

IAEA Action Plan on Nuclear Safety – Nuclear Liability

Background

The IAEA Action Plan on Nuclear Safety (the Action Plan)¹ calls upon Member States to work towards establishing a global nuclear liability regime that addresses the concerns of all States that might be affected by a nuclear accident with a view to providing appropriate compensation for nuclear damage, and to give due consideration to the possibility of joining the international nuclear liability instruments as a step towards achieving such a global regime. In addition, the Action Plan specifically calls upon the International Expert Group on Nuclear Liability (INLEX) to recommend actions to facilitate the achievement of such a global regime.

The existing international legal framework for civil liability for nuclear damage²

There are currently two international regimes for civil liability for nuclear damage. On the one hand, there is the so-called “Paris regime”, which consists of the 1960 Paris Convention on Third Party Liability in the Field of Nuclear Energy (the Paris Convention), concluded under the auspices of the Organization for Economic Cooperation and Development (OECD), open to OECD Member States and to other States only if all Parties give their consent. The Paris Convention is supplemented by the 1963 Brussels Convention Supplementary to the Paris Convention (the Brussels Supplementary Convention). Both conventions have been amended by Protocols adopted in 1964 and 1982, and will be further amended by Protocols adopted on 12 February 2004, which, however, as of August 2012, are not yet in force.³

On the other hand, there is the so-called “Vienna regime”, which consists of the 1963 Vienna Convention on Civil Liability for Nuclear Damage (the 1963 Vienna Convention) and of the 1997 Protocol to Amend the Vienna Convention (the 1997 Vienna Convention), both concluded under the auspices of the IAEA and open to all Member States of the United Nations, its specialized agencies or the IAEA, or to all States respectively.⁴

In order to create a treaty link between the different regimes, two instruments have been adopted: The first one is the 1988 Joint Protocol Relating to the Application of the Vienna Convention and the

¹ GOV/2011/59-GC(55)/14.

² The main features of the international nuclear liability instruments and the principles of nuclear liability law have been described in several IAEA documents, publications and papers prepared by INLEX. See, in particular, GOV/INF/2004/9-GC(48)/INF/5; GOV/INF/2006/4; ‘The 1997 Vienna Convention on Civil Liability for Nuclear Damage and the 1997 Convention on Supplementary Compensation for Nuclear Damage – Explanatory Texts’, IAEA International Law Series 3, STI/PUB/1279, 2007; ‘Handbook on Nuclear Law’, IAEA 2003, STI/PUB/1160, pp. 107-118; ‘Handbook on Nuclear Law: Implementing Legislation’, IAEA 2010, STI/PUB/1456, pp. 99-111; ‘Civil Liability for Nuclear Damage: Advantages and Disadvantages of Joining the International Nuclear Liability Regime’, paper prepared by INLEX.

³ In the following recommendations by INLEX, the expression “Paris Convention” covers the 1960 Paris Convention and any amendment thereto in force for a Contracting Party.

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Paris Convention (the Joint Protocol), adopted under the joint auspices of the IAEA and the OECD, which aims at bridging the gap between Parties to the Vienna and the Paris regime and extending the rights under one regime to victims in the territory of Parties to the other. The second instrument is the 1997 Convention on Supplementary Compensation for Nuclear Damage (the CSC), concluded under the auspices of the IAEA, which aims not only at establishing treaty relations between States that either belong to the Vienna or the Paris regime but also with other States, provided their national legislation is consistent with uniform rules on civil liability for nuclear damage as laid down in the Annex to the CSC. The CSC also aims at increasing the amount of compensation available in the event of a nuclear incident through supplementary funds to be provided by its Contracting Parties.

Activities carried out by INLEX and the Secretariat in the context of nuclear liability

In order to facilitate the implementation of the specific actions envisaged in the Action Plan in relation to nuclear liability, a Special Session of INLEX was held at IAEA Headquarters, from 14 to 16 December 2011. At this Special Session, INLEX agreed on a number of activities aimed at facilitating the achievement of a global nuclear liability regime as described in the Action Plan, including carrying out joint IAEA/INLEX missions in order to raise awareness of the international nuclear liability regime and encourage wider adherence to the relevant international legal instruments in specific target countries;⁵ making presentations on nuclear liability at various Agency and other meetings during 2012;⁶ and organizing a workshop on nuclear liability at IAEA Headquarters for diplomats and experts from Member States.⁷ INLEX also held preliminary discussions on specific recommendations to facilitate the achievement of a global nuclear liability regime, with a view to finalizing these recommendations at its 12th regular meeting in 2012.

At the 12th regular meeting of INLEX, which was held at IAEA Headquarters from 30 May to 1 June 2012, INLEX further discussed and finalized the following recommendations to facilitate the achievement of a global nuclear liability regime, as requested by the Action Plan.

⁵ As of August 2012, five IAEA/INLEX missions were dispatched to the following Member States: Vietnam (March 2012), Republic of Korea (April 2012), Jordan (May 2012), South Africa (July 2012), Ukraine (July 2012). China has agreed to host an IAEA/INLEX mission in the second half of 2012. Preparations are under way to implement similar missions later this year and in this context the Secretariat continues to conduct informal discussions with potentially interested Member States.

⁶ As of August 2012, presentations were made at the following meetings: Technical Meeting on Topical Issues on Infrastructure Development: Managing the Development of a National Infrastructure for Nuclear Power Plants (24-27 January 2012); 31st Meeting of the Commission on Safety Standards (27-29 March 2012); International Nuclear Safety Group (11-12 April 2012); Sixth Meeting of Representatives of the Competent Authorities identified under the Convention on Early Notification of a Nuclear Accident and the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency (17-20 April 2012); and meeting of the Advisory Group on Nuclear Security (23-27 April 2012).

⁷ The Workshop was held on 29 May 2012, at IAEA Headquarters and was attended by 59 diplomats and experts from 34 Member States and one international organization.

Recommendations on how to facilitate achievement of a global nuclear liability regime, as requested by the IAEA Action Plan on Nuclear Safety

by

the International Expert Group on Nuclear Liability (INLEX)

In order to facilitate the achievement of a global nuclear liability regime, Member States should take the following steps:

1. All Member States with nuclear installations should adhere to one or more of the relevant international nuclear liability instruments that contain commonly shared international principles reflecting the enhancements developed under the auspices of the IAEA during the 1990's. In addition, all Member States with nuclear installations should adopt national laws that are consistent with the principles in those instruments and that incorporate the best practices identified below.
2. All Member States with nuclear installations should strive to establish treaty relations with as many States as practical with a view to ultimately achieving universal participation in a global nuclear liability regime that establishes treaty relations among all States. The INLEX experts note that the CSC establishes treaty relations among States that belong to the Paris Convention, the Vienna Convention or neither, while leaving intact the Joint Protocol that establishes treaty relations among States that belong to the Paris Convention or the Vienna Convention. In addition to providing treaty relations, the CSC mandates the adoption of the enhancements developed under the auspices of the IAEA and contains features to promote appropriate compensation, including an international fund to supplement the amount of compensation available for nuclear damage.
3. Member States with no nuclear installations should give serious consideration to adhering to a global regime, taking into account the benefits which such a regime can offer for victims once it achieves adherence by a significant number of States with nuclear installations.
4. All Member States with nuclear installations should ensure that there are adequate funds available to compensate all victims of a nuclear incident, without discrimination. Therefore, such Member States should in particular:
 - a. Establish compensation and financial security amounts significantly higher than the minimum amounts envisaged under the existing instruments;
 - b. Undertake regular reviews of the adequacy of compensation amounts in order to ensure that their value is maintained and that they reflect developments in the understanding of the possible impact of incidents involving the installations on their territory, noting that there is a trend towards establishing unlimited liability of the operator;

- c. Undertake regular reviews of the adequacy of financial security amounts in order to ensure that those amounts reflect available capacity in insurance markets, as well as other sources of financial security;
- d. Be prepared to set up appropriate funding mechanisms in cases where the amount of damage to be compensated exceeds the available compensation and financial security amounts;
- e. Provide compensation for latent injuries, noting that the revised Vienna and Paris Conventions set a 30-year time limit for filing claims for personal injury; and
- f. Ensure that compensation is available in the case of an incident directly due to a grave natural disaster of an exceptional character.

5. All Member States should:

- a. Ensure that all claims arising from a nuclear accident are dealt with in a single forum in a prompt, equitable and non-discriminatory manner with minimal litigation, which could include a claims-handling system (which may be set up in close cooperation with insurers or other financial guarantors) in order to deal equitably and expeditiously with all claims; and
- b. Use the model legislation developed by the IAEA as a guide, as appropriate, when drafting or revising national nuclear liability legislation.