

NUCLEAR LAW

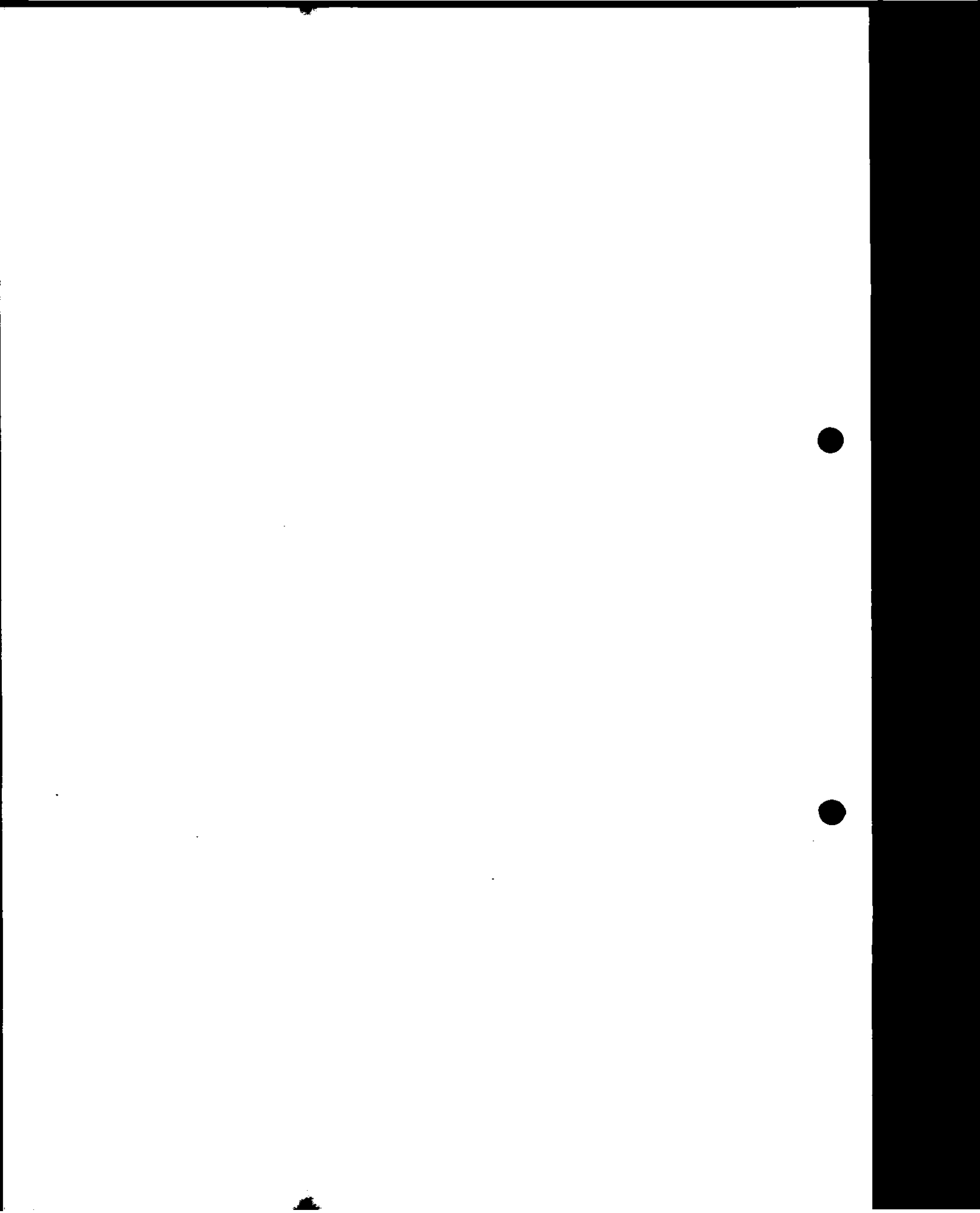
Bulletin

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S W I T Z E R L A N D

BILL ON

THIRD PARTY LIABILITY IN THE NUCLEAR FIELD (LRCN)



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THIRD PARTY LIABILITY IN THE NUCLEAR FIELD (LRCN)*

The Federal Assembly of the Swiss Confederation,
having regard to Articles 24^{quinqüies}, 64 and 64^{bis} of the Constitution ;
having regard to the Message of the Federal Council of the 10th December,
1979,

enacts :

CHAPTER I

General provisions

Section 1 Définitions

1. By nuclear energy is meant any form of energy released during nuclear processes.
2. Nuclear fuels shall be deemed to be fissile materials including uranium in the form of metal, alloy or chemical compounds, plutonium in the form of metal, alloy or chemical compounds and any other fissile material designated as such by the Federal Council.
3. Radioactive products or waste shall be deemed to be radioactive materials produced, or having become radioactive, through exposure to radiation resulting from the production, use, storage or reprocessing of nuclear fuels ; exceptions, however, are radioisotopes which are used or intended to be used, outside a nuclear installation, for industrial, commercial, agricultural, medical or scientific purposes.
4. Nuclear substances shall be deemed to be nuclear fuels, and radioactive products and wastes.

* Unofficial translation by the Secretariat.

5. Nuclear installations shall be deemed to be installations, used for producing nuclear energy or for producing, using, storing or reprocessing nuclear substances.

6. The operator of a nuclear installation shall be deemed to be the person who builds such an installation on his own account, operates or controls it in whatever capacity, or a person who, without the consent of the responsible authorities, has given up controlling it.

7. Damage of nuclear origin exists when radioactive, toxic or explosive properties or any other dangerous properties of nuclear substances bring about the death or impair the health of persons or cause material damage.

Section 2 Powers of the Federal Council

1. The Federal Council may define other terms used in this Act.
2. The Federal Council may declare that the provisions of this Act do not apply to low-radioactivity nuclear substances.

CHAPTER II

Third Party Liability

Section 3 Principle

1. The operator of a nuclear installation shall be responsible, without limit, for third party liability in respect of damage of nuclear origin caused by nuclear substances in his installation.

2. Similarly, the operator of a nuclear installation shall be responsible for third party liability in respect of damage of nuclear origin caused by nuclear substances coming from his installation and which, at the moment when the damage was caused, had not yet been taken over by the operator of another nuclear installation. Nuclear substances shall be deemed to have been taken over at the moment when they cross the boundary around the other nuclear installations or a boundary fixed by contract outside Swiss territory.

3. When the operator of a nuclear installation receives nuclear substances from abroad, that operator shall bear third party liability for damage of nuclear origin taking place in Switzerland caused by these materials during their carriage to his installation. His right of recourse against the foreign shipper is not affected.

4. If the installation does not belong to the operator, the owner shall bear third party liability jointly with the operator.

5. During the carriage of nuclear substances in transit through Switzerland, the holder of the transport licence shall bear third party liability in the event of damage of nuclear origin caused by such substances. If he has no domicile in Switzerland he shall, by written statement, submit himself to the jurisdiction of the Swiss courts and elect domicile in Switzerland with regard to any cases based on this Act.

6. Persons other than those listed in paragraphs 1 to 5 above shall not bear third party liability for damage of nuclear origin. Persons bearing third party liability by virtue of international conventions shall enjoy a right of recourse against the person so liable under this Act.

Section 4 Exoneration

The operator of a nuclear installation or the holder of a transport licence shall be released from his third party liability only if he proves that the injured party has caused the damage intentionally or by gross negligence.

Section 5 Recourse of the person bearing third party liability

The person bearing third party liability under Section 3 shall have right of recourse only against such persons :

- a) who have caused the incident intentionally or by gross negligence ;
- b) who have stolen or received the nuclear substances causing the accident ;
- c) who have granted him right of recourse by contract, although such a clause cannot be invoked against the employee of the person bearing third party liability unless the former causes the damage intentionally or by gross negligence.

Section 6 Damages, including damages for moral prejudice

1. The nature and amount of damages including those for moral prejudice shall be established in accordance with the general principles of the law on liability concerning illicit acts unless otherwise provided by this Act. Section 44, paragraph 2, of the Code of Liabilities shall not apply.

2. In general, compensation shall be granted in the form of regular payments.

3. Where the victim of the damage is in receipt of an exceptionally high income the judge may, taking all the circumstances into account, reduce the amount of compensation on a fair basis.

Section 7 Agreements

1. All agreements which exclude or restrict the third party liability arising out of this Act shall be deemed to be null and void.

2. Any agreements specifying manifestly inadequate compensation may be challenged within three years of the date of their conclusion.

Section 8 Insurance against incidents

1. Injured parties insured with the National Insurance Fund against accident risks shall retain their rights under this Act. Section 129 of the Federal Act on Sickness and Accident Insurance is not affected.

2. Payments to the injured party under a non-compulsory insurance policy, the premiums for which have been wholly or partly paid by the operator or the holder of a transport licence alleged to be liable shall be deducted from the amount of the damages payable in proportion to the share of premiums paid by him save where otherwise provided by the contract of insurance.

Section 9 Limitation and extinction of claims

1. Proceedings under this Act shall be statute barred three years from the date on which the injured party became aware of the damage and of the identity of the person assuming third party liability or cover. The right to take action shall be extinguished, with the exception of actions relating to deferred damage within the meaning of Section 12, if no proceedings are brought within a period of thirty years following the incident. When the damage is due to prolonged effects, the above periods shall begin from the moment when these effects cease.

2. As regards the right of appeal the three year period shall begin from the day on which the person enjoying that right becomes aware of the amount of the payments that he has to make.

3. Where the state of health of the injured party deteriorates after the judgment or the signing of the settlement, or if new facts or evidence come to light, application may be made for revision of the judgment or amendment of the settlement within three years of the date on which the injured party became aware of the deterioration in his state of health but in no case later than thirty years after the incident.

4. An interruption of the period of limitation for the person alleged to be responsible shall be applied equally to the insurer and the Confederation.

CHAPTER III

Cover

Part 1 Private Insurance

Section 10

1. A person bearing liability under the provisions of this Act shall, in order to cover the insured risks of his third party liability, take out with an insurance company authorised to operate in Switzerland, insurance of at least Frs. 200 million per nuclear installation, plus at least Frs. 20 million for interest payable and procedural costs relating to the payments. For the transit of nuclear materials through Switzerland, the amount insured for each transport operation shall be at least Frs. 50 million plus at least Frs. 5 million for interest payable and procedural costs.

2. Where the insurance marked offers higher cover on acceptable terms, the Federal Council may, by Order, increase these minimal amounts.

3. The Federal Council shall, by Order, define the risks that may be excluded from private third party insurance cover.

Part 2 Cover by the Confederation

Section 11 Insurance

The Confederation shall cover the person bearing third party liability for a nuclear incident up to an amount of Frs. 1 billion per nuclear installation or transport operation, plus Frs. 100 million for interest payable and procedural costs, to the extent that the damage is not covered by private insurance within the meaning of Section 10, paragraph 1.

Section 12 Deferred damage

Up to the figure of the amount specified by Section 11, the Confederation shall also cover nuclear damage reparation for which cannot be demanded from the person bearing third party liability because the thirty year period (Section 9, paragraph 1) has run out.

Section 13 Other cases

1. Up to the figure of the amount specified by Section 11 the Confederation shall also cover nuclear damage :

- a) if it is impossible to establish who bears third party liability ;
- b) if the damage concerned is not covered or if the insurer, through insolvency, is not in a position to honour the cover and if the person bearing third party liability is also incapable of doing so ;
- c) if the incident has taken place in another country and if the party injured in Switzerland is unable to secure compensation in compliance with this Act.

2. When the Confederation makes payment under paragraph 1 above, it shall enjoy a right of recourse against the person bearing third party liability. It may exercise any right of action open to the person held liable.

Section 14 Contributions by persons bearing third party liability

1. For the purpose of performing the obligations imposed on it by Sections 11 and 12, the Confederation shall collect contributions from operators of nuclear power stations and holders of transport licences the amount of which shall be calculated in such a way as to comply as far as possible with the principle of covering costs but which shall not exceed three times the private third party liability insurance premium calculated with the object of providing cover up to a figure of Frs. 200 million.

2. Within these limits, the Federal Council shall establish the amount of the contributions.

3. The administrative service specified by the Federal Council shall fix and collect contributions. Its decisions may be challenged in the Federal Court by way of proceedings under administrative law.

Section 15 Nuclear damage fund

The Confederation shall set up a fund into which shall be paid the contributions collected under Section 14 and the interest they earn.

Part 3 Other provisions concerning insurance

Section 16 Exemptions from the obligation to be insured

1. The Federal Council may exempt the person bearing third party liability from the obligation to be insured with a private insurer if that person supplies equivalent guarantees for the injured parties in another form.
2. The Confederation is not subject to the obligation to be insured for the nuclear installations of which it is the owner.

Section 17 Restoration of full cover

1. If the insurance company or the Confederation acting as insurer makes payments or constitutes reserves following an incident for which damages have to be paid, the cover is reduced by that amount. When the payments or reserves amount to one-tenth of the cover, the insurer shall inform the insurance policy-holder and the responsible Federal administrative service.
2. In that case, the insurance policy-holder shall take out additional insurance in order to reconstitute the full initial cover. This additional insurance, however, will cover only incidents occurring after its entry into effect. In cases of doubt the responsible authority shall decide as to the obligation on the insurance policy-holder to increase his cover in the light of the amount of reserves built up.
3. If an amount has been reserved to settle cases arising before the entry into effect of the additional insurance and has not been drawn upon, it cannot be used to cover damage occurring after the entry into effect of the additional insurance.

Section 18 Direct action, exceptions, rights of action

1. The injured party may bring direct action against the insurer and against the Confederation acting as insurer within the limits of the amount covered by the insurance.
2. Exceptions contained in the contract of insurance or in the Federal Act on contracts of insurance shall not be invoked against the injured party.

Section 19 Right of recourse of insurers

1. The insurer and the Confederation have a right of recourse against the insurance policy-holder to the extent that they are empowered to refuse or to reduce their payments under the contract of insurance or the Federal Act on contracts of insurance. They can enforce their right of recourse only to the extent that they will not in so doing prejudice the interests of the injured parties.

2. The insurance company or the Confederation acting as insurer shall be entitled to exercise the rights of recourse of the person liable only to the extent that this does not harm the interests of the injured parties.

Section 20 Suspension and cancellation of the insurance

The insurer shall inform the competent authority of the suspension or cancellation of the insurance. Such suspension or cancellation shall become effective only one year after receipt of the notification by the insurer, save where such insurance is replaced by another beforehand.

CHAPTER IV

Procedure

● Section 21 Conservation of evidence

1. After an incident of a certain gravity, the Federal Council shall order an enquiry. It shall, by published notice, invite all persons who may have been exposed to radiation or may have suffered material damage to make themselves known to the body designated by the Federal Council forthwith but at the latest within the three months following the publishing of the notice.

2. The published notice shall state that failure to comply with the obligation to make oneself known may subsequently make it more difficult to establish proof that there is a connection between any damage or injury and the incident that has occurred.

Section 22 Forum

1. If the incident is caused by a nuclear installation, the highest civil court in the Canton where the nuclear installation is situated has sole jurisdiction with regard to proceedings based on this Act. That court shall judge as sole Cantonal jurisdiction.

● 2. If the incident is caused during carriage of nuclear materials, proceedings shall be brought before the highest civil court in the Canton where the event causing the damage took place. When the place of the incident cannot be determined legal proceedings shall be brought :

- a) before the civil court of the Canton where the nuclear installation is situated if the operator of a nuclear installation bears third party liability ;
- b) before the highest civil court in the Canton where the holder of the licence is resident or has elected domicile if the holder of a transport licence is alleged to be liable.

3. An action under Sections 12 and 13 brought against the Confederation shall be brought before the highest court of the Berne Canton unless one of the fora specified in paragraphs 1 or 2 above exists.

4. If a large number of cases is to be expected, the Cantonal parliament may set up a special court, the number of whose members shall be in proportion to the circumstances.

Section 23 Appeals

In accordance with the provisions of the Federal Act on the Organisation of the Courts, there can be no appeal to the Federal Court against the judgment of the Cantonal court.

Section 24 Taking of evidence

1. The Cantonal court shall establish the evidence ex-officio and assess that evidence in its own discretion. It shall not be bound by the submissions of the parties. If it wishes to go further in its judgment than the submissions of the plaintiff, it shall give the parties an opportunity to state their views on the subject beforehand.

2. If a complaint is lodged against the person bearing third party liability, the court shall make provision to enable the insurer or the Confederation to defend its interests in the proceedings.

3. The Federal Court shall not be bound by the findings of fact of the lower court.

Section 25 Advances

If there are grounds for anticipating that the legal proceedings will last a certain time, the court shall make advances which shall in no way prejudice the final ruling.

CHAPTER V

Major incidents

Section 26 Principles

1. Where it appears that the financial resources, available to the person bearing third party liability, of the private insurer and the Confederation acting as insurer will not be sufficient to meet all claims for compensation (major incidents), the Federal Assembly shall make compensation regulations by adopting a Federal Order of general application, not subject to referendum. These regulations may cancel the right of recourse of the Swiss national accident insurance fund and that of the private insurers with regard to the person alleged to be liable. If necessary, the Confederation may pay additional contributions for damages that are not covered.

2. The regulations shall lay down the general principles with regard to compensation for the injured parties in such a way as to provide for the equitable distribution of the available funds. They may, if necessary, derogate from the provisions of this Act.

3. The Federal Assembly may require a special, independent authority to be responsible for the implementation of the compensation regulations. The decisions of that authority may be challenged in the Federal Court.

4. The Federal Council shall take any provisional measures that may be necessary.

Section 27 Modification of insurance payments, distribution premiums

1. Where a major incident results in a "state of distress" the Federal Council may issue regulations in relation to private insurance :

- a) on the modification of payments by the insurer ;
- b) on the levying of distribution premiums on policy holders ;
- c) on the deduction of such premiums from insurance payments.

2. The power to make such regulations shall not extend to third party liability insurance required to be taken out by virtue of Sections 10, 11 and 17. The Federal Council may take similar measures in relation to social insurance and insurance under public law.

CHAPTER VI

Penal provisions

Section 28 Failure to fulfil an obligation to be insured or to constitute reserves

1. Any person who deliberately fails to fulfil his obligations with regard to insurance or constituting reserves shall be punished by imprisonment and fine. The fine shall amount to at least twice the annual private insurance premium.

2. If the guilty party has acted through negligence, he shall be punished by imprisonment or a fine of up to Frs. 20,000.

Section 29 Offenders

Any person who, intentionally or by negligence, shall offend against this Act, its implementation provisions or a decision by the authority based on these texts, shall be punished by imprisonment or a fine of up to Frs. 20,000.

Section 30 Jurisdiction

The Federal Act on Administrative Penal Law shall be applicable. The Federal Energy Office shall be the competent administrative authority for implementation and judgment.

CHAPTER VII

Reciprocity

Section 31

In cases of damage occurring abroad, affecting persons domiciled abroad and for which the operator of a nuclear installation located in Switzerland or the holder of a transport licence granted by Switzerland bears third party liability, compensation by virtue of this Act is due to the extent that the State concerned has provision for at least equivalent treatment with regard to Switzerland. The maximum cover shall not in this case be lower than Frs. 50 million even if the State concerned provides a lower limit for third party liability.

CHAPTER VIII

Concluding provisions

Section 32 Implementation

The Federal Council shall be responsible for implementing this Act. To that end it shall take all necessary measures.

Section 33 Amendment of existing legislation

1. The Federal Act on the Organisation of Justice shall be amended as follows :

Section 41.b

The Federal Court is the only jurisdiction competent for :

- b) actions at civil law by individuals or associations against the Confederation where the amount of the claim is at least Frs. 8,000, save for actions brought under the Federal Acts of 28th March, 1905 on the Third Party Liability of Railway, Steamship and Postal Undertakings, the Act on Road Traffic, and the Federal Act of ... on Third Party Liability in the Nuclear Field and all actions against the Federal railways ;

Section 45.c (new)

Appeals are receivable, regardless of the value of the claim, in civil cases relating to a right of a pecuniary nature :

- c) in disputes relating to nuclear incidents (Act of ... on Third Party Liability in the Nuclear Field.

Section 117.abis (new)

abis. a civil law action by virtue of Section 45.c (new) is allowed ;

2. The Federal Act of 23rd December, 1959 on the Peaceful Uses of Atomic Energy and Radiation Protection shall be amended as follows :

Sections 12 to 28

Repealed

Section 35, first paragraph

1. Any person who, without a licence, carries out acts requiring a licence or who does not comply with the conditions and obligations attached to a licence, shall, unless the elements constituting a more serious offence are present, be liable to a fine of up to Frs. 20,000. An attempt to commit, and complicity in, an offence are punishable.

Section 34 Transitional provisions

1. The new legislation shall apply to damage occurring before the entry into force of this Act and discovered after its entry into force.

2. The fund for deferred atomic damage (Section 19 of the Act of 23rd December, 1959) shall be liquidated. The capital in it shall be transferred to the fund for nuclear damage set up by virtue of Section 15 of this Act.

Section 35 Referendum and entry into force

1. This Act is subject to an optional referendum.

2. The date for entry into force of this Act shall be fixed by the Federal Council.