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COMMITTEE OF THE WHOLE

RECORD OF THE EIGHTY-FIFTH MEETING

Held at the Austria Center Vienna
on Thursday, 24 September 1992, at 10.40 a.m.

Chairman: Mr. EL-SAIEDI (Egypt)

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[*] GC(XXXVI)/1027.

The composition of delegations attending the session is given in document GC(XXXVI)/INF/313/Rev.2.

92-3864 (0673n/0055n)

MEASURES TO STRENGTHEN INTERNATIONAL CO-OPERATION IN MATTERS RELATING TO
NUCLEAR SAFETY AND RADIOLOGICAL PROTECTION (resumed from meeting 82)

- Draft resolution on the revision of the Basic Safety Standards for
Radiation Protection (GC(XXXVI)/COM.5/116)

1. Mr. LAMPARELLI (Italy) expressed support for the draft resolution, which he did not think would create any difficulties, particularly as the relevant report by the Secretariat (document GC(XXXVI)/1008) was an interim one. All countries hoped that rapid progress would be made in that area.

2. The CHAIRMAN said that, if there were no objections, he would take it that the Committee wished to recommend that the General Conference adopt the draft resolution contained in document GC(XXXVI)/COM.5/116.

3. It was so decided.

- Draft resolution on measures to strengthen international co-operation
in matters relating to nuclear safety and radiological protection
(GC(XXXVI)/COM.5/119)

4. Mr. AGRELL (United Kingdom), introducing the draft resolution contained in document GC(XXXVI)/COM.5/119 on behalf of the twelve member States of the European Community, pointed out that the draft resolution dealt with both the preparation of a convention on nuclear safety and the implementation of resolution GC(XXXV)/RES/553 as a whole. He did not think it would be controversial. The text was an updated and more concise version of the resolution adopted at the previous session of the General Conference on the same subject. The new elements were contained in paragraph 5, which reflected the progress achieved and which all Member States should be able to support, whatever their views on the matter; and in paragraph 6, which was in the same spirit as paragraph 10 of the resolution adopted the previous year and which entrusted the Board of Governors and the Director General with the task of taking the appropriate decisions.

5. Mr. HOGG (Australia), Mr. LIDGARD (Sweden) and Mr. VESELY (Czechoslovakia) said that their countries wished to co-sponsor the draft resolution.

6. Mr. HASHIMI (Pakistan) said that he was not opposed to the adoption of the draft resolution, but pointed out that some countries might have difficulty with the phrase "taking into account the vital necessity of raising the general level of safety worldwide" at the end of paragraph 5. It was generally agreed that nuclear safety was the responsibility of national authorities, but the present wording of paragraph 5 seemed to pass judgement on the level of nuclear safety in countries.

7. Mr. MAGNUSSON (Iceland), Mr. SCHMIDT (Austria), Mr. KOSTENKO (Ukraine), Mr. CHO (Republic of Korea) and Mr. OSTROWSKI (Poland) said that they were perfectly satisfied with the wording of paragraph 5 and that they too wished to co-sponsor the draft resolution.

8. Mr. HASHIMI (Pakistan) proposed, in order to avoid giving the impression that judgement was being passed on the level of nuclear safety in individual countries, that the phrase "raising the general level of nuclear safety" be replaced by "ensuring a high level of nuclear safety".

9. Mr. PELEN (France), supported by Mr. SCHMIDT (Austria) and Mr. PAPADIMITROPOULOS (Greece), said that he had some sympathy for Pakistan's desire not to give the impression that the international community was passing judgement on the level of safety in certain countries or imposing a higher safety level on them. However, the text being considered did not do that; it affirmed the need for all States to pursue at all times a policy of improving safety. That was a common objective and not a judgement on the policies of individual countries in the area of safety. That being so, it was not necessary to change the present wording.

10. Mr. LAMPARELLI (Italy) said that he shared the views of the representatives of France, Austria and Greece. Moreover, the wording proposed by the representative of Pakistan merely repeated an idea already expressed in paragraph 1.

11. Mr. GUZMAN MARTINEZ (Cuba) said he supported the draft resolution, but preferred the version of paragraph 5 proposed by the representative of Pakistan. There was no harm in repeating an idea which had already been expressed in paragraph 1.

12. Mr. HASHIMI (Pakistan) said that, in the light of what had been stated, he was prepared to accept the existing wording of paragraph 5, provided that the word "always" was inserted after the words "vital necessity of".

13. Mr. AGRELL (United Kingdom) stressed that it was not the sponsors' intention to diminish the responsibility of States or to judge any particular country. He was grateful to the representative of Pakistan for his spirit of co-operation and could accept his proposal.

14. Mr. TITKOV (Russian Federation) expressed his support for the draft resolution as it had been presented and said that his country also wished to co-sponsor it. He had no objection to the insertion of the word "always".

15. Mr. FITZGERALD (Ireland) said he understood the concern which had prompted the amendment proposed by Pakistan, but suggested that the word "continually" be inserted instead of "always" in paragraph 5.

16. Mr. SCHMIDT (Austria) said that both words were acceptable since neither changed the substance of the text.

17. Mr. ELYSEU FILHO (Brazil) supported the draft resolution as modified by the representative of Pakistan.

18. Mr. PELEN (France) observed that the insertion of adverbs into texts usually did not improve them and in fact often weakened them. The original text was in complete conformity with the concerns expressed by the representative of Pakistan and it would be simpler to adopt it as it stood.

19. Mr. PAREDES PORTELLA (Peru) said that the Committee seemed to be in agreement on the substance of paragraph 5 and, since the representative of the United Kingdom did not have any objections to the insertion of the word "always", he did not see why that minor amendment could not be accepted.

20. Mr. HASHIMI (Pakistan) insisted that his amendment be adopted, since he did not consider the existing English version of the draft to be satisfactory.

21. Mr. PELEN (France) said that he was not opposed to the amendment proposed by Pakistan, but simply thought that it did not add anything to the text.

22. The CHAIRMAN said that the Committee seemed generally to be in favour of inserting the word "always" before the word "raising" in paragraph 5 of the draft resolution.

23. Mr. CAMPUZANO PIÑA (Mexico) pointed out that the Spanish version of paragraph 6 did not correspond to the English text. Furthermore, in view of the problems that had been experienced in approving the programme and budget and of attitudes to the principle of zero real growth, there seemed little point in proposing additional expenditures, even if nuclear safety was an activity of fundamental importance.

24. Mr. PELEN (France) said that the French text did not match the English version and should be brought into line with it.

25. Mr. AGRELL (United Kingdom) confirmed that the sponsors' intentions were reflected accurately in the English text. The purpose of paragraph 6 was not to depart from the programme and budget already approved, but simply to indicate clearly that the Board of Governors and the Director General were responsible for ensuring that appropriate resources were made available within the normal framework.

26. Mr. CSERVENY (Hungary) said he supported the draft resolution, but he would like the word "considering" in paragraph 3(ii) to be replaced by the word "initiating".

27. Mr. AGRELL (United Kingdom) explained that the wording had been taken from paragraph 6 of resolution GC(XXXV)/RES/553 with the appropriate grammatical changes. He did not think that it posed any special difficulties.

28. Mr. NORDIN (Malaysia) said that he shared the concerns expressed by Mexico and that he would like further clarification from the representative of the United Kingdom. If the draft resolution did not in fact depart from the approved programme and budget, the text could perhaps be made clearer by referring to "the Agency's biennial programme for 1993 and 1994" in order to indicate unambiguously that no attempt was being made to obtain further resources going beyond those which had been approved for 1993 and 1994.

29. Mr. AGRELL (United Kingdom) recalled that the budget for 1993 had already been approved by the Committee and could not be re-opened by the wording of paragraph 6. The programme for 1994 had also been approved but the budget for 1994 had not, and the Board of Governors could take whatever decisions on it that it felt were appropriate. The draft resolution therefore simply asked the Board of Governors and the Director General to ensure, when taking those decisions, that appropriate budgetary resources were made available, without prejudging what those resources should be and still less what resources would be appropriate for other programmes.

30. Mr. GUZMAN MARTINEZ (Cuba) said he shared the concerns expressed by the representatives of Malaysia and Mexico. With regard to paragraph 6, it would be better, in order not to reduce the importance of nuclear safety and radiation protection, to refer to resources available within the budgetary framework rather than the more limited framework of biennial programmes.

31. Mr. CAMPUZANO PIÑA (Mexico) said he agreed with the views expressed by Cuba and Malaysia. He felt that the Spanish text reflected better the concerns of all countries since, as the representative of Cuba had suggested, Regular Budget resources were not sufficient in themselves to finance all the activities that needed to be undertaken. The possibility of recourse to extrabudgetary resources should therefore not be excluded.

32. Mr. LAMPARELLI (Italy) said that the original idea of the sponsors of the draft resolution had been to use the wording that had finally been adopted in 1991 for resolution GC(XXXV)/RES/553. However, since the programme and budget for 1993 and 1994 had not yet been formally approved by the General Conference at its current session, it had not been possible to refer to the budget for 1993 or the Medium-Term Plan, about the existence of which there was some doubt. It had therefore been decided to use vaguer wording and to refer to "biennial programmes". No budgetary increase had been mentioned in the draft resolution, which, he recalled, had been co-sponsored by 23 countries.

33. Mr. PAREDES PORTELLA (Peru) said that, for the same reasons as the delegations of Cuba and Mexico, he supported the Malaysian proposal. Also, he felt that the expression "to ensure" in paragraph 6 was too strong and that

the reference to resources in the current text was very limited if it in fact meant the existing budget.

34. Mr. FITZGERALD (Ireland) said that his delegation's views on the budgetary allocations for safety were perhaps different from those of other delegations. In any case, the draft resolution fell short of his delegation's expectations. Nevertheless, it would be better to keep the original wording, which would avoid prejudging the question and re-opening the lengthy discussion that had taken place on the Agency's budget.

35. Mr. GOESELE (Germany) supported the remarks made by the representatives of the United Kingdom, Italy and Ireland. The wording of the draft resolution had been carefully formulated and took account of all the possible sources of financing for safety-related activities. Although not perfect, the text, which did not prejudge the question of what resources were appropriate, should be acceptable to all delegations.

36. The CHAIRMAN proposed that the Committee suspend its examination of the matter and that a small group consisting of sponsors and representatives of delegations which had expressed reservations on paragraph 6 meet to formulate the final text of the draft resolution.

37. It was so decided.

(d) LIABILITY FOR NUCLEAR DAMAGE (GC(XXXV)/RES/553, para. 11;
GC(XXXVI)/1009, 1009/Corr.1 and 1009/Add.1; GC(XXXVI)/COM.5/118)

38. The CHAIRMAN said that the Committee had before it a report by the Board of Governors and the Director General on the work of the Standing Committee on Liability for Nuclear Damage (GC(XXXVI)/1009 and Corr.1) and an Addendum containing the summary records of the Board's discussion in June on the subject. In addition, the Nordic countries, the Netherlands and Poland had submitted a draft resolution contained in document GC(XXXVI)/COM.5/118.

39. Mr. LIDGARD (Sweden), introducing the draft resolution, recalled that his delegation had already made a long statement on the question. The issue was very topical, both because of the work being done by the Standing Committee and because there was an increasing awareness of the important role a civil liability regime could play in promoting international co-operation in nuclear safety. He invited other delegations to co-sponsor the resolution.

40. Mr. PAREDES PORTELLA (Peru) and Ms. LACANLALE (Philippines) said that their countries supported the draft resolution and wished to co-sponsor it.

41. Mr. LAMPARELLI (Italy) said that his delegation had made clear its position on the question of liability for nuclear damage in its statement on nuclear safety. It could not accept the present wording of the draft resolution and proposed that paragraph 3 be replaced by the following text:

"Considers that international co-operation in nuclear safety would benefit from a regime covering all aspects of liability for damage arising from a nuclear accident".

42. Mr. OSTROWSKI (Poland) welcomed the fact that, as indicated in paragraph (d) of the draft resolution, Lithuania had acceded to the Vienna Convention. Lithuania's accession would promote friendly relations between it and Poland.

43. Mr. HOGG (Australia) supported the amendment proposed by Italy.

44. Mr. PELEN (France) said that he could not support that amendment and would prefer to keep the original text.

45. Mr. PAREDES PORTELLA (Peru) said he supported the amendment proposed by Italy and suggested that the present text of operative paragraph 3 be transferred to the preamble.

46. Mr. PELEN (France) pointed out that the content of paragraph 3 was already reflected in preambular paragraph (b).

47. Mr. FITZGERALD (Ireland) said that it was essential to strengthen the liability regime for nuclear damage and that the Standing Committee should therefore continue its work. However, he did not think that calling upon States to accede to existing conventions was the best way of proceeding, since none of those conventions was really satisfactory. His delegation supported the amendment suggested by Italy, which expressed succinctly what needed to be done in that area, and was not opposed to the suggestion made by Peru to move the existing operative paragraph 3 to the preamble.

48. Mr. AGRELL (United Kingdom) said that he would prefer to retain the original text. He understood the position of the Italian delegation, but was afraid that its amendment would have the effect of making the best the enemy of the good. General acceptance of a liability regime would promote international co-operation in safety, and in the short and medium term such a regime could only be based on the Vienna and Paris Conventions. It seemed undesirable to state that only a comprehensive regime arrived at after consideration of other very difficult questions involving State liability could promote international co-operation in nuclear safety.

49. Mr. SCHMIDT (Austria) said he supported the amendment suggested by the representative of Italy and the comments made by the representative of Ireland. However, Austria believed that, until a new convention had been prepared, liability for nuclear damage should be governed by the two existing conventions. The new convention did not necessarily have to be based on the principles of the Vienna and Paris Conventions. Furthermore, as it stood, paragraph 3 excluded an option already discussed by the Standing Committee, namely that all aspects of civil liability should be studied by the working group.

50. Mr. PAREDES PORTELLA (Peru) endorsed the proposal made by Italy, which had the virtue of recalling that a variety of questions, including that of State liability, had been raised during the discussions in the Standing Committee and the working group.

51. Mr. PAPADIMITROPOULOS (Greece), recalling the comments made the previous day by his delegation and the proposals it had put forward in the past two years in the Standing Committee, said that he fully supported the Italian amendment and pointed out that paragraph 11 of resolution GC(XXXV)/RES/553 reflected the same idea.

52. Mr. KOSTENKO (Ukraine) said that his country was not a party to either the Vienna or the Paris Conventions, but that it had always been keenly interested in the question of liability for nuclear damage, which was governed by specific provisions in Ukrainian legislation. He therefore supported the draft resolution. With regard to the amendment proposed by Italy, he agreed with the representative of the United Kingdom that the best was sometimes the enemy of the good.

53. Mr. FARAHAT (Egypt) expressed his support for the very pertinent amendment suggested by Italy.

54. Mr. TITKOV (Russian Federation) endorsed the amendment proposed by Italy and the comments made by Ireland.

55. Mr. ELYSEU FILHO (Brazil) said he was in favour of the amendment proposed by Italy, but suggested as a compromise that the paragraph be reworded to read:

"Considers that international co-operation in nuclear safety would benefit from a revised regime which would be the result of discussions covering all aspects of liability".

56. Mr. HASHIMI (Pakistan) said that his country was not a party to the Vienna and Paris Conventions. He felt that paragraph 3 could stay as it was, but that paragraph 4 was ambiguous. If the "Member States concerned" were those which were party to the Conventions, it could be assumed that they had already established effective domestic regulations on nuclear liability. If it referred to States which were not party to those Conventions - in other words, the majority of States - it was hardly appropriate to ask them to adopt regulations covering that subject. It would be preferable for the General Conference to ask the Standing Committee to complete its work soon and to express the hope that Member States would establish effective legislation concerning nuclear liability.

57. Mr. PELEN (France) said that all the members of the Standing Committee wished to continue their work, which was generally recognized as useful. Since paragraphs 2, 3 and 4 seemed to pose problems and a variety of proposals had been submitted, some of which reflected concerns expressed in the Standing Committee, he proposed that paragraphs 2, 3 and 4 be deleted. The main point was that the General Conference should express its support for the Standing Committee.

58. Mr. STURMS (Director, Legal Division) said that, as worded at present, paragraph 3 of the draft resolution reflected an important aspect of the civil liability regime. The wording had been inspired by the fact that the regime established by the Vienna and Paris Conventions channelled liability to the operator of the nuclear installation, a solution which had been adopted to meet the concerns of industries involved in improving the

safety of existing installations and which exempted them from liability. That matter was very much one of civil liability. The matter raised by Italy was also important, but was quite different: it reflected a desire to have a more comprehensive regime covering all aspects of liability. The deletion of paragraph 3 would therefore remove an important element of the draft resolution.

59. Mr. LIDGARD (Sweden) said that not only industry, but also States would welcome an expansion of the civil liability regime. Paragraph 3 dealt with one question and the Italian proposal with another. Paragraph 3 was addressed to governments and drew their attention to the importance of the civil liability regime. It would be unfortunate if it were deleted. The same applied to paragraph 4, which was not addressed only to States party to the Conventions, but also called upon all States which had not yet done so to establish effective domestic regulations in the area of nuclear liability; that was in the interests of possible victims and would facilitate greater international co-operation in the nuclear field.

60. Nevertheless, if a way could be found of incorporating the Italian proposal in the text, his delegation would have no objections. However, other delegations were worried that the wording proposed by Italy would prejudice the discussions which were to take place in the Standing Committee and had pointed out that in paragraph (b), which recalled the resolution adopted in 1991, the General Conference would be reiterating the priority it attached to the consideration of all aspects of the question of nuclear liability. That remained the guideline for the work of the Standing Committee. As worded at present, paragraph 3 would not exclude anything from the Standing Committee's consideration.

61. Mr. TALIANI (Italy) said he understood that the sponsors of the draft resolution had wanted, in the interests of realism, to place the emphasis on civil liability. He respected their point of view, but did not share it. He was afraid, like a number of other representatives, that many other aspects of the question, including State liability, would soon be forgotten in the name of realism. That was tantamount to prejudging the

results of the work of the Standing Committee. His delegation could accept the proposal made by the representative of Brazil, which seemed to be a good one.

62. Mr. MOHAN (India) said that it was clear from the discussion that the issues were complex and that there was no consensus. Furthermore, few countries were at present party to the Vienna and Paris Conventions. His delegation therefore felt that the French proposal was a wise one.

63. Mr. PAREDES PORTELLA (Peru) proposed, as a compromise, that the five existing operative paragraphs be kept and that the text proposed by Italy be added between paragraphs 3 and 4. That would have the virtue of satisfying those who wished to place the emphasis on civil liability, but also those who did not want to exclude State liability.

64. Mr. PENG (China) said that a number of questions were still being examined by the Standing Committee and that it would therefore be premature to take a decision on the matter. China, therefore, like India, supported the French proposal.

65. Mr. PAPADIMITROPOULOS (Greece) suggested that paragraph (b) be deleted and that the text of paragraph 11 of resolution GC(XXXV)/RES/553 be used in paragraph 3. Reference should also be made to that resolution in paragraph (a).

66. Mr. HASHIMI (Pakistan) said he supported the French proposal, for the same reasons as the representatives of India and China.

67. Mr. HELLER (Mexico) endorsed the French proposal, which had the virtue of maintaining the spirit of the draft resolution and ensuring the continuity of the Standing Committee's work.

68. Mr. FITZGERALD (Ireland) said that, if necessary, his delegation could accept the deletion of paragraphs 2, 3 and 4. Also, it would be useful to repeat the wording of paragraph 11 of resolution GC(XXXV)/RES/553. The wording of paragraph 5 seemed rather weak, and it would be better for the General Conference to "encourage" the Standing Committee to complete its work soon.

69. Mr. TITKOV (Russian Federation) supported the French proposal, which improved the draft resolution and avoided controversy.

70. The CHAIRMAN, after summarizing the various proposals, noted that those of Italy and France appeared to have the broadest support. He wondered whether the Committee could not accept the French proposal, the main point being that the General Conference should express its support for the Standing Committee.

71. Mr. TALIANI (Italy) said that the disadvantage of the French proposal was that it did away with the main substance of the operative part. He would prefer the compromise solution proposed by Peru to be adopted, since it accorded the same importance to both positions.

72. Mr. LIDGARD (Sweden) said that it should not be forgotten that the resolution was addressed both to the Standing Committee and to governments. There was no doubt that the absence of an appropriate legal framework hampered co-operation in the area of nuclear safety, and it would be unfortunate if that fact were not stated in the resolution. The Irish proposal to transfer preambular paragraph (b), after redrafting, to the operative part was perfectly acceptable to the sponsors of the draft resolution. Also, the text proposed by Italy could, with the Committee's agreement, be added to the operative part. Finally, if it was decided to shorten the operative part, Sweden would prefer that paragraphs 1 and 2 be retained and that paragraphs 3 and 4 be transferred to the preamble.

73. Mr. TALIANI (Italy) said that the Irish proposal was acceptable to Italy, as was the Peruvian proposal, which was along the same lines.

74. The CHAIRMAN asked those delegations which were interested in the matter to hold consultations with a view to drawing up a compromise text which the Committee would consider at its next meeting.

The meeting rose at 1 p.m.

