

NUCLEAR LAW

Bulletin

S U P P L E M E N T T O N ° 7

NETHERLANDS : BILL ON THE LIABILITY OF OPERATORS
OF NUCLEAR SHIPS

April 1971



N E T H E R L A N D S

BILL CONTAINING
REGULATIONS CONCERNING THE LIABILITY
OF OPERATORS OF NUCLEAR SHIPS *

The purpose of this Bill is to lay down regulations concerning the liability of operators of nuclear ships, and also to implement the Convention of Brussels of 25th May 1962 on the Liability of Operators of Nuclear Ships.**

Section 1

For the purposes of the present Act:

- (a) "Nuclear ship" means any ship equipped with a nuclear power plant;
- (b) "Operator" means the person authorized by a State to operate a nuclear ship under its flag, or the State that operates a nuclear ship;

* Unofficial translation prepared by the Netherlands authorities.

** Note by the Secretariat.

- (c) "Nuclear fuel" means any material which is capable of producing energy by a self-sustaining process of nuclear fission, and which is used or intended for use in a nuclear ship;
- (d) "Radioactive products or waste" means any material, including nuclear fuel, made radioactive by neutron irradiation incidental to the utilization of nuclear fuel in a nuclear ship;
- (e) "Nuclear damage" means loss of life or personal injury and loss or damage to property which 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 of radioactive products or waste;
- (f) "Nuclear incident" means any occurrence, or series of occurrences having the same origin, which causes nuclear damage;
- (g) "Nuclear power plant" means any power plant in which a nuclear reactor is, or is to be, used as the source of power, whether for propulsion of the ship or for any other purpose;
- (h) "Nuclear reactor" means any installation containing nuclear fuel in such an arrangement that a self-sustained chain process of nuclear fission can occur therein without an additional source of neutrons.

Section 2

1. The operator of a nuclear ship shall be absolutely liable for any nuclear damage upon proof that such damage has been caused by a nuclear incident involving the nuclear fuel of, or the radioactive products or waste produced in, such ship.
2. Except as otherwise provided in this Act, no person other than the operator shall be liable for such nuclear damage. The operator shall not be liable for nuclear damage except in virtue of the present Act.
3. Nuclear damage suffered by the nuclear ship itself, its equipment, fuel or stores shall not be covered by the operator's liability as defined in the present Act.
4. The operator shall not be liable with respect to nuclear incidents occurring before the nuclear fuel has been taken in charge by him or after the nuclear fuel or radioactive products or waste have been taken in charge by another person duly authorized by law and liable for any nuclear damage that may be caused by them.
5. If the operator proves that the nuclear damage resulted wholly or partially from an act or omission done with intent to cause damage by the individual who suffered the damage, the competent court may exonerate the operator wholly or partially from his liability to such individual.

6. Notwithstanding the provisions of paragraph 1, the operator shall have a right of recourse:

- (a) if the nuclear incident results from a personal act or omission done with intent to cause damage, against the individual who has acted, or omitted to act, with such intent;
- (b) if the nuclear incident occurred as a consequence of any wreck-raising operation, against the person or persons who carried out such operation without the authority of the operator or of the State having licensed the sunken ship or of the State in whose waters the wreck is situated;
- (c) if recourse is expressly provided for by contract.

Section 3

1. The liability of the operator as regards one nuclear ship shall be limited to the equivalent in guilders of 1,500 million francs in respect of any one nuclear incident, notwithstanding that the nuclear incident may have resulted from any fault of privity of that operator; such limit shall include neither any interest nor costs awarded by the competent court in actions for compensation in pursuance of the present Act.

2. A franc, as referred to in paragraph 1 is a unit of account constituted by 65.5 milligrams of gold of millesimal fineness 900.

Section 4

The operator shall be required to have and maintain coverage for his liability in accordance with Section 5, 6 or 7 up to the amount referred to in paragraph 1 of Section 3.

Section 5

1. The operator of a nuclear ship flying the Netherlands flag shall be required to have and maintain insurance or other financial security, of such type and on such terms as specified by Our Minister of Finance, up to an amount to be fixed by General Administrative Order, which shall make due allowance for the opportunities open to the operator of obtaining such coverage. Other provisions concerning the aforesaid financial security may be made by such Order.

2. If, in the opinion of Our Minister of Finance, an operator as referred to in paragraph 1 cannot obtain adequate financial security as referred to in that paragraph, or none at all, or if such financial security can be obtained only for what Our Minister of Finance considers to be unreasonable premiums or payments, Our aforesaid Minister shall be authorized to enter into insurance contracts on behalf of the State as insurer, or to provide other guarantees on behalf of the State on such terms and for such premiums or payments as he shall determine.

3. Paragraphs 1 and 2 shall not apply to any ship operated by the State.

Section 6

1. In so far as the funds becoming available under Section 5 prove insufficient to compensate for the nuclear damage, the State shall make public funds available to the operator up to the amount referred to in paragraph 1 of Section 3.

2. In so far as the lack of financial security referred to in Section 5 is due to any fault on the part of the operator, the State shall have a right of recourse against the operator in respect of any public funds made available by the State by reason of such lack of financial security.

3. Any interest or costs as referred to in Section 3 payable by an operator as referred to in Section 5 shall be borne by that operator and by the State in proportion to the funds made available under Section 5 and paragraph 1 of the present Section respectively.

4. If and in so far as the State has made public funds available to the operator under paragraph 1 it shall have the operator's right of recourse referred to in paragraph 6 of Section 2. In the exercise of such right the State shall have precedence over the insurers or other persons who have provided financial security as referred to in paragraph 1 of Section 5.

Section 7

In the case of an operator of a nuclear ship flying a foreign flag, the coverage for his liability referred to in Section 4 shall, in the opinion of Our Minister of Finance, be satisfactory.

Section 8

Whenever both nuclear damage and damage other than nuclear damage have been caused by a nuclear incident or jointly by a nuclear incident and one or more other occurrences and the other damage cannot reasonably be separated from the nuclear damage, the entire damage shall, for the purposes of the present Act, be deemed to be nuclear damage caused exclusively by the nuclear incident. However, where damage is caused jointly by a nuclear incident covered by the present Act and an emission of ionizing radiation or an emission of ionizing radiation in combination with the toxic, explosive or other hazardous properties of a source of radiation not covered by this Act, the present Act shall not affect the liability, either as regards the victims or by way of recourse or contribution, of any person who may be held liable in connection with the emission of ionizing radiation or with the toxic, explosive or other hazardous properties of that source of radiation.

Section 9

1. The right to compensation under the present Act shall be extinguished if an action is not brought, or the right to compensation is not acknowledged, within ten years from the date of the nuclear incident.

2. Where nuclear damage is caused by nuclear fuel, or by radioactive products or waste which were stolen, lost, jettisoned, or abandoned, the period established under paragraph 1 shall be computed from the date of the nuclear incident causing the nuclear damage, but such period shall in no case exceed 20 years from the date of the theft, loss, jettison or abandonment.

3. Without prejudice to the period of extinction established in paragraph 1 or 2, a period of prescription of 3 years shall apply to an action for compensation for damage under the present Act, computed from the date on which the interested person or, if he has a legal representative, the latter, had knowledge, or can reasonably be deemed to have had knowledge, of the damage and of the operator liable. Section 2013 of the Civil Code shall apply analogously.

Section 10

If and in so far as, in respect of compensation for nuclear damage there are rights to benefits under Netherlands social security legislation, the right to compensation for that damage under the present Act shall accrue to those paying the benefits, it being understood that in the case of periodic benefits the capitalized value of the benefits payable shall be regarded as the damage.

Otherwise the provisions of the said legislation shall remain in force.

Section 11

1. Where nuclear damage engages the liability of more than one operator and the damage attributable to each operator is not reasonably separable, the operators involved shall be jointly and severally liable for such damage. However, the liability of any one operator shall not exceed the amount referred to in paragraph 1 of Section 3.

2. In the case of a nuclear incident where the nuclear damage arises out of or results from nuclear fuel or radioactive products or waste of more than one nuclear ship of the same operator, that operator shall be liable in respect of each ship up to the amount referred to in paragraph 1 of Section 3.

3. In case of joint and several liability, and subject to the provisions of paragraph 1:

- (a) Each operator shall have a right of contribution against the others in proportion to the fault attaching to each of them;

- (b) Where circumstances are such that the degree of fault cannot be apportioned, the total liability shall be borne in equal parts.

Section 12

No liability under this Act shall attach to an operator in respect of nuclear damage caused by a nuclear incident directly due to an act of war, hostilities, civil war or insurrection.

Section 13

The funds provided in pursuance of Section 4 shall be used exclusively for payment of compensation due under the present Act.

Section 14

1. The right to compensation for nuclear damage shall be exercised only against the operator liable in pursuance of the present Act.

2. A Netherlands national who has paid compensation for nuclear damage under the law of another State or under an international convention shall, up to the amount that he has paid, acquire by subrogation the rights that the person so compensated would have enjoyed under the present Act. However, no rights shall be so acquired by any person if and to the extent that the operator has a right of recourse or contribution against such person under the present Act.

3. For the purposes of paragraph 2, the term "Netherlands national" shall include any public or private body established in the Netherlands, whether corporate or not, and the State.

Section 15

Actions brought under this Act and applications made under paragraph 1 of Section 18 and paragraph 1 of Section 21 must, in the first instance, be instituted at the District Court (Arrondissementsrechtbank) at the Hague.

Section 16

1. The operator of a nuclear ship flying the Netherlands flag shall inform Our Minister of Finance forthwith:

- (a) of any nuclear incident that may have caused damage for which he is liable;

- (b) of any claim for the compensation of damage brought against him out of court in connection with a nuclear incident;
 - (c) of any claim for the compensation of damage brought against him in law in connection with a nuclear incident;
 - (d) of any compensation for damage paid by him in connection with a nuclear incident.
2. In so far as the State makes available public funds as referred to in paragraph 1 of Section 6 of this Act for the compensation of nuclear damage with respect to which any of the notifications referred to in paragraph 1 has not been made, the State shall have the right of recourse against the operator as regards the sum thus paid.

Section 17

1. Any operator of a nuclear ship flying the Netherlands flag shall admit and meet claims for compensation and make settlements concerning such claims only with the approval of Our Minister of Finance.
2. Acts contravening the provision of paragraph 1 of this Section shall be legally null and void. They shall be so pronounced by the competent Court ex officio.

Section 18

1. On application by any interested person the District Court may rule that the insurers and other persons providing the coverage referred to in Section 4 shall pay direct to the persons concerned the funds they have to make available in virtue of claims admitted or awarded. The Court may revoke such a ruling at any time.
2. The Court shall not decide on an application as referred to in paragraph 1 until the person making the application, Our Minister of Finance and the operator have been heard or summoned.
3. The Court shall give its ruling at a public session and the Clerk of the Court shall cause the ruling to be published in the Government Gazette. Any interested person may appeal to a higher Court against the ruling within fourteen days of its publication in the Government Gazette.
4. The Court of Appeal shall give its ruling at a public session and the Clerk of the Court of Appeal shall cause the ruling to be published in the Government Gazette. Any interested person may appeal to the Court of Cassation against the ruling within three weeks of its publication in the Government Gazette.
5. A ruling as referred to in the first sentence of paragraph 1 shall be enforceable forthwith. Even if it is quashed by the Court of Appeal or by the Court of Cassation, any payments made in accordance with the ruling before the ruling by which it is quashed has become final shall be valid and binding.

Section 19

1. Our Minister of Finance may order at any time that, on behalf of the operator of a nuclear ship flying the Netherlands flag, he shall exercise all the operator's rights and obligations, or such of the operator's rights and obligations, as shall be designated by the Order, as regards settlement of the nuclear damage, if necessary in deviation from any agreements concluded between the operator and the insurers or other persons who have provided financial security as referred to in paragraph 1 of Section 5.

2. An Order as referred to in paragraph 1 shall be published in the Government Gazette and may contain further rules concerning the submission of claims for the compensation of nuclear damage.

Section 20

1. If the aggregate of compensation for nuclear damage to be paid by the operator exceeds the amount referred to in paragraph 1 of Section 3, the claims for compensation shall be reduced proportionately.

2. As regards the contingencies to which paragraph 1 applies, rules concerning the manner of settling claims for compensation may be laid down by General Administrative Order.

Section 21

1. If the contingency referred to in Section 20 may reasonably be expected to occur and the exact amounts to be paid as compensation have not yet been fixed, any interested person may apply to the Court for an embargo upon payment by the operator of any compensation for nuclear damage. The Clerk of the Court shall notify the operator of such an application without delay and, in the contingency referred to in Section 18, he shall likewise without delay notify the insurers or other persons providing the coverage referred to in Section 4.

2. The operator and, in the contingency referred to in Section 18, the insurers or other persons providing the coverage referred to in Section 4, may not pay any compensation for nuclear damage from the date on which they submitted an application as referred to in paragraph 1, or knew of the submission of such an application, until the date on which a ruling concerning the application has become final.

3. If the Court holds that there are valid grounds for the application, it shall place an embargo upon payment by the operator and, where a ruling as referred to in the first sentence of paragraph 1 of Section 18 is in force, by the insurers or other persons providing the coverage referred to in Section 4. Paragraphs 2, 3 and 4 of Section 18 shall apply analogously to such a ruling or to a ruling to the effect that the Court has failed to find valid grounds for the application.

4. Acts contravening the provisions of paragraph 2 or a ruling as referred to in the first sentence of paragraph 3 of this Section

shall be legally null and void. They shall be so pronounced by the Court ex officio.

5. The Court may lift the embargo upon payment referred to in paragraph 3 ex officio or on application by an interested person.

Section 22

During the period that the embargo upon payment referred to in Section 21 is in force, the amount of any claims for compensation for damage admitted or awarded shall bear interest at a rate to be fixed by Our Minister of Finance.

Section 23

1. Where the operator of a nuclear ship flying the Netherlands flag is liable, Our Minister of Finance may grant to those concerned such advances as may be required.

2. Our Minister of Finance shall determine the sums to be advanced, taking into account the nature and extent of the nuclear damage suffered, the probable sum that the interested person will be able to claim and his private circumstances.

3. Any advance shall be deducted from the sum to be paid as compensation by the operator to the person concerned.

4. Notwithstanding the provisions of paragraphs 3 and 4 of Section 21, Our Minister of Finance may, during the time the embargo on payment is in force, require the insurers or other persons providing the coverage referred to in paragraph 1 of Section 5, to make available to him the funds referred to in paragraph 1 of Section 5, as and when sums for compensation for nuclear damage have been admitted or awarded, up to an amount equal to the advances granted by him.

Section 24

1. During the periods in which, pursuant to paragraphs 2 and 3 of Section 21, no payments may be made by the operator of a nuclear ship flying a foreign flag in compensation for nuclear damage, the Court may, on application by any interested person, impose upon the operator, the insurers or other persons providing the coverage referred to in Section 4, the obligation to grant such advances as may be necessary to the persons concerned. Paragraphs 2, 3 and 4 of Section 18 shall apply analogously to such an order and to any order dismissing the application.

2. Paragraphs 2 and 3 of Section 23 shall apply analogously.

Section 25

In cases in which the Brussels Convention of 25th May 1962 on the Liability of Operators of Nuclear Ships (Netherlands Treaty Series

No. 90, 1968) does not apply, no licence as referred to in Section 15 of the Nuclear Energy Act shall be granted to the operator of a nuclear ship, until such operator has undertaken explicitly by agreement with the State to compensate nuclear damage for which he is liable in pursuance of the regulations laid down in the present Act, without any limitations other than those specified in the said regulations.

Section 26

We reserve the right to conclude with States not parties to the Brussels Convention of 25th May 1962 on the Liability of Operators of Nuclear Ships agreements that may deviate from the provisions of the present Act with regard to liability in respect of nuclear warships and government nuclear ships used exclusively on public service, provided such States provide what We consider is at least equivalent security.

Section 27

The present Act shall apply to a nuclear ship under construction in the Netherlands from the date of its launching. Between the date of launching and that on which it is entitled to fly a flag, the ship shall be deemed to be operated by the owner and to be flying the Netherlands flag.

Section 28

1. The present Act shall apply to nuclear damage caused by a nuclear incident occurring in any part of the world and involving the nuclear fuel of, or radioactive products or waste produced in, a nuclear ship flying the Netherlands flag.

2. The present Act shall apply to nuclear damage caused by a nuclear incident involving the nuclear fuel of, or radioactive products or waste produced in, a nuclear ship flying a foreign flag if either the nuclear incident occurred on Netherlands territory or the nuclear damage was suffered there.

Section 29

1. In the event of nuclear damage involving the nuclear fuel of, or radioactive products or waste produced in, a nuclear ship the operation of which, at the time of the nuclear incident, was not licensed by any State, the owner of that ship shall, for the purposes of the present Act, be deemed to be an operator, it being understood that Section 3 shall not then apply.

2. In a case such as that referred to in paragraph 1, the State shall have a right of recourse against the owner of the nuclear ship in respect of the public funds made available in pursuance of Section 6.