

Radiological Protection
2022

Building a Framework for Post-Nuclear Accident Recovery Preparedness

National-Level Guidance



NEA Workshop on Preparedness for Post-Nuclear Accident Recovery

Liability and compensation of victims after a nuclear accident

Elena de Boissieu

Legal Adviser

DNL, Nuclear Energy Agency

NUCLEAR LIABILITY AT A GLANCE

PURPOSE

- **Special liability /compensation regimes** have been adopted at the national level (by most nuclear countries and few non-nuclear countries) and at the international level (3 main international conventions) because:
 - ordinary common law is not well suited to deal with the particular problems in the nuclear field; and
 - damage may be transboundary
- **Balancing**
 - assurance of **adequate compensation for damage** suffered by victims
 - **protection of nuclear plant investors and suppliers** from ruinous liability claims
- In case of a nuclear incident, **only one entity is liable**:
 - **the operator of a nuclear installation** (where the incident occurred or that was sending/receiving the nuclear substances)

PRINCIPLES

Operator's strict liability:	<ul style="list-style-type: none"> victims do not need to prove fault or negligence, but will have to prove the causal link
Operator's exclusive liability:	<ul style="list-style-type: none"> all liability is channeled to the operator; no one else is liable (e.g. investors or suppliers of services/technology/goods) no other law than nuclear liability law applies (e.g. tort law)
Operator's liability in amount:	<ul style="list-style-type: none"> usually limited to a specified amount, but few countries provide for unlimited liability (e.g. Germany, Japan, Switzerland)
Financial Security:	<ul style="list-style-type: none"> to ensure availability of funds; private insurance primarily but other means are available (e.g. mutual, self-insurance, State guarantee/insurance, operators pools...)
Liability Limited in Time:	<ul style="list-style-type: none"> 10 years from the accident (extended to 30 years for bodily injury) insurance requires certainty in the causation (e.g. cancer)

INTERNATIONAL CONVENTIONS

- **1960 Paris Convention on Third Party Liability in the Field of Nuclear Energy**
 - Basic liability-compensation convention/ 16 Contracting Parties (mostly Western Europe)
- **1963 Brussels Convention Supplementary to the Paris Convention**
 - Supplementary funding instrument/ 13 Contracting Parties (only parties to the Paris Convention)
- **1963 Vienna Convention on Civil Liability for Nuclear Damage**
 - Basic liability-compensation convention/ 44 Contracting Parties (Central/Eastern Europe, Africa, Asia, South/Central America)
- **1988 Joint Protocol Relating to the Application of the Vienna Convention and the Paris Convention**
 - 33 Contracting Parties (12 PC + 21 VC)
- **1997 Protocol amending Vienna Convention on Civil Liability for Nuclear Damage**
 - Provides more money to more victims for more types of damage/ 15 Contracting Parties
- **1997 Convention on Supplementary Compensation for Nuclear Damage**
 - Global liability-compensation regime (basic + supplementary funding)/ 11 Contracting Parties

**LIABILITY AND COMPENSATION OF
VICTIMS AFTER A NUCLEAR
ACCIDENT**

“Recovery from a nuclear or radiological accident is a long, complex and resource-intensive process”.

2022 NEA [Report](#) on *Building a Framework for Post-Nuclear Accident Recovery Preparedness – National-Level Guidance*

TIME IS OF ESSENCE

- If there is a **dispute on the determination of the “nuclear damage”** to be compensated, victims need to submit their case to the competent court, i.e. in case of a nuclear accident at a nuclear power plant:
 - if treaty relations between the Installation State and the Affected State: the competent court of the Installation State
 - if no treaty relations: the competent court as determined by private international law
- If there is a **dispute on the interpretation / implementation of the definition of “nuclear damage”** provided under an international nuclear liability convention, States parties to a same convention may submit their case to the relevant court / tribunal:
 - **Paris Convention:**
 - European Nuclear Energy Tribunal (all Paris Convention contracting parties)
 - **Vienna Convention:**
 - International Court of Justice (2 Vienna Convention contracting parties)
 - **1997 Vienna Convention / Convention on Supplementary Compensation:**
 - Arbitration or International Court of Justice (all contracting parties)

**Victims have no time & means (financial / material)
nor mental strength to go to court
to discuss what should be considered as nuclear damage,
but they need to get compensated to continue with their lives**

What options have retained the countries to try to clarify
what “nuclear damage” means in practice
and avoid a lengthy discussion between the operator/insurers and the victims ?



TEPCO Fukushima Daiichi victims

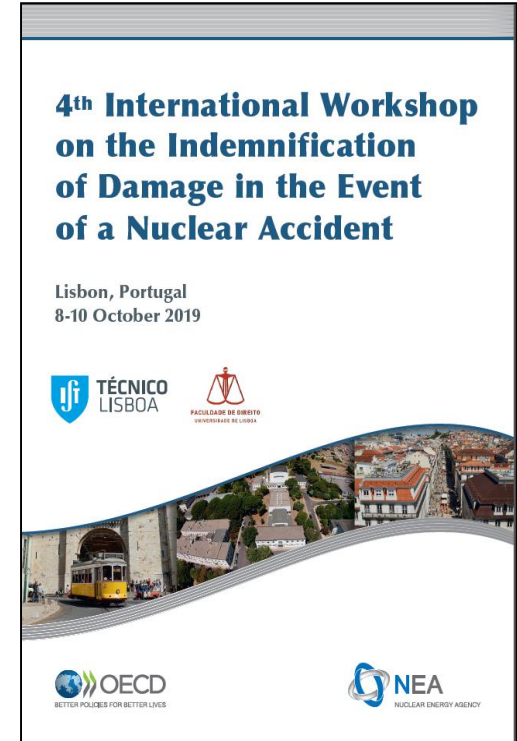
THE EXAMPLE OF FUKUSHIMA

- Dispute Reconciliation Committee for Nuclear Damage Compensation (Reconciliation Committee)
 - established in April 2011 under MEXT in accordance with the Act on Compensation for Nuclear Damage
 - mediates disputes between victims and TEPCO (established the ADR Centre, which was operational on 1 September 2011)
 - **issues non-binding guidelines to define specifically the types of nuclear damage to be compensated and to assess the appropriate compensation for a given type of damage**
- Issued several guidelines between 28 April 2011 and 26 December 2013
 - translated in the 2012 NEA [report](#) on *Japan's Compensation System for Nuclear Damage As Related to the TEPCO Fukushima Daiichi Nuclear Accident* and in *Nuclear Law Bulletin* [92](#) and [94](#)
- Victims may, individually or as part of a group, file a claim
 - directly to the operator (99.2%)
 - before the Nuclear Damage Compensation Dispute Resolution Center (*ADR Center*) (0.78%)
 - before the civil courts (0.01%)

} as of Dec 2016



2019 LISBON WORKSHOP


- The exact meaning of “nuclear damage” depends on
 - the circumstances of the accident
 - the convention(s) that will apply, if any
 - the national legislation and case law
 - the interpretation of the competent court (if victims decide to litigate)
- Workshop aimed to identify
 - what could be considered as “nuclear damage” under each head of damage provided under the conventions, in order for each country to assess whether it could be considered as such under its own legislation
 - the challenges that could be raised by some heads of damage that are difficult to determine or may potentially be compensated under different heads of damage (avoid double payment)
 - the need to have an efficient claims handling process in place




**4th International Workshop
on the Indemnification
of Damage in the Event
of a Nuclear Accident**

Lisbon, Portugal
8-10 October 2019

 **TÉCNICO LISBOA**
 **FACULDADE DE DIREITO
UNIVERSIDADE DE LISBOA**

 **OECD**
BETTER POLICIES FOR BETTER LIVES

 **NEA**
NUCLEAR ENERGY AGENCY

The poster features a central image of a yellow tram in Lisbon, Portugal, with a wavy graphic element below it. The logos of the host institutions and the organizing agencies are positioned around the text.

2019 LISBON WORKSHOP: MAIN OUTCOMES – 1/2

- Absence of **detailed definitions of heads of damage to be compensated** in the nuclear liability conventions and a variety of national legal approaches
 - competent courts will have the final say (time-consuming)
 - legal uncertainties regarding the extent of the compensation to be paid (may impact the recovery)
 - risk of overlap among different heads of damage leading to a double-compensation (to the detriment of other victims' indemnification)
- **National legislation should be developed in advance** and provide a **clear and comprehensive framework** to determine the compensation due to victims of nuclear damage
 - draw lines as to what is covered (per type of loss) and to what extent it should be compensated (e.g. Fukushima Guidelines)
 - establish a system for provisional payments, as gathering support evidence may take time
- **Knowledge of nuclear law** needs to be spread wider, allowing national jurisdictions to enable their courts to gain insight into the challenges that will be faced in the event of a nuclear accident
- **Co-ordination between competent authorities** is key (e.g. reinstatement of impaired environment, especially in a transboundary context)

2019 LISBON WORKSHOP: MAIN OUTCOMES – 2/2

- Nuclear **emergency and response arrangements, along with recovery activities** should take into account **aspects related to compensation** for nuclear damage
 - all actions undertaken as emergency measures will have an impact on the compensation process and on the capacity of the operator to indemnify victims adequately
 - emergency preparedness and response experts to **co-ordinate in advance** with different stakeholders involved in the process of handling claims for compensation (i.e. the government, the operator, insurers and other financial security providers) to address **claims handling challenges** in the aftermath of a nuclear accident (e.g. establishing a communication channel and a communication plan; creating a “one-stop shop” organisation; setting-up a system for emergency payments)

The report of the Lisbon Workshop is under finalisation and will be published soon

THANK YOU FOR YOUR ATTENTION



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