



State and the Compensation for Nuclear Damage

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Content of presentation

- 1. Forms of state intervention into the nuclear third party liability
- 2. Existing nuclear third party liability treaties
- 3. Existing treaties on supplementary compensation
- 4. Questions arising from the state interventions

1. Forms of state intervention into the nuclear third party liability (1)

- **Basic principles of existing nuclear liability treaties:**
 - Strict (absolute) liability of the **operator**
 - Exclusive liability of the **operator** (legal channeling)
 - Liability limitation (or unlimited liability)
 - **Congruence principle** (mandatory insurance etc.)
 - Very restricted exonerations (war, grave natural disaster etc.)
 - Exclusive jurisdiction of the competent court
 - Time limitations for claims

1. Forms of state intervention into the nuclear third party liability (2)

- **State can intervene into operators liability in different ways:**
 - 1. State as operator itself (insurance or other financial security not required)
 - 2. State as insurer, or guarantor of the operators liability
 - 3. State as contributor into the supplementary funds
 - 4. International community of states as contributors
 - 5. Cases of exonerations: state shall compensate the damages (the case of Fukushima accident?)

2. Existing nuclear third party liability treaties (1)

Convention on Third Party Liability in the Field of Nuclear Energy of 1960 (Paris Convention)

Article 10

- 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 and of such type and terms as the competent public authority shall specify.
- No insurer or other financial guarantor shall suspend or cancel the insurance or other financial security provided for in paragraph (a) 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.
- The sums provided as insurance, reinsurance, or other financial security may be drawn upon only for compensation for damage caused by a nuclear incident.

2. Existing nuclear third party liability treaties (2)

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

Article VII


- 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.
- Nothing in paragraph 1 of this Article shall require a Contracting Party or any of its constituent sub-divisions, such as States or Republics, to maintain insurance or other financial security to cover their liability as operators.
- The funds provided by insurance, by other financial security or by the Installation State pursuant to paragraph 1 of this Article shall be exclusively available for compensation due under this Convention.

2. Existing nuclear third party liability treaties (3)

Protocol to Amend the Vienna Convention on Civil Liability for Nuclear Damage of 1997(1997 Protocol)

Article 7

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.
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2. Existing nuclear third party liability treaties (4)

Protocol to Amend the Paris Convention on Third Party Liability in the field of Nuclear Energy of 2004 (2004 Protocol)

Article 10

- 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.
- 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).
- The Contracting Party within whose territory the nuclear installation of the liable operator is situated 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 insurance or other financial security is not available or sufficient to satisfy such claims, up to an amount not less than the amount referred to in Article 7(a) or Article 21(c).

2. Existing nuclear third party liability treaties (5)

- ***Basic features of the „first generation“ treaties:***
- Limited (Paris) vs. unlimited liability (possible under the Vienna Convention) of the operator
- However, in the reality only limited liability (with the exception of Germany)
- Conguence principle: mandatory insurance or other financial security
- Private insurance / state (public) funds or guarantees
- ***Basic features of the „second generation“ treaties:***
- unlimited liability of the operator in both revised Paris and Vienna (e.g. Sweden, Finland and Denmark)
- 1997 Protocol in force, however only in few states
- 2004 Protocol not in force yet
- Both revised regimes anchored the possibility of state intervention into securing the compensation of damages

3. Existing treaties on supplementary compensation (1)

Convention Supplementary to the Paris Convention of 29th July 1960 on Third Party Liability in the Field of Nuclear Energy of 1963 (Brussels Supplementary Convention)

The combined Paris/Brussels regime provides for compensation to a maximum amount of SDR 300 million, in three tiers:

- *a first tier* corresponding to the liability amount imposed under the Paris Convention, meaning that each Party to the Brussels Supplementary Convention is required to establish by legislation an operator liability amount of at least SDR 5 million, to be provided by insurance or other financial security.
- *a second tier* consisting of the difference between SDR 175 million and the amount required under the first tier, which is to be provided from public funds to be made available by the party in whose territory the nuclear installation of the liable operator is situated;
- *a third tier* comprising SDR 125 million to be made available from public funds contributed jointly by all the parties to the Brussels Supplementary Convention according to a pre-determined formula.

3. Existing treaties on supplementary compensation (2)

Protocol Amending the Convention Supplementary to the Paris Convention of 29th July 1960 on Third Party Liability in the Field of Nuclear Energy of 1963 (2004 Protocol)

The revised Brussels Supplementary Convention will maintain its basic three-tier compensation system but with significantly increased amounts:

- the first tier will continue to come from the operator's financial security but will be at least €700 million;
- the second tier will be provided by the state in whose territory the liable operator's installation is situated and will be up to €500 million;
- the third tier will be made available by all of the contracting parties and be up to €300 million. Thus, the total compensation available to victims of a nuclear incident under the combined Paris-Brussels regime will be not less than €1.5 billion.

3. Existing treaties on supplementary compensation (3)

Convention on Supplementary Compensation for Nuclear Damage of 1997

This defines additional amounts to be provided through contributions by contracting parties collectively on the basis of installed nuclear capacity and a UN rate of assessment, basically at 300 SDRs per MW thermal (ie about EUR 360 million total).

The CSC - not yet in force - is an instrument to which all States may adhere regardless of whether they are parties to any existing nuclear liability conventions or have nuclear installations on their territories, , though in the case where they are not party to either Paris or Vienna they must still implement national laws consistent with an annex to the CSC. In order to pass into force the CSC must be ratified by five countries with a minimum of 400 GW thermal of installed nuclear capacity.

3. Existing treaties on supplementary compensation (4)

- ***Basic observations regarding the existing compensation regimes:***
- *Clearly, regional compensation regimes (e.g. Brussels Supplementary Convention) are more vital, than international (worldwide) oriented treaties (e.g. CSC)*
- *Facing development in the 2nd tier of the Brussels regime, where the contracting parties do have freedom to set the border between the operators liability and state supplementary funding*
- *Recently, e.g. the draft of UK nuclear liability legislation introduced the principle „no-subsidy-for-nuclear“ and proposes the limit of operators liability on the limit of the 2nd tier (i.e. no state subsidy to the 2nd tier)*
- *Sweden is similar example ...*
- *Further, the 2004 Protocol reflects the possibility of opting for unlimited liability and enables such states to make use of the 3rd tier*

4. Questions arising from the state interventions

- In the European Union, we are facing renewed interest of the Union (Euratom respectively) in the issues of nuclear liability
- Compatibility of the nuclear liability legislation with the EU rules of competition is one part of the problem:
- Compatibility of limiting liability with the competition law
- Compatibility of state guarantees / other forms of state interventions with the EU law on state subsidies
- However, problems not resolved yet ...



Thank you for your invitation and attention!!

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