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GENERAL PRINCIPLES GOVERNING LIABILITY

FOR

NUCLEAR DAMAGE

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Abstract

This paper contains a brief review of the basic principles which govern the special regime of liability and compensation for nuclear damage originating on nuclear installations, in particular the strict and exclusive liability of the nuclear operator, the provision of a financial security to cover this liability and the limits applicable both in amount and in time. The paper also reviews the most important international agreements currently in force which constitute the foundation of this special regime.

General principles governing liability for nuclear damage*

I. INTRODUCTION

In the 1950's, the governments of many industrialised countries viewed the development of nuclear power as a possibly limitless source of indigenously produced energy that would enable their economies to develop rapidly and then usher in a new era of prosperity. However, fears of financially devastating liability claims in the event of an accident were inhibiting investments by potential nuclear operators and were causing suppliers and construction companies to refuse to accept contracts. For, under the ordinary law, both operators and suppliers would be subject to unlimited liability in the case of an accident.

Above all, governments were concerned to protect operators from massive liability claims that could destroy their enterprise and put them into bankruptcy. Yet, at the same time, governments were also conscious of their responsibility towards the welfare of their citizens and of the need to ensure that they would be properly protected in the case of an accident. In the case of a catastrophe, thousands of people could be injured and their property contaminated. Some means had to be found to compensate the victims, without destroying the enterprise.

These conflicting interests, the benefits to the economy that might accrue from the development of nuclear power, the avoidance of ruinous claims for damages, and the need to protect the population, all had to be reconciled. Governments sought a solution that would encourage the development of the nuclear industry by removing the legal and financial impediments at the same time as providing adequate compensation for any damage.

II. CONCEPTS UNDERLYING THE INTERNATIONAL REGIME OF NUCLEAR LIABILITY

Strict Liability

From the beginning, there was no doubt that the nuclear industry was a perfect example of the sort of activity in which the concept of strict liability for risk should be applied. Due to the unusual hazards posed by nuclear activities, it was acknowledged that permission to operate nuclear installations could not be granted unless the operator agreed to accept full responsibility for any injurious consequences. For, despite the utmost precautions, an accident could always occur and it was only just that the cost should be borne by the person who created the risk and not by the innocent victim.

Therefore, in all nuclear liability legislation (except that of the United States), the basis of liability is not fault, but strict liability for risk. Strict liability relieves the victim of the

*.This paper covers exclusively the principles of nuclear liability as embodied in the International Conventions currently in application. It does not therefore cover the changes resulting from the 1997 Protocol amending the Vienna Convention or the 1997 Convention on the Supplementary Compensation for Nuclear Damage, which are not yet in force.

burden of proving fault or negligence, requiring the payment of compensation on mere proof of a causal link between the damage and the nuclear accident in issue. Since it would be virtually impossible for any victim to have detailed knowledge of what had taken place in the nuclear installation or in the course of the carriage when the accident occurred, strict liability is necessary for justice.

Furthermore, the exonerations of liability would be limited to cases of damage caused directly by war or other hostilities, by an irresistible and unforeseeable natural disaster, or by the fault of the claimant.

Exclusive Liability of the Operator

At the initial stages of the development of the nuclear industry, the operators, suppliers and construction companies were afraid that excessive liability claims would ruin their business. For, under the common law, the suppliers would be liable if an accident resulted from their fault or negligence. As a consequence, to encourage them to become operative in the nuclear field, governments introduced into their legislation the concept of "channelling" all liability to the operator. That is, the operator would be liable regardless of whose acts or omissions were the actual cause of the accident. In addition to sparing suppliers and other contractors the trouble and expense of defending a complicated and expensive liability suit, another reason for channelling all liability to the operator was the cost of insurance. For, if anyone involved in the construction of a nuclear power plant or in supplying components could be held liable, then all those parties would have to purchase very expensive third party liability insurance, even if nuclear activities constituted only a very small proportion of their business.

For the victim, as a corollary benefit, the exclusive liability of the operator obviates the need to identify and to pursue the person who actually caused the accident. Due to the difficulty of obtaining the necessary evidence, this would be virtually impossible. Thus, with channelling, the victim would be able to avoid possibly fruitless and certainly expensive investigations and cross-actions.

In relation to the carriage of nuclear substances, there is also a derogation from the general rules on liability. Under the common law, a carrier is liable for damage caused during the course of carriage. However, this rule was considered inappropriate to the nuclear field as the carrier would also have to purchase expensive nuclear liability insurance, and because, in any event, he would not have been responsible for the packaging of the nuclear material and would lack the specialised knowledge of how to handle it. Therefore, in relation to the carriage of radioactive substances, it was considered both unfair and economically unfeasible to retain the liability of the carrier. Instead, liability would lie with the operator sending the substances, until responsibility were transferred to the operator receiving them or until the latter took charge of the shipment.

Scope of the Liability

The special liability regime for nuclear activities outlined above applies only to nuclear installations in which highly dangerous processes are carried on, such as reactors used in nuclear power plants, research reactors, factories for the manufacturing or processing of nuclear substances, factories for the separation of isotopes of nuclear fuel, and factories for the reprocessing of irradiated nuclear fuel. These processes are complex and hazardous in

themselves, as well as involving nuclear materials which may react in such a way as to cause a major catastrophe. Also covered under national legislation and the international conventions are the transport and the storage of nuclear substances and waste.

In the case of other uses of nuclear materials, such as radioisotopes used in medicine and industry, the risk is much lower and can be easily accommodated within the regular civil liability system. Similarly, uranium mining and milling is not covered by the special regime, as there is no danger of “criticality” or a sudden accident and the level of radioactivity is fairly low.

Compulsory Financial Security

In order to ensure that funds would actually be available to pay the claims, the provision of some kind of financial security was made compulsory. Usually, this security would be furnished in the form of third party liability insurance, but it could also be a bank guarantee or a form of self-insurance. In some countries a guarantee or indemnity is provided by the state.

The desire to protect the nuclear industry and the necessity of relying on insurance required both monetary and temporal limits on compensation. Although capacity for nuclear insurance has expanded greatly since the earliest times when insurers were uncertain of the risk, it still remains limited. Governments have generally been careful to stipulate a financial guarantee that does not exceed the capacity of the insurance industry, and for which the premiums would not be beyond the means of the operators to pay.

Limits on Liability

In the general law on liability there is no limit on the amount of compensation payable for damage caused by an accident: the person liable will have to pay the full amount, albeit within certain parameters related to the proximity of the causation. However, in the nuclear field, for the reasons outlined above - the desire to encourage the nuclear industry and to relieve operators of the burden of ruinous liability claims - most laws on nuclear liability provide for a limit on liability, which means a limit on the compensation payable in the case of an accident.

The limit usually coincides with the amount of financial security required. In other words, after a nuclear accident, even if the claims for compensation exceed the liability limit, the operator will only be required to provide funding up to that limit. Without a limit on liability, the operator would have to pay the balance from his assets. Yet, unlimited liability does not mean unlimited compensation, as no one has unlimited assets. If his assets all had to be disposed of in order to meet the claims, the operator would eventually be forced into bankruptcy, and out of business. Still, the victims might not receive much more than what was available under the insurance, as a serious accident might destroy the installation that was the operator’s major asset.

Because it is recognised that in the case of a major accident, the operator’s insurance and even his assets may not be sufficient to cover all the claims, in most countries, the state will provide compensation beyond the operator’s liability limit.

Time Limits

Insurance companies have also limited their coverage in time, to not more than ten years from the date of the accident. Neither the insurance companies nor the operators could tolerate the prospect of remaining liable to pay compensation for an extended period of time, never knowing when a claim might suddenly arise. Hence, in some national legislation and in the existing conventions, the time limit for submission of claims is the same ten years. In addition, in most laws, there is a “discovery rule” requiring that claims be filed within two or three years of the discovery of the damage and the identity of the operator.

Role of the State

Even before an accident occurs, the state has an important role to play in setting the conditions of the holding of financial security by the operator and in ensuring that the security is maintained. In some states, the security is a state guarantee or is backed by a state guarantee, meaning that if the security fails (for example, through the bankruptcy of the insurance company), the state will provide the funds required. In addition, this is required under some of the international conventions.

In many national legislation, the state is required to compensate the victims if the claims exceed the limit of the operator’s liability. Furthermore, in many national laws, the state will pay for the damage if the operator is exonerated, and in some, it will pay compensation for claims arising beyond the limitation period. Such intervention is only to be expected, due to the state’s responsibility for the welfare of its citizens and the principle of national solidarity.

III. THE INTERNATIONAL CONVENTIONS

Introduction

In the late 1950’s, countries wishing to promote a nuclear power industry adopted legislation providing for third party liability in the field of nuclear energy. At the same time, the liability issue was being discussed at the various international organisations responsible for the peaceful uses of nuclear energy: first, at the Organisation for European Economic Co-operation (later to become the OECD), but also at the International Atomic Energy Agency (IAEA) and the European Atomic Energy Community (Euratom). Since a nuclear accident might have transboundary consequences, states with nuclear power programmes recognised the need to conclude an international agreement that would govern compensation for damage both domestically and transnationally.

An international agreement was required to harmonise national laws in certain respects and to establish rules for cross-border legal actions against the nuclear operator by victims in other countries. Harmonisation would create legal certainty, eliminate the possibility of discrimination, and ensure that claimants in states party to the convention would have their actions adjudged by similar laws irrespective of the location of the accident or the damage. An international agreement was also needed to govern questions of liability when nuclear materials were transported across international boundaries, from one country to another and through a third country.

For potential victims, it was also extremely important to devise a special regime derogating from the general rules of private international law, as these would be inadequate or inappropriate for claiming compensation for transboundary nuclear damage. Under the general law, issues such as which courts have jurisdiction (which court should hear the case) and which law should apply can be extremely difficult to resolve.

Within a few years, two main conventions were adopted on civil liability in the nuclear field. On 29 July 1960, the Paris Convention on Third Party Liability in the Field of Nuclear Energy was adopted under the auspices of the then OEEC (later OECD). Three years later, the Vienna Convention on Civil Liability for Nuclear Damage was adopted under the auspices of the International Atomic Energy Agency. Also in 1963, most of the signatories of the Paris Convention adopted the Brussels Convention Supplementary to the Paris Convention to provide state funding for compensation above the liability of the operator.

The Paris Convention on Third Party Liability in the Field of Nuclear Energy

As noted above, the Paris Convention was adopted on 29 July 1960 under the auspices of the OECD-NEA. In 1964 a Protocol was adopted that partly harmonised its provisions with those of the Vienna Convention. In 1982, yet another Protocol made a number of technical improvements. The Convention entered into force in 1968.

The Paris Convention is open to all member countries of the OECD by simple accession and to any other state by the unanimous consent of all states parties. At the present, it is essentially a European agreement, as the non-European members of the NEA, ie. Australia, Canada, Japan, Korea and the United States are not parties. Of the original 15 signatories, 13 have ratified the Convention, with Finland acceding in 1969, a year after it came into force. The 14 states parties are: Belgium, Denmark, Finland, France, Germany, Greece, Italy, the Netherlands, Norway, Portugal, Spain, Sweden, Turkey and the United Kingdom.

Scope

The scope of the Convention is established by the definitions and the provisions on geographic coverage. For the purposes of the Convention, a “nuclear incident” is any occurrence or series of occurrences having the same origin which causes damage arising 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 from ionising radiations emitted by any source of radiation inside a nuclear installation. Not covered are certain substances with a low level of radioactivity bearing only a minor risk.

“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; and such other installations in which there are radioactive products or waste as determined by the Steering Committee for Nuclear Energy (the OECD/NEA Governing body).

The 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 installation state. However, in 1971 the Steering Committee recommended that the scope of the Paris Convention be extended in national legislation to damage suffered in a contracting state, or on the high seas on board a ship registered in the territory of a contracting state even if the nuclear incident causing the damage has occurred in a noncontracting state.

Nature of Liability

First, “strict” and “exclusive” liability is channelled to the operator of the nuclear installation where are held, or whence have come, or where are destined, the nuclear substances that caused the damage. As explained in the previous chapter, “strict” liability means that no fault or negligence on the part of the operator need be proven by the claimant and that there are few exonerations. Accordingly, under the Convention, the operator is liable for the damage indicated “upon proof that such damage or loss... was caused by a nuclear incident in such installation or involving nuclear substances coming from such installation...” In other words, the claimant need simply prove that he has suffered damage or injury and that the damage or injury was caused by the specific nuclear incident. This is a considerable advantage for the victim, as fault or negligence may be very difficult to prove.

Nuclear Damage

The operator is liable only for damage to or loss of life of any person, and damage to or loss of any property other than property on the site of the accident. The text of the Paris Convention does not refer specifically to compensation for preventive or protective measures or for damage to the environment.

Person Liable

For the purposes of the Convention, the “operator” of a nuclear installation is the person recognised or designated as the operator by the competent public authority. If the substances are in an installation at the time of an accident, then the operator of that installation is liable to compensate the damage thereby caused. If the accident has occurred during the course of carriage, then the operator responsible is the sender, until the receiver has assumed responsibility in accordance with the express terms of a written contract or has taken charge of the substances. Where nuclear substances are being sent to a person in a state not party to the Convention, then the sender is liable until the substances are unloaded from the means of transport. Conversely, where substances are being sent from a person in a state not party to the Convention, to an operator in a state party with his written consent, the latter will be liable from the time the substances are loaded onto the means of transport.

The liability of the operator is “exclusive”. This means that no one else may be held responsible. A supplier or contractor may not be held liable, even if he has been negligent or is at fault, except if he has accepted liability by contract, in which case the operator has a right of recourse. The operator also has a right of recourse against an individual acting with intent to cause damage, who has caused the nuclear incident in question. Even in these cases, the operator remains exclusively liable vis-à-vis the victims. The Convention does not affect any rights under public health insurance, social security or workmen’s compensation, or any system

relating to occupational diseases under national law. If a victim is compensated under other legislation or is cared for under public health insurance, then the body that has expended the funds may, under some national legislation, have a right of recourse against the operator.

Exonerations of liability

Regarding exonerations, under the Convention, the operator is not 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 installation state may provide to the contrary, a grave natural disaster of an exceptional character. A large number of states have taken advantage of the exception to hold the operator liable in the case of an accident due to a natural disaster, as they believe that the operator should foresee the possibility of such events and take the appropriate precautions.

Limitation in Amount of Liability

Liability is limited both in amount and in time. Pursuant to the Paris Convention, the maximum liability may not be greater than 15 million SDRs* and not less than 5 million SDRs, although national legislation may fix a higher ceiling if financial cover is available. A contracting party may set a lower limit for less dangerous installations, of no less than 5 million SDRs, but must then provide public funds to cover liability up to the usual limit. If more than one operator is liable, then they are all jointly and severally liable.

In most contracting parties, the operator's liability is in fact far higher than 15 million SDRs and in one, it is unlimited. In 1990, in order to promote harmonisation among the various national laws, the NEA Steering Committee for Nuclear Energy recommended that states parties raise their liability limits to at least 150 million SDRs, a sum that is well within the average available insurance capacity.

Limitation in Time

Because insurance is normally not available for more than ten years, the time limit for making claims is ten years from the date of the incident, with a possible exception under national law if measures have been taken by the installation state to cover the liability of the operator for actions instituted after the ten year limit. Further, the Convention permits states to establish in their national legislation a "discovery rule" providing that any claim must be made within a period of not less than two years from the time the victim discovered the damage and the identity of the operator. This latter period must still be within the general limit of ten years from the date of the accident.

In the case of damage caused by a nuclear accident involving nuclear substances that had been lost, jettisoned or abandoned, and not recovered, the time limit for making claims is 20 years from the date of the accident.

* The SDR is the unit of account used by the International Monetary Fund and is based upon a basket of weighted currencies. Because the original unit of account was based upon the official price of gold, which has since been abolished, the Special Drawing Right (SDR) was adopted to serve as the new unit to determine amounts of compensation. For the purpose of compensation, the amounts applicable in national legislation under the Paris and the Brussels Conventions are to be converted into national currency in accordance with the value established at the date of the incident.

Financial Security

In order to ensure that funds will be available to pay compensation, the Convention states that the operator shall be required to have and maintain insurance or other financial security approved by the installation state for the amount of his liability established in accordance with the Convention. Although insurance is the most common form of financial security, it is possible also to furnish a bank guarantee, to pledge liquid assets, to establish a mutual fund or to benefit from a state guarantee or a form of indemnity or insurance provided by the state. The state will determine the terms and conditions for the financial security, which must be used only to compensate claims for damage under the convention.

In the case of the international carriage of nuclear materials, the operator must provide the carrier with a certificate bearing the required information about his financial security.

Competent Court

The Convention provides that the right to compensation for damage caused by a nuclear incident may be exercised only against an operator liable in accordance with the Convention, or if such a right is provided under national law, against the insurer or other provider of a financial guarantee. The courts having jurisdiction are those where the nuclear incident occurred, except if the place of the incident cannot be determined or if the incident occurred outside the jurisdiction of any party.

Although the Convention provides for jurisdiction to lie with the courts of the installation state, it does not require that only one court have such jurisdiction. To facilitate consistency of decisions and the equitable distribution of compensation, the Steering Committee recommended in 1990 that parties designate a single court as the competent court.

Applicable Law and non-discrimination

The courts will apply the terms of the Convention as well as their own law in all matters not specifically covered by the Convention. Both the Convention and the national law must be applied without discrimination on the grounds of nationality, domicile or residence.

Compensation

The nature, form, and extent of the compensation, as well as the equitable distribution thereof are governed by national law. The Convention provides that insurance premiums and monetary compensation are to be freely transferable between the parties, while judgements are to be enforceable in the territory of any contracting party. Costs and interest are additional to the liability amount.

Additional Compensation

A state party may take any measures that it considers necessary to provide for an increase in the amount of the compensation specified in the Convention. Clearly, this refers to the possibility of providing public funds above the limitation of the liability of the operator, as is done in most states. It would also permit a system of operator pools to furnish additional

compensation. In relation to the provision of public funds in excess of the minimum 5 million SDRs, states are entitled to apply any such measure in any form under conditions that may derogate from the provisions of the Convention. The Brussels Convention is an example of a collective use of this latter provision.

The Brussels Convention Supplementary to the Paris Convention

Even before its adoption, states were aware that due to the limits on the operator's liability in the Paris Convention, not all of the damage from a nuclear accident could be compensated under its terms. Therefore, the six original members of the European Atomic Energy Community explored the possibility of concluding another convention supplementary to the Paris Convention to provide additional funding by the states parties. After a draft was produced in 1962, the initiative passed to the NEA. Eventually, thirteen of the states which had signed the Paris Convention also signed the Brussels Convention on 31st January 1963. It entered into force in 1974. At present, there are 11 parties, including all the parties to the Paris Convention, except Greece, Portugal and Turkey.

Like the Paris Convention, the Brussels Convention was also amended by Protocols adopted in 1964 and 1982. In addition to changing the unit of account to the SDR, the 1982 Protocol also raised the amount of compensation available. Since the cumulative effect of inflation over two decades had seriously eroded the original amounts, they were increased by a factor of 2.5, so the total amount of compensation under Paris plus Brussels went from 120 million units of account to 300 million SDRs.

The scope of the Brussels Convention is limited to damage caused by nuclear accidents other than those occurring entirely in the territory of a non-contracting state. The incident must be one for which an operator would be liable under the Paris Convention and the courts of a contracting party must have jurisdiction.

The Brussels Convention establishes a three-tiered compensation system. At the first level, compensation is provided by the insurance or other financial security of the operator up to the maximum of liability set by national law in accordance with the provisions of the Paris Convention. In the second tier, the balance between this amount and 175 million SDRs is then provided by the government in which the nuclear installation of the operator liable is situated (the installation state). The remaining amount, if any, between 175 million and 300 million SDRs is contributed jointly by all the states parties according to a special formula derived from the gross national product (GNP) and the thermal nuclear power capacity of the reactors situated in each state.

To implement the convention, parties may provide in their national law, either that the operator is liable up to 300 million SDRs, or that the maximum is some other amount, not less than 5 million SDRs, and that the balance between that amount and 300 million SDRs shall be provided by some other means. If there is a nuclear accident in a state party to the Brussels Convention and the damage exceeds the limit of the operator's liability, then the installation state would contribute funds to the compensation of the victims for any amount between the liability limit and the equivalent of 175 million SDRs. If some damage still remains uncompensated, the rest of the states parties to the Convention will contribute funds

proportionately, in accordance with their pre-determined share, up to the maximum limit of 300 million SDRs.

Under the terms of the Brussels Convention, victims are entitled to full compensation for the damage suffered under national law, except that if the aggregate amount of liability exceeds the 300 million SDR limit, any party may establish equitable criteria for apportionment. The court having jurisdiction will decide upon the system of disbursements. In calculating the public funds to be made available under the Convention, account will be taken only of claims made within the basic ten year limitation period.

The Vienna Convention on Civil Liability for Nuclear Damage

At the same time as the OECD-NEA was beginning work on the Paris Convention, the International Atomic Energy Agency (IAEA) had decided to prepare its own convention on the same topic. In May 1963, the members of the IAEA adopted the Vienna Convention on Civil Liability for Nuclear Damage. It came into force in 1977. Unlike the Paris Convention, its Vienna counterpart is potentially universal in scope. Up to the time of the accident at Chernobyl, the Convention had attracted only ten adherents, only two of which harboured functioning nuclear reactors. However, during the revision exercise concluded in 1997, the number of states parties has more than doubled. In March 1998, the state parties were Argentina, Armenia, Belarus, Bolivia, Brazil, Bulgaria, Cameroon, Chile, Croatia, Cuba, Czech Republic, Egypt, Estonia, Hungary, Latvia, Lebanon, Lithuania, Mexico, Niger, Peru, Philippines, Poland, Romania, Slovak Republic, Slovenia, Macedonia, Trinidad, Tobago, Ukraine and Yugoslavia.

In its current text, the Vienna Convention is quite similar to the Paris Convention. Embodied are most of the same basic principles: private actions in the national courts; strict or absolute liability of the operator; channelling exclusive liability to the operator; compulsory financial security; minimum liability; limitation in time for the submission of claims; special rules for transport cases; unity of jurisdiction; and reciprocal enforcement of judgements.

Yet, there are also differences between the two conventions, some of them significant. In general, the Vienna Convention contains fewer restrictions than the Paris Convention and is therefore more flexible. For example, in relation to the limitation of liability, the Vienna Convention stipulates only a minimum of 5 million dollars, with a maximum being permitted, if desired, in national legislation. Consequently, states are free to set whatever maximum they wish in their national legislation, or even to provide for unlimited liability. Furthermore, the amount of financial security to be provided by the operator is left to the discretion of the contracting party. In addition, Vienna is in certain respects more specific. For example, "nuclear damage" is defined and the operator's liability is explicitly stated to be absolute. It also provides, explicitly for the state, guarantee of payment of compensation in case of failure of the operators' financial security.

Unlike the Paris Convention, the Vienna Convention was not until recently supplemented by another instrument providing for state funding in addition to the compensation paid by the operator. Now, States parties to the Vienna Convention can adhere to the Convention on the Supplementary Compensation for Nuclear Damage, open to signature in September 1997 together with a Protocol amending the Vienna Convention.

The Joint Protocol Relating to the Application of the Paris Convention and the Vienna Convention

The inadequacy of the existing regime for international liability became apparent when the Soviet Union refused to accept responsibility for the damage in other states caused by the radioactive fallout from the accident at Chernobyl. The USSR maintained that it was not responsible for transboundary harm since it was a party to an internationally binding agreement in which it had expressly accepted such liability such as the Vienna Convention. Therefore, after the accident at Chernobyl, many states wished immediately to begin negotiations for the revision of the Vienna Convention. These states believed that if the deficiencies of the civil liability regime were remedied by a careful and comprehensive reworking of the Vienna Convention, more states, could be induced to become parties.

However, another problem was that at the time of Chernobyl, the Paris and Vienna Conventions existed in complete isolation to each other. As a consequence, victims in a party to one convention could not claim compensation under either convention for damage arising from an accident in a state party to the other convention.

It appeared therefore that creating a link between the Paris and Vienna Conventions, coupled with a revision of the latter, would induce the Central and Eastern European states to join the Vienna Convention, thereby extending the benefits of the international civil liability regime throughout the continent. The IAEA and the NEA established a joint Group of Experts to engage in negotiations that culminated in the adoption, at a diplomatic conference in September 1988, of the Joint Protocol Relating to the Application of the Vienna Convention and the Paris Convention.

The Joint Protocol deals with the civil liability of the operators of nuclear installations governed by both the Paris and the Vienna Conventions. Hence, it applies to nuclear damage caused by accidents occurring in land-based nuclear installations and during the transport of nuclear materials thereto and therefrom. The Joint Protocol fulfils two functions. First, by abolishing the status of non-contracting state as between the parties to the Paris and Vienna Conventions, it permits victims in states party to either of the Conventions to obtain compensation for an accident occurring in a state party to the other.

Secondly, in addition to creating this system of mutual benefits, the Joint Protocol also prevents conflicts of jurisdiction by ensuring that only one convention is applied to any one nuclear accident.

The Joint Protocol came into force in 1992. The state parties are the following: Bulgaria, Cameroon, Chile, Croatia, Czech Republic, Denmark, Egypt, Estonia, Finland, Hungary, Italy, Latvia, Lithuania, Netherlands, Norway, Poland, Romania, Slovakia, Slovenia, Sweden.

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This paper will be supplemented by a brief review of the changes brought by the 1997 Protocol to amend the Vienna Convention and by the Convention on the Supplementary Compensation for Nuclear Damage.