

International nuclear liability regime

As early as the 1950s, when nuclear power was in its very infancy, most Western States acknowledged that the consequences of a nuclear accident would not stop at geographical borders. Because of the transboundary effects of a nuclear accident, two special nuclear liability regimes were created under the auspices of the OECD and of the United Nations to compensate victims equitably.

Following the American 1957 Price-Anderson Act, the first international nuclear liability regime was founded in 1960 by Western European countries which adopted the Convention on Third Party Liability in the Field of Nuclear Energy, called the Paris Convention. The Paris Convention entered into force on 1 April 1968 and has 15 contracting Parties.¹ This convention fixed the main principles of the operator's liability for the damage caused by their activity and determined which competent court would have jurisdiction to hear claims and which State law would apply in the event of a nuclear incident.

The Brussels Supplementary Convention (1963) created an additional finance mechanism to ensure adequate compensation would be available to victims of nuclear damage through public funds. It was established for the purpose of providing compensation for nuclear damage additional or supplementary to that already provided for under the Paris Convention. This Convention was ratified by 12 Contracting States² and entered into force on 4 December 1974.

In parallel with the development of the Western European countries regime, the IAEA adopted its own nuclear liability regime in 1963 through the Vienna Convention on Civil Liability for Nuclear Damage. Stating similar principals to those laid down in the Paris Convention, some 30 non-OECD³ countries mainly from Eastern Europe, South America, Africa and the Pacific ratified the Vienna agreement.

The Paris and Vienna Conventions created a limited liability scheme based on four pillars. First, the Conventions have a no fault scheme which means no proof of fault or negligence of the nuclear installation operator is required as a condition for liability in case of an accident (absolute liability); Second, the Conventions channel liability exclusively to the operator of the nuclear installation for incidents occurring at that installation or in the course of transport of nuclear material coming from or sent to that installation. Third, the Conventions allow for limitations on the amount of liability and the time for instituting damage claims. The operator must secure insurance or other

¹ Belgium, Denmark, Finland, France, Germany, Greece, Italy, the Netherlands, Norway, Portugal, Slovenia, Spain, Sweden, Turkey, the United-Kingdom.

² Belgium, Denmark, Finland, France, Germany, Italy, the Netherlands, Norway, Slovenia, Spain, Sweden and the United-States.

³ Argentina, Bolivia, Brazil, Cameroon, Chile, Croatia, Cuba, Egypt, Hungary, Lithuania, Mexico, Niger, Peru, Philippines, Poland, Romania, Slovenia, Trinidad and Tobago, Yugoslavia.

financial guarantee up to its liability amount. The choice of limited liability counter-balanced the no-fault scheme and allows the operator to secure adequate insurance cover for the scheme.

Amendments to the Paris and Brussels Conventions in 2004

The revision of the Conventions extends the geographical scope, raises the amount of compensation available to the victims of nuclear incident, and enlarges the definition of the nuclear damage.

The first amendment deals with the expansion of the geographical scope of coverage of the Paris Convention, which allows for victims in more countries to be compensated than ever before.

The existing liability regime only recognises the compensation when the nuclear incident occurs in the territory of a contracting party and the damage must be suffered there.

The revised Paris convention will allow a victim to be compensated for damages wherever suffered, even if the victim comes from a non-contracting State as long as “the latter is a party to the Vienna Convention and the Joint Protocol, or it has no nuclear installation in its territory or maritime zones, or it has adopted legislation that affords equivalent reciprocal benefits and it based upon the principles of the Paris Convention”.

The second significant improvement to the Paris Convention is the increase in amount for which an operator will be liable. From a liability limited today to SDR⁴ 15 Million for the operator, the revision will provide for a minimum operator liability amount Euro 700 Million after the ratification. In addition, the existing minimum liability amount of SDR 5 Million applicable to accidents arising from transport of nuclear material will be raised to Euro 80 Million. Furthermore the unit of account will change to the euro to avoid fluctuations in the value of the SDR

The last main amendment in the revision, deals with the definition of nuclear damage. In addition to damages to persons and to property, other damages were recognised as being important after the Chernobyl accident. Such damages include the cost of preventive measures, the cost of measure to reinstate an impaired environment and the economic losses resulted from such an impaired environment.

However, the amendments to the Paris Convention will need to be ratified by two-thirds of the contracting parties (i.e. 10 countries) and by all

⁴ A Special Drawing Right is a unit of account defined by the International Monetary Fund, calculated on the basis of a basket of currencies of several of the most important trading nations. Based upon rate of 1 SDR = Euro 1.188, this amount is equivalent to Euro 17.82 Million.



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Contracting Parties for the Brussels Amendments (i.e. 12 countries) to be implemented.