

GLOBAL NUCLEAR LIABILITY REGIME

**Ben McRae
Assistant General Counsel
United States Department of Energy**

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Why Is Nuclear Liability Important?

- Effective nuclear liability regimes are a cornerstone of every successful civil nuclear program.
- Effective nuclear liability regimes:
 - Assure prompt and equitable compensation; and
 - Provide legal certainty for commercial arrangements.

Assured Compensation

- Assured Compensation
 - Addresses responsibility of the proponents of nuclear power to consider the consequences of a nuclear accident; and
 - Builds public confidence in and acceptance of nuclear power.

Commercial Arrangements

- Participants in nuclear projects need legal certainty concerning their potential liability in the unlikely event of a nuclear accident.
- Investors and suppliers unlikely to take part in nuclear projects without adequate protection against potential liability.
- Legal certainty provided by national law and international treaties.

IAEA ACTION PLAN

- Member States to work towards 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.
- Member States to consider joining international nuclear liability instruments as a step toward achieving such a global regime.

What Is Needed To Achieve Global Nuclear Liability Regime?

- All Countries that might be affected by a nuclear incident must have:
 - National law based on Nuclear Liability Principles, including recent enhancements and best practices; and
 - Comprehensive treaty relations among themselves by means of membership in Convention on Supplementary Compensation for Nuclear Damage (CSC)

Nuclear Liability Principles

- National law must incorporate the following nuclear liability principles:
 - All legal liability must be channeled exclusively to operator. (No one except operator can be sued; no right of recourse except as set forth in contract.)
 - Operator is subject to strict liability. (No need to show intent or fault; only need to show damage caused by nuclear incident.)
 - Jurisdiction over claims for damage from nuclear incident lies exclusively with courts of country where accident occurs. (Lawsuits cannot be brought in multiple fora.)
 - Liability of operator may be limited in amount and time.
 - Citizens of all countries must be compensated without discrimination based on nationality, domicile or residence

Recent Enhancements

- Recent enhancement to nuclear liability principles:
 - Operator liability may not be limited to less than 300 million SDRs.
 - Definition of nuclear damage expanded to include certain types of environmental damage and loss of income.
 - Country has exclusive jurisdiction over nuclear incidents that occur not only in its territory and territorial sea but also in its exclusive economic zone (EEZ).

INLEX Recommendations

- INLEX has recommended that countries with nuclear power plants undertake the following best practices to ensure adequate funds are available to compensate all victims of a nuclear incident, without discrimination.
 - Establish compensation and financial security amounts significantly higher than the minimum amounts envisioned under existing international instruments.
 - Regularly review adequacy of compensation amounts to ensure that their value is maintained and that they reflect current understanding of possible impacts of a nuclear incident.

INLEX Recommendations

- Regularly review adequacy of financial security amounts to ensure that those amounts reflect available capacity in insurance markets, as well as other sources of financial security.
- Be prepared to set up appropriate funding mechanisms in cases where damage exceeds available compensation and financial security.
- Provide compensation for latent injuries (revised Paris and Vienna Conventions set a 30-year limit on filing claims for personal injury).

INLEX Recommendations

- Ensure compensation is available in the case of an incident directly due to a grave natural disaster of an exceptional character.
- Ensure all claims are dealt with in a single forum in a prompt, equitable and non-discriminatory manner with minimal litigation, which could include claims-handling system (possibly in cooperation with insurers or other financial guarators).

Appropriate Compensation

- 300 million SDRs is minimum amount that may be considered appropriate
- Many believe amount should be considerably higher
- Some believe operator liability should be unlimited
- Assured compensation dependent on extent to which funds are guaranteed to be available

Treaty Relations

- Global regime must be based on treaty relations that link all countries that might be affected by a nuclear incident
- Treaty relations are essential to:
 - Establish exclusive jurisdiction of courts in country where incident occurs
 - Assure enforceability of judgments
 - Provide certainty on applicable law, including choice of law principles to be followed
 - Permit concentration of insurance and other resources to support higher compensation amounts

Existing Conventions

- Vienna Convention
- Paris Convention
- Brussels Supplementary Convention
- Joint Protocol
- Convention on Supplementary Compensation for Nuclear Damage

Current Situation

- There are approximately 440 power plants worldwide
- Approximately 245 plants not covered by any convention currently in effect
- 116 plants covered by 1960 Paris Convention
- 73 plants covered by 1963 Vienna Convention
- 4 plants covered by 1997 Vienna Convention
- 58 plants covered by Joint Protocol
- Approximately 150 plants will be covered by CSC when it comes into effect

Convention on Supplementary Compensation for Nuclear Damage (CSC)

- Worldwide system adopted in 1997 for purpose of “establishing a worldwide liability regime ... with a view to increasing the amount of compensation for nuclear damage”
 - CSC is only existing instrument that can provide foundation for global liability regime that addresses the concerns of all States that might be affected by a nuclear accident

CSC

CSC provides basis for global regime because it is free-standing instrument open to all States that accept:

- Basic principles of nuclear liability law
- Broad definition of nuclear damage
- Exclusive jurisdiction of country where accident occurs
- Compensation based on national law and international fund

Umbrella Regime

- CSC is a free-standing instrument that fits over existing national and international regimes
- CSC is open to countries that belong to Paris or Vienna Convention or that have national law that incorporates the nuclear liability principles as set forth in the Annex to the CSC
- CSC has special provision for United States; US domestic law (which is based on economic channeling) prevents United States from belonging to Paris or Vienna Convention

Overview

**Umbrella
Global Regime
All CSC Parties**

Paris States

Vienna States

Annex States

Apply basic principles
In Paris Convention

Apply basic principles
in Vienna Convention

Apply basic principles
In Annex

**At least 300 million SDRs under national law
International fund from contributions by CSC Parties**

Compensation

- CSC assures compensation by requiring Member States to:
 - Establish first tier amount of at least 300 million SDRs for nuclear damage; and
 - Contribute to an international supplementary fund to increase amount of compensation available

Supplementary Fund

- Amount of supplementary fund is not fixed
- Each Contracting Party's contribution is based on a number of factors, including:
 - Installed nuclear capacity of nuclear reactors within a Contracting Party at time of incident
 - Contracting Party's UN rate of contribution

Contributions calculation

Calculation:

- 90% on the basis of installed nuclear capacity of nuclear reactors within Contracting Parties
- 10% on basis of State's UN rate of assessment

Thus:

- Nuclear States pay most
- Non-nuclear States pay less than 5% of total fund

Non-nuclear States on minimum UN rate of assessment will not have to contribute

Contributions To Supplementary Fund

- If all IAEA Member States belonged to CSC, the top ten contributors to international fund would pay approximately:
 - Canada 13.9 million SDRs
 - China 12.0 million SDRs
 - France 58.5 million SDRs
 - Germany 13.2 million SDRs
 - Japan 47.0 million SDRs
 - Korea 18.7 million SDRs
 - Russian Federation 24.3 million SDRs
 - Ukraine 12.6 million SDRs
 - United Kingdom 10.9 million SDRs
 - United States 101.2 million SDRs

CSC BENEFITS FOR MEMBERS OF PUBLIC

- Assure prompt compensation with minimum of litigation
- Establish minimum amount of compensation
- Require financial guarantee for this amount
- Cover broad range of nuclear damage
- Require fair, equitable and non-discriminatory treatment of all Member State citizens

CSC BENEFITS FOR COMMERCIAL ARRANGEMENTS

- Channels all legal liability exclusively to the responsible operator
- Prohibits lawsuits against suppliers, investors or any person other than the responsible operator
- Grants exclusive jurisdiction to courts of one Member State (usually, country where nuclear incident occurs)

CSC BENEFITS FOR NEIGHBORING COUNTRIES

- Provides basis for covering all countries in a region
- Promote public confidence that citizens of neighboring countries will be treated fairly in event of nuclear incident
- Assures availability of compensation for transboundary damage
- Provides clarity concerning transport accidents

REQUIREMENTS FOR RATIFICATION

CSC is open to any country that:

- Incorporates international nuclear liability principles into its national law,
- Assures availability of at least the minimum compensation amount (300 million SDRs),
- Covers nuclear damage as defined in CSC,
- Accepts jurisdictional rules in CSC, and
- Agrees to contribute to international fund

Joint Protocol

- Joint Protocol has been very useful as a link between certain Paris and Vienna countries, especially in Europe
- Joint Protocol has and will continue to contribute to establishment of global regime by linking a number of countries
- Joint Protocol is not sufficient, however, to provide foundation for global regime that addresses the concerns of all States that might be affected by a nuclear accident

Joint Protocol

- Joint Protocol is not a free-standing instrument
- Membership is limited to countries that belong to either Paris or Vienna Convention
 - United States cannot be party to Joint Protocol since it cannot belong to either Paris or Vienna Convention without major changes to its domestic legal system

Joint Protocol

- Many countries have no incentive to belong to Joint Protocol
- Joint Protocol has no mechanism to assure appropriate compensation
 - Joint Protocol has no international fund or other mechanism to supplement compensation
 - Joint Protocol mandates no minimum compensation amount and thus has potential to result in non-appropriate amount of compensation (1963 Vienna Convention permits country to limit operator liability to 5 million US gold dollars)

Joint Protocol

- Joint Protocol also has no mechanism to assure domestic law incorporates enhancements to jurisdiction and nuclear damage definition
- Unlike CSC, Joint Protocol has no overarching provisions that apply to all Member States

Joint Protocol

- While not providing a basis for a global regime, Joint Protocol is compatible with membership in CSC.
- CSC is an umbrella instrument that can fit over other existing nuclear liability instruments such as Joint Protocol.
- Countries that belong to Joint Protocol and either revised Paris Convention or revised Vienna Convention should be able to join CSC with few, if any, changes in their existing national law.