

Decommissioning and Waste Management in the Context of the Nuclear Liability Regimes

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Nuclear Liability and Compensation Regimes Address Exceptional Situations

Most national and international legal regimes address:

- liability and compensation for damage from a nuclear incident at a nuclear installation or during transport of nuclear substances
- exceptional risks arising from nuclear activities where common law rules and practice are viewed as not suitable (e.g. activities involving high levels of radioactivity, criticality risks, etc.)
- liability and compensation for damage suffered by third parties (including nuclear operator's employees)

National and international legal regimes do not normally address:

- damage that may be caused by radioactive sources outside a nuclear installation; not deemed to pose “exceptional” risks
E.g. radioisotopes and sources used in industrial, commercial, agricultural, medical, scientific or educational applications.

International Conventions Facilitate Compensation Of Cross-border Damage

OECD Auspices

1960 Paris Convention on Nuclear Third Party Liability (PC)

1963 Brussels Supplementary Convention (BSC)

2004 Protocols to amend PC and BSC* (not in force)

➤ *Primarily countries of Western Europe*

1988 Joint Protocol links Paris and Vienna Conventions

IAEA Auspices

1963 Vienna Convention on Civil Liability for Nuclear Damage (VC)

1997 Protocol to amend the 1963 VC

1997 Convention on Supplementary Compensation for Nuclear Damage*

* Not yet in force

Nuclear Liability – Basic Principles

- **Strict liability** - operator is liable without proof of fault or negligence.
- **Exclusive liability** - only the operator is liable.
- **Liability limited in time** - 10 years from the incident (30 years for personal injury under modernised conventions), and time for making claims usually limited to 2-3 years after discovery of damage and identification of responsible operator.
- **Liability limited in amount** – a few nuclear countries have opted for **unlimited liability** (e.g. Germany, Japan, Switzerland).
- **Compulsory financial security** must equal the liability amount, or a specific amount in case of unlimited liability, to ensure funds are available when needed.
- **Unity of jurisdiction** - courts with jurisdiction are those of the country where the incident took place.
- **Non-discrimination** - competent courts are to apply the international convention ratified by their State, if any, and their own national law without discrimination based on nationality, domicile or residence.

Defining Terms is Important*

- ***Nuclear Incident***

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.

- ***Nuclear Installation***

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; and such other [designated] installations in which there are nuclear fuel or radioactive products or waste.

* *Examples drawn from the 1960 Paris Convention*

Defining Terms Is Important

- ***Nuclear substances*** means nuclear fuel (other than natural uranium and other than depleted uranium) and radioactive products or waste.
- ***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.
- ***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.

Application of the Paris Liability Regime in the Waste Management Context

Treatment of facilities undergoing decommissioning

- Facilities undergoing decommissioning are included within the group of installations covered by the Convention.
- However, the Steering Committee decided in 1990 that such installations could be exempted in conformance to certain technical criteria.
- The 1990 criteria have been deemed obsolete and are undergoing revision with the co-operative support of the NEA's Committee on Radiation Protection and Public Health and the Nuclear Law Committee.

Application of the Paris Liability Regime in the Waste Management Context

Treatment of waste disposal facilities

- Application of the regime to disposal facilities is not clearly specified in 1960 Paris Convention.
- As contemplated under the convention, the Steering Committee decided in 1984 that disposal installations should be included in the convention's coverage.
- The 2004 Protocol updating the convention makes the inclusion of disposal installations explicit.
- Development of possible exclusion criteria for low-level waste installations has been proposed and is under discussion.

Thank you!