NUCLEAR LAW Bulletin

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Contents

European Nuclear Energy Agency

Organisation for Economic Co-operation and Development

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LEGISLATIVE AND REGULATORY ACTIVITIES

• *Australia*

MARITIME CARRIAGE OF RADIOACTIVE SUBSTANCES

The Australian Department of Shipping and Transport has recently published a revised version of the "Red Book", i.e. the Australian document laying down the practical requirements for the transport of dangerous goods by sea. These requirements are in the form of a Determination, made on behalf of the Minister of Shipping and Transport under Section 6 of the Navigation (Dangerous Goods) Regulations, that various specified dangerous goods shall comply with the prescribed requirements.

In general the requirements for packing, labelling, stowing and carriage of radioactive substances are those contained in the IAEA Regulations for the Safe Transport of Radioactive Materials (1967 Edition as amended) as may be applicable to radioactive substances on sea-going vessels. Among others, there are particular provisions relating to the segregation of radioactive substances from other dangerous goods and safe distances are prescribed, both in metric and imperial units, for persons and undeveloped films. Tables give the appropriate requirements for packing, stowing and labelling of the different categories of radioactive substances, and the various radionuclides are classified into groups for the purposes of transport.

• *Austria*

REGIME OF NUCLEAR INSTALLATIONS

Act on the promotion of electricity producing enterprises /Official Gazette No. 19/1970/

This Act (Elektrizitätsförderungsgesetz 1969), which was passed by Parliament on 12th December 1969, grants certain fiscal advantages to enterprises producing or transferring electrical energy

exclusively or mainly for use by third parties. These enterprises may obtain certain tax relief for investments allocated to the promotion of the electrical power industry.

Article II of this Act provides that up to 60% of the real cost of contributions towards the construction of a nuclear power plant, which has been declared to serve the interests of the electrical power industry by the Minister of Transport and Nationalised Enterprises, can be written off by the abovementioned categories of enterprises. A prerequisite however, is that the project is financed exclusively or in part by the electricity producing or transferring enterprises by way of membership or shareholding and that these enterprises undertake to purchase at the real cost a quantity of current produced by the nuclear power plant, which is proportional to their financial participation in the project.

• *Belgium*

THIRD PARTY LIABILITY

Bill to amend the Act of 18th July 1966

This Bill which was put before the House of Representatives in early 1970, amends the Act of 18th July 1966 on third party liability in the field of nuclear energy, the Royal Decree of 28th September 1931 to co-ordinate the Acts on compensation for occupational damage, and the Act of 24th December 1963 relating to compensation for damage resulting from occupational diseases and the prevention thereof.

The first purpose of this Bill is to re-draft Section 9 of the Act of 18th July 1966, to extend its scope and to expressly grant the right to compensation provided by the Paris Convention to persons subject to Belgian legislation which regulates sickness and disablement insurance systems, social security or compensation for accidents at work and occupational diseases.

The text which was proposed in replacement of the present Section 9 is the following:

> "Without prejudice to any action resulting from this Act, the beneficiaries of sickness and disablement insurance systems, social security or workmen's and occupational disease compensation shall retain the right to benefit from such systems. The amounts to be paid in pursuance of such systems are not concurrent with compensation deriving from this Act."

The Royal Decree of 28th September 1931 and the Act of 24th December 1943 are also amended accordingly, to harmonize them with the new provisions of the Act of 18th July 1966.

RADIATION PROTECTION

Act of 3rd December 1969 (Belgian Official Gazette of 6th January 1970)

This Act empowers the King to establish dues in respect of the application of regulations on protection at work, dangerous substances and ionizing radiations. The Act supplements in particular the provisions of the Act of 29th March 1958 relating to the protection of the population against hazards arising from ionizing radiation; under this Act, the King may establish dues to be collected for the benefit of the State or of approved control organisations, to cover, wholly or in part, the administrative costs of control or supervision of the utilization of ionizing radiations. The King also sets the rate and method of payment of such dues.

• *Canada*

THIRD PARTY LIABILITY

The Nuclear Law Bulletin No. 5 reported (pages 7 - 9) on the provisions of a Canadian Bill on nuclear third party liability which was at that time before the Canadian Parliament. This Bill has now been passed (on 19th June 1970), with some amendments (the full text is given in the Supplement to this issue).

The amendments include some modifications to the definitions of "damage", "nuclear installation" and "nuclear material", and to the provisions about the Nuclear Damage Claims Commission set up to deal with claims arising from a nuclear incident. The present Act has not yet come into force.

• *Denmark*

THIRD PARTY LIABILITY

Two Bills concerning nuclear installations have been prepared in Denmark. The first presupposes ratification by Denmark of the Paris, Brussels and Vienna Conventions. The second presupposes only the ratification of the Paris and Brussels Conventions.

The text of the First Bill is fully reproduced in the supplement to this issue of the Nuclear Law Bulletin (see also Judge Spleth's article in the Chapter "Studies and Articles"). Drafting differences between the First Bill and the Second Bill have been also indicated.

• *France*

ORGANISATION AND STRUCTURE

Decree No. 70-878 of 29th September 1970 /Official Gazette of 1st October 1970/

This Decree re-defines the duties and the organisation of the Atomic Energy Commission (CEA) until now determined by the Order of 18th October 1945, as amended. The CEA which henceforth carries out its duties under directives set by the Government will still be managed by the Atomic Energy Committee whose structure is modified. The general management of the CEA is entrusted to the Administrator General whose official title is Administrator General Delegate. The post of High Commissioner is maintained; his task is to advise the Administrator General Delegate on scientific and technical matters, but he may refer directly to the Atomic Energy Committee and the Ministers concerned in respect of his proposals on the general scientific and technical orientation which he favours. A Decree of the Council of State must determine the conditions of application of this Decree whose text is reproduced in extenso in the Chapter of the Bulletin entitled "Texts".

REGIME GOVERNING NUCLEAR INSTALLATIONS

Decree No. 70-440 of 22nd May 1970 /Official Gazette of 29th May 1970/

This Decree put an end as regards nuclear and thermal power stations to the system of licensing introduced by Sections 1 to 4 of the Decree of 30th October 1935. This latter Decree required prior authorization by the Minister for Industry for the establishment of such power stations.

RADIATION PROTECTION

Order by the Minister of Public Health and Social Security of 24th April 1970 /Official Gazette of 29th May 1970/

Under the provisions of this Order, installation of electrical apparatus generating ionizing radiations rated at more than 500 keV, to be used for medical purposes, requires prior authorization by the Ministry of Public Health and Social Security, which is given upon receipt of an opinion from the National Co-ordinating Commission for establishments providing in-patient treatment. Applications for authorization must be in the form set out in an Annex to the Order.

Notice of the Minister of Public Health and Social Security /Official Gazette of 6th June 1970/

This Notice is intended for users of radioisotopes governed by the authorization system laid down in the Code of Public Health regarding radioactive waste disposal (unsealed sources only).

The Notice does not have regulatory effect and concerns only those users who come within the provisions of the Decree of 15th March 1967. It contains recommendations on conditions under which wastes, whether solid, liquid or gaseous, may be recovered, separated, evacuated and treated with a view to their being taken in charge, without prejudice nevertheless to any conditions which may be laid down by the bodies responsible for removing and storing such wastes.

Interministerial Order of 22nd June 1970 /Official Gazette of 12th September 1970/

This Order by the Minister of Labour, Employment and Population and the Minister of Public Health and Social Security contains a list of occupations requiring special medical supervision. Among the occupations listed in this Order appear those involving preparation, use, handling of, or exposure to X-rays and radioactive substances. However, the provisions of this Order do not apply to work carried out within equipment which under normal working conditions is wholly enclosed.

FOOD IRRADIATION

Decree No. 70-392 of 8th May 1970 /Official Gazette of 12th May 1970/

This Decree contains administrative regulations in implementation of the Act of 1st August 1905, on the prevention of fraudulent practices relating to trade in irradiated goods which may be used as human or animal foods. It authorizes, subject to certain conditions, the possession and sale of articles, beverages and products which may be used as human or animal foods and which have been exposed to the action of ionizing radiations.

The conditions under and limits within which irradiation may be carried out are to be laid down in a joint Order by the Minister of Agriculture, the Minister of Economy and Finance and the Minister of Public Health and Social Security, made after obtaining the opinion of the Higher Council on Public Health in France, the National Academy of Medicine and the Interministerial Commission on Artificial Radioisotopes. This list of bodies clearly shows the precautions surrounding the initial experiments in trade in irradiated foodstuffs. Among the general conditions applicable to food irradiation are the obligation to refrain from using radiations capable of setting up induced radioactivity in the product thus treated, and the obligation to affix to irradiated foodstuffs a label on which the name under which the article is sold is accompanied by the words "irradiates" or "treated by irradiation", in bold characters.

This Decree is the first specific enactment in France on food irradiation. Previously, the Interministerial Commission on Artificial Radioisotopes had published, in 1960, recommendations of a technical nature covering the way in which an application for irradiation was to be made. On 9th January 1968, the Higher Council on Public Health had issued an advisory opinion to the effect that marketing of irradiated potatoes should be allowed.

• *Germany*

GENERAL REGIME

Atomic Energy Law, 1959, as amended

Paragraph 21 of the Atomic Energy Act of 23th December 1959 in the last amended version (see Nuclear Law Bulletin 1969 No. 4, Supplement) was redrafted and approved by the Act to Amend Provisions Authorizing the Levying of Fees dated 23th June 1970 (BGBL. 1970 I, p. 805). The redrafting of the provisions concerning the costs under the Atomic Energy Act creates a new framework for the assessment of fees to be levied in connection with licensing and supervisory procedures. A new Ordinance Concerning Fees under the Atomic Energy Act is at present being drafted.

REGIME OF NUCLEAR INSTALLATIONS

Nuclear Installations Ordinance, 1960, as amended

At present a draft of a "Second Ordinance to Amend and Supplement the Nuclear Installations Ordinance" is before the Bundesrat. This Ordinance is to adjust the Nuclear Installations Ordinance to the amendments which were effected in regard to the Atomic Energy Act of 1959 in consequence of the second Act to amend the latter dated 28th August 1969 (BGBL. 1969 I, p. 1429) (see Nuclear Law Bulletin 1969, No. 4, p. 8). The amendment includes provisions on the preliminary decision inserted into the Atomic Energy Act as paragraph 7 (a) in 1969. There was some debate in the discussions on the amendment as to which special documents, information and material would have to be filed by the operator of a nuclear installation in order to obtain a preliminary decision under paragraph 7 (a), and especially as regards those documents and material which are necessary in order to examine the proposed site of a nuclear installation in a licensing procedure. The draft Ordinance dispenses with a detailed specification of the documents to be forwarded by the operator but instead chooses a general definition. It is intended that more detailed criteria will be established in the light of practical experience.

THIRD PARTY LIABILITY

Financial Security Ordinance, 1962

At present the Bundeskabinett has before it the draft of a "Second Ordinance to Amend the Financial Security Ordinance". This amendment is necessary in order to bring the Financial Security Ordinance into line with the redrafting of those passages of the Atomic Energy Act dealing with liability (see Nuclear Law Bulletin 1969, No. 4, p. 9) which

were enacted on the basis of the Act dated 28th August 1969. According to this amendment installations for the manufacture of nuclear fuel elements and transport of nuclear fuel from and to a nuclear installation situated in the Federal Republic are subject to the provisions on financial security for nuclear installations. In addition the amendment provides for better means of assessing the amount of coverage based on the actual risk in the individual case. Thus the standard coverage can be reduced substantially depending on the circumstances. On the other hand it has been ensured that where the risks are similar the coverage to be provided shall be fixed at the same level. The maximum standard coverage for reactors is DM 80 million; in all other cases, irrespective of a possible indemnification by the Bund, the coverage is DM 60 million. Finally, for non-stationary installations especially for nuclear-powered ships the population factor pursuant to paragraph 6 of the Financial Security Ordinance was fixed at value 2 which is the rate corresponding to the highest danger class.

RADIATION PROTECTION

First Radiation Protection Ordinance, 1960, as amended

Work is now underway in the Federal Ministry of Education and Sciences to prepare a draft of a "Third Ordinance to Amend the First Radiation Protection Ordinance". Besides the clarification of different individual questions the amendment is to serve the following purposes:-

- Adoption of the provisions of the amended version of the Euratom Radiation Protection Norms for health protection (Amtsblatt der Europäischen Gemeinschaften 1966, p. 3693);
- Adaptation of the First Radiation Protection Ordinance to the amended Annex C of the Railway Traffic Law (Eisenbahn-Verkehrsordnung, EVO), redrafted pursuant to the 77th Ordinance to the Railway Traffic Law;
- Adaptation of the First Radiation Protection Ordinance to the European Agreement concerning the international carriage of dangerous goods by road (ADR) which was approved by an Act of Parliament of 18th August 1969 (BGBL. 1969 II, p. 1489; see also Nuclear Law Bulletin 1969 No. 4, p. 25);
- Facilitating the transport of nuclear fuels and other radioactive substances of the lower and middle levels of activity;
- Facilitating the import of nuclear fuels by a change of the licensing requirements to a mere notification.

Implementation of Section 34 of the First Radiation Protection Ordinance

A recommendation prepared to this effect by the Federal Ministry for Education and Sciences in collaboration with the Federal Health Office and the German Atomforum has been accepted by the Committee for Atomic Energy (Landerausschuss für Atomkernenergie).

The purpose of this recommendation is to render the application of Section 34 of the 1st Radiation Protection Ordinance more flexible while preserving homogeneity. (The implementation of this Ordinance is

principally the responsibility of Land-authorities). Section 34 of the above Ordinance is concerned with the protection of air, water and soil from contamination by radioactive substances and therefore provides that air or water passing out of controlled areas must not exceed certain limits of radioactive concentration as are established with reference to Annex II of the Ordinance. Especially in connection with the output of waste water, it appeared that the conditions of application of Section 34 could be made less stringent, in particular in the case where relatively small quantities of radionuclides were handled.

The recommendation proposes to establish three classes of users of radioactive substances on the basis of the amount of radioactivity present in the maximum estimated discharge of waste waters per year. The conditions imposed on a licensee with regard to control of the discharge of waste waters should therefore vary according to the type of authorization he has received in respect of radioactive substances (quantity and utilization).

Thus it is recommended that for Class No. 1 accountability as to amount and radiotoxicity of radioisotopes handled should constitute sufficient control. Class 2 licensees should, in addition, undertake control measurements, whereas for Class No. 3 decontamination of waste waters before their discharge into sewers and surface waters should also be made obligatory. (This latter category, because of the quantity of radioactive material processed, applies to nuclear power plants, for which the licensing authorities anyway set out conditions appropriate to the circumstances of the individual case).

The distinctive feature of this recommendation as against the former way of implementing Section 34 of the 1st Radiation Protection Ordinance will be found in the long-term calculation of the radioactive concentration in waste waters. Previously, the daily average of the concentration of radioactive substances was the norm to be observed.

• *Greece*

THIRD PARTY LIABILITY

As was expected following Decree-Law No. 336 of 16th December 1969 (see Nuclear Law Bulletin No. 5), Greece deposited with the Secretary-General of OECD on 12th May 1970 the instruments of ratification of the Paris Convention on Third Party Liability in the Field of Nuclear Energy of 29th July 1960, and of its additional Protocol of 28th January 1964, thus bringing the number of ratifications up to seven.

• *Indonesia*

RADIATION PROTECTION

1. A Workshop on Nuclear Legislation on a national scale was held by the National Atomic Energy Agency in Djakarta from 6th - 8th July 1970.

The Workshop has considered a Draft Regulation on Radiation Protection for Radiation Workers and the revision of the existing Regulation on Licensing of Radioisotopes. The Draft was mainly based on the Model Radiation Protection Rules of IAEA concluded by a Study Group Meeting held in Vienna in December 1969, but taking into consideration the particular circumstances of Indonesia and its national laws and regulations. In this Draft it was decided that the Radiation Safety Officer in any Radiation Installation should be appointed by the Minister of Labour after consultation with the Director General of the National Atomic Energy Agency. It was also proposed, in connection with this Draft, to set up a National Committee on Radiation Protection, and furthermore that manuals based on ICRP and IAEA recommendations be formulated and attached to this regulation.

The revision of the Licensing of Radioisotopes Regulation has followed a proposal of the Department of Health to entitle this Department to issue licenses for their own users. It is also clearly laid down in this revision that a regular investigation of the health and safety precautions to be taken by users will be conducted by a team of the national Atomic Energy Agency.

2. It is appropriate to recall in connection with the recent developments of nuclear law in Indonesia that activities connected with the peaceful uses of nuclear energy in that country are mainly carried on by or under the aegis of the Atomic Energy Agency. The Agency, set up in 1958 under the name of Atomic Energy Institute, received its present name at the promulgation of the basic Act on atomic energy, on 26th November 1964. Under this Act, the Agency is the national body responsible for carrying out control and regulation of the applications of nuclear energy. The Agency is managed by a Director-General who is directly answerable to the Head of State. Alongside this executive body, an advisory body consisting of five persons, the Atomic Energy Council, is responsible for advising the Council of Ministers on policy and on international aspects of nuclear energy.

Under the basic Act and the Mining Act of 2nd December 1967, sole ownership of radioactive ores found in Indonesian territory and of all products obtainable from such ores is vested in the State.

The basic Act, supplemented by an implementing Regulation of 15th April 1969, also lays down that the use of ionizing radiations or radioisotopes shall be subject to prior authorization. Installations belonging to the Atomic Agency are exempted from this requirement. Authorizations can be given only to bodies or individuals providing proof that they possess the necessary equipment and installations and the appropriate qualifications to ensure protection of workers and of the population against dangers from ionizing radiations. The Atomic Agency is also responsible for inspecting atomic installations (this term including places where X-ray apparatus requiring authorization is in use); it is empowered to suspend or cancel authorizations where the conditions attached to them are not observed.

As regards nuclear third party liability, the basic Act provides that the operator of a nuclear installation shall be responsible, except in the case of force majeure, for all damage caused by operation of the installation and for incidents occurring during transport of radioactive substances despatched by such operator until they are taken in charge by the consignee. The Indonesian Government is expected to adopt at a future date special provisions regarding compensation for such damage.

• *Italy*

RADIATION PROTECTION

Decree of the President of the Republic setting the levels of radioactivity, the specific activity or concentration and the intensity of exposure doses, submitted to the provisions of Decree No. 185 of the President of the Republic - Decree No. 1303, of 5th December 1969 /Official Gazette No. 112 of 6th May 1970/

As already mentioned in the Nuclear Law Bulletin No. 6, Section 1 of Decree No. 185 of the President of the Rpublic of 13th February 1964 grants the Government the powers necessary to determine the levels of radioactivity, the specific activity or concentration and intensity of exposure doses involved in nuclear activities, which render applicable the provisions of the 1964 Decree.

This Decree which was analysed in its draft form in the fifth issue of the Bulletin, has now been published in the Official Gazette of the Italian Republic, and is in force.

Ministerial Decree of 14th July 1970 /Official Gazette of the Italian Republic No. 255 of 8th October 1970/ determining the levels of total activity, of concentration of radionuclides and the dose rates below which shall not apply the provisions of Sections 91, 92, 93, 94, 98, 102 and 105 of Decree No. 185 of the President of the Republic dated 13th February 1964

This Decree of the Minister for Health made in agreement with the Minister for Industry, Commerce and Handicrafts is based on Decree No. 185 of the President of the Republic which regulates questions of nuclear safety and health protection of workers and the population against the hazards arising from ionizing radiation. Section 110 (Exemptions) of this Decree provides the establishment, by Decree of the Minister of Health, of total activity levels, of concentration of radionuclides and of the dose rates below which the provisions of Sections 91, 92, 93, 94, 98, 102 and 105 of D.P.R. No. 185 shall not apply.

The Minsterial Decree of 14th July 1970 determines the cases which may be exempted from the obligation to notify, or from authorization - or prohibitions - established by D.P.R. No. 185.

Section 1 of the Decree lists the exemptions from the prohibition, under Section 91 of D.P.R. No. 185, to manufacture, import, distribute and hold sanitary products or cosmetics, signs, dials, devices or luminous objects generally, as well as luminescent paint or timepieces.

Section 2 determines the exemption from the obligation to notify to the competent authorities, set by Section 92 of D.P.R. No. 185, the possession of radioactive sources. Such exemptions apply, in particular, to the products listed in Section 1, as well as to devices or components used in electronics and telecommunications, which contain radioactive sources which are incorporated in apparatus for the measurement of radiation doses and radioactivity.

Section 3 determines the cases where it is unnecessary to obtain a clearance certificate, as provided by Section 93 of D.P.R. No. 185, to hold radioactive sources.

Section 4 exempts from the obligation to notify to the competent authority, in accordance with Section 94 of D.P.R. No. 185, the destruction, loss or discovery of radiation sources referred to in Section 2.

Exemptions from the obligation to obtain a clearance certificate for using ionizing radiation sources for scientific research and for industry in accordance with Section 102 of D.P.R. No. 185 are determined by Section 5 of this Decree.

Section 6 determines the conditions for exemption from the provisions of Section 105 of D.P.R. No. 185 (Authorization for the disposal of solid, liquid or gaseous radioactive wastes).

Section 7 stipulates that there shall be no exemption from the provisions of Section 91(6) of D.P.R. No. 185 (television sets and cathode ray tubes) and from the provisions of Section 98 (administration of radioactive substances to patients). Finally, Section 8 concerns the entry into force of the Decree.

• *Japan*

THIRD PARTY LIABILITY

The Law on Compensation for Nuclear Damage was enacted on 17th June 1961. In the light of the significant developments of the nuclear industry since that date, notably the construction of a number of nuclear power stations and the building of the nuclear ship "Mutsu", due to be completed in 1973, the Atomic Energy Commission decided to undertake a general review of this law.

In November 1969 the Commission set up a "Specialist Committee on Nuclear Liability", consisting of representatives of the various Government departments concerned, the universities, the insurance companies and the nuclear industry (both operators and suppliers), in order to study the following major questions:

In the first place, under the existing law some of the more important provisions such as, for example, Government assistance to nuclear operators when nuclear damage exceeds the amount of private financial security available, are only applicable in the case of installations which will have commenced to operate before 31st December 1971. On this subject the Specialist Committee has in particular been examining whether the benefit of those provisions should not be extended to installations entering into operation after the end of 1971.

In the second place, according to the present provisions the liability of the nuclear operator is unlimited and no Government financial intervention is forthcoming when nuclear damage exceeds the amount of private financial security. The Committee has been examining whether the liability of the operator (including that of the operator of a nuclear

ship) should be limited to a certain figure and whether to introduce a system of Government indemnities in place of the existing system of Government assistance referred to above.

Lastly, under the present system nuclear damage sustained during the course of his employment by a person employed in a nuclear installation is excluded from the liability of the operator. The Committee has been studying the question of whether this type of damage should be included in the liability of the operator.

It is expected that the Committee will complete its review by the end of November and will submit a report to the Atomic Energy Commission. A draft amendment of the Law could then be submitted to the Diet at the beginning of next year.

• *Korea*

NUCLEAR LEGISLATION

1. Although a number of future regulations concerning the development of nuclear energy are still under consideration, important legislation has for some time been in force in the Republic of Korea. The basic legislation, represented by the "Atomic Energy Law" (Law No. 483), dates back to 1958. The Atomic Energy Law itself has been the subject of several amendments, the latest of which was passed as late as 24th January 1969 (Law No. 2093). Equally, on 24th January 1969, a Nuclear Damage Compensation Law (Law No. 2094) was enacted. (A short account of the content of this Law will be given in the next issue of the Bulletin.) It is under the Atomic Energy Law, which laid the foundations for regulating the use of nuclear energy, that the body of rules has evolved which now governs nuclear activities in Korea. The following paragraphs give a broad outline of the present legal situation.

2. The Atomic Energy Law sets out the general policy concerning research, development, production, utilization and control of activities (Article 1) undertaken for the peaceful use of nuclear energy. It provides the establishment of an Office of Atomic Energy to be responsible under the supervision of the Minister of Science and Technology for all matters pertaining to the utilization of nuclear energy (Article 3). This Office consists of a Bureau of General Affairs, an Atomic Energy Research Institute, a Radiology Research Institute and a Radiation Research Institute in Agriculture.

3. An Atomic Energy Commission, equally reporting to the Minister of Science and Technology, is established to give nuclear activities a general orientation. At the same time it decides questions of fund allocation for the promotion of nuclear energy, questions pertaining to the planning and operation and to the control of nuclear facilities, and is responsible for stimulating and co-ordinating research. Among the functions expressly allocated to the Commission figure the licensing and control of the acquisition, production, import and export, purchase and sale of fissionable material, source materials and radioisotopes

(Article 18). By virtue of Article 20 these licensing activities are extended to nuclear reactors and other nuclear facilities. The Commission, consisting of at least five members, is presided over by the Minister of Science and Technology. The position of Vice-Chairman is held by the Director-General of the Office of Atomic Energy. All other members of the Commission are appointed by the President of the Republic on the recommendation of the Minister of Science and Technology (Article 7).

4. The Act also deals with protection against radiation hazards. The details of measures to be adopted therefore are left to be regulated by presidential decree and ordinance. Matters regulated in this way include licensing of the construction and operation of nuclear installations (Presidential Decree concerning procedures and criteria for licensing of a reactor and its related facilities and Presidential Decree on licensing of reactor operators), the handling of radioactive substances (Ordinance concerning the acquisition, use, import and export of radioactive substances) and protection against radioactive fall-out (Presidential Decree concerning the Committee responsible for protective measures against radioactivity in fall-out).

• *Netherlands*

CARRIAGE OF RADIOACTIVE MATERIALS

Fissionable Materials, Ores and Radioactive Materials (Transport) Decree (Bulletin of Acts, Orders and Decrees No. 405 of 1969)

All the regulations governing the transport of fissionable materials, ores and radioactive materials are embodied in this decree together with the regulations governing actions closely associated with the transport of these materials (transport to or from the Netherlands, and storage in connection with their transport). The transport regulations in the Commodities Act (Radioactive Materials) Decree are no longer valid, since the decree has been withdrawn.

Since the crossing of frontiers figures very largely indeed in the transport of fissionable materials, ores and radioactive materials, care has been taken to ensure that the national transport regulations run parallel with the regulations governing international transport.

In the international regulations, fissionable materials, ores and radioactive materials within the meaning of the Nuclear Energy Act are referred to as radioactive materials in danger Class IV(b). These regulations are laid down in various Conventions according to the mode of transport, viz.:

(a) The International Treaty on Goods Transport by Rail (CIM, Netherlands Treaty Series No. 160 of 1961)

The international transport of fissionable materials, ores and radioactive materials is regulated in an annex to the Convention entitled "International

Regulations governing the Transport of Dangerous Goods" (RID). The substance of these international regulations has been incorporated as national regulations in the Regulations governing the Transport of Dangerous Goods by Rail (VSG), which forms part (Annex I) of the General Transport Regulations based on the Railway Act.

The Fissionable Materials, Ores and Radioactive Materials (Transport) Decree states that these regulations are to be observed when transporting these materials by rail. The VSG Regulations with respect to the goods concerned (Class IV(b)) are therefore henceforth based on both the Railway Act and the Nuclear Energy Act.

(b) The European Agreement concerning International Transport of Dangerous Goods by Road (ADR) (Netherlands Treaty Series No. 81 of 1959)

The regulations governing the international transport of dangerous goods laid down in this Agreement have been incorporated as national regulations in the Regulations governing the Transport of Dangerous Substances by Land (VLG), which is part (Annex I) of the Regulations governing Dangerous Substances based on the Dangerous Substances Act. The Dangerous Substances Act does not apply to fissionable materials, ores and radioactive materials, because they are covered by the Nuclear Energy Act. The stipulations of Class IV(b) are therefore binding only in virtue of the reference made to them in the Fissionable Materials, Ores and Radioactive Materials (Transport) Decree.

(c) The Draft European Agreement concerning the Transport of Dangerous Goods by Inland Waterway (ADN)

The Regulations governing the Transport of Dangerous Substances by Inland Waterway (VBG), which is also part (Annex II) of the Regulations governing Dangerous Substances referred to in (b), are taken from the above-mentioned draft convention. The remarks on the VLG also apply to Class IV(b) of the VBG.

The three international regulations referred to, and consequently also the corresponding national regulations, have been drawn up for Class IV(b) on the lines of recommendations made by the International Atomic Energy Agency (IAEA) in Vienna. They are practically identical, except for the regulations governing the means of transport.

For sea transport, recommendations adapted to the IAEA recommendations are in course of preparation within the framework of the Inter-Governmental Maritime Consultative Organization (IMCO). Pending their finalization, the VBG regulations have also been made applicable to sea transport in the Fissionable Materials, Ores and Radioactive Materials (Transport) Decree, though with a few modifications that have proved necessary.

Lastly, international transport by air is regulated in the "IATA Regulations relating to the carriage of restricted articles by air" laid down by the International Air Transport Association. These IATA Regulations have now also been adapted to the IAEA recommendations as far as part 2 of the regulations for radioactive materials is concerned.

This has made it possible to restrict the licence requirement in the Fissionable Materials, Ores and Radioactive Materials (Transport) Decree to the same cases as those upon which restrictions rest in respect of other branches of transport. For transport for which no licence is required, regulations have been drafted to ensure the observance of the IATA Regulations as laid down in part 2 of the eleventh edition.

The Class IV(b) regulations as laid down in the VSG, VLG and VBG

The Class IV(b) regulations do not apply to radioactive materials whose specific activity does not exceed 0.002 microcurie per gramme; they are therefore exempt. All other radioactive materials are divided into materials that may be transported subject to certain conditions and materials that may not be transported except with a licence.

The materials that may be transported subject to certain conditions are divided into non-fissionable and fissionable radioactive materials. Both categories are subdivided into small and large sources of radiation. Those belonging to the small-source group may be transported without a licence, except fissionable materials packed in containers of nuclear safety Class III (see below), but the packing for the various sources of radiation must satisfy certain requirements stated in the regulations. In some cases the competent authority of a designated country, for instance the country of despatch, must give prior approval of the packing. This is what is called B-type packing.

Those belonging to the large-source group must always be transported in B-type containers. The requirements for this category are very stringent indeed. Moreover, one of the countries involved in the transport must grant a licence for or approve each consignment.

If a container for transporting materials of the large-source category does not satisfy all the requirements, the design must be approved by the competent authorities of each of the countries involved in the transport. Separate licences for transport are then required, one from the country of origin and one from each country involved in the transport that has not unconditionally approved the design of the container.

In view of the criticality risk attendant upon fissionable materials, containers are divided into three nuclear safety classes. Nuclear safety Class I comprises containers which under any conditions of transport, in any number and arranged in any order will not constitute a criticality risk. Nuclear safety Class II comprises containers which in limited numbers under the same circumstances will not constitute a criticality risk in whatever order they are arranged. Nuclear safety Class III refers to containers which by themselves do not constitute a criticality risk but cannot be placed in safety Class I or safety Class II. The regulations applicable to containers of nuclear safety Classes I and II containing fissionable materials are the same as those for containers with non-fissionable radioactive materials. Licences are required for containers in safety Class III, not only from the country or origin but also from every other country involved in the transport that has not unconditionally approved the design of the container concerned, whether or not

they contain materials constituting a large source of radiation.

The distinction made between fissionable and non-fissionable radioactive materials is slightly different from the fissionable materials, ores and radioactive materials classification in the Nuclear Energy Act. In international transport regulations materials are regarded as fissionable materials if they contain fissionable uranium or plutonium isotopes. These fissionable materials are practically the same as the fissionable materials containing uranium or plutonium referred to in the Nuclear Energy Act. Materials containing thorium on the other hand are regarded as non-fissionable materials in international transport regulations. However, in the Nuclear Energy Act materials containing at least the percentage of thorium stated in the Definitions Decree (i.e. 3%) are regarded as fissionable materials.

Substance of the Fissionable Materials, Ores and Radioactive Materials (Transport) Decree

Under the provisions of Section 2 of the Decree, fissionable materials and ores are exempt from the licence requirement if no licence is required for their transport under the VSG either. Since the regulations of the VSG, VLG and VBG are identical, the VSG covers the exemptions involved.

No licence is required in these contingencies because all that is necessary for transport and storage pending and during transport is to observe the general packing regulations given in the VSG or to have the materials packed in containers the design of which has been approved previously. However, according to the VSG approval of the consignment is still required in some cases. Stipulations or conditions may be attached to such approval.

In (b) to (f) of paragraph 1 of Section 2 above-mentioned reference is made to the marginal numbers (Articles) of the VSG in which information on this subject will be found. Thorium is named separately in (a), because according to the Nuclear Energy Act thorium is a fissionable material whereas in the VSG it is regarded as belonging to the category of non-fissionable radioactive materials.

The approval referred to in the VSG needs not necessarily be given by a Netherlands authority. The international regulations already referred to stipulate that in certain circumstances the consignment must be approved by the country of origin if it has acceded to the relevant convention or, alternatively, by the first country involved in the transport that has acceded to the convention. By virtue of Section 2(2) of the Fissionable Materials, Ores and Radioactive Materials (Transport) Decree, the Ministers concerned have issued the Nuclear Energy Act (Naming of countries) Decree (Netherlands Government Gazette No. 240 of 10th December 1969), in which, in addition to the countries that have acceded to the convention, a number of other countries that may be regarded as acting upon the afore-mentioned IAEA recommendations are designated. In the Decree, approval by a country so designated is on a par with approval by a country that has acceded to the convention.

The procedure to be adopted when applying for licences is given and the particulars to be provided are listed in Section 3 of the Decree.

Section 4 stipulates that an insurance policy must be taken out or some other form of financial security provided when transporting fissionable materials containing plutonium or enriched uranium.

Sections 5 ff. of the Decree contain corresponding regulations for radioactive materials. The system of the Nuclear Energy Act is such that the juridical framework differs from that for fissionable materials and ores. Exemptions are granted for fissionable materials and ores because the law prohibits in principle every unlicensed act involving these materials; the licence requirement is introduced for radioactive materials except if no licence is required by virtue of the VSG.

Overland transport

The most important stipulation is that in all cases in which no licence is required the regulations of the VSG or those of the VLG are to be observed when transporting materials by rail or by other means of overland transport.

Transport by water

According to Sections 13 and 15 of the Decree no licence is required for transport through Netherlands territorial waters if the vessel carrying the materials does not call at any Netherlands port nor for transport across non-Netherlands waters. The latter stipulation is only important if the materials are transported in a ship sailing under the Netherlands flag. However, the VBG regulations must be observed in any case, it being understood that the requirement that the consignment or the design of the packaging or container be approved shall not apply to any materials carried in a ship sailing under a foreign flag that is merely in transit through Netherlands territorial waters.

Exemption from the requirement that the consignment be approved by virtue of the VBG is granted in respect of goods carried in a ship sailing under the Netherlands flag which does not call at any Netherlands port so as to make it possible for them to be transported between countries that have not acceded to the CIM.

However, approval of the design of packaging by a CIM country or a country put on a par with a CIM country is still required with a view to ensuring the safety of those on board. If none of the countries involved in the transport nor the country in which the packaging or container was designed are listed as designated countries, approval or acceptance of the design must be granted by the Minister for Social Affairs and Public Health in agreement with the Minister of Transport and Public Works.

Transport by air

The regulations to be observed when transporting radioactive materials by air are those in part 2 of the eleventh edition of the "IATA Regulations relating to the carriage of restricted articles by air". In the Netherlands the Minister for Social Affairs and Public Health is the competent Authority referred to in these regulations; he takes his decisions in agreement with the Minister of Transport and Public Works.

Exemption from the licence requirement is granted in respect of air transport over the Netherlands not involving a landing in the Netherlands. If the materials are transported by a non-Netherlands aircraft, exemption is also granted from the requirement in IATA Regulations that consignments or the design of the packaging be approved. For transport in a Netherlands aircraft that does not land in the Netherlands exemption is limited to the licence requirement and approval of the consignment. The design of the packaging, however, must be approved in accordance with IATA Regulations.

Moving materials or causing them to be moved into or out of the Netherlands

Section 23 provides for complete exemption from the licence requirement with respect to moving fissionable materials and ores out of the Netherlands or causing them so to be moved; general exemption for moving them into the Netherlands is also granted, except when fissionable materials are transported in an organisation's or an individual's own means of transport.

Exemption with respect to moving fissionable materials into the Netherlands by an organisation's or an individual's own means of transport or causing them to be moved into the Netherlands is granted for:

1. Non-irradiated fissionable materials not containing any plutonium or enriched uranium, provided the quantity moved into the Netherlands in a single load does not contain more than 100 grammes of uranium and/or 100 grammes of thorium;

2. Fissionable materials which by virtue of a licence required in Belgium or Luxembourg are held available in or may pass in transit through these countries, provided the stipulations or conditions attached to such licences are observed;

3. Fissionable materials not intended for Belgium or Luxembourg passing in transit through the Netherlands, provided the materials are not unloaded from the means of transport in the Netherlands.

(Note: Under a Benelux regulation, fissionable materials intended for Belgium or Luxembourg passing in transit through the Netherlands need a Netherlands transport licence, which is valid in Belgium and Luxembourg.)

In all other cases a licence is required for moving fissionable materials or causing them to be moved into the Netherlands. The procedure to be adopted when applying for a licence is given and the particulars to be provided are listed in Section 24.

If by virtue of the Decree materials may be moved into and transported within the Netherlands without a licence, fissionable materials and ores may, under the provisions of Section 26, only be moved into the Netherlands by an organisation's or an individual's own means of transport or caused to be moved into the Netherlands if the materials are intended for a person who under Netherlands law, or in the case of transit under Belgian or Luxembourg law, may have them available or for a person in a country other than the Netherlands, Belgium or Luxembourg. The latter requirement is made to prevent fissionable materials or ores from being dumped in the sea or elsewhere without a licence.

If a licence is required for causing materials to be moved into the Netherlands, the carrier may only move fissionable materials across the frontier at one of the customs houses designated by the Minister for Social Affairs and Public Health in agreement with the Minister of Finance (First Offices (Designation) Decree, Government Gazette No. 241 of 11th December 1969), except for transport between the Netherlands and Belgium. The carrier must produce a certified copy of the licence on demand.

If by virtue of this decree no licence is required the person moving the fissionable materials or ores or causing them to be moved into the Netherlands must see to it that the stipulations regarding the packing and the markings and danger labels to be displayed thereon during transport are observed.

Sections 27 ff. contain corresponding regulations for moving radioactive materials or causing them to be moved into the Netherlands.

Establishments in which fissionable materials are stored pending or during transport

By virtue of Section 33 establishments in which fissionable materials are stored solely in connection with their transport are exempt from the licence requirement.

• *Norway*

THIRD PARTY LIABILITY

Discussion of the Norwegian Bill, the text of which was reproduced in the supplement to Nuclear Law Bulletin No. 1, has been delayed. It is planned to submit the Bill before Parliament early in 1971.

• *Philippines*

NUCLEAR LEGISLATION

Activities in the field of nuclear energy have been given a new legal basis by Act No. 5207, which was passed by the Philippine Congress in 1968. This Act is known as the "Atomic Energy Regulatory and Liability Act". Legislation relating to the peaceful uses of nuclear energy in the Republic of the Philippines was first introduced through the adoption of the so-called Science Act (Act No. 2067) in 1958. This Act, the purposes of which were to integrate, co-ordinate, and

intensify scientific and technological research and development, provided for the establishment of the Philippine Atomic Energy Commission. Placed under the supervision of the National Science Development Board, which was created by this same Act, the Philippine Atomic Energy Commission was entrusted with the responsibilities pertaining to the development of the use of nuclear energy by fostering research carried out either for its own account or on behalf of private interests, by regulating the utilization of nuclear material and issuing licences therefor, as well as by assisting in obtaining the requested nuclear material.

2. The regulatory and licensing functions of the Commission were extended and specified by an amendment enacted in 1963 (Act No. 3589), but still did not expressly cover the construction and operation of more important nuclear installations. However, it made it obligatory for any person who intended to manufacture, produce, transfer, possess, import or export any radioactive material to apply for an appropriate licence.

In accordance with this legislation, regulations have been promulgated by the Philippine Atomic Energy Commission, which prescribe in greater detail the conditions for the lawful acquisition, possession and use of radioactive material. A special set of rules, equally issued by the Commission, is concerned with the transport of radioactive materials in the Philippines.

3. As compared with the former legislation, which it supersedes to a large extent, the 1968 Act is more complete and takes account of international experience acquired. Its chief advantage consists in affording sufficient legal instrumentality for the development of a large-scale nuclear power programme. The following is a short account of its content.

4. After Part I which contains the general provisions on Atomic Energy, Part II deals with the powers allocated to the Atomic Energy Commission, and it becomes clear from this that the Commission is a body invested with very far-reaching authority and with an almost overall competence in questions relating to the exploitation of nuclear energy. The Commission, on the basis of national legislation, may issue regulations and orders with respect to nuclear facilities to ensure that they are complied with. It may issue, modify, suspend or revoke licences and regulate the import and export of nuclear facilities and material in accordance with national interests. It is entitled to establish advisory boards to assist it in the discharge of its responsibilities, and any governmental agency called upon by it is under a legal obligation to co-operate with the Commission (Section 5).

5. Part III concerns the legislation and licensing of nuclear facilities. Such licences (for the construction and operation of facilities) are not granted to aliens or to any foreign corporation. A corporation or entity, for the purposes of this Act, is considered as not being owned or controlled by an alien if at least 60 per cent of its capital stock is owned by Philippine citizens. The licence is to be granted by the Commission if it is proved that the proposed activities are consistent with the policies laid down in this Act, that the applicant is technically and financially qualified to meet the requirements of this Act and of the Commission's regulations, that the activities to be undertaken will not constitute an undue risk to the health and safety of the public, and that sufficient financial security is given to meet the liability requirements (Section 8).

The licensing procedure may be carried out in stages and a provisional licence for constructing a facility may be issued if sufficient evidence is provided that the proposed installation can be constructed and operated without undue risk to the health and safety of the public, or upon proof that these problems can be satisfactorily resolved in due course (Section 10). An Advisory Board, established by the Chairman of the National Science Development Board, is to assist and advise the Commission on health and safety matters arising in connection with nuclear facilities and radioactive material licensing, but final responsibility for any decision remains with the Commission (Section 12). The final permission to put a facility into operation is given upon submission of updated information when construction works are completed (Section 11). Certain categories of facilities as are specified by the Commission may not be operated unless a duly qualified person takes charge of the protection of health and safety within such facilities. The Commission therefore is empowered to issue "individual operator's licences" to meet this condition.

6. Part IV contains provisions on licensing the various uses of radioactive material. It requires such a licence to be obtained for all kinds of handling of radiactive material except for small quantities of materials as are expressly exempted by regulation (Section 17). The licences are granted upon information as determined by the Commission forwarded by the applicant and under conditions similar to those prescribed for nuclear facilities (Sections 19 and 20).

7. Provisions applying to all kinds of licences are set out in Part V. It is stipulated that licences are to be granted for a period specified in the licence itself, but not exceeding thirty-five years (Section 23). They may not be transferred unless appropriate authorization therefor has been given by the Commission (Section 24). In case of amendments to this Act or to the regulations or orders based on it, licences may be amended. To enable the Commission properly to consider the necessity of amending a licence, licensees are obliged to forward any information the Commission may ask for and to grant access to their premises to authorized inspectors at any reasonable time. They have to adopt any measures the Commission may prescribe for the protection of life, health or property (Section 26). In case of failure to comply with conditions imposed by the Commission, or where false information has been forwarded so that upon an original application the Commission would have been bound to refuse a licence, licensees are liable to have their permit suspended or withdrawn (Section 27).

8. Part VI is devoted to the administrative procedures and judicial review to which the exercise of any authoritative function in connection with licensing is subjected. The Act provides for a hearing to be held at the request of any person whose interests may be affected by a decision with regard to a licence. Such person is to be admitted as a party to the proceeding.

No order for the suspension, modification or revocation of a licence and no other decision significantly affecting the rights acquired by the licensee may be issued by the Commission without a prior hearing unless immediate action is necessary to protect the health and safety of the public /Section 31(b)/. Rules adopted by the Commission govern such hearings as well as any investigation undertaken (Section 34). All orders and decisions of the Commission, which have to be in writing and made available to the public (Section 35), are subject to judicial review by the Court of Appeals (Section 36). The Court may repeal or modify an order or decision if it finds that there was no evidence before the Commission to suport reasonably its conclusion or if it appears to be contrary to the law.

9. Civil liability of operators of nuclear installations for nuclear damage is dealt with in Part VII. The provisions contained therein closely follow those of the Vienna Convention on Civil Liability for Nuclear Damge. The Act establishes the absolute and exclusive liability of an operator even in the case where the damage, directly or indirectly, is caused by a "great natural disaster of an exceptional character" (Section 38). He is not liable for nuclear damage directly due to an armed conflict, civil war or insurrection (Section 41). Otherwise, however, he may be relieved from the consequences of such liability only by way of recourse if this is provided for in a written contract or if the damage is due wholly or partly to gross negligence of the person who suffered damage, or by action or omission of the latter intended to cause damage. Again, in accordance with the Vienna Convention, the operator's liability under this Act is limited to an amount equivalent to 5,000,000 U.S. dollars (Section 42) and does not apply to nuclear damage affecting the installation itself or property on the site which is to be used in connection with that installation. Similarly, it does not involve responsibility for damage to the means of transport when a nuclear incident occurs during carriage (Section 43). The operator of a nuclear installation has to provide financial security to cover his liability, the type and terms of which are to be prescribed by the Atomic Energy Commission (Section 46). Where nuclear damage exceeds the resources of the operator's liability funds, the Government undertakes to provide the necessary amount so that the equivalent of 5,000,000 U.S. dollars is available for any individual occurrence (Section 52).

• *Portugal*

REGIME GOVERNING NUCLEAR INSTALLATIONS

Decree-Law No. 49.398 of 24th November 1969 on the authorization of industrial nuclear activities

This Decree lays down a system of authorization for nuclear activities of an industrial nature carried on by private enterprise. Such activities include operation of nuclear installations and industrial laboratories; exploration and exploitation of deposits of radioactive ores; fabrication and processing of, and trade in, nuclear fuels; construction and operation of nuclear reactors, etc.

Henceforth, such activities will require prior authorization. Permits are granted by the Government after an opinion has been given by the Junta de Energia Nuclear. They may be granted only to legal entities which are able to establish that they are technically and financially equipped to carry on such activities. Special conditions may be attached to authorization, in particular as regards the structure of firms granted authorization, and supervision of their activities. A subsequent Decree will lay down the procedure for granting authorization. Provision is made for revocation of permits and confiscation of installations and equipment, as well as for criminal penalties in case of breaches of the relevant regulations or failure to observe the conditions attached to

authorization. The Chairman of the Junta is empowered in such event, with the approval of the Prime Minister, to take all measures necessary in the interests of safety to maintain normal operation of the installation concerned. In addition, the Decree imposes restrictions on the use of land adjoining nuclear installations, in the interests of safety both of the installation and of the population, and these restrictions can be waived only by the Junta de Energia Nuclear.

ORGANISATION AND STRUCTURE

Decree-Law No. 48970 of 17th April 1969, concerning the powers and duties of the Junta de Energia Nuclear

Under this Decree, the Junta de Energia Nuclear became a national body with powers and duties covering the whole of the Portuguese territory, i.e. including the overseas provinces (in particular Mozambique and Angola). The Junta de Energia Nuclear is in particular made the sole authority competent in regard to exploration and exploitation of deposits of radioactive ores in these provinces. The Junta is empowered either to carry out such activities itself or to grant concessions therefor to enterprises. The powers of the Junta in this regard are exercised in Angola and Mozambique respectively by a Provincial Directorate of the Department of Mining Exploration and Exploitation and by a Provincial Directorate of the Laboratory of Physics and Nuclear Engineering. These Provincial Directorates come directly under the relevant Directorate-General within the Junta. These services operate under rules laid down by the Chairman of the Junta in an Order dated 16th December 1969, and also under Decree No. 104/70 of 6th March 1970.

• *United Kingdom*

THIRD PARTY LIABILITY

The Nuclear Installations (Gilbraltar) Order /S.I.1970/1116/

1. This Order was made and came into operation on 28th July 1970, it extends to Gibraltar, with certain adaptations and modifications, certain provisions of the U.K. Nuclear Installations Act 1965.

2. The Sections of the Act which are extended to Gibraltar are Sections 10 to 17 inclusive, 21, 26 and 30. Under these provisions an operator of a nuclear installation in a country which has ratified the Paris Convention would be liable for damage caused by a nuclear incident in Gibraltar during carriage on his behalf. A similar, but unlimited, liability is imposed on any person who is not a Paris Convention operator and on whose behalf any nuclear matter which may be involved in a nuclear incident in Gibraltar is being carried. Compensation has to be paid for any injury or damage caused by such nuclear incident for which a Paris Convention operator is liable. Various exceptions are laid down and

time-limits are prescribed for the bringing of claims. A Paris Convention operator is only to be liable to pay compensation under the Act if and to the extent that he would have been liable to do so under his home law if the incident had occurred in his own territory. The provisions as to jurisdiction lay down that the Courts of Gibraltar shall not have jurisdiction if in accordance with the Paris Convention the courts of some other country have jurisdiction.

3. In connection with the above Order it should be noted that under Article 23(b) of the Paris Convention a Signatory may notify the Secretary General of OECD of the application of the Convention to any of its non-metropolitan territories, including those territories for whose international relations it is responsible.

RADIATION PROTECTION

1. The Radiological Protection Bill, which was noted in Nuclear Law Bulletin No. 4, became law on 29th May 1970. It was brought into force on 1st October 1970 by the Radiological Protection Act 1970 (Commencement) Order 1970 /S.I.1970/1330/.

2. The Act contains only minor amendments as compared with the Bill, which has already been summarized in Nuclear Law Bulletin No. 4, and, as already noted there, makes provision for the establishment of a National Radiological Protection Board to undertake research and to advise on protection from radiation hazards. An Advisory Committee is also to be set up to advise the Board on practical matters concerning radiation hazards.

• *United States*

PROTECTION OF THE ENVIRONMENT

On 2nd April 1970 the USAEC adopted a statement of general policy for use in implementing the National Environmental Policy Act of 1969 with respect to the licensing of nuclear power plants and plants which process fuel discharged by nuclear reactors. Among the matters dealt with in this policy statement are the following:

- Applications for licences to construct and operate nuclear power plants and fuel processing plants will be transmitted by the AEC for appropriate comments to Federal Agencies which have legal jurisdiction or special expertise with respect to environmental impact.

- After obtaining these comments, the Commission's Director of Regulation will prepare a detailed statement on the environmental considerations involved in the proposed plant. This statement will be made public.

- The Commission will incorporate in construction permits and operating licences for these plants a condition that the licensee shall observe Federal and State standards and requirements for the protection of the environment, including those concerning the control of the thermal effects of the release of heated water from the facility to the environment, imposed under Federal or State law and considered applicable to the facility. This condition will not apply to radiological effects since these are dealt with in other provisions of the AEC licence.

Since publication of the above-mentioned AEC statement of policy, the Council on Environmental Quality has issued interim guidance to Federal Agencies for the preparation of detailed statements on environmental considerations. Also, since that time the Water Quality Act of 1970 has become effective. This provides for certification by a State or inter-State water pollution control agency (or the Secretary of the Interior) that federally licensed activities will not violate the applicable water quality standards.

As a result, the AEC statement of general policy has been revised to reflect both these considerations. Some of the significant new or amended provisions are:

- Applicants for construction permits for nuclear power reactors and fuel processing plants would be required to submit with the application a separate report on specified environmental considerations. The Commission intends to provide appropriate guidance as to the scope and content of such reports.

- Copies of these reports would be transmitted for comments to the appropriate Federal Agencies designated by the Council on Environmental Quality which have jurisdiction by law or special expertise or which are authorized to enforce environmental standards. A notice of the availability of the report would be published in the Federal Register with a request for comments from any State and local agencies of any State affected which are authorized to enforce environmental standards.

- After receipt of comments the AEC's Director of Regulation would prepare a detailed statement on the environmental considerations, including any problems and objections raised by such agencies.

- The applicant's environmental report would incorporate by reference information submitted earlier with the application for a construction permit. The detailed statement for the operating licence stage would cover only those environmental considerations which differ significantly from those discussed at the construction permit stage.

In addition, similar procedures would be used for some types of licences for the use of radioactive materials which are not specifically covered by the present policy statements. These would include:

(i) licences for possession and use of special nuclear material for fuel element fabrication, scrap recovery and conversion of uranium hexafluoride;

(ii) use of source material for uranium milling and production of uranium hexafluoride; and

(iii) licences authorizing commercial radioactive waste disposal by land burial.

REGIME OF NUCLEAR INSTALLATIONS

The AEC's reactor licensing regulations have been amended in connection with the "backfitting" of nuclear installations. The new policy is intended to clarify the circumstances under which the Commission may require the incorporation of additional safety features in a nuclear facility after a construction permit or an operating licence has been issued. In future, the addition, elimination or modification of structures, systems or components affecting the safety of a facility after issuance of a construction permit may be required if the Commission finds that the backfitting will provide substantial additional protection required for public health and safety. This change should have the effect of cutting down somewhat the time consumed in the total licensing process.

Amendments have also been made to the regulations which deal with design criteria and operating requirements for nuclear power plants. New criteria for the quality assurance of nuclear power plants have been imposed. These requirements apply to the activities, during the life-time of a plant, which may affect the safety-related functions of the plant's structure, systems and components. Use of these criteria will assist applicants for construction permits to provide adequate information on quality assurance programmes in preliminary safety analysis reports and to develop managerial and administrative controls to assure safe operation.

CASE LAW AND ADMINISTRATIVE DECISIONS

CASE LAW

• *France*

COMPENSATION FOR WORKERS SUFFERING FROM OCCUPATIONAL DISEASES DUE TO IONIZING RADIATIONS

1. The "Caisse Primaire Centrale de l'Assurance Maladie de la Région Parisienne" appealed to the Court of Cassation against the judgment given on 8th February 1969 by the Paris Court of Appeal, confirming the decision of the Paris Social Security Board of First Instance for Contention Cases in the SALTEL case (see Nuclear Law Bulletin No. 3). The appellant founded its appeal on the following ground: it alleged that the judgment of the Court of Appeal had no legal foundation in that, contrary to the relevant provisions of the Social Security Code, it had been based on the fact that it had not been proved that exposure to radiation hazards had occurred during the period prescribed for admission to benefit, whereas the "Caisse Primaire" had maintained the opposite (namely that exposure rated at 75 millirems had occurred during the second half of March 1957 and anaemia had first become apparent during the first fortnight of April 1958), and also maintained that the nature of Mr. Saltel's work (storekeeper at the CEA) habitually exposed him to radiation hazards.

2. The Social Affairs Division of the Court of Cassation in its conclusions, did not adopt the contentions of the "Caisse Primaire", but found in particular that after March 1957 Mr. Saltel's work had, as shown by the inquiry, not involved exposure to radiation; that, moreover, during the previous period there had been no sign of appreciable radiation and, finally, that the last exposure to radiation had occurred in March 1957, i.e. more than a year before April 1958. It had therefore been open to the Court of Appeal to find that it had not been established that during the period prescribed for admission to benefit, Mr. Saltel had been habitually exposed by reason of his occupation to the action of radioactive substances, and in default of proof thereof the occupational nature of his illness could not be presumed. Accordingly, the Court of Cassation held that the decision appealed against was well-founded in law. and on 18th June 1970 it dismissed the appeal against that decision.

3. The Court of Cassation has thus confirmed its previous line of decisions, according to which the diseases listed in Table No. 6 of Occupational Diseases can be recognized as conferring entitlement to benefit only if a worker has been habitually exposed by reason of his work to the action of radioactive substances during the period prescribed for admission to benefit as shown in the said Table.

INTERNATIONAL ORGANISATIONS AND AGREEMENTS

INTERNATIONAL ORGANISATIONS

• *International Atomic Energy Agency*

AGENCY SAFEGUARDS IN THE CONTEXT OF THE NON-PROLIFERATION TREATY

Following the resolution adopted by the Board of Governors on 2nd April 1970, the Safeguards Committee (1970) met for the first time on 12th June 1970. The Committee which was charged to advise the Board on the Agency's responsibilities in relation to safeguards in connection with the Treaty on the Non-Proliferation of Nuclear Weapons and, in particular, on the content of the agreements which will be required in connection with the Treaty, held a total of 35 meetings with the participation of 49 Member States, and adjourned this first series of meetings on 22nd July 1970.

In the course of the meetings, attention was given principally to the detailed elaboration of the structure and content of Part I of the agreements to be concluded. Part I will establish the basic rights and obligations of the parties and will include, inter-alia, provisions on the manner in which safeguards are to be implemented, national systems of materials control, the provision of information to the Agency, Agency Inspectors, non-application of safeguards to nuclear material to be used in non-peaceful activities, questions of third party liability and international responsibility, and measures in relation to verification of non-diversion. The Committee devoted several meetings to an initial discussion of the problem of safeguards financing, and this problem will be taken up again at subsequent meetings. The Committee also had an initial exchange of views on Part II of the agreement in order to identify the key issues which would have to be resolved in formulating the relevant provisions; this part will specify the implementation of the safeguards provisions of Part I of the agreement and lay down procedures therefor.

The first report by the Safeguards Committee was approved by the Board of Governors on 28th July 1970, and the Board requested the Director General to use the material transmitted under cover of that report as a basis for negotiations with States Parties to NPT in accordance with Article III of that treaty. Negotiations have now begun on that basis with a number of countries.

The Safeguards Committee began its second series of meetings on 13th October 1970 in order to discuss Part II of the agreements, questions relating to the financing of safeguards and various other questions which have not yet been completely resolved in respect of Part I.

NEW COMPOSITION OF BOARD OF GOVERNORS

At its meeting in June, the Board of Governors designated the following thirteen States for membership on the 1970-71 Board: Argentina, Australia, Belgium, Canada, Denmark, France, India, Japan, Poland, South Africa, the USSR, the United Kingdom and the United States.

In addition, the following five States were elected in September by the General Conference to serve for a period of two years: Brazil, Chile, the Netherlands, Syria and Thailand. Seven members of the outgoing Board, who were elected by the General Conference in 1969, will continue for another year: Hungary, Morocco, Nigeria, Pakistan, Spain, Uruguay and Viet-Nam.

AMENDMENT OF ARTICLE VI OF THE STATUTE

In the course of the Fourteenth Regular Session of the Agency's General Conference, held in September, an important amendment was approved to Article VI of the Statute of the Agency. The amendment provides for an increase in the number of members designated by the Board as being those "most advanced in the technology of atomic energy including the production of source materials". At the same time, designations are no longer provided for according to the categories of "other producers of source materials" and "a supplier of technical assistance". Equally, a substantial increase is provided for in the number of members elected by the General Conference and the representation of areas is to be modified appreciably, in particular with respect to areas which include many developing countries and also Western Europe.

In order to come into force for all members the amendment must now be "accepted by two-thirds of all the members in accordance with their respective constitutional processes", as provided by Article XVIII.C(ii) of the Statute.

The text of the amendment, to paragraphs A, B, C and D of Article VI, is as follows:

(a) Replace sub-paragraphs A.1-A.3 by the following:

1. The outgoing Board of Governors shall designate for membership on the Board the nine members most advanced in the technology of atomic energy including the production of source materials, and the member most advanced in the technology of atomic energy including the production of source materials in each of the following areas in which none of the aforesaid nine is located:

(1) North America
(2) Latin America
(3) Western Europe
(4) Eastern Europe
(5) Africa
(6) Middle East and South Asia
(7) South East Asia and the Pacific
(8) Far East

2. The General Conference shall elect to membership of the Board of Governors:

(a) Twenty members, with due regard to equitable representation on the Board as a whole of the members in the areas listed in sub-paragraph A-1 of this Article, so that the Board shall at all times include in this category five representatives of the area of Latin America, four representatives of the area of Western Europe, three representatives of the area of Eastern Europe, four representatives of the area of Africa, two representatives of the area of the Middle East and South Asia, one representative of the area of South East Asia and the Pacific, and one representative of the area of the Far East. No member in this category in any one term of office will be eligible for re-election in the same category for the following term of office; and

(b) One further member from among the members in the following areas:

Middle East and South Asia
South East Asia and the Pacific
Far East;

(c) One further member from among the members in the following areas:

Africa
Middle East and South Asia
South East Asia and the Pacific.

(b) In paragraph B:

(i) First sentence - replace "sub-paragraphs A-1 and A-2" by "sub-paragraph A-1"; and

(ii) Second sentence - replace "sub-paragraph A-3" by "sub-paragraph A-2";

(c) In paragraph C, replace "sub-paragraphs A-1 and A-2" by "sub-paragraph A-1"; and

(d) In paragraph D, replace "sub-paragraph A-3" by "sub-paragraph A-2", and delete the second sentence.

• *European Nuclear Energy Agency*

PARIS CONVENTION

See "Greece" in chapter on "Legislation and Regulatory Activities".

MARITIME CARRIAGE OF RADIOACTIVE SUBSTANCES

1. The question of the difficulties caused by the simultaneous application of the Paris Convention (or the Vienna Convention) and the various relevant international maritime Conventions has been further considered by ENEA in active co-operation with the other organisations concerned, namely IAEA, IMCO and CMI. (For a report on the earlier meetings and on the problem generally see Nuclear Law Bulletin No. 5, pages 20-21.)

2. Three further meetings have been held since March 1970:

(a) In April 1970 the Legal Committee of IMCO met and set up a Working Group, consisting of representatives of some of those countries most interested in the problem, together with observers from international organisations such as ENEA, IAEA and CMI, to consider the alternative texts of a short new maritime Convention, which were before the Legal Committee. This Working Group was able to agree tentatively on a text of the main Article for such a Convention but time did not permit this to be discussed within the Legal Committee itself on this occasion. This text which did not differ to any great extent from an earlier text prepared by the CMI International Sub-Committee provided that any person who might be held liable under an international maritime Convention should be exonerated from such liability where an operator of a nuclear installation was liable for the same damage under a nuclear Convention.

(b) At a final meeting of the CMI Sub-Committee in June 1970 a final and slightly revised text of the new Convention was agreed on, in substitution for that provisionally agreed in March 1970.

(c) At a further meeting of the Legal Committee of IMCO in October 1970 another text, embodying the same principles and designed to be simpler and clearer than the earlier texts, was discussed. It was agreed to consider this text in greater detail at the next meeting of the Legal Committee in April 1971 as some delegations wanted an opportunity to study the question more fully before reaching a decision. It appeared that in general there was no very strong objection to the

idea of dealing with the problem by means of a short new maritime Convention although some delegations were doubtful whether the proposed solution was necessary or whether the problem was urgent.

3. Among the matters to be discussed at the next meeting of the ENEA Group of Governmental Experts on Third Party Liability in November 1970, will be the question of the overlapping of the maritime and the nuclear Conventions and the Group of Experts will have before them the various texts of a new Convention referred to in the previous paragraph. It is hoped that these discussions may assist the Governments which will be represented at the next meeting of the Legal Committee of IMCO and bring nearer a final agreement on a satisfactory solution to the problem which could be recommended to Governments for the appropriate action.

AGREEMENTS

• *Austria - United States*

LEASE FOR SPECIAL NUCLEAR MATERIAL

Pursuant to a Co-operation Agreement between the Governments of the United States and Austria of 22nd July 1959, a lease agreement concerning special nuclear material has been concluded between the United States Atomic Energy Commission on the one hand and the Austrian Government on the other.

This Agreement, which entered into force on 20th January 1970, lays down the terms and conditions under which the Austrian Government as lessee may obtain special nuclear material from the United States Atomic Energy Commission, this latter remaining the owner of the respective material.

• *Germany*

NUCLEAR SHIPS

On 25th March 1970 the Federal Republic of Germany and the Republic of Liberia signed a "Treaty on the use of Liberian waters and ports by the German nuclear-powered ship 'Otto Hahn' ". Up to this date the Treaty has not been published.

Morocco and Iran have dispensed with the conclusion of special visit agreements. Due to invitations of the respective governments conveyed through diplomatic and private channels the 'Otto Hahn' was able to enter ports in these countries. In the same way without special agreements port entry permits for Mauritania, Senegal, Sierra Leone and Togo were obtained for the 'Otto Hahn'.

OECD RADIATION PROTECTION NORMS

The Annexes to the Radiation Protection Norms which were adopted by a Decision of the OECD on 18th December 1962, were modified by the Steering Committee of the European Nuclear Energy Agency (ENEA) of the OECD on 25th April 1968. These modified Annexes have been published in the German Official Gazette (BGBL.1970, II, No. 20, page 208).

• *Germany-Netherlands-United Kingdom*

TRIPARTITE INTERNATIONAL CO-OPERATION IN THE FIELD OF THE GAS CENTRIFUGE PROCESS FOR PRODUCING ENRICHED URANIUM

On 4th March 1970 an "Agreement between the Federal Republic of Germany, the Kingdom of the Netherlands and the United Kingdom of Great Britain and Northern Ireland on collaboration in the development and exploitation of the gas centrifuge process for producing enriched uranium"* (Tractatenblad 1970, No. 41 = Cmd. 4315) was signed in the Dutch town of Almelo. The Agreement was negotiated in the years 1968 and 1969. Prior to the signature the Federal Republic of Germany and the Netherlands had submitted the draft Agreement, in accordance with Article 103 of the Euratom Treaty, to the Commission of the European Communities for endorsement. On 13th February 1970 the Commission stated its agreement to the draft after the Contracting Parties had given assurances that the obligations under the Euratom Treaty were not affected by the new Agreement.

The purposes of the collaboration Agreement are the development and economic exploitation of the gas centrifuge process in the field of isotope separation and these are to be realized by establishing joint industrial enterprises. A Joint Committee, composed of one representative of each of the Contracting Parties, and taking all its decisions by unanimous vote, is to supervise the execution of the collaboration as stipulated. Disputes between the Parties are to be settled by an arbitration procedure.

* The complete text of this Agreement is reproduced in the Chapter "Texts" of the present issue.

The three Signatories undertake to promote the economic exploitation of the gas centrifuge process exclusively by way of the joint industrial enterprises provided for in the agreement. The joint industrial enterprises on their part are bound to meet all orders placed with them by customers in the territory of the Contracting Parties. If existing enrichment capacity does not suffice, new capacity has to be installed if the respective Contracting Parties agree to provide all ensuing additional costs. As a general principle all research and development work is done on a joint basis. New programmes, therefore, first have to be submitted to the other Contracting Parties.

In addition the agreement includes provisions with regard to patents, safeguards and protection of classified material and in particular it provides that no information, equipment, source or special fissionable material, which may be at the disposal of the Contracting Parties for the purpose of or as a result of the agreed collaboration shall be passed on to non-nuclear-weapon states to enable them to manufacture nuclear weapons. The Contracting Parties also undertake to ensure that no weapons-grade uranium will be produced in the joint industrial enterprises.

As regards the security measures and protection of classified material an "Interim Agreement" [Tractatenblad 1070, No. 42 = U.K. Treaty Series No. 22 (1970)] was signed to have effect until the date of entry into force of the main Agreement.

Pursuant to this Agreement the Contracting Parties have established two joint industrial enterprises: the so-called "prime contractor organization" with registered seat in the Federal Republic of Germany, which is to be responsible for the development and construction of centrifuges and enrichment plants, and the so-called "enrichment organization", with registered seat in the United Kingdom, which will be operating the enrichment plants. Under the Agreement the two organizations are to establish and run in accordance with an initial programme two plants with a capacity of a total of 350 tonnes of separative work per annum; the plants will be situated in Capenhurst/United Kingdom (200 tonnes s.w.u./a) and Almelo/Netherlands (100 tonnes s.w.u./a); it will be left to a later decision as to where the remaining 50 tonnes s.w.u./a will be produced.

• *Philippines-United States*

CO-OPERATION AGREEMENT

The Co-operation Agreement on the civil use of atomic energy concluded between the Government of the United States and the Government of the Republic of the Philippines came into force on 19th July 1968 for a period of thirty years. This Agreement supersedes bilateral agreements in the same field previously signed by the Republic of the Philippines and the United States. The present Agreement concerns, in particular, supply of radioactive materials and nuclear fuels, uranium enrichment services, leasing of materials and equipment, transfer to and application

of safeguards by the International Atomic Energy Agency to the said materials and equipment to ensure their utilization for peaceful purposes... The Co-operation Agreement also contains provisions relating to the exchange of information.

• *European Nuclear Energy Agency*

On 14th October 1970 an Agreement was signed in Paris setting up a new International Food Irradiation Project. The original Signatories were Austria, Belgium, Canada, Denmark, France, Germany, Italy, Japan, Netherlands, Norway, Portugal, South Africa, Spain, Sweden, Switzerland, Turkey, United Kingdom and the United States. Other countries are expected to participate later.

This project is the result of consultations and collaboration between various international bodies concerned (FAO, WHO, IAEA and ENEA) and the Agreement provides for co-operation in an international programme of wholesomeness testing of irradiated foods under contracts concluded with specialized organisations in Member countries. These contracts would be co-ordinated under the direction of a full-time Project Leader who will be located at the Host Centre at Karlsruhe in Germany. The Project Leader will also engage in a programme of research into the methodology of wholesomeness testing. He will be concerned inter alia with the dissemination of information resulting from the programme and with assisting national and international authorities in their consideration of the acceptability of irradiated food.

A Board of Management is set up to supervise the execution of the programme and the Signatories will be represented on this Board. In addition, there will be a Scientific Programme Committee to advise the Board and to give guidance to the Project Leader on the execution of the programme.

LATIN AMERICA

TLATELOLCO TREATY

At the time of writing, instruments of ratification of the Tlatelolco Treaty on the Prohibition of Nuclear Weapons in Latin America have been received by Mexico, the depository State, from 17 of the 22 Signatory countries.

Mexico played an active role in the negotiation and signing of the Treaty. Indeed, the negotiations which finally led to the signing ceremony on 14th February 1967, took place in Mexico City from 1965 to 1967 under the Chairmanship of the Mexican Under-Secretary for Foreign Affairs.

The Tlatelolco Treaty - named after the seat of the Mexican Foreign Ministry - is the first International Agreement which absolutely bans nuclear weapons from a vast inhabited area. "Denuclearisation" of the South American continent is solely concerned with prohibition of manufacture and use of all kinds of nuclear weapons by the Contracting Parties, and accordingly does not prevent the use of nuclear energy for peaceful purposes. The Treaty even authorizes nuclear explosions for peaceful purposes, but does not authorize Contracting States to manufacture or acquire nuclear explosive devices otherwise than under international supervision.

The Tlatelolco Treaty contains a system of security control intended to prevent any diversion to military purposes; control is exercised by the International Atomic Energy Agency, on the basis of bilateral or multilateral agreements to be entered into between the countries concerned and the Agency. Mexico was the first State to enter into such an Agreement on 6th September 1968, having also been the first to ratify the Treaty on 20th September 1967.

The Treaty's entry into force is made subject to the fulfilment of somewhat complicated conditions: ratification of the Treaty by all the States to which it applies (i.e. all the States of Latin America situated to the south of latitude 35° North); ratification of Protocol No. I by the non-continental States which have de jure or de facto international responsibilities in regard to the area in question; ratification of Protocol No. II by States possessing nuclear weapons; finally, conclusion of agreements regarding the system of control referred to above.

Mexico will also be the seat of the "Agency for Prohibition of Nuclear Weapons in Latin America", the regional control organisation which, acting in parallel with the IAEA inspectorate, will have special responsibility once the Treaty comes into force, for detecting clandestine introduction of nuclear weapons into the "denuclearised" area.

TEXTS

• *Germany-Netherlands-United Kingdom*

AGREEMENT BETWEEN THE KINGDOM OF THE NETHERLANDS, THE FEDERAL REPUBLIC OF GERMANY AND THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND ON COLLABORATION IN THE DEVELOPMENT AND EXPLOITATION OF THE GAS CENTRIFUGE PROCESS FOR PRODUCING ENRICHED URANIUM

The Kingdom of the Netherlands,

The Federal Republic of Germany and

The United Kingdom of Great Britain and Northern Ireland;

Regarding as a matter of great importance the supply of enriched uranium for purposes other than the manufacture of nuclear weapons;

Considering the rapid growth to be expected in the installation of nuclear power plants in Europe and elsewhere in the near future;

Considering the importance of developing in Europe a substantial capacity for the enrichment of uranium in order to meet the demand for enriched uranium to fuel such plants;

Considering the progress made, in their respective countries, in the development of the gas centrifuge method;

Considering that development of this method on a co-operative basis will strengthen European technological co-operation and that its joint industrial exploitation will contribute to European economic integration;

Declaring their readiness to consider entering into collaboration with European or other countries interested in the production of enriched uranium by the gas centrifuge method;

Declaring furthermore their readiness to integrate their collaboration into the framework of an enlarged European community;

Recalling the Interim Agreement on Security Procedures and Classification signed in Almelo on 4th March, 1970, and declaring their intention to apply appropriate measures of security in fulfilment of a

common classification policy in relation to the gas centrifuge process;

Reaffirming that any co-operative arrangements will have to be consistent with the policies of the Contracting Parties in relation to the non-proliferation of nuclear weapons, to which they attach great importance, and with their international obligations in this field, and that appropriate international safeguards will be applied thereto;

Have agreed as follows:

Article I

(1) The Contracting Parties shall collaborate with one another, in accordance with the provisions of this Agreement, with a view to the enrichment of uranium by the gas centrifuge process and to the manufacture of gas centrifuges to that end.

(2) The Contracting Parties shall promote the establishment and operation of joint industrial enterprises to build plants for the enrichment of uranium by the gas centrifuge process and to operate such plants and otherwise exploit that process on a commercial basis.

(3) Each of the Contracting Parties or commercial entities nominated by it shall have the right to participate in the joint industrial enterprise referred to in paragraph (2) of this Article on a basis of equality of interest with the other Contracting Parties or commercial entities nominated by them.

(4) The Contracting Parties shall promote the integration of their research and development efforts in this field with a view to the conduct of an integrated programme of research and development by the joint industrial enterprises referred to in paragraph (2) of this Article in order to achieve and maintain a competitive position in relation to other sources of enriched uranium.

Article II

(1) In order to provide for effective supervision by the Contracting Parties, in accordance with the provisions of this Article, of the collaboration described in Article I of this Agreement, there shall be established a Joint Committee.

(2) The Joint Committee shall be composed of an accredited representative of each Contracting Party who may be accompanied by advisers. It shall take all its decisions by unanimous vote. Each representative shall have one vote.

(3) The Chairmanship of the Joint Committee shall be held in turn by the representative of each Contracting Party for a period of one year.

(4) The Joint Committee shall adopt its own rules of procedure and decide upon the administrative arrangements necessary for the execution of its responsibilities. The rules of procedure shall make appropriate provision for the use of the German, English and Netherlands languages. The administrative expenses of the Joint Committee shall be borne by the Contracting Parties in equal shares.

(5) The Joint Committee shall:

(a) consider and decide upon any questions concerning the safeguards provided for in Article VII;

(b) consider and decide upon questions arising out of the classification arrangements and security procedures to be observed in accordance with Article V;

(c) advise the Contracting Parties as to the conditions upon which any agreement of the kind referred to in Article IX might be concluded;

(d) consider and decide upon any proposals for:

(i) the transfer outside the territories of the Contracting Parties of information derived as a result of the collaboration described in Article I of this Agreement or of information, rights in which have been assigned to the joint industrial enterprises pursuant to this Agreement;

(ii) the granting of licences or sub-licences for the use outside the territories of the Contracting Parties of any of the information referred to in sub-paragraph (i) of this paragraph or of any inventions arising in the course of the collaboration described in Article I of this Agreement;

(iii) the export outside the territories of the Contracting Parties of equipment or materials developed, produced or processed under the collaboration described in Article I of this Agreement;

(e) approve the instruments establishing the joint industrial enterprises and, in particular, the composition of those enterprises, and decide whether any proposal to vary such instruments or composition may be proceeded with;

(f) approve proposals of the joint industrial enterprises for the siting of major installations to be created pursuant to the collaboration described in Article I of this Agreement;

(g) make arrangements for the assessment and payment of royalties in accordance with paragraphs (3), (4) and (5) of Annex I to this Agreement concerning Patents and other Industrial Rights;

(h) approve such research and development programmes as are to be financed in whole or in part by joint Government grants of the Contracting Parties, and consider any proposals from the joint industrial enterprises for varying the proportion of the cost of research and development to be borne jointly by the Contracting Parties;

(i) decide upon or recommend to the Contracting Parties appropriate measures to be taken if technical or economic developments occur which are likely to affect significantly the commercial exploitation of the gas centrifuge process by the joint industrial enterprises;

(j) determine any question concerning the interpretation of this Agreement put before it by the joint industrial enterprises in connection with the exercise of their functions.

(6) During the period of construction of an initial total annual capacity of 350 tonnes of separative work, the Joint Committee shall also approve such clauses of the main contracts to be concluded between the joint industrial enterprises as may have major financial implications.

(7) The Joint Committee may at any time issue to the joint industrial enterprises directives pursuant to decisions taken by it under paragraph (5) or paragraph (6) of this Article, which directives it shall be the duty of the joint industrial enterprises to put into effect.

Article III

(1) (a) Subject to the provisions of this Article, no Contracting Party shall engage in, or promote or assist in any way, the commercial exploitation of the gas centrifuge process for the enrichment of uranium otherwise than through the collaboration described in Article I of this Agreement.

(b) The joint industrial enterprises shall use their best endeavours to meet all orders for uranium enrichment services placed with them by customers in the territory of any of the Contracting Parties, whether or not the fulfilment of such orders would involve the installation of new enrichment capacity. The joint industrial enterprises shall, however, be bound to meet such orders if the Contracting Party concerned or entities within its territory agree to provide such portions of the extra finance involved as are not forthcoming from the joint industrial enterprises and the other Contracting Parties.

(2) (a) No Contracting Party shall engage in, or promote or assist in any way, any new programme of research on or development of the gas centrifuge process with a view to its exploitation for commercial purposes, unless such programme has been offered for execution by the appropriate joint industrial enterprise within the collaboration described in Article I of this Agreement and the offer has not been accepted within a period of four months.

(b) Where a programme which has been so offered and has not been accepted is carried out, its results may not be used by the Contracting Party concerned unless they have been offered for use by the appropriate joint industrial enterprise within the collaboration described in Article I of this Agreement on fair and reasonable terms and conditions and that offer has also not been accepted within a period of four months.

(3) The Contracting Parties shall inform each other, through the Joint Committee, of technical or economic developments which might affect significantly the commercial exploitation of the gas centrifuge process by the joint industrial enterprises.

Article IV

(1) The Contracting Parties shall apply, in relation to the collaboration described in Article I of this Agreement, the provisions of Annex I to this Agreement, concerning Patents and other Industrial Rights, which shall form an integral part of this Agreement.

(2) Subject to the provisions of this Article and Article III of this Agreement, no Contracting Party shall, except as may otherwise be agreed, make any use of information transferred to it pursuant to this Agreement nor communicate such information to any person except for the purposes of the collaboration described in Article I of this Agreement.

Article V

(1) The Contracting Parties shall apply, in relation to the collaboration described in Article I of this Agreement, the provisions of Annex II to this Agreement, concerning Security Procedures and Classification, which shall be an integral part of this Agreement.

(2) On the date of entry into force of this Agreement the Interim Agreement on Security Procedures and Classification signed in Almelo on 4th March, 1970, shall cease to have effect, and any information and documents transferred subject to its provisions shall be protected as if they had been transferred under this Agreement.

Article VI

(1) The Contracting Parties jointly and separately undertake to ensure that any information, equipment, source or special fissionable material which may be at their disposal for the purpose of or as a result of the collaboration described in Article I of this Agreement will not be used by or to assist, encourage or induce any non-nuclear-weapon State to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices or control over such nuclear weapons or explosive devices. For the purposes of this paragraph the expression "non-Nuclear -weapon State" means any State, including any State bound by this Agreement, which has not manufactured and exploded a nuclear weapon or other nuclear explosive device prior to 1st January 1967.

(2) The Contracting Parties further undertake to ensure that the joint industrial enterprises referred to in Article I of this Agreement shall not produce weapons grade uranium for the manufacture of nuclear weapons or other nuclear explosive devices.

Article VII

(1) For the purpose of verification of compliance with the undertakings set forth in ArticleVI of this Agreement, appropriate safeguards procedures, which shall be consistent with the international obligations of each Contracting Party, shall be applied.

(2) Under the rule established by paragraph (1) of this Article, the following procedures shall be applied:

(a) the procedures of the safeguards system established by the European Atomic Energy Community (EURATOM), and the measures for accounting for the use of material and equipment established by the Government of the United Kingdom, as applicable in the respective territories of the Contracting Parties; appropriate consultations and exchanges of visits between representatives of the Contracting Parties, and where required of the Commission of the European Communities, shall take place in order to ensure that such procedures are satisfactory and effective for the purposes of this Article;

(b) the procedures resulting from any additional obligations in relation to safeguards binding upon any of the Contracting Parties pursuant to an agreement or agreements concluded with the International Atomic Energy Agency;

(c) in the case of collaboration with, or export to, States other than the Contracting Parties, international procedures as described in sub-paragraphs (a) and (b) above, mutatis mutandis.

(3) The Joint Committee shall make whatever arrangements are necessary for the implementation of this Article.

Article VIII

(1) Any dispute which may arise between the Contracting Parties as to the interpretation or application of this Agreement or of any decision of the Joint Committee or of any measures or arrangements put into effect as a result of any such decision shall be referred to the Joint Committee, which shall endeavour to reach a friendly settlement of the matter.

(2) If a dispute is not thus settled, it shall, if possible, be settled by the Contracting Parties.

(3) If a dispute is not thus settled by the Contracting Parties it shall, at the request of any Contracting Party involved, and unless any other Contracting Party objects on security grounds, be submitted to arbitration by an Arbitral Commission.

(4) Such Arbitral Commission shall be constituted ad hoc as follows: Each Contracting Party involved shall appoint one member. If,however, all three Contracting Parties are involved and one is proceeding against the other two, or two against the third, the two in the same interest shall appoint one member in common. The two members so appointed shall nominate the third member who shall be the chairman. The members of the Arbitral Commission other than the chairman shall be appointed within two months, and the chairman within three months, from the date of the request for submission to arbitration.

5) If an appointment has not been made within the period specified in paragraph(4) of this Article, any Contracting Party involved may invite the President of the European Court of Human Rights to make the necessary appointment. If the President is a national of any Contracting Party involved or if he is otherwise prevented from discharging the said function, the Vice-President should make the necessary appointment. If the Vice-President is a national of any Contracting Party involved or if he too, is prevented from discharging the said function, the Member of the Court next in seniority who is not a national of any Contracting Party involved should make the necessary appointment.

(6) The Arbitral Commission shall, on the basis of this Agreement and of general international law, reach its decision by a majority of votes. The Arbitral Commission shall determine its own procedure. A Contracting Party not involved may intervene as a third party in the proceedings.

(7) There shall be no right of appeal against a decision of the Arbitral Commission. In case of a dispute concerning the import or scope of such decision it shall be incumbent upon the Arbitral Commission to interpret the decision at the request of any Contracting Party.

Article IX

The Contracting Parties may jointly conclude agreements for collaboration with European or other States, or international organisations. Any proposal for the conclusion of an agreement of this kind shall be considered by the Joint Committee.

Article X

The obligations of the Federal Republic of Germany and the Kingdom of the Netherlands under the Treaty establishing the European Atomic Energy Community shall not be affected by this Agreement.

Article XI

This Agreement shall apply, in respect of the Kingdom of the Netherlands, only to that part of the Kingdom situated in Europe and, in respect of the United Kingdom of Great Britain and Northern Ireland, only to Great Britain and Northern Ireland.

Article XII

This Agreement shall be subject to ratification. Instruments of ratification shall be deposited with the Government of the Kingdom of the Netherlands. The Agreement shall enter into force on the deposit with the Government of the Kingdom of the Netherlands of the third instrument of ratification. The Government of the Kingdom of the Netherlands shall inform the other Signatory States of the deposit of each instrument of ratification and of the date of entry into force of this Agreement.

Article XIII

Any Contracting Party or the Joint Committee may at any time propose amendments to this Agreement. Any such proposals shall, if approved by the Joint Committee be submitted by it for acceptance to the Contracting Parties. Any amendment so submitted shall require

acceptance in writing by each Contracting Party and shall enter into force 30 days after the receipt by the Government of the Kingdom of the Netherlands of written notification of acceptance from all of the Contracting Parties. The Government of the Kingdom of the Netherlands shall inform the other Contracting Parties of the date of entry into force of any such amendment.

Article XIV

In the event of the accession of the United Kingdom to the Treaty establishing the European Atomic Energy Community, or to any Treaty which might replace it, the Contracting Parties shall review this Agreement with a view to making any amendments which may consequentially be necessary or desirable.

Article XV

After this Agreement has been in force for a period of ten years, any Contracting Party may give one year's notice in writing of withdrawal from this Agreement. Negotiations shall promptly be held between the Contracting Parties to regulate the consequences of such a withdrawal.

Article XVI

This Agreement may at any time be terminated by the unanimous consent of the Contracting Parties. In this event a Protocol shall be concluded between them to regulate their rights and obligations consequently, which shall include provisions for the disposal of assets and liabilities arising from their collaboration under this Agreement.

Article XVII

In the event of the withdrawal from this Agreement of any Contracting Party in accordance with the provisions of Article XV, or of the termination of this Agreement under Article XVI, appropriate provision shall be made for the continuation, in connection with Articles VI and VII of undertakings and safeguards and, in connection with Article V, of measures for the protection of classified information, documents and equipment. Pending the making of such provision, the said Articles V, VI and VII, and any arrangements made or procedures applied in fulfilment thereof, shall continue in force.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this Agreement.

DONE in triplicate at Almelo this 4th day of March 1970, in the Netherlands, German and English languages, each text being equally authoritative.

For the Kingdom of the Netherlands:	(sd.)	J. LUNS
	(sd.)	R. J. NELISSEN
For the Federal Republic of Germany:	(sd.)	SCHEEL
	(sd.)	LEUSSINK
For the United Kingdom of Great Britain and Northern Ireland:	(sd.)	ANTHONY WEDGWOOD BENN
	(sd.)	CHALFONT

ANNEX I

PATENTS AND OTHER INDUSTRIAL RIGHTS

(1) For the purposes of this Annex:

(a) "industrial rights" shall mean all industrial property rights, in particular patents, registered designs, petty patents and rights in know-how, as well as copyrights;

(b) "pre-existing", in relation to industrial rights, shall mean all such rights held or controlled in the territory of any of the Contracting Parties or elsewhere at the date of entry into force of this Agreement by the following persons or bodies;

(i) in relation to the Kingdom of the Netherlands:

the Government of the Netherlands, the Stichting Reactor Centrum Nederland and the Ultra-Centrifuge Nederland N.V.;

(ii) in relation to the Federal Republic of Germany:

the Government of the Federal Republic of Germany, the Gesellschaft für Kernverfahrenstechnik m.b.H., the Gesellschaft für nukleare Verfahrenstechnik m.b.H. and the Uran-Isotopentrennungsgesellshaft m.b.H.;

(iii) in relation to the United Kingdom of Great Britain and Northern Ireland;

the Government of the United Kingdom and the United Kingdom Atomic Energy Authority;

(c) "the field" shall mean gas centrifuge and associated technology capable of use in the enrichment of uranium by the gas centrifuge process and in the construction of gas centrifuge manufacturing and enrichment plants.

(2) Subject to prior commitments existing at the date of entry into force of this Agreement, each Contracting Party shall take all measures within its power to ensure that the appropriate joint industrial enterprise is granted a free non-exclusive licence to use and exercise the pre-existing industrial rights in the field appertaining to such Contracting Party, and the right to grant sub-licences, for the purposes of any activity in the field to be performed within the collaboration described in Article I of this Agreement.

(3) A comparative evaluation of the respective effective contributions made by the pre-existing industrial rights in the field appertaining to each Contracting Party to the first joint centrifuge enrichment plant design decided upon by the joint industrial enterprises shall be made, at a time to be determined by the Joint Committee, by an Evaluation Group composed of one person nominated by each Contracting Party. Having heard evidence from the holders of these rights, the Evaluation Group shall report its findings to the Joint Committee.

(4) In addition to its task under paragraph (3) of this Annex, the Evaluation Group shall fix an appropriate percentage royalty to be applied to the value of enrichment plant to be constructed using the design referred to in the said paragraph (3).

(5) On the basis of the report of the Evaluation Group, the Joint Committee shall:

(a) determine a fixed period of time from the final decision upon the design referred to in paragraph (3) of this Annex;

(b) compute the value of enrichment plant firmly committed in that period for construction; and

(c) give the necessary instructions for the payment by the appropriate joint industrial enterprise to each Contracting Party of its share, in accordance with the report of the Evaluation Group, of the royalties due.

(6) All industrial rights arising out of integrated research and development programmes put into effect by the joint industrial enterprises, or arising out of similar programmes pursued under the auspices of any of the Contracting Parties as part of the collaboration described in Article I of this Agreement pending the commencement of such integrated programmes, shall be assigned to the appropriate joint industrial enterprise. However, applications for patents for the registration of designs may where necessary be made, in the first instance, by the originator of the invention or design, but all rights in such patents or registered designs shall be assigned to the appropriate joint industrial enterprise within six months of the date of application.

(7) The joint industrial enterprise concerned shall in relation to the industrial rights referred to in paragraph (6) of this Annex and other industrial rights in the field held or controlled by it:

(a) grant free licences for the purposes of any activity in the field to be performed within the collaboration described in Article I of this Agreement;

(b) grant licences on reasonable commercial terms to enterprises in the territories of the Contracting Parties for purposes other than the enrichment of uranium by the gas centrifuge process.

(8) All industrial rights in the field arising out of new national programmes of research and development in the field with a view to exploitation for commercial purposes shall be dealt with in accordance with paragraph (2) of Article III of this Agreement.

(9) Each Contracting Party shall ensure that the appropriate joint industrial enterprise is notified of all applications for patents or for the registration of designs falling within the terms of paragraph (8) of this Annex, and that full details thereof are provided. Such notification shall be made, whenever possible, within the period allowed by international

convention for the filing of further applications with priority in countries other than that of the originator of the invention or design concerned. Subject to the provisions of sub-paragraph 5 (d) of Article II of this Agreement, the appropriate joint industrial enterprise shall have the right to protect such inventions or designs at its own expense and in its own name, in countries in which the originator thereof fails to do so.

(10) No Contracting Party shall attack or contest, or in any way encourage or assist any other person to attack or contest, the industrial rights of the other Contracting Parties or of the joint industrial enterprises.

(11) In granting any licence or sub-licence of industrial rights in the field appertaining to them, each Contracting Party and the joint industrial enterprises shall require any resulting licensee or sub-licensee to refrain from attacking or contesting the industrial rights of the Contracting Parties or of the joint industrial enterprises.

(12) The Contracting Parties and the joint industrial enterprises shall handle commercially valuable information arising under this Agreement with appropriate precautions, and shall require all other persons to whom the information may be communicated to observe similar precautions.

(13) The granting of licences or sub-licences by the joint industrial enterprises to use and exercise outside the territories of the Contracting Parties the industrial rights referred to in paragraphs (2), (6) and (8) of this Annex or any other industrial rights in the field held or controlled by the joint industrial enterprises shall be regulated in accordance with sub-paragraph 5(d) of Article II of this Agreement.

ANNEX II

SECURITY PROCEDURES AND CLASSIFICATION

(1) The Contracting Parties shall take all appropriate measures to protect any classified matter, that is to say any classified information, documents or equipment, which may be exchanged in connection with the collaboration described in Article I of this Agreement.

(2) The Contracting Parties shall similarly take all appropriate measures to protect any matter which may result from the collaboration described in Article I of this Agreement and which has been classified in accordance with a common classification policy as provided for in paragraph (4) of this Annex.

(3) The Contracting Parties shall apply to all such classified matter the security measures applicable to their national classified matter of a corresponding security grading, but in no case shall the measures applied be less strict than the principles and minimum standards mutually agreed.

(4) (a) In accordance with sub-paragraph (5) (b) of Article II of this Agreement, the Joint Committee shall consider any questions arising out of the classification arrangements and security procedures to be applied to the matter referred to in paragraphs (1) and (2) of this Annex.

(b) Each Contracting Party shall designate an Agency to be responsible for the execution of such arrangements and procedures in its territory in accordance with a common classification policy.

(c) Where necessary in order to satisfy itself as to the satisfactory and effective implementation of sub-paragraph (b) of this paragraph, the Joint Committee may at any time call for such reports from any of the Agencies designated in accordance with that sub-paragraph as it deems necessary.

(5) (a) Classified matter falling within the terms of paragraph (1) of this Annex shall bear one of the security gradings specified in respect of the State of origin in paragraph (6) of this Annex. On receipt such classified matter shall in addition be marked with the corresponding national security grading by the Agency of the receiving State or under its authority. The receiving State may not lower or remove such a security grading without the consent of the State of origin.

(b) The Joint Committee shall give directions for the application as appropriate of the security gradings specified in paragraph (6), in accordance with a common classification policy, to matter which may result from the collaboration described in Article I of this Agreement.

(6) Corresponding security gradings within the meaning of this Annex are:

In the Kingdom of the Netherlands

ZEER GEHEIM
GEHEIM
CONFIDENTIEEL or VERTROUWELIJK
DIENSTGEHEIM

In the Federal Republic of Germany

STRENG GEHEIM
GEHEIM
VS-VERTRAULICH
VS-NUR FÜR DEN DIENSTGEBRAUCH

In the United Kingdom of Great Britain and Northern Ireland

TOP SECRET
SECRET
CONFIDENTIAL
RESTRICTED

(7) Classified matter shall be transferred from one country to another by Diplomatic Bag or by such other secure means as may be agreed between the Agencies of the Contracting Parties concerned.

(8) (a) No admission of visitors to restricted areas of premises in the territories of the Contracting Parties used for the purposes of the collaboration described in Article I of this Agreement nor access by them to classified matter shall be granted unless they are authorized to have access to classified matter of the corresponding security grading in their own State, and are accredited by the Agency of that State designated in accordance with paragraph (4) of this Annex.

(b) The accreditation shall be in writing and shall be sent in advance to the Agency of the State to be visited. It shall specify the scope and duration of the accreditation and the highest security grading to which access may be had.

(c) The Agency of the State to be visited shall be notified in advance of each visit, and shall be responsible for informing in good time the person or persons authorized to grant admission to the premises concerned. The notification shall indicate the subjects on which the visitor may be given access to classified matter.

(9) (a) (i) If classified matter falling within the terms of paragraph 1 of this Annex is lost or disclosed without authorization in the State to which it has been transferred, or if there is reasonable suspicion of such unauthorized disclosure, the Agency of the State of origin shall be informed without delay.

(ii) If classified matter falling within the terms of paragraph 2 of this Annex is lost or disclosed without authorization, or if there

is reasonable suspicion of such unauthorized disclosure, the Joint Committee shall be informed without delay.

(b) In any case falling within the terms of sub-paragraph (a) of this paragraph, the investigation of whether such an occurrence constitutes an offence under the applicable laws and regulations, and the prosecution of such an offence, shall lie entirely within the competence of the Contracting Party within whose territory the occurrence took place, in accordance with its domestic legislation and internal regulations; nevertheless, an opportunity shall be given to any other Contracting Party to lay before the competent authorities of the Contracting Party in question any information relevant to the institution of proceedings in respect of such an occurrence. The Government of the State of origin or the Joint Committee, whichever is appropriate, shall be informed in due course whether such proceedings have been instituted or not and of their outcome.

(c) Classified information transferred under the provisions of this paragraph shall be entitled to the same degree of protection as any other classified information transferred subject to this Agreement.

• *France*

MINISTRY FOR INDUSTRIAL AND SCIENTIFIC DEVELOPMENT

Decree No. 70.878 of 29th September 1970 concerning the Atomic Energy Commission*

The President of the Republic,

Following the report of the Prime Minister, the Minister of State for National Defence, the Minister for Foreign Affairs, the Minister of Economy and Finance, the Minister of National Education, and the Minister for Industrial and Scientific Development,

Considering the Constitution and, in particular, Section 37 thereof;

Considering Order No. 45.2563 of 18th October 1945 setting up an Atomic Energy Commission as well as the amendments thereto;

Considering the Opinion of the Atomic Energy Committee, of 10th September 1970;

The Council of State having stated the case;

The Council of Ministers having stated the case;

* Unofficial translation by the Secretariat.

Decrees:

Section 1

Sub-paragraph (2) et seq. of Section 1 and Sections 3, 4, 6 [sub-paragraph (1)] and 8 of the aforementioned Order of 18th October 1945 are repealed.

Section 2

The Atomic Energy Commission undertakes the following tasks, in accordance with the directives given by the Government in respect of the utilization of atomic energy in the different fields of science, industry and national defence:

It carries out the necessary scientific and technical research;

It proposes the appropriate measures to ensure the protection of persons and property against the effects of atomic energy and contributes to their implementation;

It is empowered to carry out research on, production, storage and transport of nuclear source materials either directly or through undertakings in which it has a financial interest;

It may proceed with the transformation of and trade in nuclear source material, and in general, with all operations involving such activities, either directly or indirectly, it ascertains that the users are supplied and, to this effect, proposes the necessary measures;

As regards energy applications, it co-ordinates State interventions for the study and evolving of developing techniques; when State intervention is involved, or at the request of constructors and users, it participates in programmes for the improvement of industrial techniques;

It may, in the various fields falling within its activities, construct or participate in the construction and production of devices, materials or components thereof;

It takes or proposes all useful measures to enable France to benefit from the development of the nuclear disciplines;

It follows scientific, technical and economic developments abroad in the same field, in order to keep the Government informed, particularly for the negotiation of international agreements;

The Atomic Energy Commission may, within the limits set by the Government, extend some of its research and development work to non-nuclear fields, either for economic purposes, or with a view to participating in programmes of general interest.

Section 3

The Atomic Energy Commission is managed in accordance with the general directives of the Government which are given by the Minister for Industrial and Scientific Development, through a Committee which includes:

The Administrator General Delegate;

The Secretary General of the Ministry for Foreign Affairs;

The Secretary General for Energy;

The Delegate General for Scientific and Technical Research;

The Director of the Budget;

The Director General of the National Scientific Research Centre (CNRS);

A personality designated by the Prime Minister;

Three personalities designated by the Minister for National Defence;

Five personalities who qualify by their competence in the scientific and industrial field, one of whom will carry out the duties of High Commissioner as defined in Section 5 below.

The Committee is presided over by the Minister for Industrial and Scientific Development, or, in default, by the Administrator General Delegate.

Section 4

The Atomic Energy Commission is managed by an Administrator General Delegate appointed for a period of five years by Decree of the Council of Ministers.

Section 5

The High Commissioner assumes the task of Scientific and Technical Counsellor to the Administrator General Delegate.

He may refer directly to the Atomic Energy Committee and the Ministers concerned in respect of his proposals on the general scientific and technical orientation which he favours.

He advises on any question in the nuclear field concerning the safety of persons and property which requires a decision by the Administrator General Delegate.

He may be charged with various duties, particularly in the educational field.

He presides over the Scientific Council referred to in Section 6 below.

Section 6

The task of the Scientific Council is to assist the High Commissioner in the carrying out of his duties.

The Council meets at the request of the High Commissioner and may express wishes which are transmitted to the Atomic Energy Committee and the Minister for Industrial and Scientific Development.

The Council consists of not more than fifteen members appointed for a period of three years in view of their competence, by Decree of the Minister for Industrial and Scientific Development.

Section 7

The Administrator General Delegate presents an annual report on the activities and management of the Commission to the Minister for Industrial and Scientific Development and the Minister of Economy and Finance.

Section 8

A Decree of the Council of State made on the report of the Minister for Industrial and Scientific Development and the Minister of Economy and Finance sets the conditions of application of the present Decree; in particular, it defines the administrative and financial operation of the establishment and determines the respective tasks of the Administrator General Delegate, the High Commissioner, and the Committee.

Section 9

Decree No. 51-7 of 3rd January 1951, Decree No. 56-1281 of 14th December 1956, and Decree No. 68-852 of 25th September 1968 are repealed.

Section 10

The present Decree may only be amended by Decree of the Council of State.

Section 11

The Prime Minister, the Minister of State responsible for National Defence, the Minister for Foreign Affairs, the Minister of Economy and Finance, the Minister of National Education and the Minister for Industrial and Scientific Development, each in his own field, are charged with implementing this Decree which shall be published in the Official Gazette of the French Republic.

Done in Paris, on 29th September 1970.

STUDIES AND ARTICLES

ARTICLES

THE SIMULTANEOUS APPLICATION OF THE PARIS AND THE VIENNA CONVENTION IN THE DANISH DRAFT ACT

P.A. Spleth, Judge, Supreme Court, Denmark *

1. In the supplement to Nuclear Law Bulletin No. 1 was published a Norwegian draft Act on the Uses of Atomic Energy. In the Supplement to No. 2 of the same Bulletin was published the Swedish Nuclear Liability Act of 8th March 1968. At about the same time a Danish Committee forwarded a report to the Danish Government recommending that Denmark ratify the Paris Convention and the Brussels Supplementary Convention. The report contained a draft Act aiming at that purpose. The draft was, however, not published in the supplement to the Nuclear Law Bulletin at that time, as it was expected that a Bill would be brought before the Folketing at the end of 1968. A comment on the draft was given in the Nuclear Law Bulletin No. 2.

A new Danish Act has until now not been passed by the Folketing; but the ENEA Secretariat has expressed the wish that the draft should be published now in the Supplement to the present issue of the Nuclear Law Bulletin. However, as the Danish Committee has elaborated also a second draft Bill which would enable Denmark to ratify the Vienna Convention as well, only the latter has been set out in the Supplement. In order to allow for easy reference, drafting differences between it and the draft Bill presupposing only the ratification of the Paris and Brussels Conventions, are shown in an appropriate manner in the Supplement. A draft presupposing the ratification of all three Conventions was published in Sweden already in 1966, but that draft has not been translated. The provisions of the Swedish and the Danish drafts elaborated with a view to ratification of the Vienna Convention are in principle the same. The same may be said of the Norwegian draft published in the supplement to Nuclear Law Bulletin No. 1, but that draft leaves some questions to administrative regulations.

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* The ideas expressed and the facts given in this article are under the sole responsibility of the author.

On the following pages will be found a report on how the Danish draft (published in the Supplement as Draft Bill No. 1) has tried to solve the problems arising out of the simultaneous application of the Paris and Vienna Conventions.

Persons Covered

2. As for persons covered it is assumed that no discrimination can be made based on the nationality, domicile or residence of the person suffering damage /Paris Convention (hereinafter called P, Article 14 (c) and Vienna Convention (hereinafter called V, Article XIII/. Even a person who is not a national of any Contracting Party will be entitled to compensation if the incident and the damage fall under the territorial scope of the Conventions. An exception is made under the Supplementary Convention /Article 2 (a)(iii)(3)/ where under certain circumstances only nationals of Parties to the Supplementary Convention are entitled to supplementary compensation. A corresponding provision is contained in the Danish draft Section 35 (1)(d)(iii).

Operators

3. Only operators of installations in the territory of or under the authority of a Contracting State may be held liable under the Conventions /P, Article 1 (a)(vi), V, Article I (1)(c) and (d)/. This does not exclude that similar provisions may be laid down by national legislation of a Contracting State governing the liability of operators of non-Contracting States for nuclear damage suffered in the territory of that Contracting State. The Danish draft has not made use of this possibility in general. Only where nuclear substances are carried through Danish territory it will be necessary that a person shall obtain a license for the carriage, and that such person shall be regarded as an operator liable /Section 15 (3)/. This provision does not deal with carriage of nuclear substances through Danish territorial seas without entering Danish harbours.

Territorial Scope

4. As for the territorial scope of the Conventions, P, Article 2 excludes damage caused by nuclear incidents occurring in the territory of non-Contracting States and damage suffered in such country, but the Installation State may provide that such incidents and damage shall be included. A contrario it seems to be concluded that P shall be applied if the incident has taken place and the damage is suffered either in the territory of a Contracting Party or on or over the high seas. It has not been felt necessary to include an express provision to that effect in the Danish draft.

According to Paragraph 7 of the Exposé des Motifs to P, the expression "territory of a non-Contracting State" also includes the territorial seas of such State. In later years the question has been raised whether this expression should also include ships and other means of transport registered in a non-Contracting State when they are on the high seas. This would mean an extra narrowing of the territorial scope of the Convention. Such an assumption has no foundation in the Exposé des Motifs. It should be founded upon an international principle

according to which a ship is to be considered as "a swimming part" of the territory of the State in which it is registered. It is true that for some purposes ships are dealt with in the same way as the territory of the State. According to the Danish Penal Code, Section 6, crimes committed (1) in the territory of the Danish State and (2) upon a Danish vessel outside the territory of any State are under Danish jurisdiction. But this is expressly stated in the Act. It does not emerge from an interpretation of the vessel as a swimming part of the territory of the Danish State. As for a Convention on civil law like P there seems to be no foundation for an interpretation dealing with a ship as a part of the territory of the State in which it is registered. It has also been maintained that the Convention should be interpretated in the light of the Supplementary Convention. The Supplementary Convention was, however, elaborated later than P, and it was foreseen that not all States Parties to P will be Parties to the Supplementary Convention. It was, moreover, obviously the intention to give the Supplementary Convention a narrower scope than P (see Article 2 of the Supplementary Convention). On the contrary, the contents of the Supplementary Convention seem to give good foundation for the assumption that P does not deal with ships as part of the territory of the State in which they are registered. According to Article 2 (a)(ii) of that Convention the following cases are covered:

(1) damage suffered in the territory of a Contracting Party,

(2) damage suffered on or over the high seas on board a ship or aircraft registered in the territory of a Contracting Party,

(3) damage suffered on or over the high seas by a national of a Contracting Party (with an exception for damage to a ship or aircraft).

If a ship on the high seas was to be considered as a swimming part of the territory of the State where it is registered it would be quite superfluous to mention under No. 2 expressly damage suffered on board such a ship. The solution would follow from No. 1.

Under No. 3 damage suffered by a national of a Contracting Party is covered even if it is suffered on board a ship not registered in a State Party to the Supplementary Convention. Should this provision only deal with cases where the ship is registered in a State which is Party to P, but not to the Supplementary Convention? It seems obvious that the intention is to cover any victim who is a national of a State Party to the Supplementary Convention quite irrespective of the nationality of the ship.

The Danish draft contains no special provision concerning this problem, because the solution seems obvious. If that was not the case use could have been made of the option in P, Article 2, to include such damage. It would be to the detriment of the operator if such damage should be excluded from the Convention. He would then not be able to restrict his liability for such damage according to P, Article 7, but would run the risk of being held liable for an unlimited amount according to common law.

5. Whilst the position, as far as P is concerned, should be quite clear, V creates difficulties, because it does not contain any provision about the territorial scope of that Convention. It was clear that for the States Parties to P the problems of simultaneous application of both Conventions would be soluble if a provision corresponding to P, Article 2 had been included in V. Such a provision was included as Article I A in the draft adopted by the Drafting Committee in the following wording:

> "This Convention shall not apply to nuclear incidents which occur or to nuclear damage which is suffered within the territory of a non-Contracting State, unless the law of the Installation State so provides or except as provided in Article I B."

During the discussions in the Plenary Session there was a separate vote taken upon the second part of the Article beginning with the words: "unless the law.....", and this part was deleted. As a result the Article expressly prohibited the extension of the scope of the Convention to incidents occurring or damage suffered in the territory of a non-Contracting State. Some of the delegates who had been in favour of the whole draft of the Article found that in the form arrived at after the above mentioned decision of the Plenary Session it would be all too restrictive and voted against it, and the result was that the whole Article was deleted.

The problem of how V should be interpreted in this respect was dealt with by the Standing Committee in Vienna in April 1964. The Committee reached the conclusion that "nuclear damage suffered within the territory of Contracting States and on or over the high seas would be nuclear damage covered by the Convention even if the nuclear incident causing such damage occurred on or over the high seas or within the territory of a non-Contracting State. On the other hand, nuclear damage suffered within the territory of a non-Contracting State would not be nuclear damage covered by the Convention even if the incident causing such damage occurred within the territory of a Contracting Party or on or over the high seas".

In the record it is said that the conclusions reached by the Committee could not be regarded as an interpretation of the Convention which would be binding upon the Parties thereto.

Unfortunately the Committee did not give the grounds for its conclusions. During all the discussions in Vienna in 1963 it was accepted that damage caused by an incident in the territory of a Contracting Party or on or over the high seas and suffered in such territory or on or over the high seas should be covered. But there was never in the draft any provision under which damage suffered in the territory of a Contracting State or on or over the high seas should be covered, where the incident occurred in the territory of a non-Contracting State. A Canadian proposal to that effect was expressly rejected (see Official Records of the Conference, pages 392 and 189). So the discussions during the Conference give no support to the view that Contracting Parties to V should be bound to apply the Convention where a nuclear incident in a non-Contracting State causes damage in the territory of a Contracting Party or on the high seas. As will be recalled, such an obligation is not found in P.

As for damage suffered in the territory of a non-Contracting State the discussions during the Conference do not seem to give a safe basis for the assumption that Contracting Parties should not be entitled to extend the benefits of V to such damage. When Conventions on civil law are transformed into national legislation it is not uncommon that the provisions given in accordance with the Convention are also made practicable in cases not covered by the Convention. This is one of the reasons for the reservations taken under No. 2 to P. A restriction for nuclear damage could only be founded on the grounds that the amount which in the case of one and the same incident is available to cover damage suffered is restricted. These grounds have not been found weighty enough by the Scandinavian Committees as to exclude an extension of the provisions given in national legislation to cover damage suffered in a State Party to V and a State not Party thereto (especially a State Party to P) under one and the same maximum amount.

So, the conclusion is that it is up to the Installation State - in all cases where it has jurisdiction over actions for compensation - to decide whether damage caused by an incident occurring in the territory of a non-Contracting State or suffered in a non-Contracting State shall be covered under the provisions of V and the maximum amount established according to V just as is the case where P is concerned. If, on the contrary, the conclusions of the Standing Committee should be followed, it would be impossible or very difficult to build up a legislation allowing the ratification of both P and V unless it were certain that a reduction of the compensation for nuclear damage will never be necessary.

6. Even if it is accepted that V allows a Contracting Party to extend the scope of the Convention to damage suffered in a non-Contracting State a difficulty arises from the fact that the Installation State will not always have jurisdiction over actions for compensation for nuclear damage. In such cases the Installation State will under P, Article 2, be able to make decisions as to the territorial scope of the Convention which will be binding on the other Contracting Parties. As V has no provision about this question, it must, as far as this Convention is concerned, be expected that the State whose courts have jurisdiction will decide about the territorial application of the provisions of V. If the nuclear incident has taken place in the territory of a State Party only to V (hereinafter called V-State), Denmark will not be able to decide that the courts of that State shall deal with claims for compensation for damage suffered e.g. in a State only Party to the Paris Convention (hereinafter called P-State). If such damage is to be covered Denmark must take jurisdiction herself in actions for compensation. In this case - and some others - the simultaneous application of both Conventions will necessitate the making of provisions about jurisdiction which are not found expressly in any of the Conventions.

7. The general provisions about the territorial scope of the Danish draft Act is found in Section 11 (1) which is very similar to that of Section 11 of the Act of 16th May, 1962 which is now in force. According to this provision (see draft 1) damage suffered in a State which is not a Party to either of the Conventions shall not be compensated by a Danish operator under the provisions of the draft Act, unless it is caused by an incident which occurred in Denmark. In the last mentioned special case the draft provides that also damage suffered in a non-Contracting State shall be covered. It may be of importance for the operator that his liability for such damage is under the scope of the Danish provisions and the restrictions of the amount of compensation laid down in the Danish Act. As it is foreseen that Denmark will ratify the Supplementary Convention this widening of the scope of the special regime is not likely to cause a reduction of the compensation to other victims.

8. Section 11 of the Danish Act of 1962 excludes from the provisions of the Act damage caused by an incident occurring in a non-Contracting State. Similarly, Section 11 of the draft excludes damage caused by an incident occurring in a State which is a Party neither to P nor V. As has been pointed out, V does not in the Danish view compel a V-State to cover such damage even if it is suffered in a State Party to that Convention. As for P, Article 2, the position is quite clear. The question does not seem to be of great importance. When a Danish operator sends nuclear substances through non-Contracting States, damage arising from a nuclear incident is likely to occur in such States, and the operator will be compelled to have insurance covering such damage. It might mean a considerable burden for him to have also security up to the full maximum amount according to the Conventions for the small amount of damage which might in such cases be suffered in the territory of Contracting Parties.

9. When nuclear substances are sent by a Danish operator through P and V-States a more complicated situation may arise. If a nuclear incident occurs in a P-State but gives rise to damage in a V-State, such damage is not covered by the Paris Convention unless so provided by Denmark as Installation State according to P, Article 2. In the Danish view neither does the Vienna Convention compel Denmark to cover such damage under that Convention, because the damage is caused by an incident in a State which is not a Party to V. If the incident occurs in a V-State and causes damage in a P-State, it must be foreseen that the courts of the V-State having jurisdiction will not compensate the damage suffered in the P-State under the provisions of V. According to P, Article 2, Denmark has no obligation to compensate such damage under that Convention. So it seems that in the case of an incident in a P-State damage suffered in a V-State could be held to be outside the special régime of the conventions, and the same would be the case in respect of damage suffered in a P-State, but caused by an incident in a V-State. Such a solution does not, however, seem advisable. The operator who has taken out insurance to cover his liability under both Conventions should not run the risk of being held liable outside the Convention for damage suffered in a P or V-State only because the incident has occurred in a State which is not a Party to the same Convention as the State where the damage is suffered. So it has been proposed to cover also such damage under the special régime of the Danish Act. In the case of an incident in a V-State causing damage in a P-State this can only be obtained by allowing the claims to be brought before Danish courts and so establishing two jurisdictions, one according to V, Article 11 (1) in the V-State for damage suffered in V-States or on the high seas, and another for damage suffered in the P-State. So, in Section 41 (1)(b)(iii) of the Danish draft 1 there is a provision according to which actions for such damage may be brought before Danish courts. It is foreseen that in this case the courts of the V-State could hold the operator liable to pay compensation up to the full amount of the liability established according to the Convention. The claims brought before Danish courts could therefore bring his liability above the amount for which he has had to take out insurance. In order to cover the operator in this case Section 39 of draft 1 provides that the compensation for which he has been held liable above the amount established in conformity with the draft Act according to the provisions of the Conventions shall be paid by the State. In the opposite case, where an incident in a P-State causes damage in a V-State, it might in accordance with P, Article 2, be directed that the courts of the P-State should deal with actions for damage suffered in the V-State. It has, however, been found preferable to deal with this problem in the same way as the problem mentioned above, and so it is proposed that Denmark take over jurisdiction also in this case /Section 41 (1)(b)(iii)/. The provisions of Section 39 will also apply. As Section 11 has been drafted it has not been necessary to make any special provision stating that the cases mentioned are covered by the draft Act.

10. A special problem arises where the two Conventions lead to different jurisdiction. That will e.g. be the case where a nuclear incident occurs partly in a P-State and partly in a V-State. P, Article 13 (a) and (c)(i), will lead to jurisdiction in the P-State, whilst V, Article XI, 1 and 3 (a) will lead to jurisdiction in the V-State. Nothing can be done about this, but Section 39 of the Danish draft 1 will apply, if the operator is held liable for an amount greater than that established for his liability.

If an incident occurs partly in a V-State and partly on the high seas, and the nuclear installation whose operator is liable, is situated in Denmark, V will lead to jurisdiction in the V-State for damage suffered in that State, other V-States or on the high seas. Damage suffered in P-States will not be covered under this jurisdiction. On the other hand, P will lead to jurisdiction in Denmark for damage suffered in a P-State or on the high seas. A similar situation will arise where the incident occurs partly in a P-State, partly on the high seas. It has consequently been found necessary to have a special provision about jurisdiction in Denmark in these very rare cases, Section 41 (b)(iv). In these cases, too, the double jurisdiction may lead to the result that the operator is held liable for a greater amount than provided according to the Conventions. A State intervention in favour of the operator has therefore also been foreseen in these cases in section 39 of the draft.

Rights of Subrogation

11. Another difficulty arises from the fact that P, Article 6 (d), provides for a right of subrogation against the operator liable in the rights of the victim for any person who has paid compensation to the victim for nuclear damage under an international agreement or under the legislation of a non-Contracting State, whilst V, Article IX, 2 (a), only provides for such right in favour of a national of a Contracting Party to V. It is a consequence of the ratification of P that a right of subrogation must be upheld irrespective of the nationality of the person who has paid compensation. A provision to that effect is contained in Section 23 (1), first half, of the Danish draft.

It seems very doubtful whether there is a real conflict between P and V in this respect. If the right of subrogation does not necessitate a reduction of the compensation due under V no difficulty should arise. But even if so it seems very doubtful that V should be interpreted as excluding the right of subrogation. In Danish law it has for a long time been assumed that a person paying compensation under conditions similar to those mentioned in the Conventions has a right to be subrogated in the claim which the person compensated had against the person liable, quite irrespective of his nationality. It is not easy to be seen that the ratification of V should deprive such person of a right of subrogation which he would have had under common law. Moreover, other victims cannot justly complain. If the victim had made his claim directly against the operator liable, the operator would have had to pay, and he would have had no right of recourse against the person who was liable under the conditions mentioned in V, Article IX, 2 (a). Why should the other victims be better off, when the victim has preferred to make his claim against another person than the operator, and why should the operator and insurer profit from this fact?

In order to assure that the rights of subrogation against Danish operators may always be brought before a competent court, Section 41 (1)(b)(v) provides that where the incident occurs in a V-State and the claim is made by a person who is not a national of such State, jurisdiction over such claims shall lie with Danish courts. If the incident occurs in a P-State, the court of that State will have jurisdiction also over such claims according to P, Article 13.

In the very rare cases where Danish courts have jurisdiction over claims for nuclear damage against operators of a V-State it has been found preferable to restrict the possibility of enforcing claims of subrogation to nationals of V-States, see Section 23 (1), second half of draft 1.

12. Article 6 (e) contains a special provision in favour of any person who has his principal place of business in the territory of a Contracting Party or who is a servant of such a person, and who has paid compensation for nuclear damage caused by an incident occurring in a non-Contracting State or suffered in such State. Such person shall have the same right against the operator as mentioned above. V contains no similar provision. It has been necessary, in accordance with P, to include a provision concerning this case in the Danish draft 1, Section 23 (2). It is not likely to happen that the exercise of the rights provided for in this subsection would justifiably give rise to complaint from the Parties to V, especially if it is presumed that V does not deal with any nuclear incident occurring in a State which is not a Party to that Convention. In the very rare cases where a reduction of the compensation to victims who are nationals of a V-State might be necessary solely due to the rights provided for in this subsection, it seems that the Danish State will have to pay the amount lacking.

Transport

13. Finally, a major problem arises concerning the carriage of nuclear substances. The provisions of the two Conventions are almost similarly drafted, but their contents are not the same, because the term "operator" in P means the operator of a nuclear installation operated under the authority of a P-State, whilst under V it means the operator of a nuclear installation operated under the authority of a V-State. Moreover a non-Contracting State in P means a State which is not Party to P, whilst in V it means a State not Party to V.

The conflict arises, because the Conventions do not leave it open to the operators to assume liability for nuclear substances in the course of carriage, if the substances are sent to or from a State not Party to the Convention. In such cases the operator of the installation in the Contracting State must be liable. If the substances are sent from an operator in a State which is a Party to both Conventions to an operator in a State which is only a Party to one of them, it will be in conformity with both Conventions, if the operator first mentioned assumes liability for the substances during the carriage. But he cannot leave the liability to an operator in a P-State without coming in conflict with V, Article II (b)(iv), and he cannot leave the liability to an operator in a V-State without coming into conflict with P, Article 4 (a)(iv). When nuclear substances are sent to him from an operator in a State which is a Party only to one of the Conventions the position will be the same. Possible conflicts will only be avoided if he assumes liability for the substances during their carriage. This solution, however, has some inconveniences. The taking over of the liability may be of some consequence for the Installation State in respect of its obligations according to the Supplementary Convention. Moreover,

the likelihood of practical conflicts will be different taking into account the means of transport and the route of the transport. So, it has not been provided in the Danish draft that Danish operators shall in all events take over liability for carriage of nuclear substances to or from States which are Parties to one Convention only, but it has been left to the Minister to direct in what cases and under what conditions Danish operators shall or may make agreements about the liability during carriage of the substances [draft 1, Section 14 (5)].

14. A conflict may also arise, when nuclear substances are sent from or to a State which is a Party to both Conventions to or from a State which is a Party to only one of them, and a nuclear incident occurs, whilst the nuclear substances are in Danish territory. In such cases Danish courts will have jurisdiction and will have to decide which operator shall be liable. If the contract between the operators establishes liability contrary to one of the Conventions, the problem will be, whether Danish courts shall only take account of the provisions of the contract or shall settle the matter in conformity with the Convention. This very rare problem has been left open by the Danish draft.

15. Where nuclear substances are carried from an installation in a P-State to an installation in a V-State or vice versa the operators of both installations will be liable according to rules of both Conventions. This is expressly stated in draft 1, Section 14 (3).

Supplementary Convention

16. As for the questions raised by the Supplementary Convention the draft has accepted the system mentioned in Article 3 (c)(ii) of that Convention. So the maximum liability of the operator is not raised above the amount established according to P, and accordingly V, Article XIII, should not give rise to any concern in this context.

17. Some other inconsistencies between the Conventions are of minor interest and have not been mentioned here. It has not been deemed possible to overcome the problems arising out of the simultaneous application of the two Conventions by transforming their texts, as they stand, into national legislation. In the view of the Scandinavian countries it has been found necessary to work out new legal texts on the basis of the Conventions.

ATOMIC ENERGY LAW FROM 1967 TO 1969
- STATUS AND PROSPECTUS -

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It appeared interesting to publish in the Nuclear Law Bulletin a translation of some of the most notable extracts from an article written by Professor Fischerhof of the University of Frankfurt/Main on the development of nuclear law during the past three years. This article was published in German in the January 1970 issue of the periodical "Atomwirtschaft" which kindly authorized publication of this translation.

INTERNATIONAL LAW

A great deal of time is required for international regulations to mature. Each day that passes provides evidence of this. Hence the following achievement can be considered a success to be credited to joint international effort and co-ordination of legislation. The Paris Convention on third party liability in the field of nuclear energy, drafted under the auspices of the OECD European Nuclear Energy Agency (ENEA), came into force on 1st April 1968 after its fifth ratification by a Signatory country, namely Sweden (coming after Belgium, France, the United Kingdom and Spain).

Turkey's instrument of ratification of the 1964 Supplementary Protocol was deposited on 5th April 1968, so that the Convention, in its 1964 version, is now in force in six European countries**. However, this agreement will become truly meaningful only if it is ratified by the other Signatory and neighbouring European countries. In the Federal Republic of Germany, the Government authorities initially made preparations for ratification, but subsequently this was adjourned, so that it has not yet been decided whether the legislature will adopt the theory of "legal chanelling" (sole liability of the operator of a nuclear installation) or whether on the contrary it will make use of the reservation which would enable it to maintain "economic chanelling", via the insurance cover obtained by the operator of the installation under the Atomic Act now in force.

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* The ideas expressed and the facts given in this article are under the sole responsibility of the author.

** Since this article was written Greece has in turn deposited its instruments of ratification.

On the other hand, the Brussels Supplementary Convention, which made provision for international agreement on compensation for nuclear damage, has still not come into effect. But it must be added that since it was drafted no nuclear incident causing damage to third parties has occurred in nuclear installations. What will be the fate of the Vienna Convention on civil liability for nuclear damage, prepared by the International Atomic Energy Agency (IAEA) and the Brussels Convention on the liability of operators of nuclear ships, remains a matter for conjecture.

The Monaco Symposium organised jointly by the IAEA and ENEA in October 1968 was concerned with problems arising from third party liability and insurance in the field of maritime carriage of nuclear substances, of which the most important is that resulting from the conflict between nuclear and maritime law, particularly in regard to insurance. The Symposium also discussed the problem of the applicability on the high seas of the Paris Convention on third party liability in the field of nuclear energy. Nuclear ships and disposal of radioactive wastes were not dealt with during this meeting.

The operation entitled "radioactive waste disposal into the Atlantic Ocean", which was carried out in 1967 by ENEA and in which the United Kingdom, Germany, the Netherlands, Belgium and France took part, is deserving of mention. Liability for damage was shared between the participating countries and third party liability during carriage was covered by insurance. This operation was repeated in 1969. Following earlier preparatory work by the IAEA, Germany proposed a "minimal" International Convention providing for absolute prohibition against dumping certain types of highly radioactive substances in water and against dumping less radioactive substances at depths of less than 2,000 metres. In addition such dumping would be restricted to certain specified sea areas. Prohibited zones would be defined and declaration and recording of operations would be obligatory.

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NUCLEAR LEGISLATION

In this field, the main feature has been the constant growth of existing atomic law, through an effort to adapt it to technical economic and operational requirements, and also by introducing regulations in certain countries where none existed.

European Countries

Sweden has passed a new Act on third party liability in the field of nuclear energy (8th March 1968). On the other hand, in Norway, the Atomic Energy Bill had still not become law. In 1968 a Council for Nuclear Ship Propulsion was set up in Norway.

In the United Kingdom, the Nuclear Installations Act of 1965 was finally brought into line with the Paris Convention on nuclear third party liability by means of an Act dated 16th May 1969. In 1968, new ionizing radiation regulations were brought into force for unsealed radioactive substances, and in 1969, for sealed sources, in accordance with the recommendations of the International Commission on Radiological Protection (ICRP).

By Royal Decree of 11th September 1968, the Netherlands extended the third party liability provided for under the Act on Nuclear Third Party Liability of 1965 to damage caused in adjoining States, namely Belgium, Luxembourg and Germany. (Germany, Luxembourg and the Netherlands have not so far ratified the Paris Convention on third party liability in the field of nuclear energy.) The provisions of the above Decree were incorporated into the Act in 1969. Also in 1969, the long awaited implementing orders under the Netherlands Atomic Energy Act of 1963 were published.

In Luxembourg, a Decree on radiation protection was issued on 8th February 1967, pursuant to the Act on Radiation Protection (1963). The scope of this Decree is extremely wide.

In Switzerland, work has begun on revision of the Atomic Act and of the Order concerning radiation protection. Detailed measures were adopted in this field in the form of an Order on radiation protection in research institutes (12th September 1969) and a Decree on radiation protection standards for radioluminous timepieces (18th April 1968).

In Austria, a Bill on radiation protection which had been under discussion in Parliament for some years became law on 11th June 1969. A new Bill on electricity development provides tax advantages for the first Austrian atomic power station now being planned.

In Italy, Bills for reorganising the "Comitato Nazionale per l'Energia Nucleare" (CNEN) have been introduced on more than one occasion (1967 and 1968). One of these bills provides for transformation of the CNEN into an independent national undertaking which would operate not only in the field of research and development but also in the industrial field (with staff Commission participation)*.

In Spain, in implementation of the Atomic Act of 1964, a "Reglamento sobre la Cobertura de Riesgos Nucleares" is contained in a Decree dated 22nd July 1967 which covers third party insurance and State intervention in accordance with the Paris Convention.

In Portugal, new organisations have been set up under the "Junta de Energia Nuclear" for the purpose of developing studies and projects: in particular, a Directorate-General for nuclear fuels and industrial reactors, and also companies formed under private law for mining uranium and for building and operating nuclear power stations. By a Decree-Law dated 24th November 1969 the powers and duties of the State have been re-defined.

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* On 27th October 1969 there was set up in Rome an Italian centre for the study of legislation concerning nuclear energy (CISDEN).

In Greece, under the 1968 Act, the respective powers and duties of the Greek Atomic Energy Commission and the Greek Government in the field of atomic energy have been the subject of fresh regulation.

Turkey issued in 1967 an Ordinance on radiation protection. France, at the same time as it published the Paris Convention on 11th February 1969, brought into force the Act on liability in the field of nuclear energy of 30th October 1968 containing supplementary provisions, e.g. a basic rule in regard to legal presumptions as to liability in the case of damage caused by radiation. Radiation protection regulations are contained in a Decree dated 15th March 1967 concerning in particular radiation emitted by low-activity sources or by particle accelerators rated at less than 300 MeV. A Decree of 10th November 1969 making it necessary for foreign nuclear ships to obtain prior approval has also been published. (Liability in respect of French nuclear ships is already dealt with by the Act of 12th November 1965.)

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Federal Republic of Germany

It is impossible to give here a complete picture of the development of legislation in Germany. After Bills had been prepared on two occasions, first in 1967 and again in a modified version in 1968, for the purpose of ratifying the Paris Convention and adapting the Atomic Act accordingly, major amendment of the Atomic Act was postponed by reason of the fact that the Signatories to the Paris Convention had not reached agreement on the problem of excluding small quantities of nuclear substances. Accordingly, minor amendments were announced on 28th August 1969 for harmonizing the provisions regarding transport hazards with the principles of the Paris Convention, and bringing plants for the processing of nuclear fuels (in particular those concerned with fabrication of fuel elements) under the same régime as reactors and other nuclear installations. These amendments also call for others concerning the Ordinance on nuclear installations and the provision of financial cover, for which, however, no draft has yet been prepared. The liability of the Bund in regard to compensation has been extended to include those installations to be authorized before 31st December 1980 (previously 1970) and which have commenced operating before that date. In addition, the approval procedure for atomic installations has been partly amended by the introduction of a power to grant site authorization. The licensing procedure, which is extremely lengthy, is to be progressively simplified and speeded up henceforward through use of standard forms of authorization.

Other minor amendments have been made to the Atomic Act when reforming the Penal Code and the Act on Administrative Offences, together with the Act of 22nd July 1969 on adoption of the OECD radiation protection standards for radioluminous timepieces. As regards legislation on radiation protection, note should be taken of a new version (8th August 1967) of the Ordinance on the authorization of medicaments subjected to ionizing radiations or containing radioactive substances; this new version authorizes sterilization of certain medicaments by exposure to ionizing radiations, in particular surgical supplies for sutures and bandages, and facilitates the supply of radioactive preparations to members of the medical profession. The Ordinance of 1959 on exposure of foodstuffs to radiation already prohibited the treatment of wine by ionizing radiations, and the Act of 16th July 1969 on wine-making contains

a formal prohibition of this practice. Importation of foodstuffs and wines thus treated is also prohibited, but as yet no practical method has been found for detecting such exposure to radiation, except as regards containers which may have become contaminated. The publication has also been announced of an Ordinance on drinking water (drafted in 1967) and a new Ordinance on X-rays (drafted in 1969). For reasons of constitutional law, the Ordinance on costs will take the form of an Act.

Under the Act of 15th August 1967, the application of provisions of a penal nature and of those relating to protection, but not the provisions concerning liability, contained in the Act on water utilization have been extended to cover territorial waters in order to meet the ever-growing need for the protection of water. The problem of thermal pollution, i.e. heating of water courses due to the presence of atomic power stations, has attracted the attention of the competent authorities in Germany as elsewhere, and German and Swiss projects affecting the upper reaches of the Rhine have led to contacts between the two countries but not yet to any institutionalised co-operation.

Viewed in general terms, it can be seen that legislation in Germany has required a great deal of time, due partly to the cumbersome legislative procedure.

United States

In the United States as well, atomic legislation nowadays requires considerable time. It should be remembered in this connection that it is a country in which a great number of suggestions and ideas are put forward. Moreover a great deal of minor legislation is contained in the Regulations of the Atomic Energy Commission which, however, cannot come into force before hearings have been held or the time-limit for objections has expired. Both technological progress and protection problems provide a constant stimulus. In 1968 the "Radiation Control for Health and Safety Act" (Public Law 90,206) was enacted, and implementing measures under this Act are due to be brought into effect by 1st January 1970. These will lay down standards for protecting the population and workers against equipment emitting radiations, from particle accelerators to television sets.

The problem of exposure of foodstuffs to ionizing radiations remains a controversial one. The Food and Drug Administration authorized flour contained in paper bags and intended for consumption by the Army to be exposed to such radiations, but has forbidden further distribution on a trial basis of hams preserved by means of gamma-rays (Canada, the Soviet Union, and under an Ordinance of 13th July 1967, Israel, have also to some extent authorised the preserving of foodstuffs by ionizing radiations, but subject to restrictions).

The Ministry of Labour in 1967 laid down new values for the maximum permissible doses ("working level months": WLM) in uranium mines.

Bills amending the Atomic Energy Act of 1954 provide for a strengthening of the general provisions and for giving the AEC power to inflict administrative penalities under regulations. Amendments to the 1954 Act are also concerned with new regulations on the "practical value" of a reactor for industrial and commercial purposes, under the licensing procedure contained in Section 103. This procedure takes into account

the provisions of anti-trust legislation in connection with the approval of atomic power stations, by linking such approval procedure with the necessary authorizations in connection with the use of water as a coolant and other conditions imposed for water protection (1969 Act, New York State) and protection of the environment.

Other amending Bills are concerned with the extension of the Price Anderson Amendment to cover for hazards connected with transport of nuclear substances on the high seas, unifying transport regulations, conversion of uranium enrichment plants into private undertakings and, from the viewpoint of the non-proliferation Treaty, regulations on the conditions in which the AEC may be authorized to offer its services abroad as well, in connection with nuclear explosions for peaceful uses.

Among the AEC Regulations, the most noteworthy are those for facilitating reactor building (licensing for foundation work preceding the agreement for the reactor itself; site licensing): see the Federal Register of 19th February 1969, page 2357. Certain States have entered into agreements with the AEC regarding the sharing of jurisdiction in the field of atomic energy and seventeen States have set up a "Southern Interstate Nuclear Board".

As regards international co-operation, the Act signed by the President on 14th December 1967 amending the Euratom Co-operation Act, whereby the maximum quantities of enriched uranium and plutonium which the AEC is authorized to deliver to Euratom were increased, is of great importance. The Euratom Co-operation Act is one of the main foundations for the supply of enriched uranium and plutonium to the countries of the European Communities.

Other Non-European Countries

Nuclear law and radiation protection legislation have also progressed in other countries, but only the general lines can be given here. However, mention must be made of the Atomic Energy Act of 1967 of the South African Republic, which re-enacts in an amended form the Act of 1948 and also partially amends the Atomic Energy and Nuclear Installations (Licensing and Security) Amendment Act of 1965. A Proclamation of 4th October 1968 contains new regulations regarding the handling of radionuclides, including provisions concerning radiation protection. However, no obligation to provide third party cover is imposed.

Australia has laid down provisional regulations for the carriage by sea of radioactive substances.

In Japan, an Act of 1967 extended the powers and duties of the Nuclear Fuel Corporation and changed its name to the Power Reactor and Nuclear Fuel Development Corporation.

In addition, many countries have adopted administrative measures to promote the development of nuclear energy.

INSURANCE

Nuclear insurance has in general developed smoothly. This is particularly true of insurance of nuclear installations, (third party and property insurance). For this type of cover, insurance pools have been formed in many countries and, latterly, increasing use has been made of re-insurance. Much remains to be done in the field of unified nuclear law, and no final solution has yet been found to the problems surrounding nuclear marine insurance, in spite of the recommendations put forward as a result of the Monaco Symposium (1968).

In Germany, the postponement of ratification of the Paris Convention on third party liability had the effect of slowing down development of insurance law. The general conditions governing third party liability insurance of nuclear installations have not been given their final form; however, in practice, business has been transacted with the agreement of the Insurance Supervisory Committee and the Atomic Energy Authorities using a standard form worked out by the Insurance Administration, so that delay in ratification has not had a negative effect from the viewpoint of insurance administration. Should ratification take place, both insurers and operators would support maintenance of "economic channelling" of liability. Since 1st January 1967, the German pool, "Deutsche Kernreaktor - Versicherungs Gemeinschaft" (DKVG), can give cover for power reactors only under reinsurance contracts. Third party insurance for the nuclear ship "Otto Hahn" gave fresh impetus to the insurance of nuclear installations.

Plans for large nuclear power stations (from 600 to 1,100 MW) involve new problems for insurers as they represent an insurance risk of at least 400 million DM. This will necessitate considerable reinsurance with foreign pools. The question of financial capacity also determines how the hazard to be covered by the pool is defined. The possibility of having recourse to foreign markets enables insurers to spread the risk to better advantage. The DKVG has taken a larger share than before in the American Nuclear Insurance Pool and intends in the future to undertake further underwriting so that this market may also be opened to European reinsurers. The right to set up a tax-free reserve for the insurance of nuclear installations, which had been authorized for five years, was extended until 1972 inclusively. Within the OECD, agreement has not yet been reached on implementation of the Council Recommendation of 1962 concerning "technical reserves". Conventional-type damage and nuclear damage have occurred in a great number of atomic installations throughout the world. On the other hand there is no known case of third party liability in respect of damage occurring in nuclear installations and there have been very few cases caused by the use of isotopes.

At the time of the incident caused by a reactor in an experimental power station (7.5 MWe) at Lucens in Switzerland, there was no insurance cover for damage to property but only third party insurance. Final assessment of the damage is not yet completed (up till now no third party claim has been reported).

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LEGAL PROCEEDINGS

Legal proceedings in the field of atomic energy form a chapter apart, which we can only deal with briefly here. Generally speaking, public confidence in the safety of reactors seems to have been won. In Germany, which is acknowledged to be the country offering the widest scope for legal action in regard to nuclear energy (the 1969 amendments to the Atomic Act have made a slight attempt at restricting such actions), a few people who were opposed in principle to the use of nuclear energy for peaceful purposes have instituted proceedings in the administrative courts against authorizations granted for nuclear reactors by the atomic energy authorities; the Federal Administrative Court has had to deal with one such case, and in another an appeal is still pending. All such complaints, as also applications for an injunction to stop building, have so far been dismissed by the courts as groundless. In Austria and Switzerland as well, people opposed to the very principle of the use of nuclear energy have made their voices heard.

In the United States, among other countries, the legality of permission granted to build an atomic power station on the East coast was impugned because this power station was within reach of missile launching sites in Cuba and thus constituted a danger for the population. The Circuit Court of Appeals for the District of Columbia (a Federal Court) held on 6th August 1968 that the authorities responsible for licensing an Atomic Power Station were not bound to take into consideration the possibility of any future enemy action. In its decision the Court stated that in considering what conditions to impose, no account should be taken of enemy action: the AEC was convinced that the introduction of such an obligation would completely stifle the peaceful use of atomic energy in the United States. Such a view does not seem to conflict with the objectives defined in the Atomic Energy Act by Congress and would not seem to exceed the scope of the powers conferred on the AEC by Congress in order to achieve them. The Court went on to state that the law only required an applicant to take precautions for the safety of a nuclear installation in connection with his own responsibility. To take measures relating to defence against enemy action would indeed be impossible for industry, but might well be the military duty of the State, acting in the general interest.

There have been a few cases of criminal proceedings in respect of infringements of the provisions concerning radiation protection. In 1969 a Belgian Court sentenced the engineer who was responsible for supervising work at the Belgian Centre for the Study of Nuclear Energy at Mol in Belgium to a fine of 2,000 Belgian Francs, suspended for three years, or to one month's imprisonment in default - an apparently light sentence - because he had failed to observe the safety rules, thus causing personal injury (involving amputation of a leg) to one of the staff. In Germany the senior staff of a materials testing institute were acquitted after a chief technician had received a heavy dose of radiation.

In the field of Social Security, a number of disputes have arisen, including two in France. Mrs. Majoni, a member of the staff of the French Atomic Energy Commission (CEA) made a further attempt to have her pension increased on the grounds of negligence of the CEA, after a disability pension and damages had been awarded her in 1966 by the Cour de Cassation because she was suffering from an occupational disease (progressive anaemia) within the meaning of the Decree on occupational diseases. Although contamination was only slight there was a legal presumption that it had been caused during work. The appeal was dismissed

because there was no evidence of negligence on the part of the CEA. The complaint of another member of the CEA staff was also dismissed because he had been unable to prove that he had been exposed to radiation. However, in this case an appeal is still pending.

In 1967, a Bill was introduced in the Italian Senate providing for special regulations to cover compensation for all radiation hazards in the case of persons working with medical radiation-emitting apparatus.

In Germany an action is pending in the "social" Court, in which the Court will be called upon to decide whether fatal leukemia can be deemed an occupational disease resulting from exposure to radiation, even though such exposure fell short of the maximum permissible dose. The tendency, in dealing with accidents, not to require strict proof of the casual relationship between occupational activity or an industrial accident and injury to health has been recognized by the legislature in the new Section 81 of the Act on military pensions (version of 20th February 1967). Under this latter, a pension may be awarded if failure to establish a presumption that an incident has caused injury to health is due solely to the fact that the uncertainty of medical knowledge makes it impossible to establish the real cause of the disease. Compare also Section 1(3) of the Federal Act on pensions (version of 21st February 1964).

The Federal Constitutional Court at Karlsruhe has laid down that limitations on the granting of authorizations for radioactive medicaments are not contrary to the Constitution. It held that since the action of medicaments containing radioactive substances was not yet fully known, limitation of the possibilities of use, so as to allow for further experimentation, was justified. The Administrative Court of Baden-Württemberg ordered immediate cancellation of licenses to transport radioactive substances when it was shown that the holder of the license had committed a breach of the conditions governing authorization.

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FUTURE PROSPECTS

The patchwork image presented above does not claim to provide an exhaustive survey; it needs supplementing by a digest of the many articles written on atomic law, and moreover is not intended to be only a review of the past but also to show the problems that are permanent, and the constant efforts being devoted to their solution. Thus from this survey can be deduced the areas likely to be of main concern to nuclear law in the years to come: the pursuit of reasonable harmonization of laws, particularly in Europe but also on the American continent; establishment of unified legislation in developing countries; strengthening of co-operation within international organisations; introduction of international regulations on nuclear ships and on dumping of atomic waste in the sea; relationship between mining law (ores) and nuclear laws; protection of national and international waters from pollution due to operation of nuclear installations and storage of wastes; development and amendment of radiation protection laws, improvement of social security legislation governing cases of injury to health following exposure to radiation.

Nuclear law will have to meet important responsibilities following entry into force of the non-proliferation Treaty; interpretation and application of the Treaty, agreements between Euratom and IAEA regarding security control, surveillance of nuclear explosions for peaceful uses. Finally, the technological and material achievements of the 1970's will provide new legal problems to be solved at national and international level in relation to human welfare. Nuclear law must continue to be the prototype of legal systems of protection from the dangers of modern technology.

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SUPPLEMENT TO N° 6

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D E N M A R K

NUCLEAR INSTALLATIONS (ATOMIC PLANTS) DRAFT BILL 1(*)

As indicated by Judge Spleth in his article, which is reproduced in the Nuclear Law Bulletin No. 6, two draft Bills concerning nuclear installations have been prepared for Denmark. The first, a translation of which is given in this Supplement, presupposes ratification by Denmark of the Paris Convention, the Brussels Supplementary Convention and the Vienna Convention. The second presupposes only the ratification of the Paris Convention and the Brussels Supplementary Convention.

Taking into account the subject of Judge Spleth's article, it seemed preferable to reproduce, in extenso, draft Bill No. 1; however, in order to allow for easy reference, drafting differences between it and draft Bill No. 2 are underlined in the text and explained in a footnote.

CHAPTER I

Definitions, etc.

Section 1

For the purposes of this Act:

(a) "Nuclear fuel" means fissionable material in the form of uranium metal, alloy, or chemical compound, and such other fissionable material as the Minister of Education may determine;

(b) "radioactive products" means any radioactive material, including waste, produced in, or made radioactive by exposure to the radiation incidental to, the process of producing or utilizing nuclear fuel, but does not include material mentioned in paragraph (a) of this Section;

(c) "nuclear substances" means -

(i) nuclear fuel other than natural uranium and other than depleted uranium;

(ii) radioactive products other than radioisotopes produced for and having reached the final stage of fabrication so as to be usable for any industrial, commercial, agricultural, medical or scientific purpose;

(*) Translated into English under the responsibility of the Danish Ministry of Justice.

(d) "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;

(e) "nuclear installation" or "installation" means -

(i) any nuclear reactor;

(ii) any factory for the production or processing of nuclear substances;

(iii) any factory for the separation of isotopes of nuclear fuel;

(iv) any factory for the reprocessing of irradiated nuclear fuel;

(v) any facility for the storage of nuclear substances other than storage incidental to the carriage of such substances; and

(vi) such other installations in which there are nuclear fuel or radioactive products, as the Minister of Education may determine;

(f) "Installation State", in relation to a nuclear installation, means the Contracting State within whose territory that installation is situated or, if it is not situated within the territory of any State, the Contracting State by which or under the authority of which the installation is operated;

(g) "operator", in relation to a nuclear installation, means -

(i) as concerns installations in this country,[1] the person recognized by the Minister of Education as the operator of that installation or, in the absence of such recognition, the person who operates the installation;

(ii) as concerns installations outside this country, the person responsible for the installation under the legislation of the Installation State;

(h) "nuclear damage" means -

(i) any damage caused by radioactive properties or a combination of radioactive properties with toxic, explosive or other hazardous properties of nuclear fuel or radioactive products in a nuclear installation or of nuclear substances coming from, originating in, or sent to, a nuclear installation;

(ii) any damage caused by any other ionizing radiation emitted by any source of radiation inside a nuclear installation;

(i) "nuclear incident" or "incident" means any occurrence or series of occurrences having the same origin which causes nuclear damage;

(j) "the Paris Convention" means the Convention on Third Party Liability in the Field of Nuclear Energy concluded in Paris on 29th July 1960, as amended by Additional Protocol of 28th January 1964;

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(1) In this text the expression "...this country" means Denmark.

(k) "the Vienna Convention" means the Convention on Civil Liability for Nuclear Damage concluded in Vienna on 21st May 1963;(1)(2)

(l) "the Supplementary Convention" means the Convention Supplementary to the Paris Convention and concluded in Brussels on 31st January 1963, as amended by Additional Protocol of 28th January 1964;

(m) "Contracting State" means a State which is a Party to the Paris and Vienna Conventions or to either of them;(3)

(n) "units of account" means units of account in accordance with the European Monetary Agreement of 5th August 1955 as defined on 29th July 1960.

Section 2

The Minister of Education may, if in his view the small extent of the risks involved so warrants, exclude, wholly or partly, any nuclear installation, nuclear fuel or radioactive products from the provisions of this Act: Provided that, as concerns the liability of the operator of a nuclear installation situated within the territory of any other Contracting State, the extent of such exclusion shall be determined by the legislation of the Installation State.(1)

Section 3

The Minister of Education may direct that several of the installations set out in Section 1(e) of this Act which are located at the same site and belong to the same undertaking shall be regarded as a single nuclear installation.

CHAPTER II

Nuclear Installations and Nuclear-propelled Means of Transport

The right to operate nuclear installations

Section 4

(1) The construction and operation of a nuclear installation shall be subject to the recognition of the Minister of Education.

(2) Recognition shall not be granted, where this is deemed inadvisable for reasons of safety or other essential public interests.

Section 5

(1) The recognition shall state the name of the operator liable under Chapter III of this Act. It may be granted for a specified period and shall be subject to the condition that the operator takes out and maintains such insurance as referred to in Section 30 or provides other financial security in accordance with Section 33 of this Act.

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(1) Omitted in draft 2.

(2) Subparagraphs (l), (m) and (n) of draft 1 are respectively numbered (k), (l) and (m) in draft 2.

(3) Draft 2: "to the Paris Convention".

(2) The recognition shall be granted on such conditions as are deemed necessary for reasons of safety and other essential public interests.

(3) As a condition for recognition it may be required that, in the event of discontinuation of the undertaking, such measures are taken as are necessary in the opinion of the Minister of Education with a view to ensuring that the installation, after cessation of the operation, presents no risk to public safety, and that insurance or other financial security to cover the liability of the operator under Chapter III of this Act is maintained so long as this is deemed necessary.

(4) Conditions may be changed and new conditions may be imposed, if required for reasons of safety or other essential public interests.

Section 6

A recognition may be revoked -

(a) if essential prerequisites for the recognition prove not to have been present;

(b) in the case of serious or repeated disregard of any of the conditions imposed; or

(c) if considerations of safety or any other cogent reason require the discontinuation or closing-down of the installation.

Section 7

(1) The installation shall be liable to inspection on the part of the Atomic Energy Commission and the National Health Board both during its construction and operation.

(2) The said authorities shall have access to the installation at any time and may demand any information relevant to the exercise of inspection. They may give such orders as are necessary to ensure observance of the conditions imposed for the recognition of the installation or otherwise deemed necessary for reasons of safety; in urgent cases they may also, for reasons of safety, require the use of the installation to be suspended for a specified period of time.

(3) Regulations governing the inspection shall be made by the Minister of Education.

Control of the peaceful utilization of nuclear installations, etc.

Section 8

Where international agreements prescribe control of nuclear installations, etc. in order to ensure that they are used only for peaceful purposes, the Minister of Education may make the regulations needed for that purpose, inter alia, to the effect that the persons exercising the control provided for in the agreements shall have access to the installations in order to carry out the necessary inspection.

Nuclear-propelled means of transport

Section 9

The Minister of Education may make regulations on the existence and use of nuclear-propelled means of transport within Danish territory, including regulations on the navigation in Danish waters of nuclear-propelled vessels and their access to Danish ports, and on the rules governing compensation for any damage caused by a nuclear incident.

CHAPTER III

Compensation and Insurance

Scope

Section 10

The provisions of this Chapter shall not cover liability for any reactor that is used as a source of power in a vessel or any other means of transport.

Section 11

(1) No person suffering damage shall be able to claim compensation for nuclear damage from the operator of a nuclear installation in this country under the provisions of this Chapter or corresponding provisions of any other Contracting State, if the damage is caused by an incident occurring in a State which is a Party neither to the Paris Convention nor to the Vienna Convention.(1) The same shall apply to any nuclear damage that is suffered in such a State, unless the damage was caused by an incident having occurred in this country. As concerns the liability of the operator of an installation situated in the territory of any other Contracting State, the provisions laid down in that State on the territorial extent of his liability shall apply.

(2) Where the legal provisions of a State which is not a Party to any of the Conventions(2) provide for no compensation, or less compensation than under Danish law, for nuclear damage occurring in this country, the Minister of Justice may direct that corresponding rules shall apply to compensation for nuclear damage occurring in that State.

Section 12

The Minister of Justice may direct that, for the purposes of this Chapter, a State which is not a Party to any of the Conventions(2) shall be assimilated to a Contracting State.

Operator's liability for any incident occurring in an installation

Section 13

Any nuclear damage caused by an incident occurring in an installation shall be compensated by the operator of that installation:

(1) Draft 2: "....which is not a Party to the Paris Convention".

(2) Draft 2: "....to the Paris Convention".

Provided that this shall not apply if the damage is solely due to nuclear substances stored in the installation incidental to their carriage to or from a nuclear installation situated in the territory of a Contracting State.

Incidents occurring in the course of carriage

Section 14

(1) Subject to the provisions of Section 11 of this Act, any nuclear damage caused by an incident occurring in the course of carriage of nuclear substances from an installation situated in this country or in the territory of any other Contracting State shall be compensated by the operator of that installation.

(2) In the case of carriage between installations situated in the territory of the same Contracting State or in States being Parties to the same Convention(1) the liability shall lie with the consignee operator -

(a) where he has made a contract in writing about assumption of the liability and the incident occurs after the time stipulated for transfer of liability;

(b) in other cases, where the incident occurs after he has taken charge of the substances.

(3) In the case of carriage between installations situated in the territories of Contracting States which are not Parties to the same Convention, both operators shall be liable in accordance with the rules of liability of the Convention.(2)

(4) In the course of carriage of nuclear substances intended to be used in a nuclear reactor that is used as a source of power in a vessel or any other means of transport, the liability of the consignor operator shall end when the person who is duly authorized to operate the reactor of the means of transport has taken charge of the substances.

(5) The Minister of Justice may direct in what cases and on what conditions operators of installations in this country shall or may make such an agreement about the liability as referred to in subsection (2) of this Section.

Section 15

(1) Where nuclear substances are sent from a State which is a Party neither to the Paris Convention nor to the Vienna Convention(3) to an installation situated in this country or in the territory of any other Contracting State with the written consent of the operator of that installation, the latter shall, subject to the provisions of Section 11 of this Act, compensate any nuclear damage caused by an incident occurring in the course of the carriage.

(1) Draft 2: ".... to an installation situated in this country or in the territory of any other Contracting State.....".

(2) Omitted in draft 2.

(3) Draft 2: ".... which is not a Party to the Paris Convention....".

(2) Where nuclear substances are sent from the operator of a nuclear reactor that is used as a source of power in a vessel or any other means of transport to an installation situated in this country or in the territory of any other Contracting State, the consignee operator shall be liable as provided in subsection (1) of this Section as from the time when he took charge of the substances.

(3) Any nuclear damage caused by an incident occurring in the course of carriage of nuclear substances through Denmark that is not covered by the provisions of Section 14 of this Act or subsections (1) and (2) of this Section shall be compensated by the person who has obtained a licence for the carriage under the Use of Radioactive Substances Act, 1953. For the purposes of this Chapter, the licensee shall be regarded as the operator of a nuclear installation in this country.

Section 16

The provisions of Sections 14 and 15 of this Act on liability for nuclear damage caused by an incident occurring in the course of carriage of nuclear substances shall apply also to any incident occurring during storage of the substances incidental to their carriage.

Other incidents occurring outside an installation

Section 17

Where in cases other than those governed by Sections 13 to 16 of this Act nuclear damage has been caused by nuclear substances coming from or originating in an installation situated in this country or in the territory of any other Contracting State, or which prior to the incident had been in the course of carriage as referred to in Section 15 of this Act, the liability shall lie with the operator who at the time of the incident had the substances in his charge or, in case the substances at that time were not in the charge of any operator, the operator who last had them in his charge before the incident: Provided that, where the substances had been in the course of carriage before the incident, and they had not come into the charge of another operator after the interruption of the carriage, the liability shall lie with the operator who at the time of interruption of the carriage was liable under the provisions of Sections 14 and 15 of this Act for nuclear damage caused by an incident occurring in the course of carriage.

Assumption of operator's liability

Section 18

On request by a carrier who performs carriage as referred to in Sections 14 and 15 of this Act the Minister of Justice may permit that, in place of the operator of an installation in this country, the carrier shall be liable for any nuclear damage caused by an incident occurring in the course of such carriage. Such permission may be granted only with the consent of the operator and if the applicant has shown that insurance has been taken out in accordance with Section 30 or other financial security has been furnished in pursuance of Section 33 of this Act. Where permission has been granted, the provisions on the liability of the operator shall instead apply to the carrier. This shall apply also where the liability of an operator under corresponding legislation of any other Contracting State has been transferred to a person other than the operator.

Basis of liability

Section 19

(1) The operator of a nuclear installation shall be liable under the provisions of this Chapter, even if the damage is fortuitous.(1)

(2) No operator of an installation in this country shall be liable under those provisions if the nuclear incident is directly due to an act of armed conflict, hostilities, civil war, insurrection or a grave natural disaster of an exceptional character. As concerns operators of installations situated in the territory of any other Contracting State, the rules laid down by the Installation State shall apply. The provision of the first sentence of this subsection shall apply in like manner to the extent indicated in the Paris and Vienna Conventions,(2) where the legislation of any other Contracting State is to apply to the liability of a Danish operator.

Excepted damage

Section 20

(1) The liability of an operator under this Chapter shall not cover any nuclear damage caused to the installation itself or to any property on its site which is sued or intended to be used in connection with that installation.

(2) The liability of operators of installations in this country shall in the cases referred to in Sections 14 and 15 of this Act include also any nuclear damage that is caused to the means of transport upon which the nuclear substances were at the time of the incident. If as a result of the limits of liability under Section 25 of this Act the claims for compensation cannot be fully met, compensation for damage to the means of transport shall be paid only in so far as this may be done without reducing the aggregate of compensation for other damage below a sum equal to five million units of account. Where the liability attaches to the operator of an installation situated in the territory of any other Contracting State the legislation of the Installation State shall determine whether damage to the means of transport shall be covered by the liability of the operator. The provisions of the first and second sentences of this subsection shall apply in like manner where the legislation of any other Contracting State shall apply to the liability of a Danish operator in pursuance of the Paris Convention or the Vienna Convention.(3)

Contributory fault on the part of the person suffering damage

Section 21

In case the person suffering damage has contributed to the damage intentionally or through gross negligence, the operator may be exonerated, wholly or partly, from his liability.(4)

(1) In this translation, "fortuitous" damage is understood to mean "damage which is caused neither by an act or omission done with intent to cause damage, nor by any fault on the part of the operator.

(2) Draft 2: "... in the Paris Convention....".

(3) Omitted in draft 2.

(4) Draft 2: "... from his liability, unless such person has shown only slight negligence".

Claims against persons other than the operator

Section 22

(1) No person other than the operator concerned shall be liable to pay compensation for any nuclear damage covered by the rules of liability of this Chapter or corresponding provisions of any other Contracting State. Where after the death of the operator or the discontinuation of the undertaking the claim cannot be set up against the operator or his estate, it may be advanced against the insurer or the person who has furnished other financial security. Such claim shall not be affected by any advertisement for the creditors of the operator barring claims not lodged within a specified time.

(2) Where the operator is not liable for compensation under the said rules pursuant to the provisions of Section 19(2) or Section 20 of this Act, or corresponding provisions of any other Contracting State, only the individual who has caused the damage intentionally may be required to compensate the damage: Provided that the operator shall be liable under the law of torts for such damage to any means of transport as according to the legislation of the Installation State is not covered by the rules of liability of this Chapter (cf. Section 20(2), third sentence, of this Act).

(3) The provisions of subsections (1) and (2) of this Section shall be without prejudice to any claim for compensation that may be based on an international agreement on damage in the field of transport, provided the agreement was in force or open for signature, ratification or accession on 29th July 1960.

Subrogation to the claims of the person suffering damage against the operator etc.

Section 23

(1) Any person who has had to pay compensation for nuclear damage pursuant to an agreement as referred to in Section 22(3) of this Act or under the legislation of a foreign State shall acquire by subrogation the rights of the person suffering the damage against the operator who is liable for the damage under the provisions of this Chapter: Provided that, in the case of operators of installations in a State which is not a Party to the Paris Convention, the right of subrogation may be enforced only by a State which is a Party to the Vienna Convention, or by any of its constituent sub-divisions or by a national of such State, or a partnership or any public or private body, whether corporate or not, established in the territory of that State.(1)

(1) Omitted in draft 2.

(2) Where by reason of the provisions of Section 11 of this Act the operator is not liable to the person suffering damage for any nuclear damage under the provisions of this Chapter, any person who has had to pay compensation for the damage shall nevertheless acquire such right against the operator as the person suffering damage would but for the provisions of Section 11 have had if -

(a) the compensation was paid by a person who has his principal place of business in a State which is a Party to the Paris Convention or who is the servant of such a person; and

(b) the installation is situated in a State which is a Party to the Paris Convention:

Provided that no such right shall be acquired in the event of carriage of nuclear substances to a consignee in a State which is not a Party to any of the Conventions if the incident occurred after the material was unloaded from the means of transport by which it arrived in the territory of that State. In the case of carriage of nuclear substances from a consignor in a State which is not a Party to any of the Conventions, no such right shall be acquired if the incident occurred before the material was loaded on the means of transport by which it is to be carried from the foreign State (1).

(3) Any claim against the operator under subsections (1) and (2) of this Section shall be barred in so far as the person who advances the claim is himself liable to the operator under Section 28 of this Act.

Nuclear damage in connection with other damage

Section 24

(1) Where nuclear damage covered by the provisions of this Chapter is caused jointly with any other damage and where the nuclear damage and the other damage are not reasonably separable, the provisions on nuclear damage of this Chapter shall apply to the whole of the damage.

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(1) Draft 2: Paragraph (2) reads as follows:

"(2) Where by reason of the provisions of Section 11 of this Act the operator is not liable to the person suffering damage for any nuclear damage under the provisions of this Chapter, any person who has had to pay compensation for the damage and who has his principal place of business within the territory of a Contracting Party or is the servant of a person who satisfies that condition shall acquire the same right against the operator as the person suffering damage would but for Section 11 have had: Provided that no such right shall be acquired in the event of carriage of nuclear substances to a consignee in a State which is not a Party to the Paris Convention if the incident occurred after the material was unloaded from the means of transport by which it arrived in the territory of that State. In the case of carriage of nuclear substances from a consignor in a State which is not a Party to the Paris Convention, no such right shall be acquired if the incident occurred before the material was loaded on the means of transport by which it is to be carried from the foreign State."

(2) Where, however, nuclear damage and damage caused by an emission of ionizing radiation not covered by the rules of liability of this Chapter have been caused jointly, the provision of subsection (1) of this Section shall not affect the liability of any person who under the law of torts is liable for damage caused by such ionizing radiation.

Limits of operator's liability

Section 25

(1) The aggregate liability under the provisions of this Chapter or corresponding provisions of any other Contracting State for nuclear damage caused by any one incident shall for the operator of an installation in this country be limited to 75 million kr.: Provided that in special cases, having regard to the size and type of the installation, the extent of carriage covered by the liability, and any other relevant circumstances, the Minister of Justice may determine some other maximum amount but not less than a sum equal to five million units of account. As concerns installations situated in the territory of any other Contracting State, the limits of liability laid down in the legislation of that State shall apply.

(2) The limits provided for in subsection (1) of this Section shall not include any interest or costs awarded by a court.

Section 26

(1) Where the operators of several installations are liable for the same nuclear damage under the provisions of this Chapter or the legislation of any other Contracting State, the operators shall be jointly and severally liable to the person suffering damage but each operator only within the maximum amount applicable with respect to him in pursuance of Section 25 of this Act. Where the installations are in the same State or in States which are Parties to the same Convention, and (I) where the incident occurs in the course of carriage of nuclear substances 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, the total liability of the operators shall not exceed the highest amount applicable with respect to any of them in pursuance of Section 25 of this Act.

(2) The apportionment of the aggregate liability as between the operators liable shall be determined having regard to the share in the damage of each installation as well as to any other relevant circumstances.

Section 27

(1) Where the nuclear damage caused by a single incident exceeds the sums set out in Sections 25 and 26 of this Act, the compensation and any interest accruing thereto shall, subject to Section 20(2) of this Act, be reduced proportionally.

(2) Where a reduction under subsection (1) of this Section is likely to be required, the Minister of Justice may direct that, until further notice, only a specified fraction of the compensation settled may be paid.

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(1) Omitted in draft 2.

Right of recourse of operator

Section 28

(1) Where a nuclear damage for which the operator of a nuclear installation is liable under the provisions of this Chapter or corresponding provisions of any other Contracting State has been caused by an act or omission done with intent to cause damage, the operator may claim to be indemnified by any individual or individuals who brought about the damage with such intent. Similarly, the operator may claim indemnification if such right is expressly provided by a contract in writing.(1)

(2) Apart from the claims provided for in Section 24(2) and Section 26(2) of this Act, as well as subsection (1) of this Section, the operator shall have no right of recourse against any third party in respect of any sums he may have paid by way of compensation.

Limitation

Section 29

(1) Any claim for compensation from the operator of a nuclear installation pursuant to Sections 13 to 17 and Section 23 of this Act shall be statute-barred under the provisions of the Statute of Limitations of 22nd December 1908, except that the period of limitation shall be three years. As concerns the claims referred to in Section 23 of this Act, the period shall be reckoned from the time when the beneficiary by exercising usual care might have enforced his claim through the taking of legal proceedings against the operator.

(2) Where it is not statute-barred pursuant to the provisions of subsection (1) of this Section, the claim shall be extinguished at the expiry of ten years from the date of the nuclear incident that caused the damage, unless before that time it has been recognized by the operator, or the person suffering damage has taken legal proceedings to enforce it: Provided that, if the damage was caused by nuclear substances that have been stolen, lost or abandoned and have not been recovered at the time of the incident, the limitation shall take effect not later than 20 years after the date of the theft, loss or abandonment.

(3) Where the question as to whether an action shall be brought in this country shall be decided under the provisions of Article 13(c)(ii) of the Paris Convention or Article XI(3)(b) of the Vienna Convention(2), limitation under subsections (1) and (2) of this Section shall not take effect if, before limitation has become effective under the legislation of the Contracting State concerned, a petition is made to the competent public authority of that State for a decision to be taken pursuant to the Convention(3) or, provided no such decision has been taken, an action is brought in any of the States where this may be done in pursuance of the Convention. In these cases, an action shall be brought in this country within the period that shall apply under that Convention.(4)

(1) Omitted in draft 2.

(2) Draft 2: "...decided by the Tribunal referred to in Article 17 of the Paris Convention...."

(3) Draft 2: "...to be taken by the Tribunal....."

(4) Draft 2: "...within such period as may be determined by the Tribunal".

Insurance and security

Section 30

(1) The operator of a nuclear installation in this country shall take out and maintain insurance to cover the liability for nuclear damage which he may incur under this Chapter or under the legislation of any other Contracting State, subject to the limits laid down in Section 25 of this Act.

(2) The insurance shall be approved by the Minister of Justice. The latter may approve insurance that is limited to a particular sum per installation for a specified period, and also separate insurance to cover liability for nuclear damage as a result of incidents occurring in the course of carriage. The Minister may also approve insurance which does not fully comply with the provisions of subsection (1).

Section 31

In the case of termination of the insurance contract without any new insurance taking effect, the insurer shall continue to be liable for any nuclear damage due to an incident occurring within two months after the insurer has informed the Minister of Justice in writing about the termination of the contract: Provided that, where the insurance relates to damage caused during carriage, the liability of the insurer shall continue until the carriage has been completed.

Section 32

The Minister of Justice may make regulations about the types of insurance referred to in Section 30 of this Act.

Section 33

(1) The obligation to insure shall not extend to installations for which the State is liable.

(2) The Minister of Justice may relieve the operator of an installation of the obligation to insure if he provides such security as in the judgment of the Minister is equally adequate.

(3) Where the security is furnished by a person other than the operator, the provisions on insurance of this Act shall apply in like manner.

Compensation payable by the State

Section 34

Subject to the limits laid down in Section 25 of this Act, the State shall pay any compensation for which the operator of a nuclear installation in this country is liable under the provisions of this Chapter or corresponding provisions of any other Contracting State, if it has not been possible to defray the cost of such compensation out of the funds provided by insurance or other financial security on the part of the operator.

Section 35

(1) Any claim for compensation which it has not been possible to satisfy by reason of the limits of liability under Sections 25 and 26 of this Act shall be met by the State where -

(a) the incident did not exclusively take place in a State not Party to the Supplementary Convention;

(b) an action in respect of the claim for compensation may be brought in this country under Section 41 of this Act;(1)

(c) the liability attaches to the operator of a nuclear installation for peaceful purposes that is situated in this country or in any other State Party to the Supplementary Convention and is included in the list referred to in Article 13 of that Convention; and

(d) the damage was suffered -

(i) in this country or in any other State Party to the Supplementary Convention; or

(ii) on or over the high seas on board a vessel or aircraft registered in this country or in any other State Party to the Supplementary Convention; or

(iii) on or over the high seas by a State Party to the Supplementary Convention, or by any of its nationals. Compensation for any damage to vessel or aircraft shall in this case be payable only if, at the time of the incident, the vessel or the aircraft was registered in a State Party to the Supplementary Convention.

(2) A partnership or any public or private body, whether corporate or not, established in the territory of a State Party to the Supplementary Convention and, if so determined by that State, any person domiciled therein shall in the cases referred to in subsection (1)(d)(iii) of this Section be assimilated to nationals of that State. Any person domiciled in Denmark shall be treated as a Danish national.

Section 36

(1) The aggregate of compensation payable in consequence of any one nuclear incident partly by the operator concerned under the provisions of this Chapter and partly by the State under Section 35 of this Act shall not exceed a sum equal to 120 million units of account. If as a result of the incident compensation shall be paid also by virtue of an agreement which a State being a Party to the Supplementary Convention has concluded with some other State pursuant to Article 15 of that Convention, such compensation, too, shall be included in the said maximum amount.

(2) The limit provided for in subsection (1) of this Section shall not include any interest or costs awarded by a court.

(3) Where the claims cannot be satisfied out of the sums set out in subsection (1) of this Section, the provisions of Section 27 of this Act shall apply mutatis mutandis.

Section 37

Compensation pursuant to Sections 34 and 35 of this Act shall not be paid for any nuclear damage due to an incident that occurred under the circumstances referred to in Section 19(2) of this Act.

(1) Draft 2: "...Section 40..."

Section 38

(1) Where a claim for compensation in respect of any nuclear damage caused in this country by an incident for which the operator of an installation in this country is liable has been extinguished in pursuance of Section 29(2) of this Act or a corresponding provision of the legislation of any other Contracting State, the compensation shall be paid by the State. The claim against the State may be set up only if it is admissible that no legal proceedings were taken against the operator prior to the termination of his liability under the said provisions. The claim shall be statute-barred under the provisions of the Statute of Limitations of 22nd December 1908, except that the period of limitation shall be three years, and shall be extinguished not later than 30 years after the date of the nuclear incident that caused the damage. Where other similar claims have been reduced by virtue of Section 27(1) or Section 36(3) of this Act, or corresponding provisions of any other Contracting State, the compensation referred to in this subsection shall be reduced accordingly.

(2) The Minister of Justice may direct that compensation under the provisions of subsection (1) of this Section shall be paid also for damage being caused outside this country.

Section 39

Where in pursuance of this Act and an Act prepared by any other Contracting State in accordance with the Paris Convention and the Vienna Convention, respectively, or such legislation of several Contracting States, the operator of a nuclear installation has been held liable to pay compensation in excess of the highest amount provided for in Section 25 of this Act, the amount in excess shall be paid by the State.(1)

Right of recourse of the State

Section 40

(1) Any amount paid by the State in pursuance of Sections 34-35 or 38-39(2) of this Act or otherwise paid under the provisions of the Supplementary Convention to cover any nuclear damage for which the operator of an installation in this country is liable under the legislation of any other Contracting State may be recovered from the person or persons who have caused the damage by an act or omission done with intent to cause damage.

(2) Any amount paid in pursuance of Section 34 of this Act may further be recovered -

(a) from the person who as insurer or financial guarantor or by express agreement has assumed liability for the damage (cf. Section 28(1)(ii) of this Act);

(b) from an operator who pursuant to Section 26(1) of this Act shares the liability for the damage to the extent to which the liability under Section 26(2) of this Act attaches to him;

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(1) Omitted in draft 2; accordingly, Section 40 of Draft 1 is numbered 39.

(2) Draft 2: "...38...".

(c) from the operator himself if the expense is due to his failure to take out and maintain duly approved insurance or other financial security, or to the fact that the security has proved unsound.

Competence of Danish courts

Section 41

(1) Any action against the operator of a nuclear installation or - in the case referred to in Section 22(1)(ii) of this Act - against insurer or financial guarantor for compensation for nuclear damage under Sections 13 to 17 or Section 23 of this Act may be brought before courts in this country -

(a) if the nuclear incident that caused the damage occurred, wholly or partly, in this country; or

(b) if the claim is set up against the operator of an installation in this country, and either

(i) the incident occurred entirely outside the territory of any Contracting State, or

(ii) the place of the incident cannot be established with certainty, or

(iii) the incident occurred in a State Party only to the Paris Convention or to the Vienna Convention, and the claim relates to compensation for damage in a State Party only to the other Convention, or

(iv) the incident occurred partly in a State Party to but one of the Conventions and partly outside the territory of any State, and the claim relates to damage caused outside the territory of any State or in the territory of a State Party only to the other Convention, or

(v) the incident occurred in a State Party only to the Vienna Convention, and the claim is advanced in pursuance of Section 23(1) of this Act by a person who is not a national of such State.

(2) Where in a case referred to in subsection (1) of this Section it is decided under Article 13(c)(ii) of the Paris Convention or Article XI(3)(b) of the Vienna Convention that an action shall be brought in some other Contracting State, jurisdiction over actions shall no longer lie with the courts of this country.(1)

(1) Draft 2, Section 40(1)(b) and (2) reads as follows:

"(b) if the claim is set up against the operator of an installation in this country and the incident occurred entirely outside the territory of any Contracting State, or the place of the incident cannot be established with certainty.

(2) Where in a case referred to in subsection (1) of this Section it is decided in pursuance of Article 13 of the Paris Convention by the Tribunal referred to in Article 17 of that Convention that an action shall be brought in some other Contracting State, jurisdiction over actions shall no longer lie with the courts of this country."

(3) Any application for a case to be decided under the provisions referred to in subsection (2) of this Section shall be addressed to the Minister of Justice.

Enforcement of foreign judgments

Section 42

(1) Any judgment relating to compensation for nuclear damage entered by a court of a Contracting State in accordance with the rules of jurisdiction of the Paris Convention or the Vienna Convention and satisfying the conditions for recognition laid down in the Convention concerned[1] may, subject to the limits provided for in Section 25 of this Act, be enforced in this country. This provision shall not apply to interim judgments.

(2) Any application for enforcement of a judgment referred to in subsection (1) of this Section shall be accompanied by a certified copy of the judgment and a declaration on the part of the competent public authority of the State concerned to the effect that the judgment relates to claims for compensation in respect of damage covered by the Convention[2] and that it is enforceable under the legislation of that State. It may be required that the copy and the declaration be accompanied by a certified translation into Danish.

(3) In case the bailiff does not feel capable, as matters stand, of turning down an objection based on the Convention concerned[3] he may refer the claimant to ordinary legal proceedings.

(4) The provisions of subsections (1) to (3) of this Section shall apply in like manner to any settlement effected or confirmed before the said courts.

Certificates

Section 43

(1) Where nuclear substances are sent from or to an installation in this country to a consignee or from a consignor in some other State, or[4] where such material is sent through the territory of this country from or to an installation in the territory of another Contracting State, the operator liable shall provide the carrier with a certificate issued by the insurer or the person who has furnished other financial security to cover the liability. The carrier shall not be allowed to carry out the carriage in this country before he has received the certificate, which on demand shall be shown to the competent public authority.

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(1) Draft 2 reads: "...in accordance with Article 13 of the Paris Convention and enforceable under the legislation of that State....".

(2) Draft 2 reads: "...Paris Convention...".

(3) Omitted in draft 2.

(4) Draft 2 reads: "...and...".

(2) The certificate shall state the name and address of the operator liable, indicate the substances and the carriage to which the security applies, as well as the amount, type and duration of the security. The certificate shall also include a statement by the Atomic Energy Commission or, as far as foreign operators are concerned, from the foreign competent public authority that the operator named in the certificate is an operator of a nuclear installation within the meaning of the Paris and Vienna[1] Conventions.

(3) The person issuing the certificate shall be responsible for the correctness of its data concerning the name and address of the operator, as well as the amount, type and duration of the security.

(4) The provisions of subsections (1) to (3) of this Section shall apply in like manner to the carriage of nuclear substances referred to in Section 15(3) of this Act. Regulations may be made by the Minister of Justice on the subject.

(5) The Minister of Justice may make regulations about the form of the certificate.

CHAPTER IV

Relations to Other Legislation; Penalty Provisions; Final Provisions

Section 44

Any person who is employed at a nuclear installation and covered by an industrial injuries insurance taken out by the responsible operator under the Industrial Injuries Act shall be entitled to compensation under this Act only in so far as his loss is not covered by the insurance. Notwithstanding the provision of Section 4 of the Industrial Injuries Act, the insurance company shall have no right of recourse against the operator for any benefit paid by the company to such persons.

Section 45

The provisions of the national health legislation, including the Use of Radioactive Substances Act, and of the legislation on occupational health, safety and welfare shall not be affected by the provisions of this Act.

Section 46

(1) Any person who -

(a) constructs or operates a nuclear installation without recognition;

(b) fails to comply with any condition prescribed for the recognition;

(c) makes untrue or misleading statements to be used in the consideration of questions concerning recognition or relaxation of any condition prescribed for the recognition, or who in connection with an application for such recognition or relaxation fails to disclose any fact relevant to the determination of the question; or

[1] Omitted in draft 2.

(d) makes untrue or misleading statements to the public inspection authorities;

shall be liable to a fine, simple detention or imprisonment for any term not exceeding two years.

(2) If any of the offences referred to in subsection (1) of this Section is committed through negligence, the penalty shall be a fine or simple detention.

(3) Any person who fails to comply with a request made in pursuance of Section 7 of this Act by the public inspection authorities, or who violates the provisions of Sections 30 and 43(1)[1] of this Act shall be liable to a fine or simple detention.

(4) Regulations made under this Act may prescribe the penalties of a fine or simple detention for any infringement of the regulations.

(5) A fine may be imposed on the operator of an installation, even if the offence cannot be imputed to him as intentional or negligent. As concerns offences committed by a joint-stock company, a co-operative society or suchlike, a fine may be imposed on the company or society as such. There shall be no alternative penalty for the imposition of fines under the provision of this subsection.

Section 47

The prosecution of any offence referred to in Section 46[2] of this Act shall be treated as a police prosecution. The remedies set out in Chapter 68, 69, 71 and 72 of the Administration of Justice Act shall apply to those cases to the same extent as to cases falling within the competence of the public prosecutor under the general rules.

Section 48

(1) The commencement of this Act shall be determined by the Minister of Justice.

(2) The Nuclear Installations (Atomic Plants) Act, No. 170, of 16th May 1962 shall be abolished.

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(1) Draft 2: "... and 42(1)..."

(2) Draft 2: "...45...".

Note: Draft 2 has a further Section 48 which reads:

"Section 48

This Act shall not extend to the Faroe Islands but may by Royal Order be put into force for the Islands, subject to the modifications required by the special conditions obtaining in that territory.

CANADA

AN ACT RESPECTING CIVIL LIABILITY FOR NUCLEAR DAMAGE

LOI CONCERNANT LA RESPONSABILITE CIVILE EN MATIERE DE DOMMAGES NUCLEAIRES

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Sa Majesté, sur l'avis et du consentement du Sénat et de la Chambre des communes du Canada, décrète:

SHORT TITLE

Short title

1. This Act may be cited as the *Nuclear Liability Act*.

TITRE ABRÉGÉ

Titre abrégé

1. La présente loi peut être citée sous le titre: *Loi sur la responsabilité nucléaire*.

INTERPRETATION

Definitions

2. In this Act,

"Commission"

(*a*) "Commission" means a Nuclear Damage Claims Commission established pursuant to Part II;

"Damage"

(*b*) "damage", in relation to any damage to property within the meaning of section 3, means any loss of or damage to property, whether real or personal or movable or immovable, and, for the purposes of any other provision of this Act, includes any damages arising out of or attributable to any loss of or damage to such property;

"Injury"

(*c*) "injury" means personal injury and includes loss of life;

"Minister"

(*d*) "Minister" means such member of the Queen's Privy Council for Canada as is designated by the Governor in Council to act as the Minister for the purposes of this Act;

"Nuclear incident"

(*e*) "nuclear incident" means an occurrence resulting in injury or damage that

INTERPRÉTATION

Définitions

2. Dans la présente loi,

«Commission»

a) «Commission» désigne une Commission des réparations des dommages nucléaires établie en conformité de la Partie II;

«dommage»

b) «dommage», relativement à tout dommage aux biens au sens où l'entend l'article 3, désigne toute perte de biens, meubles ou immeubles, ou tout dommage à ceux-ci et, aux fins de toute autre disposition de la présente loi, s'entend de tous dommages procédant d'une perte de biens ou d'un dommage aux biens ou qui leur sont attribuables;

«blessure»

c) «blessure» désigne des blessures corporelles faites à une personne et comprend la mort;

«Ministre»

d) «Ministre» désigne le membre du Conseil privé de la Reine pour le Canada que le gouverneur en conseil peut désigner pour remplir la fonction de Ministre aux fins de la présente loi;

«accident nucléaire»

e) «accident nucléaire» signifie un fait entraînant des blessures ou des dommages attribuables à une violation de

is attributable to a breach of the duty imposed upon an operator by this Act;

"Nuclear installation"

(*f*) "nuclear installation" means a structure, establishment or place, or two or more structures, establishments or places at a single location, coming within any following description and designated as a nuclear installation for the purposes of this Act by the Atomic Energy Control Board, namely:

(i) a structure containing nuclear material in such an arrangement that a self-sustaining chain process of nuclear fission can be maintained therein without an additional source of neutrons, including any such structure that forms part of the equipment of a ship, aircraft or other means of transportation;

(ii) a factory or other establishment that processes or reprocesses nuclear material; or

(iii) a place in which nuclear material is stored other than incidentally to the carriage of such material;

"Nuclear material"

(*g*) "nuclear material" means

(*i*) any material (other than thorium or natural or depleted uranium uncontaminated by signficant quantities of fission products) that is capable of releasing energy by a self-sustaining chain process of nuclear fission,

(ii) radioactive material produced in the production or utilisation of material referred to in subparagraph (i), and

(iii) material made radioactive by exposure to radiation consequential upon or incidental to the production or utilization of material referred to in subparagraph (i),

but does not include radioactive isotopes that are not combined, mixed or associated with material referred to in subparagraph (i); and

"Operator"

(*h*) "operator" means the holder of a subsisting licence issued pursuant to the *Atomic Energy Control Act* for the operation of a nuclear installation, or, in relation to any nuclear installation for

l'obligation imposée à un exploitant par la présente loi;

«installation nucléaire»

f) «installation nucléaire» désigne un assemblage, un établissemet ou un lieu, ou deux ou plusieurs assemblages, établissements ou lieux, en un même endroit tombant dans l'une des catégories suivantes et désignées comme installation nucléaire aux fins de la présente loi par la Commission de contrôle de l'énergie nucléaire, savoir

(i) un assemblage contenant une substance nucléaire disposée d'une façon telle qu'une réaction de fission nucléaire en chaîne qui s'entretient d'elle-même puisse y être maintenue sans source supplémentaire de neutrons, notamment tout assemblage de cette sorte qui fait partie de l'équipement d'un navire, d'un aéronef ou d'un autre moyen de transport,

(ii) une usine ou un autre établissement qui transforme ou traite des substances nucléaires, ou

(iii) un lieu où une substance nucléaire est entreposée autrement qu'incidemment au transport de cette substance;

«substance nucléaire»

g) «substance nucléaire» désigne

(i) toute substance (autre que le thorium ou l'uranium naturel ou appauvri non contaminé par des quantités importantes de produits de fission) qui est capable de libérer de l'énergie par une réaction de fission nucléaire en chaîne qui s'entretient d'elle-même,

(ii) les substances radioactives produites au cours de la production ou de l'utilisation de substances mentionnées au sous-alinéa (i), et

(iii) les substances rendues radioactives par l'exposition à la radiation à la suite de la production ou de l'utilisation de substances mentionnées au sous-alinéa (i) ou accessoirement à celles-ci,

mais ne comprend pas les isotopes radioactifs qui ne sont pas combinés, mélangés ou associés à des substances mentionnées au sous-alinéa (i); et

«exploitant»

h) «exploitant» désigne le titulaire d'une licence valide délivrée en conformité de

the operation of which there is no such subsisting licence, the recipient of the licence last issued pursuant to the *Atomic Energy Control Act* for the operation of that nuclear installation.

la *Loi sur le contrôle de l'énergie atomique*, pour l'exploitation d'une installation nucléaire, ou relativement à toute installation nucléaire pour l'exploitation de laquelle il n'y a pas de licence valide semblable, le titulaire de la dernière en date des licences délivrées en conformité de la *Loi sur le contrôle de l'énergie atomique* pour l'exploitation de cette installation nucléaire.

PART I

LIABILITY FOR NUCLEAR INCIDENTS

Duty of Operator

Duty imposed on operator

3. Subject to this Act, an operator is under a duty to secure that no injury to any other person or damage to any property of any other person is occasioned as a result of the fissionable or radioactive properties, or a combination of any of those properties with toxic, explosive or other hazardous properties, of

(*a*) nuclear material that is in the nuclear installation of which he is the operator,

(*b*) nuclear material that, having been in the nuclear installation of which he is the operator, has not subsequently been in a nuclear installation operated under lawful authority by any other person, or

(*c*) nuclear material that is in the course of carriage from outside Canada to the nuclear installation of which he is the operator or is in a place of storage incidental to that carriage.

PARTIE I

RESPONSABILITÉ DES ACCIDENTS NUCLÉAIRES

Obligation de l'exploitant

Obligation imposée à un exploitant

3. Sous réserve de la présente loi, un exploitant a l'obligation de s'assurer qu'aucune blessure à toute autre personne ou qu'aucun dommage aux biens de toute autre personne ne sont occasionnés à la suite des propriétés fissiles ou radioactives ou à la fois de l'une quelconque de ces propriétés avec des propriétés toxiques, explosives ou autres propriétés dangereuses

a) d'une substance nucléaire qui est dans l'installation nucléaire dont il est l'exploitant;

b) d'une substance nucléaire qui, ayant été dans l'installation nucléaire dont il est l'exploitant, n'a pas, par la suite, été dans l'installation nucléaire exploitée légalement par toute autre personne; ou

c) d'une substance nucléaire qui est en cours de transport à destination de l'installation nucléaire dont il est l'exploitant, en provenance de l'étranger, ou est dans un lieu d'entreposage accessoirement à ce transport.

Absolute Liability of Operator

Operator liable for breach of duty

4. Subject to this Act, an operator is, without proof of fault or negligence, absolutely liable for a breach of the duty imposed upon him by this Act.

Operators jointly and severally liable

5. Where liability under this Act in respect of the same injury or damage is incurred by two or more operators, the liability of the operators shall, to the extent that the injury or damage attributable to a breach of the duty imposed on each of them by this Act is not reasonably separable, be treated as joint and several.

Certain other damage deemed to be attributable to breach of duty

6. Injury or damage that, though not attributable to a breach of the duty imposed upon an operator by this Act, is not reasonably separable from injury or damage that is attributable to a breach of that duty shall be deemed, for the purposes of this Act, to be attributable to that breach of duty.

Exceptions

No liability where incident due to act of armed conflict

7. An operator is not liable for injury or damage of the kind described in section 3 if the nuclear incident resulting in such injury or damage occurred as a direct result of an act of armed conflict in the course of war, invasion or insurrection.

No liability to person responsible for nuclear incident

8. An operator is not liable for injury or damage suffered by any person if the nuclear incident resulting in such injury or damage occurred wholly or partly as a result of an unlawful act or omission of that person done or omitted to be done with intent to cause injury or damage.

Responsabilité absolue de l'exploitant

L'exploitant est responsable pour toute violation d'une obligation

4. Sous réserve de la présente loi, un exploitant est, sans preuve de faute ou de négligence, responsable complètement d'une violation de l'obligation à lui imposée par la présente loi.

Les exploitants sont solidairement responsables

5. Lorsqu'une responsabilité en vertu de la présente loi pour les mêmes blessures ou les mêmes dommages est encourue par deux ou plusieurs exploitants, leur responsabilité, dans la mesure où les blessures ou les dommages attribuables à une violation de l'obligation imposée à chacun d'eux par la présente loi ne peuvent normalement être imputés à l'un ou l'autre, doit être solidaire.

Certains autres dommages sont censés être attribuables à une violation de l'obligation

6. Les blessures ou les dommages qui, bien que non attribuables à une violation de l'obligation imposée à un exploitant par la présente loi, ne peuvent être normalement distingués des blessures ou des dommages qui sont attribuables à une violation de cette obligation seront censés, aux fins de la présente loi, être attribuables à cette violation de l'obligation.

Exceptions

Aucune responsabilité lorsque l'accident est dû à un acte de confit armé

7. Un exploitant n'est pas responsable des blessures ou des dommages du genre visé à l'article 3 si l'accident nucléaire ayant entraîné ces blessures ou ces dommages résulte directement d'un acte de conflit armé au cours d'une guerre, d'une invasion ou d'une insurrection.

Aucune responsabilité vis-à-vis de la personne responsable de l'accident nucléaire

8. Un exploitant n'est pas responsable des blessures ou des dommages soufferts par une personne si l'accident nucléaire ayant entraîné des blessures ou des dommages est intervenu, en tout ou partie, à la suite d'un acte illégal ou d'une omission illégale de cette personne procédant de l'intention de causer des blessures ou des dommages.

Not liable for damage to nuclear installation or other property thereon

9. (1) Where a nuclear incident occurs at a nuclear installation, the operator thereof is not liable for damage caused by the nuclear incident to the nuclear installation, to property on the premises of the nuclear installation that is used or to be used in connection with the nuclear installation, or to the ship, aircraft or other means of transportation of which the nuclear installation forms part of the equipment.

Pas de responsabilité pour des dommages à l'installation nucléaire ou à d'autres biens qui s'y trouvent

9. (1) Lorsqu'un accident nucléaire intervient sur une installation nucléaire, son exploitant n'est pas responsable des dommages causés par l'accident nucléaire à l'installation nucléaire, aux biens qui se trouvent sur le site de cette installation nucléaire et qui sont ou doivent être utilisés en rapport avec elle, ou au navire, à l'aéronef ou autre moyen de transport de l'équipement duquel l'installation nucléaire fait partie.

Not liable for damage to means of carriage

(2) Where a nuclear incident occurs in the course of the carriage of nuclear material or while such material is in storage incidental to its carriage, an operator is not liable for damage to the means of carriage or to the place where the material is stored.

Pas de responsabilité pour les dommages aux moyens de transport

(2) Lorsqu'un accident nucléaire intervient au cours du transport d'une substance nucléaire ou pendant qu'une substance est entreposée accessoirement à son transport, un exploitant n'est pas responsable des dommages aux moyens de transport ou au site où la substance est entreposée.

Limitations

Limitations

No right of recourse or indemnity

10. Subject to this Act, an operator has no right of recourse or indemnity against any person in respect of his liability under this Act for any injury or damage attributable to a breach of the duty imposed upon him by this Act.

Ni droit de recours ni indemnité

10. Sous réserve de la présente loi, un exploitant n'a ni droit de recours ni droit à une indemnité envers toute personne quant à sa responsabilité en vertu de la présente loi pour des blessures ou des dommages attribuables à une violation de l'obligation à lui imposée par la présente loi.

No other person liable

11. Except as otherwise provided by or pursuant to this Act, no person is liable for any injury or damage attributable to a breach of the duty imposed upon an operator by this Act.

Aucune autre personne n'est responsable

11. Sauf dispositions contraires de la présente loi, nul n'est responsable des blessures ou des dommages attribuables à une violation de l'obligation imposée à un exploitant par la présente loi.

Certain rights and obligations not limited

12. Nothing in this Act shall be construed as limiting or restricting

(*a*) any right or obligation of any person arising under

(i) any contract of insurance, including any insurance required by subsection (1) of section 15 to be maintained by an operator;

(ii) any scheme or system of health or hospitalization insurance, employees' compensation or occupational disease compensation; or

(iii) any survivorship or disability provision of or governing any superannuation or pension fund or plan; or

Certains droits et obligations ne sont pas limités

12. Rien dans la présente loi ne doit être interprété comme limitant ou restreignant

a) tout droit ou toute obligation d'une personne provenant

(i) de tout contrat d'assurance, notamment de toute assurance que doit maintenir un exploitant aux termes du paragraphe (1) de l'article 15;

(ii) de tout régime ou système d'assurance médicale ou d'hospitalisation, d'indemnisation des accidents du travail ou des maladies professionnelles; ou

(iii) de toute disposition touchant la survivance ou l'invalidité prévue par un régime ou une caisse de retraite ou de pension, ou qui les régit, ou

(*b*) where a nuclear incident resulting in any injury or damage of the kind described in section 3 occurred wholly or partly as a result of an unlawful act or omission of any person done or omitted to be done with intent to cause injury or damage, any right of recourse of an operator against that person.

b) tout droit de recours d'un exploitant contre une personne, lorsqu'un accident nucléaire entraînant des blessures ou des dommages du genre visé à l'article 3, est survenu en tout ou en partie, à la suite d'un acte illégal ou d'une omission illégale de cette personne procédant de l'intention de causer des blessures ou des dommages.

Limitation on bringing of actions

13. No action under this Part shall be brought

(*a*) in the case of a claim for injury other than loss of life, or for damage to property, after three years from the earliest date upon which the person making the claim had knowledge or ought reasonably to have had knowledge of the injury or damage, or

(*b*) in the case of a claim for loss of life,

(i) after three years from the date of the death of the person for whose loss of life the claim is made, or

(ii) where conclusive evidence of the death of that person is not available, after three years from the date an order presuming the person to be dead is made by a court having jurisdiction in such matters,

and in no case shall any such action be brought after ten years from the date the cause of action arose.

Limitation ayant trait aux actions

13. Aucune action en vertu de la présente Partie ne peut être intentée

a) dans le cas d'une réclamation pour des blessures corporelles à l'exclusion de la mort ou pour des dommages aux biens après expiration d'un délai de trois ans à compter de la date à laquelle la personne qui fait la réclamation a eu connaissance ou aurait raisonnablement dû avoir connaissance des blessures ou des dommages; ou

b) dans le cas d'une réclamation pour cause de décès,

(i) après expiration d'un délai de trois ans à compter du décès de la personne dont la mort motive la réclamation, ou

(ii) lorsqu'il ne peut être fourni de preuve irréfragable du décès de cette personne, après l'expiration d'un délai de trois ans à compter de la date à laquelle une ordonnance présumant que la personne est décédée est rendue par un tribunal compétent en l'espèce,

et en aucun cas une telle action ne doit être intentée après l'expiration d'un délai de dix ans à compter de la date où a pris naissance la cause d'action.

Jurisdiction of Courts

Where action under this Part is to be brought

14. (1) An action under this Part shall be brought in the court that, having regard to the parties, the nature of the action and the amount involved, has jurisdiction and that exercises jurisdiction

(*a*) in the place where the injury or damage resulting from the nuclear incident in respect of which the action is brought was occasioned, or

Compétence des tribunaux

Lieu où doit être intentée une action en vertu de la présente Partie

14. (1) Une action en vertu de la présente Partie doit être intentée devant le tribunal qui, eu égard aux parties, à la nature de l'action et au montant de la demande, est compétent et siège

a) au lieu où les blessures ou les dommages résultant de l'accident nucléaire donnant lieu à l'action ont été occasionnés, ou

(*b*) where the nuclear incident in respect of which the action is brought resulted in injury or damage occasioned in places in which more than one court would otherwise have jurisdiction under this subsection, in the place where the nuclear installation at or in relation to which the nuclear incident occurred was situated or, in the case of a nuclear installation that formed part of the equipment of a ship, aircraft or other means of transportation, was declared to be situated for the purposes of this section by the licence described in paragraph (*h*) of section 2 relating to that nuclear installation,

and that court, for the purpose of any question raised in the action relating to the place where the injury or damage was occasioned, shall be deemed to have jurisdiction throughout Canada.

Other laws and rules of practice and procedure to apply

(2) Except to the extent that they are inconsistent with any provision of this Act, all laws in force in the province where an action under this Part is brought and the rules of practice and procedure of the court in which the action is brought, apply to the action.

Insurance and Financial Responsibility

Operator to maintain insurance

15. (1) An operator shall, with respect to each nuclear installation of which he is the operator, maintain with an approved insurer insurance against the liability imposed on him by this Act, consisting of

(*a*) basic insurance for such term and for such amount not exceeding seventy-five million dollars as may be prescribed with respect to that nuclear installation by the Atomic Energy Control Board, with the approval of the Treasury Board, and

b) lorsque l'accident nucléaire donnant lieu à l'action, a entraîné des blessures ou des dommages occasionnés dans des lieux où plus d'un tribunal aurait autrement été compétent en vertu du présent paragraphe, au lieu où était située l'installation nucléaire dans laquelle l'accident nucléaire est intervenu, ou accessoirement à laquelle il est intervenu ou, s'il s'agit d'une installation nucléaire qui faisait partie de l'équipement d'un navire, d'un aéronef ou autre moyen de transport, au lieu où elle a été déclarée être située aux fins du présent article par la licence visée à l'alinéa *h*) de l'article 2 se rapportant à cette installation nucléaire,

et ce tribunal, aux fins de toute question soulevée dans l'action ayant trait au lieu où les blessures ou les dommages ont été occasionnés, doit être considéré comme ayant compétence dans tout le Canada.

Autres lois et règles de pratique et de procédure à appliquer

(2) Sauf dans la mesure où elles sont incompatibles avec toute disposition de la présente loi, toutes les lois en vigueur dans la province où une action en vertu de la présente Partie est intentée, ainsi que les règles de pratique et de procédure du tribunal où l'action est intentée, s'appliquent à l'action.

Assurance et responsabilité financière

L'exploitant doit maintenir une assurance

15. (1) Un exploitant doit, pour chaque installation nucléaire dont il est l'exploitant, maintenir auprès d'un assureur agréé, une assurance couvrant la responsabilité à lui imposée par la présente loi, consistant en

a) une assurance de base pour la période et un montant ne dépassant pas soixante-quinze millions de dollars que peut lui prescrire pour cette installation nucléaire la Commission de contrôle de l'énergie atomique avec l'approbation du conseil du Trésor; et

(*b*) supplementary insurance for the same term and for an amount equal to the difference, if any, between the amount prescribed under paragraph (*a*) and seventy-five million dollars,

and containing such terms and conditions as are approved by the Minister.

b) une assurance supplémentaire pour la même période et pour un montant qui est égal à la différence, le cas échéant, entre le montant prescrit en vertu de l'alinéa *a*) et soixante-quinze millions de dollars,

et contenant les modalités qu'approuve le Ministre.

Minister to designate approved insurers

(2) The Minister may designate as an approved insurer for the purposes of this Act any insurer or association of insurers that meets the requirements that, in his opinion, are necessary for the proper performance of the obligations to be undertaken by an approved insurer.

(2) Le Ministre peut désigner à titre d'assureur agréé aux fins de la présente loi tout assureur ou association d'assureurs qui répond aux exigences qui, à son avis, *sont nécessaires pour que soient convenablement* exécutées les obligations que doit souscrire un assureur agréé.

Le Ministre doit désigner les assureurs agréés

Reinsurance agreements

16. (1) Subject to the approval of the Treasury Board, the Minister may, with respect to the supplementary insurance described in paragraph (*b*) of subsection (1) of section 15, enter into an agreement with an approved insurer reinsuring the risk assumed by that insurer upon such terms and conditions, including the payment of such fee, as the Minister deems appropriate.

16. (1) Sous réserve de l'approbation du conseil du Trésor, le Ministre peut, en ce qui concerne l'assurance supplémentaire visée à l'alinéa *b*) du paragraphe (1) de l'article 15, conclure un accord avec un assureur agréé réassurant le risque assumé par cet assureur, selon les modalités, notamment le paiement de la redevance, que le Ministre estime appropriées.

Contrat de réassurance

Agreements to be laid before Parliament

(2) An agreement entered into under this section shall be laid before Parliament within fifteen days after the making thereof or, if Parliament is not then sitting, on any of the first fifteen days next thereafter that Parliament is sitting.

(2) Un accord conclu en vertu du présent article doit être déposé devant le Parlement dans les quinze jours de sa conclusion, ou si le Parlement ne siège pas à ce moment-là, l'un des quinze premiers jours où il siège par la suite.

Les accords doivent être soumis au Parlement

Nuclear Liability Reinsurance Account

17. All amounts payable by Her Majesty pursuant to an agreement entered into under section 16 shall be paid out of the Consolidated Revenue Fund and charged to a special account in the Consolidated Revenue Fund to be known as the Nuclear *Liability* Reinsurance Account, and all amounts received by Her Majesty pursuant to any such agreement shall be paid into the Consolidated Revenue Fund and credited to that Account.

17. Tous les montants payables par Sa Majesté en conformité d'un accord conclu en vertu de l'article 16 sont payés sur le Fonds du revenu consolidé et imputés à un compte spécial du Fonds du revenu consolidé, appelé le compte de réassurance de la *responsabilité nucléaire et tous les montants* reçus par Sa Majesté en conformité d'un tel accord sont payés au Fonds du revenu consolidé et crédités à ce compte.

Compte de réassurance de responsabilité nucléaire

PART II

SPECIAL MEASURES FOR COMPENSATION

Proclamations

Issue of proclamation

18. Where the Governor in Council is of the opinion that

(*a*) the liability of an operator under Part I in respect of a nuclear incident could exceed seventy-five million dollars, or

(*b*) as a result of any injury or damage attributable to a nuclear incident, it is in the public interest to provide special measures for compensation,

the Governor in Council shall by proclamation declare that this Part applies in respect of that nuclear incident.

Effect of proclamation

19. Subject to section 20, where a proclamation is issued pursuant to section 18, the operator otherwise liable for any injury or damage resulting from the nuclear incident described in the proclamation ceases to be liable for such injury or damage, and any proceedings under Part I in respect of that nuclear incident including proceedings to enforce judgment, brought or taken against the operator in any court either before or after the issue of the proclamation, are forever stayed.

Liability of operator to Her Majesty

20. (1) An operator described in section 19 is liable to Her Majesty for an amount equal to the lesser of

(*a*) the amount of insurance that he is required by paragraph (*a*) of subsection (1) of section 15 to maintain in respect of the nuclear installation at or in relation to which the nuclear incident occurred; or

PARTIE II

MESURES SPÉCIALES D'INDEMNISATION

Proclamations

Émission d'une proclamation

18. Lorsque le gouverneur en conseil est d'avis

a) que la responsabilité d'un exploitant en vertu de la Partie I relativement à un accident nucléaire pourrait dépasser soixante-quinze millions de dollars, ou

b) qu'à la suite des blessures ou des dommages attribuables à un accident nucléaire, il est dans l'intérêt public de prévoir des mesures spéciales d'indemnisation,

le gouverneur en conseil doit, par proclamation, déclarer que la présente Partie s'applique à cet accident nucléaire.

Effet de la proclamation

19. Sous réserve de l'article 20, lorsqu'une proclamation est émise en conformité de l'article 18, l'exploitant qui serait autrement responsable des blessures ou des dommages qu'a entraînés l'accident nucléaire visé dans la proclamation cesse d'être responsable de ces blessures ou de ces dommages et toutes les procédures en vertu de la Partie I relativement à cet accident nucléaire y compris des procédures d'exécution d'un jugement, intentées ou prises contre l'exploitant devant tout tribunal, soit avant soit après l'émission de la proclamation, sont définitivement suspendues.

Responsabilité d'un exploitant envers Sa Majesté

20. (1) Un exploitant visé à l'article 19 est comptable envers Sa Majesté d'un montant égal au moindre

a) du montant de l'assurance qu'il est requis en vertu de l'alinéa *a*) du paragraphe (1) de l'article 15 de maintenir pour l'installation nucléaire dans laquelle l'accident nucléaire est survenu ou par rapport à laquelle il est survenu; ou

(*b*) the aggregate of all amounts paid pursuant to sections 28 and 31 in respect of any injury and damage resulting from the nuclear incident.

b) du total de tous les montants payés en conformité des articles 28 et 31 pour des blessures et des dommages résultant de l'accident nucléaire.

Amount to be paid in accordance with demands

(2) Subject to subsection (3), the amount for which an operator is liable to Her Majesty under subsection (1) shall be paid to Her Majesty by the operator in accordance with demands therefor made by the Minister to the operator, and in the event of failure by the operator to pay any amount so demanded, the approved insurer with whom the insurance referred to in subsection (1) was maintained is liable to Her Majesty for that amount.

(2) Sous réserve du paragraphe (3), le montant dont un exploitant est comptable envers Sa Majesté en vertu du paragraphe (1) doit être payé à Sa Majesté par l'exploitant, en conformité des réclamations présentées à cet effet par le Ministre à l'exploitant et dans l'éventualité d'un manquement par l'exploitant à acquitter tout montant ainsi réclamé, l'assureur agréé avec lequel l'assurance mentionnée au paragraphe (1) était maintenue, est comptable envers Sa Majesté de ce montant.

Le montant doit être payé selon les demandes

Limitation

(3) The aggregate of the amounts demanded from an operator by the Minister pursuant to subsection (2) shall not in any year exceed the aggregate of the amounts paid under sections 28 and 31 during that year in respect of any injury or damage resulting from the nuclear incident.

(3) Le total des montants réclamés à un exploitant par le Ministre en conformité du paragraphe (2) ne doit pas, dans toute année, dépasser le total des montants payés en vertu des articles 28 et 31 pendant cette année pour des blessures ou dommages résultant de l'accident nucléaire.

Limitation

Establishment of Commission

Établissement d'une Commission

Governor in Council to establish *Commission* to deal with claims

21. (1) Where a proclamation has been issued pursuant to section 18, the Governor in Council shall establish a Nuclear Damage Claims Commission consisting of a chairman, a vice-chairman and not less than one other member, to deal with claims *for compensation arising out of the nuclear* incident described in that proclamation.

21. (1) Lorsqu'une proclamation a été émise en conformité de l'article 18, le gouverneur en conseil doit établir une Commission des réparations des dommages nucléaires composée d'un président, d'un vice-président, et d'au moins un autre *membre pour traiter des demandes d'in*demnité naissant de l'accident nucléaire visé dans cette proclamation.

Le gouverneur en conseil doit établir une Commission pour traiter des réclamations

Qualifications of commissioners

(2) The chairman and vice-chairman of a Commission and, where the other members of a Commission number more than two, not less than a majority of the other members, *shall be appointed from among* persons who are

(*a*) judges of the superior or county courts of Canada; or

(*b*) barristers or advocates of at least ten years' standing at the bar of any of the provinces.

(2) Le président et le vice-président d'une Commission et, lorsque les autres membres d'une Commission sont plus de deux, au moins la majorité d'entre eux *doivent être choisis parmi les personnes* qui sont

a) des juges des cours supérieures ou des cours de comté du Canada; ou

b) des avocats dûment inscrits depuis plus de dix ans au Barreau d'une des provinces.

Qualités requises des commissaires

Powers of chairman

(3) The chairman is the chief executive officer of a Commission and has the control and direction of the work and staff of the Commission, but if the chairman is absent or unable to act or if the office is vacant, the vice-chairman of the Commission has and may exercise all the powers and functions of the chairman.

(3) Le président est le fonctionnaire exécutif en chef d'une Commission; il dirige et contrôle les travaux et le personnel de la Commission, mais en cas d'absence ou d'incapacité du président ou si son poste est vacant, le vice-président de la Commission a et peut exercer les pouvoirs et fonctions du président.

Pouvoirs du président

Eligibility

(4) A person who has reached the age of seventy years is not eligible to be appointed to a Commission and a person appointed to a Commission ceases to hold office upon reaching the age of seventy years.

(4) Une personne qui a atteint l'âge de soixante-dix ans ne peut pas être nommée à une Commission et une personne nommée à une Commission cesse d'occuper son poste à l'âge de soixante-dix ans.

Admissibilité

Increase or decrease in number of commissioners

(5) Subject to this section, the Governor in Council may at any time increase or reduce the number of members of a Commission.

(5) Sous réserve du présent article, le gouverneur en conseil peut, à tout moment, augmenter ou réduire le nombre des membres d'une Commission.

Augmentation ou diminution du nombre des commissaires

Remuneration and other expenses

(6) Members of a Commission, other than a member in receipt of a salary or pension under the *Judges Act*, shall be paid such remuneration as may be fixed by the Governor in Council, and every member of a Commission is entitled to be paid reasonable travelling and other expenses while absent from his ordinary place of residence in the course of his duties under this Act.

(6) Les membres d'une Commission, autres qu'un membre qui perçoit un traitement ou une pension en vertu de la *Loi sur les juges*, reçoivent la rémunération que fixe le gouverneur en conseil; ils ont le droit de toucher des frais de déplacement et autres frais raisonnables lorsqu'ils sont absents de leur lieu ordinaire de résidence dans l'exercice de leurs fonctions, en vertu de la présente loi.

Rémunération et autres frais

Staff of Commission

22. A Commission may employ such officers and employees as it considers necessary for the proper conduct of its activities, may prescribe their duties and the terms and conditions of their employment and, with the approval of the Treasury Board, may fix and pay their remuneration and expenses.

22. Une Commission peut employer les fonctionnaires et employés qu'elle estime nécessaires pour son bon fonctionnement; elle peut prescrire leurs devoirs et les modalités de leur emploi et, avec l'approbation du conseil du Trésor, fixer et payer leur rémunération et leurs frais.

Personnel de la Commission

Existing Commission may be authorized to act

23. Where a Commission has been established pursuant to section 21 and a proclamation is issued pursuant to section 18 declaring that this Part applies in respect of another nuclear incident, the Governor in Council may instead of establishing another Commission designate that Commission to be the Commission to deal with claims for compensation arising out of that nuclear incident.

23. Lorsqu'une Commission a été établie en conformité de l'article 21 et qu'une proclamation a été émise en conformité de l'article 18 déclarant que la présente Partie s'applique relativement à un autre accident nucléaire, le gouverneur en conseil peut, au lieu d'établir une autre Commission, désigner cette Commission comme étant celle devant connaître des réclamations d'indemnités naissant de cet accident nucléaire.

La Commission existante peut être autorisée à agir

Powers of a Commission

24. (1) Subject to this Act, a Commission has exclusive original jurisdiction to hear and determine every claim brought before it for compensation arising out of the nuclear incident in respect of which it was established or designated and, in its discretion, to decide the amount of compensation to be awarded in respect of such claim.

Exercise of powers

(2) A Commission shall comply with and shall exercise its jurisdiction in accordance with this Part and any regulations made thereunder.

Rules

(3) A Commission may, with the approval of the Governor in Council, make rules respecting

(*a*) the procedures for bringing claims;

(*b*) the time and place for sittings;

(*c*) the conduct of hearings; and

(*d*) the fees and travelling expenses to be paid witnesses.

Hearing of claims

(4) The chairman of a Commission may direct that a claim shall be heard by the Commission or by three or more members of the Commission.

Quorum

(5) Where the chairman of a Commission has directed that a claim is to be heard by the Commission or by more than two members of the Commission, a majority of the Commission or of those members directed to hear the claim, as the case may be, constitutes a quorum for the hearing of the claim.

Rendering of decisions

(6) Where a claim is heard by more than two members of a Commission, a decision thereon may be rendered by a majority of the members directed to hear the claim, and a decision so rendered has the same force and effect as if it had been rendered by the Commission.

Pouvoirs d'une Commission

24. (1) Sous réserve de la présente loi, une Commission a compétence exclusive pour connaître et décider de toute réclamation d'indemnité à elle présentée et naissant de l'accident nucléaire pour lequel elle a été établie ou désignée, et à sa discrétion, elle peut fixer le montant de l'indemnité devant être accordé pour cette réclamation.

Exercice des pouvoirs

(2) Une Commission doit se conformer à la présente Partie et aux règlements y afférents et doit exercer sa compétence en conformité de cette Partie, et de ces règlements.

Règles

(3) Une Commission peut, avec l'approbation du gouverneur en conseil, édicter des règles concernant

a) les procédures d'introduction des réclamations;

b) les temps et lieux des séances;

c) la conduite des auditions; et

d) les honoraires et les frais de voyage devant être payés aux témoins.

Audition des réclamations

(4) Le président d'une Commission peut ordonner qu'une réclamation sera entendue par la Commission ou par trois membres ou plus de la Commission.

Quorum

(5) Lorsque le président d'une Commission a ordonné qu'une réclamation soit entendue par la Commission ou par plus de deux membres de la Commission, le quorum pour l'audition de la réclamation est constitué par la majorité de la Commission ou la majorité des membres chargés d'entendre la réclamation, selon le cas.

Prononcé des décisions

(6) Une décision relative à une réclamation peut être rendue par la majorité des membres chargés par une Commission d'entendre la réclamation, s'ils sont plus de deux, et une décision ainsi rendue a la même force et le même effet que si elle l'avait été par la Commission.

Reports

(7) A Commission shall make such reports as the Minister may require it to make.

(7) Une Commission doit établir les rapports que le Ministre peut lui demander de faire.

Rapports

Evidence at hearings

25. (1) A Commission is not, in the hearing of any claim, bound by the legal rules of evidence.

25. (1) Une Commission n'est pas, dans l'audition de toute réclamation, tenue par les règles légales de la preuve.

Preuve aux auditions

Powers as to witnesses and documents

(2) A Commission has, as regards the attendance, summoning and examination of witnesses and the production and inspection of documents, all such powers, rights and privileges as are vested in a superior court of record in civil cases.

(2) Une Commission a, quant à la comparution, la citation et l'interrogatoire des témoins et quant à la production et à l'inspection des documents, tous les pouvoirs, droits et privilèges qui sont dévolus à une cour supérieure d'archives en matière civile.

Pouvoirs quant aux témoins et aux documents

Foreign evidence

(3) A Commission may issue commissions to take evidence outside Canada, and may make orders for that purpose and for the return and use of the evidence so obtained.

(3) Une Commission peut émettre des commissions rogatoires pour recueillir des dépositions à l'étranger et elle peut rendre les ordonnances à cette fin et pour que les dépositions ainsi obtenues lui soient transmises et soient utilisées.

Dépositions provenant de l'étranger

Examinations and investigations

(4) A Commission may

(*a*) make such examinations and investigations respecting a nuclear incident and injury or damage attributable thereto as it considers desirable or engage other persons to make the examinations or investigations on its behalf;

(*b*) require persons claiming compensation to undergo physical or other examinations or to assist in any investigation being carried out by or on behalf of the Commission; and

(*c*) take such other steps as it considers necessary or desirable to determine the suffering or hardship of persons affected by a nuclear incident.

(4) Une Commission peut

a) faire les examens et les enquêtes concernant un accident nucléaire et les blessures ou dommages attribuables à celui-ci, selon qu'elle l'estime souhaitable ou engager d'autres personnes pour procéder aux examens ou aux enquêtes pour son compte;

b) exiger des personnes réclamant une indemnité de subir des examens physiques ou autres ou d'assister à toute enquête entreprise par la Commission ou pour son compte; et

c) prendre les autres mesures qu'elle estime nécessaires ou souhaitables pour déterminer les souffrances et les épreuves subies par des personnes affectées par un accident nucléaire.

Examens et enquêtes

Decisions and Orders of Commission

Décisions et ordonnances

Orders and decisions final

26. (1) Subject to this section, every decision or order of a Commission with respect to a claim for compensation is final and conclusive.

26. (1) Sous réserve des dispositions contraires au présent article, toute décision ou ordonnance de la Commission en ce qui concerne la réclamation d'une indemnité est définitive et péremptoire.

Les ordonnances et les décisions sont définitives

Jurisdiction as to prerogative writs

(2) The Exchequer Court of Canada has exclusive original jurisdiction to hear and determine every application for a writ of *certiorari*, prohibition or *mandamus* or for an injunction in relation to any decision or order of a Commission or any proceedings before a Commission.

Limitations

(3) A decision or order of a Commission is not subject to review or to be restrained, removed or set aside by *certiorari*, prohibition, *mandamus* or injunction or any other process or proceedings in the Exchequer Court on the ground that

(*a*) a question of law or fact was erroneously decided by the Commission or that the Commission erred as to its jurisdiction; or

(*b*) that the Commission had no jurisdiction to entertain the proceedings in which the decision or order was made or to make the decision or order.

Juridiction quant aux brefs de prérogative

(2) La Cour de l'Échiquier du Canada a compétence exclusive en premier ressort pour entendre et trancher toute demande de bref de *certiorari*, prohibition ou *mandamus* ou demande d'injonction relativement à toute décision ou ordonnance d'une Commission ou relativement aux procédures engagées devant elle.

Restrictions

(3) Une décision ou une ordonnance d'une Commission ne peut être soumise à révision ni être restreinte, rejetée ou écartée par *certiorari*, prohibition, *mandamus* ou injonction ou quelque autre procédé ou procédure devant la Cour de l'Échiquier pour le motif

a) que la Commission a décidé d'une façon erronée d'une question de droit ou de fait; ou que la Commission a méconnu sa compétence; ou

b) que la Commission n'avait pas compétence pour accueillir les procédures à la suite desquelles la décision ou l'ordonnance ont été rendues ou pour rendre la décision ou l'ordonnance.

Compensation Orders

Awards of compensation

27. (1) Where a Commission decides that compensation should be awarded in respect of a claim heard by it, the Commission shall issue an order specifying the amount of compensation awarded and the amount of any payments that may have been made by the operator, or any person on behalf of the operator, to or in respect of the person named in the order, on account of the injury or damage for which the award of compensation is made.

Orders to be sent to Minister

(2) Every order made by a Commission pursuant to subsection (1) shall be sent by the Commission to the Minister or to a person authorized by the Minister to receive it.

Ordonnance d'indemnisation

Allocation d'indemnité

27. (1) Lorsqu'une Commission décide qu'une indemnité devrait être allouée relativement à une réclamation qu'elle a entendue, la Commission peut émettre une ordonnance spécifiant le montant de l'indemnité allouée et le montant de tous paiements qui peuvent avoir été faits par l'exploitant ou pour son compte à la personne nommée dans l'ordonnance ou à son sujet, pour les blessures ou les dommages pour lesquels est intervenue l'attribution d'une indemnité.

Les ordonnances doivent être envoyées au Ministre

(2) Toute ordonnance rendue par une Commission en conformité du paragraphe (1), doit être envoyée par la Commission au Ministre ou à une personne autorisée par le Ministre à la recevoir.

Payment of awards

28. Upon receipt of an order described in section 27 the Minister may, subject to any regulations made by the Governor in Council under this Part, pay out of the Consolidated Revenue Fund to or in respect of the person entitled thereto an amount equal to the difference between the amount of compensation awarded as specified in the order, and the aggregate amount of the payments, if any, specified in the order as having been made to or in respect of the person named in the order and any interim financial assistance paid to or in respect of that person pursuant to section 31.

Paiement des sommes allouées

28. Sur réception d'une ordonnance mentionnée à l'article 27, le Ministre peut, sous réserve des règlements établis par le gouverneur en conseil en vertu de la présente Partie, payer sur le Fonds du revenu consolidé à la personne qui y a droit, ou à son sujet, un montant égal à la différence entre le montant de l'indemnité allouée comme le précise l'ordonnance et le total des paiements, s'il en est, spécifiés dans l'ordonnance comme ayant été faits à la personne nommée dans l'ordonnance, ou à son sujet, et de toute assistance financière provisoire payée à cette personne ou à son sujet en conformité de l'article 31.

Regulations respecting claims for compensation

29. (1) The Governor in Council may, with respect to claims for compensation under this Part arising out of a nuclear incident in respect of which this Part applies, make regulations

(*a*) providing for the payment by instalments of compensation awarded by order of a Commission;

(*b*) providing for pro rata payments in satisfaction of compensation awarded by order of a Commission;

(*c*) establishing priorities among persons claiming compensation, on the basis of classes of persons, categories of injury or damage, or any other basis that he considers appropriate;

(*d*) excluding, temporarily or permanently, any kind or class of injury or damage from the injury or damage for which compensation may be awarded by order of a Commission;

(*e*) respecting the proving of injury or damage before a Commission;

(*f*) providing for the prescription of claims for compensation by the effluxion of time; and

(*g*) respecting the giving of notices to persons affected by the proceedings or decisions of a Commission.

Règlements concernant les demandes d'indemnisation

29. (1) Le gouverneur en conseil peut, relativement aux demandes d'indemnisation en vertu de la présente Partie naissant d'un accident nucléaire auquel s'applique la présente Partie, établir des règlements

a) prévoyant le paiement par versements échelonnés de l'indemnité allouée par l'ordonnance d'une Commission;

b) prévoyant des paiements au pro rata en règlement de l'indemnité allouée par l'ordonnance d'une Commission;

c) établissant les priorités parmi les personnes réclamant une indemnité, en se fondant sur les catégories de personnes, les catégories de blessures ou dommages ou sur tout autre critère qu'elle estime approprié;

d) excluant, temporairement ou définitivement, les blessures ou dommages d'une ou plusieurs sortes ou catégories des blessures ou dommages ouvrant droit à l'allocation d'une indemnité par ordonnance d'une Commission;

e) concernant les modes de preuve des blessures et des dommages devant une Commission;

f) prévoyant la prescription des réclamations d'indemnité à la suite de l'expiration de délais; et

g) concernant l'envoi d'avis aux personnes affectées par les procédures ou les décisions d'une Commission.

Regulations to be submitted to Parliament

(2) Any regulations made by the Governor in Council under this section shall be laid before Parliament forthwith after they are made, or, if Parliament is not then sitting, on any of the first fifteen days next thereafter that Parliament is sitting.

Les règlements doivent être soumis au Parlement

(2) Tous règlements établis par le gouverneur en conseil en vertu du présent article doivent être déposés devant le Parlement immédiatement après leur établissement ou, si le Parlement ne siège pas à ce moment-là l'un des quinze premiers jours où il siège par la suite.

Power to make agreements

30. With the approval of the Governor in Council, the Minister or a Commission may, on behalf of the Government of Canada, enter into agreements or arrangements with the government of any province or with any person or group of persons, for the carrying out of any duty or function in relation to the payment of compensation under this Part.

Pouvoir de conclure des accords

30. Avec l'approbation du gouverneur en conseil, le Ministre ou une Commission peut, pour le compte du gouvernement du Canada, conclure des accords ou des arrangements avec le gouvernement de toute province ou avec toute personne ou tout groupe de personnes, pour l'exercice d'un devoir ou d'une fonction relativement au paiement d'une indemnité en vertu de la présente Partie.

Interim Financial Assistance

Assistance financière provisoire

Regulations providing for payment of interim financial assistance

31. (1) Where the Governor in Council, as a result of the distress, suffering or hardship caused by a nuclear incident, is of opinion that it is necessary to provide interim financial assistance to persons affected by the nuclear incident, he may make regulations providing for the payment by the Minister out of the Consolidated Revenue Fund of interim financial assistance to or in respect of such persons and may by such regulations

(*a*) specify the persons or classes of persons to or in respect of whom such amounts may be paid; and

(*b*) fix or determine the amounts that may be so paid to or in respect of any persons or classes of persons, and the terms and conditions upon which such amounts may be paid.

Règlements prévoyant une assistance financière provisoire

31. (1) Lorsque le gouverneur en conseil, à la suite du dénuement, des souffrances ou des épreuves consécutives à un accident nucléaire, est d'avis qu'il est nécessaire de fournir une assistance financière provisoire aux personnes affectées par cet accident, il peut établir des règlements prévoyant le paiement par le Ministre sur le Fonds du revenu consolidé d'un montant en vue d'une assistance financière provisoire à ces personnes ou à leur sujet et il peut, par de tels règlements

a) spécifier les personnes ou catégories de personnes auxquelles ou au sujet desquelles de tels paiements peuvent être faits; et

b) fixer ou déterminer les montants qui peuvent être ainsi payés à ces personnes, ces catégories de personnes ou à leur égard ainsi que les modalités selon lesquelles ces montants peuvent être payés.

Authorization of Commission to act

(2) The Governor in Council may authorise a Commission to perform any duty or function in relation to the provision of interim financial assistance pursuant to subsection (1) and may authorise the Commission to issue warrants for the payment of such assistance.

Autorisation d'agir donnée à la Commission

(2) Le gouverneur en conseil peut autoriser une Commission à exercer tous devoirs ou toutes fonctions relativement à la fourniture d'une assistance financière provisoire en conformité du paragraphe (1) et peut autoriser la Commission à émettre des mandats pour le paiement de cette assistance.

Warrant deemed to be cheque

(3) A warrant issued by a Commission pursuant to subsection (2) shall be deemed to be a cheque lawfully drawn on the account of the Receiver General of Canada in accordance with the *Financial Administration Act*.

(3) Un mandat émis par une Commission en conformité du paragraphe (2) doit être tenu pour un chèque légalement tiré sur le compte du Receveur général du Canada en accord avec la *Loi sur l'administration financière*.

Le mandat est tenu pour un chèque

Limit of Payments

Limite des paiements

Limit

32. Except as otherwise authorized by Parliament, the aggregate of all amounts paid pursuant to sections 28 and 31 shall not, in respect of any one nuclear incident, exceed seventy-five million dollars.

32. Sauf autorisation du Parlement, le total des montants payés en conformité des articles 28 et 31 ne doit pas, pour tout accident nucléaire, dépasser soixante-quinze millions de dollars.

Limite

PART III

GENERAL

PARTIE III

DISPOSITIONS GÉNÉRALES

Act binds the Crown

33. (1) Subject to subsection (2), the Crown in right of Canada or a province is bound by this Act.

33. (1) Sous réserve du paragraphe (2), la Couronne du chef du Canada ou la Couronne du chef d'une province est liée par la présente loi.

La loi oblige la Couronne

Crown deemed to be operator

(2) Where the Crown in right of Canada operates a nuclear installation, it shall, for all purposes of this Act except sections 15 and 20, be deemed to be the operator thereof.

(2) Lorsque la Couronne du chef du Canada exploite une installation nucléaire, elle doit, à toutes les fins de la présente loi, à l'exception des articles 15 et 20, être tenue pour en être l'exploitant.

La Couronne est censée être un exploitant

Operator not liable where injury or damage occasioned outside Canada

34. (1) Except as may be provided for in rules made under subsection (3), an operator is not liable for any injury or damage occasioned outside Canada

(*a*) that is attributable to a breach of the duty imposed upon him by this Act; or

(*b*) for which he may be liable pursuant to any law of a place outside Canada relating to liability for injury or damage resulting from the production, processing, carriage, storage, use or disposition of nuclear material;

and no court in Canada has jurisdiction to entertain any application or grant any relief or remedy arising out of or relating to any such injury or damage occasioned outside Canada.

34. (1) Sauf dispositions contraires des règles prises en vertu du paragraphe (3), un exploitant n'est pas responsable des blessures ou dommages occasionnés en dehors du Canada,

a) qui sont attribuables à une violation de l'obligation qui lui est imposée par la présente loi; ou

b) desquels il peut être responsable en conformité de la loi locale à l'étranger ayant trait à la responsabilité des blessures ou dommages résultant de la production, de la transformation, du transport, de l'entreposage, de l'usage ou de la disposition de substances nucléaires;

et aucun tribunal au Canada n'est compétent pour accueillir une demande ou accorder quelque réparation ou dédommagement procédant de ces blessures ou dommages occasionnés en dehors du Canada ou qui s'y rapportent.

Pas de recours lorsque les blessures ou les dommages ont été occasionnés à l'étranger

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Reciprocating countries

(2) Where the Governor in Council is of the opinion that satisfactory arrangements exist in any country for compensation for injury or damage resulting from the production, processing, carriage, storage, use or disposition of nuclear material in that country, including any such injury or damage occasioned in Canada, he may declare that country to be a reciprocating country for the purposes of this Act.

Pays bénéficiant de la réciprocité

(2) Lorsque le gouverneur en conseil est d'avis que des arrangements satisfaisants existent dans un pays en vue d'indemniser les blessures ou les dommages résultant de la production, de la transformation, du transport, de l'entreposage, de l'usage ou de la disposition des substances nucléaires dans ce pays y compris le genre de blessures et dommages occasionnés au Canada, il peut déclarer que ce pays bénéficie de la réciprocité aux fins de la présente loi.

Rules implementing compensation arrangements with reciprocating countries

(3) The Governor in Council may, with respect to a reciprocating country, make such rules as he considers necessary to implement any arrangement between Canada and the reciprocating country relating to compensation for injury or damage resulting from the production, processing, carriage, storage, use or disposition of nuclear material.

Règles mettant en œuvre les arrangements conclus avec des pays bénéficiant de la réciprocité

(3) Le gouverneur en conseil peut, à l'égard de tout pays bénéficiant de la réciprocité, édicter les règles qu'il estime nécessaires en vue de mettre en œuvre tout arrangement conclu entre le Canada et le pays bénéficiant de la réciprocité, relatif à l'indemnisation des blessures ou dommages résultant de la production, de la transformation, du transport, de l'entreposage, de l'usage ou de la disposition de substances nucléaires.

Idem

(4) A rule made under subsection (3) may modify any provision of Part I of this Act relating to liability or the jurisdiction of courts, to the extent that the Governor in Council considers necessary in order to give effect to an arrangement described in that subsection.

Idem

(4) Une règle édictée en vertu du paragraphe (3) peut modifier toute disposition de la Partie I relative à la responsabilité ou à la compétence des tribunaux, dans la mesure où le gouverneur en conseil l'estime nécessaire afin de donner effet à un arrangement visé dans ce paragraphe.

COMING INTO FORCE

ENTRÉE EN VIGUEUR

Coming into force

35. This Act shall come into force on a day to be fixed by proclamation.

Entrée en vigueur

35. La présente loi entrera en vigueur à une date fixée par proclamation.