

IT 22 x 5018

INIS - wj - 4445

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Revision of the Paris Convention from the German Point of View

The Federal Republic of Germany has ratified the Paris and Brussels Convention in 1975, but at the same time has made use of the possibilities of exception and deviation provided for in the Convention to such an extent that, despite the ratifications, the German legislation on third party liability in the field of nuclear energy differs considerably from the standards laid down in the conventions.

These exceptions and deviations may be explained by a desire to provide increased financial security for the population concerned. Although there are no objections to the basic structures of the Paris Convention - legal channeling, objective liability, maximum amounts of liability in conjunction with an obligation to provide appropriate coverage - the Convention contains a number of provisions which could be improved in the interest of a more effective protection of potential victims.

At the time of drawing up the Paris Convention account was taken of the needs and possibilities of the insurance market. Insurance companies have to calculate economically. This means that they tend to exclude from insurance any risk that appears to them to be too high or incalculable. The Paris Convention therefore contains exclusion of liability clauses which take this situation into account, so that one might as well call it a liability limitation convention. This applies first of all to the maximum amount of liability, which in the order of 15 million units of account represents a very moderate amount

compared with the damage which cannot be excluded from a scientific point of view.

For this reason the Federal Republic has made use in 1975 of the possibility provided for in the Convention to establish a higher amount, i.e. one billion Deutschmarks, taking into account the maximum amount of liability of the American Price Anderson Act which is also much higher. In connection with the present considerations for revision the Federal Republic would therefore welcome any proposal to establish a substantially higher amount. At present -- as already mentioned by Mr. von Busekist -- it is being considered to establish an amount of 30 million SDR which corresponds to the current capacities of the European insurance market. Even if agreement were reached on this amount -- one Contracting State has so far in principle contested the need for an increase -- it can be foreseen that several years will pass until the new convention can come into force. By that time the amount of 30 million SDR would have been reduced in its real value by the process of inflation. I could therefore imagine that the Federal Republic will endorse any proposals designed to lay down in the Convention as such that an increase is to be made after a certain period.

For example, the 30 million SDR could be increased to, say, 40 million SDR in the Convention after a period of about 5 years with effect of January 1st, 1983. This would have the advantage of leaving insurance companies sufficient time to make provision for the new amount. Moreover, there would be less need for further revisions to keep pace with inflation rates.

In its Article 8 the Paris Convention lays down an extinction period of 10 years for bringing an action of compensation. This means that in the case of retarded injuries which are not discovered ^{until} after the expiry of this period, no financial security exists for the persons concerned. Considering that injuries caused by radiation are a particular source of somatic and genetic damage at a later stage, a considerable risk is imposed upon on the population. For example, the period of extinction in Germany in such cases is 30 years.

However, the majority of the Contracting States decline the inclusion of a more favorable provision in the Convention because insurance companies are not prepared to provide insurance coverage for any period exceeding ten years.

We find the same situation in respect of the liability excluded in Article 9 of the Convention in the event of nuclear incidents caused by armed conflicts, hostilities, civil war, insurrection as well as by a grave natural disaster of an exceptional character.

When ratifying the Convention the Federal Republic was of the opinion that the risk involved in the normal operation of a nuclear installation can fairly well be kept under control and that the events referred to in Article 9 would rather be likely to cause risk to the population living in the vicinity. It has therefore declared inapplicable the exclusions provided for in Article 9.

In order to guarantee /financial security which cannot be obtained on the insurance market in the necessary amount, nature or extent, the Federation and the Länder have jointly assumed the legal

obligation to compensate any damage for which no coverage can be provided from the financial security of the operator. Thus a State guarantee for the settlement of damage up to a maximum amount of one billion Deutschmarks exists even in the case of bankruptcy of the insurance company concerned. These examples show that comprehensive financial security for the population in case of an incident is only possible with the aid of supplementary State guarantees.

If an optimal protection of the population in the vicinity of a nuclear installation is advocated as an objective, the question should be examined as to whether such a State guarantee - as also provided for in Article 7 of the Vienna Convention - could not be embodied in the Paris Convention. Already now many States make provision for a State guarantee in their national legislation.

The State guarantee provided for in the Brussels Supplementary Convention merely leads to an increase in the maximum amounts of liability, but does not eliminate the exclusions of liability contained in the Paris Convention. For this reason the relationship between ^{the} Paris and Brussels Supplementary Conventions should also be reconsidered. There is no compelling reason to reserve the State guarantee to the Brussels Supplementary Convention. It is rather possible to embody a State guarantee already in the Paris Convention and to establish higher maximum amounts of liability in the Supplementary Convention on this basis. The argument that a State guarantee was to be rejected for reasons of principle is also of little convincing effect.

In the eyes of the public, nuclear energy constitutes a particular risk. Therefore it is only fair that the State should assume the uninsurable risk in order to remove existing fears. In so doing, the State manifest its concern about the protection of the population, and by assuming the risks it shows its confidence in the safety of the nuclear installations which it has licensed. A refusal by the State to assume the risk may easily be interpreted as a lack of confidence in the safety of nuclear installations and as a lack of confidence in the State's own licensing activities in this field. Increased involvement of the State will therefore be required not only for the protection of potential victims but also in the interest of promoting the peaceful use of nuclear energy.

The so far emerging items for revision in the Conventions may at best make it possible to recover the losses caused by inflation since the signing of the Conventions and to regulate or harmonize various items of a generally inferior importance - apart from the necessary change-over to the SDR. The revision now beginning to take place therefore should be referred to as a repair or a restoration rather than a genuine revision. In the case of States having experienced high rates of inflation during the past, an increase by an average inflation factor would not even lead to the restoration of the original values established in the Conventions. While the safety of nuclear installations has incontestably increased during the past and there is already little likelihood of the occurrence of a large-scale damage, such

damage - as the Rasmussen Report has shown - remains possible after all and should therefore be included in the considerations. This is true all the more since a critical public is asking why a limitation of liability is necessary at all. In this connection I may refer to the decision of a District Court (Judge McMillan) of the US State of North Carolina, which all of you will know.

Another conceivable approach would be an unlimited liability combined with an obligation to provide financial security which then, however, would have to be limited since it is not possible to obtain unlimited financial security.

The public evidently interprets the objections raised by operators and their insurers against higher amounts of coverage as fear of the financial risk involved. Public criticism is directed against the contradiction lying in the fact that, on the one hand, stress is continuously being laid on the low risk, while, on the other hand, there is allegedly no possibility of adequate insurance for this small risk. If nuclear installations really are as safe as they are claimed to be by the supporters of the utilization of nuclear energy, then the insurance premiums should also be extremely low in view of the extremely little possibilities of large-scale damage. However, I know the insurance companies have to calculate in a different way, but it is difficult to explain to the public that the available capacities of the European insurance market do not make it possible to raise more than 30 million SDR, while the capacity of the German insurance market in the order of about 75 million SDR is considered to be an exception.

Yet less understanding would appear to exist on the German side for a revision without a substantial increase of the maximum amounts. In this case the question would have to be asked whether the whole effort for a revision would at all be worthwhile if no substantial improvements are achieved in the Conventions.

On a medium and long-term basis, the aim in accordance with the revised American Price Anderson Act should be to transfer the liability and the insurance risk more than up to now to the operators and their insurers in the sense of the Polluter-pays principle applying in the field of environmental protection.

The State guarantee for the Paris Convention advocated by me is only considered necessary from the German point of view in order to fill the existing gaps in insurance coverage in the interest of a better protection of potential victims. On a long term basis, however, it is considered desirable that the operators and their insurers should assume a greater share of the risk. The Federal Government is therefore taking a very sceptical position with regard to any proposals aiming exclusively at a raise of the maximum amounts provided for in the Brussels Supplementary Convention for the collective payment of damages by the Contracting State in the so called third tier, without a corresponding increase of the amount for which the operator of a nuclear installation is required to take insurance and for which the States have to provide guarantee in the second tier.

From the German point of view, therefore, the following two principles should govern the revision of the Conventions:

- (1) Improvement of the protection of potential victims by increasing the maximum amounts of liability in connection with a State guarantee for uninsurable risk.
- (2) Transfer of the liability and insurance risk to operators and insurers to the greatest possible extent.

As far as the State would assume the functions of an insurer by granting appropriate guarantees, it might be considered desirable to charge a fee for this service, to be calculated in accordance with actuarial principles. In view of the hitherto favourable claims experience, this might encourage insurers to cover greater risks and charge lower premiums. However, since this would be a rather controversial issue, its solution should rather be reserved to national legislation, so that experience can first be gained at the national level.

On the whole the Federal Republic of Germany would welcome a development by which we would succeed in achieving greater harmonization of legal provisions by a revision of the Paris and Brussels Supplementary Conventions and in providing increased financial security for the population of our countries in the peaceful use of nuclear energy.

