

**NUCLEAR ENERGY AGENCY  
NUCLEAR LAW COMMITTEE**

**Exposé des Motifs of the Paris Convention as amended by the Protocols of 1964,  
1982 and 2004**

The Paris Convention on Third Party Liability in the Field of Nuclear Energy of 29 July 1960, as amended by the Additional Protocol of 28 January 1964 and by the Protocol of 16 November 1982, is currently in force and has an Exposé des Motifs adopted in 1982, which is available on the OECD Nuclear Energy Agency website.

On 12 February 2004, the Contracting Parties to the Paris Convention signed the Protocol to Amend the Paris Convention, which has not yet entered into force.

On 18 November 2016, the Contracting Parties to the Paris Convention adopted this Exposé des Motifs of the Paris Convention as amended by the 2004 Protocol, which is of an explanatory nature.

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**REVISED EXPOSÉ DES MOTIFS OF THE PARIS CONVENTION  
AS AMENDED BY THE PROTOCOLS OF 1964, 1982 AND 2004**

**INTRODUCTION**

1. The production and use of nuclear energy for peaceful purposes involve hazards of a special character and potentially far-reaching consequences. Despite the high level of safety achieved in this field, the possibility remains that incidents capable of causing considerable damage can occur. The magnitude of that damage, the fact that an incident occurring in one country can cause significant damage in several neighbouring countries, and the recognition that damage caused by ionising radiation may not manifest itself until many years after the incident which caused it, have led many States to conclude that general tort law is not well suited to deal with the particular risks involved in nuclear energy production and use.
2. These States believe that a special regime for nuclear third party liability is both necessary and desirable because in the event of a nuclear incident, several different persons could be responsible for causing the damage and victims would, in all likelihood, have great difficulty in establishing which of those persons was, in fact, legally liable for that damage. Moreover, it was felt necessary to ensure that adequate financial security would be available to cover that liability.
3. The primary objectives of this special regime are threefold: first, to ensure adequate compensation of damage caused to persons, property and the environment by a nuclear incident; secondly, to make sure that nuclear operators, who are in the best position to ensure the safety of their nuclear installations and their transport activities, assume full responsibility for any breach of that safety while not being exposed to an excessive liability burden; and thirdly, to ensure that those associated with the construction, operation or decommissioning of nuclear installations (such as builders or suppliers) are exempt from that liability.
4. A special regime for third party liability should, as far as possible, provide a uniform system for all countries that could be affected by a nuclear incident occurring in a neighbouring territory. The effects of such an incident will not stop at national borders and persons on both sides of those borders should be equally protected. For these reasons, an international agreement setting up such a regime is desirable. Such an agreement would supplement measures applied in the important fields of public health and safety and accident prevention, and may also facilitate the solution of third party liability problems at a national level.
5. Furthermore, the potential magnitude of a nuclear incident will usually require international collaboration between national insurers. For the most part, marshalling the resources of the international insurance market through coinsurance and reinsurance is necessary for sufficient financial security to be made available to meet possible compensation claims. The establishment, at an international level, of uniform third party liability regulations is essential if this collaboration is to be achieved.

6. The core of the nuclear third party liability issue is upon whom, in what proportions and under what conditions should legal liability for nuclear damage caused by nuclear incidents be imposed. The solution to this problem requires reconciling the various interests described in paragraphs 2, 3 and 4 which has led to a system of liability for nuclear damage based on the following principles:
- strict liability of the operator, that is, liability without fault;
  - exclusive liability of the operator;
  - establishing a minimum amount of liability for the operator;
  - limitation upon the operator's liability in time;
  - an obligation on the operator to cover its liability by insurance or other financial security.

<i>Article 2</i>	<b><u>GEOGRAPHICAL APPLICATION OF THE CONVENTION</u></b>
<i>Article 2(a)</i>	7. (a) The Convention applies to nuclear damage suffered in the territory or in any maritime zones of a Contracting Party or, subject to the exception referred to in paragraph 11, on board a ship or aircraft registered by a Contracting Party regardless of where the damage is suffered including on the high seas. The Convention equally applies, subject to the same exception, to nuclear damage suffered in the territory or in any maritime zones of a non-Contracting State or on board a ship or aircraft registered by a non-Contracting State regardless of where the damage is suffered including on the high seas, provided that at the time of the nuclear incident, the non-Contracting State meets the requirements of any one of three different cases [Article 2(a)(ii), (iii) and (iv)] [see paragraphs 8, 9 and 10]. The term “damage suffered on board a ship or aircraft” is understood to include damage suffered by a ship or aircraft other than that which is transporting the nuclear substances which are involved in the nuclear incident.
<i>Article 2(b)</i>	7. (b) A Contracting Party may always provide, under its national legislation, for a broader scope of geographical coverage of the Convention with respect to its own nuclear operators.
<i>Article 2(a)(ii)</i>	8. The first case stipulates that the non-Contracting State be a Contracting Party to the 1963 Vienna Convention on Civil Liability for Nuclear Damage and any amendment thereto which is in force for that Party and that both the non-Contracting State and the Paris Convention State in whose territory the nuclear installation of the operator liable for the nuclear damage is located be Contracting Parties to the 1988 Joint Protocol relating to the Application of the Vienna Convention and the Paris Convention. Since the Joint Protocol creates a bridge between the Paris and Vienna Conventions, generally extending to States adhering to it the coverage that is provided under the Convention to which it is not a Contracting Party, the application of the Paris Convention to Vienna Convention/Joint Protocol States merely confirms what the Joint Protocol aims to achieve.
<i>Article 2(a)(iii)</i>	9. The second case requires that the non-Contracting State have no nuclear installations in its territory or in any maritime zones. The application of the Convention to victims in non-nuclear States is warranted since such States do not create any nuclear risks themselves, and victims in such States are in need of protection from nuclear incidents occurring in other States. In keeping with

<p><i>Article 2(a)(iv)</i></p>	<p>the provisions on jurisdiction contained in Article 13, it is up to the competent court to determine whether or not a particular non-Contracting State meets the requirements of this second case.</p> <p>10. The third case specifies that any other non-Contracting State must have nuclear liability legislation in force that affords equivalent reciprocal benefits and that is based upon principles identical to those contained in the Paris Convention. Since such States pose a risk of nuclear damage in Paris Convention States, it is only logical that the benefits under the Paris Convention should accrue to victims in such States only if those States extend the benefits of their own legislation to victims in Paris Convention States. The additional requirement that such legislation be based upon principles identical to those contained in the Paris Convention is designed to ensure that victims in Paris Convention States who suffer damage as a result of a nuclear incident occurring in such a non-Contracting State will have the same basic rights with respect to claiming compensation against the liable operator in the non-Contracting State as will victims in the non-Contracting State when bringing their claims for compensation against the liable operator under the Paris Convention. The inclusion of this additional requirement thus transforms the principle of reciprocity into concrete terms. It may also act as an incentive for non-Contracting States to apply the Paris Convention principles at national level [see paragraph 67]. In keeping with the provisions on jurisdiction contained in Article 13, it is up to the competent court to determine whether or not a particular non-Contracting State meets the requirements of this third case.</p> <p>11. The exception referred to in paragraph 7(a) is that the Convention does not apply to nuclear damage suffered on board a ship or aircraft, registered either by a Contracting Party or by a non-Contracting State described in Article 2(a) (ii), (iii) or (iv), where that ship or aircraft is in the territory of a non-Contracting State that is not described in Article 2(a) (ii), (iii) or (iv). This exception would apply, for example, to nuclear damage suffered on board a ship that is registered in a Paris Convention State but that is sailing in the territorial waters of a non-Contracting State not described in either Article 2(a)(ii), (iii) or (iv), at the time the nuclear damage occurs.</p> <p>12. The term “maritime zones” as used in the Convention means maritime zones that are established in accordance with international law. Such zones are understood to include the</p>
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	territorial sea, a contiguous zone, an exclusive economic zone and the continental shelf. <sup>1</sup>
<b>Articles 1(a)(i), (ii), (v), (vii), (ix), 1(b), 3(b)</b>	<b><u>SCOPE OF THE CONVENTION</u></b>
<b>Article 1(a)(i)</b>	<p>13. The Convention provides an exceptional regime and its scope is limited to risks of an exceptional character for which general tort law rules and practice are not suitable. Whenever risks, even those associated with nuclear activities, can properly be dealt with through existing legal processes, they are left outside the scope of the Convention</p> <p>14. The special regime of the Convention applies to nuclear incidents occurring at or in connection with nuclear installations, or in the course of transport of nuclear substances all of which terms are defined in the Convention itself. States remain free, of course, to take additional measures outside the Convention to apply its provisions to nuclear incidents not covered thereby, but this must be done through funds other than those made available under the Convention.</p> <p>15. (a) A “nuclear incident” is defined as any occurrence or series of occurrences having the same origin which causes nuclear damage. This definition does not only base the notion of nuclear incident on accidental or other extraordinary occurrences but on any occurrence causing nuclear damage. It also covers nuclear damage caused by a series of occurrences of the same origin. A series is understood as occurrences which happen within a certain period of time. Thus, for example, an uncontrolled release of radiation extending over a certain period of time which causes nuclear damage is considered to be a nuclear incident if its origin lies in one single phenomenon even though there has been an interruption in the emission of radioactivity.</p>

<sup>1</sup> On 25 April 1968, the Steering Committee for Nuclear Energy adopted a Recommendation [NE/M(68)1] according to which the Paris Convention should be understood to apply to nuclear incidents occurring on the high seas and to damage suffered on the high seas. On 22 April 1971, that same Committee adopted a Recommendation [NE/M(71)1] providing that: “The scope of application of the Paris Convention should be extended by national legislation to damage suffered in a Contracting State, or on the high seas on board a ship registered in the territory of a Contracting State, even if the nuclear incident causing the damage has occurred in a non-Contracting State.” The first of these Recommendations should be amended; the second will become obsolete and should be revoked once the Protocol to amend the Paris Convention of 12 February 2004 is in force for all Contracting Parties.

<i>Article 1(a)(i), (ix)</i>	15. (b) The definition of nuclear incident contained in the Paris Convention makes no reference to “...any occurrence which creates a grave and imminent threat of causing such (nuclear) damage”. That reference is found, instead, in the Paris Convention’s definition of “preventive measures” in order to avoid any possible interpretation of the term nuclear incident as assimilating a nuclear incident and a threat of nuclear damage. <sup>2</sup>
<i>Article 3(b)</i>	16. The situation may arise, however, where both a nuclear incident and a conventional occurrence are so closely interrelated that the resulting nuclear damage may be said to have been caused jointly by the nuclear incident and such other occurrence. In such a case, to the extent that the nuclear damage caused by the conventional occurrence is not reasonably separable from the nuclear damage caused by the nuclear incident, it is considered to be nuclear damage caused by the nuclear incident for which compensation may be claimed under the Convention.
<i>Article 3(b)</i>	17. Where, however, nuclear damage has been caused jointly by a nuclear incident and by an emission of ionizing radiation that is not addressed by the Convention, such as that coming from a source which is outside a nuclear installation, <sup>3</sup> the Convention does not limit or otherwise affect the liability of any person with respect to that emission
<i>Article 1(a)(ii), (v), 1(b)</i>	18. (a) Nuclear installations are defined as reactors, <sup>4</sup> other than those which are used or incorporated for use in a means of transport as a source of power for any purpose, <sup>5</sup> factories for the manufacture or processing of nuclear substances, factories for the separation of isotopes of nuclear fuel and factories for the reprocessing of irradiated nuclear fuel. They are also defined to include installations for the disposal of nuclear substances. <sup>6</sup> Should a

<sup>2</sup> The difference between the definitions of “nuclear incident” as contained in the 1997 Protocol to Amend the Vienna Convention and the Paris Convention is purely a drafting matter and not an issue of substance.

<sup>3</sup> This is not the only case where an emission of ionising radiation is not addressed by the Convention.

<sup>4</sup> On 8 June 1967, the Steering Committee for Nuclear Energy adopted an Interpretation [NE/M(67)1] according to which the term “reactors” in the sense of Article 1(a)(ii) of the Convention does not include sub-critical assemblies, that is to say assemblies which are not capable of maintaining a self-sustaining chain process of nuclear fission. This Interpretation will remain valid after the Protocol to amend the Paris Convention of 12 February 2004 comes into force for all Contracting Parties.

<sup>5</sup> It should be noted that a Convention on the Liability of Operators of Nuclear Ships was adopted in Brussels on 25 May 1962. This Convention has not entered into force.

<sup>6</sup> On 11 April 1984, the Steering Committee for Nuclear Energy adopted a Decision [NE/M(84)1] pursuant to which installations used for the disposal of nuclear substances are to be considered as nuclear

	<p>Contracting Party wish to exclude a nuclear installation, including a disposal facility, from the application of the Convention on the grounds that it no longer poses a significant risk, it may make application therefore to the Steering Committee for Nuclear Energy under Article 1(b) of the Convention.<sup>7</sup></p> <p>18. (b) In addition, a nuclear installation is defined to encompass facilities for the storage of nuclear substances, unless that storage is only incidental to the carriage of those substances, in which case the storage facilities will normally not be considered a nuclear installation because of the transitory and temporary nature of the storage.</p> <p>18. (c) Finally, a nuclear installation is defined to comprise any reactor, factory, installation or facility described in Article 1(a)(ii) of the Convention that is in the course of being decommissioned.<sup>8</sup> However, a Contracting Party may cease to apply the Convention to a nuclear installation that is in the course of being decommissioned if it complies with certain provisions and conditions.<sup>9</sup></p> <p>18. (d) The Convention contains no specific provision regarding its application to nuclear installations used for military purposes,</p>
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installations within the meaning of Article 1(a)(ii) of the Convention in their pre-closure phase only. Since both pre-closure and post-closure phases are covered by the Convention, this Decision will become obsolete and should be revoked once the Protocol to amend the Paris Convention of 12 February 2004 is in force for all Contracting Parties. Moreover, on 3 November 2016, the Steering Committee for Nuclear Energy adopted a Decision and Recommendation [NEA/NE(2016)7/FINAL] pursuant to which any Contracting Party may cease to apply the Paris Convention to a nuclear installation for the disposal of low-level radioactive waste, provided that the provisions set out in the Appendix to the Decision and Recommendation and any additional conditions which the Contracting Party may judge appropriate to establish are met. This Decision will also remain valid even after the Protocol to amend the Paris Convention of 12 February 2004 comes into force for all Contracting Parties.

<sup>7</sup> Article 1(b) of the Convention empowers the Steering Committee for Nuclear Energy to exclude any nuclear installation from the application of the Convention where, in the Committee's view, the small extent of the risks involved so warrants.

<sup>8</sup> On 28 April 1987, the Steering Committee for Nuclear Energy adopted an Interpretation [NE/M(87)1] calling for the Paris Convention to apply to nuclear installations in the process of being decommissioned. This Interpretation will become obsolete and should be revoked when the Protocol to amend the Paris Convention of 12 February 2004 comes into force for all Contracting Parties.

<sup>9</sup> On 30 October 2014, the Steering Committee for Nuclear Energy adopted a Decision [NEA/SUM(2014)2] pursuant to which a Contracting Party could cease to apply the Convention to a nuclear installation in the process of being decommissioned provided that the provisions set out in the Annex to the Decision are complied with together with any additional conditions which the Contracting Party itself may deem appropriate to impose. This Decision will remain valid even after the Protocol to amend the Paris Convention of 12 February 2004 comes into force for all Contracting Parties.



<p><i>Article 1(a)(iii), (iv), (v)</i></p>	<p>apart from a reference in the preamble to the Convention to the development of the production and uses of nuclear energy for peaceful purposes.</p> <p>18. (e) Neither does the Paris Convention make any reference to its application to nuclear installations that produce energy by nuclear fusion. Based upon available technical information concerning the development of such installations, the application of the Convention's special nuclear liability regime to such installations does not seem to be warranted for the time being. However, in view of the evolution of research in this field, the Steering Committee for Nuclear Energy could extend the scope of application of the Convention to such installations in accordance with the provisions of Article 1(a)(ii) and 16.</p> <p>18. (f) Factories for the manufacture or processing of natural or depleted uranium, facilities for the storage of natural or depleted uranium, and the transport of natural or depleted uranium are also excluded since the level of radioactivity is low and there are no criticality risks. Under Article 1(a)(v) of the Convention, natural uranium and depleted uranium are excluded from the definition of "nuclear substances". Installations where small amounts of fissionable materials are found, such as research laboratories, are likewise outside the Convention, and particle accelerators are also excluded. Finally, where materials such as uranium salts are used incidentally in various industrial activities not related to the nuclear industry, such usage does not bring the plant concerned within the scope of the Convention.</p> <p>19. Nuclear fuel is defined as fissionable material, that is, uranium, including natural uranium in all its forms, and plutonium in all its forms. Nuclear substances are defined as nuclear fuel, other than natural uranium and depleted uranium, and radioactive products or waste. Depleted uranium means uranium which contains a smaller proportion of the isotope U-235 than is contained in natural uranium.<sup>10</sup></p>
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<sup>10</sup> On 27 October 1977, the Steering Committee for Nuclear Energy adopted two Decisions [NE/M(77)2] on the basis of Article 1(b) of the Convention. The first concerns the exclusion from the scope of the Convention of certain categories of nuclear substances (in particular reprocessed uranium) which fulfil the conditions established by the Decision (see paragraph 22). The second (replaced at first by a Decision of the same Committee of 18 October 2007 [NEA/NE/M(2007)2], and then by a Decision of 3 November 2016 [NEA/NE(2016)8/FINAL]) deals with the exclusion from the scope of the Convention of small defined quantities of nuclear substances transported or used outside a nuclear installation. These Decisions

<p><i>Articles 1(a)(ii), (iii), 1(b), 16</i></p>	<p>20. Risks which arise in respect of radioisotopes usable for any industrial, commercial, agricultural, medical, scientific or educational purposes are excluded from the scope of the Convention, provided the radioisotopes have reached their final stage of manufacture and are outside a nuclear installation.<sup>11</sup> Such risks are not of an exceptional nature and, indeed, are covered by the insurance industry in the ordinary course of business. Despite the widespread use of radioisotopes in many fields, which requires continual and careful observance of health protection precautions, there is little possibility of catastrophe. Hence no special third party liability problems are posed and the matter is left to be determined by ordinary legal regimes.</p> <p>21. In addition, some activities, such as mining, milling and the physical concentration of uranium ores, do not involve high levels of radioactivity and such hazards as there are, concern persons immediately involved in those activities rather than the public at large. Hence, these activities do not fall within the scope of the special regime of the Convention.</p> <p>22. In order to take account of future developments and new activities which may involve risks of an exceptional nature, the Steering Committee for Nuclear Energy, the governing body of the OECD Nuclear Energy Agency (NEA), may extend the scope of the Convention to include other installations in which there is nuclear fuel or radioactive products or waste. It may also include other fissionable material in the definition of nuclear fuel. Finally, the Steering Committee may exclude any nuclear installation, nuclear fuel or nuclear substances which are currently included, by reason of the small risks involved. Decisions of the Steering Committee in all these matters are taken by mutual agreement of the members of the Steering Committee representing the Contracting Parties.</p>
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(as amended) will remain valid after the Protocol to amend the Paris Convention of 12 February 2004 has come into force.

<sup>11</sup> On 19 April 2018, the Steering Committee for Nuclear Energy adopted a Recommendation [NEA/NE(2018)3/FINAL] clarifying that the radioisotopes reach the final stage of fabrication, under Article 1(a)(iv) of the Paris Convention, when they may be used for any industrial, commercial, agricultural, medical, scientific or educational purpose. The radioisotopes which have reached the final stage of fabrication are excluded from the scope of application of the Paris Convention and shall not be made subject to it at a later stage.

<i>Articles 3, 4</i>	<b><u>NATURE OF LIABILITY</u></b>
	<p>23. There is a long-standing tradition, established by legislation or judicial interpretation, to the effect that when a person engages in a dangerous activity, that person is presumed to be liable for the hazards thereby created. Because of the special dangers involved in the activities covered by the Convention and the difficulty of establishing negligence given the technical complexity of nuclear energy production and use, the rule of strict liability has been adopted and liability for nuclear damage will thus be imposed regardless of fault. Proof of fault is not required.</p>
<i>Articles 1(a)(vi), 6(b), (c), (f), 9, 16bis</i>	<b><u>PERSON LIABLE – NUCLEAR INSTALLATIONS</u></b>
<i>Articles 1(a)(vi), 6(b)</i>	<p>24. All third party liability is channelled onto the operator of the nuclear installation where the nuclear incident occurs. Under the Convention, the operator – and only the operator – is liable for nuclear incidents at nuclear installations and for those caused by nuclear substances originating in nuclear installations. The operator of a nuclear installation is defined as the person designated or recognized as the operator of that nuclear installation by the competent public authority. Where there is a system of licensing or authorization, normally the holder of the licence or authorisation will be designated or recognized as the operator. In the majority of cases the licensee will also be the operator under the Paris Convention. However, a State may designate or recognise another entity as the operator. Where an action for compensation for nuclear damage is brought, the court is bound to consider the person deemed to be the operator by the competent public authority of the country where the relevant nuclear installation is situated as the operator of that installation.</p> <p>25. Two primary factors have motivated in favour of channelling all liability onto the operator. First, channelling obviates the necessity for all those associated with the supply to, or construction, operation or decommissioning of a nuclear installation, other than the operator himself, to take out insurance against third party liability risks which would, in any event, be difficult to achieve, thus allowing for a concentration of the insurance capacity available in favour of the operator alone. Secondly, it is desirable to avoid complicated and lengthy actions and counter-actions in an effort to establish who is legally liable.</p>

<i>Article 1(a)(ii)</i>	26. A Contracting Party may decide that, where one operator operates a number of nuclear installations at the same site, these installations are to be treated as a single nuclear installation. This decision may be extended to other premises on the same site where nuclear fuel or radioactive products or waste is held but which are not nuclear installations as defined in the Convention. Such a decision would be advantageous from the insurance point of view, in that all installations on the same site are grouped together, as well as from the victims' point of view, in that they would not have to establish in which installation on that site the nuclear incident originated.
<i>Articles 3(a), 4(a)(iii), 4(b)(iii), 6(c)(i)1, 2, 9</i>	27. (a) An individual other than the operator may be liable for nuclear damage caused by a nuclear incident:  (i) where the operator is not liable under the Convention for nuclear damage to the nuclear installation itself, to any other nuclear installation on the same site (including one under construction) or to any property on the same site used or to be used in connection with any such installation, the Convention leaves it to the ordinary rules of law to determine the liability of that individual for such damage [see paragraph 80(b)];
<i>Articles 3(a), 6(c)(i)1, 9</i>	(ii) where the operator is not liable under the Convention for nuclear damage because the nuclear incident which has caused that damage is directly due to an act of armed conflict, hostilities, civil war or insurrection, the Convention leaves it to the ordinary rules of law to determine liability for such damage [see paragraph 80(a)].
<i>Article 6(c)(i)2</i>	27. (b) The Convention also leaves it to the ordinary rules of law to determine the liability of a person, duly authorized to operate a reactor comprised in a means of transport, for nuclear damage caused by nuclear substances coming from or going to that reactor, where there is no operator liable under the Convention for such damage.
<i>Article 3, 6(c)(ii)</i>	27. (c) The third party liability regime established by the Convention is intended to be exclusive and exhaustive in nature compared to general tort law. Thus, an operator incurs no liability outside the Convention and under general tort law, for nuclear damage caused by a nuclear incident, including damage to on-site property belonging to others (but excluding the personal property of any person employed on the site) for which the operator is not liable under the Convention. However, where a right to compensation

<i>Articles 6(b), 16bis</i>	<p>for damage to such property exists by virtue of contractual arrangements, such right remains unaffected by the Convention. Article 6(c)(ii) is also designed to ensure that no nuclear operator will be held liable outside the Convention and under general tort law for damage which is not included in the Convention's definition of "nuclear damage", but which could have been included in that definition if the relevant Contracting Party had so provided in its national legislation. In such a case, general tort law will not apply and the operator will not be liable for such loss or damage.<sup>12</sup></p> <p>28. The rule contained in Article 6(b) regarding the exclusive liability of the operator does not affect certain existing international agreements in the field of transport (see paragraph 48) nor is it intended to affect the rules of public international law with regard to any possible responsibility of States towards each other.</p> <p>29. It is essential to the notion of channelling liability onto the operator that no action may lie against any other person and in particular, any person who has supplied any services, materials or equipment in connection with the planning, construction, modification, maintenance, repair, operation or decommissioning of a nuclear installation. In the ordinary course of law, on the contrary, should an incident arise due to a defect in design or in material supplied, a person suffering damage may well have a right of action against the supplier, for example on the basis of latent defect under product liability law.</p> <p>30. Furthermore, the operator might well have a right of recourse to recover compensation which it has paid for nuclear damage to third parties. A corollary to the notion of channelling is, therefore, that the operator's rights of recourse (and, by way of subrogation, the rights of recourse of the operator's insurer or other financial guarantor) against suppliers in respect of any sums which the operator has paid as compensation are barred. If they were not, each supplier would have to insure itself against the same risk already covered by the operator's insurance and this would involve</p>
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<sup>12</sup> See, by comparison, Article II.6 of the 1963 Vienna Convention on Civil Liability for Nuclear Damage as amended by the 1997 Protocol to Amend the Vienna Convention, which reads as follows: "No person shall be liable for any loss or damage which is not nuclear damage pursuant to sub-paragraph (k) of paragraph 1 of Article I but which could have been determined as such pursuant to the provisions of that sub-paragraph."



may be made against all persons who are liable for the damage, whereas several liability means that such claims may be made against any one or more of those persons who are liable for the damage. The joint and several liability of the different operators involved allows victims to make their claims for compensation either jointly against all of the liable operators up to the total amount of their liability, or severally against *any one or more* of the liable operators up to the total amount of liability of all liable operators combined. Victims are thus given the convenience of being able to sue one operator for the total amount of liability of all liable operators.

33. (b) This rule, however, does not apply to a nuclear incident involving nuclear substances in the course of carriage in one and the same means of transport, or involving such substances where they are stored incidental to the carriage in one and the same nuclear installation. In such cases, rather than adding up the liability amounts of all liable operators, the total amount of liability is limited to the highest liability amount applicable to any one of them.
34. (a) Regardless of whether victims make their claims for compensation jointly or severally, in no case will a liable operator be required to pay more than the amount of liability imposed upon it pursuant to Article 7. In practice, where claims for compensation are made against only one liable operator, that operator will invoke the ordinary rules of law regarding contributions between persons jointly and severally liable to recover from the other liable operators any compensation which that operator has paid in excess of the liability amount imposed upon it.
34. (b) In the event of a nuclear accident involving nuclear substances which have been successively in more than one nuclear installation, (i) if those substances are in a nuclear installation at the time the nuclear damage is caused, only the operator of that installation is liable for that damage to the exclusion of all operators having previously had possession of those substances; and (ii) if those substances are not in a nuclear installation at the time the nuclear damage is caused, only the operator of the nuclear installation in which those substances last were before the nuclear damage was caused, or the operator which last took charge of those substances or assumed liability therefore under the terms of a written contract, is liable for the damage.

<i>Articles 4, 5(b), 6(b), (d), (g), 7(e), (f)</i>	<b><u>PERSON LIABLE – TRANSPORT</u></b>
<i>Article 4(a)</i>	35. The following rules relating to transport apply to all the different means of transport.
<i>Articles 4(a)(i)(ii)(iii), 4(b)(i)(ii)(iii)</i>	36. In principle, liability is imposed on the operator sending the nuclear substances since it will be responsible for the packing and containment and for ensuring that these comply with the health and safety regulations laid down for transport.
<i>Articles 4(a)(i)(ii)(iii), 4(b)(i)(ii)(iii)</i>	37. The liability of the sending operator ends when the operator of another nuclear installation has assumed liability for the substances pursuant to the express terms of a written contract. However, if the contract contains no such express terms, the sending operator's liability ends when the operator of another nuclear installation has taken charge of the substances. It also ends when the substances have been taken in charge by a person duly authorized to operate a reactor comprised in a means of transport, if the substances are intended to be used in that reactor. Thus, from the point of view of the person suffering damage, the burden of proof will be on the sending operator to show that the operator of some other nuclear installation has assumed liability either under contract or by taking charge of the substances, or that a person operating a reactor comprised in a means of transport has taken charge of the nuclear substances. Similarly, if the substances are sent to the operator from a person operating a reactor comprised in a means of transport, the liability of the receiving operator begins when it has taken charge of them. The precise moment of the taking charge will normally be determined by the competent court [but see also paragraph 44].
<i>Article 4(a)(iv)</i>	38. (a) The Convention clearly cannot impose liability upon persons not subject to the jurisdiction of the Contracting Parties. If the substances are consigned to a destination in a non-Contracting State, it is therefore the sending operator who is liable until the substances have been unloaded from the means of transport by which they arrived in the territory of the non-Contracting State.
<i>Article 4(b)(iv)</i>	38. (b) In the converse situation, where substances are being carried from a non-Contracting State to a Contracting Party, that is, where there is no sender in the territory of the Contracting Parties it is vital for victims that there should always be somebody liable within the territory of the Contracting Parties. In this case, liability is



<p><b>Articles 4(a)(i)(ii), 4(b)(i)(ii), 4(c), 10(c)</b></p>	<p>imposed upon the operator to whom the substances are destined, and with whose written consent they have been sent, from the moment that they have been loaded on the means of transport by which they are to be carried from the territory of the non-Contracting State.</p> <p>39. Only an operator with a direct economic interest in nuclear substances being transported may assume liability for nuclear damage caused by a nuclear incident occurring during that transport. A direct economic interest does not necessarily mean that the operator assuming liability must be the sender or the receiver of the nuclear substances; it may be the owner of nuclear substances which, in the course of their treatment, are transported between several nuclear installations, each with its own operator. One operator may only assume such liability from another operator pursuant to the express terms of a written contract or because it has taken charge of the nuclear substances. The purpose of Article 4(c) is to prevent an operator in a Paris Convention State which imposes a comparatively low liability amount for transport activities<sup>14</sup> from assuming liability for damage occurring during the transport of nuclear substances between two other nuclear operators, for the sole purpose of reducing the cost of the transport by virtue of that operator's less expensive liability insurance premiums. Otherwise, in the event of a nuclear incident causing damage in excess of that comparatively low liability amount, that Paris Convention State would be required to provide compensation for nuclear damage, up to the amount required under Articles 7(a) or 21(c), in circumstances where neither it nor the operator derives any real benefit at all from the substances being transported.</p>
<p><b>Article 5(b)</b></p>	<p>40. In addition, since nuclear substances may be stored temporarily in the course of their carriage, it is necessary to establish a clear rule as to which operator would be liable if such storage took place in a nuclear installation. Although facilities where nuclear substances are stored only incidentally to their carriage are normally excluded from the definition of "nuclear installation" [see paragraph 18(b)], such facility may itself be a nuclear installation within the meaning of Article 1(a)(ii). However, the operator of a nuclear installation will not be liable for damage caused by a nuclear incident involving only nuclear substances which are stored at its</p>

<sup>14</sup> A comparatively low liability amount means a low liability amount compared to that imposed by other Paris Convention States.

<p><i>Article 4(e)</i></p>	<p>installation incidental to their carriage where another operator or person is liable pursuant to Article 4.</p> <p>41. There is one exception to the basic principle that only the operator is liable under the Convention. A Contracting Party may, by legislation, on condition that the requirements of Article 10(a) with regard to financial security are fulfilled, provide that a carrier be liable under the Convention in substitution for an operator of a nuclear installation in its territory. Such substitution will be in accordance with the terms laid down in the legislation and by decision of the competent public authority. Moreover, the substitution must be requested by the carrier and have the consent of the operator of the nuclear installation situated in the territory of the Contracting Party in question. Once the decision has been taken, the carrier will be liable in accordance with the Convention in place of that operator. For all the purposes of the Convention, the carrier is then considered, in respect of nuclear incidents occurring in the course of carriage of nuclear substances, as an operator of a nuclear installation in the territory of the Contracting Party whose legislation has provided for the substitution.<sup>15</sup></p> <p>42. Where, in respect of the carriage of nuclear substances coming from or destined for different operators, the carrier has assumed, by substitution, the liability of each of those operators, the rules relating to the liability of more than one operator will apply in the same way as if there had been no substitution and the carrier will be treated as if it were each and every one of those operators.</p>
<p><i>Article 4(d)</i></p>	<p>43. In order to facilitate the transport of nuclear substances, especially in the event of transit through a number of countries, it is provided that in respect of each carriage the operator liable in accordance with the Convention must provide the carrier with a certificate issued by or on behalf of the insurer or other person providing the financial security required pursuant to Article 10. However, this general obligation operates in the case of international carriage only, each Contracting Party being free to dispense with it in relation to carriage which takes place wholly within its territory. The certificate must contain the name and address of the operator</p>

<sup>15</sup> On 22 April 1971 the Steering Committee for Nuclear Energy adopted two Interpretations [NE/M(71)1], the first based on Article 4(d) of the Convention and concerning the substitution of a carrier for the operator, and the second based on Article 6(d) of the Convention and concerning the rights of subrogation of a carrier which has accepted the obligations of an operator. These Interpretations will remain valid after the Protocol to amend the Paris Convention of 12 February 2004 has come into force for all Contracting Parties.

	<p>liable and the details of the financial security. This information may not be subsequently contested by the person by whom or on whose behalf the certificate was issued. The certificate must also include an indication of the nuclear substances involved and the carriage in respect of which the security applies, as well as a statement by the competent public authority that the person named is an operator within the meaning of the Convention.<sup>16</sup></p>
<i>Article 7(e)</i>	<p>44. For transport of nuclear substances to installations situated in its territory, a Contracting Party may require the operators of the installations for whom the substances are carried from abroad to take the substances in charge the moment the substances reach its territory or even earlier. Similarly, in the case of nuclear substances sent by operators of nuclear installations in its territory to a foreign destination, a Contracting Party may require that the nuclear substances shall remain in the charge of such operators until they have left its territory or even longer.</p> <p>45. The possession of a certificate by a carrier does not imply any right to enter the territory of a Contracting Party. Moreover, a Contracting Party may subject the transit of nuclear substances through its territory to the condition that the required amount of liability of the foreign operator concerned is increased if it considers, taking account of the special dangers of the nuclear substances in the particular transit in question, that such amount does not adequately cover the risks. Nevertheless, the amount thus increased, which applies only to incidents occurring on the territory of the State being transited, cannot exceed the required amount of liability of operators of nuclear installations situated in its own territory.</p>
<i>Article 7(f)</i>	<p>46. It was recognized, however, that a right of entry in case of urgent distress into the ports of States and a right of innocent passage through territorial seas is granted under international law and that by agreement or under international law there may be a right to fly over or land on the territory of States. Thus the provisions of Article 7(e) do not apply to a transit by sea or by air in these cases.</p> <p>47. Where, and this may well be a normal case, the carriage involves nuclear substances sent by a number of different operators, the maximum total amount for which such operators are jointly and</p>

<sup>16</sup> On 8 June 1967, the Steering Committee for Nuclear Energy recommended a model financial security certificate to the Signatory countries of the Convention [NE/M(67)1]. This Recommendation will remain in effect after the Protocol to amend the Paris Convention of 12 February 2004 has entered into force for all Contracting Parties.

	<p>severally liable is the highest amount established with respect to any of them pursuant to Article 7. This rule applies, however, only where the nuclear substances involved are in one and the same means of transport or are stored incidentally to the transport, in one and the same nuclear installation [see paragraph 33(b)].</p>
<p><b>Article 6(b)</b></p>	<p>48. The channelling of liability to the nuclear operator under the Convention is not intended to interfere with existing international agreements in the field of transport in force or open for signature, ratification or accession at the date of the adoption of the Convention (29<sup>th</sup> July 1960). This intention is clearly reflected in Article 6(b) which states that the channelling principle does not affect the application of such agreements. Most international agreements in the field of transport which have been adopted since this date contain express provisions designed to avoid any conflict with the channelling principle but where such provisions are not included, Parties to the Convention may be faced with uncertain or even conflicting liability obligations. International agreements in the field of transport are understood to mean international agreements dealing with third party liability for damage involving a means of transport and international agreements dealing with bills of lading.</p> <p>49. Thus, a person suffering damage caused by a nuclear incident occurring in the course of transport may have two rights of action: one against the operator liable under the Convention and another against the carrier liable under existing international agreements in the field of transport.<sup>17</sup></p> <p>50. Where the liable operator is at the same time the carrier, for example, where it transports nuclear substances on its own means of transport, these two possible actions may be brought against one person. In this case, however, the operator cannot take advantage of the provisions of international agreements in the field of transport to reduce or alter its liability under the Convention.</p>
<p><b>Article 6(d), (g)</b></p>	<p>51. A person who has paid compensation for damage caused by a nuclear incident, whether under any international agreement in the field of transport or under any legislation of a non-Contracting State acquires, by subrogation, the rights under the Paris</p>

<sup>17</sup> This situation has caused practical difficulties in the field of carriage by sea of nuclear substances. To ensure that only the operator of a nuclear installation is liable for damage caused by a nuclear incident during such carriage, a Convention relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material was adopted in Brussels on 17 December 1971.

	<p>Convention of the victim whom that person has compensated. This concept is used in other international conventions. However, these rights can only be exercised by a person against the operator to the extent that the operator does not have a right of recourse against that person pursuant to Article 6(f).</p> <p>52. The rules relating to damage or loss caused jointly by a nuclear incident and by an incident other than a nuclear incident or caused jointly by a nuclear incident and by an emission of ionizing radiation not covered by the Convention [see paragraph 17] apply equally to nuclear incidents occurring in the course of transport.</p>
<i>Article 6(a)</i>	<b><u>ACTIONS FOR COMPENSATION</u></b>
	<p>53. Although actions for compensation under the Convention, whether arising out of nuclear incidents occurring at or in connection with nuclear installations or in the course of transport, can in principle only be brought against the operator, the right to bring actions against the insurer or other person providing the financial security, either as an alternative to the operator or in addition to him, is maintained where the national law of the court having jurisdiction grants a direct right of action in such a case.</p>
<i>Articles 1(a)(vii)-(x), 3(a), 6(c)(ii)</i>	<b><u>NUCLEAR DAMAGE GIVING THE RIGHT TO COMPENSATION</u></b>
<i>Article 1(a)(vii)</i>	<p>54. The Convention contains a detailed definition of “nuclear damage” which comprises six different categories of injury, loss, costs or damage that will be compensated under the Convention.<sup>18</sup> The first two are the traditional categories of loss of life or personal injury, and loss of or damage to property, both of which are generally provided for under national law and with the scope of both being decided by the law of the competent court.</p>
<i>Article 3(a)</i>	<p>55. With respect to damage to property, there is no right to compensation under the Convention for damage to the nuclear</p>

<sup>18</sup> The definition of “nuclear damage” contained in the Paris Convention has been inspired by similar definitions adopted under other international liability conventions, such as the definition of “pollution damage” in the 1992 Civil Liability Convention (formerly the International Convention on Civil Liability for Oil Pollution Damage) and the definition of “damage” contained in the 1996 International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances (HNS). In addition, it is almost identical to the definition of “nuclear damage” found in the 1997 Protocol to Amend the Vienna Convention and the 1997 Convention on Supplementary Compensation for Nuclear Damage and any differences between them are of a drafting nature only.

	<p>installation itself, to any other nuclear installation, including one under construction, on that same site, or to any property on that same site which is used or to be used in connection with any such installation. The purpose of this exclusion is to avoid the financial security constituted by the operator from being used principally to compensate damage to such installations or such property to the detriment of third parties. Owners of nuclear installations which are either operating or under construction are obliged to assume the risks of loss of or damage to their property since they are able to include the cost of this risk in the cost of operating or building the installation. Similarly, contractors whose property is on the site of a nuclear installation are obliged to assume the risks of loss or damage thereto, as they are able to include the cost of this risk in the price of their supply contract. The exoneration does not apply, however, to the personal property of any person employed on the site.<sup>19</sup></p> <p>56. (a) The remaining four categories of nuclear damage encompass two types of economic loss, the costs of restoring an impaired environment and the costs of measures taken to prevent or minimise nuclear damage [see paragraphs 58 to 62(b)]. Such losses and costs constitute nuclear damage however, only to the extent determined by the relevant provisions of national law of the competent court [see paragraph 97]. A Contracting Party is not free to exclude any of these four categories of damage under its national law; rather, its body of national law and legislation must address all of those heads of damage, although it has discretion to determine the nature, form and extent of compensation to be granted under those heads.</p> <p>56. (b) The definition of “nuclear damage” does not include a head of damage referred to in certain other international nuclear liability conventions<sup>20</sup> as “any other economic loss, other than any caused by the impairment of the environment, if permitted by the general law on civil liability of the competent court”. This head of damage</p>
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<sup>19</sup> On 8 April 1981, the Steering Committee for Nuclear Energy adopted a Recommendation [NE/M(81)1] that a nuclear operator should not be held liable, within the meaning of the Paris Convention, for damage caused by a nuclear incident to nuclear substances in course of carriage belonging to other operators but for which he has assumed third party liability pursuant to a contract in writing or of which he has taken charge in accordance with Article 4 of the Convention. This Recommendation will remain in effect after the Protocol to amend the Paris Convention of 12 February 2004 has entered into force for all Contracting Parties.

<sup>20</sup> The 1997 Protocol to Amend the Vienna Convention on Civil Liability for Nuclear Damage and the Convention on Supplementary Compensation for Nuclear Damage.

<p><i>Article 3(a)</i></p>	<p>is generally considered to be covered by other heads of damage already included in the definition. This difference of definitions does not touch upon possible obligations which a Contracting Party may have under other international liability conventions to which it may also be a Party, such as e.g. the Convention on Supplementary Compensation for Nuclear Damage.</p> <p>57. In all cases, the claimant must prove that the nuclear damage is caused by the nuclear incident.</p> <p>58. The first of the remaining four categories is economic loss which results from one or other of the first two categories of nuclear damage [see paragraph 54] and which is incurred by a person who has the right to claim compensation for it. In other words, the economic loss suffered by a person must arise from the personal injury, death, loss of or damage to property of that same person. Moreover, it must be a loss which is not already covered by either of the first two categories of nuclear damage. An example of this category of nuclear damage would be a factory owner's loss of income resulting from a production stoppage in that factory which is directly linked to the factory building having been damaged by a nuclear incident.</p>
<p><i>Article 1(a)(viii)</i></p>	<p>59. (a) The second of the remaining four categories of nuclear damage is the cost of measures taken, or to be taken, in order to reinstate a significantly impaired environment. The extent of the nuclear damage suffered can be assessed in monetary terms because reinstatement measures cost money. It is up to the competent court to decide whether the environmental impairment is significant.</p>
<p><i>Article 1(a)(x)</i></p>	<p>59. (b) To be compensable, reinstatement measures must fall within the definition of reasonable measures, they must have been approved by the authorities of the State where they are taken and they must aim to either restore damaged components of the environment or, where reasonable, introduce the equivalent of those components into the environment. Reasonable measures are defined under the Convention as those which, according to the law of the competent court, are appropriate and proportionate, having regard to all the circumstances, including the nuclear damage suffered or the risk of such damage, to their likely degree of success, and to relevant scientific and technical expertise. Thus, measures of reinstatement include such activities as the removal or diminishing of</p>

	<p>contaminants from land so that it no longer poses any significant risk in terms of its future use.</p> <p>59. (c) The law of the State where the nuclear damage is suffered will determine which persons are entitled to take these measures. However, since measures of reinstatement mostly cover components of the environment which are not owned by anyone, but rather are available for the benefit of the general public, it will normally be the competent public authorities who are entitled to take such measures and claim compensation therefor.</p> <p>60. (a) The third of the remaining four categories of nuclear damage comprises loss of income arising from a direct, economic interest in any use or enjoyment of the environment which has been significantly impaired and which loss is not related to loss of or damage to property. For example, fishermen may suffer economic loss because fish in the sea are contaminated by radiation and may no longer be sold in the marketplace. Since the fishermen do not own the fish until after they have been caught, the fact that the fish are contaminated does not constitute a loss of or damage to property of the fishermen.<sup>21</sup> To take another example, tourists may stay away from a particular holiday resort because the public beach used by the resort is contaminated by radiation. Once again, since the proprietor of the resort is not the owner of the beach, the fact that the beach is contaminated does not constitute a loss of or damage to the resort owner's property. Yet it will almost certainly result in a loss of income to the resort owner who will be entitled to compensation if it can show a sufficient direct, economic interest in the use or enjoyment of the damaged environment.</p> <p>60. (b) The scope of this provision is not broad, however. Use of the term "direct" economic interest is intended to ensure that compensation will not be awarded for nuclear damage that is too remote. Since the loss being claimed must derive from a direct economic interest in the use or enjoyment of the impaired environment, the fishermen in the example cited in paragraph 60(a) may be compensated for their loss of income, but a supplier of goods to those fishermen who loses business because they are no longer fishing will receive no compensation for that business loss because it is too remote in the chain of causation. Similarly, the holiday resort owner in the example cited in paragraph 60(a) will only be</p>
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<sup>21</sup> It will be up to the law of the competent court to determine if the fishermen have a sufficient direct economic interest in the use or enjoyment of the impaired environment to warrant compensation for their economic loss.



<p><i>Article 1(a)(ix)</i></p>	<p>compensated if it can be shown that there is a geographical proximity between the resort and the impaired environment (the contaminated beach) and that the business of the hotel depends upon guests being able to use that beach.</p> <p>61. For each of the above-noted categories of nuclear damage, the loss or damage must arise out of or result from ionizing radiation emitted by any source of radiation inside a nuclear installation, or emitted from nuclear fuel or radioactive products or waste in a nuclear installation or emitted from<sup>22</sup> nuclear substances that originate in, come from, or are sent to a nuclear installation. It makes no difference whether the loss or damage arises from the radioactive properties of such matter (source of radiation, nuclear fuel or radioactive products or waste, or nuclear substances) or from a combination of radioactive properties with toxic, explosive or other hazardous properties of such matter. If there is no emission of radiation then there cannot be any nuclear damage. Thus, no compensation will be awarded for damage resulting from a “rumor”. For example, a ship transporting nuclear substances may run aground near a holiday resort area, and while there is no actual emission of ionizing radiation, there is, nevertheless, widespread public fear of such an emission. The result is a significant decrease in tourism with the owners of hotels and restaurants in that area suffering a loss of income. Those losses will not be subject to compensation because there was no emission of ionizing radiation.</p> <p>62. (a) The fourth remaining category of nuclear damage covers the costs of preventive measures and further loss or damage caused by such measures. Under the Convention, preventive measures are defined as any reasonable measures taken after a nuclear incident has occurred, or after an event creating a grave and imminent threat of nuclear damage has occurred, to prevent or minimize nuclear damage. In most legal systems, victims are obliged to mitigate or avoid their losses, if possible. If they fail to do so, the amount of compensation awarded to them may be reduced. It is appropriate that the costs incurred by victims in trying to mitigate their losses should be compensated.</p>
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The actual text of Article 1(a)(vii) of the Convention refers to “...ionising radiation emitted...from nuclear fuel...or *of* nuclear substances...”. In the English and French versions of this text there is a drafting anomaly: the word “of” should be read as “from” in the English version and the word “de” should be read as “par des” in the French version. This anomaly does not appear in the other linguistic versions of the Protocol.

<i>Article 1(a)(x)</i>	62. (b) Preventive measures may range anywhere from taking iodine pills to the evacuation of the population of a city. They are often taken by public authorities. To be compensable, preventive measures must qualify as reasonable measures and reasonable measures are defined as those which, according to the law of the competent court, are appropriate and proportionate having regard to all the circumstances, such as the nuclear damage suffered or to the risk of such damage, to the likely degree of success of such measures and to relevant scientific and technical expertise. The test of “reasonableness” is designed to discourage speculative claims. In addition, if the law of the State where the measures are taken requires the approval of that State’s authorities for such measures, they will only be compensable if, in fact, that approval has been obtained.
<i>Articles 3, 6(h)</i>	<b><u>INDUSTRIAL ACCIDENTS AND OCCUPATIONAL DISEASES</u></b>
	63. Any third party who suffers nuclear damage caused by a nuclear incident, whether that third party is inside or outside the installation, is covered by Article 3. This includes employees of the operator of the nuclear installation in question, although in most countries employees who suffer nuclear damage may also be entitled to compensation under a system of public health insurance, social security, workers compensation or occupational disease compensation. In principle it is felt that benefits under such systems should be retained for employees of the installation in question and for those of other establishments, but the law establishing such systems will determine this issue, as well as whether employees are also entitled to compensation under the Convention. That same law will also decide whether those who have paid out compensation under those systems have a right of indemnity against the operator. Where such systems have been established by an intergovernmental organisation these questions are left to be decided by the regulations of the organisation.
<i>Articles 7, 10(c), 21(c)</i>	<b><u>LIABILITY AMOUNT</u></b>
	64. The Convention expresses the amount of the operator’s liability as a minimum. In fact, some Contracting Parties have even adopted national legislation which provides that the liability of their nuclear operators is not limited in amount, while at the same time requiring those operators to maintain a limited amount of insurance or other financial security in respect of that liability. It

<p><i>Articles 7(a)</i></p>	<p>is for this reason that the operator’s liability is expressed as a minimum rather than a maximum amount.</p> <p>65. The liability of a nuclear operator in respect of any single nuclear incident, whether occurring at or in connection with a nuclear installation or in the course of carriage of nuclear substances, is fixed at not less than 700 million EUR.<sup>23</sup></p>
<p><i>Article 21(c)</i></p>	<p>66. There may, however, be States wishing to accede to the Convention whose operators are not able to furnish financial security up to the minimum amount of liability of 700 million EUR required by the Convention immediately upon joining. In order not to discourage such States from becoming party to the Convention, a phasing-in provision allows them to limit their operators’ liability amount for any one nuclear incident to 350 million EUR for no more than five years from the date of adoption of the 2004 Protocol, that is, five years from 12 February 2004. This provision only applies to States acceding to the Convention after 1 January 1999 (see paragraph 109).</p>
<p><i>Article 7(g)</i></p>	<p>67. As noted previously [see paragraph 10], by virtue of Article 2(a)(iv) the Convention applies to nuclear damage suffered in a non-Contracting State which has nuclear liability legislation in force that affords equivalent reciprocal benefits to those provided under the Convention and that is based on principles identical to those of the Convention. It may be the case, however, that the non-Contracting State’s legislation provides for reciprocal benefits which are globally equivalent to those provided under the Convention without actually providing for liability amounts identical to those fixed by the Convention. In these cases, the Contracting Parties are permitted to establish liability amounts that are lower than those established by the Convention and equal to those offered by that non-Contracting State.</p>

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The Protocol to amend the Paris Convention of 12 February 2004 changed the Convention’s unit of account from the Special Drawing Right of the International Monetary Fund to the euro, the currency of twelve European Union countries at the time of the Protocol’s adoption, namely Austria, Belgium, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal and Spain. The Recommendation of the OECD Council of 16 November 1982 [C(82)128] relative to the unit of account of the Convention became obsolete with the entry into force for all Contracting Parties of the Protocol of 16 November 1982 to amend the Paris Convention, and it should therefore be revoked. In addition, the Recommendation of the Steering Committee for Nuclear Energy of 20 April 1990 [NE/M(90)1] calling for an increase and a harmonisation in the liability amounts of the Contracting Parties will become obsolete and should be revoked once the Protocol of 12 February 2004 to amend the Paris Convention of 12 February 2004 enters into force for all Contracting Parties.

<i>Article 7(b)</i>	68. Nevertheless, a Contracting Party may establish a lower amount of liability when the nuclear installation or, in the case of carriage, the nuclear substances involved are not considered by that Contracting Party as likely to cause significant damage compared to other nuclear installations and transports referred to in the Convention (e.g. certain small research reactors or laboratories). The aim of this option is to avoid burdening the nuclear operators concerned with unjustified insurance or financial security costs. The establishment of such lower amounts, however, is subject to the condition that the reduced amount must not be less than 70 million EUR in the case of a nuclear installation and 80 million EUR in the case of carriage of nuclear substances.
<i>Article 10(c)</i>	69. If a Contracting Party establishes a lower amount of liability for a nuclear operator under Article 7(b), that Contracting Party will be obliged to provide compensation for any nuclear damage incurred as a result of a nuclear incident that is in excess of that lower amount, but only up to a certain limit. This limit is an amount not less than that set forth in Article 7(a) or Article 21(c) whichever is applicable. Thus, if a Contracting Party fixes an operator's liability amount at 70 million EUR for a small research reactor and the nuclear damage resulting from an incident at such an installation exceeds that amount, the Contracting Party is required to provide compensation for the nuclear damage actually incurred, but only up to an amount that is not less than 700 million EUR or 350 million EUR as the case may be. <sup>24</sup>
<i>Article 7(c)</i>	70. Furthermore, the nuclear operator must compensate nuclear damage to the means of transport upon which the nuclear substances involved were at the time of a nuclear incident occurring in the course of carriage and outside a nuclear installation. However, the amount of this compensation must not have the effect of reducing the liability of that operator in respect of other nuclear damage to less than either 80 million EUR or such higher amount as is established by the legislation of the Contracting Party in whose territory the installation of the nuclear operator is situated. In practice, if such other nuclear damage is less than this amount, the difference between the two amounts may be used to compensate nuclear damage to the means of transport. On the other hand, if such other nuclear damage is more than 80

<sup>24</sup> The OECD Council Recommendation of 16 November 1982 [C(82)181] concerning the fixing of a reduced amount of liability will become obsolete and should be revoked once the Protocol to amend the Paris Convention of 12 February 2004 enters into force for all Contracting Parties.

<p><i>Article 7(i)</i></p>	<p>million EUR, there may need to be a proportional distribution of the total compensation available to cover all the nuclear damage, including nuclear damage to the means of transport. This might involve paying compensation of more than 80 million EUR for such other nuclear damage, but it cannot result in reducing the amount of that compensation to less than 80 million EUR.</p> <p>71. (a) Since the majority of Contracting Parties have adopted the euro as their currency, it has been selected as the unit of account for the Convention. For these Contracting Parties at least, fluctuations in the value of international units of account, such as the Special Drawing Right, which are due to fluctuations in the value of their component non-European currencies, such as the United States dollar or the Japanese Yen, will have no effect upon the amount of compensation to be provided to victims under the Convention. Reducing or eliminating the risk of such fluctuations also means that insurance coverage or other financial security may be more easily obtained for higher operator liability amounts. Those Contracting Parties who have not adopted the euro as their national currency may wish to include a “margin of safety” in their national liability amounts to ensure that those amounts do not fall below the liability amount expressed in the Convention in euros. There would seem to be no reason why Contracting Parties who have not adopted the euro as their national currency should be precluded from expressing nuclear operator liability amounts under the Convention in national currency equivalents to the specified euro amounts.</p>
<p><i>Article 7(j)</i></p>	<p>71. (b) Persons suffering nuclear damage will be able to enforce their rights to compensation without having to bring separate proceedings according to the origin of the funds being provided. This will enable victims to overcome obstacles they might face where, for example, they suffer damage from an incident occurring during the transport of nuclear substances and the operator’s liability amount is reduced, thereby forcing them to bring one claim against the operator and another against the Contracting Party in whose territory the operator’s installation is situated for damages in excess of the operator’s liability amount.<sup>25</sup></p>

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An OECD Council Recommendation of 16 November 1982 [C(82)181] recommends that where a Contracting Party sets an operator liability amount in respect of transport or low risk installations lower than the reference liability amount, it should make available public funds to satisfy any claims for compensation in excess of that lower amount up to the reference amount. Once the Protocol to amend the

<p><i>Article 7(d)</i></p> <p><i>Article 7(h)</i></p>	<p>72. Subject to the provisions of Article 7(e) [see paragraph 45], the liability amount will, in the same way as for nuclear incidents occurring at or in connection with nuclear installations, be determined by the national legislation of the liable operator.</p> <p>73. The amount of liability fixed in accordance with Article 7 does not include interest and costs awarded by a court in actions for compensation. Such interest and costs are payable by the operator in addition to any sum for which it is liable under Article 7.</p>
<p><i>Article 8</i></p>	<p><b><u>LIMITATION OF LIABILITY IN TIME</u></b></p>
<p><i>Article 8(a)</i></p> <p><i>Article 8(d)</i></p>	<p>74. Bodily injury caused by radioactive contamination may not become manifest for some time after the exposure to radiation has actually occurred. The legal period during which an action may be brought is therefore a matter of great importance. Operators and their financial guarantors will naturally be concerned if they have to maintain, over long periods of time, reserves against outstanding or expired policies for possibly large but unascertainable amounts of liability. It is reasonable for victims whose injuries may not manifest themselves until much later to have a longer prescription period for personal injury claims than for property damage claims. A further complication is the difficulty of proof involved in establishing or denying that delayed damage was, in fact, caused by the nuclear incident. A compromise has necessarily been reached between the interests of those suffering damage and the interests of operators.</p> <p>75. The Convention provides for a period of thirty years running from the date of the nuclear incident for actions for personal injury or loss of life and ten years running from the date of the nuclear incident for actions for all other nuclear damage suffered. After these periods, the right to compensation is subject to prescription or extinction if no action has been brought before a competent court.</p> <p>76. States may, however, establish a shorter period for the prescription or extinction of rights to compensation provided that such period is not less than three years from the time when the damage and the liable operator have become known to the victim or ought reasonably to have become known, and further provided that the</p>

Paris Convention of 12 February 2004 enters into force for all Contracting Parties, this Recommendation will become obsolete and should be revoked.

<p><i>Article 8(b), (c), (f)</i></p>	<p>ten and thirty year periods established under Article 8(a) are not exceeded. This shorter period may constitute a conventional period of prescription which may be suspended or interrupted even, where this is recognized, by a mere extra judiciary demand, provided always that such suspension or interruption does not have the effect of prolonging the period beyond ten or thirty years, as the case may be. On the other hand, the shorter period may be an absolute period after which no right to compensation exists.</p> <p>77. Proceedings may also be brought after the ten and thirty year periods in two cases: first, where the national legislation of the liable operator establishes a longer period and the Contracting Party in whose territory the operator's installation is situated has taken measures to cover that operator's liability for such longer period. Any proceedings brought within such longer period, however, may not affect the rights to compensation under the Convention of any person who, within the thirty year period has brought an action against the operator for personal injury or death, or who, within the ten year period has brought an action against the operator for any other nuclear damage. Secondly, unless the applicable national law provides otherwise, victims who suffer an aggravation of the nuclear damage for which they have already brought an action for compensation within the prescribed time-limit, may amend their claims after the expiry of that time-limit provided that no final judgement has yet been entered by the competent court.</p>
<p><i>Articles 13(f)(ii), 8(e)</i></p>	<p>78. The rules governing the choice of the competent court are laid down in Article 13 [see paragraphs 92-101]. Where the courts of more than one Contracting Party might be competent, the choice of competent court is, under certain circumstances, determined by the European Nuclear Energy Tribunal established by the Convention of 20<sup>th</sup> December 1957 on the Establishment of a Security Control in the Field of Nuclear Energy, and in such cases, a victim cannot bring his action until the Tribunal has made its determination. However, to avoid risking the prescription or extinction of a victim's right to compensation before the Tribunal has made its determination, it is provided that such right shall not be prescribed or extinguished if within the time limits provided for by the Convention, either one of two conditions exist; first, a victim brings his action before any of the courts from which the Tribunal can choose and where the Tribunal subsequently determines that the competent court is not the one before which the victim has already brought his action, the victim must bring his</p>

	<p>action before the selected competent court within the time limit, if any, fixed by the Tribunal; or secondly, where a request has been made to a Contracting Party to institute a determination by the Tribunal pursuant to Article 13(f)(ii), a victim brings his action subsequent to such determination and within the time, if any, fixed by the Tribunal.</p>
<i>Articles 3(a), 6(c), 9</i>	<b><u>EXONERATIONS</u></b>
<i>Article 9</i>	<p>79. The strict liability of the operator is not subject to the classic exonerations such as force majeure, Acts of God or intervening acts of third persons, whether or not such acts were reasonably foreseeable and avoidable. Insofar as any precautions can be taken, those in charge of a nuclear installation are in a position to take them, whereas potential victims have no way of protecting themselves. There are, however, two situations in which the operator will be exonerated from liability.</p>
<i>Article 6(e)</i>	<p>80. (a) First, an operator will be exonerated from liability for damage caused by a nuclear incident directly due to certain disturbances of an international character, namely acts of armed conflict and hostilities, or of a political nature, namely civil war and insurrection, on the grounds that all such matters are the responsibility of the State as a whole. An operator is not, however, exonerated from nuclear damage caused by a nuclear incident directly due to an act of terrorism, whatever its scale, since terrorist acts are not covered by the events enumerated in Article 9.</p> <p>80. (b) Secondly, if the national law so provides, the competent court may relieve the operator wholly or partly from liability for nuclear damage suffered by a person if the operator can prove that such damage resulted wholly or partly from the gross negligence of that person, or from an act or omission of that person done with intent to cause damage. As has been pointed out earlier [see paragraph 31(a)], where the operator is exonerated, if the applicable law so provides an individual may be liable for nuclear damage caused by a nuclear incident resulting from that individual's act or omission done with intent to cause damage.</p>
<i>Article 10</i>	<b><u>FINANCIAL SECURITY</u></b>
<i>Article 10(a), (b)</i>	<p>81. To meet its liability obligations towards victims, the operator is required to have and maintain financial security equal to either (i) the liability amount established pursuant to Article 7(a) or Article</p>



<p><i>Article 10(c)</i></p>	<p>7(b), (ii) the financial security limit established under Article 10(b) for operators whose liability is not limited in amount, or (iii) the phasing-in liability amount permitted pursuant to Article 21(c), whichever is applicable. Where the liability of the operator is not limited in amount, the Contracting Party in whose territory that operator's installation is situated shall establish that operator's financial security at either not less than 700 million EUR as provided for under Article 7(a) or not less than 70 million EUR or 80 million EUR as provided for under Article 7(b), whichever amount is applicable.</p>
	<p>82. Financial security may be in various forms: insurance coverage, conventional financial guarantees or ordinary liquid assets. A combination of insurance, other financial security and State guarantee may be accepted. An operator may change the insurance or other financial security, provided that the required amount is always maintained. Although the operator must have financial security available for each nuclear incident, in practice insurance coverage will, it seems, only be available per installation for a fixed period of time rather than in respect of a single incident. There is nothing in the Convention which prevents this, provided that the required amount of financial security is not reduced or exhausted as a result of a first nuclear incident without appropriate measures being taken to ensure that required amount is available for subsequent nuclear incidents.</p>
	<p>83. It is for the competent public authority to determine the type and terms of the insurance or other financial security which the operator will be required to hold. The type and terms envisaged do not imply the establishment of a supervisory authority to control insurance activities in those countries where such an authority does not already exist, but only the control necessary to ensure compliance with the Convention. Thus the competent public authority must ensure that insurance policies are satisfactory in that they do not contain clauses which might render them ineffective, such as those permitting the insurer or other financial guarantor to invalidate the financial security for non-payment of premiums.</p>
	<p>84. Whatever conditions are laid down by the competent public authority, it may happen that the financial security maintained by the operator is not available or is insufficient to satisfy nuclear damage claims arising from a nuclear incident. This might occur, for example, where the financial guarantor is bankrupt, or where</p>

	<p>the financial security corresponding to a reduced liability amount for a low-risk installation is insufficient to satisfy all nuclear damage claims resulting from an incident at that installation, or where the insurance is on a per installation basis for a fixed period and after a first nuclear incident it is impossible to reinstate the financial security up to the required amount. In these circumstances, the Contracting Party in whose territory the liable operator's installation is situated shall provide the necessary funds to ensure the payment of compensation for nuclear damage, but only up to the reference liability amount under Article 7(a) or the phasing-in amount established under Article 21(c), whichever is applicable. The guiding principle is that financial security must be available in the amount established in accordance with the Convention for each nuclear incident, whatever system is adopted by the competent public authority in regard to licensing and insuring nuclear installations.</p>
<i>Article 10(d)</i>	<p>85. Where one operator operates two or more nuclear installations on a site, and the Contracting Party concerned has not determined that they shall be treated as a single nuclear installation pursuant to Article 1(a)(ii), that operator must maintain insurance or other financial security for each of the nuclear installations which it operates.</p> <p>86. Relations between the operator and its insurer or other financial guarantor, including rights of recourse by the latter against the former, are left to be determined by each State.</p> <p>87. To ensure, as far as possible, that there will never be a period in which less than the required amount of financial security is available, it is provided that such financial security can only be suspended or cancelled, that is, brought to an end before the expiry of the period provided for in the policy, after at least two months' notice has been given to the competent public authority. The competent public authority may, of course, fix a longer period of notice. Where the financial security covers the operator's liability for nuclear damage arising from nuclear incidents occurring during transport, it shall not be suspended or cancelled during the period of the transport in question.</p>
<i>Article 10(e)</i>	<p>88. All sums provided as financial security can only be drawn upon to pay compensation for nuclear damage caused by a nuclear incident; they need not be segregated but they must not be used to meet any other claims.</p>

<i>Article 11</i>	<b><u>NATURE, FORM AND EXTENT OF COMPENSATION</u></b>
	<p>89. Claims for compensation following a nuclear incident may differ greatly in nature, in amounts and in the dates upon which they are brought, and measures may be necessary to ensure an equitable distribution of the amount of compensation available if this amount is or may be exceeded. It will be for the competent court, in accordance with national law, to decide the nature, form and extent of the compensation, within the limits of the Convention, as well as its equitable distribution. Thus, the granting of annuities and their amounts will be determined by national law; so will the effect of a person's contributory gross negligence or intentional act or omission on his claim for compensation for nuclear damage [see paragraph 80(b)].</p> <p>90. It is for each State to decide whether measures for equitable distribution should be taken in advance or at the time when actions are brought. Measures may involve providing a limit on the amount of compensation paid to each person suffering nuclear damage or limits upon the amounts of compensation paid for injury or death of persons and all other types of nuclear damage. Similarly, where the nuclear damage to be compensated exceeds or is likely to exceed the amount available under Article 7 of the Convention, it is for each State to decide whether or not priority will be given to claims for loss of life or personal injury in the distribution of compensation. Nevertheless, the Contracting Parties agree that the concept of equitable distribution of compensation allows for the setting of priorities for compensating claims.</p>
<i>Article 12</i>	<b><u>TRANSFER OF COMPENSATION</u></b>
	<p>91. If the recognition of a single competent forum to deal with all actions arising out of the same nuclear incident and the enforceability of its judgements in all Contracting Parties, is to be effective, there must be no impediments to the transfer of amounts under the Convention. Thus, insurance and reinsurance premiums, sums paid out as proceeds of insurance, reinsurance or other financial security, and sums due as compensation, interest and costs, shall all be freely transferable among the monetary areas of the Contracting Parties. This freedom to transfer is not intended,</p>

	however, to affect national laws governing insurance activities such as, the establishment of financial reserves.
<i>Article 13</i>	<b><u>JURISDICTION AND ENFORCEMENT OF JUDGEMENTS</u></b>
<i>Article 13(a), (h)</i>	<p>92. There are many factors motivating in favour of a single competent forum to deal with all actions for compensation arising out of the same nuclear incident, including direct actions against operators, insurers or other financial guarantors and actions to establish rights to claim compensation. Most important is the need for a single legal mechanism to ensure that the amount of liability established with respect to the liable operator is not exceeded. Moreover, if suits arising out of the same nuclear incident were to be tried and judgements rendered in the courts of several different countries, the problem of assuring equitable distribution of compensation might be insoluble.</p> <p>93. The general rule is that only the courts of the Contracting Party in whose territory the nuclear incident occurs have jurisdiction to hear nuclear damage compensation claims. Furthermore, the Contracting Party whose courts have jurisdiction must ensure that only one of its courts will rule on nuclear damage compensation claims from any one nuclear incident and that such Contracting Party's national law will determine the criteria by which that one court is selected.<sup>26</sup></p>
<i>Article 13(b)</i>	<p>94. (a) A special rule has been established to determine which courts have jurisdiction where a nuclear incident occurs in a Contracting Party's exclusive economic zone, or, where no zone has been established, then in an area not greater than an exclusive economic zone if one were to be established. In such cases, jurisdiction lies only with the courts of that Contracting Party as long as it has notified the Convention's depositary, the Secretary-General of the OECD, of such zone or area prior to the occurrence of the nuclear incident. However, these provisions are not to be interpreted so as to permit the exercise of jurisdiction or the delimitation of a</p>

<sup>26</sup> On 3 October 1990, the Steering Committee for Nuclear Energy adopted Recommendation [NE/M(90)2] recommending that "Contracting Parties, when revising their national legislation, provide for a single court to be competent to rule on compensation under the Paris Convention for nuclear damage arising from any one nuclear incident; the criteria for this determination shall be decided by national legislation". This Recommendation will become obsolete and should be revoked when the Protocol to amend the Paris Convention of 12 February 2004 comes into force for all Contracting Parties.

<i>Article 13(e)</i>	<p>maritime zone in a manner which is contrary to the international law of the sea.</p> <p>94. (b) Article 13 is intended to deal only with jurisdiction over nuclear damage claims arising from a nuclear incident. The notification by a Contracting Party to the Convention's depositary of the establishment of an exclusive economic zone, or area not greater than an exclusive economic zone, does not create any right or obligation or set a precedent regarding the delimitation of maritime zones between States with opposite or adjacent coasts. Similarly, no such right is created merely because the courts of the Contracting Party who have jurisdiction pursuant to Article 13(b) exercise that jurisdiction.</p>
<i>Article 13(d)</i>	<p>94. (c) Another special rule has been established to address the situation where a nuclear incident occurs in an area in respect of which there is a dispute concerning the delimitation of maritime boundaries. In such a case, a concerned Contracting Party may request that jurisdiction be determined by the European Nuclear Energy Tribunal referred to in Article 17 and in such case jurisdiction shall lie with the courts determined by the Tribunal as being those of the Contracting Party which is most clearly related to and affected by the consequences of the accident.</p>
<i>Article 13(c)</i>	<p>95. Special arrangements are necessary in the case of a nuclear incident which occurs outside the territory of a Contracting Party or where it occurs within an area for which no notification has been given under Article 13(b), or where it is not possible to determine with certainty the place of the nuclear incident. For example, an incident may occur on the high seas or, where an incident is due to continuous radioactive contamination in the course of transport, it may not be possible to determine the place of such incident. In such cases, the competent courts are the courts of the place where the liable operator's installation is situated. While there may be some practical disadvantages for victims having to resort to the jurisdiction of the operator as a result of the distance involved, it has not been possible to find another solution which would both enable victims to refer to their national courts and at the same time secure unity of jurisdiction.</p>
<i>Article 13(f)(i), (ii)</i>	<p>96. Special arrangements have also been put in place to ensure unity of jurisdiction where the courts of more than one Contracting Party are competent to hear nuclear damage compensation claims. Where the nuclear incident occurs partly outside the territory of any Contracting Party and partly within the territory of one of</p>

	<p>them, the court of that one Contracting Party has jurisdiction. In any other case jurisdiction will lie with the courts which are determined by the European Nuclear Energy Tribunal, at the request of a Contracting Party concerned, as being the courts of the Contracting Party most closely related to and affected by the consequences of the nuclear incident.</p>
<i>Article 13(g)(i), (ii)</i>	<p>97. The competent court in all cases is intended to deal with all actions which might be brought against an operator or against the insurer or other person providing the financial security either as an alternative to the operator or in addition to him, where the national law of the court having jurisdiction grants a right of direct action in such a case [Article 6(a)], either directly by persons suffering damage [Article 3] or by persons who have paid compensation for nuclear damage under international agreements in the field of transport or under the legislation of a non-Contracting State and who have thus acquired by subrogation the rights of the person so compensated [Article 6(d)]. The forum for actions of recourse by an operator under Article 6(f) or for actions for contribution by an operator against other operators in the case of joint and several liability is not fixed in the Convention and will be decided by national law [see paragraph 34(a)].</p> <p>98. An obligation is imposed upon the Contracting Party whose courts have jurisdiction to hear and determine nuclear damage compensation claims to ensure that any State may bring an action for compensation on behalf of persons who are its nationals or who are domiciled or resident in that State, as long as those persons have agreed to be represented by that State. In addition, that same Contracting Party is obliged to ensure that for nuclear damage compensation actions, any person can institute an action to enforce rights under the Convention which that person has acquired either by subrogation or by assignment.</p>
<i>Article 13(i)</i>	<p>99. The concept of a single forum carries with it the need to ensure that final judgements rendered in that forum will be recognized by, and can be enforceable in the territories of the other Contracting Parties without re-examination of the merits. Such final judgements are enforceable in any of the other Contracting Parties as soon as the formalities required have been complied with.</p> <p>100. Final judgements enforceable under Article 13(i) do not include judgements rendered against persons other than the liable operator under Article 6(b) except for insurers or other persons providing financial security where the national law of the court having</p>

<i>Article 13(j)</i>	<p>jurisdiction permits such direct actions, judgements rendered in actions of recourse by the liable operator under Article 6(f), actions against the liable operator under Article 6(h) or actions for contribution between persons jointly and severally liable.</p> <p>101. Where a Contracting Party is sued for compensation under the Convention, it is provided that such Party may not invoke any jurisdictional immunity which it might otherwise have, except in respect of measures of execution.</p>
<i>Article 14</i>	<b><u>APPLICABLE LAW</u></b>
<i>Article 14(a), (c)</i>	<p>102. The law of the competent court is the national law of the court having jurisdiction to hear nuclear damage compensation claims arising from a nuclear incident, and in most cases this will be the law of the Contracting Party in whose territory the nuclear incident takes place. The competent court must apply the provisions of the Convention without any discrimination based upon nationality, domicile or residence. Similarly, national law and national legislation, which apply to all substantive and procedural matters not specifically governed by the Convention, must be applied without any discrimination based upon nationality, domicile or residence.</p>
<i>Article 14(b)</i>	<p>103. National law and national legislation are terms which are defined in the Convention to mean, respectively, the law and the legislation of the court having jurisdiction over nuclear damage compensation claims, excluding the rules of conflict of laws relating to such claims. The exclusion of the rules on conflict of laws does not deprive the competent court of the right to determine questions of private international law. However, the exclusion clearly confirms and emphasizes that the court is only entitled to apply its rules of private international law to questions which are not governed by the provisions of the Convention.</p>
<i>Article 15</i>	<b><u>ADDITIONAL COMPENSATION</u></b>
<i>Article 15(a),(b)</i>	<p>104. It is recognised that in the event of a catastrophe, the amount of compensation to be made available under the Convention may well be inadequate to meet all nuclear damage compensation claims. In such circumstances, a Contracting Party may take such measures as it deems necessary to provide for an increase in the amount of compensation specified in the Convention, whether by increasing the amount of the operator's liability or by some other</p>

	<p>means. Where a Contracting Party takes measures to provide for compensation in excess of the 700 million EUR referred to in Article 7(a), such measures may be applied under special conditions which derogate from the provisions of the Convention, and in particular, need not be applied without discrimination to all victims.</p> <p>105. Article 15(b) allows for deviation from the non-discrimination rule contained in Article 14 where additional funds are used to compensate nuclear damage in excess of the 700 million EUR liability amount provided for under Article 7. For Contracting Parties with unlimited liability regimes or States with limited liability in excess of 700 million EUR, these additional funds are, effectively, operator funds and would therefore be subject to distribution in accordance with the non-discrimination rule of Article 14, rather than in accordance with the provisions of Article 15(b). To remedy this situation, and to ensure that the same rules apply to the distribution of these additional funds regardless of their source, deviation from the non-discrimination rule is permitted regardless of whether public or private funds are used to compensate nuclear damage in excess of the liability amount established under Article 7.<sup>27</sup></p> <p>106. On 12 February 2004, the Conference on the Revision of the Paris Convention and of the Brussels Convention Supplementary to the Paris Convention adopted a Recommendation, in Annex III to the Final Act of the Conference, on the Application of the Reciprocity Principle to Nuclear Damage Compensation Funds which reflects their agreement in respect of deviations from the non-discrimination rule. Although not legally binding, the Recommendation is considered as a strong policy commitment on the part of those States.</p>
<b>Articles 17-24</b>	<b><u>FINAL CLAUSES</u></b>
	<p>107. The final clauses of the Convention deal with disputes, reservations, ratification, amendments, accession, duration, revision and withdrawal, notification of the application of the</p>

<sup>27</sup> For Paris Convention States that are Party to the 1963 Brussels Convention Supplementary to the Paris Convention (the “Brussels Supplementary Convention”), the rules for distributing compensation under that latter Convention take precedence over those contained in the former with regard to the 2<sup>nd</sup> and 3<sup>rd</sup> tiers of compensation provided for there under, and therefore deviation from the non-discrimination rule is only allowed for the distribution of public or private funds in excess of the total compensation provided for under Article 3 of the Brussels Supplementary Convention.



<i>Article 17</i>	<p>Convention to territories for whose international relations the Contracting Party is responsible, and notice to the Signatories of receipt of the various instruments deposited pursuant to the final clauses.</p> <p>108. (a) In the case of a dispute as to the interpretation or application of the Convention, the disputing Contracting Parties will attempt to settle the matter by negotiation or other amicable means, but if they cannot do so within six months of the beginning of the dispute, then all of the Contracting Parties will meet to help them settle the matter on a cordial basis. If the dispute is still unresolved three months after that meeting, the matter may be submitted, upon the request of a Contracting Party which is party to the dispute, to the European Nuclear Energy Tribunal. The Tribunal will act in accordance with the rules governing its organisation and functioning, which are set out in the Protocol annexed to the Security Control Convention and in its Rules of Procedure.</p>
<i>Article 17(d)</i>	<p>108. (b) To ensure that the resolution of disputes concerning the delimitation of maritime boundaries is clearly outside the scope of the Convention, a provision to that effect is included in the Convention.</p>
<i>Article 21(c)</i>	<p>109. Where a Government which has not already signed the Convention accedes to it after 1 January 1999, that Government may take advantage of the “phasing-in” provision contained in Article 21(c) with regard to fixing the liability amount for its operators. Thereafter, the Government in question must raise its operators’ liability amount to that which is required under Article 7 of the Convention [see paragraph 66].</p>
<i>Article 22(c)</i>	<p>110. With regard to amendments to the Convention, the Contracting Parties have agreed to consult each other every five years on matters raised by the application of the Convention in which they have a common interest. In particular, they will consider whether or not it is desirable to increase the operator liability amounts and the corresponding financial security amounts under the Convention.</p>