**ANTARCTIC TREATY**
**XVI th CONSULTATIVE MEETING**

**TRAITÉ SUR L'ANTARCTIQUE**
**XVI e RÉUNION CONSULTATIVE**

**TRATADO ANTÁRTICO**
**XVI REUNIÓN CONSULTIVA**

ДОГОВОР ОБ АНТАРКТИКЕ
**XVI** КОНСУЛЬТАТИВНОЕ СОВЕЩАНИЕ

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# Report to the XVI Antarctic Treaty Consultative Meeting on the Meeting Held Pursuant to Recommendation XV-2

(submitted by Chile)

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Pursuant to this mandate the meeting was held on Thursday 29th November 1990 in Viña del Mar, Chile, and was attended by Representatives of the 26 Antarctic Treaty Consultative Parties and 10 other Contracting Parties to the Antarctic Treaty. Professor Francisco Orrego Vinuña, Representative of Chile, was elected Chairman.

In accordance with the terms of Recommendation XV-2 the meeting heard all the proposals and views on the issue of liability that were expressed in the course of these deliberations. The following delegations made statements on this occasion: Argentina, Australia, austria, Belgium, chile, Chiona, Denmark, France, Germany, Greece, India, Italy, The Netherlands, Norway, Sweden South Africa, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland and United States of America. Statements submitted in writing are attached to this Report.

The Meeting agreed that on the basis of all proposals and views expressed on the subject, the Meetin agreed that the Antarctic Treaty Consultative Parties may consider further the issue of liability at the appropriate time.

# REPORT TO THE XV ANTARTIC TREATY CONSULTATIVE MEETING ON THE MEETING HELD PURSUANT TO RECOMMENDATION XV-2

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**ANNEX**

**STATEMENTS**

**AUSTRALIAN STATEMENT**

**ANTARCTICA: MEETING ON ARTICLE 8.7 OF CRAMRA**

**STATEMENT BY HEAD OF THE AUSTRALIAN DELEGATION**

Mr. Chairman, I note that this meeting is separate and different in nature and context to the Special Consultative Meeting on Comprehensive Environmental Protection, which is our main reason for being here in Viña del Mar. You yourself, Mr. Chairman, have drawn our attention to Recommendation XV-2 of the 1989 Paris Consultative Meeting which called for a meeting to explore and discuss all proposal relating to Article 8.7 of CRAMRA. That recommendation gave a very narrow mandate to us and I hope we can remain within it. I am confident that under your able Chairmanship we will keep within the ambit of that mandate in dealing with what is a sensitive issue.

Mr. Chairman, Australia participated in the negotiation of CRAMRA but, like others, decided not to sign it. We are pursuing instead an alternative approach based on the development of a comprehensive regime for the protection of the Antarctic environment, which, while strengthening the Antarctic Treaty System, would obviate the need for CRAMRA-type rules. Consequently, Australia sees no need for the negotiation of a liability protocol envisaged under Article 8 of CRAMRA and would not be able to join in any such negotiation. In our view, it is no longer appropriate to pursue such a course.

However, Mr. Chairman, there would be merit in discussing liability rules for Antarctic Treaty parties and operators in a general sense because of their relevance to negotiations on a new environmental protection instrument which are occuring in another context here in Viña del Mar. We ourselves have sought to develop rules on liability in the text of our Draft Convention on Comprehensive Environmental Protection which we distributed to Treaty parties.

In discussing general liability rules, the considerable work which was put into Article 8 of CRAMRA need not be lost. A number of the concepts and mechanisms developed there are of a pioneering nature and can be drawn upon in our work in this other context of the elaboration of a new instrument for comprehensive protection of the Antarctic environment.

Thank you, Mr. Chairman

**INTERVENTION DE LA BELGIQUE LORS DE LA REUNION CONVOQUEE**

**CONFORMEMENT A LA RECOMMANDATION XV-2 DE PARIS**

**(Viña del Mar, 29 novembre 1990)**

*Monsieur le Président,*

La reunion à laquelle nous participons aujourd'hui a été convoquée conformément a la Recommandation XV-2 adoptée a París, en octobre 1989.

Comme cela a déjá été mentionné a divorses reprises, le contexte dans lequel cette Recommandation est intervenue s'est sensiblement modifié. Concrétement, l'on doit bien avouer qu'actuellement l'entrée en vigueur de la CRAMRA n'est plus a l'ordre du jour.

Il parait, des lors, sage de constater que les conditions ne sont pas réunies pour aborder une discussion technique à propos du Protocole relatif au règime de responsabilité prévu par l'article 8 de la CRAMRA.

Cela dit, il faut reconnaitre que certaines dispositions de la CRAMRA portant sur les questions de responsabilité sont incontestablement dignes d'interét. Mais il semble plus opportun d'examiner celleci et d'éventuellement s'en inspirer lors de l'élaboration d'un nouvel instrument juridique consacré a la protection de l'environnement.

Merci, Monsieur le Président.

**DECLARATION DE LA DELEGATION FRANCAISE**

**VIÑA DEL MAR**

**(réunion concernant le protocole de responsabilités prévu par la convention de Wellington)**
**21 novembre 1990**

*Monsieur le Président,*

La délégation française vous félicite pour votre élection comme président de cette réunion de travail sur la responsabilité et reconnait en vous un spécialiste important du droit international.

Comme vous le savez, le gouvernement français a décidé de ne pas signer la CRAMRA et n'a pas l'intention d'y adhérer un jour.

La présente réunion est conforme à la recommandation XV-2 adoptée à Paris. La délégation française pense toutefois qu'il n'y a pas lieu de négocier le protocole sur la responsabilité prévu par l'article 8 de la CRAMRA. En effet l'entrée en vigueur de la CRAMRA n'est pas envisageable et, en toute hypothèse, le contexte a entiérement changé depuis deux ans.

Certains éléments figurant dans l'article 8 de la CRAMRA pourraient être utiles lorsque nous examinerons le problème général de la responsabilité dans le domaine de la protection de l'environnement. Ce problème, cependant, devra être discuté dans un autre cadre que celui de la présente réunion, c'est-á-dire dans celui des prolongements qu'il conviendra de donner au futur instrument international sur la protection globale de l'environnment en Antarctique.

## INTERVENCION DE LA DELEGACION DE CHILE

El tema planteado por la Recomendación XV-2, tendiente a que se examine y estudie todas las propuestas relativas al Artículo 8 (7) de la Convención para la Reglamentación de las Actividades sobre Recursos Minerales Antárticos (CRAMRA), reviste gran interés para el conjunto del Sistema Antártico.

En efecto, como han hecho presente diversos Estados, el Artículo 8 constituye una pieza fundamental a la cual la delegación de Chile atribuyó una importancia crucial en su concepción y estructura, para aprobar el régimen de CRAMRA. La delegación de Chile fue abiertamente partidaria de que se estableciera un régimen de responsabilidad subsidiaria del Estado patrocinante conducente a fortalecer las obligaciones en que incurrieran los operadores por daño ambiental.

El estudio que encomienda realizar la Recomendación XV-2 sólo se refiere a algunos puntos que el Artículo 8 deja para ulteriores negociaciones, conducentes a un Protocolo que contendrá reglas y procedimientos adicionales sobre responsabilidad.

No obstante que sólo mediante la adopción por consenso del Protocolo a que se refiere el Artículo 8 podría avanzarse a la autorización de actividades de exploración y explotación, ese Artículo como tal contiene importantes elementos que es necesario resaltar en el presente debate y que pueden servir para ilustrar otros puntos de interés para la protección del medio ambiente antártico.

Esencialmente, el Artículo 8 vincula por primera vez la responsabilidad de los operadores consistente en medidas de respuesta necesarias y oportunas, si una actividad sobre recursos minerales antárticos causa o amenaza con causar daño al medio ambiente antártico o ecosistemas dependientes o asociados, con un sistema de reponsabilidad objetiva aplicable a diferentes hipótesis de daño y al deber de reembolsar los gastos razonables relacionados con las medidas de respuesta necesarias, así como la restauración al *statu quo ante* que cualquier otro sujeto hubiere tenido que efectuar. En este sentido, el Artículo 8 constituye una pieza que enriquece el Sistema Antártico, con el fin de proteger el medio ambiente antártico, sus ecosistemas dependientes o asociados.

El Artículo 8 es recordado en esta reunión especial en respuesta a la necesidad de completar el proceso de negociación relativo a los minerales antárticos, a través de formas concretas de perfeccionamiento del régimen de responsabilidad, contribuyendo a fortalecerlo con un modelo avanzado de responsabilidad objetiva derivada del daño ambiental y del quebrantamiento de obligaciones vinculadas a la protección del medio ambiente.

En este sentido, vale la pena precisar los principales valores contenidos en este Artículo 8 que permiten ilustrar mejor los problemas que enfrenta el amplio tema de la responsabilidad derivada de la protección ambiental en Antártida.

En primer lugar, el medio ambiente es considerado un valor en sí mismo, lo cual le otorga una especial fuerza a las obligaciones de adopción de medidas preventivas o de respuesta por parte de los operadores, sin defensas o excepciones, así como para la determinación de la responsabilidad estricta u objetiva una vez que el daño ha tenido lugar. Las referencias a otros daños que dan origen a

responsabilidad estricta, como la pérdida o el deterioro de un uso establecido en Antártida, o de ecosistemas dependientes o asociados, o a la pérdida o el daño a las cosas de un tercero, o la pérdida de la vida o lesiones personales de un tercero, deben resultar directamente del daño al medio ambiente, lo cual clarifica el sentido de los valores protegidos.

En segundo lugar, dicho Artículo prevé importantes disposiciones en materia de prevención, acciones de respuesta, incluyendo contención, limpieza y remoción, las cuales no están sujetas a excepción alguna. El futuro Protocolo no podrá debilitar estas disposiciones.

En tercer lugar, se establece la responsabilidad subsidiaria del Estado patrocinante, conforme al Derecho Internacional, en el caso de que se hubiera producido daño o éste hubiera persistido, habiendo ese Estado incurrido en incumplimiento de sus obligaciones respecto de un operador en las etapas de prospección, exploración y explotación.

En cuarto lugar, el Artículo 8 antes mencionado, así como el protocolo cuya negociación está pendiente, contribuyen al desarrollo de otros elementos de un régimen de protección ambiental en la Antártida cuales son: la adopción de medidas de respuesta inmediatas cuya puesta en acción no tiene límites o defensas y el establecimiento de medios efectivos para que el operador haga frente a sus obligaciones financieras.

Estos medios operarán no sólo cuando el operador sea incapaz de satisfacer la totalidad de sus obligaciones, sino además cuando exceda cualquier límite relevante de la responsabilidad, cuando exista una causal de exención a la responsabilidad o cuando la pérdida o el daño sean de origen indeterminado. La contribución al establecimiento de mecanismos apropiados, como un posible fondo o fondos, para hacer frente a las obligaciones de pago (por daño o por reembolso de costos) constituye otro valor a destacar en este Artículo.

Tanto estos elementos contenidos en el Artículo 8, como aquéllos que deja para su desarrollo por un futuro Protocolo, vale decir, los mecanismos procesales para determinar la responsabilidad de un operador y sus materias conexas y los requerimientos en cuanto a las capacidades para emprender acciones de respuesta (sin defensas ni límites) y los límites aceptables de la responsabilidad de un operador en las etapas de prospección, exploración y explotación, constituyen un aporte a la discusión de un futuro régimen comprensivo de protección ambiental que debe ser considerado con el máximo de atención por todos los Estados Partes del Tratado Antártico.

**STATEMENT BY MR. DIETRICH GRANOW**

**HEAD OF THE DELEGATION OF GERMANY**

*Mister Chairman,*

From the point of view of our delegation the regulation of liability is an important building stone in the framework of a comprehensive environmental protection system. Therefore this principle laid down in Article 8 of CRAMRA should be taken into consideration in developing liability regulations in general.

We are well aware that recently CRAMRA has become a bone of contention: for many people even everything related with CRAMRA has got a negative image. Nevertheless, years of efforts and reflections are contained in the CRAMRA text. The protection of environment in the Antarctica was one of its essential aims. As liability is a fundamental element in the work we will have to accomplish, it has to be elaborated carefully. We think that the principles of Article 8 of CRAMRA could probably be fruitful in carrying out this task. So we sould not hesitate to take out the best elements of CRAMRA to use them for the discussion of the liability regime we are going to develop. We are ready to cooperate in finding a suitable way for working out this important issue in the course of time.

Thank you, Mr. Chairman.

## STATEMENT BY PROFESSOR V.K. GAUR

## HEAD OF THE DELEGATION OF INDIA

At the outset our delegation would like to join the previous speakers in congratulating you on your election as the Chairman for this meeting. We are sure that your vast experience and scholarly approach will provide the requisite guidance.

Mr. Chairman, Recommendation XV-2 on "Comprehensive Measures for the Protection of the Antarctic Environment and Dependent and Associated Ecosystems" adopted at the XV ATCM in Paris provides that a meeting be held in 1990 to "explore and discuss all proposals relating to Article 8 (7) on the Convention of Antarctic Mineral Resource Activities". Article 8 paragraph 7 of this Convention envisages that further rules and procedures in respect of the provisions on liability shall be elaborated through a separate Protocol which shall be adopted by consensus by the members of the Commission and shall enter into force according to the procedure provided for in Article 61 for the entry into force of the Convention. These provisions pre-suppose that the Convention on the Regulation of Antarctic Mineral Resource Activities will enter into force in accordance with Article 62 and will be in place well before a separate Protocol on liability is elaborated.

We are aware that the political context underlying Article 8 (7) of the Convention has changed because States, whose signature and ratification for the entry into force of the Convention is crucial, have decided to set aside the Convention and work for the establishment of an instrument of comprehensive measures for the protection of the Antarctic environment and dependent and associated ecosystem. We too are committed to the protection of the Antarctic environment, irrespective of the nature of the activities undertaken there.

In view of the current climate of uncertainty about CRAMRA there does not appear to be any need or urgency for initiating discussion or negotiations on the question of elaboration of a separate Protocol on Liability. We agree with the views expressed by most of the delegations that it is premature to embark upon exercise on this issue. This, however, does not mean, Mr. Chairman, that the liability issue is not important. The question of liability needs to be addressed to in the context of specific activities which may be permitted and regulated under the new instrument on which we are working here in Viña del Mar. We cannot consider this issue in isolation. To sum up, Mr. Chairman, our delegation is of the view that this issue may be considered at the appropriate time. There is at present hardly any justification or need for a substantive discussion on this issue.

**STATEMENT BY MR. ROLF TROLLE ANDERSEN**

**HEAD OF THE DELEGATION OF NORWAY**

*Mr. Chairman,*

The mandate of this meeting is contained in Recommendation XV-2 from the Consultative Meeting in Paris last year, which states that "A meeting be held in 1990 to explore and discuss all proposals relating to article 8 (7) of the Convention on the Regulation of Antarctic Mineral Resource Activities".

Developments since the XVth ATCM have been such that an in-depth exploration and discussion of a liability protocol to CRAMRA is not realistic at this time.

This meeting nevertheless necessitates certain comments. I should like to make but a few points, which relate both to the question of a liability protocol and to CRAMRA as such.

Point number 1 is that CRAMRA was intended to be —and to a very large extent developed into— a strong environmental protection regime. Suffice it here to recall that the Convention would close the Antarctic to all exploration or development of minerals unless all members of the Commission decided otherwise by consensus, and on the basis of very strict environmental principles and provisions. This was an innovative and far-reaching provision, the practical effect of which might not have been quite appreciated by all.

Point number 2 is that the environmental provisions of CRAMRA were never intended to be seen independently from the later provisions of the liability protocol to be elaborated according to Article 8, paragraph 7. Article 8 in itself established significant and deterring response action and liability provisions, i.a. by instituting strict and unlimited liability for any damage to the environement. But the protocol was intended to elaborate further rules and procedures which were to "enhance the protection of the Antarctic environment and dependent and associated ecosystems". In other words, the liability protocol opened for the opportunity to put into place strict rules of such a nature that they could work as deterrent to any operator.

My last point, Mr. Chairman, is that the Minerals Convention was intended to fill a legal and political vacuum in the Antarctic Treaty System. It was generally acknowledged at the time that it was important to have an agreed set of rules in place in this difficult matter long before any commercial interest in minerals might arise. Should on wait until an interest arose, it would be extremely difficult to negotiate an agreement which would both safeguard the environment and take care of the underlying political needs.

Whatever we do here, and in the time ahead, we must not lose sight of this element. We might wish to and indeed prohibit commercial activity. We cannot to-day be sure, however, that a commercial interest will never arise. For that eventuality we need to have some sort of safety net in place early. The Minerals Convention provided such a safety net.

Thank you, Mr. Chairman.

## STATEMENT OF NETHERLANDS DELEGATION 29 NOVEMBER

## "LIABILITY PROTOCOL"

*Mr. Chairman,*

The decision to negotiate and discuss in Viña del Mar the issue liability within the meaning of Article 8 (7) of the Minerals Convention was taken in Paris by means of Recommendation XV-2.

In Article 8 (7) of the Mineral Convention is, *inter alia*, recognized that further rules and procedures in respect of liability should be developed by means of a separate protocol, to be adopted by consensus by the members of the Commission of the Antarctic Mineral Resources Convention. The Antarctic Mineral Resources Commision is, of course, established within the institutional framework of the Minerals Convention as such. Therefore, to become operative, the Mineral Resource Commission is dependent upon the entry into force of the Minerals Convention itself.

The same can be said with respect to the separate liability protocol we are negotiating at this particular moment, to obtain the entry into force of the protocol, the procedure provided for in Article 62 of the Minerals Convention must be followed. That procedure calls for ratification, acceptance, approval or accession by 16 Antarctic Treaty Consultative Parties which participated as such in the final session of the Fourth Special Antarctic Treaty Consultative Meeting, provided that this includes the states which are necessary to establish the institutional framework called for in the Minerals Convention, including 5 developing and 11 developed states. As a matter of fact, if my delegation has counted correctly, 20 of these states did indeed participate in this fourth meeting.

Without going into detail, Mr. Chairman, and provided that my delegation has counted correctly and interpreted well the statements and drafting proposal which we discuss at this Special Consultative Meeting concerning the drafting of a comprehensive legal instrument in the environmental protection, it seems to us that the requirements for the entry into force of the Minerals Convention and, therefore, indirectly the separate liability protocol, cannot be fulfilled. Nor is it very likely that, within a foreseeable future, the protocol and convention will enter into force. The political and legal consequences of this conclusion seem rather obvious.

Mr. Chairman, it goes without saying that our delegation attaches great importance to the issue of liability and that we are prepared to discuss the issue of a separate protocol within the framework of a minerals convention in a constructive and co-operative spirit. However, in the light of the circumstances I have just dwelled upon it seems at this stage rather premature and not appropriate to discuss the substance of such a protocol. For these reasons, Mr. Chairman, my delegation suggests to shelve this particular issue.

Now and instead concentrate all our efforts on the development of a liability regime within the framework of a comprehensive legal instrument on the protection of the Antarctic environment. Of course, if it is the feeling of the plenary that we nevertheless should negotiate a liability protocol, we will be glad to give our views on this important issue.

In this respect the "substantial" issued referred to by the distinguished delegate of the United

Kingdom seem to be a good basis for discussion, but we would like to stress that these items are perfectly suitable for a discussion within the framework of the meeting on environmental protection. To our delegation this seems a more appropriate path to follow than to work towards a separate protocol.

Thank you.

**STATEMENT BY DR. J. SERFONTEIN,**

**HEAD OF THE DELEGATION OF SOUTH AFRICA**

South Africa participated in the elaboration of CRAMRA and signed the Convention in Wellington towards the end of 1988. We were therefore willing to accept the obligations and responsibilities that would derive from these actions, including the requirement to develop a liability protocol.

The question may be asked why we were so positive about this convention. The answer to this is, Mr. Chairman, that we believed at the time, and this is still our belief, that CRAMRA itself and the development of the liability protocol would substantially contribute to the enhancement of the protection of the Antarctic environment and associated ecosystems. We therefore agree that purely from an environmental viewpoint CRAMRA is an important environmental protection instrument with which we can associate ourselves.

Because of the present mood on environmental issues we would agree that it may not now be the time to commence with the elaboration of the protocol. On the other hand, we welcome this discussion because the question of liability cannot be overlooked and we have to be prepared for the eventuality that mineral exploitation may one day become vital for the future existence and well-being of the world.

If we look at both recommendations XV-1 and XV-2 adopted at the XV Consultative Meeting you will notice that in the first paragraphs similar language is used, namely: to explore and discuss all proposals. Since we cannot explore and discuss this matter at this meeting due to the pressing needs to make progress in the discussions of the protection of the Antarctic Environment, the South African delegation will not endeavour to touch on any matter of substance at this time. But we would very strongly suggest that this meeting reports back to the XVI ATCM in Bonn of what has transpired here and we propose that the liability protocol be placed on the agenda so that at the appropiate time the elaboration of the protocol can be commenced with.

Thank you, Mr. Chairman.

## STATEMENT OF THE DELEGATION OF SWEDEN

*Mr. Chairman,*

Much of what is contained in Article 8 of CRAMRA on Response Action and Liability is farreaching and innovative. Those further rules and procedures in respect of these previsions that we are obliged to elaborate, is a prerequisite before any permit for exploration and development can be made. Those of us who would prefer consensus on a ban —be it indefinite or not— on any mineral activities in Antarctica could of course argue that if we do not elaborate a protocol, no mining can take place. This would not be a correct assessment but above all, Mr. Chairman, I am not sure that this would be a constructive way to tackle the question.

It is clearly stated that the aim of such rules and procedures shall be designed to enhance the protection of the Antarctic environment and dependent and associated ecosystem. It is clear to my delegation, that this aim is what should guide all our work in the context of the Antarctic Treaty System. It is therefor that Swdeen —under the negotiations of CRAMRA— stressed the need for very strong liability rules with no defences except an exceptional natural disaster or an armed conflict. In that context we would still be in favour of establishing a Fund, to be used when all other financial means are exhausted.

We see the discussions on all proposals relating to Article 8 (7) of CRAMRA as part of the overriding aim to protect the Antarctic environment. I see clearly how we can build on the achievement in Article 8 when we now elaborate on a new instrument for the protection of the antarctic environment. Also in this context Sweden would like to set strong clear and mandatory rules on liability.

Finally, Mr. Chairman, I would like to underline, that from our point of view it is important to devote as much and effective time as possible in order to get to a result on a binding instrument for the protection of the Antarctic environment.

## STATEMENT BY DR. J. A. HEAP

## HEAD OF THE UNITED KINGDOM DELEGATION

*Mr. Chairman,*

My delegation is glad to take the opportunity to participate in the discussion of this important issue. The meeting we are holding this morning was called for in Recommendation XV-2, adopted in Paris in October 1989. That Recommendation recalled the adoption on 2 June 1988 of the Convention on the Regulation of Antarctic Mineral Resource Activities, and the importance of the issue of liability. It went on to recommend that a meeting be held in 1990 to explore and discuss all proposals relating to Article 8 (7) of the Convention.

Recommendation XV-2 like Recommendation XV-1 —the measure which brings us together for the major part of our time in Viña del Mar— was adopted under the agenda item at the XVth ATCM entitled "Comprehensive measures for the protection of the Antarctic environment and dependent and associated ecosystems". This was no accident. Indeed it is entirely appropriate. The issue of liability was recognised, throughout the negotiation of the Minerals Convention, as an important element in the structure of environmental protection measures which were built into the Convention. Indeed, Article 8 (7) of the Convention, which mandated the elaboration through a separate Protocol of further rules and procedures in respect of the provisions on liability set out in that Article, expressly provides in subparagraph (b) that:

> "Such rules and procedures shall be designed to enhance the protection of the Antarctic environment and dependent and associated ecosystems".

I quote this provision verbatim in order to recall, and emphasise, the collective view in June 1988 amongst ATCPs that further work in the context of liability must have as a goal the enhanced protection of the environment. The full picture, in terms of environmental protection measures, was not presented by the Convention text itself. The Convention gave wide powers to the Commission to adopt binding environmental protection measures. And, as I have said, it mandated a Protocol on Liability with enhanced environmental protection as an express goal. It is regrettable that some Governments turned away from the Convention, leading to a breakdown in the consensus so painfully won in June 1988 on the minerals issue, before the full picture could be seen —indeed, before work had even begun on the negotiations of a Liability Protocol.

The fundamental importance attached to the Liability Protocol in the scheme of Minerals Convention is demonstrated by Article 8 (9) of the Convention. This provides that no application for an exploration or development permit shall be made until the liability Protocol is in force for the Party lodging the application. It is further demonstrated by the stringent rules for the adoption and entry into force of the Protocol, which are set out in Article 8 (7) (a). These rules require the adoption of the Protocol by consensus by the members of the Commission, and establish and entry into force requirement which is the same as that for the Convention itself. Recent experience shows what a considerable barrier this can be. The effect of these provisions, in short, is to prevent any minerals exploration or development in Antarctica until all Commission members, and all whose ratification or accession to the Convention is indispensible, agree. This reinforces the moratorium on exploration and

development established by the consensus requirement in Article 41 for the opening of any area for such activities —a moratorium CRAMRA itself provides.

It might be argued that there is no urgency about pursuing the negotiation of a liability Protocol. In a sense there is some force in this argument, and the action of some Governments with regard to the Minerals Convention has added to it. But I would recall that the collective view of ATCPs in June 1988, which was recorded in the Wellington Final Act, was that it would be desirable to begin work on the elaboration of the Protocol on liability *at an early stage*. In part at least, this was because it was generally felt to be desirable to fill out, in the environmental protection field, the incomplete picture presented by the Convention text alone, as I have already mentioned.

My delegation shares the view that it woud be premature to begin at this meeting detailed negotiations for a liability Protocol, given the current climate of uncertainty about the Minerals Convention. But I would caution against shelving the issue. We certainly have more pressing work, which is justifiably occupying most of our time and effort here, in reviewing and elaborating on environmental protection protection measures in respect of activities in Antarctica which are now taking place. That must be our priority. But we should not lose sight of the issue of liability in the context of possible mineral resource activities in Antarctica. The Minerals Convention may now be misunderstood and under attack. But it exists. It may turn out to have a useful, or even vital, role to play in the resolution of the minerals issue. If, in a climate different from today's, in which there is greater interest in Antarctic mineral activity, the Minerals Convention is seen as a useful regulatory mechanism, we shall need to have developed and elaborated its basic liability provisions. In such a climate the enhanced protection of the environment may not be given such prominence as it would today, or even in 1988. It would therefore be unwise to lose sight of the issue.

Accordingly, my delegation believes that, while this matter should not take priority over our other current work here concerning environmental protection, we should before long begin the process of negotiation of a Protocol on liability as called for in the Minerals Convention. Article 8 of the Convention already establishes some important substantive rules on liability in respect of mineral resource activities, and I would note in passing that these rules have been incorporated into the domestic law of the United Kingdom —although in the present uncertain situation we have yet to bring into force the Act of Parliament which incorporates those rules. Article 8 also provides a number of useful guidelines as to the possible content of a Liability Protocol, in elaboration of the rules already contained in Article 8. Among the fundamental issues my delegation believes will need to be addressed, are the following:

a) the principle that all damage to the Antarctic environment falling within the scope of Article 8 should be paid for or compensated in some way;

b) the principle that liability primarily falls upon the operator;

c) an agreed means for determining how damage should be paid for or compensated, to the extent that the operator is not liable either to clean up damage caused by his activities or to meet strict liability obligations to an entitled plaintiff;

d) the question whether financial limits to an operator's liability would be appropriate, and if so how such limits should be determined;

e) the method of assessment of damage;

f) the question of a Fund or Funds to provide a source of compensation or payment

for damage for which the operator is not liable, and the method of financing such Funds;

g) the question of any contingent State liability, in case the liability or resources of the operator or any Fund or Funds are inadequate;

h) an appropriate forum for assessing and judging liability claims, and procedures for dealing with such claims;

i) the question of who should be entitled to bring liability claims, that is to say who would be an appropriate plaintiff;

j) the question of the burden of proof in the adjudication of claims, and whether any limitation periods would be appropriate.

These are complex and difficult matters, Mr. Chairman, as the minerals negotiations showed. But we should not delay too much in turning our minds to them.

Thank you, Mr. Chairman.

**STATEMENT BY MR. CHRISTIAN ZEILEISSEN**

**HEAD OF THE DELEGATION OF AUSTRIA**

*Mr. Chairman,*

My delegation, which is very happy to work under your guidance, has followed with interest the preceding interventions, many of which has expressed thoughts which are identical with our own, as in the case of Australia, Belgium, Denmark, and France.

I would however in particular wish to support what was said by the delegation of India, regarding the urgent need for action to replace, salvage or hopefully improve the present moratorium on mining as contained in the Final Act of the Wellington Special Consultative Meeting.

There are serious grounds to consider that this moratorium is no longer valid, linked as it is to the timely entry into force of the Minerals Convention, which is now an irrealistic prerequisite.

The outcome of the present meeting, seen as a whole, should certainly include a positive solution of this essential issue.

Thank you, Mr. Chairman.

**STATEMENT BY MR. JOERGEN R. LILJIE-JENSEN**

**HEAD OF THE DELEGATION OF DENMARK**

*Mister Chairman,*

In the opening statement my delegation did explain the reasons behind our position with respect to the Minerals Conventions, and I see no need to repeat these views here.

However, the Danish delegation would like to associate itself very strongly with the views expressed by the distinguished representative of Australia earlier this morning.

Even if a liability protocol under CRAMRA is not to be considered, it is obvious that liability is an indispensable in another context. The importance of this item cannot be overestimated, in particular as a preventive measure, and it should be given high priority in the negotiations of the future comprehensive instrument, which should include strong, clear, and mandatory rules on liability.

Thank you, Mr. Chairman.