

รายการอ้างอิง

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ภาคผนวก

ภาคผนวก ก.

**CONSOLIDATED TEXT OF THE VIENNA CONVENTION ON
CIVIL LIABILITY FOR NUCLEAR DAMAGE OF 21 MAY 1963
AS AMENDED BY THE PROTOCOL OF 12 SEPTEMBER 1997¹**

THE CONTRACTING PARTIES,

HAVING RECOGNIZED the desirability of establishing some minimum standards to provide financial protection against damage resulting from certain peaceful uses of nuclear energy,

BELIEVING that a convention on civil liability for nuclear damage would also contribute to the development of friendly relations among nations, irrespective of their differing constitutional and social systems,

HAVE DECIDED to conclude a convention for such purposes, and thereto have agreed as follows -

ARTICLE I

1. For the purposes of this Convention -

- (a) "Person" means any individual, partnership, any private or public body whether corporate or not, any international organization enjoying legal personality under the law of the Installation State, and any State or any of its constituent sub-divisions.
- (b) "National of a Contracting Party" includes a Contracting Party or any of its constituent sub-divisions, a partnership, or any private or public body whether corporate or not established within the territory of a Contracting Party.
- (c) "Operator", in relation to a nuclear installation, means the person designated or recognized by the Installation State as the operator of that installation.
- (d) "Installation State", in relation to a nuclear installation, means the Contracting Party within whose territory that installation is situated or, if it is not situated within the territory of any State, the Contracting Party by which or under the authority of which the nuclear installation is operated.
- (e) "Law of the competent court" means the law of the court having jurisdiction under this Convention, including any rules of such law relating to conflict of laws.
- (f) "Nuclear fuel" means any material which is capable of producing energy by a self-sustaining chain process of nuclear fission.
- (g) "Radioactive products or waste" means any radioactive material produced in, or any material made radioactive by exposure to the radiation incidental to, the production or utilization of nuclear fuel, but does not include radioisotopes which have reached the final stage of fabrication so as to be usable for any scientific, medical, agricultural, commercial or industrial purpose.
- (h) "Nuclear material" means -

¹ This consolidated text of the 1963 Vienna Convention on Civil Liability for Nuclear Damage as amended by the 1997 Protocol thereto has been established by the Secretariat of the International Atomic Energy Agency as required by that Protocol.

The consolidated text does not have final clauses of its own. A State wishing to adhere to the 1963 Vienna Convention as amended by the 1997 Protocol may do so by adhering to the 1997 Protocol in accordance with its terms.

Reference to the "Protocol" in this consolidated text means the 1997 "Protocol to Amend the Vienna Convention on Civil Liability for Nuclear Damage".

- (i) nuclear fuel, other than natural uranium and depleted uranium, capable of producing energy by a self-sustaining chain process of nuclear fission outside a nuclear reactor, either alone or in combination with some other material; and
- (ii) radioactive products or waste.
- (i) "Nuclear reactor" means any structure containing nuclear fuel in such an arrangement that a self-sustaining chain process of nuclear fission can occur therein without an additional source of neutrons.
- (j) "Nuclear installation" means -
 - (i) any nuclear reactor other than one with which a means of sea or air transport is equipped for use as a source of power, whether for propulsion thereof or for any other purpose;
 - (ii) any factory using nuclear fuel for the production of nuclear material, or any factory for the processing of nuclear material, including any factory for the re-processing of irradiated nuclear fuel;
 - (iii) any facility where nuclear material is stored, other than storage incidental to the carriage of such material; and
 - (iv) such other installations in which there are nuclear fuel or radioactive products or waste as the Board of Governors of the International Atomic Energy Agency shall from time to time determine;
 provided that the Installation State may determine that several nuclear installations of one operator which are located at the same site shall be considered as a single nuclear installation.
- (k) "Nuclear Damage" means -
 - (i) loss of life or personal injury;
 - (ii) loss of or damage to property;
 and each of the following to the extent determined by the law of the competent court -
 - (iii) economic loss arising from loss or damage referred to in sub-paragraph (i) or (ii), insofar as not included in those sub-paragraphs, if incurred by a person entitled to claim in respect of such loss or damage;
 - (iv) the costs of measures of reinstatement of impaired environment, unless such impairment is insignificant, if such measures are actually taken or to be taken, and insofar as not included in sub-paragraph (ii);
 - (v) loss of income deriving from an economic interest in any use or enjoyment of the environment, incurred as a result of a significant impairment of that environment, and insofar as not included in sub-paragraph (ii);
 - (vi) the costs of preventive measures, and further loss or damage caused by such measures;
 - (vii) any other economic loss, other than any caused by the impairment of the environment, if permitted by the general law on civil liability of the competent court.
 in the case of sub-paragraphs (i) to (v) and (vii) above, to the extent that the loss or damage arises out of or results from ionizing radiation emitted by any source of radiation inside a nuclear installation, or emitted from nuclear fuel or radioactive products or waste in, or of nuclear material coming from, originating in, or sent to, a nuclear installation, whether so arising from the radioactive properties of such matter, or from a combination of radioactive properties with toxic, explosive or other hazardous properties of such matter.
- (l) "Nuclear incident" means any occurrence or series of occurrences having the same origin which causes nuclear damage or, but only with respect to preventive measures, creates a grave and imminent threat of causing such damage.
- (m) "Measures of reinstatement" means any reasonable measures which have been approved by the competent authorities of the State where the measures were taken, and which aim to reinstate or restore damaged or destroyed components of the environment, or to introduce, where reasonable, the equivalent of these components into the environment. The law of the State where the damage is suffered shall determine who is entitled to take such measures.
- (n) "Preventive measures" means any reasonable measures taken by any person after a nuclear incident has occurred to prevent or minimize damage referred to in sub-paragraphs (k)(i) to (v) or (vii), subject to any approval of the competent authorities required by the law of the State where the measures were taken.
- (o) "Reasonable measures" means measures which are found under the law of the competent court to be appropriate and proportionate having regard to all the circumstances, for example -

- (i) the nature and extent of the damage incurred or, in the case of preventive measures, the nature and extent of the risk of such damage;
 - (ii) the extent to which, at the time they are taken, such measures are likely to be effective; and
 - (iii) relevant scientific and technical expertise.
- (p) "Special Drawing Right", hereinafter referred to as SDR, means the unit of account defined by the International Monetary Fund and used by it for its own operations and transactions.
2. An Installation State may, if the small extent of the risks involved so warrants, exclude any nuclear installation or small quantities of nuclear material from the application of this Convention, provided that -
- (a) with respect to nuclear installations, criteria for such exclusion have been established by the Board of Governors of the International Atomic Energy Agency and any exclusion by an Installation State satisfies such criteria; and
 - (b) with respect to small quantities of nuclear material, maximum limits for the exclusion of such quantities have been established by the Board of Governors of the International Atomic Energy Agency and any exclusion by an Installation State is within such established limits.

The criteria for the exclusion of nuclear installations and the maximum limits for the exclusion of small quantities of nuclear material shall be reviewed periodically by the Board of Governors.

ARTICLE I A

1. This Convention shall apply to nuclear damage wherever suffered.
2. However, the legislation of the Installation State may exclude from the application of this Convention damage suffered -
 - (a) in the territory of a non-Contracting State; or
 - (b) in any maritime zones established by a non-Contracting State in accordance with the international law of the sea.
3. An exclusion pursuant to paragraph 2 of this Article may apply only in respect of a non-Contracting State which at the time of the incident -
 - (a) has a nuclear installation in its territory or in any maritime zones established by it in accordance with the international law of the sea; and
 - (b) does not afford equivalent reciprocal benefits.
4. Any exclusion pursuant to paragraph 2 of this Article shall not affect the rights referred to in sub-paragraph (a) of paragraph 2 of Article IX and any exclusion pursuant to paragraph 2(b) of this Article shall not extend to damage on board or to a ship or an aircraft.

ARTICLE I B

This Convention shall not apply to nuclear installations used for non-peaceful purposes.

ARTICLE II

1. The operator of a nuclear installation shall be liable for nuclear damage upon proof that such damage has been caused by a nuclear incident -

- (a) in his nuclear installation; or
- (b) involving nuclear material coming from or originating in his nuclear installation, and occurring -
 - (i) before liability with regard to nuclear incidents involving the nuclear material has been assumed, pursuant to the express terms of a contract in writing, by the operator of another nuclear installation;
 - (ii) in the absence of such express terms, before the operator of another nuclear installation has taken charge of the nuclear material; or
 - (iii) where the nuclear material is intended to be used in a nuclear reactor with which a means of transport is equipped for use as a source of power, whether for propulsion thereof or for any other purpose, before the person duly authorized to operate such reactor has taken charge of the nuclear material; but
 - (iv) where the nuclear material has been sent to a person within the territory of a non-Contracting State, before it has been unloaded from the means of transport by which it has arrived in the territory of that non-Contracting State;
- (c) involving nuclear material sent to his nuclear installation, and occurring -
 - (i) after liability with regard to nuclear incidents involving the nuclear material has been assumed by him, pursuant to the express terms of a contract in writing, from the operator of another nuclear installation;
 - (ii) in the absence of such express terms, after he has taken charge of the nuclear material; or
 - (iii) after he has taken charge of the nuclear material from a person operating a nuclear reactor with which a means of transport is equipped for use as a source of power, whether for propulsion thereof or for any other purpose; but
 - (iv) where the nuclear material has, with the written consent of the operator, been sent from a person within the territory of a non-Contracting State, only after it has been loaded on the means of transport by which it is to be carried from the territory of that State;

provided that, if nuclear damage is caused by a nuclear incident occurring in a nuclear installation and involving nuclear material stored therein incidentally to the carriage of such material, the provisions of sub-paragraph (a) of this paragraph shall not apply where another operator or person is solely liable pursuant to the provisions of sub-paragraph (b) or (c) of this paragraph.

2. The Installation State may provide by legislation that, in accordance with such terms as may be specified therein, a carrier of nuclear material or a person handling radioactive waste may, at his request and with the consent of the operator concerned, be designated or recognized as operator in the place of that operator in respect of such nuclear material or radioactive waste respectively. In this case such carrier or such person shall be considered, for all the purposes of this Convention, as an operator of a nuclear installation situated within the territory of that State.

- 3. (a) Where nuclear damage engages the liability of more than one operator, the operators involved shall, in so far as the damage attributable to each operator is not reasonably separable, be jointly and severally liable. The Installation State may limit the amount of public funds made available per incident to the difference, if any, between the amounts hereby established and the amount established pursuant to paragraph 1 of Article V.
- (b) Where a nuclear incident occurs in the course of carriage of nuclear material, either in one and the same means of transport, or, in the case of storage incidental to the carriage, in one and the same nuclear installation, and causes nuclear damage which engages the liability of more than one operator, the total liability shall not exceed the highest amount applicable with respect to any one of them pursuant to Article V.
- (c) In neither of the cases referred to in sub-paragraphs (a) and (b) of this paragraph shall the liability of any one operator exceed the amount applicable with respect to him pursuant to Article V.

4. Subject to the provisions of paragraph 3 of this Article, where several nuclear installations of one and the same operator are involved in one nuclear incident, such operator shall be liable in respect of each nuclear installation involved up to the amount applicable with respect to him pursuant to Article V. The Installation State may limit the amount of public funds made available as provided for in sub-paragraph (a) of paragraph 3 of this Article.
5. Except as otherwise provided in this Convention, no person other than the operator shall be liable for nuclear damage. This, however, shall not affect the application of any international convention in the field of transport in force or open for signature, ratification or accession at the date on which this Convention is opened for signature.
6. No person shall be liable for any loss or damage which is not nuclear damage pursuant to sub-paragraph (k) of paragraph 1 of Article I but which could have been determined as such pursuant to the provisions of that sub-paragraph.
7. Direct action shall lie against the person furnishing financial security pursuant to Article VII, if the law of the competent court so provides.

ARTICLE III

The operator liable in accordance with this Convention shall provide the carrier with a certificate issued by or on behalf of the insurer or other financial guarantor furnishing the financial security required pursuant to Article VII. However, the Installation State may exclude this obligation in relation to carriage which takes place wholly within its own territory. The certificate shall state the name and address of that operator and the amount, type and duration of the security, and these statements may not be disputed by the person by whom or on whose behalf the certificate was issued. The certificate shall also indicate the nuclear material in respect of which the security applies and shall include a statement by the competent public authority of the Installation State that the person named is an operator within the meaning of this Convention.

ARTICLE IV

1. The liability of the operator for nuclear damage under this Convention shall be absolute.
2. If the operator proves that the nuclear damage resulted wholly or partly either from the gross negligence of the person suffering the damage or from an act or omission of such person done with intent to cause damage, the competent court may, if its law so provides, relieve the operator wholly or partly from his obligation to pay compensation in respect of the damage suffered by such person.
3. No liability under this Convention shall attach to an operator if he proves that the nuclear damage is directly due to an act of armed conflict, hostilities, civil war or insurrection.
4. Whenever both nuclear damage and damage other than nuclear damage have been caused by a nuclear incident or jointly by a nuclear incident and one or more other occurrences, such other damage shall, to the extent that it is not reasonably separable from the nuclear damage, be deemed, for the purposes of this Convention, to be nuclear damage caused by that nuclear incident. Where, however, damage is caused jointly by a nuclear incident covered by this Convention and by an emission of ionizing radiation not covered by it, nothing in this Convention shall limit or otherwise affect the liability, either as regards any person suffering nuclear damage or by way of recourse or contribution, of any person who may be held liable in connection with that emission of ionizing radiation.

5. The operator shall not be liable under this Convention for nuclear damage -
 - (a) to the nuclear installation itself and any other nuclear installation, including a nuclear installation under construction, on the site where that installation is located; and
 - (b) to any property on that same site which is used or to be used in connection with any such installation.
6. Compensation for damage caused to the means of transport upon which the nuclear material involved was at the time of the nuclear incident shall not have the effect of reducing the liability of the operator in respect of other damage to an amount less than either 150 million SDRs, or any higher amount established by the legislation of a Contracting Party, or an amount established pursuant to sub-paragraph (c) of paragraph 1 of Article V.
7. Nothing in this Convention shall affect the liability of any individual for nuclear damage for which the operator, by virtue of paragraph 3 or 5 of this Article, is not liable under this Convention and which that individual caused by an act or omission done with intent to cause damage.

ARTICLE V

1. The liability of the operator may be limited by the Installation State for any one nuclear incident, either -
 - (a) to not less than 300 million SDRs; or
 - (b) to not less than 150 million SDRs provided that in excess of that amount and up to at least 300 million SDRs public funds shall be made available by that State to compensate nuclear damage; or
 - (c) for a maximum of 15 years from the date of entry into force of this Protocol, to a transitional amount of not less than 100 million SDRs in respect of a nuclear incident occurring within that period. An amount lower than 100 million SDRs may be established, provided that public funds shall be made available by that State to compensate nuclear damage between that lesser amount and 100 million SDRs.
2. Notwithstanding paragraph 1 of this Article, the Installation State, having regard to the nature of the nuclear installation or the nuclear substances involved and to the likely consequences of an incident originating therefrom, may establish a lower amount of liability of the operator, provided that in no event shall any amount so established be less than 5 million SDRs, and provided that the Installation State ensures that public funds shall be made available up to the amount established pursuant to paragraph 1.
3. The amounts established by the Installation State of the liable operator in accordance with paragraphs 1 and 2 of this Article and paragraph 6 of Article IV shall apply wherever the nuclear incident occurs.

ARTICLE V A

1. Interest and costs awarded by a court in actions for compensation of nuclear damage shall be payable in addition to the amounts referred to in Article V.
2. The amounts mentioned in Article V and paragraph 6 of Article IV may be converted into national currency in round figures.

ARTICLE V B

Each Contracting Party shall ensure that persons suffering damage may enforce their rights to compensation without having to bring separate proceedings according to the origin of the funds provided for such compensation.

ARTICLE V C

1. If the courts having jurisdiction are those of a Contracting Party other than the Installation State, the public funds required under sub-paragraphs (b) and (c) of paragraph 1 of Article V and under paragraph 1 of Article VII, as well as interest and costs awarded by a court, may be made available by the first-named Contracting Party. The Installation State shall reimburse to the other Contracting Party any such sums paid. These two Contracting Parties shall agree on the procedure for reimbursement.
2. If the courts having jurisdiction are those of a Contracting Party other than the Installation State, the Contracting Party whose courts have jurisdiction shall take all measures necessary to enable the Installation State to intervene in proceedings and to participate in any settlement concerning compensation.

ARTICLE V D

1. A meeting of the Contracting Parties shall be convened by the Director General of the International Atomic Energy Agency to amend the limits of liability referred to in Article V if one-third of the Contracting Parties express a desire to that effect.
2. Amendments shall be adopted by a two-thirds majority of the Contracting Parties present and voting, provided that at least one-half of the Contracting Parties shall be present at the time of the voting.
3. When acting on a proposal to amend the limits, the meeting of the Contracting Parties shall take into account, inter alia, the risk of damage resulting from a nuclear incident, changes in the monetary values, and the capacity of the insurance market.
4. (a) Any amendment adopted in accordance with paragraph 2 of this Article shall be notified by the Director General of the IAEA to all Contracting Parties for acceptance. The amendment shall be considered accepted at the end of a period of 18 months after it has been notified provided that at least one-third of the Contracting Parties at the time of the adoption of the amendment by the meeting have communicated to the Director General of the IAEA that they accept the amendment. An amendment accepted in accordance with this paragraph shall enter into force 12 months after its acceptance for those Contracting Parties which have accepted it.
(b) If, within a period of 18 months from the date of notification for acceptance, an amendment has not been accepted in accordance with sub-paragraph (a), the amendment shall be considered rejected.
5. For each Contracting Party accepting an amendment after it has been accepted but not entered into force or after its entry into force in accordance with paragraph 4 of this Article, the amendment shall enter into force 12 months after its acceptance by that Contracting Party.
6. A State which becomes a Party to this Convention after the entry into force of an amendment in accordance with paragraph 4 of this Article shall, failing an expression of a different intention by that State -
(a) be considered as a Party to this Convention as so amended; and



- (b) be considered as a Party to the unamended Convention in relation to any State Party not bound by the amendment.

ARTICLE VI

1. (a) Rights of compensation under this Convention shall be extinguished if an action is not brought within -
 - (i) with respect to loss of life and personal injury, thirty years from the date of the nuclear incident;
 - (ii) with respect to other damage, ten years from the date of the nuclear incident.
 - (b) If, however, under the law of the Installation State, the liability of the operator is covered by insurance or other financial security including State funds for a longer period, the law of the competent court may provide that rights of compensation against the operator shall only be extinguished after such a longer period which shall not exceed the period for which his liability is so covered under the law of the Installation State.
 - (c) Actions for compensation with respect to loss of life and personal injury or, pursuant to an extension under sub-paragraph (b) of this paragraph with respect to other damage, which are brought after a period of ten years from the date of the nuclear incident shall in no case affect the rights of compensation under this Convention of any person who has brought an action against the operator before the expiry of that period.
2. DELETED
3. Rights of compensation under the Convention shall be subject to prescription or extinction, as provided by the law of the competent court, if an action is not brought within three years from the date on which the person suffering damage had knowledge or ought reasonably to have had knowledge of the damage and of the operator liable for the damage, provided that the periods established pursuant to sub-paragraphs (a) and (b) of paragraph 1 of this Article shall not be exceeded.
4. Unless the law of the competent court otherwise provides, any person who claims to have suffered nuclear damage and who has brought an action for compensation within the period applicable pursuant to this Article may amend his claim to take into account any aggravation of the damage, even after the expiry of that period, provided that final judgment has not been entered.
5. Where jurisdiction is to be determined pursuant to sub-paragraph (b) of paragraph 3 of Article XI and a request has been made within the period applicable pursuant to this Article to any one of the Contracting Parties empowered so to determine, but the time remaining after such determination is less than six months, the period within which an action may be brought shall be six months, reckoned from the date of such determination.

ARTICLE VII

1. (a) The operator shall be required to maintain insurance or other financial security covering his liability for nuclear damage in such amount, of such type and in such terms as the Installation State shall specify. The Installation State shall ensure the payment of claims for compensation for nuclear damage which have been established against the operator by providing the necessary funds to the extent that the yield of insurance or other financial security is inadequate to satisfy such claims, but not in excess of the limit, if any, established pursuant to Article V. Where the liability of the operator is unlimited, the Installation State may establish a limit of the financial security of the operator liable, provided that such limit is not lower than 300 million SDRs. The Installation State shall ensure the payment of claims for compensation for nuclear damage which have been established against the operator to the extent that the yield of the

financial security is inadequate to satisfy such claims, but not in excess of the amount of the financial security to be provided under this paragraph.

- (b) Notwithstanding sub-paragraph (a) of this paragraph, where the liability of the operator is unlimited, the Installation State, having regard to the nature of the nuclear installation or the nuclear substances involved and to the likely consequences of an incident originating therefrom, may establish a lower amount of financial security of the operator, provided that in no event shall any amount so established be less than 5 million SDRs, and provided that the Installation State ensures the payment of claims for compensation for nuclear damage which have been established against the operator by providing necessary funds to the extent that the yield of insurance or other financial security is inadequate to satisfy such claims, and up to the limit provided pursuant to sub-paragraph (a) of this paragraph.
2. Nothing in paragraph 1 of this Article shall require a Contracting Party or any of its constituent sub-divisions, such as States or Republics, to maintain insurance or other financial security to cover their liability as operators.
3. The funds provided by insurance, by other financial security or by the Installation State pursuant to paragraph 1 of this Article or sub-paragraphs (b) and (c) of paragraph 1 of Article V shall be exclusively available for compensation due under this Convention.
4. No insurer or other financial guarantor shall suspend or cancel the insurance or other financial security provided pursuant to paragraph 1 of this Article without giving notice in writing of at least two months to the competent public authority or, in so far as such insurance or other financial security relates to the carriage of nuclear material, during the period of the carriage in question.

ARTICLE VIII

1. Subject to the provisions of this Convention, the nature, form and extent of the compensation, as well as the equitable distribution thereof, shall be governed by the law of the competent court.
2. Subject to application of the rule of sub-paragraph (c) of paragraph 1 of Article VI, where in respect of claims brought against the operator the damage to be compensated under this Convention exceeds, or is likely to exceed, the maximum amount made available pursuant to paragraph 1 of Article V, priority in the distribution of the compensation shall be given to claims in respect of loss of life or personal injury.

ARTICLE IX

1. Where provisions of national or public health insurance, social insurance, social security, workmen's compensation or occupational disease compensation systems include compensation for nuclear damage, rights of beneficiaries of such systems to obtain compensation under this Convention and rights of recourse by virtue of such systems against the operator liable shall be determined, subject to the provisions of this Convention, by the law of the Contracting Party in which such systems have been established, or by the regulations of the intergovernmental organization which has established such systems.
2. (a) If a person who is a national of a Contracting Party, other than the operator, has paid compensation for nuclear damage under an international convention or under the law of a non-Contracting State, such person shall, up to the amount which he has paid, acquire by subrogation the rights under this Convention of the person so compensated. No rights shall be so acquired by any person to the extent that the operator has a right of recourse against such person under this Convention.

- (b) Nothing in this Convention shall preclude an operator who has paid compensation for nuclear damage out of funds other than those provided pursuant to paragraph 1 of Article VII from recovering from the person providing financial security pursuant to that paragraph or from the Installation State, up to the amount he has paid, the sum which the person so compensated would have obtained under this Convention.

ARTICLE X

The operator shall have a right of recourse only -

- (a) if this is expressly provided for by a contract in writing; or
(b) if the nuclear incident results from an act or omission done with intent to cause damage, against the individual who has acted or omitted to act with such intent.

The right of recourse provided for under this Article may also be extended to benefit the Installation State insofar as it has provided public funds pursuant to this Convention.

ARTICLE XI

1. Except as otherwise provided in this Article, jurisdiction over actions under Article II shall lie only with the courts of the Contracting Party within whose territory the nuclear incident occurred.

1bis. Where a nuclear incident occurs within the area of the exclusive economic zone of a Contracting Party or, if such a zone has not been established, in an area not exceeding the limits of an exclusive economic zone, were one to be established, jurisdiction over actions concerning nuclear damage from that nuclear incident shall, for the purposes of this Convention, lie only with the courts of that Party. The preceding sentence shall apply if that Contracting Party has notified the Depositary of such area prior to the nuclear incident. Nothing in this paragraph shall be interpreted as permitting the exercise of jurisdiction in a manner which is contrary of the international law of the sea, including the United Nations Convention on the Law of the Sea.

2. Where a nuclear incident does not occur within the territory of any Contracting Party, or within an area notified pursuant to paragraph 1bis, or where the place of the nuclear incident cannot be determined with certainty, jurisdiction over such actions shall lie with the courts of the Installation State of the operator liable.

3. Where under paragraph 1, 1bis or 2 of this Article, jurisdiction would lie with the courts of more than one Contracting Party, jurisdiction shall lie -

- (a) If the nuclear incident occurred partly outside the territory of any Contracting Party, and partly within the territory of a single Contracting Party, with the courts of the latter; and
(b) in any other case, with the courts of that Contracting Party which is determined by agreement between the Contracting Parties whose courts would be competent under paragraph 1, 1bis or 2 of this Article.

4. The Contracting Party whose courts have jurisdiction shall ensure that only one of its courts shall have jurisdiction in relation to any one nuclear incident.

ARTICLE XI A

The Contracting Party whose courts have jurisdiction shall ensure that in relation to actions for compensation of nuclear damage -

- (a) any State may bring an action on behalf of persons who have suffered nuclear damage, who are nationals of that State or have their domicile or residence in its territory, and who have consented thereto; and
- (b) any person may bring an action to enforce rights under this Convention acquired by subrogation or assignment.

ARTICLE XII

1. A judgment that is no longer subject to ordinary forms of review entered by a court of a Contracting Party having jurisdiction shall be recognized, except -

- (a) where the judgment was obtained by fraud;
- (b) where the party against whom the judgment was pronounced was not given a fair opportunity to present his case, or
- (c) where the judgment is contrary to the public policy of the Contracting Party within the territory of which recognition is sought, or is not in accord with fundamental standards of justice.

2. A judgment which is recognized under paragraph 1 of this Article shall, upon being presented for enforcement in accordance with the formalities required by the law of the Contracting Party where enforcement is sought, be enforceable as if it were a judgment of a court of that Contracting Party. The merits of a claim on which the judgment has been given shall not be subject to further proceedings.

ARTICLE XIII

1. This Convention and the national law applicable thereunder shall be applied without any discrimination based upon nationality, domicile or residence.

2. Notwithstanding paragraph 1 of this Article, insofar as compensation for nuclear damage is in excess of 150 million SDRs, the legislation of the Installation State may derogate from the provisions of this Convention with respect to nuclear damage suffered in the territory, or in any maritime zone established in accordance with the international law of the sea, of another State which at the time of the incident, has a nuclear installation in such territory, to the extent that it does not afford reciprocal benefits of an equivalent amount.

ARTICLE XIV

Except in respect of measures of execution, jurisdictional immunities under rules of national or international law shall not be invoked in actions under this Convention before the courts competent pursuant to Article XI.

ARTICLE XV

The Contracting Parties shall take appropriate measures to ensure that compensation for nuclear damage, interest and costs awarded by a court in connection therewith, insurance and reinsurance premiums and funds

provided by insurance, reinsurance or other financial security, or funds provided by the Installation State, pursuant to this Convention, shall be freely transferable into the currency of the Contracting Party within whose territory the damage is suffered, and of the Contracting Party within whose territory the claimant is habitually resident, and, as regards insurance or reinsurance premiums and payments, into the currencies specified in the insurance or reinsurance contract.

ARTICLE XVI

No person shall be entitled to recover compensation under this Convention to the extent that he has recovered compensation in respect of the same nuclear damage under another international convention on civil liability in the field of nuclear energy.

ARTICLE XVII

This Convention shall not, as between the parties to them, affect the application of any international agreements or international conventions on civil liability in the field of nuclear energy in force, or open for signature, ratification or accession at the date on which this Convention is opened for signature.

ARTICLE XVIII

This Convention shall not affect the rights and obligations of a Contracting Party under the general rules of public international law.

ARTICLE XIX

1. Any Contracting Party entering into an agreement pursuant to sub-paragraph (b) of paragraph 3 of Article XI shall furnish without delay to the Director General of the International Atomic Energy Agency for information and dissemination to the other Contracting Parties a copy of such agreement.
2. The Contracting Parties shall furnish to the Director General for information and dissemination to the other Contracting Parties copies of their respective laws and regulations relating to matters covered by this Convention.

ARTICLE XX

DELETED

ARTICLE XX A

1. In the event of a dispute between Contracting Parties concerning the interpretation or application of this Convention, the parties to the dispute shall consult with a view to the settlement of the dispute by negotiation or by any other peaceful means of settling disputes acceptable to them.
2. If a dispute of this character referred to in paragraph 1 of this Article cannot be settled within six months from the request for consultation pursuant to paragraph 1 of this Article, it shall, at the request of any party to such

dispute, be submitted to arbitration or referred to the International Court of Justice for decision. Where a dispute is submitted to arbitration, if, within six months from the date of the request, the parties to the dispute are unable to agree on the organization of the arbitration, a party may request the President of the International Court of Justice or the Secretary-General of the United Nations to appoint one or more arbitrators. In cases of conflicting requests by the parties to the dispute, the request to the Secretary-General of the United Nations shall have priority.

3. When ratifying, accepting, approving or acceding to this Convention, a State may declare that it does not consider itself bound by either or both of the dispute settlement procedures provided for in paragraph 2 of this Article. The other Contracting Parties shall not be bound by a dispute settlement procedure provided for in paragraph 2 of this Article with respect to a Contracting Party for which such a declaration is in force.

4. A Contracting Party which has made a declaration in accordance with paragraph 3 of this Article may at any time withdraw it by notification to the depositary.

ARTICLE XXI

DELETED

ARTICLE XXII

DELETED

ARTICLE XXIII

DELETED

ARTICLE XXIV

DELETED

ARTICLE XXV

DELETED

ARTICLE XXVI

A conference shall be convened by the Director General of the International Atomic Energy Agency at any time after the expiry of a period of five years from the date of the entry into force of this Convention in order to consider the revision thereof, if one-third of the Contracting Parties express a desire to that effect.

ARTICLE XXVII

DELETED

ARTICLE XXVIII

This Convention shall be registered by the Director General of the International Atomic Energy Agency in accordance with Article 102 of the Charter of the United Nations.

ARTICLE XXIX

DELETED

Act on Compensation for Nuclear Damage

(Act No. 147 of 1961)

As Amended by Act No. 19 of 17 April 2009

Contents

Part I	General Provisions (Sections 1 and 2)
Part II	Liability for Nuclear Damage (Sections 3 to 5)
Part III	Financial Security
Chapter 1	Financial Security (Sections 6 to 7-2)
Chapter 2	Contract of Liability Insurance for Nuclear Damage (Sections 8 and 9)
Chapter 3	Indemnity Agreements for Compensation of Nuclear Damage (Sections 10 and 11)
Chapter 4	Deposit (Sections 12 to 15)
Part IV	Measures taken by the State (Sections 16 and 17)
Part V	Dispute Reconciliation Committee for Nuclear Damage Compensation (Section 18)
Part VI	Miscellaneous Provisions (Sections 19 to 23)
Part VII	Penal Provisions (Sections 24 to 26)
	Supplementary Provisions

PART I

General Provisions

Section 1 Purpose

The purpose of this act is to protect persons suffering from nuclear damage and to contribute to the sound development of the nuclear industry by establishing the basic system regarding compensation in case of a nuclear damage caused by reactor operation etc.

Section 2 Definitions

As used in this act, "reactor operation etc." means any activity which comes under any one of the following cases below as well as any incidental transport, storage and disposal of nuclear fuel or material contaminated by nuclear fuel [including nuclear fission products; this applies also to sub-paragraph (v)], as provided by Cabinet Order:

- i) reactor operation;
- ii) production;
- iii) reprocessing;
- iv) use of nuclear fuel;
- (iv-2) storage of spent fuel;
- (v) waste disposal of nuclear fuel or material contaminated by nuclear fuel (referred to as "nuclear fuel etc." in the following paragraph and in Section 3, paragraph 2).

2. As used in this act, "nuclear damage" means any damage caused by the effects of the fission process of nuclear fuel, or of the radiation from nuclear fuel etc., or of the toxic nature of such materials (which means effects that give rise to toxicity or its secondary effects on the human body by ingesting or inhaling such materials); however, any damage suffered by the nuclear operator who is liable for such damage pursuant to the following Section, is excluded.

3. As used in this act, "nuclear operator" means any person as specified under any one of the following sub-paragraphs (including a person who had been deemed so previously).

- (i) A person who is granted a permit as provided in Section 23 paragraph 1 of the Act for the Regulation of Nuclear Source Material, Nuclear Fuel and Reactors (Act No. 166 of 1957; hereinafter referred to as "the Regulation Act") (including a national licence under the provisions of the same paragraph applying instead by virtue of Section 76 of the Regulation Act) (including a person who is regarded as a reactor operator pursuant to Section 39, paragraph 5 of the Regulation Act);
- (ii) A person who is granted a permit as provided in Section 23-2, paragraph 1 of the Regulation Act;

- (iii) A person who is granted a licence as provided in Section 13, paragraph 1 of the Regulation Act (including a national licence under the provisions of the same paragraph applying instead by virtue of Section 76 of the Regulation Act);
- (iv) A person who is granted a licence as provided in Section 43-4, paragraph 1 of the Regulation Act (including a national licence under the provisions of the same paragraph applying instead by virtue of Section 76 of the Regulation Act);
- (v) A person who is granted a licence as provided in Section 44, paragraph 1 of the Regulation Act (including a national licence under the provisions of the same paragraph applying instead by virtue of Section 76 of the Regulation Act);
- (vi) A person who is granted a licence as provided in Section 51-2, paragraph 1 of the Regulation Act (including a national licence under the provisions of the same paragraph applying instead by virtue of Section 76 of the Regulation Act);
- (vii) A person who is granted a licence as provided in Section 52, paragraph 1 of the Regulation Act (including a national licence under the provisions of the same paragraph applying instead by virtue of Section 76 of the Regulation Act);

4. As used in this Act, "reactor" means a reactor as provided in Section 3, paragraph 4 of the Basic Atomic Energy Act (Act No. 186 of 1955), "nuclear fuel" means nuclear fuel as provided in Section 3, paragraph 2 of the Basic Atomic Energy Act (including spent fuel as provided in Section 2, paragraph 8 of the Regulation Act), "production" means production as provided in Section 2, paragraph 7 of the Regulation Act, "reprocessing" means reprocessing as provided in Section 2, paragraph 8 of the Regulation Act, "storage of spent fuel" means the storage of spent fuel as provided in Section 43, paragraph 4(1) of the Regulation Act; "waste disposal of nuclear fuel or material contaminated by nuclear fuel", means the underground disposal of waste and waste management as provided in Section 51, paragraph 2(1) of the Regulation Act; "radiation" means radiation as provided in Section 3, paragraph 5 of the Basic Atomic Energy Act, and "nuclear ship" and "foreign nuclear ship" mean nuclear ship and foreign nuclear ship as provided in Section 23-2, paragraph 1 of the Regulation Act.

PART II

Liability for Nuclear Damage

CHAPTER 1

Financial Security

Liability without fault, channelling of liability etc.

Section 3

Where nuclear damage is caused as a result of reactor operation etc. during such operation, the nuclear operator who is engaged in the reactor operation etc. on this occasion shall be liable for the damage, except in the case where the damage is caused by a grave natural disaster of an exceptional character or by an insurrection.

2. Where nuclear damage is covered by the preceding paragraph and if the damage is caused as a result of the transport of nuclear fuel etc. between nuclear operators, the nuclear operator who is the consignor of the nuclear fuel etc. shall be liable for the damage unless there is a special agreement between the nuclear operators.

Section 4

Where nuclear damage is covered by the preceding section, no person other than the nuclear operator who is liable for the damage pursuant to the preceding section shall be liable for the damage.

2. Where nuclear damage is covered by paragraph 1 of the preceding section, the liability of a nuclear operator who furnishes the financial security as provided in Section 7-2, paragraph 2 and wants a foreign nuclear ship to enter into Japanese territorial waters shall be limited to the amount as provided in Section 7-2, paragraph 2.

3. The provisions of Section 798, paragraph 1 of the Trade Act (Act No. 48 of 1899), the Act relating to the Limitation of the Liability of Shipowners (Act No. 94 of 1975) and the Products Liability Act (Act No. 85 of 1994), shall not apply to nuclear damage which is caused as a result of reactor operation etc.

Section 5 Rights of recourse

Where nuclear damage is covered by Section 3 and if the damage is caused by the wilful act of a third party, the nuclear operator who has compensated the damage pursuant to Section 3 shall retain a right of recourse against such third party.

The provisions of the preceding paragraph shall not prevent a nuclear operator from entering into a special agreement with any person regarding rights of recourse.

PART III

Financial Security

CHAPTER 1

Financial Security

Section 6 Duty to provide financial security

A nuclear operator is prohibited from reactor operation etc. unless financial security for compensation of nuclear damage (hereinafter referred to as “financial security”) has been provided.

Details of financial security

Section 7

Except when the provisions of the following section are applicable, financial security shall be provided by the conclusion of a contract of liability insurance for nuclear damage and an indemnity agreement for compensation of nuclear damage or by a deposit, approved by the Minister for Education, Culture, Sport, Science and Technology (MEXT) as an arrangement that makes available for compensation of nuclear damage, 120 billion yen (in case of such reactor operation etc. The Cabinet Order may provide for a lesser amount than 120 billion yen; hereinafter this amount is referred to as "financial security amount") for each installation or site or nuclear ship, or by an equivalent arrangement approved by MEXT.

2. Where the amount available for compensation of nuclear damage falls below the financial security amount because the nuclear operator has paid compensation for nuclear damage pursuant to Section 3, MEXT may, if it deems it necessary to ensure full compensation of nuclear damage, order the nuclear operator to bring the amount available for compensation of nuclear damage up to the financial security amount by a given time.

3. In the case provided for in the preceding paragraph, the preceding section shall not apply until the Order is made pursuant to the preceding paragraph (until the time designated by the Order, where such an Order has been made pursuant to the preceding paragraph).

Section 7-2

Where a nuclear operator wants a nuclear ship to enter into foreign territorial waters, financial security shall be provided by the conclusion of a contract of liability insurance for nuclear damage and an indemnity agreement for compensation of nuclear damage or by other financial security, approved by MEXT as an arrangement that is sufficient for the compensation of nuclear damage, in the amount agreed between the Government of Japan and the Government of such foreign country and subscribed by the nuclear operator of the nuclear ship who is liable for the compensation of nuclear damage.

2. Where a nuclear operator wants a foreign nuclear ship to enter into Japanese territorial waters, the financial security shall be that approved by MEXT as an arrangement that is sufficient for the compensation of nuclear damage, in the amount (not less than 36 billion yen in respect of nuclear damage caused by any one incident) agreed between the Government of Japan and the Government of such foreign country and subscribed by the nuclear operator of the foreign nuclear ship liable for the compensation of nuclear damage.

CHAPTER 2

Contract of Liability Insurance for Nuclear Damage*Contract of Liability Insurance for Nuclear Damage***Section 8**

The contract of liability insurance for nuclear damage (hereinafter referred to as “liability insurance contract”) shall be the contract under which an insurer undertakes to indemnify a nuclear operator for his loss arising from compensating nuclear damage, where the nuclear operator becomes liable for such nuclear damage, and under which the insurance policy holder has undertaken to pay a premium to the insurer (this provision applies only to a person who is authorised to engage in liability insurance activities pursuant to the Insurance Business act [Act No. 105 of 1995], such as a risk insurance company under Section 2, paragraph 4 of this same act, or a foreign risk insurance company under paragraph 9 of the same section, this being the meaning given to the term insurer used hereafter).

Section 9

Any person suffering from nuclear damage shall, with regard to his claim for such nuclear damage, have priority over other creditors in respect of compensation from the amount provided by the liability insurance contract.

2. The insured may request the insurer to make the insurance payment only to the extent of the amount of compensation which the insured has paid or to the extent to which the insured has acquired the consent of persons suffering from nuclear damage.
3. The right to request insurance payment under the liability insurance contract shall not be assigned, mortgaged or seized; however, a person who has suffered nuclear damage may proceed with a seizure with regard to his claim for nuclear damage.

CHAPTER 3

Indemnity Agreements for Compensation of Nuclear Damage*Indemnity agreements for compensation of nuclear damage***Section 10**

An indemnity agreement for compensation of nuclear damage (hereinafter referred to as “indemnity agreement”) shall be the contract by which the Government undertakes to indemnify a nuclear operator for his loss arising from compensating nuclear damage not covered by the liability insurance contract or other financial security for compensation of nuclear damage, where the nuclear operator becomes liable for such damage, and under which that operator has undertaken to pay an indemnity fee to the Government.

2. Provisions relating to indemnity agreements shall be laid down in another act.



Section 11

The provisions of Section 9 shall apply mutatis mutandis to the indemnity payment under the indemnity agreement.

CHAPTER 4**Deposit*****Section 12 Deposit***

A deposit for financial security shall be made in the Legal Affairs Bureau or the District Legal Affairs Bureau nearest to the main office of the nuclear operator, either in cash or in securities as provided by MEXT [including electronic securities specified in the Act on the Transfer of Securities such as shares, company bonds etc. (Act No. 75 of 2001) Section 278, paragraph 1. This provision applies also to what follows in this Chapter].

Section 13 Payment from deposit

Any person suffering nuclear damage may, with regard to his claim for compensation, receive compensation from the cash or securities deposited by the nuclear operator pursuant to the preceding section.

Section 14 Withdrawal of deposit

A nuclear operator may, in the following cases, withdraw the cash or securities deposited pursuant to Section 12 with the approval of MEXT where:

- (i) the nuclear damage has been compensated;
- (ii) financial security other than the deposit has been provided;
- (iii) reactor operation etc. has ceased.

2. When MEXT grants an approval under the preceding sub-paragraphs (ii) or (iii), it may, to the extent that it deems it necessary to ensure full compensation of nuclear damage, designate the time when the nuclear operator may withdraw cash or securities, as well as the amount of such withdrawal.

Section 15 Specifications by Orders

Provisions regarding deposits other than those provided in this Chapter shall be promulgated by Orders of MEXT and the Ministry of Justice.

PART IV

Measures taken by the State

Section 16

Where nuclear damage occurs, the Government shall give a nuclear operator (except the nuclear operator of a foreign nuclear ship) such aid as is required for him to compensate the damage, when the actual amount which he should pay for the nuclear damage pursuant to Section 3 exceeds the financial security amount and when the Government deems it necessary in order to attain the objectives of this act.

2. Aid as provided for in the preceding paragraph shall be given to the extent that the Government is authorised to do so by decision of the National Diet.

Section 17

Where the provision for exoneration in Section 3, paragraph 1 applies or where nuclear damage is deemed to exceed the amount provided under Section 7-2, paragraph 2, the Government shall take the necessary measures to relieve victims and to prevent the damage from spreading.

PART V

Dispute Reconciliation Committee for Nuclear Damage Compensation

Section 18 Dispute Reconciliation Committee for Nuclear Damage Compensation

The Dispute Reconciliation Committee for Nuclear Damage Compensation (hereinafter referred to as "Reconciliation Committee") may be established as an organisation attached to MEXT, pursuant to the provisions laid down by Cabinet Order; this Committee shall be in charge of mediating reconciliation of any dispute arising from compensation of nuclear damage and of preparing general instructions to help operators reach a voluntary settlement of such disputes.

2. The Reconciliation Committee shall:

(i) mediate reconciliation of any dispute arising from compensation of nuclear damage;

- (ii) in the event of a dispute arising from compensation of nuclear damage, draft instructions establishing the scale of the nuclear damage and other general instructions to help operators reach a voluntary settlement of the said dispute;
 - (iii) investigate and assess nuclear damage as necessary for dealing with the matters mentioned in (i) and (ii) above.
3. Provisions regarding the organisation and operation of the Reconciliation Committee as well as procedures for a request for, and conduct of, mediation other than those provided in paragraphs 1 and 2 shall be promulgated by Cabinet Order.

PART VI

Miscellaneous Provisions

Section 19 Presentation of reports and written opinions to the National Diet

Where nuclear damage occurs on a comparatively large scale, the Government must report to the National Diet as soon as possible on the extent of the damage and on the measures it has taken pursuant to this act.

- 2. When nuclear damage occurs, the Government must present to the National Diet the written opinion regarding mitigation, prevention etc. of the damage, which the Atomic Energy Commission or the Nuclear Safety Commission has submitted to the Prime Minister.

Section 20 Application of Section 10, paragraph 1 and Section 16, paragraph 1

The provisions of Section 10, paragraph 1 and Section 16, paragraph 1 shall apply to nuclear damage arising from reactor operation etc. in respect of which the activity, falling under any one of subparagraphs mentioned in Section 2, paragraph 1, has begun by 31 December 2019.

Section 21 Submission of reports and inspections

MEXT may, if it deems it necessary to ensure execution of the provisions of Section 6, require a nuclear operator to present any necessary reports or allow his officials to enter the latter's office, installation or site or his nuclear ship, to inspect his books, documents and other necessary objects, or to ask questions of the persons concerned.

- 2. When an official enters premises pursuant to the preceding paragraph, he shall carry an identification card and present it if requested by the persons concerned.
- 3. The right to conduct an inspection pursuant to paragraph 1 shall not be construed as a right to investigate a criminal offence.

Section 22 Consultations with the Minister for the Economy, International Trade and Industry (METI) or with the Minister for Regional Development, Infrastructure, Transport and Tourism (MLIT)

When MEXT takes action pursuant to Section 7, paragraph 1 or Section 7-2, paragraphs 1 or 2, or makes Orders pursuant to Section 7, paragraph 2, it shall hold prior consultations with the Minister for the Economy, International Trade and Industry (METI) in cases concerning reactors for the production of electricity, the production, reprocessing or storage of spent nuclear fuel or the disposal of waste consisting of nuclear fuel or materials contaminated by nuclear fuel, or the Minister for Regional Development, Infrastructure, Transport and Tourism (MLIT) in cases concerning reactors installed in vessels.

Section 23 Exclusion of application to the state

The provisions of Part III, Section 16 and Part VII shall not apply to the state.

PART VII

Penal Provisions

Section 24

A person who breaches the provisions of Section 6 shall be punishable by imprisonment of not more than one year, or by a fine not exceeding 1 000 000 yen, or both.

Section 25

A person shall be punishable by a fine not exceeding 1 000 000 yen for:

- (i) failing to present a report pursuant to Section 21, paragraph 1, or presenting a false report;
- (ii) refusing access to inspectors or interrupting or evading them, or refusing to answer a question pursuant to Section 21, paragraph 1 or giving a false answer to such a question.

Section 26

When the representative of a legal entity, or the agent or other employee of a legal entity or of a natural person commits any one of the offences referred to in Sections 24 and 25 in connection with the business of the legal entity or the natural person, the legal entity or the natural person shall, in addition to punishment of the actual offender, be punishable by a fine as provided in the said sections.

Supplementary Provisions (Omitted)

Date of entry into force

Section 1

This act shall enter into force on the date laid down by Cabinet Order and at the latest, nine months after the date of its promulgation.

Section 3

The penal provisions relating to acts committed before the entry into force of this act or to acts committed before the provisions laid down in Section 26, paragraph 1 of the Compensation Act cease to apply shall, before amendment by the provisions of this act and after its entry into force (this concerns the part relating to Section 23, paragraph 2 (9) of the said act), remain applicable.

Section 4 Adjustment of indemnities pursuant to other legislation

In the circumstances referred to in the preceding section, when the employees of a nuclear operator suffer nuclear damage and the nuclear operator is liable for such damage pursuant to the said section (designated simply, in the rest of this section, as “nuclear operator”), such employees or the families of the deceased shall receive an indemnity as laid down by Cabinet Order in the form of an indemnity under the provisions of the Insurance Act for the Compensation of Work Accidents (Act No. 50 of 1947) and equivalent to the compensation of such damage, or any other indemnity governed by other provisions of the act (hereinafter referred to in this section as “compensation for work accidents”). In such cases, any compensation of nuclear damage paid to employees or the families of the deceased shall be temporarily subject to the following provisions:

- (i) the nuclear operator shall be entitled not to pay indemnification, and that during a period which may extend to the extinction of the right of employees or families to receive compensation for work accidents, up to an amount equal to the value of the said compensation for work accidents calculated at the legal rate in force between the time when the damage occurred and the date on which the compensation for work accidents was paid;
- (ii) where the circumstances of the preceding paragraph apply, when compensation for work accidents has been paid, the nuclear operator shall be exonerated from his indemnification obligation up to an amount equal to the value of the said compensation for work accidents calculated at the legal rate in force between the time when the damage occurred and the date on which the compensation for work accidents was paid.

2. Where the employees of a nuclear operator have suffered nuclear damage and such damage was caused intentionally by a third party, the nuclear operator who has paid compensation for work accidents to the employees or families of the deceased shall retain a right of recourse against such third party.

Supplementary Provisions (Act No. 19 of 17 April 2001)

This act shall enter into force on 1 January 2010.

ภาคผนวก ค.*

MODEL PROVISIONS ON NUCLEAR LIABILITY

Article ##. Definitions

For the purposes of this Law:

- (a) 'Operator', in relation to a nuclear installation, means the person designated or recognized by [name of State] as the operator of that installation.
- (b) 'Nuclear material' means:
 - (i) Nuclear fuel, other than natural uranium and depleted uranium, capable of producing energy by a self-sustaining chain process of nuclear fission outside a nuclear reactor, either alone or in combination with some other material;
 - (ii) Radioactive products or waste.
- (c) 'Nuclear fuel' means any material which is capable of producing energy by a self-sustaining chain process of nuclear fission.
- (d) 'Radioactive products or waste' means any radioactive material produced in, or any material made radioactive by exposure to the radiation incidental to, the production or utilization of nuclear fuel, but does not include radioisotopes which have reached the final stage of fabrication so as to be usable for any scientific, medical, agricultural, commercial or industrial purpose.
- (e) 'Nuclear installation' means:
 - (i) Any nuclear reactor other than one with which a means of sea or air transport is equipped for use as a source of power, whether for propulsion thereof or for any other purpose;
 - (ii) Any factory using nuclear fuel for the production of nuclear material or any factory for the processing of nuclear material, including any factory for the reprocessing of irradiated nuclear fuel;
 - (iii) Any facility where nuclear material is stored, other than storage incidental to the carriage of such material.

[NOTE: The definition may also provide that, if the Government or competent State authority so decides, the nuclear installations of one operator located at the same site shall be considered as a single nuclear installation.]

- (f) 'Nuclear reactor' means any structure containing nuclear fuel in such an arrangement that a self-sustaining chain process of nuclear fission can occur therein without an additional source of neutrons.

*ต้นแบบการร่างกฎหมายเกี่ยวกับความรับผิดทางนิวเคลียร์นี้เป็นข้อมูลที่ได้มาภายหลังการสอบ
วิทยานิพนธ์

CHAPTER 11. NUCLEAR LIABILITY AND COVERAGE

- (g) 'Nuclear damage' means:
- (i) Loss of life or personal injury;
 - (ii) Loss of or damage to property;
 - (iii) Economic loss arising from loss or damage referred to in subsection (i) or (ii), in so far as not included in those subsections, if incurred by a person entitled to claim in respect of such loss or damage;
 - (iv) The costs of measures of reinstatement of impaired environment, unless such impairment is insignificant, if such measures are actually taken or to be taken, and in so far as not included in subsection (ii);
 - (v) Loss of income deriving from an economic interest in any use or enjoyment of the environment, incurred as a result of a significant impairment of that environment, and in so far as not included in subsection (ii);
 - (vi) The costs of preventive measures, and further loss or damage caused by such measures;
 - (vii) Any other economic loss, other than any caused by the impairment of the environment, if permitted by the general law on civil liability of the competent court,

in the case of subsections (i)–(v) and (vii) above, to the extent that the loss or damage arises out of or results from ionizing radiation emitted by any source of radiation inside a nuclear installation, or emitted from nuclear fuel or radioactive products or waste in, or of nuclear material coming from, originating in, or sent to, a nuclear installation, whether so arising from the radioactive properties of such matter, or from a combination of radioactive properties with toxic, explosive or other hazardous properties of such matter.

[NOTE: With respect to the heads of damage in subsections (iii)–(vii) above, the legislator should determine in the Law the extent of their coverage.]

- (h) 'Nuclear incident' means any occurrence or series of occurrences having the same origin which causes nuclear damage or, but only with respect to preventive measures, creates a grave and imminent threat of causing such damage.
- (i) 'Special drawing right', hereinafter referred to as SDR, means the unit of account defined by the International Monetary Fund and used by it for its own operations and transactions.
- (j) 'Measures of reinstatement' means any reasonable measures which have been approved by the competent authorities of the State where the measures were taken, and which aim to reinstate or restore damaged or destroyed

CHAPTER 11. NUCLEAR LIABILITY AND COVERAGE

components of the environment, or to introduce, where reasonable, the equivalent of these components into the environment.

[NOTE: The law of the State where the damage is suffered shall determine who is entitled to take such measures.]

- (k) 'Preventive measures' means any reasonable measures taken by any person after a nuclear incident has occurred to prevent or minimize damage referred to in subsections (g)(i)-(v) or (vii), subject to any approval of the competent authorities required by the law of the State where the measures were taken.
- (l) 'Reasonable measures' means measures which are found under the law of [name of court] to be appropriate and proportionate having regard to all the circumstances, for example:
 - (i) The nature and extent of the damage incurred or, in the case of preventive measures, the nature and extent of the risk of such damage;
 - (ii) The extent to which, at the time they are taken, such measures are likely to be effective;
 - (iii) Relevant scientific and technical expertise.

Article ##. Liability of the Operator

- (1) Subject to the provisions of this Law, only the operator of a nuclear installation shall be liable for nuclear damage wherever suffered, upon proof that such damage has been caused by a nuclear incident at the operator's nuclear installation.
- (2) Liability for nuclear damage caused by nuclear material which was stolen, lost, jettisoned or abandoned lies with the operator who was last authorized to possess such material.
- (3) Liability for nuclear damage shall apply to nuclear damage wherever suffered.

[NOTE: The Law, however, may provide for the exclusion of nuclear damage suffered (a) in the territory of a non-contracting State to the 1997 Vienna Convention; or (b) in any maritime zones established by a non-contracting State in accordance with the international law of the sea. Such exclusion, however, shall only apply to such a non-contracting State which has a nuclear installation in its territory or in any of its established maritime zones and does not afford reciprocal benefits.]

CHAPTER 11. NUCLEAR LIABILITY AND COVERAGE

[NOTE: Under the Paris regime, liability for damage suffered in the territory, or maritime zones, of a non-contracting State which has a nuclear installation in its territory is not covered, unless that State, at the time of the nuclear incident, is (a) a Contracting Party to the 1963 Vienna Convention (and any amendment thereto which may be in force for it) and to the 1988 Joint Protocol, provided that the Installation State is also a Party to the Joint Protocol; or (b) has in force nuclear liability legislation "which affords equivalent reciprocal benefits, and which is based on principles identical to those of this Convention, including, inter alia, liability without fault of the operator liable, exclusive liability of the operator or a provision to the same effect, exclusive jurisdiction of the competent court, equal treatment of all victims of a nuclear incident, recognition and enforcement of judgements, free transfer of compensation, interests and costs".]

Article ##. Liability during Transport

- (1) In the case of transport of nuclear material, the sending operator shall be liable for nuclear damage until the receiving operator has taken charge of the material involved, unless the sending and receiving operators have entered into a written agreement to shift liability at another stage of transport or to shift liability to the carrier of the material at its request. In the latter case, the carrier shall be considered as the operator liable in accordance with this Law.
- (2) In the case where the nuclear material has been sent to a person within the territory of a State that is not Party to the [title of the convention], the sending operator shall be liable before the nuclear material has been unloaded from the means of transport by which it has arrived in the territory of that non-contracting State.
- (3) In the case where the nuclear material has been sent from a person within a State that is not Party to the [title of the convention], the receiving operator shall be liable only after the nuclear material has been loaded on the means of transport by which it is to be carried from the territory of that non-contracting State.

Article ##. Amount of Liability

The minimum amount of liability of the operator of a nuclear installation is [300 million SDRs under the 1997 Vienna Convention and the 1997 CSC, 700 million EUR under the 2004 Paris Convention] for nuclear damage caused by any one nuclear incident.

CHAPTER 11. NUCLEAR LIABILITY AND COVERAGE

[NOTE: Alternatively, the amount may be set at 150 million SDRs, provided that in excess of that amount and up to at least 300 million SDRs, public funds shall be made available to compensate nuclear damage.]

[NOTE: The 300 million SDRs is a minimum amount foreseen in the 1997 Vienna Convention and the 1997 CSC, and a higher amount may be provided for in the Law. The 1997 CSC also foresees contributions by Contracting Parties to an international fund, if this national compensation amount is inadequate to ensure the payment of all claims for compensation for damage. Should unlimited liability be chosen, this provision and section 3 of the article below on Financial Security will need to be amended accordingly.]

[NOTE: A lower amount of liability for the operator may be established, having regard to the nature of the nuclear installation or nuclear material involved and to the likely consequences of a nuclear incident that could result therefrom, provided that in no event shall any amount so established be less than 5 million SDRs and provided that public funds shall be made available up to 300 million SDRs.]

[NOTE: The 2004 Paris Convention provides for a minimum amount of 350 million EUR for liability of the operator in respect of nuclear damage caused by any one nuclear incident for a maximum period of five years from the date of adoption of the Protocol of 12 February 2004. Also under the 2004 Paris Convention, liability for nuclear damage occurring in a non-contracting State that has a nuclear installation on its territory at the time of a nuclear incident may be fixed lower than 700 (or the transitional amount of 350) million EUR to the extent that such State does not afford reciprocal benefits of an equivalent amount.]

Article ##. Financial Security

- (1) The operator of a nuclear installation shall be required to have and maintain insurance or other financial security covering its liability for nuclear damage.
- (2) The operator of a nuclear installation shall submit for approval to [name of relevant governmental body] the conditions of the financial security required under para. (1).
- (3) The Government of [name of State] shall ensure the payment of claims for compensation for nuclear damage which have been established against the operator to the extent that the yield of the insurance or financial security of the operator set under para. (1) is inadequate to satisfy such claims. In any event, the payment of such claims shall not be in excess of the amount established in Article ## [Amount of Liability].

CHAPTER 11. NUCLEAR LIABILITY AND COVERAGE

[NOTE: This Article is not needed for States without nuclear installations.]

Article ##. Extinction of Rights of Compensation

- (1) Rights of compensation for nuclear damage under this Law shall be extinguished if an action is not brought:
 - (a) With respect to loss of life or personal injury, within 30 years from the date of the nuclear incident;
 - (b) With respect to any other nuclear damage, within 10 years from the date of the nuclear incident.
- (2) Rights of compensation for nuclear damage under this Law shall be extinguished 3 years from the date on which the person suffering damage had knowledge or ought reasonably to have had knowledge of the damage and of the operator liable for the damage, unless the time limits established in para. 1 of this Article have expired.
- (3) Unless the law of the [competent court] provides to the contrary, any person who claims to have suffered nuclear damage and who has submitted a claim for compensation within the period applicable pursuant to this Article may amend the claim to take into account any aggravation of the damage, even after the expiration of that period, provided that a final judgement has not been entered.

[NOTE: Under the 1997 CSC, an Annex State is only required to have an extinction period of 10 years. However, there is nothing to prevent an Annex State from opting for 30 years in line with that in the 1997 Vienna Convention and the 2004 Paris Convention.]

Article ##. Compensation

- (1) The nature, form and extent of the compensation, as well as the equitable distribution thereof, shall be governed by the provisions of this Law.
- (2) Where claims exceed, or are likely to exceed, the maximum amount made available pursuant to Article ## [Amount of Liability], compensation for nuclear damage caused by a nuclear incident shall be provided first for compensation for any loss of life or personal injury. After all these claims have been satisfied, claims for other loss or damage shall be compensated.
- (3) Interest and costs awarded by the competent court for compensation for nuclear damage shall be exclusive of the minimum liability amounts specified in Article ## [Amount of Liability].

CHAPTER 11. NUCLEAR LIABILITY AND COVERAGE**Article ##. Jurisdiction**

- (1) The [competent court] shall be the only court having jurisdiction to examine claims for compensation for nuclear damage pursuant to this Law caused by a nuclear incident occurring within the territory or within the exclusive economic zone of [name of State] and which are brought before that court according to the provisions of this Law.
- (2) Any person who has a right of compensation for nuclear damage pursuant to this Law may bring an action for compensation against the liable operator, or directly against the insurer or against any other person providing financial security pursuant to Article ## [Financial Security].

[NOTE: Any State may bring an action on behalf of persons who have suffered nuclear damage, who are nationals of that State or have their domicile or residence in its territory, and who have consented thereto.]

Article ##. Exceptions to Liability

- (1) The operator of a nuclear installation shall not be liable for nuclear damage that is proved to be directly caused by an act of armed conflict, hostilities, civil war or insurrection.
- (2) The operator of a nuclear installation shall not be liable for nuclear damage:
 - (a) To the nuclear installation itself or any other nuclear installation, including a nuclear installation under construction, on the site where the installation is located;
 - (b) To any property on the same site which is used or to be used in connection with any such installation.
- (3) If the operator of a nuclear installation proves that the nuclear damage resulted wholly or partly either from the gross negligence of the person suffering the damage or from an act or omission of such person done with intent to cause damage, the operator may be relieved, wholly or partly, from his obligation to pay compensation in respect of the damage suffered by such person.
- (4) Nothing in this Law shall affect the liability of any individual for nuclear damage for which the operator, by virtue of paras 2 and 3 of this Article, is not liable and which that individual caused by an act or omission done with intent to cause damage.

CHAPTER 11. NUCLEAR LIABILITY AND COVERAGE

Article ##. Judgements

A final judgement by a foreign court awarding compensation in the case of nuclear damage shall be recognized and enforced as if it were a judgement of [name of State], except:

- (a) Where the judgement was obtained by fraud;
- (b) Where the Party against whom the judgement was pronounced was not given a fair opportunity to present his case; or
- (c) Where the judgement is contrary to the public policy of [name of State] or is not in accord with fundamental standards of justice.

[NOTE: Recognition and enforcement of foreign courts' final judgements is relevant only with respect to States in treaty relations under the applicable nuclear liability instrument.]

Article ##. Non-discrimination

[This chapter of the Law] shall be applied without discrimination based upon nationality, domicile or residence.

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ประวัติผู้เขียนวิทยานิพนธ์

นางสาววาริรัตน์ ธารานุกฤษณ์ เกิดเมื่อวันที่ 9 พฤศจิกายน พ.ศ. 2526 จังหวัดจันทบุรี สำเร็จ การศึกษาระดับมัธยมศึกษาจากโรงเรียนศรียานุสรณ์ จบการศึกษาระดับปริญญาบัณฑิต จากคณะ นิติศาสตร์ จุฬาลงกรณ์มหาวิทยาลัย (สาขากฎหมายเอกชนและธุรกิจ) พ.ศ. 2549 ทำงานเป็น พนักงานฝ่ายกฎหมาย บริษัท เบญจจินดาโฮลดิ้ง จำกัด พ.ศ. 2550-2551



