

## Legal

# Legal Framework on Civil Liability for Nuclear Damage

### SUMMARY

1. It is important to develop and maintain a national legal framework to ensure prompt and adequate compensation for damage suffered by victims of a nuclear incident.
2. A number of multilateral treaties have been adopted in order to harmonize national laws in the area of civil liability for nuclear damage.
3. The IAEA's International Expert Group on Nuclear Liability (INLEX) has adopted a number of recommendations on ways to facilitate the establishment of a global nuclear liability regime addressing the concerns of all States that might be affected by a nuclear incident.
4. The IAEA supports Member States in adhering to and implementing the multilateral treaties on civil liability for nuclear damage, taking into account the INLEX recommendations.

### INTRODUCTION

The accident in 1986 at the Chernobyl nuclear power plant in the former USSR made it clear that a nuclear incident can cause damage of exceptional magnitude and that the detrimental effects of such an incident do not stop at State borders. In 2011, the accident at the Fukushima Daiichi nuclear power plant in Japan further confirmed the extreme magnitude of damage that can be caused by a nuclear incident. It is therefore essential that States put in place effective mechanisms to ensure prompt and effective compensation for damage caused by a nuclear incident, including one that may have transboundary effects.

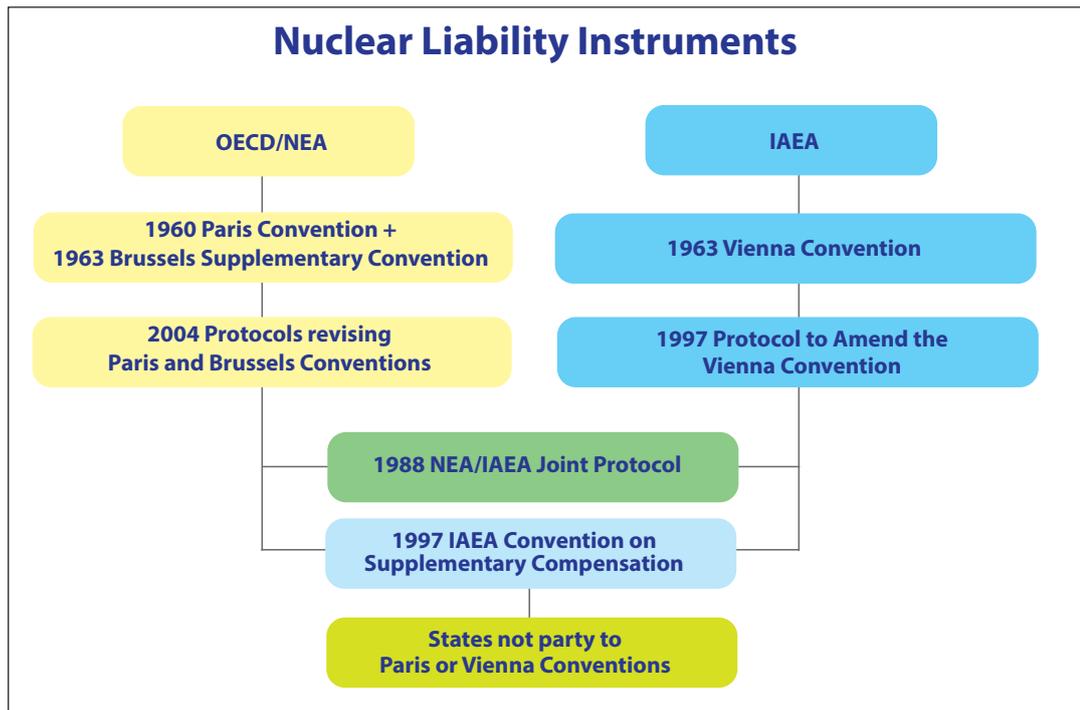
States recognized at an early stage that the ordinary legal rules applying to damage compensation at the



national level would not necessarily ensure prompt and adequate compensation for nuclear damage, and that special rules were therefore necessary. At the same time, States also realized that, in view of the potential transboundary effects of a nuclear incident, such special rules should be based on an internationally agreed legal regime.

### MULTILATERAL TREATIES

A number of multilateral treaties have been adopted in order to harmonize national laws in the area of civil liability for nuclear damage. The Convention on Third Party Liability in the Field of Nuclear Energy (Paris Convention) was adopted in Paris, France, in 1960 under the auspices of the Organisation for Economic Co-operation and Development (OECD) and is open to Members of that organization and to other States if the Parties to the Convention so agree. The Convention Supplementary to the Paris Convention (Brussels Supplementary Convention) was adopted in Brussels, Belgium, in 1963 and is open to States party



to the Paris Convention. The Vienna Convention on Civil Liability for Nuclear Damage (Vienna Convention) was adopted under the auspices of the IAEA, likewise in 1963, and is open to all Member States of the IAEA and to Member States of the United Nations or any of its specialized agencies. Both the Paris Convention and the Vienna Convention aim to harmonize national laws on civil liability for nuclear damage.

Following the Chernobyl accident, the international nuclear liability regime was strengthened through the adoption of additional multilateral treaties. First, the Joint Protocol Relating to the Application of the Vienna Convention and the Paris Convention (Joint Protocol) was adopted in 1988, under the joint auspices of the OECD and the IAEA, in order to create a treaty link between the States party to the Paris and the Vienna Conventions.

Thereafter, the Convention on Supplementary Compensation for Nuclear Damage (CSC) and the Protocol to Amend the Vienna Convention were adopted in 1997 under the auspices of the IAEA, and Protocols to amend the Paris Convention and the Brussels Supplementary Convention were adopted in 2004 under the auspices of the OECD.

## NUCLEAR LIABILITY PRINCIPLES

The international legal regime established by the aforementioned treaties is based on a number of general principles, the most important of which are:

- Exclusive liability of the operator of a nuclear installation, i.e. no other person may be held liable for nuclear damage ('legal channelling of liability');
- Strict liability of the operator, i.e. the operator is liable regardless of any fault on its part;
- Minimum amount of liability, i.e. the operator's liability may be limited by the State but not below a certain amount, which differs depending on the applicable treaty;
- Mandatory financial coverage, i.e. the operator's liability must be covered by insurance or other financial security, in order to ensure the availability of funds to compensate the victims;
- Exclusive jurisdiction of the courts of one State, normally the State where the incident occurs, so that the victims of nuclear damage do not need to bring their compensation claims in multiple forums.



**IAEA Director General Rafael Mariano Grossi opens the 20th Meeting of the International Expert Group on Nuclear Liability (INLEX).** (Photo: D. Calma/IAEA)

The multilateral treaties adopted after the Chernobyl accident built on these principles and enhanced them in at least three significant ways:

- Higher compensation, including through supplementary systems based on public funds;
- Broader definition of nuclear damage, i.e. of the damage that can be compensated; and
- Updated jurisdictional rules which take into account the specific interests of coastal States in the event of maritime nuclear incidents.

Moreover, in order to promote treaty relations among States which are party to different treaties, the 1988 Joint Protocol establishes a treaty link between the Paris Convention and the Vienna Convention, and the CSC operates as an ‘umbrella’ for all States which are either party to one of these conventions or have national legislation in place conforming to the aforementioned principles of nuclear liability.

The CSC also envisages an international fund to supplement the amount of compensation available for nuclear damage at the national level. A mechanism

for supplementary compensation is also envisaged by the Brussels Supplementary Convention, but this is available only to the States party to the Paris Convention.

## **INLEX RECOMMENDATIONS ON WAYS OF FACILITATING THE ESTABLISHMENT OF A GLOBAL NUCLEAR LIABILITY REGIME**

Following the Fukushima Daiichi accident, the IAEA’s Policy-Making Organs adopted the IAEA Action Plan on Nuclear Safety (Action Plan) which, inter alia, called upon the International Expert Group on Nuclear Liability (INLEX) to recommend actions to facilitate a global nuclear liability regime addressing the concerns of all States that might be affected by a nuclear accident, with a view to providing appropriate compensation for nuclear damage. INLEX adopted its recommendations under the Action Plan in 2012.

These recommendations provide that Member States, in particular those with nuclear installations, should adhere to one or more of the relevant international nuclear liability instruments that reflect the enhancements developed following the Chernobyl

accident, and that they should strive to establish treaty relations with as many States as practical.

The recommendations also provide that States with nuclear installations should, inter alia, establish compensation and financial security amounts significantly higher than the minimum amounts envisaged under the existing instruments, undertake regular reviews of the adequacy of such amounts, and be prepared to set up appropriate funding mechanisms in cases where the amounts are insufficient to compensate for nuclear damage.

INLEX was established by the IAEA Director General in 2003 to serve as a forum for the discussion of issues pertaining to nuclear liability and to promote adherence to the relevant international legal instruments. INLEX works to enhance global adherence to an effective nuclear liability regime, on the basis of the nuclear liability conventions.

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Additionally, INLEX assists in the development and strengthening of the national legal frameworks governing nuclear liability in IAEA Member States.

## IAEA SUPPORT FOR MEMBER STATES

Pursuant to recurring requests from the IAEA General Conference, the Secretariat assists Member States as they prepare to adhere to the international nuclear liability instruments and to develop national implementing legislation, taking into account the recommendations adopted by INLEX in 2012. Such assistance is undertaken both in the framework of the IAEA legislative assistance programme and through outreach activities conducted with the support of INLEX experts.

## AREAS WHERE MEMBER STATES MAY BENEFIT FROM IAEA ASSISTANCE

- Raising awareness among senior officials and decision-makers of the importance of adhering to one or more of the multilateral treaties adopted in the area of civil liability for nuclear damage and of developing national implementing legislation, in order to ensure prompt and adequate compensation for damage suffered by victims of a nuclear incident;
- Helping Member States, upon request, to develop such national legislation;
- Preparing and disseminating explanatory materials on the multilateral treaties adopted under IAEA auspices, as well as model legislative provisions that may help Member States in adopting national implementing legislation.

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