NUCLEAR LAW Bulletin

number 28

Contents

December 1981

Nuclear Energy Agency
Organisation for Economic Co-operation and Development

The Organisation for Economic Co-operation and Development (OECD) was set up under a Convention signed in Paris on 14th December, 1960, which provides that the OECD shall promote policies designed

- to achieve the highest sustainable economic growth and employment and a rising standard of living in Member countries, while maintaining financial stability and thus to contribute to the development of the world economy,
- to contribute to sound economic expansion in Member as well as non member countries in the process of economic development,
- to contribute to the expansion of world trade on a multilateral non discriminatory basis in accordance with international obligations

The Members of OECD are Australia, Austria, Belgium Canada, Denmark Finland, France the Federal Republic of Germany, Greece, Iceland, Ireland, Italy, Japan, Luxembourg the Netherlands, New Zealand, Norway, Portugal, Spain Sweden, Switzerland, Turkey, the United Kingdom and the United States

The OECD Nuclear Energy Agency (NEA) was established on 20th April 1972, replacing OECD's European Nuclear Energy Agency (ENEA) on the adhesion of Japan as a full Member

NEA now groups all the European Member countries of OECD and Australia, Canada, Japan, and the United States The Commission of the European Communities takes part in the work of the Agency

The primary objectives of NEA are to promote co-operation between its Member governments on the safety and regulatory aspects of nuclear development, and on assessing the future role of nuclear energy as a contributor to economic progress

This is achieved by

- *encouraging harmonisation of governments' regulatory policies and practices in the nuclear field, with particular reference to the safety of nuclear installations, protection of man against ionising radiation and preservation of the environment, radioactive waste management, and nuclear third party liability and insurance,*
- *keeping under review the technical and economic characteristics of nuclear power growth and of the nuclear fuel cycle, and assessing demand and supply for the different phases of the nuclear fuel cycle and the potential future contribution of nuclear power to overall energy demand,*
- *developing exchanges of scientific and technical information on nuclear energy particularly through participation in common services,*
- *setting up international research and development programmes and undertakings jointly organised and operated by OECD countries*

In these and related tasks NEA works in close collaboration with the International Atomic Energy Agency in Vienna, with which it has concluded a Co-operation Agreement, as well as with other international organisations in the nuclear field

LEGAL NOTICE

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LEGISLATIVE AND REGULATORY ACTIVITIES

• *Argentina*

REGIME OF RADIOACTIVE MATERIALS

1980 Act on the regime for exploration for nuclear ores

Decree No 22.477 of 18th December 1956 on radioactive ores (see Nuclear Law Bulletin No. 9) was amended by Act No 22 246 of 23rd June 1980

In view of the need to implement an accelerated programme of research for nuclear ore deposits to meet the national energy plan, this amendment empowers the National Atomic Energy Commission to delineate the areas within which exploration campaigns will be undertaken These areas will either be "open" or "exclusive" Exploration will be freely permitted in open areas, subject to compliance with the Commission's plans and to notification of discoveries to the mining authorities In the so-called exclusive areas, the Commission alone may carry on exploration activities

The Act also amends the 1956 Decree concerning exports of nuclear materials which are henceforth subject to licensing by the "National Executive Authorities" The purpose of this amendment is to ensure that domestic supply is not affected by an export operation and to enable the Commission to control the destination of the materials concerned

A result of the adoption of this Act is the consequent modification of certain provisions of the Argentine Mining Code on the exploration regime

1980 Decree on the exploration programme for uranium ores

On 31st December 1980, the "National Executive Authorities adopted Decree No 2765 on the exploration programme for uranium ores

The carrying out of the nuclear plan approved by Decree No 302 of 1979 (see Nuclear Law Bulletin No 23) is a primary objective which is based on the existence of sufficient potential uranium availability Therefore as it was necessary to evaluate such reserves, it was decided to develop the activities of the National Atomic Energy Commission in that

field as well as to allow participation by third parties in the programme of exploration for and exploitation of uranium resources in Argentine territory

Accordingly, the Commission should draw up every year an inventory of the uranium reserves required to ensure the supply of all Argentine nuclear power plants in operation, being constructed or planned for the next decade, for the duration of their operating period On the basis of the assessment of the Secretary of State for Energy of future requirements in electrical energy, the Commission will take the necessary measures to develop assured uranium reserves in order to meet the demand

In this perspective, the Commission may grant to third parties concessions for the exploration for, exploitation and production of uranium ores, provided that those concessions do not affect the areas exclusively reserved for the Commission itself and have obtained the prior approval of the Executive Authorities The operations of companies benefiting from such concessions will be supervised by the Commission which will charge a fee on ores to be exported These concessions only apply to uranium ores

1981 Decree on the activities of the Atomic Energy Commission in connection with nuclear fuel production

The Argentine Atomic Energy Commission is responsible for promoting activities involving the manufacture of fuel elements required for the nuclear power plants which are part of the national nuclear power generation programme

Accordingly, in the perspective of the forthcoming entry into service of a fuel element manufacturing plant constructed by the Commission, Presidential Decree No 1719 of 26th October 1981 authorizes the latter to set up a limited company with capital also from private funds for the purpose of operating this facility under the most favourable economic conditions This decision is in line with the policy of associating the national industry with activities in the nuclear fuel cycle

• *Australia*

NUCLEAR LEGISLATION

Review of the Atomic Energy Act 1953, as amended, and related matters (1981)

In August 1980, the Australian authorities appointed an inter-departmental Committee to conduct a review of the Atomic Energy Act 1953, as amended, and related matters Following consideration of the Report submitted by the Committee and after consultation of the Uranium Advisory Council, the authorities decided on the need for significant changes in Commonwealth (Federal) and State nuclear legislation

The Government took the view that the Atomic Energy Act in its present form did not provide an appropriate basis for the development, regulation and control of nuclear activities It has therefore decided to establish a new legal structure, developing in close consultation with the States and the Northern Territory relevant State legislation, in order to ensure that national obligations and concerns were duly met, with particular attention to international non-proliferation requirements

• *Belgium*

ORGANISATION AND STRUCTURE

1981 Royal Order setting up a Service for the Technical Safety of Nuclear Installations

This Royal Order of 7th August 1981 came into force on 15th August 1981 (Belgian Official Gazette of 19th August 1981) It sets up a Service for the Technical Safety of Nuclear Installations within the Ministry of Employment and Labour and provides for the statute of its personnel

The duties of the Service are to

- act as the secretariat for the Special Commission on Ionizing Radiations and proceed with prior consideration of safety files,
- assist the Interministerial Commission for Nuclear Safety and State Security in the Nuclear Field (see Nuclear Law Bulletin No 24),
- study problems connected with the technical safety of installations and their operation,
- co-ordinate the work of the different inspection services responsible for supervising the health and safety of workers in nuclear installations and provide the necessary technical support in this respect,
- propose the designation of approved bodies to which the State entrusts special tasks in the above field, and supervise their work.

The Service, as mentioned above, is part of the Ministry of Employment and Labour and includes a technical section and an administrative section

The Royal Order also lays down a number of provisions on the qualifications of the Service personnel in the fields of nuclear science and radiation protection

1981 Royal Order concerning the Service for Protection against Ionizing Radiations

The Royal Order of 14th August 1981 concerning the organisation and the administrative structure of the Service for Protection against Ionizing Radiations came into force when it was published in the Belgian Official Gazette of 25th August 1981

This Service, within the Ministry for Public Health and the Family, is responsible, *inter alia*, for

- controlling the application of the General Regulations for Protection of the Population and Workers against the Hazards of Ionizing Radiations (see Nuclear Law Bulletin Nos. 1, 7 and 23),
- examining the licensing application files for nuclear power plants and other Class I establishments as well as Class II and III establishments operated by the State,
- examining the licensing application files for the import, transit and transport of radioactive substances, as well as controlling compliance with the licensing conditions,
- examining the licensing application files for the use, manufacture and distribution of radioactive substances for medical purposes, as well as controlling compliance with the licensing conditions, this also applies with respect to irradiated food,
- proposing the approval of radiation-emitting medical appliances and controlling such appliances,
- acting as the secretariat for the Interministerial Commission for Nuclear Safety and State Security in the Nuclear Field, and finally
- drafting new regulations on ionizing radiations and keeping them under review

The Annex to the Royal Order lays down detailed provisions as to the qualifications required for the executive personnel

REGIME OF RADIOACTIVE MATERIALS

1981 Act concerning conditions for the export of nuclear equipment and technology

The Act of 9th February 1981 concerning conditions for the export of nuclear materials, equipment and technological data was published in the Belgian Official Gazette of 10th March 1981.

The purpose of the Act is to ensure that, in implementation of international agreements on nuclear non-proliferation, exports to non-nuclear weapon states of such materials and equipment are intended solely for peaceful uses To secure compliance with these conditions, each

export operation is subject to prior authorization by the Minister responsible for energy, following the opinion of an advisory committee made up of representatives of the Ministries concerned, who are designated by the King

The materials, equipment and technological data are specified in accordance with international agreements in the nuclear field to which Belgium is a Party A Royal Order determines the conditions for granting the authorization, these concern the international security control to be applied and physical protection measures

THIRD PARTY LIABILITY

Bill on nuclear third party liability

The Belgian authorities have for several years now been studying a Bill to replace the Act of 18th July 1966 on nuclear third party liability which contains a number of provisions for implementation of the Paris Convention (see Nuclear Law Bulletin No 16) This Bill is far more detailed and would enable Belgium to ratify the Brussels Supplementary Convention

The Bill has now been approved by the Council of Ministers and by the Council of State, it should be submitted to Parliament as soon as circumstances permit The text of the Bill is reproduced in the Supplement to this issue of the Nuclear Law Bulletin

FOOD IRRADIATION

1980 Orders on the treatment of food by ionizing radiation

The Order of 16th July 1980 (published in the Official Gazette of 19th August 1980) regulates the treatment by ionizing radiation of food for human and animal consumption The Annex to the Order lists the foods which may be irradiated and lays down the licensing requirements as well as the technical specifications to be complied with for each item

The Order of 16th October 1980 (published in the Official Gazette of 28th November 1980) which supplements the above Order adds other foods to the approved list, together with the related licensing and technical requirements

• *Brazil*

ORGANISATION AND STRUCTURE

1981 Resolution of the Nuclear Energy Commission concerning approval of independent technical supervisory bodies

Resolution No 02/81 was issued on an experimental basis by the Brazilian Nuclear Energy Commission on 3rd April 1981 and came into force when it was published in the Official Gazette of 7th May 1981

The purpose of the Resolution is to establish the requirements to be complied with for the approval of undertakings as technical supervisory bodies which are independent of nuclear facilities The Resolution applies to bodies resonsible for the technical supervision of activities in quality assurance programmes which are elaborated in accordance with the Commission's Code of Practice adopted by Resolution No 15/79 of 20th December 1979

RADIATION PROTECTION

1980 Resolution of the Nuclear Energy Commission concerning the licensing procedure for preparation and use of unsealed radioactive sources

Resolution No 10/80 was issued on an experimental basis by the Nuclear Energy Commission on 12th December 1980 and was published in the Official Gazette of 21st January 1981

The Resolution regulates the licensing procedure for the preparation and use of unsealed radioactive sources by qualified persons It applies to the preparation and use of such sources for therapeutic and diagnostic purposes *in vivo* and *in vitro* and for research purposes

REGIME OF RADIOACTIVE MATERIALS

1981 Resolution of the Nuclear Energy Commission concerning physical protection measures for nuclear facilities and activities

Resolution No. 07/81 was issued on an experimental basis by the Nuclear Energy Commission on 27th July 1981 and was published in the Official Gazette of 26th August 1981

The purpose of the Resolution is to establish the general principles and basic requirements for the physical protection of nuclear facilities and activities It applies to all activities and facilities connected with the production, use, processing, reprocessing, handling, transport and storage of materials involved in the Brazilian nuclear programme

The Resolution provides, in connection with nuclear facilities, that a preliminary physical protection plan must be submitted to the Commission in the first stages of the project The plan defines the areas to be protected and the measures to be taken for such protection A final physical protection plan must be submitted prior to the issue of an operating licence The Resolution further provides for the setting up of a Physical Protection Service responsible for ensuring compliance with the approved measures

• *Canada*

RADIATION PROTECTION

1981 Amendment to the Radiation Emitting Devices Regulations of 1972

The Radiation Emitting Devices Regulations of 10th February 1972, as amended (see Nuclear Law Bulletin Nos 11 and 26) were further amended by Order of 3rd April 1981 (SOR/81-286, Canada Gazette, Part II, Vol 115, No. 8 of 22nd April 1981).

The amendment concerns the insertion in Schedule I of ultra-sound therapy devices, this also modifies Schedule II which now includes the standards for design, construction and operation of these devices as well as labelling requirements from the viewpoint of radiation safety

• *France*

ORGANISATION AND STRUCTURE

1981 Decree on the Atomic Energy Commission

Ordinance No. 45-2563 of 18th October 1945 setting up an Atomic Energy Commission (Commissariat à l'Energie Atomique - CEA) was amended on several occasions and in particular, by Decree No. 70-878 of 29th September 1970 (see Nuclear Law Bulletin Nos 6 and 11).

Decree No. 81-789 of 18th August 1981 (published in the Official Gazette of 20th August 1981) amends certain provisions of the 1970 Decree, namely the composition of the Committee for Atomic Energy and the presentation of the annual report on the activities and management of the CEA

The text of the Decree of 29th September 1970, as amended several times and more recently by the Decree of 18th August 1981, is reproduced in the "Texts" Chapter of this issue of the Nuclear Law Bulletin

1981 Decree on the High Council for Nuclear Safety

Decree No 81-978 of 29th October 1981 (published in the Official Gazette of 31st October 1981) amends the Decree of 13th March 1973 setting up a High Council for Nuclear Safety and a Central Service for the Safety of Nuclear Installations (see Nuclear Law Bulletin No 11)

The High Council for Nuclear Safety, which is attached to the Ministry of Industry, is competent to advise on all questions involving the safety of nuclear installations, which is defined as all the technical requirements at the construction stage and at the operational stage of nuclear installations, to ensure their normal operation as well as accident prevention The Council may make any recommendations to the Minister of Industry which it considers necessary for improving the efficiency of actions in this field

It should be noted that, henceforth, the National Assembly, the Senate and the regional or general Councils concerned may request the Minister to submit for consideration by the High Council all important matters within its competence In particular, the High Council may be consulted on the scientific and technical quality of measures planned to provide the public with information on nuclear safety

1981 Decree on the Council for External Nuclear Policy

A Decree of 1st September 1976 had set up a Council for External Policy (see Nuclear Law Bulletin No. 20) responsible for defining the policy for the export of nuclear technology, equipment and products which are sensitive from the viewpoint of the non-proliferation of nuclear weapons Decree No. 81-822 of 4th September 1981 (published in the Official Gazette of 6th September 1981) amends the composition of the Council, which is now the following the Prime Minister, the Ministers for Trade, for Research and Technology, for External Relations, for Defence, for Economy and Finance, for Industry, the Minister delegate to the Minister for Industry, responsible for energy, and the Administrator-General of the Atomic Energy Commission.

1981 Order on the Institute for Protection and Nuclear Safety

The Institute for Protection and Nuclear Safety was set up within the Atomic Energy Commission (CEA) by an Order of 2nd November 1976 (see Nuclear Law Bulletin No 18) This Order has been amended by an Order of the Minister for Industry dated 29th October 1981 and published in the Official Gazette of 31st October 1981

The new Order specifies that, in connection with nuclear safety, the Institute provides direct technical support to the Central Service for the Safety of Nuclear Installations The practical measures for this collaboration will be agreed between the CEA and the Ministry of Industry. The other provisions in the Order concern, in particular, the composition and duties of the Institute's directing bodies

REGIME OF RADIOACTIVE MATERIALS

French Regulations for the Protection and Control of Nuclear Materials

The Official Gazette of the French Republic has recently published two decrees issued under the Act of 25th July 1980 on the protection and control of nuclear materials, published in the Official Gazette of 26th July 1980 (see Nuclear Law Bulletin No 26)

It may therefore be of value to take an initial look at this whole series of measures, most of whose provisions are already in force, although they require to be backed up by a number of Orders

Fully to understand the nature and scope of the new legislation which is some of the most complex currently to be found in countries using nuclear energy, it has to be seen in the national and international context

For many years the Commissariat a l'Energie atomique (CEA), a State public body, was the sole owner of nuclear materials in France For its own internal purposes it had adopted a series of measures intended to guarantee under all circumstances its control of the management and protection of nuclear materials in its possession so far as the following were concerned

- the follow-up of and accounting for nuclear materials hence the CEA's long-established "Code of management for basic materials",

- physical protection of nuclear materials within premises and installations and in the course of transport,

Changes in recent years following the development of nuclear energy and its industrial exploitation have resulted in an increase in the numbers of those concerned in the fuel cycle, from the uranium ore processing plant down to the reprocessing stage, and of course including the production of electricity when ownership of the nuclear fuel passes to the Electricité de France (EDF). National legislation had therefore become necessary, particularly since France wished to support the objectives of the International Atomic Energy Agency (IAEA) in the control of the proliferation of nuclear weapons France therefore participated in the work of the London Club designed to make exports of "sensitive' nuclear materials to countries without nuclear weapons subject to very strict rules Lastly, France was due to sign the draft International Convention on the Physical Protection of Nuclear Materials prepared by the IAEA, open for signature since March 1980 dealing with standard physical protection measures and the definition of offences in connection with the misappropriation of nuclear materials

I Scope of the new legislation

Under Section 1 of the Act of 25th July 1980 the new legislation applies to fusible, fissile, fertile or other nuclear materials, except for ores containing one or more of the fusible, fissile or fertile elements included on the list contained in a decree made in the Conseil d'Etat This list appears in Section 1 of Decree No 81 512 of 12th May

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*This note was prepared by the French Commissariat a l'Energie Atomique

1981 on the protection and control of nuclear materials (Official Gazette of 14th May 1981) It includes plutonium, uranium, thorium, deuterium, tritium and lithium 6

However, with the exception of the provisions in Section 8 imposing penalties for the unlawful possession of nuclear materials, the Act does not apply to nuclear materials allocated for defence purposes or present in nuclear installations connected with defence Such materials are covered by the special regime set out in Decree No 81-558 of 15th May 1981 on the protection and control of nuclear materials in the field of defence (Official Gazette of 17th May 1981) and in the Order of the Prime Minister of the same date

II Nuclear materials are subjected to a system of licensing and inspection

The principles of this regime are set out in Sections 2 and 3 of the Act of 25th July 1980 *"the import and export of nuclear materials, and the production, possession, use and transport of such materials are subject to licensing and inspection" "The licence may specify its duration, the quantities and form of the nuclear materials concerned, and measures to be taken to ascertain their location, and to prevent their being stolen, misappropriated or lost"*

Conditions related to the issue of licences were set out in the Decree of 12th May 1981 on the protection and control of nuclear materials

This Decree states that licences shall be issued by the Minister of Industry, after consulting the Minister of the Interior and, in the case of imports and exports, the Minister responsible for foreign relations

When several establishments are involved, a separate application must be made for each establishment The licence application must state the name and status of the designated representative of the establishment, the nature of the activities which the applicant intends to carry on, and the nature and the maximum quantities or maximum flows of materials which the activity of the applicant will involve Documentation attached to the application must describe the atomic installations, their organisation and protection and inspection arrangements

A licence must be issued for each establishment and in some cases for each installation where establishments consist of a number of distinct installations The licence may be issued subject to conditions and limits relating to its duration and to quantities of materials held, and may be suspended or revoked, primarily in cases where an offence has been committed

The Minister of Industry must be given prior notice of any changes in the circumstances under which the licensed activities are carried out, and a fresh application is required for any changes deemed important by the Minister

The Act of 25th July 1980 made provision for quantities of materials to be fixed below which licences would not be required These limits are set out in the Decree of 12th May 1981. For example, 15 grams in the case of enriched uranium and 500 kilograms for natural uranium Below these limits, the possession, transport, import or export of nuclear materials requires no more than a simple declaration to the Minister of Industry

Where quantities do not exceed certain very low limits (e g 1 gram of plutonium or enriched uranium, 1 kilogram of natural uranium) a declaration is not required Measures for the follow-up and inspection of declared materials are to be specified in an Order

As we have seen, regulated activities include the production, possession, transfer, use and export of nuclear materials The concept of transfer needs some explanation It appears to be different from transport and might cover changes in ownership or liability, not necessarily implying anything more than the physical movement of nuclear materials or movements of materials between installations within a given establishment

III Obligations of the licence holder

These obligations form the second part of the legislation and are covered by the general term of control or inspection Under the Act of 25th July 1980 this is interpreted in a very broad sense the aim is to prevent losses, theft or misappropriation of nuclear materials It includes *"the technical and accounting aspects of operations", "it must make it possible at all times to know where materials are situation and how they are being used and to identify the nature and quantities of any materials missing It also includes measures intended to prevent theft and misappropriation"*

Although the wording is not very clear on this point a distinction has to be made between inspection and control which is the responsibility of the licence holder, and the duty laid on government authorities to check that such measures are being applied

As regards the obligations of the licence holder, these are set up in the Decree of 12th May 1981 where the general term of inspection or control is also used The Decree distinguishes between

- measures to follow-up and account for materials,
- measures for the containment and surveillance of materials and for the physical protection of the premises where they are situated,
- measures for physical protection in the course of transport

(a) The follow-up of and accounting for nuclear materials should enable the licence holder at any time to know the quantities of materials in his possession, how they are being used, and any processing to which they are subject, so as to reveal any anomalies

Provision is made for verification by stocktaking at regular intervals. The licence holder must inform the Minister of Industry of any anomaly and immediately notify the police and gendarmerie of any disappearance of nuclear materials, whether through theft, loss of misappropriation

An Order will subsequently lay down detailed arrangements for follow-up and accounting procedures for nuclear materials

The Order will specify how accounting for materials is to be carried out and the frequency of stocktaking

(b) Measures for the containment and surveillance or materials and for physical protection.

The Decree of 12th May 1981 distinguishes between

- measures for the containment of materials within establishments or installations which are designed to prevent unauthorized or unjustified movements of materials,

- surveillance measures to ensure that containment is complete, that there is no abnormal departure of materials and that there is no tampering with the accounting or surveillance systems,

- physical protection measures in the true sense concerning local facilities and installations containing materials and designed to protect them against misappropriation or unlawful acts

For the purpose of physical protection measures nuclear materials are divided into three categories set out in a table annexed to the Decree

(1) materials in category III (three grams for plutonium, 15 grams for highly enriched uranium, 550 kg for natural or depleted uranium) must be stored within a zone to which access is restricted,

(2) materials in category II (400 grams for plutonium, 1 kg for highly enriched uranium) must be the subject of special measures, such as physical barriers and permanent surveillance by guards

For the category containing the most sensitive materials (2 kg for plutonium, 5 kg for highly enriched uranium) it is necessary to take quite exceptional measures storage within a protected zone with access restricted *"to persons with maximum security clearance"* under the surveillance of guards *"in close liaison with the police and emergency services"*

These levels of physical protection and the classification of nuclear materials correspond in the main to the criteria set out in the table annexed to the International Convention on the Physical Protection of Nuclear Materials The same criteria are used for the physical protection of nuclear materials in the course of transport, protection measures being adapted to the category of materials concerned

- For all nuclear materials (except however for natural uranium, depleted uranium and thorium) prior notice of a transport must be given to the Minister of Industry and the Minister of the Interior, setting out in the case of successive journeys the conditions for the transfer of liability from one carrier to the other

- For materials in categories I and II the means of transport must be approved by the Minister of Industry, approved routes must be followed, prior approval for the operation must be obtained , and constant checks must be carried out from a fixed installation

- For materials in category I, provision is made for special protection by an escort provided by the carrier, with the assistance, where necessary, of the police

The rules governing the protection and control of nuclear materials are to be laid down at a later date by a joint Order of the Minister of Industry, the Minister of the Interior and the Minister of Transport, after obtaining the opinion of a special committee responsible to the Minister of Indutry, i e the committee for the protection of the transport of nuclear materials

Lastly, a special obligation is imposed on the exporter of nuclear materials Section 2 of the Act of 25th July 1980 requires the exporter to reach agreement with purchasers as to the conditions on which materials are to be used

IV Offences, criminal penalties and liability

The Act of 25th July 1980 provides for criminal penalties in three cases

- Unlawful appropriation of nuclear materials, covering cases of theft and misappropriation, the unauthorized exercise of activities within the scope of the Act or the provision of deliberately misleading information for the purpose of obtaining a licence A person convicted of an offence is punishable by from two to ten years imprisonment and a fine (Section 6)

- Interference with inspection or control or the deliberate provision of inaccurate information to the control authorities the person responsible is punishable by imprisonment for from two months to two years and a fine (Section 7)

- Failure to declare a loss or a theft of materials is punishable by from fifteen days to two years imprisonment and a fine (Section 8)

- A sentence of imprisonment may or may not be accompanied by a fine

The Decree of 12th May 1981 introduced a number of penalties for minor offences These may be imposed by a magistrates court and may be created by regulation, whereas criminal penalties in France are exclusively a matter for legislation

These penalties are designed to punish non-compliance with the terms of the licence, particularly those dealing with measures to be taken for the purposes of the inspection and control of nuclear materials They are minor offences in what is known as the fifth category, punishable by imprisonment for from ten days to one month and a fine

This look at offences involving the possession of nuclear materials raises the question firstly of who is responsible for ensuring compliance with the requirements of the Act and the Decree and, secondly, of which authorities are responsible for enforcing the legislation and for prosecuting offences

(a) It follows from the provisions of Section 8 of the Act of 25th July 1980 and Sections 27 and 28 of the Decree of 12th May 1981 that responsibility for the inspection and control of nuclear materials including the obligation to notify the police of all cases of loss or theft lies primarily with the licence holder, with the head of the

establishment where the nuclear materials are situated and with the employees who have "legal' custody of such materials, being persons directly responsible for inspection and control measures

Where the licence holder is an incorporated body, as is nearly always the case, the directors are responsible for compliance with the law They must designate a representative for each establishment containing nuclear materials with particular responsibility for ensuring the regular application of controls over nuclear materials This representative, who is normally the head of the establishment, must in his turn inform the employees directly of the penalties to which they may be liable if an offence is committed Employees must acknowledge in writing that they have been informed of the penalities to which they are liable should they fail to declare a loss or theft

(b) Breaches of the legislation on the protection of nuclear materials may be formally reported by officers or agents of the judicial police, in line with the normal rule of French criminal law Offences may also be reported by officials in the inspection service or any other service specially concerned with such matters by reason of their work e g customs officers in the case of imports and exports, fraud prevention officers, and, as regards nuclear installations, inspectors of large nuclear installations and inspectors from the Central Service for Protection against Ionizing Radiation It will be noted that inspectors for large nuclear installations were already jointly responsible with the Prefect for the enforcement of measures for the physical protection of installations taken by the operator to prevent any unlawful action or misappropriation of fissile or radioactive materials These measures form part of the special protection plan which exists for each nuclear establishment under an Ordinance of 29th December 1958 This Ordinance deals with the protection of installations of vital national importance Nearly all nuclear installations are considered to fall within this category

Moreover, the enforcement of measures relating to nuclear materials under the Act of 25th July 1980 and the Decree of 12th May 1981 is a particular responsibility of the Minister of Industry who appoints the officials concerned These officials are bound by a duty to respect the confidential nature of their work

Lastly, special mention must be made of the co-ordinating role played by the Interministerial Committee for Nuclear Safety, which the Decree of 4th August 1975, as amended entrusts, *inter alia*, with the task of co-ordinating action in relation to the inspection and safety of nuclear materials

Conclusions

The Act of 25th July 1980 and recent instruments made under it have filled in a gap which previously existed in French nuclear law

A large number of provisions are already applicable and licensing and control procedures are now being put into effect under the responsibility of the Minister of Industry Provision has been made for implementing orders which will clarify existing provisions, particularly in the field of accounting for nuclear materials and transport procedures

This description of French law on the protection and control of nuclear materials shows that the present system now more or less accords on all points with the IAEA recommendations The general principles are the same Differences only concern secondary matters or practical arrangements Measures taken by French authorities and operators under national law will therefore facilitate the implementation of the international commitments made by France

• *Federal Republic of Germany*

RADIATION PROTECTION

First Amendment to the 1976 Radiation Protection Ordinance 1981)

The Radiation Protection Ordinance of 13th October 1976 (see Nuclear Law Bulletin Nos 16, 18 and 19) has been amended by the First Ordinance to Amend the Radiation Protection Ordinance of 22nd May 1981 (Bundesgesetzblatt 1981, I, p 445). The amendment prescribes new limits for the use, storage and disposal of glassware, ceramic objects and chinaware which contain uranium The Ordinance entered into force on 1st June 1981

Third Ordinance to amend the Ordinance implementing the Act concerning Units of Measurement (1981)

This Ordinance of 8th May 1981 (Bundesgesetzblatt 1981, I, p 422), prescribes that in the Radiation Protection Ordinance, the derived SI unit (International System of Units) of the equivalent dose "Joule per kilogramme" (J/kg) should be replaced by the derived SI-unit "sievert" (Sv)

REGIME OF NUCLEAR INSTALLATIONS

Bill to Amend the 1977 Ordinance on the Procedure for Licensing of Nuclear Installations (1981)

Work is under way in the Federal Ministry of the Interior to prepare a Bill to amend the Ordinance concerning the Licensing Procedure for Nuclear Installations of 18th February 1977 (see Supplement to Nuclear Law Bulletin No 19) The purpose of the planned amendment is to expedite and concentrate the licensing procedure for nuclear installations Particular emphasis is placed on the question of a new public hearing held in cases where a substantial alteration of an existing installation is required.

• *Italy*

RADIATION PROTECTION

1981 Ministerial Decree on the qualification of experts and medical practitioners for radiation protection surveillance

The Decree of the Minister of Labour and Social Affairs of 1st August 1981 (published in the Italian Gazette of 25th August 1981) concerns the procedure for admission to examinations, for inclusion in the national list, of qualified experts and approved medical practitioners who are competent in radiation protection matters The Decree came into force on the day following its publication and replaces a former Decree of 24th June 1978 on the same subject (see Nuclear Law Bulletin No 22)

• *Netherlands*

ENVIRONMENTAL PROTECTION

1979 Environmental Protection Act amends the 1963 Nuclear Energy Act

The Environmental Protection (General Provisions) Act of 1979 (Bulletin of Acts, Orders and Decrees No 442, 1979) and the Act implementing it (Bulletin of Acts, Orders and Decrees No 443, 1979) came into force on 1st September 1980 The Environmental Protection Act makes a number of amendments to the Nuclear Energy Act of 21st Feburary 1963 (see Nuclear Law Bulletin Nos. 3, 4 and 5) The amendments concern the licensing procedures, in particular, applications, issue of licences and appeals and provide for greater access to documents as well as public involvement in the granting of licences.

The Environmental Protection Act lays down the procedure for the admissibility of an application for a licence (Section 7) and the time-limit for a reply by the authorities (Sections 9 and 43) Appeals may be made by interested parties against rulings concerning licences for nuclear activities which may be granted without a public participation procedure (Section 53) under the Nuclear Energy Act together with the 1969 Nuclear Installations (Fissionable Materials and Ores) Decree (See Supplement to Nuclear Law Bulletin No. 10), the 1969 Devices Decree and the 1969 Radio-active Materials Decree (see Nuclear Law Bulletin No 8)

In connection with access to documents, the Environmental Protection Act provides in detail for posting of notices, and their publication in the Government Gazette and in newspapers, in compliance with the requirements of the Act (Section 13), notably as regards the authorities with which objections may be lodged. In addition, all

documents concerning an application for a licence must be made available for public perusal

Any person may lodge a reasoned objection with the authorities (Section 20) or may object orally at a public meeting in the municipality concerned. Meetings on applications for licences are held to provide an opportunity for an exchange of views between the licensing authority, the applicant and the public. A report of the meeting is sent to all participants (Section 21) Furthermore, when a provisional licence is granted, it is provided that, as a rule, persons having objected to the requested licence in the first place may again lodge a reasoned objection in writing (Section 28) The Act fixes the conditions to be complied with, including the time-limits, for the procedure for appeals against the provisional licence as well as for the decisions by the competent authorities

• *Peru*

REGIME OF RADIOACTIVE MATERIALS

1980 Decree-Law on radioactive ores

In view of the need to secure assured reserves of radioactivity ores to meet energy requirements. the Government of Peru decided to enact legislation for the exploration and exploitation of radioactive ores in the national territory and in waters within its jurisdiction The purpose of Decree-Law No 23112 on radioactive ores of 9th July 1980 is to provide a framework for the discovery and assessment of existing uranium resources in Peru to determine their incidence on the national economy

The Decree-Law vests in the Peruvian Institute for Nuclear Energy - IPEN (see Nuclear Law Bulletin No. 20) responsibility on behalf of the State for implementation and control of the activities covered by this Decree-Law

IPEN may enter into contracts with national or foreign undertakings for exploration and exploitation of radioactive ores and is entitled to receive certain benefits, calculated on the basis of the characteristics of the deposits and the international market price of the products. As far as its share is concerned, the undertaking concerned may export all or part of the products, subject to prior authorization by IPEN and after the national demand has been met

The Decree-Law further provides that, in connection with radioactive waste disposal, environmental protection and radiation protection, international regulations and rules issued by IPEN must be observed

Finally, the Decree-Law amends Decree-Law No 21875 of 5th July 1977 setting up IPEN, in particular, by providing that the latter represents the State in all matters related to exploration for and exploitation of radioactive ores.

• *Sweden*

THIRD PARTY LIABILITY

1981 Decree on nuclear third party liability

Decree No 327 of 23rd April 1981 implemented in Sweden two Decisions adopted on 27th December 1977 by the OECD Nuclear Energy Agency's Steering Committee (see Nuclear Law Bulletin No 21) The first Decision concerns the exclusion of certain kinds of nuclear substances from the application of the Paris Convention on Third Party Liability in the Field of Nuclear Energy and the second Decision excludes small quantities of nuclear substances from its scope

Section 1 of the Decree and its Annex concern these exclusions while the other provisions (Sections 2 to 6) were transferred from Decree 1968 No 46 which is replaced by this new Decree The Decree came into force on 1st July 1981

• *Switzerland*

NUCLEAR LEGISLATION

Revision of the 1959 Atomic Energy Act (1981)

Background

The Federal Act on the Peaceful Uses of Atomic Energy and Protection against Radiation of 23rd December 1959 has already been partly revised The Federal Order of 6th October 1978 concerning the Atomic Energy Act amended the licensing procedure (see Nuclear Law Bulletin Nos 19, 20, 22 and 23) Henceforth, operators must obtain a general licence to construct a nuclear installation This general licence is no longer required for nuclear installations which are in operation (Muhleberg, Beznau I and II, Gogsen) or whose construction was authorized in accordance with the 1959 Act (Leibstadt) The new Order provides for a transitory system for installations which have been granted site licences /Section 12(2)/ This provision applies to the following projects Kaiseraugst (Canton of Aargau), Graben (Canton of Bern) and Verbois (Canton of Geneva). In connection with these installations, the authorities, in the course of a simplified procedure for the issue of a general licence, just consider whether the energy produced in the installation truly corresponds to an effective need in the country

An Ordinance of the Federal Council of 11th July 1979 regulates the procedure applicable to general licences for nuclear installations with regard to holders of a site licence (see Nuclear Law Bulletin No. 24).

The validity of the 1978 Federal Order, which came into force on 1st July 1979, expires upon entry into force of a new Atomic Energy Act, and at the very latest by 31st December 1983. An overall revision of the 1959 Act was therefore required of the Expert Commission appointed in 1975 by the Federal Department of Transport, Communications and Energy. The revision covers two parts.

Part One: revision of the third party liability provisions

The 1959 Act's third party liability provisions are characterized by two points:

- Only the operator of an installation may be held liable and the person suffering damage may not proceed directly against third parties for whom the undertaking is responsible (Section 12(5), principle of channelling of liability),

- the amount of insurance intended as cover for third party liability resulting from operation of an electricity-generating nuclear power plant is limited to 200 million Swiss francs* (Federal Council Ordinance of 6th July 1977, see Nuclear Law Bulletin No. 20). If the damage caused exceeds the operator's limited third party liability, the Act establishes a special system involving the intervention of the public authorities (Sections 27 and 28).

The system of the 1959 Act is similar to that established by the Paris Convention and the Brussels Supplementary Convention, which were signed but have not yet been ratified by Switzerland. While the principle of channelling of liability is generally accepted in Switzerland, this is not the case regarding the limitation of liability. Apart from the Act on maritime navigation, there is no limitation of non-contractual liability in Switzerland. On 10th December 1979, the Federal Council addressed its message to Parliament concerning an Act on nuclear third party liability (the text of the Bill has been reproduced in the Supplement to Nuclear Law Bulletin No. 25).

After having been considered by a commission drawn from the States Council (representing the Cantons), the Bill is now being examined by an ad hoc commission of the National Council (representatives of the people). To date, the principle of the unlimited liability of the operator put forward in the Bill presented by the Federal Council has not been questioned. It is assumed that it should be possible for the new Nuclear Third Party Liability Act to enter into force some time in 1983.

Part Two: revision of the other provisions of the 1959 Act

As mentioned above, the 1978 Federal Order concerning the Atomic Energy Act is only a temporary solution pending overall revision of the Act. In July of this year, the Federal Commission for the revision of the Atomic Energy Act submitted, for consultation, to the Cantons and interested circles, a Bill on radiation protection and the use of nuclear energy. This is a Bill established by the Commission itself and in its present state should not yet be considered as a Bill issued by the Government. An explanatory report is attached to this Bill.

On the basis of the results of the consultation procedure, the Federal Council may put a message and a new Bill before Parliament. Until such time the Federal Order, which is valid until 31st December 1983, may be renewed.

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*The Federal Council (Government) has just decided that as from 1st January 1982, this amount would be raised to 300 million Swiss Francs.

RADIOACTIVE WASTE MANAGEMENT

1979 Federal Ordinance on preparatory measures for the construction of a radioactive waste repository

This Ordinance of 24th October 1979, which entered into force on 15th November 1979, contains details concerning the special procedure provided for under Section 10(2) of the Federal Order of 6th October 1978 concerning the Atomic Energy Act (see Nuclear Law Bulletin No 23) whereby the Federal Council must grant permission before preparations for the construction of radioactive waste repositories may be undertaken

The 1979 Ordinance defines preparatory measures as any activity (e g test-drilling), other than preparatory measures within the meaning of the Federal legislation on compulsory purchase, designed to evaluate or test possible sites for waste repositories and specifies the application requirements for the necessary permission These include appropriate maps and plans, a description of the research programme, a geological report and a report on the effects (environmental etc.) that the proposed preparatory measures would have The application to undertake preparatory measures is made to the Federal Department of Transport, Communications and Energy which arranges for its publication and dissemination to interested parties who may lodge objections The final decision is then taken by the Federal Council but it is specifically provided that the granting of such permission in no way implies the right to actually construct the repository Appropriate inspection procedures are provided for to ensure that the preparatory work is carried out in accordance with the conditions of the permission

• *Turkey*

ORGANISATION AND STRUCTURE

Bill on the reorganisation of the Atomic Energy Commission (1981)

A Bill on the reorganisation of the Turkish Atomic Energy Commission (TAEC) is presently being considered by the National Security Council which is the competent authority in this field The purpose of the Bill is to provide a legislative framework to develop nuclear activities in Turkey as well as to modernise the structure of TAEC to this effect

• *United Kingdom*

REGIME OF RADIOACTIVE MATERIALS

The Education (Schools and Further Education) Regulations, 1981

These Regulations (S.I 1981, No 1086) were made on 23rd July 1981. Regulation 6 of Part II of the Regulations concerns the use of radioactive substances and apparatus in schools and further education establishments The approval of the Secretary of State for Education and Science is required for the use of such substances and apparatus, and his approval may be withdrawn if arrangements for health and safety of pupils and staff are inadequate The Regulations revoke the Schools Regulations, 1959 (as amended), and the Further Education Regulations, 1975

• *United States*

STATEMENT BY PRESIDENT REAGAN ON NUCLEAR POWER (1981)

On 8th October 1981 President Reagan issued a policy statement on nuclear power Calling nuclear power "*one of the best potential sources of new electrical energy supplies in the coming decades*", the President announced five policy initiatives "*to correct present government deficiencies and to enable nuclear power to make its essential contribution to our future energy needs*"

First, the President directed the Secretary of Energy to give immediate priority attention to recommending improvements in the nuclear regulatory and licensing process in a manner consistent with public health and safety The objective is to shorten the time involved from the planning stage to issuance of an operating licence for new nuclear power plants to 6-8 years from the present 10-14 years

Second, the President directed the government agencies to proceed with the demonstration of breeder reactor technology, including completion of the Clinch River Breeder Reactor

Third, the President lifted the ban placed by previous Administrations on commercial reprocessing activities in the United States. He called upon the private sector to take the lead in developing commercial reprocessing services

Fourth, the President instructed the Secretary of Energy, working closely with industry and state governments, to proceed swiftly toward development of means of storing and disposing of commercial high-level radioactive waste

Fifth, the President directed the Secretary of Energy and the Director of the Office of Science and Technology to meet with

representatives from universities, private industry and electric utilities and report to him by 10th September 1982 on obstacles which stand in the way of increased use of nuclear energy and steps needed to overcome the obstacles

REGIME OF NUCLEAR INSTALLATIONS

Authority to issue temporary operating licences (1981)

Under the Atomic Energy Act of 1954, as amended, no person may operate a nuclear power plant without first obtaining an operating licence from the United States Nuclear Regulatory Commission A formal on-the-record evidentiary hearing must be held upon request of any person whose interest may be affected Under existing law, the Commission may not issue an operating licence until the hearing process has been completed

Two Bills are now pending, one in each House of Congress, which would authorize the Commission to issue temporary operating licences for power reactors pending final action by the Commission on the operating licence application Although the House and Senate bills differ in their particulars, both Bills would allow the Commission to initially authorize fuel loading, testing and operation of the reactor at a power level which does not exceed 5% of rated thermal power Thereafter, a temporary operating licence authorizing operation at greater power levels could be issued A temporary interim licence could not be applied for or issued before the Commission had completed its safety and environmental evaluations of the facility, but could be issued in advance of the conduct or completion of any required hearings In addition, both Bills contain provisions which permit any person to file affidavits in support of, or in opposition to, a request for a temporary operating licence Judicial review of the Commission's decision with respect to the issuance of a temporary operating licence is also permitted

The need for this legislation has arisen primarily as a consequence of the March 1979 accident at Three Mile Island Following the accident, the Commission devoted its principal attention to evaluating the accident, and to developing regulatory improvements for presently operating nuclear power plants Only limited NRC resources were available to prepare and complete the necessary safety reviews and hearings necessary for issuance of operating licences for nuclear power plants already under construction By late 1980 it became clear that delays would be experienced between the time when construction of some of these plants would be completed and the time when all of the requirements for the issuance of an operating licence, including hearing requirements, would be met In order to relieve these delays, the Commission submitted a legislative proposal to Congress in March 1981 to authorize the Commission to issue temporary operating licences for nuclear power plants These Bills reflect the initial Congressional response to the Commission's proposal

ENVIRONMENTAL PROTECTION

Status of waste management legislation (1981)

Legislation to govern the storage and disposal of high-level radioactive waste has been receiving serious consideration in the 97th Congress of the United States. Although a number of Bills have been introduced addressing waste management issues, three Bills are receiving the most attention at this writing - S 1662, H.R. 3809 (Title I) and a Subcommittee of the House Science and Technology Committee substitute for H R 1993 and H R 4697 Though there are differences among the bills, each endeavours to establish a schedule for the establishment of disposal facilities for high-level radioactive waste

A major issue in nuclear waste management in the United States is the role individual states will have in the decision to site a high-level radioactive waste repository in that state Each of the three Bills receiving current consideration define the state/federal relationship in siting a repository in a similar manner All three Bills provide for selection of a site by either the Secretary of Energy or the President, after consultation with state officials An affected state may object to *a repository siting decision by petitioning Congress within a period of* thirty to ninety days Congress may then override the siting decision by approving the state petition within a specified period of time Although these Bills differ in detail, and there is disagreement among interested parties regarding these details, there appears to be a consensus that the general method described in these Bills is the appropriate mechanism to address the role of the individual states in high-level waste repository siting decisions

• *Netherlands*

SEA DUMPING OF RADIOACTIVE WASTE

In June 1981, a joint Dutch-Belgian-Swiss radioactive waste disposal operation into the Atlantic was scheduled to take place under the NEA Multilateral Consultation and Surveillance Mechanism for Sea Dumping of Radioactive Waste The operation was suspended because, on the basis of the 1979 Environmental Protection (General Provisions) Act of the Netherlands, certain environmental protection organisations lodged an appeal against the licence for this operation before the Netherlands Administrative Court of the Council of State, which decided to suspend the operation before deciding on the merits of the case. On 7th August 1981, the Court dismissed the appeal and the operation was carried out in September The ruling of the Court is reproduced below.

Ruling of the Administrative Court of the Council of State of The Netherlands Concerning the Appeal Lodged by Certain Environmental Protection Organisations*

(7th August 1981)

THE ADMINISTRATIVE COURT

Considering

that it has been argued that the dumping /of radioactive waste/ constitutes a potential danger to the marine environment and to public health

that according to the London Convention only low and medium level radioactive waste may be dumped into the sea, subject to a special permit,

that radioactive waste with a high activity may not be dumped into the sea,

that the documents produced, in particular, the report on the NEA Review of the continued suitability of the dumping site for radioactive waste of April 1980, show that the most exposed group of the population will receive a dose of not more than 0 5 millirem as a consequence of the dumping, provided that all the provisions and recommendations of the IAEA have been complied with,

* Unofficial translation by the Netherlands authorities.

that the real radiation dose in all probability will be lower but that at present no methods are available to make more accurate dose-calculations,

that the aforementioned calculations are, among others, based on the oceanographic and radiological model described in the Technical Documents 210 and 211 of IAEA*,

that, however, several unknown factors have been used in the model, but that on the other hand, the model is based on a number of pessimistic assumptions on the disposal of radioactivity (in seawater) and on the possible irradiation of man,

that it must be assumed that, as was argued during the public session by the representatives of the Minister of Public Health and the Environment, the safety factors, consisting of pessimistic assumptions, compensate the unknown factors;

that, furthermore, it has appeared, that the aforementioned report of NEA (which has been drafted and accepted also by countries which - whatever the reasons - do not dump radioactive waste into the sea) has included the radiation caused in the marine environment by dumping in the past and as a result of fall-out caused by testing of nuclear weapons, as well as by releases into the sea from reprocessing plants among others,

that a radiation dose of 0 5 mrem per year equals 0 1% of the maximum permissible yearly dose for the public - excluding radiation from natural causes and for medical purposes - recommended by ICRP and fixed in the so-called Euratom Basic Standards and in the Radioactive Substances Decree,

that 0.5 mrem is only a fraction of the radiation dose caused by natural radiation,

that, taking the above into consideration, the radiation added to the marine environment as a consequence of the dumping is so low, that it cannot reasonably be argued that this dumping constitutes a danger for man and environment,

that, furthermore, it must be considered that the waste to be dumped is packed in accordance with the guidelines issued by IAEA and NEA

that the documents produced show that these guidelines are in accordance with the purposes of the London Dumping Convention,

that the appellants have agreed that concentrations of strontium have been found in organisms living in sea water;

that, however, the Minister of Public Health and the Environment has stated that the same situation exists for caesium and plutonium,

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*IAEA-TECDOC-210 "The Oceanographic Basis of the IAEA Revised Definition and Recommendation Concerning High-Level Radioactive Waste unsuitable for Dumping at Sea."

IAEA-TECDOC-211 "The Radiological Basis of the IAEA Revised Definition and Recommendation Concerning High-Level Radioactive Waste unsuitable for Dumping at Sea "

that in the public session no evidence was shown whether this phenomenon is a result of dumping radioactive waste or a result of the world-wide fall-out caused by nuclear weapon tests,

that the appellants are of the opinion that the authorities of the Netherlands should not only be concerned with the methods for dealing with the waste, but should also be concerned with policies to lessen the amount of radioactive waste,

that this argument, however, is not relevant to the present issue which exclusively deals with the question of whether it is justified or not to grant a special permit, issued under the Nuclear Energy Act for the disposal of a quantity of radioactive waste, in the manner indicated in the application for this permit, and in accordance with all national and international regulations,

that the London Dumping Convention, in the view of the appellants, prefers an alternative disposal method on land over dumping of radioactive waste into the sea,

that, according to Article IV, second paragraph, juncto Appendix III, under C 4 of the London Dumping Convention, consideration of an application for a special permit, should include practical availability of alternative land based methods of treatment, disposal or elimination, or of treatment to render the matter less harmful for dumping at sea,

that, as was stated earlier, the packaging of the waste to be dumped is such that the purposes of the London Convention are complied with, and therefore it is in accordance with the obligations of Article IV, second paragraph, of the Convention,

that it has been shown that the final destination of the waste is decisive concerning the way in which it must be packaged,

that it has also been shown that the packaging of the waste in question has been designed for dumping into the sea,

that, therefore, it is not reasonable to place the waste in interim storage on land, as at present it is not sufficiently clear that other methods for disposal will be available,

that this, however, leaves open the possibility that in the future, other disposal methods with packaging conditions designed for these methods will become available,

that no sufficient evidence has been shown that the special permit concerned has been granted contrary to the regulations in or connected with, the London Dumping Convention, or the regulations of the Nuclear Energy Act,

that it follows that, considering the available data and the conditions attached to the special permit, insufficient reasons exist to retract the permit,

that the special permit ought to be maintained

DECIDES

to declare that the appeal of Greenpeace is denied

• *United States*

1981 DECISION OF THE NUCLEAR REGULATORY COMMISSION ON THE FEDERAL TORT CLAIM FILED BY THE OWNERS OF THE THREE MILE ISLAND NUCLEAR POWER PLANT

On 8th June 1981, the Nuclear Regulatory Commission denied the $4 010 billion dollar claim filed against it by the owners of the Three Mile Island nuclear plant under the Federal Tort Claims Act for property damage arising from the TMI accident A summary of the claim and the operation of the Tort Claims Act was previously presented (see Nuclear Law Bulletin No 27) In denying the claim, the Commission stated that under the regulatory framework flowing from the Atomic Energy Act of 1954, as amended, the regulated nuclear industry bears the primary responsibility for the proper construction and safe operation of licensed nuclear facilities The NRC has the statutory responsibility for prescribing licensing standards to protect public health and safety and to *inspecting industry's activities against these standards The Commission* does not thereby certify to the industry that the industry's designs and procedures are adequate to protect its equipment or operations

Under the provisions of the Federal Tort Claims Act the claimant may now file suit in federal district court. The court would then consider the claim *de novo*

COURT OF APPEALS REVERSES LOWER COURT AND UPHOLDS CONSTITUTIONALITY OF STATE MORATORIUM ON CONSTRUCTION OF NEW NUCLEAR PLANTS

Pacific Legal Foundation v State Energy Resources Conservation and Development Commission (9th Circuit, 7th October 1981)

This case was heard on appeal from two lower federal court decisions invalidating portions of California's Warren-Alquist Act The Act regulates all electric plants in California and imposes a moratorium on the construction of new nuclear plants. The courts held that insofar as the Act regulates nuclear plants, it is preempted by the Atomic Energy Act On appeal from that decision, the United States Court of Appeals for the Ninth Circuit found that two issues were ripe for review, reversed the decision of the lower courts, and held that the Atomic Energy Act does not preempt state laws enacted for purposes other than protection against radiation hazards

The Court of Appeals relied on paragraph 274(k) of the Atomic Energy Act, which provides that nothing in paragraph 274, entitled "Co-operation With States", shall be construed to affect the authority of any state or local agency to regulate for purposes other than protection against radiation hazards The legislative history reveals that the subsection is intended to clarify that paragraph 274 does not impair the state's authority to regulate activities of licensees of the Atomic Energy Commission (now the Nuclear Regulatory Commission) for health, safety and economic purposes other than radiation protection

The two justiciable sections of the California statute provide that 1) any utility planning to construct a power plant must submit a notice of intention containing, *inter alia*, at least 3 alternative sites for the location of the proposed power plant, and 2) no new power plant may be certified until the California Energy Commission has found that a federally approved method of nuclear waste disposal exists Since, the Court concluded, these two provisions are not aimed at radiation hazards but at economic and environmental issues, they are not federally pre-empted but valid and enforceable

TWO FEDERAL DISTRICT COURTS HOLD STATE WASTE MANAGEMENT LAWS VIOLATIVE OF THE U S CONSTITUTION

Washington State Building and Construction Trades Council v Spellman, (E D Washington , 28th June 1981)

The State of Washington's Radioactive Waste Storage and Transportation Act of 1980, enacted as a popular initiative, banned the storage of all non-medical radioactive waste generated outside the State of Washington, and the transportation of such waste to any storage site in Washington The law was challenged by several parties, including the U S Government (as the operator of a government disposal site in the State of Washington), and the operator of three active commercial nuclear waste disposal sites in the United States The court held that the State law violated both the Supremacy Clause and the Commerce Clause of the U S. Constitution and was therefore invalid

The Supremacy Clause

The Supremacy Clause provides that the Constitution and the laws of the United States are the supreme law of the land, notwithstanding any state constitution or laws to the contrary Judicial interpretation of the Supremacy Clause has led to the development of the doctrine of federal preemption, to ascertain whether a particular state law has been explicitly preempted by the Congress either in a statute or legislative history, or implicitly preempted by Congress as evidenced by a scheme of pervasive federal regulation or a dominant federal interest

The court held that the Atomic Energy Act, the Low-Level Radioactive Waste Policy Act and the Hazardous Materials Transportation Act constitute a pervasive federal statutory scheme for the transportation and storage of all materials which pose radiation hazards, except where jurisdiction is expressly ceded to the states.

The court found that an agreement between the state and the U S Atomic Energy Commission (now the Nuclear Regulatory Commission) wherein qualified regulatory responsibility over byproduct, source, and special nuclear materials was ceded to the state, did not grant authority to effectively ban the receipt and disposal of even those materials, and certainly not of low-level waste The Low-level Radioactive Waste Policy Act, which authorizes the states to join interstate compacts to provide for regional disposal sites, subject to Congressional approval, and then exclude waste from without the region after 1st January 1986, does not cede jurisdiction to the state Rather, it constitutes part of a federal plan to place future responsibility on the individual states to dispose of their waste, making it clear that if each state did not do so by 1st

January 1986 they could be denied access to other regions' disposal sites Therefore, Congress expressly delayed authorization of any such ban until 1st January 1986

The court also noted that any attempt to ban the transport into or storage within Washington of any Federally owned waste is unconstitutional in the absence of an express Congressional waiver of sovereignty

The Commerce Clause

The Commerce Clause of the United States Constitution provides that Congress shall have the power to regulate commerce among the several states Generally, it has been interpreted to prohibit state regulation of interstate commerce unless such regulation serves a legitimate state interest and is applied in a nondiscriminatory manner

The Court first found that 1) the movement of radioactive waste in interstate commerce fits within the definition of "commerce" for Constitutional purposes, 2) the statute is not merely the action of a market participant but is a regulatory measure subject to Commerce Clause scrutiny and 3) such action erects a barrier to the free flow of interstate commerce.

The Court then applied the "Pike test", which recognizes that the court must make a delicate adjustment of the conflicting state and federal claims, and requires an affirmative answer to the questions 1) does the state law regulate evenhandedly, 2) does it effectuate a legitimate local public purpose, and 3) does it have only an incidental effect on interstate commerce. Since the state law on its face discriminates between waste generated in Washington and waste generated in other states, the court held that the state law, on its face, does not regulate evenhandedly. The court also found that the state failed to present evidence that non-medical radioactive waste transported and stored in compliance with Federal regulations is dangerous to the health and safety of the citizens of Washington, and therefore the law served no legitimate local purpose. The court then held that since the law would sufficiently aggravate the national problem of insufficient storage capacity for the nation's nuclear waste, it would have more than an incidental effect on commerce.

The State of Washington has appealed this decision to the United States Court of Appeals for the Ninth Circuit

General Electric Co v Fahner, (E.D Illinois, 12th October 1981)

The Illinois Spent Fuel Act provided, inter alia, that no spent fuel generated outside of Illinois may be transported into, disposed of, stored or accepted in the state of Illinois unless the state of origin has an away-from-reactor facility substantially similar to that of Illinois and has entered into a reciprocity agreement with Illinois General Electric Co., operator of a storage facility in Illinois, and Southern California Edison Company, a shipper of spent fuel to the GE facility, challenged the Constitutionality of the Illinois statute The court held that the statute violated both the Supremacy and the Commerce Clause of the United States Constitution and was therefore invalid

The Supremacy Clause

The court held that the Atomic Energy Act created a pervasive regulatory scheme governing the storage and transportation of spent nuclear fuel with exclusive authority vested in the Atomic Energy Commission (now the Nuclear Regulatory Commission) States may assume certain regulatory responsibilities otherwise vested in the NRC only after the state has entered into a reciprocal agreement with the NRC Illinois never entered into such an agreement The court noted that even if Illinois had entered into such an agreement, the statute would be federally preempted since the NRC has expressly preserved exclusive authority over the transfer, storage and disposal of radioactive waste material resulting from the separation in a production facility of special nuclear material from irradiated reactor fuel

The Commerce Clause

Applying the three-pronged Pike tests to make the delicate adjustment of conflicting state and federal claims (see discussion under Washington State Building and Construction Trades Council v Spellman) The court found that the Illinois statute regulated discriminatoryily *per se* Since the Illinois legislature was aware that their off-site nuclear storage facility is the only facility of its kind in the country, reciprocity is impossible and the statute totally banned the importation for storage of the storage of spent nuclear fuel from outside Illinois Since the state attempted to overtly block the flow of interstate commerce at its borders, the court decided it need not proceed to questions two and three The court did address the defendants' claim that the statute comes within the ambit of the quarantine exception to the Commerce Clause which recognizes that even if a state law facially discriminates against interstate commerce, it may be upheld if it represents a legitimate attempt to protect the people of the state The court held that any inherent danger that may be posed by spent nuclear fuel transportation and storage applies equally to all people and therefore there is no basis for distinguishing between the danger to the citizens of Illinois and that affecting the residents of other states

INTERNATIONAL ORGANISATIONS AND AGREEMENTS

INTERNATIONAL ORGANISATIONS

• *The OECD Nuclear Energy Agency*

REVISION OF THE RADIATION PROTECTION NORMS

A Joint Advisory Group convened under the auspices of the IAEA, NEA, WHO and ILO prepared a revision of the Basic Safety Standards for Radiation Protection (January 1981) taking into account new recommendations made by the International Commission on Radiological Protection (ICRP) (for further details see under IAEA below)

The NEA Committee on Radiation Protection and Public Health considered this Revision at its meeting in September 1981 and recommended its adoption by the Steering Committee for Nuclear Energy

Accordingly, at its meeting on 15th October 1981, the Steering Committee adopted the Standards prepared by the Joint Advisory Group as the 1981 Revision of the 1962 OECD Radiation Protection Norms

MULTILATERAL CONSULTATION AND SURVEILLANCE MECHANISM FOR SEA DUMPING OF RADIOACTIVE WASTE

On 17th July 1981 Japan acceded to the OECD Multilateral Consultation and Surveillance Mechanism for Sea Dumping of Radioactive Waste adopted by an OECD Council Decision of 22nd July 1977 (see Nuclear Law Bulletin Nos 20, 23 and 25). With Japan, there are now twenty-one OECD Member Countries which are parties to the Mechanism

The Mechanism has set up a system of international co-operation in radioactive waste sea dumping operations organised by OECD countries The Decision clearly states that the Mechanism was set up to further the objectives of the 1972 London Convention on the Prevention of Marine Pollution by the Dumping of Wastes and Other Matter, which gives the IAEA specific responsibilities in connection with radioactive waste dumping

RESEARCH AND ENVIRONMENTAL SURVEILLANCE PROGRAMME RELATED TO SEA DISPOSAL OF RADIOACTIVE WASTE

In accordance with the OECD Multilateral Consultation and Surveillance Mechanism for the Sea Dumping of Radioactive Waste (see above), a Group of NEA Experts from countries participating in the Mechanism carried out a review in 1979-1980 of the suitability of the current dumping site in the Atlantic Ocean The results of the review were positive and the Group's conclusions and recommendations were approved by the Steering Committee for Nuclear Energy in 1980 (see Nuclear Law Bulletin No. 25)

The Group recommended, inter alia, that for future assessments, an effort should be made to increase the scientific data base relating to the oceanographic and biological characteristics of the dumping site, and in particular to develop a site specific model of radionuclide transfer in the marine environment which would permit a better assessment of potential radiation doses to man from radioactive waste dumping

Accordingly, a co-ordinated research and environment surveillance programme-plan relevant to the Atlantic Ocean dumping site was endorsed by the Steering Committee for Nuclear Energy at its April 1981 meeting. This programme is being implemented with the participation of several Member countries and the IAEA International Laboratory for Marine Radioactivity in Monaco An Executive Group of representatives from countries* and organisations (IAEA and IMCO) participating in the programme was set up by NEA to ensure overall co-ordination and supervision of the programme and to evaluate its results

A description of the research and environmental surveillance programme was published in 1981 by NEA

TERMINATION OF THE INTERNATIONAL PROJECT IN THE FIELD OF FOOD IRRADIATION

The International Project in the field of Food Irradiation (see Nuclear Law Bulletin No 16) was set up under an Agreement signed in Paris on 14th October 1970 for an initial period of five years, which was subsequently twice extended until 31st December 1981 The Project, which is based in Karlsruhe, Federal Republic of Germany, was set up under the sponsorship of NEA, IAEA and the United Nations Food and Agricultural Organisation (FAO), the World Health Organisation (WHO) is associated with the work of the Project in an advisory capacity **

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* Belgium, Canada, Denmark, the Federal Republic of Germany, Italy, Japan (through its own research programme related to the Pacific), the Netherlands, Norway, Portugal, Spain, Switzerland, the United Kingdom and the United States

** The following twenty-four countries have contributed to the programme Australia, Austria, Belgium, Brazil, Denmark, Finland, France, the Federal Republic of Germany, Ghana, Hungary, India, Iraq, Israel, Italy, Japan, the Netherlands, Norway, Portugal, South Africa, Spain, Sweden, Switzerland, the United Kingdom and the United States.

The Agreement provides that the Parties thereto should co-operate in the execution of an international programme of wholesomeness studies and related experiments on irradiated foods The principal ai- of the programme has been the provision of objective wholesomeness data on which national and international judgements can be made concerning the acceptability of irradiated food for human consumption

The Project has successfully fulfilled its mandate, according to the conclusions of the Joint FAO/IAEA/WHO Expert Committee which stated that no further toxicological testing of food up to 10 kGy (1 Gray=100 rad was required The Committee recommended a clearance for the irradiation for conservation purposes, of all foods up to a dose of 10 kGy and said that the technological and economic feasibility of food irradiation on an industrial scale should be established

The Project's main goal has therefore been achieved and the Member countries have decided not to extend the present project Agreement beyond its expiry date of 31st December 1981

• *International Atomic Energy Agency*

ZIMBABWE JOINS THE IAEA

On the recommendation of the Board of Governors of the International Atomic Energy Agency (IAEA) the 25th Regular Session of the IAEA General Conference on 21st September 1981 approved the application of Zimbabwe as a new Member State Upon receipt by the Government of the United States of America of the instrument of acceptance of the IAEA Statute by the Government of Zimbabwe in accordance with Article XXI, the membership of the IAEA will rise to 111 Member States

THE IAEA REVISED BASIC SAFETY STANDARDS FOR RADIATION PROTECTION

The IAEA Safety Standards and Measures, approved by the Board of Governors in February 1976 and reproduced in document INFCIRC/18/Rev 1, provide that the safety standards established by the IAEA under the authority of the Board include the basic safety standards for radiation protection. Until now there have been two editions of the IAEA Basic Safety Standards for Radiation Protection, the first published in 1962 and the second in 1967 (IAEA Safety Series No 9, 1967 Edition) In both cases, they were based on the then applicable recommendations of the International Commission on Radiological Protection (ICRP)

Since the publication of the second edition, ICRP has issued new recommendations, contained in ICRP publication No 26 These ICRP recommendations were taken into account in the latest revision of the Basic Safety Standards by an expert group convened under the joint auspices of the IAEA, the International Labour Organisation, the OECD Nuclear Energy Agency and the World Health Organisation to prepare a text

that would meet the relevant needs of these four sponsoring organisations The expert group met for the first time in October 1977 and a first draft of the revised Basic Safety Standards was circulated in March 1978 to Member States of the sponsoring organisations and to interested international organisations for comment The expert group met again in 1978 to review the comments received and a second draft was circulated for comment in 1980 The comments received were considered at the last meeting of the expert group, in December 1980 The resulting text provides a broad basis for the harmonisation and updating of radiation protection standards and practices

The revised Basic Safety Standards for Radiation Protection are intended for use by the competent authorities in the Member States of the four sponsoring organisations The main text, based on the recommendations of ICRP, has been written in regulatory form, for some, it may serve as a regulatory basis for the radiation protection of employees and members of the public, others may simply wish to refer to the text when formulating regulations designed specifically to suit their particular needs and conditions The Annexes deal respectively with

- General principles for exemptions of radioactive substances, apparatus and sources from the requirements of notification, registration and licensing (Annex I),

- Quality factor (Annex II),

- Quality limits of intakes and derived air concentrations of radionuclides for occupational exposure (Annex III), and

- Practical guidance concerning the biological basis of the revised Basic Safety Standards, the system of dose limitation, occupational exposure, medical exposure, exposure of members of the public, and accident and emergency exposure (Annex IV).

In presenting the revised Basic Safety Standards to the Board of Governors on 17th September 1981, the Director General of the IAEA stated that this was a substantial step in the continuing effort to reduce the risks associated with the use of ionizing radiation. In his view the revised Standards offer a considerable improvement on the current ones and would in many circumstances increase protection for workers by nearly an order of magnitude, and for the general public by up to two orders of magnitude The underlying philosophy of the revised Standards has been evolved by ICRP and consists of control of individual risks through specified limits, optimization of protection and justification of all practices involving exposure to radiation A salient feature of the revised Standards is the requirement that all radiation exposures be as low as reasonably achievable This is the first example of a system of protection which, even after ensuring adequate safety for all individuals, still requires a further decrease in the remaining potential hazard.

The Board of Governors subsequently authorized the Director General to promulgate the revised Basic Safety Standards for Radiation Protection as part of the IAEA safety standards to be applied, as appropriate, to IAEA's own operations and to operations assisted by it and to recommend to the Member States that the revised Basic Safety Standards be taken into account in the formulation of national regulations or in the carrying out of other regulatory actions

IAEA COMMITTEE ON ASSURANCES OF SUPPLY

On 20th June 1980 the Board of Governors of the IAEA decided on the establishment of a committee open to all Member States to consider ways and means in which supplies of nuclear material, equipment and technology and fuel cycle services could be assured on a more predictable and long-term basis, in accordance with mutually acceptable considerations of non-proliferation, and the IAEA's role and responsibilities in relation thereto It may be recalled that the assured supply of technology, materials and services for the nuclear fuel cycle was the topic studied by one of the eight Working Groups of the International Nuclear Fuel Cycle Evaluation (INFCE), and its report refers to various ways of strengthening assurances of nuclear supply

This Committee on Assurances of Supply (CAS) held its first session in Vienna in September 1980, its second session in March 1981 and its third session in June 1981. Representatives of 48 Member States participated in the third session, and three intergovernmental organisations attended as observers The fourth session was held in November 1981, for which the Committee's agenda included consideration of "Principles of international co-operation in the field of nuclear energy in accordance with the Committee's mandate" and "Emergency and back-up mechanisms "

Prior to the fourth session of the Committee, the Board of Governors on 17th September 1981 adopted a resolution submitted jointly by Egypt, Kenya, Niger, Nigeria and Sudan whereby the Board decided that "the delegation of South Africa shall be prohibited from participating in all meetings of the Committee on Assurances of Supply "

MILITARY ATTACK ON IRAQI NUCLEAR RESEARCH CENTRE

Following the air attack by Israel on the Iraqi nuclear installations located at the Tuwaitha research centre on 7th June 1981, the IAEA Board of Governors on 9th June considered this matter as a special item entitled "Military attack on Iraqi nuclear research centre and its implications for the Agency" As a result of its deliberations, the Board on 12th June adopted a resolution which it requested the Director General of the IAEA to transmit to the United Nations Security Council

On 19th June 1981 the Security Council unanimously adopted, under its agenda item "Complaint by Iraq", resolution 487(1981) concerning the military attack on the Iraqi nuclear research centre The Director General of the IAEA was invited to participate in the debate of the Security Council on this item.

At its twenty-fifth regular session, the IAEA General Conference on 26th September 1981 also adopted a resolution on this matter by which it

(1) Considers that the Israeli act of aggression against the safeguarded Iraqi nuclear installations constitutes an attack against the Agency and its safeguards regime, which is the foundation of the Treaty on the Non-Proliferation of Nuclear Weapons,

(2) Decides to suspend immediately the provision of any assistance to Israel under the Agency's technical assistance programme,

(3) Also decides to consider at its twenty-sixth regular session the suspension of Israel from the exercise of the privileges and rights of membership if by that time it has not complied with the provisions of the Security Council resolution 487 of 19th June 1981,

(4) Calls upon the Member States of the Agency to end all transfer of fissionable material and technology to Israel which could be used for nuclear arms,

(5) Reaffirms its confidence in the effectiveness of the Agency safeguards system as a reliable means of verifying peaceful use of a nuclear facility, and

(6) Reaffirms further the inalienable right of all Member States to develop nuclear energy for peaceful purposes under internationally accepted safeguards.

• *F.R. of Germany-France*

1981 AGREEMENT ON MUTUAL INFORMATION IN THE EVENT OF RADIOLOGICAL INCIDENTS

In implementation of the Agreement of 3rd February 1977 on Mutual Assistance in the event of catastrophes and grave disasters concluded between the Federal Republic of Germany and the French Republic (see Nuclear Law Bulletin Nos 25 and 27), the Governments of both States signed on 28th January 1981 an Agreement on Information Exchange in the Event of Incidents and Accidents which may have Radiological Effects (Bundesgesetzblatt 1981,II, p 885) Under the Agreement the Contracting Parties must inform each other without delay on incidents and accidents which occur in either of their territories and may cause radiological effects in the territory of the other Party The Parties must also provide for an appropriate system of immediate mutual information and alert The information to be exchanged comprises, inter alia, the exact date of the incident, its type and origin, characteristics of emissions, and meteorological and hydrological data The Agreement entered into force on 6th August 1981

• *F.R. of Germany-United States*

1981 AGREEMENT ON EXCHANGE OF TECHNICAL INFORMATION AND CO-OPERATION IN NUCLEAR SAFETY

The Federal Minister of the Interior and the United States Nuclear Regulatory Commission signed the above Agreement on 6th July 1981 The Agreement provides for detailed information exchange and co-operation in various topics in the field of nuclear installations and their environmental impact. A Supplement on patents ensures the protection of inventions resulting from execution of the Agreement The Agreement was published in Bundesgesetzblatt 1981, II, p 657 and entered into force on the date of its signature

• *F.R. of Germany - Luxembourg*

1978 TREATY ON MUTUAL ASSISTANCE IN THE EVENT OF CATASTROPHES AND GRAVE DISASTERS

The above Treaty of 2nd March 1978 between the Federal Republic of Germany and the Grand Duchy of Luxembourg (Bundesgesetzblatt 1981, II, p 445) was ratified by the German Parliament by an Act of 7th July 1981 (Bundesgesetzblatt 1981, II, p 447) According to the Treaty, the Contracting Parties must assist each other in the case of catastrophes and grave disasters The scope of application expressly includes nuclear hazards The Treaty provides for a detailed legal framework for mutual assistance especially in connection with legal problems arising from border crossing by rescue teams and their equipment The Treaty shall enter into force on the first day of the second month following the exchange of the instruments of ratification

• *F.R. of Germany - Argentina*

1981 AGREEMENT ON TECHNICAL INFORMATION AND CO-OPERATION

The Federal Minister of the Interior and the Argentine Atomic Energy Commission have concluded an Agreement on the Exchange of Technical Information and Co-operation in the Field of Safety of Nuclear Installations The Agreement was signed on 8th October 1981, and entered into force on the same date (Bundesgesetzblatt 1981, II, p 958)

The information exchange covers the following fields

- reports in the field of radiation protection and nuclear safety insofar as they constitute a basis for decisions by the administrative authorities,
- licences in the field of nuclear installations and radiation protection decisions in connection with the issue of licences for installations,
- information on the status of pending licensing procedures for nuclear installations,
- information on general studies and reports in the field of radiation protection and nuclear safety,
- reports on operational experiences as well as reports on serious incidents and accidents and on reactor shut-downs by administrative order

Furthermore, the Contracting Parties have agreed on co-operation in the regulatory field They shall inform each other on specific topics for which the drafting of regulations is underway, and shall exchange copies of relevant laws, regulations, codes, directives and other material.

• *International Atomic Energy Agency*

EXTENSION OF THE MONACO LABORATORY AGREEMENT

The Agreement of 25th February 1975 between the IAEA, the Government of the Principality of Monaco and the Oceanographic Institute of Monaco concerning developmental studies on the effects of radio-activity in the sea provided for the Project in question to continue for a period of six years ending on 31st December 1980 (see Nuclear Law Bulletin No 26). On 5th February 1981 the three parties agreed, in an exchange of letters, on a continuation of the Project for six months ending on 30th June 1981. On 1st June 1981 the three parties further agreed, in an exchange of letters, on an extension of the Project for a period of three years ending on 30th June 1984, with the understanding that any party to the agreement may terminate it by giving six months' notice.

SAFEGUARDS AGREEMENTS

France

The Agreement signed in Vienna on 20th and 27th July 1978 between France, the European Atomic Energy Community (EURATOM) and the IAEA for the application of safeguards to certain nuclear materials in France entered into force on 12th September 1981, pursuant to Article 25 France is the third nuclear-weapon State to place voluntarily part of its nuclear facilities under IAEA safeguards, the others being the United Kingdom and the United States of America (see Nuclear Law Bulletin No 27) The Agreement covers nuclear material and facilities notified to the IAEA by France Of these facilities, the IAEA will designate a certain number for routine inspections. France is also expected to place under Agency safeguards substantial quantities of nuclear material as may be

required by supply agreements between France and other States The Agreement is similar to those concluded by the United Kingdom and the United States of America, which entered into force on 14th August 1978 and 9th December 1980 respectively

Argentina

An agreement was signed on 15th July 1981 between Argentina and the IAEA for the application of safeguards in connection with the Atucha II Nuclear Power Plant This 745 MWe plant will be supplied by the Federal Republic of Germany to Argentina

Two further safeguards agreements between the IAEA and Argentina were signed on 14th October 1981 One of these agreements covers the heavy water supplied to Argentina by the USSR, the other covers a heavy water production plant supplied by Switzerland to Argentina, including heavy water production technology based on the mono-thermal exchange process using ammonia. The heavy water production plant agreement is the first example of an agreement covering this type of facility to be placed under IAEA safeguards

Viet Nam

An agreement was signed on 12th June 1981 between the Socialist Republic of Viet Nam and the IAEA for the application of safeguards to the nuclear research reactor at Da Lat and to the nuclear fuel to be supplied for the reactor by the Soviet Union The reactor, which will be used for training, research and production of radioisotopes, will have an initial fuel loading of about 3 7 kilograms of 36% enriched uranium

Turkey

On 30th June 1981 Turkey signed with the IAEA an agreement for the application of safeguards in connection with the Non-Proliferation Treaty that had been approved earlier by the Board of Governors The Safeguards Agreement entered into force on 1st September 1981 in accordance with Article 25, after ratification by Turkey.

Egypt

Following the ratification of the Non-Proliferation Treaty by Egypt on 26th February 1981, negotiations between Egypt and the IAEA on the relevant safeguards agreement were completed on 25th June 1981, and the agreed text initialled at the IAEA Headquarters After approval by the Board of Governors in September 1981, the Safeguards Agreement was signed in Vienna on 7th October 1981 Pursuant to Article 23, the Agreement will enter into force upon receipt by the IAEA of a notification from the Egyptian Government that its constitutional requirements for such entry into force have been met

MULTILATERAL AGREEMENTS

• *Federal Republic of Germany*

CONVENTION ON THE PREVENTION OF MARINE POLLUTION FROM LAND-BASED SOURCES

By an Act of 18th September 1981 (Bundesgesetzblatt 1981, II, p. 870) the Federal Republic of Germany ratified the Convention on the Prevention of Marine Pollution from Land-Based Sources of 11th June 1974 (see Nuclear Law Bulletin No. 13)

The Convention, which came into force on 6th May 1978, has already been ratified by the Commission of the European Communities, Denmark, France, the Netherlands, Norway, Portugal, Spain, Sweden and the United Kingdom.

• *The OECD Nuclear Energy Agency*

EXTENSION OF THE AGREEMENT ON THE OECD HALDEN REACTOR PROJECT

A new Agreement was concluded on 10th December 1981 with a view to extending the operation of the OECD Halden Boiling Water Reactor Project (Norway) for a three-year period. Its entry into force is fixed for 1st January 1982 with the previous Agreement expiring on 31st December 1981 (see Nuclear Law Bulletin Nos. 22 and 24).

The Parties and Associated Parties are national authorities responsible for nuclear matters or research institutes from the following countries. Austria, Denmark, Finland, the Federal Republic of Germany (representing a German group of companies), Italy, Japan, the Netherlands, Norway, Sweden, the United Kingdom and the United States The Agreement also includes an Annex setting out a new research and experimental programme to be carried out during the period.

It is recalled that the Project was set up in July 1958 under the auspices of the OECD Nuclear Energy Agency to enable participants to carry out jointly research and experiments with the reactor built by Norway at Halden, and covering in particular, fuel element tests and integrated computer-based control of the reactor.

• *International Atomic Energy Agency*

CONVENTION ON THE PHYSICAL PROTECTION OF NUCLEAR MATERIAL

The Convention on the Physical Protection of Nuclear Material was signed by the governments of Bulgaria, Finland and Czechoslovakia at the IAEA Headquarters in Vienna on 23rd June 1981, 25th June 1981 and 14th September 1981 respectively. As of 15th October 1981, 32 States and one organisation, the European Atomic Energy Community (EURATOM), had signed the Convention (see Nuclear Law Bulletin Nos 26 and 27) In addition to the ratification of the Convention by Sweden and the German Democratic Republic, the Government of the Philippines deposited its instrument of ratification with the Director General of the IAEA on 22nd September 1981 in accordance with Article 18 5 of the Convention

• *IMCO*

CONVENTION ON THE PREVENTION OF MARINE POLLUTION BY THE DUMPING OF WASTES AND OTHER MATTER

The Sixth Consultative Meeting of the Contracting Parties to the London Convention was held at the Headquarters of the Inter-Governmental Maritime Consultative Organisation (IMCO) in London from 5th to 9th October 1981 (see Nuclear Law Bulletin Nos. 17, 18, 20, 22, 24 and 26).

The meeting was informed that as at 1st September 1981, forty-seven Governments had ratified or acceded to the Convention The three further Contracting Parties are Japan (15th October 1980), Suriname (21st October 1980) and Greece (10th August 1981).

• *France*

DECREE NO. 70-878 OF 29TH SEPTEMBER 1970 REGARDING THE COMMISSARIAT À L'ÉNERGIE ATOMIQUE*

THE PRESIDENT OF THE REPUBLIC

Having regard to the Constitution and particularly Article 37,

Having regard to Ordinance No. 45-2563 of 18th October 1945 setting up the Commissariat à l'Energie Atomique, as amended,

Having regard to the opinion of the Atomic Energy Committee dated 10th September 1970;

The Conseil d'Etat having been consulted,

The Council of Ministers having been consulted,

HEREBY DECREES:

Section 1

Paragraph 2 and those following it of Section 1 and Sections 3, 4, 6 (1st paragraph) and 8 of the above-mentioned Ordinance of 18th October 1945 are hereby repealed.

Section 2

The Commissariat à l'Energie Atomique shall, in conformity with the directives laid down by the government with respect to the use of atomic energy in the various fields of science, industry and national defence, perform the following duties.

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* Decree No. 70.878 of 29th September 1970 regarding the Atomic Energy Commission (CEA) (JORF of 1.10.70 - p. 9116), as amended by Decree No. 74-159 of 26th February 1974 (JORF of 27.2.74 - p. 2293), by Decree No. 76-951 of 19th October 1976 (JORF of 22.10.76 - p. 6169), by Decree No. 78-662 of 22nd June 1978 (JORF of 24.6 78 - p. 2481), by Decree No. 79-632 of 24th July 1979 (JORF of 26.7.79 - p. 1944), by Decree No. 81-300 of 31st March 1981 (JORF of 3.4.81 - p. 936), and by Decree No 81-789 of 18th August 1981 (JORF of 20.8.81 - p. 2262).

Unofficial translation by the Secretariat.

It shall carry out the necessary scientific and technical research,

It shall propose measures designed to ensure the protection of persons and property against the effects of atomic energy, and contribute to their implementation,

It shall be authorized to carry on research, production, storage and transport activities with regard to nuclear source materials either directly or through the agency of enterprises in which it holds shares,

It may involve itself in the conversion of and trade in nuclear source materials and, in general, all operations concerning such activities and directly or indirectly related thereto, it shall ensure that supplies are made available to users and shall propose the necessary measures to that end,

It shall, insofar as energy applications are concerned, co-ordinate public action in the design and development of emerging technologies, it shall, in the case of government projects or at the request of manufacturers and users, participate in programmes to improve industrial technologies,

It may, in the various fields covered by its activities, undertake or participate in the construction and production of systems, equipment or components,

It shall take or suggest all useful measures to place France in a position to benefit from the development of nuclear disciplines,

It shall monitor scientific, technological and economic developments abroad related to its activities in order to keep the Government informed, particularly in the negotiation of international agreements.

The Commissariat à l'Energie Atomique may also, within the limits laid down by the Government, extend certain of these research and development activities into non-nuclear fields either for economic purposes or with a view to participating in programmes of general interest

It may, within the same limits, carry on activities in the field of the mineral or fossil substances defined in Section 2 of the Mining Code other than liquid or gaseous hydrocarbons (*Decree No. 81-300 of 31.3.81*).

Section 3 *(Decree No. 81-789 of 18th August 1981)*

The Commissariat à l'Energie Atomique shall be administered in accordance with the general directives of the Government by a Board which, under the chairmanship of the Prime Minister or a Minister delegated for that purpose by the Prime Minister or, failing this, under the chairmanship of the Administrator-General, shall consist of

- The Administrator General,
- The Secretary General of the Ministry for Foreign Relations;
- The Director General for Energy and Source Materials;
- The Director of the Délégation Générale for Scientific and Technical Research,

- The Director for the Budget,

- The Director-General of the National Scientific Research Centre,

- A public figure chosen by the Prime Minister,

- Three public figures chosen by the Minister responsible for national defence,

- Five public figures qualified by virtue of their experience in the scientific and industrial field, one of whom shall hold the office of High Commissioner as defined in Section 5 below

The High Commissioner, and the other members of the Board who are *not de jure* members shall be appointed for three years by Decree of the Council of Ministers.

The number of members of the Board other than the *de jure* members who have exceeded the age of 65 shall be less than four Once that number is reached, the oldest member of the four shall be deemed automatically to resign.

Section 4

The Commissariat à l'Energie Atomique shall be under the overall management of an Administrator-General, appointed for five years by Decree of the Council of Ministers.

The duties of the Administrator-General shall terminate at the latest when the holder of the office has reached the age of 65 *(Decree No. 76-951 of 19 10.76)*.

Section 5

The High Commissioner shall act as scientific and technical adviser to the Administrator-General.

He may bring his proposals about the general scientific and technical orientation he considers desirable directly before the Atomic Energy Committee and the Ministers concerned.

He shall give his advice on nuclear matters regarding all questions affecting the safety of persons and property and requiring a decision by the Administrator-General.

He may be entrusted with various responsabilities, particularly in the field of education

He shall be chairman of the Scientific Council specified in Section 6 below.

Section 6

The function of the Scientific Council shall be to assist the High Commissioner in the performance of his duties

It shall meet on the request of the High Commissioner and may formulate desiderata which shall be communicated to the Atomic Energy Committee and the Minister for Industrial and Scientific Development*

* Now Minister of Industry.

It shall consist of fifteen members at the most, appointed for three years by virtue of their qualifications by order of the Minister for Industrial and Scientific Development*

Section 7 *(Decree No 81-789 of 18th August 1981)*

The Administrator-General shall present an annual report on the activity and management of the Commissariat to the Prime Minister, the Minister for Research and Technology, the Minister of Industry, the Minister of Defence and the Minister for Economic and Financial Affairs

Section 8

A Decree of the Conseil d'Etat based on a report from the Minister for Industrial and Scientific Development* and the Minister for Economic and Financial Affairs shall lay down the terms of implementation of this Decree It shall determine in particular the administrative and financial conditions in which the establishment is to function and specify the respective duties of the Administrator-General, the High Commissioner and the Board

Section 9

The following Decrees are hereby repealed 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

Section 10

The present Decree may only be amended by Decree of the Conseil d'Etat

Section 11

The Prime Minister, the Minister of State responsible for national defence, the Minister for Foreign Affairs, the Minister for Economic and Financial Affairs, the Minister of National Education and the Minister for Industrial and Scientific Development* are hereby charged, each insofar as he is concerned, with the execution of this Decree which shall be published in the Official Gazette of the French Republic.

* Now Minister of Industry

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• *Federal Republic of Germany*

Rechtsfragen der atomaren Entsorgung, Hasso Hofman, Klett-Cotta, Stuttgart, 1981, 409 pages

The author investigates the provisions of the German Atomic Energy Act concerning the treatment of spent nuclear fuels and the intermediate and final disposal of nuclear waste (so-called "Entsorgung", see Nuclear Law Bulletin Nos 24 and 25) This detailed and well documented study covers a wide range of reflections including philosophical approaches He comes to the conclusion that, in part, the German provisions on "Entsorgung" are not in line with the Constitution

Kernkraftwerk und Staatsgrenze (Nuclear Power Plants and National Borders) by Professor Dr Michael Kloepfer and Dr Christian Kohler, Schriften zum Umweltrecht Band 1, Duncker & Humblot, Berlin, 1981, 213 pages

Work on this book was commenced following the choice by France of a site for a nuclear power plant at Cattenom, a few miles only from the German and Luxembourg borders. In looking, in this context, at the question of the extent to which a State's right to construct a nuclear power plant near a border with one of its neighbours may be affected, the authors have considered four aspects issues of public international law, issues of constitutional law of the Federal Republic of Germany, issues of European law, and issues of liability under national (French and German) and international law

Given the inclusion in this book of a summary in English and French of the various arguments put forward by the authors and in view of the relative scarcity of material on this rather delicate subject of the conflict of sovereign rights in this field, extracts from this Summary are given below

"Issues of public international law

1 There are no objections under international law to the civil use of nuclear energy as such The fact that it is permissible in principle is presupposed in a large number of agreements under international law For this reason and because of the sovereignty of the State in which the nuclear power plant is built (hereinafter referred to as "the constructing State") there are no objections under international law to nuclear power plants situated inland in the case of which, even if there is an accident, no substantial harmful effects can radiate to territories outside the constructing State

2 If, on the other hand, a nuclear power plant is likely to cause nuisance outside the territory of the constructing State, in particular on the territory of another State (hereinafter referred to as "the affected State"), objections may arise under international law owing to the violation of the sovereignty of the affected State This applies primarily to nuclear power plants on the frontier or near the frontier In these cases sovereign rights of the constructing State may conflict with those of the affected State

3. Such conflicts of sovereign rights are settled according to the rules of international law on the relationship between neighbouring States so as to balance the reciprocal sovereign rights of each State whilst encroaching on those rights as little as possible In this connexion the basic rule is that no State may on its national territory carry out, promote or tolerate activities which cause on the territory of a neighbouring State substantial unusual damage For this reason substantial unusual damage such as may, in the normal operation of a nuclear power plant, occur by way of exception (for example through the overheating of water which crosses the frontier, thereby causing damage) or in the case of an accident (for example radioactive contamination), is a breach of international law and in principle creates under international law liability for damages and a duty to refrain from such activities

4 If substantial unusual damage is unlikely in the normal operation of a nuclear power plant, the permissibility under international law of nuclear power plants near the frontier is determined, subject to special agreements under international law, according to whether the risk of any accidents at a nuclear power plant near the frontier must be tolerated by the neighbouring State To declare nuclear power plants near the frontier to be unlawful in general under international law as "ultra-hazardous activities" is in principle incompatible both with the international conviction that the civil use of nuclear energy is permissible and with State practice.

5 The extent of a risk from nuclear power plants near the frontier which is tolerable under international law is determined according to the internationally recognized standards (which have still in the main to be elaborated) relating to the safety of nuclear power plants (with regard to technical installations, operation, location and size) Compliance with such safety standards is a prerequisite for the international authorization of the civil use of nuclear energy Binding the construction and operation of nuclear power plants near the frontier to internationally recognized and applied safety standards provides the possibility of balancing the sovereign rights of each State with as little encroachment on those rights as possible as regards the interests of the constructing State and the affected State and, as a uniform criterion, accords particularly well with the principle of the equality of sovereign States

6 It is impossible to determine tolerable nuisance and risk, *inter alia*, by applying the generally recognized safety standards to nuclear power plants built near the frontier, without making a distinction in more specific terms according to the circumstances of each individual case Important distinguishing criteria are

- any damage in the affected State and the likelihood, seriousness and extent of such damage (in this respect the size of the nuclear power plant is very important),

- geographical position (vicinity to the frontier, density of population in the frontier area of the affected State, river and wind directions, and so forth),

- disadvantages to the constructing State through possible restrictions on its nuclear energy plans,

- disadvantages to the affected State through the limitation of its own nuclear energy plans or other plans for use, having regard to nuclear energy plants already built in the constructing State

These criteria must be applied according to the principle that the reciprocal sovereign rights of each State should be balanced, whilst encroaching on those rights as little as possible

Issues of European Law

16 Under European Community Law, the decision as to the construction of a nuclear power plant comes within the jurisdiction of the Member States In particular, the Community Institutions can have no decisive influence on the choice of the location of the nuclear power plant In this respect the scope and limits of national freedom of choice are laid down by international law

17 The constructing State must, however, under Article 37 of the Euratom Treaty, inform the Commission of the European Communities of all plans for the disposal of radioactive waste so that it can be determined whether the implementation of those plans is liable to lead to the radioactive contamination of the territory of a neighbouring Member State The Commission delivers an opinion on this which is, it is true, not legally binding on the constructing State, but which may perhaps have an indirect influence on the national decision. If in fact the constructing State disregards the warning of possible radioactive contamination of the territory of the neighbouring State contained, where appropriate, in the Community's opinion, in reaching a decision on the construction or operation of the plant it takes a considerable risk if the effects of the radioactive waste from the plant lead to the violation of the basic standards for the protection of health which are binding throughout the Community, albeit only in the neighbouring State, the constructing Member State may be required by a legally binding directive from the Commission under the second paragraph of Article 38 of the Euratom Treaty, to take the necessary measures to prevent infringement, in other words, essentially, to adapt the operation of the plant accordingly. The combined effect of the preventive, non-binding measures and the binding directive which must be issued where appropriate may therefore exert an influence on the national decision-making process which should not be underestimated

. . .

19 To enforce the various duties created by the Euratom Treaty, in particular the duty of information from the constructing State under Article 37, as well as the duty to implement the basic standards for the protection of health, and, if necessary, to implement the directives under the second paragraph of Article 38, and, finally, the Commission's duty to take action under Article 38, it is appropriate to bring an action before the Court of Justice of the European Communities In addition to the Community Institutions, only the Member States as such have the right of action. This means, in the case of the Federal Republic of Germany, that neither the Lander involved nor the local authorities near the border affected in the cases laid down in Article 37 and the second paragraph of Article 38 of the Euratom Treaty nor individuals have a right of action On the contrary, they should be directed to exert their influence at the national level on the federal institutions which are entitled to represent them. This applies moreover in the same way to all steps connected with the protection of the rights under the Treaty, in particular to the request for information as to compliance with the duty of information or the

Commission's opinion under Article 37, as to the actions of the Commission within the context of the second paragraph of Article 38, and, where necessary, as to the measures taken by the addressee in order to comply with any directive in accordance with that provision."

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PRINTED IN FRANCE
(87 81 28 1)

NUCLEAR LAW
Bulletin

SUPPLEMENT TO NO. 28

BELGIUM

BILL
ON THIRD PARTY LIABILITY
IN THE FIELD OF NUCLEAR ENERGY (1981)

December 1981

B E L G I U M

BILL
ON THIRD PARTY LIABILITY IN THE FIELD OF NUCLEAR ENERGY*
(1981)

Part I: APPLICATION OF THE PARIS CONVENTION AND THE BRUSSELS SUPPLEMENTARY CONVENTION ON THIRD PARTY LIABILITY IN THE FIELD OF NUCLEAR ENERGY

CHAPTER I

General provisions

Section 1

For the purposes of this Act:

a) the *Paris Convention* shall denote the Convention on Third Party Liability in the Field of Nuclear Energy, signed in Paris on 29th July 1960, and the Additional Protocol thereto signed in Paris on 28th January 1964, which were approved by the Act of 1st August 1966;

b) the *Supplementary Convention* shall denote the Supplementary Convention to the Paris Convention, signed in Brussels on 31st January 1963, and the Additional Protocol thereto signed in Paris on 28th January 1964, which were approved by the Act of 1st August 1966;

c) the *Minister* shall denote the Minister whose responsibilities include nuclear insurance matters;

d) *nuclear incident, nuclear installation, nuclear fuel, radioactive products or waste* and *nuclear substances* shall have the meanings set out in Article 1 of the Paris Convention.

Section 2

1. The provisions of Part I shall apply to damage caused by a nuclear incident for which the operator is liable, provided the incident occurs in the territory of a Contracting State or on or over the high

* Unofficial translation by the Secretariat.

seas, and that the damage has been suffered in the territory of a Contracting State or on or over the high seas on board a ship or aircraft registered in the territory of a Contracting State, or on or over the high seas by a national of a Contracting State in accordance with Article 2(a)(ii)(3) of Supplementary Convention.

2. By Order made in the Council of Ministers the King may direct that Part I of this Act shall apply to damage caused by nuclear incidents within the meaning of subsection 1 and suffered by the national of a Contracting State in the territory of a non-Contracting State.

3. For the purposes of this Section, territorial waters shall be deemed to form part of the national territory.

CHAPTER II

The nuclear installation and the operator

Section 3

For the purposes of this Act an operator shall be any person who has in his possession or uses, in a nuclear installation, nuclear fuel, radioactive products or waste, or who takes charge of nuclear substances intended for his installation.

Section 4

For the purposes of this Act, the King may treat as a single nuclear installation:

i) two or more nuclear installations run by one operator and located on the same site, together with any other premises on that site where radioactive material is stored;

ii) one or more non-nuclear installations which are operated jointly for a common purpose with a nuclear installation located on the same site.

He may, in such cases, fix special conditions to be met by the operator, in particular with respect to insurance or other financial security.

CHAPTER III

Third party liability

Section 5

The operator of a nuclear installation shall be liable for damage caused by a nuclear incident in accordance with the provisions of the Paris Convention, of the Supplementary Convention and of this Act.

Section 6

In addition, the operator of a nuclear installation shall be liable, in accordance with Article 3(c) of the Paris Convention, for any damage caused or resulting from ionizing radiation emitted by other radiation sources, other than those mentioned in Article 3(a) of that Convention, located in that installation.

Section 7

The operator of a nuclear installation:

i) shall not be liable for damage to the nuclear installation itself or to any other nuclear installation located on the site, including those under construction, or for damage to any property on the site which is being or is to be used in connection with any such installation;

ii) shall be liable for damage to the means of transport upon which the nuclear substances were at the time of the nuclear incident, if he is liable for damage caused during transport in the cases provided for in Article 4 of the Paris Convention.

The payment of compensation for such damage shall not reduce the liability of the operator for other damage so as to bring it below the amount prescribed in Section 8(1) below.

Section 8

The maximum liability of the operator for damage caused by a single nuclear incident shall be B. Frs. 3,000 million.

By order made in the Council of Ministers, the King may increase or reduce this figure, so as to keep its value constant, or having regard to the capacity and nature of the nuclear installation, the amounts of materials being transported or any other circumstance which may affect its value, provided it does not fall below the minimum amount specified in Article 7(b) of the Paris Convention.

CHAPTER IV

Cover for third party liability and recognition of the operator

Section 9

The operator of a nuclear installation shall be required, in accordance with Article 10(a) of the Paris Convention, to take out and maintain insurance or other financial security to cover his liability up to the amount fixed by or pursuant to Section 8 of this Act.

Section 10

Without prejudice to the application of the law and regulations relating to the protection of the public against the hazards of ionizing radiation, no operator of a nuclear installation may keep or use any nuclear fuel, radioactive products or waste or take charge of nuclear substances intended for such nuclear installation unless he has been recognised beforehand as an operator in accordance with this Act and the rules laid down by the King.

Section 11

The operator shall be recognised as such by the King, upon supplying proof that, for the purpose of covering his liability, he has taken out insurance or financial security in accordance with Section 9.

The decree granting recognition may do so for a limited period.

Recognition may be withdrawn if the operator ceases to fulfil the conditions laid down in Section 9 or if he ceases his activities.

Any decree refusing or withdrawing recognition shall state the grounds therefor.

Any decree granting, refusing or withdrawing recognition shall be communicated to the operator by the Minister or his representative. An extract shall be published in the Belgian Official Gazette within three months of notification.

In the event of recognition being withdrawn, the operator shall remain bound by the requirements of Section 9 so long as his liability continues.

Section 12

The Minister may at any time request the operator to provide evidence that he is complying with the requirements of Section 9.

Section 13

The State shall be liable in accordance with this Act for the nuclear installations operated by it.

The obligation to take out insurance under Section 9 shall not apply to the State as operator.

Decisions by the State to operate nuclear installations shall be mentioned in the Belgian Official Gazette.

Section 14

The Minister shall establish and maintain a public register specifying those nuclear installations whose operators have been recognised pursuant to Section 11. The register shall comprise a map showing the location and boundaries of the site of each nuclear installation and, where appropriate, the boundaries of sites where several nuclear installations are located.

Every operator shall be required to inform the Minister, in accordance with the procedure laid down by the King, of any modifications affecting the installations or their sites.

Third parties shall not be deemed to have notice of the boundaries of a nuclear installation unless such boundaries appear in the aforementioned register.

The list of recognised operators shall be published each year in the Belgian Official Gazette.

This Section shall apply *mutatis mutandis* to any nuclear installation operated by the State.

CHAPTER V

Transport of nuclear substances

Section 15

Without prejudice to the application of the law and regulations concerning protection of the public and workers against the dangers of ionizing radiation:

i) the operator of a nuclear installation shall be liable, in accordance with Article 4 of the Paris Convention, for the transport of nuclear substances including storage during transport;

ii) subject to the agreement of the operator and the Minister, the operator may be replaced by the carrier for purposes of liability for damage caused by a nuclear incident occurring outside the installation provided the conditions in Section 9 are fulfilled.

In this case, the carrier shall, for nuclear incidents occurring during the transport of nuclear substances, be regarded as the operator of a nuclear installation located within Belgian territory.

Section 16

Any carrier of nuclear substances must be in possession of a certificate issued by or on behalf of the insurer or other financial guarantor stating that he satisfies the requirements of Section 9. The certificate must comply with Article 4(c) of the Paris Convention.

The King shall prescribe the arrangements for implementing this Section.

Section 17

The King may direct that Section 16 shall not apply to transport effected exclusively within Belgian territory.

Section 18

In accordance with Article 7(e) of the Paris Convention and without prejudice to the application of Article 7(f) thereof, the transit of nuclear substances through Belgian territory shall be subject to the foreign operator assuming the same obligations as the operator of a nuclear installation located in Belgian territory.

CHAPTER VI

Compensation for damage

Section 19

In accordance with Article 7(a) of the Paris Convention, total compensation payable for damage caused by a nuclear incident shall not exceed the maximum amount fixed by or pursuant to Section 8 of this Act.

Section 20

By way of exception to Section 19 and where the Supplementary Convention applies, if the damage caused by a nuclear incident exceeds the amount fixed in accordance with Section 8, compensation in excess of that amount shall be paid out of public funds allocated for a purpose other than that of covering the operator's liability in accordance with Section 3(b)(ii) and (iii) and (3)(f) of the Supplementary Convention.

The amounts may be converted into national currency by Royal Decree.

Section 21

Where total compensation does not exceed the funds available for this purpose under or pursuant to the Paris Convention, the Supplementary Convention and Sections 19 and 20 of this Act, compensation shall be awarded in accordance with the ordinary law.

Where total compensation exceeds or is likely to exceed the funds referred to in the previous subsection, the King shall determine criteria for the fair apportionment of the compensation.

Section 22

Beneficiaries under schemes for sickness and disability insurance or for compensation for industrial accidents and occupational diseases shall remain subject to the legislation governing such schemes even in the event of a nuclear incident.

Such beneficiaries shall be entitled to claim compensation for damage caused by a nuclear incident, in accordance with this Act, the Paris Convention and the Supplementary Convention, insofar as compensation therefor is not paid under schemes mentioned in the previous subsection and insofar as such persons are not prohibited by law from exercising rights to compensation against a third party responsible for the incident.

The persons or organisations which, under the schemes referred to in subsection 1 of this Section, have paid out benefits to the victims of a nuclear incident, shall, subject to the limits referred to in Sections 19 and 20, be entitled to exercise their rights of action under such schemes against the operator, his insurer, any other financial guarantor or the State.

Section 23

Without prejudice to the provisions of Section 20, the State shall pay compensation for damage not covered by insurance or financial security up to the maximum amount of the operator's liability. In this case, the State shall, up to the amount it has paid, acquire by subrogation all the rights and actions of the victims.

Section 24

Action for compensation under this Act must, on pain of forfeiture, be brought within ten years from the date of the nuclear incident.

In the case of damage caused by a nuclear incident involving nuclear fuel or radioactive products or waste which, at the time of the incident, were stolen, lost, jettisoned or abandoned and had not been recovered, rights of action for compensation not exercised within ten years after the incident shall also be forfeited. However, no action may be brought more than twenty years after the date on which the nuclear fuel or radioactive products or waste were stolen, lost, jettisoned or abandoned.

The right to claim compensation shall be forfeited three years after the time when the injured party becomes aware of the damage and the identity of the operator concerned, or from the time he ought reasonably to have become aware of these facts, provided that the ten- or twenty-year periods laid down by this Section shall in no case be exceeded.

Special legal provisions shall remain fully applicable.

Section 25

When the nuclear incident or the damage is wilfully caused by the victim, the court may reduce the compensation by a fair amount.

CHAPTER VII

Rights of recourse

Section 26

1. The insurer or person providing financial security shall be entitled by subrogation to exercise the right of recourse of the operator under Article 6(f) of the Paris Convention. The Belgian State shall be entitled by subrogation to exercise the same right insofar as, pursuant to Section 23, it has paid compensation for the damage in place of the operator.

2. Where payments have been made pursuant to Section 20 from public funds allocated by the Belgian State or other Contracting States, the Belgian State shall be entitled by subrogation to a right of recourse in its own behalf against persons against whom such proceedings may be brought, pursuant to Article 6(f) of the Paris Convention.

3. If pursuant to Section 20 of this Act payments have been made from public funds allocated by the Belgian State or by other Contracting Parties, then, having regard to Article 10(c) of the Supplementary Convention, the Belgian State and other Contracting States shall, pursuant to Article 5(b) of the Supplementary Convention, have a right of recourse against the operator for the recovery of the public funds allocated, provided the damage for which the payments have been made was caused by a nuclear incident attributable to the manifest gross negligence of the operator. The right of recourse shall be restricted to an amount equal to the public funds that may be allocated under Article 3(b)(ii) and 3(f)(ii) of the Supplementary Convention. However, the King may fix a different amount having regard to the maximum cover likely to be obtained by the operator on reasonable terms on the insurance market.

Section 27

Legal proceedings based on the Paris Convention, the Supplementary Convention and this Act shall, at first instance, be brought before the Brussels Court of First Instance, sitting as a civil court.

Section 28

The victim of damage resulting from a nuclear incident shall have a direct right of action against the insurer or other financial guarantor, and in the case referred to in Section 23, against the State.

Section 29

1. The State may intervene in any proceedings based on the provisions of the Paris Convention, the Supplementary Convention and this Act.

If the State has not intervened, the claimant must summon it to take part before the close of the hearing.

2. A judgment delivered in a case arising from damage caused by a nuclear incident cannot be appealed against by the operator, the victim or claimants to the victim's rights, the insurer or other financial guarantor unless they have appeared before the court or have been summoned to do so.

Nevertheless, a judgment delivered in a case between a victim and the operator shall be enforceable against the insurer or other financial guarantor if it is established that the insurer or guarantor was in fact in control of the proceedings.

The insurer or other financial guarantor shall be entitled to join the operator in any proceedings brought against them by the victim.

Section 30

The King shall supervise the payment of compensation by the insurers or other financial guarantors. He shall also determine the conditions under which those entitled to compensation pursuant to the Paris Convention, the Supplementary Convention or this Act may obtain information concerning insurance policies or contracts for financial security.

Section 31

For the purposes of paying compensation under Section 20 or 23, the King may set up an administrative or legal conciliation procedure which, in any case, must precede any hearing before the court.

Part II: ADDITIONAL MEASURES

Section 32

In the event of transit of nuclear substances through Belgium, including storage, the carrier shall be held liable for any damage suffered on Belgian territory as a result of any nuclear incident involving such substances, and in relation to which the Paris Convention makes no arrangements for compensation.

The King may make appropriate rules to make the provisions of Part I partly or wholly applicable to the carrier mentioned in the preceding subsection.

Section 33

Where sources of ionizing radiation not covered by the Paris Convention are kept or used in a nuclear installation in a category specified by the King, the operator shall be liable for damage caused in Belgium as a result of the radioactive properties alone or in combination with other toxic or harmful properties of the ionizing radiation sources.

The King may make appropriate rules to make the provisions of Part I partly or wholly applicable to the operator referred to in the preceding subsection.

Section 34

For damage suffered in Belgium, the King shall determine the manner whereby the State shall bear that portion of the compensation which exceeds the maximum amount fixed by Section 8, where Section 32 or Section 33 of this Act is applied, or where the provisions for compensation in the Supplementary Convention do not apply even though liability has been established in accordance with Part I and the Paris Convention.

Section 35

Breaches of Section 9, 10, 14(2) and 16 and of the decrees implementing Sections 32 and 33 shall be punishable by imprisonment for a period of 3 months to 5 years and by a fine of B.Frs. 1000 to B.Frs. 50,000 or by one of these penalties.

The provisions of Book I of the Penal Code, including Chapter VII and section 85, shall apply to such offences.

Without prejudice to the powers of officers of the criminal investigation department and on the proposal of the Ministers responsible either for insurance, the protection of the public and workers against the hazards of ionizing radiation or for nuclear safety, the King shall designate the officials and agents of the State entitled to investigate and, by means of the official record deemed correct in the absence of contrary evidence, report the offences referred to in the first subsection of this Section.

Section 36

The Act of 18th July 1966 on third party liability in the field of nuclear energy, containing certain provisions for the immediate application of the Paris Convention and its Additional Protocol, is hereby repealed.

Section 37

Operators who have been recognised as such under the Act of 18th July 1966 shall continue to benefit from such recognition provided they adjust the insurance or other financial guarantee covering their liability to the provisions of this Act within ninety days of its publication.