NUCLEAR LIABILITY AND TRANSPORT
– Compilation of relevant provisions and texts –

[as of June 2023]

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Section I

Source Documents

Note:

This compilation contains relevant provisions and texts related to transport and transit. Source documents are available at:

- Convention on Third Party Liability in the Field of Nuclear Energy of 29 July 1960, as amended by the Additional Protocol of 28 January 1964, by the Protocol of 16 November 1982 and by the Protocol of 12 February 2004 ("Paris Convention") and the *Exposé des motifs* of the Paris Convention as amended by the Protocols of 1964, 1982 and 2004
- Explanatory Report (Final Act of the Conference on the revision of the Paris Convention and of the Brussels Supplementary Convention)
- Convention of 31 January 1963 supplementary to the Paris Convention of 29 July 1960, as amended by the additional Protocol of 28 January 1964, by the Protocol of 16 November 1982 and by the Protocol of 12 February 2004 ("Brussels Supplementary Convention") and the *Exposé des motifs* of the Brussels Supplementary Convention as amended by the Protocols of 1964, 1982 and 2004
- 1963 Vienna Convention on Civil Liability for Nuclear Damage ("Vienna Convention")
- 1963 Vienna Convention on Civil Liability for Nuclear Damage as amended by the 1997 Vienna Protocol ("Revised Vienna Convention")
- Convention on Supplementary Compensation for Nuclear Damage ("Convention on Supplementary Compensation")
- The 1997 Vienna Convention on Civil Liability for Nuclear Damage and the 1997 Convention on Supplementary Compensation for Nuclear Damage - Explanatory Texts
- Joint Protocol Relating to the Application of the Vienna Convention and the Paris Convention ("Joint Protocol")
- Unofficial compilation of the Decisions, Recommendations and Interpretations (DRI) applicable to the Paris Convention
- Recommendation of the Council on the Application of the Brussels Supplementary Convention, in the Field of Nuclear Liability
- The Establishment of Maximum Limits for the Exclusion of Small Quantities of Nuclear Material from the Application of the Vienna Conventions on Nuclear Liability - Resolution adopted by the Board of Governors on 20 November 2014

Section II

OECD Conventions

Convention on Third Party Liability in the Field of Nuclear Energy of 29 July 1960, as amended by the Additional Protocol of 28 January 1964, by the Protocol of 16 November 1982 and by the Protocol of 12 February 2004 ("Paris Convention")

Article 1

a) For the purposes of this Convention:

[…]

ii) "Nuclear installation" means reactors other than those comprised in any means of transport; factories for the manufacture or processing of nuclear substances; factories for the separation of isotopes of nuclear fuel; factories for the reprocessing of irradiated nuclear fuel; facilities for the storage of nuclear substances other than storage incidental to the carriage of such substances; installations for the disposal of nuclear substances; any such reactor, factory, facility or installation that is in the course of being decommissioned; and such other installations in which there are nuclear fuel or radioactive products or waste as the Steering Committee for Nuclear Energy of the Organisation (hereinafter referred to as the "Steering Committee") shall from time to time determine; any Contracting Party may determine that two or more nuclear installations of one operator which are located on the same site shall, together with any other premises on that site where nuclear fuel or radioactive products or waste are held, be treated as a single nuclear installation.

[…]

Article 2

a) This Convention shall apply to nuclear damage suffered in the territory of, or in any maritime zones established in accordance with international law of, or, except in the territory of a non-Contracting State not mentioned under *(ii)* to *(iv)* of this paragraph, on board a ship or aircraft registered by,

i) a Contracting Party;

ii) a non-Contracting State which, at the time of the nuclear incident, is a Contracting Party to the Vienna Convention on Civil Liability for Nuclear Damage of 21 May 1963 and any amendment thereto which is in force for that Party, and to the Joint Protocol relating to the Application of the Vienna Convention and the Paris Convention of 21 September 1988, provided however, that the Contracting Party to the Paris Convention in whose territory the installation of the operator liable is situated is a Contracting Party to that Joint Protocol;

iii) a non-Contracting State which, at the time of the nuclear incident, has no nuclear installation in its territory or in any maritime zones established by it in accordance with international law; or

iv) any other non-Contracting State which, at the time of the nuclear incident, has in force nuclear liability legislation which affords equivalent reciprocal benefits, and which is based on principles identical to those of this Convention, including, inter alia, liability without fault of the operator liable, exclusive liability of the operator or a provision to the same effect, exclusive jurisdiction of the competent court, equal treatment of all victims of a nuclear incident, recognition and enforcement of judgements, free transfer of compensation, interests and costs.

b) Nothing in this Article shall prevent a Contracting Party in whose territory the nuclear installation of the operator liable is situated from providing for a broader scope of application of this Convention under its legislation.

Article 4

In the case of carriage of nuclear substances, including storage incidental thereto, without prejudice to Article 2:

a) The operator of a nuclear installation shall be liable, in accordance with this Convention, for nuclear damage upon proof that it was caused by a nuclear incident outside that installation and involving nuclear substances in the course of carriage therefrom, only if the incident occurs:

i) before liability with regard to nuclear incidents involving the nuclear substances has been assumed, pursuant to the express terms of a contract in writing, by the operator of another nuclear installation;

ii) in the absence of such express terms, before the operator of another nuclear installation has taken charge of the nuclear substances; or

iii) where the nuclear substances are intended to be used in a reactor comprised in a means of transport, before the person duly authorized to operate that reactor has taken charge of the nuclear substances; but

iv) where the nuclear substances have been sent to a person within the territory of a non-Contracting State, before they have been unloaded from the means of transport by which they have arrived in the territory of that non-Contracting State.

b) The operator of a nuclear installation shall be liable, in accordance with this Convention, for nuclear damage upon proof that it was caused by a nuclear incident outside that installation and involving nuclear substances in the course of carriage thereto, only if the incident occurs:

i) after liability with regard to nuclear incidents involving the nuclear substances has been assumed by him, pursuant to the express terms of a contract in writing, from the operator of another nuclear installation;

ii) in the absence of such express terms, after he has taken charge of the nuclear substances; or

iii) after he has taken charge of the nuclear substances from a person operating a reactor comprised in a means of transport; but

iv) where the nuclear substances have, with the written consent of the operator, been sent from a person within the territory of a non-Contracting State, after they have been loaded on the means of transport by which they are to be carried from the territory of that State.

c) The transfer of liability to the operator of another nuclear installation pursuant to paragraphs *(a)(i)* and *(ii)* and *(b)(i)* and *(ii)* of this Article may only take place if that operator has a direct economic interest in the nuclear substances that are in the course of carriage.

d) The operator liable in accordance with this Convention shall provide the carrier with a certificate issued by or on behalf of the insurer or other financial guarantor furnishing the security required pursuant to Article 10. However, a Contracting Party may exclude this obligation in relation to carriage which takes place wholly within its own territory. The certificate shall state the name and address of that operator and the amount, type and duration of the security, and these statements may not be disputed by the person by whom or on whose behalf the certificate was issued. The certificate shall also indicate the nuclear substances and the carriage in respect of which the security applies and shall include a statement by the competent public authority that the person named is an operator within the meaning of this Convention.

e) A Contracting Party may provide by legislation that, under such terms as may be contained therein and upon fulfilment of the requirements of Article 10*(a)*, a carrier may, at his request and with the consent of an operator of a nuclear installation situated in its territory, by decision of the competent public authority, be liable in accordance with this Convention in place of that operator. In such case for all the purposes of this Convention the carrier shall be considered, in respect of nuclear incidents occurring in the course of carriage of nuclear substances, as an operator of a nuclear installation on the territory of the Contracting Party whose legislation so provides.

Article 5

a) If the nuclear fuel or radioactive products or waste involved in a nuclear incident have been in more than one nuclear installation and are in a nuclear installation at the time nuclear damage is caused, no operator of any nuclear installation in which they have previously been shall be liable for the nuclear damage.

b) Where, however, nuclear damage is caused by a nuclear incident occurring in a nuclear installation and involving only nuclear substances stored therein incidentally to their carriage, the operator of the nuclear installation shall not be liable where another operator or person is liable pursuant to Article 4.

c) If the nuclear fuel or radioactive products or waste involved in a nuclear incident have been in more than one nuclear installation and are not in a nuclear installation at the time nuclear damage is caused, no operator other than the operator of the last nuclear installation in which they were before the nuclear damage was caused or an operator who has subsequently taken them in charge, or has assumed liability therefore pursuant to the express terms of a contract in writing shall be liable for the nuclear damage.

d) If nuclear damage gives rise to liability of more than one operator in accordance with this Convention, the liability of these operators shall be joint and several, provided that where such liability arises as a result of nuclear damage caused by a nuclear incident involving nuclear substances in the course of carriage in one and the same means of transport, or, in the case of storage incidental to the carriage, in one and the same nuclear installation, the maximum total amount for which such operators shall be liable shall be the highest amount established with respect to any of them pursuant to Article 7. In no case shall any one operator be required, in respect of a nuclear incident, to pay more than the amount established with respect to him pursuant to Article 7.

Article 6

[…]

b) Except as otherwise provided in this Article, no other person shall be liable for nuclear damage caused by a nuclear incident, but this provision shall not affect the application of any international agreement in the field of transport in force or open for signature, ratification or accession at the date of this Convention.

c)

i) Nothing in this Convention shall affect the liability:

[…]

2. of a person duly authorised to operate a reactor comprised in a means of transport for nuclear damage caused by a nuclear incident when an operator is not liable for such damage pursuant to Article 4*(a)(iii)* or *(b)(iii)*.

[…]

Article 7

a) Each Contracting Party shall provide under its legislation that the liability of the operator in respect of nuclear damage caused by any one nuclear incident shall not be less than 700 million euro.

b) Notwithstanding paragraph *(a)* of this Article and Article 21*(c)*, any Contracting Party may,

i) having regard to the nature of the nuclear installation involved and to the likely consequences of a nuclear incident originating therefrom, establish a lower amount of liability for that installation, provided that in no event shall any amount so established be less than 70 million euro; and

ii) having regard to the nature of the nuclear substances involved and to the likely consequences of a nuclear incident originating therefrom, establish a lower amount of liability for the carriage of nuclear substances, provided that in no event shall any amount so established be less than 80 million euro.

c) Compensation for nuclear damage caused to the means of transport on which the nuclear substances involved were at the time of the nuclear incident shall not have the effect of reducing the liability of the operator in respect of other nuclear damage to an amount less than either 80 million euro, or any higher amount established by the legislation of a Contracting Party.

d) The amount of liability of operators of nuclear installations in the territory of a Contracting Party established in accordance with paragraph (a) or (b) of this Article or with Article 21(c), as well as the provisions of any legislation of a Contracting Party pursuant to paragraph (c) of this Article shall apply to the liability of such operators wherever the nuclear incident occurs.

e) A Contracting Party may subject the transit of nuclear substances through its territory to the condition that the maximum amount of liability of the foreign operator concerned be increased, if it considers that such amount does not adequately cover the risks of a nuclear incident in the course of the transit, provided that the maximum amount thus increased shall not exceed the maximum amount of liability of operators of nuclear installations situated in its territory.

f) The provisions of paragraph *(e)* of this Article shall not apply:

i) to carriage by sea where, under international law, there is a right of entry in cases of urgent distress into the ports of such Contracting Party or a right of innocent passage through its territory; or

ii) to carriage by air where, by agreement or under international law, there is a right to fly over or land on the territory of such Contracting Party.

g) In cases where the Convention is applicable to a non-Contracting State in accordance with Article 2*(a)(iv)*, any Contracting Party may establish in respect of nuclear damage amounts of liability lower than the minimum amounts established under this Article or under Article 21*(c)* to the extent that such State does not afford reciprocal benefits of an equivalent amount.

h) Any interest and costs awarded by a court in actions for compensation under this Convention shall not be considered to be compensation for the purposes of this Convention and shall be payable by the operator in addition to any sum for which he is liable in accordance with this Article.

i) The sums mentioned in this Article may be converted into national currency in round figures.

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

Article 10

a) To cover the liability under this Convention, the operator shall be required to have and maintain insurance or other financial security of the amount established pursuant to Article 7*(a)* or 7*(b)* or Article 21*(c)* and of such type and terms as the competent public authority shall specify.

b) Where the liability of the operator is not limited in amount, the Contracting Party within whose territory the nuclear installation of the liable operator is situated shall establish a limit upon the financial security of the operator liable, provided that any limit so established shall not be less than the amount referred to in Article 7*(a)* or 7*(b)*.

c) No insurer or other financial guarantor shall suspend or cancel the insurance or other financial security provided for in paragraph *(a)* or *(b)* of this Article without giving notice in writing of at least two months to the competent public authority or, in so far as such insurance or other financial security relates to the carriage of nuclear substances, during the period of the carriage in question.

d) No insurer or other financial guarantor shall suspend or cancel the insurance or other financial security provided for in paragraph *(a)* or *(b)* of this Article without giving notice in writing of at least two months to the competent public authority or, in so far as such insurance or other financial security relates to the carriage of nuclear substances, during the period of the carriage in question.

[…]

Article 13

a) Except as otherwise provided in this Article, jurisdiction over actions under Articles 3, 4 and 6*(a)* shall lie only with the courts of the Contracting Party in whose territory the nuclear incident occurred.

b) Where a nuclear incident occurs within the area of the exclusive economic zone of a Contracting Party or, if such a zone has not been established, in an area not exceeding the limits of an exclusive economic zone were one to be established, jurisdiction over actions concerning nuclear damage from that nuclear incident shall, for the purposes of this Convention, lie only with the courts of that Party, provided that the Contracting Party concerned has notified the Secretary-General of the Organisation of such area prior to the nuclear incident. Nothing in this paragraph shall be interpreted as permitting the exercise of jurisdiction or the delimitation of a maritime zone in a manner which is contrary to the international law of the sea.

c) Where a nuclear incident occurs outside the territory of the Contracting Parties, or where it occurs within an area in respect of which no notification has been given pursuant to paragraph *(b)* of

this Article, or where the place of the nuclear incident cannot be determined with certainty, jurisdiction over such actions shall lie with the courts of the Contracting Party in whose territory the nuclear installation of the operator liable is situated.

[…]

Article 14

a) This Convention shall be applied without any discrimination based upon nationality, domicile, or residence.

b) "National law" and "national legislation" mean the law or the national legislation of the court having jurisdiction under this Convention over claims arising out of a nuclear incident, excluding the rules on conflict of laws relating to such claims. That law or legislation shall apply to all matters both substantive and procedural not specifically governed by this Convention.

c) That law and legislation shall be applied without any discrimination based upon nationality, domicile, or residence.

Article 15

b) In so far as compensation for nuclear damage is in excess of the 700 million euro referred to in Article 7*(a)*, any such measure in whatever form may be applied under conditions which may derogate from the provisions of this Convention.

Exposé des Motifs of the Paris Convention as amended by the Protocols of 1964, 1982 and 2004

Article 2: GEOGRAPHICAL APPLICATION OF THE CONVENTION

Article 2(a)

7. (a) The Convention applies to nuclear damage suffered in the territory or in any maritime zones of a Contracting Party or, subject to the exception referred to in paragraph 11, on board a ship or aircraft registered by a Contracting Party regardless of where the damage is suffered including on the high seas. The Convention equally applies, subject to the same exception, to nuclear damage suffered in the territory or in any maritime zones of a non-Contracting State or on board a ship or aircraft registered by a non-Contracting State regardless of where the damage is suffered including on the high seas, provided that at the time of the nuclear incident, the non-Contracting State meets the requirements of any one of three different cases [Article 2*(a)(ii)*,*(iii)* and *(iv)*] [see paragraphs 8, 9 and 10]. The term "damage suffered on board a ship or aircraft" is understood to include damage suffered by a ship or aircraft other than that which is transporting the nuclear substances which are involved in the nuclear incident.

Article 2(b)

7. (b) A Contracting Party may always provide, under its national legislation, for a broader scope of geographical coverage of the Convention with respect to its own nuclear operators.

Article 2(a)(iv)

[…]

11. The exception referred to in paragraph 7*(a)* is that the Convention does not apply to nuclear damage suffered on board a ship or aircraft, registered either by a Contracting Party or by a non-Contracting State described in Article 2*(a) (ii)*, *(iii)* or *(iv)*, where that ship or aircraft is in the territory of a non-Contracting State that is not described in Article 2*(a) (ii)*, *(iii)* or *(iv)*. This exception would apply, for example, to nuclear damage suffered on board a ship that is registered in a Paris Convention State but that is sailing in the territorial waters of a non-Contracting State not described in either Article 2*(a)(ii)*, *(iii)* or *(iv)*, at the time the nuclear damage occurs.

12. The term "maritime zones" as used in the Convention means maritime zones that are established in accordance with international law. Such zones are understood to include the territorial sea, a contiguous zone, an exclusive economic zone and the continental shelf.

Article 1(a)(i), (ii), (v), (ix), 1(b), 3(b): SCOPE OF THE CONVENTION

Article 1(a)(ii), (v), 1(b)

[…]

18. (b) In addition, a nuclear installation is defined to encompass facilities for the storage of nuclear substances, unless that storage is only incidental to the carriage of those substances, in which case the storage facilities will normally not be considered a nuclear installation because of the transitory and temporary nature of the storage.

[…]

18. (f) Factories for the manufacture or processing of natural or depleted uranium, facilities for the storage of natural or depleted uranium, and the transport of natural or depleted uranium are also excluded since the level of radioactivity is low and there are no criticality risks […].

Article 1(a)(iii), (iv), (v)

[…]

20. Risks which arise in respect of radioisotopes usable for any industrial, commercial, agricultural, medical, scientific or educational purposes are excluded from the scope of the Convention, provided the radioisotopes have reached their final stage of manufacture and are outside a nuclear installation. Such risks are not of an exceptional nature and, indeed, are covered by the insurance industry in the ordinary course of business. Despite the widespread use of radioisotopes in many fields, which requires continual and careful observance of health protection precautions, there is little possibility of catastrophe. Hence no special third party liability problems are posed and the matter is left to be determined by ordinary legal regimes.

[…]

Articles 6(b), 16bis: PERSON LIABLE – NUCLEAR INSTALLATIONS

28. The rule contained in Article 6*(b)* regarding the exclusive liability of the operator does not affect certain existing international agreements in the field of transport (see paragraph 48) nor is it intended to affect the rules of public international law with regard to any possible responsibility of States towards each other.

[…]

Article 5(d): LIABILITY OF MORE THAN ONE OPERATOR

[…]

33. (b) This rule, however, does not apply to a nuclear incident involving nuclear substances in the course of carriage in one and the same means of transport, or involving such substances where they are stored incidental to the carriage in one and the same nuclear installation. In such cases, rather than adding up the liability amounts of all liable operators, the total amount of liability is limited to the highest liability amount applicable to any one of them.

[…]

Articles 4, 5(b), 6(b), (d), (g), 7(e), (f): PERSON LIABLE – TRANSPORT

Article 4(a)

36. In principle, liability is imposed on the operator sending the nuclear substances since it will be responsible for the packing and containment and for ensuring that these comply with the health and safety regulations laid down for transport.

Articles 4(a)(i)(ii)(iii), 4(b)(i)(ii)(iii)

37. The liability of the sending operator ends when the operator of another nuclear installation has assumed liability for the substances pursuant to the express terms of a written contract. However, if the contract contains no such express terms, the sending operator's liability ends when the operator of another nuclear installation has taken charge of the substances. It also ends when the substances have been taken in charge by a person duly authorized to operate a reactor comprised in a means of transport, if the substances are intended to be used in that reactor. Thus, from the point of view of the person suffering damage, the burden of proof will be on the sending operator to show that the operator of some other nuclear installation has assumed liability either under contract or by taking charge of the substances, or that a person operating a reactor comprised in a means of transport has taken charge of the nuclear substances. Similarly, if the substances are sent to the operator from a person operating a reactor comprised in a means of transport, the liability of the receiving operator begins when it has taken charge of them. The precise moment of the taking charge will normally be determined by the competent court [but see also paragraph 44].

Article 4(a)(iv)

38. (a) The Convention clearly cannot impose liability upon persons not subject to the jurisdiction of the Contracting Parties. If the substances are consigned to a destination in a non-Contracting State, it is therefore the sending operator who is liable until the substances have been unloaded from the means of transport by which they arrived in the territory of the non-Contracting State.

Article 4(b)(iv)

38. (b) In the converse situation, where substances are being carried from a non-Contracting State to a Contracting Party, that is, where there is no sender in the territory of the Contracting Parties it is vital for victims that there should always be somebody liable within the territory of the Contracting Parties. In this case, liability is imposed upon the operator to whom the substances are destined, and with whose written consent they have been sent, from the moment that they have been loaded on the means of transport by which they are to be carried from the territory of the non-Contracting State.

Articles 4(a)(i)(ii), 4(b)(i)(ii), 4(c), 10(c)

39. Only an operator with a direct economic interest in nuclear substances being transported may assume liability for nuclear damage caused by a nuclear incident occurring during that transport. A direct economic interest does not necessarily mean that the operator assuming liability must be the sender or the receiver of the nuclear substances; it may be the owner of nuclear substances which, in the course of their treatment, are transported between several nuclear installations, each with its own operator. One operator may only assume such liability from another operator pursuant to the express terms of a written contract or because it has taken charge of the nuclear substances. The purpose of Article 4*(c)* is to prevent an operator in a Paris Convention State which imposes a comparatively low liability amount for transport activities from assuming liability for damage occurring during the transport of nuclear substances between two other

nuclear operators, for the sole purpose of reducing the cost of the transport by virtue of that operator's less expensive liability insurance premiums. Otherwise, in the event of a nuclear incident causing damage in excess of that comparatively low liability amount, that Paris Convention State would be required to provide compensation for nuclear damage, up to the amount required under Articles 7*(a)* or 21*(c)*, in circumstances where neither it nor the operator derives any real benefit at all from the substances being transported.

Article 5(b)

40. In addition, since nuclear substances may be stored temporarily in the course of their carriage, it is necessary to establish a clear rule as to which operator would be liable if such storage took place in a nuclear installation. Although facilities where nuclear substances are stored only incidentally to their carriage are normally excluded from the definition of "nuclear installation" [see paragraph 18*(b)*], such facility may itself be a nuclear installation within the meaning of Article 1*(a)(ii)*. However, the operator of a nuclear installation will not be liable for damage caused by a nuclear incident involving only nuclear substances which are stored at its installation incidental to their carriage where another operator or person is liable pursuant to Article 4.

Article 4(e)

41. There is one exception to the basic principle that only the operator is liable under the Convention. A Contracting Party may, by legislation, on condition that the requirements of Article 10*(a)* with regard to financial security are fulfilled, provide that a carrier be liable under the Convention in substitution for an operator of a nuclear installation in its territory. Such substitution will be in accordance with the terms laid down in the legislation and by decision of the competent public authority. Moreover, the substitution must be requested by the carrier and have the consent of the operator of the nuclear installation situated in the territory of the Contracting Party in question. Once the decision has been taken, the carrier will be liable in accordance with the Convention in place of that operator. For all the purposes of the Convention, the carrier is then considered, in respect of nuclear incidents occurring in the course of carriage of nuclear substances, as an operator of a nuclear installation in the territory of the Contracting Party whose legislation has provided for the substitution.

42. Where, in respect of the carriage of nuclear substances coming from or destined for different operators, the carrier has assumed, by substitution, the liability of each of those operators, the rules relating to the liability of more than one operator will apply in the same way as if there had been no substitution and the carrier will be treated as if it were each and every one of those operators.

Article 4(d)

43. In order to facilitate the transport of nuclear substances, especially in the event of transit through a number of countries, it is provided that in respect of each carriage the operator liable in accordance with the Convention must provide the carrier with a certificate issued by or on behalf of the insurer or other person providing the financial security required pursuant to Article 10. However, this general obligation operates in the case of international carriage only, each Contracting Party being free to dispense with it in relation to carriage which takes place wholly within its territory. The certificate must contain the name and address of the operator liable and the details of the financial security. This information may not be subsequently contested by the person by whom or on whose behalf the certificate was issued. The certificate must also include an indication of the nuclear substances involved and the carriage in respect of which the security applies, as well as a statement by the competent public authority that the person named is an operator within the meaning of the Convention.

44. For transport of nuclear substances to installations situated in its territory, a Contracting Party may require the operators of the installations for whom the substances are carried from abroad to take the substances in charge the moment the substances reach its territory or even earlier. Similarly, in the case of nuclear substances sent by operators of nuclear installations in its territory to a foreign destination, a Contracting Party may require that the nuclear substances shall remain in the charge of such operators until they have left its territory or even longer.

Article 7(e)

45. The possession of a certificate by a carrier does not imply any right to enter the territory of a Contracting Party. Moreover, a Contracting Party may subject the transit of nuclear substances through its territory to the condition that the required amount of liability of the foreign operator concerned is increased if it considers, taking account of the special dangers of the nuclear substances in the particular transit in question, that such amount does not adequately cover the risks. Nevertheless, the amount thus increased, which applies only to incidents occurring on the territory of the State being transited, cannot exceed the required amount of liability of operators of nuclear installations situated in its own territory.

Article 7(f)

46. It was recognized, however, that a right of entry in case of urgent distress into the ports of States and a right of innocent passage through territorial seas is granted under international law and that by agreement or under international law there may be a right to fly over or land on the territory of States. Thus the provisions of Article 7*(e)* do not apply to a transit by sea or by air in these cases.

47. Where, and this may well be a normal case, the carriage involves nuclear substances sent by a number of different operators, the maximum total amount for which such operators are jointly and severally liable is the highest amount established with respect to any of them pursuant to Article 7. This rule applies, however, only where the nuclear substances involved are in one and the same means of transport or are stored incidentally to the transport, in one and the same nuclear installation [see paragraph 33*(b)*].

Article 6(b)

48. The channelling of liability to the nuclear operator under the Convention is not intended to interfere with existing international agreements in the field of transport in force or open for signature, ratification or accession at the date of the adoption of the Convention (29th July 1960). This intention is clearly reflected in Article 6*(b)* which states that the channelling principle does not affect the application of such agreements. Most international agreements in the field of transport which have been adopted since this date contain express provisions designed to avoid any conflict with the channelling principle but where such provisions are not included, Parties to the Convention may be faced with uncertain or even conflicting liability obligations. International agreements in the field of transport are understood to mean international agreements dealing with third party liability for damage involving a means of transport and international agreements dealing with bills of lading.

49. Thus, a person suffering damage caused by a nuclear incident occurring in the course of transport may have two rights of action: one against the operator liable under the Convention and another against the carrier liable under existing international agreements in the field of transport.

50. Where the liable operator is at the same time the carrier, for example, where it transports nuclear substances on its own means of transport, these two possible actions may be brought against one person. In this case, however, the operator cannot take advantage of the provisions of international agreements in the field of transport to reduce or alter its liability under the Convention.

Article 6(d), (g)

51. A person who has paid compensation for damage caused by a nuclear incident, whether under any international agreement in the field of transport or under any legislation of a non-Contracting State acquires, by subrogation, the rights under the Paris Convention of the victim whom that person has compensated. This concept is used in other international conventions. However, these rights can only be exercised by a person against the operator to the extent that the operator does not have a right of recourse against that person pursuant to Article 6*(f)*.

Articles 7, 10(c), 21(c): LIABILITY AMOUNT

Article 7 (b)

68. Nevertheless, a Contracting Party may establish a lower amount of liability when the nuclear installation or, in the case of carriage, the nuclear substances involved are not considered by that Contracting Party as likely to cause significant damage compared to other nuclear installations and transports referred to in the Convention (e.g. certain small research reactors or laboratories). The aim of this option is to avoid burdening the nuclear operators concerned with unjustified insurance or financial security costs. The establishment of such lower amounts, however, is subject to the condition that the reduced amount must not be less than 70 million EUR in the case of a nuclear installation and 80 million EUR in the case of carriage of nuclear substances.

Article 10(c)

69. If a Contracting Party establishes a lower amount of liability for a nuclear operator under Article 7*(b)*, that Contracting Party will be obliged to provide compensation for any nuclear damage incurred as a result of a nuclear incident that is in excess of that lower amount, but only up to a certain limit. This limit is an amount not less than that set forth in Article 7*(a)* or Article 21*(c)* whichever is applicable. Thus, if a Contracting Party fixes an operator's liability amount at 70 million EUR for a small research reactor and the nuclear damage resulting from an incident at such an installation exceeds that amount, the Contracting Party is required to provide compensation for the nuclear damage actually incurred, but only up to an amount that is not less than 700 million EUR or 350 million EUR as the case may be.

Article 7(c)

70. Furthermore, the nuclear operator must compensate nuclear damage to the means of transport upon which the nuclear substances involved were at the time of a nuclear incident occurring in the course of carriage and outside a nuclear installation. However, the amount of this compensation must not have the effect of reducing the liability of that operator in respect of other nuclear damage to less than either 80 million EUR or such higher amount as is established by the legislation of the Contracting Party in whose territory the installation of the nuclear operator is situated. In practice, if such other nuclear damage is less than this amount, the difference between the two amounts may be used to compensate nuclear damage to the means of transport. On the other hand, if such other nuclear damage is more than 80 million EUR, there may need to be a proportional distribution of the total compensation available to cover all the nuclear damage, including nuclear damage to the means of transport. This might involve paying compensation of more than 80 million EUR for such other nuclear damage, but it cannot result in reducing the amount of that compensation to less than 80 million EUR.

Article 7(j)

71. (b) Persons suffering nuclear damage will be able to enforce their rights to compensation without having to bring separate proceedings according to the origin of the funds being provided. This will enable victims to overcome obstacles they might face where, for example, they suffer damage from an incident occurring during the transport of nuclear substances and the operator's liability amount is reduced, thereby forcing them to bring one claim against the operator and another against the Contracting Party in whose territory the operator's installation is situated for damages in excess of the operator's liability amount.

Article 7(d)

72. Subject to the provisions of Article 7*(e)* [see paragraph 45], the liability amount will, in the same way as for nuclear incidents occurring at or in connection with nuclear installations, be determined by the national legislation of the liable operator.

Article 10: <u>FINANCIAL SECURITY</u>

Article 10(a), (b)

81. […] Where the liability of the operator is not limited in amount, the Contracting Party in whose territory that operator's installation is situated shall establish that operator's financial security at either not less than 700 million EUR as provided for under Article 7*(a)* or not less than 70 million EUR or 80 million EUR as provided for under Article 7*(b)*, whichever amount is applicable.

[…]

Article 10(d)

87. […] Where the financial security covers the operator's liability for nuclear damage arising from nuclear incidents occurring during transport, it shall not be suspended or cancelled during the period of the transport in question.

Article 13: <u>JURISDICTION AND ENFORCEMENT OF JUDGEMENTS</u>

Article 13(c)

95. Special arrangements are necessary in the case of a nuclear incident which occurs outside the territory of a Contracting Party or where it occurs within an area for which no notification has been given under Article 13*(b)*, or where it is not possible to determine with certainty the place of the nuclear incident. For example, an incident may occur on the high seas or, where an incident is due to continuous radioactive contamination in the course of transport, it may not be possible to determine the place of such incident. In such cases, the competent courts are the courts of the place where the liable operator's installation is situated. While there may be some practical disadvantages for victims having to resort to the jurisdiction of the operator as a result of the distance involved, it has not been possible to find another solution which would both enable victims to refer to their national courts and at the same time secure unity of jurisdiction.

Article 15: <u>ADDITIONAL COMPENSATION</u>

Article 15(a), (b)

[…]

105. Article 15*(b)* allows for deviation from the non-discrimination rule contained in Article 14 where additional funds are used to compensate nuclear damage in excess of the 700 million EUR liability amount provided for under Article 7. For Contracting Parties with unlimited liability regimes or States with limited liability in excess of 700 million EUR, these additional funds are, effectively, operator funds and would therefore be subject to distribution in accordance with the non-discrimination rule of Article 14, rather than in accordance with the provisions of Article 15*(b)*. To remedy this situation, and to ensure that the same rules apply to the distribution of these additional funds regardless of their source, deviation from the non-discrimination rule is permitted regardless of whether public or private funds are used to compensate nuclear damage in excess of the liability amount established under Article 7.

106. On 12 February 2004, the Conference on the Revision of the Paris Convention and of the Brussels Convention Supplementary to the Paris Convention adopted a Recommendation, in Annex III to the Final Act of the Conference, on the Application of the Reciprocity Principle to Nuclear Damage Compensation Funds which reflects their agreement in respect of deviations from the non-discrimination rule. Although not legally binding, the Recommendation is considered as a strong policy commitment on the part of those States.

Explanatory Report (Final Act of the Conference on the revision of the Paris Convention and of the Brussels Supplementary Convention)

Article 2: Scope of Application

15. The Contracting Parties are proposing to significantly expand the scope of application of the Paris Convention. Under Article 2 of the Convention, a nuclear incident must occur in the territory of a Contracting Party and damage must be suffered there (unless otherwise provided by the national legislation of the liable operator). That rule was modified by two NEA Steering Committee Recommendations made in 1968 [NE/M(68)1] and in 1971 [NE/M(71)1], the first of which recommends that the Convention cover nuclear incidents occurring or nuclear damage suffered on the high seas, with the second recommending that the Convention apply to damage suffered in a Contracting State, or on the high seas on board a ship registered in a Contracting State, even if the nuclear incident occurs in a non-Contracting State.

16. The Convention will apply not only to nuclear damage suffered in any territory or maritime zone of a Contracting Party, or on board a ship or aircraft registered by that Contracting Party, but as well to nuclear damage suffered in any territory or maritime zone of a non-Contracting State or on board a ship or aircraft registered by that non-Contracting State, if that State meets any one of three conditions: a) it is a party to the Vienna Convention and the Joint Protocol; b) it has no nuclear installations in its territory or maritime zones; c) it has nuclear liability legislation in place that affords equivalent reciprocal benefits and that is based upon principles identical to those of the Paris Convention. Paris Convention States maintain, moreover, the right to provide for a broader scope of application of the Convention in respect of their own liable operators.

Article 4: Carriage of Nuclear Substances

18. The attention of the Contracting Parties has been drawn to the fact that certain nuclear operators in countries whose legislation provides for relatively low liability limits for transport activities involving nuclear substances, assume liability for such transports even though they have no interest in such activities. This practice is motivated by an interest in factoring less expensive insurance premiums into the price of the transport which will be correspondingly reduced. As a consequence, the Contracting Party in whose territory such an operator is situated could be required to provide compensation in respect of nuclear damage caused by a transport incident with which it has no connection at all. In order to put an end to this practice, the Contracting Parties are adding to Article 4 a provision which will permit the transfer of liability from one operator to another, in connection with the transport of nuclear substances, only if the other operator has a direct economic interest in the nuclear substances being transported.

Article 7: Liability Amounts

[…]

29. A new provision will also be added to Article 7 to enable persons suffering damage to enforce their rights to compensation without having to bring separate proceedings according to the origin of the funds being provided. This provision is designed to overcome the obstacle which victims might face, for example, where they suffer damage from a transport accident in respect of which the operator's liability amount is reduced and they are obliged to bring one claim against the operator in respect of its liability and another against the installation State for damages in excess of the operator's liability amount. A similar provision is contained in Article VII of the Vienna Amending Protocol.

Convention of 31 January 1963 supplementary to the Paris Convention of 29 July 1960, as amended by the additional Protocol of 28 January 1964, by the Protocol of 16 November 1982 and by the Protocol of 12 February 2004 ("Brussels Supplementary Convention")

Article 2

a) The system of this Convention shall apply to nuclear damage for which an operator of a nuclear installation, used for peaceful purposes, situated in the territory of a Contracting Party to this Convention (hereinafter referred to as a "Contracting Party"), is liable under the Paris Convention, and which is suffered:

i) in the territory of a Contracting Party; or

ii) in or above maritime areas beyond the territorial sea of a Contracting Party

1. on board or by a ship flying the flag of a Contracting Party, or on board or by an aircraft registered in the territory of a Contracting Party, or on or by an artificial island, installation or structure under the jurisdiction of a Contracting Party, or

2. by a national of a Contracting Party,

excluding damage suffered in or above the territorial sea of a State not Party to this Convention; or

iii) in or above the exclusive economic zone of a Contracting Party or on the continental shelf of a Contracting Party in connection with the exploitation or the exploration of the natural resources of that exclusive economic zone or continental shelf,

provided that the courts of a Contracting Party have jurisdiction pursuant to the Paris Convention.

[…]

c) In this Article, the expression "a national of a Contracting Party" shall include a Contracting Party or any of its constituent sub-divisions, or a partnership, or any public or private body whether corporate or not, established in the territory of a Contracting Party.

Article 3

a) Under the conditions established by this Convention, the Contracting Parties undertake that compensation in respect of nuclear damage referred to in Article 2 shall be provided up to the amount of 1 500 million euro per nuclear incident, subject to the application of Article 12bis.

b) Such compensation shall be provided as follows:

i) up to an amount of at least 700 million euro, out of funds provided by insurance or other financial security or out of public funds provided pursuant to Article 10*(c)* of the Paris Convention, such amount to be established under the legislation of the Contracting Party in whose territory the nuclear installation of the operator liable is situated, and to be distributed, up to 700 million euro, in accordance with the Paris Convention;

ii) between the amount referred to in paragraph *(b)(i)* of this Article and 1 200 million euro, out of public funds to be made available by the Contracting Party in whose territory the nuclear installation of the operator liable is situated;

iii) between 1 200 million euro and 1 500 million euro, out of public funds to be made available by the Contracting Parties according to the formula for contributions referred to in Article 12, subject to such amount being increased in accordance with the mechanism referred to in Article 12bis.

c) For this purpose, each Contracting Party shall either:

[…]

ii) establish under its legislation the liability of the operator at an amount at least equal to that established pursuant to paragraph *(b)(i)* of this Article or Article 7*(b)* of the Paris Convention, and provide that, in excess of such amount and up to the amount referred to in paragraph *(a)* of this Article, the public funds referred to in paragraphs *(b)(i)*, *(ii)* and *(iii)* of this Article shall be made available by some means other than as cover for the liability of the operator, provided that the rules of substance and procedure laid down in this Convention are not thereby affected.

[…]

f) The Contracting Parties, in carrying out this Convention, undertake not to make use of the right provided for in Article 15*(b)* of the Paris Convention to apply special conditions, other than those laid down in this Convention, in respect of compensation for nuclear damage provided out of the funds referred to in paragraph *(a)* of this Article.

[…]

Article 11

a) If the courts having jurisdiction are those of a Contracting Party other than the Contracting Party in whose territory the nuclear installation of the operator liable is situated, the public funds required under Article 3*(b)(ii)* and *(g)* shall be made available by the first-named Contracting Party. The Contracting Party in whose territory the nuclear installation of the operator liable is situated shall reimburse to the other Contracting Party the sums paid. These two Contracting Parties shall agree on the procedure for reimbursement.

b) If more than one Contracting Party is required to make available public funds pursuant to Article 3*(b)(ii)* and *(g)*, the provisions of paragraph *(a)* of this Article shall apply mutatis mutandis. Reimbursement shall be based on the extent to which each operator has contributed to the nuclear incident.

[…]

Exposé des motifs of the Brussels Supplementary Convention as amended by the Protocols of 1964, 1982 and 2004

Articles 3, 11, 12, 12bis, 14(a), 14(b) and 15(b): SUPPLEMENTARY COMPENSATION SYSTEM

Article 11(a)

17. […] However, where the nuclear incident occurs during the transport of nuclear substances, it may happen that the Contracting Party in whose territory the incident occurs is not the Contracting Party in whose territory the liable operator's nuclear installation is located. In such a case, the onus is upon the Contracting Party whose courts have jurisdiction to initially make available the public funds required under the second tier (including corresponding amounts for interest and costs), while the Contracting Party in whose territory the liable operator's nuclear installation is located is obliged to reimburse that other Contracting Party the sums paid out according to an agreed upon procedure for reimbursement. Such an arrangement obviously simplifies matters and allows for a more rapid payment of compensation to victims.

Article 11(b)

18. Where nuclear operators from two or more different Contracting Parties are held jointly and severally liable for nuclear damage arising from a nuclear incident, but where none of those Contracting Parties is the one whose courts have jurisdiction to hear and determine claims for compensation under the Convention, the situation is the same as that described in paragraph 17. While it is not likely that two or more operators from different Contracting Parties will be liable for such damage, such a case could occur.

19. […] The amount of the reimbursement will be based upon the extent to which each liable operator has contributed to the nuclear incident.

Article 3(f)

26. Under Article 15*(b)* of the Paris Convention, the Contracting Parties to that Convention may derogate from its provisions with regard to the payment of compensation for nuclear damage in excess of EUR 700 million. Thus, they may discriminate on the basis of nationality, domicile, residence or any other factor in the payment of those excess funds. The Contracting Parties to the Brussels Supplementary Convention also undertake not to derogate from the provisions of the Paris Convention with regard to the payment of compensation for nuclear damage up to the amount of the first tier (not less than EUR 700 million), but they equally undertake not to apply any special conditions to the payment of compensation for nuclear damage furnished from public funds under the second and third tiers (between not less than EUR 700 million and EUR 1 500 million), other than the special conditions laid down in the Brussels Supplementary Convention itself. Thus, the Brussels Supplementary Convention restricts, to some degree, the right of derogation permitted by Article 15*(b)* of the Paris Convention.

Article 8: FULL OR APPORTIONED COMPENSATION

38. Under the Convention, a victim who is entitled to compensation generally has the right to full compensation, in accordance with national law, for the nuclear damage which it has suffered. It will be the law of the court with jurisdiction to determine what "full compensation" is and this determination may vary from one Contracting Party to another.

39. However, the Contracting Parties recognise that the amount of damage suffered by victims may be greater than the total amount of compensation to be made available under the Convention. If this should happen, the Contracting Parties are free to establish equitable criteria for apportioning the amount of compensation available under the Convention, such as the setting of priorities or determining whether compensation for the same type of damage should be made on a fixed amount or pro-rata basis. While there is no obligation to establish such criteria, they would likely be very useful in the distribution of compensation should the need arise. If no such criteria are established, then the court having jurisdiction to hear and determine compensation claims would determine the apportionment among victims according to its national law.

40. Where criteria are established, they are to be applied regardless of whether the compensation is made available under the first, second or third tier. They must also be applied without any discrimination on the basis of the nationality, domicile or residence of the person suffering damage, subject to the provisions of Article 2 concerning the geographic scope of application of the Convention. It should be noted that the distribution of first tier funds will be made according to the geographic scope provisions contained in the Paris Convention [Article 3*(b)(i)*].

Explanatory Report (Final Act of the Conference on the revision of the Paris Convention and of the Brussels Supplementary Convention)

Article 2: Scope of Application

46. The revised Brussels Supplementary Convention will contain provisions which expand the geographic scope of application of the Convention, provisions which are largely based upon Article V of the Supplementary Compensation Convention. […] However, because the funds to be provided under the second and third tiers of the Brussels Supplementary Convention are essentially "public" money, the BSC States have decided to limit the application of those funds to victims in States which have agreed to participate in the supplementary funding regime. Thus, as is currently the case, compensation under the Convention will not be made available to victims in non-Contracting States.

<u>Section III</u>

<u>IAEA Conventions</u>

1963 Vienna Convention on Civil Liability for Nuclear Damage ("Vienna Convention")

Article I

1. For the purposes of this Convention –

[…]

(j) "Nuclear installation" means –

[…]

(iii) any facility where nuclear material is stored, other than storage incidental to the carriage of such material;

provided that the Installation State may determine that several nuclear installations of one operator which are located at the same site shall be considered as a single nuclear installation.

[…]

Article II

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

(a) In his nuclear installation; or

(b) involving nuclear material coming from or originating in his nuclear installation, and occurring –

(i) before liability with regard to nuclear incidents involving the nuclear material has been assumed, pursuant to the express terms of a contract in writing, by the operator of another nuclear installation;

(ii) in the absence of such express terms, before the operator of another nuclear installation has taken charge of the nuclear material; or

(iii) where the nuclear material is intended to be used in a nuclear reactor with which a means of transport is equipped for use as a source of power, whether for propulsion thereof or for any other purpose, before the person duly authorized to operate such reactor has taken charge of the nuclear material; but

(iv) where the nuclear material has been sent to a person within the territory of a non-Contracting State, before it has been unloaded from the means of transport by which it has arrived in the territory of that non-Contracting State;

(c) involving nuclear material sent to his nuclear installation, and occurring –

(i) after liability with regard to nuclear incidents involving the nuclear material has been assumed by him, pursuant to the express terms of a contract in writing, from the operator of another nuclear installation;

(ii) in the absence of such express terms, after he has taken charge of the nuclear material; or

(iii) after he has taken charge of the nuclear material from a person operating a nuclear reactor with which a means of transport is equipped for use as a source of power, whether for propulsion thereof or for any other purpose; but

(iv) where the nuclear material has, with the written consent of the operator, been sent from a person within the territory of a non-Contracting State, only after it has been loaded on the means of transport by which it is to be carried from the territory of that State;

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

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

3. […]

(b) Where a nuclear incident occurs in the course of carriage of nuclear material, either in one and the same means of transport, or, in the case of storage incidental to the carriage, in one and the same nuclear installation, and causes nuclear damage which engages the liability of more than one operator, the total liability shall not exceed the highest amount applicable with respect to any one of them pursuant to Article V.

(c) In neither of the cases referred to in sub-paragraphs (a) and (b) of this paragraph shall the liability of any one operator exceed the amount applicable with respect to him pursuant to Article V.

[…]

5. Except as otherwise provided in this Convention, no person other than the operator shall be liable for nuclear damage. This, however, shall not affect the application of any international convention in the field of transport in force or open for signature, ratification or accession at the date on which this Convention is opened for signature.

[…]

Article III

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

Article IV

[…]

5. The operator shall not be liable under this Convention for nuclear damage –

   (a) to the means of transport upon which the nuclear material involved was at the time of the nuclear incident.

   […]

6. Any Installation State may provide by legislation that sub-paragraph (b) of paragraph 5 of this Article shall not apply, provided that in no case shall the liability of the operator in respect of nuclear damage, other than nuclear damage to the means of transport, be reduced to less than US $5 million for any one nuclear incident.

Article VII

[…]

4. No insurer or other financial guarantor shall suspend or cancel the insurance or other financial security provided pursuant to paragraph 1 of this Article without giving notice in writing of at least two months to the competent public authority or, in so far as such insurance or other financial security relates to the carriage of nuclear material, during the period of the carriage in question.

Article XI

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

2. Where the nuclear incident occurred outside the territory of any Contracting Party, or where the place of the nuclear incident cannot be determined with certainty, jurisdiction over such actions shall lie with the courts of the Installation State of the operator liable.

[…]

Article XIII

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

1963 Vienna Convention on Civil Liability for Nuclear Damage as Amended by the 1997 Vienna Protocol ("Revised Vienna Convention")

Article I A

1. This Convention shall apply to nuclear damage wherever suffered.

2. However, the legislation of the Installation State may exclude from the application of this Convention damage suffered –

(a) in the territory of a non-Contracting State; or

(b) in any maritime zones established by a non-Contracting State in accordance with the international law of the sea.

3. An exclusion pursuant to paragraph 2 of this Article may apply only in respect of a non-Contracting State which at the time of the incident –

(a) has a nuclear installation in its territory or in any maritime zones established by it in accordance with the international law of the sea; and

(b) does not afford equivalent reciprocal benefits.

4. Any exclusion pursuant to paragraph 2 of this Article shall not affect the rights referred to in sub-paragraph (a) of paragraph 2 of Article IX and any exclusion pursuant to paragraph 2(b) of this Article shall not extend to damage on board or to a ship or an aircraft.

Article II

[…]

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

3.

(a) Where nuclear damage engages the liability of more than one operator, the operators involved shall, in so far as the damage attributable to each operator is not reasonably separable, be jointly and severally liable. The Installation Slate may limit the amount of public funds made available per incident to the difference, if any, between the amounts hereby established and the amount established pursuant to paragraph 1 of Article V.

(b) Where a nuclear incident occurs in the course of carriage of nuclear material, either in one and the same means of transport, or, in the case of storage incidental to the carriage, in one and the same nuclear installation, and causes nuclear damage which engages the liability of more than

one operator, the total liability shall not exceed the highest amount applicable with respect to any one of them pursuant to Article V.

(c) In neither of the cases referred to in sub-paragraphs (a) and (b) of this paragraph shall the liability of any one operator exceed the amount applicable with respect to him pursuant to Article V.

[…]

5. Except as otherwise provided in this Convention, no person other than the operator shall be liable for nuclear damage. This, however, shall not affect the application of any international convention in the field of transport in force or open for signature, ratification or accession at the date on which this Convention is opened for signature.

[…]

Article III

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

Article IV

[…]

6. Compensation for damage caused to the means of transport upon which the nuclear material involved was at the time of the nuclear incident shall not have the effect of reducing the liability of the operator in respect of other damage to an amount less than either 150 million SDRs, or any higher amount established by the legislation of a Contracting Party, or an amount established pursuant to sub-paragraph (c) of paragraph 1 of Article V.

7. Nothing in this Convention shall affect the liability of any individual for nuclear damage for which the operator, by virtue of paragraph 3 or 5 of this Article, is not liable under this Convention and which that individual caused by an act or omission done with intent to cause damage.

Article V

1. The liability of the operator may be limited by the Installation State for any one nuclear incident, either –

(a) to not less than 300 million SDRs; or

(b) to not less than 150 million SDRs provided that in excess of that amount and up to at least 300 million SDRs public funds shall be made available by that State to compensate nuclear damage; or

(c) for a maximum of 15 years from the date of entry into force of this Protocol, to a transitional amount of not less than 100 million SDRs in respect of a nuclear incident occurring within that period. An amount lower than 100 million SDRs may be established, provided that public

funds shall be made available by that State to compensate nuclear damage between that lesser amount and 100 million SDRs.

[…]

3. The amounts established by the Installation State of the liable operator in accordance with paragraphs 1 and 2 of this Article and paragraph 6 of Article IV shall apply wherever the nuclear incident occurs.

Article VII

1.

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

(b) Notwithstanding sub-paragraph (a) of this paragraph, where the liability of the operator is unlimited, the Installation State, having regard to the nature of the nuclear installation or the nuclear substances involved and to the likely consequences of an incident originating therefrom, may establish a lower amount of financial security of the operator, provided that in no event shall any amount so established be less than 5 million SDRs, and provided that the Installation State ensures the payment of claims for compensation for nuclear damage which have been established against the operator by providing necessary funds to the extent that the yield of insurance or other financial security is inadequate to satisfy such claims, and up to the limit provided pursuant to sub-paragraph (a) of this paragraph.

[…]

Article XI

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

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

2. Where a nuclear incident does not occur within the territory of any Contracting Party, or within an area notified pursuant to paragraph 1bis, or where the place of the nuclear incident cannot be determined

with certainty, jurisdiction over such actions shall lie with the courts of the Installation State of the operator liable.

[…]

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

Article XIII

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

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

Convention on Supplementary Compensation for Nuclear Damage (“Convention on Supplementary Compensation”)

Article III

Undertaking

[…]

2.

(a) Compensation for nuclear damage in accordance with paragraph 1(a) shall be distributed equitably without discrimination on the basis of nationality, domicile or residence, provided that the law of the Installation State may, subject to obligations of that State under other conventions on nuclear liability, exclude nuclear damage suffered in a non-Contracting State.

(b) Compensation for nuclear damage in accordance with paragraph 1(b), shall, subject to Articles V and XI.1(b), be distributed equitably without discrimination on the basis of nationality, domicile or residence.

[…]

Article V

Geographical Scope

1. The funds provided for under Article III.1(b) shall apply to nuclear damage which is suffered:

(a) in the territory of a Contracting Party; or

(b) in or above maritime areas beyond the territorial sea of a Contracting Party:

(i) on board or by a ship flying the flag of a Contracting Party, or on board or by an aircraft registered in the territory of a Contracting Party, or on or by an artificial island, installation or structure under the jurisdiction of a Contracting Party; or

(ii) by a national of a Contracting Party;

excluding damage suffered in or above the territorial sea of a State not Party to this Convention; or

(c) in or above the exclusive economic zone of a Contracting Party or on the continental shelf of a Contracting Party in connection with the exploitation or the exploration of the natural resources of that exclusive economic zone or continental shelf;

provided that the courts of a Contracting Party have jurisdiction pursuant to Article XIII.

[…]

Article XIII

Jurisdiction

1. Except as otherwise provided in this article, jurisdiction over actions concerning nuclear damage from a nuclear incident shall lie only with the courts of the Contracting Party within which the nuclear incident occurs.

[…]

3. Where a nuclear incident does not occur within the territory of any Contracting Party or within an area notified pursuant to paragraph 2, or where the place of a nuclear incident cannot be determined with certainty, jurisdiction over actions concerning nuclear damage from the nuclear incident shall lie only with the courts of the Installation State.

[…]

Article XIV

Applicable Law

1. Either the Vienna Convention or the Paris Convention or the Annex to this Convention, as appropriate, shall apply to a nuclear incident to the exclusion of the others.

2. Subject to the provisions of this Convention, the Vienna Convention or the Paris Convention, as appropriate, the applicable law shall be the law of the competent court.

Annex

Article 2

Conformity of Legislation

[…]

2. If in accordance with paragraph 1, the national law of a Contracting Party is deemed to be in conformity with the provision of Articles 3, 4, 5 and 7, then that Party:

(a) may apply a definition of nuclear damage that covers loss or damage set forth in Article I(f) of this Convention and any other loss or damage to the extent that the loss or damage arises out of or results from the radioactive properties, or a combination of radioactive properties with toxic, explosive or other hazardous properties of nuclear fuel or radioactive products or waste in, or of nuclear material coming from, originating in, or sent to, a nuclear installation; or other ionizing radiation emitted by any source of radiation inside a nuclear installation, provided that such application does not affect the undertaking by that Contracting Party pursuant to Article III of this Convention; and

(b) may apply the definition of nuclear installation in paragraph 3 of this Article to the exclusion of the definition in Article 1.I(b) of this Annex.

3. For the purpose of paragraph 2 (b) of this Article, "nuclear installation" means:

(a) any civil nuclear reactor other than one with which a means of sea or air transport is equipped for use as a source of power, whether for propulsion thereof or any other purpose; and

[…]

Article 3

Operator Liability

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

(a) in that nuclear installation; or

(b) involving nuclear material coming from or originating in that nuclear installation, and occurring:

i) before liability with regard to nuclear incidents involving the nuclear material has been assumed, pursuant to the express terms of a contract in writing, by the operator of another nuclear installation;

ii) in the absence of such express terms, before the operator of another nuclear installation has taken charge of the nuclear material; or

iii) where the nuclear material is intended to be used in a nuclear reactor with which a means of transport is equipped for use as a source of power, whether for propulsion thereof or for any other purpose, before the person duly authorized to operate such reactor has taken charge of the nuclear material; but

iv) where the nuclear material has been sent to a person within the territory of a non-Contracting State, before it has been unloaded from the means of transport by which it has arrived in the territory of that non-Contracting State;

(c) involving nuclear material sent to that nuclear installation, and occurring:

(i) after liability with regard to nuclear incidents involving the nuclear material has been assumed by the operator pursuant to the express terms of a contract in writing, from the operator of another nuclear installation;

(ii) in the absence of such express terms, after the operator has taken charge of the nuclear material; or

(iii) after the operator has taken charge of the nuclear material from a person operating a nuclear reactor with which a means of transport is equipped for use as a source of power, whether for propulsion thereof or for any other purpose; but

(iv) where the nuclear material has, with the written consent of the operator, been sent from a person within the territory of a non-Contracting State, only after it has been loaded on the means of transport by which it is to be carried from the territory of that State;

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

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

3. The liability of the operator for nuclear damage shall be absolute.

[…]

7. The operator shall not be liable for nuclear damage:

(a) to the nuclear installation itself and any other nuclear installation, including a nuclear installation under construction, on the site where that installation is located; and

(b) to any property on that same site which is used or to be used in connection with any such installation;

(c) unless otherwise provided by national law, to the means of transport upon which the nuclear material involved was at the time of the nuclear incident. If national law provides that the operator is liable for such damage, compensation for that damage shall not have the effect of reducing the liability of the operator in respect of other damage to an amount less than either 150 million SDRs, or any higher amount established by the legislation of a Contracting Party.

8. Nothing in this Convention shall affect the liability outside this Convention of the operator for nuclear damage for which by virtue of paragraph 7(c) he is not liable under this Convention.

[…]

Article 4

Liability Amounts

1. Subject to Article III.1(a)(ii), the liability of the operator may be limited by the Installation State for any one nuclear incident, either:

(a) to not less than 300 million SDRs; or

(b) to not less then 150 million SDRs provided that in excess of that amount and up to at least 300 million SDRs public funds shall be made available by that State to compensate nuclear damage.

[…]

3. The amounts established by the Installation State of the liable operator in accordance with paragraphs 1 and 2, as well as the provisions of any legislation of a Contracting Party pursuant to Article 3.7(c) shall apply wherever the nuclear incident occurs.

Article 5

Financial Security

[...]

4. No insurer or other financial guarantor shall suspend or cancel the insurance or other financial security provided pursuant to paragraph 1 without giving notice in writing of at least two months to the competent public authority or, in so far as such insurance or other financial security relates to the carriage of nuclear material, during the period of the carriage in question.

Article 6

Carriage

1. With respect to a nuclear incident during carriage, the maximum amount of liability of the operator shall be governed by the national law of the Installation State.

2. A Contracting Party may subject carriage of nuclear material through its territory to the condition that the amount of liability of the operator be increased to an amount not to exceed the maximum amount of liability of the operator of a nuclear installation situated in its territory.

3. The provisions of paragraph 2 shall not apply to:

(a) carriage by sea where, under international law, there is a right of entry in cases of urgent distress into ports of a Contracting Party or a right of innocent passage through its territory;

(b) carriage by air where, by agreement or under international law, there is a right to fly over or land on the territory of a Contracting Party.

Article 7

Liability of More Than One Operator

[…]

2. Where a nuclear incident occurs in the course of carriage of nuclear material, either in one and the same means of transport, or, in the case of storage incidental to the carriage, in one and the same nuclear installation, and causes nuclear damage which engages the liability of more than one operator, the total liability shall not exceed the highest amount applicable with respect to any one of them pursuant to Article 4.

[…]

The 1997 Vienna Convention on Civil Liability for Nuclear Damage and the 1997 Convention on Supplementary Compensation for Nuclear Damage — Explanatory Texts

Footnote 24

The definition of "nuclear material", which is relevant for nuclear incidents occurring in the course of transport under Article II.1(b) of the Convention, clearly excludes the operator's liability for damage caused by transport incidents involving "radioisotopes which have reached the final stage of fabrication so as to be usable for any scientific, medical, agricultural, commercial or industrial purpose". […]

Footnote 31

There is, however, one exception to the basic principle. Under Article II.2, the Installation State may provide by legislation that a carrier of nuclear material, or a person handling radioactive waste, be designated or recognized as operator in the place of the operator concerned. But the substitution must be requested by the carrier, or person handling the waste, and have the consent of the operator concerned. Moreover, under Article II.5, the principle of exclusive liability "shall not affect the application of any international convention in the field of transport in force or open for signature, ratification or accession at the date on which this Convention is opened for signature". Therefore, a person suffering damage caused by a nuclear incident occurring in the course of transport may have two rights of action — one against the operator under the Vienna Convention and one against the carrier, or other person, liable under existing international agreements in the field of transport. This situation has been the cause of practical difficulties in the field of insurance costs of the carriage by sea of nuclear material. In order to avoid such difficulties, the Brussels Convention relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material was adopted in 1971 (see Section 1.1 of these explanatory texts).

Page 13 – 1.3.3. Minimum liability amount and obligation of liability cover

[…] Article II.3 provides for the case where nuclear damage engages the liability of more than one operator: in such a case, under Article II.3(a), the liability of the different operators involved is joint and several, i.e. all of them — or, alternatively, each of them — may be sued for the whole amount of the damage; as a result, the total amount of compensation available in such a case is the sum of the liabilities of the operators involved. However, as is specified in Article II.3(b), this rule does not apply to a nuclear incident involving nuclear material in the course of carriage in one and the same means of transport, or, in the case of storage incidental to carriage, in one and the same nuclear installation: in such cases, the total liability cannot exceed the highest amount established with respect to any one of the operators whose liability is engaged. […]

Page 15 – 1.4. Jurisdiction, recognition of judgements and applicable law under the 1963 Vienna Convention on Civil Liability for Nuclear Damage

[…] However, the Convention may apply even if an incident occurs outside the territory of a Contracting Party, in particular if it occurs during the transport of nuclear material originating from, or sent to, a nuclear installation situated in the territory of a Contracting Party; in this case, Article XI.2 specifies that exclusive jurisdiction lies with the courts of the Installation State. The courts of the Installation State also have jurisdiction in cases where the place of the nuclear incident "cannot be determined with certainty".

The situation may occur where, as a result of the rules laid down in Article XI.1 and 2, jurisdiction would lie with the courts of more than one Contracting Party. In such a situation, Article XI.3 provides that: (a) if the nuclear incident occurred partly outside the territory of any Contracting Party and partly within the territory of a single Contracting Party, jurisdiction lies with the courts of this latter Party; and (b) in any other case, jurisdiction lies with the courts of the Contracting Party which is determined by agreement between the Contracting Parties whose courts would have jurisdiction. […]

Footnote 41

As is explained in Section 1.3.2 of these explanatory texts, actions for compensation under the Vienna Convention, whether arising out of nuclear incidents at a nuclear installation or in the course of transport of nuclear material, can only be brought against the operator liable under Article II or, in transport cases, against the carrier who may exceptionally be liable instead of the operator. However, Article II.7 preserves the right to bring a direct action against the insurer, or other person furnishing the financial security pursuant to Article VII, where the law of the competent court grants such a right.

Page 16 – 1.4. Jurisdiction, recognition of judgements and applicable law under the 1963 Vienna Convention on Civil Liability for Nuclear Damage

[…] the Convention does not provide for uniform rules covering all aspects of civil liability for nuclear damage and leaves some discretion to national law and therefore, the question of which law is to be applied by the competent court in respect of these aspects arises.

The Convention itself specifies that some matters are left to be determined by the Installation State or by "legislation" enacted by that State, whereas others are left to be governed by the "law of the Installation State". […]in transport cases the Installation State is not always the State whose courts have jurisdiction under the Convention. When the Convention refers to "legislation" enacted by the Installation State, it clearly refers to legislation specifically adopted by that State in order to regulate aspects which the Convention leaves to its discretion. On the other hand, the expression "law of the Installation State", which is not defined in the Convention, may have a broader meaning and include the general tort law or other branches of the law of the Installation State, in so far as these apply to nuclear liability. […]

Footnote 45

The "legislation" of the Installation State may provide, in particular, that a carrier of nuclear material, or a person handling radioactive waste, may, at his or her request and with the consent of the operator concerned, be designated or recognized as operator (Article II.2); and that the operator's liability extends to damage to the means of transport of nuclear material (Article IV.5).

Pages 29-31 – 2.2.3. Geographical scope

[…] In respect of the **place of a nuclear incident**, there can be no doubt that, under Article II, read in conjunction with the definitions of terms such as "operator" and "Installation State" in Article I, the 1963 Vienna Convention principally applies to nuclear incidents occurring in the territory of Contracting Parties; on the other hand, in the case of incidents occurring in the course of transport of nuclear material, it follows from the same definitions that the Vienna Convention does apply even to nuclear incidents occurring outside the territory of a Contracting Party, provided that the installation of the operator liable is located within such territory; moreover, if that installation is not situated within the territory of any State, the Convention applies if it is operated by a Contracting Party or under its authority. Given that the situation has not been changed by the 1997 Protocol, there seems to be no need here to elaborate further on this issue. […]

As for the **place where damage is suffered**, the absence of an express limitation of its territorial scope leaves it open to question whether or not the 1963 Vienna Convention allows for coverage of damage suffered outside the territory of the Contracting Parties and, in particular, in the territory of non-contracting States under the applicable substantive law, which will usually be the law of the Installation State. This question was examined by the (then) Standing Committee on Civil Liability for Nuclear Damage at its first series of meetings in 1964, where the Committee, having regard to transport cases, reached the following conclusion:

> "[I]n the case of a nuclear incident involving the liability of an operator within the meaning of the Convention, nuclear damage suffered within the territory of Contracting States and on or over the high seas would be nuclear damage covered by the Convention even if the nuclear incident causing such damage occurred on or over the high seas or within the territory of a non-contracting State. On the other hand, nuclear damage suffered within the territory of a non-contracting State would not be nuclear damage covered by the Convention even if the nuclear incident causing such damage occurred within the territory of a Contracting Party or on or over the high seas."

[…] The major argument against covering damage suffered outside the territory of the Contracting Parties is that, with limited insurance funds to call on, adding more claimants would reduce the share available for victims in the Contracting Parties, without reciprocal benefits. On the other hand, damage outside the territory of Contracting Parties may well be suffered by their nationals or by, or on board, ships or aircraft flying their flags. Moreover, it may be questioned whether leaving victims in non-contracting States without compensation is in line with public international law.

In any event, the 1997 Protocol inserts in the 1997 Vienna Convention a new provision, Article I A, whereby the Convention applies, in principle, to nuclear damage "wherever suffered". Thus, the principle underlying the 1997 Vienna Convention is the opposite of the one embodied in the existing text of Article 2 of the Paris Convention. There is, however, an important exception to the general rule: in fact, Article I A.2 and 3 allows the legislation of the Installation State to exclude damage suffered in a non-contracting State which, at the time of the nuclear incident, "(a) has a nuclear installation in its territory, or in any maritime zones established by it in accordance with the international law of the sea; and (b) does not afford equivalent reciprocal benefits".

Page 36 – 2.3.1. Origin and general features of the new definition

[…] The new Article I.1(k) brings the 1997 Vienna Convention in line with the 1960 Paris Convention[.] […] As a result, damage caused by radioactive sources is still excluded in case of an incident occurring in the course of transport thereof but is now included in case of an incident occurring in a "nuclear installation" as defined.

Page 41 – 2.3.4. Damage to property giving rise to compensation

[…] Article IV.5 of the 1963 Vienna Convention provides that the operator shall not be liable for nuclear damage […] (b) to the means of transport upon which the nuclear material involved was being carried at the time of the nuclear incident.

[…] As for damage under (b), Article IV.6 of the 1963 Vienna Convention allows the Installation State to provide by legislation that such damage **is** covered, provided that the operator's liability for other nuclear damage is not reduced to less than US $5 million for any one nuclear incident, i.e. the minimum amount which can be established under Article V. In practice, if the damage other than that to the means of transport is less than this amount, the part of the amount not used is available, if necessary, for compensation of damage to the means of transport, but then only if the legislation of the Installation State so provides. However, the 1960 Paris Convention covers damage to the means of transport as a matter of principle, but specifies that compensation for such damage must not have the effect of reducing the operator's liability in respect of other damage to an amount less than that established as the limit of its liability. In this respect also, the 1997 Protocol amends the Vienna Convention in order to bring it in line with the Paris Convention.

Pages 43-44 – 2.4.2. The options as to the legal basis for compensation

[…] As far as the limit of the operator's liability is concerned, another new provision, also based on a similar provision in the 1960 Paris Convention, has been inserted in Article V of the 1997 Vienna Convention: under Article V.3, the operator's liability amounts established by the Installation State in accordance with paragraphs 1 and 2 of the same Article apply "wherever the nuclear incident occurs". This provision is intended to make it clearer that, in the case of a nuclear incident in the course of transport of nuclear material, the operator is not liable for varying amounts depending on the countries crossed in the course of the voyage; the amounts of compensation will, in the same way as for nuclear incidents occurring at nuclear installations, be determined by the legislation of the Installation State implementing the Convention.

However, notwithstanding Article V.3, account must be taken of the fact that the Vienna Convention does not, per se, grant a right of transit through a Contracting Party's territory: therefore, where a right of transit does not already exist under other relevant treaties or under general international law (which provides, e.g., for the right of innocent passage through a State's territorial sea), the transit State may subject the transit of nuclear material through its territory to conditions, including the raising of the operator's liability limit if it considers that the limit set by the Installation State does not adequately reflect the risks involved. An express provision to this effect, based on Article 7(e) of the Paris Convention, was in fact inserted in Article 6.2 of the Annex to the Convention on Supplementary Compensation, which further specifies that a State with nuclear installations cannot, however, subject transit of nuclear material through its territory to an increase in the liability amount of the foreign operator higher than the amount envisaged for operators of nuclear installations situated in its own territory. […] it is difficult to understand why a corresponding provision was not inserted in the 1997 Vienna Convention as well, but the absence of such an express provision cannot be interpreted as derogating from a Contracting Party's prerogatives as a territorial sovereign. […]

Footnote 148

In the case of transport of nuclear material to or from a nuclear installation, Article III of the Vienna Convention requires the operator liable to provide the carrier with a certificate issued by or on behalf of the insurer or other financial guarantor furnishing the financial security required pursuant to Article VII. However, unlike the 1960 Paris Convention (Article 4(c)), the 1963 Vienna Convention does not expressly allow a Contracting Party to exclude this obligation in relation to carriage which takes place wholly within

its own territory. The 1997 Protocol amends Article III of the Vienna Convention in order to bring it in line with the Paris Convention.

Footnote 151

Article V.3 also refers to the amounts established under Article IV.6 of the 1997 Vienna Convention, which relates to compensation for damage caused to the means of transport. […] In practice, if the damage other than that to the means of transport is less than the limit of the operator's liability, the part of the amount not used is available, if necessary, for compensation of damage to the means of transport. If, on the other hand, the damage other than that to the means of transport is equal to, or exceeds, the limit of the operator's liability but is still less than 300 million SDRs, it can be compensated on the basis of the public funds to be made available by the Installation State.

Page 51 – 2.8. The applicable law and the principle of non-discrimination

[…] if the competent court is not a court of the Installation State, as may in fact be the case in transport cases, that court will have to refer to determinations made by the Installation State in respect of matters such as the designation of the liable operator (Article I.1(c)), the limit, if any, of the operator's liability (Article V) or the limit of liability cover (Article VII). […] if the Installation State has enacted legislation in order to exclude damage suffered in nuclear non-contracting States, the competent court will have to give effect to such legislation (Article I A). Finally, […] it will have to apply the "law of the Installation State" in order to ascertain whether the operator's liability is covered by insurance in a situation where the "law of the competent court" provides that rights of compensation against the operator are extinguished after a period longer than the otherwise applicable ten year, or 30 year, period (Article VI.1(b)). […]

Footnote 180

Other matters are left to be determined by the Installation State: in particular, the Installation State may determine that several nuclear installations of one operator which are located at the same site shall be considered as a single nuclear installation (Article I.1(j)); it may determine that any nuclear installation or small quantities of nuclear material are excluded from the application of the Convention if criteria for such exclusion have been established by the Board of Governors of the IAEA (Article I.2); it may limit the amount of public funds to be made available in cases where nuclear damage engages the liability of more than one operator (Article II.3(a)) or where several nuclear installations of one and the same operator are involved in one nuclear incident (Article II.4); and it may exclude the operator's obligation to provide the carrier with a certificate issued on behalf of the insurer in relation to carriage which takes place wholly within its own territory (Article III).

Footnote 181

Another matter which is left to be determined by the legislation of the Installation State relates to the possibility that a carrier of nuclear material, or a person handling radioactive waste, may, at his or her request and with the consent of the operator concerned, be designated or recognized as operator (Article II.2). Although Article X does not expressly say so, it could be argued, in addition, that it is for the legislation of the Installation State to provide for an extension of the right of recourse to benefit the Installation State in so far as it has provided public funds pursuant to the Convention. On the other hand, the 1997 Vienna Convention no longer envisages the possibility for the legislation of the Installation State to provide that the operator's liability extends to damage to the means of transport of nuclear material, since that damage is now mandatorily covered[.]

Pages 54-55 – 2.9. The new provisions on jurisdiction

[…] But an incident causing damage for which an operator is liable under the Convention can also occur, in the course of transport of nuclear material, outside the territory of a Contracting Party. In that case, Article XI.2 of the 1963 Vienna Convention provides that exclusive jurisdiction lies with the courts of the Installation State, i.e. the Contracting Party in whose territory the installation of the operator liable is situated: thus, the courts of the Installation State have jurisdiction both if the incident occurs in (or above) the territory of a non-contracting State and if the incident occurs, outside the territory of any State, on (or above) the high seas.

The term "territory" in Article XI can be deemed to include maritime areas, such as the territorial sea and internal waters, subject to the coastal State's territorial sovereignty. Thus, if the incident occurs in (or above) a Contracting Party's territorial sea, the courts of that Party, i.e. the coastal State, have jurisdiction; on the other hand, if the incident occurs in (or above) the territorial sea of a non-contracting State, jurisdiction lies with the courts of the Installation State. As for those maritime areas which are not subject to the coastal State's territorial sovereignty but to more limited "sovereign rights" and/or "jurisdiction", the term "territory" cannot apply to them. Consequently, if an incident occurs within (or above) one such zone, irrespective of whether or not the coastal State is a Party to the 1963 Vienna Convention, jurisdiction still lies with the courts of the Installation State.

The 1997 Protocol inserts in Article XI of the Vienna Convention a new paragraph 1bis, whereby:

> "Where a nuclear incident occurs within the area of the exclusive economic zone of a Contracting Party or, if such a zone has not been established, in an area not exceeding the limits of an exclusive economic zone, were one to be established, jurisdiction over actions concerning nuclear damage from that nuclear incident shall … lie only with the courts of that Party".

[…] Given the breadth of the EEZ, this new provision on jurisdiction makes it much more likely that, in the case of a nuclear incident occurring in the course of maritime transport, the courts of the coastal State, as opposed to the courts of the Installation State, will have jurisdiction under the Vienna Convention. These courts will then be able to apply their national law (or, as the case may be, the law of a foreign State applicable under the national rules of private international law) to all aspects of liability not directly regulated by the Convention and left to be determined by the "law of the competent court" […]. This could be an incentive for non-nuclear coastal States which currently are not party to any other nuclear liability convention to join the 1997 Protocol, since their courts would have exclusive jurisdiction under the Protocol in the event of a nuclear incident occurring within their EEZ, and a final judgement rendered by their competent national court would be recognized and enforced in all the other Contracting Parties to the Protocol. […]

Footnote 188

[…] The Vienna Convention cannot prevent the law of a non-contracting State within whose territory, or maritime zones, a nuclear incident occurs from conferring jurisdiction upon national courts for actions against the operator liable or, indeed, any other person who may be liable under the applicable tort law. On the other hand, the Contracting Parties are not obliged by the Vienna Convention to recognize and enforce judgements entered by the courts of that non-contracting State.

Pages 63-64 – 3.3.2. The principles of nuclear liability embodied in the Annex to the Convention on Supplementary Compensation

[…] Unlike the Vienna Convention, the Annex contains specific provisions relating to "carriage", which are based, in part, on corresponding provisions in the Paris Convention.

[…] Moreover, paragraph 3 excludes the application of paragraph 2 in two cases: the first relates to "carriage by sea where, under international law, there is a right of entry in cases of urgent distress into ports of a Contracting Party or a right of innocent passage through its territory"; the second relates to "carriage by air where, by agreement or under international law, there is a right to fly over or land on the territory of a Contracting Party". It is thus made clear that, whereas the special international regime of nuclear liability per se affords no right to enter the territory of a Contracting Party, in cases where there is such a right under general international law or under other international conventions, the transit of nuclear material can be made subject to no special condition. […]

Footnote 229

At its thirteenth meeting (15–17 May 2013), INLEX noted that, in respect of land transport or transport by inland waterways where there is no right of innocent passage under general international law, a State is not obliged to grant permission for the transit of nuclear material and may grant such permission subject to such conditions as it sees fit, both in relation to a particular shipment or generally to all shipments: for example, a State "might require that the amount of the operator's liability be unlimited, or set at a particular level". As regards the absence of a specific provision to this effect in the Vienna Convention, the Group concluded that:

> "The Vienna Convention does not affect the rights of a transit State in that regard. In contrast, Article 6.2 of the Annex to the CSC and Article 7(e) of the Paris Convention provide that a Contracting Party may subject the transit of nuclear material through its territory to the condition that the amount of liability of the operator be increased to an amount not to exceed the maximum amount of liability of the operator of a nuclear installation situated in its territory. This effectively limits the rights of nuclear States, but does not affect the rights of non-nuclear States to set whatever limit they see fit."

Footnote 231

At its thirteenth meeting (15–17 May 2013), INLEX noted that:

> "Where a right of innocent passage or similar right (such as transit passage through international straits, entry into port in case of distress, freedom of navigation through the exclusive economic zone or innocent overflight) exists (as under the 1982 United Nations Convention on the Law of the Sea), transit States cannot subject such passage to conditions other than those found in the relevant convention. If there were an incident during that passage, the transit State would have jurisdiction over any resulting claims. However, the general rule under the liability conventions is that if the incident State and the Installation State are in treaty relations, the liability limit of the Installation State would apply. While it was noted that if they were not in treaty relations they would have the possibility of unlimited liability, INLEX members noted that the benefits of treaty membership, in terms of clarity as to the liable person, availability of sufficient compensation for all credible transport accident scenarios and enforcement of judgements, far outweighed that disadvantage".

Page 69 – 3.4. The need for implementing legislation [Convention on Supplementary Compensation]

[…] if, in the event of a nuclear incident occurring in the course of transport of nuclear material, the courts of a Contracting Party "having no nuclear installation on its territory", or operated under its authority, have jurisdiction under the Convention, they are expected to refer to the national compensation amount to be made available by the Installation State under Article III.1(a).

[…] the Convention on Supplementary Compensation may be interpreted as providing for the application of the nuclear liability convention in force for the State whose courts have jurisdiction: therefore, if, in the event of an incident occurring in the course of transport of nuclear material, the courts of a Contracting Party "having no nuclear installation on its territory", or operated under its authority, have jurisdiction under the Convention on Supplementary Compensation, they would also have to apply the provisions of the Annex thereto. […] in a situation where the courts of that State have jurisdiction under Article XIII of the Convention, they will be expected to give effect to the law of the Installation State implementing these provisions. Where, however, the provisions of the Annex give some discretion to a "Contracting Party", to "national law" or to "the law of the competent court", each Annex State, including a non-nuclear State, may wish to adopt provisions in its domestic law, or apply existing ones, to complement, and sometimes derogate from, the relevant provisions in the Annex.

Pages 71-72 – 3.5.3. Geographical scope

The Convention on Supplementary Compensation says nothing as to the **place of a nuclear incident**; in this respect also, its scope of application depends entirely on the scope of the applicable civil liability convention or, in the case of an "Annex operator", on the scope of the Annex. […] However, doubts may arise if the incident occurs in the course of transport of nuclear material; depending on the scope of the applicable nuclear liability regime, the Convention may or may not apply.

[…] the Vienna Convention applies to nuclear incidents occurring outside the territory of Contracting Parties, provided that the operator of a nuclear installation situated in such territory is liable under the Convention. The same can be said in respect of the national law implementing the Annex to the Convention on Supplementary Compensation. On the other hand […] Article 2 of the Paris Convention expressly states that the Convention does not apply to nuclear incidents occurring in the territory of non-contracting States, unless otherwise provided by the law of the Installation State; […] This situation will change when the 2004 Protocol to Amend the Paris Convention enters into force: Article 2 of the amended Paris Convention no longer refers to the place of the nuclear incident in order to delimit its scope of application.

As concerns the **place where the nuclear damage is suffered**, […] the Convention on Supplementary Compensation creates an obligation on the part of all the Contracting Parties to make public funds available in order to compensate damage exceeding a given amount which the Installation State must make available at the national level. As far as the national compensation amount is concerned, Article III.2(a) of the Convention allows the law of the Installation State, subject to obligations of that State under other conventions on nuclear liability, to exclude damage suffered in a non-contracting State.

Thus, the legislation of a State which is party only to the Convention on Supplementary Compensation may exclude damage suffered in all non-contracting States. On the other hand, the legislation of a State which is a Party to both the Convention on Supplementary Compensation and the Paris Convention may not exclude damage suffered in the territory of States which are party to the Paris Convention only; in addition, if that State is a Party to the 1988 Joint Protocol as well, it cannot exclude damage suffered in the territory of States which are party to both the Vienna Convention and the 1988 Joint Protocol. Mutatis mutandis, the same holds true for the legislation of a State which is a Party to both the Convention on Supplementary Compensation and the unamended 1963 Vienna Convention. On the other hand, the legislation of a State which is a Party to both the Convention on Supplementary Compensation and the 1997 Vienna Convention

has to cover damage wherever suffered, but may exclude damage suffered in the territory, or maritime zones, of nuclear States which are party to neither the Vienna Convention nor to the Convention on Supplementary Compensation, unless these States afford reciprocal benefits; of course, if that State is also a Party to the 1988 Joint Protocol, it may not exclude damage suffered in the territory, or maritime zones, of States which are party to both the Paris Convention and the 1988 Joint Protocol. It seems clear, in any case, that damage suffered on the high seas, or within other maritime areas which cannot be considered as part of a non-contracting State's territory, will always be covered. […]

Footnote 265

Article 3.1 of the Annex contains provisions identical to those of Article II.1 of the Vienna Convention. However, for the purposes of the Annex, all States which are party to the Convention on Supplementary Compensation are to be considered as Contracting Parties. The operator of an "Annex State" may, therefore, be liable under national legislation where the nuclear incident occurs in the course of transport of nuclear material to or from an installation situated in the territory of another State Party to the Convention on Supplementary Compensation (irrespective of whether that State is a Party to the Vienna Convention, a Party to the Paris Convention or another Party to the Annex). Moreover, the operator may also be liable if the incident occurs in the course of transport of material to or from an installation situated in the territory of a non-party State (irrespective of whether that State is a Party to the Vienna Convention, a Party to the Paris Convention or a State party to no international nuclear liability convention).

Pages 82-83 – 3.9.1. The establishment of uniform rules for all Contracting Parties

[…] Article XIII is designed to establish uniform rules on jurisdiction for all Contracting Parties, irrespective of whether the operator is liable under either the Paris Convention or the Vienna Convention or under legislation implementing the Annex. Consequently, even the Contracting Parties to the 1960 Paris Convention or to the unamended 1963 Vienna Convention will have to abide by the new provisions if they ratify, or accede to, the Convention on Supplementary Compensation.

It is important to point out, in this respect, that these provisions can be regarded as being largely self-executing and Contracting Parties can opt for their direct application within their municipal legal order if they so wish. Of course, if a Contracting Party has not established an EEZ but wants to ensure that its courts have jurisdiction in the event of an incident occurring within an equivalent area, it will have to notify the Depositary of such area prior to the nuclear incident; moreover, the second sentence in Article XIII.2 appears to require a similar prior notification on the part of a State which has established an EEZ as well. […]

Pages 83-86 – 3.9.2. The problems created by conflicting treaty obligations

A complex issue which may arise in the application of Article XIII of the Convention relates to the conflict of treaty obligations. […]

This proviso only covers the situation where an incident occurs in the EEZ, or equivalent area, of a Contracting Party to the Convention on Supplementary Compensation which is also a Party to either the Paris Convention or the Vienna Convention. In such a situation, no conflict, of course, arises if the coastal State is also the Installation State, i.e. the State where the installation of the operator liable is situated; in fact, the courts of that State have jurisdiction under both the Convention on Supplementary Compensation and the applicable base convention. Similarly, no conflict arises if the Installation State is a Contracting Party to either the Paris Convention or the Vienna Convention but not to the Convention on Supplementary Compensation, since the Convention on Supplementary Compensation does not apply.

Ultimately, therefore, the proviso applies to the situation where both the Installation State and the coastal State within whose EEZ, or equivalent area, the incident occurs are party to both the Convention on Supplementary Compensation and either the Paris Convention or the Vienna Convention in their unrevised version. Of course, in relations between the Installation State and the coastal State, Article XIII.2 of the Convention on Supplementary Compensation would prevail over any inconsistent obligation deriving from an earlier treaty but, until all other Parties to the Paris Convention or to the 1963 Vienna Convention have joined the Convention on Supplementary Compensation, both States would be faced with conflicting treaty obligations: they would have to decide whether to apply Article XIII.2 of the Convention on Supplementary Funding, thereby violating their obligations vis-à-vis the States which are only party to the 1960 Paris Convention or the 1963 Vienna Convention, or to apply Article 13 of the 1960 Paris Convention or, as the case may be, Article XI of the 1963 Vienna Convention, thereby violating their obligations under the Convention on Supplementary Compensation vis-à-vis the States which are party to that Convention. The proviso avoids such problems by giving jurisdiction to the courts of the Installation State in accordance with the applicable provision in either the 1963 Vienna Convention or the 1960 Paris Convention.

[…] On the other hand, the proviso does not cover the situation where the State within whose EEZ (or equivalent area) the incident occurs is an Annex State and the Installation State is a Party to either the Paris Convention or the Vienna Convention. In such a situation, there can be no doubt that, under the Convention on Supplementary Compensation, jurisdiction lies with the courts of the coastal State; however, the Installation State is still obliged to exercise jurisdiction vis-à-vis the other Parties to the Paris Convention, or the Vienna Convention, which are not (yet) party to the Convention on Supplementary Compensation. Indeed, a conflict of treaty obligations arises for the Installation State regardless of whether the incident occurs within the EEZ, or equivalent area, of an Annex State or within its territory, including its territorial sea; in fact, from the point of view of a Contracting Party to the Paris Convention or the Vienna Convention only, irrespective of any amendment that may be in force for that State, the incident has occurred outside the territory of a Contracting Party.

Moreover, it must also be pointed out that the proviso does not cover the situation where an incident occurs in the territory, including the territorial sea, or in the EEZ, or equivalent area, of a State which is not party to the Convention on Supplementary Compensation but which is party to either the Paris Convention or the Vienna Convention. If the Installation State is a Contracting Party to both the applicable base convention and the Convention on Supplementary Compensation, the Convention on Supplementary Compensation applies, and supplementary compensation may be required for damage suffered in the Contracting Parties thereto. In such a situation, a conflict of treaty obligations arises for the Installation State, since, under the Convention on Supplementary Compensation, its courts have jurisdiction, whereas, under the applicable base convention, jurisdiction lies with the courts of the State of the incident, at least in the case of an incident occurring within its territory; depending on which amendment of the base convention is in force, jurisdiction might lie with the courts of that State in case of an incident occurring within its EEZ (or equivalent area) also in its EEZ.

[…] There can, therefore, be no doubt that, under Article XIII.3 of the Convention on Supplementary Compensation, the courts of the Installation State have jurisdiction if an incident occurs in a non-contracting State even if both the Installation State and the State of the incident are Parties to either the Paris Convention or the Vienna Convention, and irrespective of any conflicts of treaty obligations which may arise for the Installation State under the applicable base convention. […]

PageS 90-92 – 3.10.1. The applicable civil liability convention

[…] On the other hand, in the event of a nuclear incident occurring outside a nuclear installation and involving nuclear material in the course of carriage, jurisdiction may lie with the courts of a State other than the Installation State and that State may be a Party to a civil liability convention different from that which is in force for the Installation State and under which the operator is liable. Article III.3 of the 1988

Joint Protocol provides that, in such a situation, the applicable convention is that to which the Installation State is a Party. The question arises of whether the absence of a corresponding provision in Article XIV of the Convention on Supplementary Compensation implicitly indicates that a different solution was envisaged by the drafters.

[…] In fact, if the applicable convention is that which is in force for the Installation State, a non-nuclear Annex State would only be required to give effect to the specific choice of law rule implicitly embodied in Article XIV.1, thus allowing its courts to apply the national law of the Installation State incorporating or implementing the applicable convention. If, on the other hand, the applicable convention is that which is in force for the State whose courts have jurisdiction, then a non-nuclear Annex State would have to implement all the self-executing provisions of the Annex in so far as these are not directly applicable within its domestic legal order.

It must be recognized that the drafting history of Article XIV.1 is not very conclusive as to which is the "appropriate" convention. However, there is indeed some evidence that Article XIV.1 warrants the application of the convention in force for the State whose courts have jurisdiction — or, if that State is an Annex State, of the Annex to the Convention on Supplementary Compensation — instead of the convention in force for the Installation State. In particular, this solution appears to be implicit in Article 2.4 of the Annex, which, […] requires the United States of America to apply the Annex provisions in a situation where its courts have jurisdiction but the operator is not liable under the Price–Anderson Act.

But in at least one respect the Convention on Supplementary Compensation does explicitly indicate that the convention in force for the Installation State is the applicable convention. […] Article III.2(a) of the Convention on Supplementary Compensation allows the law of the Installation State to exclude damage suffered in non-contracting States, but this possibility is subject to obligations of that State under "other conventions on nuclear liability"; it seems, therefore, clear that the convention governing the exercise of options on the part of the Installation State is that in force for that State. Indeed, it would be difficult to conceive a different solution. […] irrespective of which is the applicable base convention, the competent court will have to give effect to the law of the Installation State in several other respects.

Page 92 – 3.10.2. The applicable law under the applicable convention

[…] Like the question of which is the applicable convention, the question of which law applies under the applicable convention becomes of practical significance in the event of a nuclear incident occurring outside a nuclear installation and involving nuclear material in the course of carriage, where jurisdiction lies with the courts of a State other than the Installation State. In fact, in respect of matters left to the discretion of domestic law, the Conventions provide for uniform choice of law rules pointing to the application of the law of the State whose courts have jurisdiction or of the law of the Installation State. In cases where the State whose courts have jurisdiction is not the Installation State, the law of a foreign State will, therefore, apply to issues which the applicable convention leaves to the discretion of the Installation State. […]

Footnote 345

[…] The question of which is the applicable base convention and, consequently, the applicable law incorporating or implementing that convention, in a situation where the State whose courts have jurisdiction is not the Installation State was discussed by INLEX at its fourth meeting (7–11 February 2005). The Group endorsed the interpretation given in the text, whereby the applicable base convention is the one in force for the State whose courts have jurisdiction. More specifically, the Group concluded that "any ambiguity in paragraph 1 of Article XIV is resolved by paragraph 2 which makes it clear that the applicable law is the

national law of the country with jurisdiction and that paragraph 1 can only be applied by looking to whether the applicable Vienna or Paris Conventions or the Annex to the CSC is the basis for that national law".

Joint Protocol Relating to the Application of the Vienna Convention and the Paris Convention (“Joint Protocol”)

Article II

For the purpose of this Protocol:

(a) The operator of a nuclear installation situated in the territory of a Party to the Vienna Convention shall be liable in accordance with that Convention for nuclear damage suffered in the territory of a Party to both the Paris Convention and this Protocol;

(b) The operator of a nuclear installation situated in the territory of a Party to the Paris Convention shall be liable in accordance with that Convention for nuclear damage suffered in the territory of a Party to both the Vienna Convention and this Protocol.

Article III

1. Either the Vienna Convention or the Paris Convention shall apply to a nuclear incident to the exclusion of the other.

[…]

3. In the case of a nuclear incident outside a nuclear installation and involving nuclear material in the course of carriage, the applicable Convention shall be that to which the State is a Party within whose territory the nuclear installation is situated whose operator is liable pursuant to either Article II.1(b) and (c) of the Vienna Convention or Article 4(a) and (b) of the Paris Convention.

Article IV

1. Articles I to XV of the Vienna Convention shall be applied, with respect to the Contracting Parties to this Protocol which are Parties to the Paris Convention, in the same manner as between Parties to the Vienna Convention.

2. Articles 1 to 14 of the Paris Convention shall be applied, with respect to the Contracting Parties to this Protocol which are Parties to the Vienna Convention, in the same manner as between Parties to the Paris Convention.

The 1988 Joint Protocol Relating to the Application of the Vienna Convention and the Paris Convention — Explanatory Text

Page 2 – 1.1. The existence of two distinct international treaty regimes of civil liability for nuclear damage

[…] There are, in addition, a number of substantive differences between the legal regimes laid down by the existing conventions, in particular, the different limits envisaged for the amount of the operator's liability (Article 7 of the Paris Convention and Article V of the Vienna Convention). Another difference is the possibility for a Contracting Party to subject the transit of nuclear substances through its territory to the condition that the maximum amount of liability of the foreign operator concerned be increased to the maximum amount of liability of operators of nuclear installations situated in its territory, which is envisaged by the Paris Convention (Article 7(e)) but not by the Vienna Convention.

[…] The problems that the Joint Protocol was intended to solve derive from the very existence of distinct treaty regimes that, though largely similar in content, have different Contracting Parties.

Pages 3-4 – 1.2. The problem created by the absence of treaty relations between the Contracting Parties to the Paris Convention and the Contracting Parties to the Vienna Convention

[…] The general rule under all nuclear liability Conventions is that, in the case of transport of nuclear material between the operators of two nuclear installations, the sending operator is liable until the receiving operator has assumed liability pursuant to the express terms of a written contract or, in the absence of such contract, until the receiving operator has taken charge of the material involved. However, this general rule only applies if both operators are within the territory of Contracting Parties to the same Convention: if the nuclear material is sent to a person in a non-Contracting State (including a Contracting Party to a different Convention), the sending operator remains liable until the nuclear material has been unloaded from the means of transport by which it arrived in the territory of that State; conversely, if the nuclear material is sent from a person in a non-Contracting State (including a Contracting Party to a different Convention), liability is imposed upon the receiving operator from the moment the material has been loaded on the means of transport. Thus, if a nuclear incident were to occur in the course of transport of nuclear materials between operators of nuclear installations situated in the territories of Contracting Parties to different nuclear liability Conventions, inasmuch as the applicable rules are those relating to transport to or from persons in non-Contracting States, and therefore the transfer of liability between the sending and the receiving operator cannot take place on the basis of a written contract between them or when one of them has taken charge of the materials involved, both operators may be held liable, each under the applicable Convention, for the entire time the nuclear materials are on the means of transport. One consequence of this situation would be the need for both operators to conclude insurance contracts in order to cover their respective liability for the damage caused by the same nuclear incident.

[…] The general rule under all nuclear liability Conventions is that jurisdiction lies with the courts of the Contracting Party within whose territory the nuclear incident occurred (hereinafter referred to as the 'Incident State'); however, jurisdiction lies with the courts of the Installation State if the nuclear incident occurred outside the territory of a Contracting Party (Article 13 of the Paris Convention and Article XI of the Vienna Convention). In the case of a nuclear incident occurring in the course of transport of nuclear

material between operators situated in Contracting Parties to different nuclear liability Conventions, these provisions may lead to a situation where the courts of both States have jurisdiction in respect of the same nuclear incident, each of them on the basis of the applicable Convention: since each of these States is to be considered as a non-Contracting State vis-à-vis the other, both the sending and the receiving operators may be held liable, each of them under the applicable Convention; in addition, the courts in both States, both being the Installation State under the applicable Convention, would have jurisdiction. At the same time, neither of these States would be under a specific treaty obligation to ensure that final judgements entered by the competent court in the other State are recognized and enforced within its territory (Article 13(d) of the Paris Convention and Article XII of the Vienna Convention).

Footnote 10

In the case of incidents occurring in the course of maritime transport, the term "territory" under all Conventions is deemed to include maritime areas subject to the coastal State's full sovereignty, such as internal and territorial waters, but not other maritime areas subject to more limited sovereign rights of the coastal State or otherwise subject to its jurisdiction for specific purposes, such as the exclusive economic zone. One of the most notable features of the 1997 Vienna Convention is the fact that, in the case of incidents occurring in the exclusive economic zone of a Contracting Party, jurisdiction lies with the courts of that State rather than with the courts of the Installation State (Article XI). Once the 2004 Protocol enters into force, a similar rule will be inserted in Article 13 of the Paris Convention.

Pages 19-21 – 3.2. The elimination of the distinction between Contracting Parties and non-Contracting States as regards the application of the operative provisions of either Convention (Article IV)

[…] In particular, the fact that Articles 6(e) and 7(e) of the Paris Convention are no longer excluded entails that there is no perfect reciprocity in the substantive obligations undertaken by the Parties to the two Conventions under Article IV of the Joint Protocol.

[…] Inasmuch as the mutual extension of the operator's liability under either Convention to damage suffered in the territory of Contracting Parties to the other Convention is now specifically provided for in Article II of the Joint Protocol, the main effects of Article IV of the Joint Protocol may be said to concern, in respect of the transport of nuclear material: the determination of the liable operator; and the determination of the State whose courts have jurisdiction. Moreover, a more general issue that does not exclusively relate to transport cases may arise in respect of the amount of compensation to be paid. There are, of course other effects, but these three were singled out from the beginning as the major effects of the "formula under which the parties to one Convention are treated as if they were parties to the other Convention" and appear to deserve some comment.

Footnote 97

Article 7(e) of the Paris Convention, […], relates to transit of nuclear material and allows a Contracting Party to subject the transit of nuclear substances through its territory to the condition that the maximum liability of the operator of the foreign nuclear installation be increased up to the maximum liability applicable within its own territory. No corresponding provision exists in either the original or the 1997 Vienna Convention.

Footnote 98

[Quotation from IAEA document N5/TC/643(3), pp. 5–6]

> "As a matter of fact, Article 6(e) is confined to compensation in respect of damage caused by a nuclear incident occurring in the territory of a non-Contracting State or in respect of damage caused in such territory. This rule would remain unaffected if an operator is liable under the [Paris Convention], but would not apply to incidents occurring and damage suffered in Contracting States to the [Vienna Convention] as they are not considered as non-Contracting States under the terms of draft Article III [corresponding to Article IV of the Joint Protocol]… As regards Article 7(e) of the [Paris Convention], it remains applicable among its Contracting Parties. As the Joint Protocol establishes the principle of equal treatment and non-discrimination between the Contracting Parties to either Convention, this Article should also apply in the relationship between those Parties. It is to be noted that this provision would be applied among Contracting Parties to the [Paris Convention] only, if a [Paris Convention operator] assumes liability by contract during carriage of nuclear material between his installation and that of a [Vienna Convention operator] (Articles 4(a)(i) and (b)(i) [of the Paris Convention], II.1(b)(i) and (c)(i) [of the Vienna Convention], in connection with Article II above [corresponding to Article III of the Joint Protocol]). This assumption of liability would preserve the application of the [Paris Convention] and hence of the [Brussels Convention]"

Pages 21-22 – 3.2.1. The determination of the liable operator

[…] The effect of Article IV of the Joint Protocol is that the transport of nuclear material between the operators of two nuclear installations situated within the territory of Contracting Parties to different Conventions where both are party to the Joint Protocol is treated as if the transport took place between operators of installations situated in the territory of Contracting Parties to the same Convention. Consequently, as is stated in the "Background Material" presented at the Joint IAEA/NEA Working Group meeting in October 1987, "the transfer of liability between [Vienna Convention and Paris Convention] operators is determined by the terms of a contract in writing or, in the absence thereof, by taking charge of the nuclear material".

From the perspective of the Contracting Parties to the Paris Convention, the possibility for a Paris Convention– Joint Protocol operator to assume liability by contract in the case of the transport of nuclear material between his installation and an installation situated in the territory of a Contracting Party to the Vienna Convention and the Joint Protocol is especially important since, under Article III of the Joint Protocol […] it would preserve the application of the Paris Convention and, therefore, of the Brussels Convention. However, even where a Paris Convention–Brussels Convention–Joint Protocol operator has assumed liability by contract in the case of the transport of nuclear material between his installation and an installation situated in the territory of a Vienna Convention–Joint Protocol State, the Brussels Convention, under Article 2 thereof, would only apply provided that the incident does not take place wholly in a non-Contracting State and that the courts of a Contracting Party have jurisdiction under the Paris Convention. Moreover, the additional funds available under the Brussels Convention could only be used to compensate damage suffered in the Contracting Parties (or on the high seas on board a ship or aircraft registered in a Contracting Party or by a national of a Contracting Party).

Pages 22-23 – 3.2.2. The determination of the State whose courts have jurisdiction

[…] On the other hand, in the case of a nuclear incident involving the transport of nuclear materials, problems may arise if the transport takes place between operators situated in Contracting Parties to different nuclear liability Conventions, each of which is to be considered as a non-Contracting State vis-à-vis the

other: […] both the sending and the receiving operators may be held liable, each of them under the applicable Convention, and in that case, the courts in both States, both being the Installation State under the applicable Convention, would have jurisdiction; on the other hand, the Contracting Parties to each of the Conventions would be under no specific obligation to ensure that final judgements entered by a court in a Contracting Party to the other Convention are recognized and enforced within their territories.

Under Article IV of the Joint Protocol, the jurisdictional provisions in either the Vienna Convention or the Paris Convention are to be applied with respect to the Contracting Parties to the other Convention and the Joint Protocol "in the same manner as between Parties" to that Convention. Therefore, in the case of a nuclear incident involving the transport of nuclear materials between operators whose installations are situated in Contracting Parties to different nuclear liability Conventions but which are both party to the Joint Protocol, jurisdiction lies with the courts of the Incident State (including, in the case of a Party to the 1997 Vienna Protocol or, in the future, to the Paris Convention as amended by the 2004 Protocol, in cases where the nuclear incident occurs within the area of the Incident State's exclusive economic zone). On the other hand, if the operator is liable under the Convention to which the Installation State is a Party, the competent court in the Incident State will still have to refer, in principle, to that Convention under Article III of the Joint Protocol.

The above interpretation — whereby in the event of an accident during transport involving operators in States that are Contracting Parties to different Conventions (the Paris Convention or the Vienna Convention) but which are both party to the Joint Protocol, the rules giving competence to the courts of the Incident State should apply — appears to be the one most in accordance with the ordinary meaning to be given to the terms of Article IV of the Joint Protocol in their context and in the light of the Joint Protocol's object and purpose. As pointed out in its Preamble, the object and purpose of the Joint Protocol is precisely to "establish a link" between the Paris Convention and the Vienna Convention, and the 1987 Explanatory Note confirms that this link was provided by "abolishing the distinction between Contracting Parties and non-Contracting States as regards the operative provisions of either Convention". Article IV of the Joint Protocol expressly enumerates the provisions relating to jurisdiction in both the Vienna Convention and the Paris Convention among those that have to be applied "in the same manner as between Parties": there would be no need for such enumeration if those provisions were still to apply as between non-Contracting States. […] Article III of the Joint Protocol, relating to the choice of the applicable Convention, is based on the assumption that the applicable Convention is the one in force for the Installation State, even where jurisdiction lies with the courts of a Contracting Party to another Convention: there would be no need for such a provision if, under the Joint Protocol, jurisdiction in transport cases involving Parties to different Conventions lay always with the courts of the Installation State. […]

Footnote 108

[…] It was pointed out, for example, that, in the case of the transport of nuclear material between a Paris Convention–Brussels Convention–Joint Protocol operator and a Vienna Convention–Joint Protocol operator, had an incident occurred in the Paris Convention–Brussels Convention–Joint Protocol State after the Vienna Convention State operator had taken charge of the material or had assumed liability therefore, the Brussels Convention would not have applied, whereas it would have applied without the Protocol. According to WD II: "a possible solution to this problem may be that all [Paris Convention] States ensure, either in their domestic legislation or by some administrative means, that operators of installations in their territory assume liability by contract for any incidents which may occur in the course of carriage between their installation and a [Vienna Convention] State and for which the system of the [Brussels Convention] would be applicable".

Page 25 - 3.2.3. The amount of compensation to be paid

[…] As far as the Contracting Parties to the Paris Convention are concerned, a partial remedy to the potential imbalance in the liability amounts in a transport situation is represented by Article 7(e), which, […] allows a Contracting Party to subject the transit of nuclear material through its territory to the condition that the maximum amount of liability of the foreign operator concerned be increased to the maximum amount of liability of operators of nuclear installations situated in its own territory. As also mentioned, as a result of the drafting changes which led from Article I of the 1974 Draft Joint Protocol to Article IV of the Joint Protocol, a Contracting Party to both the Paris Convention and the Joint Protocol can avail itself of this provision not only in respect of other Contracting Parties to the Paris Convention, but also in respect of the Contracting Parties to both the Vienna Convention and the Joint Protocol. However, it is unclear whether this remedy is available to the Contracting Parties to the Vienna Convention, since there is no express provision corresponding to Article 7(e) of the Paris Convention in either the 1963 Vienna Convention or the 1997 Vienna Convention. On the other hand, given the much higher amount of liability available under the Paris Convention, it is unlikely that this situation would in practice pose a problem for the Contracting Parties to the Vienna Convention. […]

Pages 29-30 – 3.3. The choice of the applicable convention (Article III)

[…] The conflict rule determining the applicable Convention was formulated in Article II of the original 1974 Draft Joint Protocol by simply referring to “the Convention to which the Installation State of the operator liable, by virtue of either Convention, is liable”. The substance of this rule has not changed, despite the drafting changes to which it was subjected to before its final adoption. It was felt, in particular, that, inasmuch as both Conventions apply not only to nuclear incidents occurring in nuclear installations, but also to nuclear incidents occurring during carriage of nuclear materials, two conflict rules (as opposed to one) were required. Thus, in the Note presented to the June 1987 NEA Group meeting the NEA Secretariat proposed a revised text for Article II, which was then adopted with minor amendments by the Group. This text was then presented at the October 1987 Joint IAEA/NEA Working Group meeting, where it was further amended and, as a result of an internal reorganization of provisions, was finally adopted as Article III of the Joint Protocol. The text of Article III of the Joint Protocol thereafter remained unchanged until its final adoption in September 1988.

[…] A particular issue, which was discussed in 1987, relates to the applicable Convention in the case of different nuclear consignments —that is, where nuclear material is carried from or to an operator whose installation is situated in the territory of a Contracting Party to the Paris Convention and, at the same time and on the same means of transport (e.g. a ship), nuclear material is carried from or to another operator whose installation is situated in the territory of a Contracting Party to the Vienna Convention. In this respect, both the Note presented to the June 1987 NEA Group meeting and the “Background Material” presented to the October 1987 Joint IAEA/NEA Working Group meeting pointed out that:

> “Which Convention applies is not a problem, where one of the operators has actually taken charge of the material or has accepted liability in writing…. [In that case,] that Convention will apply whose Contracting Party is the Installation State of the operator taking in charge. Where there is no actual taking in charge or no written acceptance of liability by one of the operators, the Convention applicable is only clear when the nuclear incident is caused exclusively by one of the nuclear consignments. Where it is caused by both consignments or — what is more likely, it is uncertain which one was responsible — both operators will be liable [Article 5(d) [of the Paris Convention], II.3 (a) [of the Vienna Convention]]. Both Conventions are applicable, and the Protocol does not point to the exclusive application of one Convention. This legal position is however in no way the result of the Protocol, and would not be different without it. The advantage of the Protocol is precisely that it permits agreements

> between [Paris Convention and Vienna Convention] operators which exclude the simultaneous application of both Conventions."

Page 33 – 4.3. Transitional issues relating to potential conflicts of treaty obligations

[Quotation from Document "Relationship between the Paris and Vienna Conventions" ("WD III") prepared in January 1975 by the NEA and IAEA Secretariats]

[…]

> "[C]ertain problems could arise in those cases where a nuclear incident would affect States Party to the Protocol and States Party to either Convention, but not to the Protocol. If, for example, an operator in a P-State which has not ratified the Protocol sends nuclear material to an operator in a V-State which has ratified the Protocol (Vp-State) through the territory of a P-State which has ratified the Protocol (Pp-State), and a nuclear incident occurs and damage is suffered in Pp, it might be argued that victims in Pp could bring actions for compensation against either the P-operator (pursuant to the Paris Convention) or the Vp-operator (pursuant to the Protocol in conjunction with the Vienna Convention), a choice which would not be possible without the Protocol being in force, as then only the Paris Convention would apply. It is to be noted that without the Protocol, victims in the transit P-State would not be protected under any Convention if the damage had been caused by a similar incident in V. If a Pp-operator sends nuclear material through the territory of P to a Vp-operator and a nuclear incident occurs in Vp which causes damage in P, an agreement between the Pp-operator and the Vp-operator that the latter should assume liability for the entire transport would not be binding as regards P. The Vp-operator could argue that the Vienna Convention would not be applicable as the nuclear damage was suffered in a non-Contracting State. The solution here (on which the transit P-State would insist) would be that the Pp-operator assumed liability for the transport. There are a number of variants to the above examples an analysis of which shows that the difficulties arising in the transitional period are by far less numerous and easier to resolve than those caused by the present situation where there is no relationship between the Conventions at all".

Section IV

Decisions, Recommendations and Interpretations Relating to Transport and Transit

OECD Decisions, Recommendations and Interpretations related to transport and transit	
Paris Convention	
TERRITORIAL SCOPE ***Recommendation*** *of the Steering Committee of 25.4.1968* *[NE/M(68)1 and NE(68)5 & Addendum]*	"Signatory countries, in adopting measures to apply the Convention, should take [into account that] the Paris Convention is applicable to nuclear incidents occurring on the high seas or to damage suffered on the high seas."
EXCLUSION OF CERTAIN KINDS OF NUCLEAR SUBSTANCES ***Decision*** *of the Steering Committee of 27.10.1977* *[NE/M(77)2 and NE(77)20]*	"The Steering Committee ………….. […] NOTES: As a consequence of this Decision a) there will be excluded from the application of the Paris Convention the following installations otherwise falling within the definition of "nuclear installation" in Article 1(a)(ii) of the Convention: […] ii) storage facilities in which the only nuclear substances stored are substances excluded hereby from the application of the Convention; b) the operator of a nuclear installation will not be liable, under the terms of the Paris Convention, for damage caused by an incident involving only nuclear substances excluded hereby in the course of carriage to or from that installation."
EXCLUSION OF SMALL QUANTITIES OF NUCLEAR SUBSTANCES OUTSIDE A NUCLEAR INSTALLATION ***Decision*** *of the Steering Committee of 3.11.2016* *[NEA/SUM(2016)2 and NEA/NE(2016)8/FINAL], replacing a Decision of 18.10.2007*	"The Steering Committee …………….. […] DECIDES: Nuclear substances which are consigned by an operator to a recipient for use shall be excluded from the application of the Paris Convention for the period during which they are outside a nuclear installation provided that the consignment, when leaving a nuclear installation, complies with the provisions set forth in the Annex to this Decision and with other relevant requirements of the Regulations for the Safe Transport of Radioactive Material of the International Atomic Energy Agency".

DEFINITION OF “RADIOISOTOPES WHICH HAVE REACHED THE FINAL STAGE OF FABRICATION” ***Recommendation*** *of the Steering Committee of 19.4.2018 [NEA/SUM(2018)1 and NEA/NE(2018)3/FINAL]*	“The Steering Committee ……………… […] RECOMMENDS the following interpretation: The radioisotopes reach the final stage of fabrication, under Article 1(a)(iv) of the Paris Convention, when they may be used for any industrial, commercial, agricultural, medical, scientific or educational purpose. The radioisotopes which have reached the final stage of fabrication are excluded from the scope of application of the Paris Convention and shall not be made subject to it at a later stage.” ***Note by the Secretariat*** *[…] The principle is that once the radioisotopes have reached the final stage of fabrication and have left the nuclear installation where they reached that stage (i.e. the “nuclear installation of origin”), they will no longer be covered by the Paris Convention.*
DAMAGE TO NUCLEAR SUBSTANCES IN THE COURSE OF CARRIAGE ***Recommendation*** *of the Steering Committee of 8.4.1981 [NE/M(81)1 and NE(81)8], replacing the Recommendation of 19.10.1967*	“The Steering Committee …………….. NOTES […] However, it would appear to be within the spirit of the Convention that the liability of a nuclear operator should not extend to damage caused to nuclear substances belonging to other nuclear operators but for which the operator in question has assumed third party liability pursuant to a contract in writing or of which he has taken charge in accordance with Article 4 of the Convention; RECOMMENDS, therefore, to the Signatories, that a nuclear operator should not be held liable, within the meaning of the Paris Convention, for damage caused by a nuclear incident to nuclear substances in course of carriage belonging to other operators but for which he has assumed third party liability pursuant to a contract in writing or of which he has taken charge in accordance with Article 4 of the Convention; […].”
OPERATOR’S CERTIFICATE OF FINANCIAL SECURITY ***Recommendation*** *of the Steering Committee of 8.10.2021 [NEA/SUM/DEC(2021)2 and NEA/NE(2021)14, Annex 2, Appendix A]*	“The Steering Committee recommends… that Signatory countries to the Paris Convention establish the certificates of financial security provided for in Article 4(d) of the Convention according to the model attached to this Recommendation.” ***Note by the Secretariat*** *This model certificate, which is in strict conformity with the provisions of the Convention, was proposed to simplify matters for national authorities and operators, in particular in relation to international transport.*

SUBSTITUTION OF A CARRIER FOR THE OPERATOR ***Interpretation*** *approved by the Steering Committee on 8.10.2021 [NEA/SUM/DEC(2021)2 and NEA/NE(2021)14, Annex 2, Appendix B]*	"Whether or not any Contracting Party itself makes use of the provisions of Article 4(e) of the Paris Convention or Article II(2) of the Vienna Convention, all Contracting Parties must legally recognise a carrier, who is properly substituted for the operator of a nuclear installation situated in one of the Contracting Parties' countries, as an operator for all the purposes of the Conventions, even if they do not themselves provide for such substitution for their own operators." ***Note by the Secretariat*** *A similar Recommendation was adopted on 28 October 1965 by Euratom, see Commission Recommendation of 28 October 1965 to the Member States on the harmonization of legislation applying the Paris Convention of 29 July 1960 and the Brussels Supplementary Convention of 31 January 1963; OJ 196, 18.11.1965, pp. 2995-2996.*
RIGHTS OF SUBROGATION OF A CARRIER ***Interpretation*** *approved by the Steering Committee on 8.10.2021 [NEA/SUM/DEC(2021)2 and NEA/NE(2021)14, Annex 2, Appendix C]*	"When a carrier accepts the obligations of an operator by being substituted for him in accordance with Article 4(e) of the Convention, he thereby renounces the taking of advantage of the right of subrogation given to a carrier against the operator by Article 6(d)."
NUCLEAR SUBSTANCES IN TRANSIT ***Recommendation*** *of the Steering Committee of 25.4.1968 [NE/M(68)1 and NE(68)5 & Addendum]*	"Where a Contracting Party to the Paris Convention makes use of Article 7(e) thereof to subject the transit of nuclear substances through its territory to the condition that the maximum amount of liability of the foreign operator concerned be increased, the maximum total liability for a nuclear incident occurring in the territory of that country will be the higher amount thus required pursuant to Article 7(e) or, if the incident occurred elsewhere, the amount originally established by the installation State as the maximum liability of that operator." ***Note by the Secretariat*** *This Recommendation was adopted to clarify the effect of exercising the option in Article 7(e) and thus simplify the issue of insurance policies for the transport of nuclear substances. This Article had caused certain problems for insurers since, depending on the interpretation given, uncertainty could have resulted as to the total amount of the operator's liability.*

NUCLEAR SUBSTANCES IN TRANSIT ***Recommendation*** *of the Steering Committee of 8.10.2021* *[NEA/SUM/DEC(2021)2 and NEA/NE(2021)14, Annex 2, Appendix D]*	"The Contracting Parties to the Paris Convention should precede any new use of Article 7(e) by an examination carried out, either within the Nuclear Law Committee, or within the framework of bilateral discussions with the countries concerned." ***Note by the Secretariat*** *In spite of the Recommendation of 25th April 1968 (above) clarifying this point, it emerged that the application of Article 7(e) still raised certain difficulties due to the fact that the decision to fix the amount of liability of the nuclear operator is generally considered as being a matter exclusively for the legislation of the country where the installation of that operator is situated. Consequently, it would be preferable for each Contracting Party, before it makes use of Article 7(e) in its national legislation, to examine, with the countries concerned, the problems likely to result therefrom.*
FINANCIAL SECURITY FOR THE OPERATOR'S LIABILITY ***Interpretation*** *(following the Recommendation of Euratom of 28.10.1965) approved by the Steering Committee on 19.10.1967* *[NE/M(67)2 and NE(67)25]*	"The obligation which arises from the financial security referred to in Article 10(a) of the Paris Convention, intended to cover liability for the purpose of Articles 3 and 4 thereof, shall not be altered by the fact that the damage is already covered by other insurance or financial security on the understanding that this does not affect the provisions of Article 6(h) of the Convention."
Brussels Supplementary Convention	
RECOMMENDATION OF THE COUNCIL ON THE APPLICATION OF THE BRUSSELS SUPPLEMENTARY CONVENTION, IN THE FIELD OF NUCLEAR LIABILITY ***Recommendation*** *adopted on 27/11/1992 and amended on 26/11/2021* *[OECD/LEGAL/0272]*	The Council […] On the proposal of the Steering Committee for Nuclear Energy: RECOMMENDS that the Contracting Parties to the Brussels Supplementary Convention which ratify the Joint Protocol should take appropriate measures to ensure that the operators of nuclear installations or carriers under their jurisdiction assume liability in all cases involving the transport of nuclear substances between such installations and those of operators situated in the territory of Contracting Parties to the Vienna Convention on Civil Liability for Nuclear Damage and to the Joint Protocol, in the case that nuclear incidents occurring during such transport would, were it not for the operation of the Joint Protocol, lead to the application of the Brussels Supplementary Convention according to its Article 2, considering that the public funds made available pursuant to Articles 3(b)(ii) and 3(b)(iii) of the Brussels Supplementary Convention by the Contracting Party in whose territory the nuclear installation of the operator liable is situated will be exclusively allocated to victims in States parties to the Brussels Supplementary Convention.

IAEA Decisions related to transport and transit	
THE ESTABLISHMENT OF MAXIMUM LIMITS FOR THE EXCLUSION OF SMALL QUANTITIES OF NUCLEAR MATERIAL FROM THE APPLICATION OF THE VIENNA CONVENTIONS ON NUCLEAR LIABILITY ***Resolution*** *adopted by the Board of Governors on 20 November 2014 [GOV/2014/63]*	The Board of Governors, […] 1. Decides that: (a) Nuclear material which is consigned by an operator to a recipient for use may be excluded from the application of the Vienna conventions on nuclear liability for the period it is outside a nuclear installation, provided that the consignment, when leaving a nuclear installation, complies with the provisions set forth in the Annex hereto and with the other relevant requirements of the Transport Regulations; (b) The resolution of 11 September 2007 on the establishment of maximum limits for the exclusion of small quantities of nuclear material from the application of the Vienna conventions on nuclear liability is repealed; […].