
ESI-CIL Nuclear Governance Project

A multidisciplinary research project by the Energy Studies Institute & Centre for International Law

Selected Documents on Civil Liability for Nuclear Damage

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SELECTED DOCUMENTS ON CIVIL LIABILITY FOR NUCLEAR DAMAGE

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A: INTERNATIONAL NUCLEAR LIABILITY INSTRUMENTS

1997 CONVENTION ON SUPPLEMENTARY COMPENSATION FOR NUCLEAR DAMAGE

The Convention entered into force on 15 April 2015, i.e. on the ninetieth day following the date on which 5 States with a minimum of 400,000 units of installed nuclear capacity deposited an instrument of ratification, acceptance or approval, pursuant to Article XX.1.

THE CONTRACTING PARTIES,

RECOGNIZING the importance of the measures provided in the Vienna Convention on Civil Liability for Nuclear Damage and the Paris Convention on Third Party Liability in the Field of Nuclear Energy as well as in national legislation on compensation for nuclear damage consistent with the principles of these Conventions;

DESIROUS of establishing a worldwide liability regime to supplement and enhance these measures with a view to increasing the amount of compensation for nuclear damage;

RECOGNIZING further that such a worldwide liability regime would encourage regional and global co-operation to promote a higher level of nuclear safety in accordance with the principles of international partnership and solidarity;

HAVE AGREED as follows:

CHAPTER I GENERAL PROVISIONS

Article I Definitions

For the purposes of this Convention:

- (a) "Vienna Convention" means the Vienna Convention on Civil Liability for Nuclear Damage of 21 May 1963 and any amendment thereto which is in force for a Contracting Party to this Convention.
- (b) "Paris Convention" means the Paris Convention on Third Party Liability in the Field of Nuclear Energy of 29 July 1960 and any amendment thereto which is in

force for a Contracting Party to this Convention.

- (c) "Special Drawing Right", hereinafter referred to as SDR, means the unit of account defined by the International Monetary Fund and used by it for its own operations and transactions.
- (d) "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.
- (e) "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.
- (f) "Nuclear Damage" means:
 - (i) loss of life or personal injury;
 - (ii) loss of or damage to property; and each of the following to the extent determined by the law of the competent court;
 - (iii) economic loss arising from loss or damage referred to in sub-paragraph (i) or (ii), insofar as not included in those sub-paragraphs, if incurred by a person entitled to claim in respect of such loss or damage;

- (iv) the costs of measures of reinstatement of impaired environment, unless such impairment is insignificant, if such measures are actually taken or to be taken, and insofar as not included in sub-paragraph (ii);
- (v) loss of income deriving from an economic interest in any use or enjoyment of the environment, incurred as a result of a significant impairment of that environment, and insofar as not included in sub-paragraph (ii);
- (vi) the costs of preventive measures, and further loss or damage caused by such measures;
- (vii) any other economic loss, other than any caused by the impairment of the environment, if permitted by the general law on civil liability of the competent court,

in the case of sub-paragraphs (i) to (v) and (vii) above, to the extent that the loss or damage arises out of or results from ionizing radiation emitted by any source of radiation inside a nuclear installation, or emitted from nuclear fuel or radioactive products or waste in, or of nuclear material coming from, originating in, or sent to, a nuclear installation, whether so arising from the radioactive properties of such matter, or from a combination of radioactive properties with toxic, explosive or other hazardous properties of such matter.

- (g) "Measures of reinstatement" means any reasonable measures which have been approved by the competent authorities of the State where the measures were taken, and which aim to reinstate or restore damaged or destroyed components of the environment, or to introduce, where reasonable, the equivalent of these components into the environment. The law of the State where

the damage is suffered shall determine who is entitled to take such measures.

- (h) "Preventive measures" means any reasonable measures taken by any person after a nuclear incident has occurred to prevent or minimize damage referred to in sub-paragraphs (f)(i) to (v) or (vii), subject to any approval of the competent authorities required by the law of the State where the measures were taken.
- (i) "Nuclear incident" means any occurrence or series of occurrences having the same origin which causes nuclear damage or, but only with respect to preventive measures, creates a grave and imminent threat of causing such damage.
- (j) "Installed nuclear capacity" means for each Contracting Party the total of the number of units given by the formula set out in Article IV.2; and "thermal power" means the maximum thermal power authorized by the competent national authorities.
- (k) "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.
- (l) "Reasonable measures" means measures which are found under the law of the competent court to be appropriate and proportionate, having regard to all the circumstances, for example:
 - (i) the nature and extent of the damage incurred or, in the case of preventive measures, the nature and extent of the risk of such damage;
 - (ii) the extent to which, at the time they are taken, such measures are likely to be effective; and
 - (iii) relevant scientific and technical expertise.

Article II Purpose and Application

1. The purpose of this Convention is to supplement the system of compensation provided pursuant to national law which:
 - (a) one of the instruments referred to in Article I (a) and (b); or
 - (b) complies with the provisions of the Annex to this Convention.
2. The system of this Convention shall apply to nuclear damage for which an operator of a nuclear installation used for peaceful purposes situated in the territory of a Contracting Party is liable under either one of the Conventions referred to in Article I or national law mentioned in paragraph 1(b) of this Article.
3. The Annex referred to in paragraph 1(b) shall constitute an integral part of this Convention.

CHAPTER II COMPENSATIONArticle III Undertaking

1. Compensation in respect of nuclear damage per nuclear incident shall be ensured by the following means:
 - (a) (i) the Installation State shall ensure the availability of 300 million SDRs or a greater amount that it may have specified to the Depositary at any time prior to the nuclear incident, or a transitional amount pursuant to subparagraph (ii);
 - (ii) a Contracting Party may establish for the maximum of 10 years from the date of the opening for signature of this Convention, a transitional amount of at least 150 million SDRs in respect of a nuclear

incident occurring within that period.

- (b) beyond the amount made available under sub-paragraph (a), the Contracting Parties shall make available public funds according to the formula specified in Article IV.
2. (a) Compensation for nuclear damage in accordance with paragraph 1(a) shall be distributed equitably without discrimination on the basis of nationality, domicile or residence, provided that the law of the Installation State may, subject to obligations of that State under other conventions on nuclear liability, exclude nuclear damage suffered in a non-Contracting State.
- (b) Compensation for nuclear damage in accordance with paragraph 1(b), shall, subject to Articles V and XI.1(b), be distributed equitably without discrimination on the basis of nationality, domicile or residence.
3. If the nuclear damage to be compensated does not require the total amount under paragraph 1(b), the contributions shall be reduced proportionally.
4. The interest and costs awarded by a court in actions for compensation of nuclear damage are payable in addition to the amounts awarded pursuant to paragraphs 1(a) and (b) and shall be proportionate to the actual contributions made pursuant to paragraphs 1(a) and (b), respectively, by the operator liable, the Contracting Party in whose territory the nuclear installation of that operator is situated, and the Contracting Parties together.

Article IV Calculation of Contributions

1. The formula for contributions according to which the Contracting Parties shall make available the public funds referred to in Article III.1(b) shall be determined as follows:

(a) (i) the amount which shall be the product of the installed nuclear capacity of that Contracting Party multiplied by 300 SDRs per unit of installed capacity; and

(ii) the amount determined by applying the ratio between the United Nations rate of assessment for that Contracting Party as assessed for the year preceding the year in which the nuclear incident occurs, and the total of such rates for all Contracting Parties to 10% of the sum of the amounts calculated for all Contracting Parties under sub-paragraph (i).

(b) Subject to sub-paragraph (c), the contribution of each Contracting Party shall be the sum of the amounts referred to in sub-paragraphs (a)(i) and (ii), provided that States on the minimum United Nations rate of assessment with no nuclear reactors shall not be required to make contributions.

(c) The maximum contribution which may be charged per nuclear incident to any Contracting Party, other than the Installation State, pursuant to sub-paragraph (b) shall not exceed its specified percentage of the total of contributions of all Contracting Parties determined pursuant to sub-paragraph (b). For a particular Contracting Party, the specified percentage shall be its UN rate of assessment expressed as a

percentage plus 8 percentage points. If, at the time an incident occurs, the total installed capacity represented by the Parties to this Convention is at or above a level of 625,000 units, this percentage shall be increased by one percentage point. It shall be increased by one additional percentage point for each increment of 75,000 units by which the capacity exceeds 625,000 units.

2. The formula is for each nuclear reactor situated in the territory of the Contracting Party, 1 unit for each MW of thermal power. The formula shall be calculated on the basis of the thermal power of the nuclear reactors shown at the date of the nuclear incident in the list established and kept up to date in accordance with Article VIII.

3. For the purpose of calculating the contributions, a nuclear reactor shall be taken into account from that date when nuclear fuel elements have been first loaded into the nuclear reactor. A nuclear reactor shall be excluded from the calculation when all fuel elements have been removed permanently from the reactor core and have been stored safely in accordance with approved procedures.

Article V Geographical Scope

1. The funds provided for under Article III.1(b) shall apply to nuclear damage which is suffered:

(a) in the territory of a Contracting Party;
or

(b) in or above maritime areas beyond the territorial sea of a Contracting Party:

(i) on board or by a ship flying the flag of a Contracting Party, or on board or by an aircraft registered

in the territory of a Contracting Party, or on or by an artificial island, installation or structure under the jurisdiction of a Contracting Party; or

(ii) by a national of a Contracting Party; excluding damage suffered in or above the territorial sea of a State not Party to this Convention; or

(c) in or above the exclusive economic zone of a Contracting Party or on the continental shelf of a Contracting Party in connection with the exploitation or the exploration of the natural resources of that exclusive economic zone or continental shelf; provided that the courts of a Contracting Party have jurisdiction pursuant to Article XIII.

2. Any signatory or acceding State may, at the time of signature of or accession to this Convention or on the deposit of its instrument of ratification, declare that for the purposes of the application of paragraph 1(b)(ii), individuals or certain categories thereof, considered under its law as having their habitual residence in its territory, are assimilated to its own nationals.

3. In this article, the expression "a national of a Contracting Party" shall include 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.

CHAPTER III ORGANIZATION OF SUPPLEMENTARY FUNDING

Article VI Notification of Nuclear Damage

Without prejudice to obligations which Contracting Parties may have under other

international agreements, the Contracting Party whose courts have jurisdiction shall inform the other Contracting Parties of a nuclear incident as soon as it appears that the damage caused by such incident exceeds, or is likely to exceed, the amount available under Article 111.1 (a) and that contributions under Article 111.1 (b) may be required. The Contracting Parties shall without delay make all the necessary arrangements to settle the procedure for their relations in this connection.

Article VII Call for Funds

1. Following the notification referred to in Article VI, and subject to Article X.3, the Contracting Party whose courts have jurisdiction shall request the other Contracting Parties to make available the public funds required under Article 111.1 (b) to the extent and when they are actually required and shall have exclusive competence to disburse such funds.
2. Independently of existing or future regulations concerning currency or transfers, Contracting Parties shall authorize the transfer and payment of any contribution provided pursuant to Article III.1(b) without any restriction.

Article VIII List of Nuclear Installations

1. Each Contracting State shall, at the time when it deposits its instrument of ratification, acceptance, approval or accession, communicate to the Depositary a complete listing of all nuclear installations referred to in Article IV.3. The listing shall contain the necessary particulars for the purpose of the calculation of contributions.
2. Each Contracting State shall promptly communicate to the Depositary all modifications to be made to the list. Where such modifications include the addition of a nuclear installation, the

communication must be made at least three months before the expected date when nuclear material will be introduced into the installation.

3. If a Contracting Party is of the opinion that the particulars, or any modification to be made to the list communicated by a Contracting State pursuant to paragraphs 1 and 2, do not comply with the provisions, it may raise objections thereto by addressing them to the Depositary within three months from the date on which it has received notice pursuant to paragraph 5. The Depositary shall forthwith communicate this objection to the State to whose information the objection has been raised. Any unresolved differences shall be dealt with in accordance with the dispute settlement procedure laid down in Article XVI.
4. The Depositary shall maintain, update and annually circulate to all Contracting States the list of nuclear installations established in accordance with this Article. Such list shall consist of all the particulars and modifications referred to in this Article, it being understood that objections submitted under this Article shall have effect retrospective to the date on which they were raised, if they are sustained.
5. The Depositary shall give notice as soon as possible to each Contracting Party of the communications and objections which it has received pursuant to this Article.

Article IX Rights of Recourse

1. Each Contracting Party shall enact legislation in order to enable both the Contracting Party in whose territory the nuclear installation of the operator liable is situated and the other Contracting Parties who have paid contributions referred to in Article III.1(b), to benefit from the operator's right of recourse to the extent that he has such a right under either one of the Conventions referred to in Article I or national legislation mentioned in Article II.1(b) and to the extent that contributions have been made by any of the Contracting Parties.
2. The legislation of the Contracting Party in whose territory the nuclear installation of the operator liable is situated may provide for the recovery of public funds made available under this Convention from such operator if the damage results from fault on his part.
3. The Contracting Party whose courts have jurisdiction may exercise the rights of recourse provided for in paragraphs 1 and 2 on behalf of the other Contracting Parties which have contributed.

Article X Disbursements, Proceedings

1. The system of disbursements by which the funds required under Article III.1 are to be made available and the system of apportionment thereof shall be that of the Contracting Party whose courts have jurisdiction.
2. Each Contracting Party shall ensure that persons suffering damage may enforce their rights to compensation without having to bring separate proceedings according to the origin of the funds provided for such compensation and that Contracting Parties may intervene in the proceedings against the operator liable.

3. No Contracting Party shall be required to make available the public funds referred to in Article III.1(b) if claims for compensation can be satisfied out of the funds referred to in Article III.1(a).

Article XI Allocation of Funds

The funds provided under Article III. 1(b) shall be distributed as follows:

1. (a) 50% of the funds shall be available to compensate claims for nuclear damage suffered in or outside the Installation State;
- (b) 50% of the funds shall be available to compensate claims for nuclear damage suffered outside the territory of the Installation State to the extent that such claims are uncompensated under sub-paragraph (a).
- (c) In the event the amount provided pursuant to Article III.1(a) is less than 300 million SDRs:
 - (i) the amount in paragraph 1(a) shall be reduced by the same percentage as the percentage by which the amount provided pursuant to Article III.1(a) is less than 300 million SDRs; and
 - (ii) the amount in paragraph 1(b) shall be increased by the amount of the reduction calculated pursuant to sub-paragraph (i).
2. If a Contracting Party, in accordance with Article III.1(a), has ensured the availability without discrimination of an amount not less than 600 million SDRs, which has been specified to the Depositary prior to the nuclear incident, all funds referred to in Article III.1(a) and (b) shall, notwithstanding paragraph 1, be made available to compensate

nuclear damage suffered in and outside the Installation State.

CHAPTER IV EXERCISE OF OPTIONS

Article XII

1. Except insofar as this Convention otherwise provides, each Contracting Party may exercise the powers vested in it by virtue of the Vienna Convention or the Paris Convention, and any provisions made thereunder may be invoked against the other Contracting Parties in order that the public funds referred to in Article III.1(b) be made available.
2. Nothing in this Convention shall prevent any Contracting Party from making provisions outside the scope of the Vienna or the Paris Convention and of this Convention, provided that such provision shall not involve any further obligation on the part of the other Contracting Parties, and provided that damage in a Contracting Party having no nuclear installations within its territory shall not be excluded from such further compensation on any grounds of lack of reciprocity.
3. (a) Nothing in this Convention shall prevent Contracting Parties from entering into regional or other agreements with the purpose of implementing their obligations under Article III.1(a) or providing additional funds for the compensation of nuclear damage, provided that this shall not involve any further obligation under this Convention for the other Contracting Parties.
- (b) A Contracting Party intending to enter into any such agreement shall notify all other Contracting Parties of its intention. Agreements concluded shall be notified to the Depositary.

CHAPTER V JURISDICTION AND APPLICABLE LAW

Article XIII Jurisdiction

1. Except as otherwise provided in this article, jurisdiction over actions concerning nuclear damage from a nuclear incident shall lie only with the courts of the Contracting Party within which the nuclear incident occurs.
2. Where a nuclear incident occurs within the area of the exclusive economic zone of a Contracting Party or, if such a zone has not been established, in an area not exceeding the limits of an exclusive economic zone, were one to be established by that Party, jurisdiction over actions concerning nuclear damage from that nuclear incident shall, for the purposes of this Convention, lie only with the courts of that Party. The preceding sentence shall apply if that Contracting Party has notified the Depositary of such area prior to the nuclear incident. Nothing in this paragraph shall be interpreted as permitting the exercise of jurisdiction in a manner which is contrary to the international law of the sea, including the United Nations Convention on the Law of the Sea. However, if the exercise of such jurisdiction is inconsistent with the obligations of that Party under Article XI of the Vienna Convention or Article 13 of the Paris Convention in relation to a State not Party to this Convention jurisdiction shall be determined according to those provisions.
3. Where a nuclear incident does not occur within the territory of any Contracting Party or within an area notified pursuant to paragraph 2, or where the place of a nuclear incident cannot be determined with certainty, jurisdiction over actions concerning nuclear damage from the nuclear incident shall lie only with the courts of the Installation State.
4. Where jurisdiction over actions concerning nuclear damage would lie with the courts of more than one Contracting Party, these Contracting Parties shall determine by agreement which Contracting Party's courts shall have jurisdiction.
5. A judgment that is no longer subject to ordinary forms of review entered by a court of a Contracting Party having jurisdiction shall be recognized 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.
6. A judgment which is recognized under paragraph 5 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. The merits of a claim on which the judgment has been given shall not be subject to further proceedings.
7. Settlements effected in respect of the payment of compensation out of the public funds referred to in Article III.1(b) in accordance with the conditions established by national legislation shall be recognized by the other Contracting Parties.

Article XIV Applicable Law

1. Either the Vienna Convention or the Paris Convention or the Annex to this Convention, as appropriate, shall apply to a nuclear incident to the exclusion of the others.
2. Subject to the provisions of this Convention, the Vienna Convention or the Paris Convention, as appropriate, the applicable law shall be the law of the competent court.

Article XV Public International Law

This Convention shall not affect the rights and obligations of a Contracting Party under the general rules of public international law.

CHAPTER VI DISPUTE SETTLEMENTArticle XVI

1. In the event of a dispute between Contracting Parties concerning the interpretation or application of this Convention, the parties to the dispute shall consult with a view to the settlement of the dispute by negotiation or by any other peaceful means of settling disputes acceptable to them.
2. If a dispute of this character referred to in paragraph 1 cannot be settled within six months from the request for consultation pursuant to paragraph 1, it shall, at the request of any party to such dispute, be submitted to arbitration or referred to the International Court of Justice for decision. Where a dispute is submitted to arbitration, if, within six months from the date of the request, the parties to the dispute are unable to agree on the organization of the arbitration, a party may request the President of the International Court of Justice or the Secretary-General of the United Nations to appoint one or more arbitrators. In

cases of conflicting requests by the parties to the dispute, the request to the Secretary-General of the United Nations shall have priority.

3. When ratifying, accepting, approving or acceding to this Convention, a State may declare that it does not consider itself bound by either or both of the dispute settlement procedures provided for in paragraph 2. The other Contracting Parties shall not be bound by a dispute settlement procedure provided for in paragraph 2 with respect to a Contracting Party for which such a declaration is in force.
4. A Contracting Party which has made a declaration in accordance with paragraph 3 may at any time withdraw it by notification to the Depositary.

CHAPTER VII FINAL CLAUSESArticle XVII Signature

This Convention shall be open for signature, by all States at the Headquarters of the International Atomic Energy Agency in Vienna from 29 September 1997 until its entry into force.

Article XVIII Ratification, Acceptance, Approval

1. This Convention shall be subject to ratification, acceptance or approval by the signatory States. An instrument of ratification, acceptance or approval shall be accepted only from a State which is a Party to either the Vienna Convention or the Paris Convention, or a State which declares that its national law complies with the provisions of the Annex to this Convention, provided that, in the case of a State having on its territory a nuclear installation as defined in the Convention on Nuclear Safety of 17 June 1994, it is a Contracting State to that Convention.

2. The instruments of ratification, acceptance or approval shall be deposited with the Director General of the International Atomic Energy Agency who shall act as the Depositary of this Convention.
3. A Contracting Party shall provide the Depositary with a copy, in one of the official languages of the United Nations, of the provisions of its national law referred to in Article II.1 and amendments thereto, including any specification made pursuant to Article III.1(a), Article XI.2, or a transitional amount pursuant to Article III.1(a)(ii). Copies of such provisions shall be circulated by the Depositary to all other Contracting Parties.

Article XIX Accession

1. After its entry into force, any State which has not signed this Convention may accede to it. An instrument of accession shall be accepted only from a State which is a Party to either the Vienna Convention or the Paris Convention, or a State which declares that its national law complies with the provisions of the Annex to this Convention, provided that, in the case of a State having on its territory a nuclear installation as defined in the Convention on Nuclear Safety of 17 June 1994, it is a Contracting State to that Convention.
2. The instruments of accession shall be deposited with the Director General of the International Atomic Energy Agency.
3. A Contracting Party shall provide the Depositary with a copy, in one of the official languages of the United Nations, of the provisions of its national law referred to in Article II.1 and amendments thereto, including any specification made pursuant to Article III.1(a), Article XI.2, or a transitional amount pursuant to Article III.1(a)(ii). Copies of such provisions shall

be circulated by the Depositary to all other Contracting Parties.

Article XX Entry Into Force

1. This Convention shall come into force on the ninetieth day following the date on which at least 5 States with a minimum of 400,000 units of installed nuclear capacity have deposited an instrument referred to in Article XVIII.
2. For each State which subsequently ratifies, accepts, approves or accedes to this Convention, it shall enter into force on the ninetieth day after deposit by such State of the appropriate instrument.

Article XXI Denunciation

1. Any Contracting Party may denounce this Convention by written notification to the Depositary.
2. Denunciation shall take effect one year after the date on which the notification is received by the Depositary.

Article XXII Cessation

1. Any Contracting Party which ceases to be a Party to either the Vienna Convention or the Paris Convention shall notify the Depositary thereof and of the date of such cessation. On that date such Contracting Party shall have ceased to be a Party to this Convention unless its national law complies with the provisions of the Annex to this Convention and it has so notified the Depositary and provided it with a copy of the provisions of its national law in one of the official languages of the United Nations. Such copy shall be circulated by the Depositary to all other Contracting Parties.

2. Any Contracting Party whose national law ceases to comply with the provisions of the Annex to this Convention and which is not a Party to either the Vienna Convention or the Paris Convention shall notify the Depositary thereof and of the date of such cessation. On that date such Contracting Party shall have ceased to be a Party to this Convention.
3. Any Contracting Party having on its territory a nuclear installation as defined in the Convention on Nuclear Safety which ceases to be Party to that Convention shall notify the depositary thereof and of the date of such cessation. On that date, such Contracting Party shall, notwithstanding paragraphs 1 and 2, have ceased to be a Party to the present Convention.

Article XXIII Continuance of Prior Rights and Obligations

Notwithstanding denunciation pursuant to Article XXI or cessation pursuant to Article XXII, the provisions of this Convention shall continue to apply to any nuclear damage caused by a nuclear incident which occurs before such denunciation or cessation.

Article XXIV Revision and Amendments

1. The Depositary, after consultations with the Contracting Parties, may convene a conference for the purpose of revising or amending this Convention.
2. The Depositary shall convene a conference of Contracting Parties for the purpose of revising or amending this Convention at the request of not less than one-third of all Contracting Parties.

Article XXV Amendment by Simplified Procedure

1. A meeting of the Contracting Parties shall be convened by the Depositary to amend the compensation amounts referred to in Article III.1(a) and (b) or categories of installations including contributions payable for them, referred to in Article IV.3, if one-third of the Contracting Parties express a desire to that effect.
2. Decisions to adopt a proposed amendment shall be taken by vote. Amendments shall be adopted if no negative vote is cast.
3. Any amendment adopted in accordance with paragraph 2 shall be notified by the Depositary to all Contracting Parties. The amendment shall be considered accepted if within a period of 36 months after it has been notified, all Contracting Parties at the time of the adoption of the amendment have communicated their acceptance to the Depositary. The amendment shall enter into force for all Contracting Parties 12 months after its acceptance.
4. If, within a period of 36 months from the date of notification for acceptance the amendment has not been accepted in accordance with paragraph 3, the amendment shall be considered rejected.
5. When an amendment has been adopted in accordance with paragraph 2 but the 36 months period for its acceptance has not yet expired, a State which becomes a Party to this Convention during that period shall be bound by the amendment if it comes into force. A State which becomes a Party to this Convention after that period shall be bound by any amendment which has been accepted in accordance with paragraph 3. In the cases referred to in the present paragraph, a Contracting Party shall be bound by an amendment when that

amendment enters into force, or when this Convention enters into force for that Contracting Party, whichever date is the later.

Article XXVI Functions of the Depositary

In addition to functions in other Articles of this Convention, the Depositary shall promptly notify Contracting Parties and all other States as well as the Secretary-General of the Organization for Economic Co-operation and Development of:

- (a) each signature of this Convention;
- (b) each deposit of an instrument of ratification, acceptance, approval or accession concerning this Convention;
- (c) the entry into force of this Convention;
- (d) declarations received pursuant to Article XVI;
- (e) any denunciation received pursuant to Article XXI, or notification received pursuant to Article XXII;
- (f) any notification under paragraph 2 of Article XIII;
- (g) other pertinent notifications relating to this Convention.

Article XXVII Authentic Texts

The original of this Convention, of which Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Director General of the International Atomic Energy Agency who shall send certified copies thereof to all States.

IN WITNESS WHEREOF, THE UNDERSIGNED, BEING DULY AUTHORIZED THERETO, HAVE SIGNED THIS CONVENTION.

Done at Vienna, this twelfth day of September, one thousand nine hundred ninety seven.

ANNEX

A Contracting Party which is not a Party to any of the Conventions mentioned in Article I(a) or (b) of this Convention shall ensure that its national legislation is consistent with the provisions laid down in this Annex insofar as those provisions are not directly applicable within that Contracting Party. A Contracting Party having no nuclear installation on its territory is required to have only that legislation which is necessary to enable such a Party to give effect to its obligations under this Convention.

Article 1 DEFINITIONS

1. In addition to the definitions in Article I of this Convention, the following definitions apply for the purposes of this Annex:

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

(b) "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.

(c) "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.

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

(e) "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.

2. An Installation State may, if the small extent of the risks involved so warrants, exclude any nuclear installation or small quantities of nuclear material from the application of this Convention, provided that:

- (a) with respect to nuclear installations, criteria for such exclusion have been established by the Board of Governors of the International Atomic Energy Agency and any exclusion by an Installation State satisfies such criteria; and
- (b) with respect to small quantities of nuclear material, maximum limits for the exclusion of such quantities have been established by the Board of Governors of the International Atomic Energy Agency and any exclusion by an Installation State is within such established limits.

The criteria for the exclusion of nuclear installations and the maximum limits for the exclusion of small quantities of nuclear material shall be reviewed periodically by the Board of Governors.

Article 2 CONFORMITY OF LEGISLATION

1. The national law of a Contracting Party is deemed to be in conformity with the provisions of Articles 3, 4, 5 and 7 if it contained on 1 January 1995 and continues to contain provisions that:
 - (a) provide for strict liability in the event of a nuclear incident where there is substantial nuclear damage off the site of the nuclear installation where the incident occurs;
 - (b) require the indemnification of any person other than the operator liable for nuclear damage to the extent that person is legally liable to provide compensation; and
 - (c) ensure the availability of at least 1000 million SDRs in respect of a civil nuclear power plant and at least 300 million SDRs in respect of other civil nuclear installations for such indemnification.

2. If in accordance with paragraph 1, the national law of a Contracting Party is deemed to be in conformity with the provision of Articles 3, 4, 5 and 7, then that Party:
 - (a) may apply a definition of nuclear damage that covers loss or damage set forth in Article I(f) of this Convention and any other loss or damage to the extent that the loss or damage 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; or other ionizing radiation emitted by any source of radiation inside a nuclear installation, provided that such application does not affect the undertaking by that Contracting Party pursuant to Article III of this Convention; and
 - (b) may apply the definition of nuclear installation in paragraph 3 of this Article to the exclusion of the definition in Article 1.1(b) of this Annex.
3. For the purpose of paragraph 2(b) of this Article, "nuclear installation" means:
 - (a) any civil 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 any other purpose; and

- (b) any civil facility for processing, reprocessing or storing:
 - (i) irradiated nuclear fuel; or
 - (ii) radioactive products or waste that:
 - (1) result from the reprocessing of irradiated nuclear fuel and contain significant amounts of fission products; or
 - (2) contain elements that have an atomic number greater than 92 in concentrations greater than 10 nano-curies per gram.
 - (c) any other civil facility for processing, reprocessing or storing nuclear material unless the Contracting Party determines the small extent of the risks involved with such an installation warrants the exclusion of such a facility from this definition.
4. Where that national law of a Contracting Party which is in compliance with paragraph 1 of this Article does not apply to a nuclear incident which occurs outside the territory of that Contracting Party, but over which the courts of that Contracting Party have jurisdiction pursuant to Article XIII of this Convention, Articles 3 to 11 of the Annex shall apply and prevail over any inconsistent provisions of the applicable national law.
- Article 3 OPERATOR LIABILITY**
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 that nuclear installation; or
 - (b) involving nuclear material coming from or originating in that 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 that nuclear installation, and occurring:

- (i) after liability with regard to nuclear incidents involving the nuclear material has been assumed by the operator 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 the operator has taken charge of the nuclear material; or
- (iii) after the operator 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) shall not apply where another operator or person is solely liable pursuant to sub-paragraph (b) or (c).

2. The Installation State may provide by legislation that, in accordance with such terms as may be specified in that legislation, a carrier of nuclear material or a person handling radioactive waste may, at such carrier or such person's 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. The liability of the operator for nuclear damage shall be absolute.
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 to be nuclear damage caused by that nuclear incident. Where, however, damage is caused jointly by a nuclear incident covered by the provisions of this Annex and by an emission of ionizing radiation not covered by it, nothing in this Annex 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. (a) No liability 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 insofar 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 caused directly due to a grave natural disaster of an exceptional character.

6. National law may relieve an operator wholly or partly from the obligation to pay compensation for nuclear damage suffered by a person if the operator proves the nuclear damage resulted wholly or partly from the gross negligence of that person or an act or omission of that person done with the intent to cause damage.
7. The operator shall not be liable for nuclear damage:
 - (a) to the nuclear installation itself and any other nuclear installation, including a nuclear installation under construction, on the site where that installation is located; and
 - (b) to any property on that same site which is used or to be used in connection with any such installation;
 - (c) unless otherwise provided by national law, to the means of transport upon which the nuclear material involved was at the time of the nuclear incident. If national law provides that the operator is liable for such damage, compensation for that damage shall not have the effect of reducing the liability of the operator in respect of other damage to an amount less than either 150 million SDRs, or any higher amount established by the legislation of a Contracting Party.
8. Nothing in this Convention shall affect the liability outside this Convention of the operator for nuclear damage for which by virtue of paragraph 7(c) he is not liable under this Convention.
9. The right to compensation for nuclear damage may be exercised only against the operator liable, provided that national law may permit a direct right of action against any supplier of funds that are

made available pursuant to provisions in national law to ensure compensation through the use of funds from sources other than the operator.

10. The operator shall incur no liability for damage caused by a nuclear incident outside the provisions of national law in accordance with this Convention.

Article 4 LIABILITY AMOUNTS

1. Subject to Article III.1(a)(ii), the liability of the operator may be limited by the Installation State for any one nuclear incident, either:
 - (a) to not less than 300 million SDRs; or
 - (b) to not less than 150 million SDRs provided that in excess of that amount and up to at least 300 million SDRs public funds shall be made available by that State to compensate nuclear damage.
2. Notwithstanding paragraph 1, the Installation State, having regard to the nature of the nuclear installation or the nuclear substances involved and to the likely consequences of an incident originating therefrom, may establish a lower amount of liability of the operator, provided that in no event shall any amount so established be less than 5 million SDRs, and provided that the Installation State ensures that public funds shall be made available up to the amount established pursuant to paragraph 1.
3. The amounts established by the Installation State of the liable operator in accordance with paragraphs 1 and 2, as well as the provisions of any legislation of a Contracting Party pursuant to Article 3.7(c) shall apply wherever the nuclear incident occurs.

Article 5 FINANCIAL SECURITY

1. (a) The operator shall be required to have and 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 4. Where the liability of the operator is unlimited, the Installation State may establish a limit of the financial security of the operator liable provided that such limit is not lower than 300 million SDRs. The Installation State shall ensure the payment of claims for compensation for nuclear damage which have been established against the operator to the extent that yield of the financial security is inadequate to satisfy such claims, but not in excess of the amount of the financial security to be provided under this paragraph.
- (b) Notwithstanding sub-paragraph (a), the Installation State, having regard to the nature of the nuclear installation or the nuclear substances involved and to the likely consequences of an incident originating therefrom, may establish a lower amount of financial security of the operator, provided that in no event shall any amount so established be less than 5 million SDRs, and provided that the Installation State ensures the

payment of claims for compensation for nuclear damage which have been established against the operator by providing necessary funds to the extent that the yield of insurance or other financial security is inadequate to satisfy such claims, and up to the limit provided in sub-paragraph (a).

2. Nothing in paragraph 1 shall require a Contracting Party or any of its constituent subdivisions 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 or Article 4.1(b) shall be exclusively available for compensation due under this Annex.
4. No insurer or other financial guarantor shall suspend or cancel the insurance or other financial security provided pursuant to paragraph 1 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 6 CARRIAGE

1. With respect to a nuclear incident during carriage, the maximum amount of liability of the operator shall be governed by the national law of the Installation State.
2. A Contracting Party may subject carriage of nuclear material through its territory to the condition that the amount of liability of the operator be increased to an amount not to exceed the maximum amount of liability of the operator of a nuclear installation situated in its territory.

3. The provisions of paragraph 2 shall not apply to:

- (a) carriage by sea where, under international law, there is a right of entry in cases of urgent distress into ports of a Contracting Party or a right of innocent passage through its territory;
- (b) carriage by air where, by agreement or under international law, there is a right to fly over or land on the territory of a Contracting Party.

Article 7 LIABILITY OF MORE THAN ONE OPERATOR

1. 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. The Installation State may limit the amount of public funds made available per incident to the difference, if any, between the amounts hereby established and the amount established pursuant to Article 4.1.
2. 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 4.
3. In neither of the cases referred to in paragraphs 1 and 2 shall the liability of any one operator exceed the amount applicable with respect to him pursuant to Article 4.

4. Subject to the provisions of paragraphs 1 to 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 4. The Installation State may limit the amount of public funds made available as provided for in paragraph 1.

Article 8 COMPENSATION UNDER NATIONAL LAW

1. For purposes of this Convention, the amount of compensation shall be determined without regard to any interest or costs awarded in a proceeding for compensation of nuclear damage.
2. Compensation for damage suffered outside the Installation State shall be provided in a form freely transferable among Contracting Parties.
3. 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 national 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.

Article 9 PERIOD OF EXTINCTION

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.

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 shall be computed from the date of that nuclear incident, but the period shall in no case, subject to legislation pursuant to paragraph 1, 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 shall not be exceeded.
4. If the national law of a Contracting Party provides for a period of extinction or prescription greater than ten years from the date of a nuclear incident, it shall contain provisions for the equitable and timely satisfaction of claims for loss of life or personal injury filed within ten years from the date of the nuclear incident.

Article 10 RIGHT OF RECOURSE

National law may provide that 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 11 APPLICABLE LAW

Subject to the provisions of this Convention, the nature, form, extent and equitable distribution of compensation for nuclear damage caused by a nuclear incident shall be governed by the law of the competent court.

1997 VIENNA CONVENTION ON CIVIL LIABILITY FOR NUCLEAR DAMAGE (CONSOLIDATED TEXT)♦

(Consolidated text of the Vienna Convention on Civil Liability for Nuclear Damage of 21 May 1963 as amended by the Protocol of 12 September 1997)¹

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 [DEFINITIONS]

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

♦ **NOTE:** To assist the reader, headings in square brackets have been included for the Articles in this instrument. These headings are not authoritative but are rather merely indicative of the substance.

¹ This consolidated text of the 1963 Vienna Convention on Civil Liability for Nuclear Damage as amended by the 1997 Protocol thereto has been established by the Secretariat of the International Atomic Energy Agency as required by that Protocol.

The consolidated text does not have final clauses of its own. A State wishing to adhere to the 1963 Vienna Convention as amended by the 1997 Protocol may do so by adhering to the 1997 Protocol in accordance with its terms.

Reference to the "Protocol" in this consolidated text means the 1997 "Protocol to Amend the Vienna Convention on Civil Liability for Nuclear Damage".

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;

(iii) any facility where nuclear material is stored, other than storage incidental to the carriage of such material; and

(iv) 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 shall from time to time determine; 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 or personal injury;

(ii) loss of or damage to property; and each of the following to the extent determined by the law of the competent court -

(iii) economic loss arising from loss or damage referred to in sub-paragraph (i) or (ii), insofar as not included in those sub-paragraphs, if incurred by a person entitled to claim in respect of such loss or damage;

(iv) the costs of measures of reinstatement of impaired environment, unless such impairment is insignificant, if such measures are actually taken or to be taken, and insofar as not included in sub-paragraph (ii);

(v) loss of income deriving from an economic interest in any use or enjoyment of the environment, incurred as a result of a significant impairment of that environment, and insofar as not included in subparagraph (ii);

(vi) the costs of preventive measures, and further loss or damage caused by such measures;

- (vii) any other economic loss, other than any caused by the impairment of the environment, if permitted by the general law on civil liability of the competent court, in the case of sub-paragraphs (i) to (v) and (vii) above, to the extent that the loss or damage arises out of or results from ionizing radiation emitted by any source of radiation inside a nuclear installation, or emitted from nuclear fuel or radioactive products or waste in, or of nuclear material coming from, originating in, or sent to, a nuclear installation, whether so arising from the radioactive properties of such matter, or from a combination of radioactive properties with toxic, explosive or other hazardous properties of such matter.
- (l) "Nuclear incident" means any occurrence or series of occurrences having the same origin which causes nuclear damage or, but only with respect to preventive measures, creates a grave and imminent threat of causing such damage.
- (m) "Measures of reinstatement" means any reasonable measures which have been approved by the competent authorities of the State where the measures were taken, and which aim to reinstate or restore damaged or destroyed components of the environment, or to introduce, where reasonable, the equivalent of these components into the environment. The law of the State where the damage is suffered shall determine who is entitled to take such measures.
- (n) "Preventive measures" means any reasonable measures taken by any person after a nuclear incident has occurred to prevent or minimize damage referred to in sub-paragraphs (k)(i) to (v) or (vii), subject to any approval of the competent authorities required by the law of the State where the measures were taken.
- (o) "Reasonable measures" means measures which are found under the law of the competent court to be appropriate and proportionate having regard to all the circumstances, for example -
- (i) the nature and extent of the damage incurred or, in the case of preventive measures, the nature and extent of the risk of such damage;
 - (ii) the extent to which, at the time they are taken, such measures are likely to be effective; and
 - (iii) relevant scientific and technical expertise.
- (p) "Special Drawing Right", hereinafter referred to as SDR, means the unit of account defined by the International Monetary Fund and used by it for its own operations and transactions.
2. An Installation State may, if the small extent of the risks involved so warrants, exclude any nuclear installation or small quantities of nuclear material from the application of this Convention, provided that -
- (a) with respect to nuclear installations, criteria for such exclusion have been established by the Board of Governors of the International Atomic Energy Agency and any exclusion by an Installation State satisfies such criteria; and
 - (b) with respect to small quantities of nuclear material, maximum limits for the exclusion of such quantities have been established by the Board of Governors of the International Atomic Energy Agency and any exclusion by an Installation State is within such established limits.

The criteria for the exclusion of nuclear installations and the maximum limits for the exclusion of small quantities of nuclear material shall be reviewed periodically by the Board of Governors.

Article I A [Geographical Scope]

1. This Convention shall apply to nuclear damage wherever suffered.
2. However, the legislation of the Installation State may exclude from the application of this Convention damage suffered -
 - (a) in the territory of a non-Contracting State; or
 - (b) in any maritime zones established by a non-Contracting State in accordance with the international law of the sea.
3. An exclusion pursuant to paragraph 2 of this Article may apply only in respect of a non-Contracting State which at the time of the incident -
 - (a) has a nuclear installation in its territory or in any maritime zones established by it in accordance with the international law of the sea; and
 - (b) does not afford equivalent reciprocal benefits.
4. Any exclusion pursuant to paragraph 2 of this Article shall not affect the rights referred to in sub-paragraph (a) of paragraph 2 of Article IX and any exclusion pursuant to paragraph 2(b) of this Article shall not extend to damage on board or to a ship or an aircraft.

Article I B [Exclusion]

This Convention shall not apply to nuclear installations used for non-peaceful purposes.

Article II
[OPERATOR LIABILITY – NUCLEAR
INSTALLATIONS AND TRANSPORT]

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 attributable to each operator is not reasonably separable, be jointly and severally liable. The Installation State may limit the amount of public funds made available per incident to the difference, if any, between the amounts hereby established and the amount established pursuant to paragraph 1 of Article V.
 - (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. The Installation State may limit the amount of public funds made available as

provided for in sub-paragraph (a) of paragraph 3 of this Article.

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 determined as such pursuant to the provisions of that sub-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 [CARRIER'S CERTIFICATE]

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. However, the Installation State may exclude this obligation in relation to carriage which takes place wholly within its own territory. 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 [NATURE OF LIABILITY]

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. No liability under this Convention shall attach to an operator if he proves that the nuclear damage is directly due to an act of armed conflict, hostilities, civil war or insurrection.
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 and any other nuclear installation, including a nuclear installation under construction,

on the site where that installation is located; and

(b) to any property on that same site which is used or to be used in connection with any such installation.

6. Compensation for damage caused to the means of transport upon which the nuclear material involved was at the time of the nuclear incident shall not have the effect of reducing the liability of the operator in respect of other damage to an amount less than either 150 million SDRs, or any higher amount established by the legislation of a Contracting Party, or an amount established pursuant to sub-paragraph (c) of paragraph 1 of Article V.
7. Nothing in this Convention shall affect 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.

Article V [LIABILITY AMOUNTS]

1. The liability of the operator may be limited by the Installation State for any one nuclear incident, either -
 - (a) to not less than 300 million SDRs; or
 - (b) to not less than 150 million SDRs provided that in excess of that amount and up to at least 300 million SDRs public funds shall be made available by that State to compensate nuclear damage; or
 - (c) for a maximum of 15 years from the date of entry into force of this Protocol, to a transitional amount of not less than 100 million SDRs in respect of a nuclear incident occurring within that period. An amount lower than 100 million SDRs may be established, provided that public funds shall be made available by that

State to compensate nuclear damage between that lesser amount and 100 million SDRs.

2. Notwithstanding paragraph 1 of this Article, the Installation State, having regard to the nature of the nuclear installation or the nuclear substances involved and to the likely consequences of an incident originating therefrom, may establish a lower amount of liability of the operator, provided that in no event shall any amount so established be less than 5 million SDRs, and provided that the Installation State ensures that public funds shall be made available up to the amount established pursuant to paragraph 1.
3. The amounts established by the Installation State of the liable operator in accordance with paragraphs 1 and 2 of this Article and paragraph 6 of Article IV shall apply wherever the nuclear incident occurs.

Article V A [Interests and Costs]

1. Interest and costs awarded by a court in actions for compensation of nuclear damage shall be payable in addition to the amounts referred to in Article V.
2. The amounts mentioned in Article V and paragraph 6 of Article IV may be converted into national currency in round figures.

Article V B [Right to Compensation]

Each Contracting Party shall ensure that persons suffering damage may enforce their rights to compensation without having to bring separate proceedings according to the origin of the funds provided for such compensation.

Article V C [Public Funds]

1. If the courts having jurisdiction are those of a Contracting Party other than the Installation State, the public funds

required under sub-paragraphs (b) and (c) of paragraph 1 of Article V and under paragraph 1 of Article VII, as well as interest and costs awarded by a court, may be made available by the first-named Contracting Party. The Installation State shall reimburse to the other Contracting Party any such sums paid. These two Contracting Parties shall agree on the procedure for reimbursement.

2. If the courts having jurisdiction are those of a Contracting Party other than the Installation State, the Contracting Party whose courts have jurisdiction shall take all measures necessary to enable the Installation State to intervene in proceedings and to participate in any settlement concerning compensation.

Article V D [Meeting of the Contracting Parties]

1. A meeting of the Contracting Parties shall be convened by the Director General of the International Atomic Energy Agency to amend the limits of liability referred to in Article V if one-third of the Contracting Parties express a desire to that effect.
2. Amendments shall be adopted by a two-thirds majority of the Contracting Parties present and voting, provided that at least one-half of the Contracting Parties shall be present at the time of the voting.
3. When acting on a proposal to amend the limits, the meeting of the Contracting Parties shall take into account, inter alia, the risk of damage resulting from a nuclear incident, changes in the monetary values, and the capacity of the insurance market.
4. (a) Any amendment adopted in accordance with paragraph 2 of this Article shall be notified by the Director General of the IAEA to all Contracting Parties for acceptance.

The amendment shall be considered accepted at the end of a period of 18 months after it has been notified provided that at least one-third of the Contracting Parties at the time of the adoption of the amendment by the meeting have communicated to the Director General of the IAEA that they accept the amendment. An amendment accepted in accordance with this paragraph shall enter into force 12 months after its acceptance for those Contracting Parties which have accepted it.

- (b) If, within a period of 18 months from the date of notification for acceptance, an amendment has not been accepted in accordance with sub-paragraph (a), the amendment shall be considered rejected.

5. For each Contracting Party accepting an amendment after it has been accepted but not entered into force or after its entry into force in accordance with paragraph 4 of this Article, the amendment shall enter into force 12 months after its acceptance by that Contracting Party.
6. A State which becomes a Party to this Convention after the entry into force of an amendment in accordance with paragraph 4 of this Article shall, failing an expression of a different intention by that State -
 - (a) be considered as a Party to this Convention as so amended; and
 - (b) be considered as a Party to the unamended Convention in relation to any State Party not bound by the amendment.

Article VI [TIME LIMITS]

1. (a) Rights of compensation under this Convention shall be extinguished if an action is not brought within -
 - (i) with respect to loss of life and personal injury, thirty years from the date of the nuclear incident;
 - (ii) with respect to other damage, ten years from the date of the nuclear incident.
- (b) If, however, under the law of the Installation State, the liability of the operator is covered by insurance or other financial security including State funds for a longer period, the law of the competent court may provide that rights of compensation against the operator shall only be extinguished after such a longer period which shall not exceed the period for which his liability is so covered under the law of the Installation State.
- (c) Actions for compensation with respect to loss of life and personal injury or, pursuant to an extension under sub-paragraph (b) of this paragraph with respect to other damage, which are brought after a period of ten years from the date of the nuclear incident shall in no case affect the rights of compensation under this Convention of any person who has brought an action against the operator before the expiry of that period.
2. DELETED
3. Rights of compensation under the Convention shall be subject to prescription or extinction, as provided by the law of the competent court, if an action is not brought within three years

from the date on which the person suffering damage had knowledge or ought reasonably to have had knowledge of the damage and of the operator liable for the damage, provided that the periods established pursuant to sub-paragraphs (a) and (b) of paragraph 1 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 [FINANCIAL SECURITY]

1. (a) 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. Where the liability of the operator is unlimited, the Installation State may establish a limit of the financial security of the operator liable, provided that such limit is not lower than 300 million SDRs. The Installation State shall ensure the payment of claims for compensation for nuclear damage which have been established against the operator to the extent that the yield of the financial security is inadequate to satisfy such claims, but not in excess of the amount of the financial security to be provided under this paragraph.

- (b) Notwithstanding sub-paragraph (a) of this paragraph, where the liability of the operator is unlimited, the Installation State, having regard to the nature of the nuclear installation or the nuclear substances involved and to the likely consequences of an incident originating therefrom, may establish a lower amount of financial security of the operator, provided that in no event shall any amount so established be less than 5 million SDRs, and provided that the Installation State ensures the payment of claims for compensation for nuclear damage which have been established against the operator by providing necessary funds to the extent that the yield of insurance or other financial security is inadequate to satisfy such claims, and up to the limit provided pursuant to sub-paragraph (a) of this 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.

3. The funds provided by insurance, by other financial security or by the Installation State pursuant to paragraph 1 of this Article or sub-paragraphs (b) and (c) of paragraph 1 of Article V 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 **[APPLICABLE LAW: NATURE, FORM AND EXTENT OF COMPENSATION]**

1. 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.
2. Subject to application of the rule of sub-paragraph (c) of paragraph 1 of Article VI, where in respect of claims brought against the operator the damage to be compensated under this Convention exceeds, or is likely to exceed, the maximum amount made available pursuant to paragraph 1 of Article V, priority in the distribution of the compensation shall be given to claims in respect of loss of life or personal injury.

Article IX **[DUPLICATIVE/ SUBSTITUTIONAL COMPENSATION SCHEMES]**

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 [RIGHTS OF RECOURSE]

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.

The right of recourse provided for under this Article may also be extended to benefit the Installation State insofar as it has provided public funds pursuant to this Convention.

Article XI [JURISDICTION OF THE COMPETENT COURT]

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.
- 1 bis. Where a nuclear incident occurs within the area of the exclusive economic zone of a Contracting Party or, if such a zone has not been established, in an area not exceeding the limits of an exclusive economic zone, were one to be established, jurisdiction over actions concerning nuclear damage from that nuclear incident shall, for the purposes of this Convention, lie only with the courts of that Party. The preceding sentence shall apply if that Contracting Party has notified the Depositary of such area prior to the nuclear incident. Nothing in this paragraph shall be interpreted as permitting the exercise of jurisdiction in a manner which is contrary to the international law of the sea, including the United Nations Convention on the Law of the Sea.
2. Where a nuclear incident does not occur within the territory of any Contracting Party, or within an area notified pursuant to paragraph 1 bis, 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, 1bis 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, 1bis or 2 of this Article.
4. The Contracting Party whose courts have jurisdiction shall ensure that only one of its courts shall have jurisdiction in relation to any one nuclear incident.

Article XI A [Actions by the State and Subrogation]

The Contracting Party whose courts have jurisdiction shall ensure that in relation to actions for compensation of nuclear damage -

- (a) any State may bring an action on behalf of persons who have suffered nuclear damage, who are nationals of that State or have their domicile or residence in its territory, and who have consented thereto; and
- (b) any person may bring an action to enforce rights under this Convention acquired by subrogation or assignment.

Article XII
[JURISDICTION, RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS]

1. A judgment that is no longer subject to ordinary forms of review entered by a court of a Contracting Party having jurisdiction shall be recognized, 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 judgment which is recognized under paragraph 1 of this Article 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. The merits of a claim on which the judgment has been given shall not be subject to further proceedings.

Article XIII [NON-DISCRIMINATION]

1. This Convention and the national law applicable thereunder shall be applied without any discrimination based upon nationality, domicile or residence.
2. Notwithstanding paragraph 1 of this Article, insofar as compensation for nuclear damage is in excess of 150 million SDRs, the legislation of the Installation State may derogate from the provisions of this Convention with respect to nuclear damage suffered in the territory, or in any maritime zone established in accordance with the international law of the sea, of another State

which at the time of the incident, has a nuclear installation in such territory, to the extent that it does not afford reciprocal benefits of an equivalent amount.

Article XIV [JURISDICTIONAL IMMUNITIES]

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 [TRANSFER OF COMPENSATION BETWEEN CONTRACTING PARTIES]

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 [RECOVERY OF DOUBLE COMPENSATION]

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 [APPLICATION OF OTHER AGREEMENTS]

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 [PUBLIC INTERNATIONAL LAW]

This Convention shall not affect the rights and obligations of a Contracting Party under the general rules of public international law.

Article XIX [PROVISION OF INFORMATION TO THE IAEA DIRECTOR GENERAL]

1. Any Contracting Party entering into an agreement pursuant to sub-paragraph (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

DELETED

Article XX A [Dispute Settlement]

1. In the event of a dispute between Contracting Parties concerning the interpretation or application of this Convention, the parties to the dispute shall consult with a view to the settlement of the dispute by negotiation or by any other peaceful means of settling disputes acceptable to them.
2. If a dispute of this character referred to in paragraph 1 of this Article cannot be settled within six months from the request for consultation pursuant to paragraph 1 of this Article, it shall, at the request of any party to

such dispute, be submitted to arbitration or referred to the International Court of Justice for decision. Where a dispute is submitted to arbitration, if, within six months from the date of the request, the parties to the dispute are unable to agree on the organization of the arbitration, a party may request the President of the International Court of Justice or the Secretary-General of the United Nations to appoint one or more arbitrators. In cases of conflicting requests by the parties to the dispute, the request to the Secretary-General of the United Nations shall have priority.

3. When ratifying, accepting, approving or acceding to this Convention, a State may declare that it does not consider itself bound by either or both of the dispute settlement procedures provided for in paragraph 2 of this Article. The other Contracting Parties shall not be bound by a dispute settlement procedure provided for in paragraph 2 of this Article with respect to a Contracting Party for which such a declaration is in force.
4. A Contracting Party which has made a declaration in accordance with paragraph 3 of this Article may at any time withdraw it by notification to the depositary.

Article XXI

DELETED

Article XXII

DELETED

Article XXIII

DELETED

Article XXIV

DELETED

Article XXV

DELETED

Article XXVI [CONFERENCE OF THE CONTRACTING PARTIES]

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

Article XXVII

DELETED

Article XXVIII [REGISTRATION WITH THE UN]

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

DELETED

1997 PROTOCOL TO AMEND THE VIENNA CONVENTION ON CIVIL LIABILITY FOR NUCLEAR DAMAGE♦

The Protocol entered into force on 4 October 2003, i.e. three months after the date of deposit of the fifth instrument of ratification, acceptance or approval, in accordance with Article 21.1.

THE STATES PARTIES TO THIS PROTOCOL,

CONSIDERING that it is desirable to amend the Vienna Convention on Civil Liability for Nuclear Damage of 21 May 1963, to provide for broader scope, increased amount of liability of the operator of a nuclear installation and enhanced means for securing adequate and equitable compensation,

HAVE AGREED as follows,

Article 1 [1963 VIENNA CONVENTION]

The Convention which the provisions of this Protocol amend is the Vienna Convention on Civil Liability for Nuclear Damage of 21 May 1963, hereinafter referred to as the "1963 Vienna Convention".

Article 2 [DEFINITIONS]

Article I of the 1963 Vienna Convention is amended as follows:

1. Paragraph I (j) is amended as follows:

- (a) the word "and" is deleted at the end of sub-paragraph (ii) and is inserted at the end of sub-paragraph (iii).
- (b) a new sub-paragraph (iv) is added as follows:
 - (iv) 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 shall from time to time determine;

2. Paragraph 1 (k) is replaced by the following text:

(k) "Nuclear Damage" means -

- (i) loss of life or personal injury;
- (ii) loss of or damage to property;

and each of the following to the extent determined by the law of the competent court -

- (iii) economic loss arising from loss or damage referred to in sub-paragraph (i) or (ii), insofar as not included in those sub-paragraphs, if incurred by a person entitled to claim in respect of such loss or damage;
- (iv) the costs of measures of reinstatement of impaired environment, unless such impairment is insignificant, if such measures are actually taken or to be taken, and insofar as not included in sub-paragraph (ii);
- (v) loss of income deriving from an economic interest in any use or enjoyment of the environment, incurred as a result of a

♦ **NOTE:** To assist the reader, headings in square brackets have been included for the Articles in this instrument. These headings are not authoritative but are rather merely indicative of the substance.

significant impairment of that environment, and insofar as not included in sub-paragraph (ii);

- (vi) the costs of preventive measures, and further loss or damage caused by such measures;
 - (vii) any other economic loss, other than any caused by the impairment of the environment, if permitted by the general law on civil liability of the competent court, in the case of subparagraphs (i) to (v) and (vii) above, to the extent that the loss or damage arises out of or results from ionizing radiation emitted by any source of radiation inside a nuclear installation, or emitted from nuclear fuel or radioactive products or waste in, or of nuclear material coming from, originating in, or sent to, a nuclear installation, whether so arising from the radioactive properties of such matter, or from a combination of radioactive properties with toxic, explosive or other hazardous properties of such matter.
3. Paragraph 1(1) is replaced by the following text:
- (1) "Nuclear incident" means any occurrence or series of occurrences having the same origin which causes nuclear damage or, but only with respect to preventive measures, creates a grave and imminent threat of causing such damage.
4. After paragraph 1(l) four new paragraphs l(m), l(n), l(o) and l(p) are added as follows:

- (m) "Measures of reinstatement" means any reasonable measures which have been approved by the competent authorities of the State where the measures were taken, and which aim to reinstate or restore damaged or destroyed components of the environment, or to introduce, where reasonable, the equivalent of these components into the environment. The law of the State where the damage is suffered shall determine who is entitled to take such measures.
- (n) "Preventive measures" means any reasonable measures taken by any person after a nuclear incident has occurred to prevent or minimize damage referred to in subparagraphs (k)(i) to (v) or (vii), subject to any approval of the competent authorities required by the law of the State where the measures were taken.
- (o) "Reasonable measures" means measures which are found under the law of the competent court to be appropriate and proportionate having regard to all the circumstances, for example-
 - (i) the nature and extent of the damage incurred or, in the case of preventive measures, the nature and extent of the risk of such damage;
 - (ii) the extent to which, at the time they are taken, such measures are likely to be effective; and
 - (iii) relevant scientific and technical expertise.
- (p) "Special Drawing Right", hereinafter referred to as SDR, means the unit of account defined by the International

Monetary Fund and used by it for its own operations and transactions.

5. Paragraph 2 is replaced by the following text:

2. An Installation State may, if the small extent of the risks involved so warrants, exclude any nuclear installation or small quantities of nuclear material from the application of this Convention, provided that -

(a) with respect to nuclear installations, criteria for such exclusion have been established by the Board of Governors of the International Atomic Energy Agency and any exclusion by an Installation State satisfies such criteria; and

(b) with respect to small quantities of nuclear material, maximum limits for the exclusion of such quantities have been established by the Board of Governors of the International Atomic Energy Agency and any exclusion by an Installation State is within such established limits.

The criteria for the exclusion of nuclear installations and the maximum limits for the exclusion of small quantities of nuclear material shall be reviewed periodically by the Board of Governors.

Article 3

After Article I of the 1963 Vienna Convention two new Articles I A and I B are added as follows:

Article I A [Geographical Scope]

1. This Convention shall apply to nuclear damage wherever suffered.

2. However, the legislation of the Installation State may exclude from the application of this Convention damage suffered -

(a) in the territory of a non-Contracting State; or

(b) in any maritime zones established by a non-Contracting State in accordance with the international law of the sea.

3. An exclusion pursuant to paragraph 2 of this Article may apply only in respect of a non-Contracting State which at the time of the incident -

(a) has a nuclear installation in its territory or in any maritime zones established by it in accordance with the international law of the sea; and

(b) does not afford equivalent reciprocal benefits.

4. Any exclusion pursuant to paragraph 2 of this Article shall not affect the rights referred to in sub-paragraph (a) of paragraph 2 of Article IX and any exclusion pursuant to paragraph 2(b) of this Article shall not extend to damage on board or to a ship or an aircraft.

Article I B [Exclusion]

This Convention shall not apply to nuclear installations used for non-peaceful purposes.

Article 4 [LIABILITY AMOUNTS]

Article II of the 1963 Vienna Convention is amended as follows:

1. At the end of paragraph 3(a) the following text is added:

The Installation State may limit the amount of public funds made available per incident to the difference, if any,

between the amounts hereby established and the amount established pursuant to paragraph 1 of Article V.

2. At the end of paragraph 4 the following text is added:

The Installation State may limit the amount of public funds made available as provided for in sub-paragraph (a) of paragraph 3 of this Article.

3. Paragraph 6 is replaced by the following text:

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 determined as such pursuant to the provisions of that sub-paragraph.

Article 5 **[CARRIAGE WHOLLY IN A TERRITORY]**

After the first sentence in Article III of the 1963 Vienna Convention the following text is added:

However, the Installation State may exclude this obligation in relation to carriage which takes place wholly within its own territory.

Article 6 **[NATURE OF LIABILITY INCLUDING EXONERATIONS, DAMAGE TO THE NUCLEAR INSTALLATION AND ON-SITE PROPERTY DAMAGE]**

Article IV of the 1963 Vienna Convention is amended as follows:

1. Paragraph 3 is replaced by the following text:
3. No liability under this Convention shall attach to an operator if he proves that the nuclear damage is directly due to an act of armed

conflict, hostilities, civil war or insurrection.

2. Paragraph 5 is replaced by the following text:

5. The operator shall not be liable under this Convention for nuclear damage -

(a) to the nuclear installation itself and any other nuclear installation, including a nuclear installation under construction, on the site where that installation is located; and

(b) to any property on that same site which is used or to be used in connection with any such installation.

3. Paragraph 6 is replaced by the following text:

6. Compensation for damage caused to the means of transport upon which the nuclear material involved was at the time of the nuclear incident shall not have the effect of reducing the liability of the operator in respect of other damage to an amount less than either 150 million SDRs, or any higher amount established by the legislation of a Contracting Party, or an amount established pursuant to sub-paragraph (c) of paragraph 1 of Article V.

4. Paragraph 7 is replaced by the following text:

7. Nothing in this Convention shall affect 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.

Article 7

1. The text of Article V of the 1963 Vienna Convention is replaced by the following text:

1. The liability of the operator may be limited by the Installation State for any one nuclear incident, either -

(a) to not less than 300 million SDRs; or

(b) to not less than 150 million SDRs provided that in excess of that amount and up to at least 300 million SDRs public funds shall be made available by that State to compensate nuclear damage; or

(c) for a maximum of 15 years from the date of entry into force of this Protocol, to a transitional amount of not less than 100 million SDRs in respect of a nuclear incident occurring within that period. An amount lower than 100 million SDRs may be established, provided that public funds shall be made available by that State to compensate nuclear damage between that lesser amount and 100 million SDRs.

2. Notwithstanding paragraph 1 of this Article, the Installation State, having regard to the nature of the nuclear installation or the nuclear substances involved and to the likely consequences of an incident originating therefrom, may establish a lower amount of liability of the operator, provided that in no event shall any amount so established be less than 5 million SDRs, and provided that the Installation State ensures that public funds shall be

made available up to the amount established pursuant to paragraph 1.

3. The amounts established by the Installation State of the liable operator in accordance with paragraphs 1 and 2 of this Article and paragraph 6 of Article IV shall apply wherever the nuclear incident occurs.

2. After Article V, four new Articles V A, V B, V C and V D are added as follows:

Article V A [Interests and Costs]

1. Interest and costs awarded by a court in actions for compensation of nuclear damage shall be payable in addition to the amounts referred to in Article V.
2. The amounts mentioned in Article V and paragraph 6 of Article IV may be converted into national currency in round figures.

Article V B [Right to Compensation]

Each Contracting Party shall ensure that persons suffering damage may enforce their rights to compensation without having to bring separate proceedings according to the origin of the funds provided for such compensation.

Article V C [Public Funds]

1. If the courts having jurisdiction are those of a Contracting Party other than the Installation State, the public funds required under sub-paragraphs (b) and (c) of paragraph 1 of Article V and under paragraph 1 of Article VII, as well as interest and costs awarded by a court, may be made available by the first-named Contracting Party. The Installation State shall reimburse to the other Contracting Party any such sums paid. These two Contracting Parties shall

agree on the procedure for reimbursement.

2. If the courts having jurisdiction are those of a Contracting Party other than the Installation State, the Contracting Party whose courts have jurisdiction shall take all measures necessary to enable the Installation State to intervene in proceedings and to participate in any settlement concerning compensation.

Article V D [Meeting of the Contracting Parties]

1. A meeting of the Contracting Parties shall be convened by the Director General of the International Atomic Energy Agency to amend the limits of liability referred to in Article V if one-third of the Contracting Parties express a desire to that effect.
2. Amendments shall be adopted by a two-thirds majority of the Contracting Parties present and voting, provided that at least one-half of the Contracting Parties shall be present at the time of the voting.
3. When acting on a proposal to amend the limits, the meeting of the Contracting Parties shall take into account, inter alia, the risk of damage resulting from a nuclear incident, changes in the monetary values, and the capacity of the insurance market.
4. (a) Any amendment adopted in accordance with paragraph 2 of this Article shall be notified by the Director General of the IAEA to all Contracting Parties for acceptance. The amendment shall be considered accepted at the end of a period of 18 months after it has been notified provided that at least one-third of the Contracting Parties at the time of the adoption of the amendment by the meeting have communicated to the Director General of the IAEA that they accept the amendment. An

amendment accepted in accordance with this paragraph shall enter into force 12 months after its acceptance for those Contracting Parties which have accepted it.

- (b) If, within a period of 18 months from the date of notification for acceptance, an amendment has not been accepted in accordance with subparagraph (a), the amendment shall be considered rejected.

5. For each Contracting Party accepting an amendment after it has been accepted but not entered into force or after its entry into force in accordance with paragraph 4 of this Article, the amendment shall enter into force 12 months after its acceptance by that Contracting Party.

6. A State which becomes a Party to this Convention after the entry into force of an amendment in accordance with paragraph 4 of this Article shall, failing an expression of a different intention by that State -

- (a) be considered as a Party to this Convention as so amended; and
- (b) be considered as a Party to the unamended Convention in relation to any State Party not bound by the amendment.

Article 8 [TIME LIMITS]

Article VI of the 1963 Vienna Convention is amended as follows:

1. Paragraph 1 is replaced by the following text:
 1. (a) Rights of compensation under this Convention shall be extinguished if an action is not brought within -

- (i) with respect to loss of life and personal injury, thirty years from the date of the nuclear incident;
 - (ii) with respect to other damage, ten years from the date of the nuclear incident.
 - (b) If, however, under the law of the Installation State, the liability of the operator is covered by insurance or other financial security including State funds for a longer period, the law of the competent court may provide that rights of compensation against the operator shall only be extinguished after such a longer period which shall not exceed the period for which his liability is so covered under the law of the Installation State.
 - (c) Actions for compensation with respect to loss of life and personal injury or, pursuant to an extension under sub-paragraph (b) of this paragraph with respect to other damage, which are brought after a period often years from the date of the nuclear incident shall in no case affect the rights of compensation under this Convention of any person who has brought an action against the operator before the expiry of that period.
2. Paragraph 2 is deleted.
 3. Paragraph 3 is replaced by the following text:
 3. Rights of compensation under the Convention shall be subject to prescription or extinction, as provided by the law of the competent court, if an action is not brought within three years from the date on which the person suffering damage had knowledge or ought reasonably

to have had knowledge of the damage and of the operator liable for the damage, provided that the periods established pursuant to sub-paragraphs (a) and (b) of paragraph 1 of this Article shall not be exceeded.

Article 9

[FINANCIAL SECURITY – REDUCED LIMITS]

Article VII is amended as follows:

1. In paragraph 1, the following two sentences are added at the end of the paragraph and the paragraph so amended becomes sub-paragraph (a) of that paragraph:

Where the liability of the operator is unlimited, the Installation State may establish a limit of the financial security of the operator liable, provided that such limit is not lower than 300 million SDRs. The Installation State shall ensure the payment of claims for compensation for nuclear damage which have been established against the operator to the extent that the yield of the financial security is inadequate to satisfy such claims, but not in excess of the amount of the financial security to be provided under this paragraph.

2. A new sub-paragraph (b) is added to paragraph 1 as follows:
 - (b) Notwithstanding sub-paragraph (a) of this paragraph, where the liability of the operator is unlimited, the Installation State, having regard to the nature of the nuclear installation or the nuclear substances involved and to the likely consequences of an incident originating therefrom, may establish a lower amount of financial security of the operator, provided that in no event shall any amount so established be less than 5 million SDRs, and provided that the Installation State ensures the payment of claims for compensation for nuclear damage which have been

- established against the operator by providing necessary funds to the extent that the yield of insurance or other financial security is inadequate to satisfy such claims, and up to the limit provided pursuant to sub-paragraph (a) of this paragraph.
3. In paragraph 3, the words "or sub-paragraphs (b) and (c) of paragraph 1 of Article V" are inserted after the words "of this Article".

Article 10 [PRIORITY IN DISTRIBUTION OF COMPENSATION]

Article VIII of the 1963 Vienna Convention is amended as follows:

1. The text of Article VIII becomes paragraph 1 of that Article.
2. A new paragraph 2 is added as follows:
 2. Subject to application of the rule of sub-paragraph (c) of paragraph 1 of Article VI, where in respect of claims brought against the operator the damage to be compensated under this Convention exceeds, or is likely to exceed, the maximum amount made available pursuant to paragraph 1 of Article V, priority in the distribution of the compensation shall be given to claims in respect of loss of life or personal injury.

Article 11 [RIGHTS OF RECOURSE]

In Article X of the 1963 Vienna Convention, a new sentence is added at the end of the Article as follows:

The right of recourse provided for under this Article may also be extended to benefit the Installation State insofar as it has provided public funds pursuant to this Convention.

Article 12 [JURISDICTION OF THE COMPETENT COURT – EXCLUSIVE ECONOMIC ZONE]

Article XI of the 1963 Vienna Convention is amended as follows:

1. A new paragraph 1 bis is added as follows:

1 bis. Where a nuclear incident occurs within the area of the exclusive economic zone of a Contracting Party or, if such a zone has not been established, in an area not exceeding the limits of an exclusive economic zone, were one to be established, jurisdiction over actions concerning nuclear damage from that nuclear incident shall, for the purposes of this Convention, lie only with the courts of that Party. The preceding sentence shall apply if that Contracting Party has notified the Depositary of such area prior to the nuclear incident. Nothing in this paragraph shall be interpreted as permitting the exercise of jurisdiction in a manner which is contrary to the international law of the sea, including the United Nations Convention on the Law of the Sea.
2. Paragraph 2 is replaced by the following text:
 2. Where a nuclear incident does not occur within the territory of any Contracting Party, or within an area notified pursuant to paragraph 1bis, 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. In paragraph 3, first line, and in sub-paragraph (b), after the figure "1", insert ", 1bis".

4. A new paragraph 4 is added as follows:

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

Article 13

After Article XI a new Article XI A is added as follows:

Article XI A [Actions by the State and Subrogation]

The Contracting Party whose courts have jurisdiction shall ensure that in relation to actions for compensation of nuclear damage -

- (a) any State may bring an action on behalf of persons who have suffered nuclear damage, who are nationals of that State or have their domicile or residence in its territory, and who have consented thereto; and
- (b) any person may bring an action to enforce rights under this Convention acquired by subrogation or assignment.

Article 14

The text of Article XII of the 1963 Vienna Convention is replaced by the following

Article XII [Judgments]

1. A judgment that is no longer subject to ordinary forms of review entered by a court of a Contracting Party having jurisdiction shall be recognized, 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 judgment which is recognized under paragraph 1 of this Article 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. The merits of a claim on which the judgment has been given shall not be subject to further proceedings.

Article 15

[DAMAGE IN A NON-CONTRACTING PARTY WITH A NUCLEAR INSTALLATION AND NO RECIPROCAL BENEFITS]

Article XIII of the 1963 Vienna Convention is amended as follows:

1. The text of Article XIII becomes paragraph 1 of that Article.
2. A new paragraph 2 is added as follows:
 2. Notwithstanding paragraph 1 of this Article, insofar as compensation for nuclear damage is in excess of 150 million SDRs, the legislation of the Installation State may derogate from the provisions of this Convention with respect to nuclear damage suffered in the territory, or in any maritime zone established in accordance with the international law of the sea, of another State which at the time of the incident, has a nuclear installation in such territory, to the extent that it does not afford reciprocal benefits of an equivalent amount.

Article 16 [PUBLIC INTERNATIONAL LAW]

The text of Article XVIII of the 1963 Vienna Convention is replaced by the following text:

This Convention shall not affect the rights and obligations of a Contracting Party under the general rules of public international law.

Article 17

After Article XX of the 1963 Vienna Convention a new Article XX A is added as follows:

Article XX A [Dispute Settlement]

1. In the event of a dispute between Contracting Parties concerning the interpretation or application of this Convention, the parties to the dispute shall consult with a view to the settlement of the dispute by negotiation or by any other peaceful means of settling disputes acceptable to them.
2. If a dispute of this character referred to in paragraph 1 of this Article cannot be settled within six months from the request for consultation pursuant to paragraph 1 of this Article, it shall, at the request of any party to such dispute, be submitted to arbitration or referred to the International Court of Justice for decision. Where a dispute is submitted to arbitration, if, within six months from the date of the request, the parties to the dispute are unable to agree on the organization of the arbitration, a party may request the President of the International Court of Justice or the Secretary-General of the United Nations to appoint one or more arbitrators. In cases of conflicting requests by the parties to the dispute, the request to the Secretary-General of the United Nations shall have priority.
3. When ratifying, accepting, approving or acceding to this Convention, a State may declare that it does not consider itself

bound by either or both of the dispute settlement procedures provided for in paragraph 2 of this Article. The other Contracting Parties shall not be bound by a dispute settlement procedure provided for in paragraph 2 of this Article with respect to a Contracting Party for which such a declaration is in force.

4. A Contracting Party which has made a declaration in accordance with paragraph 3 of this Article may at any time withdraw it by notification to the depositary.

Article 18 [DELETION OF ARTICLES IN THE 1963 VIENNA CONVENTION]

1. Articles XX to XXV, paragraphs 2, 3 and paragraph number "1." of Article XXVI, Articles XXVII and XXIX of the 1963 Vienna Convention are deleted.
2. The 1963 Vienna Convention and this Protocol shall, as between the Parties to this Protocol, be read and interpreted together as one single text that may be referred to as the 1997 Vienna Convention on Civil Liability for Nuclear Damage.

Article 19 [RELATIONSHIP BETWEEN THE 1997 VIENNA PROTOCOL AND THE 1963 VIENNA CONVENTION]

1. A State which is a Party to this Protocol but not a Party to the 1963 Vienna Convention shall be bound by the provisions of that Convention as amended by this Protocol in relation to other States Parties hereto, and failing an expression of a different intention by that State at the time of deposit of an instrument referred to in Article 20 shall be bound by the provisions of the 1963 Vienna Convention in relation to States which are only Parties thereto.

2. Nothing in this Protocol shall affect the obligations of a State which is a Party both to the 1963 Vienna Convention and to this Protocol with respect to a State which is a Party to the 1963 Vienna Convention but not a Party to this Protocol.

Article 20 [SIGNATURE]

1. This Protocol shall be open for signature by all States at the Headquarters of the International Atomic Energy Agency in Vienna from 29 September 1997 until its entry into force.
2. This Protocol is subject to ratification, acceptance or approval by States which have signed it.
3. After its entry into force, any State which has not signed this Protocol may accede to it.
4. The instruments of ratification, acceptance, approval or accession shall be deposited with the Director General of the International Atomic Energy Agency, who shall be the depositary of this Protocol.

Article 21 [ENTRY INTO FORCE]

1. This Protocol shall enter into force three months after the date of deposit of the fifth instrument of ratification, acceptance or approval.
2. For each State ratifying, accepting, approving or acceding to this Protocol after the deposit of the fifth instrument of ratification, acceptance or approval, this Protocol shall enter into force three months after the date of deposit by such State of the appropriate instrument.

Article 22

[DENUNCIATION AND CONTINUANCE OF PRIOR RIGHTS AND OBLIGATIONS]

1. Any Contracting Party may denounce this Protocol by written notification to the depositary.
2. Denunciation shall take effect one year after the date on which the notification is received by the depositary.
3. As between the Parties to this Protocol, denunciation by any of them of the 1963 Vienna Convention in accordance with its Article XXVI shall not be construed in any way as denunciation of the 1963 Vienna Convention as amended by this Protocol.
4. Notwithstanding a denunciation of this Protocol by a Contracting Party pursuant to this Article, the provisions of this Protocol shall continue to apply to any nuclear damage caused by a nuclear incident occurring before such denunciation takes effect.

Article 23 [DEPOSITARY NOTIFICATIONS]

The depositary shall promptly notify States Parties and all other States of:

- (a) each signature of this Protocol;
- (b) each deposit of an instrument of ratification, acceptance, approval or accession;
- (c) the entry into force of this Protocol;
- (d) any notification received pursuant to paragraph 1bis of Article XI;
- (e) requests for the convening of a revision conference pursuant to Article XXVI of the 1963 Vienna Convention and for a meeting of the Contracting Parties pursuant to Article V D of the 1963 Vienna Convention as amended by this Protocol;

- (f) notifications of denunciations received pursuant to Article 22 and other pertinent notifications relating to this Protocol.

Article 24 [AUTHENTIC TEXTS]

1. The original of this Protocol, of which Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the depositary.
2. The International Atomic Energy Agency shall establish the consolidated text of the 1963 Vienna Convention as amended by this Protocol in the Arabic, Chinese, English, French, Russian and Spanish languages as set forth in the annex to this Protocol.
3. The depositary shall communicate to all States the certified true copies of this Protocol together with the consolidated text of the 1963 Vienna Convention as amended by this Protocol.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this Protocol.

Done at Vienna, the twelfth day of September, one thousand nine hundred and ninety-seven.

1963 VIENNA CONVENTION ON CIVIL LIABILITY FOR NUCLEAR DAMAGE♦

The Convention came into force 12 November 1977, i.e. three months after the date of deposit of the fifth instrument of ratification, in accordance with Article XXIII.

1. The Vienna Convention on Civil Liability for Nuclear Damage was adopted on 21 May 1963 and was opened for signature on the same day. It entered into force on 12 November 1977, i.e. three months after the date of deposit with the Director General of the fifth instrument of ratification, in accordance with Article XXIII.
2. In view of the demand for copies of the Convention, its text is being issued as an INFCIRC document in all authentic languages, i.e. English, French, Russian and Spanish.

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 [DEFINITIONS]

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-

♦ **NOTE:** To assist the reader, headings in square brackets have been included for the Articles in this instrument. These headings are not authoritative but are rather merely indicative of the substance.

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 [OPERATOR LIABILITY – NUCLEAR INSTALLATIONS AND TRANSPORT]

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 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 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 [CARRIER'S CERTIFICATE]

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 [NATURE OF LIABILITY]

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 [LIABILITY AMOUNTS]

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 dollars 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 [TIME LIMITS]

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 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 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 [FINANCIAL SECURITY]

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

[APPLICABLE LAW: NATURE, FORM AND EXTENT OF COMPENSATION]

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

[DUPLICATIVE/SUBSTITUTIONAL COMPENSATION SCHEMES]

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 [RIGHTS OF RECOURSE]

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

[JURISDICTION OF THE COMPETENT COURT]

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 [JURISDICTION, RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS]

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 [NON-DISCRIMINATION]

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

Article XIV [JURISDICTIONAL IMMUNITIES]

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 [TRANSFER OF COMPENSATION BETWEEN CONTRACTING PARTIES]

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 DOUBLE COMPENSATION]

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
[APPLICATION OF OTHER AGREEMENTS]**

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 [PUBLIC INTERNATIONAL LAW]

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 of nuclear damage.

**Article XIX
[PROVISION OF INFORMATION TO THE IAEA
DIRECTOR GENERAL]**

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
[CONTINUANCE OF PRIOR RIGHTS AND
OBLIGATIONS]**

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 XXI [SIGNATURE]

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 [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 XXIII [ENTRY INTO FORCE]

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 [ACCESSION]

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 [CONTINUING IN FORCE]

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 [CONFERENCE OF THE CONTRACTING PARTIES]

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 [DEPOSITARY NOTIFICATIONS]

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 [REGISTRATION WITH THE UN]

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 [AUTHENTIC TEXTS]

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.

1988 JOINT PROTOCOL RELATING TO THE APPLICATION OF THE VIENNA CONVENTION AND THE PARIS CONVENTION[♦]

The Joint Protocol entered into force on 27 April 1992, i.e. three months after the date of deposit of instruments of ratification, acceptance, approval or accession by at least five States Party to the Vienna Convention and five States Party to the Paris Convention in accordance with Article VII.

THE CONTRACTING PARTIES

HAVING REGARD to the Vienna Convention on Civil Liability for Nuclear Damage of 21 May 1963;

HAVING REGARD to the Paris Convention on Third Party Liability in the Field of Nuclear Energy of 29 July 1960 as amended by the Additional Protocol of 28 January 1964 and by the Protocol of 16 November 1982;

CONSIDERING that the Vienna Convention and the Paris Convention are similar in substance and that no State is at present a Party to both Conventions;

CONVINCED that adherence to either Convention by Parties to the other Convention could lead to difficulties resulting from the simultaneous application of both Conventions to a nuclear incident; and

DESIROUS to establish a link between the Vienna Convention and the Paris Convention by mutually extending the benefit of the special regime of civil liability for nuclear damage set forth under each Convention and to eliminate conflicts arising from the simultaneous applications of both Conventions to a nuclear incident;

HAVE AGREED as follows:

Article I [DEFINITIONS]

In this Protocol:

- (a) "Vienna Convention" means the Vienna Convention on Civil Liability for Nuclear Damage of 21 May 1963 and any amendment thereto which is in force for a Contracting Party to this Protocol;
- (b) "Paris Convention" means the Paris Convention on Third Party Liability in the Field of Nuclear Energy of 29 July 1960 and any amendment thereto which is in force for a Contracting Party to this Protocol.

Article II [OPERATOR LIABILITY]

For the purpose of this Protocol:

- (a) The operator of a nuclear installation situated in the territory of a Party to the Vienna Convention shall be liable in accordance with that Convention for nuclear damage suffered in the territory of a Party to both the Paris Convention and this Protocol;
- (b) The operator of a nuclear installation situated in the territory of a Party to the Paris Convention shall be liable in accordance with that Convention for nuclear damage suffered in the territory of a Party to both the Vienna Convention and this Protocol.

[♦] **NOTE:** To assist the reader, headings in square brackets have been included for the Articles in this instrument. These headings are not authoritative but are rather merely indicative of the substance.

Article III [APPLICABLE CONVENTION]

1. Either the Vienna Convention or the Paris Convention shall apply to a nuclear incident to the exclusion of the other.
2. In the case of a nuclear incident occurring in a nuclear installation, the applicable Convention shall be that to which the State is a Party within whose territory that installation is situated.
3. In the case of a nuclear incident outside a nuclear installation and involving nuclear material in the course of carriage, the applicable Convention shall be that to which the State is a Party within whose territory the nuclear installation is situated whose operator is liable pursuant to either Article II.1(b) and (c) of the Vienna Convention or Article 4(a) and (b) of the Paris Convention.

Article IV [APPLICATION OF SPECIFIC ARTICLES OF THE VIENNA AND PARIS CONVENTIONS]

1. Articles I to XV of the Vienna Convention shall be applied, with respect to the Contracting Parties to this Protocol which are Parties to the Paris Convention, in the same manner as between Parties to the Vienna Convention.
2. Articles 1 to 14 of the Paris Convention shall be applied, with respect to the Contracting Parties to this Protocol which are Parties to the Vienna Convention, in the same manner as between Parties to the Paris Convention.

Article V [SIGNATURE]

This Protocol shall be open for signature, from 21 September 1988 until the date of its entry into force, at the Headquarters of the International Atomic Energy Agency by all States which have signed, ratified or acceded to either the Vienna Convention or the Paris Convention.

Article VI [RATIFICATION, ACCEPTANCE, APPROVAL OR ACCESSION]

1. This Protocol is subject to ratification, acceptance, approval or accession. Instruments of ratification, acceptance or approval shall only be accepted from States Party to either the Vienna Convention or the Paris Convention. Any such State which has not signed this Protocol may accede to it.
2. The instruments of ratification, acceptance, approval or accession shall be deposited with the Director General of the International Atomic Energy Agency, who is hereby designated as the depositary of this Protocol.

Article VII [ENTRY INTO FORCE]

1. This Protocol shall come into force three months after the date of deposit of instruments of ratification, acceptance, approval or accession by at least five States Party to the Vienna Convention and five States Party to the Paris Convention. For each State ratifying, accepting, approving or acceding to this Protocol after the deposit of the above-mentioned instruments this Protocol shall enter into force three months after the date of deposit of the instrument of ratification, acceptance, approval or accession.
2. This Protocol shall remain in force as long as both the Vienna Convention and the Paris Convention are in force.

Article VIII [DENUNCIATION]

1. Any Contracting Party may denounce this Protocol by written notification to the depositary.
2. Denunciation shall take effect one year after the date on which the notification is received by the depositary.

Article IX [TERMINATION]

1. Any Contracting Party which ceases to be a Party to either the Vienna Convention or the Paris Convention shall notify the depositary of the termination of the application of that Convention with respect to it and of the date such termination takes effect.
2. This Protocol shall cease to apply to a Contracting Party which has terminated application of either the Vienna Convention or the Paris Convention on the date such termination takes effect.

Article X [DEPOSITARY NOTIFICATIONS]

The depositary shall promptly notify Contracting Parties and States invited to the Conference on the relationship between the Paris Convention and the Vienna Convention as well as the Secretary General of the Organisation for Economic Co-operation and Development of:

- (a) Each signature of this Protocol;
- (b) Each deposit of an instrument of ratification, acceptance, approval or accession concerning this Protocol;
- (c) The entry into force of this Protocol;
- (d) Any denunciation; and
- (e) Any information received pursuant to Article IX.

Article XI [AUTHENTIC TEXTS]

The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the depositary, who shall send certified copies to Contracting Parties and States invited to the Conference on the relationship between the Paris Convention and the Vienna Convention as well as the Secretary General of the Organisation for Economic Co-operation and Development.

IN WITNESS WHEREOF the undersigned being duly authorized by their respective Governments for that purpose have signed the present Joint Protocol.

DONE at Vienna this twenty-first day of September, one thousand nine hundred and eighty-eight.

1960 PARIS CONVENTION♦

1960 Convention on Third Party Liability in the Field of Nuclear Energy, as amended by the Additional Protocol of 28 January 1964 and the Protocol of 16 November 1982.

The Convention was adopted on 29 July 1960 and entered into force on 1 April 1968, along with its 1964 Additional Protocol. The 1982 Protocol entered into force on 7 October 1988.

The GOVERNMENTS of the Federal Republic of Germany, the Republic of Austria, the Kingdom of Belgium, the Kingdom of Denmark, the Kingdom of Spain, the Republic of Finland, the French Republic, the Hellenic Republic, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of Norway, the Kingdom of the Netherlands, the Portuguese Republic, the United Kingdom of Great Britain and Northern Ireland, the Kingdom of Sweden, the Swiss Confederation and the Turkish Republic.¹

CONSIDERING that the OECD Nuclear Energy Agency, established within the framework of the Organisation for Economic Co-operation and Development (hereinafter referred to as the "Organisation")², is charged with encouraging the elaboration and harmonization of legislation relating to nuclear energy in participating countries, in particular with regard to third party liability and insurance against atomic risks;

DESIROUS of ensuring adequate and equitable compensation for persons who suffer damage caused by nuclear incidents whilst taking the necessary steps to ensure that the development of the production and uses of nuclear energy for peaceful purposes is not thereby hindered;

CONVINCED of the need for unifying the basic rules applying in the various countries to the liability incurred for such damage, whilst leaving these countries free to take, on a national basis, any additional measures which they deem appropriate;

HAVE AGREED as follows:

Article 1 [DEFINITIONS]

a. For the purposes of this Convention:

- i. "A nuclear incident" means any occurrence or succession of occurrences having the same origin which causes damage, provided that such occurrence or succession of occurrences, or any of the damage caused, arises out of or results either 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 or with any of them, or from ionizing radiations emitted by any source of radiation inside a nuclear installation.
- ii. "Nuclear installation" means reactors other than those comprised in any means

♦ **NOTE:** To assist the reader, headings in square brackets have been included for the Articles and Annexes in this instrument. These headings are not authoritative but are rather merely indicative of the substance.

¹ The designation of the Signatories is the same as that in the Protocol of 16 November 1982. It should be noted that Finland acceded to the Paris Convention and the Additional Protocol of 1964 on 16 June 1972 and has signed the Protocol of 1982.

² The Organisation for European Economic Co-operation (OEEC) was reconstituted as the Organisation for Economic Co-operation and Development (OECD) on 30 September 1961, in accordance with the provisions of the Convention on the Organisation for Economic Co-operation and Development of 14 December 1960.

In addition, following the Decision of the OECD Council dated 17 May 1972 [C(72)106 (Final)], the European Nuclear Energy Agency (ENEA) is now called the OECD Nuclear Energy Agency (NEA).

- of transport; factories for the manufacture or processing of nuclear substances; factories for the separation of isotopes of nuclear fuel; factories for the reprocessing of irradiated nuclear fuel; facilities for the storage of nuclear substances other than storage incidental to the carriage of such substances; and such other installations in which there are nuclear fuel or radioactive products or waste as the Steering Committee for Nuclear Energy of the Organisation (hereinafter referred to as the "Steering Committee") shall from time to time determine; any Contracting Party may determine that two or more nuclear installations of one operator which are located on the same site shall, together with any other premises on that site where radioactive material is held, be treated as a single nuclear installation.
- iii. "Nuclear fuel" means fissionable material in the form of uranium metal, alloy, or chemical compound (including natural uranium), plutonium metal, alloy, or chemical compound, and such other fissionable material as the Steering Committee shall from time to time determine.
 - iv. "Radioactive products or waste" means any radioactive material produced in or made radioactive by exposure to the radiation incidental to the process of producing or utilizing nuclear fuel, but does not include (1) nuclear fuel, or (2) radioisotopes outside a nuclear installation which have reached the final stage of fabrication so as to be usable for any industrial, commercial agricultural, medical, scientific or educational purpose.
 - v. "Nuclear substances" means nuclear fuel (other than natural uranium and other than depleted uranium) and radioactive products or waste.
 - vi. "Operator" in relation to a nuclear installation means the person designated or recognised by the competent public authority as the operator of that installation.
- b. The Steering Committee may, if in its view the small extent of the risks involved so warrants, exclude any nuclear installation, nuclear fuel, or nuclear substances from the application of this Convention.
- Article 2 [GEOGRAPHICAL SCOPE]**
- This Convention does not apply to nuclear incidents occurring in the territory of non-Contracting States or to damage suffered in such territory, unless otherwise provided by the legislation of the Contracting Party in whose territory the nuclear installation of the operator liable is situated, and except in regard to rights referred to in Article 6(e).
- Article 3 [NUCLEAR INSTALLATIONS]**
- a. The operator of a nuclear installation shall be liable, in accordance with this Convention, for:
 - i. damage to or loss of life of any person; and
 - ii. damage to or loss of any property other than
 - 1. the nuclear installation itself and any other nuclear installation, including a nuclear installation under construction, on the site where that installation is located; and
 - 2. any property on that same site which is used or to be used in connection with any such installation,
- upon proof that such damage or loss (hereinafter referred to as "damage") was caused by a nuclear incident in such installation or involving nuclear substances

coming from such installation, except as otherwise provided for in Article 4.

- b. Where the damage or loss is caused jointly by a nuclear incident and by an incident other than a nuclear incident, that part of the damage or loss which is caused by such other incident, shall, to the extent that it is not reasonably separable from the damage or loss caused by the nuclear incident, be considered to be damage caused by the nuclear incident. Where the damage or loss is caused jointly by a nuclear incident and by an emission of ionizing radiation not covered by this Convention, nothing in this Convention shall limit or otherwise affect the liability of any person in connection with that emission of ionizing radiation.

Article 4 [TRANSPORT LIABILITY]

In the case of carriage of nuclear substances, including storage incidental thereto, without prejudice to Article 2:

- a. The operator of a nuclear installation shall be liable, in accordance with this Convention, for damage upon proof that it was caused by a nuclear incident outside that installation and involving nuclear substances in the course of carriage therefrom, only if the incident occurs:
 - i. before liability with regard to nuclear incidents involving the nuclear substances 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 substances; or
 - iii. where the nuclear substances are intended to be used in a reactor comprised in a means of transport, before the person duly authorized to

operate that reactor has taken charge of the nuclear substances; but

- iv. where the nuclear substances have been sent to a person within the territory of a non-Contracting State, before they have been unloaded from the means of transport by which they have arrived in the territory of that non-Contracting State.
- b. The operator of a nuclear installation shall be liable, in accordance with this Convention, for damage upon proof that it was caused by a nuclear incident outside that installation and involving nuclear substances in the course of carriage thereto, only if the incident occurs:
 - i. after liability with regard to nuclear incidents involving the nuclear substances 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 substances; or
 - iii. after he has taken charge of the nuclear substances from a person operating a reactor comprised in a means of transport; but
 - iv. where the nuclear substances have, with the written consent of the operator, been sent from a person within the territory of a non-Contracting State, after they have been loaded on the means of transport by which they are to be carried from the territory of that State.
- c. 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 10. However, a Contracting Party may exclude this obligation in relation to carriage which takes place wholly within its own territory. 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 substances and the carriage in respect of which the security applies and shall include a statement by the competent public authority that the person named is an operator within the meaning of this Convention.

- d. A Contracting Party may provide by legislation that, under such terms as may be contained therein and upon fulfilment of the requirements of Article 10(a), a carrier may, at his request and with the consent of an operator of a nuclear installation situated in its territory, by decision of the competent public authority, be liable in accordance with this Convention in place of that operator. In such case for all the purposes of this Convention the carrier shall be considered, in respect of nuclear incidents occurring in the course of carriage of nuclear substances, as an operator of a nuclear installation on the territory of the Contracting Party whose legislation so provides.

Article 5 [JOINT LIABILITY]

- a. If the nuclear fuel or radioactive products or waste involved in a nuclear incident have been in more than one nuclear installation and are in a nuclear installation at the time damage is caused, no operator of any nuclear installation in which they have previously been shall be liable for the damage.
- b. Where, however, damage is caused by a nuclear incident occurring in a nuclear installation and involving only nuclear substances stored therein incidentally to their carriage, the operator of the nuclear installation shall not be liable where another operator or person is liable pursuant to Article 4.

- c. If the nuclear fuel or radioactive products or waste involved in a nuclear incident have been in more than one nuclear installation and are not in a nuclear installation at the time damage is caused, no operator other than the operator of the last nuclear installation in which they were before the damage was caused or an operator who has subsequently taken them in charge, or has assumed liability therefor pursuant to the express terms of a contract in writing shall be liable for the damage.

- d. If damage gives rise to liability of more than one operator in accordance with this Convention, the liability of these 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 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, 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 7 and provided that in no case shall any one operator be required, in respect of a nuclear incident, to pay more than the amount established with respect to him pursuant to Article 7.

Article 6 [LIABILITY OF OTHER PERSONS INCLUDING RIGHTS OF RECOURSE]

- a. The right to compensation for damage caused by a nuclear incident may be exercised only against an operator liable for the damage in accordance with this Convention, or, if a direct right of action against the insurer or other financial guarantor furnishing the security required pursuant to Article 10 is given by national law, against the insurer or other financial guarantor.

- b. Except as otherwise provided in this Article, no other person shall be liable for damage caused by a nuclear incident, but 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.
- c. i. Nothing in this Convention shall affect the liability:
 - 1. of any individual for damage caused by a nuclear incident for which the operator, by virtue of Article 3(a)(ii)(1) and (2) or Article 9, is not liable under this Convention and which results from an act or omission of that individual done with intent to cause damage;
 - 2. of a person duly authorized to operate a reactor comprised in a means of transport for damage caused by a nuclear incident when an operator is not liable for such damage pursuant to Article 4(a)(iii) or (b)(iii).
- ii. The operator shall incur no liability outside this Convention for damage caused by a nuclear incident.
- d. Any person who has paid compensation in respect of damage caused by a nuclear incident under any international agreement referred to in paragraph (b) of this Article or under any legislation of a non-Contracting State shall, up to the amount which he has paid, acquire by subrogation the rights under this Convention of the person suffering damage whom he has so compensated.
- e. Any person who has his principal place of business in the territory of a Contracting Party or who is the servant of such a person and who has paid compensation in respect of damage caused by a nuclear incident occurring in the territory of a non-Contracting

State or in respect of damage suffered in such territory shall, up to the amount which he has paid, acquire the rights which the person so compensated would have had against the operator but for the provisions of Article 2.

- f. The operator shall have a right of recourse only:
 - i. if the damage caused by a nuclear incident results from an act or omission done with intent to cause damage, against the individual acting or omitting to act with such intent;
 - ii. if and to the extent that it is so provided expressly by contract.
- g. If the operator has a right of recourse to any extent pursuant to paragraph (f) of this Article against any person, that person shall not, to that extent, have a right against the operator under paragraphs (d) or (e) of this Article.
- h. Where provisions of national or public health insurance, social security workmen's compensation or occupational disease compensation systems include compensation for damage caused by a nuclear incident, 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 or by the regulations of the inter-Governmental organisation which has established such systems.

Article 7 [LIABILITY AMOUNTS]

- a. The aggregate of compensation required to be paid in respect of damage caused by a nuclear incident shall not exceed the maximum liability established in accordance with this Article.
- b. The maximum liability of the operator in respect of damage caused by a nuclear incident shall be 15 000 000 Special Drawing Rights as defined by the International

Monetary Fund and used by it for its own operations and transactions (hereinafter referred to as "Special Drawing Rights"). However,

- i. any Contracting Party, taking into account the possibilities for the operator of obtaining the insurance or other financial security required pursuant to Article 10, may establish by legislation a greater or lesser amount;
- ii. any Contracting Party, having regard to the nature of the nuclear installation or the nuclear substances involved and to the likely consequences of an incident originating therefrom, may establish a lower amount,

provided that in no event shall any amounts so established be less than 5 000 000 Special Drawing Rights. The sums mentioned above may be converted into national currency in round figures.³

- c. Compensation for damage caused to the means of transport on which the nuclear substances involved were at the time of the nuclear incident shall not have the effect of reducing the liability of the operator in respect of other damage to an amount less than either 5 000 000 Special Drawing Rights, or any higher amount established by the legislation of a Contracting Party.

- d. The amount of liability of operators of nuclear installations in the territory of a Contracting Party established in accordance with paragraph (b) of this Article as well as the provisions of any legislation of a Contracting Party pursuant to paragraph (c) of this Article shall apply to the liability of such operators wherever the nuclear incident occurs.
- e. A Contracting Party may subject the transit of nuclear substances through its territory to the condition that the maximum amount of liability of the foreign operator concerned be increased, if it considers that such amount does not adequately cover the risks of a nuclear incident in the course of the transit: provided that the maximum amount thus increased shall not exceed the maximum amount of liability of operators of nuclear installations situated in its territory.
- f. The provisions of paragraph (e) 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.

³ RAISING AND HARMONIZING OF LIABILITY AMOUNTS

Recommendation of the Steering Committee of 20. 4. 90 [NE/M(90)1]

"The Steering Committee

.....

RECOMMENDS that:

- The Contracting Parties to the Paris Convention adopt as an objective the setting, to the extent possible, of the maximum liability of the nuclear operator at not less than 150 million Special Drawing Rights;
- The Contracting Parties to the Paris Convention examine the possibility of providing simplified methods for adjusting the liability of the nuclear operator under their national legislation, so as to take into account the evolution in the capacity available on the insurance market."

Note by the Secretariat

Article 7(b)(ii) enables a liability amount higher than the reference limit provided by the Convention to be established, subject to the availability of insurance cover. This Recommendation aims to harmonize the levels of liability under national legislation at a level corresponding to the evolution of the capacity of the insurance market to provide coverage.

- g. Any interest and costs awarded by a court in actions for compensation under this Convention shall not be considered to be compensation for the purposes of this Convention and shall be payable by the operator in addition to any sum for which he is liable in accordance with this Article.

Article 8 [TIME LIMITS]

- a. The right of compensation under this Convention shall be extinguished if an action is not brought within ten years from the date of the nuclear incident. National legislation may, however establish a period longer than ten years if measures have been taken by the Contracting Party in whose territory the nuclear installation of the operator liable is situated to cover the liability of that operator in respect of any actions for compensation begun after the expiry of the period of ten years and during such longer period: provided that 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 in respect of loss of life or personal injury against the operator before the expiry of the period of ten years.
- b. In the case of damage caused by a nuclear incident involving nuclear fuel or radioactive products or waste which, at the time of the incident have been stolen, lost, jettisoned or abandoned and have not yet been recovered, the period established pursuant to paragraph (a) of this Article shall be computed from the date of that nuclear incident, but the period shall in no case exceed twenty years from the date of the theft, loss, jettison or abandonment.
- c. National legislation may establish a period of not less than two years for the extinction of the right or as a period of limitation either from the date at which the person suffering damage has knowledge or from the date at which he ought reasonably to have known of both the damage and the operator liable:

provided that the period established pursuant to paragraphs (a) and (b) of this Article shall not be exceeded.

- d. Where the provisions of Article 13(c)(ii) are applicable, the right of compensation shall not, however, be extinguished if, within the time provided for in paragraphs (a), (b) and (c) of this Article,
 - i. prior to the determination by the Tribunal referred to in Article 17, an action has been brought before any of the courts from which the Tribunal can choose; if the Tribunal determines that the competent court is a court other than that before which such action has already been brought, it may fix a date by which such action has to be brought before the competent court so determined; or
 - ii. a request has been made to a Contracting Party concerned to initiate a determination by the Tribunal of the competent court pursuant to Article 13(c)(ii) and an action is brought subsequent to such determination within such time as may be fixed by the Tribunal.
- e. 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 judgment has not been entered by the competent court.

Article 9 [EXONERATIONS FROM LIABILITY]

The operator shall not be liable for damage caused by a nuclear incident directly due to an act of armed conflict, hostilities, civil war, insurrection or, except in so far as the legislation of the Contracting Party in whose territory his nuclear installation is situated may provide to the contrary, a grave natural disaster of an exceptional character.

Article 10 [FINANCIAL SECURITY]

- a. To cover the liability under this Convention, the operator shall be required to have and maintain insurance or other financial security of the amount established pursuant to Article 7 and of such type and terms as the competent public authority shall specify.
- b. No insurer or other financial guarantor shall suspend or cancel the insurance or other financial security provided for in paragraph (a) 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 substances, during the period of the carriage in question.
- c. The sums provided as insurance, reinsurance, or other financial security may be drawn upon only for compensation for damage caused by a nuclear incident.

Article 11
[APPLICABLE LAW: NATURE, FORM AND
EXTENT OF COMPENSATION]

The nature, form and extent of the compensation, within the limits of this Convention, as well as the equitable distribution thereof, shall be governed by national law.

Article 12
[TRANSFER OF COMPENSATION BETWEEN
CONTRACTING PARTIES]

Compensation payable under this Convention, insurance and reinsurance premiums, sums provided as insurance, reinsurance, or other financial security required pursuant to Article 10, and interest and costs referred to in Article 7(g), shall be freely transferable between the monetary areas of the Contracting Parties.

Article 13
[JURISDICTION, RECOGNITION AND
ENFORCEMENT OF FOREIGN JUDGMENTS]

- a. Except as otherwise provided in this Article, jurisdiction over actions under Articles 3, 4, 6(a) and 6(e) shall lie only with the courts of the Contracting Party in whose territory the nuclear incident occurred.
- b. Where a nuclear incident occurs outside the territory of the Contracting Parties, or where the place of the nuclear incident cannot be determined with certainty, jurisdiction over such actions shall lie with the courts of the Contracting Party in whose territory the nuclear installation of the operator liable is situated.
- c. Where jurisdiction would lie with the courts of more than one Contracting Party by virtue of paragraphs (a) or (b) of this Article, jurisdiction shall lie,
 - i. if the nuclear incident occurred partly outside the territory of any Contracting Party and partly in the territory of a single Contracting Party, with the courts of that Contracting Party; and
 - ii. in any other case, with the courts of the Contracting Party determined, at the request of a Contracting Party concerned, by the Tribunal referred to in Article 17 as being the most closely related to the case in question.
- d. Judgments entered by the competent court under this Article after trial, or by default, shall, when they have become enforceable under the law applied by that court, become enforceable in the territory of any of the other Contracting Parties as soon as the formalities required by the Contracting Party concerned have been complied with. The merits of the case shall not be the subject of further proceedings. The foregoing provisions shall not apply to interim judgments.

- e. If an action is brought against a Contracting Party under this Convention, such Contracting Party may not, except in respect of measures of execution, invoke any jurisdictional immunities before the court competent in accordance with this Article.

Article 14 [NON-DISCRIMINATION]

- a. This Convention shall be applied without any discrimination based upon nationality, domicile, or residence.
- b. "National law" and "national legislation" mean the national law or the national legislation of the court having jurisdiction under this Convention over claims arising out of a nuclear incident, and that law or legislation shall apply to all matters both substantive and procedural not specifically governed by this Convention.
- c. That law and legislation shall be applied without any discrimination based upon nationality, domicile, or residence.

Article 15 [ADDITIONAL STATE COMPENSATION]

- a. Any Contracting Party may take such measures as it deems necessary to provide for an increase in the amount of compensation specified in this Convention.
- b. In so far as compensation for damage involves public funds and is in excess of the 5 000 000 Special Drawing Rights referred to in Article 7, any such measure in whatever form may be applied under conditions which may derogate from the provisions of this Convention.

Article 16 [OECD/NEA STEERING COMMITTEE DECISIONS]

Decisions taken by the Steering Committee under Article 1(a)(ii), 1(a)(iii) and 1(b) shall be adopted by mutual agreement of the members representing the Contracting Parties.

Article 17 [DISPUTE SETTLEMENT]

Any dispute arising between two or more Contracting Parties concerning the interpretation or application of this Convention shall be examined by the Steering Committee and in the absence of friendly settlement shall, upon the request of a Contracting Party concerned, be submitted to the Tribunal established by the Convention of 20th December 1957 on the Establishment of a Security Control in the Field of Nuclear Energy.

Article 18 [RESERVATIONS]

- a. Reservations to one or more of the provisions of this Convention may be made at any time prior to ratification of or accession to this Convention or prior to the time of notification under Article 23 in respect of any territory or territories mentioned in the notification, and shall be admissible only if the terms of these reservations have been expressly accepted by the Signatories.
- b. Such acceptance shall not be required from a Signatory which has not itself ratified this Convention within a period of twelve months after the date of notification to it of such reservation by the Secretary-General of the Organisation in accordance with Article 24.
- c. Any reservation admitted in accordance with this Article may be withdrawn at any time by notification addressed to the Secretary-General of the Organisation.

Article 19 [RATIFICATION, ACCEPTANCE OR APPROVAL]

- a. This Convention shall be ratified Instruments of ratification shall be deposited with the Secretary-General of the Organisation.
- b. This Convention shall come into force upon the deposit of instruments of ratification by not less than five of the Signatories. For each Signatory ratifying thereafter, this Convention

shall come into force upon the deposit of its instrument of ratification

Article 20 [AMENDMENTS]

Amendments to this Convention shall be adopted by mutual agreement of all the Contracting Parties. They shall come into force when ratified or confirmed by two-thirds of the Contracting Parties. For each Contracting Party ratifying or confirming thereafter, they shall come into force at the date of such ratification or confirmation.

Article 21 [ACCESSION]

- a. The Government of any Member or Associate country of the Organisation which is not a Signatory to this Convention may accede thereto by notification addressed to the Secretary-General of the Organisation.
- b. The Government of any other country which is not a Signatory to this Convention may accede thereto by notification addressed to the Secretary-General of the Organisation and with the unanimous assent of the Contracting Parties. Such accession shall take effect from the date of such assent.

Article 22 [CONTINUING IN FORCE AND REVISION CONFERENCE]

- a. This Convention shall remain in effect for a period of ten years as from the date of its coming into force. Any Contracting Party may, by giving twelve months' notice to the Secretary-General of the Organisation, terminate the application of this Convention to itself at the end of the period of ten years.
- b. This Convention shall, after the period of ten years, remain in force for a period of five years for such Contracting Parties as have not terminated its application in accordance with paragraph (a) of this Article, and thereafter for successive periods of five years for such Contracting Parties as have not terminated its application at the end of one of

such periods of five years by giving twelve months' notice to that effect to the Secretary-General of the Organisation.

- c. A conference shall be convened by the Secretary-General of the Organisation in order to consider revisions to this Convention after a period of five years as from the date of its coming into force or, at any other time, at the request of a Contracting Party, within six months from the date of such request.

Article 23 [APPLICATION TO METROPOLITAN TERRITORIES]

- a. This Convention shall apply to the metropolitan territories of the Contracting Parties.
- b. Any Signatory or Contracting Party may, at the time of signature or ratification or accession to this Convention or at any later time, notify the Secretary-General of the Organisation 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 (a) 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 Secretary-General of the Organisation.
- c. 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.

Article 24 [NOTIFICATIONS BY THE OECD SECRETARY GENERAL]

The Secretary-General of the Organisation shall give notice to all Signatories and acceding Governments of the receipt of any instrument of

ratification, accession, withdrawal, notification under Article 23, and decisions of the Steering Committee under Article 1(a)(ii), 1(a)(iii) and 1(b). He shall also notify them of the date on which this Convention comes into force, the text of any amendment thereto and of the date on which such amendment comes into force, and any reservation made in accordance with Article 18.

ANNEX I [RESERVATIONS (SUBMITTED UPON SIGNATURE)]

The following reservations were accepted either at the time of signature of the Convention or at the time of signature of the Additional Protocol:

1.6(a) and (c)(i):

Reservation by the Government of the Federal Republic of Germany, the Government of the Republic of Austria and the Government of the Hellenic Republic.

Reservation of the right to provide, by national law, that persons other than the operator may continue to be liable for damage caused by a nuclear incident on condition that these persons are fully covered in respect of their liability, including defence against unjustified actions, by insurance or other financial security obtained by the operator or out of State funds.

2.6(b) and (d):

Reservation by the Government of the Republic of Austria, the Government of the Hellenic Republic, the Government of the Kingdom of Norway and the Government of the Kingdom of Sweden⁴.

Reservation of the right to consider their national legislation which includes provisions equivalent to those included in the international agreements referred to in Article 6(b) as being international agreements within the meaning of Article 6(b) and (d).

3.8(a):

Reservation by the Government of the Federal Republic of Germany and the Government of the Republic of Austria.

Reservation of the right to establish, in respect of nuclear incidents occurring in the Federal Republic of Germany and in the Republic of Austria respectively, a period longer than ten years if measures have been taken to cover the liability of the operator in respect of any actions for compensation begun after the expiry of the period of ten years and during such longer period.

4.9:

Reservation by the Government of the Federal Republic of Germany and the Government of the Republic of Austria.

Reservation of the right to provide, in respect of nuclear incidents occurring in the Federal Republic of Germany and in the Republic of Austria respectively, that the operator shall be liable for damage caused by a nuclear incident directly due to an act of armed conflict, hostilities, civil war, insurrection or a grave natural disaster of an exceptional character.

5.19:

Reservation by the Government of the Federal Republic of Germany, the Government of the Republic of Austria, and the Government of the Hellenic Republic.

Reservation of the right to consider ratification of this 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 this Convention.

⁴ At the time of the deposit of its instruments of accession, the Government of Finland subordinated its accession to the present reservation.

ANNEX II [FINAL CLAUSES]

This Convention shall not be interpreted as depriving a Contracting Party, on whose territory damage was caused by a nuclear incident occurring on the territory of another Contracting Party, of any recourse which might be available to it under international law.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, duly empowered, have signed this Convention.

DONE in Paris, this twenty-ninth day of July Nineteen Hundred and Sixty, in the English, French, German, Spanish, Italian and Dutch languages in a single copy which shall remain deposited with the Secretary-General of the Organisation for European Economic Co-operation² by whom certified copies will be communicated to all Signatories.

1963 BRUSSELS SUPPLEMENTARY CONVENTION[♦]

1963 Convention Supplementary to the Paris Convention of 29 July 1960 as Amended by the Additional Protocol of 28 January 1964 and by the Protocol of 16 November 1982.

The Convention was adopted on 31 January 1963 and entered into force on 4 December 1974, along with its 1964 Additional Protocol. The 1982 Protocol entered into force on 1 August 1991.

THE GOVERNMENTS of the Federal Republic of Germany, the Republic of Austria, the Kingdom of Belgium, the Kingdom of Denmark, the Kingdom of Spain, the Republic of Finland, the French Republic, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of Norway, the Kingdom of the Netherlands, the United Kingdom of Great Britain and Northern Ireland, the Kingdom of Sweden and the Swiss Confederation,

BEING PARTIES to the Convention of 29th July 1960 on Third Party Liability in the Field of Nuclear Energy, concluded within the framework of the Organisation for European Economic Co-operation, now the Organisation for Economic Co-operation and Development and as amended by the Additional Protocol concluded at Paris on 16th November 1982 (hereinafter referred to as the "Paris Convention"),

DESIROUS of supplementing the measures provided in that Convention with a view to increasing the amount of compensation for damage which might result from the use of nuclear energy for peaceful purposes,

HAVE AGREED as follows:

Article 1 [NATURE OF SUPPLEMENTARY COMPENSATION]

The system instituted by this Convention is supplementary to that of the Paris Convention, shall be subject to the provisions of the Paris

Convention, and shall be applied in accordance with the following Articles.

Article 2 [GEOGRAPHICAL SCOPE]

- a. The system of this Convention shall apply to damage caused by nuclear incidents, other than those occurring entirely in the territory of a State which is not a Party to this Convention:
 - i. for which an operator of a nuclear installation, used for peaceful purposes, situated in the territory of a Contracting Party to this Convention (hereinafter referred to as a "Contracting Party"), and which appears on the list established and kept up to date in accordance with the terms of Article 13, is liable under the Paris Convention; and
 - ii. suffered
 1. in the territory of a Contracting Party;
 - or
 2. on or over the high seas on board a ship or aircraft registered in the territory of a Contracting Party;
 - or

[♦] **NOTE:** To assist the reader, headings in square brackets have been included for the Articles and Annex in this instrument. These headings are not authoritative but are rather merely indicative of the substance.

3. on or over the high seas by a national of a Contracting Party, provided that, in the case of damage to a ship or an aircraft, the ship or aircraft is registered in the territory of a Contracting Party,

provided that the courts of a Contracting Party have jurisdiction pursuant to the Paris Convention.

- b. Any Signatory or acceding Government may, at the time of signature of or accession to this Convention or on the deposit of its instrument of ratification, declare that, for the purposes of the application of paragraph (a)(ii)(3) of this Article, individuals or certain categories thereof, considered under its law as having their habitual residence in its territory, are assimilated to its own nationals.
- c. In this Article, the expression "a national of a Contracting Party" shall include 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.

Article 3 [LIABILITY AMOUNTS]

- a. Under the conditions established by this Convention, the Contracting Parties undertake that compensation in respect of the damage referred to in Article 2 shall be provided up to the amount of 300 million Special Drawing Rights per incident.
- b. Such compensation shall be provided:
 - i. up to an amount of at least 5 million Special Drawing Rights, out of funds provided by insurance or other financial security, such amount to be established by the legislation of the Contracting Party in whose territory the nuclear installation of the operator liable is situated;

- ii. between this amount and 175 million Special Drawing Rights, out of public funds to be made available by the Contracting Party in whose territory the nuclear installation of the operator liable is situated;
 - iii. between 175 and 300 million Special Drawing Rights, out of public funds to be made available by the Contracting Parties according to the formula for contributions specified in Article 12.
- c. For this purpose, each Contracting Party shall either:
 - i. establish the maximum liability of the operator, pursuant to Article 7 of the Paris Convention, at 300 million Special Drawing Rights, and provide that such liability shall be covered by all the funds referred to in paragraph (b) of this Article; or
 - ii. establish the maximum liability of the operator at an amount at least equal to that established pursuant to paragraph (b)(i) of this Article and provide that, in excess of such amount and up to 300 million Special Drawing Rights, the public funds referred to in paragraph (b)(ii) and (iii) of this Article shall be made available by some means other than as cover for the liability of the operator, provided that the rules of substance and procedure laid down in this Convention are not thereby affected.
 - d. The obligation of the operator to pay compensation, interest or costs out of public funds made available pursuant to paragraphs (b)(ii) and (iii), and (f) of this Article shall only be enforceable against the operator as and when such funds are in fact made available.
 - e. The Contracting Parties, in carrying out this Convention, undertake not to make use of the

right provided for in Article 15(b) of the Paris Convention to apply special conditions:

- i. in respect of compensation for damage provided out of the funds referred to in paragraph (b)(i) of this Article;
 - ii. other than those laid down in this Convention in respect of compensation for damage provided out of the public funds referred to in paragraph (b)(ii) and (iii) of this Article.
- f. The interest and costs referred to in Article 7(g) of the Paris Convention are payable in addition to the amounts referred to in paragraph (b) of this Article and shall be borne in so far as they are awarded in respect of compensation payable out of the funds referred to in:
- i. paragraph (b)(i) of this Article, by the operator liable;
 - ii. paragraph (b)(ii) of this Article, by the Contracting Party in whose territory the nuclear installation of that operator is situated;
 - iii. paragraph (b)(iii) of this Article, by the Contracting Parties together.
- g. For the purposes of this Convention, "Special Drawing Right" means the Special Drawing Right as it is defined by the International Monetary Fund. The amounts mentioned in this Convention shall be converted into the national currency of a Contracting Party in accordance with the value of that currency at the date of the incident, unless another date is fixed for a given incident by agreement between the Contracting Parties. The equivalent in Special Drawing Rights of the national currency of a Contracting Party shall be calculated in accordance with the method of valuation applied at the date in question by the International Monetary Fund for its own operations and transactions.

Article 4 [JOINT LIABILITY]

- a. If a nuclear incident causes damage which gives rise to liability of more than one operator, the aggregate liability provided for in Article 5(d) of the Paris Convention shall not, to the extent that public funds have to be made available pursuant to Article 3(b)(ii) and (iii), exceed 300 million Special Drawing Rights.
- b. The total amount of the public funds made available pursuant to Article 3(b)(ii) and (iii) shall not, in such event, exceed the difference between 300 million Special Drawing Rights and the sum of the amounts established with respect to such operators pursuant to Article 3(b)(i) or, in the case of an operator whose nuclear installation is situated in the territory of a State which is not a Party to this Convention, the amount established pursuant to Article 7 of the Paris Convention. If more than one Contracting Party is required to make available public funds pursuant to Article 3(b)(ii), such funds shall be made available by them in proportion to the number of nuclear installations situated in their respective territories, which are involved in the nuclear incident and of which the operators are liable.

Article 5 [RIGHTS OF RECOURSE]

- a. Where the operator liable has a right of recourse pursuant to Article 6(f) of the Paris Convention, the Contracting Party in whose territory the nuclear installation of that operator is situated shall take such legislative measures as are necessary to enable both that Contracting Party and the other Contracting Parties to benefit from this recourse to the extent that public funds have been made available pursuant to Article 3(b)(ii) and (iii), and (f).
- b. Such legislation may provide for the recovery of public funds made available pursuant to

Article 3(b)(ii) and (iii), and (f) from such operator if the damage results from fault on his part.

Article 6 [TIME LIMITS]

In calculating the public funds to be made available pursuant to this Convention, account shall be taken only of those rights to compensation exercised within ten years from the date of the nuclear incident. In the case of damage caused by a nuclear incident involving nuclear fuel or radioactive products or waste which, at the time of the incident have been stolen, lost, jettisoned, or abandoned and have not yet been recovered, such period shall not in any case exceed twenty years from the date of the theft, loss, jettison or abandonment. It shall also be extended in the cases and under the conditions laid down in Article 8(d) of the Paris Convention. Amendments made to claims after the expiry of this period, under the conditions laid down in Article 8(e) of the Paris Convention, shall also be taken into account.

Article 7 [TIME LIMIT (PRESCRIPTION PERIOD)]

Where a Contracting Party makes use of the right provided for in Article 8(c) of the Paris Convention, the period which it establishes shall be a period of prescription of three years either from the date at which the person suffering damage has knowledge or from the date at which he ought reasonably to have known of both the damage and the operator liable.

Article 8 [NON-DISCRIMINATION]

Any person who is entitled to benefit from the provisions of this Convention shall have the right to full compensation in accordance with national law for damage suffered, provided that, where the amount of damage exceeds or is likely to exceed:

- i. 300 million Special Drawing Rights; or

- ii. if there is aggregate liability under Article 5(d) of the Paris Convention and a higher sum results therefrom, such higher sum,

any Contracting Party may establish equitable criteria for apportionment. Such criteria shall be applied whatever the origin of the funds and, subject to the provisions of Article 2, without discrimination based on the nationality, domicile or residence of the person suffering the damage.

Article 9 [ALLOCATION OF FUNDS]

- a. The system of disbursements by which the public funds required under Article 3(b)(ii) and (iii), and (f) are to be made available shall be that of the Contracting Party whose courts have jurisdiction.
- b. Each Contracting Party shall ensure that persons suffering damage may enforce their rights to compensation without having to bring separate proceedings according to the origin of the funds provided for such compensation.
- c. No Contracting Party shall be required to make available the public funds referred to in Article 3(b)(ii) and (iii) so long as any of the funds referred to in Article 3(b)(i) remain available.

Article 10 [AVAILABILITY OF PUBLIC FUNDS]

- a. The Contracting Party whose courts have jurisdiction shall be required to inform the other Contracting Parties of a nuclear incident and its circumstances as soon as it appears that the damage caused by such incident exceeds, or is likely to exceed, 175 million Special Drawing Rights. The Contracting Parties shall without delay make all the necessary arrangements to settle the procedure for their relations in this connection.

- b. Only the Contracting Party whose courts have jurisdiction shall be entitled to request the other Contracting Parties to make available the public funds required under Article 3(b)(iii) and (f) and shall have exclusive competence to disburse such funds.
- c. Such Contracting Party shall, when the occasion arises, exercise the right of recourse provided for in Article 5 on behalf of the other Contracting Parties who have made available public funds pursuant to Article 3(b)(iii) and (f).
- d. Settlements effected in respect of the payment of compensation out of the public funds referred to in Article 3(b)(ii) and (iii) in accordance with the conditions established by national legislation shall be recognized by the other Contracting Parties, and judgments entered by the competent courts in respect of such compensation shall become enforceable in the territory of the other Contracting Parties in accordance with the provisions of Article 13(d) of the Paris Convention.

Article 11

[REIMBURSEMENT OF PUBLIC FUNDS]

- a. If the courts having jurisdiction are those of a Contracting Party other than the Contracting Party in whose territory the nuclear installation of the operator liable is situated, the public funds required under Article 3(b)(ii) and (f) shall be made available by the first-named Contracting Party. The Contracting Party in whose territory the nuclear installation of the operator liable is situated shall reimburse to the other Contracting Party the sums paid. These two Contracting Parties shall agree on the procedure for reimbursement.
- b. In adopting all legislative, regulatory or administrative provisions, after the nuclear

incident has occurred, concerning the nature, form and extent of the compensation, the procedure for making available the public funds required under Article 3(b)(ii) and, if necessary, the criteria for the apportionment of such funds, the Contracting Party whose courts have jurisdiction shall consult the Contracting Party in whose territory the nuclear installation of the operator liable is situated. It shall further take all measures necessary to enable the latter to intervene in proceedings and to participate in any settlement concerning compensation.

Article 12 [ALLOCATION OF FUNDS]

- a. The formula for contributions according to which the Contracting Parties shall make available the public funds referred to in Article 3(b)(iii) shall be determined as follows:
 - i. as to 50%, on the basis of the ratio between the gross national product at current prices of each Contracting Party and the total of the gross national products at current prices of all Contracting Parties as shown by the official statistics published by the Organisation for Economic Co-operation and Development for the year preceding the year in which the nuclear incident occurs;
 - ii. as to 50%, on the basis of the ratio between the thermal power of the reactors situated in the territory of each Contracting Party and the total thermal power of the reactors situated in the territories of all the Contracting Parties. This calculation shall be made on the basis of the thermal power of the reactors shown at the date of the nuclear incident in the list referred to in Article 2(a)(i): provided that a reactor shall only be taken into consideration for the purposes of this calculation as from the date when it first reaches criticality.

- b. For the purposes of this Convention, "thermal power" means:
 - i. before the issue of a final operating licence, the planned thermal power;
 - ii. after the issue of such licence, the thermal power authorized by the competent national authorities.

Article 13
[LIST OF NUCLEAR INSTALLATIONS]

- a. Each Contracting Party shall ensure that all nuclear installations used for peaceful purposes situated in its territory, and falling within the definition in Article 1 of the Paris Convention, appear on the list referred to in Article 2(a)(i).
- b. For this purpose, each Signatory or acceding Government shall, on the deposit of its instrument of ratification or accession, communicate to the Belgian Government full particulars of such installations.
- c. Such particulars shall indicate:
 - i. in the case of all installations not yet completed, the expected date on which the risk of a nuclear incident will exist;
 - ii. and further, in the case of reactors, the expected date on which they will first reach criticality, and also their thermal power.
- d. Each Contracting Party shall also communicate to the Belgian Government the exact date of the existence of the risk of a nuclear incident and, in the case of reactors, the date on which they first reached criticality.
- e. Each Contracting Party shall also communicate to the Belgian Government all modifications to be made to the list. Where such modifications include the addition of a nuclear installation, the communication must be made at least three months before the expected date on which the risk of a nuclear incident will exist.
- f. If a Contracting Party is of the opinion that the particulars, or any modification to be made to the list, communicated by another Contracting Party do not comply with the provisions of Article 2(a)(i) and of this Article, it may raise objections thereto only by addressing them to the Belgian Government within three months from the date on which it has received notice pursuant to paragraph (h) of this Article.
- g. If a Contracting Party is of the opinion that a communication required in accordance with this Article has not been made within the time prescribed in this Article, it may raise objections only by addressing them to the Belgian Government within three months from the date on which it knew of the facts which, in its opinion, ought to have been communicated.
- h. The Belgian Government shall give notice as soon as possible to each Contracting Party of the communications and objections which it has received pursuant to this Article.
- i. The list referred to in Article 2(a)(i) shall consist of all the particulars and modifications referred to in paragraphs (b), (c), (d) and (e) of this Article, it being understood that objections submitted pursuant to paragraphs (f) and (g) of this Article shall have effect retrospective to the date on which they were raised, if they are sustained.
- j. The Belgian Government shall supply any Contracting Party on demand with an up-to-date statement of the nuclear installations covered by this Convention and the details supplied in respect of them pursuant to this Article.

Article 14 [PUBLIC FUNDS]

- a. Except in so far as this Convention otherwise provides, each Contracting Party may exercise the powers vested in it by virtue of the Paris Convention, and any provisions made thereunder may be invoked against the other Contracting Parties in order that the public funds referred to in Article 3(b)(ii) and (iii) be made available.
- b. Any such provisions made by a Contracting Party pursuant to Article 2 and 9 of the Paris Convention as a result of which the public funds referred to in Article 3(b)(ii) and (iii) are required to be made available may not be invoked against any other Contracting Party unless it has consented thereto.
- c. Nothing in this Convention shall prevent a Contracting Party from making provisions outside the scope of the Paris Convention and of this Convention, provided that such provisions shall not involve any further obligation on the part of the Contracting Parties in so far as their public funds are concerned.

Article 15 [AGREEMENT WITH NON-CONTRACTING PARTIES]

- a. Any Contracting Party may conclude an agreement with a State which is not a Party to this Convention concerning compensation out of public funds for damage caused by a nuclear incident.
- b. To the extent that the conditions for payment of compensation under any such agreement are not more favourable than those which result from the measures adopted by the Contracting Party concerned for the application of the Paris Convention and of this Convention, the amount of damage caused by a nuclear incident covered by this Convention and for which compensation is payable by virtue of such an agreement may

be taken into consideration, where the proviso to Article 8 applies, in calculating the total amount of damage caused by that incident.

- c. The provisions of paragraphs (a) and (b) of this Article shall in no case affect the obligations under Article 3(b)(ii) and (iii) of those Contracting Parties which have not given their consent to such agreement.
- d. Any Contracting Party intending to conclude such an agreement shall notify the other Contracting Parties of its intention. Agreements concluded shall be notified to the Belgian Government.

Article 16 [CONTRACTING PARTIES' CONSULTATIONS AND REVISION CONFERENCE]

- a. The Contracting Parties shall consult each other upon all problems of common interest raised by the application of this Convention and of the Paris Convention, especially Articles 20 and 22(c) of the latter Convention.
- b. They shall consult each other on the desirability of revising this Convention after a period of five years from the date of its coming into force, and at any other time upon the request of a Contracting Party.

Article 17 [DISPUTE SETTLEMENT]

Any dispute arising between two or more Contracting Parties concerning the interpretation or application of this Convention shall, upon the request of a Contracting Party concerned, be submitted to the European Nuclear Energy Tribunal established by the Convention of 20th December 1957 on the Establishment of a Security Control in the Field of Nuclear Energy.

Article 18 [RESERVATIONS]

- a. Reservations to one or more of the provisions of this Convention may be made at any time

prior to ratification of this Convention if the terms of these reservations have been expressly accepted by all Signatories or, at the time of accession or of the application of the provisions of Articles 21 and 24, if the terms of these reservations have been expressly accepted by all Signatories and acceding Governments.

- b. Such acceptance shall not be required from a Signatory which has not itself ratified this Convention within a period of twelve months after the date of notification to it of such reservation by the Belgian Government in accordance with Article 25.
- c. Any reservation accepted in accordance with the provisions of paragraph (a) of this Article may be withdrawn at any time by notification addressed to the Belgian Government.

Article 19 [REQUIREMENT TO BE A CONTRACTING PARTY]

No State may become or continue to be a Contracting Party to this Convention unless it is a Contracting Party to the Paris Convention.

Article 20 [ANNEX]

- a. The Annex to this Convention shall form an integral part thereof.
- b. This Convention shall be ratified. Instruments of ratification shall be deposited with the Belgian Government.
- c. This Convention shall come into force three months after the deposit of the sixth instrument of ratification.
- d. For each Signatory ratifying this Convention after the deposit of the sixth instrument of ratification, it shall come into force three months after the date of the deposit of its instrument of ratification.

Article 21 [AMENDMENTS]

Amendments to this Convention shall be adopted by agreement among all the Contracting Parties. They shall come into force on the date when all Contracting Parties have ratified or confirmed them.

Article 22 [ACCESSION]

- a. After the coming into force of this Convention, any Contracting Party to the Paris Convention which has not signed this Convention may request accession to this Convention by notification addressed to the Belgian Government.
- b. Such accession shall require the unanimous assent of the Contracting Parties.
- c. Once such assent has been given, the Contracting Party to the Paris Convention requesting accession shall deposit its instrument of accession with the Belgian Government.
- d. The accession shall take effect three months from the date of deposit of the instrument of accession.

Article 23 [CONTINUANCE OF PRIOR RIGHTS AND OBLIGATIONS]

- a. This Convention shall remain in force until the expiry of the Paris Convention.
- b. Any Contracting Party may, by giving twelve months' notice to the Belgian Government, terminate the application of this Convention to itself after the end of the period of ten years specified in Article 22(a) of the Paris Convention. Within six months after receipt of such notice, any other Contracting Party may, by notice to the Belgian Government, terminate the application of this Convention to itself as from the date when it ceases to

have effect in respect of the Contracting Party which first gave notice.

- c. The expiry of this Convention or the withdrawal of a Contracting Party shall not terminate the obligations assumed by each Contracting Party under this Convention to pay compensation for damage caused by nuclear incidents occurring before the date of such expiry or withdrawal.
- d. The Contracting Parties shall, in good time, consult each other on what measures should be taken after the expiry of this Convention or the withdrawal of one or more of the Contracting Parties, to provide compensation comparable to that accorded by this Convention for damage caused by nuclear incidents occurring after the date of such expiry or withdrawal and for which the operator of a nuclear installation in operation before such date within the territories of the Contracting Parties is liable.

Article 24 [APPLICATION TO METROPOLITAN TERRITORIES]

- a. This Convention shall apply to the metropolitan territories of the Contracting Parties.
- b. Any Contracting Party desiring the application of this Convention to one or more of the territories in respect of which, pursuant to Article 23 of the Paris Convention, it has given notification of application of that Convention, shall address a request to the Belgian Government.
- c. The application of this Convention to any such territory shall require the unanimous assent of the Contracting Parties.
- d. Once such assent has been given, the Contracting Party concerned shall address to the Belgian Government a notification which shall take effect as from the date of its receipt.

- e. Such notification may, as regards any territory mentioned therein, be withdrawn by the Contracting Party which has made it by giving twelve months' notice to that effect to the Belgian Government.
- f. If the Paris Convention ceases to apply to any such territory, this Convention shall also cease to apply thereto.

Article 25 [NOTIFICATION BY THE GOVERNMENT OF BELGIUM]

The Belgian Government shall notify all Signatories and acceding Governments of the receipt of any instrument of ratification, accession or withdrawal, and shall also notify them of the date on which this Convention comes into force, the text of any amendment thereto and the date on which such amendment comes into force, any reservations made in accordance with Article 18, and all notifications which it has received.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, duly empowered, have signed this Convention.

DONE at Brussels, this 31st day of January 1963, in the English, Dutch, French, German, Italian and Spanish languages, the six texts being equally authoritative, in a single copy which shall be deposited with the Belgian Government by whom certified copies shall be communicated to all the other Signatories and acceding Governments.

ANNEX [COVERAGE OF NUCLEAR INSTALLATIONS NOT INCLUDED IN THE ARTICLE 13 LIST]

THE GOVERNMENTS OF THE CONTRACTING PARTIES declare that compensation for damage caused by a nuclear incident not covered by the Supplementary Convention solely by reason of the fact that the relevant nuclear installation, on account of its utilization, is not on the list referred to in Article 2 of the Supplementary Convention, (including the case where such installation is considered by one or more but not all of the Governments to be outside the Paris Convention):

- shall be provided without discrimination among the nationals of the Contracting Parties to the Supplementary Convention; and
- shall not be limited to less than 300 million Special Drawing Rights.

In addition, if they have not already done so, they shall endeavour to make the rules for compensation of persons suffering damage caused by such incidents as similar as possible to those established in respect of nuclear incidents occurring in connection with nuclear installations covered by the Supplementary Convention.

2004 PARIS CONVENTION (UNOFFICIAL CONSOLIDATED TEXT)♦

Unofficial Consolidated Text of the Paris Convention incorporating the provisions of the three Amending Protocols - the Additional Protocol of 28 January 1964, the Protocol of 16 November 1982, and the Protocol of 12 February 2004.

The GOVERNMENTS of the Federal Republic of Germany, the Kingdom of Belgium, the Kingdom of Denmark, the Kingdom of Spain, the Republic of Finland, the French Republic, the Hellenic Republic, the Italian Republic, the Kingdom of Norway, the Kingdom of the Netherlands, the Portuguese Republic, the United Kingdom of Great Britain and Northern Ireland, the Republic of Slovenia, the Kingdom of Sweden, the Swiss Confederation and the Turkish Republic;*

CONSIDERING that the OECD Nuclear Energy Agency, established within the framework of the Organisation for Economic Co-operation and Development (hereinafter referred to as the "Organisation") **, is charged with encouraging the elaboration and harmonisation of legislation relating to nuclear energy in participating countries, in particular with regard to third party liability and insurance against atomic risks;

DESIROUS of ensuring adequate and equitable compensation for persons who suffer damage caused by nuclear incidents whilst taking the necessary steps to ensure that the development of the production and uses of nuclear energy for peaceful purposes is not thereby hindered;

CONVINCED of the need for unifying the basic rules applying in the various countries to the liability incurred for such damage, whilst leaving these countries free to take, on a national basis, any additional measures which they deem appropriate;

HAVE AGREED as follows:

Article 1 [DEFINITIONS]

a) For the purposes of this Convention:

- i) "A nuclear incident" means any occurrence or series of occurrences having the same origin which causes nuclear damage.
- ii) "Nuclear installation" means reactors other than those comprised in any means of transport; factories for the manufacture or processing of nuclear substances; factories for the separation of isotopes of nuclear fuel; factories for the reprocessing of irradiated nuclear fuel; facilities for the storage of nuclear substances other than storage incidental to the carriage of such substances; installations for the disposal of nuclear

♦ **NOTE:** To assist the reader, headings in square brackets have been included for the Articles and Annex in this instrument. These headings are not authoritative but are rather merely indicative of the substance.

* The designation of the Signatories is the same as that in the Protocol of 12 February 2004. It should be noted that the Republic of Austria and the Grand Duchy of Luxembourg signed the Paris Convention and its Additional Protocol of 1964 and its Protocol of 1982 but have not ratified these instruments. In addition, they have not signed the Protocol of 12 February 2004. The Republic of Slovenia acceded to the Paris Convention, as amended by the Additional Protocol of 1964 and the Protocol of 1982, with effect as of 16 October 2002 and has signed the Protocol of 12 February 2004.

** The Organisation for European Economic Co-operation and Development (OECE) was reconstituted as the Organisation for Economic Co-operation and Development (OECD) on 30 September 1961, in accordance with the provisions of the Convention on the Organisation for Economic Co-operation and Development of 14 December 1960. In addition, following the Decision of the OECD Council dated 17 May 1972 [C(72)106(Final)], the European Nuclear Energy Agency (ENEA) is now called the OECD Nuclear Energy Agency (NEA).

substances; any such reactor, factory, facility or installation that is in the course of being decommissioned; and such other installations in which there are nuclear fuel or radioactive products or waste as the Steering Committee for Nuclear Energy of the Organisation (hereinafter referred to as the "Steering Committee") shall from time to time determine; any Contracting Party may determine that two or more nuclear installations of one operator which are located on the same site shall, together with any other premises on that site where nuclear fuel or radioactive products or waste are held, be treated as a single nuclear installation.

- iii) "Nuclear fuel" means fissionable material in the form of uranium metal, alloy, or chemical compound (including natural uranium), plutonium metal, alloy, or chemical compound, and such other fissionable material as the Steering Committee shall from time to time determine.
- iv) "Radioactive products or waste" means any radioactive material produced in or made radioactive by exposure to the radiation incidental to the process of producing or utilising nuclear fuel, but does not include (1) nuclear fuel, or (2) radioisotopes outside a nuclear installation which have reached the final stage of fabrication so as to be usable for any industrial, commercial, agricultural, medical, scientific or educational purpose.
- v) "Nuclear substances" means nuclear fuel (other than natural uranium and other than depleted uranium) and radioactive products or waste.
- vi) "Operator" in relation to a nuclear installation means the person designated

or recognised by the competent public authority as the operator of that installation.

vii) "Nuclear damage" means,

- 1. loss of life or personal injury;
- 2. loss of or damage to property;

and each of the following to the extent determined by the law of the competent court,

- 3. economic loss arising from loss or damage referred to in sub-paragraph 1 or 2 above insofar as not included in those sub-paragraphs, if incurred by a person entitled to claim in respect of such loss or damage;
- 4. the costs of measures of reinstatement of impaired environment, unless such impairment is insignificant, if such measures are actually taken or to be taken, and insofar as not included in sub-paragraph 2 above;
- 5. loss of income deriving from a direct economic interest in any use or enjoyment of the environment, incurred as a result of a significant impairment of that environment, and insofar as not included in subparagraph 2 above;
- 6. the costs of preventive measures, and further loss or damage caused by such measures,

in the case of sub-paragraphs 1 to 5 above, to the extent that the loss or damage arises out of or results from ionising radiation emitted by any source of radiation inside a nuclear installation, or emitted from nuclear fuel or radioactive products or waste in, or of nuclear substances coming from, originating in, or sent to, a nuclear installation, whether so arising from the radioactive properties of such matter, or from a combination of radioactive properties with toxic, explosive or other hazardous properties of such matter.

viii) "Measures of reinstatement" means any reasonable measures which have been approved by the competent authorities of the State where the measures were taken, and which aim to reinstate or restore damaged or destroyed components of the environment, or to introduce, where reasonable, the equivalent of these components into the environment. The legislation of the State where the nuclear damage is suffered shall determine who is entitled to take such measures.

ix) "Preventive measures" means any reasonable measures taken by any person after a nuclear incident or an event creating a grave and imminent threat of nuclear damage has occurred, to prevent or minimise nuclear damage referred to in sub-paragraphs (a)(vii) 1 to 5, subject to any approval of the competent authorities required by the law of the State where the measures were taken.

x) "Reasonable measures" means measures which are found under the law of the competent court to be appropriate and proportionate, having regard to all the circumstances, for example:

1. the nature and extent of the nuclear damage incurred or, in the case of preventive measures, the nature and extent of the risk of such damage;
2. the extent to which, at the time they are taken, such measures are likely to be effective; and
3. relevant scientific and technical expertise.

b) The Steering Committee may, if in its view the small extent of the risks involved so warrants, exclude any nuclear installation, nuclear fuel, or nuclear substances from the application of this Convention.

Article 2 [GEOGRAPHICAL SCOPE]

a) This Convention shall apply to nuclear damage suffered in the territory of, or in any maritime zones established in accordance with international law of, or, except in the territory of a non-Contracting State not mentioned under (ii) to (iv) of this paragraph, on board a ship or aircraft registered by,

- i) a Contracting Party;
- ii) a non-Contracting State which, at the time of the nuclear incident, is a Contracting Party to the Vienna Convention on Civil Liability for Nuclear Damage of 21 May 1963 and any amendment thereto which is in force for that Party, and to the Joint Protocol relating to the Application of the Vienna Convention and the Paris Convention of 21 September 1988, provided however, that the Contracting Party to the Paris Convention in whose territory the installation of the operator liable is situated is a Contracting Party to that Joint Protocol;

- iii) a non-Contracting State which, at the time of the nuclear incident, has no nuclear installation in its territory or in any maritime zones established by it in accordance with international law; or
 - iv) any other non-Contracting State which, at the time of the nuclear incident, has in force nuclear liability legislation which affords equivalent reciprocal benefits, and which is based on principles identical to those of this Convention, including, inter alia, liability without fault of the operator liable, exclusive liability of the operator or a provision to the same effect, exclusive jurisdiction of the competent court, equal treatment of all victims of a nuclear incident, recognition and enforcement of judgements, free transfer of compensation, interests and costs.
- b) Nothing in the Article shall prevent a Contracting Party in whose territory the nuclear installation of the operator liable is situated from providing for a broader scope of application of this Convention under its legislation.

Article 3 [NUCLEAR INSTALLATIONS]

- a) The operator of a nuclear installation shall be liable, in accordance with this Convention, for nuclear damage other than
- i) damage to the nuclear installation itself and any other nuclear installation, including a nuclear installation under construction, on the site where that installation is located; and
 - ii) damage to any property on that same site which is used or to be used in connection with any such installation,

upon proof that such damage was caused by a nuclear incident in such installation or involving nuclear substances coming from

such installation, except as otherwise provided for in Article 4.

- b) Where nuclear damage is caused jointly by a nuclear incident and by an incident other than a nuclear incident, that part of the damage which is caused by such other incident, shall, to the extent that it is not reasonably separable from the nuclear damage caused by the nuclear incident, be considered to be nuclear damage caused by the nuclear incident. Where nuclear damage is caused jointly by a nuclear incident and by an emission of ionizing radiation not covered by this Convention, nothing in this Convention shall limit or otherwise affect the liability of any person in connection with that emission of ionising radiation.

Article 4 [TRANSPORT LIABILITY]

In the case of carriage of nuclear substances, including storage incidental thereto, without prejudice to Article 2:

- a) The operator of a nuclear installation shall be liable, in accordance with this Convention, for nuclear damage upon proof that it was caused by a nuclear incident outside that installation and involving nuclear substances in the course of carriage therefrom, only if the incident occurs:
- i) before liability with regard to nuclear incidents involving the nuclear substances 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 substances; or
 - iii) where the nuclear substances are intended to be used in a reactor

comprised in a means of transport, before the person duly authorised to operate that reactor has taken charge of the nuclear substances; but

- iv) where the nuclear substances have been sent to a person within the territory of a non-Contracting State, before they have been unloaded from the means of transport by which they have arrived in the territory of that non-Contracting State.
- b) The operator of a nuclear installation shall be liable, in accordance with this Convention, for nuclear damage upon proof that it was caused by a nuclear incident outside that installation and involving nuclear substances in the course of carriage thereto, only if the incident occurs:
 - i) after liability with regard to nuclear incidents involving the nuclear substances 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 substances; or
 - iii) after he has taken charge of the nuclear substances from a person operating a reactor comprised in a means of transport; but
 - iv) where the nuclear substances have, with the written consent of the operator, been sent from a person within the territory of a non-Contracting State, after they have been loaded on the means of transport by which they are to be carried from the territory of that State.
- c) The transfer of liability to the operator of another nuclear installation pursuant to paragraphs (a)(i) and (ii) and (b)(i) and (ii) of

this Article may only take place if that operator has a direct economic interest in the nuclear substances that are in the course of carriage.

- d) 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 10. However, a Contracting Party may exclude this obligation in relation to carriage which takes place wholly within its own territory. 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 substances and the carriage in respect of which the security applies and shall include a statement by the competent public authority that the person named is an operator within the meaning of this Convention.
- e) A Contracting Party may provide by legislation that, under such terms as may be contained therein and upon fulfilment of the requirements of Article 10(a), a carrier may, at his request and with the consent of an operator of a nuclear installation situated in its territory, by decision of the competent public authority, be liable in accordance with this Convention in place of that operator. In such case for all the purposes of this Convention the carrier shall be considered, in respect of nuclear incidents occurring in the course of carriage of nuclear substances, as an operator of a nuclear installation on the territory of the Contracting Party whose legislation so provides.

Article 5 [JOINT LIABILITY]

- a) If the nuclear fuel or radioactive products or waste involved in a nuclear incident have

been in more than one nuclear installation and are in a nuclear installation at the time nuclear damage is caused, no operator of any nuclear installation in which they have previously been shall be liable for the nuclear damage.

- b) Where, however, nuclear damage is caused by a nuclear incident occurring in a nuclear installation and involving only nuclear substances stored therein incidentally to their carriage, the operator of the nuclear installation shall not be liable where another operator or person is liable pursuant to Article 4.
- c) If the nuclear fuel or radioactive products or waste involved in a nuclear incident have been in more than one nuclear installation and are not in a nuclear installation at the time nuclear damage is caused, no operator other than the operator of the last nuclear installation in which they were before the nuclear damage was caused or an operator who has subsequently taken them in charge, or has assumed liability therefor pursuant to the express terms of a contract in writing shall be liable for the nuclear damage.
- d) If nuclear damage gives rise to liability of more than one operator in accordance with this Convention, the liability of these operators shall be joint and several, provided that where such liability arises as a result of nuclear damage caused by a nuclear incident involving nuclear substances in the course of carriage 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, 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 7. In no case shall any one operator be required, in respect of a nuclear incident, to pay more than the amount established with respect to him pursuant to Article 7.

Article 6

[LIABILITY OF OTHER PERSONS INCLUDING RIGHTS OF RECOURSE]

- a) The right to compensation for nuclear damage caused by a nuclear incident may be exercised only against an operator liable for the nuclear damage in accordance with this Convention, or, if a direct right of action against the insurer or other financial guarantor furnishing the security required pursuant to Article 10 is given by national law, against the insurer or other financial guarantor.
- b) Except as otherwise provided in this Article, no other person shall be liable for nuclear damage caused by a nuclear incident, but 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.
- c)
 - i) Nothing in this Convention shall affect the liability:
 - 1. of any individual for nuclear damage caused by a nuclear incident for which the operator, by virtue of Article 3(a) or Article 9, is not liable under this Convention and which results from an act or omission of that individual done with intent to cause damage;
 - 2. of a person duly authorised to operate a reactor comprised in a means of transport for nuclear damage caused by a nuclear incident when an operator is not liable for such damage pursuant to Article 4(a)(iii) or (b)(iii).

- ii) The operator shall incur no liability outside this Convention for nuclear damage caused by a nuclear incident.
- d) Any person who has paid compensation in respect of nuclear damage caused by a nuclear incident under any international agreement referred to in paragraph (b) of this Article or under any legislation of a non-Contracting State shall, up to the amount which he has paid, acquire by subrogation the rights under this Convention of the person suffering nuclear damage whom he has so compensated.
- e) 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 national law so provides, relieve the operator wholly or partly from his obligation to pay compensation in respect of the damage suffered by such person.
- f) The operator shall have a right of recourse only:
 - i) if the nuclear damage caused by a nuclear incident results from an act or omission done with intent to cause damage, against the individual acting or omitting to act with such intent;
 - ii) if and to the extent that it is so provided expressly by contract.
- g) If the operator has a right of recourse to any extent pursuant to paragraph (f) of this Article against any person, that person shall not, to that extent, have a right against the operator under paragraph (d) of this Article.

- h) Where provisions of national or public health insurance, social security, workers' compensation or occupational disease compensation systems include compensation for nuclear damage caused by a nuclear incident, 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 or by the regulations of the inter-governmental organisation which has established such systems.

Article 7 [LIABILITY AMOUNTS]

- a) Each Contracting Party shall provide under its legislation that the liability of the operator in respect of nuclear damage caused by any one nuclear incident shall not be less than 700 million euro.
- b) Notwithstanding paragraph (a) of this Article and Article 21(c), any Contracting Party may,
 - i) having regard to the nature of the nuclear installation involved and to the likely consequences of a nuclear incident originating therefrom, establish a lower amount of liability for that installation, provided that in no event shall any amount so established be less than 70 million euro; and
 - ii) having regard to the nature of the nuclear substances involved and to the likely consequences of a nuclear incident originating therefrom, establish a lower amount of liability for the carriage of nuclear substances, provided that in no event shall any amount so established be less than 80 million euro.
- c) Compensation for nuclear damage caused to the means of transport on

which the nuclear substances involved were at the time of the nuclear incident shall not have the effect of reducing the liability of the operator in respect of other nuclear damage to an amount less than either 80 million euro, or any higher amount established by the legislation of a Contracting Party.

- d) The amount of liability of operators of nuclear installations in the territory of a Contracting Party established in accordance with paragraph (a) or (b) of this Article or with Article 21(c), as well as the provisions of any legislation of a Contracting Party pursuant to paragraph (c) of this Article shall apply to the liability of such operators wherever the nuclear incident occurs.
- e) A Contracting Party may subject the transit of nuclear substances through its territory to the condition that the maximum amount of liability of the foreign operator concerned be increased, if it considers that such amount does not adequately cover the risks of a nuclear incident in the course of the transit, provided that the maximum amount thus increased shall not exceed the maximum amount of liability of operators of nuclear installations situated in its territory.
- f) The provisions of paragraph (e) 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.

- g) In cases where the Convention is applicable to a non-Contracting State in accordance with Article 2(a)(iv), any Contracting Party may establish in respect of nuclear damage amounts of liability lower than the minimum amounts established under this Article or under Article 21(c) to the extent that such State does not afford reciprocal benefits of an equivalent amount.
- h) Any interest and costs awarded by a court in actions for compensation under this Convention shall not be considered to be compensation for the purposes of this Convention and shall be payable by the operator in addition to any sum for which he is liable in accordance with this Article.
- i) The sums mentioned in this Article may be converted into national currency in round figures.
- j) Each Contracting Party shall ensure that persons suffering damage may enforce their rights to compensation without having to bring separate proceedings according to the origin of the funds provided for such compensation.

Article 8 [TIME LIMITS]

- a) The right of compensation under this Convention shall be subject to prescription or extinction if an action is not brought,
 - i) with respect to loss of life and personal injury, within thirty years from the date of the nuclear incident;

- ii) with respect to other nuclear damage, within ten years from the date of the nuclear incident.
- b) National legislation may, however, establish a period longer than that set out in subparagraph (i) or (ii) of paragraph (a) of this Article, if measures have been taken by the Contracting Party within whose territory the nuclear installation of the operator liable is situated to cover the liability of that operator in respect of any actions for compensation begun after the expiry of the period set out in subparagraph (i) or (ii) of paragraph (a) of this Article and during such longer period.
- c) If, however, a longer period is established in accordance with paragraph (b) of this Article, an action for compensation brought within such period shall in no case affect the right of compensation under this Convention of any person who has brought an action against the operator,
 - i) within a thirty year period in respect of personal injury or loss of life;
 - ii) within a ten year period in respect of all other nuclear damage.
- d) National legislation may establish a period of not less than three years for the prescription or extinction of rights of compensation under the Convention, determined from the date at which the person suffering nuclear damage had knowledge, or from the date at which that person ought reasonably to have known of both the nuclear damage and the operator liable, provided that the periods established pursuant to paragraphs (a) and (b) of this Article shall not be exceeded.
- e) Where the provisions of Article 13(f)(ii) are applicable, the right of compensation shall not, however, be subject to prescription or extinction if, within the time provided for in paragraphs (a), (b) and (d) of this Article,
 - i) prior to the determination by the Tribunal referred to in Article 17, an action has been brought before any of the courts from which the Tribunal can choose; if the Tribunal determines that the competent court is a court other than that before which such action has already been brought, it may fix a date by which such action has to be brought before the competent court so determined; or
 - ii) a request has been made to a Contracting Party concerned to initiate a determination by the Tribunal of the competent court pursuant to Article 13(f)(ii) and an action is brought subsequent to such determination within such time as may be fixed by the Tribunal.
- f) Unless national law provides to the contrary, any person suffering nuclear 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 nuclear damage after the expiry of such period, provided that final judgement has not been entered by the competent court.

Article 9 [EXONERATIONS FROM LIABILITY]

The operator shall not be liable for nuclear damage caused by a nuclear incident directly due to an act of armed conflict, hostilities, civil war, or insurrection.

Article 10 [FINANCIAL SECURITY]

- a) To cover the liability under this Convention, the operator shall be required to have and maintain insurance or other financial security of the amount established pursuant to Article 7(a) or 7(b) or Article 21(c) and of such type and terms as the competent public authority shall specify.
- b) Where the liability of the operator is not limited in amount, the Contracting Party within whose territory the nuclear installation of the liable operator is situated shall establish a limit upon the financial security of the operator liable, provided that any limit so established shall not be less than the amount referred to in Article 7(a) or 7(b).
- c) The Contracting Party within whose territory the nuclear installation of the liable operator is situated 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 insurance or other financial security is not available or sufficient to satisfy such claims, up to an amount not less than the amount referred to in Article 7(a) or Article 21(c).
- d) No insurer or other financial guarantor shall suspend or cancel the insurance or other financial security provided for in paragraph (a) or (b) 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 substances, during the period of the carriage in question.
- e) The sums provided as insurance, reinsurance, or other financial security

may be drawn upon only for compensation for nuclear damage caused by a nuclear incident.

Article 11 [APPLICABLE LAW: NATURE, FORM AND EXTENT OF COMPENSATION]

The nature, form and extent of the compensation, within the limits of this Convention, as well as the equitable distribution thereof, shall be governed by national law.

Article 12 [TRANSFER OF COMPENSATION BETWEEN CONTRACTING PARTIES]

Compensation payable under this Convention, insurance and reinsurance premiums, sums provided as insurance, reinsurance, or other financial security required pursuant to Article 10, and interest and costs referred to in Article 7(h), shall be freely transferable between the monetary areas of the Contracting Parties.

Article 13 [JURISDICTION, RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS]

- a) Except as otherwise provided in this Article, jurisdiction over actions under Articles 3, 4 and 6(a) shall lie only with the courts of the Contracting Party in whose territory the nuclear incident occurred.
- b) Where a nuclear incident occurs within the area of the exclusive economic zone of a Contracting Party or, if such a zone has not been established, in an area not exceeding the limits of an exclusive economic zone were one to be established, jurisdiction over actions concerning nuclear damage from that nuclear incident shall, for the purposes of this Convention, lie only with the courts of that Party, provided that the Contracting Party concerned has notified the Secretary-General of the Organisation of such area

prior to the nuclear incident. Nothing in this paragraph shall be interpreted as permitting the exercise of jurisdiction or the delimitation of a maritime zone in a manner which is contrary to the international law of the sea.

- c) Where a nuclear incident occurs outside the territory of the Contracting Parties, or where it occurs within an area in respect of which no notification has been given pursuant to paragraph (b) of this Article, or where the place of the nuclear incident cannot be determined with certainty, jurisdiction over such actions shall lie with the courts of the Contracting Party in whose territory the nuclear installation of the operator liable is situated.
- d) Where a nuclear incident occurs in an area in respect of which the circumstances of Article 17(d) apply, jurisdiction shall lie with the courts determined, at the request of a Contracting Party concerned, by the Tribunal referred to in Article 17 as being the courts of that Contracting Party which is most closely related to and affected by the consequences of the incident.
- e) The exercise of jurisdiction under this Article as well as the notification of an area made pursuant to paragraph (b) of this Article shall not create any right or obligation or set a precedent with respect to the delimitation of maritime areas between States with opposite or adjacent coasts.
- f) Where jurisdiction would lie with the courts of more than one Contracting Party by virtue of paragraph (a), (b) or (c) of this Article, jurisdiction shall lie,
 - i) if the nuclear incident occurred partly outside the territory of any Contracting Party and partly in the territory of a single Contracting

Party, with the courts of that Contracting Party; and

- ii) in any other case, with the courts determined, at the request of a Contracting Party concerned, by the Tribunal referred to in Article 17 as being the courts of that Contracting Party which is most closely related to and affected by the consequences of the incident.
- g) The Contracting Party whose courts have jurisdiction shall ensure that in relation to actions for compensation of nuclear damage:
 - i) any State may bring an action on behalf of persons who have suffered nuclear damage, who are nationals of that State or have their domicile or residence in its territory, and who have consented thereto; and
 - ii) any person may bring an action to enforce rights under this Convention acquired by subrogation or assignment.
- h) The Contracting Party whose courts have jurisdiction under this Convention shall ensure that only one of its courts shall be competent to rule on compensation for nuclear damage arising from any one nuclear incident, the criteria for such selection being determined by the national legislation of such Contracting Party.
- i) Judgements entered by the competent court under this Article after trial, or by default, shall, when they have become enforceable under the law applied by that court, become enforceable in the territory of any of the other Contracting Parties as soon as the formalities required by the Contracting Party concerned have been

complied with. The merits of the case shall not be the subject of further proceedings. The foregoing provisions shall not apply to interim judgements.

- j) If an action is brought against a Contracting Party under this Convention, such Contracting Party may not, except in respect of measures of execution, invoke any jurisdictional immunities before the court competent in accordance with this Article.

Article 14 [NON-DISCRIMINATION]

- a) This Convention shall be applied without any discrimination based upon nationality, domicile, or residence.
- b) "National law" and "national legislation" mean the law or the national legislation of the court having jurisdiction under this Convention over claims arising out of a nuclear incident, excluding the rules on conflict of laws relating to such claims. That law or legislation shall apply to all matters both substantive and procedural not specifically governed by this Convention.
- c) That law and legislation shall be applied without any discrimination based upon nationality, domicile, or residence.

Article 15 [ADDITIONAL STATE COMPENSATION]

- a) Any Contracting Party may take such measures as it deems necessary to provide for an increase in the amount of compensation specified in this Convention.
- b) In so far as compensation for nuclear damage is in excess of the 700 million euro referred to in Article 7(a), any such measure in whatever form may be

applied under conditions which may derogate from the provisions of this Convention.

Article 16 [OECD/NEA STEERING COMMITTEE DECISIONS]

Decisions taken by the Steering Committee under Articles 1(a)(ii), 1(a)(iii) and 1(b) shall be adopted by mutual agreement of the members representing the Contracting Parties.

Article 16bis [PUBLIC INTERNATIONAL LAW]

This Convention shall not affect the rights and obligations of a Contracting Party under the general rules of public international law.

Article 17 [DISPUTE SETTLEMENT]

- a) In the event of a dispute arising between two or more Contracting Parties concerning the interpretation or application of this Convention, the parties to the dispute shall consult with a view to settling the dispute by negotiation or other amicable means.
- b) Where a dispute referred to in paragraph (a) is not settled within six months from the date upon which such dispute is acknowledged to exist by any party thereto, the Contracting Parties shall meet in order to assist the parties to the dispute to reach a friendly settlement.
- c) Where no resolution to the dispute has been reached within three months of the meeting referred to in paragraph (b), the dispute shall, upon the request of any party thereto, be submitted to the European Nuclear Energy Tribunal established by the Convention of 20 December 1957 on the Establishment of a Security Control in the Field of Nuclear Energy.

- d) Disputes concerning the delimitation of maritime boundaries are outside the scope of this Convention.

Article 18 [RESERVATIONS]

- a) Reservations to one or more of the provisions of this Convention may be made at any time prior to ratification, acceptance or approval of, or accession to, this Convention or prior to the time of notification under Article 23 in respect of any territory or territories mentioned in the notification, and shall be admissible only if the terms of these reservations have been expressly accepted by the Signatories.
- b) Such acceptance shall not be required from a Signatory which has not itself ratified, accepted or approved this Convention within a period of twelve months after the date of notification to it of such reservation by the Secretary-General of the Organisation in accordance with Article 24.
- c) Any reservation admitted in accordance with this Article may be withdrawn at any time by notification addressed to the Secretary-General of the Organisation.

Article 19 [RATIFICATION, ACCEPTANCE OR APPROVAL]

- a) This Convention shall be subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the Organisation.
- b) This Convention shall come into force upon the deposit of instruments of ratification, acceptance or approval by not less than five of the Signatories. For each Signatory ratifying, accepting or approving thereafter, this Convention shall come into force upon the deposit of its instrument of ratification, acceptance or approval.

Article 20 [AMENDMENTS]

Amendments to this Convention shall be adopted by mutual agreement of all the Contracting Parties. They shall come into force when ratified, accepted or approved by two-thirds of the Contracting Parties. For each Contracting Party ratifying, accepting or approving thereafter, they shall come into force at the date of such ratification, acceptance or approval.

Article 21 [ACCESSION]

- a) The Government of any Member or Associate country of the Organisation which is not a Signatory to this Convention may accede thereto by notification addressed to the Secretary-General of the Organisation.
- b) The Government of any other country which is not a Signatory to this Convention may accede thereto by notification addressed to the Secretary-General of the Organisation and with the unanimous assent of the Contracting Parties. Such accession shall take effect from the date of such assent.
- c) Notwithstanding Article 7(a), where a Government which is not a Signatory to this Convention accedes to this Convention after 1 January 1999, it may provide under its legislation that the liability of an operator in respect of nuclear damage caused by any one nuclear incident may be limited, for a maximum of five years from the date of the adoption of the Protocol of ... 12 February 2004 to amend this Convention, to a transitional amount of not less than 350 million euro in respect of a nuclear incident occurring within that period.

Article 22 [CONTINUING IN FORCE, CONTRACTING PARTIES' CONSULTATIONS AND REVISION CONFERENCE]

- a) This Convention shall remain in effect for a period of ten years as from the date of its

coming into force. Any Contracting Party may, by giving twelve months' notice to the Secretary-General of the Organisation, terminate the application of this Convention to itself at the end of the period of ten years.

- b) This Convention shall, after the period of ten years, remain in force for a period of five years for such Contracting Parties as have not terminated its application in accordance with paragraph (a) of this Article, and thereafter for successive periods of five years for such Contracting Parties as have not terminated its application at the end of one of such periods of five years by giving twelve months' notice to that effect to the Secretary-General of the Organisation.
- c) The Contracting Parties shall consult each other at the expiry of each five year period following the date upon which this Convention comes into force, upon all problems of common interest raised by the application of this Convention, and in particular, to consider whether increases in the liability and financial security amounts under this Convention are desirable.
- d) A conference shall be convened by the Secretary-General of the Organisation in order to consider revisions to this Convention after a period of five years as from the date of its coming into force or, at any other time, at the request of a Contracting Party, within six months from the date of such request.

Article 23 **[APPLICATION TO METROPOLITAN TERRITORIES]**

- a) This Convention shall apply to the metropolitan territories of the Contracting Parties.
- b) Any Signatory or Contracting Party may, at the time of signature, ratification, acceptance or approval of, or accession to, this

Convention or at any later time, notify the Secretary-General of the Organisation 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 (a) 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 Secretary-General of the Organisation.

- c) 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.

Article 24 **[NOTIFICATION BY THE OECD SECRETARY GENERAL]**

The Secretary-General of the Organisation shall give notice to all Signatories and acceding Governments of the receipt of any instrument of ratification, acceptance, approval, accession or withdrawal, of any notification under Articles 13(b) and 23, of decisions of the Steering Committee under Article 1(a)(ii), 1(a)(iii) and 1(b), of the date on which this Convention comes into force, of the text of any amendment thereto and the date on which such amendment comes into force, and of any reservation made in accordance with Article 18.

ANNEX [RESERVATIONS (SUBMITTED UPON SIGNATURE)]

The following reservations were accepted either at the time of signature of the Convention or at the time of signature of the Additional Protocol:

1. Article 6(a) and (c)(i):

Reservation by the Government of the Federal Republic of Germany, the Government of the Republic of Austria and the Government of the Hellenic Republic.

Reservation of the right to provide, by national law, that persons other than the operator may continue to be liable for damage caused by a nuclear incident on condition that these persons are fully covered in respect of their liability, including defence against unjustified actions, by insurance or other financial security obtained by the operator or out of State funds.

2. Article 6(b) and (d):

Reservation by the Government of the Republic of Austria, the Government of the Hellenic Republic, the Government of the Kingdom of Norway, the Government of the Kingdom of Sweden and the Government of the Republic of Finland.

Reservation of the right to consider their national legislation which includes provisions equivalent to those included in the international agreements referred to in Article 6(b) as being international agreements within the meaning of Articles 6(b) and (d).

3. Article 8(a):

Reservation by the Government of the Federal Republic of Germany and the Government of the Republic of Austria.

Reservation of the right to establish, in respect of nuclear incidents occurring in the Federal Republic of Germany and in the Republic of Austria respectively, a period longer than ten years if measures have been taken to cover the liability of the operator in respect of any actions for compensation begun after the expiry of the period of ten years and during such longer period.

4. Article 9:

Reservation by the Government of the Federal Republic of Germany and the Government of the Republic of Austria.

Reservation of the right to provide, in respect of nuclear incidents occurring in the Federal Republic of Germany and in the Republic of Austria respectively, that the operator shall be liable for damage caused by a nuclear incident directly due to an act of armed conflict, hostilities, civil war, insurrection or a grave natural disaster of an exceptional character.

5. Article 19:

Reservation by the Government of the Federal Republic of Germany, the Government of the Republic of Austria, and the Government of the Hellenic Republic.

Reservation of the right to consider ratification of this 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 this Convention.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, duly empowered, have signed this Convention.

DONE in Paris, this 29 day of July 1960, in the English, French, German, Spanish, Italian and Dutch languages in a single copy which shall remain deposited with the Secretary-General of the Organisation for Economic Co-operation and

Development by whom certified copies will be communicated to all Signatories.

The Decisions, Recommendations and Interpretations relating to the application of the Paris Convention are set forth in a brochure published by the OECD Nuclear Energy Agency in 1990.

2004 PARIS PROTOCOL[♦]

The 2004 Protocol to Amend the Convention on Third Party Liability in the Field of Nuclear Energy of 29 July 1960, as amended by the Additional Protocol of 28 January 1964 and the Protocol of 16 November 1982.

The Protocol was adopted on 12 February 2004 and has not yet entered into force.

THE GOVERNMENTS of the Federal Republic of Germany, the Kingdom of Belgium, the Kingdom of Denmark, the Kingdom of Spain, the Republic of Finland, the French Republic, the Hellenic Republic, the Italian Republic, the Kingdom of Norway, the Kingdom of the Netherlands, the Portuguese Republic, the United Kingdom of Great Britain and Northern Ireland, the Republic of Slovenia, the Kingdom of Sweden, the Swiss Confederation and the Republic of Turkey;

CONSIDERING that it is desirable to amend the Convention on Third Party Liability in the Field of Nuclear Energy, concluded at Paris on 29 July 1960 within the framework of the Organisation for European Economic Co-operation, now the Organisation for Economic Co-operation and Development, as amended by the Additional Protocol signed at Paris on 28 January 1964 and by the Protocol signed at Paris on 16 November 1982;

HAVE AGREED as follows:

I. [1960 PARIS CONVENTION]

The Convention on Third Party Liability in the Field of Nuclear Energy of 29 July 1960, as amended by the Additional Protocol of 28 January 1964 and by the Protocol of 16 November 1982, shall be amended as follows:

[Article 1 - Definitions]

- A. Sub-paragraphs (i) and (ii) of paragraph (a) of Article 1 shall be replaced by the following text:
- i) "A nuclear incident" means any occurrence or series of occurrences having the same origin which causes nuclear damage.
 - ii) "Nuclear installation" means reactors other than those comprised in any means of transport; factories for the manufacture or processing of nuclear substances; factories for the separation of isotopes of nuclear fuel; factories for the reprocessing of irradiated nuclear fuel; facilities for the storage of nuclear substances other than storage incidental to the carriage of such substances; installations for the disposal of nuclear substances; any such reactor, factory, facility or installation that is in the course of being decommissioned; and such other installations in which there are nuclear fuel or radioactive products or waste as the Steering Committee for Nuclear Energy of

[♦] **NOTE:** To assist the reader, headings in square brackets have been included for the Articles in this instrument. These headings are not authoritative but are rather merely indicative of the substance.

the Organisation (hereinafter referred to as the “Steering Committee”) shall from time to time determine; any Contracting Party may determine that two or more nuclear installations of one operator which are located on the same site shall, together with any other premises on that site where nuclear fuel or radioactive products or waste are held, be treated as a single nuclear installation.

- B. Four new sub-paragraphs (vii), (viii), (ix) and (x), shall be added to paragraph (a) of Article 1 as follows:

vii) “Nuclear damage” means,

1. loss of life or personal injury;
2. loss of or damage to property; and each of the following to the extent determined by the law of the competent court,
3. economic loss arising from loss or damage referred to in sub-paragraph 1 or 2 above insofar as not included in those sub-paragraphs, if incurred by a person entitled to claim in respect of such loss or damage;
4. the costs of measures of reinstatement of impaired environment, unless such impairment is insignificant, if such measures are actually taken or to be taken, and insofar as not included in sub-paragraph 2 above;
5. loss of income deriving from a direct economic interest in any use or enjoyment of the

environment, incurred as a result of a significant impairment of that environment, and insofar as not included in sub-paragraph 2 above;

6. the costs of preventive measures, and further loss or damage caused by such measures, in the case of sub-paragraphs 1 to 5 above, to the extent that the loss or damage arises out of or results from ionising radiation emitted by any source of radiation inside a nuclear installation, or emitted from nuclear fuel or radioactive products or waste in, or of nuclear substances coming from, originating in, or sent to, a nuclear installation, whether so arising from the radioactive properties of such matter, or from a combination of radioactive properties with toxic, explosive or other hazardous properties of such matter.

viii) “Measures of reinstatement” means any reasonable measures which have been approved by the competent authorities of the State where the measures were taken, and which aim to reinstate or restore damaged or destroyed components of the environment, or to introduce, where reasonable, the equivalent of these components into the environment. The legislation of the State where the nuclear damage is suffered shall determine who is entitled to take such measures.

- ix) "Preventive measures" means any reasonable measures taken by any person after a nuclear incident or an event creating a grave and imminent threat of nuclear damage has occurred, to prevent or minimise nuclear damage referred to in sub-paragraphs (a)(vii) 1 to 5, subject to any approval of the competent authorities required by the law of the State where the measures were taken.
- x) "Reasonable measures" means measures which are found under the law of the competent court to be appropriate and proportionate, having regard to all the circumstances, for example:
1. the nature and extent of the nuclear damage incurred or, in the case of preventive measures, the nature and extent of the risk of such damage;
 2. the extent to which, at the time they are taken, such measures are likely to be effective; and
 3. relevant scientific and technical expertise.
- [Article 2 – Geographical Scope]
- C. Article 2 shall be replaced by the following text:
- a) This Convention shall apply to nuclear damage suffered in the territory of, or in any maritime zones established in accordance with international law of, or, except in the territory of a non-Contracting State not mentioned under (ii) to (iv) of this paragraph, on board a ship or aircraft registered by,
- i) a Contracting Party;
 - ii) a non-Contracting State which, at the time of the nuclear incident, is a Contracting Party to the Vienna Convention on Civil Liability for Nuclear Damage of 21 May 1963 and any amendment thereto which is in force for that Party, and to the Joint Protocol relating to the Application of the Vienna Convention and the Paris Convention of 21 September 1988, provided however, that the Contracting Party to the Paris Convention in whose territory the installation of the operator liable is situated is a Contracting Party to that Joint Protocol;
 - iii) a non-Contracting State which, at the time of the nuclear incident, has no nuclear installation in its territory or in any maritime zones established by it in accordance with international law; or
 - iv) any other non-Contracting State which, at the time of the nuclear incident, has in force nuclear liability legislation which affords equivalent reciprocal benefits, and which is based on principles identical to those of this Convention, including, inter alia, liability without fault of the operator liable, exclusive liability of the operator or a

provision to the same effect, exclusive jurisdiction of the competent court, equal treatment of all victims of a nuclear incident, recognition and enforcement of judgements, free transfer of compensation, interests and costs.

- b) Nothing in this Article shall prevent a Contracting Party in whose territory the nuclear installation of the operator liable is situated from providing for a broader scope of application of this Convention under its legislation.

[Article 3 – Nuclear Installations]

- D. Article 3 shall be replaced by the following text:

- a) The operator of a nuclear installation shall be liable, in accordance with this Convention, for nuclear damage other than:
- i) damage to the nuclear installation itself and any other nuclear installation, including a nuclear installation under construction, on the site where that installation is located; and
 - ii) damage to any property on that same site which is used or to be used in connection with any such installation,

upon proof that such damage was caused by a nuclear incident in such installation or involving nuclear substances coming from such installation, except as otherwise provided for in Article 4.

- b) Where nuclear damage is caused jointly by a nuclear incident and by an incident other than a nuclear incident, that part of the damage which is caused by such other incident, shall, to the extent that it is not reasonably separable from the nuclear damage caused by the nuclear incident, be considered to be nuclear damage caused by the nuclear incident. Where nuclear damage is caused jointly by a nuclear incident and by an emission of ionising radiation not covered by this Convention, nothing in this Convention shall limit or otherwise affect the liability of any person in connection with that emission of ionizing radiation.

[Article 4 – Transport Liability]

- E. Paragraphs (c) and (d) of Article 4 shall be renumbered as paragraphs (d) and (e) respectively and a new paragraph (c) shall be added to read as follows:

- c) The transfer of liability to the operator of another nuclear installation pursuant to paragraphs (a)(i) and (ii) and (b)(i) and (ii) of this Article may only take place if that operator has a direct economic interest in the nuclear substances that are in the course of carriage.

[Article 5 – Joint Liability]

- F. Paragraphs (b) and (d) of Article 5 shall be replaced by the following text:

- b) Where, however, nuclear damage is caused by a nuclear incident occurring in a nuclear installation and involving only nuclear substances stored therein incidentally to their carriage, the operator of the nuclear installation shall not be liable where

another operator or person is liable pursuant to Article 4.

- d) If nuclear damage gives rise to liability of more than one operator in accordance with this Convention, the liability of these operators shall be joint and several, provided that where such liability arises as a result of nuclear damage caused by a nuclear incident involving nuclear substances in the course of carriage 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, 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 7. In no case shall any one operator be required, in respect of a nuclear incident, to pay more than the amount established with respect to him pursuant to Article 7.

[Article 6 – Liability of Other Persons Including Rights of Recourse]

G. Paragraphs (c), (e) and (g) of Article 6 shall be replaced by the following text:

- c) i) Nothing in this Convention shall affect the liability:
1. of any individual for nuclear damage caused by a nuclear incident for which the operator, by virtue of Article 3(a) or Article 9, is not liable under this Convention and which results from an act or omission of that individual done with intent to cause damage;

2. of a person duly authorised to operate a reactor comprised in a means of transport for nuclear damage caused by a nuclear incident when an operator is not liable for such damage pursuant to Article 4(a)(iii) or (b)(iii).

- iii) The operator shall incur no liability outside this Convention for nuclear damage caused by a nuclear incident.

- e) 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 national law so provides, relieve the operator wholly or partly from his obligation to pay compensation in respect of the damage suffered by such person.
- g) If the operator has a right of recourse to any extent pursuant to paragraph (f) of this Article against any person, that person shall not, to that extent, have a right against the operator under paragraph (d) of this Article.

[Article 7 – Liability Amounts]

H. Article 7 shall be replaced by the following text:

- a) Each Contracting Party shall provide under its legislation that the liability of the operator in respect of nuclear damage caused by any one nuclear incident shall not be less than 700 million euro.

b) Notwithstanding paragraph (a) of this Article and Article 21(c), any Contracting Party may,

i) having regard to the nature of the nuclear installation involved and to the likely consequences of a nuclear incident originating therefrom, establish a lower amount of liability for that installation, provided that in no event shall any amount so established be less than 70 million euro; and

ii) having regard to the nature of the nuclear substances involved and to the likely consequences of a nuclear incident originating therefrom, establish a lower amount of liability for the carriage of nuclear substances, provided that in no event shall any amount so established be less than 80 million euro.

c) Compensation for nuclear damage caused to the means of transport on which the nuclear substances involved were at the time of the nuclear incident shall not have the effect of reducing the liability of the operator in respect of other nuclear damage to an amount less than either 80 million euro, or any higher amount established by the legislation of a Contracting Party.

d) The amount of liability of operators of nuclear installations in the territory of a Contracting Party established in accordance with paragraph (a) or (b) of this Article or with Article 21(c), as well as the provisions of any legislation of a Contracting Party pursuant to paragraph (c) of this

Article shall apply to the liability of such operators wherever the nuclear incident occurs.

e) A Contracting Party may subject the transit of nuclear substances through its territory to the condition that the maximum amount of liability of the foreign operator concerned be increased, if it considers that such amount does not adequately cover the risks of a nuclear incident in the course of the transit, provided that the maximum amount thus increased shall not exceed the maximum amount of liability of operators of nuclear installations situated in its territory.

f) The provisions of paragraph (e) 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.

g) In cases where the Convention is applicable to a non-Contracting State in accordance with Article 2 (a)(iv), any Contracting Party may establish in respect of nuclear damage amounts of liability lower than the minimum amounts established under this Article or under Article 21(c) to the extent that such State does not

afford reciprocal benefits of an equivalent amount.

- h) Any interest and costs awarded by a court in actions for compensation under this Convention shall not be considered to be compensation for the purposes of this Convention and shall be payable by the operator in addition to any sum for which he is liable in accordance with this Article.
- i) The sums mentioned in this Article may be converted into national currency in round figures.
- j) Each Contracting Party shall ensure that persons suffering damage may enforce their rights to compensation without having to bring separate proceedings according to the origin of the funds provided for such compensation.

[Article 8 – Time Limits]

I. Article 8 shall be replaced by the following text:

- a) The right of compensation under this Convention shall be subject to prescription or extinction if an action is not brought,
 - i) with respect to loss of life and personal injury, within thirty years from the date of the nuclear incident;
 - ii) with respect to other nuclear damage, within ten years from the date of the nuclear incident.
- b) National legislation may, however, establish a period longer than that set out in sub-paragraph (i) or (ii) of paragraph (a) of this Article, if measures have been taken by the

Contracting Party within whose territory the nuclear installation of the operator liable is situated to cover the liability of that operator in respect of any actions for compensation begun after the expiry of the period set out in sub-paragraph (i) or (ii) of paragraph (a) of this Article and during such longer period.

- c) If, however, a longer period is established in accordance with paragraph (b) of this Article, an action for compensation brought within such period shall in no case affect the right of compensation under this Convention of any person who has brought an action against the operator,
 - i) within a thirty year period in respect of personal injury or loss of life;
 - ii) within a ten year period in respect of all other nuclear damage.
- d) National legislation may establish a period of not less than three years for the prescription or extinction of rights of compensation under the Convention, determined from the date at which the person suffering nuclear damage had knowledge, or from the date at which that person ought reasonably to have known of both the nuclear damage and the operator liable, provided that the periods established pursuant to paragraphs (a) and (b) of this Article shall not be exceeded.
- e) Where the provisions of Article 13(f) (ii) are applicable, the right of compensation shall not, however, be subject to prescription or extinction if,

within the time provided for in paragraphs (a), (b) and (d) of this Article,

- i) prior to the determination by the Tribunal referred to in Article 17, an action has been brought before any of the courts from which the Tribunal can choose; if the Tribunal determines that the competent court is a court other than that before which such action has already been brought, it may fix a date by which such action has to be brought before the competent court so determined; or
- ii) a request has been made to a Contracting Party concerned to initiate a determination by the Tribunal of the competent court pursuant to Article 13(f) (ii) and an action is brought subsequent to such determination within such time as may be fixed by the Tribunal.
- f) Unless national law provides to the contrary, any person suffering nuclear 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 nuclear damage after the expiry of such period, provided that final judgement has not been entered by the competent court.

[Article 9 – Exonerations from Liability]

- J. Article 9 shall be replaced by the following text:

The operator shall not be liable for nuclear damage caused by a nuclear

incident directly due to an act of armed conflict, hostilities, civil war, or insurrection.

[Article 10 – Financial Security]

- K. Article 10 shall be replaced by the following text:

- a) To cover the liability under this Convention, the operator shall be required to have and maintain insurance or other financial security of the amount established pursuant to Article 7(a) or 7(b) or Article 21(c) and of such type and terms as the competent public authority shall specify.
- b) Where the liability of the operator is not limited in amount, the Contracting Party within whose territory the nuclear installation of the liable operator is situated shall establish a limit upon the financial security of the operator liable, provided that any limit so established shall not be less than the amount referred to in Article 7(a) or 7(b).
- c) The Contracting Party within whose territory the nuclear installation of the liable operator is situated 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 insurance or other financial security is not available or sufficient to satisfy such claims, up to an amount not less than the amount referred to in Article 7(a) or Article 21(c).
- d) No insurer or other financial guarantor shall suspend or cancel the insurance or other financial

security provided for in paragraph (a) or (b) 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 substances, during the period of the carriage in question.

- e) The sums provided as insurance, reinsurance, or other financial security may be drawn upon only for compensation for nuclear damage caused by a nuclear incident.

[Article 12 – Transfer of Compensation Between Contracting Parties]

- L. Article 12 shall be replaced by the following text:

Compensation payable under this Convention, insurance and reinsurance premiums, sums provided as insurance, reinsurance, or other financial security required pursuant to Article 10, and interest and costs referred to in Article 7(h), shall be freely transferable between the monetary areas of the Contracting Parties.

[Article 13 – Jurisdiction, Recognition and Enforcement of Foreign Judgments]

- M. Article 13 shall be replaced by the following text:

- a) Except as otherwise provided in this Article, jurisdiction over actions under Articles 3, 4 and 6(a) shall lie only with the courts of the Contracting Party in whose territory the nuclear incident occurred.
- b) Where a nuclear incident occurs within the area of the exclusive economic zone of a Contracting

Party or, if such a zone has not been established, in an area not exceeding the limits of an exclusive economic zone were one to be established, jurisdiction over actions concerning nuclear damage from that nuclear incident shall, for the purposes of this Convention, lie only with the courts of that Party, provided that the Contracting Party concerned has notified the Secretary-General of the Organisation of such area prior to the nuclear incident. Nothing in this paragraph shall be interpreted as permitting the exercise of jurisdiction or the delimitation of a maritime zone in a manner which is contrary to the international law of the sea.

- c) Where a nuclear incident occurs outside the territory of the Contracting Parties, or where it occurs within an area in respect of which no notification has been given pursuant to paragraph (b) of this Article, or where the place of the nuclear incident cannot be determined with certainty, jurisdiction over such actions shall lie with the courts of the Contracting Party in whose territory the nuclear installation of the operator liable is situated.
- d) Where a nuclear incident occurs in an area in respect of which the circumstances of Article 17(d) apply, jurisdiction shall lie with the courts determined, at the request of a Contracting Party concerned, by the Tribunal referred to in Article 17 as being the courts of that Contracting Party which is most closely related to and affected by the consequences of the incident.

- e) The exercise of jurisdiction under this Article as well as the notification of an area made pursuant to paragraph (b) of this Article shall not create any right or obligation or set a precedent with respect to the delimitation of maritime areas between States with opposite or adjacent coasts.
- f) Where jurisdiction would lie with the courts of more than one Contracting Party by virtue of paragraph (a), (b) or (c) of this Article, jurisdiction shall lie,
 - i) if the nuclear incident occurred partly outside the territory of any Contracting Party and partly in the territory of a single Contracting Party, with the courts of that Contracting Party; and
 - ii) in any other case, with the courts determined, at the request of a Contracting Party concerned, by the Tribunal referred to in Article 17 as being the courts of that Contracting Party which is most closely related to and affected by the consequences of the incident.
- g) The Contracting Party whose courts have jurisdiction shall ensure that in relation to actions for compensation of nuclear damage:
 - i) any State may bring an action on behalf of persons who have suffered nuclear damage, who are nationals of that State or have their domicile or residence in its territory, and who have consented thereto; and
 - ii) any person may bring an action to enforce rights under this Convention acquired by subrogation or assignment.
- h) The Contracting Party whose courts have jurisdiction under this Convention shall ensure that only one of its courts shall be competent to rule on compensation for nuclear damage arising from any one nuclear incident, the criteria for such selection being determined by the national legislation of such Contracting Party.
- i) Judgements entered by the competent court under this Article after trial, or by default, shall, when they have become enforceable under the law applied by that court, become enforceable in the territory of any of the other Contracting Parties as soon as the formalities required by the Contracting Party concerned have been complied with. The merits of the case shall not be the subject of further proceedings. The foregoing provisions shall not apply to interim judgements.
- j) If an action is brought against a Contracting Party under this Convention, such Contracting Party may not, except in respect of measures of execution, invoke any jurisdictional immunities before the court competent in accordance with this Article.

[Article 14 – Non-Discrimination]

N. Paragraph (b) of Article 14 shall be replaced by the following text:

- b) “National law” and “national legislation” mean the law or the

national legislation of the court having jurisdiction under this Convention over claims arising out of a nuclear incident, excluding the rules on conflict of laws relating to such claims. That law or legislation shall apply to all matters both substantive and procedural not specifically governed by this Convention.

[Article 15 – Additional State Compensation]

O. Paragraph (b) of Article 15 shall be replaced by the following text:

- b) In so far as compensation for nuclear damage is in excess of the 700 million euro referred to in Article 7(a), any such measure in whatever form may be applied under conditions which may derogate from the provisions of this Convention.

[Article 16bis – Public International Law]

P. A new Article 16bis shall be added after Article 16 as follows:

Article 16bis

This Convention shall not affect the rights and obligations of a Contracting Party under the general rules of public international law.

[Article 17 – Dispute Settlement]

Q. Article 17 shall be replaced by the following text:

- a) In the event of a dispute arising between two or more Contracting Parties concerning the interpretation or application of this Convention, the parties to the dispute shall consult with a view to settling the dispute by negotiation or other amicable means.

- b) Where a dispute referred to in paragraph (a) is not settled within six months from the date upon which such dispute is acknowledged to exist by any party thereto, the Contracting Parties shall meet in order to assist the parties to the dispute to reach a friendly settlement.

- c) Where no resolution to the dispute has been reached within three months of the meeting referred to in paragraph (b), the dispute shall, upon the request of any party thereto, be submitted to the European Nuclear Energy Tribunal established by the Convention of 20 December 1957 on the Establishment of a Security Control in the Field of Nuclear Energy.

- d) Disputes concerning the delimitation of maritime boundaries are outside the scope of this Convention.

[Article 18 - Reservations]

R. Article 18 shall be replaced by the following text:

- a) Reservations to one or more of the provisions of this Convention may be made at any time prior to ratification, acceptance or approval of, or accession to, this Convention or prior to the time of notification under Article 23 in respect of any territory or territories mentioned in the notification, and shall be admissible only if the terms of these reservations have been expressly accepted by the Signatories.
- b) Such acceptance shall not be required from a Signatory which has not itself ratified, accepted or

approved this Convention within a period of twelve months after the date of notification to it of such reservation by the Secretary-General of the Organisation in accordance with Article 24.

- c) Any reservation admitted in accordance with this Article may be withdrawn at any time by notification addressed to the Secretary-General of the Organisation.

[Article 19 – Ratification, Acceptance or Approval]

S. Article 19 shall be replaced by the following text:

- a) This Convention shall be subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the Organisation.
- b) This Convention shall come into force upon the deposit of instruments of ratification, acceptance or approval by not less than five of the Signatories. For each Signatory ratifying, accepting or approving thereafter, this Convention shall come into force upon the deposit of its instrument of ratification, acceptance or approval.

[Article 20 - Amendments]

T. Article 20 shall be replaced by the following text:

Amendments to this Convention shall be adopted by mutual agreement of all the Contracting Parties. They shall come into force when ratified, accepted or approved by two-thirds of the Contracting Parties. For each Contracting Party

ratifying, accepting or approving thereafter, they shall come into force at the date of such ratification, acceptance or approval.

[Article 21 - Accession]

U. A new paragraph (c) shall be added to Article 21 to read as follows:

- c) Notwithstanding Article 7(a), where a Government which is not a Signatory to this Convention accedes to this Convention after 1 January 1999, it may provide under its legislation that the liability of an operator in respect of nuclear damage caused by any one nuclear incident may be limited, for a maximum period of five years from the date of the adoption of the Protocol of 12 February 2004 to amend this Convention, to a transitional amount of not less than 350 million euro in respect of a nuclear incident occurring within that period.

[Article 22 – Contracting Parties’ Consultations]

V. Paragraph (c) of Article 22 shall be renumbered as paragraph (d) and a new paragraph (c) shall be added to read as follows:

- c) The Contracting Parties shall consult each other at the expiry of each five year period following the date upon which this Convention comes into force, upon all problems of common interest raised by the application of this Convention, and in particular, to consider whether increases in the liability and financial security amounts under this Convention are desirable.

[Article 23 – Application to Metropolitan Territories]

W. Paragraph (b) of Article 23 shall be replaced by the following text:

- b) Any Signatory or Contracting Party may, at the time of signature, ratification, acceptance or approval of, or accession to, this Convention or at any later time, notify the Secretary-General of the Organisation 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 (a) 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 Secretary-General of the Organisation.

[Article 24 – Notifications by the OECD Secretary General]

X. Article 24 shall be replaced with the following text:

The Secretary-General of the Organisation shall give notice to all Signatories and acceding Governments of the receipt of any instrument of ratification, acceptance, approval, accession or withdrawal, of any notification under Articles 13(b) and 23, of decisions of the Steering Committee under Article 1(a)(ii), 1(a)(iii) and 1(b), of the date on which this Convention comes into force, of the text of any amendment thereto and the date on which such amendment comes into force, and of any

reservation made in accordance with Article 18.

Y. The term “damage” appearing in the following articles shall be replaced by the term “nuclear damage”:

Article 4(a) and (b)

Article 5(a) and (c)

Article 6(a), (b), (d), (f) and (h)

Z. In the first sentence of Article 4 of the French text the word “stockage” shall be replaced by the word “entreposage”, and in this same Article the word “transportées” is replaced by the words “en cours de transport”. In paragraph (h) of Article 6 of the English text, the word “workmen’s” shall be replaced by the word “workers”.

AA. Annex II of the Convention shall be deleted.

II. [FINAL CLAUSES]

a) The provisions of this Protocol shall, as between the Parties thereto, form an integral part of the Convention on Third Party Liability in the Field of Nuclear Energy of 29 July 1960, as amended by the Additional Protocol of 28 January 1964 and by the Protocol of 16 November 1982 (hereinafter referred to as the “Convention”), which shall be known as the “Convention on Third Party Liability in the Field of Nuclear Energy of 29 July 1960, as amended by the Additional Protocol of 28 January 1964, by the Protocol of 16 November 1982 and by the Protocol of 12 February 2004”.

b) This Protocol shall be subject to ratification, acceptance or approval. An instrument of ratification, acceptance or

approval shall be deposited with the Secretary-General of the Organisation for Economic Cooperation and Development.

- c) The Signatories of this Protocol who have already ratified or acceded to the Convention express their intention to ratify, accept or approve this Protocol as soon as possible. The other Signatories of this Protocol undertake to ratify, accept or approve it at the same time as they ratify the Convention.
- d) This Protocol shall be open for accession in accordance with the provisions of Article 21 of the Convention. Accessions to the Convention will be accepted only if they are accompanied by accession to this Protocol.
- e) This Protocol shall come into force in accordance with the provisions of Article 20 of the Convention.
- f) The Secretary-General of the Organisation for Economic Co-operation and Development shall give notice to all Signatories and acceding Governments of the receipt of any instrument of ratification, acceptance, approval or accession to this Protocol.

2004 BRUSSELS SUPPLEMENTARY CONVENTION (UNOFFICIAL CONSOLIDATED TEXT)*

Unofficial Consolidated Text of the Brussels Supplementary Convention incorporating the provisions of the three Amending Protocols - the Additional Protocol of 28 January 1964, the Protocol of 16 November 1982, and the Protocol of 12 February 2004.

THE GOVERNMENTS of the Federal Republic of Germany, the Kingdom of Belgium, the Kingdom of Denmark, the Kingdom of Spain, the Republic of Finland, the French Republic, the Italian Republic, the Kingdom of Norway, the Kingdom of the Netherlands, the United Kingdom of Great Britain and Northern Ireland, the Republic of Slovenia, the Kingdom of Sweden and the Swiss Confederation;*

BEING PARTIES to the Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy, concluded within the framework of the Organisation for European Economic Co-operation, now the Organisation for Economic Co-operation and Development, and as amended by the Additional Protocol concluded at Paris on 28 January 1964, by the Protocol concluded at Paris on 16 November 1982 and by the Protocol concluded at Paris on 12 February 2004 (hereinafter referred to as the "Paris Convention");

DESIROUS of supplementing the measures provided in that Convention with a view to increasing the amount of compensation for damage which might result from the use of nuclear energy for peaceful purposes;

HAVE AGREED as follows:

Article 1 [DEFINITIONS]

The system instituted by this Convention is supplementary to that of the Paris Convention, shall be subject to the provisions of the Paris Convention, and shall be applied in accordance with the following Articles.

Article 2 [GEOGRAPHICAL SCOPE]

- a) The system of this Convention shall apply to nuclear damage for which an operator of a nuclear installation, used for peaceful purpose, situated in the territory of Contracting Party to the Convention (hereinafter referred to as a "Contracting Party"), is liable under the Paris Convention, and which is suffered:
 - i) in the territory of a Contracting Party; or
 - ii) in or above maritime areas beyond the territorial sea of a Contracting Party
 1. On board or by a ship flying the flag of a Contracting Party, or on board or by an aircraft registered in the territory of a Contracting Party, or on or by an artificial island, installation or

* **NOTE:** To assist the reader, headings in square brackets have been included for the Articles and Annex in this instrument. These headings are not authoritative but are rather merely indicative of the substance.

* The designation of the Signatories is the same as that in the Protocol of 12 February 2004. It should be noted that the Republic of Austria and the Grand Duchy of Luxembourg signed the Brussels Supplementary Convention, its Additional Protocol of 1964 and its Protocol of 1982 but have not ratified these instruments. In addition, they have not signed the Protocol of 12 February 2004. The Republic of Slovenia acceded to the Brussels Supplementary Convention, as amended by the Additional Protocol of 1964 and the Protocol of 1982, with effect as of 5 June 2003 and has signed the Protocol of 12 February 2004.

structure under the jurisdiction of a Contracting Party, or

2. by a national of a Contracting Party,

excluding damage suffered in or above the territorial sea of a State not Party to the Convention; or

- iii) in or above the exclusive economic zone of a Contracting Party or on the continental shelf of a Contracting Party in connection with the exploitation or the exploration of the natural resources of the exclusive economic zone or continental shelf,

provided that the courts of a Contracting Party have jurisdiction pursuant to the Paris Convention.

- b) Any Signatory or acceding Government may, at the time of signature or accession to the Convention or on the deposit of its instrument of ratification, acceptance or approval declare that, for the purposes of the application of paragraph (a)(ii) 2 of this Article, individuals or certain categories thereof, considered under its law as having their habitual residence in its territory are assimilated to its own nationals.
- c) In the Article, the expression “a national of a Contracting Party” shall include 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.

Article 3 [LIABILITY AMOUNTS]

- a) Under the conditions established by this Convention, the Contracting Parties undertake that compensation in respect of nuclear damage referred to in Article 2

shall be provided up to the amount of 1500 million euro per nuclear incident, subject to the application of Article 12bis.

- b) Such compensation shall be provided as follows:

- i) Up to an amount of at least 700 million euro, out of funds provided by insurance or other financial security or out of public funds provided pursuant to Article 10(c) of the Paris Convention, such amount to be established under the legislation of the Contracting Party in whose territory the nuclear installation of the operator liable is situated, and to be distributed, up to 700 million euro, in accordance with the Paris Convention;

- ii) Between the amount referred to in paragraph (b)(i) of this Article and 1200 million euro out of public funds to be made available by the Contracting Party in whose territory the nuclear installation of the operator liable is situated;

- iii) Between 1200 million euro and 1500 million euro, out of public funds to be made available by the Contracting Parties according to the formula for contributions referred to in Article 12, subject to such amount being increased in accordance with the mechanism referred to in Article 12bis.

- c) For this purpose, each Contracting Party shall either:

- i) Establish under its legislation that the liability of the operator shall not be less than the amount referred to in paragraph (a) of this Article, and provide that such liability shall be covered by all the funds referred to in paragraph (b) of this Article; or

- ii) Establish under its legislation the liability of the operator at an amount at least equal to the established pursuant to paragraph (b)(i) of this Article or Article 7(b) of the Paris Convention, and provide that, in excess of such amount and up to the amount referred to in paragraph (a) of this Article, the public funds referred to in paragraphs (b)(i), (ii), (iii) of this Article shall be made available by some means other than as cover for the liability of the operator, provided that the rules of substance and procedure laid down in this Convention are not thereby affected.
- d) The obligation of the operator to pay compensation, interest or costs out of public funds made available pursuant to paragraphs (b)(ii) and (iii) and (g) of this Article shall only be enforceable against the operator as and when such funds are in fact made available.
- e) Where a State makes use of the option provided for under Article 21 (c) of the Paris Convention, it may only become a Contracting Party to this Convention if it ensures that funds will be available to cover the difference between the amount for which the operator is liable and 700 million euro.
- f) The Contracting Parties, in carrying out this Convention, undertake not to make use of the right provided for in Article 15 (b) of the Paris Convention to apply special conditions, other than those laid down in this Convention, in respect of compensation for nuclear damage provided out of the funds referred to in paragraph (a) of this Article.
- g) The interest and costs referred to in Article 7(h) of the Paris Convention are

payable in addition to the amounts referred to in paragraph (b) of this Article, and shall be borne in so far as they awarded in respect of compensation payable out of the funds referred to in:

- (i) paragraph (b)(i) of this Article, by the operator liable;
- (ii) paragraph (b)(ii) of this Article, by the Contracting Party in whose territory the installation of the operator liable is situated to the extent of the funds made available by that Contracting Party;
- (iii) paragraph (b)(iii) of this Article, by the Contracting Parties together.
- h) The amounts mentioned in this Convention shall be converted into the national currency of the Contracting Party whose courts have jurisdiction in accordance with the value of that currency at the date of the incident, unless another date is fixed for a given incident by agreement between the Contracting Parties.

Article 4 (DELETED)¹

Article 5 [RIGHTS OF RECOURSE]

Where the operator liable has a right of recourse pursuant to Article 6(f) of the Paris Convention, the Contracting Parties to this Convention shall have the same right of recourse, to the extent that public funds have been made available pursuant to Article 3(b) and (g).

Article 6 [TIME LIMITS]

In calculating the public funds to be made available pursuant to this Convention, account shall be taken only of those rights to compensation exercised within thirty years from the date of the nuclear incident in the case of loss of life or personal injury, and ten years from the

¹ Article 4 was deleted by the Protocol of 12 February 2004.

date of the nuclear incident in the case of all other nuclear damage. Such period is, moreover, extended in the cases and under the conditions laid down in Article 8(e) of the Paris Convention. Amendments made to claims after the expiry of this period, under the conditions laid down in Article 8(f) of the Paris Convention, shall also be taken into account.

Article 7 [TIME LIMIT (PRESCRIPTION PERIOD)]

Where a Contracting Party makes use of the right provided for in Article 8(d) of the Paris Convention, the period which it establishes shall be a period of prescription of at least three years either from the date at which the person suffering damage has knowledge or from the date which he ought reasonably to have known of both the damage and the operator liable.

Article 8 [NON-DISCRIMINATION]

Any person who is entitled to benefit from the provisions of this Convention shall have the right to full compensation in accordance with national law for nuclear damage suffered, provided that where the amount of such damage exceeds or is likely to exceed 1500 million euro, a Contracting Party may establish equitable criteria for apportioning the amount of compensation that is available under this Convention. Such criteria shall be applied whatever the origin of the funds and, subject to the provisions of Article 2, without discrimination based on the nationality, domicile or residence of the person suffering the damage.

Article 9 [ALLOCATION OF FUNDS]

- a) The system of payment of public funds made available pursuant to this Convention shall be that of the Contracting Party whose courts have jurisdiction.
- b) Each Contracting Party shall ensure that persons suffering damage may enforce their rights to compensation without having to bring separate proceedings according to the

origin of the funds provided for such compensation.

- c) A Contracting Party shall be required to make available the funds referred to in Article 3(b)(iii) once the amount of compensation under this Convention reaches the total of the amounts referred to in Article 3(b)(i) and (ii), irrespective of whether funds to be provided by the operator remain available or whether the liability of the operator is not limited in amount.

Article 10 [PUBLIC FUNDS]

- a) The Contracting Party whose courts have jurisdiction shall be required to inform the other Contracting Parties of a nuclear incident and its circumstances as soon as it appears that the nuclear damage caused by such incident exceeds, or is likely to exceed the sum of the amounts provided for under Article 3(b)(i) and (ii). The Contracting Parties shall, without delay, make all the necessary arrangements to settle the procedure for their relations in this connection.
- b) Only the Contracting Party whose courts have jurisdiction shall be entitled to request the other Contracting Parties to make available the public funds required under Article 3(b)(iii) and (g) and shall have competence to disburse such funds
- c) Such Contracting Party shall, when the occasion arises, exercise the right of recourse provided for in Article 5 on behalf of the other Contracting Parties who have made available public funds pursuant to Article 3(b)(iii) and (g).
- d) Settlements effected in respect of the payment of compensation for nuclear damage out of the public funds referred to in Article 3(b)(ii) and (iii) in accordance with the conditions established by national legislation shall be recognised by the other Contracting Parties, and judgements entered by the competent courts in respect of such

compensation shall become enforceable in the territory of the other Contracting Parties in accordance with the provisions of Article 13 (i) of the Paris Convention.

Article 11
[REIMBURSEMENT OF PUBLIC FUNDS]

- a) If the courts having jurisdiction are those of a Contracting Party other than the Contracting Party in whose territory the nuclear installation of the operator liable is situated, the public funds required under Article 3 (b)(ii) and (g) shall be made available by the first-named Contracting Party. The Contracting Party in whose territory the nuclear installation of the operator liable is situated shall reimburse to the other Contracting Party the sums paid. These two Contracting Parties shall agree on the procedure for reimbursement.
- b) If more than one Contracting Party is required to make available public funds pursuant to Article 3 (b)(ii) and (g), the provisions of paragraph (a) of this Article shall apply *mutatis mutandis*. Reimbursement shall be based on the extent to which each operator has contributed to the nuclear incident.
- c) In adopting all legislative, regulatory or administrative provisions, after the nuclear incident has occurred, concerning the nature, form and extent of the compensation, the procedure for making available the public funds required under Article 3 (b)(ii) and (g) and, if necessary, the criteria for the apportionment of such funds, the Contracting Party whose courts have jurisdiction shall consult the Contracting Party in whose territory the nuclear installation of the operator liable is situated. It shall further take all measures necessary to enable the latter to intervene in proceedings and to

participate in any settlement concerning compensation.

Article 12 [ALLOCATION OF FUNDS]

- a) The formula for contributions according to which the Contracting Parties shall make available the public funds referred to in Article 3(b)(iii) shall be determined as follows:
 - i) as to 35 %, on basis of the ratio between the gross domestic product at current prices of each Contracting Party and the total of the gross domestic products at current prices of all Contracting Parties as shown by the official statistics published by the Organisation for Economic Co-operation and Development for the year preceding the year in which the nuclear incident occurs;
 - ii) as to 65%, on the basis of the ratio between the thermal power of the reactors situated in the territory of each Contracting Party and the total thermal power of the reactors situated in the territories of all the Contracting Parties. This calculation shall be made on the basis of the thermal power of the reactors shown at the date of the nuclear incident in the lists referred to in Article 13, provided that for the purposes of this calculation, a reactor shall only be taken into consideration as from the date when it first reaches criticality and a reactor shall be excluded from the reactor core and has been stored safely in accordance with approved procedures.

- b) For the purposes of this Convention, "thermal power" means:
- i) before the issue of a final operating licence, the planned thermal power;
 - ii) after the issue of such licence, the thermal power authorised by the competent national authorities.

Article 12bis [ALLOCATION OF FUNDS]

- a) In case of accession to the Convention, the public funds mentioned in Article 3(b)(iii) are increased by:
- i) 35% of an amount determined by applying to the above-mentioned sum the ratio between the gross domestic product at current prices of the acceding Party and the total of the gross domestic products at current prices of all the Contracting Parties, excluding that of the acceding Party, and
 - ii) 65% if an amount determined by applying to the above-mentioned sum the ratio between the thermal power of the reactors situated in the territory of the acceding Party and the total thermal power of the reactors situated in the territories of all the Contracting Parties, excluding that of the acceding Party.
- b) The increased amount referred to in paragraph (a) shall be rounded up to the nearest amount expressed in thousands of euro.
- c) The gross domestic product of the acceding Party shall be determined in accordance with the official statistics published by the Organisation for Economic Co-operation and Development for the year preceding the year in which the accession comes into force.

- d) The thermal power of the acceding Party shall be determined in accordance with the list of nuclear installations communicated by that Government to the Belgian Government pursuant to Article 13(b), provided that for the purpose of calculating the contributions under paragraph (a)(ii) of this Article, a reactor shall only be taken into consideration as from the date when it first reaches criticality and a reactor shall be excluded from the calculation when all nuclear fuel has been removed permanently from the reactor core and has been stored safely in accordance with approved procedures.

Article 13

[LIST OF NUCLEAR INSTALLATIONS]

- a) Each Contracting Party shall ensure that all nuclear installations used for peaceful purposes situated in its territory, and falling within the definition in Article 1 of the Paris Convention, appear on a list.
- b) For this purpose, each Signatory or acceding Government shall, on the deposit of its instrument of ratification, acceptance, approval or accession, communicate to the Belgian Government full particulars of such installations.
- c) Such particulars shall indicate:
- i) In the case of all installations not yet completed, the expected date on which the risk of a nuclear incident will exist;
 - ii) and further, in the case of reactors, the expected date on which they will first reach criticality, and also their thermal power.
- d) Each Contracting Party shall also communicate to the Belgian Government the exact date of the existence of the risk of a nuclear incident and, in the case of

reactors, the date on which they first reached criticality.

- e) Each Contracting Party shall also communicate to the Belgian Government all modifications to be made to the list. Where such modifications include the addition of a nuclear installation, the communication must be made at least three months before the expected date on which the risk of a nuclear incident will exist.
- f) If a Contracting Party is of the opinion that the particulars, or any modification to be made to the list. Where such modifications include the addition of a nuclear installation, the communication must be made at least three months before the expected date on which the risk of a nuclear incident will exist.
- g) If a Contracting Party is of the opinion that a communication required in accordance with this Article has not been made within the time prescribed in this Article, it may raise objections only by addressing them to the Belgian Government within three months from the date on which it knew of the facts which, in its opinion, ought to have been communicated.
- h) The Belgian Government shall give notice as soon as possible to each Contracting Party of the communications and objections which it has received pursuant to this Article.
- i) The list referred to in this Article shall consist of all the particulars and modifications referred to in paragraphs (b), (c), (d) and (e) of this Article, it being understood that objections submitted pursuant to paragraphs (f) and (g) of this Article shall have effect retrospective to the date on which they were raised, if they are sustained.

- j) The Belgian Government shall supply any Contracting Party on demand with an up-to-date statement of the nuclear installations covered by this Convention and the details supplied in respect of them pursuant to this Article.

Article 14 [PUBLIC FUNDS]

- a) Except in so far as this Convention otherwise provides, each Contracting Party may exercise the powers vested in it by virtue of the Paris Conventions, and any provisions made thereunder may be invoked against the other Contracting Parties in order that the public funds referred to in Article 3(b)(ii) and (iii) be made available
- b) Any such provisions made by a Contracting Party pursuant to Article 2(b) of the Paris Convention as a result of which the public funds referred to in Article 3 (b)(ii) and (iii) are required to be made available may not be invoked against any other Contracting Party unless it has consented thereto.
- c) Nothing in this Convention shall prevent a Contracting Party from making provisions outside the scope of the Paris Convention and of this Convention, provided that such provisions shall not involve any further obligation on the part of the Contracting Parties in so far as their public funds are concerned.
- d) Where all the Contracting Parties to this Convention ratify, accept, approve or accede to any other international agreement in the field of supplementary compensation for nuclear damage, a Contracting Party to this Convention may use the funds to be provided pursuant to Article 3 (b)(iii) of this Convention to satisfy any obligation it may have under such other international agreement to provide supplementary compensation for nuclear damage out of public funds.

Article 15
[AGREEMENT WITH
NON-CONTRACTING PARTIES]

- a) Any Contracting Party may conclude an agreement with a State which is not a Party to this Convention concerning compensation out of public funds for damage caused by a nuclear incident. Any Contracting Party intending to conclude such an agreement shall notify the other Contracting Parties of its intention. Agreements concluded shall be notified to the Belgian Government.
- b) To the extent that the conditions for payment of compensation under any such agreement are not more favourable than those which result from the measures adopted by the Contracting Party concerned for the application of the Paris Convention and of this Convention, the amount of damage caused by a nuclear incident covered by this Convention and for which compensation is payable by virtue of such an agreement may be taken into consideration, where the provision to Article 8 applies, in calculating the total amount of damage caused by that incident.
- c) The provisions of paragraphs (a) and (b) of this Article shall in no case affect the obligations under Article 3 (b)(ii) and (iii) of those Contracting Parties which have not given their consent to such agreement.

Article 16
[CONTRACTING PARTIES' CONSULTATIONS
AND REVISION CONFERENCE]

- a) The Contracting Parties shall consult each other upon all problems of common interest raised by the application of this Convention and of the Paris Convention, especially Articles 20 and 22(c) of the latter Convention.

- b) They shall consult each other on the desirability of revising this Convention after a period of five years from the date of its coming into force, and at any other time upon the request of a Contracting Party.

Article 17 [DISPUTE SETTLEMENT]

- a) In the event of a dispute arising between two or more Contracting Parties concerning the interpretation or application of this Convention, the parties to the dispute shall consult with a view to settling the dispute by negotiation or other amicable means.
- b) Where a dispute referred to in paragraph (a) is not settled within six months from the date upon which such dispute is acknowledged to exist by any party thereto, the Contracting Parties shall meet in order to assist the parties to the dispute to reach a friendly settlement.
- c) Where no resolution to the dispute has been reached within three months of the meeting referred to in paragraph (b), the dispute shall, upon the request of any party thereto, be submitted to the European Nuclear Energy Tribunal established by the Convention of 20th December 1957 on the Establishment of a Security Control in the Field of Nuclear Energy.
- d) Where a nuclear incident gives rise to a dispute between two or more Contracting Parties concerning the interpretation or application of the Paris Convention and of this Convention, the procedure for resolving such dispute shall be the procedure provided for under Article 17 of the Paris Convention.

Article 18 [RESERVATIONS]

- a) Reservations to one or more of the provisions of this Convention may be

made at any time prior to ratification, acceptance or approval of this Convention if the terms of these reservations have been expressly accepted by all Signatories or, at the time of accession or of the application of the provisions of Articles 21 and 24, if the terms of these reservations have been expressly accepted by all Signatories and acceding Governments.

- b) Such acceptance shall not be required from a Signatory which has not itself ratified, accepted or approved this Convention within a period of twelve months after the date of notification to it of such reservation by the Belgian Government in accordance with Article 25.
- c) Any reservation accepted in accordance with the provisions of paragraph (a) of this Article may be withdrawn at any time by notification addressed to the Belgian Government.

Article 19 [REQUIREMENT TO BE A CONTRACTING PARTY]

No State may become or continue to be a Contracting Party to this Convention unless it is a Contracting Party to the Paris Convention.

Article 20 [ANNEX]

- a) The Annex to this Convention shall form an integral part thereof.
- b) This Convention shall be subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Belgian Government.
- c) This Convention shall come into force three months after the deposit of the sixth instrument of ratification, acceptance or approval.

- d) For each Signatory ratifying, accepting or approving this Convention after the deposit of the sixth instrument of ratification, acceptance or approval, it shall come into force three months after the date of the deposit of its instrument of ratification, acceptance or approval.

Article 21 [AMENDMENTS]

Amendments to this Convention shall be adopted by agreement among all the Contracting Parties. They shall come into force on the date when all Contracting Parties have ratified, accepted or approved them.

Article 22 [ACCESSION]

- a) After the coming into force of this Convention, any Contracting Party to the Paris Convention which has not signed this Convention may request accession to this Convention by notification addressed to the Belgian Government.
- b) Such accession shall require the unanimous assent of the Contracting Parties.
- c) Once such assent has been given, the Contracting Party to the Paris Convention requesting accession shall deposit its instrument of accession with the Belgian Government.
- d) The accession shall take effect three months from the date of deposit of the instrument of accession.

Article 23 [CONTINUANCE OF PRIOR RIGHTS AND OBLIGATIONS]

- a) This Convention shall remain in force until the expiry of the Paris Convention.
- b) Any Contracting Party may, by giving twelve months' notice to the Belgian Government, terminate the application of this Convention to itself after the end of

the period of ten years specified in Article 22(a) of the Paris Convention. Within six months after receipt of such notice, any other Contracting Party may, by notice to the Belgian Government, terminate the application of this Convention to itself as from the date when it ceases to have effect in respect of the Contracting Party which first gave notice.

- c) The expiry of this Convention or the withdrawal of a Contracting Party shall not terminate the obligations assumed by each Contracting Party under this Convention to pay compensation for damage caused by nuclear incidents occurring before the date of such expiry or withdrawal.
- d) The Contracting Parties shall, in good time, consult each other on what measures should be taken after the expiry of this Convention or the withdrawal of one or more of the Contracting Parties, to provide compensation comparable to that accorded by this Convention for damage caused by nuclear incidents occurring after the date of such expiry or withdrawal and for which the operator of a nuclear installation in operation before such date within the territories of the Contracting Parties is liable.

Article 24 **[APPLICATION TO METROPOLITAN** **TERRITORIES]**

- a) This Convention shall apply to the metropolitan territories of the Contracting Parties.
- b) Any Contracting Party desiring the application of this Convention to one or more of the territories in respect of which, pursuant to Article 23 of the Paris Convention, it has given notification of application of that Convention, shall

address a request to the Belgian Government.

- c) The application of this Convention to any such territory shall require the unanimous assent of the Contracting Parties.
- d) Once such assent has been given, the Contracting Party concerned shall address to the Belgian Government a notification which shall take effect as from the date of its receipt.
- e) Such notification may, as regards any territory mentioned therein, be withdrawn by the Contracting Party which has made it by giving twelve months' notice to that effect to the Belgian Government.
- f) If the Paris Convention ceases to apply to any such territory, this Convention shall also cease to apply thereto.

Article 25 **[NOTIFICATION BY THE** **GOVERNMENT OF BELGIUM]**

The Belgian Government shall notify all Signatories and acceding Governments of the receipt of any instrument of ratification, acceptance, approval, accession or withdrawal, and shall also notify them of the date on which this Convention comes into force, the text of any amendment thereto and the date on which such amendment comes into force, any reservations made in accordance with Article 18, any increase in the compensation to be provided under Article 3(a) as a result of the application of Article 12bis, and all notifications which it has received.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, duly empowered, have signed this Convention.

DONE at Brussels, this 31 day of January 1963, in the English, Dutch, French, German, Italian and Spanish languages, the six texts being equally authoritative, in a single copy which shall be deposited with the Belgian Government by whom certified copies shall be communicated to all the other Signatories and acceding Governments.

ANNEX [COVERAGE OF NUCLEAR INSTALLATIONS NOT INCLUDED IN THE ARTICLE 13 LIST]

THE GOVERNMENTS OF THE CONTRACTING PARTIES declare that compensation for nuclear damage caused by a nuclear incident not covered by the Supplementary Convention solely by reason of the fact that the relevant nuclear installation, on account of its utilisation, is not on the list referred to in Article 13 of the Supplementary Convention (including the case where such installation is considered by one or more but not all of the Governments to be outside the Paris Convention):

- shall be provided without discrimination among the nationals of the Contracting Parties to the Supplementary Convention; and
- shall not be limited to less than 1 500 million euro.

In addition, if they have not already done so, they shall endeavour to make the rules for compensation of persons suffering damage caused by such incidents as similar as possible to those established in respect of nuclear incidents occurring in connection with nuclear installations covered by the Supplementary Convention.

2004 BRUSSELS SUPPLEMENTARY PROTOCOL ♦

The 2004 Protocol to Amend the Convention of 31 January 1963 Supplementary to the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy, as amended by the Additional Protocol of 28 January 1964 and the Protocol of 16 November 1982.

The Protocol was adopted on 12 February 2004 and has not yet entered into force.

THE GOVERNMENTS of the Federal Republic of Germany, the Kingdom of Belgium, the Kingdom of Denmark, the Kingdom of Spain, the Republic of Finland, the French Republic, the Italian Republic, the Kingdom of Norway, the Kingdom of the Netherlands, the United Kingdom of Great Britain and Northern Ireland, the Republic of Slovenia, the Kingdom of Sweden and the Swiss Confederation;

CONSIDERING that certain provisions of the Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy, as amended by the Additional Protocol of 28 January 1964 and by the Protocol of 16 November 1982, have been amended by the Protocol concluded at Paris on 12 February 2004 and of which they are Signatories;

CONSIDERING that it is desirable to amend also the Convention of 31 January 1963 Supplementary to the Paris Convention of 29 July 1960, as amended by the Additional Protocol of 28 January 1964 and by the Protocol of 16 November 1982;

HAVE AGREED as follows:

I. [1963 BRUSSELS SUPPLEMENTARY CONVENTION]

The Convention of 31 January 1963 Supplementary to the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy, as amended by the Additional

Protocol of 28 January 1964 and by the Protocol of 16 November 1982, is amended as follows:

[Preamble]

A. The second paragraph of the Preamble shall be replaced by the following text:

BEING PARTIES to the Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy, concluded within the framework of the Organisation for European Economic Co-operation, now the Organisation for Economic Co-operation and Development, and as amended by the Additional Protocol concluded at Paris on 28 January 1964, by the Protocol concluded at Paris on 16 November 1982 and by the Protocol concluded at Paris on 12 February 2004 (hereinafter referred to as the "Paris Convention");

B. Article 2 shall be replaced by the following text:

Article 2 [Scope of Application]

a) The system of this Convention shall apply to nuclear damage for which an operator of a nuclear installation, used for peaceful purposes, situated in the territory of a Contracting Party to this Convention (hereinafter referred to as a "Contracting Party"), is liable under the Paris Convention, and which is suffered:

- i) in the territory of a Contracting Party;
- or

♦ **NOTE:** To assist the reader, headings in square brackets have been included for the Articles and Annex in this instrument. These headings are not authoritative but are rather merely indicative of the substance.

- ii) in or above maritime areas beyond the territorial sea of a Contracting Party
 - 1. on board or by a ship flying the flag of a Contracting Party, or on board or by an aircraft registered in the territory of a Contracting Party, or on or by an artificial island, installation or structure under the jurisdiction of a Contracting Party, or
 - 2. by a national of a Contracting Party, excluding damage suffered in or above the territorial sea of a State not Party to this Convention; or
- iii) in or above the exclusive economic zone of a Contracting Party or on the continental shelf of a Contracting Party in connection with the exploitation or the exploration of the natural resources of that exclusive economic zone or continental shelf, provided that the courts of a Contracting Party have jurisdiction pursuant to the Paris Convention.
- b) Any Signatory or acceding Government may, at the time of signature or accession to this Convention or on the deposit of its instrument of ratification, acceptance or approval, declare that, for the purposes of the application of paragraph (a)(ii) 2 of this Article, individuals or certain categories thereof, considered under its law as having their habitual residence in its territory, are assimilated to its own nationals.
- c) In this Article, the expression “a national of a Contracting Party” shall include 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.

- C. Article 3 shall be replaced by the following text:

Article 3 [Liability Amounts]

- a) Under the conditions established by this Convention, the Contracting Parties undertake that compensation in respect of nuclear damage referred to in Article 2 shall be provided up to the amount of 1 500 million euro per nuclear incident, subject to the application of Article 12bis.
- b) Such compensation shall be provided as follows:
 - i) up to an amount of at least 700 million euro, out of funds provided by insurance or other financial security or out of public funds provided pursuant to Article 10(c) of the Paris Convention, such amount to be established under the legislation of the Contracting Party in whose territory the nuclear installation of the operator liable is situated, and to be distributed, up to 700 million euro, in accordance with the Paris Convention;
 - ii) between the amount referred to in paragraph (b)(i) of this Article and 1 200 million euro, out of public funds to be made available by the Contracting Party in whose territory the nuclear installation of the operator liable is situated;
 - iii) between 1 200 million euro and 1 500 million euro, out of public funds to be made available by the Contracting Parties according to the formula for contributions referred to in Article 12, subject to such amount being increased in

accordance with the mechanism referred to in Article 12bis.

c) For this purpose, each Contracting Party shall either:

- i) establish under its legislation that the liability of the operator shall not be less than the amount referred to in paragraph (a) of this Article, and provide that such liability shall be covered by all the funds referred to in paragraph (b) of this Article; or
- ii) establish under its legislation the liability of the operator at an amount at least equal to that established pursuant to paragraph (b)(i) of this Article or Article 7(b) of the Paris Convention, and provide that, in excess of such amount and up to the amount referred to in paragraph (a) of this Article, the public funds referred to in paragraphs (b)(i), (ii) and (iii) of this Article shall be made available by some means other than as cover for the liability of the operator, provided that the rules of substance and procedure laid down in this Convention are not thereby affected.

d) The obligation of the operator to pay compensation, interest or costs out of public funds made available pursuant to paragraphs (b)(ii) and (iii) and (g) of this Article shall only be enforceable against the operator as and when such funds are in fact made available.

e) Where a State makes use of the option provided for under Article 21(c) of the Paris Convention, it may only become a Contracting Party to this Convention if it ensures that funds will be available to cover the difference between the amount for which the operator is liable and 700 million euro.

f) The Contracting Parties, in carrying out this Convention, undertake not to make use of the right provided for in Article 15(b) of the Paris Convention to apply special conditions, other than those laid down in this Convention, in respect of compensation for nuclear damage provided out of the funds referred to in paragraph (a) of this Article.

g) The interest and costs referred to in Article 7(h) of the Paris Convention are payable in addition to the amounts referred to in paragraph (b) of this Article, and shall be borne in so far as they are awarded in respect of compensation payable out of the funds referred to in:

- i) paragraph (b)(i) of this Article, by the operator liable;
- ii) paragraph (b)(ii) of this Article, by the Contracting Party in whose territory the installation of the operator liable is situated to the extent of the funds made available by that Contracting Party;
- iii) paragraph (b)(iii) of this Article, by the Contracting Parties together.

h) The amounts mentioned in this Convention shall be converted into the national currency of the Contracting Party whose courts have jurisdiction in accordance with the value of that currency at the date of the incident, unless another date is fixed for a given incident by agreement between the Contracting Parties.

D. Article 4 shall be deleted.

E. Article 5 shall be replaced by the following text:

Article 5 [Rights of Recourse]

Where the operator liable has a right of recourse pursuant to Article 6(f) of the Paris Convention, the Contracting Parties to this Convention shall have the same right of recourse, to the extent that public funds have been made available pursuant to Article 3(b) and (g).

F. Article 6 shall be replaced by the following text:

Article 6 [Time Limits]

In calculating the public funds to be made available pursuant to this Convention, account shall be taken only of those rights to compensation exercised within thirty years from the date of the nuclear incident in the case of loss of life or personal injury, and ten years from the date of the nuclear incident in the case of all other nuclear damage. Such period is, moreover, extended in the cases and under the conditions laid down in Article 8(e) of the Paris Convention. Amendments made to claims after the expiry of this period, under the conditions laid down in Article 8(f) of the Paris Convention, shall also be taken into account.

G. Article 7 shall be replaced by the following text:

Article 7 [Time Limit (Prescription Period)]

Where a Contracting Party makes use of the right provided for in Article 8(d) of the Paris Convention, the period which it establishes shall be a period of prescription of at least three years either from the date at which the person suffering damage has knowledge or from the date at which he ought reasonably to have known of both the damage and the operator liable.

H. Article 8 shall be replaced by the following text:

Article 8 [Non-Discrimination]

Any person who is entitled to benefit from the provisions of this Convention shall have the right

to full compensation in accordance with national law for nuclear damage suffered, provided that where the amount of such damage exceeds or is likely to exceed 1 500 million euro, a Contracting Party may establish equitable criteria for apportioning the amount of compensation that is available under this Convention. Such criteria shall be applied whatever the origin of the funds and, subject to the provisions of Article 2, without discrimination based on the nationality, domicile or residence of the person suffering the damage.

I. Article 9 shall be replaced by the following text:

Article 9 [Allocation of Funds]

- a) The system of payment of public funds made available pursuant to this Convention shall be that of the Contracting Party whose courts have jurisdiction.
- b) Each Contracting Party shall ensure that persons suffering nuclear damage may enforce their rights to compensation without having to bring separate proceedings according to the origin of the funds provided for such compensation.
- c) A Contracting Party shall be required to make available the funds referred to in Article 3(b)(iii) once the amount of compensation under this Convention reaches the total of the amounts referred to in Article 3(b)(i) and (ii), irrespective of whether funds to be provided by the operator remain available or whether the liability of the operator is not limited in amount.

J. Article 10 shall be replaced by the following text:

Article 10 [Availability of Public Funds]

- a) The Contracting Party whose courts have jurisdiction shall be required to inform the other Contracting Parties of a nuclear incident and its circumstances as soon as

it appears that the nuclear damage caused by such incident exceeds, or is likely to exceed the sum of the amounts provided for under Article 3(b)(i) and (ii). The Contracting Parties shall, without delay, make all the necessary arrangements to settle the procedure for their relations in this connection.

- b) Only the Contracting Party whose courts have jurisdiction shall be entitled to request the other Contracting Parties to make available the public funds required under Article 3(b)(iii) and (g) and shall have competence to disburse such funds.
- c) Such Contracting Party shall, when the occasion arises, exercise the right of recourse provided for in Article 5 on behalf of the other Contracting Parties who have made available public funds pursuant to Article 3(b)(iii) and (g).
- d) Settlements effected in respect of the payment of compensation for nuclear damage out of the public funds referred to in Article 3(b)(ii) and (iii) in accordance with the conditions established by national legislation shall be recognised by the other Contracting Parties, and judgements entered by the competent courts in respect of such compensation shall become enforceable in the territory of the other Contracting Parties in accordance with the provisions of Article 13(i) of the Paris Convention.

K. Article 11 shall be replaced by the following text:

Article 11 [Reimbursement of Public Funds]

- a) If the courts having jurisdiction are those of a Contracting Party other than the Contracting Party in whose territory the nuclear installation of the operator liable is situated, the public funds required under Article 3(b)(ii) and (g) shall be made available by the first-named

Contracting Party. The Contracting Party in whose territory the nuclear installation of the operator liable is situated shall reimburse to the other Contracting Party the sums paid. These two Contracting Parties shall agree on the procedure for reimbursement.

- b) If more than one Contracting Party is required to make available public funds pursuant to Article 3(b)(ii) and (g), the provisions of paragraph (a) of this Article shall apply *mutatis mutandis*. Reimbursement shall be based on the extent to which each operator has contributed to the nuclear incident.
- c) In adopting all legislative, regulatory or administrative provisions, after the nuclear incident has occurred, concerning the nature, form and extent of the compensation, the procedure for making available the public funds required under Article 3(b)(ii) and (g) and, if necessary, the criteria for the apportionment of such funds, the Contracting Party whose courts have jurisdiction shall consult the Contracting Party in whose territory the nuclear installation of the operator liable is situated. It shall further take all measures necessary to enable the latter to intervene in proceedings and to participate in any settlement concerning compensation.

L. Article 12 shall be replaced by the following text:

Article 12 [Allocation of Funds]

- a) The formula for contributions according to which the Contracting Parties shall make available the public funds referred to in Article 3(b)(iii) shall be determined as follows:
 - i) as to 35%, on the basis of the ratio between the gross domestic product

at current prices of each Contracting Party and the total of the gross domestic products at current prices of all Contracting Parties as shown by the official statistics published by the Organisation for Economic Co-operation and Development for the year preceding the year in which the nuclear incident occurs;

- ii) as to 65%, on the basis of the ratio between the thermal power of the reactors situated in the territory of each Contracting Party and the total thermal power of the reactors situated in the territories of all the Contracting Parties. This calculation shall be made on the basis of the thermal power of the reactors shown at the date of the nuclear incident in the lists referred to in Article 13, provided that for the purposes of this calculation, a reactor shall only be taken into consideration as from the date when it first reaches criticality and a reactor shall be excluded from the calculation when all nuclear fuel has been removed permanently from the reactor core and has been stored safely in accordance with approved procedures.

b) For the purposes of this Convention, "thermal power" means:

- i) before the issue of a final operating licence, the planned thermal power;
- ii) after the issue of such licence, the thermal power authorised by the competent national authorities.

M. A new Article 12bis shall be added after Article 12 as follows:

Article 12bis [Allocation of Funds]

- a) In case of accession to this Convention, the public funds mentioned in Article 3(b)(iii) are increased by:
 - i) 35% of an amount determined by applying to the above-mentioned sum the ratio between the gross domestic product at current prices of the acceding Party and the total of the gross domestic products at current prices of all the Contracting Parties, excluding that of the acceding Party, and
 - ii) 65% of an amount determined by applying to the above-mentioned sum the ratio between the thermal power of the reactors situated in the territory of the acceding Party and the total thermal power of the reactors situated in the territories of all the Contracting Parties, excluding that of the acceding Party.
- b) The increased amount referred to in paragraph (a) shall be rounded up to the nearest amount expressed in thousands of euro.
- c) The gross domestic product of the acceding Party shall be determined in accordance with the official statistics published by the Organisation for Economic Co-operation and Development for the year preceding the year in which the accession comes into force.
- d) The thermal power of the acceding Party shall be determined in accordance with the list of nuclear installations communicated by that Government to the Belgian Government pursuant to Article 13(b), provided that for the purpose of calculating the contributions under paragraph (a)(ii) of this Article, a reactor shall only be taken into consideration as

from the date when it first reaches criticality and a reactor shall be excluded from the calculation when all nuclear fuel has been removed permanently from the reactor core and has been stored safely in accordance with approved procedures.

- N. Paragraphs (a), (b), (f) and (i) of Article 13 shall be replaced by the following text:

Article 13 [List of Nuclear Installations]

- a) Each Contracting Party shall ensure that all nuclear installations used for peaceful purposes situated in its territory, and falling within the definition in Article 1 of the Paris Convention, appear on a list.
- b) For this purpose, each Signatory or acceding Government shall, on the deposit of its instrument of ratification, acceptance, approval or accession, communicate to the Belgian Government full particulars of such installations.
- f) If a Contracting Party is of the opinion that the particulars, or any modification to be made to the list, communicated by another Contracting Party do not comply with the provisions of this Article, it may raise objections thereto only by addressing them to the Belgian Government within three months from the date on which it has received notice pursuant to paragraph (h) of this Article.
- i) The list referred to in this Article shall consist of all the particulars and modifications referred to in paragraphs (b), (c), (d) and (e) of this Article, it being understood that objections submitted pursuant to paragraphs (f) and (g) of this Article shall have effect retrospective to the date on which they were raised, if they are sustained.

- O. Article 14 shall be replaced by the following text:

Article 14 [Public Funds]

- a) Except in so far as this Convention otherwise provides, each Contracting Party may exercise the powers vested in it by virtue of the Paris Convention, and any provisions made thereunder may be invoked against the other Contracting Parties in order that the public funds referred to in Article 3(b)(ii) and (iii) be made available.
 - b) Any such provisions made by a Contracting Party pursuant to Article 2(b) of the Paris Convention as a result of which the public funds referred to in Article 3(b)(ii) and (iii) are required to be made available may not be invoked against any other Contracting Party unless it has consented thereto.
 - c) Nothing in this Convention shall prevent a Contracting Party from making provisions outside the scope of the Paris Convention and of this Convention, provided that such provisions shall not involve any further obligation on the part of the Contracting Parties in so far as their public funds are concerned.
 - d) Where all of the Contracting Parties to this Convention ratify, accept, approve or accede to any other international agreement in the field of supplementary compensation for nuclear damage, a Contracting Party to this Convention may use the funds to be provided pursuant to Article 3(b)(iii) of this Convention to satisfy any obligation it may have under such other international agreement to provide supplementary compensation for nuclear damage out of public funds.
- P. Article 15 shall be replaced by the following text:

Article 15 [Agreement with Non-Contracting Parties]

- a) Any Contracting Party may conclude an agreement with a State which is not a Party to this Convention concerning compensation out of public funds for damage caused by a nuclear incident. Any Contracting Party intending to conclude such an agreement shall notify the other Contracting Parties of its intention. Agreements concluded shall be notified to the Belgian Government.
- b) To the extent that the conditions for payment of compensation under any such agreement are not more favourable than those which result from the measures adopted by the Contracting Party concerned for the application of the Paris Convention and of this Convention, the amount of damage caused by a nuclear incident covered by this Convention and for which compensation is payable by virtue of such an agreement may be taken into consideration, where the proviso to Article 8 applies, in calculating the total amount of damage caused by that incident.
- c) The provisions of paragraphs (a) and (b) of this Article shall in no case affect the obligations under Article 3(b)(ii) and (iii) of those Contracting Parties which have not given their consent to such agreement.

Q. Article 17 shall be replaced by the following text:

Article 17 [Dispute Settlement]

- a) In the event of a dispute arising between two or more Contracting Parties concerning the interpretation or application of this Convention, the parties to the dispute shall consult with a view to

settling the dispute by negotiation or other amicable means.

- b) Where a dispute referred to in paragraph (a) is not settled within six months from the date upon which such dispute is acknowledged to exist by any party thereto, the Contracting Parties shall meet in order to assist the parties to the dispute to reach a friendly settlement.
- c) Where no resolution to the dispute has been reached within three months of the meeting referred to in paragraph (b), the dispute shall, upon the request of any party thereto, be submitted to the European Nuclear Energy Tribunal established by the Convention of 20th December 1957 on the Establishment of a Security Control in the Field of Nuclear Energy.
- d) Where a nuclear incident gives rise to a dispute between two or more Contracting Parties concerning the interpretation or application of the Paris Convention and of this Convention, the procedure for resolving such dispute shall be the procedure provided for under Article 17 of the Paris Convention.

R. Article 18 shall be replaced by the following text:

Article 18 [Reservations]

- a) Reservations to one or more of the provisions of this Convention may be made at any time prior to ratification, acceptance or approval of this Convention if the terms of these reservations have been expressly accepted by all Signatories or, at the time of accession or of the application of the provisions of Articles 21 and 24, if the terms of these reservations have been expressly accepted by all Signatories and acceding Governments.

b) Such acceptance shall not be required from a Signatory which has not itself ratified, accepted or approved this Convention within a period of twelve months after the date of notification to it of such reservation by the Belgian Government in accordance with Article 25.

c) Any reservation accepted in accordance with the provisions of paragraph (a) of this Article may be withdrawn at any time by notification addressed to the Belgian Government.

S. Article 20 shall be replaced by the following text:

Article 20 [Annex]

a) The Annex to this Convention shall form an integral part thereof.

b) This Convention shall be subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Belgian Government.

c) This Convention shall come into force three months after the deposit of the sixth instrument of ratification, acceptance or approval.

d) For each Signatory ratifying, accepting or approving this Convention after the deposit of the sixth instrument of ratification, acceptance or approval, it shall come into force three months after the date of the deposit of its instrument of ratification, acceptance or approval.

T. Article 21 shall be replaced by the following text:

Article 21 [Amendments]

Amendments to this Convention shall be adopted by agreement among all the Contracting Parties. They shall come into force on the date when all

Contracting Parties have ratified, accepted or approved them.

U. Article 25 shall be replaced by the following text:

Article 25

[Notification by the Government of Belgium]

The Belgian Government shall notify all Signatories and acceding Governments of the receipt of any instrument of ratification, acceptance, approval, accession or withdrawal, and shall also notify them of the date on which this Convention comes into force, the text of any amendment thereto and the date on which such amendment comes into force, any reservations made in accordance with Article 18, any increase in the compensation to be provided under Article 3(a) as a result of the application of Article 12bis, and all notifications which it has received.

V. The Annex shall be replaced by the following text:

ANNEX [COVERAGE OF NUCLEAR INSTALLATIONS NOT INCLUDED IN THE ARTICLE 13 LIST]

THE GOVERNMENTS OF THE CONTRACTING PARTIES declare that compensation for nuclear damage caused by a nuclear incident not covered by the Supplementary Convention solely by reason of the fact that the relevant nuclear installation, on account of its utilisation, is not on the list referred to in Article 13 of the Supplementary Convention (including the case where such installation, which is not on the list, is considered by one or more but not all of the Governments to be outside the Paris Convention):

- shall be provided without discrimination among the nationals of the Contracting Parties to the Supplementary Convention; and
- shall not be limited to less than 1 500 million euro.

In addition, if they have not already done so, they shall endeavour to make the rules for compensation of persons suffering damage caused by such incidents as similar as possible to those established in respect of nuclear incidents occurring in connection with nuclear installations covered by the Supplementary Convention.

II. [FINAL CLAUSES]

- a) The provisions of this Protocol shall, as between the Parties thereto, form an integral part of the Convention of 31 January 1963 Supplementary to the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy, as amended by the Additional Protocol of 28 January 1964 and by the Protocol of 16 November 1982 (hereinafter referred to as the "Convention"), which shall be known as the "Convention of 31 January 1963

Supplementary to the Paris Convention of 29 July 1960, as amended by the Additional Protocol of 28 January 1964, by the Protocol of 16 November 1982 and by the Protocol of 12 February 2004".

- b) This Protocol shall be subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval of this Protocol shall be deposited with the Belgian Government.
- c) The Signatories of this Protocol who have already ratified or acceded to the Convention express their intention to ratify, accept or approve this Protocol as soon as possible. The other Signatories of this Protocol undertake to ratify, accept or approve it at the same time as they ratify the Convention.
- d) This Protocol shall be open for accession in accordance with the provisions of Article 22 of the Convention. Accessions to the Convention will be accepted only if they are accompanied by accession to this Protocol.
- e) This Protocol shall come into force in accordance with the provisions of Article 21 of the Convention.
- f) The Belgian Government shall give notice to all Signatories and acceding Governments of the receipt of any instrument of ratification, acceptance, approval or accession.

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B: BACKGROUND DOCUMENTS

OVERVIEW OF THE MODERNIZED IAEA NUCLEAR LIABILITY REGIME (INLEX, 2007)*

1. The adoption in 1997 of the Protocol to Amend the Vienna Convention on Civil Liability for Nuclear Damage¹ (1997 Protocol) and the Convention on Supplementary Compensation for Nuclear Damage² (1997 CSC) marked a major milestone in the development of the international nuclear liability regime. The 1997 Protocol and the 1997 CSC contain important improvements in the amount of compensation available, the scope of damage covered and the allocation of jurisdiction. Furthermore, the 1997 CSC provides the framework for establishing a global regime with widespread adherence by nuclear and non-nuclear countries.
2. The existing international nuclear liability regime is based on the Convention on Third Party Liability in the Field of Nuclear Energy of 29th July 1960, as amended by the Additional Protocol of 28th January 1964 and by the Protocol of 16th November 1982 (1960 Paris Convention) and the Vienna Convention on Civil Liability for Nuclear Damage (1963 Vienna Convention), which set forth the basic principles of nuclear liability law³. These principles include the following:
 - **The operator of a nuclear installation is exclusively liable for nuclear damage.** All liability is channelled on to one person, namely the operator of the nuclear installation where the nuclear incident occurs, or in the case of an

accident during the shipment of material, of the installation from which the shipment originated. Under the Conventions, the operator — and only the operator — is liable for nuclear incidents, to the exclusion of any other person. Two primary factors have motivated this exclusive liability of the operator, as distinct from the position under the ordinary law of torts. Firstly, it is desirable to avoid difficult and lengthy questions of complicated legal cross-actions to establish in individual cases who is legally liable. Secondly, such exclusive liability obviates the necessity for all those who might be associated with the construction or operation of a nuclear installation other than the operator itself, to also take out insurance, and thus allows a concentration of the insurance capacity available.

- **Strict (no-fault) liability is imposed on the operator**⁴. There is a long established tradition of legislative action or judicial interpretation that a presumption of liability for hazards created arises when a person engages in a dangerous activity. Owing to the special dangers involved in the activities within the scope of the Conventions and the difficulty of establishing negligence in particular cases, this presumption has been adopted for nuclear liability. Strict

* Extracted from IAEA International Law Series No. 3, *The 1997 Vienna Convention on Civil Liability for Nuclear Damage and the 1997 Convention on Supplementary Compensation for Nuclear Damage – Explanatory Texts*, as prepared by INLEX, 2007.

¹ Reproduced in document INFCIRC/566.

² Reproduced in document INFCIRC/567.

³ These Conventions were linked in 1988 by the Joint Protocol Relating to the Application of the Vienna Convention and the Paris Convention.

⁴ Referred to in the Conventions as “absolute liability”.

liability is therefore the rule; liability results from the risk, irrespective of fault.

- **Exclusive jurisdiction is granted to the courts of one State, to the exclusion of the courts in other States.** The general rule is that a court of the Contracting Party in whose territory the nuclear incident occurs has jurisdiction. If suits arising out of the same incident were to be tried and judgements rendered in the courts of several different countries, the problem of assuring equitable distribution of compensation might be insoluble. Within the country, one single competent forum should deal with all actions — including direct actions against insurers or other guarantors and actions to establish rights to claim compensation — against the operator arising out of the same nuclear incident.
- **Liability is limited in amount and in time.** In the absence of a limitation of liability, the risks could in the worst possible circumstances involve financial liabilities greater than any hitherto encountered and it would be very difficult for operators to find the necessary insurance or financial security to meet the risks. As to the limitation in time, bodily injury caused by radioactive contamination may not become manifest for some time after the exposure to radiation has actually occurred. The legal period during which an action may be brought is therefore a matter of great importance. Operators and their insurers or financial guarantors will naturally be concerned if they have to maintain, over long periods of time, reserves against outstanding or expired policies for possibly large but unascertainable amounts of liability. On the other hand, it is unreasonable for victims whose damage manifests itself late to find no

provision has been made for compensation to them. A further complication is the difficulty of proof involved in establishing or denying that delayed damage was, in fact, caused by the nuclear incident. A compromise has necessarily been arrived at between the interests of those suffering damage and the interests of operators.

3. The 1997 Protocol and the 1997 CSC built on these principles but enhanced them in three significant ways: higher compensation; broader definition of nuclear damage; and updated jurisdiction rules. In addition, the 1997 Protocol mandates access to compensation by residents of non-Contracting Parties.
4. The 1997 Protocol and the 1997 CSC establish 300 million special drawing rights (SDRs)⁵ as the minimum amount that a country must make available under its national law to compensate nuclear damage. This represents a major increase in the minimum amounts required by the 1960 Paris Convention and the 1963 Vienna Convention. Furthermore, the 1997 CSC provides for an international fund to supplement the amount of compensation available under national law. Assuming widespread adherence, the international fund could provide approximately 300 million SDRs more to compensate nuclear damage, meaning a total compensation amount of approximately 600 million SDRs. Contributions to the international fund are based on a formula under which more than 90% of the contributions come from nuclear power generating States on the basis of their installed nuclear capacity, while the remaining portion comes from all Member States on the basis of their United Nations rate of assessment. Since nuclear power generating States generally have high United Nations rates of assessment, this formula

⁵ As of August 2006 this amounted to US\$445 million, or €349 million.

should result in a very high percentage of the contributions coming from nuclear power generating States. The 1997 CSC provides that half of the international fund must be exclusively allocated to cover any transboundary damage. This recognizes the importance that the international community attaches to compensating transboundary damage.

5. The 1997 Protocol and the 1997 CSC enhance the definition of "nuclear damage" by explicitly identifying the types of damage that must be compensated. In addition to personal injury and property damage, which are included in the existing definition, the enhanced definition includes five categories of damage relating to impairment of the environment, preventive measures, and economic loss. The definition makes it clear that these additional categories are covered to the extent determined by the law of the competent court. The enhanced definition thus provides certainty that the concept of nuclear damage includes costs of reinstatement of impaired environment, preventive measures, and certain economic loss, while recognizing that the forms and content of compensation is best left to the national law of the State whose courts have jurisdiction over a particular nuclear incident.
6. The 1997 Protocol and the 1997 CSC also revise the definition of "nuclear incident" to make it clear that, in the absence of an actual release of radiation, preventive measures may be taken in response to a grave and imminent threat of a release of radiation that could cause other types of nuclear damage. The use of the phrase "grave and imminent" makes it clear that preventive measures can be taken if there is a credible basis for believing that a release of radiation with severe consequences may occur in the future. The 1997 Protocol and the 1997 CSC are explicit that preventive measures (as well as measures of reinstatement relating to impairment of the environment) must be reasonable. The importance of

reasonableness is confirmed by the inclusion of a definition of reasonable measures. This definition makes it clear that the competent court is responsible for determining whether a measure is reasonable under its national law, taking into account all relevant factors.

7. The 1997 Protocol and the 1997 CSC reaffirm the basic principle of nuclear liability law that exclusive jurisdiction over a nuclear incident lies with the courts of the Member State where the incident occurs, or with the courts of the Installation State if the incident occurs outside any Member State. They also recognize recent developments in the law of the sea in respect of the exclusive economic zone (EEZ) and the concerns of some coastal States over compensation for possible accidents in the course of maritime shipments of nuclear material. Specifically, the 1997 Protocol and the 1997 CSC provide that the courts of a Member State will have exclusive jurisdiction over claims for nuclear damage resulting from a nuclear incident in its EEZ. EEZ jurisdiction is only for the purposes of adjudicating claims for nuclear damage and does not create or modify any rights or obligations concerning actual shipments.
8. In addition to enhancing the existing international nuclear liability regime, the 1997 CSC provides the framework for establishing a global regime. The 1997 CSC is a free-standing instrument open to all States. As a free-standing instrument, it offers a State the means to become part of the global regime without also having to become a member of the 1960 Paris Convention or the 1963 Vienna Convention. The 1997 CSC requires a State Party to accept the higher compensation amounts, including participation in the international fund, the broader definition of nuclear damage and the updated jurisdiction rules. The provisions of the 1997 CSC on these matters take precedence over any similar provisions in other nuclear liability instruments to which a State might adhere.

9. To the maximum extent practicable, the 1997 CSC has been developed to be compatible with the 1960 Paris Convention and the 1963 Vienna Convention. A State Party to the 1960 Paris or 1963 Vienna Conventions would have to change its national law only to the extent necessary to reflect the provisions in the 1997 CSC that apply to all member countries. These provisions include: ensuring the availability under its national law of at least 300 million SDRs to compensate nuclear damage; participating in the international fund; implementing the enhanced definition of “nuclear damage”; and extending coverage to include all Member States. Other States would have to take similar actions, as well as ensure their national laws were consistent with the basic principles of nuclear liability law set forth in the Annex to the 1997 CSC, which is based on the provisions of the 1960 Paris and 1963 Vienna Conventions. The 1997 CSC also contains a provision to accommodate the unique legal regime in the United States of America, and thereby permit the United States of America to become part of a global regime.

RECOMMENDATIONS ON HOW TO FACILITATE THE ACHIEVEMENT OF A GLOBAL NUCLEAR LIABILITY REGIME (INLEX, 2012)

2011 IAEA Action Plan on Nuclear Safety – Nuclear Liability

BACKGROUND

The IAEA Action Plan on Nuclear Safety (the Action Plan)¹ calls upon Member States to work towards establishing a global nuclear liability regime that addresses the concerns of all States that might be affected by a nuclear accident with a view to providing appropriate compensation for nuclear damage, and to give due consideration to the possibility of joining the international nuclear liability instruments as a step towards achieving such a global regime. In addition, the Action Plan specifically calls upon the International Expert Group on Nuclear Liability (INLEX) to recommend actions to facilitate the achievement of such a global regime.

In order to facilitate the implementation of the specific actions envisaged in the Action Plan in relation to nuclear liability, a Special Session of INLEX was held at IAEA Headquarters, from 14 to 16 December 2011. At this Special Session, INLEX agreed on a number of activities aimed at facilitating the achievement of a global nuclear liability regime as described in the Action Plan. INLEX also held preliminary discussions on specific recommendations to facilitate the achievement of a global nuclear liability regime, with a view to finalizing these recommendations at its 12th regular meeting in 2012.

At the 12th regular meeting of INLEX, which was held at IAEA Headquarters from 30 May to 1 June 2012, INLEX further discussed and finalized the following recommendations to facilitate the achievement of a global nuclear liability regime, as requested by the Action Plan.

RECOMMENDATIONS ON HOW TO FACILITATE ACHIEVEMENT OF A GLOBAL NUCLEAR LIABILITY REGIME, AS REQUESTED BY THE IAEA ACTION PLAN ON NUCLEAR SAFETY BY THE INTERNATIONAL EXPERT GROUP ON NUCLEAR LIABILITY (INLEX)

In order to facilitate the achievement of a global nuclear liability regime, Member States should take the following steps:

1. All Member States with nuclear installations should adhere to one or more of the relevant international nuclear liability instruments that contain commonly shared international principles reflecting the enhancements developed under the auspices of the IAEA during the 1990's. In addition, all Member States with nuclear installations should adopt national laws that are consistent with the principles in those instruments and that incorporate the best practices identified below.
2. All Member States with nuclear installations should strive to establish treaty relations with as many States as practical with a view to ultimately achieving universal participation in a global nuclear liability regime that establishes treaty relations among all States. The INLEX experts note that the CSC establishes treaty relations among States that belong to the Paris Convention, the Vienna Convention or neither, while leaving intact the Joint Protocol that establishes treaty relations among States that belong to the Paris Convention or the Vienna Convention. In addition to providing treaty

¹ GOV/2011/59-GC(55)/14.

relations, the CSC mandates the adoption of the enhancements developed under the auspices of the IAEA and contains features to promote appropriate compensation, including an international fund to supplement the amount of compensation available for nuclear damage.

3. Member States with no nuclear installations should give serious consideration to adhering to a global regime, taking into account the benefits which such a regime can offer for victims once it achieves adherence by a significant number of States with nuclear installations.
4. All Member States with nuclear installations should ensure that there are adequate funds available to compensate all victims of a nuclear incident, without discrimination. Therefore, such Member States should in particular:
 - a. Establish compensation and financial security amounts significantly higher than the minimum amounts envisaged under the existing instruments;
 - b. Undertake regular reviews of the adequacy of compensation amounts in order to ensure that their value is maintained and that they reflect developments in the understanding of the possible impact of incidents involving the installations on their territory, noting that there is a trend towards establishing unlimited liability of the operator;
 - c. Undertake regular reviews of the adequacy of financial security amounts in order to ensure that those amounts reflect available capacity in insurance markets, as well as other sources of financial security;
 - d. Be prepared to set up appropriate funding mechanisms in cases where the amount of damage to be compensated

exceeds the available compensation and financial security amounts;

- e. Provide compensation for latent injuries, noting that the revised Vienna and Paris Conventions set a 30-year time limit for filing claims for personal injury; and
 - f. Ensure that compensation is available in the case of an incident directly due to a grave natural disaster of an exceptional character.
5. All Member States should:
- a. Ensure that all claims arising from a nuclear accident are dealt with in a single forum in a prompt, equitable and non-discriminatory manner with minimal litigation, which could include a claims-handling system (which may be set up in close cooperation with insurers or other financial guarantors) in order to deal equitably and expeditiously with all claims; and
 - b. Use the model legislation developed by the IAEA as a guide, as appropriate, when drafting or revising national nuclear liability legislation.

ADVANTAGES AND DISADVANTAGES OF JOINING THE INTERNATIONAL NUCLEAR LIABILITY REGIME (INLEX, 2010)

I. INTRODUCTION

There is a set of international conventions which are designed to provide compensation for damage arising from nuclear incidents. These conventions, which form an international nuclear liability regime, include: the Convention on Third Party Liability in the Field of Nuclear Energy of 29 July 1960 (Paris Convention); the Convention Supplementary to the Paris Convention of 1963 (Brussels Supplementary Convention, BSC); and the Convention on Civil Liability for Nuclear Damage of 1963 (Vienna Convention). All these conventions have been amended by protocols.¹² There is also the Convention on Supplementary Compensation for Nuclear Damage of 12 September 1997 (CSC), which was developed as an umbrella for the other international liability conventions and to provide the basis for a global nuclear liability regime that could attract broad adherence from countries with and without nuclear power plants. As yet, the number of States that have ratified or implemented³ one of

these conventions is still limited;⁴ and the CSC is not yet in force.⁵ Moreover, only about one half of all nuclear power plants are located in States which are contracting parties to one of the nuclear liability conventions.

Consequently, it is appropriate to ask whether more States should join the international nuclear liability regime. The answer to this question depends on an assessment of the pros and cons of adherence to the international nuclear liability regime. This is the aim of the present paper.

In assessing this issue, it is necessary to compare the position of a country that is a party to the nuclear liability regime with the position where no such system applies. Such a comparison is to some extent hypothetical, but nevertheless inevitable. The aspects that are compared are partly procedural and partly substantive in nature. On the procedural side, the following points will be compared: (1) Which courts are competent to

¹ See the Additional Protocol of 28 January 1964, the Protocol of 16 November 1982 and the Protocol of 12 February 2004 to the Paris Convention, the Protocol to Amend the Vienna Convention on Civil Liability for Nuclear Damage of 1997. In particular, there is the Joint Protocol Relating to the Application of the Vienna Convention and the Paris Convention of 21 September 1988, which bridges the gap between the Paris Convention and the Vienna Convention and extends the rights under the one Convention to victims in the territory of the other Convention.

² The following conventions should be mentioned here. The Brussels Convention relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material of 1971 exonerates the sea carrier of nuclear material from liability where the operator of a nuclear installation is already liable for the same damage either under the Paris or Vienna Conventions or under equally favourable national law. The Brussels Convention on the Liability of Operators of Nuclear Ships of 1962 has not yet entered into force and probably will never enter into force due to conflicting views as to whether the Convention should include nuclear warships.

³ It is not within the scope of this paper whether and which States regard international treaties as self-executing so that legal action can be based on the respective convention itself, and in which States (as for instance Australia) international treaties must be implemented by way of national law so that legal action must be based on the respective national law. As to the general problem of whether and when international treaties are self-executing, see Brownlie, *Principles of Public International Law* (6th ed. 2003) 50 et seq. For the sake of simplicity and brevity, both situations can be covered here by the term 'nuclear conventions regime'. Similarly, where it is mentioned in this paper that the nuclear conventions are applicable, this will include the case that the respective convention has been implemented by way of national law, so that, strictly speaking, not the convention but the respective national law is applicable.

⁴ The Paris Convention has thus far been ratified by 15 States, the BSC by 12 (European) States, and the Vienna Convention by 36 States worldwide. The Joint Protocol has been ratified by 25 out of the 51 Paris and Vienna convention States. But many of the most important nuclear States such as China, India, Japan, the Republic of Korea and the USA do not adhere to any of the nuclear conventions in force. About half of all nuclear installations worldwide are not covered by the nuclear conventions regime.

⁵ Thus far the necessary number of ratifications has not yet been reached.

decide cases of nuclear liability? This question includes the issue of possible State immunity. (2) Which law applies? (3) Are judgements on liability for nuclear damage recognized and enforced in other countries? On the substantive side, the questions: What are the differences between the substantive rules on liability for nuclear damage under the conventions and under national law will be answered. Although in the end the differences in the substantive rules are most decisive for the question of adherence or non-adherence, only after it has been ascertained which courts are competent and which law is applicable can rules of (the applicable) substantive law be compared.

It is neither possible nor necessary to include all countries in such a comparison; references to a few representative countries can suffice. The States selected include China and India (which have a number of nuclear power plants but have not yet ratified any of the nuclear liability conventions), the United States (which has approximately a quarter of the existing nuclear power plants in the world and has ratified the CSC), Germany (which has an extensive nuclear industry and is a Contracting Party to the Paris Convention) and Austria (which is a 'non-convention State' and operates no nuclear power plants though it does operate a research reactor)). Other international conventions or regional regulations which concern the above-mentioned matters have also been taken into account.

At the outset a short scenario of possible nuclear incidents will be given in order to better understand the legal implications.

II. SCENARIOS OF POSSIBLE NUCLEAR INCIDENTS

A Chernobyl type accident is the first example of a nuclear incident that will be considered.

Such an incident affects not only the inhabitants of the country where the nuclear installation is located, but also inhabitants of other countries. The State where the installation is situated may be either a Contracting Party to one of the nuclear liability conventions or may be a non-convention State. Also, the countries where the victims are living may or may not adhere to one of the conventions.

A second type of incident that will be taken into account is when nuclear material causes damage while being transported from one country to another. Again, the country where the damage occurs may be a convention State or a non-convention State, and so may be the State where the responsible operator or the carrier has its place of business.

III. COMPARISON OF PROCEDURAL ASPECTS

1. State immunity

In the cases described, the State can be the operator of the nuclear installation – be it an installation for the production of energy or a research reactor. For victims of a nuclear incident at such an installation,⁶ the question then arises whether the involved State can be made liable or whether the State can rely on the defence of state immunity. It is questionable whether activities like the supply of energy or the conduct of research, if provided by State agencies in the nuclear field, give rise to the defence of State immunity so that private claims against the responsible operator are not allowed.

a) Situation Covered By One Of The Nuclear Liability Conventions

If a case occurs in a situation where either the Paris or the Vienna

⁶ Or, in the case of transport, involving nuclear material being transported to or from the installation.

Convention⁷ is applicable, the liable State or its agency cannot invoke jurisdictional immunity. This is explicitly stated by both Conventions.⁸ “Except in respect of measures of execution”⁹ the contracting parties have waived their possible right of state immunity. Therefore, even if the nuclear installation is operated by the State to undertake typical State activities, the defence of sovereign immunity is not available. In the case of a nuclear incident at such an installation, victims could sue the State before the competent courts, regardless of whether the installation served public purposes.

b) Situation Not Covered by Any Nuclear Liability Convention

Where none of the conventions on civil nuclear liability are applicable, the issue of State immunity is determined in accordance with, first, other applicable international conventions or, secondly, with the rules of customary public international law or, thirdly, with the autonomous national rules concerning the matter. Although there is a specialized convention on State immunity, namely the Basel Convention on State Immunity of 1972, according to Art. 29(b) this Convention does not apply to damage caused by nuclear energy.¹⁰ Therefore,

the international customary law on State immunity has to be applied as far as possible. Under its rules, it is decisive whether the State acted as a State (“*acta jure imperii*”) or like a private person (“*acta jure gestionis*”).¹¹ It is the prevailing view that the borderline between these two kinds of State activities must be determined according to the objective character of the activity.¹² It therefore depends on the purpose for which a State-run nuclear installation is used. In the case of a nuclear power plant which produces energy for general supply, it is doubtful whether a State as operator of a nuclear installation would enjoy immunity in the courts of other countries when this installation causes nuclear damage. In the aftermath of the Chernobyl accident, for instance, German courts denied that the then Soviet Union was immune, since energy could be produced and supplied in the same way by private enterprises.¹³ But courts of other countries may decide otherwise. With respect to State-run research reactors operated for scientific or medical purposes,¹⁴ it may be even more convincingly argued that the State should not be immune if the reactor causes nuclear damage.

⁷ It should be mentioned that neither convention covers nuclear damage due to military operations: see Art. I (1) (j) (i), IV (3) (a) Vienna Convention, Art. 1 (a) (ii), 9 Paris Convention, Art. II (2) CSC (“for peaceful purposes”).

⁸ Art. 13 (e) Paris Convention; Art. XIV Vienna Convention. Art. XV CSC (which is not yet in force) leaves “the general rules of public international law” — which include rules on state immunity — untouched.

⁹ See explicitly Art. XIV Vienna Convention and Art. 13 (e) Paris Convention.

¹⁰ It should be noted, however, that there is no such exclusion under the United Nations Convention on Jurisdictional Immunities of States and Their Property. This convention, which is not yet in force, was adopted by the UN General Assembly on 2 December 2004 after extensive consideration in the International Law Commission and the Legal Committee of the UN General Assembly over a period of several years. Under Article 12 of that convention, it is not possible for a State to invoke immunity in a proceeding which relates to personal injuries and damage to property. See General Assembly resolution 59/38, annex, Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 49 (A/59/49).

¹¹ See thereon Brownlie (supra fn. 16) 335 et seq.; Stein/von Buttlar, *Völkerrecht* (11th ed. 2005) no. 717 et seq.

¹² See, for instance, German Federal Constitutional Court (Bundesverfassungsgericht – BVerfG) Entscheidungen (BVerfGE) 16, 27; BVerfGE 46, 362; Stein/von Buttlar no. 719. Specific Immunity Acts which some States have introduced follow the same line; see, for example, the US-Foreign Sovereign Immunity Act (sect. 1603 (d) where ‘commercial’ acts are defined).

¹³ Amtsgericht Bonn, NJW 1988, 1393; Landgericht Bonn NJW 1989, 1225.

¹⁴ Such reactors fall also under the definitions of “nuclear installation” in Art. 1 (a) (ii) Paris Convention and “nuclear reactor” in Art. I (1) (i) Vienna Convention and Art. I (d) CSC, since with the exception of reactors comprised in a means of transport the Conventions do not distinguish as to the purposes for which nuclear reactors are run; see also Exposé des Motifs (to the Paris Convention) no. 9.

c) Summary

Viewed from the perspective of potential victims, it is certainly an advantage if the involved State cannot invoke the defence of immunity should a State-run nuclear installation cause damage. Within the nuclear convention regime, it is clear that at the jurisdictional level no such defence is available. This means that a victim can always sue the respective State and can, where justified, get at least a judgement against this State. Outside the nuclear liability convention regime, it remains doubtful whether and when the defence may be invoked.

2. Jurisdiction

With respect to the envisaged case scenarios, the issue of — international — jurisdiction plays an important role. If victims reside and suffer damage in a country other than the one in which the operator of the nuclear installation¹⁵ has its place of business, it is open to question as to where the victim can or must sue the operator of the damaging installation. The nuclear conventions generally come into play only if the nuclear installation is located on the territory of a convention State and the victim suffers damage in that or another convention State.¹⁶

a) Situation Covered by One of the Nuclear Liability Conventions

Where the installation is located in a nuclear liability convention State and the victim suffers damage in another convention State¹⁷, the nuclear liability conventions apply.¹⁸ They contain the following rule: the courts of the State where the nuclear incident occurred¹⁹ have exclusive jurisdiction over actions concerning liability for the incident, provided that that State is a Contracting Party to one of the conventions.²⁰ If the incident occurred outside the territory of a Contracting Party,²¹ or if the place of the incident could not be determined with certainty, then the courts of the State where the relevant nuclear installation is situated have exclusive jurisdiction, again provided that the installation State is a Contracting party.²² The 1997 and 2004 amendments to the conventions, and the CSC, extend the jurisdiction of coastal convention States' courts to incidents occurring in the Exclusive Economic Zone (EEZ). With respect to the exclusive jurisdiction under the conventions, it is irrelevant that the victim resides in

¹⁵ It shall also be assumed that the place of business of the operator and the location of the damaging nuclear installation are in the same country.

¹⁶ The conventions also apply to certain damage suffered outside the territory of any State; see Art. 2 Paris Convention; Art. V (1) CSC. The revised Vienna and Paris Conventions may in some circumstances also apply to damage suffered in non-contracting States: ref. Art I A and Art 2(a).

¹⁷ *Infra*.

¹⁸ By virtue of the Joint Protocol (fn. 3) the territorial scope of the Paris and Vienna Convention can be regarded as one since the Protocol (where it has been ratified or implemented) grants the rights under the Paris Convention to victims in the territory of the Vienna Convention and vice versa.

¹⁹ Art. 13 (a) Paris Convention; Art. XI (1) Vienna Convention; Art. XIII (1) CSC.

²⁰ See further thereto *Magnus*, International Nuclear Transport from the Private International Law Perspective, in: Reform of Civil Nuclear Liability. Budapest Symposium 1999 (ed. by OECD, 2000) 263 et seq., 282 et seq.; *Sands/Galizzi*, The 1968 Brussels Convention and Liability for Nuclear Damage, *ibid.* 475 et seq., 479 et seq.

²¹ The territory of a Contracting Party includes also the exclusive economic zone of that party: Art. XIII (2) CSC; Art I A revised Vienna Convention and Art 2(a) revised Paris Convention.

²² See Art. 13 (b) Paris Convention; Art. XI (2) Vienna Convention; Art. XIII (3) CSC. However, these provisions are binding only for the convention States. They cannot oust the jurisdiction of non-convention States. Thus, in this situation there can exist side by side exclusive jurisdiction in a convention State and (normally non-exclusive) jurisdiction of the courts of a non-convention State.

another convention State or suffers the damage there.²³

The exclusive jurisdiction rule requires the plaintiff to institute proceedings in the exclusively competent court, while all other courts of the Contracting States are no longer competent to hear the case and must on their own motion dismiss any claim concerning liability for the nuclear incident. The exclusive jurisdiction is also coupled with the channelling of liability onto the responsible operator,²⁴ who alone can be sued in the competent court while other potential defendants cannot be sued. Even in the case of nuclear damage caused during a transport of nuclear substances, the installation operator remains responsible.²⁵

In principle, this exclusive jurisdiction has the effect that all actions arising out of one incident are heard in the same court. This leads to a concentration of actions in one court where a number of plaintiffs are involved, which in case of nuclear incidents is more likely to happen than in other tort cases. Exclusive jurisdiction may also facilitate equal treatment of multiple plaintiffs and equal allocation of available assets.

b) Situation Not Covered by Any Nuclear Liability Convention

Where the nuclear liability conventions are not applicable, general jurisdiction rules apply.

They may be either part of international instruments — such as for instance EU regulations — or they may be autonomous national rules.

Outside the EU, some countries provide for (internal) exclusive jurisdiction at the place where the nuclear incident occurred;²⁶ while others allow the victim to choose among courts either at the defendant's domicile or place of business or at the place where the tort was committed or where the damage was suffered.²⁷ If several persons — operator, carrier, others — are possibly liable for nuclear damage, the victim is generally entitled but also often practically forced to sue them all in order to obtain full compensation (such a situation may not be that different inside the EU). Whether all possibly liable persons can be sued in one court or must be sued at their respective places of business may depend on the discretion of the court.

In Europe, harmonized jurisdiction rules apply: EU Regulation 44/2001/EC on Jurisdiction and the Enforcement of Judgements in Civil and Commercial Matters,²⁸ its predecessor, the Brussels Convention of 1968²⁹ on the same matters, and the Lugano Convention of 1988³⁰ (as well on the same subject) provide rules on jurisdiction for law suits for the compensation of nuclear damage where the

²³ For a critique, because this regulation may force victims to sue in foreign courts, see in particular *Fischerhof (- Pelzer)*, *Deutsches Atomgesetz und Strahlenschutzrecht I* (2nd ed. 1978) Art. 13 PÜ no. 1.

²⁴ Exceptionally, an action may also lie against an insurer or other financial guarantor; see Art. 6 Paris Convention. It should also be noted that a special “grandfather clause” is, contained in the Annex to the CSC (Article 2) in order to take into account the situation of the United States of America, whose domestic law on liability and compensation in respect of nuclear damage predates both the Paris Convention and the Vienna Convention and is based on the concept of “economic”, as opposed to “legal”, channelling of nuclear liability.

²⁵ See Art. 4 Paris Convention; Art. II (3) (b) Vienna Convention.

²⁶ As for instance in China; see *Li Zhaohui/Wu Aihong/Nan Bin*, Brief introduction to China's Nuclear Liability Regime, in: *Reform of Civil Nuclear Liability. Budapest Symposium 1999* (supra fn. 33) 541, 545.

²⁷ This is, for instance, true for India: sec. 19 and 20 of the Code of Civil Procedure; see further Paras Diwan, *Private International Law* (3rd ed. 1993) 569 s.

²⁸ The Regulation is directly applicable in all EU Member States except Denmark.

²⁹ This Convention still applies with respect to Denmark.

³⁰ This Convention is applicable in most of the EU Member States and also in Iceland, Norway and Switzerland.

nuclear conventions do not apply.³¹ All three instruments allow the victim a choice of forum: the victim is entitled to sue either in the courts of the country where the defendant is domiciled³² or where the harmful event occurred³³ or threatened to occur.³⁴ The place where the harmful event occurred includes both the place where the tortfeasor/operator acted and where the victim suffered the harm. If these places are located in different (EU Member) countries, the defendant may choose between the courts of these countries (he can always choose the courts of the defendant's domicile if this lies in yet another country).³⁵ The mentioned instruments do not, however, provide for exclusive jurisdiction of the courts of a certain State;³⁶ nor is there a procedural channelling of liability onto the operator of a nuclear installation.

c) Summary

From an individual victim's perspective, it is at first sight an advantage to be entitled to sue all possibly liable persons and to choose among various competent courts, and in particular to have access to the courts of the State where the damage occurred and where the victim is most likely to have his or her residence. The national solutions which allow such a choice appear to be preferable to the exclusive jurisdiction provided for by the nuclear liability regime and some national laws.

But if there are many victims in different countries — which is one of the possible

scenarios — other considerations have to be taken into account. In such a case, it is in the interest of all victims that the assets available for compensation purposes are distributed in a fair and equitable manner, rather than victims who sue first getting all losses compensated while victims who come later receive less or nothing. Considerations similar to those in insolvency cases apply here, namely, to collect all available assets at one place and to distribute them by one distributor in a fair and equal way among the different classes of victims (for instance, those who were injured; those whose property was damaged or destroyed; those who lost profits). This 'procedural channelling' on one responsible operator can only be achieved within the framework of the nuclear liability conventions. National jurisdiction rules — even if they prescribe exclusive jurisdiction — cannot secure this effect where victims in more than one country are affected, since the national rules bind only the courts of that State but no court of any other State. However, even the nuclear liability conventions cannot achieve the desirable procedural concentration of claims if only a few States are contracting parties to the conventions, since outside the convention States national jurisdiction rules remain in force, so that victims may choose between the courts of the non-convention State and the court having jurisdiction under the applicable convention. The intended effects of the procedural channelling can therefore only be reached if many — at best all — States become convention States.

³¹ Art. 71 Regulation 44/2001/EC, however, priority to specialized conventions like the nuclear conventions as far as they regulate jurisdiction in civil law matters; see ECJ, ECR 1994-I, 5439 (*Tatry v. Rataj*, C-406/92) at para. 28; see also *Sands/ Galizzi* (supra fn. 33) 497 and further *Kropholler*, *Europäisches Zivilprozessrecht* (8th ed. 2005) Art. 71 no. 1 et seq.

³² Art. 2 of all three instruments.

³³ Art. 5, No. 3 of all three instruments.

³⁴ Art. 5, No. 3 of Regulation 44/2001/EC.

³⁵ See European Court of Justice (ECJ), ECR 1976, 1735 (*Handelswerkerij G.J. Bier v. Mines d'Alsace de Potasse*, C 21/76).

³⁶ Even an injunction against possible emissions from a nuclear power plant in a neighbouring EU Member State would not fall within the scope of Art. 22 Regulation 44/2001/EC, which provides for exclusive jurisdiction of the courts at the place where immovables are situated with respect to proceedings concerning rights in rem in such property; see ECJ 18 May 2006 (C-343/04, *Land Oberösterreich v. CEZ as*).

3. Applicable law

a) Situation covered by one of the nuclear liability conventions

Where a scenario as envisaged above is covered by one of the nuclear liability conventions, then most (although not all) aspects of liability and compensation are regulated by the convention. For aspects not directly covered by the conventions, the conventions determine the applicable law uniformly: it is the law of the country where the competent court (see above) is situated.³⁷ The reference to this law includes, however, the rules of that law relating to conflict of laws.³⁸

b) Situation not covered by any nuclear liability convention

If the above-mentioned scenarios are not covered by any of the nuclear liability conventions, then the applicable law must be determined in the ordinary way. First, according to applicable international instruments and, in their absence, according to national rules on the applicable tort law.

At the international level, there are thus far no conventions which unify the general conflict rules on international torts. At the European level, a regulation ("Rome II Regulation") makes provision for the law applicable to non-contractual obligations.³⁹ However, non-contractual obligations arising out of nuclear damage have been explicitly excluded.⁴⁰ Therefore, generally the autonomous conflicts rules of the single states will remain applicable.

Again, the autonomous conflicts rule for torts in most countries follows the *traditional lex loci delicti commissi* maxim⁴¹—the law of the country where the nuclear incident happened or where the damage was suffered is applicable.⁴² But also other approaches can be found, for instance the former English rule of double actionability:⁴³ The tort must give rise to an action in the country where proceedings are instituted, and the tort must not be justifiable in the country where it was committed.⁴⁴ Yet others regard the *lex loci delicti* principle only as a starting rule and follow in fact a multi-factor approach.⁴⁵ In this view, jurisdiction flows to the country with which the tort and the parties are most closely

³⁷ See Art. 14 (b) Paris Convention; Art. I (e) and VIII Vienna Convention; Art. I (k) and XIV (2) CSC.

³⁸ So expressly Art. I (e) Vienna Convention; Art. I (k) CSC. The same understanding applies to Art. 14 (b) Paris Convention and its reference to "national law" and "national legislation"; compare *Exposé des motifs* to the Paris Convention No. 60; *Haedrich, Atomgesetz mit Pariser Atomhaftungsübereinkommen* (1986) p. 649.

³⁹ See Reg. (EC) No.864/2007.

⁴⁰ See Art. 1 (2) (f) of the Reg. (EC) No. 864/2007.

⁴¹ See, for instance, France: deduced from Art. 3 Code civil: Cour de Cassation, *Journal de droit international* (JDI) 1983, 123 with note Légier; for Germany: Art. 40 (1) Einführungsgesetz zum Bürgerlichen Gesetzbuch (Introductory Act to the Civil Code — EGBGB); for Great Britain: sec. 11 Private International Law (Miscellaneous Provisions) Act 1995.

⁴² See for instance China: § 146 (1) General Principles of Civil Law: The law of the country is to be applied where the tort occurred. The place of tort is in general the place where the tortfeasor acted and committed the tortious conduct. However, the court may apply the law of the place where the damage was suffered if the case is more closely connected with the law of this place (see *Young, IPRax* 1993, 323 et seq.; *Xu Guojian, ICLQ* 1991, 684 et seq.). Where the tortfeasor and the victim are citizens of the same state and/or have their domicile in the same state the law of this state may be applied instead of the law of the tort (§ 146 (2) General Principles of Civil Law). But a foreign tort can be sued upon in China only if it constitutes a tort under Chinese substantive law as well (§ 146 (2) General Principles of Civil Law).

⁴³ The United Kingdom abolished the rule in 1995 when the Private International Law (Miscellaneous Provisions) Act 1995 entered into force.

⁴⁴ This is still the rule in India; see, e.g., *The Kotah Transport Ltd. v. The Jhalawas Bus Service Ltd.*, 1960 Raj.224; further *Paras Diwan, Private International Law* (3rd ed. 1993) 551 et seq., 570.

⁴⁵ This is the case, for instance, with the USA; see, e.g., *Babcock v. Jackson*, 191 N.E. 2d 279 (N.Y. 1963); *Reich v. Purcell*, 432 P. 2d 727 (Cal. 1967); further *Rosenberg/Hay/Weintraub, Conflict of Law. Cases and Materials* (10th ed. 1996) 520 ss.; *Scoles/Hay, Conflict of Laws* (2nd ed. 1994, Suppl. 1995) 570 ss.

connected.⁴⁶ This has to be determined by weighing all relevant factors, in particular the place of the injury, the place of the tortious act, domicile, residence, nationality, place of business,⁴⁷ and other factors like the relevant policies of the forum, justified expectations of the parties, etc.⁴⁸ Only in simple cases can the outcome of this evaluation process be predicted with some certainty.

c) Summary

With respect to the determination of the applicable law, the main difference between the nuclear convention regime and autonomous national solutions is that to a large extent, the conventions contain uniform substantive law on liability and compensation, and need to refer to national law only for a relatively few residual questions. Even in respect of those residual questions, the applicable national law is generally clear. In contrast, outside the conventions the outcome as to which law applies is difficult to predict. Considerable time and money could be spent on the determination of the applicable law and its contents even before substantive issues were considered. The convention regime offers advantages in this regard to all parties to actions arising from a nuclear incident.

4. Recognition and Enforcement of Judgements

A further procedural aspect of great practical importance concerns the question as to whether a judgement which awards compensation for nuclear damage will be

recognized and enforced in another country than that where the judgement was rendered. Again, the situation differs between countries which adhere to one of the nuclear liability conventions and those which do not.

a) Situation Covered by One of the Nuclear Liability Conventions

Under the nuclear liability regime, the recognition and enforcement of foreign judgements is less likely to be required. The judgement against the responsible operator is generally rendered by the court where the nuclear incident occurred, because under the nuclear liability conventions this court is exclusively competent.⁴⁹ There is a relatively high likelihood⁵⁰ that the operator is located there and possesses assets there against which execution can be pursued. In particular, the financial security which the operator must maintain will be available at that place. Therefore, it is likely that victims can successfully enforce judgements in the State where they have been rendered.

Nonetheless, the nuclear liability conventions provide further that judgements of a convention State which have been rendered by a court which is competent under the respective convention must be recognized and can be enforced in all other convention States without the need for re-litigation.⁵¹ In these States, such a judgement has the same effect as a domestic judgement.⁵² Recognition and enforcement may be denied only in very limited circumstances (like, for instance, public

⁴⁶ See also § 145(1) Restatement Second on Conflict of Laws.

⁴⁷ See § 145(2) Restatement Second on Conflict of Laws.

⁴⁸ See § 6(2) Restatement Second on Conflict of Laws.

⁴⁹ See above under III.2.a).

⁵⁰ If the nuclear incident occurred at the installation, the courts there are competent and it is very likely that the operator is located there. If the incident occurred outside the territory of a Contracting Party or if the place of the incident remains uncertain, the courts of the installation State are competent, and again it is very likely that the operator is located there. Only if the incident occurs during the transport of nuclear material in another convention State does jurisdiction lie with the courts of a State other than the installation State.

⁵¹ Art. 13 (d) Paris Convention; Art. XII Vienna Convention; Art. XIII No. 5 CSC.

⁵² Art. 13 (d) Paris Convention; Art. XII (2) Vienna Convention; Art. XIII No. 6 CSC.

policy).⁵³ In any event, the merits of the case will not be subject to any further proceedings.⁵⁴

b) Situation Not Covered by Any Nuclear Convention

Outside the scope of the nuclear conventions, the recognition and enforcement of foreign judgements is first regulated by international instruments, mainly bilateral treaties concerning this matter. In the absence of international instruments, the autonomous national rules of the State where recognition and enforcement is sought apply.

The various national rules under which foreign judgements are recognised and enforced vary rather widely. Some countries proceed on the basis that foreign judgements can only be recognized and enforced if a multilateral or bilateral treaty obliges the State to give effect to foreign court decisions.⁵⁵ Others provide that foreign judgements can generally be recognized on the basis of reciprocity only.⁵⁶ Yet others deny recognition only on certain specific grounds like the violation of the *ordre public*, etc.⁵⁷

On a regional level, the aforementioned EU Regulation 44/2001/EC⁵⁸ as well as the Brussels and Lugano Conventions cover the

recognition and enforcement of judgements of one Member State in another Member State. Judgements rendered in one Member State have to be recognized and enforced in all other Member States, with similar minor exceptions as allowed under the nuclear liability conventions⁵⁹ Judgements rendered in third States are, however, not covered by these instruments.

c) Summary

The nuclear liability regime ensures that judgements rendered in one convention State are recognized and can be enforced in all other convention States. Outside the nuclear liability regime, it is uncertain whether a judgement for compensation of nuclear damage will be recognized and can be enforced outside the country where the judgement was rendered. It is clearly advantageous for victims if they can trust that a judgement rendered in one country will be recognized and enforced in others.

IV. COMPARISON OF SUBSTANTIVE ASPECTS

The most significant differences between the nuclear liability regime and national laws concern the substantive rules on liability and compensation for nuclear damage. The

⁵³ See Art. 12 (1) (a) – (c) Vienna Convention; Art. XIII No. 5 (a) – (c) CSC.

⁵⁴ Art. 13 (d) Paris Convention; Art. XII (3) Vienna Convention; Art. XIII No. 6 CSC.

⁵⁵ Until recently (but see the following fn.) this has been the case with the Russian Federation; see thereon *M.M. Boguslawskij*, Die Anerkennung und Vollstreckung von Entscheidungen ausländischer staatlicher Gerichte und Schiedsgerichte in der Russischen Föderation, in: *W. Seiffert* (ed.), Anerkennung und Vollstreckung ausländischer Entscheidungen in Osteuropa (Munich, 1994), 15 ss.

⁵⁶ See, for instance, Austria: §§ 79, 80 Gesetz über das Exekutions- und Sicherungsverfahren (Act on Procedure of Enforcement and Provisional Measures [EO]); Germany: § 328 par. 1 No. 5 Zivilprozessordnung (Civil Procedure Code – ZPO). In a similar sense see now the recent decision of the Supreme Court of the Russian Federation of 7 June 2002, IPRax 2003, 356 et seq. (in German translation).

⁵⁷ See, for instance, the USA where the recognition and enforcement of foreign judgements is a matter falling within the competence of the single States which, however, apply rather uniform rules. According to § 98 Restatement Second on the Conflict of Laws foreign judgements can only be recognized and enforced: if the judgement is final and conclusive under the law of the court which rendered the judgement; if the court which delivered the judgement had jurisdiction; if the defendant had been given proper notice of the suit; if the defendant had the opportunity to be heard; if the judgement does not violate the public policy of the recognition State.

⁵⁸ As to the applicability of the Regulation in case of nuclear damage see supra 36.

⁵⁹ See Art. 34, 35, 45 Regulation 44/2001/EC. Any judgement of a court of one EU Member State is to be declared enforceable in another Member State immediately and without any review under Art. 34 or 35 (see Art. 41). But on appeal of the judgement debtor the grounds of non-recognition listed in Art. 34 and 35 may lead to the refusal or revocation of a declaration of enforceability (Art. 45). Again, Denmark is not bound by these provisions of the Regulation but by the respective rules of the Brussels Convention. For the Brussels and Lugano Conventions, see their corresponding Art. 27, 28 and 34.

original Paris and Vienna Convention have been improved by a number of revisions and additional conventions — in particular the CSC. For a comparison of substantive aspects, the most recent state of the conventions shall be taken into account even though, for instance, the CSC has thus far not entered into force.

a) Situation covered by one of the nuclear liability conventions

The nuclear liability conventions pursue two aims: the primary aim is to ensure that victims of a nuclear incident can claim, and will in fact receive, adequate compensation for their losses. But an additional aim is also to enable the civil use of nuclear power by introducing maximum limits for the liability of operators of nuclear installations. It should be noted, however, that contracting parties are not constrained from providing greater liability or even unlimited liability at the national level. In general, the nuclear liability conventions define the conditions under which liability is incurred, state the remedies and try to ensure that sufficient means for compensation are available.

- The nuclear liability conventions introduce a regime of strict liability for nuclear damage. Victims are not required to prove fault of the liable person.⁶⁰
- The nuclear liability conventions require non-discrimination based on nationality,

domicile or residence, an advantage that may not be available under national laws.

- Only a few grounds of exemption from this liability — such as armed conflict, civil war, exceptional natural disaster⁶¹ but not acts of terrorism — are accepted.⁶²
- Liability is channelled to the operator of the nuclear installation.⁶³ Victims can only and need only to approach the operator in order to get compensation.⁶⁴
- The notion of “nuclear damage” is uniformly defined. In the revised and most recent conventions, it is given a broad meaning which includes not only personal injury⁶⁵ and property damage, but also, a number of further heads of damage, including costs of measures for the reinstatement of the environment and costs of preventive measures (though the extent of compensation is partly left to the applicable national law).⁶⁶
- The necessary causal link between damage and nuclear activity is detailed by the conventions themselves.⁶⁷
- Maximum amounts of damages are provided for.⁶⁸
- Uniform rules on time limits are provided for.⁶⁹

⁶⁰ Art. 3 Paris Convention; Art. IV Vienna Convention.

⁶¹ Exceptional natural disaster has been removed as a ground for exemption under the revised Vienna and Paris Conventions.

⁶² Art. 9 Paris Convention; Art. IV (2) and (3) Vienna Convention.

⁶³ Art. 3, 6 Paris Convention; Art. II Vienna Convention.

⁶⁴ Though there might apply the exception of Art. 6 Paris Convention that a claim lies also against the insurer or financial guarantor.

⁶⁵ However, the question whether and to which extent non-pecuniary damage is recoverable is still left to the applicable national law; see in this sense Exposé des Motifs (to Paris Convention) no. 39; further thereon Fischerhof (- Pelzer) (supra fn. 36) Art. 3 PÜ no. 6.

⁶⁶ See Art. I (f) CSC.

⁶⁷ Art. 3 Paris Convention; Art. II Vienna Convention.

⁶⁸ Art. 7 Paris Convention; Art. V Vienna Convention.

⁶⁹ Art. 8 Paris Convention; Art. VI Vienna Convention.

- The conventions establish some uniform rules on burden of proof.⁷⁰
- The conventions make payable sums freely transferable between the contracting parties.⁷¹
- It is of particular practical importance that the conventions require the operator of a nuclear installation to have and maintain insurance coverage or other financial security of a certain amount for a possible incident.⁷² Thus, the very serious risk that the liable defendant cannot satisfy all successful claims is at least significantly reduced, if not almost excluded. (Additionally, insurers or other financial guarantors must give at least two months' notice of suspension or cancellation of coverage.)
- The revised conventions require that the State where the installation is located guarantees considerable further funds.⁷³
- Further contributions by other contracting parties can be made available.⁷⁴

b) Situation Not Covered By Any Nuclear Liability Convention

If none of the nuclear liability conventions are applicable, the provisions of national law have to step in. For situations such as those envisaged at the beginning of this paper, the respective rules of different States vary rather widely. To some extent, the differences depend on whether the State is one with or without a nuclear power industry.

- Some non-convention States have introduced a regime of strict liability for nuclear damage with certain grounds of exemption.⁷⁵ Other non-convention States still follow the traditional tort law approach which requires fault, at least negligence, in order to incur liability.⁷⁶ The apparent effect of this rule is mitigated by the fact that for many common law jurisdictions, the law of nuisance/Rylands v. Fletcher (strict liability) might be applicable.
- Some of the non-convention States also channel liability to the operator of the

⁷⁰ Art. 3, 4 Paris Convention; Art. II Vienna Convention.

⁷¹ Art. 12 Paris Convention; Art. XV Vienna Convention.

⁷² Art. 10 Paris Convention; Art. VII Vienna Convention.

⁷³ See in particular Art. III (1) CSC.

⁷⁴ See Art. IV CSC. For instance, China has adopted the standard of the nuclear liability conventions including strict liability for its internal law. This has been effected by a Decree of the State Council: Guo Han (1986) No. 44. Also, the United States has provided for strict liability for nuclear damage on the federal level in cases where not already provided by applicable state law (see the Atomic Energy Act of 1954 with later modifications in particular by the Price-Anderson Act of 1957). Strict liability is incurred in the USA if the Nuclear Regulatory Commission qualifies any incident as an 'extraordinary nuclear occurrence (ENO)'. The nuclear incident at Three Mile Island in 1979 was not so qualified because of the low level of radioactive releases involved. Therefore, liability was based on fault liability in that case under the applicable law of the State of Pennsylvania; see *In re TMI (Three Mile Island)*, 67 F. 3d 1103 (3d Cir. 1995).

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⁷⁶ This is still the case with India. Neither the Indian Atomic Energy Act of 1962 with later modifications nor the Radiation Protection Rules of 1971 provide for special rules on civil liability for nuclear damage (though the Atomic Energy Act entitles the Government to enact such special rules). The general Indian tort law follows the pattern of English Common Law. It is based on the fault principle: if negligent conduct of a tortfeasor is established which has caused damage, this person is liable for the full loss.

nuclear installation.⁷⁷ But it appears to be the more widespread rule that victims can sue both the operator and other possibly liable persons.⁷⁸

- Some of the non-convention States have introduced maximum amounts⁷⁹ while others have not; and, therefore, effectively provide for unlimited liability.⁸⁰
- The national rules on prescription differ regularly.
- Free transferability of money payments is not everywhere and always secured. Even member States of the International Monetary Fund (IMF) may restrict the transfer of home currency to other countries as long as such restriction is in conformity with the Bretton Woods Agreement of 1944 which created the IMF.
- A number of non-convention States ensure that the operator of a nuclear installation has to take and to maintain insurance coverage or another financial security of a certain amount for nuclear incidents.⁸¹ However, where no channelling to the operator is provided for, there is also regularly no obligation on potential tortfeasors to insure.

- Few non-convention States oblige the State to contribute to funds from which further compensation of victims is paid.⁸²
- The non-convention States do not have the possibility to oblige other states to contribute to funds for the compensation of nuclear victims.

c) Summary

If the substantive differences which exist between the situation as covered by one of the nuclear liability conventions and outside the conventions are compared, the first and most important difference is the uniformity under the conventions and the great variety under the various national laws. Looked at from the perspective of potential victims, the nuclear liability conventions offer the following advantages:

- generally strict liability with no necessity to prove fault; only some non-convention States also offer such a regime;
- generally channelling of liability to the operator with the good chance of a fair and equal distribution of all available assets; such channelling is offered by relatively few non-convention States;

⁷⁷ Channelling to the operator is, for instance, provided for in China; see thereto See *Li Zhaohui/Wu Aihong/Nan Bin*, Brief Introduction to China's Nuclear Liability Regime, in: Reform of Civil Nuclear Liability. Budapest Symposium 1999 (ed. by OECD, 2000) 541 et seq.; in the United States economic channeling to the operator is prescribed, see *Quattrocchi*, Nuclear Liability Insurance in the United States: An Insurer's Perspective, in: Reform of Civil Nuclear Liability, Budapest Symposium 1999 (supra fn. 33) 383 et seq.

⁷⁸ This is even the rule in Austria which has introduced a Nuclear Liability Act rather recently though the country does not possess nuclear power plants (see § 16 Austrian Act on Civil Liability for Damage Caused by Radioactivity of 1999).

⁷⁹ For example, China, see thereto See *Li Zhaohui/Wu Aihong/Nan Bin*, Brief Introduction to China's Nuclear Liability Regime, in: Reform of Civil Nuclear Liability. Budapest Symposium 1999 (supra fn. 33) 541 et seq.; also the United States, see *Quattrocchi*, Nuclear Liability Insurance in the USA: An Insurer's Perspective, in: Reform of Civil Nuclear Liability. Budapest Symposium 1999 (supra fn. 33) 383 et seq. The total financial amount available for the compensation of victims amounts to almost 10 billion US\$.

⁸⁰ For instance, India; however, also Austria where the Act of 1999 introduced strict liability. A limit applies only with respect to loss of income and immaterial impairment due to preventive measures or due to the danger of radiation (§ 11 (4) AtomHG).

⁸¹ Again this is true, for instance, for China and the USA; see the references in fn. 78.

⁸² Although there are exceptions: for example, the Price-Anderson Act requires Congress to consider additional funds if the amount provided under that Act is not sufficient to compensate all victims.

- general inclusion of certain heads of damage which are not always included under national law;
- free transferability of payments;
- general requirement that the operator of a nuclear installation is reasonably insured or maintains other financial security; such a requirement is offered by relatively few non-convention States; and
- the obligation of the State and even other States to contribute to the funds available for compensation; a few non-convention States ensure contributions by the State itself, but obviously not by other States.

This list shows quite a number of substantive advantages for victims which the nuclear liability conventions — at least in their most recent form — bring about. The main advantage is the generalization of rules for the protection of potential victims. These rules may also be found in certain — though rather few — national laws outside the convention system. Most national laws do not, however, meet the standard of protection as set by the conventions. Outside the nuclear liability conventions, the protection of the victim would therefore entirely depend on whether a national law would be applicable which would protect victims in a similar way as do the conventions. This, in turn, would mainly depend on where the incident or the damage occurred. Therefore, it would be by mere chance that one of the few national laws which is as favourable as the conventions would be applicable. In most cases, a clearly less favourable law would apply.

It is only natural that there are also certain disadvantages of the substantive law of the nuclear liability regime as compared to national laws. The disadvantages are the following:

- possible limitation of liability of the operator by maximum amounts, while a considerable number of non-convention States allow unlimited liability (although regularly requiring fault on the part of the liable person and not requiring any insurance or other financial security);
- possible remaining limitations in the definition of "nuclear damage" as compared to some national laws (although the definition of nuclear damage in the recent instruments is consistent with, or broader than, definitions of damage in other regimes covering non-nuclear damage);
- prescription periods which are in some cases shorter than the periods allowed under national law; and
- third persons who are also liable under national law cannot be made liable under the nuclear liability conventions.

Comparing the differences concerning substantive liability law for nuclear damage, the nuclear liability conventions display considerable advantages — in particular, because victims outside the convention regime cannot trust that in case of a nuclear incident a national law which happens to be as favourable as the nuclear liability conventions will be applicable.

V. CONCLUSIONS

The survey shows relevant differences between the situation where one of the nuclear liability conventions is applicable as compared to the situation where this is not the case. The advantages of the nuclear liability conventions are, in particular:

1. With respect to State immunity, the nuclear liability conventions ensure that a State cannot invoke this defence, while under national law it may be uncertain whether the operation of a State run

nuclear power plant which produces energy for the public or a research reactor used for scientific research and/or medical radioisotope production entitle the involved State to invoke the defence of State immunity.

2. Under the nuclear liability conventions, jurisdiction is exclusively accorded to the courts at one place only; this is generally where the nuclear incident occurred or, exceptionally, where the relevant nuclear installation is situated. The national laws (including regional harmonization such as in the EU) do not normally provide for such procedural channelling. They regularly — but not without exception — allow the victim/plaintiff to choose between the courts of the defendant's domicile and the courts at the place where the damaging event took place or where the damage was suffered. Though this possibility to choose might at first sight appear as an advantage for victims, it does not allow a concentration of all proceedings and all available funds at one place in the hands of one distributing court. Such procedural channelling secures as far as possible a fair and equal treatment of all potential victims, and is therefore also advantageous for every single victim. The procedural channelling can only be achieved under a convention regime which coordinates the jurisdiction of courts of different States. National law alone is unable to achieve this channelling effect because national law is binding on its own courts only, not the courts of other States.
3. The nuclear liability conventions make it largely unnecessary to select, and to refer to, the applicable national law because the conventions provide for substantive liability rules themselves. Outside the scope of the convention system it is, however, always necessary as a first step to designate the applicable

national law. The result of this selection cannot always be predicted with certainty. Not infrequently, the applicable conflicts rules grant courts a considerable discretion; partly victims are entitled to opt for either the law of the country of the damaging event or of the country where the damage was suffered. The necessity to determine the applicable law and its substantive content costs time and money. Moreover, the applicable law may be much less favourable than the convention regime.

4. Under the nuclear liability conventions, the recognition and enforcement of judgements are secured. A judgement of a court of a convention State must be recognized and can be enforced in all other convention States. Under national or regionally harmonized law, recognition and enforcement may be doubtful since the conditions of recognition and enforcement of foreign judgements vary widely.
5. With respect to the substantive rules on liability for nuclear damage, the conventional system establishes a system of strict liability, channels this liability to the operator, sets uniform rules for the recoverable damage and the notion of causation, limits liability by certain maximum amounts of damages (although contracting parties are not constrained from providing greater liability or even unlimited liability at the national level), secures their payment by forcing the operator to maintain insurance coverage or other financial security and enlarges the means available for compensation by obliging the contracting parties to contribute. Under the different national laws, there are many solutions. Some countries provide for even higher maximum amounts; others follow the standard of the convention system only to some

extent; still others provide for fault liability only. Further, the practically important aspect of securing the payment of an adjudicated compensation and a contribution by the State is differently — if at all — regulated. The main advantage of the nuclear liability conventions is to bring about a uniform liability system which is able to effectively protect victims. The convention regime avoids the situation that mere coincidence decides whether a national law that is as similarly favourable as the convention regime applies to victims, or whether a much less favourable national law applies. At present, the latter situation will be the much more likely case.

On the other hand, the nuclear liability conventions also contain a number of disadvantages, in particular the following:

1. Under the convention regime, victims of a transboundary accident will often if not regularly be forced to sue in a foreign State because of the exclusive jurisdiction of the courts of that State. This is the necessary corollary of the procedural channelling and the price for the advantages of the channelling.
2. The nuclear liability conventions allow States to set limits on the amount of liability. However, apparently Japan, the USA, Switzerland and South Africa are the only non-convention countries which provide for higher amounts of liability than the amounts mandated under the revised conventions.
3. Claims against third persons who under general law would also be liable for nuclear damages are excluded due to the channelling of claims to the operator. This limitation would indeed affect victims where the liable operator and the further available means would not be able to fully satisfy the claims of the victims, but where full satisfaction would be reached

if also these third persons could be made liable.

4. The nuclear liability conventions do not cover all situations where nuclear damage can occur. Military installations are excluded.
5. The existence of several nuclear liability conventions which are in force in only a few States or which are not in force at all is unsatisfactory and impedes a truly uniform nuclear liability regime. This disadvantage could be lessened by a greater number of ratifications of the conventions, particularly those — the CSC and the Joint Protocol — which seek to unify the Paris and Vienna regimes.

Balancing the advantages and disadvantages, the nuclear liability conventions considerably improve the protection of victims in comparison to most national laws. Quite a number of the advantages, like procedural channelling, recognition and enforcement of judgements, liability for damage caused by State-run nuclear activities, free transferability of payable sums and contributions of other States to compensation funds can only be achieved by international agreements. National laws are unable to achieve these advantages.

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ESI-CIL Nuclear Governance Project

A multidisciplinary research project by the Energy Studies Institute & Centre for International law

Summary

The Energy Studies Institute (ESI) and the Centre for International Law (CIL), both of NUS, have secured a research grant from Singapore's National Research Foundation entitled "Policy and Law for Nuclear Safety and Security" as part of the Singapore Government's Nuclear Policy Research Programme. With funding of over two million Singapore Dollars, the three-year Nuclear Governance Project, which began on 4 January 2016, is staffed by a multidisciplinary academic team carrying out research in the governance of nuclear safety, security and civil liability for nuclear damage.

The project will focus on two main research areas: international, regional and national legislative and regulatory frameworks for nuclear safety and security; and nuclear liability.

Dr Philip Andrews-Speed, Senior Principal Fellow at ESI is the principal investigator for the project. Associate Professor Robert Beckman, Head of Ocean Law and Policy at CIL, is the co-principal investigator.

Context

Growing interest in the use of nuclear energy world-wide and particularly in Asia raises a number of safety and security concerns. Some of these concerns arise in part from an apparent lack of a unified global governance regime and complexities due to multiple levels of governance in Asia. At present, Singapore is seeking to gain further knowledge and expertise in order to play a part in strengthening nuclear governance.

The project aims to carry out multidisciplinary research into the international, regional and national governance regimes for the safe and secure uses of nuclear energy, with an aim of proposing recommendations for strengthening current regimes.

Overall Project Objectives

Centred around research, networking and capacity building, the overall objectives of the project are to:

- carry out and publish policy and academic research in the field of nuclear law and policy in collaboration with other institutions inside and outside Singapore;
- establish Singapore as an internationally-recognised centre for policy and academic research in this field;
- build Singapore's capacity and expertise in this field;
- establish a training programme for Singapore-based officials; and
- establish a regional and global network of academics, professionals, and research institutions,

thereby contributing to the enhancement of global and regional nuclear safety and security.

Specific Research Questions

In addition to examining the governance of nuclear safety and security at the international, regional and national levels, the project will also specifically evaluate governance in the fields of nuclear liability, emergency preparedness and response, the maritime transport of radioactive material and the disposal of spent fuel and radioactive waste. Finally, in drawing on this work, implications for the future will be assessed

in light of new nuclear-build (particularly in developing countries) involving new vendors, technologies and challenges.

For each governance regime, the primary question is how effective is it, what explains its degree of effectiveness and how can it be strengthened? This will include an analysis of the strengths and weaknesses of the normative framework and how national and local conditions shape the adoption and implementation of such a framework.

Collaboration and Outreach

ESI and CIL have considerable experience and expertise in the fields of international energy governance and international law, including in the area of transboundary risks and pollution. These capacities will be enhanced through the development of an international network of institutions and individuals with expertise in nuclear law and policy. Potential collaborators will include individual specialists, universities, think tanks, research institutes, legal and other professional firms, international and non-governmental organisations and energy companies.

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