

NUCLEAR LAW

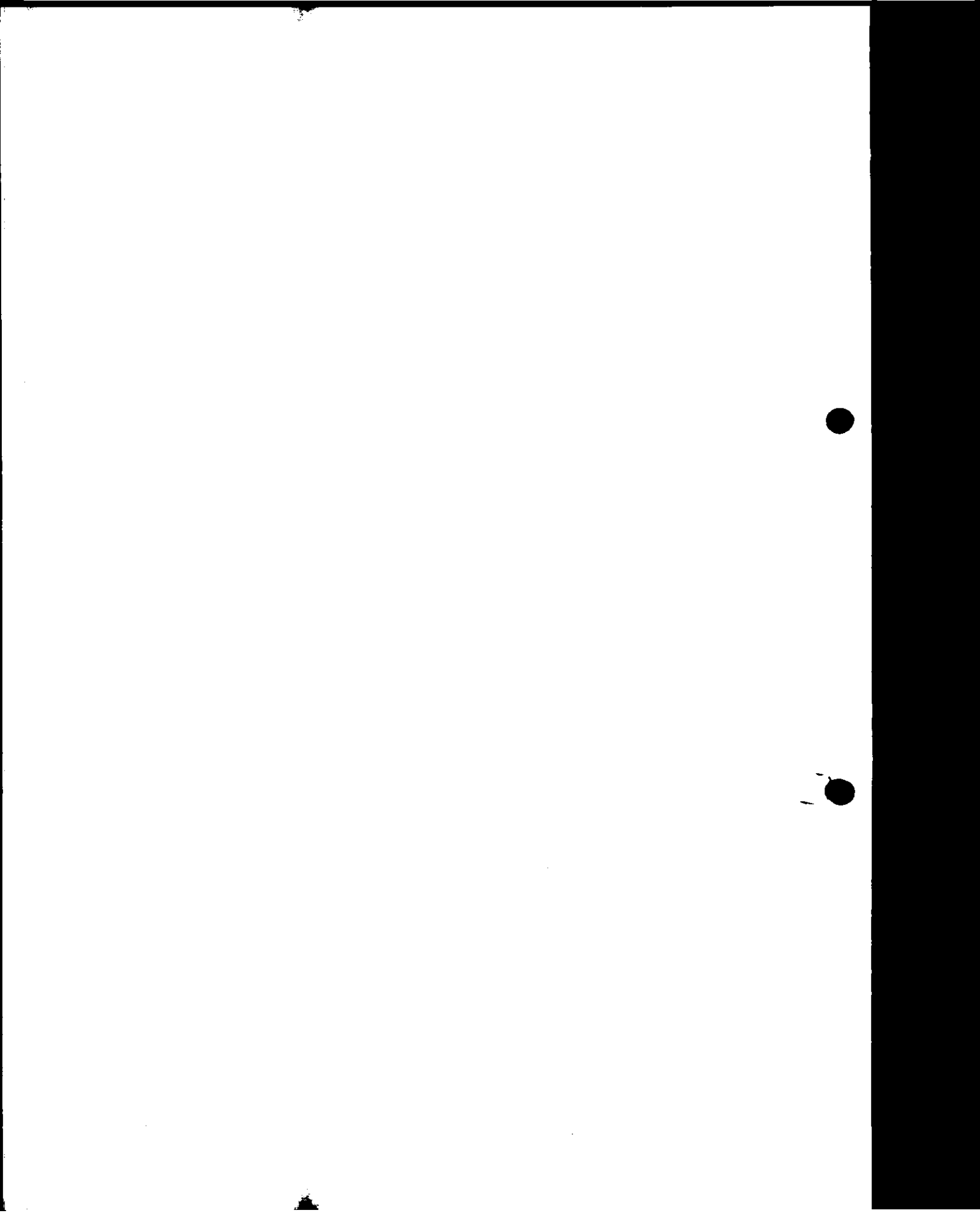
Bulletin

S U P P L E M E N T T O N ° 32

S W I T Z E R L A N D

ACT OF 18TH MARCH 1983
ON NUCLEAR THIRD PARTY LIABILITY

December 1983



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ON NUCLEAR THIRD PARTY LIABILITY*

The Federal Assembly of the Swiss Confederation,
having regard to Article 24^{quingies} of the Federal Constitution;
having regard to the Message of the Federal Council dated 10th December 1979,
enacts:

C H A P T E R I

SCOPE AND DEFINITIONS

Section 1 Scope

1. This Act governs third party liability for nuclear damage caused by nuclear installations or by the carriage of nuclear materials, and the cover thereof.
2. It shall not apply to damage caused by radioisotopes used or intended to be used outside a nuclear installation for industrial, commercial, agricultural, medical or scientific purposes.
3. The Federal Council may exempt nuclear materials of low radioactivity from the application of this Act.

Section 2 Definitions

1. "Nuclear damage" shall mean:
 - a) injury, loss or damage caused by the radioactive, toxic, explosive or other hazardous properties of nuclear materials;
 - b) loss following from measures ordered or recommended by the authorities to avert or mitigate an immediately threatening nuclear danger, excluding loss of profits.

*Unofficial translation edited by the Secretariat.

2. "Nuclear substances" shall mean nuclear fuel, radioactive products and waste.
3. "Nuclear fuel" shall mean fissile materials in the form of uranium or plutonium metal, alloy or chemical compound and any other fissile material designated by the Federal Council.
4. "Radioactive products and waste" shall mean radioactive materials produced, or materials having become radioactive, by exposure to radiation resulting from the production, use, storage, reprocessing or carriage of nuclear fuels.
5. "Nuclear installations" shall mean installations for the production of nuclear energy or for the production, use, storage or reprocessing of nuclear materials.
6. "Nuclear energy" shall mean any form of energy released in any process of nuclear transmutation.
7. "Operator of a nuclear installation" shall mean any person who builds or possesses a nuclear installation or has relinquished possession thereof without the agreement of the competent authority.

C H A P T E R I I

T H I R D P A R T Y L I A B I L I T Y

Section 3 Principle

1. The operator of a nuclear installation shall be liable without limit for nuclear damage caused by nuclear substances in his installation.
2. He shall also be liable for nuclear damage 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 of the other nuclear installation or a boundary fixed by contract outside Swiss territory.
3. Where the operator of a nuclear installation receives nuclear substances from abroad, he shall be liable for nuclear damage in Switzerland caused by those substances in the course of carriage to his installation. Any right of recourse against the foreign shipper shall not be affected hereby.
4. If the installation does not belong to the operator, the owner shall be jointly liable with the operator.
5. If nuclear substances cause nuclear damage while in transit through Switzerland, the holder of the transport licence shall be liable. If he has no domicile in Switzerland he shall by means of a declaration in writing submit himself to the jurisdiction of the Swiss courts and elect a domicile in Switzerland with regard to any claims under this Act.
6. Persons other than those named in paragraphs 1 to 5 above shall not be liable towards injured parties for nuclear damage. Persons liable under international Conventions shall have a right of recourse against the person liable under this Act.

Section 4 Costs of measures taken by the authorities

The costs of measures taken by the competent authorities to avert or mitigate any imminent nuclear hazard may be charged to the operator of the nuclear installation or the holder of the transport licence.

Section 5 Exoneration

1. The operator of a nuclear installation or the holder of a transport licence shall be relieved of liability if he proves that the injured party caused the damage intentionally.
2. He may be totally or partially relieved of liability if he proves that the injured party caused the damage by gross negligence.

Section 6 Recourse of the person liable

The person liable by virtue of Section 3 shall have the right of recourse only against persons:

- a) who have caused the damage intentionally;
- b) who have stolen or unlawfully received the nuclear substances from which the damage arose;
- c) who have granted him such a right by contract; the person liable can only invoke such a right against an employee if the latter has caused the damage intentionally.

Section 7 Damages, solatium

1. The nature and extent of damages and the granting of a solatium shall be governed by the principles of the Code of Obligations relating to liability in tort. Section 44 paragraph 2 of the Code of Obligations shall not apply.
2. Where the victim of the damage is in receipt of an unusually high income, the Court may, taking all the circumstances into account, reduce compensation on a fair basis.

Section 8 Agreements

1. Agreements excluding or restricting liability under this Act shall be null and void.
2. Agreements specifying manifestly inadequate compensation may be challenged within three years of the date of their conclusion.

Section 9 Accident insurance

1. Injured parties who are insured under the Accident Insurance Act shall retain their rights under that Act, subject to the provisions of Section 44 of the said Act. Insurers shall be entitled to the right of recourse in accordance with Sections 41 to 44 thereof.

2. Benefits paid to an injured party under a non-compulsory accident insurance the premiums for which have been paid in whole or in part by the operator or the holder of the transport licence shall be deducted from the amount of compensation to be paid by the latter in proportion to his share in the premium payment, unless otherwise provided by the contract of insurance.

Section 10 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 liable or responsible for cover. The right to take action shall be extinguished, with the exception of actions relating to deferred damage (Section 13), if no proceedings are brought within a period of thirty years following the occurrence having caused the damage; if the damage is due to prolonged effects, such period shall begin from the moment when these effects cease.

2. With respect to the right of recourse the three-year period shall begin from the day on which the person enjoying such a 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 thereof, but in no case later than thirty years from the date of the occurrence having caused the damage.

4. An interruption of the period of limitation effective against the person alleged to be liable, against an insurer or against the Confederation shall be equally valid against the other two parties.

C H A P T E R I I I

COVER

PART 1: PRIVATE INSURER

Section 11

1. Any person liable under this Act shall, in order to cover the insurable risk, take out insurance with an insurer authorised to operate in Switzerland for at least Sw.Frs 300 million per nuclear installation, plus at least Sw.Frs 30 million for interest payable and procedural costs in proportion to the insurance payments. For each transit of nuclear substances through Switzerland the amount to be insured shall be at least Sw.Frs 50 million plus at least Sw.Frs 5 million for interest payable and procedural costs.

2. Where the insurance market offers higher cover on acceptable terms, the Federal Council shall increase these minimum amounts.

3. The Federal Council shall define the risks that private insurers may exclude from cover irrespective of injured parties.

PART 2: CONFEDERATION

Section 12

The Confederation shall cover the person liable for nuclear damage up to a total of Sw.Frs 1000 million per nuclear installation or transport operation, plus Sw.Frs 100 million for interest payable and procedural costs, in so far as such damage exceeds the cover granted by private insurance or is excluded therefrom (Section 11 paragraph 3).

Section 13 Deferred damage

The Confederation shall cover, up to the amount specified in Section 12, nuclear damage for which compensation can no longer be claimed from the person liable because the thirty-year extinction period has run out (Section 10 paragraph 1).

Section 14 Contributions by the persons liable

1. For the purpose of covering its obligations under Sections 12 and 13 the Confederation shall levy contributions from the operators of nuclear installations and the holders of transport licences. Such contributions shall be calculated so as to comply as far as possible with the principle of covering costs.
2. The Federal Council shall determine the amount of the contributions.
3. The authority designated by the Federal Council shall calculate and levy the 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 establish a fund into which shall be paid the contributions collected under Section 14 as well as the interest they earn.

Section 16 Special cases

1. In addition, the Confederation shall, in so far as the injured party has not caused the damage intentionally, cover nuclear damage, out of general funds and up to the amount specified in Section 12:
 - a) where the person liable cannot be identified;
 - b) where the damage is caused by an uninsured nuclear installation or an uninsured transport operation;
 - c) where the insurer cannot cover the damage because of insolvency and the person liable is also unable to do so;
 - d) where the person who has suffered nuclear damage in Switzerland as a result of an occurrence abroad cannot obtain compensation equivalent to that available under this Act in the country concerned.

2. The Confederation may reduce or refuse payment where the injured party has caused the damage by gross negligence.

3. Where the Confederation makes a payment in accordance with paragraph 1, it may take recourse against the person liable. It may also exercise any right of recourse open to the latter.

PART 3: OTHER PROVISIONS ON INSURANCE

Section 17 Exemptions from compulsory insurance

1. The Federal Council may exempt the person liable from the obligation to take out private insurance if he offers equivalent security for the injured parties by other means.

2. The Confederation is not subject to compulsory insurance for nuclear installations which it operates.

Section 18 Reinstatement of full cover

1. Where the private insurer or the Confederation make payments or set up reserves for an occurrence having caused damage, cover is reduced by that amount. Where the payments or reserves amount to one-tenth of the cover, the insurer shall notify the policy-holder and the competent Federal authority.

2. In that case, the policy-holder shall take out additional insurance to reinstate the full initial cover. This additional insurance shall, however, only cover damage caused after its entry into effect. In case of doubt the competent authority shall decide as to the obligation of the policy-holder to increase his cover, taking into account the amounts reserved.

3. An amount reserved for settlement of damage caused before the entry into effect of the additional insurance but not required therefor shall not be used to cover damage caused after the entry into effect of the additional insurance.

Section 19 Direct action, exceptions

1. The injured party may bring direct action against the insurer and the Confederation within the limits of the amount covered by insurance.

2. Exceptions under the contract of insurance or under the Federal Act on contracts of insurance may not be invoked against the injured party.

Section 20 Right of recourse of insurers

1. The private insurer and the Confederation shall have a right of recourse against the policy-holder or the insured party to the extent that they are entitled to refuse or reduce payment by virtue of the contract of insurance or of the Federal Act on contracts of insurance. They shall only avail themselves of such rights of recourse in so far as the interests of the injured parties are not prejudiced thereby.

2. The private insurer and the Confederation shall be entitled to exercise the rights of recourse of the person liable in so far as the interests of the injured parties are not prejudiced thereby.

Section 21 Suspension and termination of the insurance

The insurer shall inform the competent authority of the suspension and termination of the insurance. Unless the insurance is replaced by another beforehand, such suspension and termination shall be effective only six months from the date of receipt of such notification.

C H A P T E R IV

PROCEDURE

Section 22 Conservation of evidence

1. After the occurrence of damage of a serious nature, the Federal Council shall order an enquiry into the circumstances. It shall, by published notice, require all persons who consider they have suffered nuclear damage to make themselves known to a body designated by the Federal Council within three months of the publication of the notice, with the mention of the date and place of occurrence of the damage.

2. The notice shall specify that failure to observe the period prescribed will not lead to loss of possible rights to compensation, but may make it more difficult to establish proof of a causal link between the damage and the occurrence.

Section 23 Sole Cantonal instance

The Cantons shall designate a court which shall have sole jurisdiction for the whole Canton for claims brought with respect to nuclear damage.

Section 24 Forum

1. If damage is caused by a nuclear installation, the court of the Canton in which the nuclear installation is situated shall have jurisdiction.

2. If damage is caused during the carriage of nuclear substances, jurisdiction shall lie with the court of the Canton in which the occurrence causing the damage took place. If the place of the occurrence cannot be determined, the competent court shall be:

- a) where the operator of a nuclear installation is liable, the court of the Canton in which the nuclear installation is situated;
- b) where the holder of a transport licence is liable, the court of the Canton in which the holder of the transport licence resides or has elected domicile.

3. Actions against the Confederation under Sections 13 and 16 shall be brought before the highest court of the Canton of Bern, unless one of the fora specified in paragraphs 1 or 2 applies.

Section 25 Appeals

In accordance with the provisions of the Federal Act on the Organisation of the Courts, an appeal against a judgment of the Cantonal Court may be brought before the Federal Court.

Section 26 Principles of procedure

1. The Cantonal Court shall *ex officio* determine the facts relevant to the judgment. It shall establish the necessary evidence and shall assess that evidence in its own discretion. It shall not be bound by the submissions of the parties. If it intends to go beyond the submissions of the plaintiff in its judgment, it shall give the parties an opportunity to state their views on the subject beforehand.

2. If a claim is brought against a person liable, against a private insurer or against the Confederation, the Court shall also give the other two parties an opportunity to defend their interests in the proceedings.

Section 27 Determination of Court costs and parties' costs

In determining Court costs and parties' costs the Court may take into consideration the financial circumstances of the party liable therefor.

Section 28 Provisional payments

If there are grounds for anticipating that the legal proceedings will last a considerable time, the Court may award provisional payments on account without prejudice to its final judgment.

CHAPTER V

MAJOR OCCURRENCES

Section 29 Principles

1. If there are grounds for anticipating that the financial resources of the person liable, the private insurer and the Confederation, available for covering the damage, will not be sufficient to satisfy all claims (major occurrence), the Federal Assembly shall establish an indemnity scheme by means of a Federal Order of general application, not subject to referendum. This Order may cancel the right of recourse against the person liable of all public and private insurers and sickness insurance funds, subject to the provisions of Section 20. If necessary, the Confederation may pay additional contributions in respect of damage not otherwise covered.

2. The Order shall determine the general principles for compensation of the injured parties in order to ensure the equitable distribution of all available funds. In so doing it may derogate from the provisions of this Act.

3. The Federal Assembly may entrust a special independent body with the implementation of the indemnity scheme. Appeals to the Federal Court against decisions of this body shall be permissible.

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

Section 30 Modification of insurance premiums, retrospective premiums

1. Where a state of emergency is created by a major occurrence the Federal Council is empowered to issue regulations relating to private insurance on:

- a) the modification of the insurers' liability;
- b) the levying of retrospective premiums on policy-holders;
- c) the deduction of such retrospective premiums from insurance payments.

2. This power shall not extend to the insurance for third party liability required to be taken out by virtue of Sections 11, 12 and 18. The Federal Council may take corresponding measures in relation to social insurance and third party liability insurance.

C H A P T E R VI

PENAL PROVISIONS

Section 31 Failure to fulfil an obligation to obtain insurance or financial security

1. Any person who deliberately fails to fulfil his obligation to obtain insurance or financial security shall be punishable by imprisonment and by a fine not exceeding Sw.Frs 100,000.

2. If the guilty party has so failed through negligence, he shall be punishable by imprisonment for up to one year or by a fine of up to Sw.Frs 20,000.

Section 32 Offences

Any person who intentionally or by negligence fails to comply with any provision of this Act, or of any regulations made thereunder, or with any decision by any authority made in accordance therewith, shall be punishable by imprisonment or by a fine of up to Sw.Frs 20,000.

Section 33 Jurisdiction

The Federal Act on Administrative Penal Law shall be applicable. The Federal Energy Office shall be the competent prosecuting and judging authority.

C H A P T E R VII

RECIPROCITY

Section 34

In respect of nuclear damage suffered abroad by persons resident abroad and for which the operator of a nuclear installation in Switzerland or the holder of a transport licence issued by Switzerland is responsible, compensation is due under this Act to the extent that the foreign State concerned has made provision for at least equivalent treatment with regard to Switzerland. The maximum cover shall not in this case be lower than Sw.Frs 50 million, even if the foreign State concerned provides for a lower limit for third party liability.

C H A P T E R VIII

CONCLUDING PROVISIONS

Section 35 Implementation

The Federal Council shall implement this Act.

Section 36 Amendment and repeal of existing legislation

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

Section 41.b

The Federal Court is the only jurisdiction competent for:

- b. civil actions by private persons or corporations against the Confederation where the amount at issue is at least Sw.Frs 8,000; save for actions under the Federal Act of 28th March 1905 on liability of railway and steamship undertakings and the Post Office, under the Federal Act on Road Traffic and under the Federal Act on Nuclear Third Party Liability of 18th March 1983 and all actions against the Federal Railways.

Section 45.c

Appeals are receivable, regardless of the amount at issue, in civil actions relating to a right of a pecuniary nature:

- c. in disputes relating to liability for nuclear damage (Act on Nuclear Third Party Liability of 18th March 1983).

Section 117.a^{bis}

1. An action under administrative law is not receivable where:

a^{bis} a right of appeal under civil law by virtue of Section 45.c is allowed.

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

Sections 12 to 28

Repealed

Section 35, first paragraph

1. Any person who intentionally or negligently infringes this Act or the provisions for its execution, and in particular any person who undertakes any action for which a licence is required without such licence or who fails to observe conditions or obligations attached to the issue of a licence, shall, provided that his conduct does not also constitute any more serious offence, be liable to a fine not exceeding Sw.Frs 20,000. An attempt to commit and complicity in, an offence shall also be punishable.

Section 37 Transitional provisions

1. In respect of nuclear damage caused before entry into force of this Act and discovered only after such entry into force, the Confederation shall in place of the person liable indemnify the injured party in accordance with the provisions of this Act to the extent that such person was not liable under the previous Act.

2. The assets of the Delayed Atomic Injury Fund (Section 19 of the Federal Act of 23rd December 1959 on the Peaceful Uses of Atomic Energy and Protection against Radiation) shall be transferred to the nuclear damage fund created under Section 15 of this Act.

Section 38 Referendum and entry into force

1. This Act is subject to an optional referendum.

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