intended to lighten the burden for those who otherwise might have to travel long distances in connection with litigation arising out of claims.

42. Mr. DUNSHEE de ABRANCHES (Brazil) and Mr. NORDENSON (Sweden) supported the motion.

43. The PRESIDENT put to the vote the United Kingdom motion for a separate vote on paragraph 4.

44. There were 30 votes in favour and 10 against, with 9 abstentions. The motion was carried.

45. The PRESIDENT put paragraph 4 to the vote.

46. There were 16 votes in favour and 28 against, with 7 abstentions. Paragraph 4 was rejected.

47. The PRESIDENT put to the vote paragraphs 1, 2 and 3 of Article IX.

48. There were 43 votes in favour and 1 against, with 4 abstentions. Paragraphs 1, 2 and 3 of Article IX were adopted, having obtained the required two-thirds majority.

49. Mr. ARANGIO RUIZ (Italy) said that, as a consequence of the acceptance of paragraph 3(b) of Article IX, it would be difficult for Italy to accede to a Convention by which the courts of justice of any country would have to abstain from hearing claims for compensation for nuclear damage until the conclusion of an intergovernmental agreement of the kind envisaged. Such a provision might even be unconstitutional. It was in any case very strange that an international convention should bind the Contracting Parties to deny in certain instances a fundamental human right.

Article X

50. Mr. RAO (India) was opposed to paragraph 1(c) and moved that it be voted on separately. The provision in question was unnecessary and undesirable. The concepts of public policy and fundamental standards of justice varied from country to country and, if a Contracting Party were permitted to refuse to recognize a final judgement on such grounds, the whole purpose of the Convention could be defeated.
51. Mr. DADZIE (Ghana) agreed, and supported the motion.
52. Mr. ULMAN (United States of America) opposed the motion. Subparagraphs (a), (b) and (c) were an integral part of paragraph 1 and accordingly that paragraph ought to be voted on as a whole.
53. Mr. ZALDIVAR (Argentina) also opposed the motion. Article X had been discussed at length in the Committee of the Whole and the present draft represented a compromise solution.
54. The PRESIDENT put to the vote the Indian motion for a separate vote on paragraph 1(c).
55. There were 12 votes in favour and 30 against, with 8 abstentions. The motion was rejected.
56. Mr. ARANGIO RUIZ (Italy) moved that the words "or is not in accord with fundamental standards of justice" in paragraph 1(c) be voted on separately.
57. Mr. ZALDIVAR (Argentina) and Mr. ULMAN (United States of America) opposed the motion.
58. The PRESIDENT put the Italian motion to the vote.
59. There were 13 votes in favour and 28 against, with 8 abstentions. The motion was rejected.
60. The PRESIDENT put Article X to the vote.
61. There were 44 votes in favour and 3 against, with 3 abstentions. Article X was adopted, having obtained the required two-thirds majority.

Article XI

62. Mr. ULMAN (United States of America), introducing the United States amendment (CN-12/27), pointed out that it had been drafted in such a way as to dispel the misgivings expressed by some delegates in the Committee of the Whole. Adoption of the amendment should not lead to a situation in which a foreign national would be subject to provisions of national law which were less favourable than the provisions of the Convention. Such an eventuality was, in fact, precluded by the provisions of Article XI itself. It had also been suggested that, if the amendment were adopted, commercial foreign corporations might be treated, pursuant to the definition of a "National of a Contracting Party" in Article I, paragraph 1(b), in the same way as domestic corporations. Such an interpretation was not correct, however, since a domestic corporation could only be organized under the laws of the country in question. The definition would not include a foreign corporation merely doing business in that country and not organized under its laws.
63. Mr. THOMPSON (United Kingdom) regretted he was still apprehensive lest a United Kingdom airline, for example, with premises in the United

States, might be treated as a national corporation. Accordingly he opposed the amendment.

64. Mr. DUNSHEE de ABRANCHES (Brazil) supported the amendment, which met the objections his delegation had expressed in the Committee of the Whole.

65. The PRESIDENT put to the vote the United States amendment (CN-12/27).

66. There were 21 votes in favour and 18 against, with 9 abstentions. The amendment was not adopted, having failed to obtain the necessary two-thirds majority.

67. Article XI was adopted unanimously.

68. Mr. CHRISTODOULO (Greece) said his vote in favour of Article XI should not be interpreted as meaning that Greece relinquished its right, based on the rules of international law, to apply the provisions of the Article in such a way as to ensure the reciprocity of rights and obligations on behalf of the persons liable.

Article XII

69. The PRESIDENT put Article XII to the vote.

70. There were 36 votes in favour and 11 against, with 2 abstentions. Article XII was adopted, having obtained the required two-thirds majority.

Article XIII

71. Article XIII was adopted unanimously.

Article XV

72. Article XV was adopted unanimously.

Article XVI

73. Mr. GOSS (United Kingdom) said that the vote on Article XVI in the Committee of the Whole[5] showed that very few delegations had given serious consideration to that Article. He regarded the Article as unnecessary, since the Installation State itself could perform the task prescribed. The Article would impose a burden on operators which would be entirely unjustified, since they would be obliged to make reports which did not relate to liability for a nuclear incident.

74. Mr. RAO (India) said the term "nuclear incident" was defined in Article I as "an occurrence or series of occurrences having the same origin which causes nuclear damage". A period of limitation during which a party could sue for compensation had been prescribed and, if an operator did not report a nuclear incident for, say, a period of ten years, the statute of limitations provided for in the Convention would apply. The article merely required an operator to report to his own Government and to inform it of the date on which a nuclear incident had occurred, so that the victim would be in

[5] 22nd meeting, para. 17.

a better position to observe the provisions regarding limitations to which he had referred.

75. Mr. de ERICE (Spain) endorsed the views expressed by the delegate of the United Kingdom.

76. The PRESIDENT put Article XVI to the vote.

77. There were 20 votes in favour and 19 against. with 10 abstentions. Article XVI was not adopted, having failed to obtain the required two-thirds majority.

The meeting rose at 1. 25 p. m.

SEVENTH PLENARY MEETING

Sunday, 19 May 1963, at 3. 25 p. m.

President: Mr. LOKUR (India)

CONSIDERATION OF ARTICLES APPROVED BY THE COMMITTEE OF THE WHOLE (continued)

Article III (resumed[1]) (CN-12/42)

1. Mr. de CASTRO (Philippines) moved that a separate vote be taken on paragraph 7(b), which would undermine or nullify the limit of liability set by Article IV, paragraph 1. In the event of an incident including damage to means of transport exceeding the limit as extended by the State concerned, the operator would, as he saw it, still be liable for that further damage under paragraph 7(b).

2. Mr. NORDENSON (Sweden) pointed out that if an Installation State had availed itself of paragraph 6, paragraph 7(b) would not apply and the operator would not be liable for the further damage to the means of transport because of the wording of paragraph 7(b) "by virtue of sub-paragraph (b) of paragraph 5 of this Article, he is not liable under this Convention".

3. Mr. BRATUSJ (Union of Soviet Socialist Republics) supported the Philippine delegate's motion.

4. Mr. GOSS (United Kingdom) opposed the deletion of paragraph 7(b) since, if it were deleted and an Installation State did not avail itself of paragraph 6, no one at all might be liable for means of transport.

5. The PRESIDENT put to the vote the Philippines motion that paragraph 7(b) be voted upon separately.

6. There were 17 votes in favour and 21 against, with 10 abstentions. The motion was rejected.

7. Mr. OHTA (Japan), recalling that the Brazilian delegate had moved that a separate vote be taken on paragraph 3(b), said that some delegates apparently feared that the words "a grave natural disaster of an exceptional

[1] 4th plenary meeting, paras. 105-131.

character" might be stretched too far in an attempt to avoid liability. His delegation had said in the Committee of the Whole that it found the words vitally necessary since his country could be subject to a severe earthquake of exceptional magnitude and such an occurrence should be on a par with the acts mentioned in paragraph 3(a).

8. Mr. GOSS (United Kingdom) opposed a separate vote on paragraph 3(b).

9. The PRESIDENT put to the vote the Brazilian motion that paragraph 3(b) be voted upon separately.

10. There were 11 votes in favour and 30 against, with 10 abstentions. The motion was rejected.

11. The PRESIDENT put the text of Article III in document CN-12/42 to the vote.

12. There were 46 votes in favour and none against, with 2 abstentions. Article III was adopted, having obtained the required two-thirds majority.

13. Mr. de CASTRO (Philippines) said that he had abstained rather than vote against the Article on the understanding that it had the meaning given it by the Swedish delegate.

14. Mr. ENGLISH (United States of America) said he had voted in favour of paragraph 3(b) and understood that the term "grave natural disaster" had the meaning of some catastrophic and unforeseeable event as given to it in paragraph 48 of the Exposé des motifs in the Paris Convention.

Article XVII (CN-12/41)

15. Mr. NORDENSON (Sweden) said that the Article was in fact superfluous in that it attempted to ensure that no one could obtain compensation more than once for the same damage under different systems of law. That was already prevented by the law of tort. Moreover, the wording was ambiguous and could lead to a number of cases of double recovery, against which the wording of the joint amendment (CN-12/40/Rev. 1) would guard more efficiently, if it were felt desirable to include such a provision in the Convention. The words "if or" should be deleted from that amendment. He pointed out that the amendment did not mean that if a person made a claim and then withdrew it he could not re-enter the claim, and the same would be the case if the claim were rejected.

16. Mr. MAUSS (France) agreed with the Swedish delegate that it was unnecessary to state specifically that there should be no possibility of double recovery. On the other hand it seemed reasonable, and even desirable, to cover the case of a victim who had received partial compensation under one convention but wished to try and obtain further compensation under another convention, some of whose provisions were more favourable to him; and that case would be covered both by the proposed text and by the joint amendment. However, the text proposed by the Drafting Committee went a little further by providing that the victim could not start several claims under different conventions but must choose his method of recourse from the outset - though it would not of course prevent his trying another method subsequently if the first failed or discontinuing the initial proceedings and starting new proceedings under another convention. Though for that reason he preferred the proposed text, he could accept the joint amendment if it was supported by the majority.

17. Mr. RAO (India) asked how the proposed text could be implemented under the existing treaty law. There was nothing in it to prevent the claimant getting compensation under the Vienna Convention and then claiming again under another convention unless there were corresponding articles in the other conventions.

18. Mr. PHUONG (Viet-Nam) said that the text proposed by the Drafting Committee was the more logical in that the victim's right of option (as to the convention under which he wished to receive compensation) should be exercised at the outset, not once the proceedings under different conventions had run their course.

19. Mr. MAUSS (France) admitted the difficulty pointed out by the Indian delegate and said that his original proposal[2] had attempted to obviate that point but the present text had been agreed upon in the Drafting Committee as most likely to command the support of all delegates. He agreed with the point made by the delegate of Viet-Nam.

20. Mr. NORDENSON (Sweden) said that the point raised by the delegate of Viet-Nam could be settled by national legislation.

21. The PRESIDENT put to the vote the joint amendment (CN-12/40/Rev. 1), subject to deletion of the words "if or".

22. There were 20 votes in favour and 8 against, with 20 abstentions. The amendment was adopted, having obtained the required two-thirds majority.

23. The PRESIDENT put to the vote Article XVII as amended.

24. There were 19 votes in favour and 9 against, with 20 abstentions. Article XVII, as amended, was adopted, having obtained the required two-thirds majority.

Article XVIII

25. The PRESIDENT put Article XVIII to the vote.

26. There were 48 votes in favour and none against, with 2 abstentions. Article XVIII was adopted, having obtained the required two-thirds majority.

Article XIX

27. Mr. MITCHELL (United States of America), introducing his amendment (CN-12/19), said that when he had originally proposed such an article in the Committee of the Whole many delegates had accepted the principle but had felt there should be some limitation in point of time.[3] The limitation he proposed was one of 25 years from the date of licensing the installation, so as to correspond with the Brussels Convention.

28. Mr. HENAO-HENAO (Colombia) supported the United States amendment.

29. The PRESIDENT put the United States amendment (CN-12/19) to the vote.

30. There were 22 votes in favour and 21 against, with 5 abstentions. The amendment was not adopted, having failed to obtain the required two-thirds majority.

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[2] CW/2, No. 2, approved at the 23rd meeting of the Committee of the Whole (paras. 101-103).

[3] See 22nd meeting, paras 39-57.

31. The PRESIDENT put Article XIX to the vote.

32. There were 47 votes in favour and none against, with 1 abstention. Article XIX was adopted, having obtained the required two-thirds majority.

Proposed new articles:

On derogation from the Convention in respect of additional compensation, and on rights available under public international law.

33. Mr. MAUSS (France) said that the six-nation proposal contained in document CN-12/39, which was based upon an earlier French proposal[4], was intended to cover the event of a grave disaster necessitating emergency measures. If a State, in such event, provided for massive compensation from public funds above the limit set by the Convention, it should have the freedom to decide whether such extra funds should be used to compensate damage to persons rather than to property. The proposal would also obviate a State being obliged, under the Convention, to devote such extra funds to nationals of a country which did not extend reciprocity in that respect.

34. Mr. GASIOROWSKI (Poland) sketched the history of the proposal in its different forms and reaffirmed his strong opposition to it.

35. Mr. ZALDIVAR (Argentina) felt the proposal was unnecessary as to its main part and objectionable as to the three exceptions indicated. It was clear that, in the circumstances described, a State could make any conditions it thought fit regarding the use of the additional funds thus made available.

36. Mr. TAGUINOD (Philippines) rejected the proposal on the ground that it would open the door to discriminatory treatment above the limit of $ 10 million.

37. Mr. BOULANGER (Federal Republic of Germany) said that the reasons for the proposal had been clearly explained by the French delegate. Unless it were adopted his delegation might not be able to sign the Convention.

38. Mr. THOMPSON (United Kingdom) said that the problem did not arise in the United Kingdom but his delegation had co-sponsored the proposal because it felt that, if a Contracting Party fulfilled all the conditions of the Convention in respect of an additional amount of $ 10 million, i.e. twice the minimum amount laid down in Article IV, it should be free to derogate with regard to further compensation, particularly when reciprocal agreements had been made with other countries.

39. The PRESIDENT put the six-nation proposal (CN-12/39) to the vote.

40. There were 20 votes in favour and 20 against, with 9 abstentions. The proposal was not adopted, having failed to obtain the required two-thirds majority.

41. Mr. CARRAUD (France) declared on behalf of his delegation that France would interpret the Convention as not preventing a Contracting Party which might in the event of a grave nuclear incident decide to increase, out of public funds, the minimum amount established in Article IV from using such an additional amount, to the extent that it exceeded $ 10 million, in accordance with rules other than those provided for in the Convention.

42. Mr. THOMPSON (United Kingdom), Mr. JARVIS (Canada), Mr. COLOT

[4] CW/2, No. 1 (discussed in conjunction with Article IV).

(Belgium), Mr. SPLETH (Denmark), Mr. OLWAEUS (Sweden), Mr. ARANGIO RUIZ (Italy), Mr. SCHEFFER (Netherlands), Mr. STEPHENSON (South Africa), Mr. PFISTER (Switzerland) and Mr. GUDENUS (Austria) said that they interpreted the Convention in the same way as the French delegation.

43. Mr. ARANGIO RUIZ (Italy), introducing his delegation's proposal (CN-12/13/Rev. 1), said that the text was a revised version of a proposal that had been defeated by a small majority in the Committee of the Whole[5]. The new proposal should satisfy most delegations. In the first place, the new article did not refer to any additional rights actionable by the victims under the national law of the Contracting Parties as modified by the Vienna Convention or before national courts: it dealt only with such rights as might derive from international law as between sovereign States, actionable through the methods of diplomacy, arbitration, conciliation or judicial settlement.

44. Secondly, the rules referred to in the proposal were the general rules of the international law of tort, and there was no reason for any misgivings about such a non-committal reference. Those rules had evolved slowly through the centuries, were currently applied in international relations and, whether codified or not, would be interpreted by the legal advisers of sovereign States themselves or by international tribunals or courts to which sovereign States had agreed or might agree to submit their disputes.

45. The wording of the article had been changed to meet some objections that had been expressed, and reference had been made exclusively to the general rules of public international law. It should also be noted that no positive statement was made concerning the rights and duties to be preserved: if no rights were found to exist at the inter-State level, the article would not create any; if the rights did exist, the article left them totally unimpaired

46. Mr. ALLOTT (United Kingdom) supported the Italian proposal on the understanding that it meant that matters dealt with by ordinary public law which were not governed by the Convention would continue to be thus governed.

47. Mr. RAO (India) said he could support the Italian proposal, since his delegation's objections to the original proposal did not apply to the revised text.

48. Mr. SCHEFFER (Netherlands) said he could now vote for the Italian proposal, in order to make clear that the question of State responsibility remained outside the Convention.

49. Mr. VILKOV (Union of Soviet Socialist Republics) said he could not support the Italian proposal because it was absolutely superfluous.

50. Mr. DUNSHEE de ABRANCHES (Brazil) could not agree with the Soviet delegate. The Convention contained a number of restrictions of international law which might give rise to doubt in the event of disputes. It therefore seemed advisable to state that the general rules of public international law were not affected by the Convention.

51. The PRESIDENT put to the vote the Italian proposal (CN-12/13/Rev. 1).

52. There were 25 votes in favour and 11 against, with 15 abstentions. The proposal was adopted, having obtained the required two-thirds majority.

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[5] 22nd meeting, paras. 21-38.

Article XX

53. The PRESIDENT observed that there were no amendments, but drew attention to the six-nation proposal for an optional protocol (CN-12/23), which bore on the same subject as the Article and might therefore be discussed in conjunction with it.

54. Mr. RAO (India), introducing the six-nation proposal, said that the vital question before the Conference was why relatively few States had accepted the compulsory jurisdiction of the International Court of Justice. That situation was due to extreme political tensions, to the recent admission of some fifty new Member States to the United Nations and to the fluidity of international law itself; he appealed to the sponsors of the Article to take those factors into consideration. It should be borne in mind that the optional protocols that had been attached to the multilateral conventions concluded since 1958 had been signed by not more than twenty-five countries; since that had been the fate of the optional protocols, there would be little hope of States signing or acceding to the Convention if Article XX were retained.

55. Furthermore, it was illogical to provide for compulsory jurisdiction in paragraph 1 of the Article and in the very next paragraph to allow a State to contract out of a treaty obligation by a simple declaration. Moreover, delegates who had come to the Conference with full powers to sign the Convention did not necessarily have powers to sign the declaration provided for in paragraph 2; that technical situation might prevent many delegations from signing.

56. In conclusion, he cited a strong supporter of the International Court of Justice, who had stressed the need to await the growth of confidence in what was still a relatively new institution.

57. Mr. DONATO (Lebanon) said that it might seem anomalous for his country, which was a strong supporter of the International Court, to urge adoption of the optional protocol. Nevertheless, his delegation considered that the Court's prestige would be impaired if the Convention were to contain a compulsory jurisdiction clause which invited formal reservations by a number of States. He would therefore vote for the six-nation proposal as a compromise solution.

58. Mr. SCHEFFER (Netherlands) observed that the provision in paragraph 2 of Article XX was by no means unusual and appeared in a number of international agreements. As for the Indian delegate's objection that representatives might not have full powers to make the declaration provided for in that paragraph, he pointed out that the declaration could also be made at the time of ratification or accession. He could not see that the inclusion of Article XX could prevent any State from signing the Convention.

59. Mr. VILKOV (Union of Soviet Socialist Republics) said it was shortsighted of those who opposed the optional protocol to argue that paragraph 2 was acceptable as a means of contracting out of the obligation under paragraph 1, for in that case the optional protocol and paragraph 2 would have the same effect, and all objections to the optional protocol were groundless.

60. Moreover, the Conference had rejected proposals for the introduction of a reservations clause, and it was illogical to reintroduce such a provision in Article XX.

61. Finally, the advocates of the article based their arguments on their alleged respect for the Court, but paragraph 2 contained an express invitation to States to deny the Court's compulsory jurisdiction. The task of the Conference was to ensure that as many States as possible should sign the Convention; it was obvious that a large number of States could not accept Article XX. The optional protocol had been proposed as a practical compromise, and the experience of five years had shown that that solution was acceptable both to States which accepted the Court's compulsory jurisdiction and to those which could not yet do so.

62. Mr. MOUSSAVI (Iran) said he would vote for the six-nation proposal.

63. Mr. de ERICE (Spain) said it was essential to avoid a situation in which at least eighteen States would be obliged to declare formally that they would not submit to the Court and its Statute. The Optional Protocol, which fully provided for the compulsory jurisdiction of the Court, would leave the door open for countries which were not yet prepared to submit to that jurisdiction to do so in the future.

64. He moved that the six-nation proposal be put to the vote before Article XX.

65. Mr. GIBSON BARBOZA (Brazil), Mr. GASIOROWSKI (Poland) and Mr. VILKOV (Union of Soviet Socialist Republics) supported the Spanish motion.

66. The PRESIDENT put the Spanish motion to the vote.

67. There were 23 votes in favour and 22 against, with 4 abstentions. The motion was carried.

68. The PRESIDENT put to the vote the six-nation proposal (CN-12/23).

69. There were 40 votes in favour and 3 against, with 7 abstentions. The proposal was adopted, having obtained the required two-thirds majority.

70. The PRESIDENT said that, since the six-nation proposal had been adopted, Article XX would be omitted from the Convention.

71. Mr. HENAO-HENAO (Colombia) said that there seemed to be a discrepancy between the Optional Protocol, which provided that the instruments of ratification and accession should be deposited with the Austrian Government and later with the United Nations, and the Convention itself, which provided that those instruments should be deposited with the Director General of the International Atomic Energy Agency.

72. The PRESIDENT suggested that the Drafting Committee should be authorized to bring the Optional Protocol into line with the Convention in that respect.

73. It was so agreed.

Article XXI

74. The PRESIDENT suggested that Articles XXI to XXVIII, to which there were no amendments, might be voted on together.

75. Mr. PETRŽELKA (Czechoslovakia) said he would be obliged to ask for separate votes on Articles XXI, XXIV and XXVII. He would vote against those Articles, since his delegation strongly opposed the idea that the Conference and the Convention were not open to all States, and particularly to such States as the German Democratic Republic, the Democratic Republic of Viet-Nam and the Peopie's Democratic Republic of Korea, which were being denied admission to the United Nations for political reasons.

76. The PRESIDENT said he would accordingly put all the Articles to the vote separately. He then put to the vote Article XXI.

77. There were 37 votes in favour and 11 against, with 2 abstentions. Article XXI was adopted, having obtained the required two-thirds majority.

Article XXII

78. Article XXII was adopted unanimously.

Article XXIII

79. Article XXIII was adopted unanimously.

Article XXIV

80. Mr. TREVOR (United Kingdom), Chairman of the Drafting Committee, said that the Drafting Committee proposed that the opening words of paragraph 1 should read "All States Members of the United Nations, or of any of the specialized agencies, or of the International Atomic Energy Agency. . .".

81. Mr. RAO (India) observed that the formula in the analogous clauses of the international conventions adopted since 1958 referred to two other categories of States, namely parties to the Statute of the International Court of Justice and States invited by the United Nations to become parties to the convention in question. Perhaps the Chairman of the Drafting Committee or the Chairman of the Sub-Committee on Final Clauses might explain the reason for that important omission.

82. Mr. BOULANGER (Federal Republic of Germany), speaking on a point of order, said he doubted whether it was in order to ask the Chairmen of subsidiary organs of the Conference to explain why certain words had been included or omitted. The Indian delegate had had ample opportunity to submit an amendment if he had wished to do so.

83. Mr. TREVOR (United Kingdom), Chairman of the Drafting Committee, said that, under its terms of reference, the Drafting Committee could not add anything of substance to the texts it had received from the Committee of the Whole.

84. Mr. RAO (India) said he had merely wished to draw attention to an omission which had probably been unintentional.

85. The PRESIDENT put to the vote Article XXIV, with the amendment proposed by the Drafting Committee.

86. At the request of Mr. Kim (Korea), a roll-call was taken.
Romania, having been drawn by lot by the President, was called upon to vote first.

The result of the vote was as follows:

In favour: South Africa, Spain, Sweden, Switzerland, Thailand, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela, Viet-Nam, Argentina, Australia, Austria, Belgium, Brazil, Canada, China, Colombia, Denmark, El Salvador, France, Federal Republic of Germany, Greece,

Guatemala, Honduras, Iran, Israel, Italy, Japan, Republic of Korea, Lebanon, Mexico, Monaco, Netherlands, Philippines, Portugal.

Against: Romania, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Yugoslavia, Bulgaria, Byelorussian Soviet Socialist Republic, Cuba, Czechoslovak Socialist Republic, Finland, Ghana, Hungary, Indonesia, Poland.

Abstaining: India, Morocco.

87. There were 36 votes in favour and 13 against, with 2 abstentions. Article XXIV, as amended, was adopted, having obtained the required two-thirds majority.

88. Mr. VILKOV (Union of Soviet Socialist Republics) wished to make two statements for the record: first, that the Soviet delegation considered that all States which wished to, could accede to the Convention and pursue its objectives; second, that there was no indication in the Convention that States acceding to the Statute of the International Court might accede to the Convention. In that connection, the Soviet Union stated that it would not consider the present provision as a precedent for future conferences.

89. Mr. KONSTANTINOV (Bulgaria) associated his delegation with the statement made by the Soviet delegate.

Article XXV

90. Article XXV was adopted unanimously.

Article XXVI

91. Article XXVI was adopted unanimously.

Article XXVII

92. Mr. VILKOV (Union of Soviet Socialist Republics) noted that one of the dates in the first paragraph of the Article had been left blank.

93. The PRESIDENT said that the date would read 19 May 1963.

94. Mr. VILKOV (Union of Soviet Socialist Republics) noted further that the Article did not contain words, like those of Article IX of the Optional Protocol, to the effect that the English, French, Russian and Spanish texts were equally authentic. He asked whether the Drafting Committee could bring the two texts into agreement.

95. Mr. TREVOR (United Kingdom), Chairman of the Drafting Committee, said that the matter raised by the Soviet delegation was one of substance, not of drafting and that the Drafting Committee, under its terms of reference, could not add such words to the Convention without an appropriate amendment from the Committee of the Whole.

96. The PRESIDENT thought that the position with regard to authenticity was substantially the same in both texts, even though it was stated differently.

97. Mr. RAO (India) said that the problem was a legal one and that it was essential for both texts to contain the words.

98. Mr. DADZIE (Ghana) said that since all conventions contained such

wording, it was desirable that the present Convention should contain them as well.

99. Mr. McKNIGHT (Australia) considered that the signature clause sufficiently established the authenticity of the four languages. While he felt that the addition of the proposed words was unnecessary, he suggested that the Conference could, if it so desired, leave it to the President to arrange for their inclusion in the Convention.

100. Mr. RAO (India), Mr. DADZIE (Ghana) and Mr. VILKOV (Union of Soviet Socialist Republics) concurred in that suggestion.

101. The PRESIDENT said that if the Conference so authorized him, he would take steps to concord the Optional Protocol and the Convention so as to provide for the authenticity of all texts.

102. It was so agreed.

103. Subject to the above, the PRESIDENT put to the vote Article XXVII.

104. There were 39 votes in favour and 11 against, with 2 abstentions. Article XXVII was adopted, having obtained the required two-thirds majority.

Article XXVIII

105. Article XXVIII was adopted unanimously.

Final text of Articles I, II, IIA and IV - VIII (CN-12/42)

106. The PRESIDENT reminded the Conference that it had yet to vote on the final text of Articles I, II, IIA and IV - VIII, as amended by the Drafting Committee (CN-12/42)[6]. Article III had already been adopted.[7] The only changes made by the Drafting Committee had been in punctuation or phraseology, but he understood it also wished to propose that in the second sentence of Article V, paragraph 1, the words "or by State indemnification" be replaced by "or by State funds".

107. Subject to that, the final texts of Articles I, II, IIA and IV - VIII, as amended by the Drafting Committee (CN-12/42), were adopted unanimously.

The protocol (CN-12/41,

108. Mr. TREVOR (United Kingdom), Chairman of the Drafting Committee, said the order of the paragraphs should be reversed and "21 May 1963" inserted as the date.

109. Subject to that, the protocol was adopted unanimously.

The title of the Convention (CN-12/41,

110. The title of the Convention was adopted unanimously.

The preamble (CN-12/41,

111. Mr. MAURER (United States of America) said his delegation's understanding of the first paragraph of the preamble was that it embodied the dual

[6] See 4th plenary meeting, paras. 9 and 10.

[7] Para. 12 above.

objective of the Convention, viz. to protect victims of nuclear incidents and to encourage the development of the atomic energy industry.

112. The preamble was adopted unanimously.

ADOPTION OF THE CONVENTION AS A WHOLE, THREE DRAFT RESOLUTIONS AND THE FINAL ACT

113. The PRESIDENT, before putting to the vote the Convention as a whole, reminded the Conference that the articles would have to be renumbered. The Convention would comprise the texts in documents CN-12/41 and 42, with the omission of Article IX, paragraph 4, Article XVI and Article XX, with the addition of the new article contained in document CN-12/13/Rev. 1, with the amendment of Article XVII contained in document CN-12/40/Rev. 1 and with the amendment of Article XXIV mentioned by the Chairman of the Drafting Committee[8]. If the Conference so authorized him, he would, in conjunction with the Chairman of the Drafting Committee, make the necessary changes.

114. It was so agreed.

115. Mr. MAURER (United States of America) wished to make a statement prior to the vote. The United States delegation would be unable to approve the Convention, as a result of several difficulties to which it gave rise for the United States (e. g. the inadequate level fixed for the minimum limit of liability, and the non-inclusion of clauses providing for the continuation of protection and permitting the application of national law to claims involving United States citizens only). It realized, however, that there was solid support for the Convention at the Conference and it recognized the good-will of those who had opposed the United States arguments. In those circumstances, the only proper course was to abstain. However, he could assure the Conference that the United States would carefully review the text of the Convention and study the action taken by other countries with respect to it, especially in the matter of raising limits of liability.

116. Mr. THOMPSON (United Kingdom) said that some of the recent changes in the draft of the Convention had been agreeable to his delegation and others less so. One unexpected feature had been the disappearance of Article IA, a development which would doubtless create difficulties for the United Kingdom. It would, however, try to overcome them. With that qualification, his delegation would vote in favour of the Convention as a whole.

117. Mr. GUDENUS (Austria) said that, as the Convention made no specific provision regarding reservations, the Austrian delegation wished to indicate that it intended to enter certain reservations at the time of signature or accession. One would concern Article II, paragraph 5. Another would be to the effect that Austria considered ratification of the Convention as constituting an obligation under international law to enact national legislation on third-party liability in the field of nuclear energy in accordance with the provisions of the Convention.

118. Mr. BOULANGER (Federal Republic of Germany) said that the Convention, in its present form, presented certain difficulties for his country.

[8] Para. 80 above.

It would have to study the text carefully and decide whether those difficulties could be overcome. For those reasons, his delegation would have to abstain.

119. Mr. ZALDIVAR (Argentina) said that he would vote in favour of the Convention, the present text of which represented the fruit of tremendous efforts. That did not mean, however, that Argentina was renouncing its point of view on the question of right of recourse. He hoped that in the near future, by means of revisions or bilateral regional agreements, it would be possible to revert to that vital juridical principle.

120. Mr. JARVIS (Canada) said that his country might, for the same reasons as those given by the United States delegation, find serious difficulty in acceding to the Convention.

121. Mr. McKNIGHT (Australia) pointed out that many of the States which were making reservations to the Convention were doing so in the light of their own special interests. Of course, problems relating to other groups of countries would still remain unsolved. The Australian delegation would vote in favour of the Convention, even though it realized that the text was not a perfect one.

122. Mr. DADZIE (Ghana) said that the Convention did not contain all the provisions his country would have desired. However, in the realization that any convention must be based on a spirit of give and take, his delegation would vote for the present text.

123. Mr. SCHEFFER (Netherlands) said that the substance and wording of certain articles created a number of difficulties for which a solution had still to be sought; nevertheless his delegation would vote for the Convention, as it formed a solid base for further international co-operation in the field of civil liability for nuclear damage.

124. Mr. FRANCO-NETTO (Brazil) said that his Government, like that of Austria, reserved its position regarding final acceptance of the Convention in its present form. The Convention had a number of flaws: in particular the denial of the right of recourse. As his delegation had repeatedly stated, that was a very important point, but it would vote for the Convention in order to further the spirit of co-operation in which it had been drafted. That vote, however, in no way obligated his Government with regard to final acceptance.

125. Mr. LAGORCE (France) agreed that the Convention was not entirely satisfactory, but he thought it testified to a real spirit of co-operation between the countries concerned in the effort to lay down minimum standards. His delegation would vote for the Convention, but that did not necessarily mean that his Government would ratify it at a later date.

126. Mr. de ERICE (Spain) was on the whole in favour of the Convention, but agreed with the comments made by other delegations, in particular those of Austria, Argentina and Brazil.

127. Mr. BRATUSJ (Union of Soviet Socialist Republics) considered that the Convention constituted a satisfactory first stage, and that it was in full conformity with the Agency's Statute. The Convention was not entirely satisfactory, but it was a successful compromise arrived at through a genuine spirit of co-operation. His delegation would vote in favour of the Convention.

128. Mr. SANALAN (Turkey) thought the Convention in many ways unsatisfactory, and his Government would later study it in detail. However, his delegation would not vote against it.

129. Mr. COLOT (Belgium) said his delegation would vote for the Convention as a compromise solution, but his Government would not be committed by his delegation's vote in favour.

130. Mr. ARANGIO RUIZ (Italy) associated himself in general with the statement made by the delegate of Australia.

131. Mr. SPAČIL (Czechoslovakia) said his delegation would vote for the Convention although it did not regard it as in every way satisfactory. His Government would study the Convention in detail before finally acceding.

132. The PRESIDENT put the Convention to the vote.

133. At the request of Mr. Thompson (United Kingdom), a roll-call vote was taken.

Greece, having been drawn by lot by the President, was called upon to vote first.

The result of the vote was as follows:

In favour: Greece, Hungary, India, Indonesia, Iran, Israel, Italy, Japan, Republic of Korea, Lebanon, Mexico, Netherlands, Philippines, Poland, Portugal, Romania, South Africa, Spain, Sweden, Switzerland, Thailand, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, Venezuela, Viet-Nam, Yugoslavia, Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, China, Colombia, Cuba, Czechoslovak Socialist Republic, Denmark, Finland, France, Ghana.

Abstaining: Honduras, Morocco, United States of America, Canada, El Salvador, Federal Republic of Germany.

134. There were 43 votes in favour and none against, with 6 abstentions. The Convention was adopted, having obtained the required two-thirds majority.

135. The PRESIDENT invited the Conference to discuss the joint draft resolution on establishment of a standing committee (CN-12/15/Rev. 1) and the three amendments thereto (CN-12/43, 44 and 45).

136. Mr. FRANCO-NETTO (Brazil) said that the countries sponsoring the draft resolution considered that a standing committee would play an important part in facilitating the future work of the Conference, and that it would encourage Governments to ratify the Convention. It had been made perfectly clear during the deliberations of the Committee of the Whole that the Convention dealt with a branch of juridical science which was still in the formative stage.

137. The Conference had been able to agree about certain basic principles and procedures for incorporation in an international legal instrument, and it seemed both logical and necessary to establish some subsidiary body which would deal with problems occurring in connection with the implementation of the Convention: such a body would not have authority to modify any decisions of principle already embodied in the Convention, though it might well be that its work would result in subsequent revision of the Convention.

138. The committee would also consider the question of an international

compensation fund and, by linking the Conference more closely with the International Atomic Energy Agency, it would leave the way open for further development.

139. The Brussels Conference, which had adopted the Brussels Convention on the Liability of Operators of Nuclear Ships, had set up a similar committee and had also established a compensation fund, and experience could be drawn from its operation.

140. Mr. HENAO-HENAO (Colombia), introducing his amendment (CN-12/44), said that its purpose was to ensure that the draft resolution was implemented in the light of the Agency's Statute.

141. Mr. GOSS (United Kingdom) said his delegation supported the draft resolution and the Colombian amendment. The purpose of the amendment submitted by the United Kingdom (CN-12/43) was solely to clarify the text. In view of the final text of Article V, paragraph 1[9], he suggested that the expression "public funds" be replaced by "State funds".

142. He further suggested that the words "and to advise ... any such problems" in paragraph 1(a) of the draft resolution be replaced by the words "and to advise on any such problems": it was clear that either the Director General or the Contracting Parties would be able to seek the Committee's advice.

143. Mr. SPAČIL (Czechoslovakia) reminded the Conference that his delegation had expressed its views regarding the establishment of a standing committee during the work of the Committee of the Whole: his delegation still saw no need for the establishment of such a committee and considered that matters for settlement could be dealt with either through diplomatic channels or by the International Atomic Energy Agency. If, however, the majority of the Conference wanted to adopt the draft resolution, his delegation would not vote against it, provided the Colombian amendment was adopted. He considered that amendment necessary in order to ensure that both the Board of Governors and the General Conference were involved in setting up the committee. He suggested that the Colombian amendment should also be applied to paragraph 2.

144. The United Kingdom amendment dealt with the establishment of a compensation fund, and although he understood why some delegations supported such an idea he thought it unsatisfactory to entrust such a non-authoritative body as the proposed committee with the duties referred to. He was opposed to the establishment of such a fund and that was one reason why his delegation could not support the draft resolution.

145. His Government could not agree to the joint amendment (CN-12/45) because it was in effect a revision of Article IX, paragraph 3(b) of the Convention, which had already been adopted. In any case, he did not think it possible that such a body would be capable of solving difficulties when there was clearly no agreement.

146. Mr. NORDENSON (Sweden) said his delegation supported the amendments submitted by Colombia and the United Kingdom.

147. Introducing the joint amendment submitted by Italy, the United Kingdom and Sweden (CN-12/45), he recalled that when the Conference had been discussing Article IX, the delegate of Italy had proposed the deletion of para-

[9] See para. 106 above.

graph 3(b)[10], on the grounds of his concern as to the delays that would result in settling disputes in case the Contracting Parties failed to agree. Although he thought those fears had been exaggerated, he realized that there were certain problems, and for that reason he thought it might be advisable for the standing committee to consider some possible procedures for settling disputes in such cases.

148. He suggested replacing the words "an international body" by the words "a procedure", since it might well be that some mechanism other than an international body could be devised for settling disputes.

149. Mr. MOUSSAVI (Iran) and Mr. DONATO (Lebanon) supported the draft resolution.

150. Mr. BRATUSJ (Union of Soviet Socialist Republics) said his delegation would vote against the draft resolution. The only case he knew where such a standing committee had been established was at the Brussels Conference; and in that case there were special circumstances since the Conference had been convened by the Belgian Government. It was clear that that Government could not undertake permanent duties connected with the implementation of the Brussels Convention. In the present instance, however, the duties which it was proposed to entrust to the standing committee could equally well be carried out by the International Atomic Energy Agency.

151. Moreover, the work of the proposed standing committee would involve the Agency in unnecessary expenditure.

152. His delegation could not support the United Kingdom amendment (CN-12/43) as paragraph 1(b) of the draft resolution was of no interest to a number of States, including the USSR.

153. Nor could it support the joint amendment (CN-12/45) as that question had been settled within the framework of the Convention, which had already been adopted.

154. However, his delegation would agree to the Colombian amendment (CN-12/44), if it meant that both the Board of Governors and the General Conference would be involved in the task.

155. The Soviet delegation's negative vote on the resolution did not, however, imply that the Soviet Union would not participate in the work of the standing committee.

156. Mr. SCHEFFER (Netherlands) supported the draft resolution and all the amendments thereto, including the oral amendments submitted by the delegate of the United Kingdom. In particular, he welcomed the Colombian amendment, since it was not for the present conference to make recommendations to the Board of Governors, which was a specific organ of the International Atomic Energy Agency.

157. Mr. FRANCO-NETTO (Brazil) said that, in the first place, he wished to make it clear that the standing committee would be representative of the various geographical areas involved.

158. Regarding the opinion of the Soviet delegate that there was no parallel between the Brussels Conference and the present conference, and that the Agency could undertake duties of the kind which had been entrusted to the standing committee set up at the Brussels Conference, he pointed out that the Contracting States themselves would then take no part in the work. Such

[10] 6th plenary meeting, paras. 7-11.

a standing committee would provide an immediate link with atomic science and would in particular be of benefit to developing countries.

159. Regarding the question of expense, he pointed out that if the Agency were to undertake the duties referred to in the draft resolution, expense would still be involved and sometimes it might be greater than it could be with a standing committee: under paragraph 1(c) of the draft resolution, for example, the Agency would probably have to send experts to the areas concerned. The standing committee could meet at times when its members were united for some other purpose such as the General Conference.

160. With regard to the compensation fund referred to in paragraph 1(b) of the draft resolution, he pointed out that there would be no compulsion regarding participation in the fund: States like the Soviet Union, which objected to the establishment of such a fund merely because it was of no interest to them, need not participate.

161. Mr. KONSTANTINOV (Bulgaria) said his delegation could not support the draft resolution, for the reasons already given by the Soviet delegate. In any case, no new central body was required to supervise application of the Convention. An international fund was also superfluous, because financial questions concerned the individual States, which were free to organize any special financial arrangements necessary.

162. The only amendment acceptable to his delegation was that proposed by Colombia.

163. Mr. GHELMEGEANU (Romania) was of the opinion that as the Agency's Statute made it possible to organize a conference whenever required, it was unnecessary for the Conference to make arrangements such as those foreseen in the draft resolution.

164. The PRESIDENT pointed out that paragraph 1(e) of the draft resolution indicated that the standing committee should "study any other special problems referred to it by the Conference". However, as the Conference was on the point of ending, it would be unable to refer any further problems and he therefore proposed the deletion of that sub-paragraph.

165. It was so agreed.

166. The PRESIDENT put to the vote the Colombian amendment (CN-12/44).

167. There were 37 votes in favour and none against, with 2 abstentions. The amendment was adopted, having obtained the required two-thirds majority.

168. The PRESIDENT put to the vote the United Kingdom amendment (CN-12/43).

169. There were 20 votes in favour and 11 against, with 8 abstentions. The amendment was not adopted, having failed to obtain the required two-thirds majority.

170. The PRESIDENT put to the vote the joint amendment (CN-12/45).

171. There were 22 votes in favour and 9 against, with 8 abstentions. The amendment was adopted, having obtained the required two-thirds majority.

172. The PRESIDENT pointed out that as paragraph 1(e) had been deleted, the new clause proposed in document CN-12/45 would have to be inserted as "(e)" and not "(f)".

173. He put to the vote the draft resolution (CN-12/15/Rev. 1) as amended.

174. There were 26 votes in favour and 8 against, with 5 abstentions. The

draft resolution, as amended, was adopted, having obtained the required two-thirds majority.

175. Mr. ARANGIO RUIZ (Italy) suggested that, although the matter was not included under the terms of reference of the Standing Committee mentioned in the resolution, it would be highly desirable, in the light of the discussions, for the International Atomic Energy Agency to arrange for a study of the international responsibility of States for nuclear damage at the earliest date convenient to the Director General.

176. Mr. McKNIGHT (Australia) supported the Italian delegate's suggestion.

177. The PRESIDENT put to the vote the draft resolution proposed in document CN-12/10/Rev. 2, with the second line completed to read "... Vienna, on 19 May 1963 ...".

178. The draft resolution was adopted by acclamation.

179. Mr. GUDENUS (Austria) said that his delegation and country were honoured by the resolution which had just been adopted and that he would ensure that it was brought to the attention of the appropriate authorities.

180. The PRESIDENT put to the vote the draft resolution proposed in document CN-12/11/Rev. 1.

181. The draft resolution was adopted by acclamation.

182. Mr. TREVOR (United Kingdom), Chairman of the Drafting Committee, called attention to an omission from the text of the Final Act, set out in document CN-12/38/Rev. 1, where it would be appropriate to mention the alternate members of the Drafting Committee, who had been of great assistance to it.

183. Mr. PETRŽELKA (Czechoslovakia), referring to paragraph 3 of the Final Act, stated that his delegation did not consider China to be represented at the Conference, as no delegate nominated by the Chinese People's Republic was present.

184. He proposed that the composition of the three Sub-Committees should be indicated in paragraph 9 of the Final Act.

185. The PRESIDENT, having pointed out that a reference to the Optional Protocol should be inserted in the spaces in paragraphs 13, 14 and 15, put to the vote the Final Act (CN-12/38/Rev. 1) subject to that addition and the proposed addition of the names of alternate members of the Drafting Committee and the composition of the three Sub-Committees.

186. The Final Act, thus amended, was adopted by acclamation.

CLOSURE OF THE CONFERENCE

187. Mr. EKLUND, Director General of the International Atomic Energy Agency, thanked the delegates for the adoption of the resolution expressing appreciation to the Agency for the organization of the Conference and stated his satisfaction with the results which had been achieved. It was, of course, unpleasant to talk of incidents, but as the eventuality could not be ruled out, it was necessary to provide protection for possible victims. Although it was impossible to reconcile all interests, the Conference had gone a long way towards a satisfactory solution and the Agency would always be pleased to assist countries wishing to establish legislation in the field of atomic energy. He thanked the President of the Conference, the chairmen of the

various committees and all delegates for the help they had given the Agency.

188. Mr. ZALDIVAR (speaking on behalf of Argentina, Brazil, Colombia, El Salvador, Guatemala, Mexico, Portugal, Spain and Venezuela), Mr. BRATUSJ (on behalf of Bulgaria, the Byelorussian SSR, Czechoslovakia, Cuba, Hungary, Poland, Romania, the Ukrainian SSR, the Union of Soviet Socialist Republics and Yugoslavia), Miss RATUMBUYSANG and Mr. PHUONG (on behalf of the Afro-Asian countries), Mr. COLOT (on behalf of Austria, Belgium, France, Federal Republic of Germany and Netherlands), Mr. MAURER (United States of America) and Mr. THOMPSON (on behalf of Australia, Canada and the United Kingdom) paid tribute to the ability, wisdom and impartiality with which the President had led the Conference to a highly satisfactory conclusion. They also expressed the highest appreciation for the immense amount of work accomplished by the Agency and the great assistance received from the Austrian Government.

189. The PRESIDENT, in thanking delegates for their expressions of appreciation, paid tribute to the immense efforts made by the various Committees; it was in fact to them that the success of the Conference was due.

The meeting and Conference closed at 9.10 p.m.

SUMMARY RECORDS OF THE COMMITTEE OF THE WHOLE

FIRST MEETING

Monday, 29 April 1963, at 3.20 p.m.

Chairman: Mr. McKNIGHT (Australia)

ELECTION OF OFFICERS

1. The CHAIRMAN called for nominations for the post of Vice-Chairman.
2. Mr. THOMPSON (United Kingdom) nominated Mr. Ghelmegeanu, the head of the Romanian delegation.
3. Mr. DONATO (Lebanon) seconded the nomination.
4. *Mr. Ghelmegeanu (Romania) was elected Vice-Chairman by acclamation.*
5. The CHAIRMAN called for nominations for the post of Rapporteur.
6. Mr. MAURER (United States of America) nominated Mr. Dunshee de Abranches, of the Brazilian delegation.
7. Mr. RAO (India) seconded the nomination.
8. *Mr. Dunshee de Abranches (Brazil) was elected Rapporteur by acclamation.*

CONSIDERATION OF THE DRAFT CONVENTION ON MINIMUM INTERNATIONAL STANDARDS REGARDING CIVIL LIABILITY FOR NUCLEAR DAMAGE (CN-12/2)

9. The CHAIRMAN drew attention to the Draft Convention on Minimum International Standards Regarding Civil Liability for Nuclear Damage as revised by the Intergovernmental Committee on Civil Liability for Nuclear Damage (CN-12/2), to the proposed amendments transmitted to the Secretariat up to 8 April 1963 (CN-12/CW/1), and to the amendments proposed since that date. The United Kingdom amendment to the title of the Convention (CW/1*, amendment 1) would be considered together with the preamble at a later stage.

Article I

Paragraph 1

10. Mr. de CASTRO (Philippines) withdrew his delegation's amendment (CW/1, amendment 2), since it was merely a drafting change consequential upon the new article proposed by his delegation to follow Article I. A (CW/1, amendment 24).

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* For convenience the symbol CN-12, denoting the Conference, is hereinafter omitted before all CW (Committee of the Whole) documents.

Paragraph 2

11. The CHAIRMAN said that amendments 3, 4 and 5 in document CW/1 would be considered together, since they were closely related; the Norwegian delegation, which had submitted amendments 3 and 5, had agreed that amendment 4, submitted by the United Kingdom, should be considered first.

12. Mr. GOSS (United Kingdom) said that the purpose of his delegation's amendment to paragraph 2 was twofold. First, it would write into the article the understanding recorded in paragraph 6 (p. 41) of the Intergovernmental Committee's report (CN-12/2). Radioisotopes which had reached the final stage of fabrication ought to be excluded because they did not then constitute a nuclear hazard within the meaning of the Convention. Secondly, the paragraph in its present form did not cover two kinds of radioisotopes: those produced by high-energy machines, and natural radioisotopes. Since it was already difficult enough to know whether operators were or were not liable for damages caused by radioactive material, the situation would be considerably simplified if finished radioisotopes were regarded as non-hazardous.

13. Mr. JARVIS (Canada) observed that the words "which have reached the final stage of fabrication" had been introduced into the discussion for the first time. He doubted whether it was desirable to go quite so far. After separation from the fuel, material might undergo many processes, and various parts of it might be ready for final use at various stages. It might therefore be better to use the stage of separation from fuel as the dividing line.

14. Mr. GOSS (United Kingdom) answered that the purpose of the amendment was to exclude radioisotopes only at the moment when they could safely be handed over to industrial operators. The bulk material should not be excluded from the Convention until it was safely packaged in individual containers.

15. Mr. SPINGARN (United States of America) opposed the United Kingdom amendment. The Committee's wording stated clearly that whether a radioisotope was nuclear material depended on whether it was inside or outside a nuclear installation. The United Kingdom amendment introduced a subjective element which increased difficulty of proof.

16. Mr. WEITNAUER (Federal Republic of Germany) agreed with the United Kingdom representative that certain radioisotopes were not covered by the wording of paragraph 2, but drew a different conclusion from that fact. All potential radioactive material should be covered by the Convention. His delegation's amendment to paragraph 9 (CW/1), amendment 14) would serve the interest of victims and operators alike by abolishing the need to differentiate between various radioactive materials inside an installation which might have caused damage. Victims would be saved difficulties of proof, and operators would be able to cover various risks under one insurance policy. If the United Kingdom amendment were adopted, operators might be compelled to take out insurance for the relatively small risk of damage by radioisotopes.

17. Mr. STEPHENSON (South Africa) pointed out, in connection with the words "which have reached the final stage of fabrication", that there might

be a later stage when a radioisotope was again taken out of its protective covering and again became dangerous. His delegation had submitted an amendment to paragraph 5 (CW/1, amendment 9) in order to allow for that possibility.

18. Mr. NORDENSON (Sweden) strongly supported the United Kingdom amendment. The objection that it would give rise to difficulties of proof was unfounded, since the Draft Convention contained specific provision for joint liability (Article II, paragraph 6).

19. The CHAIRMAN put the United Kingdom amendment to paragraph 2 (CW/1, amendment 4) to the vote.

20. There were 17 votes in favour and 16 against, with 7 abstentions. The amendment was approved.

21. Mr. ROGNLIEN (Norway) said that his delegation would not press its amendment to paragraphs 2 and 3 (CW/1, amendments 3 and 5), but hoped that the words in amendment 5 "or similar particular uses" would be referred to the Drafting Committee[1].

Paragraph 3

22. Mr. FRANCO-NETTO (Brazil) pointed out that his delegation's proposal to embody the concept of nuclear fusion (CW/30) affected Article I as a whole. Nuclear damage might occur from four sources: nuclear radiation, radioisotopes fission and fusion; all were covered by the draft except fusion. A number of countries were working on fusion processes, and an important nuclear country had recently reported a major achievement in fusion research. At its first meeting in 1961 the Intergovernmental Committee had decided not to refer to fusion in the Draft Convention because the hazards were difficult to evaluate. What was known about fusion suggested that its risks were relatively small. The processes were different from those used in fission, and involved no risks from toxic substances or radiation; since the materials generating fusion were water or lithium, there were no radioactive by-products. It was, however, conceivable that some radioactive materials might be produced. The Drafting Committee might be asked to insert the reference in the proper place or places.

23. Mr. THOMPSON (United Kingdom) could not support the Brazilian proposal, for it seemed mistaken to try to regulate a subject before its implications were known. The Brazilian delegate himself had admitted that the materials used in fission and in fusion were dissimilar and that no radioactive materials were produced in fusion processes. Fusion was still so far from commercial exploitation that the Intergovernmental Committee had decided to exclude it from the Convention. A similar suggestion had been rejected at the Brussels Conference on the Liability of Operators of Nuclear Ships.

24. Mr. BOULANGER (Federal Republic of Germany) fully agreed. Current knowledge about fusion was far too scanty to support legislation.

25. Mr. ZALDIVAR (Argentina) supported the Brazilian proposal. The only argument against introducing the notion of fusion was that the process

[1] Established at the 2nd plenary meeting (paras. 1 - 4).

was insufficiently understood; but presumably not everything was yet known about fission. A convention containing general conditions to protect victims should cover all contingencies.

26. Mr. BELLI (Italy) said he could not vote for the Brazilian proposal, since facts should precede law.

27. Mr. de ERICE (Spain) considered it indispensable to introduce the concept of fusion into the Convention. The Brazilian delegation had produced no specific wording; the Convention was not a code for an unchanging set of circumstances but a guide for the future. It was known that damage could result from fusion, and provision must therefore be made for liability. Moreover, the Convention was to remain in force for ten years, during which time the effects of fusion would become much better known.

28. Mr. RAO (India) endorsed the United Kingdom delegate's views. Various aspects of fusion were unknown, and the present was neither the time nor the place to regulate it. Such regulation would moreover be very hard to word.

29. Mr. RUEGGER (Switzerland) agreed with the Indian delegate. If necessary, reference to fusion could be made later at any time in an additional protocol, without having to resort to the complicated procedure for revision.

30. Mr. DADZIE (Ghana) agreed that more data on fusion should be obtained before reference to it was included in the Convention.

31. The CHAIRMAN put the Brazilian proposal (CW/30) to the vote.

32. There were 3 votes in favour and 32 against, with 7 abstentions. The proposal was rejected.

33. Mr. NORDENSON (Sweden) said that his delegation had submitted its amendment (CW/1, amendment 6) because the words it proposed to leave out were ambiguous and added nothing substantive to the definition. It wished also to change the first words of paragraph 3 (a) to read "nuclear fuel, other than natural uranium, depleted uranium and thorium".

34. Mr. THOMPSON (United Kingdom) said he could support the Swedish amendment with that addition.

35. Mr. LYTKIN (Union of Soviet Socialist Republics) observed that the words which the Swedish delegation proposed to delete had been included specifically to clarify the kind of nuclear fuel which constituted nuclear material. Theoretically all materials might be subject to fission, but the definitions must be based on some degree of probability. Thorium and depleted uranium were not nuclear fuels, since they produced no chain reaction either inside or outside a reactor.

36. Mr. STEPHENSON (South Africa) pointed out that part of the words in question already appeared in paragraph 1 and the words "by itself or in combination with some other material" made paragraph 3 (a) hard to understand. He therefore supported the Swedish amendment.

37. The CHAIRMAN put to the vote the Swedish amendment (CW/1, amendment 6), as orally amended.

38. There were 16 votes in favour and 20 against, with 8 abstentions. The amendment was rejected.

Paragraph 4

39. Mr. RAO (India) said that the purpose of his amendment (CW/36) was to exclude controlled detonations of nuclear devices for so-called peaceful purposes. The present text could mean that the Convention connived at such a practice. Secondly, the text was not sufficiently scientific. And, thirdly, the words "can occur" were too wide, since they could cover an interval of one microsecond and therefore a bomb.

40. Mr. ZALDIVAR (Argentina) said that his delegation could not agree with the amendment, which, since there was still technical confusion between the terms "controlled" and "self-sustaining", would exclude any kind of explosion. Certain types of explosions were necessary for peaceful purposes, such as blasting.

41. Mr. THOMPSON (United Kingdom) supported the proposed amendment.

42. Mr. SCHEFFER (Netherlands) said that his delegation also was in favour. It had had some difficulty with the word "structure", which could conceivably include installations where nuclear materials were stored, (paragraph 5 (c)). That interpretation would be avoided by the amendment.

43. Mr. LYTKIN (Union of Soviet Socialist Republics) said the amendment was an improvement, since it stressed the controlled chain reaction as a property of a reactor.

44. Mr. ŠEVČIK (Czechoslovakia) said that in certain states a reactor might go out of control and therefore be dangerous; that risk should be covered.

45. Mr. ROGNLIEN (Norway) asked the effect of the amendment on the cases put forward by the delegate of Argentina.

46. Mr. BOULANGER (Federal Republic of Germany) pointed out that the Convention was preparing laws for just the case mentioned by the Czechoslovak delegate. Failure of the chain reaction because of accident must not have the effect of taking a reactor outside the definition. His delegation preferred the original text.

47. Mr. BELLI (Italy) replied that the definition should be taken to apply only to the normal conditions of operation in a reactor.

48. Mr. SPINGARN (United States of America) said his delegation preferred the original text, which gave some protection against a defectively-built reactor.

49. Mr. RAO (India) said that the Italian delegate's answer, that a definition should not be construed to apply to the abnormal, covered that case. The amendment would not exclude the explosions mentioned by the delegate of Argentina.

50. Mr. WEINSTEIN (European Nuclear Energy Agency) wondered whether the Indian amendment could be taken as an implied criticism of Article 1 (10) of the 1962 Brussels Convention on the Liability of Operators of Nuclear Ships (the Brussels Convention), with which the present text of paragraph 4 was almost identical. The arguments accepted for excluding the word "controlled" from the definition of "nuclear reactor" in that Convention had been substantially the same as those of the delegate of Czechoslovakia.

51. Mr. RAO (India) denied that any criticism was intended.

52. Mr. STEWART (South Africa) said that the definition should be more legal than scientific, and the amendment was not wide enough.

53. The CHAIRMAN put the Indian amendment (CW/36) to the vote.

54. There were 19 votes in favour and 19 against, with 7 abstentions. The amendment was not approved.

Paragraph 5

55. Mr. BOULANGER (Federal Republic of Germany) said that his delegation's amendment (CW/1, amendment 7) was intended as a simple means of enlarging the paragraph to cover future technical developments without entailing renewed ratification.

56. Mr. SPINGARN (United States of America) explained that his sub-amendment (CW/34) was intended to confine the materials covered by the paragraph to hazardous materials, to provide a criterion for the Board of Governors of the Agency, and to maintain consistency with a proposed amendment to a later part of the text.

57. Mr. ZALDIVAR (Argentina) said that his delegation opposed the amendment as a whole, since it would allow the obligations of the Convention to be extended almost without limit by the Board of Governors, which would not represent all the signatories. Moreover, signatories could not undertake obligations in advance.

58. Mr. ŠEVČIK (Czechoslovakia) stated that his delegation objected to the amendment as offering too wide a scope for interpretation. It also introduced a new factor by specially empowering the Board of Governors to interpret the Convention. The United States sub-amendment was acceptable to his delegation insofar as it made the amendment less categorical.

59. Mr. RUEGGER (Switzerland) sympathized with the purpose of the amendment but agreed with the delegate of Argentina that the delegation of power to the Board of Governors might lead too far. Moreover, the Board might not consider itself competent to deal with such technical and specific matters, and some form of study group should be established to advise it.

60. Mr. BELLI (Italy) suggested that there would be no delegation of power to the Board of Governors, which would merely make technical findings after studying all the evidence.

61. Mr. GHELMEGEANU (Romania) said that "nuclear installation" was a fundamental concept and the paragraph correctly specified the three ideas pertinent to it which limited liability under the Convention. Such a definition should be very precise, and any variation in it might change its scope. States could not admit a delegation of power enabling the Board of Governors to extend or restrict their liability after the Convention had entered into force. He recognized the need for flexibility, but not in fundamental concepts.

62. Mr. RAO (India) agreed with the delegates of Argentina and Switzerland. If the amendment were adopted, the scientific task of determining which places were nuclear installations would be delegated to the Board of Governors. The Board, however, was an administrative, not a scientific body, and extra machinery would be needed for such determinations.

63. Mr. NISHIMURA (Japan) pointed out that the final clauses to the Convention allowed for revision, and therefore covered any such question arising as a result of rapid technical progress.

64. Mr. BOULANGER (Federal Republic of Germany) expressed his gratitude to all speakers for their concern over the issue. His delegation's aim

was to set up machinery for easy administration of the Convention. If the majority considered the Board not competent for the task, his delegation would redraft its amendment as follows:

> "such other installations in which there are nuclear fuel or radioactive products or waste as the General Conference of the International Atomic Energy Agency, acting on proposals from the Board of Governors, shall from time to time determine by a two-thirds majority".

It would accept any suitable compromise.

65. Mr. SCHEFFER (Netherlands) said his delegation could support the intention behind the amendment, but felt that the problem should be solved otherwise. The Board of Governors might not represent all the parties to the Convention, and the General Conference might represent some States which were not parties to the Convention. He suggested in agreement with the delegate of Switzerland that all parties should be asked for their views when such a question arose, and also that the question might be the subject of a separate article.

66. Mr. WILSON (Ghana) said that his delegation, while sympathizing with the purpose, objected to the amendment on legal grounds, since it would produce further obligations binding the signatories without their consent.

67. Mr. NORDENSON (Sweden) supported the amendment as reworded by the delegate of the Federal Republic of Germany. The Agency's Statute empowered the Board of Governors to extend the scope of its definitions. His delegation supported item (2) of the United States sub-amendment, but could not see the need for item (1).

68. Mr. ROGNLIEN (Norway) supported the amendment of the delegate of the Federal Republic of Germany, as orally amended by him.

69. Mr. LYTKIN (Union of Soviet Socialist Republics) said that his delegation was in favour of the original text. Since the amendment referred to future installations, it could affect related articles and was therefore a serious matter of substance. Secondly, the scope of an obligation could only be modified by those States which had accepted it. Any necessary revision should be in accordance with the procedure laid down in the final clauses.

70. Mr. RAO (India) pointed out that scientific advice would not necessarily bind the Board of Governors or the General Conference, particularly since the United States sub-amendment contained the qualification "in its view". He questioned whether any provision in the Agency's Statute required the Board of Governors to discharge duties imposed by multilateral conventions.

71. Mr. STEPHENSON (South Africa) enquired whether the words "such other installations" meant classes of installations or specific installations.

72. The CHAIRMAN suggested that the German and United States delegates should confer to see if they could amalgamate their amendments with due regard to the many points raised, and especially to that raised by the South African delegate.

The meeting rose at 6 p. m.

SECOND MEETING

Tuesday, 30 April 1963, at 10.55 a.m.

Chairman: Mr. McKNIGHT (Australia)

CONSIDERATION OF THE DRAFT CONVENTION ON MINIMUM INTERNATIONAL STANDARDS REGARDING CIVIL LIABILITY FOR NUCLEAR DAMAGE (CN-12/2) (continued)

Article I (continued)

Paragraph 5 (continued)

1. The CHAIRMAN announced that the new joint proposal of the United States of America and the Federal Republic of Germany[1] was not yet available in all languages. He proposed that the Committee meanwhile begin by considering the Norwegian amendment to paragraph 5 (c) (CW/1, amendment 8).

2. Mr. ROGNLIEN (Norway) said that the purpose of his amendment was to rectify an omission in the definition of "nuclear installation" but that the matter would be difficult to discuss before the Committee had examined Article II. He therefore proposed that the examination of his amendment be postponed until after the discussion of Article II.

3. The CHAIRMAN noted that the United Kingdom amendment (CW/1, amendment 10) was closely related to the Norwegian amendment and assumed that it would also be held over.

4. He accordingly invited the Committee to consider the South African amendment (CW/1, amendment 9).

5. Mr. STEWART (South Africa) withdrew that amendment, as its purpose had been met by the adoption of the United Kingdom amendment to paragraph 2 (CW/1, amendment 4)[2].

6. The CHAIRMAN drew attention to the United States amendment to paragraph 5 (a) (CW/9, No. 1).

7. Mr. SPINGARN (United States of America) stated that the purpose of his amendment was to bring the Convention into line with modern developments. Low- and medium-power mobile plants were now in use in the United States. His amendment would bring such plants within the scope of the Convention while excluding reactors used to propel means of transport by sea or air or in outer space.

8. Mr. SCHEFFER (Netherlands) and Mr. MAUSS (France) expressed misgivings regarding the purpose and effect of the United States amendment. In their view, the present text was better.

9. Mr. SPINGARN (United States of America) explained that the plants he had in mind were trailer-mounted mobile plants which were transported by truck or railroad. In the United States such plants were usable for a number of purposes, including disaster relief and assisting foreign Govern-

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[1] See 1st meeting, para. 72.

[2] 1st meeting, para. 20.

ments, and he thought it desirable that such reactors should come within the scope of the Convention.

10. The CHAIRMAN put the United States amendment (CW/9, No. 1) to the vote.

11. There were 13 votes in favour and 21 against, with 8 abstentions. The amendment was rejected.

12. The CHAIRMAN next drew attention to the United States proposal to delete the proviso to paragraph 5 (CW/1, amendment 11).

13. Mr. SPINGARN (United States of America) stated that in the view of his delegation the proviso to paragraph 5 was inconsistent with the basic purpose of the Convention, which was to ensure a satisfactory amount of financial protection for the victims of nuclear incidents. As it stood, that proviso would defeat the object of paragraphs 3 and 4 of Article II and result in inadequate protection for the public. The reason why no distinction had been made as to the size and hazardous nature of installations was that to introduce such distinctions, in terms of the extent of financial coverage required, would be a difficult problem in practice. Since there was not the same difficulty about refraining from treating several installations as one, he thought the best solution for protection of the public would be to delete the proviso.

14. Mr. JARVIS (Canada) and Mr. ZALDIVAR (Argentina) sympathized with the point of view of the United States delegation but thought it difficult to come to any decision regarding the proviso before determining the amount to be inserted in paragraph 1 of Article IV. They therefore proposed that consideration of the United States proposal be deferred until that amount had been decided.

15. Mr. MAUSS (France) was in favour of maintaining the paragraph as it stood. He was not sure that the deletion of the proviso would improve the protection of victims and thought that the matter should be left to the national legislation of each State. Treating several installations at the same site as one installation would not reduce protection; on the contrary, to fix a very high limit of liability and at the same time provide for cumulation of liability for each operator would impose too heavy a burden on the Installation State and defeat its own purpose. There was no reason why research centres with several low-power reactors should not be treated as one installation, as the risk was no greater than with one single powerful reactor.

16. Mr. NISHIMURA (Japan) agreed with the delegate of France.

17. Mr. BELLI (Italy) also agreed with the delegate of France and pointed out that in the Convention liability was determined not by installation but by nuclear incident and there was therefore no problem for the victims, who would still be covered by insurance or other financial guarantees in the event of an incident occurring in a multiple installation. He added that the Convention had two aims: to protect the victims and to ensure that operators of nuclear installations were not hampered by excessively difficult conditions. If several installations at the same site had to be insured separately the cost of nuclear power would be raised. The existing text offered perfectly adequate financial guarantee.

18. Mr. COLOT (Belgium) stated that his delegation was in favour of maintaining the proviso in view of the situation in his country, where the various

nuclear installations at Mol were treated under Belgian law as one single installation.

19. Mr. GHELMEGEANU (Romania) was in favour of maintaining the proviso. He thought that paragraph 4 of Article II removed the anxieties felt by the United States delegate. Deletion of the proviso would complicate the payment of compensation by making several undertakings liable; it would be simpler to treat undertakings at the same site as one.

20. Mr. LYTKIN (Union of Soviet Socialist Republics) thought that the United States proposal would give the victims of incidents no additional protection. The degree of damage caused did not depend on the number of installations but on their power. On the other hand, to treat reactors at the same site separately would increase costs and slow down future development of nuclear power. He therefore preferred the present text.

21. Mr. THOMPSON (United Kingdom) also opposed deletion of the proviso. Under United Kingdom legislation it was for the responsible Minister to decide whether two or more installations at the same site should be treated as one. That arrangement worked satisfactorily. In his view the matter was primarily one for the Installation State, which could be relied upon to protect its own nationals and guard against the abuse feared by the United States delegate.

22. Mr. ROGNLIEN (Norway) was also in favour of maintaining the proviso. There was no difficulty if damage resulted from different incidents, as Article IV related the limit of liability to separate incidents. The victim was ensured the same protection whether there was one large installation or several small installations at the same site.

23. The CHAIRMAN put the United States proposal (CW/1, amendment 11) to the vote.

24. There were 5 votes in favour and 29 against, with 5 abstentions. The proposal was rejected.

25. Mr. PAPATHANASSIOU (Greece) withdrew his amendment (CW/35).

Paragraph 6

26. The CHAIRMAN noted that the Danish amendment (CW/1, amendment 12) was similar to a Norwegian amendment to Article II and proposed that it be examined in connection with Article II. He then drew attention to the Norwegian amendment to paragraph 6 (CW/1, amendment 13).

27. Mr. ROGNLIEN (Norway) stated that the amendment was mainly a question of drafting and was intended to simplify the wording, especially for the purposes of Article II. There was also a possible change of substance in that the operator was more clearly defined.

28. The CHAIRMAN agreed that the amendment was largely a matter of drafting and could be referred to the Drafting Committee.

29. It was so agreed.

Paragraph 7

30. The CHAIRMAN noted that no amendments had been submitted.

Paragraph 8

31. Mr. COLOT (Belgium), introducing the Belgian amendment (CW/45), urged that everything should be done to bring the text of the Convention into line with the texts of the Brussels Convention and the Convention on Third Party Liability in the Field of Nuclear Energy, signed at Paris on 29 July 1960 (the Paris Convention). Conflicts of jurisprudence might arise if different wording was used to express the same idea. The present definition of "nuclear incident" seemed to exclude certain incidents which would be covered by the other two conventions. He therefore proposed that the existing paragraphs 8 and 9 be replaced by a single new paragraph.

32. Mr. RITCHIE (United Kingdom), while agreeing that as far as possible the Conference should aim at consistency with other conventions already signed, pointed out that the Paris Convention did not define "nuclear damage". The majority of the Intergovernmental Committee had preferred the present draft which they regarded as much clearer. He thought it would be a retrograde step to change the text worked out at great length by that Committee and therefore opposed the Belgian amendment.

33. Mr. BELLI (Italy) supported the Belgian amendment not only for the sake of consistency of wording but for reasons of substance. In his view, the wording of the Paris Convention was more simple, more practical and more legal. He thought that the distinction between a nuclear incident and nuclear damage in the Draft Convention might raise doubts as to whether a person qualified for compensation or not. The Belgian amendment seemed to cover all possible cases.

34. Mr. RUEGGER (Switzerland) thought that, on balance, the present text should be maintained. It was a simple definition arrived at after long discussions begun before the final adoption of the Paris Convention. He saw no risk of a conflict between the two texts and thought that the draft approved by the Intergovernmental Committee was clear and applicable to every conceivable case.

35. Mr. HARDERS (Australia) said he too was in favour of maintaining the original text as it had been carefully considered by the Intergovernmental Committee and deliberately approved by it in its present form.

36. Mr. ROGNLIEN (Norway) and Mr. EDLBACHER (Austria) pointed out that the wording of the Belgian amendment differed from the wording of the Paris Convention and requested an explanation.

37. Mr. COLOT (Belgium) apologized for a typing error in the text of the Belgian amendment. He requested the members of the Committee to replace the words "and from the" in the fourth line by the words "or a combination of radioactive properties with".

38. Mr. NORDENSON (Sweden) found himself compelled to oppose the Belgian amendment, not only for the reasons stated by the United Kingdom delegate but also because he thought the amendment would extend the scope of the Convention too far by including damage due to hazards other than those peculiar to nuclear installations. From the words "or some of the damage caused" in the third line it would seem that damage could come within the scope of the Convention even if only a small proportion of it was due to nuclear hazards.

39. Mr. JARVIS (Canada) fully supported the United Kingdom and Swedish delegates and added that the adoption of the amendment would entail considerable redrafting and awkward phraseology in other parts of the text.
40. Mr. SPLETH (Denmark) fully shared the views of the United Kingdom and Swedish delegates although he appreciated the concern of the Italian delegate. In his view conventional damage due to nuclear incidents should be covered and he drew attention to the Danish proposal to insert the words "directly or indirectly" in paragraph 9 (CW/32). That solution might satisfy those who found the definition too narrow.
41. Mr. SUONTAUSTA (Finland) thought that the Committee should not exaggerate the difference between the Belgian amendment and the Draft Convention. He opposed the amendment on the ground that a change in the text might lead to erroneous interpretations.
42. The CHAIRMAN put the Belgian amendment (CW/45) to the vote.
43. There were 7 votes in favour and 35 against, with 2 abstentions. The amendment was rejected.

Paragraph 9

44. Mr. WEITNAUER (Federal Republic of Germany) said that the need for his amendment (CW/1, amendment 14) had increased as a result of the Committee's acceptance of the United Kingdom amendment to paragraph 2 (CW/1, amendment 4)[3]. The definition adopted for "radioactive products or waste" meant that in the case of damage caused by radioisotopes, even when inside a nuclear installation, the victims would not be covered by the Convention. The proposed amendment would avoid the difficulties which would arise if a distinction had to be made between radioisotopes and other radioactive materials inside an installation, so that the operator would require two different insurance policies, one for damage under the Convention, with limit of liability, the other for damage caused by radioisotopes and therefore outside the scope of the Convention, with no limit.
45. Mr. ROGNLIEN (Norway) strongly supported the amendment and agreed that it should be left to the Installation State to decide whether it wished its national law to provide for that type of damage.
46. Mr. RUEGGER (Switzerland) favoured the proposed addition. The amendment went somewhat further than Article 12 of the Swiss federal law of 1959 on the peaceful uses of atomic energy and protection against radiation, but followed the general trend of the national legislation which was developing on the subject in a number of countries.
47. Mr. RAO (India) supported the amendment but proposed, as a sub-amendment, that the words "if the law of the Installation State so provides" should be deleted.
48. Mr. SCHEFFER (Netherlands), while supporting the proposed amendment in principle, agreed that it would be better to delete those words so that, rather than leaving the matter to the Installation State, the provision would be included in the Convention as a general rule.
49. Mr. DADZIE (Ghana) endorsed that view.
50. Mr. COLOT (Belgium) preferred the amendment in its original form.

[3] 1st meeting, para. 20.

51. Mr. NORDENSON (Sweden) agreed. Should the Indian sub-amendment be adopted, the amendment would be contrary to the Committee's previous decision, in connection with paragraph 2, that radioisotopes should be excluded. The matter should be left entirely to the national legislation of the Installation State.

52. The CHAIRMAN put to the vote the sub-amendment proposed orally by the delegate of India, to delete the words "if the law of the Installation State so provides" from the amendment submitted by the Federal Republic of Germany (CW/1, amendment 14).

53. There were 6 votes in favour and 19 against, with 18 abstentions. The sub-amendment was rejected.

54. The CHAIRMAN put to the vote the amendment submitted by the Federal Republic of Germany (CW/1, amendment 14).

55. There were 29 votes in favour and 10 against, with 3 abstentions. The amendment was approved.

56. Mr. ENGLISH (United States of America), introducing the United States amendment (CW/9, No. 2), said that if certain damage arising out of a nuclear incident, such as loss of profits, mental suffering and moral damage, was not regarded as falling within the definition of nuclear damage and, further, a Contracting Party did not bring such damage within the scope of the Convention by virtue of the optional power vested in it by the second sentence of paragraph 9, a strong argument could be made to the effect that what the Convention did not deal with, it did not control, and that recovery for such damage could therefore be permitted under normal tort law outside the Convention. That would clearly be inconsistent with the objectives of the Convention, as the operator and other parties involved would then be subject to liability for damage arising from a nuclear incident without the benefit of the provisions of the Convention dealing with limit of liability, channelling, etc. His delegation accordingly proposed that the Convention should contain an express provision precluding liability for such damage.

57. In reply to Mr. SCHEFFER (Netherlands), Mr. ENGLISH said that the intention of the amendment was that compensation should not be permitted for such damage under any circumstances. Otherwise there was a danger of subjecting the operator and others engaged in the nuclear field to uninsurable financial risk, the avoidance of which was one of the basic objectives of the Convention.

58. Mr. RAO (India) suggested that it would be preferable to deal with the United States amendment under Article III, paragraph 1, rather than in connection with an article which contained only definitions.

59. Mr. TREVOR (United Kingdom) considered that it might be more appropriate to place the amendment in a completely new article: if included in the definitions, it was doubtful whether it would have the effect intended by its sponsor.

60. Mr. MAUSS (France) pointed out that in some respects the United States amendment might conflict with the provisions of the new article which the French delegation proposed be inserted between Articles VI and VII (CW/3).

61. The CHAIRMAN closed the discussion on the United States amendment, on the understanding that the United States delegation would consult with the French and other delegations with a view to submitting a revised amendment in connection with Article III.

62. Mr. SCHEFFER (Netherlands), introducing his amendment (CW/33), explained that in the view of his delegation it would be more appropriate to refer to the law of the Installation State, which governed the liability of the operator, rather than to the law of the competent court, which might be the law of a country other than the Installation State.

63. Mr. ROGNLIEN (Norway) opposed the amendment.

64. Mr. TREVOR (United Kingdom) said that the objections to the amendment appeared to outweigh its advantages. An English court would award nothing in respect of moral damage, which was not recognized by English law. It would raise difficulties for the English courts, therefore, if an incident in England involved an operator from a country where moral damage was recognized by the courts. It would, however, be equally unreasonable if a national of a country where moral damage was recognized could not obtain compensation from the competent courts of his country because moral damage was not recognized by the law of the Installation State.

65. Mr. NISHIMURA (Japan) supported the Netherlands amendment.

66. Mr. WEITNAUER (Federal Republic of Germany) opposed the amendment because it conflicted with the basic principle of the Convention that the competent courts should apply their own law only insofar as the Convention made no provision, and because it would raise great practical difficulties in regard to interpretation.

67. Mr. GHELMEGEANU (Romania) considered that the Netherlands amendment should not be discussed before the Committee had examined paragraph 11, which his delegation supported. He would prefer to retain the original text of the last sentence of paragraph 9.

68. Mr. RUEGGER (Switzerland) regretted that he could not support the Netherlands amendment. The question of the law of the competent court and the law of the Installation State had been gone into very thoroughly in the panel of legal experts which had prepared the first text of the Draft Convention. It had been considered that victims would be afforded greater protection under the law of the competent court: it should not be forgotten that, although legal provisions would of necessity be developed on the subject, there would certainly be an interim period when in many cases the law of the Installation State would not provide adequate protection for possible victims.

69. Mr. COLOT (Belgium) supported the amendment, which was, like his own delegation's proposal in connection with Article IX, paragraph 5 (CW/23), designed to fill a gap in the Draft Convention: a similar gap would be noted in connection with Article IV, paragraphs 1 and 2.

70. Mr. SCHEFFER (Netherlands) could not agree that the amendment conflicted with a basic principle of the Draft Convention. References would be found in the text both to the law of the competent court and to the law of the Installation State, and it would be necessary to decide in each case which reference was the more appropriate. If the system applied in the Convention was to be, as provided in Article IV, that the limits of liability should vary, it would be reasonable to refer in Article I, paragraph 9, to the law of the Installation State, which was responsible in all cases for establishing the limits of liability.

71. The CHAIRMAN put the Netherlands amendment (CW/33) to the vote.

72. There were 15 votes in favour and 24 against, with 4 abstentions. The amendment was rejected.

73. Mr. SPLETH (Denmark) said that his delegation's amendment (CW/32) had been introduced to avoid any possible difficulties in regard to the interpretation of the phrase, "which arises out of or results from", in the first sentence of paragraph 9. In the view of his delegation, that phrase should be interpreted as covering all types of damage, even conventional damage, provided that the original cause of the damage resulted from the radioactive properties of nuclear material. For example, damage caused by fire which spread to surrounding property as a result of an explosion in a reactor should be covered by the Convention. The only damage excluded should be that due solely to causes unrelated to radioactive properties: for example, the Convention would not cover damage which was due solely to the collision of two vehicles, even though one vehicle was carrying nuclear fuel. If there was general agreement with the Danish interpretation of the phrase his delegation would not press its amendment.

74. Mr. BELLI (Italy) agreed with the Danish interpretation of paragraph 9, but suggested that it would be preferable simply to express such agreement without putting the Danish amendment to the vote since in the event of its rejection doubt would be cast on the validity of the interpretation.

75. Mr. EDLBACHER (Austria) shared the view of the Danish delegation in regard to the interpretation of paragraph 9, but considered that the meaning was already clear and that the words "results from" covered indirect damage. It might be preferable to add an exposé des motifs rather than to amend the paragraph.

76. Mr. TREVOR (United Kingdom) opposed the Danish amendment. Causation was normally a matter for the courts to decide. The insertion of the words "directly or indirectly" might have unfortunate results: it would for example, be possible to argue that in the case of a man who suffered radiation injury as a result of a nuclear incident and was killed while being taken to hospital in an ambulance, his death had been indirectly caused by the nuclear incident.

77. Mr. GHELMEGEANU (Romania) also opposed the Danish amendment. Under the system established by the Draft Convention it was not possible to lay down uniform rules regarding indirect damage; the extent to which such damage was covered could only be determined by the law of the competent court. That view was confirmed by the Secretariat's comment in paragraph 91 of document CN-12/3. It had been the opinion of most members of the Intergovernmental Committee that the limit of liability should not be set too high. The effect of the Danish amendment would be to decrease still further the amounts available for compensation for direct damage.

The meeting rose at 1 p.m.

THIRD MEETING

Tuesday, 30 April 1963, at 3.15 p.m.

Chairman: Mr. McKNIGHT (Australia)

CONSIDERATION OF THE DRAFT CONVENTION ON MINIMUM INTERNATIONAL STANDARDS REGARDING CIVIL LIABILITY FOR NUCLEAR DAMAGE (CN-12/2) (continued)

Article I (continued)

Paragraph 5 (continued)

1. Mr. BOULANGER (Federal Republic of Germany), introducing a joint German and United States amendment (CW/47) to paragraph 5, said that it combined his previous proposal (CW/1, amendment 7) and that of the United States of America (CW/34)[1]. Provision for convening the proposed committee would be more appropriately made in the final clauses.

2. Mr. ZALDIVAR (Argentina) said that the new amendment entailed no change of principle. The matter of revision should be regulated by the final clauses, which might perhaps give the Agency discretion to convene the signatories for the purpose.

3. Mr. SPAČIL (Czechoslovakia) said that any attempt to provide for the future would overload the Convention without solving the problem. He supported the view that the final clauses were the proper place for dealing with the revision procedure, and doubted whether a special procedure should be provided in regard to the definition of a nuclear installation. Creation of one ad hoc body would be a precedent for the creation of others.

4. Mr. PAHR (Austria) said that any amendment of the definition of "nuclear installation" would change the whole meaning of the Convention. Since under the Austrian Constitution amendments to the Convention could only be ratified by the Austrian Parliament and President, no decision by an extraneous committee could be acceptable.

5. Mr. SPINGARN (United States of America) said the amendment had been meant to provide a more flexible and less formal way of revising minor points than reconvening the signatories.

6. Mr. BOULANGER (Federal Republic of Germany) pointed out that Austria had signed the Paris Convention, which contained similar provisions. The proposed committee would obviate new international conferences over minor changes necessitated by technical progress.

7. Mr. KONSTANTINOV (Bulgaria) said that the new amendment was no better than the previous one. He was completely opposed to any delegation of powers. Questions of liability and financial coverage were too important to be settled otherwise than by the regular method. The proposed committee, bound to unanimity, would be no more flexible than the full body of the signatories.

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[1] See 1st meeting, paras. 55 to 72, and 2nd meeting, para. 1.

8. Mr. PAHR (Austria) suggested that the Austrian position had been misunderstood. Article I, paragraph (b) of the Paris Convention provided for limitation and not extension of that convention's scope, and was therefore not at variance with the requirements of the Austrian Constitution.

9. Mr. RAO (India) said that the new amendment was a great improvement but was still unsound. He asked whether, if ten members ratifying the convention formed a committee, changes made by them would bind future signatories.

10. Mr. PAPATHANASSIOU (Greece) said that the new amendment was simpler than the old, since it covered only a specific type of installation and not installations in general.

11. Mr. NORDENSON (Sweden) supported the joint amendment, which would greatly facilitate the procedure. He pointed out that Austria was bound, not only by Article I, paragraph (b) of the Paris Convention, but also by Article I, paragraph (a, ii), which allowed the Steering Committee of the European Nuclear Energy Agency to extend that convention's scope. He suggested that the voting procedure of the proposed committee should be relegated to the final clauses, and that the Committee should vote only on the substance of the amendment.

12. Mr. RUEGGER (Switzerland) supported the basic idea of the amendment for reasons already stated by other delegations. He agreed with the Indian delegate's criticism, and held that the unanimity requirement was unusually drastic and in the present case difficult to apply. Legal clarity demanded clear procedure. The classical procedure from a legal point of view, would be the elaboration and ratification from time to time of brief protocols which could be drafted quickly, perhaps at the Agency's annual General Conference.

13. Mr. de ERICE (Spain) agreed with the objections so far raised. The proposed final clauses provided that the Convention should come into force when five States had ratified it. A two-thirds majority in the committee would mean that three States could change the Convention before it had been ratified by other States. If the committee procedure required unanimity, each signatory would have a veto. It would be incongruous to adopt by a simple majority a text giving each signatory a veto.

14. The CHAIRMAN noted the Swedish delegate's suggestion, but put the joint amendment (CW/47) to the vote as it stood.

15. There were 15 votes in favour and 22 against. The amendment was rejected.

Paragraph 9 (continued)

16. Mr. PAPATHANASSIOU (Greece) said that in his view the Danish amendment (CW/32) afforded better protection than the existing text.

17. Mr. SPLETH (Denmark) withdrew the amendment seeing that the preceding debate[2] showed that the existing text presented no difficulties.

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[2] 2nd meeting, paras. 73 to 77.

Paragraph 10

18. Mr. COLOT (Belgium), introducing his proposal to delete paragraph 10 (CW/16), said that paragraph was unacceptable to Belgian law, under which every public and private body had legal personality.
19. Mr. RITCHIE (*United Kingdom*) found the argument unconvincing. Paragraph 6, defining "operator", used the word "person", which without the definition given in paragraph 10 would not in English law include a State. Article XII clearly recognized States as persons for the purposes of the Convention. Without paragraph 10, the term "person suffering nuclear damage" would be restricted to private individuals. The definition was copied from Article I, paragraph 3 of the Brussels Convention, for which it had been found acceptable for the reasons he was now giving.
20. Mr. ZALDIVAR (Argentina) said that in his country's civil code, like that of other Latin American countries, bodies without legal personality - "civil associations" - were recognized and "person" included a State and its political subdivisions. The omission of paragraph 10 could, however, cause difficulties to common-law countries.
21. Mr. PAHR (Austria) desired to retain paragraph 10, since Austrian law recognized a "personal commercial company" that had no legal personality.
22. Mr. COLOT (Belgium) withdrew his proposal, but pointed out that paragraph 10 in its present form would create difficulties under Belgian law.

Paragraph 11

23. Mr. NISHIMURA (Japan), introducing his amendment (CW/38), said that the wording of the paragraph was tautological. Article III, paragraph 3 contained the words he proposed. He suggested that the point should be referred to the Drafting Committee.
24. Mr. ENGLISH (United States of America) agreed that the amendment should be referred to the Drafting Committee, and proposed that the words "law of the court" should read "law applied by the court".
25. The Japanese amendment (CW/38) and the oral proposal by the United States delegate were referred to the Drafting Committee.

Additional paragraphs

26. Mr. BOULANGER (Federal Republic of Germany), introducing his proposal (CW/1, amendment 15), pointed out that the Convention was not intended to cover minor risks. He desired to change the opening words of the amendment in line with the joint amendment to paragraph 5 (CW/47)[3], from "The Board of Governors" to "A committee composed of a representative from each of the Contracting Parties", and to insert after the word "exclude" the words "by unanimous vote".
27. Mr. KONSTANTINOV (Bulgaria) repeated the grounds on which he had opposed the joint amendment to paragraph 5, holding that no special committee ought to be empowered either to add to or subtract from the

[3] See paras. 1 - 15 above.

obligations of signatories. The Committee had already rejected the principle underlying the proposal.

28. The CHAIRMAN suggested that the Committee should discuss whether any body should be empowered to restrict the scope of the Convention with regard to nuclear installations, nuclear fuel and nuclear material.

29. Mr. THOMPSON (United Kingdom) hoped that no decision reached on the German proposal would prejudice his proposal for an additional paragraph (CW/1, amendment 16), and asked the Committee to distinguish between "installations" and "nuclear material".

30. Mr. STEPHENSON (South Africa) was afraid that the German proposal might impose too heavy a burden on the operator, since the State would no longer be liable. He suggested it might be desirable to lay down that the operator should be excused by the Installation State from providing insurance for minor risks.

31. The CHAIRMAN noted that suggestion, and put the German proposal (CW/1, amendment 15), as orally amended, to the vote.

32. There were 13 votes in favour and 20 against. The proposal was rejected.

33. Mr. THOMPSON (United Kingdom), introducing his proposal (CW/1, amendment 16), said that there were already two exceptions to the definition of nuclear material in paragraph 3, and liability under the Convention was too heavy for small risks. Perhaps a suitable body with sufficient scientific advice, like the Steering Committee under the Paris Convention, could be appointed to decide for or against application. The objections raised to the joint amendment to paragraph 5 (CW/47) were irrelevant.

34. Mr. ROGNLIEN (Norway) sympathized with the United Kingdom proposal but asked whether a decision to exclude certain nuclear material would bind the Installation State or be merely permissive. In adopting the German amendment to paragraph 9 (CW/1, amendment 14)[4] the Committee had affirmed the principle that, where the materials were inside the nuclear installation, the Installation State should decide whether they should be included or not.

35. Mr. RUEGGER (Switzerland) fully supported the United Kingdom proposal, which would not amend the Convention but merely affect its application. Some slight exceptions to the Convention might become necessary, and the Swiss delegation did not object to the establishment of a small body of experts to whom certain problems would be referred. However, the large standing body envisaged by the United States of America and the Federal Republic of Germany in their joint amendment to paragraph 5 could be too unwieldy, and he supported the suggestion that the Board of Governors be entrusted with the task of setting up a small group to take such decisions as were necessary from time to time.

36. Mr. KONSTANTINOV (Bulgaria) said that, although he shared the United Kingdom delegation's wish to render the Convention flexible in regard to the exclusion of small quantities of nuclear materials, he could not agree in principle that an organ should be established to decide how the Convention should apply. Besides, two proposals with that end in view had already been rejected by the Committee.

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[4] 2nd meeting, paras. 44 to 55.

37. Mr. SPAČIL (Czechoslovakia) said it was undesirable to leave provisions in the Convention to be clarified at some future date by some undetermined procedure. Anything that could not be determined at the present Conference should be dealt with at a later conference. Nevertheless, the United Kingdom proposal had some value, and the Committee might perhaps set up a working group to study what small quantities might be excluded. He could not agree with the Swiss delegate that a new permanent organ should be established to decide how the Convention should apply.

38. Mr. ZALDIVAR (Argentina) could not support the United Kingdom proposal. A number of delegates had urged that the small quantities which could be excluded be determined in advance. The explanations given by the United Kingdom in support of its proposal stated that the operator would be absolutely liable and would be required to provide insurance covering the transport of the material, which would only be out of proportion to the negligible risks involved. If, however, the risks were negligible, the premiums would be correspondingly low. It was quite unnecessary to set up a standing body to deal with such a remote possibility.

39. Mr. GHELMEGEANU (Romania) pointed out that the USSR delegation to the Intergovernmental Committee had proposed laying down the radiation level above which a nuclear material might be regarded as dangerous under the Convention. The majority of that committee had agreed that no attempt should be made to determine the technical details of the degree of damage. It was extremely doubtful whether a working group could establish a minimum, normal or maximum risk, and still less likely that it could provide clear objective criteria valid in international law. Even small quantities of nuclear material could cause the death of human beings and damage to property. He therefore could not support the United Kingdom proposal.

40. Mr. NISHIMURA (Japan) said that his country's law excluded extremely small quantities from government control. Nevertheless, a provision along the lines proposed by the United Kingdom would imply that certain generally accepted quantities were excluded, and the law of certain countries would have to be revised accordingly. It would be wiser to leave the matter for each Contracting Party to decide.

41. Mr. CARRAUD (France) supported the Czechoslovak delegate's suggestion that a working group should be set up.

42. Mr. ZALDIVAR (Argentina) thought that the Committee should first vote on the substance of the United Kingdom proposal. Only then could it decide whether or not to establish a working group.

43. After a brief discussion in which Mr. BELLI (Italy), Mr. SPAČIL (Czechoslovakia), Mr. THOMPSON (United Kingdom) and Mr. RAO (India) took part, the CHAIRMAN invited the Committee to vote on the principle that the problem of small quantities of nuclear material should be examined.

44. There were 35 votes in favour and 1 against, with 5 abstentions. The principle was adopted.

45. The CHAIRMAN said that a working group on the problem of small quantities of nuclear materials would be established in due course.

46. Mr. TREVOR (United Kingdom) asked that discussion of his delegation's proposal to add another new paragraph (CW/1, amendment 17) be postponed, since its wording depended on the decision ultimately taken on Article I A and Article VII, paragraph 2.

Article I A

47. The CHAIRMAN invited the Committee to consider Article I A and the amendments thereto (CW/1, amendments 18 to 23, CW/24, CW/37, CW/39). Although the Argentine proposal to delete the article (CW/1, amendment 18) seemed at first sight to be the furthest removed from the original text, the Indian proposal (CW/37, first alternative) to delete the words "unless the law of the Installation State so provides" was even more radical, since it would preclude application of the Convention to incidents occurring in the territory of a non-contracting State.

48. Mr. RAO (India), introducing the Indian amendment (CW/37), said that the proposed alternatives had a similar object. Article I A as it stood would extend the benefits of the Convention to non-contracting States without the corresponding obligations. Some international instruments, such as the United Nations Charter, were so wide as to be capable of extension to non-signatory States; but the Convention was not.

49. The second alternative would reduce the quantum of damages payable to nationals of a non-contracting State, in order to preclude cases where compensation for nuclear damage occurring in the territory of a non-contracting State would leave nothing in the limited liability fund out of which to compensate nationals of a Contracting State.

50. Mr. DUNSHEE de ABRANCHES (Brazil) said it would be clear from paragraph 10 of the report of the Intergovernmental Committee (CN-12/2, p. 43) that his delegation, which had abstained from voting on the article in 1962 because such a provision would have no effect in international law, was in favour of the Argentine proposal (CW/1, amendment 18). If the first Indian amendment (CW/37, first alternative) were adopted, all that would be left in the article would be an affirmation that the Convention did not apply to any non-contracting State. That, however, was a logical rather than a legal contention, and the article in that truncated form would be completely redundant.

51. Mr. PAPATHANASSIOU (Greece) also opposed the inclusion of a provision along the lines of Article I A for three reasons. First, the limited liability fund should not favour nationals of a non-contracting State to the detriment of nationals of Contracting States. Secondly, the provision ran counter to the modern trend towards conformity of national law with international conventions. Thirdly, the Draft Convention contained a provision on accession, yet some States might be tempted not to accede to it if they could enjoy its benefits without the corresponding obligations. The Greek delegation could accept either the Argentine or the Indian solution; in any case it was against extension of the benefits of the Convention to non-contracting States.

52. Mr. TREVOR (United Kingdom) disagreed with all the views so far expressed. Article I A did not apply the Convention to non-contracting States. It covered two different possibilities. First, a nuclear incident occurring in the territory of a non-contracting State might cause, in connection with the carriage of nuclear materials, damage to nationals of that State and also to nationals of a Contracting Party. For example, the crew of a ship carrying nuclear material would probably be nationals of a Contracting Party, and should certainly be entitled to benefit by the Convention. Secondly,

damage might occur in two neighbouring countries one of which was a party to the Convention while the other was not; if the damage occurred in the territory of the non-contracting State, it should be covered by the Convention.

53. In reply to the Indian delegate, he could not agree that the inclusion of Article I A would make it unnecessary for any country to become a party to the convention. The extension of benefits to a non-contracting State depended entirely on the law of the Installation State, and no non-contracting State could be sure of benefiting. Moreover the alternative Indian amendment constituted an admission that Article I A without its final proviso was insufficient.

54. The United Kingdom was strongly in favour of Article 1 A, and hoped that the Convention would be truly international. His country was in a particularly invidious position in that respect, since its closest neighbour, Ireland, was not a Member of the Agency; it could not conceive that it should be prevented from extending the benefits of the Convention to an incident occurring in Irish territory.

55. Mr. WEITNAUER (Federal Republic of Germany) considered Article I A a crucial provision of the Convention, which touched on a number of problems of international private law and had important economic aspects. Legally, the article was in conformity with the rule lex loci delicti commissi. From the economic point of view it was true that, if the maximum available amount were used to compensate nationals of non-contracting States, the benefits accorded to nationals of contracting States might be diminished. On the other hand, it should be borne in mind that the Convention was also intended to protect the operator by establishing a maximum amount, and the suppliers and carriers by the channelling rule. Therefore it should be open to national law to apply the Convention to incidents occurring in a non-contracting State as well as to damage suffered by victims in a non-contracting State. That would be the normal way of dealing with problems of international private law in tort cases wherever, under the rules of conflict of laws, the civil law of a given country was applicable. Another attitude, however, could be taken with regard to compensation made available by State intervention beyond the amounts covered by private insurance or other private guarantees. In that connection he drew attention to the proposal put forward by the Federal Republic of Germany for a new article (CW/1, amendment 123).

56. Mr. BELLI (Italy) said he could not agree with the delegates of the United Kingdom and the Federal Republic of Germany. It was perfectly obvious that an international agreement could not apply to non-contracting States, and it seemed inadvisable to provide that a Contracting Party could extend the Convention to such a State by its municipal law. In any case the Convention was based on the principle of limited liability, and Article I A seemed to nullify that very principle, the effect of which should be to ensure the performance of obligations under the Convention. Every State was of course free to extend its own obligations under its municipal law, and by bilateral and other agreements outside the Convention. If, however, Article I A were retained in its present form, States would have no incentive to accede to the Convention.

57. He could not agree with the delegate of the Federal Republic of Germany that the article was based on any principle of international private law.

The meeting rose at 6 p. m.

FOURTH MEETING

Thursday, 2 May 1963, at 10. 50 a. m.

Chairman: Mr. McKNIGHT (Australia)

ORGANIZATION OF WORK

1. The CHAIRMAN said that the Conference at its first plenary meeting[1] had accepted the Secretariat's suggestions for the method of work and procedures as outlined in documents CN-12/4 and Add. 1. In paragraph 9 of that document, the Secretariat had pointed out that for certain questions, such as the execution of judgments and the relationship with other conventions, no text had been elaborated by the Intergovernmental Committee, and had suggested that as those matters should be taken up at an early stage it might be useful if the Committee of the Whole were "to hold a brief discussion of these questions if necessary with a view to establishing sub-committees or working groups which could meet during the second week to draft texts for those subjects". He proposed therefore that the Committee should, in accordance with that suggestion, discuss the matter at the beginning of its morning meeting on Friday 3 May.

2. *It was so decided.*

CONSIDERATION OF THE DRAFT CONVENTION ON MINIMUM INTERNATIONAL STANDARDS REGARDING CIVIL LIABILITY FOR NUCLEAR DAMAGE (CN-12/2) (continued)

Article I A (continued)

3. The CHAIRMAN recalled that only the first of the alternative amendments proposed by the Indian delegation (CW/37) was under discussion at the present time, namely the proposal for deletion of the words "unless the law of the Installation State so provides".

4. Mr. ZALDIVAR (Argentina) said that in the light of the interpretation of the article offered by the United Kingdom delegate at the previous meeting, it appeared that the Convention should contain some provision in regard to its application to nuclear incidents that occurred, or to nuclear damage that was suffered, in the territory of a non-contracting State. Although the present draft was not satisfactory he would therefore withdraw his dele-

[1] Loc. cit., paras. 48 and 49.

gation's proposal to delete the whole article (CW/1, amendment 18). He would oppose the Indian proposal.

5. Mr. de ERICE (Spain) considered that Article I A constituted an escape clause of a scope unprecedented in any other international agreement and would destroy the value of the Convention as a whole. Since its effect would be to allow a non-contracting State to select only those parts of the Convention which it found convenient to apply, States would not ratify the Convention but would apply such provisions as they chose by bilateral agreement outside it. The paradoxical situation would arise that in certain cases the Convention might be superseded by the national legislation of a non-contracting State. His delegation would have supported the Argentine proposal to delete the whole article. It would instead support the first Indian amendment and, should that be rejected, the second Indian amendment.

6. The CHAIRMAN explained that he intended to dispose of all the other amendments to Article I A before opening discussion on the second Indian amendment, which would then be considered in relation to the text of Article I A with whatever amendments had been approved by then.

7. Mr. RAO (India), speaking on a point of order, pointed out that his delegation's intention had been to propose that, if the first Indian amendment was rejected, the words proposed in the second should be added to the original text of Article I A.

8. Mr. ARANGIO RUIZ (Italy) suggested that it would be preferable to vote on the second Indian amendment before taking up the other amendments.

9. The CHAIRMAN ruled against that suggestion. The first Indian amendment represented a clear-cut issue quite distinct from that raised by the second. If the first amendment was rejected, there was no reason why the delegate of India should not propose addition of the words proposed in his second amendment whatever other changes had been made in the text.

10. Mr. HARDERS (Australia) said that, although the text of Article I A related to facts and circumstances affecting a non-contracting State, it was not in any way concerned with the position of such a State, or any of its organs of government, vis-à-vis the Convention. In particular, the article did not purport to vest any jurisdiction in, or to give any directions to, the courts of a non-contracting State: that point was well brought out in paragraph 38 of the commentary prepared by the Secretariat (CN-12/3).

11. The debate had indicated that there was in fact a need to give Contracting States at least a discretionary power to extend the application of the Convention to cover incidents that occurred, or damage that was suffered, in the territory of a non-contracting State. It seemed prudent as a matter of law to include in the Convention some such express authority because it might otherwise be contended that each Contracting State, even if it wished to extend the application of the Convention in that way, was under an obligation to other Contracting States not to allow the limited liability fund established under the Convention to be used except for the purpose of compensating damage suffered on the territory of Contracting States. For that reason, his delegation would oppose the first Indian amendment, which would destroy completely the whole intention of the article.

12. Other speakers had also drawn attention to the difficulties which would arise in regard to insurance cover.

13. Mr. COLOT (Belgium) favoured the retention of the original text of Article I A. His delegation shared fully the views expressed at the previous meeting by the United Kingdom delegate. There was no intention of extending the application of the Convention to non-contracting States. The true aim of the article was to allow an Installation State to legislate in such a way as to make the Convention applicable, to the extent that it decided to do so, to nuclear incidents which might occur on the territory of a non-contracting State. The Belgian Government considered that it was essential for the Convention to allow it that discretion, and that Article I A should refer to the law of the Installation State. A reference to "the law of the competent court" as proposed by certain delegations was too vague.

14. Mr. GASIOROWSKI (Poland) reintroduced the proposal to delete Article I A (CW/1, amendment 18) which had been withdrawn by the delegate of Argentina. It was unnecessary to insert in the Convention the recognized principle of international law enunciated in the first part of Article I A, while the proviso contained in the second part of the article would be open to abuse.

15. His delegation would support the first Indian amendment as an alternative to deletion of the whole article.

16. Mr. DUNSHEE de ABRANCHES (Brazil) said his delegation wished to co-sponsor the proposal to delete the article, reintroduced by the delegate of Poland.

17. Mr. GHELMEGEANU (Romania) also supported the proposal to delete Article I A.

18. Mr. STEWART (South Africa) said that wherever there was a possibility of Contracting States being held liable in respect of nuclear incidents occurring, or nuclear damage suffered, in the territory of non-contracting States, it was to their advantage to be able to legislate in such a way that the Convention applied to such incidents or damage. It might also be to the advantage of other Contracting States if, for example, a particular Contracting State operating in the territory of a non-contracting State could legislate that the Convention should apply in respect of such operation. The Contracting States might otherwise have difficulty in obtaining compensation for damage extending across the frontier from a nuclear incident in the territory of the non-contracting State, or for damage suffered by their nationals in that territory.

19. If some provision along the lines of the present text of Article I A was retained, the Drafting Committee should be asked to consider whether it was necessary to amend the definition of "Installation State" in Article I, paragraph 7.

20. Mr. ROGNLIEN (Norway) opposed the Indian amendment. It should be left to the discretion of the Installation State how far the Convention should apply to nuclear incidents occurring, or nuclear damage suffered, in the territory of a non-contracting State. He would, therefore, support the existing text of Article I A.

21. Mr. PAPATHANASSIOU (Greece) said that his delegation had modified its view on the deletion of Article I A in the light of consultations with other delegations and had decided to support the first Indian amendment, which it preferred to the second.

22. Mr. ENGLISH (United States of America) said that his delegation felt it highly desirable to retain Article I A in its present form for purposes of clarity. If there was no such provision some doubt would exist as to the possibility of extending the benefits of the Convention, particularly in regard to incidents occurring or damage sustained during transportation.

23. Mr. RAO (India) said that he had heard no convincing argument for the inclusion in the present Convention of a new rule extending benefits to non-contracting States without the corresponding obligations, contrary to the well-established rule of treaty law that only parties to a treaty should have rights and obligations. Moreover, if the rule in question was included, persons suffering damage on the territory of a non-contracting State would not be bound by the limit of liability established by the Convention, since the State was not a party to the Convention, and could claim full compensation. thus obtaining more benefit than persons suffering damage in a contracting State, who would be entitled only to limited compensation.

24. Mr. NORDENSON (Sweden) expressed strong support for the existing text of Article I A. His delegation considered that it might in certain situations be of profound interest for a Contracting State to be able to extend the scope of the Convention to all damage suffered in a neighbouring non-contracting State which for some reason might not wish to adhere to the Convention but might, on a basis of reciprocity, offer the Contracting State a bilateral agreement on liability for nuclear damage. Many such situations might arise. particularly in the years immediately following the Convention's entry into force, when some countries had not yet felt able to ratify it. It would be unfortunate in such cases if the Contracting State was forced to establish a separate system of financial coverage for the damage in the neighbouring non-contracting State.

25. Mr. PHUONG (Viet-Nam) agreed with those who felt there was no need for Article I A. Regarding the point raised by the South African delegate, States could make provision for their non-metropolitan territories without that fact being specified in the Convention. Even though the Paris Convention contained similar provisions Article I A was an unnecessary innovation. If it was to be maintained, however, his delegation would vote for the first Indian amendment.

26. Mr. MOUSSAVI (Iran) also supported the first Indian amendment.

27. The CHAIRMAN put the first Indian amendment (CW/37, first alternative) to the vote.

28. There were 17 votes in favour and 23 against, with 6 abstentions. The amendment was rejected.

29. Mr. SPAČIL (Czechoslovakia) and Mr. VILKOV (Union of Soviet Socialist Republics) wished it to be placed on record that now that the Indian amendment had been rejected, their delegations considered the existing text contrary to general international law and could not regard it as a precedent.

30. Mr. NISHIMURA (Japan) said that while he appreciated the legal arguments of the Indian delegate, he had voted against his amendment for practical reasons relating to the liability fund to be established under the Convention.

31. The CHAIRMAN put to the vote the Polish/Brazilian proposal to delete Article I A in toto.[2]

32. There were 17 votes in favour and 26 against, with 5 abstentions. The proposal was rejected.

33. Mr. JARVIS (Canada), explaining the Canadian amendment (CW/1, amendment 19), said that, while he did not object to a statement that the Convention did not apply to damage suffered in the territory of a non-contracting State, he feared that the text as it stood might complicate the application of the Convention as between Contracting States. In some cases the victims would not be entitled to compensation and in others the operator might be liable to an unlimited extent. In the case of nuclear incidents compensation should not depend on the law of the Installation State but the Convention should lay down guiding lines. Maintenance of the reference to nuclear incidents in Article I A might have numerous awkward and incalculable results; in his view, the Convention should apply as between Contracting States regardless of the place where the incident occurred. He believed that the arguments of those delegates who preferred to maintain the existing text related to damage suffered in non-contracting States rather than incidents in such States causing damage in Contracting States.

34. The CHAIRMAN put the Canadian amendment (CW/1, amendment 19) to the vote.

35. There were 10 votes in favour and 25 against, with 11 abstentions. The amendment was rejected.

36. Mr. TAGUINOD (Philippines), introducing his amendment (CW/1, amendment 22), said that on the one hand his delegation felt that the present wording of the Draft Convention was more far-reaching than the article-by-article comments of the Secretariat (CN-12/3) seemed to intend. Secondly, his delegation thought it desirable to make it clear that specific legislation on the part of the Installation State would be required to extend the application of the Convention in the manner envisaged; that introduced a clearer distinction between the law of the Installation State and the law of the competent court.

37. The CHAIRMAN put the Philippine amendment (CW/1, amendment 22) to the vote.

38. There was 1 vote in favour and 32 against, with 11 abstentions. The amendment was rejected.

39. Introducing the Japanese amendment (CW/39), Mr. NISHIMURA (Japan) showed how the present text might lead to inequality of treatment for nationals of the Installation State depending on the place where the damage was suffered or the incident occurred.

40. Mr. WEITNAUER (Federal Republic of Germany) said he was sympathetic to the Japanese amendment but wondered why it was restricted to maritime transport.

41. Mr. YAMANO (Japan) felt that the situation the amendment was intended to cover was most likely to arise in the case of maritime transport. He was, however, prepared to delete the word "maritime".

42. Mr. NORDENSON (Sweden) asked the Japanese delegate if he could not entirely delete the reference to transportation so that the Convention

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[2] See paras. 14 and 16 above.

would apply to all cases where actions were brought by nationals of Contracting States who sustained damage, irrespective of where the incident causing the damage occurred.

43. Mr. YAMANO (Japan) drew the Committee's attention to the fourth sentence in paragraph 38 of the commentary prepared by the Secretariat (CN-12/3), where specific reference was made to international transportation. His delegation's amendment had been formulated with that reference in view and also took into account the funds that would be available under the Convention. He therefore preferred to keep the reference to international transportation.

44. Mr. HARDERS (Australia) and Mr. TREVOR (United Kingdom) said they would vote against the amendment, as the matter was already covered by the discretion granted to the Installation State under the existing text of the article.

45. Mr. SCHEFFER (Netherlands) pointed out that Article XI provided that there should be no discrimination based upon nationality, domicile or residence. He would therefore vote against the Japanese proposal as it would introduce an element of discrimination in favour of the nationals of Contracting States.

46. The CHAIRMAN put the Japanese amendment (CW/39) to the vote, subject to deletion of the word "maritime".

47. There were 4 votes in favour and 26 against, with 15 abstentions. The amendment was rejected.

48. Introducing his amendment (CW/24), Mr. PAHR (Austria) said it was an established rule, as other speakers had pointed out, that a convention could not apply to third parties. If application of the Convention was to be extended, it was best that that be done by the law of the competent court. Reference to the law of the Installation State might have undesirable consequences, such as a conflict of law and different treatment for victims of the same nuclear incident, whereas reference to the law of the competent court would ensure equality of treatment.

49. Mr. ROGNLIEN (Norway) supported the Austrian amendment not only because he feared complications would result from the application of the law of the Installation State but also because the law of the competent court was more equitable in all cases.

50. Mr. COLOT (Belgium) found the suggestions of the Austrian delegate interesting but could not support his amendment as the rules of competence had not yet been defined.

51. Mr. TREVOR (United Kingdom) said that in his view the proper law to which reference should be made in Article I A was the law of the Installation State. In the question of the amount of liability, he foresaw that reference to the law of the competent court might lead to difficulties. Moreover, the degree by which application of the Convention was extended by the operation of that law would depend on the views of each State regarding the liability of its own operators. He feared that the consequence of referring in Article I A to the law of the competent court might be to necessitate two funds instead of one. He therefore preferred the existing text.

52. Mr. PAHR (Austria) drew the United Kingdom's delegate's attention to the effect of Article IX (3). Secondly, he agreed that the limit of liability was always determined by the law of the Installation State, but the Austrian

amendment did not violate that principle. He could not agree that it would entail the establishment of two funds, as each State was obliged to maintain its fund at the same level and consequently there would only be one fund.

53. Mr. WEITNAUER (Federal Republic of Germany) took it that the reference to the law of the Installation State included a reference to its laws Regarding conflict of laws. In practice, therefore, difficulties might perhaps be reduced if the law of the Installation State referred to the law of the competent court, i. e. the law of the place where the incident occurred.

54. The CHAIRMAN put the Austrian amendment (CW/24) to the vote.

55. There were 4 votes in favour and 36 against, with 6 abstentions. The amendment was rejected.

56. The CHAIRMAN noted that the Committee still had to consider the Norwegian amendment (CW/1, amendment 21), the United Kingdom amendment (CW/1, amendment 23) and the second Indian amendment (CW/37, second alternative). The second part of the Norwegian amendment, proposing reference to the law of the competent court, had already been disposed of and he proposed that the remainder of the Norwegian amendment and the United Kingdom amendment be examined together after the two delegations had an opportunity to confer. The second Indian amendment would be examined in conjunction with Article I A although it was possibly more relevant to Article VII.

The meeting rose at 1. 5 p. m.

FIFTH MEETING

Thursday, 2 May 1963, at 3. 15 p. m.

Chairman: Mr. McKNIGHT (Australia)

CONSIDERATION OF THE DRAFT CONVENTION ON MINIMUM INTERNATIONAL STANDARDS REGARDING CIVIL LIABILITY FOR NUCLEAR DAMAGE (CN-12/2) (continued)

Article I A (continued)

1. Mr. KENT (United Kingdom) introduced his delegation's amendment to Article I A (CW/1, amendment 23). The purpose of the amendment was to give a national of a Contracting Party the right to recover from an operator in a Contracting State compensation paid for nuclear damage suffered in the territory of a non-contracting State. The problem affected a carrier who under the law either of the non-contracting State or of his own country would be liable for nuclear damage if that law did not apply the Convention to incidents occurring in a non-contracting State.

2. The proposed article would protect the carrier by enabling a State to accord him, against the operator, the same rights as the victim would have enjoyed if the Convention had been applicable to the case. The operator

also would benefit, for unless carriers had some such protection they would be reluctant to carry nuclear materials into the territory of a non-contracting State, or might well require the terms of carriage to include indemnity.

3. The United Kingdom had proposed elsewhere that the term "national of a Contracting Party" should be defined (CW/1, amendment 17).

4. Paragraph 2 of the present amendment should be distinguished from Article VII, paragraph 2 (a), which related to nuclear incidents in a Contracting State.

5. Mr. ARANGIO RUIZ (Italy) said that Article I A would allow each Contracting Party to defeat by its domestic legislation one of the main purposes of the Convention, to provide compensation for victims who were nationals, or at least residents, of Contracting States, by allowing nationals of non-contracting States to benefit to their detriment. Since the proposal to delete the article had been rejected[1] the Italian delegation now believed that the only possibility of retaining the basic rule was to adopt the second Indian amendment (CW/37, second alternative), giving priority to claims for damage suffered in Contracting States' territory. As the United Kingdom delegate had pointed out, special rules might be necessary for exceptional cases; but in his delegation's opinion those should be dealt with in a different article or a new article.

6. Mr. NORDENSON (Sweden) fully supported the United Kingdom amendment, particularly since the Swedish delegation to the Intergovernmental Committee had been obliged to withdraw a similar proposal for technical reasons. Nevertheless, his delegation was somewhat concerned by the implications of the words in paragraph 2 "other than the operator". It would like the Committee to discuss the possibility of providing that an operator who was sued in a non-contracting State in respect of nuclear damage occurring in that State should be allowed to deduct the amount he would have to pay from the fund set up by the Convention. If, for example, Sweden had and Finland had not ratified the Convention, and an incident causing damage to both States took place in Swedish territorial waters with a Swedish operator and a United Kingdom carrier, and the United Kingdom ship was arrested in Helsinki: then, under the United Kingdom amendment, if Finnish victims chose to sue the carrier he could claim in a Swedish court reimbursement from the fund; but if they sued the operator he would have no such recourse and must therefore maintain additional coverage to protect him against Finnish claims. There seemed to be no justification for such a difference of treatment depending on whether victims chose to sue the carrier or the operator.

7. Mr. RAO (India) asked whether the conjunction "or" near the end of paragraph 1 of the United Kingdom amendment should not be "and". If not, the implication might be that paragraph 2 would come into operation even if the law of the Installation State did not provide accordingly.

8. Mr. KENT (United Kingdom) replied that "or" was the correct link between the two phrases. Paragraph 2 stood on its own and had nothing to do with the law of the Installation State. The final words of paragraph 1 had been inserted merely to clarify the general situation.

9. Mr. SCHEFFER (Netherlands) supported the United Kingdom amendment,

[1] Fourth meeting, para. 32.

but suggested that the Drafting Committee be instructed to decide where the provision in paragraph 2 should eventually be placed.

10. Mr. ROGNLIEN (Norway) said he could support the United Kingdom amendment on the understanding that it would refer to habitual residents in the territory of a Contracting State, and that the period of limitation would be extended, with regard to which his delegation would submit a proposal under Article V[2].

11. Mr. WEITNAUER (Federal Republic of Germany) fully supported the United Kingdom amendment and failed to understand the arguments of the Swedish delegate. Installation States were free to set up their own rules requiring operators to be covered by insurance in respect of claims to which the Convention was not applicable. To go into further detail would only complicate matters.

12. Mr. NORDENSON (Sweden) said his delegation wished to provide that an operator should be able to recover compensation from the fund only when compelled to pay under the law of a non-contracting State, not in accordance with a settlement or for other non-compulsory reasons. The point he had raised was admittedly awkward and difficult to draft; he had merely wished to obtain opinions on the basic principle.

13. Mr. ARANGIO RUIZ (Italy) said that the Committee could not vote on the United Kingdom amendment as a whole until it knew whether paragraph 1 would be qualified by the second Indian amendment or not. Since the United Kingdom delegate had explained that paragraph 2 was a separate proposal, he moved that a separate vote be taken on it and that it be voted on first.

14. The CHAIRMAN put paragraph 2 of the United Kingdom amendment (CW/1, amendment 23) to the vote.

15. There were 22 votes in favour and 16 against, with 8 abstentions. The paragraph was approved.

16. Mr. de ERICE (Spain) and Mr. TREVOR (United Kingdom) suggested that the Drafting Committee consider whether the provision should not constitute a separate article.

17. It was so agreed.

18. Mr. ROGNLIEN (Norway) said that his delegation would in due course present a proposal to include in the provision just accepted the concept of habitual residence in the territory of a Contracting State[3].

19. Mr. ENGLISH (United States of America) said that, since the Committee had rejected the proposal to delete Article I A, paragraph 1 of the United Kingdom amendment, which coincided substantively with that article, should not be put to the vote.

20. Mr. GASIOROWSKI (Poland) drew attention to Rule 37 of the Rules of Procedure, which provided that, if a motion for division was carried, those parts of the proposal or amendment which were subsequently approved should be put to the vote as a whole.

21. The CHAIRMAN disagreed with the United States delegate's view. A decision not to delete a text should not be regarded as an affirmative vote on it. Besides, a number of alternative proposals had been before the Committee when the proposal for deletion had been rejected.

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[2] CW/77 (distributed subsequently): see also 15th meeting, paras. 53-58.

[3] CW/84 (distributed subsequently): see also 10th meeting, paras. 1-13.

22. After a brief procedural discussion, in which Mr. HARDERS (Australia), (Mr. RAO (India), Mr. ARANGIO RUIZ (Italy) and Mr. ENGLISH (United States of America) took part, Mr. TREVOR (United Kingdom) withdrew paragraph 1 of his amendment (CW/1, amendment 23).

23. Mr. RAO (India), introducing his second amendment (CW/37, second alternative), said that the least the Committee could do, now that it had decided to admit nationals of non-contracting States to some of the benefits of the Convention, was to make some distinction between them and nationals of Contracting States and give priority to claims in respect of nuclear damage suffered in the territory of Contracting Parties.

24. Mr. RUEGGER (Switzerland) supported the Indian amendment, believing that some limitation of the general proviso in Article I A was necessary. Though he hesitated on principle to include in the Convention a provision which could appear discriminatory, additional reasons why it seemed necessary to do so were in order to provide an incentive for non-contracting States to become Contracting Parties, and to clarify a situation which would remain ambiguous until the Convention became universal.

25. The panel of legal experts which had prepared the first draft had felt that the Convention's chances of becoming a really effective instrument depended above all upon its keeping the form of a framework. Article I A however, possibly went beyond that framework, and the report of the legal panel had suggested that it be placed among the final clauses. Article I A should not define an exception, but the applicability of national legislation, and the Swiss delegation could not support amendments which entered into detail. In his opinion the Committee could return to the right path by adopting the Indian amendment.

26. Mr. DONATO (Lebanon) supported the Indian amendment because it was based on international equity.

27. Mr. de ERICE (Spain) agreed with the Swiss delegate that the Indian proposal would improve Article I A as far as was possible at the present stage. He could not, however, agree that the Indian amendment was discriminatory; on the contrary, it remedied any discrimination which might be derived from the interpretation of Article I A, by restoring to some extent the proper balance between international and national law.

28. Mr. GIBSON BARBOZA (Brazil) fully supported the Indian amendment for the reasons given by the Swiss and Spanish delegates.

29. Mr. PAPATHANASSIOU (Greece) was prepared to support the amendment, although he felt that the word "priority" was rather vague.

30. Mr. TREVOR (United Kingdom) also found the word "priority" vague, and asked whether its insertion could mean that non-priority claims would have to wait until the period of limitation was practically past, in case priority claims covered damage which had required a long time to become apparent. He also raised the question of damage occuring on the high seas.

31. Mr. ROGNLIEN (Norway) agreed with the United Kingdom delegate, but found the amendment acceptable on the assumption that it would be for the law of the Installation State to deal with those detailed problems. The Convention should not be too elaborate.

32. Mr. SCHEFFER (Netherlands) said that the basic principle of non-discrimination contained in Article XI should be adhered to in the present article.

33. Mr. YAMANO (Japan) felt that the amendment was intended to ensure equity, but asked the Indian delegate to illustrate the term "priority" by examples.

34. Mr. COLOT (Belgium) was against the amendment for three reasons: those pointed out by the United Kingdom and Netherlands delegates, and because Article I A as drafted left national legislatures free to establish priorities.

35. Mr. WEITNAUER (Federal Republic of Germany) agreed with the objections already raised. While he felt that some discrimination was unavoidable under State-covered liabilities, he was against any discrimination under private law. Once claims from non-contracting States were made acceptable, all claims should be on the same footing.

36. Mr. STEPHENSON (South Africa) said the amendment would defeat the object of the clause, which was to obviate the need for two separate insurance funds. If there were discrimination, the fund might be exhausted for the nationals of Contracting Parties and an extra fund made necessary for nationals of non-contracting States.

37. Mr. ARANGIO RUIZ (Italy) called the attention of the Committee to the fact that to leave Article I A as it now stood implied the possibility for each Contracting Party to extend unilaterally the benefit of the Convention's limited compensation system to nationals of non-contracting States not resident of a Contracting Party. That might not only reduce the interest of non-contracting States in becoming parties to the Convention, but could also result in detriment to the nationals and residents of Contracting Parties, for whose protection the Convention was mainly intended.

38. The best solution would have been to delete Article I A altogether. Since that proposal had been rejected, the adoption of the Indian amendment was now a necessity, for only by that means could the fundamental interest of the Contracting Parties and of their nationals and residents be protected.

39. Mr. GHELMEGEANU (Romania) pointed out that priority implied competition between claims. Since, where a nuclear incident occurred during carriage through the territory of a non-contracting State, damages would only be paid if the law of the Contracting State so allowed, the question of priority would not arise. Confusion had occurred between the liability and the amount needed to cover it. Article IV would limit liability under the Convention, whereas for incidents on the territory of non-contracting States Installation States or operators should be left to obtain suitable coverage if they were prepared to accept such liability. There was no question of competition, since there were two different situations requiring two sets of coverage.

40. Mr. RAO (India) said that priority meant that claims of nationals of Contracting States should be met before those of non-contracting States. His amendment was concerned with the principle, and if that were accepted the points of detail that had been raised could be referred to the Drafting Committee.

41. The CHAIRMAN put the second Indian amendment (CW/37, second alternative) to the vote.

42. There were 14 votes in favour and 14 against, with 15 abstentions. The amendment was not approved.

43. Mr. HENAO-HENAO (Colombia), explaining why he had voted against the United Kingdom and Indian amendments, said that it was illogical to limit the field of civil liability while the danger of nuclear damage was increasing. The purpose of the Convention was to compensate for damage wherever it might occur, so that there should be no discrimination in liability. He also objected to the use of the word "subdito" in the Spanish texts. He realized that that term was accepted as equivalent to "national", but felt that it was more appropriate to nationals of dependent than of independent countries.

44. Mr. SPAČIL (Czechoslovakia) asked what procedure was going to be adopted for the voting on each article when all proposed amendments had been adopted or rejected.

45. The CHAIRMAN, without ruling, suggested that the text should go after discussion to the Drafting Committee and then return to the Committee of the Whole for final adoption.

46. Mr. SPAČIL (Czechoslovakia) said that in his experience articles were adopted in their final form before being passed to the Drafting Committee. He felt that that was a matter of principle, and that other members should state their views.

47. Mr. RAO (India) agreed with the Czechoslovak delegate that it would be better to vote on each article as a whole before passing it to the Drafting Committee, who would then pass it to the plenary Conference. Otherwise much time might be wasted.

48. Mr. GIBSON BARBOZA (Brazil) said that that was the usual practice. The Drafting Committee had to integrate the text in any event, but, since it had no power to alter the substance, the Committee of the Whole need not see the text again before it went before the plenary Conference.

49. Mr. MAURER (United States of America) pointed out that that was the procedure proposed in the memorandum on preparation, method of work and procedures of the Conference (CN-12/4, paragraph 8). The Drafting Committee should not, however, send the text article by article to the plenary Conference: it would be best for it to complete its work on the whole text before submitting it to plenary. Also, the Drafting Committee could always refer items to the Committee of the Whole for instruction or explanation.

50. The CHAIRMAN pointed out that, in both articles discussed so far, some matters had been left open either for drafting or because they depended on points in later articles. Consequently it would be difficult to approve those articles at the present stage. He would consult interested delegates in order to find a suitable method of procedure.

New article (after Article I A)

51. Mr. TAGUINOD (Philippines), introducing his proposal for a new article (CW/1, amendment 24), explained that the present definitions of "Installation State" and "operator" were not sufficient for an international or intergovernmental organization operating an installation in the following cases:

(i) where the organization, because of extra-territorial rights or other reasons, was not subject to the law of the State where it was situated;

(ii) where the Installation State was not a Contracting Party to the Convention; and

(iii) where the Installation State, in view of the international character of the installation, would not accept full responsibility for the installation in accordance with the terms of the Convention.

He recognized, however, that the problems raised in his proposal were very complex and could hardly be solved by the Conference without resorting to a working group. He would, therefore, withdraw the proposal if a resolution were passed instructing the Director General of the Agency, assisted by suitable international organizations, to study the problem and make proposals before the first revisory conference met. If a committee were formed to study other points in connection with the Convention, the Director General might submit his proposals to it.

52. The CHAIRMAN said that several international organizations desired to study the problem with the Director General.

53. The proposed new article (CW/1, amendment 24) was provisionally withdrawn.

Article II

Paragraph 1

54. The CHAIRMAN said that there were three groups of amendments to paragraph 1: those concerned with the test for the transfer of liability during transit, those clarifying the text, and those concerned with liability and storage facilities. There were in effect three alternative methods of determining transfer of liability. The present text based the transfer of liability primarily on the terms of the contract or where there was no contract or the contract was silent on the matter, on the concept of "taken in charge". The Netherlands amendment (CW/1, amendment 25) suggested a test based on physical considerations, primarily the movement of the consignment across the frontier of the receiving State; the Belgian and Greek amendments (CW/17, Nos. 1 and 2, and CW/51) aimed at eliminating the terms of the contract so that the test should be simply the concept of "taken in charge"; the Austrian amendment (CW/25, No. 1) aimed at replacing the terms of the contract by terms fixed by the Installation State. Finally, different variations of the concept "taken in charge" were suggested in the United States amendment (CW/10, No. 1) and the Swedish amendment (CW/48) as well as in the last part of the Netherlands amendment already mentioned. He proposed that all those amendments should be discussed together and then voted upon separately.

55. Mr. SCHEFFER (Netherlands), introducing his amendment (CW/1, amendment 25), said he wished to amend his proposed text for (b, ii) as follows:

"before physical control over the nuclear material has been assumed by the operator of another nuclear installation or the operator of any nuclear reactor with which a means of transport is equipped for use as a source of power, whether for propulsion thereof or any other purpose, if such material is intended for use ir such reactor".

56. The concept "taken in charge" was not very clear; it had been used in

the Paris Convention and had given rise to several interpretations. It could be interpreted either physically or legally. If legally, it might mean the same as the express terms of the contract. The amendment, which introduced the concept of physical control, was much clearer. The concern of the Convention was that Governments should protect those for whom they were responsible, and that every victim should be treated on the same footing. Contractual terms could produce liabilities to another limit than that of the Contracting State. The liability should be unchanged until the material had moved into another territory.

57. Mr. NISHIMURA (Japan) pointed out that respect for contractual terms was embodied in the laws of all civilized States, which could always intervene to protect public morality or civil order. In the international situation there was no supranational legislature to intervene. Liability during transport was most important for civil safety, and consequently third parties must know where the liability lay, which they did not always know in cases where the question might be decided by the contract. Experience had shown that a less advanced State buying nuclear material from a more advanced State usually had to accept the latter's terms even if unfavourable. The Netherlands proposal was equitable and just.

58. Mr. WEITNAUER (Federal Republic of Germany) said that in his view the Netherlands amendment was not flexible enough since it allowed of no agreement between Contracting States for an earlier or later transfer of liability. A State should be able to demand and another State to accept stricter conditions of liability if they thought fit. The difficulty would be avoided by amending Article II A to require that the certificate should make clear when and where the liability would pass.

The meeting adjourned at 6 p.m.

SIXTH MEETING

Friday, 3 May 1963, at 10.50 a.m.

Chairman: Mr. McKNIGHT (Australia)

CONSIDERATION OF THE DRAFT CONVENTION ON MINIMUM INTERNATIONAL STANDARDS REGARDING CIVIL LIABILITY FOR NUCLEAR DAMAGE (CN-12/2) (continued)

Appointment of Sub-Committee on Exclusion of Materials

1. The CHAIRMAN announced that the sub-committee which was to be set up in accordance with the Committee's earlier decision[1] to consider the question of excluding from the scope of the Convention consignments consisting of a small quantity of nuclear materials would be composed of the

[1] Third meeting, paras. 43 to 45.

delegates of Brazil, the Czechoslovak Socialist Republic, Ghana, India, Japan, Sweden, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America.[2]

Relation with other international agreements

2. The CHAIRMAN recalled that under Rule 26 of the Rules of Procedure the draft articles adopted by the Intergovernmental Committee constituted the basic proposals for discussion by the Conference. On the relationship of the Convention to other international agreements the Intergovernmental Committee had submitted no recommendations, but three proposals on the subject had been submitted, by Belgium (CW/14), the United Kingdom (CW/1, amendment 37) and the United States of America (CW/71).

3. Mr. MAURER (United States of America) welcomed the opportunity to discuss in the Committee of the Whole the article on supersession proposed by the United States. The text of the new proposal (CW/71) was substantially the same as that of the United States proposal on of document CN-12/2. However, after lengthy discussions in the meetings of the Intergovernmental Committee, the issues had been clarified and were now ripe for decision by the Committee of the Whole. The United States proposal involved two issues which he felt the Committee could now decide by vote. The first was whether the Convention should supersede and take precedence over all other agreements for the special and limited case of damage caused by a nuclear incident, as his delegation proposed, or whether the conventions relating to transport should be excluded, as the United Kingdom delegation proposed. Of course, as paragraph 2 of the United States proposal stated, nothing in the United States article would affect obligations of Contracting Parties to non-contracting States. That was stating the obvious, but perhaps it was clarifying to do so.

4. The second issue was the relation of the Convention to the Paris Convention. As regards the second issue, he believed that regional conventions should be encouraged, and that the Paris Convention, whose principles were identical with those underlying the new Convention, should be maintained unaltered as between the signatories. In his opinion, that was all there needed to be said on the matter.

5. With regard to the first issue, there were several important reasons for the United States position favouring supersession including the field of transport. First, such supersession was consistent with, and in fact required by, the basic premise of the Conference; namely, that nuclear incidents created a special situation not adequately covered by existing agreements, and that a new, even revolutionary special regime to cover damage resulting from nuclear incidents was necessary - one which would best protect the interests both of the victims and of industry. That regime was one of absolute liability, limited liability, long statutes of limitation, no recourse, centralization of jurisdiction, etc. It was contrary to the premise underlying the Conference to make any exception to that regime, for transport or for any other field. Secondly, the United Kingdom proposal would, he was convinced, be detrimental to the interests of air and sea carriers,

[2] The Sub-Committee's report was in due course issued as document CW/96 and Corr.1 and 2.

and would leave them liable under existing conventions, whereas, if the United States proposal was adopted, they would be completely relieved of liability. He could not understand how shipping interests could support the United Kingdom proposal, under which transport undertakings involved in a nuclear incident would be exposed, first, to the complications and large burdens and costs of litigation. Then, in such litigation, they might be subject to unlimited liability or limited liability under other conventions, and even though they had a right of recourse against the operator of a nuclear installation under the present Convention, there would obviously be cases in which the transport people would not be able to recover completely from the operators' fund, and thus would be out of pocket millions of dollars, since they had to share that fund with other victims. (He illustrated his point by a concrete example with figures involving the Ship Owners Limitation of Liability Convention). Thirdly, if the transport field was not covered by the supersession article, a serious breach would be permitted to the fundamental principle of the Convention, that of channelling liability to the operator and relieving all other persons of liability. Indeed, the entire concept of cumulative remedies and alternate liabilities was contrary to the principles of the Convention. Complications and confusion would also arise for the victims if they had to seek remedies under two or more international agreements. For all those reasons, he found the United Kingdom proposal unacceptable. In addition, he addressed himself to the United Kingdom argument that it would be a breach of existing obligations under other agreements to supersede such other agreements for the special case of a nuclear incident. There was no merit at all in that argument. The article proposed by the United States of America was identical with Article XIV of the Brussels Convention, which had been drafted by the United Kingdom. An attempt might be made to distinguish what was done in the Brussels Convention, but the distinctions were completely unimportant. Under the supersession clause of the Brussels Convention, there was no question but that if a nuclear incident came about by reason of a collision between a conventional ship and a ship with a nuclear reactor, the Ship Owners Limitation of Liability Convention and the Collision Convention would be ousted of application, and only the nuclear ship would be liable. In a similar fashion, if a conventional ship should negligently collide with a ship carrying nuclear material, those other conventions should be ousted of application, and only the operator of the nuclear installation from which the nuclear material came should be liable. No breach of obligations incurred under those conventions had been involved by the inclusion of the supersession clause in the Brussels Convention, nor would any breach of those obligations be involved by including in the present Convention the supersession clause the United States was proposing.

6. In summary, the main issue was whether the Conference should take action to supersede for the special and limited case of a nuclear incident all the conventions which might otherwise be applicable, or whether an exception should be made for the field of transport. It was the United States view that such an exception was not justified and should not be made.

7. Mr. COLOT (Belgium) stated that his country was attending the Conference in a spirit of co-operation and would do everything for its

success. He felt it his duty, however, to emphasize the problem of the relationship between the Vienna Convention and other international agreements, especially those of Paris and Brussels. His Government could hardly support the new Convention if substantial difference persisted, since constant problems of jurisprudence would result. It was a principle in the Belgian Court of Cassation that the date of ratification by Parliament determined which convention would apply. Thus the Vienna Convention, if ratified after the Paris Convention, would prevail. His delegation understood that many countries were unable to accept all the obligations of the Paris and Brussels Conventions and in a spirit of conciliation had submitted the proposal in document CW/14 - which should be read in conjunction with the other Belgian proposal in document CW/15 - in the hope that other countries would be prepared to accept it and would respect the obligations of Belgium and the other parties to the Paris and Brussels Conventions. It was his opinion that the present meeting should not go into details but rather define guiding principles supported by a majority of the delegations. He expressed his readiness to examine all other proposals with regard to the relationship of the Vienna Convention to other conventions. The problem was of such importance it might be desirable to refer it to a sub-committee.

8. Mr. GHELMEGEANU (Romania) said it was generally agreed that the aim of the Vienna Conference was an international convention of universal application which laid down effective rules governing civil liability for nuclear damage. The same spirit of co-operation as had been shown by the 17 States which were parties to the Paris Convention must be shown by the 58 States attending the present Conference. It was in the interests of all countries that there should be harmony between the Convention and existing international agreements but firmness should be shown in ensuring that the new Convention prevailed as far as possible over the others. The principal task of the Conference was to remove obstacles in the way of a just and rational solution. It was, in the first place, especially important that there should be harmony between the Convention and existing international agreements on transport since nuclear incidents might well occur during transportation, in some cases far from the territories of the Contracting States. Secondly, there must be harmony between the Convention and the national laws of the Contracting States, so that there might be a secure basis for the principle of channelling liability through the operator of a nuclear installation. As far as the Paris and Brussels Conventions were concerned, it might be a good idea to establish a special sub-committee with the task of identifying incompatible clauses and endeavouring to ensure that, where compatibility could not be achieved, the present Convention, being more general in scope, prevailed over all other existing agreements. Failing that, the problem of conflicts of law would have to be solved by the Contracting Parties in accordance with the principles of international law.

9. Mr. LAGORCE (France) supported both aspects of the United States proposal. The Draft Convention was the first world-wide instrument capable of regulating civil liability in the transportation of nuclear materials. Earlier conventions had not provided a solution at global level, as the number of participants had been insufficient. It was a simple but unsatisfactory solution to say that maritime and transportation agreements should prevail over the Vienna Convention. For, if that was the case, the shipowners

would still remain liable, as the United States delegate had pointed out. Moreover, those who had drafted the earlier conventions had not made provision for the question of civil liability for nuclear damage and would not object to the desire of the present Conference to make new provisions. There was also the danger that shipowners might refuse to transport dangerous nuclear materials unless they obtained a general discharge of liability from the operator and the operator's State. It was a unique opportunity to settle the question in a satisfactory way.

10. Mr. ZALDIVAR (Argentina) wished to make a distinction, as previous speakers had done, between conventions having a similar objective and others not directly related to the new Convention. The question of relation to the Paris Convention did raise problems which would have to be considered by the Conference. He fully supported the United States proposal and the Belgian proposal, but was surprised that the United Kingdom proposal had been submitted, as it would destroy the whole structure of the Convention and lead to complications in interpretation. The aim of the Conference was to draft a general convention, a framework, and the United Kingdom proposal was inconsistent with that aim. He was prepared to vote immediately on the United States proposal and agreed with the United States delegate that a decision should be taken by the Committee and that there was no need to refer the matter to a sub-committee.

11. Mr. PAPATHANASSIOU (Greece) endorsed the views expressed by the delegate of Belgium. His delegation would favour the establishment of a sub-committee or working group to prepare an acceptable text on the basis of the United States and Belgian proposals, the principle of which was the same, although neither was drafted in entirely satisfactory terms. In his view, an affirmation that the Paris Convention had priority should precede the mention of the other international conventions: should the Committee decide not to include such an affirmation, his Government would be obliged to formulate a reservation in regard to the priority of the Paris Convention. In addition, a provision should be included to cover the possibility of a future revision of the Paris Convention producing disparity with the present Convention. Paragraph 2 of the United States proposal was drafted in terms which were too negative and vague.

12. Mr. BELLI (Italy) expressed sympathy with the views of the United States and French delegates in regard to the desirability of having a single set of rules to cover transport so that no conflict would arise in regard to jurisdiction. It was very important to seek a solution for that problem and the Agency might perhaps be authorized to consult with other organizations on the possibility of revising transport conventions. It was, however, too optimistic to hope that the problem could be solved immediately by inserting a single article in the present Convention.

13. Mr. TREVOR (United Kingdom) said that it was not beyond the bounds of possibility that the Vienna Convention would deal with certain new aspects which had not been very apparent in Paris, so that it might in certain respects represent an improvement on the Paris Convention: a statement that it was automatically subservient would remove the opportunity for improvement.

14. He felt somewhat confused in regard to the arguments of the United States delegate, who had insisted that the Paris Convention, but not the

international agreements in the field of transport, should be preserved. In fact, however, the Paris Convention itself preserved those agreements, so that the adoption of the United States proposal would create an unsatisfactory and unreasonable situation for States which ratified both the Paris and Vienna Conventions: if the Paris Convention was before the courts it would be necessary to apply the international transport conventions; those conventions would, on the other hand, be held to be inapplicable if the Vienna Convention was before the courts.

15. Mr. KENT (United Kingdom), elaborating on Mr. Trevor's remarks, said that it was true that when such important conventions as the Warsaw Convention of 1929, the International Convention on Bills of Lading, 1924 and the European Rail Convention (CIM) had been drafted, the carriage of nuclear material had not been envisaged, but it would be strange if liability under those conventions was in future to be decided by whether or not the victim belonged to a State acceding to the present Convention. The Warsaw Convention, for example, had been ratified by over 70 States, more than were represented at the present Conference: States that had ratified the Warsaw Convention but were not represented at the present Conference could not be expected to accept a decision of the Conference to overrule that convention in favour of the provisions of the present Convention. The proper procedure, if it was considered necessary to amend the transport conventions, would be to convene a meeting for that purpose as had been done in connection with the European Rail Convention (CIM) in February 1961: a new convention had been adopted which included a provision excluding liability for nuclear damage where, under the law of the Contracting State in question, special provisions applied to such liability.

16. The weakness of the United States proposal was only too apparent. Supersession was confined to States parties to the Convention, so that the international transport conventions could only be superseded as between States which had ratified the Vienna Convention. It was clear from paragraph 2 that nothing would affect the obligations of Contracting States to non-contracting States arising under any international convention or agreement. It would therefore be impossible to provide for the supersession of the international transport conventions unless the Contracting Parties to those conventions were the same as the Contracting Parties to the present Convention.

17. It was true that the United States proposal followed closely the formula, suggested by the United Kingdom, which had been used in Article XIV of the Brussels Convention. In the Brussels Convention, however, the operator made liable under the Convention was the same person as the carrier. It was clear, therefore, that there would be a conflict between the liability of one and the same person in his capacity as an operator under the Brussels Convention and his liability as a carrier under existing transport conventions, and that it was essential to state which liability should prevail. It had been decided that the Brussels Convention should in that respect supersede existing transport conventions. In his delegation's view, the position was entirely different in the case of the present Convention, which concerned the operators of land-based installations. There was no reason to exonerate the carrier from liability under existing conventions, because no conflict would exist.

18. The solution suggested by the United Kingdom (CW/1, amendment 37) was the simplest one possible, being confined to a statement that the Convention concerned the liability of the operator for nuclear damage, leaving the obligations of the carrier under existing transport conventions untouched except that, where the liability of the carrier arose from nuclear damage, it was suggested that he should be given the right of recovery for compensation paid to the victim in accordance with Article VII, paragraph 2 (a).

19. The litigation to which, according to the United States delegate, the shipowner might be open would in any case arise where the victim could not take advantage of the present Convention: where he could do so, he might well prefer to proceed against the operator rather than the carrier because the limit of liability was very much higher under the present Convention than under most transport conventions.

20. Mr. YAMANO (Japan) supported the United States proposal. The present Convention should, in general, supersede other conventions because of its universal character, and the fact that it stipulated a special regime for the field of nuclear energy. However, he felt some sympathy with the view that the special interests of signatories of the Paris Convention should be taken into account and that compatibility should be maintained between the two conventions. While he could therefore agree that the Paris Convention should not be superseded by the present Convention, no further exceptions should be allowed. In regard to the liability of shipowners, he endorsed the views of the United States delegate.

21. Mr. GASIOROWSKI (Poland) said that all three proposals before the Committee were open to criticism. The United States proposal contained a manifest contradiction which had already been pointed out by the United Kingdom delegate. On the one hand it established the principle that the present Convention should supersede any preceding instrument or international agreement while on the other hand it declared that principle inapplicable with regard to the Paris Convention. If an exception was to be made for that convention, why not for the transport conventions? It must also be remembered that there were a number of bilateral agreements concerning nuclear energy in addition to the multilateral conventions, and they too must be taken into account. In regard to the Belgian proposal, it was not accurate to state that the present Convention should not "modify" previous conventions. It must be remembered that the present Convention would go further than others and would include new provisions. The States ratifying it would therefore assume further obligations, and to that extent, existing conventions would be modified. Finally, the United Kingdom proposal was unnecessary, since the obligation on the carrier to provide compensation under an existing international transport convention would, in any case, stand. The problem was too complex for the present Conference to solve without profound study. The relationship between conventions was indeed an important problem of public international law. Unless time could be found to examine it thoroughly and agree on a formula which would not be open to criticism, it would be preferable to leave the question in abeyance. The specific difficulties which might arise would then be dealt with in accordance with general international law.

22. Mr. SCHEFFER (Netherlands) considered that the two problems, that of the relation of the Convention to international transport conventions, and

that of its relation to other conventions in the field of liability for nuclear damage, must be dealt with separately and not in a single article. In regard to transport, he had little to add to the able statement by the United Kingdom delegate. The United States and Belgian proposals seemed somewhat out of place in a convention whose purpose was to commit States to introducing uniform rules on the liability of operators. Though it certainly would be desirable to have uniform rules applied everywhere so that the same nuclear incident was not governed by different regulations, that ideal solution could never be attained completely, so that there would always be cases in which it was not clear which rules applied. The complexity of the problem was such that his delegation strongly supported the setting up of a special working group.

23. Mr. WEITNAUER (Federal Republic of Germany) also supported the establishment of a special working group.

24. The United States proposal offered no solution, but merely transferred the problem to the lawyers and the courts. It would be an unfortunate method of dealing with previous conventions to state that the present Convention superseded everything which had gone before. The general application of such a principle would create great disorder. His delegation therefore favoured the United Kingdom proposal.

25. Mr. SPAČIL (Czechoslovakia) could not accept the proposal that the three nuclear conventions, including the present Convention, however satisfactory they were, should have priority over all other conventions and agreements in case of conflict. Only a few international agreements, such as the United Nations Charter and the Universal Declaration of Human Rights, could be granted such supremacy. In his view, the customary procedure should be followed of allowing the two Contracting Parties concerned to decide on the most reasonable approach in the particular circumstances whenever a conflict arose between two conventions to which they were both party. His delegation would prefer that no article on the subject should appear in the Convention. If the majority favoured the inclusion of an article, however, he would suggest that it should be along the lines of the provision included in the recently adopted Vienna Convention on Consular Relations.

26. Mr. TAGUINOD (Philippines) said that under the existing international transport conventions the liability of the carrier was in most cases predicated on fault or negligence. He therefore felt somewhat disturbed at the possible effect should Article VII, paragraph 2 (a) be adopted: it would be possible for a carrier who had been sued for his fault or negligence to be allowed a right of subrogation against an operator liable under the present Convention whose liability would be absolute. That would be a completely anomalous situation. The United States proposal would simplify matters and his delegation would support it.

27. Mr. VILKOV (Union of Soviet Socialist Republics) pointed out that the Paris Convention had been signed by 16 States, whereas there were some 80 Members of the IAEA, over 50 being represented at the Conference. It was clear, therefore, which convention should be subordinate: such an important conference should not place itself in a position where it had to adapt the provisions of its draft to those of a regional convention. It was for the 16 signatories of the Paris Convention to settle, as a domestic matter, any conflict which might arise between the two conventions. There would cer-

tainly be other conventions whose provisions could be invoked by their signatories against the present Convention. The Soviet delegation therefore proposed that the normal procedure of international law should apply in regard to conflicts of law.

28. In regard to the international transport conventions, the United States proposal could only lead to chaos. It would be impossible to provide by a single sentence in the present Convention that it superseded all other conventions ratified by States, including States not represented in the Conference. In his view it would not only be outside the competence of the Conference, but very rash, for it to attempt to do so.

29. The solution lay in the accepted and satisfactory process of international law whereby a conference could be convened when it was found necessary to revise an earlier convention. The Warsaw Convention, for example, had been revised in 1955 at the Hague and in 1960 in Mexico.

30. Although such a provision was strictly speaking unnecessary, in order to meet the wishes of some delegates an article might be included such as was customary in international conventions, to the effect that the provisions of the present Convention did not modify other international agreements in force between the participating States.

The meeting rose at 1 p.m.

SEVENTH MEETING

Friday, 3 May 1963, at 3.20 p.m.

Chairman: Mr. McKNIGHT (Australia)

CONSIDERATION OF THE DRAFT CONVENTION ON MINIMUM INTERNATIONAL STANDARDS REGARDING CIVIL LIABILITY FOR NUCLEAR DAMAGE (CN-12/2) (continued)

Relation with other international agreements (continued)

1. Mr. GUDENUS (Austria) expressed his preference for the Belgian proposal (CW/14) as covering the problem adequately, though he felt some modification in the drafting was necessary. He was in favour of referring the proposal to an ad hoc working group for that purpose.

2. Mr. COLOT (Belgium) insisted that his proposal would retain the force of the Paris and Brussels Conventions as between the parties to those conventions, but only as between those parties. It would clarify the position of parties to the present Convention who were not also parties to those conventions.

3. Mr. HARDERS (Australia) said that the fact that the United States proposal (CW/71) followed Article XIV of the Brussels Convention appeared to cause some difficulty to the United Kingdom delegate but he found the explanation given by the United States delegate convincing enough. On the

surface the United States proposal might appear to give rise to possible difficulties in regard to actions brought against shipowners but on careful analysis he could see only two alternatives. If the injured party were a national of a Contracting State he would in fact be more likely to sue the operator under the Vienna Convention; if he were a national of a non-contracting State no conflict could arise. He proposed that the attention of organizations interested in international transport should be drawn to the problem and it be left to them to deal with it.

4. Mr. MAURER (United States of America) said, first, that he wished to correct a misapprehension about paragraph 1 of the United States proposal. That paragraph referred to the Paris Convention and the convention supplementary thereto, but not to the Brussels Convention, with which no question of conflict arose. Secondly, with regard to the Paris Convention, the United States position was simply that it was desirable to allow regional groups to work out rules for themselves which would be binding between them. That did not mean, as the United Kingdom delegate had indicated, that the United States approved all the rules in the Paris Convention. There was, for example, a provision as to transport in the Paris Convention, also one on execution of judgments, and several other provisions which the United States delegation was personally not sympathetic to. It was quite willing to have those continue in force among the parties to the Paris Convention. However, the United States delegation thought it would be improper for the Paris Convention countries to insist that the transport provision in that convention, whether a good or a bad rule, should be incorporated in the Vienna Convention, and it was undesirable and impossible that the Vienna Convention should be an exact copy of the Paris Convention.

5. Further, the problem had been raised of Contracting Parties being bound by different rules vis-à-vis different countries. There was nothing unusual about that, however, in fact, all countries with a well-developed treaty system often found themselves under different obligations to different countries in cases of the same kind.

6. Most important of all, although he had listened with great care to the argumentation, he had not heard any refutation of the point that the United Kingdom transportation provision was bad. The United States delegation had shown it was bad as being inconsistent with the underlying aim of the Conference, namely to provide in the Convention, the best possible regime for all cases of nuclear incidents. The second respect in which it was bad is that it did not afford protection to the shipping interests or the air interests. The United States delegation had heard no flat statement that under the United Kingdom proposal there would be no liability for air carriers and ship carriers; it had heard no flat statement that shippers or air carriers found liable under their conventions had a complete right of recourse which would entirely indemnify them in all cases. With regard to the statement of the Australian delegate, a victim might very well not sue the nuclear operator but the carrier, thinking he might recover more. The victim would have to choose and would be confused. With regard to Article XIV of the Brussels Convention, an ineffectual effort had been made to distinguish it from the supersession clause proposed by the United States. The two clauses were exactly alike in superseding in an ad hoc way the Air Conventions (Warsaw and Rome) and the Ship Conventions (Bills of Lading and Ship Owners

Limitation of Liability). Thus, if there were a case where an aircraft collided with a nuclear ship and caused a nuclear incident, regardless of the Rome Convention or the Warsaw Convention the provisions applicable to the incident would be those of the Brussels Convention, and the carriers and crew would be exculpated from any liability; that was exactly the rule that the United States wished to have applicable to land installations in the present Convention. Thus, if in the case of the Brussels Convention, it had been possible to establish a precedence for the regime of that convention over the transportation conventions in incidents involving conventional ships and conventional aircraft colliding with a nuclear ship, it was possible, without any legal hindrance, to establish a similar precedence for the regime of the present Convention over the transportation conventions in incidents involving conventional ships and aircraft colliding with a ship carrying nuclear material.

7. Mr. SCHEFFER (Netherlands) moved that the discussion be adjourned under Rule 22 of the Rules of Procedure and that a sub-committee be established to study all the proposed amendments and present a combined amendment if possible.

8. Mr. MAURER (United States of America) said that after so much time had already been spent it was undesirable to refer the matter to a sub-committee, which could only produce a new document for discussion. There were, in essence, four alternative courses: (i) no supersession clause; (ii) nothing in the present Convention to affect any other convention; (iii) the present Convention to supersede wherever a conflict between it and another convention arose; (iv) the present Convention to supersede except in regard to the field of transport. A separate question was whether the present Convention should contain a provision that it would not supersede the Paris Convention as between the parties to that convention. He urged that the Committee should vote on those principles and then refer the matter to the Drafting Committee.

9. Mr. BOULANGER (Federal Republic of Germany) and Mr. KENT (United Kingdom) supported, and Mr. RAO (India) - for the reasons advanced by the United States delegate - opposed, the motion tabled by the Netherlands delegate.

10. The CHAIRMAN put the Netherlands delegate's motion to the vote.

11. There were 24 votes in favour and 13 against, with 8 abstentions. The motion was carried.

12. Mr. MAURER (United States of America), on a point of order, asked for some date to be set for the sub-committee to report back in order that there might be sufficient time to consider its proposals carefully before the close of the Conference.

13. The CHAIRMAN assured the United States delegate his preoccupation would be borne in mind. He asked delegates who wished to serve on the sub-committee to give their names to the Secretariat in order that he might know their wishes before announcing its composition[1].

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[1] See 8th meeting, para. 1.

Execution of judgments

14. The CHAIRMAN pointed out that there was no basic proposal before the Committee in the form of a text recommended by the Intergovernmental Committee. Proposals had been submitted, however, by Norway, Philippines and the United Kingdom (CW/1, amendments 114, 115 and 116) and also by the United States of America (CW/4), the Netherlands (CW/72) and Brazil and the United States of America jointly (CW/75). The United States of America was prepared to withdraw its proposal if the joint Brazilian/United States proposal was adopted.

15. Mr. MAURER (United States of America), introducing the joint proposal (CW/75), said it was based on the United Kingdom proposal (CW/1, amendment 116), except for paragraph 1 (iii), to which he attached special importance. The United States had never entered into a single agreement dealing with the recognition of judgments and if it was to do so now that agreement must meet the United States constitutional requirements. For that purpose paragraphs 1 (i) and (ii) were not sufficient and sub-paragraph (iii) was required to cover substantive due process. The phrasing of that sub-paragraph as it related to "fundamental standards of justice", had been taken in preference to the more normal formula "not in accordance with due process" since that might not be clear enough to non-Common Law countries. He would leave the explanation of the term "contrary to the public policy of the Contracting State" to the delegate of Brazil.

16. He stressed that the sub-paragraph was not intended as an escape-clause. The final clauses should provide that any disputes as to whether the provision had been abused for the purpose of evading responsibility for enforcing a particular judgment of a foreign court should be referred to the International Court of Justice.

17. Mr. RAO (India) said the Convention should contain no provision for the execution of judgments through the courts, except in the case of recourse actions. The execution of judgments should be the responsibility of Governments, without the victims needing to resort further to courts of law. It would be a denial of justice if victims who had received satisfaction from one court should have to go to court once more, and often to foreign courts, for the execution of that judgment. He suggested a new article recognizing the State's responsibility for seeing that judgments were executed, along the lines of the United States proposal reproduced in document CN-12/2, paragraph 55

18. Mr. DUNSHEE de ABRANCHES (Brazil) said the execution of foreign judgments was a matter which was not yet agreed upon by jurists. The recent draft conventions on the subject prepared in Hamburg (1962), by the International Academy of Comparative Law, and in Brussels (1963), by the International Law Association, had approached the problem in much the same way as the joint Brazilian/United States proposal. That approach, which was similar to the one adopted in recent nuclear conventions, was now accepted by most jurists as basically just. He pointed out the differences in the concepts of "jurisdiction" and "competence" in Civil and Common Law. The concept of "public policy", which was equivalent to the Civil Law "ordre publique", had been fully dealt with by many writers and required no further explanation. It had been introduced to provide a com-

promise between the two legal systems so as to ensure the unreserved approval of the greatest possible number of States.

19. Mr. ROGNLIEN (Norway) said the Norwegian proposal (CW/1, amendment 114) was also similar to the United Kingdom proposal, with the exception of paragraph 4. Under that paragraph judgment would be recognized only within the limitations laid down in Article IV and the execution would be suspended if the total amount laid down in that article was likely to be exceeded.

20. He was not in favour of paragraph 1 (iii) of the Brazilian/United States proposal as it introduced a new concept which would be difficult to apply in the Norwegian courts. The concept of "public policy" was well known but inappropriate in the present context.

21. Mr. ZALDIVAR (Argentina) said the Argentine delegation was against including any clauses on the execution of judgments, owing to the diversity of juridical concepts to be covered. Some had already been mentioned and he felt that the concept of public policy was anything but clear. He agreed with the Indian delegate that the Convention should simply include a general statement to the effect that it was the State's responsibility to see that foreign judgments were executed, leaving it to the State to take whatever action to that end was necessary and appropriate under its domestic law.

22. Mr. NESTOR (Romania) considered that the Convention should contain provisions concerning the recognition and execution of judgments in order to make the indemnification effective, since general agreements concerning the recognition and execution of judgments existed, in most cases, only between neighbouring countries, and sometimes not even between them. With regard to the general principle by which the work on such clauses should be guided, he believed that account should be taken of the fact that judgments entered by the competent courts were not ipso jure executable in the territory of the other Contracting Parties. It was necessary that a certain amount of control be exercised by the competent courts of the State in which execution was sought. Nevertheless those courts must not proceed to a re-examination of the substance of the matter. They should, however, be able to satisfy themselves that the judgment was a final one, that the court which had entered the judgment had been competent to do so, that the party against whom the judgment was rendered had been duly informed so as to be in a position to defend himself and, finally, that the execution of such a judgment was not contrary to the public policy of the State in which execution was sought. It might not be inappropriate to provide in the Convention that the costs of litigation with regard to the recognition and execution of judgments to which the Convention applied should not be higher than those prescribed for the execution of national judgments.

23. Mr. TREVOR (United Kingdom), introducing his proposal (CW/1, amendment 116), said the point had been discussed at great length at the time of the Brussels Convention. Since the problems which arose in connection with the present Convention were much the same, his proposal was based on Article XI. 4 of the Brussels Convention.

24. He agreed with the Norwegian delegate that the United States proposal introduced concepts unknown to international conventions and he was strongly opposed to any such innovation. He was not in favour of the final clauses permitting disputes regarding the execution of judgments to be referred

to the International Court of Justice as that could introduce considerable delay in the payment of compensation. He agreed with the Romanian delegate that there must be some clause. He also felt that the Indian proposal was not sufficiently clear and suggested that if the matter were left to municipal law there might be more delay than with a proper enforcement clause.

25. Mr. KORCHAK (Ukrainian Soviet Socialist Republic) said that the difficulty before the Committee was to achieve a correct balance between international and national law. The position of countries which could not accept a text conferring automatic jurisdiction upon foreign courts must be taken into account.

26. Mr. TAGUINOD (Philippines) said that his delegation's proposal (CW/1, amendment 115) was similar to that of the United Kingdom in substance, with the exception of one point, which was contained in the last phrase of paragraph 2 (b). His delegation believed it essential that a claimant, as well as an operator, should be given a fair opportunity to present his case.

27. He agreed with speakers who found it difficult to accept paragraph 1 (iii) of the Brazilian/United States proposal (CW/75).

28. Mr. PAPATHANASSIOU (Greece) said he could not agree with the Indian and Argentine representatives that the Convention should contain no provision on execution of judgments, for such a clause was essential from the point of view of international good faith. Even with such a clause, there would be nothing to prevent interested States from concluding bilateral agreements to facilitate the execution of judgments even further.

29. Nor could he agree with the United Kingdom delegate that the references to fundamental standards of justice and to the public policy of the Contracting State in paragraph 1 (iii) of the joint Brazilian/United States proposal were too vague. There was, moreover, a definite connection between the two concepts in that paragraph. However, he could not fully endorse paragraph 3 of the joint proposal, since it was conceivable that proceedings might be reopened if the health of the victim deteriorated after the judgment had been given. The Drafting Committee might consider including a provision to cover that point.

30. Mr. BELLI (Italy) said he could not agree with delegations which saw no need for a provision on execution of judgments; from the practical point of view, victims of nuclear damage must have the certainty that judgments given in their favour in one Contracting State would be enforced in other Contracting States. On the other hand, he could not support the joint proposal, which was an unfortunate attempt to combine Anglo-Saxon and Latin law. He agreed with the United Kingdom and Netherlands delegates that the rules already accepted in Article XI of the Brussels Convention should be followed as closely as possible.

31. Mr. NISHIMURA (Japan) said his delegation was in favour of including an article on the execution of foreign judgments and was prepared to accept Article XI of the Brussels Convention as a model, with reference to the public policy of the Contracting State as an additional criterion; on the other hand, he was not sure of the exact meaning of the term "fundamental standards of justice".

32. Mr. EDLBACHER (Austria) observed that Article IX was restrictive, in that it conferred exclusive competence on the courts of a single State. His delegation would not oppose a clause on the execution of judgments which

would somewhat broaden that provision. At any rate some such clause was essential. It was true that there were already many agreements on the subject, but those were mostly bilateral instruments concluded between neighbouring countries. In a multilateral convention, the provision must be extremely simple if it were to ensure that victims received their dues. He was therefore opposed to the joint proposal, and particularly to paragraph 1 (iii); the concepts of "fundamental standards of justice" and 'public policy" were subject to a number of interpretations, which differed even among European countries.

33. He was inclined to favour the Norwegian proposal, but wished to put two questions with regard to paragraph 4 of that text. In the first place, since paragraphs 1 to 3 referred only to a final judgment, it was surprising to find a reference to execution being suspended until final judgment or other settlement had been given. Secondly, he asked why the court of the Installation State was the only one to be accorded the faculty of suspending execution of judgment.

34. Mr. GASIOROWSKI (Poland) said, in regard to the criticism that the term "public policy" in the joint proposal was too vague, that the Committee must bear in mind the fact that it was dealing with a multilateral convention. For practical reasons, it was difficult to say that a judgment given in one country should automatically be recognized in countries with very different social structures; moreover, the need to safeguard State sovereignty could not be ignored. Clauses referring to public policy, which was a fully recognized concept in continental legal systems, appeared in a number of international agreements on legal assistance.

35. Mr. HENAO-HENAO (Colombia) said that three main trends had emerged from the debate. The first was towards omitting an enforcement clause altogether; the second and third, represented by the joint proposal and the United Kingdom, Norwegian and Philippine proposals respectively, differed in their approach to the enumeration of the cases where a State requested to recognize and execute a foreign judgment might refuse or delay such recognition and execution. The Colombian delegation was in favour of an intermediate solution: the provision should be neither too abstract nor too detailed, but should constitute a common denominator of the various countries' requirements. Thus, the text might be based on paragraphs 1 and 2 of the joint proposal, with the exception of paragraph 1 (iii), which entered into unnecessary detail; in particular, there was no need to refer to "fundamental standards of justice", since it was axiomatic that those standards were always applied by the competent court.

36. Mr. ZALDIVAR (Argentina) explained that the reason why his delegation was against including rules of enforcement in the Convention was because it was so difficult to enumerate all the possible criteria of non-enforcement. It was noteworthy in that connection that none of the proposals so far submitted seemed to be generally acceptable.

37. Mr. DUNSHEE de ABRANCHES (Brazil) pointed out to critics of the term "public policy" that the 1927 Convention on the Enforcement of Arbitral Awards contained a "public policy clause". That instrument had been signed by ten countries and a number of others had subsequently acceded to it. A number of other instruments existed as proof that the concept of public policy was thoroughly established in international law

38. Mr. RAO (India) took exception to the United Kingdom delegate's assertion that the new text proposed by the Indian delegation was imprecise. If arrangements for expeditious payment of compensation were entrusted to the executive organs of the State, the victims would receive their dues much more quickly than they would under the United Kingdom proposal, for the legal proceedings might take years. Even if the State were slow to take action, pressure could be exercised through diplomatic channels; under the procedure proposed in the United Kingdom proposal, however, nothing would happen if execution were delayed, and if diplomatic channels were used, the answer would naturally be that the question was sub judice.

39. Mr. MAURER (United States of America) considered that, procedurally, three matters of principle should be decided by the Committee; first, the need for any enforcement clause; secondly, whether that clause should take the form of a general provision along the lines proposed by the Indian delegation; and, thirdly, whether the criteria of non-enforcement should or should not include that contained in paragraph 1 (iii) of the joint proposal. Depending on the latter decision, the Norwegian, Netherlands and Philippines amendments could be combined with the principle adopted.

40. Turning to criticisms of the term "fundamental standards of justice" in the joint proposal, he said it was merely a longer way of expressing the notion of due process. Some doubt had been expressed as to whether the International Court of Justice could accept the term and act on it; his delegation believed that the Court, which based its decisions on "general principles of law recognized by civilized countries", could certainly decide whether or not a given judgment was in accord with fundamental standards of justice. As for the term "public policy", he cited three conventions, one between the United Kingdom and France, another between the United Kingdom and Belgium and a third between France and Italy, which all contained "public policy clauses".

41. Mr. TREVOR (United Kingdom) observed that the conventions to which the United States delegate had referred were bilateral instruments. The United Kingdom was fully aware of what France and Belgium meant by public policy, but that did not necessarily apply to all countries. Nevertheless, his delegation had no rigid views on the use of the term and, moreover, differentiated between the use of the expression by itself and in conjunction with the term "fundamental standards of justice".

42. The CHAIRMAN suggested that the Committee should vote on three principles, first, whether the Convention should contain a clause on the execution of judgments, secondly, on the principle contained in paragraph 1 (iii) of the joint proposal and, thirdly, on the principle contained in the United States proposal reproduced on page 26 of document CN-12/2.

43. Mr. ROGNLIEN (Norway) moved that the debate be adjourned and a sub-comittee set up to consider all proposals made in connection with the execution of judgments.

44. Mr. MAURER (United States of America) and Mr. ZALDIVAR (Argentina) opposed the motion, on the ground that the work of any sub-committee that might subsequently be set up would be greatly simplified by some decisions of principle by the Committee.

45. Mr. SCHEFFER (Netherlands) supported the Norwegian motion. Some

aspects of the problem could best be discussed in a small sub-committee, and a vote on principles would merely be a waste of time.

46. The CHAIRMAN put the Norwegian delegate's motion to the vote.

47. There were 26 votes in favour and 13 against, with 6 abstentions. The motion was carried.

48. The CHAIRMAN said that he would announce the sub-committee's composition in due course.[2]

The meeting rose at 6 p. m.

[2] See 8th meeting, para. 2.

EIGHTH MEETING

Tuesday, 7 May 1963, at 10. 40 a. m.

Chairman: Mr. McKNIGHT (Australia)

COMPOSITION OF THE SUB-COMMITTEE ON RELATIONS WITH OTHER INTERNATIONAL AGREEMENTS, AND OF THE SUB-COMMITTEE ON EXECUTION OF JUDGMENTS

1. The CHAIRMAN announced that the Sub-Committee on Relations with other International Agreements would consist of the delegates of Belgium, Brazil, the Czechoslovak Socialist Republic, France, the Federal Republic of Germany, India, Japan, the Netherlands, the Philippines, Romania, Sweden, Switzerland, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland and the United States of America.[1]

2. The Sub-Committee on Execution of Judgments would be composed of the delegates of Argentina, Belgium, Brazil, Italy, Japan, the Netherlands, Norway, Romania, Turkey, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland and the United States of America[2].

CONSIDERATION OF THE DRAFT CONVENTION ON MINIMUM INTERNATIONAL STANDARDS REGARDING CIVIL LIABILITY FOR NUCLEAR DAMAGE (CN-12/2) (continued)

Article II (resumed[3])

Paragraph 1 (continued)

3. The CHAIRMAN recalled that the main point that the Committee would have to consider with regard to Article II, paragraph 1, was the test for

[1] The Sub-Committee's report was in due course issued as document CN-12/CW/104 and Corr.1.

[2] The Sub-Committee's report was in due course issued as document CN-12/CW/94 and Corr.1.

[3] 5th meeting, paras. 54-58.

determining the transfer of liability when nuclear materials passed from one operator to another. The operators would usually be land-based, but the provision also covered transfer of nuclear material from one nuclear ship to another.

4. Under the Netherlands amendment (CW/1, amendment 25), the test for the transfer of liability between land-based operators was entry of the material into the territory of the receiving operator, and in the case of nuclear ships the assumption of physical control. The Belgian and Greek amendments (CW/17 Nos. 1 and 2 and CW/51) in fact eliminated the contract test and substituted "taking in charge". The Austrian amendment (CW/25 No.1) provided that the test should be the conditions fixed by the Installation State and, in default, taking in charge. The joint Swedish, United Kingdom and United States amendment (CW/76), which replaced the United States amendment (CW/10 No. 1) and the Swedish amendment (CW/48), provided separate tests for land-based operators and for transport to and from nuclear ships; the existing text of paragraph 1 would thus apply only to land-based operators, whereas the test for nuclear ships would be that of taking in charge.

5. The Greek amendment (CW/51) also provided that the words "under a contract with him" in sub-paragraph (c) (iii) should be replaced by the words "with his consent". In the Swedish amendment (CW/48) the introductory words established a connection between damage and a nuclear incident, and that connection was repeated in the joint amendment CW/76. The joint amendment submitted by Denmark and Norway (CW/79) provided an exception where nuclear material was stored.

6. He suggested that the Committee should begin its debate on that complicated paragraph by considering only the test for transfer of liability. Where the operators were land-based, the Committee could decide between four variants: whether the test should be (1) entry into the territory of the receiving operator; (2) taking in charge; (3) the conditions fixed by the Installation State or, in default, taking in charge; or (4) the express terms of a contract or, in the absence of a contract, taking in charge. Where material was transferred to or from a nuclear ship, the Committee should decide whether the test should be physical control.

7. After that decision had been taken, he would ask the Austrian delegate whether he would maintain as a separate test the conditions fixed by the Installation State. The Committee should also examine the principle of taking in charge as such; and the Greek delegation might consider whether its point on sub-paragraph (c) (iii) could be referred to the Drafting Committee. The Committee might also examine the connection between damage and a nuclear incident, and the Danish-Norwegian amendment.

8. Mr. RAO (India) said his delegation had wished to submit a proposal to delete sub-paragraphs (b) (iii) and (c) (iii) of paragraph 1, but had not done so because it had not been sure of the final decision on Article I A. Now that that article had been adopted, those two sub-paragraphs fitted into the scheme of the text: the Convention would not be applicable to nuclear incidents occurring in the territory of non-contracting States unless the law of the Installation State so provided. Accordingly there was no need to provide for liability before or after the nuclear material was unloaded from or loaded on the means of transport by which it had arrived in or was to be

carried from the territory of a non-contracting State, since the incidents concerned were excluded under Article I A.

9. Mr. NORDENSON (Sweden) observed that the provisions to which the Indian delegate had referred did not relate only to incidents occurring in non-contracting States. For example, if the United States of America had not ratified the Convention but Sweden had done so, and a Swedish operator sent a consignment of nuclear material to an operator or other person residing in United States territory, and the consignee took charge of the material and then sent it to a third person by ship through the high seas, and it subsequently entered the territory of a contracting State, where a nuclear incident took place: then, if there were no clause along the lines of sub-paragraph (b) (iii), the Swedish operator would continue to be liable. That example showed the need for a clause providing a final limit of liability.

10. Mr. GHELMEGEANU (Romania) said that paragraph 1 contained an element essential to the general system of the Convention: the primary responsibility of the operator. Paragraph 5 re-stated that principle and drew special attention to possible exceptions; accordingly the remainder of the article contained auxiliary provisions. The amendments which suggested derogation from the principle that the transfer of liability should be subject to an express contract were not convincing, and the arguments adduced in their favour were somewhat contradictory. In most systems of national law and in international transport conventions, taking in charge was no substitute for a written contract, but merely an event complementary to a contract.

11. The Netherlands delegate had suggested, in the explanation to his amendment, that a third party might not be aware of the contents of a contract; but the factual taking in charge of the nuclear material could be ascertained objectively. The Indian delegate had rightly stressed (CN-12/1/Add. 1, page 10) that taking in charge would raise questions of fact giving rise to a complex situation which would have to be determined by the court on evidence, and would inflict difficulty and delay on victims. The Romanian delegation shared the view expressed in the explanation to the Philippine amendment (CW/1, amendment 27) that it was more realistic to leave the question of transfer of liability to be settled primarily by the express terms of the contract between the operators.

12. He therefore supported the Intergovernmental Committee's text of the paragraph. It was essential not to obscure the fundamental idea of the responsibility of the operator, which provided the best guarantee that victims would not become embroiled in procedural difficulties.

13. Mr. RAO (India) observed that, if the example given by the Swedish delegate was valid, there was no need to include in sub-paragraph (b) (iii) the words "is unloaded from the means of transport by which it", since that phrase implied coverage of nuclear incidents occurring in the territory of non-contracting States. The wording of the paragraph should reflect the Committee's decision on Article I A.

14. Mr. EDLBACHER (Austria) said that his delegation would withdraw its amendment (CW/25 No. 1) if the Committee could accept a solution whereby the criterion for the transfer of responsibility derived from the Convention itself and did not depend on a contract between two operators, since the latter solution was contrary to Austrian law. The victims should be able to ascertain definitely who was responsible for the nuclear incident.

The Austrian delegation could accept as a criterion taking in charge, or perhaps the solution proposed in the Netherlands amendment (CW/1, amendment 25).

15. Mr. ROGNLIEN (Norway), commenting on the Indian delegate's remarks, observed that Article I A as approved by the Committee contained two paragraphs, the first relating to damage to and compensation of the victims, and the second to claims for reimbursement of damages paid to victims. The provisions of sub-paragraphs (b) (iii) and (c) (iii) were unnecessary in respect of Article I A, paragraph 1, but provided a necessary limitation to recourse in respect of paragraph 2.

16. Mr. COLOT (Belgium) could not agree that operators should be able to transfer their responsibility by contract only. First, such a provision would open the door to fraudulent transfer to an insolvent operator. Secondly, Belgian law allowed contracting out of responsibility only for very slight damage. Thirdly, the contract might be secret and the victim might consequently be unaware where to apply for compensation. His delegation therefore preferred the criterion of taking in charge as a more certain guarantee for the victim; moreover, that solution had been used in earlier conventions. It was prepared to withdraw its amendments (CW/17 Nos. 1 and 2) in favour of the Greek amendment (CW/51).

17. Mr. PAPATHANASSIOU (Greece) endorsed the Belgian delegate's views. The criterion of express contract was dangerous and vague, since notions of contract varied greatly from country to country, and the operator could impose his will on the victims by obtaining exoneration to their detriment. The criterion of taking in charge might be imperfect, but had the advantage of being subject to examination by courts and not being left to the arbitrary decision of interested parties.

18. Mr. SCHEFFER (Netherlands) observed that the opponents of the criterion of the express terms of a contract argued that the victims should be given an objective criterion other than a reference to a contract between operators. It had been further argued that operators would not be entirely free in concluding contracts, because the Government of the Installation State could prescribe how those contracts were to be concluded; the possibility of control, however, should be clearly stated in the Convention.

19. A number of delegations seemed to be in favour of the taking in charge test; but its use in the Paris and Brussels Conventions had proved that it was open to a number of interpretations. Some delegates argued that the interpretation could be left to the courts; but that was a highly unsatisfactory solution. The expression "taken in charge" appeared in various pieces of transport legislation, but its meaning depended on material rules of law which differed from one branch of transport to another. The term actually meant taking over physical control, but could not be used to indicate the point of transfer of liability. On the other hand, the Netherlands amendment (CW/1, amendment 25) was brief and clear, and ensured that the maximum limit fixed by a State should always apply in its territory.

20. Mr. GASIOROWSKI (Poland) could not agree with the Austrian delegate that the criterion of the express terms of a contract was unsatisfactory because the liability was not contractual. The object of the Convention was to establish objective liability for a risk, and not subjective liability for a fault. Nor could be share the misgivings about fraudulent transfer of liabi-

lity to an insolvent operator: all States had systems of insurance or guarantee for the observance of duties by those who had undertaken them. The objection to the criterion of the terms of a contract on the ground that those might be secret was invalid, because the issues would be decided by the competent courts, which would have all the evidence before them.

21. He fully endorsed the arguments adduced against the criterion of taking in charge, and supported the Intergovernmental Committee's text, which maintained the principle that the parties could determine their liability by contract.

22. Mr. TREVOR (United Kingdom) agreed with the Polish delegate. The Netherlands amendment would entail the additional expense of two distinct insurances for the two operators, and would unnecessarily hamper the carriage of nuclear material. Moreover, it would be difficult to agree on exactly what international boundaries would be crossed, since no international decision had been reached on the extent of the territorial sea.

23. Mr. JARVIS (Canada) said that his country's delegation to the Intergovernmental Committee had at one time put forward the solution proposed in the Netherlands amendment; but further consideration and actual transactions had convinced it that the territorial test would not operate satisfactorily in practice. Customs posts or airports at which nuclear material arrived might be many miles within the boundary of a State.

24. With regard to the test of express terms of the contract, experience had shown that permission to export or import would be given only after countries had considered various aspects of dispatch.

25. Mr. FERRO (Hungary) said it was a basic principle that transfer of liability depended on the will of the interested parties, reflected in a written contract, and in such a delicate matter as the transfer of liability for the carriage of nuclear materials the Convention should on no account prevent the parties from adopting that procedure. Secondly, sub-paragraphs (b) (i) and (b) (ii) of the Netherlands amendment seemed to be mutually contradictory. Thirdly, "physical control" was not a legal concept; if an operator refused to accept the material, there could be no question of physical control, and the liability would remain with the supplier. Physical control could therefore only be legal if it were expressed in writing. Fourthly, the territorial concept was ambiguous, since the international problem of the territorial sea remained unsolved. Lastly, the solution proposed by the Intergovernmental Committee was far more satisfactory than any of the amendments.

26. Mr. SCHEFFER (Netherlands) could not agree with the United Kingdom delegate that division of liability between two operators would be more expensive, since the question was one of distance, and insurance would be shared on a territorial basis. He had also been surprised by the argument that it might be difficult to ascertain territorial boundaries, since every State was fully aware of its own frontiers, even though no international agreement had been reached on the territorial sea.

27. The Canadian delegate's argument also seemed to be unfounded, since the question was not one of customs control but of the place where an incident occurred, and that could always be ascertained. He could not understand the Hungarian delegate's assertion that sub-paragraphs (b) (i) and (b) (ii) of the Netherlands amendment were contradictory. Sub-paragraph

(b) (i) related to international and sub-paragraph (b) (ii) to national transport; the test for the former was the boundary of the territory, and for the latter physical control.

28. Mr. RAO (India) pointed out that the concept "taken in charge" was fully understood in Europe but not necessarily elsewhere. It would not necessarily answer the question of exactly who was in charge of the material at a particular time. The test should be simply the written contract, which should be obligatory.

29. Mr. SUONTAUSTA (Finland) said that the Convention should also provide for the assumption of liability under a written contract; that would make the Convention more flexible.

30. Mr. BOULANGER (Federal Republic of Germany) agreed with the United Kingdom delegate that, if the test were entry into the territory of the consignee State, the passing of liability would be no clearer and more expensive, since two insurance contracts would be needed. He could accept the test of "taken in charge", since it had been adopted for the Brussels and Paris Conventions, and the United Kingdom delegate had assured him that it covered the contractual as well as the physical aspect. He was prepared to support the joint Swedish, United Kingdom and United States amendment (CW/76) subject to a small drafting change, namely inserting in paragraph 1 (b) (ii) the word "otherwise", so that it would read "before such operator has otherwise taken charge of the nuclear material". He could not support the Austrian amendment (CW/25 No. 1) that the conditions should be fixed by the Installation State, for it would amount to a provision for a transport licence.

31. The CHAIRMAN referred the proposed drafting change to the Drafting Committee for consideration.

32. Mr. NORDENSON (Sweden) said that no further explanation of the joint amendment was necessary, since the United Kingdom delegate had explained clearly that the concept of a contract was essential. Transfer of liability to an insolvent operator by fraud was precluded by the Convention. States would ensure that victims received compensation from the appropriate funds. He asked whether, if under the Netherlands proposal a ship entered the consignee's territorial waters, returned to the high seas, and then re-entered the territorial waters, liability would be finally transferred at the first entry, or would be transferred back and forth at each exit and re-entry.

33. Mr. PAPATHANASSIOU (Greece) pointed out that at present the Convention laid down no compulsory minimum insurance cover.

34. Mr. ŠEVČIK (Czechoslovakia) felt that the Netherlands proposal would raise many complications. For instance, where spent material was accompanied by personnel of the consignee operator, simple transfer of liability at the territorial border could raise difficulties. He was in favour of express written terms.

35. Mr. BELLI (Italy) objected that a contract gave third parties no certainty of law. The details would not be known before an incident occurred, and insistence on contractual conditions in the Convention could enable operators in a strong position to impose harsh terms. The concept "taken in charge", though imperfect, would ensure that an operator's liability should not cease until it passed to another operator.

36. Mr. RAO (India) pointed out that, under the Netherlands amendment to Article II A (CW/1, amendment 48), the certificate would state when the liability would pass.

37. The CHAIRMAN asked the Committee to vote in principle on the various points raised throughout the discussion on Article II, paragraph 1, and suggested that the case of transport of nuclear material from one land-based operator to another be treated first. The first principle to be voted upon was that the criterion should be the fact of crossing the territorial boundary (CW/1, amendment 25).

38. There was 1 vote in favour and 34 against, with 8 abstentions. The principle was rejected.

39. The CHAIRMAN put to the vote the second principle, which was that of "taken in charge" (CW/51).

40. There were 11 votes in favour and 21 against, with 9 abstentions. The principle was rejected.

41. Mr. GUDENUS (Austria) withdrew his amendment (CW/25 No. 1).

42. The CHAIRMAN said he would next put to the vote the third principle, which was that of "express contract in writing" and, failing that, "taken in charge".

43. Mr. RAO (India) requested that the two criteria "express contract in writing" and "taken in charge" be voted on separately.

44. The CHAIRMAN said he understood that the Indian delegate wished the liability to remain with the consignor unless the written contract provided otherwise. If there were no contract, there would be no transfer of liability.

45. He then put to the vote the principle that the criterion should be "the express terms of the contract in writing".

46. There were 30 votes in favour and 8 against, with 6 abstentions. The principle was approved.

47. The CHAIRMAN put to the vote the corollary principle: that if there were no express terms the criterion should be that of "taken in charge".

48. There were 38 votes in favour and 1 against, with 6 abstentions. The principle was approved.

49. The CHAIRMAN put to the Committee the case of transport of nuclear materials to and from nuclear ships, and asked for a vote on the principle that the criterion should be that of "taken in charge".

50. There were 34 votes in favour and none against, with 9 abstentions. The principle was approved.

51. The Greek amendment to sub-paragraph (c) (iii) (CW/51) was referred to the Drafting Committee.

52. The proposed addition represented by the words "upon proof that such damage has been caused by a nuclear incident" (CW/76, introductory clause) was referred to the Drafting Committee.

53. Mr. ROGNLIEN (Norway) said that the amendment co-sponsored by his country (CW/79) was intended to cover the situation where a nuclear material consignment in the course of carriage underwent incidental storage in a nuclear installation of one of the types defined in Article I, paragraph 5 (a), (b) or (c), or was taken in charge by an operator of such an installation. Without that amendment the operator of such installation would become liable, whereas the consignor should properly remain liable throughout the transport. The amendment would also obviate duplication of insurance. Its exact

place in the Convention should be referred to the Drafting Committee. He requested that an appropriate reference be made in amendment CW/79 to amendment CW/76, sub-paragraphs (a) and (b) (ii) and (iii), in the event of the latter amendment also being approved.

54. Mr. SPLETH (Denmark) gave that request his full support. The Paris Convention had made a similar provision, and he felt that the present Convention was intended to do the same, though the point had not yet been expressly made. He suggested that, if approved, amendment CW/79 might be referred to the Drafting Committee.

55. Mr. NORDENSON (Sweden) also gave his full support to the amendment. He wished it to be made perfectly clear that liability was to remain with either the consignor or the consignee and no one else.

56. Mr. SCHEFFER (Netherlands) expressed his sympathy with that principle. Article II, paragraph 1, could be redrafted to include it.

57. The CHAIRMAN put the joint Danish-Norwegian amendment (CW/79) to the vote.

58. There were 17 votes in favour and 2 against, with 21 abstentions. The amendment was approved.

59. The CHAIRMAN put to the vote the oral amendment of the Indian delegate, for omission of the words "is unloaded from the means of transport by which it"[4].

60. There was 1 vote in favour and 20 against, with 21 abstentions. The amendment was rejected.

61. Mr. ROGNLIEN (Norway) said that his amendment (CW/1, amendment 26) was merely intended to provide that the operator of a nuclear ship should only be an operator expressly authorized by domestic law. He requested that the amendment be referred to the Drafting Committee.

62. The CHAIRMAN put the joint Swedish-United Kingdom-United States amendment (CW/76) to the vote, pointing out that a number of points in the text had already been referred to the Drafting Committee.

63. There were 34 votes in favour and none against, with 9 abstentions. The amendment was approved.

The meeting rose at 1 p.m.

[4] Para. 13 above.

NINTH MEETING

Tuesday, 7 May 1963, at 3.10 p.m.

Chairman: Mr. McKNIGHT (Australia)

CONSIDERATION OF THE DRAFT CONVENTION ON MINIMUM INTERNATIONAL STANDARDS REGARDING CIVIL LIABILITY FOR NUCLEAR DAMAGE (CN-12/2) (continued)

Article II (continued)

Paragraph 2

1. The CHAIRMAN drew attention to the Austrian amendment (CW/25, No. 2), the Greek amendment (CW/52) and the South African amendment (CW/1, amendment 32), and proposed that they be considered in that order.
2. Mr. EDLBACHER (Austria) stated that the Austrian delegation had proposed the amendment because it believed that the designation of a person carrying nuclear materials or handling nuclear waste as the operator should be left solely to the legislation of the Installation State.
3. The CHAIRMAN put the Austrian amendment (CW/25, No. 2) to the vote.
4. *There were 3 votes in favour and 13 against, with 20 abstentions. The amendment was rejected.*
5. Introducing his amendment (CW/52), Mr. PAPATHANASSIOU (Greece) expressed surprise that the fact that it was regarded as admissible to substitute the carrier for the operator was being used to justify the substitution of a person handling radioactive waste for the operator. In some cases the words "or a person handling radioactive waste" would be merely superfluous but in others they might have dangerous financial consequences. In view of the decision taken at the previous meeting regarding a lower limit of insurance and the replacement of insurance by a State guarantee or other financial guarantee it would be going too far to extend the practice of substitution to persons handling nuclear waste, a category which, moreover, was not clearly defined.
6. Mr. GHELMEGEANU (Romania) in that connection requested an explanation of the term "radioactive waste" in paragraph 2 of Article II. The article-by-article comments (CN-12/3) made it clear that the term in question was not identical with the term "radioactive products or waste" as defined in paragraph 2 of Article I. What then did it mean?
7. The CHAIRMAN suggested that a member of the Intergovernmental Committee might explain the term.
8. Mr. TREVOR (United Kingdom) stated that the Intergovernmental Committee had decided not to attempt any definition of "radioactive waste". Whether a substance was to be regarded as a useful product or as waste would depend on the facts of each particular case. Although it was impossible to find a satisfactory definition it had seemed advisable to the Committee to provide, for example, for the possibility that a company might be set up to deal solely with the safe disposal of radioactive waste.

9. The CHAIRMAN put the Greek amendment (CW/52) to the vote.

10. There were 6 votes in favour and 25 against, with 9 abstentions. The amendment was rejected.

11. Presenting the South African amendment (CW/1, amendment 32), Mr. STEPHENSON (South Africa) stated that he considered the question one of clarification rather than of principle. He felt that the present wording did not go far enough since the operator would only be liable in respect of an incident related to his installation. In the case of a carrier the installation would presumably be the carrier's place of storage but a carrier might possibly be involved in an incident unrelated to his place of storage and, under paragraph 3 of Article I, would not be liable. He felt the matter was mainly a question of drafting and would be satisfied if it was referred to the Drafting Committee.

12. Mr. RITCHIE (United Kingdom) explained in reply to the South African delegate that for the purposes of paragraph 2 the installation was that of the operator for whom the carrier had been substituted, and not his own place of storage. There was no need therefore for the South African amendment.

13. Mr. STEPHENSON (South Africa) accepted the explanation but felt that the text should be clear enough to obviate the need for explanations.

14. The CHAIRMAN assured the South African delegate that the question would be taken into account by the Drafting Committee and, subject to reference to the Drafting Committee, put paragraph 2 to the vote.

15. There were 36 votes in favour and none against, with 2 abstentions. Paragraph 2 was approved.

Paragraph 3

16. The CHAIRMAN stated that as a result of consultations the total number of amendments before the Committee had been reduced to three, namely the Philippine amendment (CW/1, amendment 30), the Austrian amendment (CW/25 No. 3) and the joint Netherlands, Swedish and United States amendment (CW/86). As the Philippine and Austrian amendments were identical they would be treated as one and the Philippine amendment only would be put to the vote.

17. Mr. EDLBACHER (Austria) explained that the essence of paragraph 3 was to provide joint and several liability. The intention was to protect the victim, who, in claiming damages, could not be aware of the exact cause or effects of a nuclear incident. By including the words "where ... the damage attributable to each operator is not reasonably separable", however, the Conference would be taking away with one hand what it had given with the other. For where damage was attributable to two or more operators, a victim who brought an action against only one operator might well forfeit his claim in respect of that part of the damage attributable to other operators; to avoid that risk he would in practice have to go to the expense of bringing separate suits against all the operators involved. That being so, it was reasonable to ask what remained of the concept of joint and several liability.

18. Mr. TAGUINOD (Philippines) agreed that the introduction of the qualification "where .... the damage attributable to each operator is *not* reasonably separable" would lead to a number of difficulties. Owing to the complex nature of nuclear energy, controversy would be certain to arise as to whether

particular damage was or was not reasonably separable and views might even differ as to the meaning of "reasonably separable". Such qualification to the rule of joint and several liability would, furthermore, place the victims at a serious disadvantage. In the event that two or more operators of installations in different states should become liable for nuclear damage, and assuming that the damage had been deemed reasonably separable, the courts of those States would be competent to decide what shares were attributable to the individual operators and might disagree, with the result that the victim would not recover adequate damages. Such disagreement was highly possible, since the determination of the degree of causation traceable to the different installations, though feasible, would be a difficult and complicated procedure.

19. Mr. RAO (India) sympathized with the Philippine and Austrian point of view but thought the present amendment should be discussed in conjunction with the Philippine proposal to add a new paragraph to Article II (CW/1, amendment 47). If the latter amendment was adopted the question of joint and several liability would rest on a more logical basis.

20. Mr. BELLI (Italy) and Mr. de ERICE (Spain) favoured the Philippine and Austrian amendment on practical and legal grounds. While the victim was required to prove causality he should not be required to determine with certainty what share of the damage was attributable to each operator.

21. Mr. TREVOR (United Kingdom) did not believe the case was likely to arise much in practice. He could not see why two operators should be jointly liable if it was clear that a certain share of the damage was attributable to one and a quite distinct share attributable to the other. Moreover, the present amendment made no distinction between nuclear incidents occurring in the course of transport and those not so occurring. The joint Netherlands, Swedish and United States amendment made such a distinction, and he therefore preferred it.

22. Mr. NORDENSON (Sweden) believed that the Philippine delegate was anxious to protect victims from having to prove the inseparability of damage. Even with the amended text, however, the victim would have to prove that the damage engaged the liability of more than one operator. He therefore did not believe that the amendment substantially changed the text as it ran at present or as reworded in accordance with the joint Netherlands, Swedish and United States amendment. The matter could perhaps be clarified quickly in an informal discussion.

23. Mr. DADZIE (Ghana) was afraid that if the Philippine and Austrian amendment was adopted no attempt would be made to apportion liability among operators, however clear the share of each might be. In his delegation's view that would not be fair, and he could not therefore support the amendment.

24. Mr. de CASTRO (Philippines) pointed out that his delegation's amendment to paragraph 3 concerned the right of the victim to claim damages. His delegation's proposal to insert a new paragraph (CW/1, amendment 47), however, safeguarded the interests of operators as among themselves. Where it was possible to separate the damage attributable to each operator the operators would compensate one another but where that was not possible each would pay an equal share.

25. Mr. RAO (India) and Mr. DADZIE (Ghana) proposed that the Committee

should vote first on amendment 47 as that would make it easier to decide on amendment 30.

26. After some discussion on the extent to which the two amendments were interrelated, the CHAIRMAN said he accepted the proposal of the Indian and Ghanaian delegates as a procedural motion to postpone the vote on amendment 30. He put the motion to the vote.

27. There were 8 votes in favour and 26 against, with 7 abstentions. The motion was rejected.

28. The CHAIRMAN then put the Philippine amendment (CW/1, amendment 30) to the vote.

29. There were 10 votes in favour and 24 against, with 8 abstentions. The amendment was rejected.

30. Opening the discussion on the joint Netherlands, Swedish and United States amendment (CW/86), Mr. COPPENS (Netherlands) stated that the basic text seemed to prescribe two conditions for joint and several liability but that those conditions were really the same and that the wording should be amended accordingly. The amendment also made it clear that joint and several liability would only apply in so far as the damage was not reasonably separable but not to the total damage. Paragraph (b) stated the principle that one amount would be applicable for total liability in the case of carriage whether there was joint and several liability or not. Paragraph (c) contained a proviso that the liability of any one operator should never exceed the amount to which he would be liable under Article IV.

31. Mr. TREVOR (United Kingdom) noted that paragraph (a) referred to the separability of damage but paragraph (b) did not. As his delegation saw it, the result would be that two or more operators could be liable for quite separate damage but the victim would be unable to get anything in excess of the highest individual amount applicable under Article IV. If the damage could be separated and two or more funds were available it was, on the face of it, unreasonable so to limit the amount payable to the victim. He requested an explanation of that point.

32. Mr. MITCHELL (United States of America) agreed with the United Kingdom delegate's interpretation of paragraph (b). It was the intention of the paragraph to limit the amount in accordance with normal insurance practice, since insurance carriers declined to provide cumulative coverage of the kind the United Kingdom delegate would like.

33. Mr. NORDENSON (Sweden) added that the sponsors of the amendment had had in mind the case of a collision between a ship carrying consignments of nuclear materials owned by a number of different operators and another ship. The damage caused in such an incident might be partly separable as between the different operators, and partly not separable. If the paragraph were amended in the sense desired by the United Kingdom delegate, the principle of the "highest individual amount" would apply in so far as the damage was inseparable and the principle of cumulative coverage in so far as the damage was separable. No court could apply such a complex rule.

34. The CHAIRMAN put the joint Netherlands, Swedish and United States amendment (CW/86) to the vote.

35. There were 25 votes in favour and 7 against, with 11 abstentions. The amendment was approved.

New paragraph (following para. 3)

36. Mr. MITCHELL (United States of America), introducing his proposal for a new paragraph to follow paragraph 3 (CW/10 No. 3), said that as the Convention dealt with joint and several liability, it would not be complete without some provision for the distribution of contributions between operators who were jointly and severally liable. The proposed new paragraph based the apportioning of contributions on the degree of fault, in so far as that could be determined, a principle familiar to courts in the Common Law countries. The principle of the degree of fault, which was that stated in Article VII, paragraph 3, of the Brussels Convention, was more practical than that of the degree of damage since, as had been stated in the previous discussion, the degree of damage was often not separable.

37. The second part of the proposed new paragraph dealt with the situation arising when the operators were nationals of different States with different legal limits of liability. It would be unfair if an operator in a State with a higher limit of liability had therefore to contribute a greater proportion than one in a State with a lower limit.

38. Mr. RAO (India) said that the United States amendment covered much the same ground as the new paragraph proposed by the Philippines (CW/1, amendment 47) and the two amendments should be discussed together.

39. Mr. de CASTRO (Philippines) doubted whether it was advisable for the Convention to make provision for the final distribution of contributions between operators who were jointly and severally liable. That could be left to the national law of the different States. The courts should be able to take account of other factors than the degree of fault, e.g., in the case of a collision involving a ship carrying nuclear material, the size of the different operators' consignments of such material.

40. The CHAIRMAN announced that with the consent of the United States delegate the discussion of his amendment (CW/10 No. 3) would be adjourned till the discussion of the other paragraphs of Article II had been completed.

Paragraph 4

41. The CHAIRMAN said the Danish amendment (CW/1, amendment 33) would be referred to the Drafting Committee.

Paragraph 5

42. The CHAIRMAN said the United Kingdom amendment (CW/1, amendment 37) could be more appropriately dealt with by the Sub-Committee on Relation with other International Agreements. The Philippine amendment (CW/1, amendment 35) would be referred to the Drafting Committee. The Danish and Swedish amendments (CW/1, amendments 34 and 36) were in substance identical, and would be voted on as one.

43. Mr. SPLETH (Denmark) said that the implications of the paragraph as drafted were too wide. Where the operator was exonerated, as under paragraph 3 of Article III, no one would be liable and it would be impossible to recover damages. In the case of an armed conflict, civil war, etc., the combatants would be liable provided they were liable in common law. Simi-

larly, with the paragraph as it stood, Article III, paragraph 5 would mean that no one was liable for damage to a nuclear installation itself, even if the damage were intentional.

44. The Danish amendment laid down the principle that only when the operator was liable under the Convention should no other person be liable. It also recognized an exception to that principle in the case where an operator had been liable, but the extinction period had run out.

45. Mr. TREVOR (United Kingdom) said that the Danish and Swedish amendments ran counter to the basic principle of the Convention - the principle of channelling liability to the operator.

46. Article III, paragraph 5 (b), laid down that the operator was not liable for damage occurring to a means of transport carrying nuclear material; but if the Danish amendment were adopted, other persons would be liable. If a ship carrying nuclear material were damaged in a collision through the fault of another ship, the owners of the second ship would be liable for the damage. It had always been the intention of the drafters of the Convention to avoid such a possibility and to see that responsibility for nuclear damage was not dispersed amongst a number of persons but was restricted to the operator. Otherwise it would become impossible to get insurance. Every ship would have to take out insurance to cover the risk of a collision with a ship carrying nuclear material, in case that ship were not covered under the law of the Installation State. The Danish amendment was misconceived.

47. Mr. NORDENSON (Sweden) said that the difficulties foreseen by the United Kingdom delegate had already been taken care of by a Swedish amendment to Article III, paragraph 5 (CW/1, amendment 66). That amendment provided that liability for damage to a nuclear installation or a means of transport carrying nuclear material should extend only to persons who had caused the damage intentionally.

48. Mr. BELLI (Italy) said the present text of the paragraph was in line with Article II, paragraph 2, of the Brussels Convention as well as with the philosophy of the Convention as a whole, which was that only the operator should be liable. The Danish and Swedish amendments were, moreover, ambiguous, and would give rise to difficulties of interpretation.

49. The CHAIRMAN put the Danish and Swedish amendments (CW/1, amendments 34 and 36) to the vote.

50. There were 9 votes in favour and 29 against, with 9 abstentions. The amendments were rejected.

51. The CHAIRMAN put paragraph 5 to the vote.

52. There were 39 votes in favour and none against, with 1 abstention. The paragraph was approved.

New paragraph (following para. 5)

53. Mr. ENGLISH (United States of America), presenting his proposal (CW/70) for a new paragraph to follow paragraph 5, said that there were certain types of damage which might arise from a nuclear incident - loss of profits or mental suffering - which might not be covered by the definition of "nuclear damage" finally adopted for Article I, paragraph 9, or by the definition adopted by the competent court in accordance with the option ex-

tended to it by the final sentence of that paragraph. Any damage not so included would not give rise to liability under the Convention. It might be argued that what the Convention did not deal with it could not control, and that recovery for such damage might still be had outside the Convention, under the rules of normal law. But such a result was clearly contrary to the basic objectives of the Convention. The object of the United States proposal was to give a guarantee that no recovery for damage not covered by the Convention could be had outside the Convention.

54. The question of the placing of the new paragraph and its exact wording could be left to the Drafting Committee.

55. The CHAIRMAN put the United States proposal (CW/70) to the vote.

56. There were 21 votes in favour and 1 against, with 21 abstentions. The proposal was approved.

Paragraph 6

57. The CHAIRMAN stated that six delegations - those of Belgium, Canada, the Netherlands, the Philippines, Sweden and the United Kingdom (CW/17 No. 3 and CW/1, amendments 38 to 42 respectively) - had proposed the deletion of paragraph 6.

58. Mr. KENT (United Kingdom) said that the principle of channelling all liability to the operator should be rigidly maintained except in so far as carriers might be liable under other international conventions.

59. Very unfortunate consequences would follow from making carriers liable as well as operators: a ship or aircraft might be seized by the competent court and detained unless the case were settled or security offered. That might lead carriers to be reluctant to carry nuclear material. Carriers would have to insure against liability for nuclear damage and insurance might not be available. The cost of carrying nuclear material would be increased to cover the insurance. If insurance were not available, carriers might ask operators for indemnity, which would not benefit operators.

60. As the United Kingdom had pointed out in explanation of its amendment (CW/1, amendment 42), paragraph 6 of Article II originated in the reservation which certain Governments had entered in regard to Article 6 (a) of the Paris Convention, but there was a considerable difference between a reservation made by certain States and a provision incorporated in the Convention itself. If the paragraph were retained, and the law of the Installation State imposed concurrent liability on the operator and the carrier, proceedings could be brought against the carrier in the court of a country having jurisdiction under Article IX. But if there were no such provision, and the Installation State made a reservation on the point, other contracting States would not be obliged to recognize the liability of the carrier where jurisdiction lay elsewhere than in the Installation State.

61. Mr. BELLI (Italy) supported the deletion of the paragraph for the reasons given by the United Kingdom delegate. The paragraph was contrary to the fundamental principles of the Convention; it also gave rise to practical difficulties which would be avoided if the principle of channelling all liability to the operator were strictly adhered to.

62. Mr. EDLBACHER (Austria) said that his delegation was firmly opposed to the deletion of paragraph 6. Austrian law recognized the principle of

causal liability of persons other than the operator in connection with all types of dangerous undertakings, as also the liability of persons causing an accident through wilful act or omission. The Convention should uphold the right of national law to assign liability in that way. Not to do so would be to violate a fundamental principle and would cause serious difficulties for countries whose law included such provisions for cases where the dangers were far less serious than those connected with nuclear incidents.

63. Mr. PAPATHANASSIOU (Greece) said that he opposed the deletion of the paragraph as a whole because the Convention should not impose limits on national legislation. It should be left to national law to assign liability in such a way as best to protect the interests of the victim of a nuclear incident. The first part of the paragraph was essential to the Convention, but he had certain reservations as to sub-paragraph (b).

64. Mr. WEITNAUER (Federal Republic of Germany) said that he was in favour of retaining the paragraph substantially as it stood. Channelling could be ensured in two ways: by the "legal" method of laying down a general principle that no persons other than the operator should be liable; and the more flexible method of "economic channelling" which maintained civil law actions but provided State indemnification to cover persons who might be liable. The latter system was the one in force in the United States of America and the Federal Republic of Germany.

65. Under the United Kingdom proposal, carriers would not be safeguarded from all liability because existing conventions would be left untouched. The system of economic channelling would provide better protection for carriers than the right of recourse or eventual subrogation under Article VII, paragraph 2. Certainly the two systems would give equivalent results if they were suitably applied.

66. The wording of the paragraph was perhaps imperfect and would be improved if the Swedish alternative amendment (CW/1, amendment 41 No. 2) were adopted. In particular he supported the proposal to substitute the law of the competent court for the law of the Installation State because in the case of an incident occurring in a means of transport outside the Installation State, there would be no possibility of applying the rules of economic channelling if the coverage of the Installation State did not include protection for carriers and persons other than operators.

67. If agreement could not be reached, one way out of the difficulty might be for those States which wished to retain the paragraph to enter reservations, as the United Kingdom delegate had suggested.

68. Mr. HENAO-HENAO (Colombia) said that he opposed the deletion of the paragraph for the same reasons that had led him to abstain in the vote on the United States proposal for a new paragraph to follow paragraph 5, namely that there should be no damage for which nobody was responsible. Paragraph 6 did not lay down an international rule but discreetly authorized certain legislation by States, and that was better than making no provision at all. The philosophy of the Convention should be that operators were almost solely liable; by making that slight exception the danger of leaving victims without compensation was avoided.

69. Mr. CHARNOFF (United States of America) said that by allowing actions against persons other than operators a measure of flexibility was retained and the Convention was rendered more acceptable to many countries.

70. It was doubtful if the possible seizure of carriers' ships or aircraft - about which the United Kingdom delegate had expressed concern - would ever take place since financial security would have to be available. In any event, the case would be met by adopting the Swedish alternative amendment, which he supported for the reasons given by the German delegate.

71. Mr. COPPENS (Netherlands) strongly supported the deletion of paragraph 6. To insert the paragraph would be to abandon the principle of channelling.

72. Mr. COLOT (Belgium) agreed with the Netherlands delegate. To retain the paragraph would be to open the way to a series of exceptions to the channelling principle at the whim of the Installation State.

73. The CHAIRMAN put to the vote the proposal made by various countries to delete paragraph 6 (CW/1, amendments 38-42, and CW/17 No. 3).

74. There were 30 votes in favour and 9 against, with 5 abstentions. The proposal was approved.

75. Mr. PAPATHANASSIOU (Greece) said that, in view of the vote, his delegation withdrew its amendment (CW/53) and wished to record his reservation to the effect that national law should be free to assign liability to third parties as it saw fit.

76. Mr. EDLBACHER (Austria) and Mr. WEITNAUER (Federal Republic of Germany) associated their delegations with the Greek reservation.

Paragraph 7

77. Mr. TAGUINOD (Philippines), proposing the deletion of paragraph 7 (CW/1, amendment 43), said that the provision would complicate the question of jurisdiction. His country would probably have to make international arrangements to secure the necessary insurance or other financial security; as the insurer or guarantor would be in some other country than the Philippines problems of jurisdiction would arise. Again, to allow an action to be brought directly against the insurer or guarantor might vitiate the provisions for the limitation of liability and for ensuring that funds provided should be devoted exclusively to the payment of claims for nuclear damage covered by the Convention. In cases where the operator's insurers or guarantors could be effectively reached in countries where they had assets and which disregarded the limitations of liability, a single claim for nuclear damage might, for instance, exhaust the insurers' funds so that other claimants under the Convention would have no remedy.

78. The CHAIRMAN put to the vote the proposal submitted by the Philippines and the United States of America for the deletion of paragraph 7 (CW/1, amendments 43 and 46).

79. There were 11 votes in favour and 19 against, with 14 abstentions. The proposal was rejected.

80. The CHAIRMAN said that four of the remaining amendments to paragraph 7 - Philippines (CW/1, amendment 44), Swedish (CW/1, amendment 45), Japanese (CW/40) and Netherlands (CW/54) - raised two points: first, whether the law providing for direct action should be that of the competent court or that of the Installation State; and second, whether an action could be brought against the Installation State itself. He invited delegates to comment on the first point.

81. Mr. YAMANO (Japan) said that the purpose of paragraph 7 was the same as that of Article XVIII of the Brussels Convention but the wording of the Brussels Convention was preferable. Some countries admitted suits to be brought directly against the insurer or the provider of financial security; others did not. If the law of the competent court was to be decisive, those countries which did not admit actions against insurers would have to amend their law. That would be contrary to the spirit of the Convention.

82. Mr. RITCHIE (United Kingdom) preferred the text of the paragraph as it stood. The law of the competent court should be decisive. The same idea was contained in Article 6 (a) of the Paris Convention. If the law of the Installation State were referred to, it would mean that the competent court would have to apply the law of the Installation State even if it differed from its own.

83. Mr. CHARNOFF (United States of America) supported the Japanese amendment. His delegation would have preferred the article to be deleted, but since it was to be retained, it preferred that the decision should rest with the Installation State, because the financial security provided by the operator would be provided under the law of the Installation State and the insurers involved would have more certainty as to their commitments.

84. Mr. WEITNAUER (Federal Republic of Germany) said that he preferred paragraph 7 as it stood. The problem was one of conflicts of law and the paragraph as it stood was in harmony with the way that problem was dealt with in international private law.

85. Mr. FLEISCHMANN (France) said that it would be better for victims of nuclear damage if reference to the law of the competent court were retained.

86. The CHAIRMAN put to the vote the question of principle, whether the law providing for direct action against the person providing financial security should be the law of the Installation State, and not the law of the competent court.

87. There were 15 votes in favour and 20 against, with 5 abstentions. The question was decided in the negative.

The meeting rose at 6. 5 p. m.

TENTH MEETING

Wednesday, 8 May 1963, at 10.45 a.m.

Chairman: Mr. McKNIGHT (Australia)

CONSIDERATION OF THE DRAFT CONVENTION ON MINIMUM INTERNATIONAL STANDARDS REGARDING CIVIL LIABILITY FOR NUCLEAR DAMAGE (CN-12/2) (continued)

Article I A (resumed[1])

1. Mr. ROGNLIEN (Norway), introducing his amendment (CW/84), pointed out that it was intended to cover also stateless refugees and displaced persons, who should have the same rights as nationals.
2. Mr. KENT (United Kingdom) supported the amendment.
3. Mr. ZALDIVAR (Argentina) supported the amendment because it would cover share companies which had domicile but no nationality.
4. Mr. RAO (India) asked if the principle was to be extended throughout the Convention.
5. Mr. ROGNLIEN (Norway) said that the amendment referred only to Article I A, new paragraph 2[2], but the point would be taken up later under Article VII[3].
6. Mr. MAUSS (France) wished the principle to be limited to individuals, to avoid difficulties of interpretation.
7. Mr. MAURER (United States of America) shared the concern of the French delegate, and feared an overlap in terms if the United Kingdom text adopted for paragraph 2 were supplemented.
8. Mr. STEPHENSON (South Africa) asked why a distinction had been made between principal and subordinate places of business.
9. Mr. ROGNLIEN (Norway) said that he felt some restriction to be necessary, and that the advantages of the Convention should not be gained through a subordinate place of business. The concept "national" was dealt with in Article VII but not in Article I A. If a definition of "national" were later written into the Convention, he would raise the point again.
10. Mr. BOULANGER (Federal Republic of Germany) opposed the amendment. A similar proposal had been discussed at length at the Brussels Conference and rejected as dangerous on grounds of vagueness.
11. Mr. DUNSHEE de ABRANCHES (Brazil) supported the Norwegian amendment with some misgiving. The use of the word "domicile", which had a well-established meaning, would perhaps improve the amendment.
12. The CHAIRMAN put the Norwegian amendment (CW/84) to the vote.
13. There were 14 votes in favour and 17 against, with 15 abstentions. The amendment was rejected.

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[1] See 5th meeting, para. 18.
[2] Ibid., para. 15.
[3] See 16th meeting, paras. 74-81.

Article II (resumed)

Paragraph 7 (continued[4])

14. The CHAIRMAN asked the Committee to discuss the question whether the Installation State should be exempted from direct action against it as insurer.

15. Mr. ZALDIVAR (Argentina) said that the right of direct action was essential, for it would give the victims of a nuclear incident greater security of recovery, and would in some cases preclude indefinite delay in the payment of compensation; the bankruptcy of an insurer might, for example, delay such payment for years. The principle was accepted in insurance law when it was permitted by the law of the competent tribunal. The arguments for the Philippines amendment (CW/1, amendment 44) were not convincing, since Article VI provided for maintenance of a financial security solely for the payment of indemnities. The Swedish amendment (CW/1, amendment 45) was analogous to Article XVIII of the Brussels Convention, which provided for the right of direct action against the insurer or any other person, except the Installation State. He did not remember why that exception had been made in Brussels, but he thought that in the present case such an exemption was neither reasonable nor justified. Direct action should be open either in all cases or not at all. Accordingly Argentina had submitted an amendment (CW/66) which was almost identical with Article XVIII of the Brussels Convention, since it recognized the right of direct action when such action was permitted by the law of the competent tribunal; the amendment, however, did not place the Installation State in the same privileged position as did that article.

16. The CHAIRMAN put to the vote the principle contained in the Philippines amendment (CW/1, amendment 44): that the Installation State be expressly exempted from the provisions of Article II, paragraph 7.

17. There were 9 votes in favour and 14 against, with 15 abstentions. The principle was rejected.

18. Mr. NORDENSON (Sweden) withdrew his amendment (CW/1, amendment 45).

19. Article II, paragraph 7, was referred to the Drafting Committee.

New paragraph (on right of contribution)

20. The CHAIRMAN asked the Committee to discuss the new paragraphs proposed by the Philippines (CW/1, amendment 47) and by the United States of America (CW/10, No. 3). The Philippines delegate had agreed that the latter proposal should be discussed before his own.

21. Mr. ROGNLIEN (Norway) said that if a minor installation was involved in the incident together with a large installation and the latter, on an objective basis, was the main or major contributor to the damage, the principle of the United States proposal, based on degree of fault or equal sharing, would not be just. It would be better to leave the problem in question to national legislation.

[4] See 9th meeting, paras. 77 - 87.

22. Mr. WEITNAUER (Federal Republic of Germany) agreed with the Norwegian delegate, and held that the proposal went beyond the scope of the Convention. The principle contained in the last sentence of the proposed text was erroneous, since the principle of joint and several liability might well lead to a cumulation of the maximum amounts without any right of recourse or contribution.

23. Mr. TREVOR (United Kingdom) pointed out that the concept "fault" had no place in a convention dealing with absolute liability. The last sentence of the proposed text was difficult to understand and far from satisfactory. If two Installation States chose to set higher limits of compensation than the minimum upper limits set by the Convention, they should not be overruled.

24. Mr. MITCHELL (United States of America) asked the Committee, before discussing the details, to vote on whether such a provision should be inserted.

25. Mr. ARANGIO RUIZ (Italy) supported that request.

26. Mr. GASIOROWSKI (Poland), on a point of order, detected a tendency, when several similar amendments were before the Committee, to vote on the principles they contained and then refer the problem to the Drafting Committee. That was overloading the Drafting Committee. Since only two amendments were at present being discussed, and had been distributed in writing some time before, the normal procedure of voting on them should be followed.

27. Mr. RAO (India) asked how the proposed new text could be applied, considering that Article II, paragraph 3, had already been approved.

28. Mr. VILKOV (Union of Soviet Socialist Republics) declared that the proposal was outside the scope of the Convention.

29. Mr. MAURER (United States of America) saw no conflict between the proposed text and Article II, paragraph 3.

30. Mr. RUEGGER (Switzerland) agreed that the first part of the text at least was perfectly compatible with Article II, paragraph 3, which applied where "the damage attributable to each operator is not reasonably separable".

31. The CHAIRMAN said that the United States proposal in fact covered two questions, dealt within two distinct parts of the proposed text. Under Rule 37 of the Rules of Procedure he moved that the Committee vote first on the first part, which laid down a principle, and then, if necessary, on the second, which related to the procedure.

32. There were 26 votes in favour and 2 against, with 15 abstentions. The motion was carried.

33. The CHAIRMAN put to the vote the first part of the text: "Subject to the provisions of paragraph 3, in case of joint and several liability, each operator shall have a right of contribution against the others".

34. There were 18 votes in favour and 19 against, with 8 abstentions. That part of the text was rejected.

35. The CHAIRMAN pointed out that the Philippines proposal (CW/1, amendment 43) was thereby also rejected.

Article II A

36. The CHAIRMAN said that the United States delegation had withdrawn its amendment (CW/1, amendment 51), and the South African and Swedish

amendments (CW/1, amendments 49 and 50) could be referred to the Drafting Committee.

37. Mr. SCHEFFER (Netherlands), introducing his amendment (CW/1, amendment 48), said that it should be considered in the light of the discussion on transfer of liability under Article II, paragraph 1[5]. The Netherlands delegation had been concerned by the argument that third parties might not know which operator was liable, particularly where nuclear material was transported. It had therefore considered that the certificate should indicate the point at which liability passed.

38. Mr. KENT (United Kingdom) suspected a misconception concerning the function of the certificate. His delegation understood that the point of transfer of liability had been decided under Article II, paragraph 1. The certificate was purely administrative. It would show the point of transfer of liability, since it would cover the liability of one operator only, and a new certificate would be issued when the liability passed.

39. Mr. BASSOV (Byelorussian Soviet Socialist Republic) could not support the Netherlands amendment. The international rules governing the settlement of disputes over civil liability were contained in Articles II, III and IV; but Article II A dealt with a secondary matter: the form of the documents accompanying nuclear material. Those would naturally vary in detail from one country to another, and the certificate prescribed by the Convention should contain only general information concerning the operator and the material. The Netherlands amendment was undesirable because it went into even further detail than the existing text.

40. Mr. WEITNAUER (Federal Republic of Germany) supported the Netherlands amendment as a necessary complement to the Committee's decision on Article II. Since the criterion of the express terms of the contract had been adopted, it would be difficult for victims to ascertain which operator was liable unless the point of transfer of liability was indicated. It was his understanding that the indication provided by the Netherlands amendment would have exactly the same legal effect as the other statements contained in the certificate.

41. Mr. SCHEFFER (Netherlands) said that the United Kingdom and Byelorussian delegates seemed to have misunderstood his amendment. There was no question of any innovation or any new decision concerning the transfer of liability; the sole purpose of the amendment was to provide more complete information in conformity with the decision taken on Article II, paragraph 1. The certificate provided for in Article II A clearly accompanied the carrier. He could not agree with the United Kingdom delegate that a new certificate would be required when the liability of one operator ceased and that of another began, since that would merely increase the difficulty of ascertaining which operator was liable. Since the test under Article II, paragraph 1, had been made the express terms of the contract, and the third party might not be aware of those terms, the third party would at least be informed through the certificate of the cessation of liability.

42. Mr. ARANGIO RUIZ (Italy) considered that the Netherlands amendment in its existing form was unacceptable and likely to lead to misinterpretation of the whole Convention.

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[5] 5th meeting, paras. 54 - 58, and 8th meeting, paras. 3 - 68.

43. Mr. ZALDIVAR (Argentina) said he could not vote for the Netherlands amendment for two reasons: (1) the issue was purely administrative; and (2) the amendment might defeat the Netherlands delegation's aim. It would in any case create confusion concerning which operator was liable.

44. Mr. ROGNLIEN (Norway) said he could support the Netherlands amendment, and could not follow the Argentine delegate's arguments. Article II A as a whole had an administrative purpose, and there was no reason why the amendment should create any confusion. It did not preclude any dispute concerning transfer of liability; and an indication of the point of transfer was bound to be useful. The indication would not necessarily be exact, but would merely relate to the terms of the contract.

45. Mr. STEPHENSON (South Africa) did not consider the Netherlands amendment really necessary. A certificate issued by the operator who had assumed liability must state the duration of the period of security; another operator assuming liability must provide a similar certificate for the remaining period of carriage. Secondly, the amendment laid down a mandatory rule, but there would undoubtedly be circumstances in which an operator could not comply with it: for example, if the liability were assumed by an operator of a non-contracting State.

46. Mr. RAO (India) considered the Netherlands amendment a necessary complement to the primary test that the Committee had approved under Article II, paragraph 1. Any certificate would naturally mention the written contract; indeed, a certificate could hardly be issued if no contract existed. The amendment would provide a valuable indication for third parties.

47. Mr. DUNSHEE de ABRANCHES (Brazil) supported the Netherlands amendment, which was not merely procedural. The certificate could be used against the operator in the competent court if it contained any declaration which was either untrue or contrary to the interests of other parties. That would provide a substantive advantage for victims.

48. Mr. HARDERS (Australia) endorsed the South African delegate's views and said he would vote against the Netherlands amendment. Article II A imposed an obligation on operators for a given time, and there should be no gap in validity between certificates. In any case, no operator could be responsible for stating when another operator would assume liability.

49. Mr. VILKOV (Union of Soviet Socialist Republics) said that the Netherlands amendment was ambigous since it implied that, when a certificate was drawn up, the parties could agree on the point at which liability should pass from one operator to another. If that were so, the Convention itself seemed to be unnecessary, and operators could merely use certificates as a criterion of the transfer of liability. Secondly, the amendment obliged operators to indicate in the certificate the point when liability would be assumed. If, however, two operators failed to give the necessary indication and an incident occurred, it could hardly be said that the operator who was liable at the time could be exonerated by the omission. The amendment could therefore only cause confusion, and would benefit neither operators nor victims.

50. Mr. SCHEFFER (Netherlands) said it was quite clear that Article II A as a whole related to administrative measures and created no rights or obligations. The only function of the certificate was to supply factual information which might be of use to victims. The Netherlands delegation

believed that that information should be as complete as possible. It set no store by the exact wording of its text, which could be referred to the Drafting Committee.

51. Mr. KENT (United Kingdom) observed that the Netherlands delegate seemed to think that a certificate issued under Article II A covered the whole transit of a consignment of nuclear material. The United Kingdom delegation had received expert advice from the insurance market that, when liability passed from one operator to another in transit, it was most unlikely that a single certificate could cover the whole journey. For example, if nuclear material were conveyed from an installation in the Netherlands to Berkeley in the United Kingdom, and was shipped from Rotterdam to London in a Netherlands vessel, the liability of the Netherlands operator might pass to an English operator in London. The English operator would be liable for the journey of the material by train from London to Berkeley. The certificate issued to the Netherlands operator for the journey from Rotterdam to London would become invalid upon the arrival of the material in London; a second certificate issued by the insurers of the British operator would cover the journey from London to Berkeley. Accordingly the Netherlands amendment was based on a misapprehension and was quite unnecessary.

52. Mr. ROGNLIEN (Norway) agreed with the United Kingdom delegate that the receiving operator should have a certificate issued as soon as he assumed liability. Nevertheless, if nuclear material were carried by a Norwegian operator to the United Kingdom by ship, and the contract provided that the United Kingdom operator should assume liability when the territorial boundary was passed, a certificate could be obtained, not on the boundary of the territorial sea, but only at the first United Kingdom port reached by the vessel. The Netherlands proposal related only to advance information, which could be useful to the carrier and to other persons.

53. Mr. SCHEFFER (Netherlands) reiterated that the wording of his delegation's proposal might be improved. He believed, however, that the Committee should vote on whether information concerning the beginning and end of liability should be given in the certificate.

54. The CHAIRMAN put the Netherlands amendment (CW/1, amendment 48) to the vote.

55. There were 9 votes in favour and 23 against, with 12 abstentions. The amendment was rejected.

56. The CHAIRMAN put Article II A to the vote.

57. There were 35 votes in favour and none against, with 8 abstentions. Article II A was approved.

Article III

Paragraph 1

58. The CHAIRMAN, observing that the paragraph related to the principle of the absolute liability of the operator, and recalling that the words "upon proof that such damage has been caused by a nuclear incident" had been

incorporated in Article II[6], suggested that the paragraph should be referred to the Drafting Committee.

59. It was so agreed.

Paragraph 2

60. The CHAIRMAN observed that the United States delegation had withdrawn its original amendment (CW/1, amendment 56), but submitted a new amendment (CW/11 No. 1 and 11/Corr. 1). He suggested that the Committee should first consider the Belgian amendment (CW/18/Rev. 1 No. 1) and the Greek amendment (CW/56), which proposed deletion of the paragraph. He also drew attention to the observations submitted by the International Maritime Committee (CW/INF/5).

61. Mr. COLOT (Belgium) said that his delegation proposed deletion of paragraph 2 because it was contrary to the principle of the absolute liability of the operator, which was based on the fact that the operator wielded a physical force quite out of proportion to any fault that might be committed by the plaintiff. The risk to the community was borne by the operator alone, and the counterpart to that risk was compensation to the maximum amount. There was therefore no reason for making any exception to the principle of absolute liability, especially since nuclear incidents resulting from wilful acts or omissions were dealt with in Article VIII, to which the Belgian delegation had submitted a clarifying amendment (CW/22).

62. His delegation had carefully considered the amendment submitted by the delegations of the United Kingdom (CW/1, amendment 55), the Netherlands (CW/67) and Austria (CW/26 No. 2), which were fairly close to the Belgian amendment. He drew particular attention to the second paragraph of the explanation of the United Kingdom amendment (CW/1, page 39).

63. The effect of the adoption of the paragraph would be that the slightest fault, even if committed by a child, might deprive a number of persons of all compensation. That aspect was also dealt with in the observations of the International Maritime Committee.

64. Mr. PAPATHANASSIOU (Greece) endorsed the Belgian delegate's remarks. Since the Convention gave the operator a right of recourse in cases of wilful damage under Article VIII, it was absolutely unnecessary to provide that he could take action against the same person under the national law of his country. Humanity and good sense made it most undesirable to provide an exception to the absolute liability of the operator in cases of negligence which might have results out of all proportion to the actual fault.

65. If the paragraph were not deleted, the Greek delegation would vote for the Netherlands amendment.

66. Mr. BIRCH-REYNARDSON (International Maritime Committee), speaking at the invitation of the Chairman, said that the traditional concept of liability depending upon negligence had been abandoned early in the discussions on civil liability for nuclear damage, and had been replaced by the principle of the absolute and exclusive liability of the operator of a land-based installation or of a nuclear ship - which was in fact a mobile nuclear in-

[6] 8th meeting, para. 56.

stallation. The reasons for that departure from traditional doctrine were perfectly sound: a victim had to take proceedings against an ascertainable entity covered by adequate insurance, and if liability were not exclusive and absolute, other persons would be obliged to cover themselves by insurance.

67. The International Maritime Committee had always upheld the principle of absolute liability of the operator because nuclear materials were inherently dangerous and an operator must accept the consequences if, having released them from his installation, they subsequently caused nuclear damage while in transit. The principle had been accepted at Brussels in 1962; the Brussels Convention had excluded the entire concept of negligence, and had only retained the right of recourse in case of a wilful act or omission.

68. The principle of absolute liability laid down in Article III, paragraph 1, was vitiated in paragraph 2, which in certain cases, enabled the competent court to relieve the operator wholly or partly from his liability. Since lawyers were traditionally conservative, it might be difficult for them to discard the old legal concept of negligence. Though it seemed unfair to exonerate a supplier of faulty equipment which caused an incident, the interests of the public must prevail, and those interests would be best safeguarded by adhering to the principle of the absolute liability of the operator. For example, if nuclear material were packed in faulty containers, a collision at sea might cause the containers to break open and give rise to a nuclear incident; the colliding ship which was at fault might be severely irradiated and abandoned; in that case, under the Brussels Convention, the operator would be liable but the manufacturer of the containers would not suffer in any way.

69. If paragraph 2 were adopted, an inadmissible difference of status would thus be created between operators of nuclear ships and the operators of land-based installations. Indeed, if the provision were adopted, the owners of all "non-carrying" ships sailing the high seas would run the risk of being unable to recover from the operator for nuclear damage to their ships. Even if, as seemed doubtful, insurance cover against such risks would be available to ship-owners, the cost of sea transport would be increased as a result of carriage of nuclear material by sea. He therefore urged the Committee to delete paragraph 2 from Article III, and to substitute for it a provision along the lines of Article II, paragraph 5, of the Brussels Convention.

The meeting rose at 1 p.m.

ELEVENTH MEETING

Wednesday, 8 May 1963, at 3.20 p.m.

Chairman: Mr. McKNIGHT (Australia)

CONSIDERATION OF THE DRAFT CONVENTION ON MINIMUM INTERNATIONAL STANDARDS REGARDING CIVIL LIABILITY FOR NUCLEAR DAMAGE (CN-12/2) (continued)

Article III (continued)

Paragraph 2 (continued)

1. Mr. ZALDIVAR (Argentina) said that his delegation opposed deletion of the paragraph - as proposed by Belgium (CW/18/Rev. 1, No.1) and Greece (CW/56) - for strictly legal reasons. The concept of "absolute liability" referred to in paragraph 1 was interpreted differently in different legal systems. The Anglo-Saxon legal system admitted that liability - even so-called "absolute liability" - could be reduced in the case of fault or negligence; in the Latin American legal systems the concept of "responsabilidad objectiva" did not admit such reduction. Thus if paragraph 2 were deleted, a certain anarchy might arise. Instead, provision should be made to authorize a reduction of liability in cases of fault (culpa).

2. Mr. DUNSHEE de ABRANCHES (Brazil) said that the problem could not be solved unless the concept of liability was very clearly defined. Most delegations followed the English text, but the English concept of "absolute liability" was not exactly the same as the Spanish concept of "responsabilidad objetiva". That concept was based on the doctrine of risk and was entirely opposed to the introduction of considerations of fault (culpa). If the Convention adopted the principle of "responsabilidad objectiva" based on the doctrine of risk, paragraph 2 would raise no problems: to say that the operator was "absolutely liable" would mean that the victim had only to prove the existence of a causal nexus between the damage and the incident, but that did not mean that the operator could not invoke fault on the part of the victim as a contributory or concurrent cause. It did, however, mean that the victim was not obliged to produce any proof of fault on the part of the operator.

3. It would not be just if a victim who had contributed to the occurrence of an incident should receive the same compensation as one who had not. If coverage were insufficient to meet all the damage, then priority should be given to victims who had not contributed to causing the incident. The text of paragraph 2 was legally and morally correct, and the Brazilian delegation could not support the proposal for its deletion.

4. Mr. RAO (India) said the Indian delegation would base its conclusions on the following premises: first, that nuclear material was no ordinary material, but peculiarly deadly; second, that it was necessary to adhere to the principle of absolute liability laid down in paragraph 1 of Article III; third, that, as stated in Article VIII (a), account should be taken of intent

to cause damage, even if the person concerned did not realize the extent of the eventual damage his act or omission would cause.

5. "Fault" in paragraph 2 meant wilful intention to cause damage, in the sense of Article VIII (a). Given that interpretation, paragraph 2 was essential to the Convention.

6. Mr. BRAJKOVIC (Yugoslavia) said that he entirely supported the views of the International Maritime Committee (CW/INF/5) and would therefore support those amendments which called for the adoption of provisions on the lines of those found in the Brussels Convention.

7. Mr. KENT (United Kingdom) said that he would like to give the United Kingdom's view not only on the proposals to delete paragraph 2 but also on the Netherlands and United States amendments (CW/67 and CW/11 No. 1 and 11/Corr. 1).

8. To ensure that in cases of fault or negligence the victim should not be precluded from receiving compensation from the operator two methods had been suggested: the deletion of paragraph 2, and the insertion of a new paragraph providing that a victim should be entitled to compensation unless guilty of an act or omission done with intent to cause damage. In support of the first method it could of course be argued that, if nothing was said in the Convention, the question whether a victim guilty of negligence should be able to claim would be dealt with under national law. It seemed much better, however, to include a specific provision on the lines of paragraph 2 as legal systems differed widely.

9. The second method was supported by many transport interests in the United Kingdom, who feared that if operators could escape liability for nuclear damage in the case of fault or negligence on the part of the victim, carriers might be unable to insure against the consequences of their own negligence, which might involve serious loss. Again, it was feared that if insurance were not available to servants of carriers through whose fault or negligence a nuclear incident had occurred - e.g. the master of a ship involved in a collision - those persons might be left without redress for very serious and lasting injuries.

10. After due consideration, the United Kingdom delegation had decided it could support neither the Belgian and Greek amendments nor the Netherlands and United States amendments. Its view was that it should be left to each State to decide whether or not to provide in its law that a victim through whose fault or negligence the nuclear incident had occurred should not thereby be precluded from receiving compensation.

11. Mr. BELLI (Italy) said that the question raised by the proposal to delete paragraph 2 was of prime importance for the whole philosophy of the Convention. Although he agreed that from a legal point of view the arguments of the Belgian delegate were correct, he could not agree to the deletion of paragraph 2. To delete the paragraph would mean making the operator liable without exception - even in cases of malicious intent ("dol"). Under the principle of causal liability it was not necessary to prove fault on the part of the operator, but regard was still had to cases where there was malicious intent on the part of the victim. The paragraph should be amended to provide for the possibility of reducing the compensation to be paid by the operator to victims acting with malicious intent. In Roman law, the concept of culpa lata (faute lourde in French) was equivalent to that of malicious intent (dol),

but it could not be included in the Convention because the concept of faute lourde did not exist in many legal systems.

12. Mr. GHELMEGEANU (Romania) said that paragraph 2 raised two questions: one of material law and liability and one of jurisdiction.

13. On the question of liability, he agreed with those delegations which favoured the adoption of a system of responsabilité objective based on the concept of risk, but the adoption of that principle did not imply the deletion of paragraph 2. Paragraph 2 should be amended, not deleted, because practice showed that there were very few countries whose law adhered to the principle of responsabilité objective without admitting three possible exceptions: force majeure, act of a third party (fait d'un tiers) and act of the victim (fait de la victime). Paragraph 2 referred to acts of the victim. But it referred to "fault" without making any distinction between fault with malicious intent (faute dolosive ou délictuelle) and negligence, or the failure to foresee what should have been foreseen, and therefore, under the text as it stood, both types of fault could be invoked to reduce the liability of the operator and to lay upon the victim a share of the liability. He was therefore in favour of those amendments which provided that the operator's liability should be reduced - not eliminated - in the case of malicious intent (faute dolosive).

14. On the question of jurisdiction, he favoured those amendments which suggested replacing reference to the competent court by reference to the court of the Installation State. The competent court would presumably be the court of the country where the incident took place, but the victim might be a national of a third State. As it was the aim of the Convention to make operators solely liable, it was the court of the operator's State - the Installation State - which should have jurisdiction.

15. Mr. COLOT (Belgium) and Mr. PAPATHANASSIOU (Greece) withdrew their amendments in the light of the comments that had been made.

16. The CHAIRMAN said that three elements arose for discussion in connection with the next group of amendments – those of the United States of America (CW/11 No. 1 and 11/Corr. 1), Austria (CW/26 No. 2), Japan (CW/41), the Netherlands (CW/67) and the United Kingdom (CW/1, amendment 55). They were the degree of fault of the injured party; whether the competent court had discretion or a mandatory duty to relieve the operator of liability; and whether such relief should take the form of partial reduction or of total exoneration. He invited the Committee to hold a general debate on the question of the degree of fault on the part of the victim, after which he would put the Netherlands, Austrian and Japanese amendments to the vote in that order. The United States amendment, which raised the question whether the court had discretion or an obligation, would then be discussed, and finally the United Kingdom amendment, which raised the question whether the operator's liability should only be reduced or totally eliminated.

17. Mr. COPPENS (Netherlands) said that the Netherlands amendment raised a fourth point, namely that operators should be exonerated only in the case of an act or omission done with intent to cause damage on the part of an individual.

18. The CHAIRMAN said that point could be dealt with at the end of the discussion.

19. Mr. BRATUSJ (Union of Soviet Socialist Republics) said that if damage was the result of an intentional act on the part of the victim, it would not be contrary to the principle of absolute liability that the operator should be wholly relieved of liability. If, however, damage was due to gross negligence on the part of the victim, it would be excessively harsh to deprive him of all possibility of indemnity; but in that case the court should have the right to reduce the operator's liability. That would be in accordance with Soviet law, which recognized the principle of "mixed liability".
20. He accordingly supported the Austrian amendment.
21. Mr. EDLBACHER (Austria) said that he was not opposed to the substance of paragraph 2 but to the word "fault", which ran counter to the two principles on which the Convention was based: those of channelling and of causal liability. Fault on the part of the operator did not alter the degree of his liability; not did fault on the part of a third party. In any case third parties could not be liable. It was therefore illogical to introduce the concept of fault into the relations between the operator and the victim.
22. In English, the concept of fault was very wide and covered both "faute lourde" (or "dol") and "faute légère" and even minor irregularities which were not strictly speaking "fautes" at all. The concept of fault referred to in paragraph 2 should, therefore, be limited to intentional acts and gross negligence.
23. The Austrian amendment met the point which the Austrian and other delegations had had in mind in reserving their positions with regard to the decision to delete paragraph 6 of Article II[1], in that it would give the competent courts the right to transfer liability to a third party who had caused a nuclear incident by intentional act or serious negligence.
24. Mr. PECK (United States of America) said that Article II, paragraph 5 of the Brussels Convention referred to damage resulting "wholly or partially from an act or omission done with intent to cause damage". The delegations which had considered the problem at Brussels had found that wording adequate, and he saw no reason why similar wording should not be taken over into the present Convention.
25. It was not the purpose of the United States amendment to exonerate operators if other persons were at fault except if an element of intent were present. The purpose of the Conference was to find a common language which would be acceptable to every type of legal system and treat all countries equitably. He thought his amendment was equitable in that sense.
26. Mr. PHUONG (Viet-Nam) did not think that the wording of paragraph 2 should stick too closely to Article II, paragraph 5 of the Brussels Convention. In his view, the words "an act or omission done with intent to cause damage" were confusing.
27. He supported the Austrian amendment, which would safeguard the principle of the absolute liability of the operator while affording him protection in the event of intentional acts or gross negligence by the person who had suffered the damage.
28. Mr. RUEGGER (Switzerland) shared in principle the view of the Italian delegation that the point under discussion was one of the essential points in the Convention. The necessity of maintaining an exception based on the

[1] 9th meeting, paras. 75 and 76.

fault of the victim was generally conceded, not only to safeguard the operator's interests but also to ensure that innocent victims would not have to share damages with victims who had caused or aggravated damage by a wilful act or gross negligence. The Netherlands amendment was too restrictive and he preferred the Austrian amendment, the scope of which was not limited to individuals and which also included the concept of gross negligence. The consequences of gross negligence were widely recognized. Publications of the International Labour Organisation had shown what the effects of negligence could be and persons guilty of such negligence should be deterred not only by legal sanctions but by the loss of certain rights.

29. Mr. KENT (United Kingdom) said that, as already indicated, his delegation could not support any of the proposals under discussion. In its view, it should be left to each State to decide whether or not the national law should provide that fault on the part of the victim should not preclude the recovery of compensation from the operator.

30. Mr. COPPENS (Netherlands) thought it logical that the operator should not pay compensation to a victim who had wilfully caused the damage, but the principle of absolute liability had been accepted in the Convention and consistency must be maintained. The Netherlands amendment followed the solution adopted in the Brussels Convention. He wondered if it would help if it were modified by replacing the words "exonerate the operator wholly or partially from his liability to such individual" by the words "reduce the amount of compensation recoverable in respect thereof", taken from the United Kingdom amendment.

31. Mr. SUONTAUSTA (Finland) pointed out that there could be no exception to the principle of absolute liability. Moreover, the question being discussed involved a purely legal rule and was not a social question. For those reasons his delegation was in favour of the basic text contained in document CN-12/2.

32. Mr. ZALDIVAR (Argentina) supported the Austrian amendment, which was fully satisfactory from the point of view of Argentine legislation and jurisprudence.

33. Mr. COLOT (Belgium) was anxious that paragraph 2 of Article III should not contradict the principle adopted in paragraph 1 of the same article and therefore supported the Netherlands amendment as it stood, or modified as suggested by its author.

34. Mr. STEPHENSON (South Africa) suggested that there should be exoneration in respect of dolus in the case of all legal persons but that there should be exoneration in respect of negligence only in the case of individuals.

35. Mr. KENT (United Kingdom) pointed out that the concept of gross negligence was not recognized in English law and that the Austrian proposal caused certain difficulties for the United Kingdom and other countries having the English system of law. Moreover, the concept of gross negligence or faute lourde meant different things in different countries. For those reasons the Austrian proposal was the least acceptable of those under discussion.

36. Mr. EDLBACHER (Austria) pointed out that the concept of gross negligence was included in other international agreements. There seemed no good reason, therefore, why it should not be included in the present Convention. The United Kingdom delegate had stated that the concept of gross

negligence was unknown in English law, but it was also true that English law did not have the concept of fault.

37. Mr. VERGNE (France) said he had some sympathy with the Netherlands amendment but preferred the United States amendment, though, as it referred to nuclear damage resulting wholly or partially from an act or omission, it should also provide, like the Netherlands amendment, for whole or partial exoneration from liability.

38. The CHAIRMAN, after recalling his remarks regarding the order in which the various amendments were to be put to the vote, said that as no formal proposal had been made for modifying the wording of the Netherlands amendment (CW/67), he would put it to the vote in the form in which it had been submitted, on the understanding that the vote related solely to the question what should be the criterion laid down for the establishment of fault.

39. There were 12 votes in favour and 19 against, with 10 abstentions. The Netherlands amendment was rejected.

40. The CHAIRMAN then put the Austrian amendment (CW/26 No. 2) to the vote, likewise in so far as it concerned the criterion for the establishment of fault.

41. There were 24 votes in favour and 12 against, with 5 abstentions. The Austrian amendment was approved on the basis indicated by the Chairman.

42. The CHAIRMAN announced that the Japanese amendment was withdrawn and called for speakers on the United States amendment (CW/11 No. 1 and 11/Corr. 1), which was substantially to substitute the word "shall" for the word "may".

43. Mr. PECK (United States of America) stated that the principle of absolute liability had been adopted and certain norms had been agreed to regarding the type of fault which would exonerate the operator. It should therefore be mandatory for the courts to apply the relevant provisions of the Convention in the manner decided by the Conference.

44. With regard to the point raised by the French delegate, his delegation was convinced that there should be complete exoneration in the case of a wilful act or omission but was prepared to accept complete or partial exoneration in the case of gross negligence if a majority of the Conference so desired. The words "wholly or partially" should accordingly be inserted after the words "shall exonerate the operator".

45. Mr. SCHMID (Austria) thought it would be very difficult to prove intent in the kind of case envisaged. It accordingly seemed more appropriate to him to give the courts a discretionary rather than a mandatory power.

46. Mr. ROGNLIEN (Norway) opposed the United States proposal on the ground that it was too detailed and categorical. There were cases, e.g. where damage was caused by a young child, in which there was intent but in which some compensation might nevertheless be just and reasonable.

47. The CHAIRMAN put to the vote the United States amendment (CW/11 No. 1 and 11/Corr. 1), as orally modified by the United States delegate.

48. There were 6 votes in favour and 14 against, with 21 abstentions. The amendment was rejected.

49. Introducing the United Kingdom amendment (CW/1, amendment 55), Mr. KENT (United Kingdom) explained that the purpose was to ensure that each State had the right to decide for itself whether a victim who was guilty

of fault would be precluded from obtaining compensation from the operator. Therefore the proposed amendment was not substantially different from the basic text, but was really only a matter of drafting.

50. The CHAIRMAN said the amendment would accordingly be referred to the Drafting Committee, and requested the Committee to revert to the Netherlands amendment (CW/67) in so far as it concerned the substitution of the word "individual" for the word "person".

51. Mr. BERTELS (Netherlands) stated that his delegation's preference for the word "individual" was connected with the concept of intent to cause nuclear damage but the adoption of the Austrian amendment adding the concept of gross negligence had changed the position and his delegation wished to withdraw its proposal.

52. Mr. ROGNLIEN (Norway) thought that the personal fault of the individual, unlike the fault of a legal person, was something tangible, from which consequences to the individual could be seen to flow naturally and properly. He therefore wished to reintroduce the Netherlands proposal.

53. Mr. JARVIS (Canada) supported the reintroduction of the Netherlands proposal as he felt that the use of the word "person" in the context of intent and gross negligence might cause great difficulties in the application of the Convention. If the application of the paragraph was limited to the individual the Convention would be departing as little as possible from the principles of absolute liability and channelling.

54. Mr. BRATUSJ (Union of Soviet Socialist Republics) preferred to keep the word "person", which would mean either a legal person or an individual. Under Soviet law the fault of a legal person and that of an individual were recognized equally and there was no problem with regard to the fault of a legal person, which was treated as the fault of the separate individuals concerned.

55. Mr. NORDENSON (Sweden) fully supported the Netherlands proposal, now reintroduced by the Norwegian delegation. While Swedish law recognized the vicarious liability of which the Soviet delegate had spoken, he did not think that the liability of a legal person should apply in the particular field of liability for nuclear damage.

56. Mr. PECK (United States of America), though sympathizing with the views of the previous speakers, preferred the word "person" to the word "individual".

57. Mr. EDLBACHER (Austria) fully agreed with the Soviet delegate. Views differed as to whether a legal person could commit a fault and since the legislation of certain countries treated legal persons and individuals alike no distinction should be made in the Convention. He therefore supported the maintenance of the basic text.

58. Mr. ŠEVČIK (Czechoslovakia) gave a specific example in support of the view that a legal person could be held liable for gross negligence.

59. The CHAIRMAN put to the vote the Netherlands proposal, reintroduced by the delegate of Norway, to substitute "individual" for "person" in paragraph 2 of Article III.

60. There were 10 votes in favour and 20 against, with 10 abstentions. The proposal was rejected.

61. Mr. RAO (India) noted the phrase "in accordance with the provisions of its law". There had been no vote or decision on that phrase, though it

had been omitted in the Netherlands and United States amendments. Would it be interpreted as meaning that courts would apply the paragraph only if the matter was provided for in the national law or that States ratifying the Convention would be required to enact legislation to bring the paragraph into effect?

62. The CHAIRMAN said he understood from the Netherlands and the United States delegations that they had considered the omission of the words "in accordance with the provisions of its law" as a purely drafting matter. The question raised by the Indian delegate would be referred to the Drafting Committee.

63. He then put to the vote paragraph 2 as a whole, as amended by the Austrian amendment (CW/26 No. 2).

64. There were 30 votes in favour and 4 against, with 6 abstentions. Paragraph 2 was approved, subject to being referred to the Drafting Committee.

Paragraph 3

65. The CHAIRMAN said the first group of amendments were those which simply proposed to delete the words "or a grave natural disaster of an exceptional character", namely the United States amendment (CW/1, amendment 63) and the Philippines amendment (CW/1, amendment 60). Another group comprised those proposing addition of a special clause relating to that point, namely the Japanese amendment (CW/42) and the United Kingdom amendment (CW/1, amendment 62). Once that point had been disposed of, further points to be discussed were whether exoneration from liability should be mandatory or not and whether national legislation might eliminate certain exonerations.

66. Mr. ULMAN (United States of America) stated that the purpose of the United States amendment was to bring the text into line with the basic principle of absolute liability. Paragraph 3 provided for exceptions to that principle and its scope should therefore be as narrow as possible and maximum protection should be ensured for the victims of nuclear damage. The words it was proposed to delete were vague in content and might offer an undesirable loophole. Moreover, they might involve litigation and it was the opinion of his delegation that litigation under the Convention should be limited as far as possible.

67. Mr. RITCHIE (United Kingdom) said that from his delegation's point of view there was no objection to deleting the reference to grave natural disasters, but the United Kingdom amendment sought to take the views of other countries into consideration.

68. Mr. JARVIS (Canada) felt that making an exception in respect of grave natural disasters was departing from the principle of absolute liability. In his view, moreover, the matter of exceptions should be dealt with in the Convention and not left to the action of national legislatures.

69. Mr. OHTA (Japan) thanked the United Kingdom delegate for his remarks. Japan was subject to earthquakes and was nevertheless in a position to exploit nuclear power. Earthquake damage was not included in an ordinary Japanese insurance policy and if the operator was not excluded from liability under the Convention in respect of a nuclear incident caused by an earthquake, he would be placed in an impossible position with regard to the financial security. He stressed that his delegation had in mind only catastrophic and

completely unforeseeable earthquakes, such as the 1923 earthquake which had destroyed almost half of Tokyo. He would return at a later stage to the question of the law of the Installation State. The first paragraph of the Japanese amendment was modelled on Article VIII of the Brussels Convention but by way of compromise the second paragraph made it possible for the Installation State, if it so wished, to make the operator liable in respect of nuclear damage due to a grave natural disaster.

70. Mr. EDLBACHER (Austria) was in favour of the United States amendment. Thanks to the technical measures taken there would be few nuclear incidents in normal conditions and serious damage was most likely to be caused by natural disasters. The more an undertaking was dangerous and subject to natural disasters the more the principle of exoneration should be reduced.

71. Mr. RUEGGER (Switzerland) preferred to maintain the basic text as proposed by the Panel of Experts in 1959. Swiss legislation was based on that formula and would be difficult to change. The present Convention was the first on the subject and could not make provision for everything. The Conference should not be too ambitious and he proposed that the basic text in document CN-12/2 be maintained.

72. Mr. TAGUINOD (Philippines) observed that the problem involved in deciding whether or not to delete the phrase "or a grave natural disaster of an exceptional character" was that of deciding on whom the burden of loss arising from force majeure should fall. He felt that the loss resulting from dangerous, but socially desirable activities should be borne by the party best able to bear them, where both parties were without fault. His delegation also felt that the loss should be borne by the party which had introduced the risks from which damage resulted. It should also be taken into account that in cases of grave natural disaster the means of preventing the damage lay exclusively with the operator. For that reason his delegation was in favour of deleting the words "grave natural disaster of an exceptional character".

73. Mr. RAO (India) considered that since the Conference had adopted the principle of absolute liability that principle should not be subject to exceptions. As the paragraph stood it opened the door to any amount of exceptions.

74. Mr. FABIÃO (Brazil) was also in favour of deleting the words in question.

The meeting rose at 6.20 p.m.

TWELFTH MEETING

Thursday, 9 May 1963, at 10.10 a.m.

Chairman: Mr. McKNIGHT (Australia)

CONSIDERATION OF THE DRAFT CONVENTION ON MINIMUM INTERNATIONAL STANDARDS REGARDING CIVIL LIABILITY FOR NUCLEAR DAMAGE (CN-12/2) (continued)

Article III

Paragraph 3 (continued)

1. The CHAIRMAN invited the Committee to resume consideration of the proposal to delete the words "or a grave natural disaster of an exceptional character".

2. Mr. HARDERS (Australia) supported the objections to those amendments expressed by the delegate of Japan. The principle of absolute liability must not be carried too far. The remainder of paragraph 3 already allowed exceptions in case of armed conflict, invasion, civil war and insurrection. No convincing argument had been adduced against the exception for events over which man had no control. The words "grave natural disaster" would not raise difficulties of interpretation, since the competent courts would understand the circumstances. Discretion should be given to the State, which might be the Installation State, to apply the provision.

3. For the redrafting of paragraph 3, his delegation preferred the United Kingdom proposal (CW/1, amendment 62) to the Japanese proposal (CW/42).

4. Mr. STEPHENSON (South Africa) endorsed the views expressed at the previous meeting by the delegate of Switzerland. The law of South Africa also provided for the contingency of grave disaster. The advice of the South African insurance experts was that, if the risks of grave disaster were to be covered under the Convention, the insurance premiums would have to be considerably higher; his Government would not wish to place that burden on the industry.

5. Mr. NA NAGARA (Thailand) noted a certain lack of interest in the topic. Most countries probably found themselves more fortunately placed than, for instance, Japan, which had to live under the threat of dreadful natural catastrophes. His delegation supported the Japanese plea to retain the reference to "grave natural disaster". Absolute liability was an ideal which in real life could, like all ideals, be approached but never quite attained. The aim should be to ensure that exceptions were as fair rather than as few as possible.

6. The Committee had already accepted in paragraph 2 the complete or partial exoneration of the operator from liability where damage was wilful or due to gross negligence, and would presumably accept the other exceptions listed in paragraph 3. If war were considered a fair exception on the ground that the responsibility for it fell on the nation as a whole, the operator could not be held more responsible in case of a grave natural disaster, for it was humanly possible to prevent war, but not to prevent an earthquake.

7. The Convention must ensure all possible protection for the public, but should not impose on the operator an unreasonable or undefined burden which would cripple the development of peaceful uses of atomic energy in countries such as Japan. Insurance cover against natural disaster, as against war, would be exorbitant if indeed it could be obtained at all.

8. The CHAIRMAN put to the vote the proposal made by various countries (CW/1, amendments 58, 60 and 63) to delete the words "or a grave natural disaster of an exceptional character".

9. There were 7 votes in favour and 24 against, with 7 abstentions. The proposal was rejected.

10. The CHAIRMAN invited the Committee to consider next the Japanese proposal (CW/42) and the United Kingdom proposal (CW/1, amendment 62). The first paragraphs of those proposals and the Canadian amendment (CW/1, amendment 58) were in almost identical terms.

11. Mr. JARVIS (Canada) withdrew the Canadian amendment in view of the suggested order of voting.

12. Mr. RITCHIE (United Kingdom) pointed out that the reference to revolution and rebellion in the first paragraph of the United Kingdom proposal did not appear in the Japanese text. His delegation had thought that the words "war, hostilities, civil war or insurrection" might not cover all occasions on which law and order might break down. Subject to that addition, which he would not press, the first paragraph of the United Kingdom proposal, like the Japanese proposal, followed Article VIII of the Brussels Convention. It would be best to exonerate the operator absolutely in the exceptional circumstances specified.

13. Mr. MAURER (United States of America) held that the present text of paragraph 3, barring exoneration unless the law of the competent court specifically prescribed it, would afford greater protection to victims.

14. Mr. SCHEFFER (Netherlands) supported the Japanese proposal because he considered its reference to the law of the Installation State more appropriate than the reference in the United Kingdom proposal to the law of the competent court.

15. Mr. YAMANO (Japan) said that in his view the Installation State was obviously the country best informed of the possibility and results of nuclear incidents, and was therefore competent to legislate on the exoneration of operators. If a disaster took place in the country where the nuclear installation was situated, the law of the Installation State and that of the competent court would be the same. A nuclear incident involving material in transit might take place in a country whose law did not exonerate an operator from liability.

16. Mr. RITCHIE (United Kingdom) agreed that in respect of fixed installations there was normally no difference between the law of the competent court and the law of the Installation State; there might be a difference in cases concerning transport of materials. His delegation had used the words "the competent court" because they appeared in paragraph 3 of the Intergovernmental Committee's text, and also because it had based the second paragraph of its proposal (paragraph 3A) on Article IX of the Paris Convention.

17. Mr. SUONTAUSTA (Finland) supported the Japanese proposal.

18. The CHAIRMAN put the second paragraph of the Japanese proposal (CW/42, paragraph 3A) to the vote.

19. There were 28 votes in favour and 6 against, with 8 abstentions. The paragraph was approved.

20. The CHAIRMAN said that the approval of that part of the Japanese proposal made it unnecessary to vote on the remaining amendments. The Philippines and South African amendments (CW/1, amendments 59 and 61) might be referred to the Drafting Committee.

21. He then put to the vote the first paragraph of the Japanese proposal (CW/42, paragraph 3).

22. There were 40 votes in favour and none against, with 3 abstentions. The paragraph was approved.

Paragraph 4

23. The CHAIRMAN observed that the United States of America had withdrawn its amendment (CW/1, amendment 64). He accordingly proposed that paragraph 4 be referred to the Drafting Committee.

24. The proposal was adopted unanimously.

Paragraph 5

25. Mr. JARVIS (Canada) observed that paragraph 5 was closely related to the amount to be determined under Article IV, paragraph 1. He therefore moved that its consideration be deferred until that amount was determined.

26. Mr. MAURER (United States of America) agreed with the Canadian delegate in respect of sub-paragraph (b), but thought that sub-paragraph (a) could be considered immediately.

27. The CHAIRMAN put the Canadian motion to the vote.

28. There were 9 votes in favour and 15 against, with 19 abstentions. The motion was rejected.

29. Mr. COLOT (Belgium) said that the purpose of his delegation's amendment (CW/18/Rev.1 No. 2) was to clarify the present vague wording. Sub-paragraph (a) should specify that the property concerned was in the operator's care or under his control. Moreover, paragraph 26 of the Intergovernmental Committee's report (CN-12/2, page 47) stated that the delegates of France, the Federal Republic of Germany and the United Kingdom had recorded their objection to the wording of the final part of sub-paragraph (a) and had suggested wording along the lines of the Belgian amendment.

30. Mr. BRATUSJ (Union of Soviet Socialist Republics) asked whether the Belgian delegation had omitted deliberately any reference to the nuclear installation itself.

31. Mr. COLOT (Belgium) said that the words had been omitted inadvertently from the Belgian amendment.

32. Mr. MAURER (United States of America) considered that the Intergovernmental Committee's text was clearer than either the Belgian amend-

ment or the United Kingdom amendment (CW/1, amendment 67). The principal difference lay in the words "any property on the site of that installation which is used or to be used in connection with that installation". The Belgian amendment referred only to property in the care or under the control of the operator, and might lead to litigation and confusion. The original text, moreover, dealt with a situation where the property on the site represented an insurable item.

33. Mr. TREVOR (United Kingdom) said that the object of his delegation's amendment was to cover such property as, for instance, vehicles belonging to workers or visitors and therefore not in the custody of the operator.

34. Mr. NORDENSON (Sweden) said he could support the Belgian amendment, which was similar in substance to his own amendment (CW/1, amendment 66).

35. Mr. MAURER (United States of America) said that in his country the vehicles to which the United Kingdom delegate had referred could be insured on the site.

36. Mr. RAO (India) pointed out that the original text of the paragraph, unlike the United Kingdom, Swedish and Belgian amendments, did not refer to the operator. The definition of an operator in Article I made it obvious that he might be concerned only with a small part of the installation. The Indian delegation preferred the original text, for it believed that all property on the site of the installation should be covered.

37. The CHAIRMAN put the Belgian amendment to sub-paragraph (a) (CW/18/Rev. 1 No. 2) to the vote.

38. There were 15 votes in favour and 16 against, with 14 abstentions. The amendment was rejected.

39. Mr. MAURER (United States of America) said that his delegation's amendment (CW/11 No. 2) might be referred to the Drafting Committee.

40. The CHAIRMAN said that the United Kingdom amendment and that part of the Swedish amendment relating to sub-paragraph (a) had been disposed of by the vote on the Belgian amendment. The Belgian amendment to sub-paragraph (b) would be considered under Article IV, paragraph 1.

41. The Committee should now consider the Swedish amendment (CW/1, amendment 66) in so far as it related to the introductory words of the paragraph.

42. Mr. NORDENSON (Sweden) said that the purpose of his amendment was to make it clear that the liability of the operator himself was excluded not only in the Convention, but also under all rules of the law of torts. Persons other than the operator who carried nuclear materials were covered by the general exclusion in Article II, paragraph 5.

43. The Swedish delegation thought that the provision appearing in Article II, paragraph 3, of the Brussels Convention should be extended to fixed installations. Unless liability were thus channelled, the operator would be compelled to maintain double coverage, which would be highly undesirable.

44. Mr. GAZDIK (International Air Transport Association), speaking at the invitation of the Chairman, said that IATA's understanding of Article III, paragraph 5, read with Article II, paragraph 5, was that air carriers could recover for damage caused to the aircraft by the operator. It had therefore been somewhat disturbed by the statement in paragraph 61 of the Secretariat's comments on the Draft Convention (CN-12/3) that Contracting Parties might by legislation permit owners of the means of transport on which the nuclear

material was carried at the time of the incident to claim from the liable operator compensation for damage to the means of transport. No reference was made to the Convention, and his association believed that some jurisdictions might interpret the comment to mean that the Convention would preclude an air carrier from recovering for nuclear damage resulting from an act or negligence of the operator.

45. For example, if a shipment from a nuclear installation caused nuclear damage in an air carrier owing to faulty packing, and passengers, shippers and certain objects on the ground suffered damage and the aircraft was destroyed, the passengers, shippers and owners of the property on the ground would have a right of action against the operator under the Convention, and the air carrier would also have a right of action based on ordinary tort law, a contract, or an indemnity agreement.

46. If the Swedish amendment were adopted, however, that situation would change materially, for its effect would be to eliminate the air carrier's right of action against the operator under ordinary tort law. Accordingly the amendment went much further than the Convention itself, since it affected all liability for nuclear damage. Its result would be that air carriers with expensive equipment would carry dangerous material without any recourse against the operator.

47. It might be said that the solution lay in taking out insurance, or in contractual or indemnity provisions. It was well known, however, that the insurance market was limited; even if some insurance were available, it would be limited or not available at all after one or two catastrophic losses. The Swedish amendment might also have the effect of making an indemnity agreement invalid in law.

48. It should be borne in mind that in the near future a very large number of shipments would be covered by the Convention, which would thus relate to many aircraft, and not to the few nuclear ships to which the Brussels Convention referred. In the predictable future every aircraft would at one time or another probably carry certain quantities of nuclear material and, if the Swedish amendment were adopted, would be exposed to risk without subrogation and without right of recovery.

49. In his association's opinion the Convention should clearly state the principle that it did not relieve the operator of any liability, under ordinary tort law or under contractual arrangements, for nuclear damage caused to means of transport by nuclear incidents. The principle was not new and had already been partially adopted in paragraph 4.

50. Mr. KEAN (International Civil Aviation Organization), speaking at the invitation of the Chairman, said that his organization's approach differed from that of IATA, since ICAO was not an organization of air carriers but was concerned with ensuring that the nuclear industry was not deprived of available means of transport by air. An effect of the Swedish amendment would be to prevent nuclear operators from agreeing with the air carrier to indemnify him for nuclear damage to the aircraft, or at least to make an indemnity agreement unenforceable, because the operator was precluded from incurring liability. He was sure that that was not the real intention of the Swedish amendment, for operators should be free to give the carrier a contractual indemnity if carriage by air were to remain available.

51. Mr. MAURER (United States of America) pointed out that the intention

of the Intergovernmental Committee had merely been to exempt operators from liability under the Convention; nothing in Article II, paragraph 5, derogated from that principle. It was equally clear, however, that there should be a right of action against the operator outside the Convention. The Intergovernmental Committee's text should be retained, since otherwise a most unfair burden would be imposed on the operator.

52. Mr. TREVOR (United Kingdom) observed, in connection with the statement of the representative of IATA, that the Secretariat's comment in document CN-12/3, paragraph 61, was inaccurate. Great care should be taken in referring to the applicability of normal rules of tort law outside the Convention. Article II, paragraph 5, quite clearly meant that the provisions of ordinary tort law were applicable; but the question whether the operator himself was liable for nuclear damage under ordinary tort law when he was specifically exempted from liability under the Convention was quite different.

53. The effect of the Swedish amendment varied in respect of sub-paragraph (a) and of sub-paragraph (b). Where on-site property was concerned, he could support the Swedish wording; but he sympathized with the views expressed by the representatives of IATA and ICAO and did not think that exemption from tort liability outside the Convention should apply to means of transport. Perhaps separate votes could be taken on the Swedish amendment as it affected sub-paragraphs (a) and (b).

54. Mr. NORDENSON (Sweden) agreed that two different points were concerned. In reply to the IATA representative, he said that the solution of the problem in respect of on-site property lay in insurance coverage; moreover, his delegation had had no intention of invalidating any indemnity or other contractual arrangement. Perhaps the wording of the amendment could be clearer; but it was based on the assumption that the Convention as a whole was concerned only with liability under the law of torts, and in no way affected liability arising under a contract.

55. His delegation's first concern was with on-site property. Perhaps a vote could first be taken on the amendment in relation to both sub-paragraphs; if the amendment were rejected, it could be voted on in relation to sub-paragraph (a) only.

56. Mr. WEITNAUER (Federal Republic of Germany) said that the Swedish amendment had raised doubts in his mind concerning the correct interpretation of the whole Convention. He had believed that, although an operator incurred no liability under the Convention for on-site damage, he and other persons might still be liable for such damage under the law of torts. The Swedish amendment, however, seemed to presuppose that if the operator's liability were excluded, no liability at all could arise. Insofar as the Swedish and United Kingdom delegates based their arguments on the Brussels Convention, he felt that it was a doubtful model to follow since what might be correct with regard to nuclear ships might not necessarily be appropriate in the case of land-based installations.

57. Mr. SCHEFFER (Netherlands) said that he was not completely clear about the legal position. Article III, paragraph 5, left the liability outside the Convention intact, but he did not understand its correct relationship to Article II, paragraph 5. He asked whether, where a third party caused on-site damage or a ship collided with another ship carrying nuclear material,

in innocent party had no right of action at all, since he had none under the Convention.

58. Mr. MAURER (United States of America) said that the two paragraphs taken in conjunction gave the operator of an installation a right under ordinary law outside the Convention. That was clear from the words of Article II, paragraph 5, "except as otherwise provided in this Convention". The text of the Swedish amendment had not the same effect when read in conjunction with Article II, paragraph 5. He agreed with the German delegate that it was necessary to decide what the Conference wished, and asked for a vote on the principle before referring the paragraph to the Drafting Committee. He felt strongly that the operator of an installation should keep his ordinary legal right to sue for damage to his installation.

59. Mr. ARANGIO RUIZ (Italy) agreed that it was necessary to vote on the substance of the issue.

60. Mr. TREVOR (United Kingdom) said two liabilities were involved: that of the operator, and that of any other person. Article II, paragraph 5, used the general words: "no person other than the operator shall be liable". Where nuclear damage was caused by a collision of two ships, the operator could not sue the other ship for the nuclear damage to the ship carrying the nuclear material. If the meaning of the paragraph were otherwise, every ship would need insurance cover for collisions with ships carrying nuclear material - an enormous burden which was the very thing the Convention was intended to avoid. As regards the operator's own liability, the position was different. If he were not to be liable under the Convention for on-site damage, he might or might not be allowed under the Convention recourse to the ordinary law of tort for negligence. The Swedish amendment was relevant only to sub-paragraph (a); sub-paragraph (b) should allow liability vis-à-vis carriers.

61. Mr. NORDENSON (Sweden) withdrew the part of his amendment applying to sub-paragraph (b). The operator should not be liable under ordinary law for on-site damage. The United States delegate had said that nothing prevented the operator from suing a third party for nuclear damage under the ordinary law of tort. As the United Kingdom delegate had stated, that point had been settled under Article II, paragraph 5; he asked what other meaning the United States delegate attached to that paragraph.

62. Mr. MAURER (United States of America) felt that the Swedish delegate had misunderstood the United States point, which only referred to the legal right of the operator to sue third parties who had caused damage to his installation, not to the rights of victims, which would not be affected. Clearly an operator should have a legal right to sue third parties who had caused damage to property. The Conference should decide whether to allow operators legal rights outside the Convention.

63. Mr. SCHEFFER (Netherlands) said that he was still not clear when persons other than operators would be liable. Article II, paragraph 5, said that no other person should be liable; Article III, paragraph 5, would mean that the operator also was not liable. He wished to know whether other persons would be liable under Article III, paragraph 5, or whether nobody would be liable in the exceptions covered by Article III, paragraph 5.

64. Mr. TREVOR (United Kingdom) said that under the original text there

was no liability for any person other than the operator, but the operator could be liable under the law of tort.

65. Mr. SCHEFFER (Netherlands) did not see how the text could be interpreted in that way.

66. Mr. WEITNAUER (Federal Republic of Germany) said that a further case would have to be considered, i.e. when the operator was not the owner of the installation.

67. The CHAIRMAN, pointing out that the German delegate's comment concerned a matter of detail, put to the vote the principle: "That an operator can, apart from the present Convention, sue any person under ordinary tort law for damage caused to his installation, on-site property, etc. as defined in Article III".

68. There were 12 votes in favour and 13 against, with 18 abstentions. The principle was rejected.

69. The CHAIRMAN said the Committee had not indicated any clear intention and he would consult with delegations[1].

Article IV

Paragraph 1

70. The CHAIRMAN said that as no basic figure had been given in the original text, he had consulted the delegates who had tabled amendments and had suggested that the amount of the limit should be fixed first. He proposed a general debate on the limit, followed by a roll-call, and that the Committee should then discuss the other amendments.

71. Mr. COPPENS (Netherlands) requested that the principles governing the amount should be debated first. He suggested that the Committee should discuss whether State intervention should be included as a substantial part of the amount available for compensation, the possibilities for operators to obtain private insurance, and whether there should be one minimum limit or different limits for on-site and for transportation incidents.

72. The CHAIRMAN, while admitting that those points were relevant to the debate, ruled that the proposed procedure would be followed.

73. Mr. RAO (India) considered that the article should allow all States to become parties and accept the obligations of the Convention. Consequently the level should be within the reach of every State, and he had proposed (CW/80) the figure of $ 5 million with that need in mind. A higher figure would hamper developing countries and prevent some States from ratifying the Convention, so that some States would continue to operate nuclear installations outside the Convention, and development in other States would be reduced. He hoped that, if insurance premiums proved to be low, individual States would set higher limits.

74. Mr. DUTILLEUX (Belgium) found the Indian delegate's statement of the problem very reasonable.

75. Mr. ŠEVČIK (Czechoslovakia) felt that technological considerations should be taken into account. The various types of installations provided

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[1] See 19th meeting, para. 38.

totally different levels of risk and amounts of potential damage. The location and safety standards should also be considered. One single limit, without regard to the standards and requirements of different countries, would not be practical. His delegation had also proposed a minimum figure of $ 5 million (CW/78), so as to encourage accession by developing countries, but for many countries a higher figure would be appropriate.

76. Mr. MAURER (United States of America) said that the Convention had two aims: to nurture infant industries in the field of atomic energy, and to protect the victims of a nuclear incident. Unless satisfactory provision were made for the latter aim, the Convention would at the first serious incident be discarded. No country could consider itself an island exempt from the problems raised by a nuclear incident, since the resulting damage could extend well beyond its borders and all contingencies should be covered.

77. Precedents for the limit of liability ranged from the Price-Anderson Agreement in the United States - $ 500 million plus insurance - to the Paris Convention - $ 70 million from the operator's own resources or $ 120 million from joint resources. A limit of $ 70 million was perhaps easier for other countries to accept, particularly in view of the position of the developing countries. The figure could be merely theoretical for countries which only possessed relatively harmless research reactors; other countries might find a way of pooling their resources. The question of variable limits, raised by the Czechoslovak delegate, had been considered but no practical method had been found. Article IV, paragraph 2, bore witness to the desire to impose a high limit when one's own nationals were involved, and showed the inadequacy of a low figure in Article IV, paragraph 1.

78. Mr. FLEISCHMANN (France) was in favour of a limit of $ 5 million. He was prepared to accept a higher limit, but thought that so broad a convention should fix a sum which could be accepted by the greatest number of countries. That should be the very minimum, and every State should be free to provide a higher limit, either individually or regionally, as under the Paris and Brussels Conventions.

The meeting rose at 1 p. m.

THIRTEENTH MEETING

Thursday, 9 May 1963, at 3.15 p.m.

Chairman: Mr. McKNIGHT (Australia)

CONSIDERATION OF THE DRAFT CONVENTION ON MINIMUM INTERNATIONAL STANDARDS REGARDING CIVIL LIABILITY FOR NUCLEAR DAMAGE (CN-12/2) (continued)

Article IV (continued)

Paragraph 1 (continued)

1. Mr. LYTKIN (Union of Soviet Socialist Republics) agreed with the Czechoslovak delegate that the danger from nuclear reactors had been highly exaggerated. Modern reactors differed greatly from the earlier types, especially the one at Windscale (United Kingdom) where considerable contamination had occurred, and nuclear incidents were unlikely. Moreover, the Agency's statistics showed that during the past 20 years, less than 30 persons had been victims of nuclear incidents and all of them had been employed in nuclear installations. The problem as it affected third parties was not a serious one. He therefore believed that the sum of $ 5 million would easily cover all possible damage resulting from nuclear reactors.

2. Mr. DUNSHEE de ABRANCHES (Brazil) pointed out that the difficulties arising in connection with the limit of liability were legal as well as monetary. Every system of law recognized that the person causing the damage was obliged to compensate the victim as fully as possible and for that reason a high amount seemed necessary. On the other hand, a high limit would debar private enterprise from entering the field of nuclear energy in the developing countries and the peoples of those countries would consequently be denied the benefits of nuclear power. The Conference must choose between the purely legal aspect and the need to promote the development of nuclear power in all countries. His delegation felt sure that the delegates could have confidence in technological progress and it would therefore vote in favour of the figure of $ 5 million as proposed by Czechoslovakia (CW/78) and India (CW/80). If that proposal was not adopted his delegation was prepared to examine the Belgian amendment (CW/19 and Corr. 1) in the light of the resulting situation.

3. Mr. THOMPSON (United Kingdom) said that, after careful consideration, his delegation did not regard a high limit of liability as suitable in the present Convention. Although the United Kingdom was a party to international agreements in which high limits of liability were prescribed and although its own legislation prescribed no limit of liability, it favoured a low amount in the present Convention. The aim of the Convention was to establish minimum international standards and the standards adopted should be acceptable to all countries, while individual States or groups of States would be free to go further if they wished. The Agency existed to promote the peaceful uses of atomic energy and it was essential that less developed countries, whose installations would be limited to small research reactors,

should not be prevented from entering the nuclear field. It was always possible that different arrangements, involving for instance an international liability fund, might be made at some future date. For the present it was no argument in favour of a high limit to say that a nuclear incident entailing damage of such proportions was unlikely ever to occur. Every undertaking given by a country must be given in good faith. His delegation had proposed a figure of $ 15 million but was now prepared to vote for a figure of $ 5 million. Nevertheless it would not withdraw its proposal (CW/65) since other delegations might wish to reinstate it. He hoped, however, that the greater safety of modern reactors and the safety record of reactors and nuclear installations generally would be accepted as demonstrating that a high minimum limit of liability was not necessary.

4. Mr. LINDSAY (Ghana) fully agreed with the Indian proposal that the limit should be $ 5 million, a figure which would not deter the developing nations from undertaking nuclear research for the benefit of their peoples but which would be adequate to provide compensation for victims of nuclear damage. The proposed figure was, in any case, a minimum one and the Installation States were not precluded from providing for a larger amount of compensation.

5. Mr. PHUONG (Viet-Nam) agreed with the United Kingdom delegate that the purpose of the Convention was to fix minimum international standards. Since developing countries constituted a large majority, it would appear appropriate to take into account their capabilities if the Convention were to be accepted by the maximum number of countries. The developing countries were eager to share in the benefits derived from the peaceful uses of nuclear energy, and therefore the limit of liability should not be too high. One should bear in mind that in most of the developing countries the operator was directly, or indirectly, the State itself, whose financial resources were very limited. He was not convinced by the figures the United States delegate had quoted at the previous meeting, as they seemed to apply to highly-developed States only. For that reason, his delegation would support the Indian proposal, and he thanked the Belgian, French and United Kingdom delegates for the understanding they had shown vis-à-vis the developing countries by accepting an amount within their means.

6. Mr. RUEGGER (Switzerland) stated that three important considerations had to be borne in mind, namely the effective protection of victims, the general desire for the development of nuclear energy and the universality of the Convention. Switzerland was able, in the light of its own legislation and of the international agreements to which it was a party, to accept either a high or a low figure. It was essential to find a common denominator, not necessarily the lowest, but one which would enable a large majority of the States represented to give effective undertakings. While his instructions made it likely that he would abstain from voting, he could say that his delegation would not be in favour of any figure below $ 15 million.

7. Mr. GUDENUS (Austria) stated that his delegation, like the Swiss delegation, could agree to either a high or a low figure. It would in fact be pleased to agree to whatever figure was adopted by the majority of the Conference. If that figure was $ 5 million, however, his delegation would require a clear understanding that the Contracting Parties would be under

an obligation to have the sum available at any time and for any nuclear incident.

8. Mr. KONSTANTINOV (Bulgaria) stated that the problem was a complex one, partly owing to insufficient practical experience of the results of nuclear incidents. His delegation endorsed the principle of a minimum limit of liability contained in paragraph 1 and felt that the amount should be determined on the basis of a thorough study of the legal and technological aspects of the problem. Too high a limit would not ensure better protection for the victims and might prevent many countries from accepting the Convention. His delegation therefore supported the figure of $ 5 million proposed by Czechoslovakia and India.

9. Mr. de CASTRO (Philippines) stated that in its proposal (CW/1, amendment 69) the Philippines delegation had proposed a figure of $ 20 million, which seemed neither so high as to be unduly onerous for the operator, nor too low to ensure adequate compensation for the victim. Having followed the discussion, however, his delegation was prepared to accept the figure of $ 5 million but, for the same reasons as the United Kingdom delegation, did not wish to withdraw its proposal.

10. Mr. PAPATHANASSIOU (Greece) and Miss RATUMBUYSANG (Indonesia) said they would vote in favour of the figure of $ 5 million.

11. Mr. JARVIS (Canada) felt that the interests of developing countries had been over-stressed and those of the victims somewhat neglected. While everyone hoped that a nuclear incident would be very exceptional, or would never occur at all, the possibility of one occurring existed and should be borne in mind. Sooner or later, in the course of the normal development of technology, plutonium would be used as fuel and would be carried between States. It could easily be a source of expensive nuclear incidents. Moreover, the present tendency was to scale down existing safety precautions on the ground that they were excessive. At some stage in that process the probability of disaster might increase. He therefore urged the Committee to decide on a figure considerably higher than $ 5 million.

12. Mr. GHELMEGEANU (Romania) agreed with the Soviet delegate that the minimum amount of liability should be determined on the basis of statistics. Those showed, on the one hand, that technological development went hand in hand with the development of adequate safety measures and, on the other, that nuclear incidents had so far concerned only persons inside nuclear installations. The Convention was concerned with damage outside nuclear installations and the figure accepted should be based on the statistics concerning such damage. He understood that the amount would always be made up after an incident had occurred so as to be available for every subsequent incident. In that case the amount available would really be greater than $ 5 million. If the low limit in fact proved insufficient the Convention could be revised or the Installation State concerned could amend its laws.

13. Mr. ZALDIVAR (Argentina) was surprised that so many delegations favoured the low limit of liability. His delegation felt that the essential aim of the Convention was to protect victims of nuclear incidents and not to promote the development of nuclear power. He did not believe that a high limit of liability would be a brake on nuclear industries, as in most countries the operator would be the Government, which would pay the total

compensation whatever limit was adopted. In the case of installations operated by private enterprise insurance coverage could be provided. A high limit would also be beneficial where compensation involved international relations. He suggested that the disadvantages of the high limit might be offset by the creation of an international compensation fund, as proposed in the draft recommendation submitted by Argentina (CN-12/9). He would vote in favour of the United States proposal (CW/85).

14. Mr. RAO (India) said that if the Committee adopted a high figure the effect would be to reinforce people's remaining fears of atomic energy. A low figure would, on the contrary, tend to soothe those fears and encourage the developing countries in their desire to use nuclear power to improve their standard of living. Moreover, even if a low figure was adopted, it would be open to each State to fix a higher limit if its installations were of such extent, power or complexity as to make that desirable. In any case a high figure would be impracticable in most countries at the present time; some of the figures suggested were greater than the total budget of many developing countries, which would therefore find it very difficult to accept the Convention if any such figure were adopted.

15. Mr. BELLI (Italy) said Italy was in a similar position to the United Kingdom, having a high limit of liability in its national legislation and having adhered to the Brussels Convention. Nevertheless, as the present Convention was one on minimum international standards, his delegation would vote in favour of the figure of $ 5 million. He also supported the Argentine proposal for an international fund which could be drawn on in the event of a nuclear catastrophe and thought it deserved careful study.

16. Mr. GASIOROWSKI (Poland) said that the problem was primarily an internal one for the Installation State, which was, accordingly, best equipped to fix the limit of liability itself. Nothing prevented any State from fixing a higher limit than that laid down in the Convention, but many developing countries were not in a position to assume so heavy a burden. Poland favoured a limit of $ 5 million.

17. Mr. CONTRERAS CHAVEZ (El Salvador) said that he agreed with the Argentine and United States delegations and thought that the figure of $ 70 million was reasonable. For countries that were small and underdeveloped, and to whom that figure might seem too high, the question was in fact only of theoretical concern.

18. Mr. MAURER (United States of America) said that the Convention had two prime objectives: to nurture atomic industry and to protect the victims of nuclear incidents. In his previous statement[1] he had placed them on an equal footing, but if he were forced to place those two objectives in order of priority he would say that as the protection of victims concerned human rights, it should take priority over the advancement of industry. And he thought that, if pressed, the Indian delegate would give the same answer.

19. The point had been made that underdeveloped countries could not afford the figure proposed by the United States. That misstated the problem, which was not one of the appropriation of money but of a contingent liability which might never arise.

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[1] 12th meeting, paras. 76 and 77.

20. It had also been said that a high limit would discourage the installation of small research reactors of only slight potential danger; but precisely because the danger presented by such reactors was slight, compensation to the figure of $ 70 million would never be called for and private insurers need feel no qualms on that score. He was, in any case, in favour of measures, such as the establishment of an international fund, for helping countries which still felt uneasy about the figure of $ 70 million.

21. The Convention would have failed in its purpose unless the two main objectives he had mentioned were both safeguarded. Universality in the question at issue was a secondary consideration.

22. Mr. de los SANTOS (Spain) said Spain had signed the Paris Convention and would sign the Brussels Convention and adopt the figure stipulated in that Convention in its internal law. For the present Convention, however, he thought it more realistic and conducive to the widest possible measure of support for the Convention to adopt an intermediate figure of $ 15 million or $ 20 million.

23. He supported the suggestion for an international fund to help all countries to meet their obligations in the nuclear field, and recalled that the Brussels Conference had recommended the Agency to study the matter further.

24. Mr. RAO (India) said the Indian delegation naturally regarded human rights as of paramount concern. On the question at issue, however, he was not convinced that possible damage would exceed the figure of $5 million. He had not heard of any nuclear incident which had involved compensation amounting to that figure, and with the progress of science the risks of damage should decrease.

25. Mr. BRAJKOVIĆ (Yugoslavia) said that at the Brussels Conference the Yugoslav delegation had supported a limit of $ 100 million. But ships were mobile and entered ports and densely populated areas where the risk of widespread damage was high. The present Convention concerned, firstly, fixed installations, which were adequately protected and usually remote from centres of population, and, secondly, nuclear material in transport, which would be carried in protective containers. The risks were therefore less, and the figure of $ 5 million seemed all the more acceptable.

26. The CHAIRMAN called for a roll-call vote on the figure to be inserted in Article IV, paragraph 1.

27. Portugal, having been drawn by lot by the Chairman, was called upon to vote first.

28. The result of the vote was as follows:

For $ 5 million: Portugal, Romania, Sweden, Thailand, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, Viet-Nam, Yugoslavia, Australia, Austria, Belgium, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Colombia, Cuba, Czechoslovak Socialist Republic, Denmark, Finland, France, Federal Republic of Germany, Ghana, Greece, Holy See, Hungary, India, Indonesia, Israel, Italy, Japan, Lebanon, Mexico, Morocco, Norway, Philippines, Poland.

For $ 15 million: South Africa, Spain.
For $ 70 million: Turkey, United States of America, Argentina, Canada, China, El Salvador.
Abstaining: Switzerland, Netherlands.

29. There were 37 votes for a figure of $ 5 million, 2 for $ 15 million and 6 for $ 70 million, with 2 abstentions. The figure of $ 5 million was approved.

30. The CHAIRMAN said consideration of the second part of the Indian amendment (CW/80) would be deferred pending the report of the Sub-Committee on Exclusion of Materials, and the Philippine amendment (CW/1, amendment 70) would be referred to the Drafting Committee.

31. The French proposal for insertion of a new paragraph between paragraphs 1 and 2 (CW/2 No. 1) would be considered at the end of the discussion on Article IV, and the Drafting Committee would decide on the placing of the paragraph, if approved.

32. Mr. DUTILLEUX (Belgium), introducing his amendment (CW/19 and Corr. 1), said it was essential that the principle of the limitation of liability should be formally expressed in the Convention. There was so far nothing in the Convention which said how the amount of compensation for victims was to be fixed or which law the competent court should apply. The Belgian amendment safeguarded the position of operators and Installation States, who were required by Article VI to provide the necessary funds if insurance were lacking. The existing draft allowed Installation States to limit the liability of operators; the amendment followed the Paris Convention in making it obligatory for Installation States to limit liability; in the absence of such a provision operators might be faced with unlimited claims for compensation. Sub-paragraph (b) of the amendment set the limits within which the Installation State could fix the liability of operators.

33. Mr. BOULANGER (Federal Republic of Germany) supported the Belgian amendment, which would help to ensure that the necessary insurance was forthcoming.

34. The CHAIRMAN put the Belgian amendment (CW/19 and Corr. 1) to the vote.

35. There were 8 votes in favour and 14 against, with 20 abstentions. The amendment was rejected.

36. Mr. IVANOV (Ukrainian Soviet Socialist Republic) said that the purpose of his amendment (CW/44) was to provide that the monetary unit in which the limits of liability was expressed should be clearly defined in the Convention in terms of gold, to safeguard the interests of both victims and operators. He proposed the equation US $ 35 - 1 Troy ounce of gold; but the precise unit could be fixed by the Drafting Committee. He insisted, however, that there should be no reference to the International Monetary Fund, as some States represented at the Conference were not members of that organization.

37. Mr. MAURER (United States of America) agreed with the Ukrainian delegate on the necessity of defining the value of the monetary unit in terms of gold. He thought that the Ukrainian amendment and the United States amendment (CW/12 No. 4) could be sent for reconciliation to the Drafting Committee. He was prepared to drop any reference to the International Monetary Fund.

38. Mr. de ERICE (Spain) agreed on the need for a new paragraph defining the value of the monetary unit referred to, but preferred the text of Article III, paragraph 4 of the Brussels Convention.
39. The CHAIRMAN called for a vote on the question of principle whether to insert a new paragraph in Article IV on the lines of the Ukrainian and United States amendments. If the principle were approved, the two versions would be sent to the Drafting Committee.
40. There were 42 votes in favour and none against, with 1 abstention. The question put by the Chairman was decided affirmatively.

Paragraph 2

41. The CHAIRMAN said the deletion of paragraph 2 had been proposed by the United Kingdom (CW/1, amendment 71) and Czechoslovakia (CW/78).
42. Mr. KENT (United Kingdom) said that the main reasons for his proposal were given in the written explanations accompanying it, and he had little to add to them.
43. The Committee had fixed the lower limit of liability at $ 5 million. One of the main considerations which had prompted that vote was the desire to make it possible for the underdeveloped countries to develop nuclear industries and set up research reactors, which would always represent a greater risk than nuclear material in transport. It would defeat that objective if States which fixed a higher limit were permitted to impose that higher limit on nuclear materials in transit through their territory. It would be illogical to apply a higher limit of liability for material in transit than was applied to nuclear installations.
44. In the event of his amendment being defeated, he reserved the right to submit an alternative proposal.
45. Mr. JARVIS (Canada) said that in view of the very low limit that had been adopted for paragraph 1, countries through whose territorial waters or land area nuclear materials were likely to be transported in considerable quantities were interested in securing additional protection for potential victims. The risk was possibly at present less for materials in transit than for nuclear installations, but might well be increased if considerable quantities of plutonium entered into international trade. Installation States should have the right to fix a higher limit of liability for materials in transit, but there should be a ceiling on that liability.
46. Mr. GASIOROWSKI (Poland) supported the proposal to delete paragraph 2, first because it opened the way to discrimination by allowing a State to raise the limit of liability in particular cases, e.g. if it thought that a particular risk was involved, secondly because it presented the danger that the practical application of the Convention might be complicated by failure to establish a uniform procedure.
47. Mr. SPAČIL (Czechoslovakia) endorsed what had been said in the explanations accompanying the United Kingdom proposal (CW/1, amendment 71). The same principles should be applied to nuclear materials in transit as were applied to nuclear installations, and the reasoning which had led the Conference to approve the lower limit of liability in paragraph 1 was no less valid in the case of nuclear materials in transit. If transit States were free to raise the limits of liability many of the poorer and underdeveloped

countries would be precluded from developing their nuclear industries and from engaging in the transport of nuclear materials.

48. Mr. BOULANGER (Federal Republic of Germany) urged the Committee to retain paragraph 2. The paragraph would not lead to discrimination; it did not change the limit of liability in force in a given country, which would be the same for all transit shipments. If transit shipments were admitted at the lower limit of liability fixed by foreign countries then there would in fact be discrimination against similar shipments originating within the country to the detriment of native operators.

49. Mr. SCHEFFER (Netherlands) said that he could not support the United Kingdom proposal, though he might have done so had a uniform limit applying to all materials in transport been adopted. As that was not so, the protection afforded to victims would differ according to the country of origin of the material in transit.

50. Mr. RUEGGER (Switzerland) said that, as a transit country, Switzerland was particularly interested in the point at issue and regarded the paragraph as a safeguard necessary within the framework of the Convention. He agreed with the statements of the German and Netherlands delegates.

51. Mr. VILKOV (Union of Soviet Socialist Republics) said that he supported the proposal for deletion of paragraph 2, which was at variance with the text of paragraph 1, since it would permit transit States to raise the limit of liability for materials in transit at their discretion.

52. Provisions similar to that contained in the paragraph had been discussed and rejected at the Geneva Conference on the Law of the Sea in 1958 as well as at Brussels. Since nuclear ships, when entering ports or territorial waters, constituted a greater danger than nuclear materials in transit, there was all the less reason to include an analogous provision in the present Convention.

53. Mr. MAUSS (France) urged the Committee to retain the paragraph. A country which had fixed a higher limit for its own operators should not have to apply a lower limit for nuclear material in transit. He did not think the paragraph would increase the burden on countries abiding by the lower limit as if insurance coverage were lacking the charge would be assumed by the State imposing the higher limit.

54. If, as had been argued, the transport of nuclear materials involved only a slight risk, insurance payments could not be very high; but the risk might in fact be considerable in the case of plutonium.

55. Certain delegates had referred to previous conventions, but those conventions were exclusively maritime and were therefore irrelevant to the issue.

56. For the Convention to be acceptable to a maximum number of countries, it should not permit discrimination according to the origin of material in transport.

57. Mr. RAO (India) said that he did not believe there was any rule in international law providing an inherent right of transit through the territory of another State. The question was still regulated by bilateral treaties.

58. A State, therefore, had the right to subject nuclear material in transit through its territory to certain conditions based on its prime duty to protect its citizens from dangers arising from its own good-neighbourly conduct in permitting transit. That was the principle embodied in paragraph 2.

59. The nationals of a transit State were entitled to compensation up to the limit established by their country, even in the case of material from a country with a lower limit. The paragraph should be retained.

60. Mr. PAPATHANASSIOU (Greece) said that, although his country had a large merchant navy and hoped in future to become a carrier of nuclear materials, there were other interests - namely, those of victims of possible nuclear incidents - which it was even more important to safeguard. He therefore opposed the proposal to delete the paragraph.

61. Mr. SCHMID (Austria) said he opposed the deletion of the paragraph because it was not fair that the compensation paid to victims should depend on the origin of the nuclear material in transit.

62. Mr. ULMAN (United States of America) said that the discussion indicated that many of the countries which had supported the low limit of liability had done so in the belief that they could protect the interest of their nationals if damage exceeded $ 5 million. They were, however, unwilling to subject nuclear material coming from another country, but passing in transit through their territory, to a limit of liability which they deemed inadequate. Paragraph 2 was an essential safeguard for countries which wished to apply a higher limit of liability in their internal legislation.

63. It was incorrect to appeal to the Brussels Convention as a precedent as the Brussels Convention had fixed a universally applicable limit of liability of $ 100 million.

64. Mr. SPAČIL (Czechoslovakia) said that if transit States thought that the limit of liability fixed in the country dispatching nuclear material was too low, they could refuse to allow transit of the material. The dispatching State, for its part, might have no remedy if it found the limit of liability of the transit State too high.

65. The CHAIRMAN put to the vote the proposal to delete paragraph 2 (CW/1, amendment 71 and CW/78).

66. There were 20 votes in favour and 23 against, with 4 abstentions. The proposal was rejected.

67. Mr. SANALAN (Turkey) said that the purpose of his amendment (CW/57) was to allow for a higher figure of compensation than any limit established by virtue of paragraph 1. That was of particular importance for underdeveloped countries which lay on important international lines of communication.

68. The CHAIRMAN put the Turkish amendment (CW/57) to the vote.

69. There were 3 votes in favour and 29 against, with 15 abstentions. The amendment was rejected.

70. Mr. BETTE (Luxembourg) said his delegation proposed (CW/64) deletion of the words "on whose territory there is a nuclear installation", since they gave rise to discrimination. A State like Luxembourg which had no nuclear installations on its territory would not be able to apply the provisions of the paragraph as it stood. He could not agree to such a restriction of his country's rights in so important a sphere.

71. Mr. SCHEFFER (Netherlands) associated himself with the Luxembourg delegate's statement. It would be most unfair to discriminate against countries which had no nuclear installations.

72. Mr. DONATO (Lebanon) supported the statements of the Luxembourg and Netherlands delegates.

73. Mr. STEPHENSON (South Africa) said that if the words in question were deleted another discrimination would arise. The final clause of the paragraph forbade Installation States from exceeding the limit which they had established. That proviso would not apply to countries which were not Installation States, which would therefore be free to raise the limit to any amount.

74. The CHAIRMAN put the Luxembourg amendment (CW/64) to the vote.

75. There were 14 votes in favour and 13 against, with 20 abstentions. The amendment was approved.

76. The CHAIRMAN invited the Committee to discuss the first United States amendment (CW/12 No. 1), for insertion of the words "or entry on its territory".

77. Mr. ULMAN (United States of America) said that a Contracting Party should not only have the right to subject material in transit through its territory to higher limits of liability, but that it should have the same right in respect of material destined for installations within its territory. Otherwise, it would either have to accept the lower limit of liability for such material or to take it in charge at the point of entry.

78. Mr. KENT (United Kingdom) was strongly opposed to the words which the United States delegation proposed to insert. They would imply that if a State with a limit of liability of, say, $ 10 million sent nuclear material to a point in the interior of the United States, that material would become liable to a limit of $ 70 million or even higher from the moment it entered United States territory. That struck at one of the basic ideas of the Convention - that an operator should carry the limit of liability of his Installation State.

79. Mr. SCHEFFER (Netherlands) supported the United States amendment for the very reason which had been given by the United Kingdom delegate for opposing it. It was illogical to make a distinction between material in transit and material entering a country and destined for a point within that country. The protection given to nationals of the transit country should be the same in both cases.

80. Mr. ROGNLIEN (Norway) said that he opposed the United States amendment for the reasons given by the United Kingdom delegate. It might seem illogical to make a distinction between material in transit and material entering a country for a destination in that country, but there was an important distinction in fact between the two cases: in the case of "entry" there was a consignee. He, or the Contracting State itself, could take charge of the material at the frontier either by contract or by physical control. In that way the receiving country would provide for the higher limit of liability it wished to impose, so that the United States amendment was unnecessary. It would, moreover, lead to difficulties in the exchange of nuclear material.

81. The CHAIRMAN put the first United States amendment (CW/12 No. 1) to the vote.

82. There were 9 votes in favour and 22 against, with 15 abstentions. The amendment was rejected.

83. Mr. JARVIS (Canada) said the purpose of his amendment (CW/68/Rev. 1) was to impose a maximum limit on the liability that might be imposed on nuclear material in transit. The need for such a maximum limit seemed too obvious to need argument.

84. Mr. ROGNLIEN (Norway) supported the Canadian amendment in principle, but asked whether he would be permitted to propose a figure of $ 10 million instead of the $ 70 million proposed by Canada.

85. The CHAIRMAN said that the Committee should first discuss the principle of the Canadian amendment (CW/68/Rev. 1 No. 1) and then decide on the amount (No. 2).

86. Mr. KONSTANTINOV (Bulgaria) said that in voting on paragraph 1 the Committee had adopted a minimum limit. Now it was asked to accept a maximum limit. He would like some further explanation.

87. Mr. STEPHENSON (South Africa) asked whether the acceptance of the Canadian amendment would mean the deletion of the proviso contained in the last clause of paragraph 2. The paragraph as amended by adoption of the Luxembourg amendment made a distinction between Installation States and non-installation States. Would the question be reopened if the Canadian amendment were adopted?

88. Mr. SPAČIL (Czechoslovakia) said that by rejecting the Belgian amendment (CW/19 and Corr. 1) the Committee had decided not to fix a maximum limit of liability. He asked whether it was in order to reconsider the question in connection with the Canadian amendment.

89. The CHAIRMAN said that paragraph 1 laid down a minimum limit but said nothing about a maximum limit. Paragraph 2 provided that Contracting States could raise the limit of liability of nuclear materials in transit through their territory up to the limit which they had established. The Canadian delegation appeared to have in mind the possibility that the liability on material in transit might be raised, for instance in the United States, to a limit of $ 500 million, and had posed the question whether that should be allowed.

90. Mr. NORDENSON (Sweden) said that the Chairman had put the position clearly, but the position was even worse than had been stated. Paragraph 1 of Article IV said that the Installation State "may" limit the liability of the operator; it did not say it was obliged to do so. An Installation State might fix no limit and provide for unlimited liability, and that unlimited liability would apply to material in transit from operators in other countries which had fixed a limit. He therefore supported the principle of the Canadian proposal that an upper limit should be laid down either by fixing a definite figure or by some such formula as "the highest limit established by any Contracting State".

91. The CHAIRMAN put to the vote the Canadian amendment as far as it concerned the question of principle (CW/68/Rev. 1 No. 1), i.e. with no figure specified.

92. There were 26 votes in favour and 5 against, with 15 abstentions. The amendment was approved.

93. Mr. JARVIS (Canada) said that, as regards the figure, he proposed $ 70 million (CW/68/Rev. 1 No. 2), partly because it was the figure proposed by the United States for inclusion in paragraph 1, partly because it was the limit of State liability fixed by the Paris Convention as amended, and partly because at the meeting of the Intergovernmental Committee certain States which regarded themselves as potential "transit States" had indicated that they thought a rather high figure should be fixed.

94. Mr. DONATO (Lebanon) supported the figure of $ 70 million.

95. The CHAIRMAN said he must put the Norwegian proposal[2] to the vote first as a sub-amendment to the Canadian amendment.

96. There were 24 votes in favour and 11 against, with 10 abstentions. The proposal to insert "$10 million" in the text of the Canadian amendment was approved.

97. Thus amended, the CHAIRMAN put the Canadian amendment (CW/68/Rev.1) to the vote.

98. There were 25 votes in favour and 12 against, with 9 abstentions. The amendment was approved.

The meeting rose at 6.30 p.m.

FOURTEENTH MEETING

Friday, 10 May 1963, at 9.50 a.m.

Chairman: Mr. McKNIGHT (Australia)

CONSIDERATION OF THE DRAFT CONVENTION ON MINIMUM INTERNATIONAL STANDARDS REGARDING CIVIL LIABILITY FOR NUCLEAR DAMAGE (CN-12/2) (continued)

Article IV (continued)

Paragraph 2 (continued)

1. Mr. PECK (United States of America) said that the basic intention of his amendment (CW/12, No. 2) was to preserve the existing international law and agreements on innocent passage, entry in case of urgent distress and overflight. Whether the passage of a vessel carrying nuclear material could be considered innocent and, if so, how far its passage could be regulated by the coastal State was not clear in international law. The United Kingdom and the United States of America agreed that the right of innocent passage was a servitude on the sovereignty of a coastal State, and that reasonable regulations by that State were acceptable. The right of entry in case of urgent distress could not be prohibited. For aircraft there was no right of innocent passage but certain rights of overflight, which States were free to permit or to regulate by agreement where aircraft carried nuclear material. Those three rights should remain.

2. Mr. KENT (United Kingdom) said that the paragraph should not apply to the right of entry in case of urgent distress, since it was unfair that a ship carrying a nuclear cargo should incur heavier liability when trying to save life. Nor should it apply to the other two rights. If there were a higher level of liability than that provided by the ordinary law of the installation State, operators and carriers would be seriously handicapped, and carriers would tend to avoid States imposing higher liability and would thus increase

[2] See para. 84 above.

the costs. He agreed with the United States delegate that existing international agreements should not be disturbed; but where they granted a right of innocent passage, it should also be granted on the same terms to vessels carrying nuclear materials. There was in fact no absolute right of innocent passage, since most States made regulations covering certain cargoes.

3. Mr. DUNSHEE de ABRANCHES (Brazil) said that the problem had been well set out in the article-by-article comments on the Convention prepared by the Secretariat of the Agency (CN-12/3) and that he approved of the conclusions.

4. Mr. SCHMID (Austria) asked the representative of the International Air Transport Association if there were any international regulations on the amount of nuclear material that might be carried by air.

5. Mr. GAZDIK (International Air Transport Association) said that certain principles had been the subject of an agreement submitted to Governments and approved by most of those represented at the Conference. They had been developed in co-operation with the Agency and were subject to review, so that they might change within a short time.

6. Mr. SCHMID (Austria) said that in the light of that statement he supported the United Kingdom amendment (CW/58).

7. Mr. SCHEFFER (Netherlands) agreed with the idea behind the proposals, and considered the United Kingdom wording clearer; the United States amendment seemed to allow differences of interpretation. He asked the United Kingdom delegate why sub-paragraph (i) spoke of international law only, whereas sub-paragraph (ii) spoke of agreement and international law.

8. Mr. PAPATHANASSIOU (Greece) said there was a difference in substance between the two amendments: the United States amendment merely refrained from affecting existing provisions; the United Kingdom amendment laid down a rule. Consequently he preferred the former.

9. Mr. NISHIMURA (Japan) said that there was no conventional or customary right of innocent passage. The transport of nuclear material was not innocent. Moreover, the right of innocent passage in the air only applied to non-commercial flight. He would therefore vote against that part of the amendments which applied to innocent passage and overflight, but for that part which concerned right of entry in case of urgent distress.

10. Mr. ROGNLIEN (Norway) supported the United Kingdom amendment as better than that of the United States, but considered it slightly obscure in not forbidding an increase in liability but merely excluding the provisions of paragraph 2 in the given cases.

11. Mr. GHELMEGEANU (Romania) regretted that he could not support either amendment. Provisions should not be adopted concerning the question of whether the passage of ships carrying nuclear material was to be considered as innocent passage or not. It was up to the State to judge, according to the prevailing conditions, whether or not the transport of dangerous goods through its territorial sea or its air space constituted innocent passage.

12. Mr. HARDERS (Australia) asked the United States delegate for clarification. He understood that if a ship called at a port and nuclear damage ensued, the operator would be liable up to a limit of $10 million. However, the United States amendment seemed to suggest that, if the damage occurred

during passage through the territorial sea, the coastal State could impose the maximum liability in force within its own territory.

13. Mr. PECK (United States of America) agreed that it would be wrong for the Convention to state the law on innocent passage, but pointed out that his amendment would not do so. He did not intend to answer theoretical questions; that was the duty of the competent courts.

14. Mr. TAGUINOD (Philippines) felt that the difference between the two amendments was only one of form, as they clearly did not attempt to prejudice the existing international law. The United Kingdom amendment was, however, clearer.

15. Mr. KENT (United Kingdom) said that he had no objection to the Netherlands delegate's suggestion that the words "by agreement or" should also appear in sub-paragraph (i). The Norwegian delegate's doubts could be referred to the Drafting Committee. In answer to the Romanian delegate, he said he had been careful to indicate that his amendment would not disturb international agreements.

16. Mr. PECK (United States of America) pointed out that his amendment contained the words "without prejudice to such rights as may exist", which emphasized his wish not to disturb existing rights. The United Kingdom amendment would in fact disturb such rights and, though its wording was that of the Paris Convention, he suggested that his wording was to be preferred.

17. The CHAIRMAN put the United States amendment (CW/12, No. 2) to the vote.

18. There were 22 votes in favour and 10 against, with 11 abstentions. The amendment was approved.

19. The CHAIRMAN, while recognizing the preference for the United Kingdom amendment expressed by several delegates, considered that the approval of the United States amendment implied its rejection.

20. Mr. ROGNLIEN (Norway) said that he had voted for the United States amendment to ensure the adoption of the principle, but that he infinitely preferred the United Kingdom proposal.

21. Mr. BRATUSJ (Union of Soviet Socialist Republics) gave the same reason for his vote in favour of the United States amendment.

22. Mr. MAURER (United States of America) submitted on a point of order that, under Rule 38 of the Rules of Procedure, the approval of his amendment implied the rejection of the United Kingdom amendment, a vote on which would be tantamount to a reconsideration of his amendment and under Rule 30 could only be taken if the meeting so decided by a two-thirds majority.

23. The CHAIRMAN upheld the United States delegate's point of order, but pointed out that the right of appeal under Rule 19 was still open.

24. Mr. THOMPSON (United Kingdom) formally appealed against the ruling.

25. The CHAIRMAN but the appeal to the vote.

26. There were 21 votes in favour and 12 against, with 7 abstentions. The appeal was upheld.

27. After discussion, the CHAIRMAN put to the vote the United Kingdom amendment (CW/58).

28. There were 17 votes in favour and 18 against, with 8 abstentions. The amendment was rejected.

29. The CHAIRMAN proposed that Article IV, paragraph 2, as amended, should be referred to the Drafting Committee.
30. Mr. MAURER (United States of America) said he would vote for reference of the paragraph to the Drafting Committee but, since the figure of $10 million was unacceptable to his Government, his delegation would move an amendment to it at an appropriate time.
31. Mr. RUEGGER (Switzerland) said that his delegation had supported the Intergovernmental Committee's text of paragraph 2 and had voted for the Luxembourg (CW/64) and United States (CW/12) amendments. It would, however, in any event, be obliged to abstain from voting on reference of the paragraph to the Drafting Committee, owing to the adoption of the Norwegian oral sub-amendment to the Canadian amendment (CW/68), introducing the figure of $10 million[1], which was decidedly too low a figure.
32. Mr. FLEISCHMANN (France) said he would vote against reference of the paragraph to the Drafting Committee because he could not accept the figure introduced by the Norwegian sub-amendment.
33. Mr. de ERICE (Spain) said he would abstain from voting on the proposal because he considered the vote unnecessary. Under Rule 46 of the Rules of Procedure, the Drafting Committee would in any case review the wording of any proposal that had been approved.
34. The CHAIRMAN said, in reply to the Spanish delegate, that, since opinions seemed to differ on the interpretation of Rule 46, he had decided to take votes on reference of texts to the Drafting Committee, in order to avoid procedural debates.
35. He put to the vote his proposal that Article IV, paragraph 2, as amended, should be referred to the Drafting Committee.
36. There were 31 votes in favour and 2 against, with 9 abstentions. The proposal was approved.

Paragraph 3

37. The CHAIRMAN suggested that, since there were no amendments to paragraph 3, that text also should be referred to the Drafting Committee.
38. It was so agreed.

New paragraphs

39. The CHAIRMAN drew attention to the French proposal (CW/2, No. 1) to insert a new paragraph between paragraphs 1 and 2. That proposal was closely linked with the United States amendment (CW/12, No. 3) and with that of the Federal Republic of Germany (CW/1, amendment 123).
40. Mr. FLEISCHMANN (France) said that the purpose of his delegation's amendment was to enable every State to provide in its national law or in agreements with other countries for an increase in the minimum amount of compensation payable to victims of nuclear incidents. The agreed amount of $5 million might be regarded as a minimum minimorum; obviously any State which could do so owed a duty to extend the limit by drawing upon public funds.

[1] 13th meeting, para. 96

41. The idea was not new, for no State in fact stood aside in case of national disaster such as flood or earthquake. Provision should be made for such calamities in the Convention, so as to encourage States to exceed the minimum. Of course, no country could be obliged to compensate nationals of other States in excess of the minimum if its own nationals benefited only by the minimum in the same circumstances. The basic principle of the amendment was that reciprocity must exist if all discrimination were to be eliminated.

42. Two points might need to be clarified. First, the term "any such measures in whatever form" might include, in addition to increased compensation, prolongation of the Convention's ten-year limit to, for instance, the thirty years stipulated in many national laws, provided that all compensation beyond the ten-year limit were paid out of public funds. The question whether the allocation of public funds fell within or outside the civil liability of operators was left to national law.

43. Secondly, the term "under conditions which derogate from .... this Convention" meant that the State might limit the allocation of public funds to certain categories of victims, e.g. its own nationals, or nationals of a State with which it had a reciprocity agreement.

44. His delegation considered such a clause essential in order to make the draft Convention compatible with the obligations undertaken under the Paris Convention.

45. Mr. BOULANGER (Federal Republic of Germany) said that his delegation's proposal (CW/1, amendment 123) was closely linked with the proposal (CW/2, No. 1) just explained by the French delegate. His delegation's decision on whether or not to press its amendment would depend on the outcome of the vote on the French proposal.

46. Mr. BRATUSJ (Union of Soviet Socialist Republics) said that although his delegation understood the reasons for the French amendment, it considered the latter unnecessary, since the Convention related to minimum standards and did not prohibit the use of public funds to increase the minimum amount of compensation stated in Article IV, paragraph 1.

47. Mr. MAURER (United States of America) could not agree that the French and United States amendments were closely linked. Whereas the United States amendment proposed a strictly-limited derogation clause, the French amendment allowed derogation from such basic principles of the Convention as channelling and jurisdictional competence. Moreover, the French amendment would lead to endless difficulties and confusion. In so far as it concerned the application of the Paris Convention among the parties to the Convention under consideration, its proper place was in the supersession clause, and the Belgian delegation had already submitted an amendment to that effect (CW/14).

48. Mr. TREVOR (United Kingdom) said he agreed with everything that the French delegate had said when introducing his amendment, but considered that difficulties might arise from its wording. While he could not agree with all the United States delegate's criticisms of the French amendment, he could see some objections to derogation from provisions on channelling and jurisdictional competence. Perhaps the French delegate could revise the amendment to exclude those derogations.

49. The United Kingdom delegation agreed that discrimination should be allowed in favour of certain categories of victims in excess of the minimum, if that surplus were paid from public funds. In that respect the United States amendment was quite inadequate and, moreover, failed to cover the French delegate's point concerning bilateral treaties. In addition, the granting of preference to participate in additional compensation was not acceptable, since a State might not wish to pay some categories of victims at all if it received no advantage under a reciprocal agreement. A number of European countries which had concluded such agreements did not think that the United States amendment went far enough in that respect.

50. In reply to the delegate of the Soviet Union, he observed that the main reason for including the clause was procedural, since countries might not wish to provide two separate limits, one under the Convention, to which Article XI would apply, and the other governing additional compensation out of public funds.

51. Mr. ROGNLIEN (Norway) supported the principle of the French amendment, but hoped that its wording would be made more precise.

52. Mrs. OSCHINSKY (Belgium) supported the French amendment, although her delegation had submitted a similar proposal (CW/14) in connection with the supersession clause.

53. Mr. GASIOROWSKI (Poland) considered it unnecessary to state the obvious fact that a State could always provide benefits for certain categories of victims. Moreover, the French proposal raised two important questions of principle. First, it was absolutely inadmissible to permit derogations from the provisions of an international convention. Secondly, the French proposal provided for entirely unjustifiable discrimination in favour of certain categories of victims, and was totally incompatible with Article XI of the draft Convention.

54. Mr. FLEISCHMANN (France) said he was prepared to revise his amendment. His delegation had not intended to introduce exceptions to such fundamental principles as those of channelling or jurisdictional competence.

55. Mr. ARANGIO RUIZ (Italy) said the debate had shown that provision for additional coverage was unnecessary. It was self-evident that Contracting Parties were free to dispose of public funds as they pleased, and the new paragraph could only cause additional difficulties.

56. Mr. SCHEFFER (Netherlands) supported the principle of the French amendment, but agreed that the wording should be clarified. He, too, thought that it should be made a separate article.

57. He could not agree with the Italian delegate that Contracting Parties were free to dispose of public funds as they pleased. The Convention laid down a set of rules which, since a minimum of $5 million had been adopted, must be held to apply to compensation in excess of that amount. It would be advisable, possibly in connection with the final clauses, to examine the real meaning of the words "minimum standards".

58. Mr. SUONTAUSTA (Finland) declared that the United States amendment in fact went much further than the French amendment, since it interfered with the whole system of the Convention, whereas the French amendment merely related to additional compensation. At all events, the Finnish delegation would vote against both.

59. Mr. RUEGGER (Switzerland) said he could accept both the principle

and the wording of the French amendment, and could not agree with the Polish delegate that the principle of non-discrimination was involved. The amendment allowed States to bestow a favour by way of exception to the terms of the Convention; the non-discrimination principle laid down in Article XI remained inviolate.

60. The two most important points of the amendment were observance of regional arrangements and agreements, and legal clarity. On the latter point he could not agree with the Italian delegate that the amendment was unnecessary, for it seemed highly desirable to specify the freedom of States to grant additional compensation.

61. He agreed with the Finnish delegate that the United States amendment went too far.

62. Mr. DUNSHEE de ABRANCHES (Brazil) favoured the principle of the French and United States amendments, but preferred the former because it did not refer to nationals of the Contracting Party. Under the Brazilian Constitution the minimum established in the Convention could be supplemented by public funds, and no distinction would be made between Brazilian nationals and others. He also agreed with previous speakers that the principle of derogation should be stated in the Convention itself.

63. Mr. NORDENSON (Sweden) said he could support the principle of the French amendment, but thought it essential to differentiate between the two methods that the State could use to increase the amount of compensation to victims or certain categories of victims. If for constitutional reasons a State established a system of compensation from public funds outside the civil liability of the nuclear operator, it would be quite free to derogate from any provisions of the Convention, including the rules on jurisdictional competence; but it would not be free to do so where a system of additional compensation fell within the civil liability of nuclear operators. He asked the French delegate which of those two situations the amendment was intended to cover.

64. Mr. FLEISCHMANN (France) suggested that, to meet the wish of certain delegations, the words "without prejudice, however, to the rules governing the exclusive liability of the operator and to the rules of jurisdictional competence" should be added at the end of his amendment.

65. In reply to the Swedish delegate, he said that the amendment was also intended to cover situations where the State wished to take measures outside the civil liability of the operator.

66. Mr. TAGUINOD (Philippines) said that all the amendments proposed were unacceptable to his delegation, even on the footing that derogation was to be reciprocal. Certain countries might find it necessary to raise the limit adopted in Article IV, paragraph 1, because their nuclear activities entailed great risks; but that was no reason for discriminating against other countries which, in view of the low safety risks of their atomic activities, had no reason for setting up such a high limit of liability. Moreover, if a State wished to increase the limit of its liability because it recognized a moral duty to provide compensation for damage due to its highly dangerous activities, it obviously owed that obligation not only to its own nationals, but to the nationals of all other countries which might suffer damage from such undertakings.

67. Mr. MAURER (United States of America) considered that a clause giving

complete freedom to derogate from the Convention if public funds were used nullified all the protection that the Convention might provide. The limited derogation provided in his delegation's amendment should be permitted, but the French proposal, even as amended, was too broad, since it still allowed derogation from a number of important rules.

68. He could not agree with the United Kingdom delegate that the reference in the United States amendment to the granting of preference to nationals of the Contracting Party failed to cover reciprocal agreements, for under some agreements the nationals of that State would be placed on an equal footing with others, whereas in the absence of an agreement they would be granted preference.

69. Mr. BOULANGER (Federal Republic of Germany) fully endorsed the Swiss delegate's remarks. The purpose of the amendments was not to introduce discrimination, but to enable additional benefits to be granted. Those additional benefits should not, however, be restricted to the State's own nationals. He withdrew paragraphs 2 and 3 of his proposal (CW/1, amendment 123).

70. Mr. DADZIE (Ghana) said that, although he supported the principle of the French amendment, he could not agree to the inclusion of a derogation clause. Each Contracting Party should be free to do what it wished, subject to the condition that it observed the minimum standards laid down in the Convention.

71. Mr. EDLBACHER (Austria) fully supported the French amendment, in the belief that any State which was prepared to increase compensation out of public funds should have a certain freedom of action. Nevertheless, the reservation that Austria had entered in respect of Article II, paragraph 6[2], would also extend to the new provision.

72. Mr. NORDENSON (Sweden) thought that the amendment suggested by the French delegate would give rise to confusion. It might be interpreted as meaning that a State would be prevented from undertaking civil liability over and above the liability of the operator. A State should, however, be entitled to take such steps as it considered necessary irrespective of the provisions relating to the exclusive liability of the operator under the Convention.

73. Mr. TREVOR (United Kingdom) said that the French oral sub-amendment was quite satisfactory to his delegation. Nevertheless, he could not agree with the United States delegate that restriction of additional compensation to nationals of the Contracting Party made the necessary allowance for reciprocity.

74. On the Swedish delegate's remarks, he observed that there was nothing to prevent a State from assuming its own liability outside the Convention; its function in the case at issue was to help the operator to meet his liabilities.

75. Mr. JARVIS (Canada) thought that the scope of the term "rules of jurisdictional competence" in the French sub-amendment was not quite clear. A State using public funds for additional compensation might set up a special tribunal for the purpose.

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[2] 9th meeting, para. 76.

76. Mr. GASIOROWSKI (Poland) reiterated his delegation's strong objections to the amendments, and pointed out that no attention had been given to the two fundamental points of principle he had raised. Indeed, the explanation given by the delegate of Switzerland did not appear to be valid. If a State wished to grant favourable treatment outside the framework of the Convention, it could always do so without the necessity of introducing a special provision to that effect into the Convention itself. Such a provision, expressly authorizing each Contracting Party to derogate from the Convention, would justify in advance discrimination within the framework of the Convention.

77. Mr. MAURER (United States of America) repeated that the French amendment, even with the oral addition, admitted important deviations from the Convention. He also could not agree with the United Kingdom delegate that the word "preference" in the United States amendment precluded discrimination in favour of certain categories of victims.

78. Mr. ZALDIVAR (Argentina) opposed the French amendment because it implied derogations which would completely change the Convention's character.

79. Mr. COPPENS (Netherlands) moved that the debate be adjourned and a working group set up to draft a clause along the lines of the French amendment.

80. Mr. GASIOROWSKI (Poland) opposed the Netherlands motion.

81. The CHAIRMAN put the Netherlands motion to the vote.

82. There were 6 votes in favour and 22 against, with 15 abstentions. The motion was defeated.

83. The CHAIRMAN put to the vote the French amendment (CW/2, No. 1), as orally amended.

84. There were 20 votes in favour and 22 against, with 5 abstentions. The amendment was rejected.

85. The CHAIRMAN put to the vote the United States amendment (CW/12, No. 3).

86. There were 6 votes in favour and 23 against, with 17 abstentions. The amendment was rejected.

87. Mr. LAGORCE (France), introducing his delegation's proposed new paragraph 4 (CW/2, No. 2), said that its purpose was to prevent victims from claiming compensation under the provisions of more than one convention on civil liability. If the Convention contained no express provision to the contrary, beneficiaries in countries which had signed the Convention, the Paris Convention and the Brussels Convention might obtain compensation from different sources for the same damage. Under the new paragraph a victim would have to choose the convention under which he would claim compensation.

88. Mr. IVANOV (Ukrainian Soviet Socialist Republic) supported the French amendment.

89. Mr. RAO (India) did not consider that the French amendment was in conformity with general treaty law on multilateral conventions, for the decision concerning claims should depend on the provisions of each instrument. Even if the amendment were admissible under general treaty law, it would be wiser to await the report of the Sub-Committee on Relations with other International Agreements before deciding on the matter.

90. Mr. ROGNLIEN (Norway) endorsed the Indian delegate's remarks.
91. Mr. DADZIE (Ghana) also agreed with the Indian delegate. The provisions of one convention could not control those of any other. Moreover, the figure of $5 million had been set as a minimum for the liability of the operator; the implication was that a larger amount could be claimed if possible, and there seemed to be no objection to the victim recovering more under other conventions.
92. Mr. MAURER (United States of America) said it was not clear whether the French amendment related only to multilateral conventions on civil liability or to bilateral instruments as well.

The meeting rose at 1 p.m.

FIFTEENTH MEETING

Saturday, 11 May 1963, at 10.40 a.m.

Chairman: Mr. McKNIGHT (Australia)

CONSIDERATION OF THE DRAFT CONVENTION ON MINIMUM INTERNATIONAL STANDARDS REGARDING CIVIL LIABILITY FOR NUCLEAR DAMAGE (CN-12/2) (continued)

Article IV (continued)

New paragraphs (continued)

1. The CHAIRMAN said that, after informal discussion, it appeared that the French proposal for a new paragraph 4 (CW/2, No. 2) depended to a large extent on the conclusion reached by the Conference in regard to the Convention's relation to other conventions. At the request of the delegate of France he would therefore suggest that further discussion of the proposal be deferred until the relevant article had been approved.
2. *It was so decided.*
3. The CHAIRMAN reminded the Committee that, at its thirteenth meeting, it had decided to refer the United States amendment (CW/12, No. 4) and the Ukrainian amendment (CW/44) to the Drafting Committee as the basis of a new paragraph for insertion in Article IV[1]. He invited the Committee to consider the sub-amendment submitted by the United Kingdom (CW/90) to the United States amendment.
4. Mr. RITCHIE (United Kingdom) said his delegation was proposing that a sentence be added dealing with conversion into national currencies other than gold. It also wished to propose that the question of conversion into national currencies in round figures should be dealt with as in Article III (4) of the Brussels Convention.

[1] 13th meeting, paras. 39 and 40.

5. The CHAIRMAN suggested that the United Kingdom sub-amendment (CW/90) should be referred to the Drafting Committee.

6. It was so agreed.

Article V

Paragraph 1

7. The CHAIRMAN invited the Committee to consider the amendments submitted by the Federal Republic of Germany, the Philippines and Norway (CW/1, amendments 72, 74 and 73) and by Greece (CW/59), in that order.

8. Mr. BOULANGER (Federal Republic of Germany) said his delegation proposed deletion of the words "under the law of the Installation State" at the beginning and the end of the second sentence of paragraph 1. Extension of the extinction period under the law of the competent court could only be to the advantage of the victims whether that court was in the Installation State or some other State. And provided the liability of the operator was covered for the whole period, it did not matter whether it was covered under the law of the Installation State or some other State.

9. Mr. GHELMEGEANU (Romania) said the second sentence of paragraph 1, though justified in principle, would be of little practical effect since it would presuppose the conformity of the law in two States which might be widely separated – the Installation State and the State in which the competent court was established. In his view it would be preferable to consider more closely the provisions of Article 8 (c) of the Paris Convention and Article V (1) of the Brussels Convention. In that connection, he would refer to paragraph 68 of the comments prepared by the Secretariat of the Agency (CN-12/3).

10. The CHAIRMAN suggested that the Drafting Committee might be asked to consider how far consistency with the Brussels and Paris Conventions could be achieved in the light of whatever decisions the Committee took on paragraph 1.

11. Mr. SPINGARN (United States of America) and Mr. TAGUINOD (Philippines) opposed the German amendment. It was reasonable that the length of the period during which the operator remained liable should be governed by the law of the Installation State, which had the primary interest in the matter and was responsible for assuring financial coverage.

12. Mr. SPLETH (Denmark) supported the proposal to delete the references to the law of the Installation State. There was no reason why the scope of the provision should not be made as wide as possible since it was not stated how the liability of the operator was to be covered, but merely that if it was covered for a period longer than ten years the rights of compensation might be maintained against him for the longer period.

13. The CHAIRMAN put to the vote the amendment submitted by the Federal Republic of Germany (CW/1, amendment 72).

14. There were 9 votes in favour and 23 against, with 13 abstentions. The amendment was rejected.

15. Mr. TAGUINOD (Philippines) introducing his amendment (CW/1, amendment 74), said that the present text of paragraph 1 had a serious shortcoming, in that whether or not the victims would have rights of compensation against the operator for a period longer than ten years would depend on whether

the matter was considered procedural or substantive by the competent court. If the law of the Installation State provided for longer coverage of the operator's liability, the extension should, in his view, be applied ipso facto to the period during which there was right of compensation against the operator, thus ensuring the uniformity of application which was appropriate for an international convention.

16. The CHAIRMAN put to the vote the Philippine amendment (CW/1, amendment 74).

17. There were 5 votes in favour and 10 against, with 28 abstentions. The amendment was rejected.

18. Mr. ROGNLIEN (Norway) said the intention of the Norwegian amendment (CW/1, amendment 73) was to state explicitly to which rights the paragraph should apply. In addition to the provisions mentioned in the amendment, reference should be made to Article I A, which had been approved by the Committee after the amendment had been submitted.

19. Mr. RAO (India) suggested that consideration of the possible inclusion of a reference to Article VII, paragraph 2, should be postponed until the Committee had approved the text of that article.

20. Mr. ROGNLIEN (Norway) replied that it would be a matter for the Drafting Committee to decide, in the light of the Committee's decision on Article VII, paragraph 2, how the reference should be drafted.

21. Mr. MAUSS (France) pointed out that it was not merely a question of drafting. The Committee must decide in principle whether the extinction period should apply to rights of recourse.

22. The CHAIRMAN agreed that the Committee must take a decision on that point and put the Norwegian amendment (CW/1, amendment 73) to the vote.

23. There were 7 votes in favour and 11 against, with 25 abstentions. The amendment was rejected.

24. Mr. PAPATHANASSIOU (Greece) explained that it would suffice to refer his amendment (CW/59) to the Drafting Committee if the major amendment of principle submitted by his delegation to Article VI, paragraph 1, (CW/62), were adopted. If the major amendment were rejected, however, there would be no further reason to consider the amendment to Article V, paragraph 1. He would therefore suggest that its consideration be postponed.

25. It was so agreed.

26. The CHAIRMAN put Article V, paragraph 1, (CN-12/2), to the vote.

27. There were 41 votes in favour and 1 against, with 1 abstention. The paragraph was approved, subject to being referred to the Drafting Committee.

Paragraph 2

28. The CHAIRMAN said proposals had been submitted by the Netherlands, Norway and the United States of America (CW/1, amendments 75, 76 and 78) and Japan (CW/43) regarding the extinction period in cases where nuclear damage was caused by nuclear material which had been stolen, lost, jettisoned or abandoned. Turkey had proposed deletion of the reference to abandonment (CW/60).

29. The amendment submitted by Sweden (CW/1, amendment 77) concerned a drafting point and might be referred directly to the Drafting Committee.

30. The Committee should, however, begin by considering the Austrian proposal to delete paragraph 2 altogether (CW/27, No. 1).
31. Mr. EDLBACHER (Austria) said that the juridical reasons for paragraph 2 were not apparent. It would be unfair to victims to allow any exceptions to the rule established in paragraph 1 that the period of extinction or prescription should be computed from the date of the nuclear incident. The Committee had already decided that paragraph 6 of Article II should be deleted[2] because its provisions might constitute a violation of the basic principle of the Convention that liability should be channelled to the operator. In the view of his delegation, paragraph 2 of Article V would also be a serious violation of the principle of channelling responsibility. The operator should be responsible for everything which happened in his installation, including the jettisoning or abandonment of nuclear material. He must also take measures to ensure that there be no theft or loss. There was no reason to establish a special regime for such eventualities.
32. Mr. RAO (India) supported the Austrian proposal to delete paragraph 2. The period of prescription should in all cases be computed from the date of the nuclear incident.
33. Mr. ZALDIVAR (Argentina) opposed deletion. Paragraph 2 envisaged an exceptional situation which might be beyond the power of the operator to control. He should therefore be granted some latitude.
34. Mr. SCHEFFER (Netherlands), while sympathizing to some extent with the views of the Austrian delegation, considered that the faults of paragraph 2 could more appropriately be remedied in accordance with the amendment submitted by his delegation. He would therefore oppose deletion.
35. Mr. BELLI (Italy) expressed his preference for the amendments submitted by Norway and the United States of America.
36. The CHAIRMAN put to the vote the Austrian proposal to delete paragraph 2 (CW/27, No. 1).
37. There were 4 votes in favour and 32 against, with 6 abstentions. The proposal was rejected.
38. Mr. SCHEFFER (Netherlands), introducing his amendment (CW/1, amendment 75), said he agreed with the Austrian delegation that it was illogical to compute the period of extinction from the date of the theft etc., as that date had nothing to do with the incident or the resultant damage. On the other hand, there should in such cases be some limit on the maximum duration of the period, and he felt that his text, which followed Article V (2) of the Brussels Convention, was more logical.
39. Mr. THOMPSON (United Kingdom) sympathized with the purpose of the amendment but pointed out the difficulty of obtaining insurance for so long a period.
40. Mr. BELSER (European Insurance Committee), speaking at the invitation of the Chairman, appealed for the retention of the basic text as it appeared in document CN-12/2. Long prescription periods frequently offered insoluble difficulties for insurers. A period of ten years had been conceded in the Paris Convention but that was the maximum; longer periods would mean the immobilization of a large amount of capital for long periods, often uselessly. Other solutions were possible and had been embodied, for ex-

[2] 9th meeting, paras. 73 and 74.

ample, in Swiss, Italian and Swedish legislation. Most countries would have recourse to insurance to meet their obligations under the Convention but the funds available to insurance companies were not unlimited.

41. Mr. SUONTAUSTA (Finland) said that a period of 20 years would be exceptional from the legal point of view, could be too burdensome for the nuclear industry and would often prove useless. Possible victims were fully served by paragraph 2 as it stood.

42. Mr. ROGNLIEN (Norway), while acknowledging that the legitimate interests of the insurance companies must be borne in mind, felt that the predominant consideration should be the interests of the victims. The text as it stood gave rise to an invidious situation, since it allowed the extinction of rights before they might even have arisen, thereby depriving the victim of compensation.

43. Mr. SPINGARN (United States of America), Mr. NESTOR (Romania) and Mr. EDLBACHER (Austria) supported the amendment for the reasons given by the Netherlands and Norwegian delegates.

44. Mr. RUEGGER (Switzerland) appreciated the concern expressed by many delegates but pointed out, for example, that Article 18 of the Swiss law allowed victims, after the expiry of the normal period of prescription, to enter a plea for compensation from a general fund. There appeared to be a fair measure of support for the proposal to establish an international liability fund to supplement the resources made available by insurance or State guarantee, and such a fund might be used, by analogy with Swiss law, to provide compensation in the kind of case envisaged in Article V, paragraph 2.

45. The CHAIRMAN put the Netherlands amendment (CW/1, amendment 75) to the vote.

46. There were 29 votes in favour and 6 against, with 7 abstentions. The amendment was approved.

47. The CHAIRMAN said he understood the Turkish amendment (CW/60) was withdrawn. He accordingly put to the vote the question whether the Netherlands amendment, just approved, and the Japanese, Norwegian and United States amendments, which were similar in purpose, should be referred to the Drafting Committee as the basis of the text for paragraph 2.

48. There were 35 votes in favour and 1 against, with 5 abstentions. The amendments were referred to the Drafting Committee.

Paragraph 3

49. Mr. COLOT (Belgium) said that the purpose of his amendment (CW/20/Rev. 1, No.1) was to replace the three-year period referred to in paragraph 3 by a period of two years, so as to ensure agreement with the Paris Convention.

50. Mr. NISHIMURA (Japan) pointed out that Article V of the Brussels Convention established a period of three years, which, in his view, was more reasonable.

51. Mr. GHELMEGEANU (Romania) wondered whether the reference to the law of the competent court should not be replaced by a reference to the law

of the Installation State, to bring the text into conformity with the other paragraphs in Article V.

52. The CHAIRMAN felt that the Romanian delegate's suggestion was a question of substance. He would ask the Drafting Committee to take it into account, but if that committee agreed that it involved a matter of substance, the Romanian delegate would, if he wished to press it, have to submit an amendment to the plenary Conference. He put the Belgian amendment (CW/20/Rev. 1, No. 1) to the vote.

53. There were 7 votes in favour and 22 against, with 12 abstentions. The amendment was rejected.

54. Mr. ROGNLIEN (Norway) said the purpose of the Norwegian amendment (CW/77) was to cover the case of someone who had paid compensation to a victim near the expiry of the period of prescription and who had a right of recourse under the text approved for Article I A, paragraph 2. It would be reasonable if he law of the competent court could provide a further period for that person to maintain his right against the operator.

55. Mr. SPLETH (Denmark) said that in the cases envisaged in the Norwegian amendment, the period of prescription should clearly run from the time the person who had to pay compensation learnt of the damage, since otherwise he might be in a difficult position resulting from the differing periods laid down by different systems of national law. While in principle he accordingly supported the amendment, he suggested that it might be superfluous as a result of the vote on Article V. paragraph 1. As he understood that vote, the period of prescription was not to apply to rights of recourse.

56. Mr. ROGNLIEN (Norway) said he did not wish to take up the question of the difference between rights of recourse and rights of subrogation. He merely wished to provide the possibility of the law of the competent court granting a further extension in the cases referred to. He agreed that in such cases, i.e. where the law of the competent court had availed itself of the present provisions of paragraph 3, the period of prescription should not run from the time the victim had knowledge of the damage. Exactly when it should begin to run was not, however, in his view, the concern of the Convention, provided the periods laid down in paragraphs 1 and 2 were not overstepped.

57. Mr. NORDENSON (Sweden) also supported the amendment. It was unfair for the national of a Contracting State to lose his right of recourse if the victim took action against him too late for the former to make use of his right. As regards the point raised by the Danish delegate, he had not understood the decision on paragraph 1 to mean that the rules of prescription should not apply to rights of recourse but merely that the Committee felt it unnecessary to include such a provision since such rights were covered by the initial words of paragraph 1, "Rights of compensation".

58. The CHAIRMAN put the Norwegian amendment (CW/77) to the vote.

59. There were 6 votes in favour and 9 against, with 27 abstentions. The amendment was rejected.

60. The CHAIRMAN put to the vote the question whether paragraph 3 (CN-12/2) should be referred to the Drafting Committee.

61. There were 43 votes in favour and 1 against. The paragraph was referred to the Drafting Committee.

62. Mr. ROGNLIEN (Norway) wished to place on record that, in his delegation's view, as a result of the voting on the two Norwegian amendments, Article V did not in itself cover actions for recourse or subrogation.

The meeting rose at 1 p.m.

SIXTEENTH MEETING

Saturday, 11 May 1963, at 3.15 p.m.

Chairman: Mr. McKNIGHT (Australia)

CONSIDERATION OF THE DRAFT CONVENTION ON MINIMUM INTERNATIONAL STANDARDS REGARDING CIVIL LIABILITY FOR NUCLEAR DAMAGE (CN-12/2) (continued)

Article V (continued)

Paragraph 4

1. Mr. RITCHIE (United Kingdom) said the United Kingdom amendment (CW/1, amendment 79) was designed to remove the provision whereby an injured party could bring fresh action within the period of prescription, even after the final judgement had been given. That clause was contrary to the general rule interest rei publicae sit finis litium. Moreover, the constant possibility of actions would raise difficulties for insurers and would not be in the interest of the injured person himself, for the courts would clearly not award compensation for future losses.
2. Mr. SANALAN (Turkey), Mr. SPINGARN (United States of America) and Mrs. OSCHINSKY (Belgium) withdrew their amendments (CW/61, CW/1, amendment 80, CW/20/Rev. 1, No. 2) in favour of the United Kingdom amendment.
3. Mr. NESTOR (Romania) was in favour of retaining the paragraph in its existing form, since it was not contrary to the principle of the character of final judgements. If the victim suffered future damage he would not be prevented from recovering further compensation, since that would be a new action quite distinct from the one in respect of which a final judgement had been handed down. A judgement could only render compensation for the damage which existed at the time of that action, and could not award compensation for possible future damage. Where damage had been aggravated one could not invoke the final judgement entered, since the victim acquired new rights by virtue of the aggravation.
4. Mr. MAUSS (France), Mr. MOUSSAVI (Iran) and Miss RATUMBUYSANG (Indonesia) said they could vote for the United Kingdom amendment.
5. Mr. RAO (India) said it was contrary to the very purposes of the Convention to lay down that once final judgement in one action had been entered no fresh action could be brought. For example, if an injured person felt

some effects immediately, filed a suit and was granted compensation by a final judgement within one year, it was unfair not to allow him to sue again for aggravation of injuries after five years, whereas a person who felt no effects immediately after the incident but could prove such effects nine years later would be in a position to sue.

6. Mr. BELLI (Italy) said that the injured party must still be able to sue in respect of damage which became apparent after the final judgement; Italian law contained an express provision to that effect in connection with accidents at work.

7. Mr. YAMANO (Japan) endorsed the remarks made by the Indian and Italian delegates and said he would vote for the Intergovernmental Committee's text.

8. Mr. DADZIE (Ghana) said that in his delegation's view that text was over-generous. It should not be possible to take further action after a final judgement had been handed down. He would vote for the United Kingdom amendment.

9. The CHAIRMAN put to the vote the United Kingdom amendment (CW/1, amendment 79).

10. There were 24 votes in favour and 10 against, with 9 abstentions. The amendment was approved.

11. Mr. SCHMID (Austria), introducing his delegation's amendment (CW/27, No. 2), said that the term "final judgement" had no exact meaning in Austrian jurisdiction. It was therefore proposed to replace it by the expression "judgement enforceable under the law applied by the competent court", which was used in the Convention recently concluded by the Organisation for Economic Co-operation and Development and might satisfy exponents of both the Anglo-Saxon and Latin legal systems.

12. Mr. SCHEFFER (Netherlands) considered it inadvisable to depart from the clear and universally understood term "final judgement".

13. Mr. BOULANGER (Federal Republic of Germany) said he could not agree with the Netherlands delegate. German law coincided with Austrian law in the matter, and he thought the expression "final judgement" might be too narrow.

14. The CHAIRMAN put to the vote the Austrian amendment (CW/27, No. 2).

15. There were 2 votes in favour and 14 against, with 26 abstentions. The amendment was rejected.

16. The CHAIRMAN proposed that the United Kingdom amendment (CW/1, amendment 79), which the Committee had just approved, be referred to the Drafting Committee as a basis for the text of paragraph 4.

17. There were 36 votes in favour and none against, with 5 abstentions. The amendment was referred to the Drafting Committee.

18. Mr. SPLETH (Denmark) withdrew his delegation's proposal for a new paragraph (CW/1, amendment 81).

Article VI

Paragraph 1

19. Mr. PAPATHANASSIOU (Greece) said that his delegation set great store by its amendment (CW/62) to delete the second sentence of paragraph 1. It

was inadmissible to impose on the Installation State the obligation to cover risks for which the operator was liable, particularly since the State concerned might be incapable of guaranteeing the necessary funds. The provision imposed an intolerable and unfair burden on small countries like his own in which large amounts of private foreign capital were invested. Moreover, in the event of insolvency of the Installation State, the victims would be left without proper cover.

20. If the majority of the Committee were against the proposed deletion, his delegation might suggest rewording the paragraph so as to remove the dangerously vague reference to financial security other than the yield of insurance; if that idea were also unacceptable, the Greek Government would be obliged to enter a strong reservation with regard to Article VI, paragraph 1.

21. Mr. THOMPSON (United Kingdom) opposed the Greek amendment. The operator's cover for his liability would normally be by insurance and would be provided not per incident, but per installation over a fixed period. That was satisfactory provided the insurance was not materially reduced by the first incident and the operator was not left without cover for subsequent incidents. In his delegation's opinion the ultimate responsibility lay with the Installation State. In that connection, it associated itself with the views of the Japanese delegation, which, in paragraph 41 of the Intergovernmental Committee's report (CN-12/2), had placed on record its understanding that the second sentence would not require a State to include funds in advance in its budget.

22. Mr. BRATUSJ (Union of Soviet Socialist Republics) also opposed the Greek amendment.

23. Mr. BELSER (European Insurance Committee), speaking at the invitation of the Chairman, said that as a result of the Committee's decisions the operator's civil liability was to be limited per incident, without a second limit per installation. On the other hand, as the United Kingdom delegate had recognized, insurance cover would have to be provided per installation. Otherwise, the problem of unforeseeably large commitments would only be shifted to the insurer. Insurers were prepared to cover claims up to the limit laid down in Article IV, but had to know the possible extent of their financial commitments. As indicated in document CW/INF/9, the least they could ask for was that the principle of per-installation cover be recognized in Article VI or that some other means be found whereby the Conference would take formal note of the fact that insurance cover would have to be provided on a per-installation basis.

24. Mr. SANALAN (Turkey) said that the Greek amendment was quite unnecessary if it was agreed that the second sentence would not require the Installation State to include funds in advance in its budget.

25. The CHAIRMAN put the Greek amendment (CW/62) to the vote.

26. There was 1 vote in favour and 35 against, with 8 abstentions. The amendment was rejected.

27. Mr. PAPATHANASSIOU (Greece) declared on behalf of his delegation that Greece reserved the right to settle the question of coverage of persons responsible under the Convention who were installed in Greece in the manner which it considered most appropriate, even, if necessary, in a manner

not absolutely in conformity with the Convention. Greece intended to enter a reservation to that effect.

28. The CHAIRMAN proposed that the basic text of paragraph 1, in the form in which it appeared in document CN-12/2, be referred to the Drafting Committee.

29. There were 44 votes in favour and 1 against, with 1 abstention. The paragraph was referred to the Drafting Committee.

Paragraph 2

30. Mr. RUEGGER (Switzerland) suggested that the reference to "Cantons" might be omitted, since it had been made unnecessary by the recent adoption of a Swiss federal law in that regard.

31. The CHAIRMAN proposed that the Argentine amendment (CW/1, amendment 82) and the Philippine amendment (CW/1, amendment 83) be referred to the Drafting Committee.

32. Mr. BOULANGER (Federal Republic of Germany) submitted that the Philippine amendment was substantive, since it was difficult to decide whether a State, republic or province was "directly operating as such a nuclear installation". For example, the status of various universities differed, and the Contracting Party might not wish to insure some of them. A vote should therefore be taken on the Philippine amendment.

33. Mr. TAGUINOD (Philippines) observed that a State or constituent subdivision thereof might operate a nuclear installation directly or indirectly. Such a governmental entity might, for instance, operate an installation indirectly when the installation was State-owned or State-controlled but had a distinct legal personality. The present text of Article VI, paragraph 2, did not make it clear whether or not the exemption from maintaining financial protection set forth in that paragraph applied to the operators of installations which were State-owned or State-controlled but which had been given a separate legal personality. He believed that the operators of such installations should be required to maintain insurance or other financial protection, and that was the purpose of his delegation's amendment.

34. Mr. WILSON (Australia) said an installation wholly owned by the State and having a separate legal identity, whose operations were backed by a State Treasury, should not be required to maintain insurance or other financial security.

35. Mr. BOULANGER (Federal Republic of Germany) still considered that the Philippine amendment would merely confuse the issue in a number of cases, such as that of a research centre which was a limited-liability company and whose shares were owned jointly by the State and one of its constituent sub-divisions. There could be no question of nominal insurance; premiums cost money, and the Conference should not adopt any provision which would make the operation of reactors more expensive.

36. Mr. NORDENSON (Sweden) said he could not support the Philippine amendment. The entire Convention was based on the concept of an operator recognized as such by the Installation State. Under Article VI, paragraph 1, the operator was required to maintain insurance or other financial security, and it would be most unwise to introduce the concept of direct or indirect operation.

37. Mr. MAUSS (France) agreed with the Swedish delegate. Moreover, the Philippine amendment provided no additional guarantee for victims.

38. Mrs. OSCHINSKY (Belgium) introduced her delegation's proposal (CW/21, No. 1) to delete paragraph 2. She said it would solve all difficulties concerning direct or indirect operation. The reasons for it were, first, that a rule exonerating the Contracting Party from its obligation to cover liability was dangerous; and secondly, that a constituent sub-division of a State which was a nuclear operator was exposing the Installation State to a certain risk and should not be exempted from that obligation.

39. Mr. TAGUINOD (Philippines), referring to his amendment, said that his country operated a nuclear research reactor through its Atomic Energy Commission, a governmental body whose financial requirements were voted directly by the legislature. The State guaranteed payment of compensation for any nuclear damage or injury arising in connection with the reactor without maintaining insurance or other financial security. However, where an independent authority with a distinct legal or corporate personality operated, for instance, a power reactor to generate electricity, it should maintain insurance and not depend on government guarantee alone. If the liability of the operator were protected by insurance, the victims would have an obvious advantage in recovering compensation, at least from the procedural point of view. That would provide a more effective system of compensation than one based on public funds.

40. Mr. RAO (India) said that Article VI, paragraph 1, imposed a clear obligation on operators to maintain insurance or other financial security. The second sentence of paragraph 1 obliged the Installation State to make good any lack in the insurance fund. If the principle were accepted that States or their sub-divisions which were operators should not be subject to the provisions of paragraph 1 concerning insurance, paragraph 2 should be retained. He opposed the Belgian proposal.

41. Mr. SCHMID (Austria) said that his delegation could not support the Philippine amendment. In Austria there existed limited-liability companies operating reactors, 51% of whose capital belonged to the State and which were controlled by the State. If the amendment were approved, those organizations would have to carry insurance.

42. The CHAIRMAN put to the vote the Belgian proposal (CW/21, No. 1) for the deletion of paragraph 2.

43. There were 4 votes in favour and 36 against, with 4 abstentions. The proposal was rejected.

44. The CHAIRMAN put to the vote the Philippine amendment (CW/1, amendment 83).

45. There was 1 vote in favour and 30 against, with 14 abstentions. The amendment was rejected.

46. The CHAIRMAN put to the vote the question that the basic text of Article VI, paragraph 2, be referred to the Drafting Committee.

47. There were 42 votes in favour and none against, with 2 abstentions. The paragraph was referred to the Drafting Committee.

Paragraph 3

48. The CHAIRMAN proposed that, since there were no amendments to paragraph 3, it should be referred to the Drafting Committee.
49. It was so agreed.

New paragraph

50. Mr. DUTILLEUX (Belgium) said that the Belgian proposal (CW/21, No. 2), for the addition of a new paragraph, was intended to forbid insurers to suspend insurance or financial security without notifying the assured. Since, according to the Convention, an operator lacking insurance must abandon its activity, it must be given an adequate opportunity to find new cover.
51. Mr. PAPATHANASSIOU (Greece) and Mr. ROGNLIEN (Norway) supported the Belgian proposal.
52. The CHAIRMAN put to the vote the question that the Belgian proposal (CW/21, No. 2) be referred to the Drafting Committee.
53. There were 32 votes in favour and 1 against, with 8 abstentions. The proposal was referred to the Drafting Committee.

New article (to be inserted between Articles VI and VII)

54. Mr. MAUSS (France) moved that a new article be inserted (CW/3). He said that where claims for damage exceeded the funds available, they would have to be reduced: there was nothing in the Convention to say how the compensation should then be apportioned between the claimants, or between physical injury and damage to property. The Convention should clearly state that the law of the competent court should apply.
55. Mr. ZALDIVAR (Argentina) said that the new article was not only obscure but also unnecessary, because its provisions were implied by the whole structure of the Convention. He would vote against it.
56. Mr. BELLI (Italy) thought the proposal valuable in filling a gap in the Convention.
57. Mr. SCHEFFER (Netherlands) was in favour of the French proposal but thought it could be more simply worded.
58. Mr. de CASTRO (Philippines) asked whether the word "limits" meant the limits of compensation or the general limitations in the Convention. He further asked how the French proposal was to be reconciled with Article VI, paragraph 1, which provided that the Installation State should specify the amount, type and terms of the financial security.
59. Mr. RUEGGER (Switzerland) strongly supported the French proposal, considering it a necessary supplement to the Convention, in accordance with Swiss law, and quite clear.
60. Mr. ZALDIVAR (Argentina) hoped that, since the majority of delegates seemed to favour the approval of the new article, the Drafting Committee would consult with the French delegation to see if it could not produce a clearer text. The Spanish words "naturaleza, forma e importancia" were far from clear.
61. Mr. MAUSS (France) said that there was no intention to go back on the

decision that the Installation State should fix the limit of liability; but it should be laid down that compensation should be apportioned by the law of the competent court.

62. Mr. MITCHELL (United States of America) said that, while sympathizing with the purpose of the French proposal, he found it unnecessary. He thought that the reference to the "nature, form and extent of compensation" might lead the competent court to infringe the provision originally made by the Installation State.

63. Mr. DUTILLEUX (Belgium) disagreed that the new article was unnecessary. There was nothing in the Convention allowing the competent court to apply its own law. In fact Article IV, paragraph 2, as approved, provided a case in which the competent court could not do so.

64. Mr. WEITNAUER (Federal Republic of Germany) thought the French proposal absolutely necessary to prevent disputes over whether the law of the competent court or that of the Installation State should be applied in the apportionment of compensation.

65. The CHAIRMAN put the French proposal (CW/3) to the vote.

66. There were 21 votes in favour and 5 against, with 19 abstentions. The proposal was approved. The new article was referred, with the observation of the Netherlands delegate, to the Drafting Committee.

Article VII

Paragraph 1

67. The CHAIRMAN said that the Philippine amendment (CW/1, amendment 84) had been withdrawn.

68. Mr. MAURER (United States of America) said that the United States delegation had withdrawn its amendments (CW/1, amendments 85 and 86) because Article II, paragraph 6, had been deleted[1]. It would take the point up with the Drafting Committee and, if some matter of substance seemed to be left unsettled, raise it again later in the Committee of the Whole.

69. The CHAIRMAN suggested that Article VII, paragraph 1, be referred to the Drafting Committee.

70. It was so agreed.

Paragraph 2

71. Mr. ZALDIVAR (Argentina) said that his delegation proposed the deletion of the paragraph (CW/1, amendment 87) as unnecessary because a person other than the operator who had paid compensation for nuclear damage would acquire by subrogation rights against the debtor under the ordinary law of his country. The confusion to which the paragraph gave rise was shown by the large number of amendments submitted to it.

72. The CHAIRMAN put to the vote the Argentine proposal (CW/1, amendment 87).

73. There were 3 votes in favour and 19 against, with 20 abstentions. The proposal was rejected.

[1] See 9th meeting, paras. 73 and 74.

Sub-paragraph (a)

74. The CHAIRMAN invited the Committee to discuss that part of the Danish amendment (CW/1, amendment 88) which proposed to delete the words "who is a national of a Contracting Party", and that part of the Norwegian amendment (CW/1, amendment 92) which proposed to insert the words "or has his habitual residence in the territory of".

75. Mr. SPLETH (Denmark) said that a similar point had been dealt with in connection with the United Kingdom amendment to Article I A (CW/1, amendment 23), but in that case, unlike the present case, the operator was not liable to compensate the victim. A victim might sometimes have the choice of bringing an action against an operator or against another person under, say, an international transport convention. That other person should have a right of recourse against the operator who was liable; otherwise the operator might evade his obligation by persuading the victim to bring his action against the other person. There was no such restriction in the Paris Convention, which gave the right of recourse to any person who had furnished compensation when the operator was liable (Article 6). The same was true of the Brussels Convention (Article XI (5, a)), as the Secretariat of the Agency pointed out in its article-by-article comments (CN-12/3, paragraph 78). He wished that recommendation had been followed.

76. The CHAIRMAN put to the vote the Danish proposal to delete the words "who is a national of a Contracting Party".

77. There were 9 votes in favour and 12 against, with 20 abstentions. The proposal was rejected.

78. Mr. ROGNLIEN (Norway) said that he had nothing to add to the Danish delegate's statement. The only difference between the Danish proposal and his own was that he wished the right to be restricted to nationals of a Contracting State and persons habitually resident there.

79. Mr. MAUSS (France) hoped that the Norwegian proposal would not be adopted, but that if it were it might be restricted to individuals (personnes physiques).

80. The CHAIRMAN put to the vote the Norwegian proposal to insert the words "or has his habitual residence in the territory of".

81. There were 8 votes in favour and 15 against, with 17 abstentions. The proposal was rejected.

82. Mr. SPLETH (Denmark) drew attention to the explanation of his amendment (CW/1, Ad 89). He wished it to be clear that the extinction period for a victim's claim provided in Article V, paragraph 3, did not necessarily coincide with that limiting the right of recourse of a person who had paid compensation. The latter period should not be computed from the moment the victim knew of the damage, for there might be a long delay between that moment and his institution of an action, and the action itself might last a long time, so that the rights of the victim against the operator might already have expired before the person who had paid compensation knew of his liability. He would agree that the extinction period might start to run later than his amendment provided — for instance, from the date of payment of compensation — but not earlier.

83. Mr. MAUSS (France) said it was understood that all liability should be channelled to the operator's insurer, but he did not see how that could be

done where a claim arose much later and covered a much longer period. He could not support the Danish amendment.

84. Mr. SCHEFFER (Netherlands) asked if the Danish amendment referred to the right of recourse or the right of subrogation. Since subrogation would be automatic, special provision for its extinction period was unnecessary.

85. Mr. ROGNLIEN (Norway) stressed that the Danish amendment dealt only with the short period referred to in paragraph 3 of Article V and not with the ten-year period referred to in paragraph 1; it therefore concerned only those States which had decided to avail themselves of the shorter period.

86. Mr. SPLETH (Denmark), replying to the Netherlands delegate, said that his amendment was specially important in cases of subrogation, for in a case where the rights of the victim expired the rights of a person who had paid compensation expired too.

87. The CHAIRMAN put the Danish amendment (CW/1, amendment 89) to the vote.

88. There were 4 votes in favour and 7 against, with 31 abstentions. The amendment was rejected.

89. The CHAIRMAN ruled that the rejection of the Danish amendment implied rejection of the last sentence of the Norwegian amendment (CW/1, amendment 92).

90. The United States amendment (CW/1, amendment 95) raised the question of supersession, and the United States delegation had requested that it should not be dealt with until the report of the Sub-Committee on Relations with other International Agreements[2] had been received.

Sub-paragraph (c)

91. The CHAIRMAN said that the German amendment (CW/1, amendment 90) proposing that the words "non-contracting Party" should be replaced by "non-contracting State" had been referred to the Drafting Committee.

92. The German amendment proposing the deletion of the words "In this paragraph ...." (CW/1, amendment 91) would make the definition generally applicable throughout the Convention. The United Kingdom had presented an amendment (CW/1, amendment 17) to Article I proposing a definition of "national of a Contracting Party" identical with that in the text of Article VII, paragraph 2(c). He proposed that the Committee should first take a decision on sub-paragraph (c) and then – if it were approved – decide whether it should be transferred to Article I. The German amendment could be referred to the Drafting Committee.

93. He put the principle of sub-paragraph (c) to the vote.

94. There were 31 votes in favour and 5 against, with 5 abstentions. The principle was approved. Sub-paragraph (c) was referred to the Drafting Committee.

95. Mr. RAO (India) said that the sub-paragraph was a definition and should go in Article I.

96. The CHAIRMAN suggested that it should be referred to the Drafting Committee as part of Article I.

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[2] The Sub-Committee's report was in due course issued as document CN-12/CW/104 and Corr. 1.

97. It was so decided.

98. Mrs. OSCHINSKY (Belgium) said that the Drafting Committee should be requested to extend the definition to cover individuals as well as legal persons.

99. The CHAIRMAN pointed out that the word "désigné" in the French text was quite wrong. The point would be dealt with by the Drafting Committee.

The meeting rose at 5.40 p.m.

SEVENTEENTH MEETING

Monday, 13 May 1963, at 9.35 a.m.

Chairman: Mr. McKNIGHT (Australia)

CONSIDERATION OF THE DRAFT CONVENTION ON MINIMUM INTERNATIONAL STANDARDS REGARDING CIVIL LIABILITY FOR NUCLEAR DAMAGE (CN-12/2) (continued)

Article VIII

1. Mr. DUNSHEE de ABRANCHES (Brazil) said that the fourteen-Power amendment (CW/92) was designed to secure the operator's right of recourse against all persons whose act or omission had contributed to cause a nuclear incident.

2. The principle of channelling was one of the basic principles of the Convention, but it applied only to the relationship between the operator and the victim; once the operator had paid compensation, channelling had fulfilled its role. It did not concern the further question of the apportionment of liability between all those persons who had jointly contributed to the damge. At that point the principle of joint responsibility should become applicable. The operator should, inter alia, have the right of recourse against the manufacturers or suppliers of nuclear equipment or material provided he could prove that the damage was due to the fault of the manufacturer or supplier. The effect of the present text, however, was to absolve manufacturers and suppliers from all responsibility.

3. Sub-paragraph (a) gave a right of recourse only in cases of acts or omissions done with intent to cause damage, that was to say, in the case of criminal actions which would fall within the criminal code; but the right of recourse should also apply to faults falling within the civil code. To speak of an "act or omission done with intent" was to introduce a subjective element which it would be difficult to prove; the amendment referred to the criterion of damage, which was purely objective.

4. Again, sub-paragraph (a) referred only to individuals, whereas the amendment referred to persons as defined in paragraph 10 of Article 1. That meant that under the existing text an operator would have no right of recourse at all against a firm of manufacturers even if they had knowingly

supplied defective material. To give a right of recourse against individuals – say, a worker or employee – was a purely empty provision because no individual would have the financial resources to pay the necessary compensation. Sub-paragraph (a) provided no real right of recourse at all; even if the operator won his case he could receive no compensation.

5. Sub-paragraph (b) dealt with cases where recourse was expressly provided for by contract; but in doing so it conferred no rights not already enjoyed and was likewise a mere empty provision because in such a case the liability of the manufacturer or supplier would follow from the contract and not from the Convention.

6. Sub-paragraph (c) dealt only with the case of nuclear material in transit. That the carrier should be liable while the manufacturer or supplier enjoyed absolute freedom from responsibility was contrary to all principles of law and all legal systems.

7. He had not heard any legal argument against the principle of the amendment. The only arguments brought forward at the meetings of the Intergovernmental Committee had been economic arguments concerning the effect on atomic industry of the so-called "pyramiding of insurance". But legal considerations could not be ignored on purely economic grounds. In any case manufacturers did maintain insurance in the normal course of business to cover their civil liabilities vis-à-vis third parties. Fears of a pyramiding of insurance seemed therefore exaggerated. If the operator felt that he had recourse against the manufacturer's insurance he would be the more willing to provide adequate compensation for victims.

8. There was no reason to give priority to economic arguments in a convention which was primarily concerned with the protection of victims of nuclear incidents. Admittedly the problem was not simple but he was confident that a provisional solution could be found along the lines proposed in the joint amendment.

9. Mr. THOMPSON (United Kingdom) said that his delegation was strongly opposed to the amendment. The question was not a new one and it had been fought out both in the United Kingdom itself, when that country had been discussing its domestic legislation on liability for nuclear damage, and in the discussions at the Paris Conference. In both cases the decision had been reached, after careful study of the arguments, that liability should be channelled exclusively to the operator apart from some minor exceptions in which he should have right of recourse. That decision was embodied both in the Paris Convention and in the Brussels Convention.

10. The joint amendment could only be described as a time-bomb which, if included in it, would blow the Convention sky-high. A convention containing such a provision could not exist alongside other already existing conventions or alongside the internal legislation of many countries. If the amendment were approved, the Convention would be unacceptable to a large number of the countries present, in particular those which were parties to the Paris Convention. The Conference might spend days in repeating the arguments for and against the amendment. He urged delegates to have nothing to do with it and to reject it root and branch.

11. Mr. SCHEIDWIMMER (Federal Republic of Germany) said that he supported everything that had been said by the United Kingdom delegate. The Convention, like other conventions dealing with nuclear damage, and the

laws of the individual States, had two main concerns: the protection of victims and the encouragement of the atomic Industry. But if suppliers were deprived of protection from claims by operators, the effect on the atomic industry would be disastrous. That was why the law in all countries protected suppliers and manufacturers by channelling liability to operators, either by the so-called legal method, or by the method that was followed in Germany, that protecting suppliers by the same insurance policies and by the same State indemnification as that by which operators were covered. If suppliers and operators were covered in the same way, by the same insurance policies, no question of recourse by operators against suppliers could arise. He opposed the joint amendment.

12. Mr. PAPATHANASSIOU (Greece) said that, as one of the sponsors of the amendment, he entirely supported the arguments of the Brazilian delegate. There was no reason why operators, after having fulfilled their obligations to the victims, should not have recourse against manufacturers and suppliers outside the Convention by bringing normal actions for fault under the internal law of their country. The fault of the manufacturer would, of course, have to be proved; if it were not proved he would not pay. He found that principle wholly acceptable and thought the criticisms brought against the joint amendment were unjustified.

13. Regarding the statement by the United Kingdom delegate that the amendment was incompatible with the Paris Convention, his attitude was that in the event of a conflict between the Paris Convention and the present Convention – if the amendment were approved – the Paris Convention should prevail.

14. Mr. SANALAN (Turkey) said that although his delegation had not sponsored the amendment, he thought it in accordance with the interests of those countries which were dependent on foreign manufacturers for supplies of nuclear material and equipment, and would therefore vote for it. If operators had a right of recourse against manufacturers, the latter would be more vigilant in ensuring that the material they supplied was satisfactory. It would, moreover, be of benefit to victims if the operator were not the only person liable to pay compensation.

15. Mr. STEPHENSON (South Africa) agreed with the United Kingdom delegate. The same question had been fully discussed in connection with the relevant legislation in South Africa and the same conclusion had been reached.

16. The Brazilian delegate had said that there were no legal arguments against the principle of the amendment. There were, in fact, two: first, the nuclear industry introduced an entirely new and abnormal type of risk and an operator had to accept a new form of liability; the scope of that liability could be judged by analogy with Roman law, under which the owner of a lion that he allowed to roam the streets freely could not escape liability on the ground that the lion's actions were not under his control. Secondly, the amendment omitted all reference to malicious intent on the part of a person other than the supplier or manufacturer. The South African legal system provided criminal sanctions against such persons, and the operator should also have a right of recourse against them.

17. Apart from that, he thought the economic arguments with regard to channelling and the need to avoid a pyramiding of insurance outweighed the arguments on which the amendment was based.

18. Mr. TAGUINOD (Philippines) said that the right of recourse provided by sub-paragraph (a) in the existing text was purely empty because it was obvious that individuals would not possess the necessary funds. The need for punishing such individuals could be covered by providing criminal sanctions in the penal code of the individual States. But there was the further need of securing justice for operators.

19. He agreed that hitherto the standards of care shown by manufacturers, suppliers and carriers of nuclear material had been high; but there was no guarantee that, as nuclear energy became more and more a feature of everyday life, that same high standard would continue to be observed. Manufacturers and suppliers might be tempted to relax their precautions, particularly if operators had no right of recourse against them for fault.

20. He did not think that the argument concerning the pyramiding of insurance was cogent because liability under the Convention was limited.

21. Mr. SANTOS (Spain) said that Spain had always maintained the principle of right of recourse against suppliers of material which caused or contributed to an accident. That was a legal principle, deriving from Roman law, which had been observed for centuries and was still enforced in current legislation. The Spanish delegation had supported the arguments of the Italian delegate at the Paris Conference and of the Argentine delegate at the Brussels Conference, and if it had, nevertheless, signed the Paris and Brussels Conventions without making a reservation on the point, that was because, in its desire to arrive at a convention on civil liability for nuclear damage, it had not wished to create greater difficulties, and because it had regarded those Conventions as valuable international instruments. Now, however, the Spanish delegation insisted on the principle of right of recourse.

22. As had been said, the principal aims of the present Convention were twofold: the protection of victims and the promotion of nuclear industry. The recognition of the operator's right of recourse in no way prejudiced the position of victims, who would still be able to obtain compensation quickly, thanks to the principle of channelling liability to the operator. But that principle did not affect the operator's right of recourse against manufacturers. Nuclear materials and installations were mainly produced by large firms which could afford to pay the compensation involved; but the operators of small nuclear installations would risk bankruptcy if they did not have the right of recourse against suppliers of defective equipment. Moreover, the possibility of a fault on the part of the manufacturer was greater than on the part of the operator, and the Spanish delegation at the Brussels Conference had in fact introduced an amendment aiming at reversing the order of liability, though unfortunately the amendment had not been accepted.

23. Miss RATUMBUYSANG (Indonesia) said that she would vote for the amendment for the reasons which had been given by the Brazilian and other delegates and because it was in accordance with Indonesian law.

24. Mr. SCHEFFER (Netherlands) said that he understood the views of those delegations which wished to adhere to the normal rule of law that any person who had caused damage to another should be liable; but prolonged study of the question of nuclear damage had shown it was necessary to depart from traditional rules in view of the exceptional risks involved. It had become clear that the development of the atomic industry could only be furthered if

the principle of channelling were maintained, since it was only the operator who could be insured in such a way as to prevent a prohibitive rise in the cost of producing nuclear energy. He had thought the principle so well established that it came as a surprise to find it questioned at that stage. If the principle of channelling were not upheld, he fully shared the view of the United Kingdom delegate that the Convention as a whole would be in danger.

25. Mr. PEEL (International Labour Organisation) (ILO) said that the joint amendment would permit recourse actions against individual employees of the operator and of other undertakings, and that that would apply even in cases where only simple negligence was involved. As the ILO observer at the Intergovernmental Committee had said, that was not in accordance with modern trends of labour law nor with the standards laid down in other international agreements.

26. Mr. SPINGARN (United States of America) said that the promotion of the atomic industry would be seriously jeopardized if the amendment were adopted.

27. It was not true that nuclear installations were built exclusively by large firms. The construction of nuclear installations was a very complex matter and very many people were involved – those who laid the foundations, built the structure, provided piping and other equipment, maintenance services, etc. Many of those persons would be nationals of the country where the installation was located, and they would be in danger of bankruptcy in the event of a nuclear incident, as the risks involved might in large measure be uninsurable. They would therefore be highly reluctant to engage in such undertakings at all.

28. The economic needs of the new technology had led to certain limitations on the right of recourse being incorporated in the Paris and Brussels Conventions. The reasons which had prompted those provisions were equally valid in the case of the present Convention and he strongly opposed the joint amendment.

29. Mr. RUEGGER (Switzerland) said that the provisions of Swiss law and Switzerland's obligations under the Paris and Brussels Conventions did not allow it to support the amendment. However, the Swiss delegation had great respect and understanding for the legal scruples of the sponsors. No jurist imbued with the principles of Roman law could cheerfully contemplate the step involved in modifying that legal concept; the step, nevertheless, was necessary, since the overriding need was to avoid provisions which would act as a brake on the atomic industry, without providing additional protection for victims.

30. It was to be hoped that the minority would ultimately be convinced that the provisions approved by the majority were not simply a violation of an essential legal principle but were imposed by the necessity of providing for an exceptional case and of laying the foundations for future development. The fears of the minority might be allayed if it were provided that operators were covered not only by insurance and State indemnification but by an international fund, on the lines proposed by the Argentine delegation, to correct any injustices which might occur. The Swiss delegation would vote for the retention of the existing text.

31. Mr. KEAN (International Civil Aviation Organization) (ICAO) said that

the effect of the amendment would be to render it impossible for airlines and their crews to carry nuclear materials by air, because they would then be exposed to risks against which they could not insure. That would not benefit the victims of a nuclear incident.

32. Mr. GROSCLAUDE (Intergovernmental Maritime Consultative Organization) (IMCO) associated himself with the statement of the ICAO observer, which applied equally to sea transport.

33. Mr. ZALDIVAR (Argentina) said that the statement of the ICAO observer, was inaccurate because nuclear materials were in fact transported to the Argentine by air, though Argentine law allowed recourse against carriers.

34. Mr. BRATUSJ (Union of Soviet Socialist Republics) said that he understood the considerations by which the sponsors of the amendment had been guided but opposed it, not because it conflicted with the Paris Convention, to which the Soviet Union was not a party, nor solely for the economic reasons given by the United Kingdom and United States delegates, but also for reasons of a juridical character. It should be borne in mind that law was developing and had not remained petrified at the stage of Roman law.

35. Where a contract existed between the operator and a supplier (contractor) the mutual obligations and rights of both parties were laid down in the contract. That meant that an operator, in the exercise of his rights, could require the supply of materials and equipment and the performance of services in accordance with the terms of the contract. If the joint amendment was approved, the operator would be automatically guaranteed a right of recourse against the supplier (contractor) in the event of fault on the latter's part. That might lessen the operator's vigilance in seeing that the terms of the contract were fulfilled and might make him less stringent vis-à-vis the other party. The existence of a contract meant that the two parties were free to enter claims against each other arising from non-observance of the terms of the contract, but did not mean an automatic transfer from the operator to the supplier of liability in respect of damage caused by a nuclear incident. Accordingly the operator's right of recourse against the supplier (contractor) could only be laid down in the contract. If there was no such provision in the contract there was no right of recourse.

36. For the juridical reasons he had indicated, the right of recourse in the cases under discussion could not follow automatically from the court's decision that compensation should be paid by the operator for nuclear damage occurring in his installation, even where the supplier (contractor) was at fault.

37. Mr. JARVIS (Canada) endorsed the view expressed by the United Kingdom delegate that approval of the joint amendment would very seriously hamper the development of the peaceful uses of atomic energy, a view supported by intensive experience in Canada in connection with atomic research and development.

38. Mr. SCHEFFER (Netherlands) considered that the Committee's decision on the joint amendment would be decisive for the success or failure of the Conference. The question was not whether nuclear materials were at present carried by air, but whether a right of recourse against carriers, who could stipulate no exoneration from liability, as proposed in the joint amendment, should be granted by an international convention. He agreed with the

ICAO and IMCO observers that should the amendment be approved, the transport of nuclear materials by air or sea would be rendered impossible.

39. Mr. EDLBACHER (Austria) said that his delegation had attached considerable importance to Article II, paragraph 6, which the Committee had decided to delete[1]. It had decided to become a co-sponsor of the joint amendment because it wished to re-introduce the principle involved in another way.

40. The present text of Article VIII was not acceptable because it referred in sub-paragraph (a) to the "individual" and not to a "person" as defined in paragraph 10 of Article I, and because it provided that the operator should have a right of recourse only if that individual had acted, or had omitted to act, "with intent" to cause damage, a circumstance which would never arise, nor would it ever be possible to prove such intent. Though it would of course be open to the operator and those with whom he concluded a contract to stipulate in the contract that there would be no right of recourse against the contractor, it should be stated positively in the Convention, as a general principle, that the operator should have the right of recourse. In a spirit of compromise, however, he would suggest that the joint amendment might be revised by the addition of a phrase along the lines of the Austrian amendment (CW/26, No. 2) which had been approved by the Committee in connection with Article III, paragraph 2[2]. He would therefore suggest that separate votes should be taken, first on the text of the amendment as it appeared in document CN-12/CW/92, and then on the suggested addition.

41. Mr. DONATO (Lebanon) supported that suggestion.

42. Mr. HENAO-HENAO (Colombia) said that sub-paragraph (a) of Article VIII was totally unacceptable on both legal and moral grounds, because it provided that the operator should have a right of recourse only in cases where there had been "intent" to cause damage. The joint amendment, which his delegation had co-sponsored, provided that operators should have a right of recourse in case of "fault" of the person concerned, which was more appropriate from every point of view.

43. The proposed amendment was all the more desirable in view of the tendency of Governments to favour unduly the development of their national air and sea transport companies, whose responsibility increased in proportion to the potential danger represented by the goods they carried.

44. Mr. VILKOV (Union of Soviet Socialist Republics) pointed out that even when the equipment supplied was of excellent quality, a nuclear incident might occur due to its wrongful use. It might, however, be regarded as the responsibility of the manufacturer to design the equipment in such a way that it could not be wrongly used. Introduction of the concept of "fault" would thus in fact make for an increase in the complexity of the problem.

45. Mr. PHUONG (Viet-Nam) endorsed the views expressed by the delegate of Austria. Those countries in which the nuclear industry was highly developed should take into account the fact that, in aiming to protect their own industry by denying to the operator a possible right of recourse against a supplier at fault, they might handicap the development of the peaceful uses of atomic energy in the developing countries, where the operators would

[1] See 9th meeting, paras. 73 and 74.

[2] See 11th meeting, paras. 40 and 41.

be for a long time to come the Governments themselves, either directly or indirectly.

46. Mr. THOMPSON (United Kingdom) urged that it should not be considered that there was a divergence of interests between the more highly developed countries, as suppliers of nuclear materials, and the developing countries. In the view of his delegation, the joint amendment would be against the interests of all.

47. Mr. DUNSHEE de ABRANCHES (Brazil) said that it could not be argued that the present Convention should not contain a provision concerning the operator's right of recourse because there was no such provision in the Paris Convention. The present Conference gave an opportunity to those States which had not been represented at Paris to express their views. The system of chanelling liability to the operator had been instituted to facilitate the victim's claim for compensation and was not incompatible with a right of recourse as provided in the joint amendment. The establishment of such a right of recourse would indeed be the best way of protecting possible victims, since it would give the assurance that suppliers of nuclear installations would exercise all the necessary care and would endeavour to make the industry more efficient. The development of the industry would be hampered if suppliers had no legal responsibility because they would have no need to supervise manufacture so carefully.

48. It was not true, as the ILO observer had suggested, that the joint amendment was contrary to the interests of the workers. The proposed text did not mention "the individual" but a "person", the definition of that term being contained in Article I, paragraph 10.

49. In regard to the comments of the Soviet delegate, he would point out that the joint amendment did not provide that the supplier would be automatically liable but only that he would be liable if fault could be proved. It was true that a nuclear incident by its very nature made the establishment of proof difficult. If it could be proved that the supplier was at fault, however, the operator must have a right of recourse against him. That right was not only a rule of Roman law, but was universally applied by the legal systems of every country, including the Soviet Union.

50. He requested that a roll-call vote should be taken on the joint amendment.

51. Mr. BRATUSJ (Union of Soviet Socialist Republics) again explained his point of view regarding the joint amendment. As he had already indicated, even if the supplier had been at fault in discharging his contractual obligations, the right of recourse would still apply automatically, and that would weaken the control which the operator exerted over the supplier (contractor).

52. The CHAIRMAN said that during the discussion of the joint amendment several suggestions had been made for its modification. He would urge the Committee to refrain from submitting sub-amendments at that stage of its work. He would put to the vote only the original proposals submitted in writing. Those delegates who wished to introduce further changes could propose amendments in plenary meeting. He put to the vote the joint amendment (CW/92).

53. At the request of Mr. Dunshee de Abranches (Brazil), a roll-call vote was taken.

The United States of America, having been drawn by lot by the Chairman, was called upon to vote first.

The result of the vote was as follows:

In favour: Viet-Nam, Argentina, Austria, Brazil, Colombia, Greece, Holy See, Indonesia, Iran, Israel, Lebanon, Mexico, Morocco, Philippines, Portugal, Spain, Turkey

Against: United States of America, Australia, Belgium, Bulgaria, Byelorussian Soviet Socialist Republic, Canada, Cuba, Czechoslovak Socialist Republic, Denmark, Finland, France, Federal Republic of Germany, Hungary, India, Netherlands, Norway, Poland, Romania, South Africa, Sweden, Switzerland, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland.

Abstaining: Yugoslavia, China, Ghana, Italy, Japan, Republic of Korea, Thailand.

54. There were 17 votes in favour and 24 against, with 7 abstentions. The amendment was rejected.

55. The CHAIRMAN invited the Committee to consider the proposal by the Philippines for the redrafting of sub-paragraph (a) (CW/1, amendment 96).

56. Mr. TAGUINOD (Philippines) said that the matter had for the most part been debated in connection with the joint amendment which had just been rejected by the Committee. The first part of his delegation's amendment, which provided that the operator should have a right of recourse only if "a nuclear incident results from an act or omission done with intent to cause damage or from gross negligence" was substantially the same as the addition to the joint amendment suggested by the delegate of Austria. As to the proviso which followed, his delegation considered that it represented a compromise between the joint amendment and the present text of sub-paragraph (a), and that it would remove the objection to the joint amendment, expressed by the ICAO observer that a carrier might not be willing to carry nuclear materials because he would not assume responsibility in cases where the pilot might be at fault.

57. Mr. KENT (United Kingdom) said that his delegation opposed the Philippine amendment as strongly, and for the same reasons, as it had opposed the joint amendment. Under some systems of law, including English law, little or no difference was recognized between faute lourde (or gross negligence) and negligence. In countries where that held true, the Philippine amendment would have much the same effect as the rejected joint amendment.

58. Mr. ENGLISH (United States of America) agreed that in principle the Philippine amendment would have the same effect as the joint amendment. It would place an uninsurable financial risk on the supplier and would have the same inhibiting effect on the atomic industry.

59. The CHAIRMAN put the Philippine amendment (CW/1, amendment 96) to the vote.

60. There were 10 votes in favour and 17 against, with 14 abstentions. The amendment was rejected.

61. The CHAIRMAN said that the delegation of Belgium had agreed that its amendment (CW/22) concerned three points of drafting. With the Committee's consent, he would therefore refer the amendment directly to the Drafting Committee.

62. It was so agreed.

63. The CHAIRMAN said that the proposal by Greece (CW/63) to delete sub-paragraph (b) had been withdrawn. He accordingly invited the Committee to consider the United Kingdom amendment (CW/1, amendment 98).

64. Mr. RITCHIE (United Kingdom) explained that his delegation had proposed the addition of the words "in writing" at the end of sub-paragraph (b) purely for precision and for the reasons given in the explanation of his amendment (CW/1, Ad 98).

65. Mr. ZALDIVAR (Argentina) and Mr. GIBSON BARBOZA (Brazil) opposed the amendment as superfluous. It went into detail which was not appropriate in the Convention. It was, moreover, difficult to see how a contract could be entered into if it did not exist in writing.

66. The CHAIRMAN put the United Kingdom amendment (CW/1, amendment 98) to the vote.

67. There were 16 votes in favour and 14 against, with 14 abstentions. The amendment was approved.

68. The CHAIRMAN drew attention to the United Kingdom and United States proposals to delete sub-paragraph (c) (CW/1, amendments 99 and 100).

69. Mr. PECK (United States of America) said his delegation considered it to be quite unnecessary to provide for such a remote contingency as that envisaged in sub-paragraph (c).

70. Mr. KENT (United Kingdom) said that the small majority by which the Committee had decided to retain Article IV, paragraph 2, seemed to indicate that there was no particular favour for that provision. Sub-paragraph (c) of Article VIII took the matter further: it would pass on to the carrier the higher limit of liability to which the operator might be subject under Article IV, paragraph 2, when nuclear material passed through certain States. A very heavy and unfair liability would thus be imposed on the carrier against which he would be quite unable to insure.

71. The CHAIRMAN put to the vote the proposal to delete sub-paragraph (c) (CW/1, amendments 99 and 100).

72. There were 18 votes in favour and 14 against, with 13 abstentions. The proposal was approved.

73. The CHAIRMAN said that the Committee's decision to delete sub-paragraph (c) implied a rejection of the Swedish amendment (CW/1, amendment 97).

74. The amendment submitted by Norway (CW/95) concerned drafting only and would be referred directly to the Drafting Committee.

75. He proposed that Article VIII, as amended, be referred to the Drafting Committee.

76. There were 33 votes in favour and 2 against, with 9 abstentions. Article VIII, as amended, was referred to the Drafting Committee.

The meeting rose at 12.50 p.m.

EIGHTEENTH MEETING

Monday, 13 May 1963, at 3.10 p.m.

Chairman: Mr. McKNIGHT (Australia)

CONSIDERATION OF THE DRAFT CONVENTION ON MINIMUM INTERNATIONAL STANDARDS REGARDING CIVIL LIABILITY FOR NUCLEAR DAMAGE (CN-12/2) (continued)

Article IX

Paragraph 1

1. Mr. COLOT (Belgium) said that, since the Convention was based on the exclusive liability of operators, he had suggested in his amendment (CW/23, No. 1) that actions for compensation should be brought in the courts of the Installation State and not of the State where the incident had taken place. That principle had been laid down by the Intergovernmental Committee in document CN-12/1, page 66, but not approved. His amendment was a logical consequence of Article IV, under which the Installation State fixed the limit of the operator's liability. The second paragraph of his amendment, applying the principle to incidents during carriage, followed Article 13 (b) of the Paris Convention.

2. Mr. ULMAN (United States of America) preferred the text in document CN-12/2 [1], and would vote against the amendment.

3. Mr. TREVOR (United Kingdom) agreed. Where, for instance, a ship jettisoned nuclear material in territorial water, the courts of the coastal State should have jurisdiction, since it was the State most likely to have suffered damage.

4. Mr. GHELMEGEANU (Romania) pointed out that, since paragraph 6 of Article II had been deleted [2] and paragraph 7 concerned direct action against insurers, only paragraphs 1 and 2 of Article II, applying principally to carriers, would be mentioned in Article IX. The present paragraph should be redrafted to give jurisdiction to the courts of the operator's rather than the carrier's country — i.e. to the courts of the Installation State, as suggested by the Intergovernmental Committee. He was prepared to support the Belgian amendment if the points he had raised were taken into account.

5. The CHAIRMAN reminded the Romanian delegate that oral amendments could not be debated, but that the suggestion could be raised in the Plenary Conference. He put the Belgian amendment (CW/23, No. 1) to the vote.

6. There were 2 votes in favour and 21 against, with 18 abstentions. The amendment was rejected.

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[1] Article IX, Para. 1.

[2] See 9th meeting, Paras. 73 and 74.

7. Mr. EDLBACHER (Austria) said that his amendment (CW/28) concerned drafting only, to make the paragraph apply also to actions for recognition, upon which most actions for compensation depended.

8. Mr. ZALDIVAR (Argentina) supported the amendment. He said that the Spanish text was clearer and the versions should be concorded.

9. Mr. de ERICE (Spain) and Mr. DUNSHEE de ABRANCHES (Brazil) supported the amendment for the same reasons.

10. Mr. BRATUSJ (Union of Soviet Socialist Republics) agreed, and suggested the wording "actions for recognition and compensation".

11. Mr. TREVOR (United Kingdom) acknowledged that declaratory actions were necessary in some jurisdictions. However, the amendment would raise some difficulty under Common Law, since it might also cover Article VIII, on the operator's right of recourse.

12. Mr. EDLBACHER (Austria) admitted that he had not intended to make paragraph 1 apply to actions brought under Article VIII.

13. Mr. WEITNAUER (Federal Republic of Germany) supported the amendment. He said that the difficulties of the United Kingdom delegate were excluded by the clear reference in paragraph 1 to Article II, but agreed that paragraph 2 might raise some doubts. The point was perhaps one for the Drafting Committee.

14. Mr. SCHEFFER (Netherlands) said that the amendment would affect other articles, and supported the German delegate's suggestion.

15. The CHAIRMAN proposed that the amendment (CW/28) should be referred to the Drafting Committee.

16. It was so agreed.

17. The CHAIRMAN said that CW/1, amendments 101 and 103, had been withdrawn, and that CW/1, amendment 104, had, with the proposer's consent, been referred to the Drafting Committee.

18. Mr. ROGNLIEN (Norway) said that the language of CW/1, amendment 102, had been made inapplicable by earlier decisions, but the substance remained. He wished the paragraph to apply also to Article I A, paragraph 2, and to Article VII, paragraph 2. Under some legal systems the provision would be self-evident in questions of substantive law, but under others it might not, more particularly in questions of procedure. He feared lest actions for contribution might be covered, which had not been the intention. The point should not be left to the general understanding of the Committee, since many persons not represented there might be left in doubt of the true intention.

19. Mr. TREVOR (United Kingdom) said that the point had already been covered. Rights of contribution had not been mentioned, so that there was no danger. He suggested that the matter should be left to the Drafting Committee, and that the other articles to be mentioned should be specified.

20. The CHAIRMAN proposed that the Norwegian amendment (CW/1, amendment 102) be referred to the Drafting Committee.

21. It was so agreed.

22. The CHAIRMAN proposed that the original text of paragraph 1 be also referred to the Drafting Committee.

23. There were 41 votes in favour and none against, with 2 abstentions. The Chairman's proposal was approved. Paragraph 1 was referred to the Drafting Committee.

Paragraph 2

24. The CHAIRMAN proposed that paragraph 2 be referred to the Drafting Committee.
25. It was so agreed.

Paragraph 3

26. Mr. ZALDIVAR (Argentina) said that in CW/1, amendment 105, he had proposed the deletion of sub-paragraph (iii) because no body had been established to determine the competent court. He withdrew the amendment provisionally until that point had been decided.
27. The CHAIRMAN suggested that discussion of paragraph 3 be deferred until the joint amendment submitted by the Federal Republic of Germany, the Philippines, Sweden and the United Kingdom (CW/101/Rev. 1, No. 2) was before the Committee, since the revised version made some changes in substance.
28. It was so agreed.

Paragraph 4

29. Mr. SCHEFFER (Netherlands), introducing his proposal (CW/73), said that paragraph 4, which it would delete, dealt with procedure. Since matters of procedure differed widely between jurisdictions, no attempt should be made to unify them in the Convention and they should be left to the procedural law of each State. Moreover, the text was not precise enough to establish legal procedure.
30. Mr. MAURER (United States of America) said that his amendment (CW/1, amendment 113) might meet the difficulties raised by other delegates, since it enabled evidence to be taken in the party's own country rather than in that of the court if that country gave its consent. The Convention was the first by which jurisdiction was completely centralized. That, though desirable, might raise tremendous difficulties in litigation, particularly in transport cases, where a party might have to travel far to vindicate his rights.
31. Mr. RAO (India) said that paragraph 4 should be retained, for it enabled the burden of litigation to be lightened, while leaving the exact measures to the States themselves. He saw no vagueness in the provision, and was in favour of taking evidence abroad on commission.
32. Mr. TREVOR (United Kingdom) said that his delegation had proposed the deletion of the paragraph (CW/1, amendment 112) because United Kingdom courts did not allow evidence to be taken by foreign commissions in the United Kingdom. Such a wide and general provision would be likely to produce differences of interpretation. He would accept the United States amendment for want of a better, but only if it stopped at the word "object".
33. Mr. WEITNAUER (Federal Republic of Germany) said he would support the United States amendment if the words "in so far as this is consistent with the legal systems of the countries involved" were added.
34. Mr. ZALDIVAR (Argentina) said that the paragraph might do harm by its vagueness, and in any case dealt with matters outside the scope of the Convention. The United States amendment contained the same faults. His

delegation proposed the deletion of the paragraph (CW/1, amendment 110).

35. Mr. RAO (India) pointed out that his country and the United Kingdom had arrangements for taking evidence on commission. He felt that the United States amendment was intended to be mandatory in the interests of victims of nuclear incidents. Generally speaking, his delegation could support it without the words "if such Contracting Party does not object", which seemed to defeat the purpose of the Convention.

36. Mr. MAURER (United States of America) stated that his delegation would like a more mandatory text, but considered in the light of previous discussions that it would be sufficient to emphasize the point and make the paragraph hortatory. In effect the United States text exhorted the courts of the various countries to do all they could to lighten the burden of litigation for parties and witnesses abroad.

37. Mr. de ERICE (Spain) thought that paragraph 4 as it stood and as it would read if the United States amendment were approved was not necessary and might result in complications. Arrangements already existed for co-operation between the courts of different States. He therefore supported the Argentine proposal to delete the paragraph, and would vote against the United States amendment.

38. Mr. VILKOV (Union of Soviet Socialist Republics) stated that his delegation could not support the original wording of paragraph 4. His country could not agree that courts should act in or send representatives to the territory of another State. The sending of commissions of inquiry was an infringement of national sovereignty. It was normal international practice for civil courts to request evidence from the corresponding courts in other States. Co-operation could also take place under a bilateral or multilateral agreement, or, in the absence of an agreement, through diplomatic channels. The Convention governing judicial co-operation between countries signed at The Hague in 1905 and revised in 1954 could be applied in many cases. Either paragraph 4 should be completely deleted or a reference to the procedural law of the Contracting Parties should be included.

39. Mr. DUNSHEE de ABRANCHES (Brazil) said that international judicial co-operation was not a principle or an obligation for States which were not parties to bilateral or multilateral conventions, but for most countries was a matter of international courtesy. The Hague Conventions concerned European States only. The United Nations Charter prescribed co-operation in the interest of justice and public health as a duty of the Member States, and that principle should be embodied in the Convention. It need not be made mandatory at the present stage. His delegation would support paragraph 4.

40. Mr. RAO (India) stated that the problem of providing for victims of nuclear incidents who could not bring actions in foreign courts would not be solved merely by deleting paragraph 4. The purpose of paragraph 4 was to ensure that evidence was received in foreign courts, not to dictate its value there. If evidence were not admissible in foreign courts, victims would find it too difficult and too costly to obtain compensation. He was not convinced that judicial co-operation could be achieved through diplomatic channels, nor did he think that the matter should be left to private international law. There must be some acceptable and workable solution.

41. Mr. EDLBACHER (Austria) thought that the Convention should oblige Contracting Parties to act upon letters rogatory requesting evidence. His

delegation could not support either the existing text of paragraph 4 or the United States amendment.

42. Mr. GASIOROWSKI (Poland) pointed out that the agreements governing judicial assistance contained specific conditions which it would be difficult to lay down in the Convention. There was no point, therefore, in merely stating a principle. Unlike the Brazilian delegate, he felt that paragraph 4 was in fact far-reaching and might even affect national sovereignty. It was not true, as the Indian delegate had stated, that victims of incidents had no means of recourse. There were multilateral conventions. Moreover, if the Hague Conventions were so far limited to European States, other States should accept them, and delegates should bring the matter to the attention of their Governments. His delegation could therefore not support paragraph 4.

43. Mr. RUEGGER (Switzerland) thought that the contents of paragraph 4 and of the United States amendment should be placed in a statement of reasons accompanying the Convention rather than in the text itself. The Convention, as it had developed, went into much detail, but should not prescribe international co-operation as a duty. Nevertheless, his delegation would not vote against paragraph 4.

44. Mr. BELLI (Italy) proposed that the Committee should decide first whether the paragraph should stand or not. His delegation felt it could be deleted. The statement of a general principle without any indication of the means of applying it did not appear useful.

45. Mr. MAURER (United States of America) suggested, in order to clarify the intention of his delegation, that the words "if such Contracting Party does not object" in the fourth line might be replaced by a proviso to the same effect at the end of the paragraph. With regard to the vote, he felt that some delegations who were not in favour of paragraph 4 as it stood, might, after the vote on the Argentine amendment to delete the paragraph, wish to return to the United States amendment.

46. Mr. DADZIE (Ghana) felt it essential for the Convention to provide victims with a procedure for the taking of evidence abroad, and therefore supported the existing text of paragraph 4. To delete the paragraph altogether would leave a loophole. Such ambiguities as it contained might be referred to the Drafting Committee. He would vote for the United States amendment.

47. The CHAIRMAN ruled that the proposal to delete paragraph 4 should be voted on first. He put to the vote the Argentine proposal (CW/1, amendment 110), the United Kingdom proposal (CW/1, amendment 112), and the Netherlands proposal (CW/73).

48. There were 24 votes in favour and 19 against, with no abstentions. The proposal was approved.

49. Mr. MAURER (United States of America) requested a vote on the United States amendment (CW/1, amendment 113).

50. Mr. GASIOROWSKI (Poland) submitted that the request could not be granted unless the Committee decided to reconsider the whole question.

51. Mr. RAO (India) stated that there had been a definite understanding that the Committee would vote on the United States amendment after the other amendments. That understanding had influenced the delegates' votes.

52. Mr. KIM (Korea) and Mr. DADZIE (Ghana) agreed.

53. Mr. TREVOR (United Kingdom), referring to Rule 38 of the rules of

procedure, did not see how any further vote could be taken once a paragraph had been deleted.

54. Mr. BELLI (Italy) felt that Rule 38 should have been invoked before the vote on the Argentine amendment, and shared the view that there had been an understanding that the Committee would vote on the United States amendment.

55. The CHAIRMAN ruled that the approval of the proposal to delete the paragraph implied the rejection of the United States amendment (CW/1, amendment 113), and invited a motion of dissent against his ruling.

56. Mr. MAURER (United States of America) appealed under Rule 19 against the Chairman's ruling, and requested that the Committee decide whether it would vote on the United States amendment.

57. The CHAIRMAN explained that the Committee was voting on the United States appeal against his ruling. If the motion were carried, the United States amendment would be put to the vote.

58. There were 22 votes in favour and 19 against, with 7 abstentions. The appeal was upheld.

59. As the United States delegation wished to reword its amendment, the CHAIRMAN suggested that the vote be taken the following morning, when a written text would be available.

60. It was so agreed.

Paragraph 3 (continued)

61. The CHAIRMAN, returning to paragraph 3, stated that in his view the joint amendment submitted by the Federal Republic of Germany, the Philippines, Sweden and the United Kingdom (CW/101/Rev. 1, No. 2) was furthest removed from the basic text and should therefore be voted on first.

62. Mr. MAURER (United States of America) felt that the United States amendment (CW/13) was a more drastic departure from the basic text and should be given priority. By way of compromise he proposed that the Committee discuss both amendments together and then decide which to vote on first.

63. Mr. SPÁČIL (Czechoslovak Socialist Republic) appealed to the delegates to observe the rules of procedure, instead of following a tendency to ignore them in deciding procedural matters. He agreed with the Chairman that the joint amendment was the furthest from the basic text and should therefore be examined first.

64. The CHAIRMAN repeated that in his view the joint amendment which proposed that disputes be settled by agreement was further from the basic text than the United States amendment, which left the decision to an unspecified outside party. He proposed that there be a general discussion, after which he might reconsider his ruling.

65. Mr. ROGNLIEN (Norway) felt that the United States amendment was the furthest removed from the basic text. With regard to the joint amendment, he wished to know what procedure would be adopted if the Contracting Parties did not reach agreement, and asked one of the sponsors to explain.

66. Mr. TREVOR (United Kingdom) pointed out that the cases provided for in paragraph 3 were very exceptional. It must be assumed that States parties

to an international convention would act reasonably and take all steps to avoid disagreement. He failed to see an alternative to the joint amendment. Both the basic text and the United States amendment contained blanks and therefore offered no solution. He did not see how the Committee could vote on the United States amendment unless the blanks were filled.

67. Mr. WEITNAUER (Federal Republic of Germany) agreed with the United Kingdom delegate that Contracting Parties could be expected to act reasonably. He mentioned that a procedure for the settlement of disputes existed under the Paris Convention, which would not be affected by the present proposal.

68. Mr. NORDENSON (Sweden) felt sure that any dispute that arose could easily be settled by reference to some international arbitration body. The sense of responsibility of the Contracting Parties could be relied upon: claims would be settled rapidly and due compensation paid.

69. Mr. COPPENS (Netherlands) opposed the United States amendment because it proposed to transfer decisions to a neutral body. His delegation strongly supported the joint amendment.

70. Mr. MAURER (United States of America) considered paragraph 3 of the basic text too complicated to have any clear meaning. There had been various attempts to simplify it, and the joint amendment was not a satisfactory solution. Arbitration was not as easy as the joint amendment would imply. His delegation's amendment was based on the Brussels Convention and provided only for cases where the limit of liability under Article IV was exceeded; it would not be difficult to fill the blanks in the amendment.

71. Mr. EDLBACHER (Austria) thought that the Convention should lay down a procedure for instituting discussions between Governments in the event of disagreement. In any case those discussions would take time, and he wondered how the delay would affect the period of prescription laid down in a previous article. It would be necessary to safeguard the rights of victims.

72. Mr. NORDENSON (Sweden) noted that the joint amendment was not inconsistent with the United States amendment and that the approval of the former did not imply rejection of the latter. He therefore proposed that the Committee discuss and vote on the joint amendment first.

73. Mr. VILKOV (Union of Soviet Socialist Republics) asked the Chairman if the Argentine amendment (CW/1, amendment 105) had been withdrawn, and asked the United States delegate how he proposed to fill the blanks in his amendment.

74. The CHAIRMAN explained that the Argentine amendment had not been withdrawn but postponed until the other amendments had been dealt with.

75. In reply to the questions of various delegates, Mr. MAURER (United States of America) proposed to insert the words "the Secretary-General of the United Nations" in the blanks in the United States amendment.

76. Mr. VILKOV (Union of Soviet Socialist Republics) could not see what the United Nations Secretary-General had to do with liability for nuclear damage. He proposed that the Committee examine the joint amendment and, if it failed to find a solution in that direction, return to the Argentine amendment.

77. The CHAIRMAN explained that the Argentine amendment would be discussed only if the other amendments were rejected and the basic text main-

tained. He put the joint amendment submitted by the Federal Republic of Germany, the Philippines, Sweden and the United Kingdom (CW/101/Rev. 1, No. 2) to the vote.

78. There were 20 votes in favour and 8 against, with 18 abstentions. The joint amendment was approved.

79. He then put the United States amendment (CW/13) to the vote.

80. There were 6 votes in favour and 20 against, with 18 abstentions. The amendment was rejected.

81. Mr. BRAJKOVIC (Yugoslavia) felt that as the Committee had reached an impasse on that point, the question could be solved by a provision according to which the court before which the plaintiff had presented the action would be competent, and in the case of several plaintiffs, the court before which the first action had been presented.

82. The CHAIRMAN assumed that the Argentine amendment was withdrawn and said that the Belgian delegation was withdrawing its amendment (CW/23, No. 2). He ruled formally that all other amendments to paragraph 3 had been by implication rejected by the approval of the joint amendment (CW/101/Rev. 1, No. 2) and the rejection of the United States amendment (CW/13).

83. He formally moved that the basic text of paragraph 3, as amended by the joint amendment, be referred to the Drafting Committee.

84. There were 32 votes in favour and none against, with 12 abstentions. The basic text, as thus amended, was referred to the Drafting Committee.

The meeting rose at 7 p.m.

NINETEENTH MEETING

Tuesday, 14 May 1963, at 3.15 p.m.

Chairman: Mr. McKNIGHT (Australia)

CONSIDERATION OF THE DRAFT CONVENTION ON MINIMUM INTERNATIONAL STANDARDS REGARDING CIVIL LIABILITY FOR NUCLEAR DAMAGE (CN-12/2) (continued)

Article IX (continued)

Paragraph 4 (continued)

1. The CHAIRMAN recalled that the Committee had been about to vote at its eighteenth meeting on the United States amendment (CW/1, amendment 113), but that the vote had been postponed until the final text of the proposal was available in writing. That text was now before the Committee as document CW/107, and he would immediately put it to the vote.

2. There were 16 votes in favour and 3 against, with 12 abstentions. The amendment was approved.

3. Mr. ZALDIVAR (Argentina) protested against the procedure followed on the amendment just approved, and declared that it would place the Com-

mittee of the Whole and the Drafting Committee in a very awkward position. On the previous day the Committee had voted for the total deletion of paragraph 4[1], and the Chairman had been wrong to put the United States appeal to the vote. It was not possible to approve an amendment to a paragraph that had been deleted. Moreover, the United States amendment differed very slightly from the deleted paragraph. He reserved the right to raise the matter before the Plenary Conference.

4. The CHAIRMAN recalled that he had already stated twice that there were several deficiencies in the United Nations model rules. Under the rules of the Agency's Board of Governors and General Conference, a meeting might decide to vote on an amendment even if the approval of another amendment implied its rejection. The United States delegate had requested a vote on his amendment because he had thought that many of the delegations which had voted to delete rather than retain the paragraph might favour his alternative version; the only means by which he could have that version put to the vote had been to appeal under Rule 19 from the Chairman's ruling that a vote could not be taken on it. A majority of the Committee had upheld the appeal and then approved the United States amendment. It was not a satisfactory method, but there was no alternative. Delegations could still reject the United States version in plenary.

5. Mr. GASIOROWSKI (Poland) denied that the Committee was omnipotent. In fact it had rules to which it must conform, one of which (Rule 30) laid down that a matter that had been disposed of might not be reconsidered without a two-thirds majority. Under Rule 38 the approval of a proposal to delete a provision excluded all further consideration of that provision. On the previous day the meeting had contravened the practice of all international conferences. The Committee had acquiesced inadvertently, but it was now necessary to rectify the error which had been committed. He proposed that the Committee decide by a two-thirds majority in accordance with Rule 30 whether the previous day's decision was to be reconsidered or not.

6. Mr. RAO (India) submitted in reply to the Polish delegate that the rules of procedure were not masters of the delegations. The Chairman had made the position clear on the previous day and no objection had been raised. He supported the Chairman's action, and failed to see how anyone could move the reconsideration of the proposal now that a vote had been taken.

7. Mr. GASIOROWSKI (Poland) pointed out that the rules of procedure had been adopted by the Plenary Conference and not by the Committee of the Whole. He wondered what meaning Rule 30 had if it could be set aside by an appeal to the meeting. He repeated that there had been an error on the previous day, and advocated a return to strict observance of the rules of procedure.

8. Mr. DADZIE (Ghana), while appreciating the views of the Polish delegate, pointed out that a vote had been taken and that the matter could not be reconsidered. By way of compromise he suggested that Rule 30 be applied strictly if similar situations arose in future. No delegate had invoked Rule 30 on the previous day, and the matter must therefore be considered closed.

9. The CHAIRMAN assumed that the matter was closed, and reminded

[1] 18th meeting, paras. 47 and 48.

delegates that they could move the deletion of the paragraph in plenary. He assumed that the Brazilian amendment (CW/111) just circulated was withdrawn, since it had been intended as an alternative to the United States amendment (CW/107) if the latter were not approved. He proposed that the Committee should examine the Indian proposal (CW/81), which was now relevant to the discussion.

10. Mr. GIBSON BARBOZA (Brazil) felt that there had been misunderstanding of the issues at the previous day's meeting. His amendment was a sub-amendment to the United States amendment. He was prepared to withdraw it if the Committee thought it had been submitted out of time, but would otherwise request a vote on it. He asked the Chairman to explain his decision.

11. The CHAIRMAN said there had been a misunderstanding. He had thought it had been more or less agreed that the approval of the United States amendment implied the rejection of the Brazilian amendment. Since, however, the Brazilian amendment had not been distributed until the start of the meeting, he would rule that it had been submitted too late and therefore not rejected. He reminded the Brazilian delegate that it could still be submitted in plenary.

12. Mr. RAO (India) withdrew the Indian proposal and suggested that, since the United States amendment and the Brazilian amendment dealt with basically the same question and the Brazilian amendment was better drafted, both texts should be submitted to the Drafting Committee, with a note that the United States amendment was the one which had been approved.

13. The CHAIRMAN agreed with the suggestion of the Indian delegate. He then proposed that the Committee should examine the text of the Swedish new paragraph 4 (CW/1, amendment 108, No. 2), which was relevant to the decision taken on the previous day respecting agreements between States[2].

14. Mr. NORDENSON (Sweden) noted that the Committee had decided on the previous day that the Contracting Parties concerned should settle by agreement which Party had jurisdiction. The Convention must, however, make provision for certain difficulties that might arise in reaching agreement on a single jurisdiction. The Swedish amendment attempted to make it easier for Contracting Parties to settle a dispute over jurisdiction. It proposed a system of multiple jurisdiction, so that two or more Contracting Parties might have jurisdiction in respect of the same incident.

15. The Committee had adopted the principle of limited liability, but in cases where the limit of liability was exceeded the problem of equitable apportionment would arise. His delegation accepted multiple jurisdiction on condition that the agreement between the Contracting Parties included appropriate provision for equitable apportionment and distribution. Cases involving multiple liability would be very few and would only arise in clearly defined circumstances – for instance, where a nuclear incident occurred outside the territory of any Contracting Party and two or more operators were liable; or where a nuclear incident occurred on the territories of two or more Contracting Parties. The Contracting Parties involved would mostly be neighbouring countries and therefore likely to reach a satisfactory agreement.

16. Mr. TREVOR (United Kingdom) was entirely against provision in the

[2] 18th meeting, paras. 77 and 78.

Convention for multiple jurisdiction. Its difficulties were obvious. For instance, the two or more courts having jurisdiction might disagree on whether the incident had caused nuclear damage. All the decisions taken by the Committee had been in favour of single jurisdiction. Moreover, the discussions in Brussels had shown that an expression like "appropriate provisions" was too vague and that any provision for apportionment must be governed by specific rules. He considered the Swedish amendment completely retrograde.

17. Mr. NORDENSON (Sweden) pointed out in reply to the United Kingdom delegate that the Swedish amendment assumed that the Contracting Parties would agree on the meaning of equitable apportionment and distribution. If they did not, they would be obliged to adhere to the system of single jurisdiction. He added that, in view of the amendments already approved, the words "Installation State" would be replaced by "Contracting Party".

18. Mr. ROGNLIEN (Norway) said he would vote in favour of the Swedish amendment, since the text of paragraph 3 approved on the previous day did not lay down satisfactorily what would happen if the Contracting Parties did not reach agreement. The Swedish amendment offered a solution additional to those contained in paragraph 3, and therefore gave greater protection to victims.

19. The CHAIRMAN put the Swedish amendment (CW/1, amendment 108, No. 2) to the vote.

20. There were 8 votes in favour and 17 against, with 18 abstentions. The amendment was rejected.

Article XV

21. The CHAIRMAN proposed that the Committee should dispose of the Swedish amendment (CW/1, amendment 125), which was relevant to the discussion.

22. Mr. NORDENSON (Sweden) explained that the amendment was consequential upon the joint amendment (CW/101/Rev. 1, No. 2), approved at the eighteenth meeting, which allowed jurisdiction to be determined by agreement. Where an agreement was reached by Contracting Parties, the amendment would enable the victim to find out from the Agency which court was competent.

23. The CHAIRMAN put the Swedish amendment (CW/1, amendment 125) to the vote.

24. There were 14 votes in favour and 13 against, with 16 abstentions. The amendment was approved.

25. The CHAIRMAN stated that the amendment would be referred to the Drafting Committee.

Article IX (continued)

New paragraph

26. The CHAIRMAN proposed that the Committee should examine the Indian proposal (CW/100) to add a new paragraph to Article IX.

27. Mr. RAO (India) considered the Indian proposal was almost self-explanatory. The Convention referred only to courts of law, but some mat-

ters, such as assessment of damages, did not relate exclusively to the interpretation and application of the law. For those matters, it might be necessary to set up an independent board of experts to find the facts. Such tribunals were an accepted feature of a number of legal systems, including that of India, and Indian experience had shown that in some cases the method was more expeditious. The words "subject to judicial review" would ensure that their decisions conformed to the basic principles of law and procedure. He drew the Committee's attention to paragraph 54 of the report of the Intergovernmental Committee (CN-12/2), and expressed the view that the Indian proposal was only formulating an idea that was already understood.

28. Mr. WEITNAUER (Federal Republic of Germany) could not support the Indian proposal, as its consequences could not be fully predicted. The matter should be left to national legislation.

29. Mr. GASIOROWSKI (Poland) thought the Indian proposal was too far-reaching and imperative, and would give extensive power to administrative authorities, which would aggravate the dangers implied in the text of paragraph 4.

30. Mr. TREVOR (United Kingdom) sympathized with the intention behind the Indian proposal, but feared it might defeat its own ends. He thought that the same or more favourable rights would be ensured without it.

31. Mr. BELLI (Italy) had much sympathy with the Indian proposal although there was nothing similar in Italian legislation. He suggested that it might be made a definition in Article I.

32. Mr. RAO (India) stated in reply to the German delegate that it had already been provided that the Convention would not be implemented until a final judicial decision had been taken. He could understand the objection of the United Kingdom delegate, but again drew attention to paragraph 54 of the report of the Intergovernmental Committee. He was prepared to withdraw the proposal if a statement that the word "courts" included administrative authorities were included in the exposé or the record.

33. The CHAIRMAN stated that no exposé was planned, and thought it best to put the Indian proposal (CW/100) to the vote.

34. There were 10 votes in favour and 16 against, with 21 abstentions. The proposal was rejected.

35. Mr. RAO (India) wished the matter to be placed on record, and asked how paragraph 54 of the report of the Intergovernmental Committee was to be interpreted.

36. Mr. ROGNLIEN (Norway) pointed out that paragraph 54 set out the opinion merely of the Intergovernmental Committee.

37. The CHAIRMAN stated that the official record would reflect the views expressed, and be referred to in the interpretation of the Convention. He assured the Indian and Norwegian delegates that their views would be placed on record.

Article III (resumed)[3]

Paragraph 5 (continued) and new paragraph 6

38. The CHAIRMAN proposed that the Committee return to Article III, paragraph 5, on which there had been a marked cleavage of opinion, and examine

[3] See 12th meeting, paras. 1 to 69.

the Philippine amendment (CW/1, amendment 65), the Belgian amendment (CW/18/Rev. 1, No. 2), and a new joint amendment sponsored by Denmark and six other countries (CW/105).

39. Mr. COLOT (Belgium) stated that his delegation was prepared to withdraw its amendment on the understanding that the figure of $5 million be inserted in paragraph 5 (b).

40. The CHAIRMAN noted the statement of the Belgian delegate, and proposed that the Committee examine the joint amendment (CW/105).

41. Mr. KENT (United Kingdom) explained that the purpose of the joint amendment was to amalgamate as far as possible the proposals contained in documents CW/88/Rev. 2, CW/89 and CW/91. He hoped that the compromise text would be approved by a majority of the delegations. Its sub-paragraph (a) closely followed paragraph 5 of the basic text, with some drafting improvements. Sub-paragraph (b) had a twofold intention: to entitle the owner of on-site property and the owner of a means of transport to claim against an individual causing nuclear damage by a wilful act or omission, and to entitle the owner of a means of transport to claim compensation not only under the Convention but also under a contract or under general tort law.

42. Sub-paragraph (c) was intended to meet the wishes of certain States, particularly those which had supported amendment CW/92, rejected the previous day[4]. It would not appeal to all delegations and did not appeal to his own, but was permissive and might reasonably be accepted. Sub-paragraph (d) provided that the funds established under the Convention would not be used for compensation which was or might be payable under sub-paragraphs (b) and (c).

43. With regard to the second part of the amendment, which proposed a new paragraph 6, the provision might be included elsewhere in the Convention at the discretion of the Drafting Committee.

44. Mr. DUNSHEE de ABRANCHES (Brazil) stated that there were two points in the joint amendment which his delegation could not accept. Sub-paragraph (c) would result in discrimination, which was contrary to the law of his country. Secondly, the proposed new paragraph 6 was irrelevant to Article III and unacceptable in itself, for it laid down the absolute rejection of liability as a general rule and was contrary to the doctrine of civil liability. If included in the Convention, it might oblige Contracting Parties to repeal much of their national law.

45. Mr. SCHEFFER (Netherlands) appreciated the efforts made by Denmark and the other sponsors to clarify the legal position concerning the rules of liability which should apply. He asked why sub-paragraph (c) referred to Article II, paragraph 5, but sub-paragraph (b) did not.

46. Mr. NORDENSON (Sweden) thought the Brazilian delegate might have misunderstood sub-paragraph (c). It did not depart from the principle of non-discrimination set out in Article XI, but rather amounted to discrimination in reverse: instead of depriving any person of rights, it allowed States to impose new obligations to the advantage of victims. The point raised by the Netherlands delegate was merely one of drafting: a reference to Article II, paragraph 5, could be inserted in sub-paragraph (b) without altering its substance. The

[4] 16th meeting, paras. 80 and 81.

proposed new paragraph 6 did not alter the substance of the principle laid down in Article II, paragraph 5, as the Brazilian delegate feared; but the sponsors had thought it advisable to state the principle of channelling more clearly than it was stated in Article II.

47. Mr. WEITNAUER (Federal Republic of Germany) added that the proposed text was based on the principle of channelling, and its purpose was to protect the man in the street against liability for nuclear damage caused by negligence. A simple accident might, if nuclear materials were present, lead to risks which far exceeded normal risks and for which no person could obtain insurance coverage.

48. Mr. SCHEFFER (Netherlands) thanked the Swedish delegate. The proposed new paragraph 6 seemed to state more or less the same thing as Article II, paragraph 5; his delegation would vote for the amendment on condition that the question of redundancy were carefully examined in the Drafting Committee.

49. Mr. STEPHENSON (South Africa) agreed with the Netherlands delegate. Article II, paragraph 5, provided that no person other than the operator should be liable for nuclear damage. The new proposal applied simply to "no person" – including the operator. A further new element in the new proposal was the reference to a contract in writing. That provided an unlimited opportunity for the operator to dispose of his liability by a contract in writing, which was quite opposed to the general intention of the Conference.

50. Mr. NISHIMURA (Japan) said that sub-paragraph (c) was unacceptable because it contradicted Article III, paragraph 2. Each Contracting Party should be authorized to render nationals of other States liable.

51. Mr. PAPATHANASSIOU (Greece) asked the sponsors whether the operator referred to in sub-paragraphs (a) and (b) was only an operator of the Installation State, or any operator anywhere.

52. Mr. KENT (United Kingdom) said that under sub-paragraph (a) (ii) any Installation State might provide by its law that owners of means of transport might recover compensation against the fund of its own operators. To the South African delegate, he replied that the word "person" in the new paragraph 6 covered operators and all other persons.

53. Under sub-paragraph (a) means of transport had the right of compensation; under the basic text that right was extended to it only if the Installation State so provided. Under sub-paragraph (b) means of transport, and not owners of on-site property, were given a right of action against the operator under contract or in tort. Under sub-paragraph (c), which was permissive, the operator had a right of action against a national of an Installation State which so provided by its law. The new paragraph 6 provided that the situation should be governed by the Convention or expressly by a contract in writing.

54. Mr. DUNSHEE de ABRANCHES (Brazil) said that Brazil stood for equal treatment of nationals and aliens, and sub-paragraph (c) established inadmissible discrimination, for it was unfair to impose unilateral obligations on nationals of the Installation State. Paragraph 6 was not consistent with the principle of channelling liability. The Brazilian delegation opposed that trend, and asked for a separate vote on the words "who is a national of that State" in sub-paragraph (c).

55. Mr. KENT (United Kingdom) asked for a separate vote on each sub-paragraph of the amendment. He did not, however, think it reasonable to vote separately on various passages of the sub-paragraphs.

56. Mr. NORDENSON (Sweden) held that the new paragraph 6 was fully compatible with the Committee's decision on Article II, paragraph 5, which laid down the channelling principle. The exceptions set forth in sub-paragraphs (b) and (c) were intended to be exhaustive, and were in fact the provisions referred to in Article II, paragraph 5. He thought that paragraph 6 could be referred directly to the Drafting Committee without a vote.

57. The CHAIRMAN observed that the Brazilian request for a separate vote amounted to a proposal to delete the words "who is a national of that State" from sub-paragraph (c). Although he was reluctant to accept oral sub-amendments, he thought it would be unwise to leave that important point to be raised for the first time in plenary. If the sponsors did not object, he would put the Brazilian sub-amendment to the Committee.

58. Mr. KENT (United Kingdom), on behalf of the sponsors, objected to the introduction of the Brazilian sub-amendment.

59. Mr. DUNSHEE de ABRANCHES (Brazil) said he would move the sub-amendment in plenary.

60. The CHAIRMAN put to the vote sub-paragraph (a) of the seven-nation amendment (CW/105, No. 1).

61. There were 38 votes in favour and 1 against, with 4 abstentions. The sub-paragraph was approved.

62. The CHAIRMAN put to the vote sub-paragraph (b).

63. There were 27 votes in favour and 6 against, with 14 abstentions. The sub-paragraph was approved.

64. The CHAIRMAN put to the vote sub-paragraph (c).

65. There were 16 votes in favour and 17 against, with 13 abstentions. The sub-paragraph was rejected.

66. The CHAIRMAN put to the vote sub-paragraph (d).

67. There were 28 votes in favour and 4 against, with 13 abstentions. The sub-paragraph was approved.

68. Mr. NORDENSON (Sweden) moved on a point of order that no vote be taken on the new paragraph 6. It was consequential on the preceding paragraph, and, since sub-paragraph (c) had been rejected, a vote on it would imply reconsideration of provisions already adopted, and a two-thirds majority would be required.

69. Mr. DUNSHEE de ABRANCHES (Brazil) considered that, under the rules of procedure, the proposal should either be withdrawn or voted on.

70. The CHAIRMAN upheld the Brazilian delegate's view. He put to the vote the new paragraph 6 proposed in the seven-nation amendment (CW/105, No. 2).

71. There were 12 votes in favour and 22 against, with 13 abstentions. The paragraph was rejected.

72. The CHAIRMAN put to the vote, as a whole, paragraph 5 as set out in the seven-nation amendment (CW/105, No. 1), with the exception of sub-paragraph (c) which had already been rejected by the Committee.

73. There were 38 votes in favour and none against, with 5 abstentions. The paragraph, thus amended, was approved.

74. Mr. ROGNLIEN (Norway) proposed that the figure at the end of sub-paragraph (a) (ii) should be $5 million.

75. The CHAIRMAN put the Norwegian proposal to the vote.

76. There were 36 votes in favour and 1 against, with 9 abstentions. The proposal was approved.

77. Mr. TAGUINOD (Philippines) said that his delegation's amendment to paragraph 5 (CW/1, amendment 65) might be referred to the Drafting Committee, since the applicability of Article III, paragraph 2, was already implied by the text of the paragraph which the Committee had just approved.

78. The CHAIRMAN said that the Philippine amendment would be referred to the Drafting Committee, which might decide to refer it back to the Committee of the Whole if it considered that a substantive point was involved.

Report of the Sub-Committee on Exclusion of Materials

79. Mr. CHARNOFF (United States of America) said that on page 3, fifth line, of the Sub-Committee's proposal the words "are established" should be replaced by "have been established". The Sub-Committee had clearly intended not to permit any exclusion until after the Board of Governors had established the maximum limits within which the Installation State might exercise discrimination.

80. Mr. WILSON (Australia) said that his delegation had some reservations concerning the application of the Sub-Committee's proposal to the international carriage of fissile materials. That carriage was unique in that the shipper was not master of his own fate but depended upon the standard of care exercised by other shippers; the danger arose when several shipments of fissile materials were brought together. The choice of minimum quantities rested on certain assumptions concerning standards of packaging, the physical form of the materials and so forth. Certain standards existed as recommendations but were not binding on States. For example, if a shipment of fissile materials in excess of the maximum quantities, packaged in accordance with the prescribed regulations, met another shipment below that limit which was not properly packed, a nuclear incident might arise for which the innocent party would bear the full financial liability while the party at fault would be free. He therefore doubted whether it was realistic to assume that in that case the degree of risk depended on the quantities; perhaps international carriage of fissile materials might be excluded from the exemption.

81. Mr. DADZIE (Ghana) agreed with the United States delegate, and pointed out that the word "annually" in the last sentence of the report should be replaced by "periodically", which was used in the proposal itself.

82. Mr. VILKOV (Union of Soviet Socialist Republics) said that the Soviet Union, which had served on the Sub-Committee, had voted for the proposal in the interests of co-operation.

83. Mr. GOSS (United Kingdom) considered that the Sub-Committee had reached a clear and generally acceptable solution of the problem: the United Kingdom was confident that the Board of Governors would establish rational maximum limits. The point raised by the Australian delegate was relatively unimportant, for the Agency regulations had been drawn up by experts and were based on a safety factor well beyond any additional possibilities of danger. Nor could he accept the Australian suggestion to exclude international carriage of fissile materials; his delegation's purpose in raising the whole matter had been to ensure, for example, that very small slivers of ir-

radiated nuclear fuel from reactors abroad could be sent to the United Kingdom without undue difficulty. He was sure that the Board of Governors would take into account the potential dangers referred to by the Australian delegate.

84. Mr. BELLI (Italy) said he could accept the Sub-Committee's proposal in principle, since the Board of Governors was eminently qualified to establish the small quantities to which the Convention would not apply. On the other hand, he believed that the proposal should not relate to the carriers of nuclear material or persons handling radioactive waste referred to in Article II, paragraph 2, since there could be no exceptions to the quantities they handled.

85. The CHAIRMAN put to the vote the proposal appearing on page of the report of the Sub-Committee on Exclusion of Materials (CW/96 and Corr. 1).

86. There were 42 votes in favour and 1 against, with 4 abstentions. The proposal was approved.

Article IV (resumed)[5]

Paragraph 1 (continued)

87. Mr. SUBRAHMANYAM (India), introducing his delegation's amendment (CW/80), said that a lower limit of liability had been proposed in sub-paragraph (ii) to meet the situation of developing countries, which received a constant flow of consignments of nuclear materials in the form of fresh fuel elements from more developed countries and frequently returned spent fuel elements for reprocessing. The consignments might not be very large but the packing requirements for them were stringent enough to ensure that radiation and radioactive contamination hazards were considerably reduced, and hence if each of those consignments were subject to the $5 million limit, great inconvenience would be caused to the operators, who would be unable to obtain low-premium rates. Transport of nuclear materials should therefore carry a lower limit.

88. Mr. THOMPSON (United Kingdom) sympathized with the Indian proposal, which had been considered in the United Kingdom but abandoned as impracticable. It should be borne in mind, moreover, that a number of delegations had expressed the view that the limit should be much higher than $5 million. His delegation believed that that figure was particularly suitable to risks attached to small research reactors and material in transit, but that the amount should be much higher for larger installations with greater liabilities. He hoped that the Indian delegation would not press its amendment; the United Kingdom could not support it.

89. Mr. ZALDIVAR (Argentina) supported the Indian amendment, holding it perfectly reasonable to set a lower limit for nuclear material in transit.

90. Mr. ROGNLIEN (Norway) said that his delegation had always been in favour of a low liability, but agreed with the United Kingdom delegate that the $5 million limit should be kept.

91. Mr. MAURER (United States of America) could not support the Indian amendment, since his delegation was already deeply disturbed by the low

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[5] See 15th meeting, Paras. 1 to 5.

figure that had been adopted by the Committee and which bore no relation to the adequate protection of human beings.

92. Mr. RAO (India) pointed out that the figures in both sub-paragraphs of his delegation's amendment were minimal. Any State which wished to raise the figure could do so.

93. The CHAIRMAN put the Indian amendment (CW/80) to the vote.

94. There were 16 votes in favour and 19 against, with 11 abstentions. The amendment was rejected.

Article V (resumed)[6]

New paragraph 5

95. Mr. EDLBACHER (Austria), introducing the joint amendment submitted by Austria, the Federal Republic of Germany and the Philippines (CW/110), said that under the new Article IX, paragraph 3 (ii) periods of prescription would include the time taken by States to reach agreement on jurisdiction. To prevent that prejudice to the rights of victims, the new paragraph suspended the period from the time when the victim submitted his claim to the Government of the State concerned until six months after the designation of the competent court by agreement between the Contracting Parties.

96. Mr. ROGNLIEN (Norway), Mr. RITCHIE (United Kingdom), and Mr. ZALDIVAR (Argentina) did not consider that the wording of the amendment was clear enough.

97. Mr. ENGLISH (United States of America) suggested that the amendment might be referred directly to the Drafting Committee to express the principle in the proper language.

98. Mr. BELLI (Italy) considered that the Committee should take a vote on the clear principle that extinction or prescription should be suspended while the Contracting Parties examined the possibility of agreement. The Drafting Committee could not prepare a text without knowing the consensus of the Committee on that point.

99. Mr. WEITNAUER (Federal Republic of Germany) endorsed the Italian delegate's remarks.

100. The CHAIRMAN put the joint amendment (CW/110) to the vote.

101. There were 39 votes in favour and 1 against, with 5 abstentions. The amendment was approved.

The meeting rose at 6.30 p.m.

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[6] See 16th meeting, paras. 1 to 18.

TWENTIETH MEETING

Wednesday, 15 May 1963, at 9.45 a.m.

Chairman: Mr. McKNIGHT (Australia)

CONSIDERATION OF THE DRAFT CONVENTION ON MINIMUM INTERNATIONAL STANDARDS REGARDING CIVIL LIABILITY FOR NUCLEAR DAMAGE (CN-12/2) (continued)

Article X

1. The CHAIRMAN invited the Committee to consider Article X in the light of the report of the Sub-Committee on Execution of Judgments (CW/94 and Corr. 1), taking as the basic text for the discussion paragraph 11 of that report.
2. Mr. ZALDIVAR (Argentina), speaking as Chairman of the Sub-Committee, said the text proposed in paragraph 11 of the report should be regarded as a compromise, accepted as such, by more than two thirds of the Sub-Committee's members. Some of the concepts included in it were not to be found in the legal systems of certain States, but they did not conflict with them, and were moreover an indispensable part of the legal systems of other States.
3. Mr. ROGNLIEN (Norway) said that the purpose of the joint amendment submitted by Japan, Norway and the United Kingdom (CW/93) was to clarify the scope of the Article; it concerned only the opening words of paragraph 1.
4. Though mainly a drafting amendment, it did differ on two points of substance from the text proposed by the Sub-Committee. First, the amendment referred specifically to judgements against the operator or the person providing financial security, thereby excluding certain other categories of judgement from the scope of the Article; for example, judgements awarding on operator litigation costs against the victim, judgements awarding an operator recourse against a third party under Article VIII and judgements in respect of the apportionment of liability between operators. The two latter cases came under Article IX of the Convention, and the first case should be dealt with outside the Convention.
5. The second point of substance was contained in the words "so long as the total of the judgements has not exceeded the limit of the liability of the operator established pursuant to Article IV". Where a large number of victims was involved in a claim for compensation, some time might elapse between the delivery of the first judgements and that of later judgements, and the limit of liability might be exceeded. The purpose of the amendment was to ensure that judgements should be executed as soon as they were presented and not suspended in case later judgements should exceed the limit. If, however, an operator had paid claims up to the limit he should not be liable to pay subsequent awards.
6. Mr. OHTA (Japan) recalled that, at the fourteenth meeting of the Committee of the Whole, the Committee had rejected the French amendment

CW/2, No. 1[1] and the United States amendment CW/12, No. 3[2] as it had thought it self-evident that claims of victims for compensation exceeding the $5 million limit fell outside the scope of the Convention. That was, however, a case which might frequently arise in practice, and therefore the sponsors of the joint amendment (CW/93) thought it better that Article X should clearly specify that courts were not obliged to recognize the judgements of foreign courts in excess of the limit.

7. Mr. SCHEFFER (Netherlands) said he regretted being unable to support the amendment. The first part, which aimed at limiting the scope of the Article to certain categories of final judgement, was merely unnecessary. The second part, on the other hand, was quite irrelevant to the purpose of the Article. Once the competent court had passed judgement, it was not the task of the court of another country to verify whether the total limit of liability had been exceeded. The court of the second country would not know all the relevant details of the case, and such a provision would be unworkable. Article X should deal only with the question of the recognition and execution of foreign judgements and the question of the limit of liability should not be confused with it.

8. Mr. ULMAN (United States of America) thought that the amendment was unnecessary because recognition of a judgement in excess of the limits of liability laid down in Article IV would be a violation of the provisions of the Convention.

9. Mr. ZALDIVAR (Argentina) opposed the amendment for the reasons given by the Netherlands and United States delegates.

10. The CHAIRMAN put to the vote the joint Japanese, Norwegian and United Kingdom amendment (CW/93).

11. There were 8 votes in favour and 24 against, with 11 abstentions. The amendment was rejected.

12. The CHAIRMAN pointed out that the text proposed by the Sub-Committee offered alternative wordings, which were given in square brackets in paragraph 11 of its report. The Committee would have to choose between the two alternatives, "under this Convention" and "under Article IX of this Convention".

13. Mr. ZALDIVAR (Argentina) said that owing to lack of time the Sub-Committee had not been able to come to a decision concerning the alternative phrases in question. Article IX clearly specified that the court having jurisdiction should be that on whose territory the incident occurred, but a court having jurisdiction "under the Convention" might be that of the Installation State or of some other country. In general, the competent court under Article IX would be that of the Installation State, but particularly in the case of incidents in connection with materials in transit some other court might be competent.

14. Mr. DUNSHEE de ABRANCHES (Brazil) said that the question of the alternative phrasing had not been discussed in the Sub-Committee. The text finally adopted by the Sub-Committee closely followed that of the joint Brazilian-United States proposal (CW/75), which contained the phrase "under this Convention". The inclusion in the report of the alternative phrase was

[1] 14th meeting, para. 84.

[2] Ibid., para. 86.

unjustified because no amendment had been submitted proposing the change in question.

15. Mr. ULMAN (United States of America) said that Article IX dealt with the question of courts having jurisdiction over actions for compensation for nuclear damage. The article on the recognition of judgements should refer to judgements relating to those actions only. To speak of a final judgement "entered by the court having jurisdiction under this Convention" would be to expand the category of actions referred to by including, for instance, actions for recourse. He did not think it desirable to include judgements on actions of that nature in a provision whose purpose was to ensure that victims obtained the compensation they had been awarded.

16. Mr. ZALDIVAR (Argentina) said that what the Brazilian delegate had said was true. The United States delegation, although one of the original sponsors of the joint proposal (CW/75), had now expressed a preference for the alternative wording which had been included in the Sub-Committee's draft. It was for the Committee to decide which alternative it preferred because the question was one of substance and not merely of drafting.

17. The CHAIRMAN put to the vote the Brazilian proposal that the opening words of paragraph 1 should read: "A final judgement entered by a Court having jurisdiction under this Convention shall be ...".

18. There were 14 votes in favour and 22 against, with 6 abstentions. The proposal was rejected.

19. Mr. ZALDIVAR (Argentina) said that there appeared to be a certain contradiction in the attitude of some delegates. The exceptions referred to in sub-paragraphs (i), (ii) and (iii) would, as a result of the vote, apply only to the decisions of courts having jurisdiction under Article IX and not to other courts. He was amazed that certain delegations which had so strongly supported the insertion of exceptions should now vote in favour of a proposal as a result of which those exceptions would not apply in the case of certain courts. The Argentine delegation, for its part, had accepted the text out of a desire for conciliation and it was now prepared to support it in the same spirit.

20. The CHAIRMAN put to the vote the alternative text for the opening words of paragraph 1, reading: "A final judgement entered by a Court having jurisdiction under Article IX of this Convention shall be ...".

21. There were 28 votes in favour and 8 against, with 5 abstentions. The text was approved.

22. Mr. ROGNLIEN (Norway) said that the purpose of the joint French-Italian-Norwegian-United Kingdom amendment (CW/109) was to avoid the reference to public policy and fundamental standards of justice. Such a reference might be necessary in connection with other multilateral conventions but to retain it in the present Convention was quite indefensible. If a victim were unable to have a judgement in his favour executed, it would mean he would be unable to receive compensation at all, and that was a very serious matter – all the more so as it would not have arisen naturally from the application of certain rules of law but would have been created artificially by the Convention itself. For the Convention designated which courts were exclusively competent to deal with claims for nuclear damage, and it was therefore the Convention which denied victims the right of following up their claims if a certain court refused to recognise the judgement

of a foreign court. As it had closed all other possibilities the Convention would therefore be responsible for preventing victims from getting their money if the court where execution was sought invoked sub-paragraph (iii). To argue from the fact that a public policy clause existed in other conventions was therefore invalid.

23. The concept of "public policy" was vague and differed from country to country: in some legal systems it might be contrary to public policy to give compensation to victims of a certain race or nationality; some systems refused to give compensation for moral damage, shortening of life, etc.; other systems might refuse compensation to illegitimate children, and,most important of all, in some countries it might be contrary to public policy to make payments in foreign currency if economic necessity so dictated. It was clear from those examples that the public policy clause could be used to destroy the whole purpose and principles of the Convention.

24. The concept of "fundamental standards of justice" similarly differed from country to country. In some countries it might be in accordance with fundamental standards of justice to take into account the financial position of litigants; in others not. Thus a judgement awarded in a court recognizing the relevance of the financial situation of litigants might be refused in a court which regarded it as irrelevant.

25. In any case the clause was unnecessary because the Convention laid down the rules and principles on which judgements for compensation should be based and the competent court was bound to apply those principles if the State to which it belonged had become a Contracting Party and wished to remain so. The judgements whose execution was sought under Article X were judgements on claims for compensation against operators or their guarantors and those persons were obliged under the Convention to maintain funds for the payment of such claims. How could States which were Parties to the Convention allege that it was contrary to their public policy to pay such claims from the funds which they had established in virtue of the Convention?

26. Mr. RITCHIE (United Kingdom) said that his delegation's views on the point were well known. It entirely endorsed what the Norwegian delegate had said.

27. Mr. GASIOROWSKI (Poland) said that the question had already been discussed at length both in the Sub-Committee and in the Committee of the Whole. He thought it unnecessary to repeat arguments which were already familiar. As the Chairman of the Sub-Committee had said, the text in paragraph 11 of its report was a compromise text which should not again be called in question. He appealed to the sponsors of the joint amendment to withdraw it.

28. Mr. RUEGGER (Switzerland) said that, while he agreed with the Norwegian and United Kingdom delegations on the question of public policy, he could not agree with them on the question of fundamental standards of justice. He accordingly proposed that the two points be voted on separately.

29. In paragraph 7 of the Sub-Committee's report (CW/94/Corr. 1) it was stated that "the concept of fundamental standards of justice only has a meaning in a given municipal system". He disagreed; international standards of justice did exist and it would be desirable if there were a supra-national tribunal competent to resolve all doubtful issues. He reserved the right to return to the problem in the discussion on final clauses.

30. Mr. ULMAN (United States of America) thought that the text adopted

by the Sub-Committee was equitable and would appeal to a majority of delegates. He regarded the concepts of public policy and fundamental standards of justice as indivisible and in fact interchangeable and was opposed to a separate vote on them.

31. Under the United States Constitution, courts in that country could not recognize judgements rendered by foreign courts which were contrary either to fundamental standards of justice or to the public policy of the United States. That did not mean that absolute freedom was given to a court in which recognition was sought to refuse recognition at its whim or caprice. Certain fundamental standards of justice and public policy were generally recognized not only in the United States but in the very countries which had proposed deletion of sub-paragraph (iii). He did not agree that the words "public policy" were vague. They could only be invoked if there were something fundamentally wrong with the judgement, not merely some irregularity of procedure. They might be invoked, for example, if a judgement had been arbitrarily rendered awarding punitive compensation going far beyond the actual damage suffered. In such a case the court in which recognition was sought should be free to refuse recognition.

32. Mr. DUNSHEE de ABRANCHES (Brazil) said that, although the text in the Sub-Committee's report was largely based on the Brazilian-United States proposal (CW/75) it had since been approved in the Sub-Committee by a large majority including delegations representing nations with such widely differing legal systems as those based on common law, on Roman law and on the Soviet legal system.

33. Both the international conventions on the question of the execution of judgements of foreign courts – the 1923 convention on the execution of arbitral awards and the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards – referred to public policy, and the countries which now objected to the concept had signed and ratified those conventions, which were regarded as an important step forward in international legal science.

34. If the Convention were to contain no article on the execution of foreign judgements, then – since there were no multilateral treaties dealing with the question and very few bilateral treaties – countries would be free to recognize or not to recognize the decisions of foreign courts as they saw fit. The only principle that could be appealed to was that of reciprocity, and if there were no reciprocity the judgements of foreign courts would not be recognized. The whole purpose of the Article was to secure recognition of foreign judgements. But to ask a country to recognize and execute on its territory the judgements of foreign courts which were contrary to its basic concept of public policy would be to ask it to renounce its sovereignty.

35. The Brazilian delegation accepted the desirability of the international recognition of foreign judgements, but it was impossible to advance in that direction unless States could lay down minimum conditions in respect of public policy and fundamental standards of justice.

36. It was impossible to separate the two concepts because they largely coincided. He could not agree that the concept of public policy was vague; on the contrary, it was a well-established concept of international law, both public and private.

37. The Brazilian delegation could accept neither the proposal for the deletion of the provision nor the Swiss proposal for a separate vote.

38. Mr. SUONTAUSTA (Finland) agreed with the Brazilian delegate. Sub-paragraphs (i) and (ii) were merely special cases of the general principle set out in sub-paragraph (iii), and the concepts they contained were at least as vague. It would therefore be more logical to propose the deletion of those two sub-paragraphs, or of all three. He accepted the text proposed by the Sub-Committee.

39. Mr. ROGNLIEN (Norway) said that he had been present at the New York Conference on the Recognition and Enforcement of Foreign Arbitral Awards and had voted for the insertion of a public policy clause in that convention. But that was a multilateral convention covering all kinds of claims and contained no provisions on which awards should be based.

40. The joint proposal was the same as that which its two sponsors had submitted to the Brussels Convention and which figured in that convention as paragraph 4(a) of Article XI, having been adopted by a large majority, whereas a United States amendment proposing the addition of a clause referring to public policy and fundamental standards of justice had been heavily defeated.

41. Mr. DADZIE (Ghana) supported the views of the Norwegian and United Kingdom delegations.

42. By adopting sub-paragraph (iii) as it stood the Conference would be placing in the hands of Contracting Parties a powerful weapon which might be used to frustrate the objectives of the Convention. The concept of public policy was fluid and could be invoked to justify innumerable arguments against the recognition of particular foreign judgements. On the other hand, the concept of fundamental standards of justice admitted of legal proof. The Ghanaian delegation therefore supported the Swiss proposal that the two parts of sub-paragraph (iii) be voted on separately.

43. Mr. RAO (India) endorsed the very clear and detailed case made out by the Norwegian delegate for the deletion of sub-paragraph (iii). What was against public policy in one country was not necessarily against it in another. It was, for example, the public policy of the United States not to support claims by an individual company to privileges which might damage the interests of other American companies. But it might be the public policy of other countries to insist that a State trading corporation should enjoy a monopoly. Such a conflict of views might lead to a refusal to recognize judgements on the basis of sub-paragraph (iii).

44. He opposed the proposal for a separate vote.

45. Mr. CARRAUD (France) said that the object of Article X was to facilitate execution and recognition of foreign judgements. The effect of sub-paragraph (iii), however, would be to make such recognition more difficult, since it would be possible for States to hide behind the vague and fluid formulas of public policy and fundamental standards of justice.

46. The problem of execution was one of the most complex in international law, and a convention on liability for nuclear damage was not the place for a final pronouncement on it. The very fact of signing and ratifying the Convention would make its provisions mandatory on Contracting Parties. That mandatory character went without saying and there was no need to insert a special article on the recognition of foreign judgements. The whole Article

should be deleted, but if that did not prove possible, then the Committee should adopt the text of the Paris Convention, Article 13, sub-paragraph (e).

47. Mr. OHTA (Japan) opposed the deletion of sub-paragraph (iii). Judicial systems differed, so that the reference to "fundamental standards of justice" was necessary as a compromise to allow ratification by as many countries as possible.

48. Mr. MOUSSAVI (Iran) agreed that the reference to "fundamental standards of justice" might be retained, though not that to the public policy of the Contracting State.

49. Mr. SANALAN (Turkey) was in favour of deleting sub-paragraph (iii) altogether, for the reasons given by the Norwegian and United Kingdom delegates, and opposed the division of the vote on the sub-paragraph.

50. Mr. VILKOV (Union of Soviet Socialist Republics) said that it was true that, as some delegates had mentioned, there was no compensation for "moral damage" in some countries, including the Soviet Union. It should, however, be clearly understood that full compensation was given for material damage: for example, a wife would receive not only a pension on the death of her husband, but compensation for the difference between the pension and her husband's wages. In cases such as the theft of a dog, the owner would be given compensation only for the value of the dog, and the thief would be punished, but no compensation could be given for the owner's feelings at the loss. To take another example, a woman whose engagement was broken off because of an injury done to her by a third person could be awarded compensation against that person for the physical injury, but not for her disappointment because the marriage would not take place. Judgements awarding compensation for such "moral damage" would therefore not be executed in the Soviet Union. No particular concern need arise in regard to that situation, however, since the law of some other countries, e.g. Brazil and Belgium, was the same.

51. His delegation found no difficulty in accepting the public policy concept, which was recognized and applied in practice by the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, to which the Soviet Union had adhered. For example, the courts of the Soviet Union would not execute any judgement based on discrimination on grounds of sex or race because it would be contrary to the Soviet Constitution to do so. Only in such exceptional cases would judgements not be executed, however, and the exceptions did not admit of arbitral decisions.

52. Mr. RUEGGER (Switzerland) withdrew his proposal for separate votes on the two parts of sub-paragraph (iii), in order not to delay the proceedings. After listening to the discussion, and in a spirit of conciliation, his delegation could accept the text proposed by the Sub-Committee.

53. The CHAIRMAN put to the vote the proposal to delete sub-paragraph (iii) of paragraph 1 (CW/109).

54. There were 19 votes in favour and 20 against, with 9 abstentions. The proposal was rejected.

55. The CHAIRMAN proposed that the Committee refer to the Drafting Committee the text of Article X as proposed by the Sub-Committee (CW/94, para. 11), the introductory part to read as already agreed[3].

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[3] See paras. 20 and 21 above.

56. There were 36 votes in favour and 6 against, with 5 abstentions. The proposal was approved.

Article XI

57. Mr. MAURER (United States of America) said that, on reflection, his delegation considered its proposal for the revision of the Article (CW/1, amendment 117) to be a matter of drafting and was therefore prepared to leave it to the Drafting Committee.

58. Mr. ULMAN (United States of America), Introducing the United States amendment proposing the addition of a new paragraph to Article XI (CW/6), said it in no way derogated from the principle of non-discrimination established in Article XI, with which his delegation was in full accord. The intention was only to permit the United States, and any other country which so desired, to apply its own national legislation, rather than the Convention, to claims in which only its own nationals were involved and where damage was confined within its boundaries. Such a provision might be to the advantage of large countries like the United States of America. However, in order to protect the basic principle of non-discrimination, the amendment provided that every foreign national would have the option of pursuing a claim for compensation against a national of the Contracting State either under its law or under the Convention: the foreign national would, however, only have that option if the necessary funds were assured for the satisfaction of all claims for nuclear damage to the extent that the yield of insurance or financial security was inadequate.

59. Mr. ZALDIVAR (Argentina) said that the text of the amendment was not clear.

60. Mr. ULMAN (United States of America) explained, further, that the amendment would permit the Convention to apply where a foreign claim of any kind arose under the Convention, and not only where a claim of a foreign victim for compensation was involved. When there was no foreign claim of any kind, the Contracting State would be permitted to apply its own legislation.

61. Mr. SANALAN (Turkey) said that the amendment would seem to affect the principle of non-discrimination laid down in Article XI. What would happen if the victim possessed dual nationality?

62. Mr. ROGNLIEN (Norway) asked whether the proposal was intended to apply to incidents outside the Contracting State and, if so, whether the option given to a foreign claimant to pursue his claim against a national of the Contracting State under the law of that State would not derogate from the principle, established in Article IX, that the courts of the Contracting Party on whose territory the nuclear incident occurred should have exclusive competence. For example, would United States crew members, injured in a nuclear incident occurring in a United States ship in British waters, claim not in British, but in United States courts: and would a British subject injured in the same incident also be able to claim in the United States courts, irrespective of the provisions of Article IX? If so, would the courts of the United Kingdom or of the United States be responsible for the distribution of funds?

63. Mr. HARDERS (Australia) supported the intention of the United States

amendment but felt that the drafting was not sufficiently clear. He suggested, therefore, that the Committee might agree to accept the principle and refer it to the Drafting Committee.

64. Mr. MAURER (United States of America) agreed that a vote might be taken on the principle of the amendment. If the principle were accepted, the amendment could then be referred to the Drafting Committee.

65. He recognized that the proposed provision was complicated. There was, however, no question of any derogation from the Convention when a foreign national was a party to a claim, either as plaintiff or defendant. The rights of all other Contracting Parties would therefore be unimpaired. It would, however, meet the concern of the legislators of countries with large land masses, like the United States, if it were possible for a Contracting State to apply its national law in the case of incidents where both claimants and defendants were nationals of the country.

66. Mr. RITCHIE (United Kingdom) recognized that it might be to the advantage of a victim to bring claims under his own national law, for example in the United States of America. He was, however, somewhat concerned at the option offered to foreign claimants to pursue their claims against nationals of a Contracting State under the law of that State. If he were in a foreign country, the victim might find himself in a difficult position and decide under financial or other pressure to give up his rights under the Convention and choose to sue under the national law instead — a decision which he might subsequently regret.

67. Mr. DUNSHEE de ABRANCHES (Brazil) supported the principle of the amendment, but found the draft unsatisfactory. He could not accept any discrimination between nationals of the Contracting State and foreigners domiciled in the State, to whom lex fori applied. He would suggest that a new draft should be prepared making that point clear.

68. Mr. NORDENSON (Sweden) asked whether or not "the necessary funds" mentioned in the amendment referred to funds provided under the Convention and therefore subject to limitation under Article IV. If the Installation State were obliged to provide funds other than those under the Convention, the question of multiple jurisdiction would be reopened with all the difficulties it entailed.

69. It was not clear whether the term "foreign national" used in the amendment was equivalent to "national of a Contracting Party" as defined in Article VII, paragraph 2(c). If so, the amendment would seem to apply, for example, to a Swedish company established in the United States but entirely owned by Swedish citizens, which would not then be entitled to obtain compensation under the provisions of the Convention unless the United States waived the option he understood the amendment to confer on it.

70. It would seem that the intention of the last proviso of the amendment was that the Contracting State concerned should assure the necessary funds, since only a person, physical or juridical, could do so and not "the law".

71. Mr. ZALDIVAR (Argentina) opposed the amendment as drafted. To provide that the Convention might be applied by a Contracting State solely to a claim to which a foreign national was a party would, in practice, involve a multitude of different procedures and standards. If the operator involved were a company, it might be difficult to establish the nationality, in view of the various legal concepts involved in its determination. Innumer-

able difficulties might arise, for example, if it seemed at first that only nationals of the country had been injured in a nuclear incident and it was later found that there had been a foreign victim. In his view, the amendment was contrary to the principle of non-discrimination.

72. Mr. HENAO-HENAO (Colombia) said that the explanations offered had strengthened his opposition to the amendment. It discriminated between nationals and foreigners in two ways: against nationals by excluding them from the scope of the Convention, so that they would have serious difficulty in trying to obtain their rights; and against foreigners by placing a foreign claimant in the impossible situation that he would have to employ both legal and financial experts to assist him to ascertain whether the law of the Contracting State did in fact assure necessary funds for the satisfaction of his claim.

73. Mr. RAO (India) suggested that, in view of the differing interpretations of the amendment, it would facilitate the Committee's decision if the United States delegation could submit a written statement of the principle involved.

74. Mr. MAURER (United States of America) said it appeared that the amendment had not been understood by some delegations. There would be no discrimination against foreign nationals, who, if injured in a nuclear incident in the United States for example, would be able either to claim under the Convention with every right accorded by it or to claim under United States law, which would allow them possible recovery of up to $500 million. If anything, there would be discrimination against any United States nationals injured in the same incident who would be able only to claim under United States law. Nor would there be any discrimination against foreign nationals habitually resident in the United States, who could also elect to sue either under the Convention or under United States law.

75. In reply to the delegate of Sweden, he said his delegation considered that a corporation organized under United States States law and owned by Swedish citizens would come within the definition of "national of a Contracting Party" in Article VII, paragraph 2(c), and would therefore be regarded as a national of the United States who must sue under United States law. Since, however, the limit of liability was high under that law, and the law must assure the necessary funds for the satisfaction of claims, such a corporation could only stand to gain.

76. In the case of an incident on the high seas in which a United States operator was liable, any British subject involved would have the right to sue under the Convention or under United States law, while the United States nationals would sue under United States law. No problem of jurisdiction arose since the British subject could still choose to sue wherever he was entitled to do so under the Convention.

77. There was no intention of tampering in any way with the funds established under Article IV, since the Government of a Contracting State must supply funds from another source to meet the option: again, no problem of jurisdiction arose.

78. If a foreign carrier were sued and paid compensation to a United States claim under the law of a non-Contracting State, or otherwise, the claim of the foreign carrier for reimbursement against a United States operator would be considered as one to which a foreigner was a party and the carrier

would therefore be entitled to sue under the Convention or under United States law, as he chose.

79. Mr. SUONTAUSTA (Finland) accepted the principle of the United States amendment, which would give the Convention the necessary flexibility. In his view, the difficulties were mainly ones of drafting.

80. Mr. VILKOV (Union of Soviet Socialist Republics) opposed the United States amendment. The Conference was trying to draft minimum standards and should not overload the Convention with provisions for rather remote contingencies. The question of the application of the Convention to nationals should be left to the national legislation of the Contracting Parties: it was the sovereign right of the State to decide whether it wished to apply the Convention or its domestic law to its nationals. The United States proposal would allow the whole purpose of the Convention to be circumvented by giving a Contracting State the option of not applying it to foreign nationals. The result would be to establish a kind of competition between countries and to invite victims to claim where they could obtain the highest compensation, making it impossible to ensure equitable treatment for victims in all countries.

81. Mr. NORDENSON (Sweden) said that, after hearing the explanation of the United States delegate, he was prepared to support the amendment subject to certain drafting changes for the sake of greater clarity. He asked if the United States delegation would consider using the term "a national of a Contracting Party" as defined in Article VII, paragraph 2(c), instead of the term "foreign national".

82. Mr. MAURER (United States of America) agreed that the amendment could be reworded so as to use the former term.

83. Mr. ARANGIO RUIZ (Italy) agreed that it would be desirable to give a certain elasticity to the Convention but considered that the existing provision in Article XI was sufficiently flexible, since by stating that the Convention and the national law applicable thereunder should be applied "without any discrimination based upon nationality, domicile or residence" it implied some kind of discretionary power for each Contracting State in regard to incidents where only its own nationals, or a given category of nationals, were involved. If the Conference adopted the United States amendment it would no longer have a convention of uniform law, but would have to start redrafting the whole Convention. It was, however, impossible to vote on such an obscure and complicated text. He would propose, therefore, that no vote should be taken until the proposal had been drafted in clear terms.

84. Mr. ROGNLIEN (Norway) agreed that the intention of the amendment was still obscure and said that he would vote against it.

85. Mr. MAURER (United States of America) said, further to the point raised earlier by the Norwegian delegate, that in the case of a nuclear incident occurring in the United Kingdom but caused by nuclear materials for which a United States operator was liable, any United Kingdom citizen involved would be able to sue in the British courts under Article IX, while the United States Government might request any United States citizen involved to sue the operator under United States law, with the assurance that the funds available in the United Kingdom would in no way be less than those required under Article IV. No harm would result to anyone from that procedure and, in fact, the United States citizen would be precluded from pursuing claims

against the funds made available under Article IV, which would be an advantage for the remaining claimants.

86. The CHAIRMAN said that it seemed desirable that there should be a more specific text available in writing. He would not, therefore, put the amendment to a vote at the present meeting.

The meeting rose at 1.5 p.m.

TWENTY-FIRST MEETING

Wednesday, 15 May 1963, at 3.20 p.m.

Chairman: Mr. McKNIGHT (Australia)

CONSIDERATION OF THE DRAFT CONVENTION ON MINIMUM INTERNATIONAL STANDARDS REGARDING CIVIL LIABILITY FOR NUCLEAR DAMAGE (CN-12/2) (continued)

Report of the Sub-Committee on Relations with other International Agreements

1. The CHAIRMAN observed that the Sub-Committee's report (CW/104 and Corr. 1) contained two proposals (paras. 6, 13). The first related to agreements having the same purposes as the Convention, the second to transport conventions. The United States delegation had submitted a proposal (CW/103) to add two paragraphs to the first proposal. He suggested that the Committee should deal first with the Sub-Committee's proposals and then with the United States proposal.

2. Mr. MAURER (United States of America) said that paragraph 1 of the first alternative in his delegation's proposal was identical with the Sub-Committee's first proposal (para. 6), but paragraphs 2 and 3 conflicted with and might be regarded as an amendment to its second proposal (para. 13). Those paragraphs should therefore be voted on before the Sub-Committee's second proposal.

3. The CHAIRMAN said he could not agree with that procedure, and invited the Committee to consider the Sub-Committee's proposal in paragraph 6.

4. Mr. MAURER (United States of America) said that the Sub-Committee's proposal, which coincided with paragraph 1 of the United States text, really meant that the Convention would not affect the Paris and Brussels Conventions in their application between the parties.

5. Mr. COLOT (Belgium) considered that adoption of the Sub-Committee's proposal, which was based on a Belgian amendment, would meet the interests of all States whether they were signatories of the Paris and Brussels Conventions or not. The clause imposed no obligations on non-parties and, in fact, enabled them to enjoy certain benefits in the countries belonging to the Organisation for Economic Co-operation and Development (OECD). It was to be commended, since the protection given jointly by the Paris and

Brussels Conventions was in some respects better than that offered by the present draft.

6. Mr. RAO (India) said that the phrase in the Sub-Committee's proposal "having the same purposes" was not quite clear. The quantum of compensation was a vital point of the Draft Convention, and the figure of $5 million that had been adopted provisionally might be regarded as one of its purposes.

7. Mr. ALLOTT (United Kingdom) said that he could support the Sub-Committee's proposal on the understanding that it meant that nothing in the Convention would prevent parties to other agreements from applying those agreements among themselves irrespective of the Convention.

8. Mr. SCHEFFER (Netherlands) did not consider that the Sub-Committee's proposal eliminated all the difficulties that might arise. A State which was party to more than one convention on civil liability might find that their provisions were dissimilar in respect of a given nuclear incident, and then the criterion would be the law applied by the competent court and not relations between States. However, the Sub-Committee's proposal would be useful in a number of cases, and as a fully satisfactory solution was hard to find, the Netherlands delegation would vote for the proposal.

9. Mr. VILKOV (Union of Soviet Socialist Republics) and Mr. PAPATHANASSIOU (Greece) said they could support the Sub-Committee's proposal.

10. Mr. ARANGIO RUIZ (Italy) said he could support the Sub-Committee's proposal in principle. He would, however, like some explanation of the Belgian delegate's statement that parties to the present Convention who were not parties to the Paris and Brussels Conventions would benefit by them.

11. Mr. DUNSHEE de ABRANCHES (Brazil) said he could vote for the Sub-Committee's proposal as a compromise solution. His delegation believed that the Convention should contain a clause declaring that it superseded all previous agreements; but three other views had been upheld in the Committee. Some delegations considered that the Convention should not supersede the Paris and Brussels Conventions or transport conventions; others that it should contain no declaration on supersession; yet others that none of its provisions should run counter to obligations established by previous agreements. The Brazilian delegation could agree in a spirit of compromise that exceptions should be made in the case of the Paris and Brussels Conventions, because the first had been concluded on a regional basis, and the second was a special case.

12. Mr. PETRŽELKA (Czechoslovakia), speaking as Chairman of the Sub-Committee, said that two main issues had arisen from the proposal in paragraph 6 of its report. The first was the relationship of the Convention to regional agreements, particularly to the Paris Convention and also to the Brussels Convention; the phrase "having the same purposes" had been used to distinguish those Conventions from transport agreements. Secondly, the Sub-Committee had intended to leave to the Drafting Committee the task of expressing in English the principle contained in the phrase beginning with the words "as regards the application ....".

13. Mr. RAO (India) reiterated that the phrase "having the same purposes" was ambiguous, for exactly the same purposes might be enumerated at the beginning of two conventions which were applied in quite different ways. He therefore agreed with the United Kingdom delegate's suggestion, which would

allow parties to decide whether they should be governed by the Convention or continue to apply other agreements.

14. Mr. DADZIE (Ghana) agreed, and suggested that the words "having the same purposes" might be replaced by "having similar purposes".

15. Mr. COLOT (Belgium) said, in reply to the Italian delegate, that Articles 2 and 14 of the Paris Convention conferred benefits on all the victims, irrespective of their nationality, for nuclear incidents occurring in OECD countries.

16. The CHAIRMAN put to the vote the proposal in paragraph 6 of the Sub-Committee's report (CW/104).

17. There were 42 votes in favour and none against, with 3 abstentions. The proposal was approved.

18. Mr. ALLOTT (United Kingdom) stressed that he had voted for the proposal on the understanding that his interpretation of its meaning was correct.

19. The CHAIRMAN invited the Committee to consider the Sub-Committee's second proposal (para. 13).

20. Mr. MAURER (United States of America) said that his delegation found the proposal unacceptable for three reasons. First, it would allow the rules of existing transport conventions to apply to nuclear incidents, to which they were not adapted. The Draft Convention, which made full provision for such incidents, should supersede all transport conventions in the special case of a nuclear incident, since the present Convention embodied a special and novel regime which was considered by all present as best suited for a nuclear incident.

21. Secondly, the clause would harm air and sea carriers by making them liable as well as the operator of the installation. They might in some cases be burdened with costly litigation and with limited or unlimited liability; when they sought recourse from a limited fund they would have to take their chance with all the other victims of the nuclear incident; they would not receive full compensation and might lose millions of dollars.

22. Thirdly, the Committee had already decided to delete Article II, paragraph 6[1], which allowed persons other than the operator to be liable. The objection to that provision had been that it would be a serious breach of the channelling principle, and the United Kingdom delegation had argued strongly in favour of its deletion; yet the proposal in paragraph 13 allowed other parties to be liable and thus was completely inconsistent with the channelling principle.

23. It had also been argued that the absence of such a clause would lead to a breach of obligations under other conventions. The United States delegation could not agree with that view: there was no reason why the Conference should not adopt a binding provision to supersede transport conventions or other agreements conflicting with it for the case of a nuclear incident. Indeed, some of the provisions of the Draft Convention already in effect superseded existing agreements. Thus the Committee's decision on Article III, paragraph 2, was really designed to supersede the Collision Convention, which rendered the negligent ship liable. He urged the Committee to give serious consideration to paragraphs 2 and 3 of his delegation's proposal (CW/103), intended to replace the Sub-Committee's proposal.

[1] 9th meeting, paras. 73 and 74.

24. The second alternative proposed by his delegation was to omit any provision on relations with other conventions other than the proposal in paragraph 6 already adopted by the Committee. The effect of the convention on other instruments concerning civil liability would then be decided under customary international law. His delegation saw some merit in such a solution, since an impartial judge would probably decide along the lines of the supersession clause the United States delegation had proposed.

25. Mr. ALLOTT (United Kingdom) said that his delegation had four reasons for wishing the Sub-Committee's second proposal to be adopted. First, it was unnecessary to supersede existing transport conventions. The Brussels Convention had had to do so because it dealt with cases where there was direct conflict between the roles of the operator as an operator and as a carrier. No such conflict existed in the present circumstances; and an operator who was also a carrier could ask to be sued as an operator under the present Convention and not as a carrier under a transport convention.

26. Secondly, under the procedures of existing transport conventions victims normally obtained compensation without undue difficulty, and that system should be retained. The United States delegate had stressed the point of view of carriers liable under transport conventions; but they were accustomed to the terms they might expect under those instruments, and the interests of the victims must be considered.

27. Thirdly, it was hardly appropriate for the Conference to decide on supersession. The many existing complex transport conventions developed over many years, adhered to by many parties, and drawn up by experts should not be written off without very strong reasons. Moreover, their supersession might give rise to conflict with them in relations with States not parties to the present Convention; that point was clearly set forth in the observations of the International Civil Aviation Organization (CW/INF/8).

28. Fourthly, supersession would in practice lead to more rather than fewer inconveniences, since two sets of provisions on carriage would exist for parties and for non-parties to the Convention. If the transport conventions were not superseded, the problem of two regimes would only exist when an operator was also a carrier and insofar as the victim chose to sue the operator under the present Convention rather than the carrier under a transport convention.

29. In reply to the United States delegate, he observed that in some respects the system of transport conventions was superior to that of the present Convention. Moreover, he doubted whether the interests of carriers would suffer as much as the United States delegate seemed to think; in any case the interests of the victims should be paramount. Nor could he agree that the United Kingdom delegation's attitude in the matter was inconsistent with its views on Article II, paragraph 6; the channelling principle was fully preserved in the Sub-Committee's proposal, albeit in somewhat roundabout form.

30. He could not accept the second United States alternative, for to leave the whole question to customary international law would entail supersession of other conventions.

31. Mr. RAO (India) agreed with the principle of the proposal, but thought that the final words "or open for signature, ratification or accession ..." raised difficulties. At that stage an instrument could not be regarded as a

convention, and its provisions could be adopted only in terms of domestic law. A similar but even more serious problem arose on paragraph 2 of the United States amendment: an instrument must be in force before it could be superseded, and before relations between Contracting and non-contracting States could exist in respect of it.

32. Mr. ZALDIVAR (Argentina) asserted that the proposal would destroy the channelling principle by making it difficult for victims to ascertain whether they should sue under the rules of transport conventions or of the present Convention, to which court they should apply, and how their compensation should be paid if their action was successful. He also agreed with the Indian delegate that the reference to conventions "open for signature, ratification or accession" made the proposal technically unacceptable.

33. He could not agree with the United Kingdom delegate that existing transport conventions would make it easier for victims to obtain compensation for nuclear damage, since they did not cover the unique characteristics of nuclear incidents. The whole purpose of the Convention was to lay down a special set of rules and to change the existing system.

34. Mr. GHELMEGEANU (Romania) said that the Committee, in approving the proposal in paragraph 6 of the report, had had in mind the principle of international law that parties were bound by conventions which they concluded and acceded to. The same principle underlay the proposal in paragraph 13, which should be approved, since transporters would be bound by the treaties their countries had concluded.

35. The United States delegate had raised the question of the supersession of some conventions by others. In the opinion of the Romanian delegation, supersession was applicable only where parties to two conventions would otherwise sign conflicting provisions. Because of the Committee's efforts to reconcile the Convention with other agreements on civil liability, few cases of conflict could possibly arise. But it was not for the Conference to provide over-all solutions for those exceptional cases, in which customary international law always prevailed. The relevant fundamental principles of international law were, first, the prevalence of general over specific provisions, and secondly the chronological priority of the particular conventions.

36. He could not agree with the Argentine delegate that the proposal would distort the fundamental principle of channelling, which was based on the exclusive competence of the court of the State in whose territory the nuclear incident occurred. Thus the transport conventions would be applicable to carriers, and the exceptional case of the operator who was also a carrier was covered by Article II, paragraph 1. Moreover, transport conventions contained a wide complex of provisions, and would undoubtedly be modified to take account of liability for nuclear damage.

37. Mr. ROGNLIEN (Norway) supported paragraph 13, since it left actions open outside the Convention and was therefore highly advantageous to victims. The words "open for signature ..." had practical value in covering conventions ratified by many States but not by enough to bring them into force. Those words would also cover provisions from such conventions already embodied in national law.

38. Mr. SPÁČIL (Czechoslovakia) repeated that the Convention should contain no provision at all concerning relations with other conventions. Para-

graph 13 was based on that principle, and stated at the same time a general declaratory rule governing future specific cases. It derived from the principle of paragraph 6, already adopted. He could not agree with the United States amendment, since he considered it illogical to make a general rule in one paragraph and contradict it in another.

39. Mr. HARDERS (Australia) supported the proposal in paragraph 13. The United States delegate had said it would raise difficulties for transport operators, but he himself understood that the transport operators themselves agreed with it. Any difficulties which it might present could be dealt with best by the international transport organizations.

40. Mr. RAO (India) said that the word "application" could only be used when States were already parties to the particular convention. The situation mentioned by the Norwegian delegate should be governed by an express provision.

41. Mr. OHTA (Japan) could not support paragraph 13. Where a transporter handled nuclear material exclusively and therefore might be regarded as an operator, his position under the present Convention might conflict with that under transport conventions. In such a case, the present Convention should prevail, since that Convention was intended to establish a new and universal system in the field of nuclear damage and the field of transportation was no exception.

42. Mr. DUNSHEE de ABRANCHES (Brazil) could not accept paragraph 13, since he considered it wrong to permit previous agreements, except only the Paris and Brussels Conventions, to supersede the special regime set up by the present Convention. If paragraph 13 were adopted, the Convention would be superseded by the Warsaw Convention, 1929, Article XX of which laid down that a carrier was not liable if he could prove that he had taken all measures, or that it had been impossible to take the necessary measures, to prevent an accident. That provision could not be reconciled with the principle of absolute liability on which the present Convention was based. He would accept paragraph 2 of the United States amendment.

43. Mr. VILKOV (Union of Soviet Socialist Republics) was in favour of paragraph 13. He said that the Committee should not make the Convention supersede the Warsaw Convention automatically, since the latter had established rules for revision and had resulted from a conference of more than 70 States, for which the 57 States present ought not to take a decision. He agreed with the Indian delegate that paragraph 13 was imperfect, but suggested that the Drafting Committee could improve it.

44. Mr. ALLOTT (United Kingdom) said that the wording of paragraph 13 was justified, since many existing transport conventions were elaborated by outstanding protocols, which it would be illogical to exclude while preserving the conventions. The word "application" removed any legal objection to the present form of words, for it implied that there could be no conflict until the outstanding conventions came into force.

45. Mr. ROGNLIEN (Norway) suggested as a possible solution the words "which was in force or open for signature, ratification or accession at the date ....".

46. Mr. MAURER (United States of America) agreed with the Indian delegate that paragraph 13 would prevent the Convention from superseding other conventions which might not come into effect for a very long time. He could not agree with the United Kingdom delegate that the regime of the transport

conventions which might not come into effect for a very long time. He could not agree with the United Kingdom delegate that the regime of the transport conventions might be as good as that which the Committee was constructing. The present Convention was the best and surest remedy for victims of a nuclear incident, and no other convention should be allowed to govern recovery in case of a nuclear incident.

47. Paragraph 13 was a flagrant deviation from the principle of channelling. There should be either a clear supersession clause or none at all. It would take a long time, and involve many conferences, to adopt additional protocols amending other conventions. He would rather take immediate action on the problem, and asked the Committee to cover nuclear incidents in all fields in the present Convention instead of omitting incidents in the transport field.

48. The CHAIRMAN put the proposal in paragraph 13 of the Sub-Committee's report (CW/104) to the vote.

49. There were 22 votes in favour and 15 against, with 9 abstentions. The proposal was approved.

New articles:

(on provision of additional compensation by a Contracting Party in respect of nuclear damage caused by nuclear incidents occurring on its territory, and on measures taken by one or more Contracting Parties to increase the amount of compensation under the Convention with regard to damage suffered outside their territory).

50. Mr. TAGUINOD (Philippines), introducing his delegation's proposal (CW/1, amendment 124), said that the purpose of the new article was to permit a Contracting Party to provide additional compensation over and above the maximum established under Article IV, paragraph 1, to be made available without any discrimination except for the four specified exceptions.

51. Mr. MAURER (United States of America) said that his delegation objected to any proposals allowing derogation. The term "adopting such measures as it considers desirable to provide additional compensation" would allow wide deviation from the basic principles of the Convention.

52. Mr. MAUSS (France) opposed the Philippine proposal. The purpose of the Convention was to lay down minimum rules; moreover, the proposal did not provide for reciprocity.

53. Mr. TAGUINOD (Philippines) assured the United States delegate that his delegation had not intended to allow deviations from the Convention. If the principle of additional compensation were accepted, the text might be redrafted.

54. Mr. ZALDIVAR (Argentina) said that, while he saw no harm in the Philippine proposal, he considered paragraph 1 unnecessary, since States could not be prevented from providing additional compensation. The second paragraph seemed to be a mere re-statement of the principle of non-discrimination, and was therefore redundant.

55. Mr. TAGUINOD (Philippines) replied that there was no redundancy since the non-discrimination clause in Article XI only referred to compensation within the system of the Convention, not to additional compensation.

56. Mr. NORDENSON (Sweden) had no objection in principle to the first part of the Philippine amendment, but considered it restrictive. It would prevent, for instance, a Contracting Party from awarding additional compen-

sation for nuclear damage produced in the territory of another State by an incident occurring on the high seas. He could not support the second paragraph for the reason given by the French delegate.

57. The CHAIRMAN put to the vote the Philippine proposal (CW/1, amendment 124).

58. There were 2 votes in favour and 28 against, with 15 abstentions. The proposal was rejected.

59. Mr. WEITNAUER (Federal Republic of Germany), introducing his delegation's proposed new article (CW/97/Rev. 1), said that the limit of $5 million in Article IV, paragraph 1, had been established on the assumption that private funds would probably not be available to cover the liability of the operator in excess of that amount, so that public funds would be required. That would certainly be true of most Contracting Parties with regard to the maximum of $10 million laid down in Article IV, paragraph 2. The Installation State which would have to make the public funds available had an interest in determining how they should be spent. It could not, however, subject payment of compensation out of public funds to reciprocity with neighbouring States without infringing Article XI, which provided that the Convention and the national legislation applicable thereunder should be applied without any discrimination.

60. It would not be fair to require a Contracting Party with a higher limit of liability to protect victims in a neighbouring country in the same way as those in its own country if, in case of an incident in the other country, its own victims would be given much less protection. The Installation State should therefore be allowed to provide the larger amount of compensation subject to reciprocity, or on whatever other conditions it might consider suitable. Similar problems might arise if the period allowed for claims were extended by a State to more than ten years.

61. The same result could be achieved by establishing compensation systems outside the Convention — for instance under administrative regulations — but that would certainly not be in the interests of victims.

62. His proposal provided at least three guarantees if a Contracting Party wished to raise the operator's civil liability above $10 million and to make the necessary coverage available out of national funds. First, the channelling rule must apply to the additional amount, and so no derogation from Article II, paragraph 5, should be allowed. Secondly, there should be no derogation from the provisions of Article IX, concerning jurisdiction. Thirdly, in order to make quite clear that no discrimination at all was admissible where nuclear damage was suffered on the territory of Contracting States which had set up systems of additional compensation, the proposal stated expressly that derogation might be made only for nuclear damage suffered outside their territory. Victims would thus be protected if they suffered damage inside the States which had concluded the Brussels Supplementary Convention.

63. Mr. NORDENSON (Sweden), while supporting the proposal, thought that the text might be taken to cover damage only outside the territory of a Contracting Party.

64. Mr. WEITNAUER (Federal Republic of Germany) said that that limitation was not intended.

65. Mr. SCHEFFER (Netherlands) considered the proposal necessary in

principle. Some allowance must be made for the application of measures already taken by States.

66. Mr. RITCHIE (United Kingdom) supported the proposal.

67. Mr. CHARNOFF (United States of America) asked if the proposal would give Contracting Parties recourse against the operator, who must be adequately protected.

68. Mr. NORDENSON (Sweden) asked if the reference to the maximum amount laid down in Article IV, paragraph 2, was intended merely to establish the amount above which the amendment should take effect, or whether it restricted the provision to transport situations.

69. The CHAIRMAN proposed to postpone further discussion to give delegates time to study the proposal.

70. It was so agreed.

Article XII

71. Mr. SCHEFFER (Netherlands) withdrew his amendment (CW/74).

72. Mr. CARDONA (Mexico), introducing his amendment (CW/87), explained that it was logical to extend the immunity from jurisdiction accorded to diplomatic representatives to the State itself, and that as a general rule States did not have to submit to the jurisdiction of foreign courts. Unlike most of the principles contained in the Convention, Article XII could not be coordinated with his country's law. His amendment was not intended to sidestep national law when actions were brought under the Convention, but merely to divert them from foreign courts.

73. Mr. SPÁČIL (Czechoslovakia) agreed with the Mexican delegate that Article XII, since it dealt with State sovereignty, could not be enforced either politically or practically. No State could be compelled to waive immunity and subject itself to the courts of another State. He could agree to the text of the Mexican amendment as far as the words "pursuant to Article IX", but not farther, since the International Court of Justice had no obligatory jurisdiction.

74. The CHAIRMAN put the Mexican amendment (CW/87) to the vote.

75. There were 4 votes in favour and 28 against, with 12 abstentions. The amendment was rejected.

76. Mr. ULMAN (United States of America) said that his amendment (CW/1, amendment 121) extended the principle expressed in Article XII, since some political sub-divisions operating nuclear installations might otherwise invoke immunity.

77. Mr. ZALDIVAR (Argentina) agreed with the principle, and asked whether the United States would delete the word "operator" as suggested in the Argentine amendment (CW/1, amendment 118).

78. The CHAIRMAN proposed to put the United States amendment to the vote first and then proceed to the Argentine amendment.

79. Mr. ROGNLIEN (Norway) said that the United States amendment seemed to be a matter of drafting. He suggested adding, after the words "an operator", the words "or any other person".

80. Mr. SUONTAUSTA (Finland) said that the original text should be kept. He doubted whether the immunities under national law covered by the United States amendment would be recognized by other States.

81. Mr. ZALDIVAR (Argentina) said that the amendment was not purely a matter of drafting, but must be dealt with by the Committee. He agreed to the order of voting suggested by the Chairman.

82. The CHAIRMAN put the United States amendment (CW/1, amendment 121) to the vote.

83. There were 19 votes in favour and 10 against, with 13 abstentions. The amendment was approved.

84. Mr. ZALDIVAR (Argentina) said that he desired the word "operator" to be deleted from the text because operators were not the only dependants who might invoke immunity; under Article VI a pool of insurers might also do so. He wished to express the wider meaning which he perceived behind the amendment.

85. Mr. ULMAN (United States of America) said that his amendment had been modelled on Article 13 (f) of the Paris Convention, which had a similar purpose. Contracting Parties should not be treated differently from private operators, and so deletion of the word "operator" would extend the principle beyond his intention.

86. Mr. KONSTANTINOV (Bulgaria) and Mr. RAO (India) asked how the United States amendment would read if the Argentine amendment were applied to it.

87. The CHAIRMAN said that the Argentine amendment would be treated as a proposal to adopt the original text without the words "as an operator liable", and the two amendments would be combined by the Drafting Committee. The United States amendment dealt with actions against operators whoever they might be, whereas the Argentine amendment would include actions against Contracting States whether operators or not. If the Argentine amendment were adopted, it would cover the point in the Philippine amendment (CW/1, amendment 119). If it were rejected, he would put the latter amendment to the vote.

88. Mr. ZALDIVAR (Argentina) pointed out that the intention of his amendment was that nobody should be able to invoke immunity from jurisdiction.

89. Mr. GASIOROWSKI (Poland) held that, since the United States amendment had been adopted, the Argentine amendment was superfluous. It applied to the original text, which no longer existed, and there had not originally been any question of adding a new paragraph.

90. The CHAIRMAN said that two issues of principle were involved which were not incompatible but, because they had been formulated in two amendments, would both have to be put to the vote. He proposed that the matter be raised again after the sponsors had conferred and a suitable form of words had been found.

The meeting rose at 7.15 p.m.

TWENTY-SECOND MEETING

Thursday, 16 May 1963, at 9.50 a.m.

Chairman: Mr. McKNIGHT (Australia)

CONSIDERATION OF THE DRAFT CONVENTION ON MINIMUM INTERNATIONAL STANDARDS REGARDING CIVIL LIABILITY FOR NUCLEAR DAMAGE (CN-12/2) (continued)

Article XII (continued)

1. Mr. ROGNLIEN (Norway) said that, although his delegation had sympathy with the Argentine proposal (CW/114), the text seemed to be unduly vague since it provided no restriction whatsoever and gave the State no immunity when it acted as operator.

2. Mr. ZALDIVAR (Argentina) thought that some delegations had misunderstood the scope of the United States proposal (CW/1, amendment 121) that had been adopted at the preceding meeting[1]. Under that amendment, the State could not invoke jurisdictional immunities when it acted as operator; but financial security must be provided for possible victims where the State did not act as operator, and the Argentine proposal therefore provided that no one, neither a private operator nor a State, could invoke jurisdictional immunity except with regard to measures of execution.

3. Mr. MAURER (United States of America) observed that Article VI, paragraph 2, as approved by the Committee, did not require a Contracting State or a constitutional part thereof to maintain insurance or other financial security. The Argentine amendment was therefore irrelevant.

4. Mr. de los SANTOS (Spain) supported the Argentine proposal, which provided for cases where action was taken against States in courts, as frequently happened in transport matters. The proposal did not conflict with the Paris Convention, which admitted waiver of immunity both when the State acted as operator and in other cases.

5. Mr. KONSTANTINOV (Bulgaria) also considered that the Argentine proposal was irrelevant, since it failed to make it clear who had the right to waive immunity. Moreover, the Committee had already adopted the principle that immunity could be waived only when the State acted as operator.

6. The CHAIRMAN put the Argentine proposal (CW/114) to the vote.

7. *There were 16 votes in favour and 15 against, with 10 abstentions. The proposal was approved.*

8. The CHAIRMAN proposed that Article XII, as amended, should be referred to the Drafting Committee.

9. *There were 27 votes in favour and 10 against, with 4 abstentions. Article XII, as amended, was referred to the Drafting Committee.*

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[1] 21st meeting, paras. 82 and 83.

Article XIII

10. The CHAIRMAN suggested that, since there were no amendments to *Article XIII, it should be referred to the Drafting Committee.*
11. It was so agreed.

New article:

(on expeditious payment of compensation)

12. Mr. RAO (India) withdrew his delegation's proposal (CW/82).

Article XV

13. The CHAIRMAN suggested that, since there were no amendments to Article XV, it should be referred to the Drafting Committee.
14. It was so agreed.

New articles:

(on reporting of nuclear incidents, on liability in respect of acts or omissions done with intent to cause damage, on rights available under international law, and on continuation of protection)

15. Mr. RAO (India), introducing his delegation's proposal (CW/102), said that, since the Committee had already decided on the period of limitation for filing claims for nuclear damage, it seemed obvious that any information concerning nuclear incidents should be made known to the Installation State so that the beginning of the period of limitation might be ascertained.
16. The CHAIRMAN put to the vote the Indian proposal (CW/102).
17. There were 10 votes in favour and 6 against, with 27 abstentions. The proposal was approved.
18. Mr. SPLETH (Denmark), introducing the proposal for a new article submitted by his delegation and that of Sweden (CW/88/Rev. 3), said that it was intended to deal with cases where the operator was exempted from liability under Article III, paragraph 3, but where that exemption was obviously incompatible with other provisions of the Convention. The sponsors had particularly in mind cases where a serious nuclear incident might have been produced by an act intended to cause damage. In the absence of such a provision, insurrectionists, for example, who had intentionally caused nuclear damage might be brought to court and then exonerated under the Convention.
19. The CHAIRMAN put to the vote the Danish-Swedish proposal (CW/88/Rev. 3).
20. There were 17 votes in favour and 8 against, with 19 abstentions. The proposal was approved.
21. Mr. ARANGIO RUIZ (Italy) said that the purpose of his delegation's proposal (CN-12/13) was to solve the problem of the international responsibility of States for nuclear damage. A State might be an operator, and as such would be liable under the Convention; it was also liable as a public authority responsible for nuclear operations in the Installation State and

as such was liable for violations of the Convention when it came into force. These obligations were actionable before the competent courts, or, if an international dispute arose concerning the application of the Convention, they would be determined through negotiations, arbitration or any other means provided for in the Convention. Nevertheless, those obligations did not cover all the rights and duties of States, and their responsibility under the international law of torts, as distinct from non-compliance with conventions, should also be mentioned.

22. The law of nations might be invoked in cases of omission or negligence by a State, for instance where governmental controls over a nuclear installation were inadequate, or where a State tended to favour placing installations in frontier areas with a view to limiting damage occurring in its own territory. In such cases, although the State might not be the operator and might not be violating the Convention, it might nevertheless be liable under international law for damage caused to nationals of another State. The Convention should not be interpreted so as to prevent a State from acting through diplomatic channels or through an arbitral or judicial authority to obtain compensation for damage caused by another State.

23. The Italian proposal had been based on Annex II to the Paris Convention, but the wording had been somewhat changed to take into account the fact that damage might be caused by a nuclear incident occurring anywhere, including the high seas.

24. Mr. ROGNLIEN (Norway) supported the Italian proposal. Even if it were not adopted, the Norwegian delegation would consider that rights under public international law would not be affected by the Convention.

25. Mr. SCHEFFER (Netherlands) said it was perfectly clear that the liability of States as such vis-à-vis other States was not affected by the Convention. The Italian proposal was therefore unnecessary, particularly since the Brussels Conference had also held the inclusion of a similar clause superfluous. Moreover, such a clause was very difficult to formulate, and the words "under international law" were particularly vague, for the Convention itself would ultimately be part of international law.

26. Mr. RUEGGER (Switzerland) warmly supported the Italian proposal. Although the rules to which it obviously referred were still based largely on customary international law, and although the International Law Commission was in the process of studying the subject of State responsibility with a view to codifying it, such a reference was necessary. The first panel of jurists called upon by the Agency to prepare a draft convention had been expressly asked to study also the problems of international responsibility in the field in question. That was unfortunately not possible at the time for various reasons. However, the essential problem remained and must be dealt with along other lines. The Vienna Conventions on Diplomatic Relations and Consular Relations expressly stated in the preambles that the provisions were based on the recognized rules of customary international law. He was sure that the Drafting Committee could find a wording which would satisfy all delegations.

27. Mr. VILKOV (Union of Soviet Socialist Republics) and Mr. RAO (India) associated themselves with the views of the Netherlands delegate.

28. Mr. MAURER (United States of America) said he wished to ask the Italian delegate three questions which might clarify the intention of the pro-

posal. If the United States allowed an installation to be established 30 miles from the Canadian border and a runaway reactor caused $30 million worth of damage on Canadian soil, three hypothetical questions might arise. In the first place, could Canada, basing itself in the Convention, say that the United States had been negligent in installing the reactor 30 miles from the border or negligent in the safety rules it had imposed regarding the reactor and that consequently it would have to pay $25 million in addition to the $5 million payable under the Convention? Secondly, could Canada argue that the United States should pay that amount under international law, on the ground that the United States had allowed an ultrahazardous activity to be conducted on its territory, even if the United States was guilty of no negligence? Thirdly, could Canada say that, since the $5 million under the Convention was a minimum figure and was out of all proportion to the risk involved, the United States should have provided a larger amount of compensation and that Canada should be paid a further $25 million in addition because a denial of justice would exist in the contrary case?

29. Mr. SUONTAUSTA (Finland) said he could not vote for the Italian proposal, which was not only redundant but incomplete, since it did not mention the duties of States under general international law, but only their rights.

30. Mr. DUNSHEE de ABRANCHES (Brazil) thought that the problem should be studied in the light of another illustration. If an installation near a State frontier was not equipped with the necessary safety measures and a nuclear incident occurred causing damage to nationals or property of another Contracting State, it would, on the basis of the Italian proposal, be possible to prove the guilt of the Installation State. It was true that the Convention, if ratified, would be incorporated in positive international law; for that very reason it was essential to adopt the principle embodied in the Italian proposal. He agreed, however, that the drafting was not very satisfactory and suggested that the proposal be referred to the Drafting Committee, which might be asked to follow the wording of Annex II to the Paris Convention more closely.

31. Mr. ARANGIO RUIZ (Italy) thought that the arguments that had been raised against his delegation's proposal actually militated in its favour. It was not accurate to say that the Convention, when in force, would become a part of international law, since no instrument could form part of general customary international law, which was binding upon States irrespective of specific treaties concluded. Nor could he agree that the term "international law" was ambiguous. There might be cases where an international tribunal might rule that a State was engaged in hazardous nuclear activities in its own territories or on the high seas. Of course, the Convention would be inadequate in very few cases, but since the limit decided upon was only $5 million, it was conceivable that a State, after paying up to that amount, might still be liable under customary rules of international law determining State responsibility.

32. Mr. SCHEFFER (Netherlands) said that the term "international law" was not always interpreted to mean "general customary international law". The way in which it was used in the proposal should be clearly defined, but he doubted whether the Drafting Committee would be able to find the correct formula.

33. Mr. RUEGGER (Switzerland) thought that the Netherlands delegate's misgivings might be dispelled if reference were made to "general rules of international law". He endorsed the Brazilian delegate's suggestion that Annex II to the Paris Convention should be taken as a basis.

34. Mr. ARANGIO RUIZ (Italy) accepted the Swiss delegate's suggestion to use the term "general rules of international law".

35. Mr. MAURER (United States of America) said he would not press for an answer to the three questions he had asked if the Italian delegate were reluctant to address himself to them. Nevertheless, the United States delegation was obliged to reserve its position on the effect of the Italian text in the Convention. The United States would abstain in the vote on the Italian proposal.

36. Mr. ROGNLIEN (Norway) observed that the proposal laid no claim to laying down the rights which existed under general rules of international law. That would be decided by the International Court of Justice or an international arbitration tribunal, and the Norwegian delegation had no doubt that such a decision would be equitable.

37. The CHAIRMAN put the Italian proposal (CN-12/13) to the vote.

38. There were 13 votes in favour and 15 against, with 16 abstentions. The proposal was rejected.

39. Mr. MITCHELL (United States of America), introducing his delegation's proposal for a new article (CW/7), said that the text was intended to deal with the problem of the effect of termination of the Convention in regard to installations constructed or placed in operation while the Convention was in force. In the United States view, the Convention should continue to apply to such installations. Sub-paragraph (a), dealing with nuclear incidents which might occur before termination of the Convention, might be regarded as self-evident, and had been inserted merely as a clarification of sub-paragraph (b).

40. Termination of the Convention or its denunciation by a particular Contracting State was a contingency for which due provision must be made. In the event of termination or denunciation, the operator of a nuclear reactor forming part of an electrical generating system, to take only one example, bearing in mind the unlimited risks to which he would be subject, might shut down the reactor, thus incurring serious economic loss and possibly disrupting the generating system. Suppliers of services and materials, to say nothing of the general public, might also find themselves in a very difficult position. It therefore seemed essential to ensure that the provisions of the Convention would continue, in such an event, to apply to installations constructed or placed in operation while the Convention was in force.

41. In the absence of such a provision, builders, suppliers and operators of installations might hesitate to set up installations even while the Convention was in force. That would seriously impede development of the peaceful uses of atomic energy. Moreover, the protection the Convention sought to confer on the victims of nuclear incidents might well prove illusory in the event of its termination. An analogous provision, he pointed out, had been included in the Brussels Convention.

42. Mr. ROGNLIEN (Norway) said he could support sub-paragraph (a) of the United States proposal but thought that sub-paragraph (b) went too far.

Article XIX of the Brussels Convention could not be taken as a model, owing to the differences between land-based installations, which remained in the territory of the Installation State, and nuclear ships, which travelled from one State to another. Moreover, the Brussels Convention provided a time-limit beginning from the date of the licensing of the nuclear ship, whereas no such limit was provided in the United States proposal. The Norwegian delegation might be able to agree that the Convention should continue to apply to incidents occurring up to, say, ten years after the date of licensing of an installation.

43. Mr. NISHIMURA (Japan) agreed with the Norwegian delegate but observed that the life of a nuclear installation might be as much as twenty or twenty-five years.

44. Mr. SANALAN (Turkey), Mr. JARVIS (Canada), Mr. STEINWENDER (Austria) and Mr. MOUSSAVI (Iran) agreed with the Norwegian and Japanese delegates.

45. Mr. VILKOV (Union of Soviet Socialist Republics) said he could not support sub-paragraph (b), because it was contrary to the general rules of international law for a convention to remain binding on a State after that State had denounced it. The introduction of a time-limit would not change his delegation's view.

46. Mr. HARDERS (Australia) said his delegation could not accept sub-paragraph (b) and asked whether the introductory words of the proposal, in relation to that sub-paragraph, concerned the provisions of the Convention as they were in force before denunciation or whether they included subsequent amendments.

47. Mr. MITCHELL (United States of America), replying to the Australian delegate, said that the provisions concerned were only those in effect at the date of denunciation. In reply to the Soviet delegate, he pointed out that, if a State acceded to a convention containing that provision, it would recognize it as binding and there would be no essential contradiction. All delegations would agree that the very Convention under consideration was necessary because the construction and operation of nuclear installations might have international effects; a State engaging in such enterprises must continue to recognize its responsibilities vis-à-vis other States, in respect of installations established while the Convention was in force.

48. Mr. SANALAN (Turkey), supported by Mr. ROGNLIEN (Norway), moved that separate votes be taken on sub-paragraphs (a) and (b).

49. Mr. MAURER (United States of America) opposed the motion.

50. The CHAIRMAN put the motion for division to the vote.

51. There were 36 votes in favour and 3 against, with 5 abstentions. The motion was carried.

52. The CHAIRMAN put to the vote the introductory words and sub-paragraph (a) of the United States proposal (CW/7).

53. The introductory words and sub-paragraph (a) were approved unanimously.

54. The CHAIRMAN put to the vote sub-paragraph (b).

55. There were 7 votes in favour and 30 against, with 10 abstentions. Sub-paragraph (b) was rejected.

56. The CHAIRMAN suggested that the introductory words and sub-paragraph (a) of the proposal be referred to the Drafting Committee.

57. It was so agreed.

Report of the Committee on Final Clauses

58. Mr. de ERICE (Spain), Chairman of the Committee, said its report (CW/106), which he hoped would be approved unanimously, was the fruit of its members' willingness to find agreed compromise solutions. The text of certain articles had been opposed by some delegates, who had reserved the right to raise the questions relating to them again, but no amendments had been submitted.

59. Mr. VILKOV (Union of Soviet Socialist Republics) said that his delegation opposed the text of Articles A, D and G proposed in section IV of the Committee's report. The Convention should be open to all States who wished to adhere to it.

60. Mr. PETRŽELKA (Czechoslovakia) wished to protest against the fact that, for political reasons, a number of peaceful States, such as the German Democratic Republic, the Democratic Republic of Viet-Nam and the Korean People's Democratic Republic, had not been permitted to participate in the Conference. Czechoslovakia had protested on a number of occasions against the fact that for political reasons certain peaceful States had been illegally prevented from becoming Members of the United Nations, its specialized agencies, and the International Atomic Energy Agency, and it therefore could not accept that the sole criterion for future accession to the Convention should be membership of those organizations. In view of the special importance of the Convention, it should be open to all States, and the existing text of Articles A, D and G was therefore unjustified. It was extremely regrettable that a convention which opened new horizons in the field of the peaceful uses of atomic energy should be used for entirely extraneous purposes deriving from the "cold war".

61. Mr. KERLEY (United States of America) said that his delegation was in favour of the text of Article A, as adopted by the Committee, providing that only those countries which had participated in the Conference might sign the Convention. Article D provided that members of the United Nations, the specialized agencies and the International Atomic Energy Agency should be entitled to become parties by accession. The two articles taken together permitted those States which were generally recognized as members of the international community to participate in the Convention. The draft was based on numerous precedents at other international conferences.

62. Mr. CHANG (China) said he supported the articles as drafted by the Committee, and especially Articles A, D and G. The Convention had been worked out at a time when certain forces were working against peace, endeavouring to divide nations against themselves and create illegitimate regimes. In those circumstances, it was sound practice to limit participation in the Convention to States generally recognized as members of the international community.

63. Mr. DADZIE (Ghana) said that although his delegation supported in principle the Committee's report, it would have preferred that accession to such an important Convention be open to all States.

64. Mr. KONSTANTINOV (Bulgaria) associated himself with what had been said by the Soviet and Czechoslovak delegates. By its very nature, the Convention should be universal, since the technical and legal consequences of a nuclear incident would not be limited to the territory of Contracting Parties.

The text proposed for Articles A, D and G had the sole purpose of discriminating politically against a number of peaceful, independent and sovereign States, and their exclusion would impede those countries' development of atomic energy for peaceful purposes.

65. Mr. GHELMEGEANU (Romania) supported those delegations who wished to make possible universal accession to the Convention. It was reasonable that the Convention could only be signed by States represented at the Conference, as provided for under Article A, but it was another matter to limit the number of States which could accede to it as was done in Article D. That ran counter to the hope which had been so often voiced throughout the discussions, namely that the Convention should be adopted by an overwhelming majority of the States of the world and, if possible, applied universally.

66. Membership of the United Nations was no criterion of a State's existence. Romania had existed after the Second World War, had signed a number of important treaties, including the 1947 Peace Treaties, and had been recognized by many other States, though it had not then been a Member of the United Nations. At its establishment, the United Nations had had only five Members; it now had 111. All the States of the world never had been and were not now Members of the United Nations; therefore, from the standpoint of international law, there was no basis for the distinction drawn in Article D. The Convention should be open for accession to all States without discrimination.

67. Mr. ALLOTT (United Kingdom) said that the views of the United Kingdom delegation were well known. It agreed with the United States delegation, and thought that the Committee's draft represented a compromise.

68. Mr. GASIOROWSKI (Poland), after endorsing the remarks of the delegate of Romania, said it was a universally acknowledged principle of international public law – upheld by jurists of all nations – that the recognition of one State by another was a declarative and not a constitutive act. A State did not exist thanks to recognition; recognition did not create States, but merely confirmed the fact of their existence. A State existed if it fulfilled the necessary conditions: held authority over a given territory, fulfilled its international obligations, etc. The conditions that a political organism had to fulfil to constitute a State were well known and stated in innumerable textbooks on international law; recognition added nothing. It was therefore erroneous to argue that participation in the Convention should be limited to "States generally recognized as members of the international community". It followed that if certain States were excluded from the Convention, that could only have been for political reasons unworthy of a gathering of eminent jurists. From the moment of its existence, a State acquired an international legal personality and as such was fully entitled to take part in all international conventions. The Polish delegation could not accept a text which was based on a false legal premise.

69. Mr. BRAJKOVIĆ (Yugoslavia) said that as a matter of principle and in view of the Convention's universal scope, his delegation regarded it as quite unjustifiable to confine it to a certain category of States only; it should be open to all members of the international community.

70. Mr. SUONTAUSTA (Finland) said that the task of the Conference was to elaborate a really universal convention, for it was only under those circumstances that the Convention could fulfil its purpose. It was not a politi-

cal, but a technical Convention concerned with civil liability and international collaboration in legal matters. His delegation therefore thought that the largest possible number of States should be able to accede to it.

71. Miss RATUMBUYSANG (Indonesia) associated herself with the views expressed by the Czechoslovak delegate and other speakers who had supported the universality of the Convention.

72. Mr. KIM (Republic of Korea) supported the Committee's draft and objected to the terms in which certain delegates had referred to the northern part of Korea.

73. Mr. FERRÓ (Hungary) said that during the earlier discussions many delegations had expressed the view that the Convention should be universal, and now some of those same delegations which had praised the principle of universality were retreating from it for political motives. Nuclear damage, as was well known, did not take cognizance of State boundaries but was liable to afflict all States alike. He therefore could not agree with those delegations which now wished to discriminate against certain States and to limit the number of those entitled to adhere to the Convention. He would vote alongside those delegations which wished to prevent discrimination.

74. Mr. JARVIS (Canada) pointed out that the point under discussion was being studied by the International Law Commission. In the meantime, the Conference should adopt the Committee's text, which accorded with the practice followed in many international conventions produced under the auspices of the United Nations.

75. The CHAIRMAN put to the vote Article A in section IV of the Committee's report (CW/106).

76. At the request of Mr. Boulanger (Federal Republic of Germany), a roll-call vote was taken.

Finland, having been drawn by lot by the Chairman, was called upon to vote first.

The result of the vote was as follows:

In favour: France, Federal Republic of Germany, Greece, Honduras, Israel, Italy, Japan, Republic of Korea, Lebanon, Mexico, Netherlands, Norway, Philippines, Portugal, South Africa, Spain, Sweden, Switzerland, Thailand, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America, Viet-Nam, Argentina, Australia, Austria, Belgium, Brazil, Canada, China, Colombia, Denmark, El Salvador

Against: Finland, Hungary, Indonesia, Poland, Romania, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Yugoslavia, Bulgaria, Byelorussian Soviet Socialist Republic, Cuba, Czechoslovak Socialist Republic

Abstaining: Ghana, India, Morocco

77. There were 33 votes in favour and 12 against, with 3 abstentions. Article A was approved.

78. Articles B and C were approved unanimously.

79. Mr. RAO (India) requested a separate vote on paragraph 1 of Article D.

80. The CHAIRMAN put paragraph 1 to the vote.

81. At the request of Mr. Boulanger (Federal Republic of Germany), a roll-call vote was taken.

The Byelorussian Soviet Socialist Republic, having been drawn by lot by the Chairman, was called upon to vote first.

The result of the vote was as follows:

In favour: Canada, China, Colombia, Denmark, El Salvador, France, Federal Republic of Germany, Greece, Honduras, Israel, Italy, Japan, Republic of Korea, Lebanon, Luxembourg, Mexico, Netherlands, Norway, Philippines, Portugal, South Africa, Spain, Sweden, Switzerland, Thailand, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America, Viet-Nam, Argentina, Australia, Austria, Belgium, Brazil.

Against: Byelorussian Soviet Socialist Republic, Cuba, Czechoslovak Socialist Republic, Finland, Ghana, Hungary, India, Indonesia, Morocco, Poland, Romania, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Yugoslavia, Bulgaria

Abstaining: Iran

82. There were 34 votes in favour and 15 against, with 1 abstention. Paragraph 1 of Article D was approved.

83. Mr. RUEGGER (Switzerland) said that, true to its tradition, Switzerland was in favour of the universality of all conventions such as that under discussion, and it devoutly hoped that the Convention would receive the largest possible number of adherents. It thought, however, that the principle of universality was preserved in that the paragraph permitted all Members of the Agency to accede to the Convention and that as other States were admitted to the Agency, they too would be able to accede to it. His delegation would welcome the accession of new States.

84. Paragraphs 2 and 3 of Article D were approved unanimously.

85. The CHAIRMAN put Article D to the vote as a whole.

86. There were 33 votes in favour and 10 against, with 5 abstentions. Article D was approved.

87. Articles E and F were approved unanimously.

88. The CHAIRMAN put Article G to the vote.

89. There were 33 votes in favour and 10 against, with 3 abstentions. Article G was approved.

The meeting rose at 12.45 p.m.

TWENTY-THIRD MEETING

Thursday, 16 May 1963, at 3.15 p.m.

Chairman: Mr. McKNIGHT (Australia)

CONSIDERATION OF THE DRAFT CONVENTION ON MINIMUM INTERNATIONAL STANDARDS REGARDING CIVIL LIABILITY FOR NUCLEAR DAMAGE (CN-12/2) (continued)

Report of the Committee on Final Clauses (continued)

1. Mr. ALLOTT (United Kingdom) proposed under Rule 39 of the rules of procedure that the Committee debate the joint proposal submitted by six States (CW/113) before proceeding to the optional protocol proposed by five States (CW/83).

2. Mr. VILKOV (Union of Soviet Socialist Republics) submitted on a point of order that the sequence of debate had already been settled.

3. The CHAIRMAN said that under Rule 39 the United Kingdom motion was in order.

4. Mr. ALLOTT (United Kingdom) held that it would be unfair to debate the optional protocol unless the delegates knew that they could vote first on the proposed new article, to which it was an alternative. During the discussion it had become clear that many delegates who would prefer the new article would accept the protocol if the new article were rejected, so that an opportunity to vote on both should be given. The Committee on Final Clauses had in fact adopted the protocol on the understanding that it was an alternative to the new article.

5. Mr. de ERICE (Spain) said that the order of business decided upon in the morning had been to vote on all the contents of the report (CW/106), including the optional protocol, before proceeding to the other business. The joint proposal (CW/113) was in fact a new article and should be discussed with the other new articles. The United Kingdom motion should have been raised earlier.

6. Mr. VILKOV (Union of Soviet Socialist Republics) and Mr. GASIOROWSKI (Poland), agreeing with the Spanish delegate, insisted that the procedure adopted in the previous similar case of the report on supersession be followed: that the report should be examined first.

7. Mr. RUEGGER (Switzerland), supporting the United Kingdom motion, said that integral parts of the Convention should have priority.

8. Mr. ROGNLIEN (Norway) supported the United Kingdom motion because it allowed delegates to express preference, which otherwise they could not do. The joint proposal (CW/113) was the proposal further removed from the original proposal and should therefore be discussed first.

9. Mr. OHTA (Japan), Mr. MAURER (United States) and Mr. HARDERS (Australia) agreed.

10. Mr. RAO (India) said that, since CW/113 was a new article and CW/83 an optional protocol, there was no issue of priority and Rule 39 did not apply.

11. Mr. de ERICE (Spain) maintained that CW/83 was not a separate protocol, but an additional protocol forming part of the Convention. It had ori-

ginally been a draft article, and the Committee on Final Clauses had decided to present it as an additional protocol. Since Rules 16 and 19 had been satisfied, the United Kingdom could only move under Rule 30 to reconsider.

12. Mr. SPÁČIL (Czechoslovakia) declared that the basic proposal of the Committee on Final Clauses should be considered first. The Committee of the Whole would be acting unreasonably if, having asked for and received the report, it then dealt with another matter. He agreed with the Soviet Union delegate that the same rule of procedure should be followed in similar cases. The optional protocol provided a solution acceptable to the greatest number of delegates, and was therefore likely to be signed by the greatest number.

13. Mr. DADZIE (Ghana) agreed with the Czechoslovak delegate that the report should be dealt with before any other matter.

14. Mr. SCHEFFER (Netherlands) shared the views of the United Kingdom and Swiss delegates. The optional protocol could not be a part of the Convention, since it provided that it should be signed and ratified separately. Though the Chairman had laid down an order of procedure, the Committee could, under Rule 39, decide otherwise, and the United Kingdom motion therefore conformed to the rules of procedure. There were not two conflicting proposals before the Committee, but merely a question of how a principle should be formulated; if CW/113 were discussed first the delegates would have more freedom of decision.

15. Mr. HENAO-HENAO (Colombia) agreed with the Swiss delegate, and said that he had co-sponsored CW/113, since his State had always been in favour of obligatory jurisdiction for the International Court of Justice.

16. Mr. VILKOV (Union of Soviet Socialist Republics) suggested that both CW/83 and CW/113 be discussed together on an equal footing, and that a vote then be taken on CW/83 under the ordinary procedure. Otherwise the Committee should treat the United Kingdom motion as a motion to reconsider under Rule 30.

17. Mr. HESSER (Sweden) said that CW/113 should be given priority in order to complete the Convention before proceeding to other matters.

18. Mr. GASIOROWSKI (Poland), on a point of order, condemned the use of an exceptional procedure contrary to that previously used by the Conference. He asked for a roll-call vote.

19. Mr. RAO (India) considered that, since the Committee was dealing with the report, which recommended the optional protocol, it was improper to introduce a proposal to add a disputes clause to the Convention. The proposals were totally different in character.

20. The CHAIRMAN said that under Rule 39, since both proposals related to the settlement of disputes, he was bound to put to the vote the United Kingdom motion to vary the order of voting.

21. At the request of Mr. Gasiorowski (Poland), a roll-call vote was taken.

Austria, having been drawn by lot by the Chairman, was called upon to vote first.

The result of the vote was as follows:

In favour: Austria, Belgium, Canada, China, Colombia, Denmark,

El Salvador, Finland, France, Federal Republic of Germany, Italy, Japan, Republic of Korea, Luxembourg, Netherlands, Norway, Philippines, Sweden, Switzerland, Thailand, United Kingdom of Great Britain and Northern Ireland, United States of America, Australia,

Against: Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Cuba, Czechoslovak Socialist Republic, Ghana, Hungary, India, Indonesia, Morocco, Poland, Portugal, Romania, Spain, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Yugoslavia, Argentina

Abstaining: Greece, Iran, Israel, Mexico, South Africa, Viet-Nam

22. There were 23 votes in favour and 18 against, with 6 abstentions. The motion was carried.

23. Mr. ALLOTT (United Kingdom), introducing the six-nation proposal (CW/113), said that paragraph 1 established the compulsory jurisdiction of the International Court of Justice as a final resort. There were two points of view on the subject. The first was whether the International Court of Justice was the right instance to settle disputes. The United Kingdom wished to stress the merits of the International Court, which represented all the legal systems of the world and was familiar with international conventions.

24. The question whether the Court's jurisdiction should be compulsory or not was more difficult, and certain States held particularly strong views on it. In his delegation's opinion the whole purpose of a disputes clause was to provide an effective final instance for settling disputes, so that there should be no ultimate failure to agree. Nevertheless, that principle raised insuperable difficulties for some countries, and the sponsors of the proposal had followed the precedent of the Brussels Convention by providing that a Contracting Party might declare that it did not consider itself bound by the compulsory jurisdiction of the Court. Paragraphs 2 and 3 of the proposal thus covered every possible interest.

25. With regard to the proposed optional protocol (CW/83), his delegation was glad that a similar additional instrument recognizing the compulsory jurisdiction of the Court had been attached to the Conventions on the Law of the Sea and the Vienna conventions on diplomatic and consular relations. It could not, however, regard that solution as wholly satisfactory, because the optional character of the protocol would enable some parties to ignore it altogether. A clause in the Convention providing that a State could contract out by special declaration would afford a greater inducement to recognize the Court's compulsory jurisdiction. Accordingly, though his delegation could support either solution, it preferred the six-nation proposal.

26. Mr. de ERICE (Spain) observed that the vote on the United Kingdom procedural motion might be regarded as a test vote on the six-nation proposal. Since 18 votes had been cast against that motion, it might be assumed that at least 18 countries would make the declaration referred to in paragraph 2 if the proposal were adopted. Moreover, since the other Contracting Parties would not be bound by that paragraph in relation to States which had made the declaration, at least 36 countries would not be bound

to recognize the jurisdiction of the International Court. That result would surely be contrary to the intention of the sponsors, which was to encourage States to accept that jurisdiction. Furthermore, the 18 dissenting States might be precluded from signing the Convention if the provision were adopted. It would be far better to leave the door open for those States to accede to the optional protocol in good time.

27. Mr. COLOT (Belgium) considered that the procedure set forth in the six-nation proposal should meet the requirements of all States represented at the Conference. The provision of arbitration procedure, with reference to the International Court in case of failure to agree on organization of the arbitration, seemed to be perfectly reasonable, especially in view of the provision for reservations made by paragraph 2. It was much less certain that the alternative solution, the optional protocol, would produce the desired results.

28. Mr. RAO (India) said that the six-nation proposal was totally unpractical. At the 1945 San Francisco Conference, at which the United Nations Charter and the Statute of the International Court of Justice had been drafted, it had been proposed that the concept of law should govern all national disputes. Nevertheless, reference had been made even then to the natural diffidence of small States to have their disputes with larger States regulated by international law in general and by the International Court in particular. Moreover, both the United States of America and the Soviet Union had opposed the principle of compulsory jurisdiction of the Court.

29. That principle had thus not been acceptable in 1945, and Article 36, paragraph 2, of the Statute was therefore an optional clause, which only about 40 of the 111 States Members of the United Nations now accepted. It was obvious that progress in the matter could be made only gradually and that no principle should be forced on new States by old ones. Moreover, the Charter did not state that the International Court of Justice was the only instrument for the settlement of disputes.

30. There was a risk that inclusion of the provision would itself prevent a number of States from signing the Convention. Several States, rightly or wrongly, had considerable reservations concerning the composition of the Court and the representation on it of different legal systems. If the Court were the perfect instrument that the United Kingdom delegation believed it to be, more than about 40 States would have submitted to its compulsory jurisdiction. There was certainly a lack of confidence in the impartiality of its judgements, and the fact that the American continent was represented by five judges, Asia by only two and Africa by only one raised further doubts. The efforts of the United Nations to reform the Court constantly encountered obstacles, and until it was reformed many countries would be unwilling to submit to its jurisdiction.

31. The six-nation proposal gave rise, moreover, to some legal difficulties. It would invite reservations to other articles of the Convention; and the system of calling upon States to declare that they were not bound by a provision was both unprecedented and undesirable. His delegation supported the view, upheld by the United States at San Francisco, that an optional provision would enable States which could accept compulsory jurisdiction to remain consistent with their own principles while allowing other States to adhere to theirs.

32. Mr. RUEGGER (Switzerland) considered it essential to include in the Convention a provision for settlement of the disputes which would inevitably arise. Those disputes could only be settled by an independent international court or an arbitral tribunal; yet objections were being raised to a compulsory jurisdiction clause even with provision for reservation. Participant States which were members of the International Labour Organisation (ILO) – and practically all of them were members – all unreservedly accepted the jurisdiction of the Court regarding the interpretation of the ILO Constitution.

33. The Indian delegate's argument that compulsory jurisdiction should be accepted gradually was taken into account in the six-nation proposal. He could only regret that some other States were not prepared, as Switzerland was, to go as far as possible in respect of arbitration and jurisdiction clauses. New States in particular could surely benefit by Switzerland's experience as a small country, whose policies were based not on force but on law as an essential safeguard. Arbitration had proved an excellent solution for many disputes which could have taken another turn if diplomatic channels had been used. It was obviously advantageous for small States, and he deplored the exaggeration of sovereignty which prevented certain countries from accepting it.

34. The Indian delegate had referred to the debates at the San Francisco Conference; he would therefore no doubt agree that the six-nation proposal was in line with the optional character that had been given to Article 36, paragraph 2, of the Statute of the International Court, a Statute which, by the way, had not originated in San Francisco, but had been, wisely, simply taken over from the Statute accepted in 1921 in Geneva. Moreover, the proposal in no way prejudiced the rights of those States whose Governments could not accept the Court's compulsory jurisdiction.

35. It was necessary to recall that the solution of an optional protocol had been proposed, but only as a last resort, by the Swiss delegation to the First Conference on the Law of the Sea, since otherwise the first of the United Nations conventions on codification of international law would have been adopted without any disputes clause – an impossible situation. The solution was by no means satisfactory, for an optional protocol was only too easy to ignore and its link with the parent instrument was tenuous. He urged the Committee to vote for the six-nation proposal. If it were rejected he could vote, in extremis, for an optional protocol, but his delegation had very grave doubts as to the real effect of such instruments, and deeply regretted that the system adopted as a last resort in 1958, on the proposal of Switzerland, had since become customary as an easy way out.

36. Mr. GASIOROWSKI (Poland) proposed that the time allowed to each speaker should be limited to five minutes.

37. Mr. VILKOV (Union of Soviet Socialist Republics) moved the closure of the list of speakers.

38. The CHAIRMAN proposed that the list of speakers should be declared closed, and that the time allowed to each speaker should be limited to three minutes.

39. It was so agreed.

40. Mr. GASIOROWSKI (Poland) supported the optional protocol, the adoption of which would, he said, be in accordance with the practice of recent years followed, for example, by the 1958 United Nations Conference on the

Law of the Sea and by the United Nations conferences on diplomatic relations and on consular relations.

41. Mr. SCHEFFER (Netherlands) considered that the six-nation proposal was in accordance with the long-established practice of multilateral conventions, including the Brussels Convention. It was essential to include in any such convention a provision for settlement of disputes. No valid argument had been advanced in favour of a separate protocol.

42. Paragraph 2 of the six-nation proposal provided that any State might, at the time of signature, ratification or accession, declare that it did not consider itself bound by paragraph 1. No State could say, therefore, that the inclusion of paragraph 1 would oblige it to remain outside the Convention.

43. Mr. ZALDIVAR (Argentina) said that his delegation would vote against the six-nation proposal, which provided for the compulsory jurisdiction of the International Court of Justice.

44. Mr. KERLEY (United States of America) said that his delegation would have preferred to vote for a settlement article which fully recognized the compulsory jurisdiction of the International Court of Justice. Its proposal for that purpose had, however, not been accepted by the Committee on Final Clauses, and it would therefore vote for the six-nation proposal.

45. Mr. VILKOV (Union of Soviet Socialist Republics) supported the optional protocol because it was in accordance with the practice which had developed in similar conferences in recent years, and would allow the greatest number of States to adhere to the Convention. The six-nation proposal, which he opposed, would not even fulfil the intention of its supporters, because paragraph 2 would give States a legal means of avoiding the compulsory jurisdiction which they had accepted in paragraph 1.

46. Mr. DADZIE (Ghana) opposed the six-nation proposal for the same reasons as the delegate of India. Paragraph 2 provided that a Contracting Party might "at the time of signature, ratification or accession" declare that it did not consider itself bound by paragraph 1. It was precisely the existence of paragraph 1 which would hinder if not prevent some States, including Ghana, from signing the Convention. Experience had shown that a better way of dealing with settlement of disputes was to adopt an optional protocol.

47. The CHAIRMAN put to the vote the six-nation proposal (CW/113).

48. There were 26 votes in favour and 16 against, with 5 abstentions. The proposal was approved.

49. Mr. VILKOV (Union of Soviet Socialist Republics) stated that his delegation's vote against the proposal did not debar the Soviet Union from invoking the provision contained in its paragraph 2.

New article:

(on reservations concerning one or more provisions of the Convention)

50. The CHAIRMAN said that the delegation of Belgium had withdrawn its proposed new article (CW/108).

51. Mr. PAPATHANASSIOU (Greece) reintroduced the proposal under rule 29 of the rules of procedure, and requested a separate vote on each paragraph. His delegation fully supported the first paragraph but had some misgivings about the drafting of the second. It was essential and in accor-

dance with international law that the Convention should contain provision for reservations.

52. Mr. SCHEFFER (Netherlands) regretted the reintroduction of the proposal. In his view the first paragraph was not in accordance with existing international law.

53. Mr. SPÁČIL (Czechoslovakia) appealed to the delegate of Greece not to press the proposal. His delegation could support the first paragraph, but not the second, and therefore considered it preferable that there should be no provision.

54. Mr. PAPATHANASSIOU (Greece) withdrew the proposal on the understanding that the record of the meeting would set out the view of his delegation that the absence of any provision concerning reservations implied no diminution of the sovereign right of any State to express reservations concerning one or more of the Convention's provisions.

55. Mr. ROGNLIEN (Norway) stated that, in the view of his delegation, no reservations to the Convention would be permitted in the absence of an express clause.

56. Mr. RAO (India) agreed with that declaration.

57. Mr. SCHEFFER (Netherlands) said that his delegation did not agree with the Greek delegate's declaration.

58. Mr. ALLOTT (United Kingdom) said that his Government's attitude towards reservations to the Convention would be governed by the general principles of international law.

New article:

(on territorial application of the Convention)

59. The CHAIRMAN invited the Committe to consider the United Kingdom proposal for a new article on territorial application of the Convention (CW/99).

60. Mr. ALLOTT (United Kingdom) said that the proposal was substantially the same as the earlier proposal by the United Kingdom (CW/1, amendment 126), but drafting changes had been introduced to take into account the constructive comments made by several delegations. Its purpose was stated in the document just mentioned (CW/1, amendment 126).

61. Three further considerations should be borne in mind. First, the provision was designed to deal with a situation of fact with which the United Kingdom and several other countries were faced. Where the Convention had to be applied in a number of countries with differing legal systems and in different circumstances, there was a practical need to provide for its progressive application to each territory becoming able to accede to it and deciding that it wished to do so. If the United Kingdom were obliged to ratify on behalf of all the territories at the same time, its ratification might be delayed considerably, or even indefinitely if one or two territories decided that they could not accept the Convention.

62. Secondly, the provisions of the Convention were unusually complex and would require complex legislation in all the territories for whose international relations the United Kingdom was responsible.

63. Thirdly, the Convention was a most important contribution to international law, and particularly to co-operation between the nations of the

world. It would be a pity if a practical and necessary provision were omitted from it on grounds other than practicality and legal necessity.

64. A similar provision had appeared in many other international conventions.

65. Mr. DADZIE (Ghana) strongly opposed the inclusion of a provision related to the perpetuation of colonialism. He regretted that, when the United Nations had taken active steps by General Assembly resolution 1514 (XV) to condemn colonialism in all its forms, the United Kingdom should have found it necessary to propose such a provision. He hoped that the Committee would endorse the United Nations resolution and reject the United Kingdom proposal. The important need was not to apply the Convention to subject peoples, but to free them so that they could accede to the Convention by their own unfettered sovereign will.

66. Mr. SPLETH (Denmark) strongly supported the United Kingdom proposal. It would meet the case of his own country, which could not apply the Convention to all its territories without their consent.

67. Mr. SCHEFFER (Netherlands) supported the United Kingdom proposal, which was in accordance with the Constitution of the Kingdom of the Netherlands in respecting the rights of autonomy and self-government of the three parts of that Kingdom by giving them full opportunity to decide themselves whether they wished to adhere to the Convention.

68. Mr. RAO (India), Mr. GHELMEGEANU (Romania), and Miss RATUMBUYSANG (Indonesia) strongly opposed the United Kingdom proposal.

69. Mr. VILKOV (Union of Soviet Socialist Republics) said that his delegation would vote against the proposal, which had been submitted to the Committee on Final Clauses and rejected by a majority. At the Brussels Conference a majority had decided against the inclusion of the colonial clause in the Convention on Liability of Operators of Nuclear Ships. The best way to avoid difficulties of application to territories would be to implement the United Nations General Assembly resolution and to allow the people of those countries to decide freely whether they wished to accept the Convention.

70. Mr. SPÁČIL (Czechoslovakia) opposed the United Kingdom proposal, which completely contradicted the spirit of the General Assembly resolution.

71. Mr. HARDERS (Australia) pointed out that, although the United Kingdom had withdrawn its proposal in the Committee on Final Clauses, it had reserved the right to introduce a further proposal on territorial application.[1]

72. Australia would welcome the day when it was no longer necessary to make such a proposal. At present, however, it was still necessary, for the technical reasons explained by the United Kingdom delegate, to protect the interests of non-self-governing territories. In no sense was there any colonial aspiration, or any intention to deny the benefits of the Convention to any of the territories concerned.

73. Mr. ALLOTT (United Kingdom) stressed that it was necessary to take account of the existing situation. Colonialism was no more relevant to the question than an assertion that the parliaments of certain countries were not democratic would be to a proposal to omit the ratification clause.

74. The CHAIRMAN invited the Committee to vote on the United Kingdom proposal (CW/99).

75. At the request of Mr. Dadzie (Ghana), a roll-call vote was taken.

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[1] See document CN-12/CW/106, section VII.

The Byelorussian Soviet Socialist Republic, having been drawn by lot by the Chairman, was called upon to vote first.

The result of the vote was as follows:

In favour:	Denmark, Finland, France, Federal Republic of Germany, Greece, Italy, Luxembourg, Netherlands, Portugal, South Africa, Sweden, United Kingdom of Great Britain and Northern Ireland, United States of America, Australia
Against:	Byelorussian Soviet Socialist Republic, Colombia, Czechoslovak Socialist Republic, Ghana, Hungary, India, Indonesia, Israel, Mexico, Morocco, Philippines, Poland, Romania, Spain, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Yugoslavia, Argentina, Brazil, Bulgaria
Abstaining:	Canada, China, El Salvador, Holy See, Iran, Japan, Republic of Korea, Norway, Thailand, Viet-Nam, Austria, Belgium

76. There were 14 votes in favour and 20 against, with 12 abstentions. The proposal was rejected.

Article XI (resumed)[2]

77. Mr. MAURER (United States of America) said that his submission (CW/6/Add. 1) had improved certain points as a result of the previous debate on his amendment CW/6, which was now restricted to claims arising out of an incident occurring in the State's own territory. Under paragraph 3 a national of another Contracting Party would be able to choose between the national law of the Installation State and the provisions of the Convention, thus eliminating discrimination against foreign nationals. Paragraph 2 provided that a State exercising the option would need to make available funds up to the amount provided under the Convention. Damage to on-site property and transport had been excluded from the provision because it was not necessary to burden the opting State with the satisfaction of all claims.

78. Mr. ZALDIVAR (Argentina) objected that the United States submission was an outline of principles and not a new amendment, and therefore not admissible under Rule 27. It did not improve the original proposal, since, in view of the ten-year extinction period, there would be no certainty that only nationals were involved in an incident. An action might have been commenced or even concluded under national law before a foreign victim claimed, so that much involved litigation would result. Paragraph 2 was ambiguous, and paragraph 3 might produce a multiplicity of jurisdictions, which was against the purpose of the Convention.

79. Mr. VILKOV (Union of Soviet Socialist Republics) agreed with that view.

80. Mr. ROGNLIEN (Norway) said his doubts about the original proposal

[2] See 20th meeting, paras. 57 to 86.

were cleared up, particularly since the provision was now confined to incidents on the territory of the opting State. The last sentence of paragraph 2 might be superfluous. He asked whether the word "transport" referred only to a transport carrying nuclear material within the territory of the Installation State.

81. The CHAIRMAN said that, during the discussion on the previous day, several delegates had found the United States proposal (CW/6) confusing and had requested an exposé. CW/6/Add. 1 was merely that exposé, and would, if approved, be transmitted with CW/6 to aid the Drafting Committee.

82. Mr. DUNSHEE de ABRANCHES (Brazil) said that paragraph 1, by providing that the option could be exercised only where nationals of the Installation State were plaintiffs, made paragraph 3 meaningless. The proposal might produce discrimination, for a State could allow by its national law extra action barred to foreigners.

83. Mr. NORDENSON (Sweden) saw some inconsistencies between the text and the exposé, which introduced new elements. He was not clear what the practical effect would be, but thought it would be very difficult for the Drafting Committee to reconcile the two without further explanation. If none were given, he might have to abstain from voting.

84. Mr. DADZIE (Ghana) could not support the United States proposal. Every State had a sovereign right to make in its domestic law what provision it wished concerning its own nationals. Internationally, he would prefer the Convention to safeguard rights in claims to which non-nationals were parties. The Convention, moreover, should not be overloaded with detail.

85. Mr. ARANGIO RUIZ (Italy) also found some discrepancy between the two texts. The Committee could not adopt either without causing great difficulty for the Drafting Committee. He suggested, therefore, that discussion of the proposal should be postponed again until a text in clear legal terms was submitted by the United States delegation.

86. The CHAIRMAN declared that no matter could be postponed so late in the Conference.

87. Mr. RITCHIE (United Kingdom) could not support the outline of principles any more than the original proposal. For example, paragraph 1 of the outline might handicap a United Kingdom airline with premises in the United States. If the airline, as a carrier of nuclear materials, were involved in a nuclear incident in the United States and became a party to a claim, it might well be considered a national of the United States within the definition in Article VII, paragraph 2(c), in that it would be "established" within that territory.

88. Mr. VILKOV (Union of Soviet Socialist Republics) said that each State was entitled to deal in its domestic law with claims to which only its own nationals were parties; but the Convention should apply in all cases concerning foreign nationals. The adoption of the United States proposal would destroy the whole purpose of the Convention.

89. Mr. NISHIMURA (Japan) said that there seemed to be some contradiction between paragraph 1 and paragraph 3 of the outline of principles, which he could not support.

90. Mr. MAURER (United States of America) said that his delegation had hoped, in view of the complexity of its original proposal, that the Committee

might accept the principles of the outline and refer them to the Drafting Committee, as it had often done before.

91. It was true that there appeared to be discrepancies between the original proposal and the outline of principles. The intention was, however, that they should be read together. For example, the original proposal was phrased more generally and did not state the intention that it should apply only to claims arising from incidents occurring in the territory of the Installation State.

92. He replied to the United Kingdom delegate that, although paragraph 1 of the outline of principles was differently drafted, its intention was that of the original proposal.

93. His delegation felt somewhat disconcerted that it had been unable to present its proposal in a way that would show the complete protection afforded to foreign nationals, who would have all rights under the Convention and also an option to sue under the national law of the Installation State. The main purpose of the proposal was to allow the United States and other countries of a similar mind to apply their own law when only their own nationals were involved. Moreover, it subjected the option to certain safeguards.

94. The CHAIRMAN put the United States proposal and outline of principles (CW/6 and Add. 1) to the vote.

95. There were 10 votes in favour and 18 against, with 17 abstentions. The proposal was rejected.

Article IV (resumed)[3]

96. The CHAIRMAN invited the Committee to consider the amendment by France (CW/2, No. 2).

97. Mr. VERGNE (France) said that his delegation proposed that the Convention should include a provision that no one should be entitled to claim compensation for damage caused by a nuclear incident under more than one convention relating to civil liability for nuclear damage. A victim might conceivably be able to claim under two different conventions. To allow him to select from one convention favourable provisions differing from those of the other would introduce confusion and might delay settlement of claims and payment of compensation.

98. The CHAIRMAN put the French amendment (CW/2, No. 2) to the vote.

99. There were 16 votes in favour and 7 against, with 19 abstentions. The amendment was approved.

100. Mr. SPÁČIL (Czechoslovakia) asked that the Drafting Committee should be notified that the Russian text of the proposal did not correspond to the English.

New article:

(on additional protection for victims)

101. The CHAIRMAN invited the Committee to consider the joint proposal of the Federal Republic of Germany and Sweden concerning a new article XIV A (CW/97/Rev. 2).

[3] See 19th meeting, paras. 87 to 94.

102. Mr. GASIOROWSKI (Poland), on a point of order, said that the Committee had already discussed and settled the question dealt with in the joint proposal[4]. By rejecting the French amendment contained in document CW/2, No. 1[5], it had disposed of the substance of the closely related proposal of the Federal Republic of Germany (CW/1, amendment 123). The new joint proposal was a revision of the latter proposal and did not differ from it in any important respect. To discuss it would be to reconsider a matter already settled. To do so was contrary to Rule 30 of the rules of procedure and, if it became general, would enable any article to be reintroduced, thus delaying the Committee's work interminably.

103. The CHAIRMAN disagreed. The joint proposal differed from the original in two important respects: first, the amount referred to was $10 million and not $5 million; second, a much more limited right of derogation was specified.

104. Mr. BOULANGER (Federal Republic of Germany) emphasized that he had stated at the fourteenth meeting that his delegation's amendment was closely linked — not that it was identical — with the French proposal[6], and that he was reserving his decision on whether or not to press the German amendment. He had withdrawn paragraphs 2 and 3 of that amendment, but the substance of paragraph 1, embodied in the joint proposal now before the Committee, had not yet been discussed.

105. Mr. KONSTANTINOV (Bulgaria) agreed with the Polish delegate that the joint proposal constituted an attempt to reconsider a matter already decided. He disagreed that the joint proposal was substantially different from the original.

106. Mr. GASIOROWSKI (Poland) said that he did not question the Committee's right to change its mind, but it had to do so in accordance with the rules of procedure. The Polish delegation invoked Rule 30 and asked that the Committee should be permitted to vote on the principle of whether it wanted to consider the joint proposal or not.

107. Mr. VILKOV (Union of Soviet Socialist Republics) agreed with that view.

108. The CHAIRMAN said that he would take into account the views of the Polish and Soviet delegates when he ruled on the matter at the following meeting. For the time being, however, he adhered to his view that discussion of the joint proposal did not constitute reconsideration of a proposal rejected earlier.

The meeting rose at 7. 20 p. m.

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[4] See 14th meeting, paras. 45 and 79 to 86.

[5] Ibid., paras. 83 and 84.

[6] See 14th meeting, para. 45.

TWENTY-FOURTH MEETING

Friday, 17 May 1963, at 9.45 a.m.

Chairman: Mr. McKNIGHT (Australia)

CONSIDERATION OF THE DRAFT CONVENTION ON MINIMUM INTERNATIONAL STANDARDS REGARDING CIVIL LIABILITY FOR NUCLEAR DAMAGE (CN-12/2) (continued)

New article:

(on additional protection for victims)(continued)

1. The CHAIRMAN, recalling the previous discussion[1], said that he had given careful thought to the Polish delegate's submission that to discuss the German-Swedish proposal for a new article XIV A on additional protection for victims (CW/97/Rev. 2) would be contrary to Rule 30 of the rules of procedure[2], as the joint proposal so closely resembled the French amendment (CW/2, No. 1) which had been rejected at the Committee's fourteenth meeting[3], but he adhered to his ruling to the effect that the differences between the German-Swedish proposal and the French amendment – particularly in respect of the scope of the rights of derogation which they permitted – were sufficient to permit a discussion of the joint proposal without invoking the procedure for reconsideration under Rule 30.

2. Mr. BOULANGER (Federal Republic of Germany) said that the revised text of the German proposal, originally presented as amendment 123 in document CN-12/CW/1, had been produced in consultation with the Swedish delegate in the light of questions which had been raised during discussion of the original German proposal.

3. Mr. NORDENSON (Sweden) said that there was nothing in the Convention as it stood to prevent a Contracting Party from increasing protection for victims beyond the limits laid down in Article IV by providing money from public funds or from other financial sources. Such additional systems of protection might derogate from some of the provisions of the Convention, but the limits to the derogation should be clearly set down. Any such additional systems of protection should be subject to the principle of channelling (Article II, paragraph 5), the rules limiting recourse (Article VIII) and the rules governing jurisdiction (Article IX). Moreover, the right to derogate should not apply to additional protection that might be provided below the figure of US $10 million, a figure which had been chosen in view of the text approved for Article IV.

4. He thought that the proposal, if approved, would encourage Contracting Parties to enter into bilateral or multilateral agreements on a reciprocal basis with other Contracting States, or with non-contracting States, and that in such cases the Contracting Parties in question would wish to dero-

[1] 23rd meeting, paras. 101 to 108.

[2] Ibid., paras. 102 and 106.

[3] 14th meeting, paras. 83 and 84.

gate from the provisions of the Convention concerning non-discrimination. Such bilateral or multilateral agreements would be for the benefit of victims and of the nationals of the Contracting Parties in general.

5. Mr. ROGNLIEN (Norway) said that although his delegation had felt a certain hesitation about the original German proposal, he could see no danger in it in its present form and would therefore support it.

6. Mr. TAGUINOD (Philippines) said that the previous draft of the proposal (CW/97/Rev. 1) seemed to apply to nuclear incidents occurring in transit (Article IV, paragraph 2). The new draft (CW/97/Rev. 2) seemed to apply rather to Article IV, paragraph 1. He asked the Swedish delegate to which paragraph of Article IV the proposal applied.

7. Mr. THOMPSON (United Kingdom) said that his delegation had found difficulty in understanding the proposal as originally presented, but in its new form, and with the help of the explanations given by the sponsors, its purport now seemed clear, and the United Kingdom delegation would support it.

8. Mr. PAPATHANASSIOU (Greece) said that various delegations might agree with only some of the three exceptions listed under (i), (ii) and (iii), and he moved that a separate vote be taken on each exception.

9. Mr. STEPHENSON (South Africa) said that he found himself in the same difficulty as the Philippine delegate. He wondered also whether the proposal referred to nuclear damage occurring within or outside the terms of the Convention. Nuclear damage outside the Convention might be damage occurring in a non-contracting State or damage due to an incident in a non-contracting State where the Installation State did not provide that such damage should come under the provisions of the Convention.

10. Mr. EDLBACHER (Austria) supported the joint proposal in principle, but in view of the very restrictive text which had been adopted for Article VIII, he could not agree to exception (ii). If Article VIII were extended to provide for recourse in the case of gross negligence ("faute grave"), then the Austrian delegation could agree to that exception also.

11. Mr. DUNSHEE de ABRANCHES (Brazil) associated himself with the remarks of the Austrian delegate, adding that a further necessary change in Article VIII was replacement of the word "individual" by "person".

12. Mr. SCHEFFER (Netherlands) also supported the joint proposal, especially with regard to exceptions (i) and (iii).

13. Mr. GASIOROWSKI (Poland) said that if a Contracting Party adopted measures which were not specifically provided for in the Convention, such measures could either be compatible with the Convention or incompatible with it. It was obviously unnecessary to insert a special provision to the effect that a Contracting Party might adopt measures outside the Convention that were compatible with it. On the other hand, it was a basic principle of international law that if a State undertook international obligations, it could not unilaterally absolve itself from them, that it could not adopt measures incompatible with its obligations. In permitting such unilateral derogations from the Convention, the German-Swedish proposal seemed to overthrow that principle of international law.

14. The position was made still worse by the fact that, instead of clearly defining the provisions which could be derogated from, the proposal took

the opposite course: it mentioned a number of articles which could not be derogated from but left the possibilities of derogation otherwise unlimited.

15. The Polish delegation strongly opposed the proposal.

16. Mr. BOULANGER (Federal Republic of Germany) said that the Polish delegate had misrepresented the Swedish-German proposal, which certainly did not suggest that a Contracting Party might unilaterally absolve itself from its international obligations. The proposal provided for the opposite case, where States wished to undertake additional obligations going beyond the Convention.

17. Mr. FLEISCHMANN (France) supported the proposal.

18. The word "discrimination" had an ominous sound in the ears of certain delegations. But was it so shocking that certain countries where nuclear installations were numerous and where, therefore, risks of accidents were relatively high, should wish to provide greater protection to their nationals than nationals of other countries enjoyed? No country would tolerate that its Finance Minister should consent to pay from public funds sums to nationals of foreign countries which were not, in their turn, prepared to do the same on a basis of reciprocity. The proposal did not permit countries to derogate unilaterally from certain obligations; it permitted them to assume other obligations on a basis of strict reciprocity within the framework of bilateral or multilateral agreements. Countries would in any case be free to conclude such agreements outside the Convention; the proposal provided that they could do so within the framework of the Convention. So far France had been prepared to accept the Convention as laying down guiding lines in the form of minimum standards and leaving it open to States to adopt supplementary measures provided such measures respected the basic principles of the Convention. But if the joint proposal were not adopted, it would have to reconsider its position.

19. Mr. KONSTANTINOV (Bulgaria) opposed the proposal, which would annul the provisions approved for Article IV, paragraph 2(b). If Contracting Parties wished to provide greater compensation for victims, they could do so on the basis of Article IV, paragraph 1.

20. Mr. PHUONG (Viet-Nam) said that in adopting the existing text of Article IV, paragraph 1, many delegations had shown a spirit of conciliation which was necessary if the Convention were to be widely acceptable. His delegation wished to show the same spirit of conciliation in recognizing that – though many countries were not directly affected by the German-Swedish proposal – that proposal answered a need of countries which had a highly developed nuclear industry, and therefore ran greater risks of nuclear incidents.

21. He supported the proposal as a whole, but had reservations concerning exception (ii), referring to Article VIII.

22. Mr. CHARNOFF (United States of America) said that the Chairman had ruled that the joint proposal differed sufficiently from the French amendment not to fall under Rule 30 of the rules of procedure because of the different scope of the exceptions mentioned. But, if a separate vote on each exception were allowed, that difference might be whittled away so that the Committee would end up with what was in fact a reconsideration of the French amendment; and for that, a two-thirds majority on a special motion

would be necessary. The only way to avoid that danger would be to vote on the proposal in its entirety.

23. The United States delegation supported the proposal as a whole: in particular it regarded the three limits it set to the power of derogation as absolutely essential. By permitting too great a freedom of derogation the purpose of the Convention would be defeated. That applied particularly to Article VIII, freedom to derogate from which would recreate the danger of multiple insurance and multiple premiums which had led the Committee to draft Article VIII in its present form. If exception (ii) were deleted, the United States delegation would have to oppose the proposal.

24. Finally, he pointed out that if the limits of liability laid down in paragraphs 1 and 2 of Article IV were subsequently reconsidered, then the figure appearing in the new article XIV A, if adopted, should also be reconsidered.

25. Mr. NORDENSON (Sweden), replying to the Philippine delegate, pointed out that the text of the joint proposal contained no reference to Article IV; it referred to nuclear damage arising from any incident, not merely an incident in transit. The figure of US $10 million had been chosen as the limit below which there should be no derogation, because a lower figure would constitute a violation of Article IV, paragraph 2.

26. Replying to the South African delegate, he said that the proposal referred only to nuclear damage covered by the Convention, the words "nuclear damage" being used in accordance with the definition in Article I. As regards exception (ii), he thought it essential that the provisions of Article VIII should be exluded from the right of derogation, whatever those provisions might be. Certain delegations which found the existing text of Article VIII too restrictive might think it necessary to introduce an amendment to the Article, but that did not affect the necessity for exception (ii)

27. The reference to Article II, paragraph 5 (laying down the principle of channelling) did not mean that a Contracting State would be prevented from itself assuming liability towards victims under whatever additional systems of protection it established.

28. Both the Swedish and German delegations were opposed to the Greek request for separate votes on the three exceptions, though he could not agree that, if exception (ii) were deleted, the proposal would be equivalent to the French amendment which had already been rejected.

29. Mr. VILKOV (Union of Soviet Socialist Republics) said that the Swedish delegate's explanation had convinced him that the adoption of the proposal would undo the whole work of the Conference.

30. He agreed with the United States delegate concerning the possibility of the proposal's becoming identical with the rejected French amendment if a separate vote were allowed; and he insisted on the strict application of Rule 30 of the rules of procedure.

31. Mr. TAGUINOD (Philippines) said that in the light of the Swedish delegate's explanation as to the scope of the Swedish-German proposal, he found it even more objectionable than the French amendment. The French amendment had referred only to additional sums made available from public funds; the Swedish-German proposal applied to additional funds whatever might be their origin. That would be contrary to the intentions of Article IV.

32. Mr. NISHIMURA (Japan) opposed the proposal for the reasons given by the Philippine delegate.

33. The CHAIRMAN put to the vote the Greek motion for separate votes on the three exceptions.

34. There were 10 votes in favour and 25 against, with 8 abstentions. The motion was defeated.

35. The CHAIRMAN put to the vote the German-Swedish proposal for a new article XIV A (CW/97/Rev. 2).

36. There were 14 votes in favour and 18 against, with 12 abstentions. The proposal was rejected.

Preamble and title of Convention

37. The CHAIRMAN drew attention to the proposals in the report of the Committee on Final Clauses (CW/106) and the Netherlands proposal (CW/112).

38. Mr. SCHEFFER (Netherlands) said that the Netherlands proposal should be regarded as amendments to the report. It was essentially a matter of drafting and concerned no fundamental principle. His delegation objected to the term "minimum standards" since it was not clear from a legal point of view. The Convention dealt fully with a particular subject and the term in question might create the impression that each Contracting Party could add what it pleased to the Convention. In his view the term "certain standards", which had already been used in several transport conventions, would show that the Convention, while complete in itself, did not deal with all related matters.

39. Mr. OHTA (Japan) drew attention to possible ambiguity in the preamble between the words "the Vienna Convention" in the second paragraph and the words "a Convention" in the third paragraph and hoped that a consistent text would be found by the Drafting Committee.

40. Mr. VILKOV (Union of Soviet Socialist Republics) stated that his delegation supported the preamble as set out in the report of the Committee on Final Clauses, including the reference to minimum standards.

41. Mr. de ERICE (Spain), speaking as Chairman of the Committee on Final Clauses, said that the Committee's report was the result of hard work and compromise. It was possible the drafting might be further improved by the Drafting Committee. His Committee had, however, kept the words "minimum standards" after careful examination, since it was felt that the Convention was a basic one and that the signatories were free to go further if they wished. That point had been illustrated by the discussion on the minimum amount of liability.

42. Mr. RAO (India) felt that the title and preamble should be as simple as possible, as they would be referred to frequently. The title in the report was too long and its unfamiliarity was an added defect. Similarly the purpose of the preamble was merely to indicate the contents of the Convention and not to state the entire concept. For those reasons he preferred the Netherlands proposal.

43. Mr. ALLOTT (United Kingdom) also supported the Netherlands proposal and agreed that the words "minimum standards" were misleading.

44. Mr. PHUONG (Viet-Nam) supported the Netherlands proposal in so far as it related to the title but would prefer to see the words "minimum standards" kept in the preamble, so as to make it clear that the Convention

was a basis such as could be accepted by a large number of countries, including those still at the development stage in the field of nuclear energy.

45. Mr. GIBSON BARBOZA (Brazil) stated that, as far as the preamble was concerned, his delegation preferred the text of the Committee's report, although he agreed with the Japanese delegate that the words "the Vienna Convention" and "a Convention" were inconsistent. With regard to the title, he agreed that it might be shorter but pointed out that finding an adequate short title had proved difficult. Moreover a number of delegations had felt that if the words "nuclear damage" appeared in the title it might cause alarm and that a longer but accurate title would be preferable. His delegation was, however, prepared to accept the Netherlands proposal if other delegations did not object to the inclusion of the words in question.

46. Mr. DADZIE (Ghana) supported the text of the preamble proposed by the Committee subject to the points raised by the delegate of Japan. Concerning the title, he said that, although he had supported the Committee's text, he felt bound to support the Netherlands proposal which corresponded exactly to the text which his delegation had proposed to the Committee but which had been rejected by that Committee.

47. Mr. ZALDIVAR (Argentina) likewise favoured the preamble proposed by the Committee in its report. He would also support the title contained in that document as, in addition to what the Brazilian delegate had said, the Convention related essentially to civil liability, whether there was nuclear damage or not, and that fact should be shown in the title.

48. Mr. VILKOV (Union of Soviet Socialist Republics), referring to the title, pointed out that he had abstained from voting in the Committee on Final Clauses because the wording decided on by that Committee had been ambiguous in Russian. It was not true, as was implied, that the peaceful uses of nuclear energy necessarily led to nuclear damage. He welcomed the Netherlands proposal and would support it.

49. Mr. PRICE (United States of America) stated that his delegation fully supported the preamble and title set out in the Committee's report. It was not advisable to refer to nuclear damage in the title. He preferred the words "minimum standards" to "certain standards" as the former stated the purpose of the Convention more clearly. Moreover, there was no reference in the Netherlands preamble to the peaceful uses of nuclear energy, the promotion of the development of which constituted one of the Convention's two main purposes.

50. The CHAIRMAN stated that the Committee would vote first on the preamble and secondly on the title. He would put the text of the report to the vote first in each case and if it failed to receive a majority would then put the Netherlands proposal to the vote.

51. He put the preamble, as set out in the report of the Committee on Final Clauses (CW/106), to the vote.

52. There were 27 votes in favour and 10 against, with 5 abstentions. The preamble was approved.

53. The CHAIRMAN then put to the vote the title, as set out in the report of the Committee on Final Clauses.

54. There were 10 votes in favour and 27 against, with 6 abstentions. The title proposed by the Committee on Final Clauses was rejected.

55. The CHAIRMAN put to the vote the title proposed by the Netherlands in document CW/112.

56. There were 31 votes in favour and 2 against, with 8 abstentions. The title proposed by the Netherlands was approved.

CONCLUSION OF THE COMMITTEE'S WORK

57. The CHAIRMAN stated that the Committee had completed its task and was now able to submit a complete set of articles to the plenary Conference. During the deliberations he had found the rules of procedure deficient in certain places and thought they could be improved. The Provisional Rules of Procedure of the Board of Governors of the Agency provided for a motion from the floor whereby a proposal could be voted on after a vote on the same subject and he suggested that a similar rule might be adopted for a conference like the present one. Moreover, the words "proposal" and "amendment" had been used interchangeably and he suggested that the United Nations rules for the conduct of conferences drafting legal provisions might lay down the form in which amendments were to be submitted. He pointed out that certain lengthy amendments really concerned the change of a few words, whereas brief amendments had dealt with points of substance. The absence of a definite formula had led to complications. He understood, however, that a proposal had been made in the United Nations family that the International Law Commission draw up a set of rules in detail for the conduct of conferences convened to draft legal conventions. He fully supported that idea.

58. In conclusion, he expressed his gratitude to all delegations. The subject was a terribly important one. The Conference had been convened to seek to accelerate and enlarge peace, health and prosperity throughout the world and everyone should bear in mind the possible scope of the Convention. At present there were 45 power reactors operating in nine countries and 35 new ones were under construction. There were 160 research reactors in 38 countries and 40 new ones were planned in those and in nine other countries. Moreover, those figures did not include sub-critical assemblies. The danger of an incident spreading over territorial boundaries affected a somewhat limited number of States, but the transport of fuel elements for reprocessing would involve as many as 47 countries. It was well to recall that the Convention would have to apply to a large number of commercial movements of nuclear materials in which operators, shippers and insurance interests were all concerned.

59. Mr. RAO (India) agreed with the Chairman that the rules of procedure for a conference like the present one should be re-examined and pointed out that similar difficulties had arisen at the United Nations conference on consular relations. He paid tribute to the Chairman for bringing the work of the Committee to a successful conclusion. While anxious to observe the schedule, he had allowed every delegate to express his views and had permitted an exhaustive debate on all important questions.

60. Mr. SPÁČIL (Czechoslovakia) paid tribute to the Chairman's tirelessness, calmness and good humour, which had greatly assisted the Committee in the successful completion of its work.

61. Mr. de ERICE (Spain), who spoke also on behalf of Argentina and Brazil, Mr. COLOT (Belgium), Mr. RUEGGER (Switzerland), Mr. VILKOV (Union of Soviet Socialist Republics), Mr. MAURER (United States of America), Mr. DADZIE (Ghana), Mr. GASIOROWSKI (Poland), Mr. THOMPSON (United Kingdom), Mr. MOUSSAVI (Iran), who spoke also on behalf of Lebanon, and Mr. GHELMEGEANU (Romania) joined in the warm tributes paid to the Chairman.

62. The CHAIRMAN thanked the speakers for their gracious tributes and declared the Committee's proceedings closed.

The meeting rose at 12.15 p.m.

REPORTS OF THE COMMITTEES AND SUB-COMMITTEES

COMMITTEE ON FINAL CLAUSES

(CN-12/CW/106, 13 May 1963, Original: English)

Report of the Chairman: D. José de Erice (Spain)

I.

At its 2nd plenary meeting on 3 May 1963, the Conference appointed a Committee on Final Clauses consisting of the following members: Brazil, Colombia, Czechoslovak Socialist Republic, Ghana, Indonesia, Japan, Lebanon, Morocco, Netherlands, Spain, United Kingdom of Great Britain and Northern Ireland, United States of America and the Union of Soviet Socialist Republics.

The Committee on Final Clauses held meetings on 6, 8, and 11 May 1963.

The following documents were before the Committee: CN-12/2, CW/1, CW/8, CW/15, CW/31, CW/83, FC/1 to FC/7.

II.
TITLE OF CONVENTION

The Committee adopted by 8 votes to 0 with 1 abstention the following title:

"Vienna Convention on Civil Liability Arising From Peaceful Uses of Nuclear Energy".

The Union of Soviet Socialist Republics abstained from voting on the grounds that the expression "arising from", at least in Russian, was ambiguous as the impression might be conveyed that the peaceful uses of nuclear energy led automatically to civil liability.

A proposal submitted by the United Kingdom in document CW/1 (p. 389) which had been amended to read "Vienna Convention on the Civil Liability of Operators of Nuclear Installations" was rejected by the Committee by 7 votes to 3 with 1 abstention.

III.
PREAMBLE

The Committee adopted by 10 votes to 0 with one abstention the following preamble:

"The Contracting Parties,

"Having recognized the desirability of establishing some minimum standards to provide financial protection against damage resulting from certain peaceful uses of nuclear energy,

"Believing that the Vienna Convention on Civil Liability Arising from Peaceful Uses of Nuclear Energy would also contribute to the

development of friendly relations among nations, irrespective of their differing constitutional and social systems,

"Have decided to conclude a Convention for that purpose, and thereto have agreed as follows."

Before adopting the above quoted Preamble, the Committee had accepted by 6 votes to 5 with no abstentions an amendment to delete from the proposal submitted by the United States of America contained in CN-12/2, page 63*, the phrase "without exposing the nuclear industry to an unreasonable or indefinite burden of liability."

The Committee had approved the 2nd paragraph of the Preamble "Believing that ... social systems", proposed by the Czechoslovak Socialist Republic, by 8 votes to 3 with no abstention.

IV.
FINAL CLAUSES ADOPTED BY THE COMMITTEE

ARTICLE A

"This Convention shall be open for signature by the States represented at the International Conference on Civil Liability for Nuclear Damage held in Vienna from 29 April to ... May 1963."

The Union of Soviet Socialist Republics and the Czechoslovak Socialist Republic opposed the adoption of the Article on the grounds that all States of the world, including all Members of the International Atomic Energy Agency, should be allowed to sign the Convention without any discrimination, and reserved their right to intervene again on this point at this Conference. Other members of the Committee supported this Article, noting that the limitation of participation in convention to States generally recognized as members of the international community was well established in the practice of international organizations.

ARTICLE B

"This Convention shall be ratified, and the instruments of ratification shall be deposited with the Director General of the International Atomic Energy Agency."

ARTICLE C

1. "This Convention shall come into force three months after the deposit of instruments of ratification by at least five States.
2. "This Convention shall come into force in respect of each State which ratified it after the deposit of the fifth instrument of ratification as provided in paragraph 1 of this Article, three months after the date of deposit of the instrument of ratification of that State."

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* These Official Records

An amendment submitted by the United Kingdom in document CN-12/FC/2 to raise the number of ratifications needed for the entry into force of the Convention to 10 States was not carried (5 votes to 5 with one abstention).

ARTICLE D

1. "States Members of the United Nations, Members of the specialized agencies and of the International Atomic Energy Agency not represented at the International Conference on Civil Liability for Nuclear Damage, held in Vienna from 20 April 1963 to ... May 1963, may accede to this Convention.
2. The instruments of accession shall be deposited with the Director General of the International Atomic Energy Agency.
3. The Convention shall come into force in respect of the acceding State three months after the date of deposit of the instrument of accession of that State but not before the date of entry into force of the Convention as established by Article C."

The Union of Soviet Socialist Republics and the Czechoslovak Socialist Republic opposed the adoption of the Article on the grounds that the Convention should be open to all States of the world without any discrimination, and reserved the right to intervene again on this point at this Conference. Other delegations supported this Article for reasons already given in regard to Article A.

ARTICLE E

1. "This Convention shall remain in force for a period of ten years from the date of its entry into force. Any Contracting Party may, by giving before the end of that period at least twelve months' notice to the Director General of the International Atomic Energy Agency, terminate the application of this Convention to itself at the end of the period of ten years.
2. This Convention shall, after the period of ten years, remain in force for a further period of five years for such Contracting Parties as have not terminated its application in accordance with the provisions of paragraph 1 of this Article, and thereafter for successive periods of five years each for those Contracting Parties which have not terminated its application at the end of one of such periods, by giving at least twelve months' notice to that effect before the end of one of such periods to the Director General of the International Atomic Energy Agency."

ARTICLE F

1. "A conference shall be convened by the Director General of the International Atomic Energy Agency in order to consider revision of this Convention at any time after the expiry of five years from the date of its entry into force, if one-third of the Contracting Parties express a desire to that effect.

2. Any Contracting Party may denounce this Convention by notification to the Director General of the International Atomic Energy Agency within twelve months following the first Revision Conference held in accordance with the provisions of paragraph 1.
3. This denunciation shall take effect one year after the date on which the notification has been received by the Director General of the International Atomic Energy Agency."

Some delegations expressed their preference for a simple majority instead of one-third in paragraph 1, and reserved their position.

ARTICLE G

"The Director General of the International Atomic Energy Agency shall notify the States invited to the International Conference on Civil Liability for Nuclear Damage and the States which have acceded to this Convention of the following:
1. Signatures, ratifications and accessions received in accordance with Articles A, B, and D.
2. The date on which the Convention will come into force in accordance with Article C.
3. Denunciations and terminations received in accordance with Articles E and F.
4. Requests for the convening of a revision conference pursuant to Article F."

The Czechoslovak Socialist Republic, Ghana. Indonesia, Morocco and the Union of Soviet Socialist Republics opposed the adoption of this Article on the ground that all States of the world should be allowed to accede to the Convention without any discrimination. The right was reserved by some of these delegations to intervene again on this point at this Conference. Other delegations supported this Article for reasons already given in regard to Article A.

V.

The Committee adopted by 8 votes to 0 with 4 abstentions the Optional Protocol concerning the compulsory settlement of disputes, as proposed by Argentina, Ghana, India, Indonesia and Spain (CN-12/CW/83).

Before adopting the Optional Protocol the Committee had, by 7 votes to 4 with 1 abstention, accepted the principle that the question of settlement of disputes should be dealt with in the form of a Protocol rather than in an Article of the Convention.

VI.

The proposal submitted by the Federal Republic of Germany in doc. CN-12/FC.3 to have a reservation clause in the Convention to the effect that no reservation to this Convention should be admissible except the

"reservation of the right to give effect to this Convention either by giving it the force of law or by including in the national legislation the provisions of this Convention",

was rejected by the Committee by unanimous vote.

VII.

The United Kingdom withdrew their proposal contained in CN-12/CW/1, p. 92 to include an article on territorial application in the Convention, after the majority of the members of the Committee had expressed themselves against the inclusion of such an article. The United Kingdom, however, reserved the right to introduce a further proposal on the matter at this Conference.

VIII.

The Committee rejected, by 10 votes to 1 against with one abstention a proposal submitted by Austria contained in document FC. 7, to the effect that the

"ratification of this Convention shall import an obligation under international law to enact national provisions governing civil liability for nuclear damage in accordance with the provisions of this Convention."

IX.

A similar proposal submitted by Brazil in document CW/31, Rev. 1 to the effect that

"the standards of this Convention shall be embodied in the national legislation of each Contracting State by the fact of that State having ratified it, unless its constitutional system provides to the contrary"

was withdrawn in the light of the discussions which took place in the Committee.

CREDENTIALS COMMITTEE

(CN-12/16, 16 May 1963, Original: English)

Report of the Chairman: Mr. Thomas De Castro (Philippines)

1. At its first plenary meeting held on 29 April 1963, the Conference appointed the Credentials Committee consisting of representatives of the following States: Argentina, Australia, Bulgaria, Lebanon, Philippines, El Salvador, the Union of Soviet Socialist Republics, the United States of America, Iraq.

2. The Credentials Committee met on 14 May 1963. The Secretariat reported to the Committee as follows:

(a) Credentials of the representatives of the following States issued by the

Head of State or Government or Ministry for Foreign Affairs have been submitted to the Secretariat of the Conference in accordance with rule 3 of the rules of procedure:

Argentina
Australia
Austria
Belgium
Brazil
Bulgaria
Byelorussion Soviet Socialist Republic
Canada
China
Colombia
Cuba
Czechoslovak Socialist Republic
Denmark
Finland
France
Federal Republic of Germany
Ghana
Greece
Guatemala
Holy See
Hungary
India
Indonesia
Israel
Italy
Japan
Lebanon
Luxembourg
Mexico
Monaco
Morocco
Netherlands
Nicaragua
Norway
Philippines
Poland
Portugal
Romania
South Africa
Spain
Sweden
Switzerland
Thailand
Ukrainian Soviet Socialist Republic
Union of Soviet Socialist Republics
United Arab Republic
United Kingdom of Great Britain and Northern Ireland
Viet-Nam
Yugoslavia

(b) In respect of the representatives of Albania, El Salvador, Turkey, Venezuela, the Republic of Korea and the Dominican Republic an authorization to represent their Governments at the Conference had been received by cablegram emanating from the Minister for Foreign Affairs.

(c) The names of representatives of the following States have been submitted to the Secretariat of the Conference in communications from the respective Embassies or permanent Missions to the International Atomic Energy Agency in Vienna: Honduras, Iran, Iraq and United States of America.

(d) Credentials have also been received for an observer from Ecuador.

The Secretariat has been informed that the Credentials for the representatives who up to now had submitted provisional credentials in the form of cablegram, and also for those in respect of whom only communications from the Permanent Missions had been received, would be submitted before the end of the Conference.

3. The Representative of the Union of Soviet Socialist Republics raised the question of the representation of China. He stated that only representatives appointed by the Government of the People's Republic of China were

qualified to represent China at the Conference. He further stated that the delegation of the Union of Soviet Socialist Republics could not recognize credentials submitted on behalf of China by any other person and requested that these credentials should be considered as not valid.

4. The Chairman referred to the decision of the Board of Governors of the International Atomic Energy Agency at its 286th meeting on 5 March 1962 to convene an international conference on civil liability for nuclear damage in 1963 and to invite the Members of the Agency to participate in the Conference. As the Director General had, pursuant to the said decision, invited the Government of the Republic of China to attend the Conference, the only question within the competence of the Credentials Committee was whether the credentials issued by the Government of the Republic of China were in proper order. The Chairman then stated that, since these credentials were issued in accordance with the rule 3 of the rules of procedure, the proposal of the representative of the Union of Soviet Socialist Republics was out of order.

5. The representatives of the Union of Soviet Socialist Republics and Bulgaria challenged the Chairman's ruling. The representative of Bulgaria stated that his delegation associated itself with the position taken by the representative of the Union of Soviet Socialist Republics and did not recognize as valid any credentials issued on behalf of China other than those issued by the People's Republic of China.

The Committee upheld the Chairman's ruling by 6 votes to 2.

6. The representative of the United States of America reserved his Government's position in regard to the credentials of the Hungarian delegation.

7. The representatives of the Union of Soviet Socialist Republics and Bulgaria stated that the reservation made by the representative of the United States of America was groundless. Hungary is a member of the Board of Governors of the Agency and had been invited to participate in the Conference.

8. The Chairman proposed that the Credentials Committee should find the received credentials of all representatives in order, and submit to the Conference a report for its approval, taking note of the declarations of the delegates of States mentioned above in paragraph 2 (b, c) that their credentials will be submitted before the end of the Conference.

9. The proposal of the Chairman was adopted by the Committee.

10. The representative of the Union of Soviet Socialist Republics stated that his approval of the report on the credentials of the representatives at the Conference should not be interpreted as a change in his delegation's position in regard to the representation of China.

11. Accordingly, the Credentials Committee recommends that the Conference approve its report.

SUB-COMMITTEE ON EXCLUSION OF MATERIALS

(CN-12/CW/96, 13 May 1963, Original: English)

Report of the Chairman: E.K. Dadzie (Ghana)

After a thorough debate[1] on the amendment No. 16 contained in document CN-12/CW/1 the Committee of the Whole decided at its third meeting on 30 April 1963 to establish a Sub-Committee to examine the problem of exclusion of small quantities of nuclear material from the application of the Convention. The Sub-Committee was composed of Brazil, Czechoslovak Socialist Republic, Ghana, India, Japan, Sweden, Union of Soviet Socialist Republics, United Kingdom and the United States of America and met on Monday, 6 May 1963, on Wednesday, 8 May 1963 and on Thursday, 9 May 1963.

There was general agreement on the principle of excluding small quantities of nuclear material from the application of the Convention. Views differed, however, concerning the procedure for establishing standards and regulations governing the exclusion of small quantities as well as which body should assume this responsibility.

Two delegations emphasized that at present there are no internationally approved standards or recommendations on which the definition of small quantities could be based. Therefore it should, for the time being, be left to the Installation State to provide for such standards in its national legislation, as had already been done by some countries. If and where necessary the Installation State should come to an agreement with any other States concerned. These delegations were not against international standards per se, and even wished that such standards be established and internationally agreed, but felt unable to approve a text based on standards that were still unknown.

On the other hand, a number of delegations considered it important to avoid too far-reaching divergencies of national laws. It was therefore necessary that an effective control be placed upon the ability of the Installation State to exclude quantities of nuclear material from the coverage of the Convention. Accordingly the proposal to be adopted must include provision for the establishment by an international body of maximum limits for the exclusion of nuclear materials.

Many members of the Sub-Committee took the position that such maximum limits should be established by or under the auspices of the International Atomic Energy Agency.

One proposal was that standards should be established by the Board of Governors of the Agency.

Another proposal was that standards should be established by a scientific and/or legal panel to be convened by the Director General or the Board of Governors of the Agency and the terms of reference of which should be determined by the present Sub-Committee and incorporated in a resolution to be adopted by the Conference.

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[1] See document CN-12/CW/OR.3.

A further proposal was that the maximum limits should be established by a Committee composed of experts nominated by each Signatory. A later suggestion made on this proposal was that the earlier suggestion of a panel under the auspices of the International Atomic Energy Agency could guide the Committee of experts to be nominated by the Signatories.

Also discussed was a proposal that the findings of this Committee should be considered to have been accepted by the Contracting Parties unless a certain number of them (to be specified in the pertinent provision of the Convention) had communicated their disagreement to the Director General of the International Atomic Energy Agency within a certain period of time.

All these successive proposals were fully discussed in the Sub-Committee. Although each proposal obtained support, none was able to win unanimous approval. The Sub-Committee therefore took a vote on all proposals which were maintained by their sponsors and decided to submit to the Committee of the Whole the following proposal, which was that which secured the largest measure of support:

> "The Installation State may, if the small extent of the risks involved so warrants, exclude any small quantities of nuclear material from the application of this Convention, provided that maximum limits for the exclusion of such quantities are established by the Board of Governors of the International Atomic Energy Agency, and that any exclusion by an Installation State shall be within such established limits. The limits shall be reviewed periodically by the Board of Governors."

The two sentences of the proposal were voted separately. The first sentence was approved by 5 votes to 2 with 1 abstention and the second sentence (The limits shall be reviewed annually by the Board of Governors) was approved by 3 votes to 2 with 3 abstentions.

SUB-COMMITTEE ON RELATIONS WITH OTHER INTERNATIONAL AGREEMENTS

(CN-12/CW/104, 14 May 1963, Original: French)

Report of the Chairman: Mr. K. Petrželka (Czechoslovakia)

Mandate

1. At its seventh meeting, the Committee of the Whole decided to adjourn its debate on relations between the present Convention and other international agreements and to establish a sub-committee to consider this question together with the various proposals for drafting a new article on the subject[1]

[1] See CN-12/CW/OR. 6, paras. 2-30 and CN-12/CW/OR. 7, paras. 1-13.

Composition

2. The Sub-Committee met three times, on 7, 10 and 11 May 1963. It was composed of representatives of the following delegations:

Belgium	Philippines
Brazil	Romania
Czechoslovakia	Sweden
France	Switzerland
Federal Republic of Germany	Union of Soviet Socialist Republics
India	United Kingdom of Great Britain
Japan	and Northern Ireland
Netherlands	United States of America

Proposals submitted to the Sub-Committee

3. (a) The proposals and amendments falling under the terms of reference of the Sub-Committee and introduced before its establishment were listed in paragraph 2 of document CN-12/CW/SC.2/1, viz

CN-12/CW/1, amendment 37	Amendment to Article II, para. 5, submitted by the United Kingdom
CN-12/CW/5	Proposal by the United States of America for a new article, revised in document CN-12/CW/71
CN-12/CW/14	Proposal by Belgium for a new article
CN-12/CW/71	Proposal by the United States of America revising its proposal referred to in document CN-12/CW/5

(b) Two proposals were submitted subsequently:

CN-12/CW/SC.2/2	Proposal by the Federal Republic of Germany
CN-12/CW/SC.2/3	Proposal by Belgium

Method of Work

4. Since a general discussion of the problem had already taken place in the Committee of the Whole, the Sub-Committee agreed to the Chairman's proposal that it should immediately consider the main questions of substance, first, the relations of the present Convention with existing or future regional conventions (and more particularly the Paris Convention of 29 July 1960 and the supplemental Convention thereto signed at Brussels on 31 January 1963) and, secondly, its relations with transport conventions.

Relations with existing and future regional conventions

5. After a general discussion in which the Belgian delegation upheld its original amendment (CW/14)[2] and the United States delegation the second part of paragraph 1 of its amendment (CW/71)[3], it was agreed that these two delegations should submit a joint text. This was distributed as document CW/SC.2/3, having been submitted by the Belgian delegation with the support of the United States delegation, which therefore withdrew the text reproduced in footnote 3 below. The new draft was thus considered on its own merits, independently of document CW/71.

6. At the request of the USSR, Belgium and the United States of America agreed to the addition of the word "agreements" alongside the word "conventions". Consequently, the English version of the Belgian proposal read as follows:

> "The present Convention shall not affect agreements or conventions in the field of civil liability for nuclear damage having the same purposes, as regards the application of such agreements or conventions between States parties to them."

Before the vote, the Belgian delegation emphasized that, in its opinion, the words "as regards the application of . . ." in the English text were preferable to the words "qui continuent à s'appliquer. . ." in the French text, since the latter might suggest, quite incorrectly, that the authors of the amendment had intended to limit the scope of the text to existing conventions only.

7. One result of amending the Belgian proposal in this way was to widen its scope. It was no longer a matter merely of the relations between the present Convention and regional conventions, such as the Paris Convention, but of the relations between the present Convention and any agreement or convention relating to civil liability in the field of nuclear energy which had the same purpose.

8. Several members of the Sub-Committee pointed out that this new version did not eliminate all the difficulties of application arising out of the fact that the present Convention and the Paris Convention would be in force concurrently; in particular it does not solve the question, what happens when two different conventions are simultaneously applicable to the same incident.

Another member stated that he could not support this version which, like the original one (CW/14), implied that existing conventions, especially the Paris Convention, were superior or should in any event supersede the present Convention, even as between States which were parties to both Conventions; that opinion was not shared by all the parties to the two instruments in question. The same member was of the view that it would have been pre-

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[2] This amendment read as follows:

"The present Convention shall not modify previous regional conventions having the same object and accordingly applying only to the nations which have concluded them in their relations with one another."

[3] This second part read as follows:

"provided, however, that as between States which ratify or accede to it, this Convention shall not supersede the Paris Convention of July 29, 1960, on Third-Party Liability in the Field of Nuclear Energy and the Convention supplementary thereto of January 31, 1963, between these States."

ferable for the text of document CW/SC. 2/3 to form the subject of a separate protocol or, simply, of a reservation to the Convention rather than of a special article actually incorporated in it.

9. Despite these objections, the Belgian proposal contained in document CW/SC. 2/3, as amended by the USSR (see paragraph 6 above), was adopted by the Sub-Committee by 8 votes in favour and 2 against, with 1 abstention.

10. As a result of this vote, the representative of the Federal Republic of Germany withdrew his proposal contained in document CW/SC. 2/2.

Relations with transport conventions

11. There were two opposing views on this subject. Certain delegations considered that the system laid down by the present Convention was a special system and as such should, in all cases involving a nuclear incident, prevail over any other international instrument or agreement. This view was reflected in the United States amendment (CW/71), which read as follows:

> "1. As between States which ratify this Convention or accede to it, this Convention shall supersede any international convention or agreement between these States which is in force, open for signature, ratification or accession at the date on which this Convention is opened for signature, but only to the extent that such convention or agreement is in conflict with the Convention.
>
> 2. Nothing in this article shall affect the obligations of contracting States to non-contracting States arising under any international convention or agreement."

12. In the view of other delegations, the present Convention should not supersede international conventions except by application of the normal rules governing conflicts between treaties.

13. Some delegations, in particular that of the United Kingdom, considered it necessary to make express provision for a clause designed to safeguard existing transport conventions. This view was expressed in the United Kingdom amendment to Article II, paragraph 5 (CW/1, amendment 37), which read as follows:

> "Except as otherwise provided in this Convention, no person other than the operator shall be liable for nuclear damage. However, this provision shall not affect the application of any international convention in the field of transport in force or open for signature, ratification or accession at the date on which this Convention is opened for signature.

14. In the view of its supporters, this provision had the advantage of leaving to the victim the choice of a recourse action against the carrier, under the applicable transport conventions, or against the operator, under the rules of the Vienna Convention. The sponsors of the amendment emphasized that such a choice did not imply a double recourse. The provision also had the advantage of leaving it to the interested parties to decide themselves whether the transport conventions should be revised.

The following objections were raised to this amendment: the special system laid down in the Vienna Convention was the most satisfactory one which could be applied to nuclear incidents, even in the case of transport; the existence of an alternative system of recourse destroyed the basic prin-

ciple of channelling; finally, in certain circumstances the air or sea carrier might be unable to recover in full from the operator of the nuclear installation.

15. The Sub-Committee disregarded these objections and adopted, by 8 votes to 3, the United Kingdom proposal as set out in paragraph 13 above.

16. The Sub-Committee had thus carried out its mandate, on which its members had already agreed. However, at the express request of the United States representative and for the purpose of supplying the fullest possible information to the Committee of the Whole, the Sub-Committee, after discussing the matter, agreed, by 6 votes in favour and 3 against, with 1 abstention, to vote on two further points as well. It was agreed, however, that these votes should be purely platonic and that they could in no way be regarded as calling into question or affecting the decisions the Sub-Committee had already taken.

17. The first point to be voted on was the text of the United States amendment (CW/71), exclusive of the second part of paragraph 1 (see paragraph 11 above). The vote on this text was 3 in favour and 5 against, with 3 abstentions.

Subsequently, two delegates who were not present when the vote was taken informed the Secretariat, one that he would have voted in favour of the text and the other that he would have voted against it.

18. The second point on which a vote was requested by the United States delegation was worded as follows:

> "Apart from the Belgian amendment defining the relationship of the Vienna Convention to other conventions in the field of civil liability for nuclear damage, there should be no other clause defining any relation, neither the United States supersession clauses nor the British amendment to Article II, paragraph 5, starting with the word "However"."

The vote on this matter was 4 in favour and 7 against, with 3 abstentions.

19. The drafts adopted by the Sub-Committee are therefore those appearing in paragraphs 6 and 13 above.

SUB-COMMITTEE ON EXECUTION OF JUDGEMENTS

(CN-12/CW/94, 13 May 1963, Original: English)

Report of the Chairman: Dr. E. Zaldivar (Argentina)

1. Mandate

At its seventh meeting the Committee of the Whole decided to adjourn its debate on Article X of the Convention (Execution of Judgements) and to establish a Sub-Committee to consider all proposals related to this article.

2. Composition

The Sub-Committee convened on 7, 8 and 9 May 1963. It was composed of representatives of the following delegations:

Argentina	Norway
Belgium	Romania
Brazil	Turkey
Italy	Union of Soviet Socialist Republics
Japan	United Kingdom
Netherlands	United States of America

3. Proposals submitted to the Sub-Committee

(a) The proposals falling under the terms of reference of the Sub-Committee and introduced before its establishment were listed in paragraph 2 of document CN-12/CW/SC.3/1.
(b) Subsequently two amendments were submitted jointly by Norway and the United Kingdom under the reference CN-12/CW/SC.3/2 and 3.

4. Necessity of a clause

The first question which was discussed was whether there should be a clause on enforcement of judgements in the Convention. The Committee unanimously agreed that it should be so.

The Committee also unanimously agreed to the general principle that a final judgement entered by a court having jurisdiction under the Convention should be recognized in the territory of any other Contracting State. As to the question whether Judgement by Default should be mentioned specifically (see CW/1 No.114), it was agreed that the question might be referred to the Drafting Committee in view of the fact that some of the delegates were under the impression that the words "final judgements" were covering a judgement by default.

5. Method of Work

The Sub-Committee agreed that the various problems concerning the rec gnition and enforcement of judgements would not be discussed proposal by proposal but according to points of substance.

For simple ease of working the basic paper selected for discussion was CW/75, i.e. the joint Brazilian-United States proposal.

6. Consideration of the Proposals

The Committee then proceeded to examine the proposal submitted in document CN-12/CW/82 the aim of which was to expedite payment of the compensation by the persons liable. The Committee felt that the substance of this proposal was more closely related to recommendation than to obligation, that it was not exactly related to Execution of Judgements and that it should therefore not be taken into consideration by the Sub-Committee. It was pointed out by a delegate that the proposal should be discussed in the framework of Article XIII.

7. Exceptions

The first exception, "where the judgement was obtained by fraud", met with no objection.

The second exception, "where the operator was not given a fair opportunity to present his case" was amended, in order to take into account the objection contained in the amendment CW/1 No. 115, to read "where the party against whom the judgement is pronounced was not given a fair opportunity to present his case".

Amendment CW/SC. 3/2, proposed, with a view to reaching a compromise, that the exceptions should also include the case "where the judgement does not accord with internationally accepted fundamental standards of justice" and "where the judgement was given in respect of a cause of action which is contrary to public policy". The intentions behind this drafting were first to internationalize the fundamental standards of justice in order to make them acceptable to everyone, and second to limit the scope of "ordre public". The Committee felt, however, that internationalizing the fundamental standards of justice would be of no help as the concept of fundamental standards of justice only has a meaning in a given municipal system. Furthermore the limitations proposed to be attached to "ordre public" were not understood in view of the difficulty of translating the English phrase "in respect of a cause of action which is contrary to public policy".

The following was stressed in favour of the public policy concept: it is the usual practice and it was recognized specifically in the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards whose Article V, paragraph 2(b), mentions public policy as an exception. Against this concept some delegates invoked its vagueness and changing character.

Finally both the concept of the fundamental standards of justice and public policy as appearing in (iii) of CW/75 were accepted by the majority. Some members insisted on having the concept of public policy limited or narrowed in some way, but their proposal as appearing in CW/SC. 3/2 was rejected.

8. No further proceedings on the merits

By rejecting CW/SC. 3/2, the Committee accepted paragraph 3 as it now stands in CW/75.

9. Recognition

Paragraph 2 of the CW/75 was also accepted unanimously.

A point of drafting was raised by one delegate to the effect that this paragraph should speak not of "a final judgement which is recognized" but of "a kind of judgement which is recognizable". The point was considered to be one of drafting although the majority felt that the logic of the Article required that the text should be left as it was.

10. Case where total compensation awarded by judgements exceeds the limit of Article IV

Two amendments, CW/SC. 3/3 and CW/1 No. 114 paragraph 4, were considered in this regard.

The Committee considered that these two amendments merited discussion, but not in the framework of Article X concerning the Execution of Judgements. It was left to the delegations concerned to take the matter up in the Plenary should it be necessary to do so.

11. Text proposed by the Committee

1. A final judgement entered by a court having jurisdiction under [this Convention or under Article IX of this Convention] shall be recognized in the territory of any other contracting State, except:
   (i) where the judgement was obtained by fraud, or
   (ii) where the party against whom the judgement is pronounced was not given a fair opportunity to present his case, or
   (iii) where the judgement is not in accord with fundamental standards of justice or is contrary to the public policy of the contracting State in which recognition is sought.
2. A final judgement which is recognized shall, upon being presented for enforcement in accordance with the formalities required by the law of the contracting State where enforcement is sought, be enforceable as if it were a judgement of a court of that State.
3. The merits of a claim on which the judgement has been given shall not be subject to further proceedings.

12. Method of referring to jurisdiction

It will be seen from the text adopted that the Committee did not decide on the method of referring to the court having jurisdiction. Some delegations believed that reference should be made in this regard not only to Article IX of the Convention but to the whole Convention, in view of the fact that other articles of the Convention may give competence to some other courts.

PROPOSALS AND AMENDMENTS SUBMITTED IN THE COMMITTEE OF THE WHOLE

DOCUMENT CN-12/CW/1, 12 April 1963, Original: English, French, Spanish

DOCUMENT CN-12/CW/1 No. 1
United Kingdom: amendment to title

The title of the Convention should be: "Convention on the Liability of Operators of Nuclear Installations".

DOCUMENT CN-12/CW/1 No. 2
Philippines: amendment to Article I (opening clause)

Insert: "For purposes of this Convention and except when otherwise therein provided,"

DOCUMENT CN-12/CW/1 No. 3
Norway: amendment to Article I, paragraph 2.

Delete the following words in the end of the paragraph: "but does not include radioisotopes outside a nuclear installation which are employed or intended to be employed for medical, scientific, agricultural, commercial or industrial uses." (cf. amendment proposed to Article I para. 3 (b)).

DOCUMENT CN-12/CW/1 No. 4
United Kingdom: amendment to Article I, paragraph 2

Substitute the following definition of "radioactive products or waste"; "'Radioactive products or waste' means any radioactive material made radioactive by exposure to the radiation incidental to, the production or utilization of nuclear fuel, but does not include radioisotopes which have reached the final stage of fabrication so as to be usable for medical, scientific, agricultural, commercial or industrial uses."

DOCUMENT CN-12/CW/1 No. 5
Norway: amendment to Article I, paragraph 3

Litra (b) should read: "(b) radioactive products or waste, except radioisotopes which have reached the final stage of fabrication so as to be usable

Note: Amendments and proposals relating to the draft articles adopted by the Intergovernmental Committee on Civil Liability for Nuclear Damage at its second series of meetings (CN-12/2), which were submitted before the Conference was convened, were reproduced in document CN-12/CW/1 which contains 126 amendments or proposals. These were, in part, accompanied by explanations which, however, are not reproduced in the final records.

Amendments and proposals submitted during the Conference are contained in series CN-12/CW/2 to 114.

for being employed for medical, scientific, agricultural, commercial, industrial or similar particular uses."

DOCUMENT CN-12/CW/1 No. 6
Sweden: amendment to Article I, paragraph 3

Delete the words: "capable of producing energy by a self-sustaining process of nuclear fission outside a nuclear reactor by itself or in combination with some other material."

DOCUMENT CN-12/CW/1 No. 7*
Federal Republic of Germany: amendment to Article I, paragraph 5.

Insert the following sub-paragraph: "(d) Such other installations in which there are nuclear fuel or radioactive products or waste as the Board of Governors of the International Atomic Energy Agency (hereinafter referred to as the "Board of Governors") shall from time to time determine."

DOCUMENT CN-12/CW/1 No. 8
Norway: amendment to Article I, paragraph 5

Litra (c) should read: "(c) any facility for the storage of nuclear material;" (cf. amendment proposed to Article II para.1 (b) (ii)).

DOCUMENT CN-12/CW/1 No. 9
South Africa: amendment to Article I, paragraph 5

Insert after the words "nuclear material" the words: "other than radioisotopes which are employed or intended to be employed for medical, scientific, agricultural, commercial or industrial uses."

DOCUMENT CN-12/CW/1 No. 10
United Kingdom: amendment to Article I, paragraph 5

Substitute sub-paragraph (c) by the following: "(c) any installation for the storage of nuclear material other than storage incidental to the carriage of such material;"

DOCUMENT CN-12/CW/1 No. 11
United States of America: amendment to Article I, paragraph 5

Delete proviso at end of paragraph.

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* See also documents CN-12/CW/34 and CN-12/CW/47.

DOCUMENT CN-12/CW/1 No. 12
Denmark: amendment to Article I, paragraph 6

Add the following: "However, in the case of storage incidental to the carriage of nuclear material the operator of the place of storage shall, as far as the provisions of paragraph 1 of Article II are concerned, not be considered an operator of a nuclear installation."

DOCUMENT CN-12/CW/1 No. 13
Norway: amendment to Article I, paragraph 6

Add the following as a new second sub-paragraph: " 'Operator', in relation to a nuclear power plant with which a means of transport is equipped, means the person designated or recognized as the operator of that nuclear power plant by the State by which or under the authority of which the nuclear power plant is operated." (cf. Article II para.1 (b) (i) and (c) (i)).

DOCUMENT CN-12/CW/1 No. 14
Federal Republic of Germany: amendment to Article I, paragraph 9

At the end of the first sentence, add the following words: "or, if the law of the Installation State so provides, other ionizing radiation emanating from any other source of radiation inside the nuclear installation."

DOCUMENT CN-12/CW/1 No. 15
Federal Republic of Germany: amendment to Article I

Add at the end of Article I the following paragraph; "The Board of Governors may, if in its view the small extent of the risk involved so warrants, exclude any nuclear installation, nuclear fuel or nuclear material from the application of this Convention."

DOCUMENT CN-12/CW/1 No. 16
United Kingdom: amendment to Article I

Add at the end of Article I the following paragraph: "The ... may, if in its view the small extent of the risks involved so warrants, exclude, subject to such conditions as it may think fit, any class or quantity of nuclear material from the application of this Convention."

DOCUMENT CN-12/CW/1 No. 17
United Kingdom: amendment to Article I

Add the following paragraph: " 'National of a Contracting Party' includes a Contracting Party or any of its constituent sub-divisions or a partnership or any public or private body whether corporate or not established in the territory of a Contracting Party".

DOCUMENT CN-12/CW/1 No. 18
Argentina: amendment to Article I A

Delete this Article.

DOCUMENT CN-12/CW/1 No. 19
Canada: amendment to Article I A

Delete the words "to nuclear incidents that occur or". The Article would then read: "This Convention shall not apply to nuclear damage that is suffered in the territory of a non-contracting Party, unless the law of the Installation State so provides."

DOCUMENT CN-12/CW/1 No. 20
Federal Republic of Germany: amendment to Article I A

The words "non-contracting Party" should be replaced by "non-contracting State". A State which does not sign the Convention is no "Party" to the Convention.

DOCUMENT CN-12/CW/1 No. 21
Norway: amendment to Article I A

This Article should read as follows: "Except in regard to rights of recourse referred to in Article VII, paragraph 2(x), this Convention shall not apply to nuclear incidents that occur or to nuclear damage that is suffered in the territory of a non-contracting State, unless the law of the competent court otherwise provides." (cf. Article II, para. 1 (b) (iii) and (c) (iii) and amendments proposed to Article VII, para. 2).

DOCUMENT CN-12/CW/1 No. 22
Philippines: amendment to Article I A

Redraft this Article as follows: "This Convention shall apply to (a) nuclear incidents that occur in the territory of a non-contracting Party in the course of the shipment of nuclear material to or from Contracting Parties, or (b) nuclear damage that is suffered in such territory, only if the Installation State specifically so provides by legislation."

DOCUMENT CN-12/CW/1 No. 23
United Kingdom: amendment to Article I A

Substitute the following: "1. This Convention shall not apply to nuclear incidents that occur or to nuclear damage that is suffered in the territory of a non-Contracting State, unless the law of the Installation State so provides or except in regard to the rights referred to in paragraph 2 of this Article. 2. Where a nuclear incident occurs or nuclear damage is suffered

in the territory of a non-Contracting State any person who is a national of a Contracting Party, other than the operator, and who has paid compensation in respect of such incident or damage shall, up to the amount which he has paid, acquire the rights which the person so compensated would have enjoyed, had this Convention applied, against the operator who, but for the provisions of paragraph 1 of this Article, would have been liable."

DOCUMENT CN-12/CW/1 No. 24
Philippines: proposal to add a new article (after Article I A)

Insert the following: "1. Where a nuclear installation is owned, operated or maintained by Contracting Parties through, or by means of an international organization, such Contracting Parties shall designate which among them will assume the rights and responsibilities of the Installation State and of the operator under this Convention with respect to the nuclear installation. Such designation shall be made by transmitting a written certification thereof to the Director General of the International Atomic Energy Agency. The Contracting Party so designated shall be deemed the Installation State and/or the operator, as the case may be, for all purposes of this Convention. 2. If, for any reason, no designation is made of the Installation State or the operator as required in paragraph 1 of this Article, the following rules shall apply: (a) the Installation State shall be (i) the Contracting Party under whose law the installation is subject as provided in the organic charter of the international organization or other convention entered into by the Member States of the international organization or, (ii) if there is no such provision, the Contracting Party on whose territory that installation is situated or, (iii) in case of default thereof or if the installation is not situated on the territory of any State, each Contracting Party that is a member of the international organization by which or under the authority of which the nuclear installation is operated; (b) each and every Contracting Party that is a member of the international organization shall be deemed the operator in the same manner and to the same extent as a State individually owning, operating or maintaining a nuclear installation."

DOCUMENT CN-12/CW/1 No. 25
Netherlands: amendment to Article II, paragraph 1

Substitute the following for sub-paragraphs (b) and (c):
"b) involving nuclear material coming from or originating in his nuclear installation and occurring
(i) before the nuclear material has entered the territory of another State, if it has been sent to a person within the territory of that State, or in other cases,
(ii) before physical control over the nuclear material has been assumed by the operator of another nuclear installation or the operator of any nuclear reactor with which a means of transport is equipped for use as a source of power, if such material is intended for use in such installation or reactor.

(c) involving nuclear material sent to his installation with his approval and occurring

(i) after the nuclear material has left the territory of a non-contracting State or has entered the territory of the State on which his installation is situated, or in other cases,

(ii) after physical control over the nuclear material has been assumed by him."

DOCUMENT CN-12/CW/1 No. 26

Norway: amendment to Article II, paragraph 1

In paragraph 1 litra (b) (i) and litra (c) (i) the words "the operator of any nuclear reactor with which a means of transport is equipped for use as a source of power, whether for propulsion thereof or for any other purpose" should be substituted by the following:

"the operator of a nuclear power plant with which a means of transport is equipped". (cf. amendment proposed to Article I para. 6)

Litra (b) (ii) of paragraph 1 should read as follows:

"(ii) in the absence of such express terms, before such operator has taken charge of the nuclear material; however, where the nuclear material is in the course of carriage, it shall in this respect be left out of consideration that the material, incidental to the carriage, may have been taken in charge by the operator of a nuclear installation referred to in Article I paragraph 5 (c); or" (cf. amendment proposed to Article I para. 5 (c)).

DOCUMENT CN-12/CW/1 No. 27

Philippines: amendment to Article II, paragraph 1

Redraft paragraph 1 (b) (i) and (ii) as follows:

"(i) before liability with regard to nuclear incidents caused by such material has been assumed pursuant to the express terms of a contract in writing by the operator of another nuclear installation; or

(ii) before such operator, in the absence of such express terms, or the operator of any nuclear reactor with which a means of transport is equipped for use as a source of power, whether for propulsion thereof or for any other purpose, has taken charge of the nuclear material; or"

Consequently, paragraph 1 (c) (i) and (ii) would have to be revised as follows:

"(i) after liability with regard to nuclear incidents caused by such material has been assumed by him from the operator of another nuclear installation, pursuant to the express terms of a contract in writing; or

(ii) after he has taken charge of the nuclear material from such other operator, in the absence of such express terms, or from the operator of a nuclear reactor with which a means of transport is equipped for use as a source of power, whether for propulsion thereof or for any other purposes; or"

The words "under a contract with him" appearing at the end of paragraph 1 (c) (iii) should be deleted.

DOCUMENT CN-12/CW/1 No. 28

South Africa: amendment to Article II, paragraph 1

Insert the words

"if such material is intended for use in such reactor" after the word "purpose" where it occurs in sub-paragraph b (i).

DOCUMENT CN-12/CW/1 No. 29
South Africa: amendment to Article II, paragraph 2

Add the following at the end of the paragraph:

"and for the purpose of paragraph 1 any vehicle or place of storage operated by him shall be considered to be a nuclear installation."

DOCUMENT CN-12/CW/1 No. 30
Canada: amendment to Article II, paragraph 3

Delete the 2nd and 3rd sentences of paragraph 3 of this Article and substitute, "Where nuclear damage engages the liability of more than one operator and the damage attributable to each operator is not reasonably separable, the operators involved shall be jointly and severally liable for such damage. However, the liability of any one operator shall not exceed the limit laid down in Article IV".

DOCUMENT CN-12/CW/1 No. 31*
Philippines: amendment to Article II, paragraph 3

The clause "and the damage attributable to each operator is not reasonably separable" should be deleted.

DOCUMENT CN-12/CW/1 No. 32
Sweden: amendment to Article II, paragraph 3

1) The first sentence of the present paragraph 3 should become paragraph 3 and should be amended to read as follows:

"If and to the extent that nuclear damage engages the liability of more than one operator, the operators involved shall be jointly and, except as otherwise provided in paragraph 4 of this Article, severally liable for such damage."

2) The provisions of the second and third sentences should be separated from the provision of the first sentence and should therefore be contained in a new paragraph 4, which should be amended to read as follows:

"Where a nuclear incident occurring in the course of carriage and involving nuclear material on one and the same means of transport, or a nuclear incident occurring in one and the same place of storage incidental to carriage, gives rise to liability of more than one operator, the total liability shall not exceed the highest individual amount applicable pursuant to Article IV. In neither case shall the liability of any one operator exceed the amount applicable with respect to him pursuant to Article IV".

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* See also document CN-12/CW/49.

DOCUMENT CN-12/CW/1 No. 33
Denmark: amendment to Article II, paragraph 4

Insert after the words: "Subject to the provisions of paragraph 3" "and the proviso of paragraph 5 in Article I", and replace the words "laid down in Article IV" by the words "established pursuant to".

DOCUMENT CN-12/CW/1 No. 34
Denmark: amendment to Article II, paragraph 5

This paragraph should read as follows:

"Where the operator is liable for nuclear damage under this Convention, or, but for the provisions of Article V would have been liable, no person other than the operator shall be liable for such damage except as otherwise provided in the Convention".

DOCUMENT CN-12/CW/1 No. 35
Philippines: amendment to Article II, paragraph 5

This paragraph should be reworded as follows:

"Except as otherwise provided in paragraph 2 of this Article no person other than the operator shall be liable for nuclear damage."

DOCUMENT CN-12/CW/1 No. 36
Sweden: amendment to Article II, paragraph 5

This paragraph should be amended to read as follows:

"Except as otherwise provided in this Convention, no person other than the operator shall be liable for nuclear damage for which the operator is or, but for the provisions of Article V, would have been liable under this Convention".

DOCUMENT CN-12/CW/1 No. 37
United Kingdom: amendment to Article II, paragraph 5

Substitute the following:

"Except as otherwise provided in this Convention, no person other than the operator shall be liable for nuclear damage. However, this provision shall not affect the application of any international Convention in the field of transport in force or open for signature, ratification or accession at the date on which this Convention is opened for signature."

DOCUMENT CN-12/CW/1 No. 38
Canada: amendment to Article II, paragraph 6

Delete paragraph 6 in its entirety.

DOCUMENT CN-12/CW/1 No. 39
Netherlands: amendment to Article II, paragraph 6

Delete this paragraph.

DOCUMENT CN-12/CW/1 No. 40
Philippines: amendment to Article II, paragraph 6

This paragraph should be eliminated.

DOCUMENT CN-12/CW/1 No. 41
Sweden: amendment to Article II, paragraph 6

1) This paragraph should be deleted.

2) If this proposal should not meet with general acceptance, substitute "provided that" for "if" in the first sentence, and add as a new subparagraph (c) the following:

"(c) no assets of such persons may be seized or arrested and no measures of execution may be exercised against such assets on account of any claim for compensation for nuclear damage", and substitute "the law of the competent court" for "the law of the Installation State".

DOCUMENT CN-12/CW/1 No. 42
United Kingdom: amendment to Article II, paragraph 6

Delete this paragraph.

DOCUMENT CN-12/CW/1 Nos. 43 and 44
Philippines: amendment to Article II, paragraph 7

This paragraph should be deleted.

If, however, the majority of nations in the Conference decide to adopt this provision, it is suggested that the same be redrafted as follows:

"An action for compensation for nuclear damage may lie against the insurer or other person except the Installation State who has provided financial security to the operator pursuant to paragraph 1 of Article VI, if the law of the competent court so provides."

DOCUMENT CN-12/CW/1 No. 45
Sweden: amendment to Article II, paragraph 7

Amend this paragraph to read as follows:

"Direct action shall lie against any person providing financial security in accordance with Article VI, if the law of the competent court so provides; where the Installation State itself has provided such financial security, this shall not, however, entitle a claimant to bring action against the Installation State before the courts of another State."

DOCUMENT CN-12/CW/1 No. 46
United States of America: amendment to Article II, paragraph 7

Delete this paragraph.

DOCUMENT CN-12/CW/1 No. 47
Philippines: amendment to Article II

A new paragraph should be added under this Article which shall read as follows:

"Subject to the provision of paragraph 3, in case of joint and several liability:

(a) Each operator shall have a right of contribution against the others in proportion to the amount of damage attributable to each of them;

(b) Where the proportional amount of damage attributable to each operator cannot be reasonably determined, the total liability shall be borne in equal shares.

DOCUMENT CN-12/CW/1 No. 48
Netherlands: amendment to Article II A

Insert at the end: "The certificate shall further indicate when the liability will be assumed by the operator of another nuclear installation or the operator of a reactor with which a means of transport is equipped for use as a source of power and the name and address of that operator."

DOCUMENT CN-12/CW/1 No. 49
South Africa: amendment to Article II A

Substitute for the words "the carrier", where they occur in the first sentence, the words "any carrier employed by him."

DOCUMENT CN-12/CW/1 No. 50
Sweden: amendment to Article II A

Insert after "Convention" in the first line the following words: " – – – in respect of nuclear incidents occurring in the course of carriage of nuclear material – – " (drafting change only).

DOCUMENT CN-12/CW/1 No. 51
United States of America: amendment to Article II A

Add at end of paragraph "and the certificate is approved by the Installation State".

DOCUMENT CN-12/CW/1 No. 52
South Africa: amendment to Article III, paragraph 1

Substitute the following: "The absolute liability of the operator for nuclear damage in terms of Article II shall arise upon proof that such damage has been caused by a nuclear incident."

DOCUMENT CN-12/CW/1 No. 53
Sweden: amendment to Article III, paragraph 1

This paragraph should be amended to read as follows: "Liability of the operator under this Convention for nuclear damage shall arise irrespective of fault on the part of the operator."

DOCUMENT CN-12/CW/1 No. 54
United States of America: amendment to Article III, paragraph 1

Substitute the following for this paragraph: "The liability of the operator for nuclear damage under Article II shall be absolute, upon proof that such damage has been caused by a nuclear incident."

DOCUMENT CN-12/CW/1 No. 55
United Kingdom: amendment to Article III, paragraph 2

Substitute the following: "Where the operator proves that the nuclear damage resulted wholly or partly from the fault of the person suffering the damage, the competent court may, if its law so provides, reduce the amount of compensation recoverable in respect thereof."

DOCUMENT CN-12/CW/1 No. 56
United States of America: amendment to Article III, paragraph 2

Add at the beginning of this paragraph the phrase "Subject to Article VIII, sub-paragraph (a)."

DOCUMENT CN-12/CW/1 No. 57
Argentina: amendment to Article III, paragraph 3

Replace the words "State whose court is competent" by "Installation State". If this is not adopted employ wording used in Article VIII of the Brussels Convention.

DOCUMENT CN-12/CW/1 No. 58
Canada: amendment to Article III, paragraph 3

Delete paragraph 3 of this Article and substitute the following: "No liability under this Convention shall attach to an operator in respect of nuclear damage caused by a nuclear incident directly due to an act of war, hostilities, civil war or insurrection."

DOCUMENT CN-12/CW/1 Nos. 59 and 60
Philippines: amendments to Article III, paragraph 3

Substitute "legislation of the State whose court is competent" with "law of the competent court."

Delete the words "or a grave national disaster of an exceptional character" appearing in this paragraph.

DOCUMENT CN-12/CW/1 No. 61
South Africa: amendment to Article III, paragraph 3

Delete the words "with respect to a nuclear incident" in the second line, and re-word as follows: "Except insofar as the legislation of the State whose court is competent may provide, the operator shall not be exonerated from liability under this Convention for nuclear damage directly due to an act of armed conflict, invasion, civil war, insurrection, or a grave national disaster of an exceptional character."

DOCUMENT CN-12/CW/1 No. 62
United Kingdom: amendment to Article III, paragraph 3

Substitute the following two paragraphs: "3. No liability under this Convention shall attach to an operator in respect of nuclear damage caused by a nuclear incident directly due to an act of war, hostilities, civil war, revolution, rebellion or insurrection.

3 A. Except in so far as the law of the competent Court may provide to the contrary the operator shall not be liable for nuclear damage caused by a nuclear incident directly due to a grave natural disaster of an exceptional character."

DOCUMENT CN-12/CW/1 No. 63
United States of America: amendment to Article III, paragraph 3

Delete the phrase "grave natural disasters of an exceptional character."

DOCUMENT CN-12/CW/1 No. 64
United States of America: amendment to Article III, paragraph 4

Delete "by a nuclear incident or".

DOCUMENT CN-12/CW/1 No. 65
Philippines: amendment to Article III, paragraph 5

• On the second line of sub-paragraph (b) between the comma after "however" and the word "provided," insert "subject to paragraph 2 of Article III".

DOCUMENT CN-12/CW/1 No. 66
Sweden: amendment to Article III, paragraph 5

This provision should be amended to read as follows: "Except as regards the liability of any individual having caused the damage by an act or omission done with intent to cause damage, neither the operator nor any other person shall incur liability for nuclear damage
(a) to the nuclear installation itself or to any property held by the operator or in his custody or under his control in connection with and at the site of his installation; or (b) to the means etc. (present text) – – – US $– – million."

DOCUMENT CN-12/CW/1 No. 67
United Kingdom: amendment to Article III, paragraph 5

Substitute "(a) to the nuclear installation itself or to property held by the operator or in his custody or under his control in connection with, and at the site of, his installation; or "

DOCUMENT CN-12/CW/1 No. 68
United States of America: amendment to Article III, paragraph 5

At the end of this paragraph change the language "to an amount less than US $....million" to "to an amount less than the amount established in conformity with Article IV, paragraph 1."

DOCUMENT CN-12/CW/1 Nos. 69 and 70
Philippines: amendment to Article IV, paragraph 1

The figure of US $20 million as the minimum limit of liability is suggested.

Add to the end of the sentence the following words: "notwithstanding that the nuclear incident may have resulted from any fault or negligence of the operator."

DOCUMENT CN-12/CW/1 No. 71
United Kingdom: amendment to Article IV, paragraph 2

Delete this provision.

DOCUMENT CN-12/CW/1 No. 72
Federal Republic of Germany: amendment to Article V, paragraph 1

Delete the words "under the law of the Installation State" at the beginning and the end of second phrase.

DOCUMENT CN-12/CW/1 No. 73
Norway: amendment to Article V, paragraph 1

The first sentence should read as follows:

"Rights of compensation for nuclear damage under paragraphs 1, 2, 6 and 7 of Article II and rights of recourse under paragraph 2 of Article VII shall be extinguished if an action is not brought within ten years from the date of the nuclear incident."

DOCUMENT CN-12/CW/1 No. 74
Philippines: amendment to Article V, paragraph 1

Redraft this paragraph so as to read as follows:

"Rights of compensation under this Convention shall be extinguished if an action is not brought within ten years from 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 State indemnification for a period longer than ten years rights of compensation against the operator shall be extinguished only upon expiration of the period for which his liability is so covered under the law of the Installation State. However, such extension of the extinction period shall in no case affect the right 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 the aforesaid period of ten years."

DOCUMENT CN-12/CW/1 No. 75
Netherlands: amendment to Article V, paragraph 2

Substitute the following: "Where nuclear damage is caused by nuclear material which was stolen, lost, jettisoned or abandoned, the period established under paragraph 1 shall be computed from the date of the nuclear incident causing the nuclear damage, but the period shall in no case exceed a period of twenty years from the date of the theft, loss, jettison or abandonment."

DOCUMENT CN-12/CW/1 No. 76
Norway: amendment to Article V, paragraph 2

Paragraph 2 should read (as Article V paragraph 2 of the Brussels Convention on nuclear ships): "Where nuclear damage is caused by nuclear material which was stolen, lost, jettisoned or abandoned, the period established under paragraph 1 shall be computed from the date of the nuclear incident causing the nuclear damage, but the period shall in no case exceed a period of twenty years from the date of the theft, loss, jettison or abandonment as the case may be."

DOCUMENT CN-12/CW/1 No. 77
Sweden: amendment to Article V, paragraph 2

Insert after "material which" the words "at the time of the nuclear incident" (drafting change only).

DOCUMENT CN-12/CW/1 No. 78
United States of America: amendment to Article V, paragraph 2

This paragraph should be revised to read: "Where nuclear damage is caused by nuclear material which was stolen, lost, jettisoned, or abandoned, the period established under paragraph 1 shall be computed from the date of the nuclear incident causing the nuclear damage, but the period shall in no case exceed a period of twenty years from the date of the theft, loss, jettisoning or abandonment as the case may be".

DOCUMENT CN-12/CW/1 No. 79
United Kingdom: amendment to Article V, paragraph 4

Substitute the following: "Unless the law of the competent Court otherwise provides, any person who claims to have suffered nuclear damage and who has brought an action for compensation within the period applicable under this Article may amend his claim to take into account any aggravation of the damage, even after the expiry of that period, provided final judgment has not been entered."

DOCUMENT CN-12/CW/1 No. 80
United States of America: amendment to Article V, paragraph 4

Delete "bring a new action before expiry of that period if final judgment has already been entered, or".

DOCUMENT CN-12/CW/1 No. 81
Denmark: amendment to Article V,

A new paragraph should be inserted, dealing with the cases where Article IX, paragraph 3 (iii) applies, cf. the OEEC Convention Article 8 (b).

DOCUMENT CN-12/CW/1 No. 82
Argentina: amendment to Article VI

Insert "Provinces" after "Republics".

DOCUMENT CN-12/CW/1 No. 83
Philippines: amendment to Article VI

Redraft as follows: "However, nothing in paragraph 1 shall require a Contracting Party or any of its constituent subdivisions, such as States, Republics or Cantons, directly operating as such a nuclear installation, to maintain insurance or other financial security to cover their liability as operators."

DOCUMENT CN-12/CW/1 No. 84
Philippines: amendment to Article VII, paragraph 1

Redraft as follows: "Where provisions of national or public health insurance, social insurance, social security, workmen's compensation or occupational disease compensation systems include compensation for nuclear damage, rights of beneficiaries of such systems to compensation under this Convention shall not be impaired but only to the extent that the damage suffered by them is not compensated under these systems. Rights of recourse by virtue of the aforementioned systems shall be determined by the law of the Contracting Party in which such systems have been established, or the regulations of the intergovernmental organization having established such systems. In no event shall the liability of the operator pursuant to Article IV be exceeded."

DOCUMENT CN-12/CW/1 Nos. 85 and 86
United States of America: amendment to Article VII, paragraph 1

Revise the proviso clause at the end of this paragraph to read "provided that only the operator and persons under Article II, paragraph 6, shall be liable and provided, further, that the liability of the operator and such persons shall be subject to the conditions of Article IV and Article II, paragraph 6."

Add to end of paragraph: "Nothing in this paragraph shall permit the establishment of prior rights among claims."

DOCUMENT CN-12/CW/1 No. 87
Argentina: amendment to Article VII, paragraph 2

Delete paragraph.

DOCUMENT CN-12/CW/1 Nos. 88 and 89
Denmark: amendment to Article VII, paragraph 2

Subparagraph (a) of paragraph 2, 1st sentence, should be replaced by the following: "If a person other than the operator has paid compensation for nuclear damage under an International Convention or under the law of a non-contracting State, such person shall, up to the amount which he has paid, and within the limitation established pursuant to Article IV, have a right of recourse against the operator liable for that damage."

Add a new subparagraph: "The rights provided for in subparagraph (a) shall be extinguished according to the provisions of paragraphs 1 and 2 of Article V. If a period of extinction or prescription is established according to paragraph 3 of Article V, such period may, in respect of such rights, not be computed from a date earlier than the date when the liability of such person has been established by judgement or amicable settlement."

DOCUMENT CN-12/CW/1 Nos. 90 and 91
Federal Republic of Germany: amendment to Article VII, paragraph 2

The words "non-contracting Party" should be replaced by "non-contracting State" in subparagraph (a).

Delete the words "in this paragraph" in subparagraph (c).

DOCUMENT CN-12/CW/1 Nos. 92 and 93
Norway: amendment to Article VII, paragraph 2

Paragraph 2 litra (a) should read as follows: "(a) If a person, other than the operator, who is a national of or has his habitual residence in the territory of a Contracting State has paid compensation for nuclear damage under an international Convention referred to in Article Z or under the law of a non-contracting State, such person shall, up to the amount which he has paid, have a right of recourse against the operator to the extent that the operator would have been held liable for such damage in an action for compensation against him in accordance with this Convention. However, NO RIGHTS shall be so acquired by any person to the extent that the operator has a right of recourse or contribution against such person under this Convention. The law of the competent court may subject the recourse action to a particular extinction or prescription within the periods established in or pursuant to Article V paragraph 1, 2 and 4."

Add the following as a new litra (x) in paragraph 2 immediately after litra (a): "(x) Where a nuclear incident occurs in the territory of a non-contracting State or nuclear damage is suffered in such territory, any person who is a national of or has habitual residence in the territory of a Contracting State, shall have a right of recourse for any sum which he is liable to pay in respect of such incident or damage, within the limitations of amount and in time established in or pursuant to Article IV and Article V, against the operator, who, but for the provisions of Article I A, would have been liable in accordance with this Convention. However, no rights shall be so acquired by any person to the extent that the operator has or, but for the provisions of Article I A, would have had a right of recourse or contribution against such person under this Convention. The law of the competent court may subject the recourse action to a particular extinction or prescription within the periods established in or pursuant to Article V paragraphs 1, 2 and 4."

DOCUMENT CN-12/CW/1 No. 94
United Kingdom: amendment to Article VII, paragraph 2

Delete subparagraph (c).

DOCUMENT CN-12/CW/1 No. 95
United States of America: amendment to Article VII, paragraph 2

Revise the phrase "under an International Convention" to read "under an International Convention not superseded by this Convention" in subparagraph (a).

DOCUMENT CN-12/CW/1 No. 96
Philippines: amendment to Article VIII

Sub-paragraph (a) should be redrafted as follows: "(a) If the nuclear incident results from an act or omission done with intent to cause damage

or from gross negligence; provided, however, that there shall be no right of recourse if the act or omission or negligence was done by a servant or agent and the person employing such servant or agent proves that he took all proper measures to prevent the damage or that such servant or agent was acting outside the scope of his employment or authority."

DOCUMENT CN-12/CW/1 No. 97
Sweden: amendment to Article VIII

Add following to subparagraph (c):

"– – – (carrier's control) and provided that, subject to the foregoing provisions of this Article, recourse against the carrier may be exercised only if and to the extent that the carrier, but for the provisions of paragraph 5 of Article II, would have been liable towards the person suffering the damage."

DOCUMENT CN-12/CW/1 Nos. 98 and 99
United Kingdom: amendment to Article VIII

Add at the end of subparagraph (b) "in writing".
Delete subparagraph (c).

DOCUMENT CN-12/CW/1 No. 100
United States of America: amendment to Article VIII

Delete sub-paragraph (c).

DOCUMENT CN-12/CW/1 No. 101
Canada: amendment to Article IX, paragraph 1

Delete paragraph 1 and substitute the following:

"1. Except as otherwise provided in this Article, jurisdiction over actions for compensation for nuclear damage under paragraphs 1, 2, 6 and 7 of Article II shall lie only with the courts of the Contracting Party on whose territory nuclear damage has been sustained."

CN-12/CW/1 No. 102
Norway: amendment to Article IX, paragraph 1

Add the following as a new second sentence in paragraph 1:

"The same applies to jurisdiction over recourse actions under paragraph 2 of Article VII."

DOCUMENT CN-12/CW/1 No. 103
Canada: amendment to Article IX, paragraph 2

Delete paragraph 2 and substitute the following:

"Where the nuclear damage has been sustained on the territory of more than one Contracting Party or, subject to Article I A, outside the territory of any Contracting Party, jurisdiction over actions for compensation for nuclear damage shall lie with the courts of the Installation State of the operator liable."

DOCUMENT CN-12/CW/1 No. 104
Denmark: amendment to Article IX, paragraph 2

Insert in the second line before the word "outside" the word "entirely".

DOCUMENT CN-12/CW/1 No. 105
Argentina: amendment to Article IX, paragraph 3

Delete sub-paragraph (iii).

DOCUMENT CN-12/CW/1 No. 106
Canada: amendment to Article IX, paragraph 3

Delete sub-paragraph (i) and substitute the following:

"(i) with the courts of that Installation State in which the damage was partly sustained, or"

DOCUMENT CN-12/CW/1 No. 107
Philippines: amendment to Article IX, paragraph 3

Sub-paragraph (ii) should be deleted.

If the foregoing proposal is adopted, the words "with jurisdiction under sub-paragraph (ii)" appearing on the first line of sub-paragraph (iii) should consequently be deleted. The determination of the State most closely connected to the matters at issue may be left to the President of the International Court of Justice or other official or authority agreed upon in each particular case by the Contracting Parties involved.

DOCUMENT CN-12/CW/1 No. 108
Sweden: amendment to Article IX, paragraph 3

1) Substitute the following for paragraph 3:

"Where two or more operators are liable for nuclear damage caused by a single nuclear incident, and under paragraph 2 jurisdiction would lie with the courts of more than one Installation State, jurisdiction shall lie

(a) with the courts of that Installation State which is determined by mutual agreement between the Installation States concerned; or

(b) if within three months following the nuclear incident no such agreement has been reached, with the courts of that Installation State, which at the request of any of the operators liable or of a Contracting Party concerned, is determined by the President of the International Court of Justice to be the most closely connected to the matters at issue.

2) Add the following provision as a new paragraph 4:

"In cases referred to in paragraph 3 of this Article the Installation States concerned may by such mutual agreement as referred to in sub-paragraph (a) of paragraph 3 determine that jurisdiction shall lie with the courts of more than one Installation State, provided that in such agreement are included appropriate provisions to ensure equitable apportionment and distribution of the amounts available for compensation, specifically in case the total amount of damage exceeds or is likely to exceed any amount of liability applicable pursuant to Article IV to any of the operators liable."

DOCUMENT CN-12/CW/1 No. 109
United States of America: amendment to Article IX, paragraph 3

Delete sub-paragraph (ii) and sub-paragraph (iii), and substitute a single sub-paragraph (ii) as follows: "if there is no such state or there is more than one, with the courts of the Contracting Party which is determined by ..... to be the most closely connected to the matters at issue."

DOCUMENT CN-12/CW/1 No. 110
Argentina: amendment to Article IX, paragraph 4

Delete the whole paragraph.

DOCUMENT CN-12/CW/1 No. 111
South Africa: amendment to Article IX, paragraph 4

Reword as follows:

"The courts having jurisdiction may take appropriate measures to receive the testimony of parties or witnesses in the territory of other Contracting Parties within which they reside, ... etc."

DOCUMENT CN-12/CW/1 No. 112
United Kingdom: amendment to Article IX, paragraph 4

Delete this paragraph

DOCUMENT CN-12/CW/1 No. 113
United States of America: amendment to Article IX, paragraph 4

Revise this paragraph to read: "The courts having jurisdiction may take appropriate measures to obtain testimony in the territory of another Contracting Party of parties or witnesses residing therein, if such Contracting Party does not object, and may take any other feasible measures to lighten the burden of litigation in such situations."

DOCUMENT CN-12/CW/1 No. 114
Norway: amendment to Article X

This Article should read:
"1. A final judgement, including a judgement by default, entered by a court having jurisdiction under Article IX of this Convention shall be recognized in the territory of any other Contracting State within the limitation of the amount of liability established pursuant to Article IV, except where:
(i) the judgement was obtained by or based on fraud, or
(ii) the operator was not given a fair opportunity to present his case.
2. A final judgement which is recognizable under paragraph 1 shall, upon being presented for execution in accordance with the formalities required by the law of the Contracting State where execution is sought, be enforceable as if it were a judgement of a court of that State.
3. The merits of a claim on which the judgement has been given shall not be subject to further proceedings.
4. Notwithstanding the provisions of paragraphs 2 and 3 of this Article, the court of the Installation State to which application for the execution of a judgement is made, may suspend the execution, in whole or in part. until final judgement or other settlement has been given on all actions for nuclear damage filed against the operator with courts having jurisdiction under Article IX of this Convention, if the court of execution is satisfied that the total amount of compensation, which might be awarded by judgements based on such actions, is likely to exceed the limitation of the amount of liability established pursuant to Article IV."

DOCUMENT CN-12/CW/1 No. 115
Philippines: amendment to Article X

This Article should read:
"1. A judgement entered by a court having jurisdiction under the provisions of this Convention, when final and executory under the law of the State of such Court, shall be recognized in the territory of any other Contracting State and shall be enforceable to the same extent as if it were a judgement of a court of such State upon compliance with the formalities required by the law of the Contracting State where enforcement is sought.
2. The merits of the case on which a final judgement which is entitled to recognition as herein provided has been rendered shall not be the subject of further proceedings, except:
(a) where the judgement was obtained by fraud or
(b) the operator was not given adequate notice and opportunity to defend or the claimant was not given fair opportunity to present his case."

DOCUMENT CN-12/CW/1 No. 116
United Kingdom: amendment to Article X

The following is proposed:
"1. A final judgement entered by a Court having jurisdiction under this Con-

vention shall be recognized in the territory of any other Contracting State, except

(i) where the judgement was obtained by fraud, or

(ii) where the operator was not given a fair opportunity to present his case.

2. A final judgement which is recognized shall, upon being presented for enforcement in accordance with the formalities required by the law of the Contracting State where enforcement is sought, be enforceable as if it were a judgement of a Court of that State.

3. The merits of a claim on which the judgement has been given shall not be subject to further proceedings."

DOCUMENT CN-12/CW/1 No. 117

United States of America: amendment to Article XI

Revise this Article to read as follows: "This Convention shall be applied without any discrimination based upon nationality, domicile or residence."

DOCUMENT CN-12/CW/1 No. 118

Argentina: amendment to Article XII *

Delete "as an operator liable".

DOCUMENT CN-12/CW/1 No. 119

Philippines: amendment to Article XII

Redraft as follows:

"If any action is brought against a Contracting State as an operator liable under this Convention or for its responsibility to provide indemnity under paragraph 1 of Article VI, such Contracting State may not invoke any jurisdictional or sovereign immunities before the court competent pursuant to this Convention, except in respect of measures of execution."

DOCUMENT CN-12/CW/1 No. 120

United Kingdom: amendment to Article XII

Substitute the following:

"Where an action is brought against a Contracting State as an operator liable under this Convention, the Contracting State shall waive any jurisdictional immunities it may enjoy before the court competent pursuant to Article IX; the waiver shall not, however, extend to any measure of execution."

DOCUMENT CN-12/CW/1 No. 121

United States of America: amendment to Article XII

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* See also document CN-12/CW/114.

Revise this Article to read "If any action is brought against an operator liable under this Convention, such operator may not invoke any jurisdictional immunities under rules of national or international law before the court competent pursuant to Article IX, except in respect of measures of execution."

DOCUMENT CN-12/CW/1 No. 122
Denmark: Proposal to add a new article after Article XIII

Add a new article after Article XIII: "If the damage caused by a nuclear incident will or is likely to exceed the limit established pursuant to Article IV, and the Contracting Party whose courts have jurisdiction under Article IX is not the Installation State, the Contracting Party whose courts have jurisdiction shall take steps to ensure an equitable distribution of the funds available, unless otherwise provided for in an agreement with the Installation State".

DOCUMENT CN-12/CW/1 No. 123*
Federal Republic of Germany: Proposal to add a new article (XIV A)

Add a new article (XIV A)
"1. In so far as compensation for nuclear damage involves public funds and is in excess of the amount of ... referred to in para. 1 of Article IV, any measures to increase the amount of compensation under this Convention may be provided for and applied under conditions which may derogate from the provisions of this Convention.
"2. Where jurisdiction will lie with the courts of a Contracting Party other than the Installation State, the Installation State shall not be bound to make available public funds pursuant to para. 1 of Article VI in order to ensure compensation in excess of the amount referred to in para. 1 of Article IV for damage suffered outside the territories of the Contracting Parties by persons other than nationals of the Contracting Parties, unless the amount of compensation has been increased with the consent of the Installation State.
"3. In the case referred to in para. 1 and 2, any obligation of the operator to pay compensation in excess of the amount referred to in para. 1 of Article IV shall become enforceable only if and to the extent that the public funds necessary to cover his liability are effectively made available."

DOCUMENT CN-12/CW/1 No. 124
Philippines: proposal to add a new article

Add a new article:
"Article

"1. Nothing in this Convention shall prevent any Contracting Party from adopting such measures as it considers desirable to provide additional

* See also document CN-12/CW/97/Rev. 2.

compensation in respect of nuclear damage caused by nuclear incidents occurring in its territory.

"2. If any such measures are adopted by any Contracting Party, the additional compensation shall be made available without discrimination except in so far as such compensation includes benefits deriving from national health insurance, social security, workmen's compensation or occupational disease compensation systems."

DOCUMENT CN-12/CW/1 No. 125

Sweden: amendment to Article XV

Number the present provision paragraph 1, and add the following as paragraph 2:

"Any Contracting Party entering into an agreement on jurisdictional competence under paragraphs 3 or 4 of Article IX shall forthwith furnish to the Director General for information and for dissemination to the other Contracting Parties copies of such agreement."

DOCUMENT CN-12/CW/1 No. 126

United Kingdom: Proposed article on the territorial application of the Convention

The following article on the territorial application of the Convention is proposed:

"1. This Convention shall apply to the metropolitan territories of the Contracting Parties.

"2. Any Signatory or Contracting Party may, at the time of signature or ratification of or accession to this Convention or at any later time, notify the Director General of the International Atomic Energy Agency that this Convention shall apply to those of its territories, including the territories for whose international relations it is responsible, to which this Convention is not applicable in accordance with paragraph 1 of this Article and which are mentioned in the notification. Any such notification may in respect of any territory or territories mentioned therein be withdrawn by giving twelve months' notice to that effect to the Director General of the International Atomic Energy Agency.

"3. Any territories of a Contracting Party, including the territories for whose international relations it is responsible, to which this Convention does not apply shall be regarded for the purpose of this Convention as being a territory of a non-contracting State."

DOCUMENT CN-12/CW/2, 26 April 1963, Original: French

France: amendment to Article IV

1. Insert a new paragraph between paragraphs 1 and 2:

"Any Contracting Party may take such measures as it deems necessary with a view to increasing the amount of the compensation that is specified in this Convention.

"Insofar as compensation for damage involved public funds and is in excess of the minimum amount of ..... million dollars provided for in Paragraph 1, any such measures in whatever form may be applied under conditions which derogate from the provisions of this Convention."

2. Add a new paragraph 4:

"No one shall be entitled to claim compensation for damage caused by a nuclear incident under more than one convention relating to civil liability in connection with nuclear energy."

DOCUMENT CN-12/CW/3, 26 April 1963, Original: French

France: Proposal to add new article between Articles VI and VII

Within the limits laid down in this Convention, the law of the Competent Court shall be the law applied in determining the nature, form and extent of compensation and ensuring its equitable distribution.

DOCUMENT CN-12/CW/4, 26 April 1963, Original:English

United States of America: Proposal concerning Execution of Judgements (Article X)

"1. A final judgement entered by a court having jurisdiction under Article IX shall be recognized in the territory of any other Contracting State, except where the judgement is not in accord with fundamental standards of justice.

"2. A final judgement which is entitled to recognition shall, upon being presented for enforcement in accordance with the formalities required by the law of the Contracting State where enforcement is sought, be enforceable to the same extent as if it were a judgement of a court of that State.

"3. The merits of a claim on which the judgement has been given shall not be subject to further proceedings."

DOCUMENT CN-12/CW/5, 26 April 1963, Original: English

*United States of America: Proposal to add new article (Relation with other International Agreements)**

"1. As between States which ratify this Convention or accede to it, this Convention shall supersede any international convention or agreement between these States which is in force, open for signature, ratification or accession at the date on which this Convention is opened for signature, but only to the extent that such convention or agreement is in conflict with the Convention; provided, however, that this shall not apply to the Paris Convention of July 29, 1960, on Third Party Liability in the Field of Nuclear Energy and the supplementary Brussels Convention of January 31, 1963.

"2. Nothing in this Article shall affect the obligations of Contracting States to non-contracting States arising under any international convention or agreement."

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* Revised by document CN-12/CW/71

DOCUMENT CN-12/CW/6, and Add. 1, 26 April 1963, Original: English
United States of America: amendment to Article XI

Add a new paragraph 2 to Article XI:

"Nothing in paragraph 1 shall preclude a Contracting State from applying the Convention solely to a claim, whether for compensation or otherwise, to which a foreign national is a party, provided however, that a foreign claimant who has a claim for compensation for nuclear damage shall have the option to pursue his claim against a national of such Contracting State under its law and provided such law assures the necessary funds for the satisfaction of all claims for nuclear damage to the extent that the yield of insurance or financial security is inadequate."

OUTLINE OF PRINCIPLES

1. An Installation State may apply its own national law to a claim arising from an incident occurring in its territory, if its own nationals are the only parties to such claim.
2. If an Installation State exercises this option, that State must ensure that the necessary funds are available for the satisfaction of claims up to at least an amount equivalent to the amount which the Installation State establishes under the Convention and to the extent that the yield of insurance or other financial insurance is inadequate. But the Installation State need make no provision for damages to on-site property or to means of transport.
3. If an Installation State exercises this option, that State must give a national of another Contracting State an election to pursue his claim under national law or under the Convention.

DOCUMENT CN-12/CW/7*, 26 April 1963, Original: English
United States of America: Proposal to add new article (Continuation of Protection)

"Notwithstanding the termination of this Convention or the termination of its application to any Contracting State pursuant to Article ———, the provisions of this Convention shall continue to apply:
(a) with respect to any nuclear incident occurring before such termination and involving such Installation State or any operator within its territory, and
(b) with respect to, and for the life of, any nuclear installation as defined in Article I, paragraph 5 (a) or (b), which was licensed by or begun in such Installation State during the period of the duration of this Convention."

DOCUMENT CN-12/CW/8, 26 April 1963, Original: English
United States of America: Proposals for Final Clauses.

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* See also document CN-12/19

The United States proposals appearing in document CN-12/2 are submitted as proposals to the Conference.*

DOCUMENT CN-12/CW/9, 26 April 1963, Original: English
United States of America: amendment to Article I.

1. Paragraph 5 (a): Substitute the following:
"(a) any nuclear reactor other than one with which a means of sea or air transport is equipped for use as a source of power, whether for propulsion thereof or for any other purpose".
2. Paragraph 9: Add at end of last sentence:
"and if not so included, no compensation therefor shall be permitted."

DOCUMENT CN-12/CW/10, 26 April 1963, Original: English
United States of America: amendment to Article II **

1. Paragraph 1: Substitute the following:
"Subject to the provisions of Article I A, the operator shall be liable for any nuclear damage caused by a nuclear incident:
(a) In his nuclear installation.
(b) Involving nuclear material coming from or originating in his nuclear installation, and occurring
(i) before liability with regard to nuclear incidents caused by such material has been assumed, pursuant to the express terms of a contract in writing, by the operator of another nuclear installation; or
(ii) in the absence of such express terms, before such operator has taken charge of the nuclear material; or
(iii) before the nuclear material is taken in charge by the operator of any nuclear reactor with which a means of transport is equipped for use as a source of power, whether for propulsion thereof or for any other purpose; or
(iv) except as provided in sub-paragraph (iii), before the nuclear material is unloaded from the means of transport by which it has arrived in the territory of a non-contracting Party, if it has been sent to a person within the territory of that non-contracting Party.
(c) Involving nuclear material sent to his nuclear installation, and occurring
(i) after liability with regard to nuclear incidents caused by such material has been assumed by him from the operator of another nuclear installation pursuant to the express terms of a contract in writing with that operator; or
(ii) in the absence of such express terms, after he has taken charge of the nuclear material; or
(iii) after he has taken charge of the nuclear material from the operator of any nuclear reactor with which a means of transport is equipped for use as source of power, whether for propulsion thereof or for any other purpose; or

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* See document CN-12/2 (Basic Proposal) above.
** Paragraph 1 revised by document CN-12/CW/76; see also document CN-12/CW/86.

(iv) except as provided in sub-paragraph (iii) after the nuclear material is loaded on the means of transport by which it is to be carried from the territory of a non-contracting Party, if it has been sent from a person within the territory of that non-contracting Party to the operator under a contract with him."

2. Paragraph 3. Substitute the following:

"Where nuclear damage is attributable to more than one operator and and damage attributable to each operator is not reasonably separable, the operators involved shall be jointly and severally liable for such damage. Where either separate liability or joint and several liability of more than one operator arises from a nuclear incident occurring in the course of carriage on one and the same means of transport or located in one and the same place of storage incidental to carriage, the total liability of all operators shall not exceed the highest individual amount applicable pursuant to Article IV. In all cases falling under this paragraph liability of one operator shall not exceed the amount applicable with respect to him pursuant to Article IV."

3. Add new paragraph between present paragraph 3 and 4 to read as follows:

"Subject to the provisions of paragraph 3, in case of joint and several liability, each operator shall have a right of contribution against the others in proportion to the fault attaching to each of them. Where the circumstances are such that the degree of fault cannot be apportioned, the total liability shall be borne in equal parts. In either case contribution shall be computed upon the basis of the minimum amount established by Article IV, paragraph 1, and not upon the basis of any higher amount which may be established by national law."

DOCUMENT CN-12/CW/11 (including correction), 26 April 1963, Original: English

United States of America: amendment to Article III

1. Paragraph 2: Substitute the following:

"If the operator proves that nuclear damage resulted wholly or partially from an act or omission with intent to cause damage by the person who suffered the damage, the competent court shall exonerate the operator from his liability to such person."

2. Paragraph 5 (a): Revise to read as follows:

"(a) to the nuclear installation itself on the site of which the nuclear incident occurs or to any property on that site which is used or to be used in connection with that installation."

DOCUMENT CN-12/CW/12, 26 April 1963, Original: English

*United States of America: amendment to Article IV**

1 Paragraph 2: Substitute the following:

"Any Contracting Party on whose territory there is a nuclear installation may subject the transit of nuclear material through its territory or

* See also document CN-12/CW/90

entry on its territory to the condition that any limit of liability in respect of such material be increased, if it considers that such limit does not adequately cover the risks of a nuclear incident involving such material in the course of its transit through its territory or entry on its territory; provided that if such Contracting Party has established a limit pursuant to paragraph 1, this limit shall not be exceeded."

2. Add following new sentence at end of provision:

"The provisions of this paragraph are without prejudice to such rights as may exist under international law or agreement with respect to innocent passage, entry in cases of urgent distress, and overflight."

3. Add a new paragraph after the paragraph 3 as follows:

"If a Contracting Party takes measures to establish a limit of liability in excess of the amount specified in paragraph 1, such measures may not be applied under conditions which derogate from the provisions of this Convention, except that the nationals of such Contracting Party who have claims for nuclear damage may be granted a preference to participate in any additional compensation which is provided out of its public funds."

4. Add at end of Article IV a new paragraph as follows:

"The United States dollar referred to in paragraph 1 of Article IV is equivalent to 0.86671 grammes of fine gold being the value of the United States dollar declared to the International Monetary Fund on 18 December 1946."

DOCUMENT CN-12/CW/13, 26 April 1963, Original: English
United States of America: amendment to Article IX, paragraph 3

Substitute the following:

"Where two or more operators are jointly liable for nuclear damage, and under paragraph 2 jurisdiction would be with the courts of more than one Installation State and there is a reasonable likelihood that the total amount of damage exceeds the amount of liability applicable pursuant to Article IV to any of the operators liable, jurisdiction shall be with the court f the Installation State which is determined by the ... to be the most closely connected to the matters at issue. Such determination shall be made by ... at the request of one of the Installation States concerned and upon a proper showing that such reasonable likelihood exists."

DOCUMENT CN-12/CW/14, 29 April 1963, Original: French
Belgium: Proposal to add a new article (Relation with Other International Agreements)

"The present Convention shall not modify previous regional conventions having the same object and accordingly applying only to the nations which have concluded them in their relations with one another."

DOCUMENT CN-12/CW/15, 29 April 1963, Original: French
Belgium: Proposal to add new article (Settlement of Disputes)

"Any dispute between two or more Contracting Parties in regard to the interpretation or application of this Convention shall, in default of a solution

by agreement, be submitted at the request of an interested Contracting Party to the International Court at The Hague."

DOCUMENT CN-12/CW/16, 29 April 1963, Original: French
Belgium: amendment to Article I

Delete paragraph 10.

DOCUMENT CN-12/CW/17, 29 April 1963, Original: French
Belgium: amendments to Article II

1. Delete all of paragraphs 1 (b)(i) and 1 (c)(i).
2. In paragraphs 1 (b)(ii) and 1 (c)(ii), delete the words "or in the absence of such express terms".
3. Delete paragraph 6.

DOCUMENT CN-12/CW/18 and Rev.1, 2 May 1963, Original: French
Belgium: amendments to Article III

1. Delete paragraph 2.
2. Paragraph 5
Replace the existing text by the following:
"No liability shall arise under this Convention for nuclear damage –
(a) to property held by the operator which is in his care or under his control on the site of the installation and relates to the operation of the installation;
(b) to the means of transport upon which the nuclear materials concerned are at the time of the nuclear incident."

DOCUMENT CN-12/CW/19 and Corr.1, 29 April 1963, Original: French
Belgium: amendment to Article IV, paragraph 1

Replace the proposed text by the following:
"(a) The total compensation payable in respect of damage caused by a nuclear incident shall not exceed the maximum liability laid down under the terms of this Article.
"(b) The maximum liability of the operator for damage caused by a nuclear incident shall be fixed at US $15 million. Nevertheless, a greater or lesser amount may be fixed by the legislation of a Contracting Party provided the operator can obtain the insurance or other financial security required under Article VI, but the amount so fixed shall not in any case be less than US $5 million. The amounts referred to in this paragraph may be converted into national currencies in round figures."

DOCUMENT CN-12/CW/20 and Rev.1, 2 May 1963, Original: French
Belgium: amendments to Article V

1. Paragraph 3: Replace the words "three years" by "two years".
2. Paragraph 4: Delete the phrase: "... if final judgement has already been entered, ..."

DOCUMENT CN-12/CW/21, 29 April 1963, Original: French
Belgium: amendments to Article VI

1. Delete paragraph 2.
2. Add the following new paragraph:

"The insurer or any other person who has provided financial security may not suspend the insurance or financial security provided for in paragraph 1 of the present Article or terminate it without giving at least two months' notice in writing to the competent public authority or, in so far as the said insurance or other financial security concerns the transport of nuclear materials, during the duration of such transport."

DOCUMENT CN-12/CW/22, 29 April 1963, Original: French
Belgium: amendments to Article VIII

Replace sub-paragraph (a) by the following:
"(a) If the damage results from an act or omission when there is an intent to cause damage, against the individual who has acted, or has omitted to act, with such intent."

DOCUMENT CN-12/CW/23 and Corr.1, 29 April 1963, Original: French
Belgium: amendments to Article IX

1. Paragraph 1

Replace the existing text by the following:

"Except as otherwise provided in this Article, jurisdiction over actions for compensation for nuclear damage under paragraphs 1, 2, 6 and 7 of Article II shall lie only with the courts of the Contracting Party where the installation of the responsible operator is situated.

"In the case of a nuclear incident occurring during transport, the courts having jurisdiction in virtue of the legislation of the Contracting Party on whose territory the nuclear materials in question were at the time of the incident shall alone have jurisdiction, subject to the provisions of paragraph 2 of this Article."

2. Paragraph 3

Replace the existing text by the following:

"If in virtue of paragraphs 1 and 2 of this Article, the courts of more than one Contracting Party have jurisdiction, jurisdiction shall lie, in the case of a nuclear incident occurring during the transport of nuclear materials,

(i) with the courts having jurisdiction, in virtue of the local legislation, at the place in the territory of the Contracting Party where the means of transport on which the nuclear materials concerned were at the time of the nuclear incident is registered, provided that these courts have jurisdiction in virtue of paragraph 1 of this Article; or

(ii) in default of such court, with the court designated at the request of an interested Contracting Party by the court referred to in Article...."

3. Add the following new paragraph 5:

"The law of the competent court shall apply to all matters both substantive and procedural not expressly governed by this Convention."

DOCUMENT CN-12/CW/24, 29 April 1963, Original: English
Austria: amendment to Article I A

Replace the words "unless the law of the Installation State so provides" by the words "unless the law of the competent court so provides".

DOCUMENT CN-12/CW/25, 29 April 1963, Original: English
Austria: amendments to Article II

1. Paragraph 1(b)(i) and (c)(i)
Replace the words "pursuant to the express terms of a contract in writing" by the words "in accordance with the conditions fixed by the Installation State".
2. Paragraph 2
Delete the words "at his request and with the consent of the operator concerned".
3. Paragraph 3
Delete the words "and the damage attributable to each operator is not reasonably separable".

DOCUMENT CN-12/CW/26, 29 April 1963, Original: English
Austria: amendments to Article III

1. Paragraph 1
Delete the words "upon proof that such damage has been caused by a nuclear incident".
2. Paragraph 2
Insert the words "and if it is established that the person suffering the damage has caused nuclear damage with the intent to cause damage or by gross negligence" after the words "person suffering the damage".
3. Paragraph 4
The word "omission" in the sixth line is to be replaced by the word "emission".

DOCUMENT CN-12/CW/27, 29 April 1963, Original: English
Austria: amendments to Article V

1. Delete paragraph 2.
2. Paragraph 4
The expression "final judgement" should be replaced by "judgement enforceable under the law applied by the competent court".

DOCUMENT CN-12/CW/28, 29 April 1963, Original: English
Austria: amendment to Article IX, paragraph 1

Delete the words "for compensation".

DOCUMENT CN-12/CW/29, 29 April 1963, Original: English
Austria: amendment to Article XII

Delete the words "except in respect of measures of execution"

DOCUMENT CN-12/CW/30, 29 April 1963, Original: English
Brazil: amendment to Article I

The Government of Brazil feels that the concept of Nuclear Fusion should be embodied in the convention. Appropriate amendments to the text of the convention would have to be adopted, particularly with regard to Article I.

DOCUMENT CN-12/CW/31 and Rev.1, 29 April 1963, Original: English
Brazil: Proposal to add new article

Add a new article reading as follows:
"The standards of this convention shall be embodied in the national legislation of each Contracting State by the fact of that State having ratified it, unless its constitutional system provides to the contrary."

DOCUMENT CN-12/CW/32, 29 April 1963, Original: English
Denmark: amendment to Article I, paragraph 9

Insert before "results from" the words:
" - directly or indirectly - "

DOCUMENT CN-12/CW/33, 29 April 1963, Original: English
Netherlands: amendment to Article I, paragraph 9

Paragraph 9, last sentence to read:
"Any other loss or damage so arising or resulting shall be included only if and to the extent that the law of the Installation State so provides."

DOCUMENT CN-12/CW/34*, 29 April 1963, Original: English
United States of America: amendment to Article I, paragraph 5

If the amendment suggested by the Federal Republic of Germany (CN-12/CW/1, No.7) is considered favourably, we suggest the following modifications:

(1) For the phrase "nuclear fuel or radioactive products or waste" substitute the phrase "nuclear material".

(2) At the end of the paragraph add the phrase "if in its view the exceptional nature of the risk involved so warrants".

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* See also documents CN-12/CW/1 No. 7 and CN-12/CW/47

DOCUMENT CN-12/CW/35, 29 April 1963, Original: French
Greece: amendment to Article I, paragraph 5

Delete the words "located at the same site" in the last part of the paragraph.

DOCUMENT CN-12/CW/36, 29 April 1963, Original: English
India: amendment to Article I, paragraph 4

Paragraph 4, to read as follows:

"Nuclear reactor" means any structure containing nuclear fuel in such an arrangement that a controlled sustained chain process of nuclear fission can be maintained therein without an additional source of neutrons.

DOCUMENT CN-12/CW/37, 29 April 1963, Original: English
India: amendment to Article I A

Delete the words "unless the law of the Installation State so provides"

or

Add at the end of the Article the following:

"provided that the claims in respect of nuclear damage suffered in the territory of the contracting parties are given priority".

DOCUMENT CN-12/CW/38, 29 April 1963, Original: English
Japan: amendment to Article I, paragraph 11

Amend the words "the law of the court having jurisdiction" to read "the law of the State whose court is competent".

DOCUMENT CN-12/CW/39, 29 April 1963, Original: English
Japan: amendment to Article I A

This Article should read as follows:

"This Convention shall not apply to nuclear incidents that occur or to nuclear damage that is suffered in the territory of a non-Contracting Party except:

(a) where the law of the Installation State so provides, or

(b) where an action has been brought by a national of any Contracting Party who suffered nuclear damage arising out of such nuclear incident in the course of international maritime carriage of nuclear material".

DOCUMENT CN-12/CW/40, 29 April 1963, Original: English
Japan: amendment to Article II, paragraph 7

Substitute the following:

"An action for compensation for nuclear damage shall be brought against the operator; it may also be brought against the insurer or any person other than the Installation State who has provided financial security to the operator pursuant to paragraph 1 of Article VI, if the right to bring an action against the insurer or such other person is provided under the law of the Installation State."

DOCUMENT CN-12/CW/41, 29 April 1963, Original: English
Japan: amendment to Article III, paragraph 2

Add the following as the second sentence:

"However, in case of maritime carriage of nuclear material, if the operator proves that the nuclear damage resulted wholly or partly from an act or omission done with intent to cause damage by the person suffering the damage the competent court may, in accordance with the provisions of its law, relieve the operator wholly or partly from his liability to such person."

DOCUMENT CN-12/CW/42, 29 April 1963, Original: English
Japan: amendment to Article III, paragraph 3

Redraft as follows:

"3. No liability under this Convention shall attach to an operator in respect of nuclear damage caused by a nuclear incident directly due to an act of war, hostilities, civil war or insurrection.

"3A. Except in so far as the law of the Installation State may provide to the contrary, the operator shall not be liable for nuclear damage caused by a nuclear incident directly due to a grave natural disaster of an exceptional character."

DOCUMENT CN-12/CW/43, 29 April 1963, Original: English
Japan: amendment to Article V, paragraph 2

Substitute the following:

"Where nuclear damage is caused by nuclear material which was stolen, lost, jettisoned or abandoned, the period established under paragraph 1 shall be computed from the date of the nuclear incident causing the nuclear damage, but the period shall in no case exceed a period of twenty years from the date of the theft, loss, jettisoning or abandonment as the case may be."

DOCUMENT CN-12/CW/44, 29 April 1963, Original: Russian
Ukrainian Soviet Socialist Republic: amendment to Article IV

Insert the following new paragraph 2:

Paragraph 2

The dollar mentioned in paragraph 1 is the unit of calculation corresponding at the present time to the value of the United States dollar at its gold parity, that is to say $35 per ounce troy of pure gold.

DOCUMENT CN-12/CW/45, 30 April 1963, Original: French
Belgium: amendment to Article I, paragraph 8

Delete paragraphs 8 and 9 and replace them by the following text:

"Paragraph 8

A nuclear incident means any occurrence or series of occurrences having the same origin which has caused damage, provided that this occurrence or series of occurrences, or some of the damage caused, arises out of or results from the radioactive properties and from the toxic, ex-

plosive or other hazardous properties of nuclear fuels or radioactive products or waste."

DOCUMENT CN-12/CW/46, 30 April 1963, Original: French
Austria: amendment to Article II, paragraph 6

Amend the introductory words and the beginning of sub-paragraph (a) to read:

"The law of the Installation State may determine that, in addition to the operator, other persons shall also be liable.

With respect, however, to persons having a direct or indirect contractual relation with the operator of the nuclear installation,

(a) the total liability of all persons ...."

DOCUMENT CN-12/CW/47*, 30 April 1963, Original: English
Federal Republic of Germany and the United States of America: amendment to Article I, paragraph 5

Replacing amendment No. 7 of CN-12/CW/1 and CN-12/CW/34:

"(d) Such other installations in which there is nuclear material, as a committee composed of a representative from each of the Contracting Parties shall from time to time by unanimous vote determine."

DOCUMENT CN-12/CW/48, 30 April 1963, Original: English
*Sweden: amendment to Article II***

Substitute the following for the present paragraph 1:

"Subject to the provisions of Article I A, the operator shall be liable for nuclear damage upon proof that such damage has been caused by a nuclear incident:

(a) In his nuclear installation.

(b) Involving nuclear material coming from or originating in his nuclear installation and occurring

(i) before liability with regard to nuclear incidents caused by such material has been assumed pursuant to the express terms of a contract in writing by the operator of another nuclear installation, or in the absence of such express terms, before such operator has taken charge of the nuclear material; or

(ii) if the nuclear material was intended to be used in a nuclear reactor with which a means of transport is equipped, whether for propulsion thereof or for any other purpose, before the operator of such reactor has taken charge of the nuclear material; or

(iii) if the nuclear material has been sent to a person within the territory of a non-contracting State, before the material is unloaded from the means of transport by which it has arrived in the territory of that non-contracting State.

(c) Involving nuclear material sent to his installation and occurring

(i) after liability with regard to nuclear incidents caused by such ma-

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* See also documents CN-12/CW/1 No.7 and CN-12/CW/34.

** Paragraph 1 revised by document CN-12/CW/76.

terial has been assumed by him pursuant to the express terms of a contract in writing; or, in the absence of such express terms, after he has taken charge of the nuclear material; or

(ii) if the nuclear material has been sent from a person within the territory of a non-contracting State, after the material is loaded on the means of transport by which it is to be carried from the territory of that non-contracting State."

DOCUMENT CN-12/CW/49, 30 April 1963, Original: English
Sweden: amendment to Article II *

Substituting amendment 31 reproduced in CN-12/CW/1
"(a) If and to the extent that nuclear damage engages the liability of more than one operator, the operators involved shall be jointly and, except as otherwise in sub-paragraph (b) of this paragraph, severally liable for such damage.
(b) Where a nuclear incident occurring in the course of carriage and involving nuclear material on one and the same means of transport, or a nuclear incident occurring in one and the same place of storage incidental to carriage, gives rise to liability of more than one operator, the total liability shall not exceed the highest individual amount applicable pursuant to Article IV.
(c) In neither of the cases referred to in sub-paragraphs (a) and (b) of this paragraph the liability of any one operator shall exceed the amount applicable with respect to him pursuant to Article IV."

DOCUMENT CN-12/CW/50, 30 April 1963, Original: English
Netherlands: amendment to Article I A (and general amendment)

In this Article as well as in the other Articles of the draft-convention the expression "a non-contracting Party" should be substituted by "a non-contracting State".

DOCUMENT CN-12/CW/51, 30 April 1963, Original: English
Greece: amendment to Article II, paragraph 1

Paragraph 1:
Alinea b (i):
Replace the words "assumed pursuant to the express terms of a contract in writing" by the words "taken in charge by".
Alinea b (ii):
To be deleted.
Alinea c (i):
Replace the words "pursuant to the express terms of a contract in writing with that operator" by the words "taken in charge by him".
Alinea c (ii):
To be deleted.

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* See also document CN-12/CW/1, No. 31 and CN-12/CW/86

Alinea c (iii):
Replace the words "under a contract with him" by the words "with his consent".

DOCUMENT CN-12/CW/52, 30 April 1963, Original: French
Greece: amendment to Article II, paragraph 2

Delete the words "or a person handling radioactive waste".

DOCUMENT CN-12/CW/53, 30 April 1963, Original: French
Greece: amendment to Article II, paragraph 6

Delete the word "if" and sub-paragraphs (a) and (b).

DOCUMENT CN-12/CW/54, 30 April 1963, Original: English
Netherlands: amendment to Article II, paragraph 7

Paragraph 7 to read:
"Direct action shall lie against the person providing financial security in accordance with Article VI, if the law of the Installation State so provides."

DOCUMENT CN-12/CW/55, 30 April 1963, Original: English
*Netherlands: amendment to Article II, paragraph 3 **

Paragraph 3 to be read:
"If damage gives rise to liability of more than one operator in accordance with this Convention, the liability of those operators shall be joint and several: provided that where such liability arises as a result of damage caused by a nuclear incident involving nuclear substances in the course of carriage, the maximum total amount for which such operators shall be liable shall be the highest amount established with respect to any of them pursuant to Article IV, if any, and provided that in no case shall any operator be required, in respect of a nuclear incident, to pay more than the amount established with respect to him pursuant to Article IV, if any."

DOCUMENT CN-12/CW/56, 30 April 1963, Original: French
Greece: amendment to Article III, paragraph 2

Delete this paragraph

DOCUMENT CN-12/CW/57, 30 April 1963, Original: English
Turkey: amendment to Article IV, paragraph 2

Delete the last sentence beginning with "provided that....".

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* See also document CN-12/CW/86

DOCUMENT CN-12/CW/58, 30 April 1963, Original: English
United Kingdom: amendment to Article IV

If paragraph 2 of this Article is not deleted insert a new paragraph 3:

"The provisions of paragraph 2 of this Article shall not apply

(i) to carriage by sea where, under international law, there is a right of entry in cases of urgent distress into the ports of such Contracting Party or a right of innocent passage through its territory; or

(ii) to carriage by air where, by agreement or under international law, there is a right to fly over or land on the territory of such Contracting Party."

DOCUMENT CN-12/CW/59, 30 April 1963, Original: French
Greece: amendment to Article V, paragraph 1

Delete the words "or other financial security or State indemnification".

DOCUMENT CN-12/CW/60, 30 April 1963, Original: English
Turkey: amendment to Article V, paragraph 2

Delete the word "abandoned".

DOCUMENT CN-12/CW/61, 30 April 1963, Original: English
Turkey: amendment to Article V, paragraph 4

To be redrafted as follows:

4. Unless national law provides to the contrary, any person suffering damage caused by a nuclear incident who has brought an action for compensation within the period provided for in this Article may amend his claim in respect of any aggravation of the damage after the expiry of such period provided that final judgement has not been entered by the competent court.

DOCUMENT CN-12/CW/62, 30 April 1963, Original: French
Greece: amendment to Article VI, paragraph 1

Delete the last sentence, beginning with the words "The Installation State shall ensure the payment .... ".

DOCUMENT CN-12/CW/63, 30 April 1963, Original: French
Greece: amendment to Article VIII, paragraph (b)

Delete this paragraph.

DOCUMENT CN-12/CW/64, 30 April 1963, Original: French
Luxembourg: amendment to Article IV, paragraph 2

Delete the words "on whose territory there is a nuclear installation".

DOCUMENT CN-12/CW/65, 2 May 1963, Original: English
United Kingdom: amendment to Article IV, paragraph 1

Insert the figure "U.S. $15 million".

DOCUMENT CN-12/CW/66, 2 May 1963, Original: Spanish
Argentina: amendment to Article II, paragraph 7

Amend to read:

"Actions for compensation for nuclear damage shall be brought directly against the operator. They may be brought against the insurer or any other person providing financial security in accordance with Article VI only if the law of the competent court so provides."

DOCUMENT CN-12/CW/67, 2 May 1963, Original: English
Netherlands: amendment to Article III, paragraph 2

To be read:

"If the operator proves that the nuclear damage resulted wholly or partially from an act or omission done with intent to cause damage by the individual who suffered the damage, the competent courts may exonerate the operator wholly or partially from his liability to such individual."

DOCUMENT CN-12/CW/68 and Rev.1, 8 May 1963, Original: English
Canada: amendment to Article IV, paragraph 2

1. Add at the end of paragraph 2:

"and provided further that the limit, as so increased, shall not exceed US $..... Million".

2. If the amendment proposed in 1. above is adopted in principle, it is further proposed that the figure of "US $70 Million" be inserted therein.

DOCUMENT CN-12/CW/69, 2 May 1963, Original: English
Canada: amendment to Article IV, paragraph 3

1. Paragraph 3:
Renumber as paragraph 4.
2. Insert new paragraph 3:
"3. Where the place of a nuclear incident involving nuclear material in transit through the territory of more than one contracting party cannot be determined with certainty, the liability of the operator shall be limited to
(a) The amount established pursuant to paragraph 2, by the contracting party on whose territory the damage is sustained; or
(b) If the damage is sustained on the territory of more than one of the contracting parties, the highest amount established pursuant to paragraph 2 by any of those contracting parties."

DOCUMENT CN-12/CW/70, 2 May 1963, Original: English
United States of America: amendment to Article II

Insert as a new paragraph between paragraph 5 and paragraph 6 of Article II (or in such other appropriate place as the Drafting Committee may determine) the following new paragraph:

"If under the second sentence of Article I, paragraph 9, the law of the competent court does not include any other loss or damage as nuclear damage, no person shall be liable for such other loss or damage."

DOCUMENT CN-12/CW/71, 2 May 1963, Original: English
United States of America: Proposal contained in document CN-12/CW/5

Revise to read as follows:

"1. As between States which ratify this Convention or accede to it, this Convention shall supersede any international convention or agreement between these States which is in force, open for signature, ratification or accession at the date on which this Convention is opened for signature, but only to the extent that such convention or agreement is in conflict with the Convention; provided, however, that as between States which ratify or accede to it, this Convention shall not supersede the Paris Convention of July 29, 1960, on Third-Party Liability in the Field of Nuclear Energy and the Convention supplementary thereto of January 31, 1963, between these States.
2. Nothing in this Article shall affect the obligations of Contracting States to non-contracting States arising under any international convention or agreement."

DOCUMENT CN-12/CW/72, 2 May 1963, Original: English
Netherlands: Proposal concerning Article X (Execution of Judgements)

To read as follows (Text conforms to Article XI, paragraph 4, of the Brussels Ships Convention):

"1. A final judgement entered by a court having jurisdiction under Article IX shall be recognized in the territory of any other Contracting State, except:
(i) where the judgement was obtained by fraud; or
(ii) the operator was not given a fair opportunity to present his case.
2. A final judgement which is recognized shall, upon being represented for enforcement in accordance with the formalities required by the law of the Contracting State where enforcement is sought, be enforceable as if it were a judgement of a court of that State.
3. The merits of a claim on which judgement has been given shall not be subject to further proceedings."

DOCUMENT CN-12/CW/73, 2 May 1963, Original: English
Netherlands: amendment to Article IX, paragraph 4

To be deleted.

DOCUMENT CN-12/CW/74, 2 May 1963, Original: English
Netherlands: amendment to Article XII

Delete at the end of the Article the words:
"except in respect of measures of execution".

DOCUMENT CN-12/CW/75, 2 May 1963, Original: English
Brazil and the United States: Proposal concerning Article X

1. A final judgement entered by a Court having jurisdiction under this Convention shall be recognized in the territory of any other Contracting State, except
(i) where the judgement was obtained by fraud, or
(ii) where the operator was not given a fair opportunity to present his case, or
(iii) where the judgement is not in accord with fundamental standards of justice or is contrary to the public policy of the Contracting State in which recognition is sought.
2. A final judgement which is recognized shall, upon being presented for enforcement in accordance with the formalities required by the law of the Contracting State where enforcement is sought, be enforceable as if it were a judgement of a Court of that State.
3. The merits of a claim on which the judgement has been given shall not be subject to further proceedings.

DOCUMENT CN-12/CW/76, 3 May 1963, Original: English
Sweden, United Kingdom, United States of America: amendment to Article II, paragraph 1
Replacing CN-12/CW/10 and CN-12/CW/48 so far as paragraph (1) is concerned.
Substitute the following paragraph:
"Subject to the provisions of Article I A, the operator shall be liable for nuclear damage upon proof that such damage has been caused by a nuclear incident –
(a) in his nuclear installation;
(b) involving nuclear material coming from or originating in his nuclear installation, and occurring
(i) before liability with regard to nuclear incidents caused by such material has been assumed, pursuant to the express terms of a contract in writing, by the operator of another nuclear installation; or
(ii) in the absence of such express terms, before such operator has taken charge of the nuclear material; or
(iii) if the nuclear material was intended to be used in a nuclear reactor with which a means of transport is equipped, whether for propulsion thereof or for any other purpose, before the operator of such reactor has taken charge of the nuclear material; but
(iv) where the nuclear material has been sent to a person within the territory of a non-contracting State, before the material is unloaded from

the means of transport by which it has arrived in the territory of that non-contracting State;

(c) involving nuclear material sent to his nuclear installation, and occurring

(i) after liability with regard to nuclear incidents caused by such material has been assumed by him from the operator of another nuclear installation pursuant to the express terms of a contract in writing with that operator; or

(ii) in the absence of such express terms, after he has taken charge of the nuclear material; or

(iii) after he has taken charge of the nuclear material from the operator of any nuclear reactor with which a means of transport is equipped for use as source of power, whether for propulsion thereof or for any other purpose; but

(iv) where the nuclear material has been sent from a person within the territory of a non-contracting State, after the material is loaded on the means of transport by which it is to be carried from the territory of that non-contracting State."

DOCUMENT CN-12/CW/77, 3 May 1963, Original: English
Norway: amendment to Article V

Add the following at the end of paragraph 3:

"The rights referred to in Article I A, paragraph 2 may be subjected to a particular extinction or prescription within the periods established under paragraph 1 or 2."

DOCUMENT CN-12/CW/78, 3 May 1963, Original: English
Czechoslovak Socialist Republic: amendment to Article IV, paragraph 1 and 2

Paragraph 1:

Insert the figure "US $ 5 Million."

Paragraph 2:

Delete this paragraph.

DOCUMENT CN-12/CW/79, 3 May 1963, Original: English
Denmark and Norway: amendment to Article II, paragraph 1

Add the following at the end:

"However, when nuclear material is stored incidental to the carriage of such material it shall, as far as the provisions of sub-paragraphs (a) and (b)(ii) are concerned, be left out of consideration that the storage may have taken place in a nuclear installation."

DOCUMENT CN-12/CW/80, 3 May 1963, Original: English
India: amendment to Article IV, paragraph 1

Substitute the following paragraph:

"The liability of the operator may be limited by the Installation State -
(i) to not less than US $5 Million for any one nuclear incident occurring in his nuclear installation, and
(ii) to not less than US $1 Million for any one nuclear incident involving nuclear material coming from, originating in, or sent to his nuclear installation."

DOCUMENT CN-12/CW/81, 3 May 1963, Original: English
India: Proposal to add new article

Evidence recorded by courts having jurisdiction over persons suffering nuclear damage shall be accepted by courts having jurisdiction under Article IX as evidence in proof of nuclear damage suffered by such persons.

DOCUMENT CN-12/CW/82, 3 May 1963, Original: English
India: Proposal to add new article

The State whose court renders judgements for compensation for nuclear damage shall take appropriate measures to arrange for expeditious payment of the compensation by the persons liable.

DOCUMENT CN-12/CW/83, 6 May 1963, Original: English
Argentina, Ghana, India, Indonesia and Spain: Proposal relating to Optional Protocol Concerning the Compulsory Settlement of Disputes

The States Parties to the present Protocol and to the ..... Convention on Civil Liability for Nuclear Damage hereinafter referred to as "the Convention", adopted by the International Conference held at Vienna from 29 April to May 1963,

Expressing their wish to resort in all matters concerning them in respect of any dispute arising out of the interpretation or application of the Convention to the compulsory jurisdiction of the International Court of Justice, unless some other form of settlement has been agreed upon by the parties within a reasonable period,

Have agreed as follows:

ARTICLE I

Disputes arising out of the interpretation or application of the Convention shall lie within the compulsory jurisdiction of the International Court of Justice and may accordingly be brought before the Court by an application made by any party to the dispute being a Party to the present Protocol.

ARTICLE II

The parties may agree, within a period of two months after one party has notified its opinion to the other that a dispute exists, to resort not to the International Court of Justice but to an arbitral tribunal. After the ex-

piry of the said period, either party may bring the dispute before the Court by an application.

ARTICLE III

1. Within the same period of two months, the parties may agree to adopt a conciliation procedure before resorting to the International Court of Justice.
2. The conciliation commission shall make its recommendations within five months after its appointment. If its recommendations are not accepted by the parties to the dispute within two months after they have been delivered, either party may bring the dispute before the Court by an application.

ARTICLE IV

The present Protocol shall be open for signature by all States which may become Parties to the Convention as follows: (.....)

ARTICLE V

The present Protocol is subject to ratification. The instruments of ratification shall be deposited with the .....

ARTICLE VI

The present Protocol shall remain open for accession by all States which may become Parties to the Convention. The instruments of accession shall be deposited with the .....

ARTICLE VII

1. The present Protocol shall enter into force on the same day as the Convention or on the thirtieth day following the date of deposit of the second instrument of ratification or accession to the Protocol with the ....., whichever date is the later.
2. For each State ratifying or acceding to the present Protocol after its entry into force in accordance with paragraph on the thirtieth day after deposit by such State of its instrument of ratification or accession.

ARTICLE VIII

The ..... shall inform all States which may become Parties to the Convention:
(a) of signatures to the present Protocol and of the deposit of instruments of ratification or accession, in accordance with Articles IV, V and VI;
(b) of the date on which the present Protocol will enter into force, in accordance with Article VII.

ARTICLE IX

The original of the present Protocol, of which the English, French, Russian and Spanish texts are equally authentic, shall be deposited with the ..... who shall send certified copies thereof to all States referred to in Article IV.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Protocol.

DONE AT VIENNA, this .....day of May, one thousand nine hundred and sixty-three.

DOCUMENT CN-12/CW/84, 6 May 1963, Original: English
Norway: amendment to Article I A, paragraph 2

Add after the words "a national of a Contracting Party" the following:
"or has his habitual residence or principal place of business in the territory of a Contracting State".

DOCUMENT CN-12/CW/85, 6 May 1963, Original: English
United States of America: amendment to Article IV, paragraph 1

Insert the figure "US $70 million".

DOCUMENT CN-12/CW/86, 7 May 1963, Original: English
Netherlands, Sweden and United States of America: amendment to Article II, paragraph 3. Replacing amendments CW/55, CW/49 and CW/10 No. 2

"(a) Where nuclear damage engages the liability of more than one operator, the operators involved shall, insofar as the damage attributable to each operator is not reasonably separable, be jointly and severally liable.
(b) Where a nuclear incident occurring in the course of carriage and involving nuclear material on one and the same means of transport, or a nuclear incident occurring in one and the same place of storage incidental to carriage, gives rise to liability of more than one operator, the total liability shall not exceed the highest individual amount applicable pursuant to Article IV.
(c) In neither of the cases referred to in sub-paragraphs (a) and (b) of this paragraph the liability of any one operator shall exceed the amount applicable with respect to him pursuant to Article IV."

DOCUMENT CN-12/CW/87, 8 May 1963, Original: Spanish
Mexico: amendment to Article XII

Replace the proposed text by the following:

A Contracting State against which an action is brought for nuclear damage as an operator liable under this Convention may invoke jurisdictional immunity before the court competent pursuant to Article IX, and shall then

submit to the jurisdiction of the International Court of Justice for settlement of any dispute arising between it and the State or States representing their plaintiff nationals, unless the Parties agree on some other pacific means of settlement.

DOCUMENT CN-12/CW/88 and Revs. 1, 2 and 3, 14 May 1963, Original: English

Denmark and Sweden: Proposal to add new article after Article VIII

"In respect of nuclear damage for which the operator, by virtue of paragraph 3 of Article III is not liable under this Convention, nothing in the Convention shall affect the liability of any individual who has caused the damage by an act or omission done with intent to cause damage."

DOCUMENT CN-12/CW/89, 10 May 1963, Original: English

Sweden and United Kingdom: Proposal to add new article

LIABILITY OF OPERATOR AND OTHERS

1. It is clear that, where under the Convention the operator is liable for nuclear damage, all other persons are exonerated from any liability in tort. The reason for this is to avoid the pyramiding of insurance if, in fact, insurance is available to such other persons. This is most unlikely to be so at any rate in the United Kingdom and Europe.

2. Under the Convention there are certain kinds of nuclear damage for which the operator is not liable. It is submitted that in these cases also all other persons should be exonerated in the same way.

3. Operators are not liable under the Convention for:

(a) damage to the nuclear installation itself or property on the site of the installation (Article III, (5), (a));

(b) damage to the means of transport of nuclear material (Article III, (5), (b)).

4. Installations and On-site property

Damage could be caused by the negligence of:

(a) suppliers of materials used in the installation;

(b) contractors working on the site (e.g. engineering firms);

(c) other persons coming on to the site.

5. Such suppliers, contractors, etc.-

(a) cannot insure against this kind of liability;

(b) in many cases cannot obtain an indemnity against this risk of liability by a contract with the operator. Thus a suppliers of tools to a contractor working on the nuclear installation site may not know that his tools are to be used on such a site.

6. Means of transport of nuclear material

Damage to the means of transport could be caused by the negligence of:

(a) suppliers of materials to be used in the means of transport (e.g. suppliers of a defective ship's boiler);

(b) owners of other vehicles which cause a collision.

7. The supplier of materials to be used in the means of transport should

not be exposed to the risk of liability for nuclear damage to the means of transport for the same reasons as are explained in paragraph 5 above. It is even more important that no such liability should fall on owners of other ships, aircraft or motor vehicles which may negligently collide with the ship, aircraft or motor vehicle carrying the nuclear material. They would be quite unable to know if or when they might meet a vehicle carrying nuclear material. Every ship, aircraft and motor vehicle would therefore have at all times to maintain insurance to cover liability for nuclear damage to such a vehicle. This would result in the very pyramiding insurance which it is the purpose of channelling liability to the operator to avoid, if indeed the insurance is available which is most unlikely. If insurance is not available these owners of vehicles will themselves have to pay compensation for damage of a most abnormal and unforeseeable character.

8. For all these reasons it is submitted that no person other than the operator should be liable for any nuclear damage, whether under the Convention or under the ordinary law of tort (though there is no objection to a limited right of recourse, dealt with elsewhere in the Convention, in respect of damage caused intentionally or covered by contract).

9. To ensure that this will be the position the following new article is proposed:

"Except as provided in this Convention or under a contract, no person shall be liable for nuclear damage."

DOCUMENT CN-12/CW/90, 10 May 1963, Original: English

United Kingdom: amendment to Article IV

(Amendment to the United States amendment (CN-12/CW/12))

Add the following sentence at the end of paragraph 4 of Article IV after the words "18th December, 1946":

"Conversion into national currencies other than gold shall be effected on the basis of their gold value at the date of payment."

DOCUMENT CN-12/CW/91, 11 May 1963, Original: English

United States of America: amendment to Article III, paragraph 5

Read as follows:

a. Nothing in this Convention shall apply to or otherwise affect the liability of any person for nuclear damage to the nuclear installation itself or to any property on the site of that installation which is used or to be used in connection with that installation; provided, however, that the funds provided in conformity with Article VI shall not be available for such damage.

b. No person shall be liable for nuclear damage to the means of transport upon which the nuclear material involved was at the time of the nuclear incident.

DOCUMENT CN-12/CW/92, 11 May 1963, Original: English

Argentina, Austria, Brazil, Colombia, Greece, Indonesia, Iran, Lebanon, Mexico, Morocco, Philippines, Portugal, Spain, Viet-Nam: amendment to Article VIII

To read as follows:

"Operators shall have a right of recourse against any person who has manufactured materials or equipment - for, or who has furnished materials, equipment or - services in connection with the design, construction, repair or operation of a nuclear installation, or who has transported or stored nuclear material, for fault of such person." *

DOCUMENT CN-12/CW/93, 11 May 1963, Original: English
Japan, Norway, United Kingdom: amendment to Article X, paragraph 1

The initial words of paragraph 1 should be replaced by the following:

"Final judgements against an operator or a person providing financial security, entered by a court having jurisdiction over the action under Article IX of this Convention shall, so long as the total of the judgements has not exceeded the limit of the liability of the operator established pursuant to Article IV, be recognized in the territory of any other contracting State, except where:.....".

DOCUMENT CN-12/CW/94 and Corr.1
Report of the Sub-Committee on Execution of Judgements (see above)

DOCUMENT CN-12/CW/95, 13 May 1963, Original: English
Norway: amendment to Article VIII

Redraft (a) and (b) to read as follows:
"(a) If recourse is expressly provided for by contract in writing; or
(b) against an individual who has caused the nuclear incident by an act or omission with intent to cause damage."

DOCUMENT CN-12/CW/96
Report of the Sub-Committee on Exclusion of Materials (see above)

DOCUMENT CN-12/CW/97 and Revs.1 and 2, 16 May 1963, Original: English
Federal Republic of Germany and Sweden: Proposal to add new article

Substitute the following for the amendment contained in CN-12/CW/1, No. 123

"Any measures taken by a Contracting Party to increase the amount of compensation for nuclear damage in so far as such additional compensation is in excess of US $10 million, may derogate from the provisions of this Convention other than

(i) Article II, paragraph 5;
(ii) Article VIII; and
(iii) Article IX."

DOCUMENT CN-12/CW/98, 13 May 1963, Original: English
Note by the Chairman of the Drafting Committee to the Chairman of the Committee of the Whole

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* See also document CN-12/2, paragraph 47.

1. The Committee of the Whole referred to the Drafting Committe the last item in the amendment to Article II, paragraph 1, proposed by Greece, which appears in CN-12/CW/51.
2. The amendment proposed that the words "under a contract with him" in paragraph 1 (c)(iii) of Article II should be replaced by the words "with his consent".
3. The Drafting Committee have decided to adopt the phrase "with the written consent of the operator".
4. The Committee have, however, asked me to point out to you that this involves a slight change in substance, as would indeed the adoption of the Greek amendment as it appears in CN-12/CW/51.
5. The point is that consent, even written consent, can be given ex post facto whereas the reference to a contract implies agreement in advance.
6. The Committee of the Whole also referred to the Drafting Committee the amendment to Article II A proposed by South Africa and numbered 49 in CN-12/CW/1.
7. This amendment assumes that the operator liable will always be the employer of the carrier. This is not, however, the case. A carrier could be employed by the receiving operator for transport from docks to installation when by express agreement between the two operators the consigning operator remains liable until the nuclear material has reached the receiving operator's installation.
8. The Drafting Committee accordingly considers that to adopt this amendment would effect a change in substance in Article II A. They have therefore decided not to take this amendment into account.

DOCUMENT CN-12/CW/99, 13 May 1963, Original: English
United Kingdom: Proposal to add new article

1. Any State may, on signing or ratifying or acceding to this Convention or at any later time, notify the Director General of the International Atomic Energy Agency that this Convention shall apply to the territory or territories mentioned in the notification, being a territory or territories for whose international relations such State is responsible. Any such notification may in respect of any territory or territories mentioned therein be withdrawn by giving twelve months' notice to that effect to the Director General of the International Atomic Energy Agency, provided that such right of withdrawal shall only be exercisable within the periods provided for denunciation and termination under the provisions of Articles ... (Revision) and ... (Termination) respectively.
2. Any territory for whose international relations a Contracting Party is responsible but to which this Convention is not applied in accordance with the provisions of paragraph 1 of this Article shall be regarded for the purposes of this Convention as being the territory of a non-contracting State.

DOCUMENT CN-12/CW/100, 13 May 1963, Original: English
India: amendment to Article IX

A new paragraph to read as follows:
The term "courts" may, for the purpose of this Convention, include administrative bodies, the decisions of which are subject to judicial review.

DOCUMENT CN-12/CW/101 and Rev.1 *, 13 May 1963, Original: English
Federal Republic of Germany, Philippines, Sweden and United Kingdom: amendment to Article IX, paragraphs 2 and 3

1. Paragraph 2:
Delete the words "on the territory of more than one Contracting Party or".
2. Redraft paragraph 3 to read as follows:
"Where under paragraph 1 or 2 jurisdiction would lie with the courts of more than one Contracting Party, jurisdiction shall lie
(i) in case the nuclear incident occurred partly on the territory of a Contracting Party and partly outside the territory of any Contracting Party, with the courts of that Contracting Party, or
(ii) if there is no such Contracting Party or there is more than one, with the courts of the Contracting Party which is determined by agreement between the Contracting Parties whose courts would be competent under paragraph 1 or 2".

DOCUMENT CN-12/CW/102, 13 May 1963, Original: English
India: Proposal to add new article

The operator shall report to the Installation State every nuclear incident occurring in his nuclear installation immediately after the occurrence comes to his knowledge.

DOCUMENT CN-12/CW/103, 13 May 1963, Original: English
United States of America: Proposal to add new article (Relations with other International Agreements)

A. FIRST ALTERNATIVE:

1. The present Convention shall not affect agreements or conventions in the field of civil liability for nuclear damage having the same purposes, as regards the application of such agreements or conventions between States parties to them.
2. As between States which ratify this Convention or accede to it, this Convention shall supersede any international convention or agreement between these States which is in force, open for signature, ratification or accession at the date on which this Convention is opened for signature, but only to the extent that such convention or agreement is in conflict with the Convention.
3. Nothing in this article shall affect the obligations of contracting States to non-contracting States arising under any international convention or agreement.

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* See also document CN-12/CW/110

B. SECOND ALTERNATIVE:

1. The present Convention shall not affect agreements or conventions in the field of civil liability for nuclear damage having the same purposes, as regards the application of such agreements or conventions between States party to them.

(Apart from above, there shall be no other provision on relations with other conventions, neither the United States proposal reflected in paragraphs 2 and 3 in First Alternative nor the United Kingdom amendment to Article II (5) reflected in CW/1 No. 37)

DOCUMENT CN-12/CW/104 and Corr. 1

Report of the Sub-Committee on Relations with Other International Agreements (see above)

DOCUMENT CN-12/CW/105, 13 May 1963, Original: English

Denmark, Federal Republic of Germany, Finland, Norway, Sweden, United Kingdom, United States of America: amendment to Article III

1. Paragraph 5 to read as follows:

(a) The operator shall not be liable under this Convention for nuclear damage

(i) to the nuclear installation itself or to any property on the site of that installation which is used or to be used in connection with that installation; or

(ii) to the means of transport upon which the nuclear material involved was at the time of the nuclear incident; any Installation State may, however, provide by legislation that this exception shall not apply; provided that in no case shall the inclusion of damage to the means of transport result in reducing the liability of the operator in respect of other nuclear damage to an amount less than US $ ..... million.

(b) With respect to nuclear damage for which the operator, by virtue of sub-paragraph (a), is not liable under this Convention, nothing in this Convention shall affect the liability of any individual who has caused the damage by an act or omission done with intent to cause damage or, with respect to damage referred to in sub-paragraph (a)(ii), the liability of the operator under rules other than those laid down in this Convention.

(c) Nothing in paragraph 5 of Article II shall prevent the Installation State from providing by legislation that, with respect to nuclear damage for which the operator, by virtue of sub-paragraph (a)(i), is not liable under this Convention, any person who is a national of that State may be held liable for such damage under rules other than those laid down in this Convention.

(d) Without prejudice to the provisions of sub-paragraph (a)(ii), the funds furnished in conformity with Article VI shall in no case be available to cover any liability referred to in sub-paragraphs (b) and (c).

2. Add a new paragraph 6 to read:

"Except as provided in this Convention or under the express terms of a contract (in writing), no person shall be liable for nuclear damage."

DOCUMENT CN-12/CW/106
Report of the Committee on Final Clauses (see above)

DOCUMENT CN-12/CW/107, 14 May 1963, Original: English
*United States of America: amendment to Article IX, paragraph 4 **

Amendment No. 113 appearing in document CW/1 to read as follows:

"The courts having jurisdiction may take appropriate measures to obtain testimony in the territory of another Contracting Party of parties or witnesses residing therein, and may take any other feasible measures to lighten the burden of litigation in such situations, provided that, if any action is to be taken in the territory of another Contracting Party, such action shall only be taken if such Contracting Party consents."

DOCUMENT CN-12/CW/108, 14 May 1963, Original: French
Belgium: Proposal to add new article

Any State may, at the time of signature or ratification of or accession to this Convention, express reservations concerning one or more of its provisions.

Such reservations shall have no effect in relation to States which shall have notified the Director General of the International Atomic Energy Agency, within three months from the date of the notification specified in Article F.., of their disagreement with such reservations.

DOCUMENT CN-12/CW/109, 14 May 1963, Original: English
France, Italy, Norway, United Kingdom: amendment to Article X, paragraph 1

In the text proposed by the Sub-Committee on Execution of Judgements (CW/94) delete sub-paragraph (iii) of paragraph 1.

DOCUMENT CN-12/CW/110, 14 May 1963, Original: French
Austria, Federal Republic of Germany, Philippines: Proposal concerning Article V, new paragraph 5

(Proposal arising out of the adoption of amendment CW/101/Rev.1, relating to Article IX).

In the case referred to in Article IX, paragraph 3(ii), there shall be no period of extinction or prescription in respect of the action relating to the nuclear damage if, within the periods established in paragraphs 1 to 3 of this Article, a claim has been entered with one of the Contracting Parties whose agreement with other Contracting Parties is required for designation of the competent court, provided that an action is brought within six months after such designation.

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* See also document CN-12/CW/111.

DOCUMENT CN-12/CW/111, 14 May 1963, Original: English
Brazil: amendment to Article IX, paragraph 4

Amendment to the amendment CN-12/CW/107 submitted by the United States of America.
Paragraph 4 to read as follows:
"The Courts having jurisdiction may take appropriate measures to obtain evidence in the territory of another Contracting Party, provided that the request be presented in accordance with the formalities required by the law of the Contracting Party where the taking of evidence is sought."

DOCUMENT CN-12/CW/112, 14 May 1963, Original: English
Netherlands: Proposal concerning Final Clauses (Title of the Convention)

TITLE OF THE CONVENTION

Should be as follows:
"Vienna Convention on Civil Liability for Nuclear Damage".

PREAMBLE

Should be as follows:
"The Contracting Parties,
"Having recognized the desirability of establishing certain standards to provide financial protection against nuclear damage;
"Believing that the Vienna Convention on Civil Liability for Nuclear Damage would contribute to the development of friendly relations among nations, irrespective of their differing constitutional and social systems,
"Have decided to conclude a Convention for that purpose, and thereto have agreed as follows."

DOCUMENT CN-12/CW/113, 15 May 1963, Original: English
Belgium, Colombia, Japan, Netherlands, Sweden, United Kingdom: Proposal concerning Final Clauses (Settlement of Disputes)

1. Any dispute between two or more Contracting Parties concerning the, interpretation or application of this Convention which cannot be settled through negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by application in conformity with the Statute of the Court.
2. Each Contracting Party may at the time of signature, ratification or accession declare that it does not consider itself bound by paragraph 1. The other Contracting Parties shall not be bound by that paragraph in relation to any Contracting Party which has made such a declaration.
3. Any Contracting Party having made a declaration in accordance with paragraph 2 may at any time withdraw this declaration by notification to the Director General of the International Atomic Energy Agency.

DOCUMENT CN-12/CW/114, 16 May 1963, Original: English and Spanish
Argentina: amendment to Article XII

(This amendment supersedes the amendment No. 118 in CN-12/CW/1)

Jurisdictional immunities under rules of national or international law cannot be invoked in actions under this Convention before the Court competent pursuant to Article IX, except in respect of measures of execution.

PROPOSALS AND AMENDMENTS SUBMITTED IN THE PLENARY

DOCUMENT CN-12/9, 8 May 1963, Original: Spanish

Argentina: the Draft Recommendation of the Conference to the Director General of the International Atomic Energy Agency

The Conference requests the Director General of the International Atomic Energy Agency to ensure that the Agency consider and decide upon –
(a) the desirability and feasibility of setting up an "International Compensation Fund for Nuclear Damage", and the manner in which such a Fund would operate to enable Contracting Parties to meet the liability laid down in Article IV of the Convention, or to cover nuclear damage exceeding the amount therein provided;
(b) the desirability and feasibility of concluding an agreement between the Contracting Parties for the provision of immediate medical assistance to persons affected by a nuclear incident occurring in territory or affecting nationals of a Contracting Party.

DOCUMENT CN-12/10 and Revs. 1 and 2, 16 May 1963, Original: English

Belgium, Brazil, Colombia, the Czechoslovak Socialist Republic, Holy See, Indonesia, Iran, Lebanon, Netherlands, Portugal, Spain and Turkey: Draft Resolution

The International Conference on Civil Liability for Nuclear Damage, at the end of its work in Vienna, the May 1963, wishes to express its most deep and profound gratitude to the people and Government of Austria, of Lower Austria and of the City of Vienna for the kind and friendly hospitality granted to all delegates at the above-mentioned Conference, allowing them, once again, to work for the high task of the friendship and understanding among the Nations.

DOCUMENT CN-12/11 and Rev. 1, 16 May 1963, Original: English

Argentina, Belgium, Brazil, the Czechoslovak Socialist Republic, India, Iran, Poland, South Africa, Spain, Sweden, Switzerland, the Ukrainian Soviet Socialist Republic, the Union of Soviet Socialist Republics and the United Kingdom of Great Britain and Northern Ireland: Draft Resolution

The International Conference on Civil Liability for Nuclear Damage, on conclusion of the work for which it was convened by the Board of Governors of the International Atomic Energy Agency, wishes to record its deep appreciation of this valuable action taken by the Board as well as of the unsparing assistance it has received from the Agency, the excellent arrangements made by whom have alone made possible the accomplishment of its task.

DOCUMENT CN-12/12, 14 May 1963, Original: English
Italy: amendment to Article I A

Add the following:

"provided that any compensation payable in respect of nuclear incidents occurring or nuclear damage suffered within the territory of a non-contracting State does not result in reducing the compensation available for nationals of the contracting Parties to less than US $5 million."

DOCUMENT CN-12/13 and Rev. 1, 17 May 1963, Original: English
Italy: Proposal to add new article

This Convention shall not be construed as affecting the rights, if any, which may be available to a Contracting Party under the general rules of public international law in respect of nuclear damage.

DOCUMENT CN-12/14 and Rev. 1*, 17 May 1963, Original: English
Italy: amendment to Article I, paragraph 1 (a) (document CN-12/17 Add.1)

Add the following:

"or an international organization enjoying legal personality under the law of the Installation State"

or

substitute the word "means" by the word "includes".

The amendment might be a matter of drafting.

DOCUMENT CN-12/15 and Rev. 1, 17 May 1963, Original: English
Argentina, Brazil, Finland, India, Morocco, Philippines, Yugoslavia: Draft Resolution

The International Conference on Civil Liability for Nuclear Damage recommends that:

1. The Board of Governors of the International Atomic Energy Agency establish a Standing Committee composed of representatives of the Governments of 15 States, with the following tasks:

(a) to keep under review problems relating to the International Convention on Civil Liability for Nuclear Damage, and to advise the Director General of the International Atomic Energy Agency at his request on any such problems;

(b) to study the desirability and feasibility of setting up an international compensation fund for nuclear damage, and the manner in which such a fund would work to enable operators of the Contracting Parties to meet the liability under Article IV of the Convention, including ways of covering nuclear damage exceeding the amount therein provided;

(c) to study any problems arising in connection with the application of the Convention to a nuclear installation operated by or under the auspices of an intergovernmental organization, particularly in respect of the "Installation State" as defined in Article I;

* See also document CN-12/43.

(d) to prepare any documents for the revision Conference to be convened in accordance with Article F, and
(c) to study any other special problems referred to it by the Conference.
2. The composition of the Committee be revised periodically by the Board of Governors, taking into account, inter alia, the ratifications received.
3. The Committee co-ordinate its work with that of the Standing Committee established by the Diplomatic Conference on Maritime Law on 25 May 1962, insofar as it concerns subject matters which are also studied by the Committee.
4. Interested international organizations in relations with the Agency be invited to be represented by observers at the Committee.

DOCUMENT CN-12/16
Report of the Credentials Committee (see above)

DOCUMENT CN-12/17/Adds. 1 to 4, 16-18 May 1963
Articles Provisionally Adopted by the Drafting Committee

ARTICLE I

Paragraph 1

For the purposes of this Convention:
(a) "Person" means any individual or partnership, or any public or private body whether corporate or not, including a State or any of its constituent sub-divisions.
(b) "National of a Contracting Party" includes a Contracting Party or any of its constituent sub-divisions or a partnership or any public or private body whether corporate or not established within the territory of a Contracting Party.
(c) "Operator", in relation to a nuclear installation, means the person designated or recognized by the Installation State as the operator of that installation.
(d) "Installation State", in relation to a nuclear installation, means the Contracting Party within whose territory that installation is situated or, if it is not situated within the territory of any State, the Contracting Party by which or under the authority of which the nuclear installation is operated.
(e) "Law of the competent court" means the law of the court having jurisdiction under this Convention, including any rules of such law relating to conflict of laws.
(f) "Nuclear fuel" means any material which is capable of producing energy by a self-sustaining chain process of nuclear fission.
(g) "Radioactive products or waste" means any radioactive material produced in, or any material made radioactive by exposure to the radiation incidental to the production or utilization of nuclear fuel, but does not include radioisotopes which have reached the final stage of fabrication so as to be usable for any scientific, medical, agricultural, commercial or industrial purpose.
(h) "Nuclear material" means

Note: This draft resolution supersedes the Argentine draft resolution in CN-12/9 and the Philippine proposal in CN-12/CW/1, No.24.

(i) nuclear fuel, other than natural uranium and depleted uranium, capable of producing energy by a self-sustaining chain process of nuclear fission outside a nuclear reactor, either alone or in combination with some other material; and

(ii) radioactive products or waste.

(i) "Nuclear reactor" means any structure containing nuclear fuel in such an arrangement that a self-sustaining chain process of nuclear fission can occur therein without an additional source of neutrons.

(j) "Nuclear installation" means

(i) any nuclear reactor other than one with which a means of transport is equipped for use as a source of power, whether for propulsion thereof or for any other purpose;

(ii) any factory using nuclear fuel for the production of nuclear material, or any factory for the processing of nuclear material, including any factory for the re-processing of irradiated nuclear fuel; and

(iii) any facility where nuclear material is stored;

provided that the Installation State may determine that several nuclear installations of one operator located at the same site shall be considered as a single nuclear installation.

(k) "Nuclear damage" means

(i) Loss of life, any personal injury or any loss of, or damage to, property which arises out of 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;

(ii) any other loss or damage so arising or resulting if and to the extent that the law of the competent court so provides; and

(iii) if the law of the Installation State so provides, loss of life, any personal injury or any loss of, or damage to, property which arises out of or results from other ionizing radiation emitted by any other 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.

Paragraph 2

An Installation State may, if the small extent of the risks involved so warrants, exclude any small quantities of nuclear material from the application of this Convention, provided that

(a) maximum limits for the exclusion of such quantities have been established by the Board of Governors of the International Atomic Energy Agency, and

(b) any exclusion by an Installation State is within such established limits. The limits shall be reviewed periodically by the Board of Governors.

ARTICLE I A

This Convention shall not apply to nuclear incidents which occur or to nuclear damage which is suffered within the territory of a non-Contracting

State, unless the law of the Installation State so provides or except as provided in Article I B.

ARTICLE I B

Where a nuclear incident occurs or nuclear damage is suffered within the territory of a non-Contracting State any person who is a national of a Contracting Party, other than the operator, who has paid compensation in respect of such incident or damage shall, up to the amount which he has paid, acquire the rights which the person so compensated would have enjoyed against the operator who would have been liable, had the Convention applied.

ARTICLE II

Paragraph 1

Subject to the provisions of Article I A, the operator of a nuclear installation shall be liable for nuclear damage upon proof that such damage has been caused by a nuclear incident -

(a) in such installation; or

(b) involving nuclear material coming from or originating in such installation, and occurring

(i) before liability with regard to nuclear incidents involving the nuclear material has been assumed, pursuant to the express terms of a contract in writing, by the operator of another nuclear installation; or

(ii) in the absence of such express terms, before the operator of another nuclear installation has taken charge of the nuclear material; or

(iii) where the nuclear material is intended to be used in a nuclear reactor with which a means of transport is equipped for use as a source of power, whether for propulsion thereof or for any other purpose, before the person operating such reactor has taken charge of the nuclear material; but

(iv) where the nuclear material has been sent to a person within the territory of a non-Contracting State, before it has been unloaded from the means of transport by which it has arrived in the territory of that non-Contracting State;

(c) involving nuclear material sent to such nuclear installation, and occurring

(i) after liability with regard to nuclear incidents involving the nuclear material has been assumed by him, pursuant to the express terms of a contract in writing, from the operator of another nuclear installation; or

(ii) in the absence of such express terms after he has taken charge of the nuclear material; or

(iii) after he has taken charge of the nuclear material from a person operating a nuclear reactor with which a means of transport is equipped for use as a source of power, whether for propulsion thereof or for any other purpose; but

(iv) where the nuclear material has, with the written consent of the operator, been sent from a person within the territory of a non-Contracting State,

after it has been loaded on the means of transport by which it is to be carried from the territory of that State;

provided that if nuclear damage is caused by a nuclear incident occurring in a nuclear installation and involving nuclear material stored therein incidentally to the carriage of such material, the provisions of sub-paragraph (a) of this paragraph shall not apply where another operator or person is solely liable pursuant to the provisions of sub-paragraph (b) or (c) of this paragraph.

Paragraph 2

The Installation State may provide by legislation that, in accordance with such terms as may be specified therein, a carrier of nuclear material or a person handling radioactive waste may, at his request and with the consent of the operator concerned, be designated or recognized as operator in the place of that operator in respect of such nuclear material or radioactive waste respectively. In such case for all the purposes of this Convention such carrier or such person shall be considered as an operator of a nuclear installation situated within the territory of that State.

Paragraph 3

(a) Where nuclear damage engages the liability of more than one operator, the operators involved shall, in so far as the damage attributable to each operator is not reasonably separable, be jointly and severally liable.

(b) Where a nuclear incident occurs in the course of carriage of nuclear material, either in one and the same means of transport or, in the case of storage incidental to the carriage, in one and the same nuclear installation, and causes nuclear damage which engages the liability of more than one operator, the total liability shall not exceed the highest amount applicable with respect to any one of them pursuant to Article IV.

(c) In neither of the cases referred to in sub-paragraphs (a) and (b) of this paragraph shall the liability of any one operator exceed the amount applicable with respect to him pursuant to Article IV.

Paragraph 4

Subject to the provisions of paragraph 3, where several nuclear installations of one and the same operator are involved in one nuclear incident, such operator shall be liable in respect of each nuclear installation involved up to the amount applicable with respect to him pursuant to Article IV.

Paragraph 5

Except as otherwise provided in this Convention, no person other than the operator shall be liable for nuclear damage. However, this provision shall not affect the application of any international convention in the field of transport in force or open for signature, ratification or accession at the date on which this Convention is opened for signature.

Paragraph 6 (new)

No person shall be liable for any loss or damage which is not nuclear damage under sub-paragraph (k) (i) of paragraph 1 of Article I but which could have been included as such under sub-paragraph (k) (ii) of paragraph 1 of Article I.

Paragraph 7

Direct action shall lie against the person furnishing financial security pursuant to Article VI, if the law of the competent court so provides.

ARTICLE II A

The operator liable in accordance with this Convention shall provide the carrier with a certificate issued by or on behalf of the insurer or other financial guarantor furnishing the security required pursuant to Article VI. The certificate shall state the name and address of that operator and the amount, type and duration of the security, and these statements may not be disputed by the person by whom or on whose behalf the certificate was issued. The certificate shall also indicate the nuclear material in respect of which the security applies and shall include a statement by the competent public authority of the Installation State that the person named is an operator within the meaning of this Convention.

ARTICLE III

Paragraph 1

The liability of the operator for nuclear damage under this Convention shall be absolute.

Paragraph 2

If the operator proves that the nuclear damage resulted wholly or partly either from the gross negligence of the person suffering the damage or from an act or omission of such person done with intent to cause damage, the competent court may, if its law so provides, relieve the operator wholly or partly from his obligation to pay compensation in respect of the damage suffered by such person.

Paragraph 3

(a) No liability under this Convention shall attach to an operator for nuclear damage caused by a nuclear incident directly due to an act of armed conflict, hostilities, civil war or insurrection.
(b) Except in so far as the law of the Installation State may provide to the contrary, the operator shall not be liable for nuclear damage caused by a nuclear incident directly due to a grave natural disaster of an exceptional character.

Paragraph 4

Whenever both nuclear damage and damage other than nuclear damage have been caused by a nuclear incident or jointly by a nuclear incident and one or more other occurrences, such other damage shall, to the extent that it is not reasonably separable from the nuclear damage, be deemed, for the purposes of this Convention, to be nuclear damage caused by the nuclear incident. Where, however, damage is caused jointly by a nuclear incident covered by this Convention and by an emission of ionizing radiation not covered by it, nothing in this Convention shall limit or otherwise affect the liability, either as regards any person suffering nuclear damage or by way of recourse or contribution, of any person who may be held liable in connection with that emission of ionizing radiation.

Paragraph 5

The operator shall not be liable under this Convention for nuclear damage
(a) to the nuclear installation itself or to any property on the site of that installation which is used or to be used in connection with that installation;
(b) to the means of transport upon which the nuclear material involved was at the time of the nuclear incident.

Paragraph 6

Any Installation State may provide by legislation that sub-paragraph (b) of paragraph 5 of this Article shall not apply, provided that in no case shall the liability of the operator in respect of nuclear damage, other than nuclear damage to the means of transport, be reduced to less than US $ 5 million for any one nuclear incident.

Paragraph 7

Nothing in this Convention shall affect:
(a) the liability of any individual for nuclear damage for which the operator, by virtue of paragraph 3 or paragraph 5 of this Article is not liable under this Convention and which that individual caused by an act or emission done with intent to cause damage;
(b) the liability outside this Convention of the operator for the nuclear damage referred to in sub-paragraph (b) of paragraph 5 of this Article.

ARTICLE IV

Paragraph 1

The liability of the operator may be limited by the Installation State to not less than US $ 5 million for any one nuclear incident.

Paragraph 2

(a) Any Contracting Party may subject the transit of nuclear material through its territory to the condition that any limit of liability in respect of such

material be increased, if it considers that such limit does not adequately cover the risks of a nuclear incident involving such material in the course of its transit through its territory.
(b) Any limit of liability so increased shall not exceed the limit, if any, established by such Contracting Party pursuant to paragraph 1 of this Article, and in no case shall exceed US $10 million.
(c) The provisions of this paragraph shall be without prejudice to such rights as may exist under international law or international agreement with respect to innocent passage, entry in cases of urgent distress, overflight and landing from the air.

Paragraph 3

Any limits of liability which may be established in conformity with this Article shall not include any interest or costs awarded by a court in actions for compensation of nuclear damage.

Paragraph 4 (new)

The United States dollar referred to in this Convention is a unit of account equivalent to the value of the United States dollar in terms of gold on 29 April 1963, that is to say US $ 35 per one troy ounce of pure gold.

Paragraph 5 (new)

The sums mentioned in paragraphs 1 and 2 of this Article may be converted into national currency in round figures.

ARTICLE V

Paragraph 1

Rights of compensation under this Convention shall be extinguished if an action is not brought within ten years from 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 State indemnification for a period longer than ten years, the law of the competent court may provide that rights of compensation against the operator shall only be extinguished after a period which may be longer than ten years, but shall not be longer than the period for which his liability is so covered under the law of the Installation State. However, such extension of the extinction period shall in no case affect the right 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 the aforesaid period of ten years.

Paragraph 2

Where nuclear damage is caused by nuclear material which at the time of the nuclear incident was stolen, lost, jettisoned or abandoned, the period established under paragraph 1 shall be computed from the date of the nuclear

incident causing the nuclear damage, but the period shall in no case exceed a period of twenty years from the date of the theft, loss, jettison or abandonment.

Paragraph 3

The law of the competent court may establish a period of extinction or prescription of not less than three years from the date on which the person suffering nuclear damage has knowledge or ought reasonably to have knowledge of the damage and of the operator liable for the damage, provided that the period established under paragraphs 1 and 2 shall not be exceeded.

Paragraph 4

Unless the law of the competent court otherwise provides, any person who claims to have suffered nuclear damage and who has brought an action for compensation within the period applicable under this Article may amend his claim to take into account any aggravation of the damage, even after the expiry of that period, provided that final judgment has not been entered.

Paragraph 5 (new)

Where jurisdiction is to be determined pursuant to sub-paragraph (b) of paragraph 3 of Article IX and a request has been made within the period applicable pursuant to this Article to any one of the Contracting Parties empowered so to determine, but the time remaining after such determination is less than six months, the period within which an action may be brought shall be six months, reckoned from the date of such determination.

ARTICLE VI

Paragraph 1

The operator shall be required to maintain insurance, or other financial security covering his liability for nuclear damage, in such amount, of such type and in such terms as the Installation State shall specify. The Installation State shall ensure the payment of claims for compensation for nuclear damage established against the operator by providing the necessary funds to the extent that the yield of insurance or the financial security is inadequate to satisfy such claims, but not in excess of the limit, if any, established pursuant to Article IV.

Paragraph 2

Nothing in paragraph 1 of this Article shall require a Contracting Party or any of its constituent sub-divisions, such as States or Republics, to maintain insurance or other financial security to cover their liability as operators.

Paragraph 3

The funds provided by insurance, by other financial security or by the Installation State pursuant to paragraph 1 of this Article shall be exclusively available for compensation due under this Convention.

Paragraph 4 (new)

No insurer or other financial guarantor shall suspend or cancel the insurance or other financial security provided for in paragraph 1 of this Article without giving notice in writing of at least two months to the competent public authority or in so far as such insurance or other financial security relates to the carriage of nuclear material, during the period of the carriage in question.

ARTICLE VI A

Subject to the 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.

ARTICLE VII

Paragraph 1

Where provisions of national or public health insurance, social insurance, social security, workmen's compensation or occupational disease compensation systems include compensation for nuclear damage, rights of beneficiaries of such systems to obtain compensation under this Convention and rights of recourse by virtue of such systems against the operator liable shall be determined by the law of the Contracting Party in which such systems have been established, or the regulations of the intergovernmental organization having established such systems, provided that in no event shall the liability of the operator pursuant to Article IV be exceeded.

Paragraph 2

(a) If a person who is a national of a Contracting Party, other than the operator, has paid compensation for nuclear damage under an International Convention or under the law of a non-Contracting State, such person shall, up to the amount which he has paid, acquire by subrogation the rights under this Convention of the person so compensated. However, no rights shall be so acquired by any person to the extent that the operator has a right of recourse against such person under this Convention.
(b) Nothing in this Convention shall preclude an operator who has paid compensation for nuclear damage out of funds other than those provided pursuant to paragraph 1 of Article VI from recovering from the person providing financial security under paragraph 1 of Article VI or from the Installation State, up to the amount he has paid, the sum which the person so compensated would have obtained under this Convention.

ARTICLE VIII

The operator shall have a right of recourse only:
(a) If this is expressly provided for by a contract in writing; or
(b) If the nuclear incident results from an act or omission done with intent to cause damage, against the individual who has acted or omitted to act with such intent.

ARTICLE IX

Paragraph 1

Except as otherwise provided in this Article, jurisdiction over actions under Articles I B and II shall lie only with the courts of the Contracting Party within whose territory the nuclear incident occurred.

Paragraph 2

Where the nuclear incident occurred outside the territory of any Contracting Party, or where the place of the nuclear incident cannot be determined with certainty, jurisdiction over such actions shall lie with the courts of the Installation State of the operator liable.

Paragraph 3

Where under paragraph 1 or 2 of this Article jurisdiction would lie with the courts of more than one Contracting Party, jurisdiction shall lie
(a) if the nuclear incident occurred partly outside the territory of any Contracting Party, and partly within the territory of a single Contracting Party, with the courts of the latter; and
(b) in any other case, with the courts of that Contracting Party which is determined by agreement between the Contracting Parties whose courts would be competent under paragraph 1 or 2 of this Article.

Paragraph 4

The court having jurisdiction may take appropriate measures to obtain within the territory of another Contracting Party the testimony of parties or witnesses residing therein, and may take any other feasible measures to lighten the burden of litigation, provided that any such measures shall be taken in the territory of another Contracting Party only with that Contracting Party's consent.

ARTICLE X

1. A final judgment entered by a court having jurisdiction under Article IX shall be recognized within the territory of any other Contracting Party, except:
(a) where the judgment was obtained by fraud; or

(b) where the party against whom the judgment was pronounced was not given a fair opportunity to present his case; or
(c) where the judgment is contrary to the public policy of the Contracting Party within the territory of which recognition is sought, or is not in accord with fundamental standards of justice.
2. A final judgment which is recognized shall, upon being presented for enforcement in accordance with the formalities required by the law of the Contracting Party where enforcement is sought, be enforceable as if it were a judgment of a court of that Party.
3. The merits of a claim on which the judgment has been given shall not be subject to further proceedings.

ARTICLE XI

This Convention and the national law applicable thereunder shall be applied without any discrimination based upon nationality, domicile or residence.

ARTICLE XII

Except in respect of measures of execution, jurisdictional immunities under rules of national or international law shall not be invoked in actions under this Convention before the courts competent pursuant to Article IX.

ARTICLE XIII

The Contracting Parties shall take appropriate measures to ensure that compensation for nuclear damage, interest and costs, awarded by a court in connection therewith, insurance and reinsurance premiums and funds provided by insurance, reinsurance or other financial security, or funds provided by the Installation State, pursuant to this Convention, shall be freely transferable into the currency of the Contracting Party within whose territory the damage is suffered, and of the Contracting Party within whose territory the claimant is habitually resident, and, as regards insurance or reinsurance premiums and payments, into the currencies specified in the insurance or reinsurance contract.

ARTICLE XIV

ARTICLE XV

Paragraph 1

Any Contracting Party entering into an agreement pursuant to subparagraph (b) of paragraph 3 of Article IX shall furnish without delay to the Director General of the International Atomic Energy Agency for information and for dissemination to the other Contracting Parties a copy of such agreement.

Paragraph 2

The Contracting Parties shall furnish to the Director General for information and for dissemination to the other Contracting Parties copies of their respective laws and regulations relating to matters covered by this Convention.

ARTICLE XVI (New)

The operator shall be required to report without delay to the Installation State every nuclear incident which occurs in his nuclear installation.

ARTICLE XVII (New)

No person shall have a right to compensation under this Convention if he is claiming for the same nuclear damage under another convention on civil liability for nuclear damage or to the extent that he has already obtained compensation under such other convention.

ARTICLE XVIII (New)

This Convention shall not, as between the parties to them, affect the application of any agreements or conventions in the field of civil liability for nuclear damage in force, or open for signature, ratification or accession at the date on which this Convention is open for signature.

ARTICLE XIX (New)

Notwithstanding the termination of the application of this Convention to any Contracting Party, either by termination pursuant to Article XXV, or by denunciation pursuant to Article XXVI, the provisions of this Convention shall continue to apply to any nuclear damage caused by a nuclear incident occurring before such termination.

ARTICLE XX (New)

1. Any dispute between two or more Contracting Parties concerning the interpretation or application of this Convention which has not been settled through negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties do not agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by application in conformity with the Statute of the Court.
2. Each Contracting Party may at the time of signature, ratification or accession declare that it does not consider itself bound by paragraph 1 of this Article. The other Contracting Parties shall not be bound by that paragraph in relation to any Contracting Party which has made such a declaration.

3. Any Contracting Party which has made a declaration pursuant to paragraph 2 of this Article may at any time withdraw such declaration by notification to the Director General of the International Atomic Energy Agency.

ARTICLE XXI

This Convention shall be open for signature by the States represented at the International Conference on Civil Liability for Nuclear Damage held in Vienna from 29 April to May 1963.

ARTICLE XXII

This Convention shall be ratified, and the instruments of ratification shall be deposited with the Director General of the International Atomic Energy Agency.

ARTICLE XXIII

1. This Convention shall come into force three months after the deposit of instruments of ratification by at least five States.
2. This Convention shall come into force in respect of each State which ratifies it after the deposit of the fifth instrument of ratification as provided in paragraph 1 of this Article, three months after the date of deposit of the instrument of ratification of that State.

ARTICLE XXIV

1. States Members of the United Nations, Members of the specialized agencies and of the International Atomic Energy Agency not represented at the International Conference on Civil Liability for Nuclear Damage, held in Vienna from 29 April 1963 to May 1963, may accede to this Convention.
2. The instruments of accession shall be deposited with the Director General of the International Atomic Energy Agency.
3. This Convention shall come into force in respect of the acceding State three months after the date of deposit of the instrument of accession of that State but not before the date of the entry into force thereof pursuant to Article XXIII.

ARTICLE XXV

1. This Convention shall remain in force for a period of ten years from the date of its entry into force. Any Contracting Party may, by giving before the end of that period at least twelve months' notice to that effect to the Director General of the International Atomic Energy Agency, terminate the application of this Convention to itself at the end of the period of ten years.
2. This Convention shall, after the period of ten years, remain in force for a further period of five years for such Contracting Parties as have not terminated its application pursuant to the provisions of paragraph 1 of this Article, and thereafter for successive periods of five years each for those

Contracting Parties which have not terminated its application at the end of one of such periods, by giving, before the end of one of such periods, at least twelve months' notice to that effect to the Director General of the International Atomic Energy Agency.

ARTICLE XXVI

1. A conference shall be convened by the Director General of the International Atomic Energy Agency at any time after the expiry of a period of five years from the date of the entry into force of this Convention in order to consider the revision thereof, if one-third of the Contracting Parties express a desire to that effect.

2. Any Contracting Party may denounce this Convention by notification to the Director General of the International Atomic Energy Agency within a period of twelve months following the first Revision Conference held pursuant to the provisions of paragraph 1 of this Article.

3. Denunciation shall take effect one year after the date on which notification to that effect has been received by the Director General of the International Atomic Energy Agency.

ARTICLE XXVII

The Director General of the International Atomic Energy Agency shall notify the States invited to the International Conference on Civil Liability for Nuclear Damage held in Vienna from 29 April 1963 to May 1963, and the States which have acceded to this Convention of the following:

(a) Signatures, ratifications and accessions received pursuant to Articles XXI, XXII and XXIV.
(b) Declarations and withdrawals made pursuant to Article XX.
(c) The date on which this Convention will come into force pursuant to Article XXIII.
(d) Terminations and denunciations received pursuant to Articles XXV and XXVI.
(e) Requests for the convening of a revision conference pursuant to Article XXVI.

DONE AT VIENNA, this day of May, one thousand nine hundred and sixty-three, in the English, French, Russian and Spanish languages in a single copy, which shall be deposited with the Director General of the International Atomic Energy Agency, who shall issue certified copies thereof to all States entitled to sign or accede to this Convention.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, whose credentials have been found in order, have signed this Convention.

Title of the Convention

VIENNA CONVENTION ON CIVIL LIABILITY FOR NUCLEAR DAMAGE

PREAMBLE

THE CONTRACTING PARTIES,

HAVING RECOGNIZED the desirability of establishing some minimum standards to provide financial protection against damage resulting from certain peaceful uses of nuclear energy,

BELIEVING that a Convention on civil liability for nuclear damage would also contribute to the development of friendly relations among nations, irrespective of their differing constitutional and social systems,

HAVE DECIDED to conclude a Convention for such purposes, and thereto have agreed as follows.

DOCUMENT CN-12/18, 16 May 1963, Original: English
South Africa: amendment to Article I, paragraph 1(d) (document CN-12/17/Add. 1)
Insert the word "such" between "any" and "State".

DOCUMENT CN-12/19, 16 May 1963, Original: English
United States: Proposal to add new article (Continuation of Protection)

Add a new paragraph to follow the article adopted by the Committee of the Whole in CW/7:

"and (b) with respect to nuclear damage caused by a nuclear incident occurring after such termination and involving the operator of a nuclear installation licensed or otherwise authorized prior to the date of such termination, provided the nuclear incident occurs prior to the expiry of twenty-five years after the date of such licensing or other authorization."

DOCUMENT CN-12/20, 17 May 1963, Original: English
South Africa: amendment to Article IV paragraph 2, sub-paragraph (b) (document CN-12/17/Add.3)

Read as follows:
"Any limit of liability so increased shall not exceed any limit established by the Board of Governors of the International Atomic Energy Agency applicable to the class or quantity of nuclear material involved and the territory through which it will be carried."

DOCUMENT CN-12/21, 17 May 1963, Original: English
Italy: amendment to Article IX, paragraph 3 (document CN-12/17/Add. 3)

Delete sub-paragraph (b)

DOCUMENT CN-12/22, 17 May 1963, Original: English

Argentina, Brazil, Colombia, Indonesia, Iran, Lebanon, Mexico, Morocco, Philippines, Portugal, Spain and Viet-Nam: amendment to Article VIII (document CN-12/17/Add.3)

To read as follows:

"Operators shall have a right of recourse against any person who has manufactured materials or equipment for, or who has furnished materials, equipment or services in connection with the design, construction, repair or operation of a nuclear installation, or who has transported or stored nuclear material, for fault of such person."

DOCUMENT CN-12/23, 17 May 1963, Original: English

Argentina, Brazil, Ghana, India, Indonesia and Spain: Proposal relating to the Optional Protocol Converning the Compulsory Settlement of Disputes

The States Parties to the present Protocol and to the ..... Convention on Civil Liability for Nuclear Damage hereinafter referred to as "the Convention", adopted by the International Conference held at Vienna from 29 April to May 1963,

Expressing their wish to resort in all matters concerning them in respect of any dispute arising out of the interpretation or application of the Convention to the compulsory jurisdiction of the International Court of Justice, unless some other form of settlement has been agreed upon by the parties within a reasonable period,

Have agreed as follows:

ARTICLE I

Disputes arising out of the interpretation or application of the Convention shall lie within the compulsory jurisdiction of the International Court of Justice and may accordingly be brought before the Court by an application made by any party to the dispute being a Party to the present Protocol.

ARTICLE II

The parties may agree, within a period of two months after one party has notified its opinion to the other that a dispute exists, to resort not to the International Court of Justice but to an arbitral tribunal. After the expiry of the said period, either party may bring the dispute before the Court by an application.

ARTICLE III

1. Within the same period of two months, the parties may agree to adopt a conciliation procedure before resorting to the International Court of Justice.
2. The conciliation commission shall make its recommendations within five months after its appointment. If its recommendations are not accepted by the parties to the dispute within two months after they have been delivered, either party may bring the dispute before the Court by an application.

ARTICLE IV

The present Protocol shall be open for signature by all States which may become Parties to the Convention as follows: (.....)

ARTICLE V

The present Protocol is subject to ratification. The instruments of ratification shall be deposited with the .....

ARTICLE VI

The present Protocol shall remain open for accession by all States which may become Parties to the Convention. The instruments of accession shall be deposited with the .....

ARTICLE VII

1. The present Protocol shall enter into force on the same day as the Convention or on the thirtieth day following the date of deposit of the second instrument of ratification or accession to the Protocol with the ....., whichever date is the later.
2. For each State ratifying or acceding to the present Protocol after its entry into force in accordance with paragraph 1 of this Article, the Protocol shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

ARTICLE VIII

The ..... shall inform all States which may become Parties to the Convention:
(a) of signatures to the present Protocol and of the deposit of instruments of ratification or accession, in accordance with Articles IV, V and VI;
(b) of the date on which the present Protocol will enter into force, in accordance with Article VII.

ARTICLE IX

The original of the present Protocol, of which the English, French, Russian and Spanish texts are equally authentic, shall be deposited with the ..... who shall send certified copies thereof to all States referred to in Article IV.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorised thereto by their respective Governments, have signed the present Protocol.

DONE AT VIENNA, this ..... day of May, one thousand nine hundred and sixty-three.

DOCUMENT CN-12/24, 17 May 1963, Original: English
Norway: amendment to Article II, paragraph 1 sub-paragraph (b) (iii)(document CN-12/17/Add. 2)

Substitute the words "before the person operating" by the following: "before the person authorized by law to operate".

DOCUMENT CN-12/25, 17 May 1963, Original: English
Norway: amendment to Article II, paragraph 6 (document CN-12/17/Add. 2)

Substitute the words "but which could" by the following:
"and which have not but could"

DOCUMENT CN-12/26, 17 May 1963, Original: English
Norway: amendment to Article II, paragraph 1 (document CN-12/17/Add. 2)

The proviso at the end of paragraph 1 should read as follows:
"provided that if nuclear damage is caused by a nuclear incident involving nuclear material in the course of carriage it shall, so far as the provisions of sub-paragraphs (a), (b) (ii) and (b) (iii) are concerned, be left out of consideration that such material, incidentally to its carriage, may have been stored or otherwise taken in charge by another operator or person than the consignee."

DOCUMENT CN-12/27, 17 May 1963, Original: English
United States of America: amendment to Article XI (document CN-12/17/Add.4)

Add a new paragraph as follows:
Nothing in paragraph 1 shall preclude an Installation State from applying its national law, apart from the provisions of this Convention, to a claim, whether for compensation or otherwise, to which nationals of that State are parties and which arises from a nuclear incident occurring in its territory, provided that
(a) such national law ensures that the necessary funds are available up to at least an amount equivalent to the limit of liability which that State establishes under the Convention for the satisfaction of all claims for damage caused by the nuclear incident, other than damages to the categories of property described in Article III, paragraph 5(a) and (b), to the extent that the yield of insurance or other financial security is inadequate, and
(b) a national of another Contracting State who has a claim for compensation for nuclear damage, including claims acquired by subrogation, shall have the option to pursue his claim against a national of such Installation State either under the national law or under the provisions of the Convention.

DOCUMENT CN-12/28, 17 May 1963, Original: English
United States: amendment to Article I (j) (i) (document CN-12/17/Add. 1)

Substitute the following:

"(i) any nuclear reactor other than one with which a means of sea or air transport is equipped for use as a source of power, whether for propulsion thereof or for any other purpose;"

DOCUMENT CN-12/29, 17 May 1963, Original: English

Italy: amendment to Article VII, paragraph 1 (document CN-12/17/Add. 3)

After the word "determined" add the following:
"subject to the provisions of this Convention"
and delete the words at the end:
"provided that in no event shall the liability of the operator pursuant to Article IV be exceeded".

DOCUMENT CN-12/30, 17 May 1963, Original: English

Norway: amendment to Article IX, paragraph 1 (document CN-12/17/Add. 3)

Paragraph 1 should read as follows:

"Except as otherwise provided in this Article, jurisdiction over actions under Articles I B, II or VII, paragraph 2 shall lie only with the courts of the Contracting State within whose territory the nuclear incident occurred."

DOCUMENT CN-12/31, 17 May 1963, Original: English

Netherlands: amendment to Article II, paragraph 1 (document CN-12/17/Add.2)

Delete the last sentence of this paragraph beginning with "provided that if nuclear damage is caused by.....".

DOCUMENT CN-12/32, 17 May 1963, Original: English

Netherlands: amendment to Article I, paragraph 1, sub-paragraph j. (iii) (document CN-12/17/Add. 1)

"(iii) any facility where nuclear material is stored, other than a place of storage incidental to the carriage of such material".

DOCUMENT CN-12/33, 17 May 1963, Original: English

Australia: amendment to Article VIII (document CN-12/17/Add. 3)

Add a new paragraph 2

"Notwithstanding the provisions of paragraph 1, the Operator shall have a right of recourse against any person who has manufactured materials or equipment for, or who has furnished materials, equipment or services in connection with the design, construction or repair of a nuclear installation, for fault of that person, provided that the liability of that person shall not exceed US$10 million."

DOCUMENT CN-12/34, 18 May 1963, Original: English

Netherlands: amendment to Article III, paragraph 2 (document CN-12/17/Add.3)

To read:

"If the operator proves that the nuclear damage resulted wholly or partly from an act or omission done with intent to cause damage by the person who suffered the damage, the competent court may, if its law so provides, relieve the operator wholly or partly from his obligation to pay compensation in respect of the damage suffered by such person".

DOCUMENT CN-12/35, 18 May 1963, Original: English

Netherlands: amendment to Article IV, paragraph 2, sub-paragraph (c) (document CN-12/17/Add. 3)

To redraft as follows:

"The provisions of this paragraph shall be without prejudice to such rights as may exist under international law or international agreement with respect to

(i) innocent passage through the territorial sea and overflight;

(ii) entry in the internal waters and landing from the air in cases of urgent distress".

DOCUMENT CN-12/36, 18 May 1963, Original: English

Netherlands: amendment to Article IV, paragraph 2, sub-paragraph (b) (document CN-12/17/Add. 3)

To substitute "US $10 million" by "US $15 million".

DOCUMENT CN-12/37, 18 May 1963, Original: English

Brazil: amendment to Article IX, paragraph 4 (document CN-12/17/Add. 3)

Paragraph 4 to read as follows:

"The Courts having jurisdiction may take appropriate measures to obtain evidence in the territory of another Contracting Party, provided that the request be presented in accordance with the formalities required by the law of the Contracting Party where the taking of evidence is sought."

DOCUMENT CN-12/38 and Rev. 1, 18 May 1963, Original: English

Draft Final Act of the International Conference on Civil Liability for Nuclear Damage

1. The Board of Governors of the International Atomic Energy Agency at its 286th meeting on 5 March 1962 decided to convene an international conference to conclude a convention on civil liability for nuclear damage together with such ancillary instruments as might prove necessary.

2. The International Conference on Civil Liability for Nuclear Damage met at the "Neue Hofburg" in Vienna from 29 April to 19 May 1963.

3. The Governments of the following fifty-eight States were represented at the Conference: Albania, Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Canada, China, Colombia, Cuba, Czechoslovak Socialist Republic, Denmark, Dominican Republic,

El Salvador, Finland, France, Federal Republic of Germany, Ghana, Greece, Guatemala, Holy See, Honduras, Hungary, India, Indonesia, Iran, Israel, Italy, Japan, Republic of Korea, Lebanon Luxembourg, Mexico, Monaco, Morocco, Netherlands, Nicaragua, Norway, Philippines, Poland, Portugal, Romania, South Africa, Spain, Sweden, Switzerland, Thailand, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela, Viet-Nam, Yugoslavia.

4. The Governments of Ecuador and Chile were represented by observers.

5. The Board of Governors invited the United Nations and the specialized Agencies and other interested international organizations in relations with the Agency to be represented by observers at the Conference. The following specialized agencies and intergovernmental organizations accepted this invitation: International Labour Organisation; Food and Agriculture Organization of the United Nations, International Civil Aviation Organization; Universal Postal Union; Intergovernmental Maritime Consultative Organization; Central Office for International Railway Transport; European Atomic Energy Community; European Nuclear Energy Agency of the Organisation for Economic Cooperation and Development; Inter-American Nuclear Energy Commission of the Organization of American States; International Institute for Unification of Private Law.

6. The Conference elected Mr. B.N. Lokur (India) as President.

7. The Conference elected as Vice-President Mr. K. Petrželka (Czechoslovak Socialist Republic) and Mr. E.K. Dadzie (Ghana).

8. The following committees were set up by the Conference:

Comittee of the Whole

Chairman : Mr. A.D. McKnight (Australia)
Vice-Chairman: Mr. M. Ghelmegeanu (Romania)
Rapporteur : Mr. C.A. Dunshee de Abranches (Brazil)

Committee on Final Clauses

Chairman : Dr. José de Erice (Spain)
Members : Brazil, Colombia, Czechoslovak Socialist Republic, Ghana, Indonesia, Japan, Lebanon, Morocco, Netherlands, Spain, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America.

Drafting Committee

Chairman : Mr. J.P.H. Trevor (United Kingdom)
Members : Mr. M. Lagorge (France), Mr. K. Farkas (Hungary), Mr. M. Nacht (Israel), Prof. G. Arangio Ruiz (Italy), Mr. D.M. Cabrera Macia (Mexico), Mr. U. Nordenson (Sweden), Mr. S.N. Bratusj (USSR), Mr. E.E. Spingarn (United States of America) and as his alternate Mr. W. English.

Credentials Committee

Chairman : Mr. Thomas de Castro (Philippines)
Members : Argentina, Australia, Bulgaria, Lebanon, El Salvador, Philippines, Union of Soviet Socialist Republics, United States of America.

9. In addition, the Committee of the Whole set up the following Sub-Committees:

Sub-Committee on Exclusion of Materials
Chairman: Mr. E.K. Dadzie, (Ghana).

Sub-Committee on Relations with other International Agreements

Chairman: Mr. K. Petrželka (Czechoslovak Socialist Republic).

Sub-Committee on Execution of Judgments

Chairman: Mr. E. Zaldívar (Argentina)

10. The Director General of the International Atomic Energy Agency was represented by Mr. F. Seyersted, Director of the Legal Division of the Agency. Mr. K.F. Wolff, Consultant in the Legal Division, acted as Executive Secretary of the Conference.

11. The Conference had before it the following documents:

a) Observations submitted by Governments on the Draft Convention on Minimum International Standards regarding Civil Liability for Nuclear Damage, as prepared by the Intergovernmental Committee on Civil Liability for Nuclear Damage at its first series of meetings in May 1961 in Vienna;

b) Draft Convention on Minimum International Standards regarding Civil Liability for Nuclear Damage as revised by the Intergovernmental Committee on Civil Liability for Nuclear Damage at its second series of meetings in October 1962, and Report of the Committee;

c) Amendments to the Draft Convention submitted by Governments in advance of the Conference;

12. The Conference allocated the consideration of the draft articles on civil liability for nuclear damage as prepared by the Intergovernmental Committee to the Committee of the Whole. The preparation of the title, preamble and final clauses was allocated to the Committee on Final Clauses, which reported to the Committee of the Whole.

13. On the basis of the deliberations as recorded in the records of the plenary meetings and of the Committee of the Whole and in the reports of the Committee on Final Clauses, the Credentials Committee, the Sub-Committee on Relations with other International Agreements, the Sub-Committee on Exclusion of Materials, the Conference prepared the following Convention and .....:

Vienna Convention on Civil Liability for Nuclear Damage.

.....

14. The foregoing Convention and ..... which is [are] subject to ratification, was [were] adopted by the Conference on 19 May 1963 and

opened for signature on ... May 1963 in accordance with its [their] provisions at the Headquarters of the International Atomic Energy Agency. The Convention and ... was [were] also opened for accession, in accordance with its [their] provisions.

15. The Convention and ... will be deposited with the Director General of the International Atomic Energy Agency.

16. The Conference adopted also the following resolutions, which are appended to this Final Act:

Resolution on .....
Resolution on .....
Resolution on .....

DONE AT VIENNA this day of May, one thousand nine hundred and sixty-three, in a single copy in the English, French, Russian and Spanish languages. The original of this Final Act shall be deposited in the archives of the Director General of the International Atomic Energy Agency.

IN WITNESS WHEREOF the representatives have signed this Final Act.

DOCUMENT CN-12/39, 18 May 1963, Original: French

Belgium, Federal Republic of Germany, France, the Netherlands, Sweden and the United Kingdom: Proposal to add new article (document CN-12/17/Add.4)

"Any measures taken by a Contracting Party to increase, out of public funds, the amount of compensation for nuclear damage in so far as such additional compensation is in excess of US$10 million, may derogate from the provisions of this Convention other than

(i) Article II, paragraph 5;
(ii) Article VIII; and
(iii) Article IX."

DOCUMENT CN-12/40 and Rev.1, 18 May 1963, Original: English

Sweden, Italy and the United Kingdom: amendment to New Article XVII (document CN-12/17/Add.4)

Substitute for existing text:

No person shall be entitled to recover compensation under this Convention if or to the extent that he has recovered compensation, in respect of the same nuclear damage, under another convention on civil liability in the field of nuclear energy.

DOCUMENT CN-12/41, 19 May 1963

Text of Articles IX to XXVIII inclusive, together with the Title and the Preamble adopted by the Drafting Committee

ARTICLE IX

(1) Except as otherwise provided in this Article, jurisdiction over actions under Article II shall lie only with the courts of the Contracting Party within whose territory the nuclear incident occurred.

(2) Where the nuclear incident occurred outside the territory of any Contracting Party, or where the place of the nuclear incident cannot be determined with certainty, jurisdiction over such actions shall lie with the courts of the Installation State of the operator liable.

(3) Where under paragraph (1) or (2) of this Article jurisdiction would lie with the courts of more than one Contracting Party, jurisdiction shall lie -

(a) If the nuclear incident occurred partly outside the territory of any Contracting Party, and partly within the territory of a single Contracting Party, with the courts of the latter; and

(b) in any other case, with the courts of that Contracting Party which is determined by agreement between the Contracting Parties whose courts would be competent under paragraph (1) or (2) of this Article.

(4) The court having jurisdiction may take appropriate measures to obtain within the territory of another Contracting Party the testimony of parties or witnesses residing therein, and may take any other feasible measures to lighten the burden of litigation, provided that any such measures shall be taken within the territory of another Contracting Party only with that Contracting Party's consent.

ARTICLE X

(1) A final judgment entered by a court having jurisdiction under Article IX shall be recognized within the territory of any other Contracting Party, except -

(a) where the judgment was obtained by fraud;

(b) where the party against whom the judgment was pronounced was not given a fair opportunity to present his case; or

(c) where the judgment is contrary to the public policy of the Contracting Party within the territory of which recognition is sought, or is not in accord with fundamental standards of justice.

(2) A final judgment which is recognized shall, upon being presented for enforcement in accordance with the formalities required by the law of the Contracting Party where enforcement is sought, be enforceable as if it were a judgment of a court of that Contracting Party.

(3) The merits of a claim on which the judgment has been given shall not be subject to further proceedings.

ARTICLE XI

This Convention and the national law applicable thereunder shall be applied without any discrimination based upon nationality, domicile or residence.

ARTICLE XII

Except in respect of measures of execution, jurisdictional immunities under rules of national or international law shall not be invoked in actions under this Convention before the courts competent pursuant to Article IX.

ARTICLE XIII

The Contracting Parties shall take appropriate measures to ensure that compensation for nuclear damage, interest and costs, awarded by a court in connection therewith, insurance and reinsurance premiums and funds provided by insurance, reinsurance or other financial security, or funds provided by the Installation State, pursuant to this Convention, shall be freely transferable into the currency of the Contracting Party within whose territory the damage is suffered, and of the Contracting Party within whose territory the claimant is habitually resident, and, as regards insurance or reinsurance premiums and payments, into the currencies specified in the insurance or reinsurance contract.

ARTICLE XIV

ARTICLE XV

(1) Any Contracting Party entering into an agreement pursuant to subparagraph (b) of paragraph (3) of Article IX shall furnish without delay to the Director General of the International Atomic Energy Agency for information and dissemination to the other Contracting Parties a copy of such agreement.
(2) The Contracting Parties shall furnish to the Director General for information and dissemination to the other Contracting Parties copies of their respective laws and regulations relating to matters covered by this Convention.

ARTICLE XVI (New)

The operator shall be required to report without delay to the Installation State every nuclear incident which occurs in his nuclear installation.

ARTICLE XVII (New)

No person shall have a right to compensation under this Convention if he is claiming for the same nuclear damage under another international convention on civil liability for nuclear damage or to the extent that he has already obtained compensation under such other convention.

ARTICLE XVIII (New)

This Convention shall not, as between the parties to them, affect the application of any international agreements or international conventions in the field of civil liability for nuclear damage in force, or open for signature, ratification or accession at the date on which this Convention is opened for signature.

ARTICLE XIX (New)

Notwithstanding the termination of the application of this Convention to any Contracting Party, either by termination pursuant to Article XXV or by

denunciation pursuant to Article XXVI, the provisions of this Convention shall continue to apply to any nuclear damage caused by a nuclear incident occurring before such termination.

ARTICLE XX (New)

(1) Any dispute between two or more Contracting Parties concerning the interpretation or application of this Convention which has not been settled through negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties do not agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by application in conformity with the Statute of the Court.
(2) Each Contracting Party may at the time of signature, ratification or accession declare that it does not consider itself bound by paragraph (1) of this Article. The other Contracting Parties shall not be bound by that paragraph in relation to any Contracting Party which has made such a declaration.
(3) Any Contracting Party which has made a declaration pursuant to paragraph (2) of this Article may at any time withdraw such declaration by notification to the Director General of the International Atomic Energy Agency.

ARTICLE XXI

This Convention shall be open for signature by the States represented at the International Conference on Civil Liability for Nuclear Damage held in Vienna from 29 April to ... May 1963.

ARTICLE XXII

This Convention shall be ratified, and the instruments of ratification shall be deposited with the Director General of the International Atomic Energy Agency.

ARTICLE XXIII

This Convention shall come into force three months after the deposit of the fifth instrument of ratification, and, in respect of each State ratifying it thereafter, three months after the deposit of the instrument of ratification by that State.

ARTICLE XXIV

(1) States Members of the United Nations, Members of the Specialized Agencies and of the International Atomic Energy Agency not represented at the International Conference on Civil Liability for Nuclear Damage, held in Vienna from 29 April 1963 to ... May 1963, may accede to this Convention.
(2) The instruments of accession shall be deposited with the Director General of the International Atomic Energy Agency.

(3) This Convention shall come into force in respect of the acceding State three months after the date of deposit of the instrument of accession of that State but not before the date of the entry into force of this Convention pursuant to Article XXIII.

ARTICLE XXV

(1) This Convention shall remain in force for a period of ten years from the date of its entry into force. Any Contracting Party may, by giving before the end of that period at least twelve months' notice to that effect to the Director General of the International Atomic Energy Agency, terminate the application of this Convention to itself at the end of that period of ten years.
(2) This Convention shall, after that period of ten years, remain in force for a further period of five years for such Contracting Parties as have not terminated its application pursuant to the provisions of paragraph (1) of this Article, and thereafter for successive periods of five years each for those Contracting Parties which have not terminated its application at the end of one of such periods, by giving, before the end of one of such periods, at least twelve months' notice to that effect to the Director General of the International Atomic Energy Agency.

ARTICLE XXVI

(1) A conference shall be convened by the Director General of the International Atomic Energy Agency at any time after the expiry of a period of five years from the date of the entry into force of this Convention in order to consider the revision thereof, if one-third of the Contracting Parties express a desire to that effect.
(2) Any Contracting Party may denounce this Convention by notification to the Director General of the International Atomic Energy Agency within a period of twelve months following the first Revision Conference held pursuant to the provisions of paragraph (1) of this Article.
(3) Denunciation shall take effect one year after the date on which notification to that effect has been received by the Director General of the International Atomic Energy Agency.

ARTICLE XXVII

The Director General of the International Atomic Energy Agency shall notify the States invited to the International Conference on Civil Liability for Nuclear Damage held in Vienna from 29 April 1963 to ... May 1963, and the States which have acceded to this Convention of the following:

(a) Signatures, ratifications and accessions received pursuant to Articles XXI, XXII and XXIV.
(b) Declarations and withdrawals made pursuant to Article XX.
(c) The date on which this Convention will come into force pursuant to Article XXIII.
(d) Terminations and denunciations received pursuant to Articles XXV and XXVI.

(e) Requests for the convening of a revision conference pursuant to Article XXVI.

ARTICLE XXVIII

This Convention shall be registered by the Director General of the International Atomic Energy Agency in accordance with Article 102 of the Charter of the United Nations.

DONE in Vienna, this .... day of May, one thousand nine hundred and sixty-three, in the English, French, Russian and Spanish languages in a single original which shall be deposited with the Director General of the International Atomic Energy Agency, who shall issue certified copies.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, duly authorized thereto, have signed this Convention.

Title of the Convention:

VIENNA CONVENTION ON CIVIL LIABILITY FOR NUCLEAR DAMAGE

PREAMBLE

THE CONTRACTING PARTIES,

HAVING RECOGNIZED the desirability of establishing some minimum standards to provide financial protection against damage resulting from certain peaceful uses of nuclear energy,

BELIEVING that a convention on civil liability for nuclear damage would also contribute to the development of friendly relations among nations, irrespective of their differing constitutional and social systems,

HAVE DECIDED to conclude a Convention for such purposes, and thereto have agreed as follows.

DOCUMENT CN-12/42, 19 May 1963
Draft Convention (Article I-VIII)

The attached text of Articles I - VIII inclusive represents the final text adopted by the Drafting Committee and includes all the alterations to the provisional text required by the decisions taken by the Conference on 18 May 1963, with the exception of the amendment submitted by South Africa to Article I (1) (d) and contained in document CN-12/18.

ARTICLE I

(1) For the purposes of this Convention –

(a) "Person" means any individual, partnership, any private or public body whether corporate or not, any international organization enjoying legal personality under the law of the Installation State, and any State or any of its constituent sub-divisions.

(b) "National of a Contracting Party" includes a Contracting Party or any of its constituent sub-divisions, a partnership, or any private or public body whether corporate or not established within the territory of a Contracting Party.
(c) "Operator", in relation to a nuclear installation, means the person designated or recognized by the Installation State as the operator of that installation.
(d) "Installation State", in relation to a nuclear installation, means the Contracting Party within whose territory that installation is situated or, if it is not situated within the territory of any State, the Contracting Party by which or under the authority of which the nuclear installation is operated.
(e) "Law of the competent court" means the law of the court having jurisdiction under this Convention, including any rules of such law relating the conflict of laws.
(f) "Nuclear fuel" means any material which is capable of producing energy by a self-sustaining chain process of nuclear fission.
(g) "Radioactive products or waste" means any radioactive material produced in, or any material made radioactive by exposure to the radiation incidental to, the production or utilization of nuclear fuel, but does not include radioisotopes which have reached the final stage of fabrication so as to be usable for any scientific, medical, agricultural, commercial or industrial purpose.
(h) "Nuclear material" means -

(i) nuclear fuel, other than natural uranium and depleted uranium, capable of producing energy by a self-sustaining chain process of nuclear fission outside a nuclear reactor, either alone or in combination with some other material; and
(ii) radioactive products or waste.

(i) "Nuclear reactor" means any structure containing nuclear fuel in such an arrangement that a self-sustaining chain process of nuclear fission can occur therein without an additional source of neutrons.
(j) "Nuclear installation" means -

(i) any nuclear reactor other than one with which a means of sea or air transport is equipped for use as a source of power, whether for propulsion thereof or for any other purpose;
(ii) any factory using nuclear fuel for the production of nuclear material, or any factory for the processing of nuclear material, including any factory for the re-processing of irradiated nuclear fuel; and
(iii) any facility where nuclear material is stored, other than storage incidental to the carriage of such material;

provided that the Installation State may determine that several nuclear installations of one operator which are located at the same site shall be considered as a single nuclear installation.
(k) "Nuclear damage" means -

(i) loss of life, any personal injury or any loss of, or damage to, property which arises out of 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;

(ii) any other loss or damage so arising or resulting if and to the extent that the law of the competent court so provides; and
(iii) if the law of the Installation State so provides, loss of life, any personal injury or any loss of, or damage to, property which arises out of or results from other ionizing radiation emitted by any other 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.

(2) An Installation State may, if the small extent of the risks involved so warrants, exclude any small quantities of nuclear material from the application of this Convention, provided that –

(a) maximum limits for the exclusion of such quantities have been established by the Board of Governors of the International Atomic Energy Agency; and
(b) any exclusion by an Installation State is within such established limits.

The maximum limits shall be reviewed periodically by the Board of Governors.

ARTICLE II

(1) The operator of a nuclear installation shall be liable for nuclear damage upon proof that such damage has been caused by a nuclear incident –

(a) in his nuclear installation; or
(b) involving nuclear material coming from or originating in his nuclear installation, and occurring –
(i) before liability with regard to nuclear incidents involving the nuclear material has been assumed, pursuant to the express terms of a contract in writing, by the operator of another nuclear installation;
(ii) in the absence of such express terms, before the operator of another nuclear installation has taken charge of the nuclear material; or
(iii) where the nuclear material is intended to be used in a nuclear reactor with which a means of transport is equipped for use as a source of power, whether for propulsion thereof or for any other purpose, before the person duly authorized to operate such reactor has taken charge of the nuclear material; but
(iv) where the nuclear material has been sent to a person within the territory of a non-Contracting State, before it has been unloaded from the means of transport by which it has arrived in the territory of that non-Contracting State;
(c) involving nuclear material sent to his nuclear installation, and occurring
(i) after liability with regard to nuclear incidents involving the nuclear material has been assumed by him, pursuant to the express terms of a contract in writing, from the operator of another nuclear installation;
(ii) in the absence of such express terms, after he has taken charge of the nuclear material; or
(iii) after he has taken charge of the nuclear material from a person operating a nuclear reactor with which a means of transport is equipped for use as a source of power, whether for propulsion thereof or for any other purpose; but
(iv) where the nuclear material has, with the written consent of the operator, been sent from a person within the territory of a non-Contracting State,

only after it has been loaded on the means of transport by which it is to be carried from the territory of that State;

provided that, if nuclear damage is caused by a nuclear incident occurring in a nuclear installation and involving nuclear material stored therein incidentally to the carriage of such material, the provisions of sub-paragraph (a) of this paragraph shall not apply where another operator or person is solely liable pursuant to the provisions of sub-paragraph (b) or (c) of this paragraph.

(2) The Installation State may provide by legislation that, in accordance with such terms as may be specified therein, a carrier of nuclear material or a person handling radioactive waste may, at his request and with the consent of the operator concerned, be designated or recognized as operator in place of that operator in respect of such nuclear material or radioactive waste respectively. In this case such carrier or such person shall be considered, for all the purposes of this Convention, as an operator of a nuclear installation situated within the territory of that State.

(3) (a) Where nuclear damage engages the liability of more than one operator, the operators involved shall, in so far as the damage attributable to each operator is not reasonably separable, be jointly and severally liable.

(b) Where a nuclear incident occurs in the course of carriage of nuclear material, either in one and the same means of transport, or, in the case of storage incidental to the carriage, in one and the same nuclear installation, and causes nuclear damage which engages the liability of more than one operator, the total liability shall not exceed the highest amount applicable with respect to any one of them pursuant to Article IV.

(c) In neither of the cases referred to in sub-paragraphs (a) and (b) of this paragraph shall the liability of any one operator exceed the amount applicable with respect to him pursuant to Article IV.

(4) Subject to the provisions of paragraph (3) of this Article, where several nuclear installations of one and the same operator are involved in one nuclear incident, such operator shall be liable in respect of each nuclear installation involved up to the amount applicable with respect to him pursuant to Article IV.

(5) Except as otherwise provided in this Convention, no person other than the operator shall be liable for nuclear damage. This, however, shall not affect the application of any international convention in the field of transport in force or open for signature, ratification or accession at the date on which this Convention is opened for signature.

(6) No person shall be liable for any loss or damage which is not nuclear damage pursuant to sub-paragraph (k) of paragraph (1) of Article I but which could have been included as such pursuant to sub-paragraph (k) (ii) of that paragraph.

(7) Direct action shall lie against the person furnishing financial security pursuant to Article VI, if the law of the competent court so provides.

ARTICLE II A

The operator liable in accordance with this Convention shall provide the carrier with a certificate issued by or on behalf of the insurer or other financial guarantor furnishing the financial security required pursuant to Article VI. The certificate shall state the name and address of that operator

and the amount, type and duration of the security, and these statements may not be disputed by the person by whom or on whose behalf the certificate was issued. The certificate shall also indicate the nuclear material in respect of which the security applies and shall include a statement by the competent public authority of the Installation State that the person named is an operator within the meaning of this Convention.

ARTICLE III

(1) The liability of the operator for nuclear damage under this Convention shall be absolute.

(2) If the operator proves that the nuclear damage resulted wholly or partly either from the gross negligence of the person suffering the damage or from an act or omission of such person done with intent to cause damage, the competent court may, if its law so provides, relieve the operator wholly or partly from his obligation to pay compensation in respect of the damage suffered by such person.

(3) (a) No liability under this Convention shall attach to an operator for nuclear damage caused by a nuclear incident directly due to an act of armed conflict, hostilities, civil war or insurrection.

(b) Except in so far as the law of the Installation State may provide to the contrary, the operator shall not be liable for nuclear damage caused by a nuclear incident directly due to a grave natural disaster of an exceptional character.

(4) Whenever both nuclear damage and damage other than nuclear damage have been caused by a nuclear incident or jointly by a nuclear incident and one or more other occurrences, such other damage shall, to the extent that it is not reasonably separable from the nuclear damage, be deemed, for the purposes of this Convention, to be nuclear damage caused by that nuclear incident. Where, however, damage is caused jointly by a nuclear incident covered by this Convention and by an emission of ionizing radiation not covered by it, nothing in this Convention shall limit or otherwise affect the liability, either as regards any person suffering nuclear damage or by way of recourse or contribution, of any person who may be held liable in connection with that emission of ionizing radiation.

(5) The operator shall not be liable under this Convention for nuclear damage -

(a) to the nuclear installation itself or to any property on the site of that installation which is used or to be used in connection with that installation; or

(b) to the means of transport upon which the nuclear material involved was at the time of the nuclear incident.

(6) Any Installation State may provide by legislation that sub-paragraph (b) of paragraph (5) of this Article shall not apply, provided that in no case shall the liability of the operator in respect of nuclear damage, other than nuclear damage to the means of transport, be reduced to less than US $5 million for any one nuclear incident.

(7) Nothing in this Convention shall affect –

(a) the liability of any individual for nuclear damage for which the operator, by virtue of paragraph (3) or (5) of this Article, is not liable under this Con-

vention and which that individual caused by an act or omission done with intent to cause damage; or
(b) the liability outside this Convention of the operator for nuclear damage for which, by virtue of sub-paragraph (b) of paragraph (5) of this Article, he is not liable under this Convention.

ARTICLE IV

(1) The liability of the operator may be limited by the Installation State to not less than US $5 million for any one nuclear incident.
(2) Any limits of liability which may be established pursuant to this Article shall not include any interest or costs awarded by a court in actions for compensation of nuclear damage.
(3) The United States dollar referred to in this Convention is a unit of account equivalent to the value of the United States dollar in terms of gold on 29 April 1963, that is to say US $35 per one troy ounce of fine gold.
(4) The sums mentioned in paragraph (6) of Article III and in paragraph (1) of this Article may be converted into national currency in round figures.

ARTICLE V

(1) Rights of compensation under this Convention shall be extinguished if an action is not brought within ten years from 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 State indemnification for a period longer than ten years, the law of the competent court may provide that rights of compensation against the operator shall only by extinguished after a period which may be longer than ten years, but shall not be longer than the period for which his liability is so covered under the law of the Installation State. 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 the aforesaid period of ten years.
(2) Where nuclear damage is caused by a nuclear incident involving nuclear material which at the time of the nuclear incident was stolen, lost, jettisoned or abandoned, the period established pursuant to paragraph (1) of this Article shall be computed from the date of that nuclear incident, but the period shall in no case exceed a period of twenty years from the date of the theft, loss, jettison or abandonment.
(3) The law of the competent court may establish a period of extinction or prescription of not less than three years from the date on which the person suffering nuclear damage had knowledge or should have had knowledge of the damage and of the operator liable for the damage, provided that the period established pursuant to paragraphs (1) and (2) of this Article shall not be exceeded.
(4) Unless the law of the competent court otherwise provides, any person who claims to have suffered nuclear damage and who has brought an action for compensation within the period applicable pursuant to this Article may amend his claim to take into account any aggravation of the damage, even

after the expiry of that period, provided that final judgment has not been entered.

(5) Where jurisdiction is to be determined pursuant to sub-paragraph (b) of paragraph (3) of Article IX and a request has been made within the period applicable pursuant to this Article to any one of the Contracting Parties empowered so to determine, but the time remaining after such determination is less than six months, the period within which an action may be brought shall be six months, reckoned from the date of such determination.

ARTICLE VI

(1) The operator shall be required to maintain insurance or other financial security covering his liability for nuclear damage in such amount, of such type and in such terms as the Installation State shall specify. The Installation State shall ensure the payment of claims for compensation for nuclear damage which have been established against the operator by providing the necessary funds to the extent that the yield of insurance or other financial security is inadequate to satisfy such claims, but not in excess of the limit, if any, established pursuant to Article IV.

(2) Nothing in paragraph (1) of this Article shall require a Contracting Party or any of its constituent sub-divisions, such as States or Republics, to maintian insurance or other financial security to cover their liability as operators.

(3) The funds provided by insurance, by other financial security or by the Installation State pursuant to paragraph (1) of this Article shall be exclusively available for compensation due under this Convention.

(4) No insurer or other financial guarantor shall suspend or cancel the insurance or other financial security provided pursuant to paragraph (1) of this Article without giving notice in writing of at least two months to the competent public authority or, in so far as such insurance or other financial security relates to the carriage of nuclear material, during the period of the carriage in question.

ARTICLE VI A

Subject to the 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.

ARTICLE VII

(1) Where provisions of national or public health insurance, social insurance, social security, workmen's compensation or occupational disease compensation systems include compensation for nuclear damage, rights of beneficiaries of such systems to obtain compensation under this Convention and rights of recourse by virtue of such systems against the operator liable shall be determined, subject to the provisions of this Convention, by the law of the Contracting Party in which such systems have been established, or by the regulations of the intergovernmental organization which has established such systems.

(2) (a) If a person who is a national of a Contracting Party, other than the operator, has paid compensation for nuclear damage under an international convention or under the law of a non-Contracting State, such person shall, up to the amount which he has paid, acquire by subrogation the rights under this Convention of the person so compensated. No rights shall be so acquired by any person to the extent that the operator has a right of recourse against such person under this Convention.

(b) Nothing in this Convention shall preclude an operator who has paid compensation for nuclear damage out of funds other than those provided pursuant to paragraph (1) of Article VI from recovering from the person providing financial security pursuant to that paragraph or from the Installation State, up to the amount he has paid, the sum which the person so compensated would have obtained under this Convention.

ARTICLE VIII

The operator shall have a right of recourse only –
(a) if this is expressly provided for by a contract in writing; or
(b) if the nuclear incident results from an act or omission done with intent to cause damage, against the individual who has acted or omitted to act with such intent.

DOCUMENT CN-12/43, 19 May 1963, Original: English
United Kingdom: amendment to Draft Resolution (document CN-12/15/Rev. 1)

Replace the words following "such a fund would work ....." by:
"to provide cover for the liability for nuclear damage of operators of the Contracting Parties in excess of that available from insurance and the public funds of individual Contracting Parties".

DOCUMENT CN-12/44, 19 May 1963, Original: English
Colombia: amendment to Draft Resolution (document CN-12/15. Rev. 1)

Revise the first part of para. 1 to read:
"The International Atomic Energy Agency, according to its Statute, establish ....."

DOCUMENT CN-12/45, 19 May 1963, Original: English
Italy, United Kingdom and Sweden: amendment to Draft Resolution (document CN-12/15/Rev. 1)

Add the following as a new sub-paragraph (f) at the end of paragraph 1 of the Draft Resolution proposed in document CN-12/15/Rev. 1:
"(f) to study the feasibility and desirability of establishing an international body to settle any question which may arise as between two or more Contracting Parties with respect to the determination of the Contracting Party whose courts are to exercise jurisdiction pursuant to Article IX 3(b)."

OBSERVATIONS OF INTERNATIONAL ORGANIZATIONS

OBSERVATION BY THE INTERNATIONAL UNION OF PRODUCERS AND DISTRIBUTORS OF ELECTRICAL ENERGY

(CN-12/CW/INF/1, 30 April 1963, Original: French)

ARTICLE I

Paragraph 5

Since nuclear power stations are at present a costly means of producing electrical energy, it seems necessary not to risk augmenting producers' costs by increasing the number of financial guarantees they must provide and their insurance obligations.

We should therefore suggest that the concept of financial guarantee be linked to that of site, and that the last two lines of the paragraph be amended to provide that several "nuclear installations" on the same site shall be deemed to be a single installation unless the State on whose territory they are situated provides otherwise.

We may add that in densely-populated countries a large concentration of electric power on a single site will expose the population to less risk of a nuclear incident than will a number of scattered reactors, and moreover that the inspection and security measures at a power station will probably match the installed capacity of the site.

OBSERVATION BY THE INTERNATIONAL UNION OF AVIATION INSURERS

(CN-12/CW/INF/2, 2 May 1963, Original: English)

ARTICLE VII

Paragraph 2b

Having regard to the possibility that national legislation may impose liability on parties other than the operator it is submitted that the words "an operator" in the first line should be substituted by the words "any party in a claim".

OBSERVATION BY THE INTERNATIONAL UNION OF PRODUCERS AND DISTRIBUTORS OF ELECTRICAL ENERGY (UNIPEDE)

(CN-12/CW/INF/3, 3 May 1963, Original: French)

ARTICLE VI

Paragraph 1

Generally speaking, it may be assumed that the victims of an incident occurring in a nuclear power station will apply for compensation to the operator of the station, who is objectively liable.

As long as relatively small damage is involved, it will be sufficient for the operator to forward the claims to the insurer who is covering the operator's liability and is subrogated to him.

If, on the other hand, it is a rather serious incident and the use of public funds will be required for the compensation of victims, the producers of electrical energy fear – and apparently with good reason – that they will be confronted with difficult situations unless their obligations are carefully defined and delimited.

One question in which they cannot fail to be interested is when the public funds will be available for compensating for damage not indemnified by insurance. They must state further that they do not have the necessary means for undertaking attempts to reach compromise settlements with victims or for preparing their recourse actions. Moreover, they consider it desirable that organizations producing electrical energy, even if they belong to different countries, should be faced with similar, if not identical, problems.

Various ways of settling this question can of course be visualized, all, naturally, subject to the agreement of the State participating directly in the indemnification of the damage. However, with a view to expressing its point of view in concrete form, UNIPEDE believes that it can indicate a simple formula which would save producers of electrical energy from having to act as substitutes for the insurer and at the same time enable the State concerned to be informed concerning the use of the amount whose depletion would give rise to the payment of public funds. Where appropriate, it would also enable the State concerned to take action with respect to such use, thereby clarifying the possible liability of the operator in the matter. It would, it seems to us, suffice if claims for compensation for damage were addressed simultaneously to the operator and to the State, although no interdependence of such claims would be established thereby. The claim addressed to the State would not constitute bringing an action against the State except to the extent that it is demonstrated that the amount of security provided by the insurer has been depleted.

COMMUNICATION FROM THE CENTRAL OFFICE FOR INTERNATIONAL RAILWAY TRANSPORT - (COIRT)

(CN-12/CW/INF/4, 3 May 1963, Original: English)

In connection with the question of the relation of the Vienna Convention with other international agreements, especially those in the field of transport, Article 64 of the International Convention Concerning Carriage of Goods by Rail (CIM), as revised on 25 February 1961, should be mentioned. This Article reads as follows:

ARTICLE 64

Liability in case of nuclear incidents

The railway shall not be liable under this Convention for loss or damage caused by a nuclear incident when pursuant to special provisions in force in a Contracting State governing liability in the field of nuclear energy the operator of a nuclear installation or another person who is substituted for him is liable for the loss or damage.

An identical provision is also contained in the International Convention concerning the Carriage of Passengers and Luggage by Rail (CIV).

OBSERVATIONS OF THE REPRESENTATIVE OF THE COMITÉ MARITIME INTERNATIONAL

(CN-12/CW/INF/5, 6 May 1963, Original: English)

ARTICLE III

Paragraph 2

This paragraph may relieve an operator from liability to a person who suffers nuclear damage if the operator can prove that the nuclear damage resulted from the fault of such person.

In view of the definition of "person" in the Convention (individual, partnership, public or private body whether corporate or not, including a State or any of its constituent subdivisions), the following two examples may be given to illustrate the effect of this paragraph:

(a) A nuclear incident occurs during the loading or discharging of nuclear material, due to the fault of a stevedore employed by a Port Authority. The stevedore is killed by the consequent radiation and the port is put out of action. Not only might the dependants of the negligent stevedore be unable to recover, but the Port Authority, as his employers, might also be without a remedy.

(b) Ship "A", carrying nuclear material, collides with Ship "B", a conventional vessel, and a nuclear incident occurs; the collision is caused by the fault of Ship "B". Radiation is extensive, and as

a result, Ship "B" is abandoned. Ship "B" might be unable to recover any damages from the operator.

It is appreciated that this paragraph appears to be permissive only i.e. when giving effect to the Convention, Installation States may provide in their law that, notwithstanding the fault of a person, the operator shall not be entitled to claim exemption from liability to such person. Such a provision would not, however, be of avail, for example, to a negligent ship-owner if the law of the "competent court" provides that a person at fault is deprived of his right to damages. Thus, so long as any Installation State allows the fault of the "person" as a defence to the operator, all "non-carrying" ships sailing the high seas will run the risk of being unable to recover from the operator in respect of nuclear damage sustained by such ships. Even if, as seems doubtful, insurance cover against such risks would be available to shipowners, the cost of sea transport will be increased as a result of nuclear material being carried by sea.

Nuclear materials are inherently dangerous and an operator must accept the consequences if, having released them from his installation, they subsequently cause nuclear damage while in transit. But, apart from this consideration, by imposing single and absolute liability on the operator, the pyramiding of insurance cover is avoided and costs in the whole nuclear sphere are thereby reduced.

This reasoning was accepted and applied at the Brussels Conference in 1962. In the Convention on Liability of Operators of Nuclear Ships the operator is absolutely liable and the whole concept of fault is excluded from the Convention. The operator is able to claim exemption from liability if, and only if, he can prove that the nuclear damage resulted from "an act or omission done with intent to cause damage by an individual who suffers the damage". (Article II (5)).

The Comité Maritime International is strongly opposed to the paragraph as drafted and submits that it should be deleted and substituted by the wording appearing in Article II (5) of the Nuclear Ship Convention, such as proposed by the Netherlands delegation in amendment CN-12/CW/67 dated 2 May 1963 and by the United States delegation in amendment CN-12/CW/11 dated 26 April 1963.

OBSERVATION OF THE INTERNATIONAL UNION OF AVIATION INSURERS

(CN-12/CW/INF/6, 6 May 1963, Original: English)

ARTICLE VII

Paragraph 2 b

In explanation of the suggestion submitted in CN-12/CW/INF/2 it is stated that the IUAI believes in the principle of channelling liability to the nuclear establishment operator, and in the cases where the carrier may

be held liable in the first instance, is interested in preserving such rights of recourse against the operator.

It is submitted for consideration that the proposed amendment contained in CN-12/CW/INF/2 helps to clarify this position.

OBSERVATIONS ON THE DRAFT CONVENTION ON MINIMUM INTERNATIONAL STANDARDS REGARDING CIVIL LIABILITY FOR NUCLEAR DAMAGE

(CN-12/CW/INF/7, 7 May 1963, Original: English)

ARTICLE II, Paragraph 7
ARTICLE III, Paragraph 2
ARTICLE VII

Observation submitted by INTERNATIONAL CONFEDERATION OF FREE TRADE UNIONS, BRUSSELS

The text of the draft Convention adopted by the Intergovernmental Committee on Civil Liability for Nuclear Damage (document CN-12/2) and the comments prepared by the Secretariat of the Agency (document CN-12/3) give rise to the following observations:

Article II, paragraph 7

As the insurers of the party responsible for the damage can be sued directly by the persons who have suffered the damage, it would be desirable that the Convention take account of nuclear damage suffered by nationals of a given country working in another country where an operator of the former has a nuclear installation. The Convention should further state to which insurers the workers suffering nuclear damage could have recourse for compensation and under what conditions.

Article III, paragraph 2

Paragraph 2 of this Article states: "If the operator proves that the nuclear damage resulted wholly or partly from the fault of the person suffering the damage the competent court may, in accordance with the provisions of its laws, relieve the operator wholly or partly from his responsibility to such person".

This provision appears unacceptable, particularly for workers who might be involved in such a case; we are opposed to the principle of non-liability of the operator in the event of another person being at fault.

The provision should be amended so as to preserve the principle of absolute liability of the operator in the manner done, for instance, in the Convention on the Liability of Nuclear Ship Operators (Brussels, 1962). This

contains a provision which only restricts the principle of absolute liability in case of deliberate intent to cause damage. It reads as follows:

> "If the operator proves that the nuclear damage resulted wholly or partly from an act or omission done with intent to cause damage by the individual who suffered the damage the competent courts may exonerate the operator wholly or partially from his liability to such individual."

It is the words "with intent to cause damage", which safeguard the principle of absolute liability of the operator. It is our view that similar language should be used in Article III, paragraph 2 of the Convention, in order that the principle already established for nuclear ships may be applied also to all other accidents falling under this Convention.

Article VII

Persons suffering personal injury are to be compensated under the relevant national system of social security (health insurance, workmen's compensation), if such a system provides for compensation for nuclear damage. Nevertheless, although the rights of the beneficiaries of such a system and the rights of recourse provided for are determined by the Contracting Party or by the regulations of the intergovernmental organization (for instance ILO) having established such systems, it should be clearly stated, as the ILO has proposed, that employees covered by social security systems should not lose their right to compensation under the present Convention, if that compensation exceeds that due under the social security system.

OBSERVATIONS SUBMITTED BY THE INTERNATIONAL CIVIL AVIATION ORGANIZATION (ICAO)

(CN-12/CW/INF/8, 7 May 1963, Original: English)

ARTICLE II

Paragraph 5

1. The Warsaw Convention of 1929 has been ratified by approximately 70 States, including most States represented here. It regulates the liability of carriers by air in respect of death or injury caused to passengers and loss of or damage to cargo. The Rome Conventions of 1933 and 1952 regulate the liability of aircraft operators for death, injury or damage caused on the surface by an aircraft in flight or anything falling therefrom.
2. A Convention which adopts a system of channelling liability for nuclear damage to the operator of the nuclear installation might, in certain circumstances, be in conflict with existing obligations arising under the Warsaw or Rome Conventions.
3. If all the parties to the Warsaw and Rome Conventions became parties to the IAEA Convention at the same moment in time, there would be no

problem, because as between parties to the IAEA Convention any prior Convention would be superseded to the extent that there was a conflict. This, it is respectfully suggested, would be so even without an express provision for supersession.

4. However, in the nature of things, it cannot be expected that all the parties to the existing civil aviation conventions will simultaneously become parties to the IAEA Convention. In Consequence the numerous States parties to existing Conventions will be unable to ratify the present Convention without being in possible breach of their obligations to those States which are parties to the existing Conventions but not to the new one.

Example: States A, B and C are parties to the Warsaw Convention. States A and B become parties to the IAEA Convention but State C does not. A passenger by air who is a national of State C, wishes to exercise his right under the Warsaw Convention to sue an airline of State A in the courts of State B for nuclear injuries occurring in the course of carriage by that airline. Under the IAEA Convention, State B is obliged towards State A to prevent the action for nuclear damage being brought against an airline of State A, but under the Warsaw Convention State B is obliged towards State C to allow the action to be brought.

5. The supersession of existing conventions, as between parties to the IAEA Convention, would therefore produce a conflict of international obligations in certain circumstances, not necessarily confined to the particular example given above. An effect of the potential conflict might be to delay or prevent the ratification of the IAEA Convention.

6. This point could be met by a provision that nothing in the IAEA Convention shall affect existing conventions in the field of civil aviation, a solution which would avoid the conflict by leaving the aircraft operator to bear the risk of nuclear damage to third parties. The provision for subrogation in Article VII, paragraph 2(a) of the draft convention will, it is thought, provide an adequate remedy for the probable inability of the aircraft operator to insure against nuclear liability.

7. However, the solution mentioned in the preceding paragraph would be inadequate in a case in which the nuclear operator and the operator of the aircraft were one and the same person. In such a case (and it may be that similar considerations apply to carriage by sea or land), it would not be right for that person to shelter behind the possibly lower limits of the existing Convention. It would appear that there would be no difficulty if, in such a case, the IAEA Convention applied to the person concerned in his capacity of nuclear operator, thereby exposing him to greater liability than under existing civil aviation conventions. In such a case of double capacity the claim would be determined according to whichever convention the plaintiff chose to invoke.

8. The solution recommended is therefore one which –

(a) Adds to Article II, paragraph 5 a provision that it is not to exclude liability of persons, other than the nuclear operator, arising under existing civil aviation conventions; and

(b) preserves the right of subrogation against the nuclear operator, at present appearing in Article VII, paragraph 2(a); and

(c) makes the nuclear operator liable under the IAEA Convention even

though he may also be a person liable under an existing civil aviation convention.

OBSERVATIONS SUBMITTED BY THE STUDY CENTRE OF THE PERMANENT COMMITTEE OF ATOMIC RISK, EUROPEAN INSURANCE COMMITTEE

(CN-12/CW/INF/9, 8 May 1963, Original: English)

ARTICLE IV

Paragraph 1
(In conjunction with ARTICLE VI)

Financial security as required under Article VI of the draft Convention is obviously only given once. This applies to bank guarantees and personal securities of all kinds, and it applies also to insurance. Any person providing financial security of any kind must know the total extent of his commitments to enable him to meet them, and this means in the case of insurance that cover can only be granted for one fixed and specified amount with respect of any one installation. With sums running to millions of dollars it is essential that a limit be fixed for insurers, just as for operators whatever their legal status. Otherwise, the problem of uncontrollable commitments would, in the case of limitation of the operator's liability per incident, only be shifted to the insurer, or simply postponed if other financial security is provided.

For these reasons, the satisfactory all-round solution to this problem is to limit liability per installation, in which case both the operator and the person providing financial security (whatever form this takes) would be protected. This is the solution adopted by the Swiss Federal Law on the peaceful uses of atomic energy and protection against radiations, of December 23rd, 1959 (Articles 12, paragraph 6, and 21, paragraph 2).

If, however, the limitation of the operator's third party liability is per incident, at least a second limitation per installation should be provided for, as proposed in document CN-12/2, paragraph 27 and paragraph 28, but not limited to a one-year period.

In any case, insurers request that per-installation cover be officially recognized in the Convention, for example under Article VI. The Swedish Nuclear Liability Act 1960 expressly provides this solution (Article 10, paragraph 3).

An absorbed cover will be reinstated by negotiation (taking account of the availability of the various types of financial security) including of course re-instatement of the depleted insurance cover.

OBSERVATIONS OF THE COMITÉ MARITIME INTERNATIONAL

(CN-12/CW/INF/10, 10 May 1963, Original: English)

ARTICLE III

Paragraph 5(b)

This paragraph may relieve the operator from any liability for nuclear damage to the means of transport, be it railway, lorry, aircraft or ship.

The paragraph appears to be permissive, however, and an Installation State may provide that the operator shall be liable up to a specified sum. An Installation State is defined as the Contracting Party on whose territory the nuclear installation is situated. Thus the flag of the ship is irrelevant in this context and a ship carrying nuclear material from an Installation State whose law provides that nuclear damage to the ship is excluded would be unable to recover notwithstanding any provision of the law of the flag of the ship to the contrary.

It is accepted that nuclear damage to the nuclear installation itself, i.e. on-site damage, should be excluded from the Convention. It was for this reason that, in the Nuclear Ship Convention it is provided, in Article II (3), that "Nuclear damage suffered by the nuclear ship herself ... shall not be covered by the Operator's liability as defined in this Convention."

In sub-paragraph 5(b), however, no question of on-site damage arises. It is unreasonable that the carrier of nuclear material should be denied the right to recover damages when his means of transport is destroyed by a nuclear incident. He is, surely, a victim of nuclear damage just as any other member of the public.

This is another example of undesirable deviation from the principle of channelling. If this paragraph is adopted what will be the result? Carriers will seek indemnities from operators to cover any risk of nuclear damage to their means of transport. There will thus be pyramiding of insurance and consequential additional expenses in transporting nuclear material. The economic cost of covering the risk of damage to the ship will still be borne by the operator, but it will be increased to no real purpose; without an indemnity, nuclear materials will not be carried at all.

It is submitted that this sub-paragraph should be omitted in toto. Whether or not the Conference supports this proposal it is, in any event, considered quite essential that it should be made clear in the Convention that carriers are not restricted from their right to conclude any contract of indemnity with the operator.

OBSERVATIONS OF THE INTERGOVERNMENTAL MARITIME CONSULTATIVE ORGANIZATION (IMCO)

(CN-12/CW/INF/11, 13 May 1963, Original: French)

ARTICLE III

Paragraph 5(b)

Article III, paragraph 5(b), provides that the operator shall not be liable for damage to the means of transport upon which the nuclear material was present.

The Committee's attention is drawn to the fact that the inclusion of such a provision in the Convention cannot fail to affect the carriage of nuclear materials by sea.

To deprive the maritime carrier of compensation for damage to the ship carrying nuclear materials is to discriminate against him, since he will be treated differently from the other victims of the nuclear incident.

In actual practice, maritime carriers would have no choice but to refrain from carrying nuclear materials, because there would be no common denominator between the risks incurred by the ship and the cost of carriage. It should also be borne in mind that since the cargo of nuclear material would not fill the ship's holds, the shipowner would probably not be inclined to take such a load on board, in order not to interfere with the dispatch of other goods.

The question therefore arises whether the effect of the provision in question would be not only to subject carriage by sea to unfair treatment but also to deprive operators of a mode of transport which it will doubtless be essential for them to have at their disposal.

The Committee might consider a solution which was capable of avoiding the drawbacks of Article III, paragraph 5(b). In the opinion of the IMCO representative, the International Maritime Committee, in document CN-12/CW/INF/10, has suggested a solution which is deserving of consideration. IMCO would support this solution or any other solution which would lead to the same result.

OBSERVATIONS BY THE INTERGOVERNMENTAL MARITIME CONSULTATIVE ORGANIZATION (IMCO)

(CN-12/CW/INF/12, 14 May 1963, Original: French)

Exclusion of nuclear materials

The proposal submitted to the Committee of the Whole by the Sub-Committee on Exclusion of Materials (CN-12/CW/96) provides that the Board of Governors of the International Atomic Energy Agency should be charged with establishing maximum limits – and periodically reviewing them – for

the exclusion of small quantities of nuclear material from the scope of the Convention if it is considered that the risks are sufficiently small.

The evaluation of such risks during transport does not depend only on the type of product being carried. It also depends on the technical conditions under which transport is carried out. This is especially true of transport by sea, from the point of view of stowage, handling, disposition of the cargo on board etc.

Moreover, any decision tending to modify the scope of the Convention would have repercussions on the economics and efficiency of transport by sea.

In these circumstances, the body responsible for establishing the maximum limits should be of such a nature as to ensure that the multiple and complex aspects of the problem can be considered with a full knowledge of the facts.

OBSERVATION BY THE STUDY CENTRE OF THE PERMANENT COMMITTEE OF ATOMIC RISK, EUROPEAN INSURANCE COMMITTEE

(CN-12/INF/8, 18 May 1963, Original: English)

ARTICLES III, IV and V

Any person – banker, insurer, or any other financial guarantor – must know for how much, and for how long, he is committed. In this respect three problems are raised by the draft as adopted by the Committee of the Whole, and though they differ essentially in their nature, they may conveniently be recorded together.

1. The first difficulty resides in the provisions of Article III, paragraph 7(b), as adopted provisionally by the Drafting Committee (CN-12/17/Add. 3), which reads:

   "Nothing in this Convention shall affect ... (b) the liability outside this Convention of the operator for the nuclear damage referred to in sub-paragraph (b) of paragraph 5 of this Article".

   in conjunction with Article VI, paragraph 3:

   "The funds provided by insurance or other financial security or by the Installation State pursuant to paragraph 1 of this Article shall be extensively available for compensation due under this Convention".

   This means, as insurers understand it, that on top of the limit of liability fixed in accordance with Article IV the operator will be liable for any amount with regard to the damage caused to the means of transport:

   A. If the damage to the means of transport is excluded in accordance with Article III, paragraph 5(b) the full amount of damage to the means of transport is due in addition to the limit fixed in accordance with Article IV, paragraph 1.

   B. If the damage to the means of transport is included as permitted by Article III, paragraph 6, it may be partly paid for out of the difference between the $5 million reserved for real third parties and

the limit of liability established under Article IV, paragraph 1; in the case of heavy damage to or total loss of the means of transport, this remainder could be insufficient.

Under Anglo-Saxon law and the Code Napoleon rules the court decides on the application of strict liability in the individual case; it can be taken as certain that outside of the convention also strict liability will, in effect, be imposed for damage caused by nuclear materials, but it will be unlimited.

In both cases A and B the limitation under Article IV is disrupted and operators, faced with increased and even unknown commitments, will request third party liability insurers to grant them cover which may exceed their capacities.

What is to be the amount insured if the operator does not know on which means of transport the nuclear material will be shipped?

The solution to these problems has to be found through insurance cover for nuclear damage to the means of transport (hull, "casco" insurance), and not through denying to the operator the benefit of this Convention with respect to damage to the property of a person who profits financially from the carriage and profits also from the channelling for all damage caused to third parties, even if he has been negligent.

2. The second difficulty is that liability is limited under Article IV, paragraph 1 on a per-incident basis. Cover given on the same basis would not allow the insurer to know the amount of his commitments on one and the same installation, and it cannot therefore be granted in another way than per-installation. The reasons why this is so have been drawn to the attention of the Committee of the Whole in document CN-12/CW/INF/9.
3. The third difficulty is created by the amendment adopted to Article V, providing that where nuclear material has been stolen, lost, jettisoned, or abandoned, claims against the operator may in some cases not be prescribed or extinguished for twenty years computed from the date of the first occurrence in the chain of causality of the damage, i.e. the loss, theft, jettisoning or abandonment. This means that insurers may be called upon by operators for cover for the same duration, which cannot be reconciled with sound insurance technique:
   - it would mean immobilization of funds for this long period, perhaps uselessly;
   - these funds, in view of the regulations for insurance investments, would be subject in any country to the universal decrease in purchasing power of money.

Under normal circumstances for non-nuclear damage, third party liability insurers are in a position to settle claims within two or three years from the occurrence which gave rise to the damage.

While they appreciate the necessity of protecting the victims, they emphasize that a solution to this problem can be found under special arrangements, such as have been adopted in Article 24 of the Italian and Article 19 of the Swiss nuclear liability law (special funds for delayed atomic injuries) or in accordance, for instance, with the laws of the United Kingdom, Sweden and Denmark.

Insurers would be grateful for reasons of professional probity that this declaration on three points be officially recorded.

OBSERVATIONS OF THE INTERNATIONAL UNION OF PRODUCERS AND DISTRIBUTORS OF ELECTRICAL ENERGY (UNIPEDE)

(CN-12/INF/9, 18 May 1963, Original: French)

ARTICLE III

The operators of nuclear power stations cannot but welcome the principle laid down in Article III, paragraph 5(b), under which they are exempt from all liability in respect of nuclear damage to the means of transport on which the fuel they use is carried.

There is, however, a matter which still causes them serious concern. From what has been said by the representatives of various carriers' organizations it is to be feared that it will in fact be impossible for nuclear fuel to be shipped by sea or air unless the Installation State, using the option conferred on it by Article III, paragraph 6, decrees that paragraph 5(b) shall not apply. Liability in respect of damage to the means of transport would then be transferred to the operator, who is certainly in no better position to insure against it than the carriers. The operator would thus have to bear a risk of indeterminate size, but which would certainly be very heavy and possibly intolerable.

There is then here a problem of importance for the development of nuclear power production, and it is essential for such development that a system be quickly established which will take into account the interests of carriers, insurers and operators of nuclear power stations alike, as well as what can reasonably be expected of them.

FINAL ACT

FINAL ACT OF THE INTERNATIONAL CONFERENCE ON CIVIL LIABILITY FOR NUCLEAR DAMAGE

(CN-12/48, 20 May 1963)

1. The Board of Governors of the International Atomic Energy Agency at its 286th meeting on 5 March 1962 decided to convene an international conference to conclude a convention on civil liability for nuclear damage together with such ancillary instruments as might prove necessary.

2. The International Conference on Civil Liability for Nuclear Damage met at the "Neue Hofburg" in Vienna from 29 April to 19 May 1963.

3. The Governments of the following fifty-eight States were represented at the Conference: Albania, Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Byelorussion Soviet Socialist Republic, Canada, China, Colombia, Cuba, Czechoslovak Socialist Republic, Denmark, Dominican Republic, El Salvador, Finland, France, Federal Republic of Germany, Ghana, Greece, Guatemala, Holy See, Honduras, Hungary, India, Indonesia, Iran, Israel, Italy, Japan, Republic of Korea, Lebanon, Luxembourg, Mexico, Monaco, Morocco, Netherlands, Nicaragua, Norway, Philippines, Poland, Portugal, Romania, South Africa, Spain, Sweden, Switzerland, Thailand, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela, Viet-Nam, Yugoslavia.

4. The Governments of Ecuador and Chile were represented by observers.

5. The Board of Governors invited the United Nations and the specialized agencies and other interested international organizations in relation with the Agency to be represented by observers at the Conference. The following specialized agencies and intergovernmental organizations accepted this invitation: International Labour Organisation, Food and Agriculture Organization of the United Nations, International Civil Aviation Organization, Universal Postal Union, Intergovernmental Maritime Consultative Organization, Central Office for International Railway Transport, European Atomic Energy Community, European Nuclear Energy Agency of the Organisation for Economic Co-operation and Development, Inter-American Nuclear Energy Commission of the Organization of American States, International Institute for Unification of Private Law.

6. The Conference elected Mr. B.N. Lokur (India) as President.

7. The Conference elected as Vice-Presidents Mr. K. Petrželka (Czechoslovak Socialist Republic) and Mr. E.K. Dadzie (Ghana).

8. The following committees were set up by the Conference:

Committee of the Whole

Chairman: Mr. A.D. McKnight (Australia)
Vice-Chairman: Mr. M. Ghelmegeanu (Romania)
Rapporteur: Mr. C.A. Dunshee de Abranches (Brazil)

Committee on Final Clauses

Chairman: Mr. J. de Erice (Spain)
Members: Brazil, Colombia, Czechoslovak Socialist Republic, Ghana, Indonesia, Japan, Lebanon, Morocco, Netherlands, Spain, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America.

Drafting Committee

Chairman: Mr. J. P. H. Trevor (United Kingdom)
Members: Mr. M. Lagorce (France), Mr. K. Farkas (Hungary), Mr. M. Nacht (Israel), Mr. G. Arangio Ruiz (Italy), Mr. D. M. Cabrera Macía (Mexico), Mr. U. Nordenson (Sweden), Mr. S. N. Bratusj (USSR), Mr. E. E. Spingarn (United States); in addition Mr. E. Zaldivar (Argentina) served as alternate to Mr. Cabrera Macía, Mr. P. Mauss (France) to Mr. Lagorce, Mr. K. J. S. Ritchie (United Kingdom) to Mr. Trevor, and Mr. W. English (United States of America) to Mr. Spingarn.

Credentials Committee

Chairman: Mr. T. G. de Castro (Philippines)
Members: Argentina, Australia, Bulgaria, El Salvador, Lebanon, Philippines, Union of Soviet Socialist Republics, United States of America.

9. In addition, the Committee of the Whole set up the following sub-committees:

Sub-Committee on Exclusion of Materials

Chairman: Mr. E. K. Dadzie (Ghana)
Members: Brazil, Czechoslovak Socialist Republic, Ghana, India, Japan, Sweden, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America.

Sub-Committee on Relations with other International Agreements

Chairman: Mr. K. Petrželka (Czechoslovak Socialist Republic)
Members: Belgium, Brazil, Czechoslovak Socialist Republic, France, Federal Republic of Germany, India, Japan, Netherlands, Philippines, Romania, Sweden, Switzerland, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America.

Sub-Committee on Execution of Judgements

Chairman: Mr. E. Zaldivar (Argentina)
Members: Argentina, Belgium, Brazil, Italy, Japan, Netherlands,

Norway, Romania, Turkey, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America.

10. The Director General of the International Atomic Energy Agency was represented by Mr. F. Seyersted, Director of the Legal Division of the Agency. Mr. K. F. Wolff, Consultant in the Legal Division, acted as Executive Secretary of the Conference.

11. The Conference had before it the following documents:

(a) Observations submitted by Governments on the Draft Convention on Minimum International Standards regarding Civil Liability for Nuclear Damage, as prepared by the Intergovernmental Committee on Civil Liability for Nuclear Damage at its first series of meetings in May 1961 in Vienna;

(b) Draft Convention on Minimum International Standards regarding Civil Liability for Nuclear Damage, as revised by the Intergovernmental Committee on Civil Liability for Nuclear Damage at its second series of meetings in October 1962, and Report of the Committee;

(c) Amendments to the Draft Convention submitted by Governments in advance of the Conference.

12. The Conference allocated the consideration of the draft articles on civil liability for nuclear damage as prepared by the Intergovernmental Committee to the Committee of the Whole. The preparation of the title, preamble and final clauses was allocated to the Committee on Final Clauses, which reported to the Committee of the Whole.

13. On the basis of the deliberations as recorded in the records of the plenary meetings and of the Committee of the Whole and in the reports of the Committee on Final Clauses, the Credentials Committee, the Sub-Committee on Relations with other International Agreements, the Sub-Committee on Execution of Judgements and the Sub-Committee on Exclusion of Materials, the Conference prepared the following Convention and Optional Protocol:

Vienna Convention on Civil Liability for Nuclear Damage

Optional Protocol Concerning the Compulsory Settlement of Disputes.

14. The foregoing Convention and Protocol, which are subject to ratification, were adopted by the Conference on 19 May 1963 and opened for signature on 21 May 1963 in accordance with their provisions at the Headquarters of the International Atomic Energy Agency. The Convention and Protocol were also opened for accession, in accordance with their provisions.

15. The Convention and the Protocol will be deposited with the Director General of the International Atomic Energy Agency.

16. The Conference adopted also the following resolutions, which are appended to this Final Act:

Resolution on the establishment of a Standing Committee

Resolution expressing a tribute to the Government and people of the Republic of Austria

Resolution expressing a tribute to the International Atomic Energy Agency.

17. The original of this Final Act, of which the English, French, Russian

and Spanish texts are equally authentic, shall be deposited with the Director General of the International Atomic Energy Agency.

IN WITNESS WHEREOF the representatives have signed this Final Act.

DONE in Vienna this twenty-first day of May, one thousand nine hundred and sixty-three.

TEXT OF CONVENTION

VIENNA CONVENTION ON CIVIL LIABILITY FOR NUCLEAR DAMAGE

(CN-12/46, 20 May 1963)

THE CONTRACTING PARTIES,

HAVING RECOGNIZED the desirability of establishing some minimum standards to provide financial protection against damage resulting from certain peaceful uses of nuclear energy,

BELIEVING that a convention on civil liability for nuclear damage would also contribute to the development of friendly relations among nations, irrespective of their differing constitutional and social systems,

HAVE DECIDED to conclude a convention for such purposes, and thereto have agreed as follows -

ARTICLE I

1. For the purposes of this Convention -

(a) "Person" means any individual, partnership, any private or public body whether corporate or not, any international organization enjoying legal personality under the law of the Installation State, and any State or any of its constituent sub-divisions.

(b) "National of a Contracting Party" includes a Contracting Party or any of its constituent sub-divisions, a partnership, or any private or public body whether corporate or not established within the territory of a Contracting Party.

(c) "Operator", in relation to a nuclear installation, means the person designated or recognized by the Installation State as the operator of that installation.

(d) "Installation State", in relation to a nuclear installation, means the Contracting Party within whose territory that installation is situated or, if it is not situated within the territory of any State, the Contracting Party by which or under the authority of which the nuclear installation is operated.

(e) "Law of the competent court" means the law of the court having jurisdiction under this Convention, including any rules of such law relating to conflict of laws.

(f) "Nuclear fuel" means any material which is capable of producing energy by a self-sustaining chain process of nuclear fission.

(g) "Radioactive products or waste" means any radioactive material produced in, or any material made radioactive by exposure to the radiation incidental to, the production or utilization of nuclear fuel, but does not include radioisotopes which have reached the final stage of fabrication so as to be usable for any scientific, medical, agricultural, commercial or industrial purpose.

(h) "Nuclear material" means -

(i) Nuclear fuel, other than natural uranium and depleted uranium, capable of producing energy by a self-sustaining chain process of nuclear fission outside a nuclear reactor, either alone or in combination with some other material; and

(ii) Radioactive products or waste.

(i) "Nuclear reactor" means any structure containing nuclear fuel in such an arrangement that a self-sustaining chain process of nuclear fission can occur therein without an additional source of neutrons.

(j) "Nuclear installation" means -

(i) Any nuclear reactor other than one with which a means of sea or air transport is equipped for use as a source of power, whether for propulsion thereof or for any other purpose;

(ii) Any factory using nuclear fuel for the production of nuclear material, or any factory for the processing of nuclear material, including any factory for the re-processing of irradiated nuclear fuel; and

(iii) Any facility where nuclear material is stored, other than storage incidental to the carriage of such material;

provided that the Installation State may determine that several nuclear installations of one operator which are located at the same site shall be considered as a single nuclear installation.

(k) "Nuclear damage" means -

(i) Loss of life, any personal injury or any loss of, or damage to, property which arises out of 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;

(ii) Any other loss or damage so arising or resulting if and to the extent that the law of the competent court so provides; and

(iii) If the law of the Installation State so provides, loss of life, any personal injury or any loss of, or damage to, property which arises out of or results from other ionizing radiation emitted by any other 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.

2. An Installation State may, if the small extent of the risks involved so warrants, exclude any small quantities of nuclear material from the application of this Convention, provided that:

(a) Maximum limits for the exclusion of such quantities have been established by the Board of Governors of the International Atomic Energy Agency; and

(b) Any exclusion by an Installation State is within such established limits. The maximum limits shall be reviewed periodically by the Board of Governors.

ARTICLE II

1. The operator of a nuclear installation shall be liable for nuclear damage upon proof that such damage has been caused by a nuclear incident -

(a) In his nuclear installation; or
(b) Involving nuclear material coming from or originating in his nuclear installation, and occurring -
  (i) Before liability with regard to nuclear incidents involving the nuclear material has been assumed, pursuant to the express terms of a contract in writing, by the operator of another nuclear installation;
  (ii) In the absence of such express terms, before the operator of another nuclear installation has taken charge of the nuclear material; or
  (iii) Where the nuclear material is intended to be used in a nuclear reactor with which a means of transport is equipped for use as a source of power, whether for propulsion thereof or for any other purpose, before the person duly authorized to operate such reactor has taken charge of the nuclear material; but
  (iv) Where the nuclear material has been sent to a person within the territory of a non-contracting State, before it has been unloaded from the means of transport by which it has arrived in the territory of that non-contracting State;
(c) Involving nuclear material sent to his nuclear installation, and occurring -
  (i) After liability with regard to nuclear incidents involving the nuclear material has been assumed by him, pursuant to the express terms of a contract in writing, from the operator of another nuclear installation;
  (ii) In the absence of such express terms, after he has taken charge of the nuclear material; or
  (iii) After he has taken charge of the nuclear material from a person operating a nuclear reactor with which a means of transport is equipped for use as a source of power, whether for propulsion thereof or for any other purpose; but
  (iv) Where the nuclear material has, with the written consent of the operator, been sent from a person within the territory of a non-Contracting State, only after it has been loaded on the means of transport by which it is to be carried from the territory of that State;

provided that, if nuclear damage is caused by a nuclear incident occurring in a nuclear installation and involving nuclear material stored therein incidentally to the carriage of such material, the provisions of sub-paragraph (a) of this paragraph shall not apply where another operator or person is solely liable pursuant to the provisions of sub-paragraph (b) or (c) of this paragraph.

2. The Installation State may provide by legislation that, in accordance with such terms as may be specified therein, a carrier of nuclear material or a person handling radioactive waste may, at his request and with the consent of the operator concerned, be designated or recognized as operator in the place of that operator in respect of such nuclear material or radioactive waste respectively. In this case such carrier or such person shall be considered, for all the purposes of this Convention, as an operator of a nuclear installation situated within the territory of that State.

3. (a) Where nuclear damage engages the liability of more than one operator, the operators involved shall, in so far as the damage attribut-

able to each operator is not reasonably separable, be jointly and severally liable.

(b) Where a nuclear incident occurs in the course of carriage of nuclear material, either in one and the same means of transport, or, in the case of storage incidental to the carriage, in one and the same nuclear installation, and causes nuclear damage which engages the liability of more than one operator, the total liability shall not exceed the highest amount applicable with respect to any one of them pursuant to Article V.

(c) In neither of the cases referred to in sub-paragraphs (a) and (b) of this paragraph shall the liability of any one operator exceed the amount applicable with respect to him pursuant to Article V.

4. Subject to the provisions of paragraph 3 of this Article, where several nuclear installations of one and the same operator are involved in one nuclear incident, such operator shall be liable in respect of each nuclear installation involved up to the amount applicable with respect to him pursuant to Article V.

5. Except as otherwise provided in this Convention, no person other than the operator shall be liable for nuclear damage. This, however, shall not affect the application of any international convention in the field of transport in force or open for signature, ratification or accession at the date on which this Convention is opened for signature.

6. No person shall be liable for any loss or damage which is not nuclear damage pursuant to sub-paragraph (k) of paragraph 1 of Article I but which could have been included as such pursuant to sub-paragraph (k) (ii) of that paragraph.

7. Direct action shall lie against the person furnishing financial security pursuant to Article VII, if the law of the competent court so provides.

ARTICLE III

The operator liable in accordance with this Convention shall provide the carrier with a certificate issued by or on behalf of the insurer or other financial guarantor furnishing the financial security required pursuant to Article VII. The certificate shall state the name and address of that operator and the amount, type and duration of the security, and these statements may not be disputed by the person by whom or on whose behalf the certificate was issued. The certificate shall also indicate the nuclear material in respect of which the security applies and shall include a statement by the competent public authority of the Installation State that the person named is an operator within the meaning of this Convention.

ARTICLE IV

1. The liability of the operator for nuclear damage under this Convention shall be absolute.

2. If the operator proves that the nuclear damage resulted wholly or partly either from the gross negligence of the person suffering the damage or from an act or omission of such person done with intent to cause damage, the competent court may, if its law so provides, relieve the operator wholly

or partly from his obligation to pay compensation in respect of the damage suffered by such person.

3. (a) No liability under this Convention shall attach to an operator for nuclear damage caused by a nuclear incident directly due to an act of armed conflict, hostilities, civil war or insurrection.

(b) Except in so far as the law of the Installation State may provide to the contrary, the operator shall not be liable for nuclear damage caused by a nuclear incident directly due to a grave natural disaster of an exceptional character.

4. Whenever both nuclear damage and damage other than nuclear damage have been caused by a nuclear incident or jointly by a nuclear incident and one or more other occurrences, such other damage shall, to the extent that it is not reasonably separable from the nuclear damage, be deemed, for the purposes of this Convention, to be nuclear damage caused by that nuclear incident. Where, however, damage is caused jointly by a nuclear incident covered by this Convention and by an emission of ionizing radiation not covered by it, nothing in this Convention shall limit or otherwise affect the liability, either as regards any person suffering nuclear damage or by way of recourse or contribution, of any person who may be held liable in connection with that emission of ionizing radiation.

5. The operator shall not be liable under this Convention for nuclear damage -

(a) To the nuclear installation itself or to any property on the site of that installation which is used or to be used in connection with that installation; or

(b) To the means of transport upon which the nuclear material involved was at the time of the nuclear incident.

6. Any Installation State may provide by legislation that sub-paragraph (b) of paragraph 5 of this Article shall not apply, provided that in no case shall the liability of the operator in respect of nuclear damage, other than nuclear damage to the means of transport, be reduced to less than US $ 5 million for any one nuclear incident.

7. Nothing in this Convention shall affect -

(a) The liability of any individual for nuclear damage for which the operator, by virtue of paragraph 3 or 5 of this Article, is not liable under this Convention and which that individual caused by an act or omission done with intent to cause damage; or

(b) The liability outside this Convention of the operator for nuclear damage for which, by virtue of sub-paragraph (b) of paragraph 5 of this Article, he is not liable under this Convention.

ARTICLE V

1. The liability of the operator may be limited by the Installation State to not less than US $ 5 million for any one nuclear incident.

2. Any limits of liability which may be established pursuant to this Article shall not include any interest or costs awarded by a court in actions for compensation of nuclear damage.

3. The United States dollar referred to in this Convention is a unit of account equivalent to the value of the United States dollar in terms of gold on

29 April 1963, that is to say US $ 35 per one troy ounce of fine gold.
4. The sum mentioned in paragraph 6 of Article IV and in paragraph 1 of this Article may be converted into national currency in round figures.

ARTICLE VI

1. Rights of compensation under this Convention shall be extinguished if an action is not brought within ten years from 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 period longer than ten years, the law of the competent court may provide that rights of compensation against the operator shall only be extinguished after a period which may be longer than ten years, but shall not be longer than the period for which his liability is so covered under the law of the Installation State. 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 the aforesaid period of ten years.
2. Where nuclear damage is caused by a nuclear incident involving nuclear material which at the time of the nuclear incident was stolen, lost, jettisoned or abandoned, the period established pursuant to paragraph 1 of this Article shall be computed from the date of that nuclear incident, but the period shall in no case exceed a period of twenty years from the date of the theft, loss, jettison or abandonment.
3. The law of the competent court may establish a period of extinction or prescription of less than three years from the date on which the person suffering nuclear damage had knowledge or should have had knowledge of the damage and of the operator liable for the damage, provided that the period established pursuant to paragraphs 1 and 2 of this Article shall not be exceeded.
4. Unless the law of the competent court otherwise provides, any person who claims to have suffered nuclear damage and who has brought an action for compensation within the period applicable pursuant to this Article may amend his claim to take into account any aggravation of the damage, even after the expiry of that period, provided that final judgment has not been entered.
5. Where jurisdiction is to be determined pursuant to sub-paragraph (b) of paragraph 3 of Article XI and a request has been made within the period applicable pursuant to this Article to any one of the Contracting Parties empowered so to determine, but the time remaining after such determination is less than six months, the period within which an action may be brought shall be six months, reckoned from the date of such determination.

ARTICLE VII

1. The operator shall be required to maintain insurance or other financial security covering his liability for nuclear damage in such amount, of such type and in such terms as the Installation State shall specify. The Installation State shall ensure the payment of claims for compensation for nuclear damage which have been established against the operator by providing the

necessary funds to the extent that the yield of insurance or other financial security is inadequate to satisfy such claims, but not in excess of the limit, if any, established pursuant to Article V.

2. Nothing in paragraph 1 of this Article shall require a Contracting Party or any of its constituent sub-divisions, such as States or Republics, to maintain insurance or other financial security to cover their liability as operators.

3. The funds provided by insurance, by other financial security or by the Installation State pursuant to paragraph 1 of this Article shall be exclusively available for compensation due under this Convention.

4. No insurer or other financial guarantor shall suspend or cancel the insurance or other financial security provided pursuant to paragraph 1 of this Article without giving notice in writing of at least two months to the competent public authority or, in so far as such insurance or other financial security relates to the carriage of nuclear material, during the period of the carriage in question.

ARTICLE VIII

Subject to the 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.

ARTICLE IX

1. Where provisions of national or public health insurance, social insurance, social security, workmen's compensation or occupational disease compensation systems include compensation for nuclear damage, rights of beneficiaries of such systems to obtain compensation under this Convention and rights of recourse by virtue of such systems against the operator liable shall be determined, subject to the provisions of this Convention, by the law of the Contracting Party in which such systems have been established, or by the regulations of the intergovernmental organization which has established such systems.

2. (a) If a person who is a national of a Contracting Party, other than the operator, has paid compensation for nuclear damage under an international convention or under the law of a non-contracting State, such person shall, up to the amount which he has paid, acquire by subrogation the rights under this Convention of the person so compensated. No rights shall be so acquired by any person to the extent that the operator has a right of recourse against such person under this Convention.

   (b) Nothing in this Convention shall preclude an operator who has paid compensation for nuclear damage out of funds other than those provided pursuant to paragraph 1 of Article VII from recovering from the person providing financial security pursuant to that paragraph or from the Installation State, up to the amount he has paid, the sum which the person so compensated would have obtained under this Convention.

ARTICLE X

The operator shall have a right of recourse only -

(a) If this is expressly provided for by a contract in writing; or

(b) If the nuclear incident results from an act or omission done with intent to cause damage, against the individual who has acted or omitted to act with such intent.

ARTICLE XI

1. Except as otherwise provided in this Article, jurisdiction over actions under Article II shall lie only with the courts of the Contracting Party within whose territory the nuclear incident occurred.

2. Where the nuclear incident occurred outside the territory of any Contracting Party, or where the place of the nuclear incident cannot be determined with certainty, jurisdiction over such actions shall lie with the courts of the Installation State of the operator liable.

3. Where under paragraph 1 or 2 of this Article, jurisdiction would lie with the courts of more than one Contracting Party, jurisdiction shall lie -

(a) If the nuclear incident occurred partly outside the territory of any Contracting Party, and partly within the territory of a single Contracting Party, with the courts of the latter; and

(b) In any other case, with the courts of that Contracting Party which is determined by agreement between the Contracting Parties whose courts would be competent under paragraph 1 or 2 of this Article.

ARTICLE XII

1. A final judgment entered by a court having jurisdiction under Article XI shall be recognized within the territory of any other Contracting Party, except -

(a) Where the judgment was obtained by fraud;

(b) Where the party against whom the judgment was pronounced was not given a fair opportunity to present his case; or

(c) Where the judgment is contrary to the public policy of the Contracting Party within the territory of which recognition is sought, or is not in accord with fundamental standards of justice.

2. A final judgment which is recognized shall, upon being presented for enforcement in accordance with the formalities required by the law of the Contracting Party where enforcement is sought, be enforceable as if it were a judgment of a court of that Contracting Party.

3. The merits of a claim on which the judgment has been given shall not be subject to further proceedings.

ARTICLE XIII

This Convention and the national law applicable thereunder shall be applied without any discrimination based upon nationality, domicile or residence.

ARTICLE XIV

Except in respect of measures of execution, jurisdictional immunities under rules of national or international law shall not be invoked in actions under this Convention before the courts competent pursuant to Article XI.

ARTICLE XV

The Contracting Parties shall take appropriate measures to ensure that compensation for nuclear damage, interest and costs awarded by a court in connection therewith, insurance and reinsurance premiums and funds provided by insurance, reinsurance or other financial security, or funds provided by the Installation State, pursuant to this Convention, shall be freely transferable into the currency of the Contracting Party within whose territory the damage is suffered, and of the Contracting Party within whose territory the claimant is habitually resident, and, as regards insurance or reinsurance premiums and payments, into the currencies specified in the insurance or reinsurance contract.

ARTICLE XVI

No person shall be entitled to recover compensation under this Convention to the extent that he has recovered compensation in respect of the same nuclear damage under another international convention on civil liability in the field of nuclear energy.

ARTICLE XVII

This Convention shall not, as between the parties to them, affect the application of any international agreements or international conventions on civil liability in the field of nuclear energy in force, or open for signature, ratification or accession at the date on which this Convention is opened for signature.

ARTICLE XVIII

This Convention shall not be construed as affecting the rights, if any, of a Contracting Party under the general rules of public international law in respect to nuclear damage.

ARTICLE XIX

1. Any Contracting Party entering into an agreement pursuant to subparagraph (b) of paragraph 3 of Article XI shall furnish without delay to the Director General of the International Atomic Energy Agency for information and dissemination to the other Contracting Parties a copy of such agreement.
2. The Contracting Parties shall furnish to the Director General for information and dissemination to the other Contracting Parties copies of their respective laws and regulations relating to matters covered by this Convention.

ARTICLE XX

Notwithstanding the termination of the application of this Convention to any Contracting Party, either by termination pursuant to Article XXV or by denunciation pursuant to Article XXVI, the provisions of the Convention shall continue to apply to any nuclear damage caused by a nuclear incident occurring before such termination.

ARTICLE XXI

This Convention shall be open for signature by the States represented at the International Conference on Civil Liability for Nuclear Damage held in Vienna from 29 April to 19 May 1963.

ARTICLE XXII

This Convention shall be ratified, and the instruments of ratification shall be deposited with the Director General of the International Atomic Energy Agency.

ARTICLE XXIII

This Convention shall come into force three months after the deposit of the fifth instrument of ratification, and, in respect of each State ratifying it thereafter, three months after the deposit of the instrument of ratification by that State.

ARTICLE XXIV

1. All States Members of the United Nations, or of any of the specialized agencies or of the International Atomic Energy Agency not represented at the International Conference on Civil Liability for Nuclear Damage, held in Vienna from 29 April to 19 May 1963, may accede to this Convention.
2. The instruments of accession shall be deposited with the Director General of the International Atomic Energy Agency.
3. This Convention shall come into force in respect of the acceding State three months after the date of deposit of the instrument of accession of that State but not before the date of the entry into force of this Convention pursuant to Article XXIII.

ARTICLE XXV

1. This Convention shall remain in force for a period of ten years from the date of its entry into force. Any Contracting Party may, by giving before the end of that period at least twelve months' notice to that effect to the Director General of the International Atomic Energy Agency, terminate the application of this Convention to itself at the end of that period of ten years.
2. This Convention shall, after that period of ten years, remain in force for a further period of five years for such Contracting Parties as have not

terminated its application pursuant to paragraph 1 of this Article, and thereafter for successive periods of five years each for those Contracting Parties which have not terminated its application at the end of one of such periods, by giving, before the end of one of such periods, at least twelve months' notice to that effect to the Director General of the International Atomic Energy Agency.

ARTICLE XXVI

1. A conference shall be convened by the Director General of the International Atomic Energy Agency at any time after the expiry of a period of five years from the date of the entry into force of this Convention in order to consider the revision thereof, if one-third of the Contracting Parties express a desire to that effect.

2. Any Contracting Party may denounce this Convention by notification to the Director General of the International Atomic Energy Agency within a period of twelve months following the first revision conference held pursuant to paragraph 1 of this Article.

3. Denunciation shall take effect one year after the date on which notification to that effect has been received by the Director General of the International Atomic Energy Agency.

ARTICLE XXVII

The Director General of the International Atomic Energy Agency shall notify the States invited to the International Conference on Civil Liability for Nuclear Damage held in Vienna from 29 April to 19 May 1963 and the States which have acceded to this Convention of the following -

(a) Signatures and instruments of ratification and accession received pursuant to Articles XXI, XXII and XXIV;
(b) The date on which this Convention will come into force pursuant to Article XXIII;
(c) Notifications of termination and denunciation received pursuant to Articles XXV and XXVI;
(d) Requests for the convening of a revision conference pursuant to Article XXVI.

ARTICLE XXVIII

This Convention shall be registered by the Director General of the International Atomic Energy Agency in accordance with Article 102 of the Charter of the United Nations.

ARTICLE XXIX

The original of this Convention, of which the English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Director General of the International Atomic Energy Agency, who shall issue certified copies.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, duly authorized thereto, have signed this Convention.

DONE in Vienna, this twenty-first day of May, one thousand nine hundred and sixty-three.

TEXT OF OPTIONAL PROTOCOL

OPTIONAL PROTOCOL CONCERNING THE COMPULSORY SETTLEMENT OF DISPUTES

(CN-12/47, 20 May 1963)

The States Parties to the present Protocol and to the Vienna Convention on Civil Liability for Nuclear Damage hereinafter referred to as "the Convention", adopted by the International Conference held at Vienna from 29 April to 19 May 1963,

EXPRESSING THEIR WISH to resort in all matters concerning them in respect of any dispute arising out of the interpretation or application of the Convention to the compulsory jurisdiction of the International Court of Justice, unless some other form of settlement has been agreed upon by the parties within a reasonable period,

HAVE AGREED as follows -

ARTICLE I

Disputes arising out of the interpretation or application of the Convention shall lie within the compulsory jurisdiction of the International Court of Justice and may accordingly be brought before the Court by an application made by any party to a dispute being a Party to the present Protocol.

ARTICLE II

The parties to a dispute may agree, within a period of two months after one party has notified its opinion to the other that a dispute exists, to resort not to the International Court of Justice but to an arbitral tribunal. After the expiry of the said period, either party may bring the dispute before the Court by an application.

ARTICLE III

1. Within the same period of two months, the parties may agree to adopt a conciliation procedure before resorting to the International Court of Justice.
2. The conciliation commission shall make its recommendations within five months after its appointment. If its recommendations are not accepted by the parties to the dispute within two months after they have been delivered, either party may bring the dispute before the Court by an application.

ARTICLE IV

The present Protocol shall be open for signature by all States which may become Parties to the Convention.

ARTICLE V

The present Protocol is subject to ratification. The instruments of ratification shall be deposited with the Director General of the International Atomic Energy Agency.

ARTICLE VI

The present Protocol shall remain open for accession by all States which may become Parties to the Convention. The instruments of accession shall be deposited with the Director General of the International Atomic Energy Agency.

ARTICLE VII

1. The present Protocol shall enter into force on the same day as the Convention or on the thirtieth day following the date of deposit of the second instrument of ratification or accession to the Protocol with the Director General of the International Atomic Energy Agency, whichever date is the later.

2. For each State ratifying or acceding to the present Protocol after its entry into force in accordance with paragraph 1 of this Article, the Protocol shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

ARTICLE VIII

The Director General of the International Atomic Energy Agency shall inform all States which may become Parties to the Convention -

(a) Of signatures to the present Protocol and of the deposit of instruments of ratification or accession, in accordance with Articles IV, V and VI;

(b) Of the date on which the present Protocol will enter into force, in accordance with Article VII.

ARTICLE IX

The original of the present Protocol, of which the English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Director General of the International Atomic Energy Agency who shall issue certified copies.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, duly authorized thereto, have signed this Protocol.

RESOLUTIONS

RESOLUTION ON THE ESTABLISHMENT OF A STANDING COMMITTEE

(CN-12/48, 20 May 1963)

Adopted by the International Conference on Civil Liability for Nuclear Damage on 19 May 1963

The International Conference on Civil Liability for Nuclear Damage recommends that:

1. The International Atomic Energy Agency, according to its Statute, establish a Standing Committee composed of representatives of the Governments of 15 States, with the following tasks:

(a) To keep under review problems relating to the Vienna Convention on Civil Liability for Nuclear Damage, and to advise the Director General of the International Atomic Energy Agency at his request on any such problems;

(b) To study the desirability and feasibility of setting up an international compensation fund for nuclear damage, and the manner in which such a fund would work to enable operators of the Contracting Parties to meet the liability under Article V of the Convention, including ways of covering nuclear damage exceeding the amount therein provided;

(c) To study any problems arising in connection with the application of the Convention to a nuclear installation operated by or under the auspices of an intergovernmental organization, particularly in respect of the "Installation State" as defined in Article I;

(d) To prepare any documents for the revision conference to be convened in accordance with Article XXVI; and

(e) To study the feasibility and desirability of establishing a procedure for settling any question which may arise as between two or more Contracting Parties with respect to the determination of the Contracting Party whose courts are to exercise jurisdiction pursuant to Article XI 3(b);

2. The composition of the Committee be revised periodically, taking into account, inter alia, the ratifications received;

3. The Committee co-ordinate its work with that of the Standing Committee established by the Diplomatic Conference on Maritime Law on 25 May 1962, insofar as concerns subject matters which are also studied by that Committee;

4. Interested international organizations in relation with the Agency be invited to be represented by observers at the Committee.

RESOLUTION EXPRESSING A TRIBUTE TO THE GOVERNMENT AND PEOPLE OF THE REPUBLIC OF AUSTRIA

Adopted by the International Conference on Civil Liability for Nuclear Damage on 19 May 1963

The International Conference on Civil Liability for Nuclear Damage, at the end of its work in Vienna, on 19 May 1963, wishes to express its most deep and profound gratitude to the people and Government of Austria, of Lower Austria and of the City of Vienna for the kind and friendly hospitality granted to all delegates at the above-mentioned Conference, allowing them, once again, to work for the high task of friendship and understanding among nations.

RESOLUTION EXPRESSING A TRIBUTE TO THE INTERNATIONAL ATOMIC ENERGY AGENCY

Adopted by the International Conference on Civil Liability for Nuclear Damage on 19 May 1963

The International Conference on Civil Liability for Nuclear Damage, on conclusion of the work for which it was convened by the Board of Governors of the International Atomic Energy Agency, wishes to record its deep appreciation of this valuable action taken by the Board as well as of the unsparing assistance it has received from the Agency, the excellent arrangements made by which have alone made possible the accomplishment of its task.

INDEX OF ARTICLES WITH RELATED DOCUMENTATION

This Index comprises Conference documents and parts thereof related to the individual Articles of the Convention. It constitutes references to the relevant parts of the Summary Records of the meetings of the Plenary and of the Committee of the Whole, to amendments presented to the different Articles, to Reports of Committees and Sub-Committees and to Observations of International Organizations. No reference is made to the article-by-article comments on the basic draft, which are to be found in document CN-12/3.

References on the left relate to the minutes of the Plenary sessions and amendments and other documents; those on the right refer to the minutes of the Committee of the Whole and amendments and other documents. Non-underlined figures refer to meetings (or, in the case of amendments, to documents); those underlined refer to the pertinent paragraphs thereof.

Documents with the symbol CN-12/ refer to amendments submitted to the Plenary and are to be found on pages 445-481; those with the symbol CN-12/CW/ refer to amendments and reports submitted to the Committee of the Whole and are to be found on pages 373-443; and those with the symbol CN-12/CW/INF/ refer to observations of international organizations and are to be found on pages 483-495.

A table is given on page 521, below, listing the Articles of the Draft Convention (Basic Proposal, to which all references in minutes and amendments refer) and the equivalent Articles in the Final Text.

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The Final Clauses, in respect of which no text had been proposed by the Intergovernmental Committee, were discussed on the basis of the Report of the Chairman of the Committee on Final Clauses (CN-12/CW/106). The following table shows the correspondence between the Articles contained in the Report and the Final Text.

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