

## **Taking Nuclear Third Party Liability into the Future**

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### **Session 3: International Conventions in Practice**

#### **-The Role of the IAEA-**

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#### **A. Nuclear liability conventions adopted under IAEA auspices and their status in EU Member States**

Let me start by setting out the legal panorama of the nuclear liability conventions adopted under IAEA auspices and their status in EU Member States.

The so-called “**Vienna regime**” consists of the 1963 Vienna Convention on Civil Liability for Nuclear Damage (the **1963 Vienna Convention**) and of the 1997 Protocol to Amend the Vienna Convention (or in other words the **1997 Vienna Convention**).

In addition, as we all know, following the Chernobyl accident, States realized that in addition to the need to modernize the Vienna regime there was a need to establish treaty relations between the Parties to it and the Paris regime. In this regard, two instruments have been adopted.

The first one is the 1997 Convention on Supplementary Compensation for Nuclear Damage (the **CSC**), and the second one is the 1988 Joint Protocol Relating to the Application of the Vienna Convention and the Paris Convention (the **Joint Protocol**).

The CSC, however, aims not only at establishing treaty relations between States that either belong to the Vienna or the Paris regime but also with other non-contracting States, provided their national legislation is consistent with uniform rules on civil liability for nuclear damage as laid down in the Annex to the CSC and as such the CSC provides for the possibility of a truly global nuclear liability regime.

The CSC also aims at increasing the amount of compensation available in the event of a nuclear incident through supplementary funds to be provided by its Contracting Parties.

All of these instruments (except for the Joint Protocol) provide for the same basic nuclear liability principles which we all know, namely (1) exclusive liability of the operator of the nuclear installation; (2) strict liability, i.e. liability without fault; (3) minimum amounts of liability; (4) limitation of liability in time; (5) mandatory financial security; (6) equal treatment of victims; and (7) uniform rules on jurisdiction and the obligation to recognize and enforce judgements rendered in the competent forum.

In addition, the 1997 Protocol and the 1997 CSC enhanced the international nuclear liability regime in three significant ways:

First, they provide for higher compensation amounts and broadened “geographical scope” second, they provide for a broader definition of nuclear damage and third, they provide for updated jurisdiction rules.

**The 1963 Vienna Convention on Civil Liability for Nuclear Damage** entered into force on 12 November 1977. As of 15 January 2014, there were 39 Contracting Parties and ten EU Member States are party to the 1963 Vienna Convention (namely Bulgaria, Croatia, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania and Slovakia).

**The 1997 Protocol to Amend the Vienna Convention** entered into force on 4 October 2003. As of 15 January 2014, there were 11 Contracting Parties and three EU Member States are party to the 1997 Protocol (namely Latvia, Poland and Romania). At the same time, this means, however, that seven EU Member States that are party to the 1963 Vienna Convention have not yet joined the 1997 Protocol.

**The 1997 Convention on Supplementary Compensation for Nuclear Damage** has not yet entered into force. As of 15 January 2014, there were 17 Signatory States and four Contracting Parties and one EU Member State (Romania) is a party.

**The 1988 Joint Protocol Relating to the Application of the Vienna Convention and the Paris Convention** which was adopted under the joint auspices of the IAEA and the OECD, entered into force on 27 April 1992. As of 15 January 2014, there were 27 Contracting Parties and ten EU Member States are party to the Joint Protocol (namely Bulgaria, Croatia, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania and Slovakia).

Out of the ten EU Member States that are party to the Vienna nuclear liability conventions, only one seems not to have implementing legislation in place.

However, it should be noted that further to a conclusion by INLEX in 2007, the minimum amount of liability under the 1963 VC refers to the value of the United States dollar in terms of gold and is therefore subject to adjustment and dependent on the day-to-day price of gold. (currently it is approx. 180 million US\$) As a result, some of the EU countries that are party to the 1963 VC have outdated minimum liability amounts in their national legislation.

In any event, all EU countries that are party to the Vienna nuclear liability conventions are also party to the Joint Protocol.

## **B. The continuing relevance of the basic principles underlying the global nuclear liability regime**

The Post-Fukushima Ministerial Conference on Nuclear Safety in 2011, adopted a Ministerial Declaration calling for a number of improvements to global nuclear safety and also specifically recognised “*the need for 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*”.

The Ministerial Declaration also requested the Director General to develop a draft Action Plan on Nuclear Safety which he did and which was adopted in September 2011, by the IAEA Board of Governors and subsequently by the IAEA General Conference.

The Action Plan defines a programme of work to strengthen the global nuclear safety framework consisting of 12 main actions, each with corresponding sub-actions.

One action specifically addresses improving the effectiveness of the “*International legal framework*” and in this regard, inter alia, provides that “*Member States [are] 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.*”

Further, Member States are requested “*to give due consideration to the possibility of joining the international nuclear liability instruments as a step toward achieving such a global regime.*” and finally, it requested the “*IAEA International Expert Group on Nuclear Liability (INLEX) to recommend actions to facilitate achievement of such a global regime*”.

Both the Ministerial Declaration and the Action Plan refer to a global nuclear liability regime and also there has been no change proposed in the Ministerial Declaration or the Action Plan to the existing nuclear liability principles contained in the current nuclear liability regime.

### **C. INLEX activities in the context of the IAEA Action Plan on Nuclear Safety**

Further to the Action Plan, INLEX, held a Special Session in December 2011 devoted specifically to its implementation and agreed on a number of activities to help achieve a global nuclear liability regime.

These included in particular, the carrying out of joint IAEA/INLEX missions to target countries in order to raise awareness of the international nuclear liability regime and also to encourage wider adherence to these instruments. (These target countries are essentially those with nuclear activities and newcomer countries not party to the nuclear liability conventions).

Also, INLEX finalized a document entitled “*Recommendations on how to facilitate the achievement of a global nuclear liability regime*” (which is available on the IAEA’s website), most notably calling on all IAEA Member States **with** nuclear installations that they all: “*should adhere to one or more of the relevant international nuclear liability instruments*” developed under the auspices of the IAEA in the 1990s, that they should “*adopt national laws that are consistent with the principles in those instruments ...*” and that they “*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....*”.

INLEX also noted “*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 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.*”

In the same spirit, and also based on its Recommendations of 2012, INLEX finally adopted a paper entitled “*Benefits of Joining the International Nuclear Liability Regime and Corresponding Key Messages*”, during its meeting in May last year. The key messages underline in particular that:

- a national compensation scheme enabling the payment of compensation to victims with the minimum of legal uncertainty is an essential part of preparation for nuclear energy;
- such a national compensation scheme need to be linked into an international system;
- the nuclear liability conventions create such a coherent international system and also that
- the intention of the CSC is to establish a worldwide nuclear liability regime on the principles of nuclear liability law, without prejudice to other liability conventions.

And again, INLEX also refers to a global nuclear liability regime and did not deviate from any of the nuclear liability principles contained in the current nuclear liability regime. Rather the message by INLEX was and has been since its inception in 2003 to improve the current regime using the flexibility allowed by some of the existing conventions in particular the liability amounts.

#### **D. IAEA Legislative Assistance Programme**

How do we, at the IAEA, implement all of this? Through our legislative assistance programme. This programme covers all areas of nuclear law i.e. nuclear safety, security, safeguards and liability for nuclear damage.

Through this programme we not only help our Member States to ratify the international legal instruments adopted under the auspices of the IAEA but also to draft corresponding implementing legislation (see in particular the Handbooks on Nuclear Law). This applies also to the area of nuclear liability.

On average, we assist about **25** countries in reviewing their national laws and train about **200** individuals in nuclear law every year. Although our efforts are more global than regional in nature, of the 28 EU countries, we have assisted seven so far in the context of our legislative assistance programme.

In addition, we carry out what we call awareness missions to Member States to encourage national policymakers about the importance of the international legal instruments adopted under IAEA auspices, including as I said specific Joint IAEA/INLEX missions on nuclear liability.

And finally, we also hold regular annual sessions of the Nuclear Law Institute (NLI), a dedicated two-week course on nuclear law, and we organize a large number of other events to help our Member States navigate through the increasingly complex terrain of nuclear law such as treaty events, workshops for diplomats from our Permanent Missions and the like.