

## **Statement of the International Expert Group on Nuclear Liability (INLEX):\***

### **Benefits of Joining the Global Nuclear Liability Regime**

1. The IAEA Action Plan on Nuclear Safety (The Action Plan) recommends establishment of a global nuclear liability regime. A global nuclear liability regime requires universal participation through treaty relations among all States with and without nuclear installations that might be affected by a nuclear incident. To achieve this regime, States are encouraged to join as many of the international nuclear liability instruments as practical. These instruments are: the Paris Convention on Third Party Liability in the Field of Nuclear Energy (Paris Convention), the Brussels Convention Supplementary to the Paris Convention on Third Party Liability in the Field of Nuclear Energy (Brussels Supplementary Convention), the 1963 Vienna Convention on Civil Liability for Nuclear Damage (1963 Vienna Convention), the Protocol to Amend the 1963 Vienna Convention on Civil Liability for Nuclear Damage (1997 Vienna Convention), the Joint Protocol Relating to the Application of the Vienna Convention and the Paris Convention (Joint Protocol), and the Convention on Supplementary Compensation for Nuclear Damage (CSC).
2. A global nuclear liability regime is an important element of the legal framework necessary to support the peaceful uses of nuclear energy. Such a regime should: (1) ensure prompt and equitable compensation for nuclear damage, including transboundary damage; (2) address the consequences of a maritime or any other transport accident involving nuclear material; and (3) provide the legal certainty necessary for international cooperation and commercial participation in nuclear projects.
3. General tort law often results in protracted litigation in multiple jurisdictions, against multiple defendants, with uncertain outcomes, and with no guarantee of judgments being enforceable or funds being available to pay judgments. To overcome these problems, the global nuclear liability regime builds upon and enhances the nuclear liability principles developed in the 1960s with the adoption of the Paris Convention and the Vienna Convention. These principles provide for, among other things, the exclusive liability of the operator of a nuclear facility without the need to prove fault (in accordance with the basic principle of the responsibility of the operator for safety and security), the obligation of such operators to carry insurance or other financial security, the vesting of jurisdiction over a nuclear incident in a single State and the requirement for non-discriminatory treatment of all victims. The global nuclear liability regime requires each State to apply these principles.
4. Beginning in the late 1990s, the international nuclear liability instruments were enhanced to, among other things: provide higher compensation; explicitly cover environmental damage, economic loss and preventive measures; and to grant a country exclusive jurisdiction over nuclear incidents in its exclusive economic zone (EEZ). The global nuclear liability regime requires each State to apply these enhancements.
5. Coastal States have voiced concerns over maritime accidents involving nuclear material. The global nuclear liability regime seeks to address these concerns by granting a country exclusive jurisdiction over nuclear incidents that occur in its EEZ and by expanding the definition of nuclear damage to explicitly cover environmental damage, economic loss and preventive measures.

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\* As elaborated at the 22nd INLEX Meeting (6 - 8 September 2022).

6. Suppliers, investors, lenders and insurers will not participate in nuclear projects unless their concerns over potential liability are addressed adequately. The global nuclear liability regime addresses these concerns by providing legal certainty that civil liability claims arising from nuclear damage will be channelled exclusively to the operator and adjudicated exclusively in the courts of one State, usually the State where a nuclear incident occurs.
7. The IAEA Action Plan called upon INLEX to recommend actions to facilitate achievement of the global nuclear liability regime. INLEX recommended that States with nuclear installations should: (1) establish treaty relations with as many States as practical, with a view to achieving universal participation in the global nuclear liability regime, and (2) apply the enhanced nuclear liability principles. States with no nuclear installation should consider adherence to the global nuclear liability regime once the regime contains a significant number of States with nuclear installations to offer meaningful benefits to those suffering nuclear damage arising from nuclear incidents, including during maritime transport.
8. INLEX notes that the CSC provides a pathway to treaty relations among the Paris Convention and Vienna Convention States parties, including those Paris and Vienna States parties to the Joint Protocol, as well as CSC Annex States (those that apply the nuclear liability principles and enhancements as set forth in the CSC and the CSC Annex) and, thus, provides a mechanism to achieve treaty relations with as many States as practical, with the goal of universal participation in the global nuclear liability regime. In addition, the CSC contains features to promote increased compensation, including an international fund to supplement the amount of compensation available for nuclear damage.
9. To further enhance the protection of victims and facilitate more universal participation, States with nuclear installations should ensure that there are adequate funds available to compensate all victims of a nuclear incident, without discrimination, including among other things, establishing compensation and financial security amounts significantly higher than the minimum amounts envisaged under the existing instruments.