

THE PARIS CONVENTION & THE BRUSSELS SUPPLEMENTARY CONVENTION (as applicable to a nuclear incident occurring at a nuclear power plant)

OECD/NEA Workshop

Nuclear damage, liability issues and compensation schemes

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THE PARIS REGIME (under OECD auspices)

- 1960** **Paris Convention on Nuclear Third Party Liability (PC - in force 1968)**
- **Basic liability/compensation convention:** 16 Contracting States
 - Parties (mostly Western Europe)
- 1963** **Brussels Convention Supplementary to Paris Convention (BSC - in force 1974)**
- **Supplementary funding instrument:** 13 Contracting States
 - All parties must be/are PC states
- 2004** **Protocol amending PC (RPC) + Protocol amending BSC (RBSC) (not yet in force)**
- Provide **more money for more victims for more damage**
 - 16 PC Contracting States / 13 BSC Contracting States

STATUS OF RATIFICATION

Country	PC	BSC	JP	Country	PC	BSC	JP
Belgium	X	X		Norway	X	X	X
Denmark	X	X	X	Portugal	X		
Finland	X	X	X	Slovenia	X	X	X
France	X	X		Spain	X	X	
Germany	X	X	X	Sweden	X	X	X
Greece	X		X	Switzerland*	X	X	
Italy	X	X	X	Turkey	X		X
Netherlands	X	X	X	UK	X	X	

JP: 1988 Joint Protocol relating to the application of the Vienna Convention and the PC

** : Switzerland 's ratification of the PC, RPC, BSC and RBSC will only be effective upon the entry into force of the RPC and RBSC.*

PC PROVIDES COMMON NUCLEAR LIABILITY PRINCIPLES

- **Operator's Strict Liability:** liable regardless of fault
- **Operator's Exclusive Liability:** only person liable for nuclear damage
- **Liability Limited in Amount:** PC provides for a minimum
- **Mandatory Financial Security:** operator required to have and maintain insurance or other financial security
- **Liability Limited in Time:** Actions must be brought within a certain time from the date the victim has knowledge of both the person liable and the damage; the right of action is fully extinguished after a certain time following the date of the tort
- **Equal treatment of victims:** non-discrimination based on nationality, domicile or residence
- **Exclusive jurisdiction** of the courts of the State where the accident occurred [*RPC: only one of those courts must have jurisdiction*]

DEFINITION OF “NUCLEAR DAMAGE”

- **Current heads of damage**
 - **Damage to or loss of life of any person**
 - **Damage to or loss of any property, other than on-site i.e.**
 - The nuclear installation itself + any other installation on the site
 - Any property on the site which is used or to be used in connection with the nuclear installation
- **Additional heads of damage under RPC**
 - **Economic loss arising from loss or damage referred to above**
 - **Costs of measures of reinstatement of impaired environment, unless such impairment is insignificant**
 - **Loss of income deriving from a direct economic interest in any use or enjoyment of the environment**
 - **Cost of preventive measures + further loss or damage caused by them**

LIABILITY LIMITED IN AMOUNT

- **PC + BSC**

- **1st tier: Operator's liability**

- maximum liability limit: 15 million SDRs € 17 million
 - 1990 NEA recommendation: **150 million SDRs** € **170 million**

- **2nd tier: Operator's State funds**

- 1st tier up to 175 million SDRs **25 million SDRs** € **28 million**

- **3rd tier: International fund**

125 million SDRs € **141 million**

TOTAL **300 million SDRs** € **339 million**

- **RPC + RBSC**

- **1st tier: Operator's liability**

min. € 700 million

- **2nd tier: Operator's State funds**

€ 500 million

- **3rd tier: International fund**

€ 300 million

TOTAL € **1.5 billion**

At 04/12/2013: 1 Special Drawing Right (SDR) = € 1.13 / US\$ 1.53

MANDATORY FINANCIAL SECURITY

- **Operator's obligation under PC / RPC**

Operator to have and maintain insurance or other financial security as required by the competent public authority, in any case it shall be **at least equal to the minimum liability amount under the PC.**

- **Contracting States obligation under RPC**

The RPC State where the nuclear installation of the operator liable 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.**

LIABILITY LIMITED IN TIME

ACTIONS MUST BE BROUGHT

- **PC / BSC**
 - within **10 years** from the date of the accident
 - Within **2/3 years** from the date at which the victim had knowledge (or ought reasonably to have known) of both the nuclear damage and the operator liable (*Discovery Rule*)

- **RPC / RBSC**
 - within **30 years** from the date of the accident for **loss of life and personal injury**
 - within **10 years** from the date of the accident for **other nuclear damage**
 - within **3 years** from the date at which the victim had knowledge (or ought reasonably to have known) of both the nuclear damage and the operator liable (*Discovery Rule*)

GEOGRAPHICAL SCOPE

- **PC**

- **applies if incident occurs and damage is suffered in the territory of a PC State**, including the territorial sea
- *may* apply if incident occurs and damage is suffered **in the territory of non-PC State**, if provided by the legislation of the PC State where the nuclear installation of the operator liable is situated

- **RPC**

- **applies to nuclear damage suffered in the territory of a PC State**
- applies to nuclear damage suffered in **the territory of non-PC States** if
 - it is a party to the Vienna Convention and concerned States are parties to the 1988 Joint Protocol
 - it has no nuclear installations
 - its nuclear liability legislation affords equivalent reciprocal benefits and is based on principles identical to those contained in the PC
- PC State may provide for a broader scope of application under its legislation

BSC INTERNATIONAL FUND MECHANISM

- Main principles 1/2 -

- **BSC SCOPE**

- **Installation of the operator liable under the PC must be situated in the territory of a BSC State and must appear in the list of nuclear installations communicated to the Belgian Government (BSC depositary)**
- **Damages must be suffered in the territory of a BSC State**

- **RBSC EXTENDED SCOPE**

- Extension only concerns nuclear damage suffered in or above maritime areas beyond the territorial sea of a BSC State or in or above a BSC State's exclusive economic zone, under specified circumstances
- Article 14(d) provides that **where all RBSC States** become contracting parties to any other international supplementary funding regime (e.g. CSC), a RBSC State may use the funds to be provided under 3rd tier to satisfy any obligation it may have under such other regime

BSC INTERNATIONAL FUND MECHANISM - Main principles 2/2 -

- **BSC Formula**

- 50% calculated on the basis of the ratio between ***gross national product at current prices of each BSC State*** / total of the gross national products at current prices of all BSC States as shown by the official statistics published by the OECD for the year preceding the year of the accident
- 50% on the ratio based on ***thermal power of the reactors situated*** at the date of the accident

- **RBSC Formula**

- 35% on the ratio based on ***gross domestic product***
- 65% on the ratio based on ***installed nuclear capacity***

=> reflects the sense of responsibility which BSC States place on nuclear power generating states

ENTRY INTO FORCE OF RPC AND RBSC

- **2000 Council Regulation on jurisdiction and recognition/ enforcement of judgements in civil and commercial matters**
 - The EU has exclusive competence on such matters
 - Article 13 RPC affects this rule as it determines the competent court
- **2004 Council Decision**
 - Authorises MS/PC States to ratify/accede the 2004 Protocol amending the PC in the interest of the European Community
 - But requires that they take the necessary steps to **deposit simultaneously** their instruments of ratification/accession of the 2004 Protocol amending the PC within a reasonable time and, if possible, before 31 December 2006.
 - **11 PC States Concerned** / Entry into force of 2004 Protocol requires ratification by 2/3 of the PC States

THANK YOU FOR YOUR ATTENTION !