

**1964 ADDITIONAL PROTOCOL TO AMEND THE CONVENTION ON
THIRD PARTY LIABILITY IN THE FIELD OF NUCLEAR ENERGY OF
29 JULY 1960**

Adopted in Paris, France on 28 January 1964

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The Governments of the Federal Republic of Germany, the Republic of Austria, the Kingdom of Belgium, the Kingdom of Denmark, Spain, the French Republic, the Kingdom of Greece, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of Norway, the Kingdom of the Netherlands, the Portuguese Republic, the United Kingdom of Great Britain and Northern Ireland, the Kingdom of Sweden, the Swiss Confederation and the Turkish Republic, being Signatories to the Convention on Third Party Liability in the Field of Nuclear Energy of 29th July 1960, concluded in Paris within the framework of the European Nuclear Energy Agency of the Organisation for European Economic Co-operation, now the Organisation for Economic Co-operation and Development;

Considering that at an International Conference which met in Vienna under the auspices of the International Atomic Energy Agency from 29th April to 19th May 1963, at which the signatories were represented, an International Convention on civil liability for nuclear damage was adopted:

Noting that by virtue of article XVII of that Convention the application of the Paris Convention as between the signatories thereto shall not be affected;

Desirous nevertheless of ensuring that as far as possible there are no conflicts between the two Conventions, thus enabling them to become parties to both Conventions if they so decide;

Have agreed as follows:

I

The Convention on third party liability in the field of nuclear energy of 29th July 1960 shall be amended as follows:

A. The last paragraph of the preamble shall be replaced by the following text:

Convinced of the need for unifying the basic rules applying in the various countries to the liability incurred for such damage, whilst leaving these countries free to take, on a national basis, any additional measures which they deem appropriate, including the application of the provisions of this Convention to damage caused by incidents due to ionizing radiations not covered therein;

B. Article 2 shall be replaced by the following text:

ARTICLE 2

This Convention does not apply to nuclear incidents occurring in the territory of non-Contracting States or to damage suffered in such territory, unless otherwise provided by the legislation of the Contracting Party in whose territory the nuclear installation of the operator liable is situated, and except in regard to rights referred to in article 6(e).

C. Article 3 shall be replaced by the following text:

ARTICLE 3

- (a) The operator of a nuclear installation shall be liable, in accordance with this Convention, for:
- (i) damage to or loss of life of any person; and
 - (ii) damage to or loss of any property other than
 1. the nuclear installation itself and any property on the site of that installation which is used or to be used in connection with that installation;
 2. in the cases within article 4, the means of transport upon which the nuclear substances involved were at the time of the nuclear incident, upon proof that such damage or loss (hereinafter referred to as "damage") was caused by a nuclear incident involving either nuclear fuel or radioactive products or waste in, or nuclear substances coming from such installation, except as otherwise provided for in article 4.
- (b) Where the damage or loss is caused jointly by a nuclear incident and by an incident other than a nuclear incident, that part of the damage or loss which is caused by such other incident shall, to the extent that it is not reasonably separable from the damage or loss caused by the nuclear incident, be considered to be damage caused by the nuclear incident. Where the damage or loss is caused jointly by a nuclear incident and by an emission of ionizing radiation not covered by this Convention, nothing in this Convention shall limit or otherwise affect the liability of any person in connection with that emission of ionizing radiation.
- (c) Any Contracting Party may by legislation provide that the liability of the operator of a nuclear installation situated in its territory shall include liability for damage which arises out of or results from ionizing radiations emitted by any source of radiation inside that installation, other than those referred to in paragraph (a) of this article.

D. Article 4 shall be replaced by the following text:

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 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) 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 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 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. 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.
- (d) 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.

E. Article 5 shall be replaced by the following text:

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 damage is caused, no operator of any nuclear installation in which they have previously been shall be liable for the damage.

- (b) Where, however, 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 damage is caused, no operator other than the operator of the last nuclear installation in which they were before the damage was caused or an operator who has subsequently taken them in charge shall be liable for the damage.
- (d) If 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 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 and provided that 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.

F. Article 6 shall be replaced by the following text:

ARTICLE 6

- (a) The right to compensation for damage caused by a nuclear incident may be exercised only against an operator liable for the damage in accordance with this Convention, or, if a direct right of action against the insurer or other financial guarantor furnishing the security required pursuant to article 10 is given by national law, against the insurer or other financial guarantor.
- (b) Except as otherwise provided in this article, no other person shall be liable for 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:
 - 1. of any individual for damage caused by a nuclear incident for which the operator, by virtue of article 3 (a) (ii) (1) and (2) or article 9, is not liable under this Convention and which results from an act or omission of that individual done with intent to cause damage;
 - 2. of a person duly authorized to operate a reactor comprised in a means of transport for damage caused by a nuclear incident when an operator is not liable for such damage pursuant to article 4 (a) (iii) or (b) (iii).
- (ii) The operator shall incur no liability outside this Convention for damage caused by a nuclear incident except where use has not been made of the right provided for in article 1(c), and then only to the extent that national legislation or the legislation of the Contracting Party in whose territory the nuclear installation of the operator liable is situated has made specific provisions concerning damage to the means of transport.

- (d) Any person who has paid compensation in respect of damage caused by a nuclear incident under any international agreement referred to in paragraph (b) of this article or under any legislation of a non-Contracting State shall, up to the amount which he has paid, acquire by subrogation the rights under this Convention of the person suffering damage whom he has so compensated.
- (e) Any person who has his principal place of business in the territory of a Contracting Party or who is the servant of such a person and who has paid compensation in respect of damage caused by a nuclear incident occurring in the territory of a non-Contracting State or in respect of damage suffered in such territory shall, up to the amount which he has paid, acquire the rights which the person so compensated would have had against the operator but for the provisions of article 2.
- (f) (i) The operator shall have a right of recourse only:
 - (i) if the damage caused by a nuclear incident results from an act or omission done with intent to cause damage, against the individual acting or omitting to act with such intent;
 - (ii) if and to the extent that it is so provided expressly by contract.
- (g) If the operator has a right of recourse to any extent pursuant to paragraph (f) of this article against any person, that person shall not, to that extent, have a right against the operator under paragraphs (d) or (e) of this article.
- (h) Where provisions of national or public health insurance, social security, workmen's compensation or occupational disease compensation systems include compensation for damage caused by a nuclear incident, rights of beneficiaries of such systems and rights of recourse by virtue of such systems shall be determined by the law of the Contracting Party or by the regulations of the Inter-Governmental Organisation which has established such systems.

G. Article 7 shall be replaced by the following text:

ARTICLE 7

- (a) The aggregate of compensation required to be paid in respect of damage caused by a nuclear incident shall not exceed the maximum liability established in accordance with this article.
- (b) The maximum liability of the operator in respect of damage caused by a nuclear incident shall be 15,000,000 European Monetary Agreement units of account as defined at the date of this Convention (hereinafter referred to as "units of account"): provided that any Contracting Party, taking into account the possibilities for the operator of obtaining the insurance or other financial security required pursuant to article 10, may establish by legislation a greater or less amount, but in no event less than 5,000,000 units of account. The sums mentioned above may be converted into national currency in round figures.
- (c) Any Contracting Party may by legislation provide that the exception in article 3(a)(ii)(2) shall not apply: provided that in no case shall the inclusion of damage to the means of transport result in reducing the liability of the operator in respect of other damage to an amount less than 5,000,000 units of account.

- (d) The amount of liability of operators of nuclear installations in the territory of a Contracting Party established in accordance with paragraph (b) of this article 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) 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.

H. Article 8 shall be replaced by the following text:

ARTICLE 8

- (a) The right of compensation under this Convention shall be extinguished if an action is not brought within ten years from the date of the nuclear incident. National legislation may, however, establish a period longer than ten years if measures have been taken by the Contracting Party in whose territory the nuclear installation of the operator liable is situated to cover the liability of that operator in respect of any actions for compensation begun after the expiry of the period of ten years and during such longer period: provided that such extension of the extinction period shall in no case affect the right of compensation under this Convention of any person who has brought an action in respect of loss of life or personal injury against the operator before the expiry of the period of ten years.
- (b) In the case of damage caused by a nuclear incident involving nuclear fuel or radioactive products or waste which, at the time of the incident have been stolen, lost, jettisoned or abandoned and have not yet been recovered, the period established pursuant to paragraph (a) of this article shall be computed from the date of that nuclear incident, but the period shall in no case exceed twenty years from the date of the theft, loss, jettison or abandonment.
- (c) National legislation may establish a period of not less than two years for the extinction of the right or as a period of limitation either from the date at which the person suffering damage has knowledge or from the date at which he ought reasonably to have known of both the damage and the operator liable: provided that the period established pursuant to paragraphs (a) and (b) of this article shall not be exceeded.

- (d) Where the provisions of article 13(c)(ii) are applicable, the right of compensation shall not, however, be extinguished if, within the time provided for in paragraph (a) of this article,
- (i) prior to the determination by the Tribunal referred to in article 17, an action has been brought before any of the courts from which the Tribunal can choose; if the Tribunal determines that the competent court is a court other than that before which such action has already been brought, it may fix a date by which such action has to be brought before the competent court so determined; or
- (ii) a request has been made to a Contracting Party concerned to initiate a determination by the Tribunal of the competent court pursuant to article 13(c)(ii) and an action is brought subsequent to such determination within such time as may be fixed by the Tribunal.
- (e) Unless national law provides to the contrary, any person suffering damage caused by a nuclear incident who has brought an action for compensation within the period provided for in this article may amend his claim in respect of any aggravation of the damage after the expiry of such period provided that final judgement has not been entered by the competent court.

I. Article 9 shall be replaced by the following text:

ARTICLE 9

The operator shall not be liable for damage caused by a nuclear incident directly due to an act of armed conflict, hostilities, civil war, insurrection or, except in so far as the legislation of the Contracting Party in whose territory his nuclear installation is situated may provide to the contrary, a grave natural disaster of an exceptional character.

J. Article 13 shall be replaced by the following text:

ARTICLE 13

- (a) Except as otherwise provided in this article, jurisdiction over actions under articles 3, 4, 6(a) and 6(e) shall lie only with the courts of the Contracting Party in whose territory the nuclear incident occurred.
- (b) Where a nuclear incident occurs outside the territory of the Contracting Parties, 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.
- (c) Where jurisdiction would lie with the courts of more than one Contracting Party by virtue of paragraphs (a) or (b) of this article, jurisdiction shall lie,
 - (i) if the nuclear incident occurred partly outside the territory of any Contracting Party and partly in the territory of a single Contracting Party, with the courts of that Contracting Party; and
 - (ii) in any other case, with the courts of the Contracting Party determined, at the request of a Contracting Party concerned, by the Tribunal referred to in article 17 as being the most closely related to the case in question.

- (d) Judgements entered by the competent court under this article after trial, or by default, shall, when they have become enforceable under the law applied by that court, become enforceable in the territory of any of the other Contracting Parties as soon as the formalities required by the Contracting Party concerned have been complied with. The merits of the case shall not be the subject of further proceedings. The foregoing provisions shall not apply to interim judgements.
- (e) If an action is brought against a Contracting Party under this Convention, such Contracting Party may not, except in respect of measures of execution, invoke any jurisdictional immunities before the court competent in accordance with this article.

K. Annex I shall be replaced by the following text:

ANNEX I

The following reservations were accepted either at the time of signature of the Convention or at the time of signature of the Additional Protocol:

1. Article 6(a) and (c)(i): Reservation by the Government of the Federal Republic of Germany, the Government of the Republic of Austria and the Government of the Kingdom of Greece

Reservation of the right to provide, by national law, that persons other than the operator may continue to be liable for damage caused by a nuclear incident on condition that these persons are fully covered in respect of their liability, including defence against unjustified actions, by insurance or other financial security obtained by the operator or out of State funds.

2. Article 6(b) and (d): Reservation by the Government of the Republic of Austria, the Government of the Kingdom of Greece, the Government of the Kingdom of Norway and the Government of the Kingdom of Sweden

Reservation of the right to consider their national legislation which includes provisions equivalent to those included in the international agreements referred to in article 6(b) as being international agreements within the meaning of article 6(b) and (d).

3. Article 8(a): Reservation by the Government of the Federal Republic of Germany and the Government of the Republic of Austria

Reservation of the right to establish, in respect of nuclear incidents occurring in the Federal Republic of Germany and in the Republic of Austria respectively, a period longer than ten years if measures have been taken to cover the liability of the operator in respect of any actions for compensation begun after the expiry of the period of ten years and during such longer period.

4. Article 9: Reservation by the Government of the Federal Republic of Germany and the Government of the Republic of Austria

Reservation of the right to provide, in respect of nuclear incidents occurring in the Federal Republic of Germany and in the Republic of Austria respectively, that the operator shall be liable for damage caused by a nuclear incident directly due to an act of armed conflict, hostilities, civil war, insurrection or a grave natural disaster of an exceptional character.

5. Article 19: Reservation by the Government of the Federal Republic of Germany, the Government of the Republic of Austria, and the Government of the Kingdom of Greece

Reservation of the right to consider ratification of this Convention as constituting an obligation under international law to enact national legislation on third party liability in the field of nuclear energy in accordance with the provisions of this Convention.

II

- (a) The provisions of this Additional Protocol shall form an integral part of the Convention on third party liability in the field of nuclear energy of 29th July 1960 (hereinafter referred to as the "Convention").
- (b) This Additional Protocol shall be ratified or confirmed. Instruments of ratification of this Additional Protocol shall be deposited with the Secretary-General of the Organisation for Economic Co-operation and Development.

Where there is a confirmation of this Additional Protocol, it shall be notified to him.

- (c) The signatories of this Additional Protocol who have already ratified the Convention undertake to ratify or to confirm this Additional Protocol as soon as possible. The other signatories of this Additional Protocol undertake to ratify it or to confirm it at the same time as they ratify the Convention. Accessions to the Convention will be accepted only if they are accompanied by accession to this Additional Protocol.
- (d) The Secretary-General of the Organisation shall give notice to all signatories and acceding Governments of the receipt of any instrument of ratification and of the receipt of any confirmation.
- (e) In calculating the number of ratifications required in accordance with article 19(b) for the coming into force of the Convention, account will be taken only of those signatories who have ratified the Convention and have ratified or confirmed this Additional Protocol.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, duly empowered, have signed this Protocol.

DONE in Paris the 28th day of January 1964 in the English, French, German, Spanish, Italian and Dutch languages in a single copy which shall remain deposited with the Secretary-General of the Organisation for Economic Cooperation and Development by whom certified copies will be communicated to all signatories.