107TH CONGRESS
2d Session

SENATE

TREATY DOC.
107–21

CONVENTION ON SUPPLEMENTARY COMPENSATION FOR NUCLEAR DAMAGE

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

CONVENTION ON SUPPLEMENTARY COMPENSATION FOR NUCLEAR DAMAGE, DONE AT VIENNA ON SEPTEMBER 12, 1997. CONVENTION ADOPTED BY A DIPLOMATIC CONFERENCE CONVENED BY INTERNATIONAL ATOMIC ENERGY AGENCY (IAEA) AND OPENED FOR SIGNATURE AT VIENNA, SEPTEMBER 29, 1997 DURING IAEA GENERAL CONFERENCE

NOVEMBER 15, 2002.—Convention was read the first time, and together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

U.S. GOVERNMENT PRINTING OFFICE

19–118 WASHINGTON : 2002

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *November 15, 2002.*

To the Senate of the United States:

I transmit herewith, for Senate advice and consent to ratification, with a declaration, the Convention on Supplementary Compensation for Nuclear Damage done at Vienna on September 12, 1997. This Convention was adopted by a Diplomatic Conference convened by the International Atomic Energy Agency (IAEA) and was opened for signature at Vienna on September 29, 1997, during the IAEA General Conference. Then-Secretary of Energy Federico Peña signed the Convention for the United States on that date, subject to ratification. Also transmitted for the information of the Senate is the report of the Department of State concerning the Convention.

The Convention establishes a legal framework for defining, adjudicating, and compensating civil liability for nuclear damage that results from an incident in the territory of a Party, or in certain circumstances in international waters, and creates a contingent international supplementary compensation fund. This fund would be activated in the event of an incident with damage so extensive that it exhausts the compensation funds that the Party where the incident occurs is obligated under the Convention to make available.

The international supplementary fund would be made up largely of contributions from Parties that operate nuclear power plants. The improved legal certainty and uniformity provided under the Convention combined with the availability of additional resources provided by the international supplementary fund create a balanced package appealing both to countries that operate nuclear power plants and those that do not. The Convention thus creates for the first time the potential for a nuclear civil liability convention with global application.

Prompt U.S. ratification of the Convention is important for two reasons. First, U.S. suppliers of nuclear technology now face potentially unlimited third-party civil liability arising from their activities in foreign markets because the United States is not currently party to any international nuclear civil liability convention. In addition to limiting commercial opportunities, lack of liability protection afforded by treaty obligations has limited the scope of participation by major U.S. companies in the provision of safety assistance to Soviet-designed nuclear power plants, increasing the risk of future accidents in these plants. Once widely applied, the Convention will create for suppliers of U.S. nuclear equipment and technology substantially the same legal environment in foreign markets that they now experience domestically under the Price-An-

derson Act. It will level the playing field on which they meet foreign competitors and eliminate the liability concerns that have inhibited them from providing the fullest range of safety assistance.

Second, under existing nuclear liability conventions many potential victims outside the United States generally have no assurance that they will be adequately or promptly compensated in the event they are harmed by a civil nuclear incident, especially if that incident occurs outside their borders or damages their environment. The Convention, once widely accepted, will provide that assurance.

United States leadership is essential in order to bring the Convention into force soon. With the United States as an initial Party, other countries will find the Convention attractive and the number of Parties is likely to grow quickly. Without U.S. leadership, the Convention could take many years to enter into force. The creation of a global civil liability regime will play a critical role in allowing nuclear power to achieve its full potential in the diverse and environmentally responsible world energy structure we need to build in the coming decades.

The Convention is consistent with the primary existing U.S. statute governing nuclear civil liability, the Price-Anderson Act of 1957. Adoption of the Convention would require virtually no substantive changes in that Act. Moreover, under legislation that is being submitted separately to implement the Convention, the U.S. contingent liability to contribute to the international supplementary fund would be completely covered, either by funds generated under the Price-Anderson Act in the event of an accident covered by both that Act and the Convention, or by funds contributed to a retrospective pool by U.S. suppliers of nuclear equipment and technology in the event of an accident covered by the Convention but falling outside the Price-Anderson system. In either case, U.S. taxpayers would not have to bear the burden of the U.S. contribution to the international supplementary fund.

The Convention allows nations that are party to existing nuclear liability conventions to join the new global regime easily, without giving up their participation in those conventions. It also permits nations that do not belong to an existing convention to join the new regime easily and rapidly. The United States in particular benefits from a grandfather clause that allows it to join the Convention without being required to change certain aspects of the Price-Anderson system that would otherwise be inconsistent with its requirements.

The Convention, without relying on taxpayer funds, will increase the compensation available to potential victims of a civil nuclear incident, strengthen the position of U.S. exporters of nuclear equipment and technology, and permit us to provide safety assistance to the world's least-safe reactors more effectively.

I urge the Senate to act expeditiously in giving its advice and consent to ratification of the Convention on Supplementary Compensation for Nuclear Damage, with a declaration as set forth in the accompanying report of the Department of State.

GEORGE W. BUSH.

LETTER OF SUBMITTAL

THE SECRETARY OF STATE,
Washington, DC, August 7, 2001.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you the Convention on Supplementary Compensation for Nuclear Damage, done at Vienna on September 12, 1997. I recommend that this Convention be transmitted to the Senate for advice and consent to ratification, with a declaration.

This Convention was adopted by a Diplomatic Conference convened by the International Atomic Energy Agency (IAEA), and was opened for signature at Vienna on September 29, 1997, during the IAEA General Conference. Then-Secretary of Energy Peña signed the Convention for the United States on that date, subject to ratification.

Acting in the light of the 1986 Chernobyl accident, the General Conference of the IAEA decided in 1989, with U.S. support, to establish within the IAEA a Standing Committee on Nuclear Liability (SCNL). The SCNL's mandate was to examine ways to strengthen the existing international legal regime governing third party liability in the event of another nuclear accident. The SCNL met formally 17 times in Vienna over the intervening 7 years. It focused on two projects: (1) modernizing and strengthening the Vienna Convention on Civil Liability for Nuclear Damage of May 21, 1963 (the Vienna Convention), to provide a greater level of protection to third party victims of a nuclear accident to which that convention applied; and (2) drafting a new convention on supplementary funding that would mobilize funds on the international plane to supplement national funds made available by the "installation state" under its national law and its obligations under other nuclear liability conventions to which it might also be party.

In May 1997, the SCNL adopted and forwarded to the IAEA Board of Governors the texts of a Protocol to Amend the Vienna Convention and of a "Supplementary Funding Convention" (as the Convention on Supplementary Compensation for Nuclear Damage was then known). The texts were considered by the Board of Governors at its June 1997 meeting. It decided to convene a Diplomatic Conference for the week of September 8–12, 1997, to adopt the two texts and open them for signature. The Diplomatic Conference adopted the two texts on September 12 and opened them for signature on September 29, the first day of the 1997 IAEA General Conference. Along with the United States, six other states (Australia, Lebanon, Lithuania, Morocco, Romania, and Ukraine) signed the Convention on Supplementary Compensation for Nuclear Damage

(the "CSC") during the General Conference. Six other states (Argentina, the Czech Republic, Indonesia, Italy, Peru, and the Philippines) have since signed the CSC, and three states (Argentina, Morocco, and Romania) have ratified it. (The United States did not sign the Protocol to Amend the Vienna Convention; it is not party to the underlying Vienna Convention or to the Organization for Economic Cooperation and Development's (OECD) Paris Convention on Third Party Liability in the Field of Nuclear Energy of July 29, 1960 (the Paris Convention), because those conventions do not take into account the U.S. system of tort liability based on the laws of the States of the United States.)

The CSC is divided into two parts, a main body and an annex. The main body creates mechanisms for compensating nuclear damage caused within the territory of Parties to the CSC (and in certain cases outside their territory) by a nuclear incident in a covered installation for which an operator within a state that is a Party to the CSC is liable under the CSC. Under the regime created by the CSC, the first tier of compensation is provided by funds made available under the laws of the "installation state." The CSC defines an "installation state" in relation to a covered nuclear installation as the Party within whose territory that installation is situated, or if it is not situated within the territory of any state, the Party by which or under the authority of which the nuclear installation is operated. The minimum first tier compensation level for CSC Parties is set at a convertible currency equivalent to 300 million special drawing rights (SDRs)[1] (about $400 million at current rates of exchange). There is, however, provision for a phrase-in period ending in 2007, until which time states may join the CSC with a first tier amount equivalent to not less than 150 million SDRs (about $200 million). After 2007, the 300 million SDRs requirement applies to all Parties.[2] With respect to accidents within the territory of the United States (including its territory of the United States (including its territorial sea), and certain accidents occurring outside U.S. territory, the requirement for the United States to ensure the availability of the equivalent of 300 million SDRs in first tier compensation is already met (with two narrow exceptions)[3] by funds that would be provided under the Price-Anderson Act (42 U.S.C. § 2210).

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[1] A special drawing right is the unit of account defined by the International Monetary Fund and used by it for its own operations and transactions.

[2] By contrast, the current version of the Vienna Convention allows parties to limit liability to as little as the equivalent of 5 million 1963 gold dollars (about $50 million at recent gold prices). Under the Paris Convention (to which most Western European countries belong) the operator's liability maybe limited to as little as 15 million SDRs per incident. The January 31, 1963, Brussels Convention Supplementary to the Paris Convention (the Brussels Convention), to which most Paris Convention Parties also belong, provides for the Paris/Brussel system to make available no less than 300 million SDRs to compensation damage in those Paris states that also being to the Brussels Convention. By comparison, once broadly adopted the CSCs will assure that no less than 600 million SDRs (about $800 million) will be available to victims.

[3] With respect to any nuclear incident occurring outside the United States involving contractors of the Department of Energy (DOE) transporting U.S. Government nuclear material, the Price-Anderson Act limits aggregate legal liability to $100 million. DOE has already recommended to Congress in its 1999 Report to Congress on the Price-Anderson Act, submitted to Congress in March 1999 (the 1999 Price-Anderson Act, submitted to Congress in March 1999 (the 1999 Price-Anderson Report), that this amount be increased to about $500 million, which would exceed the CSC requirement of 300 million SDRs. See the analysis of Annex Article 5 below for a discussion of a narrow set of potential accidents occurring outside the United States not covered by the Price-Anderson Act, but for which the United States would be the "installation state."

The second tier of compensation is provided by the international supplementary compensation fund that gives the CSC its name. The obligation to contribute to the fund would be triggered if the "installation state" notifies the Parties that the amount of all eligible claims may exceed the minimum first tier amount that applies to that state. Approximately 90 percent of the international supplementary fund would be made up of contributions assessed on the basis of the nuclear power generating capacity (if any) of each Party to the CSC at the time the incident occurs; the remainder would be made up of contributions assessed on the basis of each Party's United Nations assessment.

Were it needed in its entirety today and were all major nuclear power generating states party to the CSC, the international supplementary fund would provide in excess of 300 million SDRs to compensate victims. Of this amount, the United States, as it possesses about one-third of the world's nuclear generating capacity, would be obligated to contribute the U.S. dollar equivalent of approximately 100 million SDRs (about $131 million). When only a few states are party, the U.S. contribution would be far less (see discussion below of Article IV(1)).

Legislation to implement this requirement in the United States in a manner that does not impose a cost on U.S. taxpayers is being submitted separately to Congress. It provides that, if an accident covered by the CSC is also covered by the Price-Anderson Act, funds drawn from contributions made pursuant to that Act by U.S. nuclear utilities will cover the U.S. contribution to the international supplementary fund. In the event of an accident covered by the CSC, but not covered by the Price-Anderson system, the legislation would provide that U.S. firms that supply nuclear equipment and technology will be required to contribute to a retrospective risk pooling program that will be used to reimburse the United States for its contribution to the international supplementary fund (plus any interest and costs awarded). The obligation of suppliers to pay into the pool would be deferred until the United States is called upon to contribute to the international supplementary fund with respect to an actual covered incident.

A third tier of compensation would be available in some states, such as the United States, that make available national funds of more than 300 million SDRs under domestic legislation. States that make available third tier funds are free to raise and distribute them in accordance with domestic law, with the single condition (already met by the United States) that the availability of these funds not be conditioned on the existence of reciprocal obligations with other nations that do not have nuclear installations on their territory.

The CSC incorporates three well-accepted principles that form the basis for the Price-Anderson system as well as the Paris and Vienna conventions. It (1) requires that all claims resulting from a covered nuclear incident be adjudicated in a single forum (in most cases the courts of the Party within which the nuclear incident occurs), (2) channels liability for all claims to the nuclear installation operator, and (3) provides for the strict liability of the operator (i.e., without the need to prove negligence).

The CSC establishes two legal criteria to be met by a state wishing to become a Party. First, each CSC Party must also be a Party to the 1994 Convention on Nuclear Safety. The United States met this condition on July 10, 1999. The second is that each Party to the CSC must also either be party to the Vienna Convention, the Paris Convention, or must have domestic nuclear liability statutes that conform to the requirements set forth in the CSC's Annex. The Annex, in turn, contains a grandfather clause specifically designed to permit the United States to join the new Convention without substantive change to the Price-Anderson system.

The CSC assures that in most cases significantly greater resources will be available from both domestic and international sources to compensate potential victims and provide for restoration of the environment in the territory of Parties in the event of a nuclear incident. It also lays the foundation for a global legal regime governing nuclear liability. This regime would link, through legally binding treaty relations, states that are party to the Vienna Convention (32 states, including a number of Central and Eastern European states), the Paris Convention (17 states in Western Europe) and those states that are currently not party to either the Vienna Convention or the Paris Convention, including the United States, Canada, China, Japan, Russia, and South Korea, as well as many states that do not produce nuclear-generated power. Previous efforts (in particular those using the Vienna convention as a basis) failed to create such a global regime because the United States, the world's largest nuclear power-generating state, was not prepared to alter its fundamental tort-law system to conform to the Vienna Convention and because non-nuclear power generating states had no incentive to join that regime.

The CSC addresses the first of these problems by providing the grandfather clause in Article 2 of the Annex that allows the United States to become a Party without significantly altering Price-Anderson as it currently exists.[4]

The second problem is addressed by the international supplementary fund, which has no analog in the Vienna Convention. Fifty percent of the fund is to be used to compensate damage occurring outside the "installation state" (transboundary damage), including transboundary damage occurring in a non-nuclear power generating Party. The availability of this fund, especially as half of it must be applied toward transboundary damage, creates a strong incentive for such non-nuclear states to join the regime, creating for the first time the potential for a nuclear liability convention that will apply globally.

Increasing potential compensation for victims and for environmental damage and eventually creating a uniform global legal regime are important goals in themselves, but U.S. ratification of the CSC may also have two additional benefits. First, the CSC can

[4] Becoming a Party, would, however, affect the U.S. Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601, *et seq.*) (CERCLA), insofar as it applies to a narrow category of nuclear incidents, namely those occurring in international waters that affect the environment or natural resources of the U.S. Exclusive Economic Zone (EEZ) and over which U.S. courts would have jurisdiction under the CSC. This change would limit the scope of parties liable for damage but would result in the guarantee of more funds available to compensate nuclear damage from this category of nuclear incidents than is available under CERCLA.

strengthen U.S. efforts to improve nuclear safety, because, once widely accepted, the CSC will eliminate ongoing concerns on the part of U.S. suppliers of nuclear safety equipment and technology that they would be exposed to damage claims by victims of a possible future accident at a facility where they have provided assistance. This exposure to liability exists not only in the country where safety work has been performed and in other countries where damage might occur, but also in the United States because the suppliers are based here and are therefore subject to suit in U.S. courts. The CSC provides a mechanism for removing these liability concerns for suppliers, thus creating a legal environment that facilitates the provision of safety assistance.

Second, U.S. participation in a global liability regime will allow U.S. exporters of nuclear technology and equipment to compete more effectively in foreign markets generally. Today, as noted above, these firms are exposed to potentially unlimited liability in their foreign businesses and to suit in U.S. courts. Even if the suits are baseless, expenses to defend such cases can be substantial. When the United States and the state whose nationals are involved are both Parties to the CSC, however, liability exposure will be channeled to the operator in the "installation state," thus substantially limiting the nuclear liability risk of U.S. suppliers. Once the CSC is widely adopted, the entire nuclear supplier industry will be able to operate abroad under a single set of rules similar to those that have applied in the United States under the Price-Anderson Act since the beginning of the commercial nuclear power industry in the 1950s, and that have contributed to the development of safe and effective nuclear technology in this country.

The following is an article-by-article analysis of the CSC:

The Preamble refers to the existing international instruments and national legislation that form the legal context within which the CSC is designed to operate, states the goals of creating a worldwide liability regime and increasing the amount of compensation for nuclear damage, and recognizes that the existence of such a worldwide regime would encourage regional and global cooperation to increase the level of nuclear safety.

Article I contains definitions of 12 terms used in the CSC. They include definitions of the Vienna and Paris Conventions, "Special Drawing Right," "nuclear reactor," "installation state," "nuclear damage," "measures of reinstatement," "preventive measures," "nuclear incident," "installed nuclear capacity," "law of the competent court" and "reasonable measures." The definition of "nuclear damage" is substantially longer and more involved than the others, reflecting a need to accommodate different concepts of tort liability found in a wide variety of domestic legal systems while at the same time ensuring uniformity with respect to certain core elements. The types of damage covered by CSC are thus divided into two categories: those that must be compensated (loss of life, personnel injury, and property loss or damage), and those that are to be compensated "to the extent determined by the laws of the competent court." This second category provides the national court adjudicating claims under the CSC with flexibility to determine under that state's legal system how and to what extent to compensate the following types of losses: those economic losses not falling in the

categories of loss of life, personnel injury, and property loss or damage; the costs of measures of reinstatement of impaired environment; loss of income deriving from an economic interest in any use or enjoyment of the environment; the costs of preventive measures taken to mitigate damage from an imminent or actual nuclear incident; and any other economic loss recognized by the general law on civil liability of that court. The types of loss or damage enumerated in Article I are (with the exception of the costs of preventive measures) only covered by the CSC to the extent that the loss or damage arises out of or results from ionizing radiation emitted inside a nuclear installation or emitted from nuclear fuel or radioactive products or waste in, or of nuclear material coming from, originating in, or sent to, a nuclear installation.

Article II lays out the overarching scope of the CSC and the extent of its application and establishes the relationship of the Annex to the CSC. Paragraph 1 states that the CSC's purpose is to supplement the system of compensation provided pursuant to national law that implements the Vienna Convention or the Paris Convention or that complies with the CSC's Annex. Paragraph 2 states that the CSC applies "to nuclear damage for which an operator of a nuclear installation used for peaceful purposes situated in the territory of a Contracting Party is liable" under the Vienna or Paris Convention or under national law that complies with the Annex. The limitation to installations used for peaceful purposes excludes military facilities from the coverage of the CSC.[5] Paragraph 3 incorporates the Annex as an integral part of the CSC.

Article III contains the central undertaking of the CSC. Paragraph 1(a) obligates the "installation state" to ensure the availability of 300 million SDRs, or a greater amount it may have specified to the Depository (the Director General of the IAEA) before the incident, or an amount not less than 150 million SDRs during the transitional period ending September 29, 2007. The funds made available under this subparagraph constitute the first tier of compensation available in the event of a nuclear incident in a Party to the CSC. Paragraph 1(b) establishes the obligation on all Parties to the CSC to make available public funds according to the formula specified in Article IV. These contributions make up the international supplementary fund that constitutes the second tier of compensation.

Paragraph 2(a) requires that first tier funds be distributed equitably without discrimination on the basis of nationality, domicile or residence. The courts of the "installation state" are thus required to treat domestic and transboundary victims without regard to their nationality when allocating the first tier of compensation. Subject to obligations it may have under other conventions on nuclear liability, the "installation state" is, however, free to include or exclude damage suffered in an non-Party state from the first tier. Paragraph 2(b) subjects the international supplementary fund to the same non-discrimination requirement, subject to Article V

[5] Each Party will decide which of its installations are used for peaceful purposes under the CSC. In the United States, installations used for peaceful purposes would not include nuclear submarines and other installations used for military operations, i.e., all operations of the Department of Defense. Some of the installations operated by the Department of Energy may also be excluded from coverage of the CSC.

(which determines the geographical scope within which damage must occur in order to be eligible for compensation from the fund) and Article XI(1)(b) (which reserves 50 percent of the fund in favor of compensating transboundary damage).

Paragraph 3 of Article III reduces contributions to the fund proportionately among the contributing Parties if the damage compensated does not use up the entire fund. Paragraph 4 creates a separate category of interest and costs that may be assessed by a competent court and allocates any such interest and costs among the various possible contributors to the first two tiers proportionately. Contributions by the various possible contributors of their proportionate share of any interest and costs awarded will be required in addition to their actual contributions made pursuant to paragraph 1(a) and paragraph 1(b) of Article III and may cause their total contributions to exceed the contribution caps or minimums otherwise specified in the CSC. Interest and costs are allowed by the Price-Anderson Act and CERCLA and will be provided for in the implementing legislation that will be submitted with respect to the financing of U.S. contributions to the international supplementary fund.

Article IV establishes the formula under which contributions to the fund are to be calculated.

Paragraph 1(a)(i) assesses 300 SDRs per unit of installed capacity, which is defined in paragraph 2 as one megawatt of thermal power. Paragraph 1(a)(ii) assesses an additional amount equal to 10 percent of the amount assessed in (i), to be contributed by all Parties on the basis of the ratio between their United Nations rate of assessment for the year preceding the year in which the nuclear incident occurs and the total of such rates for all CSC Parties.

Subpargraph (b) states that each Party's contribution shall constitute the sum of the amounts attributable to it under subparagraph (a), provided that states assessed the minimum rate by the United States and having no nuclear reactors shall be exempt from the requirement to contribute. The proviso was added in order to facilitate adherence to the CSC by very small developing states (e.g., Pacific Island nations).

Subparagraph (c) contains a contribution cap. It provides that the maximum contribution that may be charged to a Party, other than the "installation state," must not exceed a specified percentage, equal to its UN rate of assessment plus eight percentage points, of the fund as a whole. For the United States this percentage would be 33 percent (assuming a United Nations rate of assessment of 24 percent plus 8 percent); i.e., the U.S. share of the fund would be capped at one-third, based on a U.S. assessment of 25 percent.[6] Absent the cap, if the United States and only a few other states were Parties (e.g., soon after the CSC enters into force), the proportion represented by the U.S. contribution would otherwise be much higher. For example, if the supplementary fund were to be activated when the United States, South Korea, Canada and Japan were the only nuclear power-generating states party to the CSC, the U.S. contribution to the fund without the 33 percent cap would

[6] The recent reduction in the U.S. assessment to 22 percent lowers the U.S. contribution under Article IV(1)(b) and the U.S. cap under Article IV(1)(c) with respect to covered nuclear incidents occurring after the year 2001.

be about 93 million SDRs out of a total fun of about 150 million SDRs (i.e., the United States would contribute 62 percent). Under the cap, however, the U.S. contribution would be limited to about 50 million SDRs (33 percent of 150) and the fund would actually total 107 million SDRs.

When the cap applies, the fund created would be smaller than it would otherwise have been, but this possible reduction of funds available for victims was judged to be acceptable when weighed against the likelihood that major nuclear power generating countries would not ratify the CSC if they faced a potentially disproportionate financial burden in the early states of building a global regime. To emphasize the transitional nature of the cap, the subparagraph further provides that it begins to phase out when a substantial fraction of the world's nuclear generating capacity, 625,000 MW, is represented by Parties to the CSC, at which point each Party's cap is increased by one percentage point. For each 75,000 MW in excess of 625,000 MW represented by CSC Parties, the level of the cap further increases one percentage point.

Paragarph 2, which defines a unit of installed capacity as 1 MW of thermal power, states that the formula shall be calculated on the basis of the installed capacity of the reactors shown at the date of the incident on a list established and updated pursuant to Article VIII.

Paragraph 3 provides that for the purpose of calculating contributions, a reactor shall be taken into account from the date when nuclear fuel elements are first loaded into the reactor and shall be excluded when all fuel elements have been removed permanently from the reactor core and have been safely stored in accordance with approved procedures. For the United States, these procedures are those approved by the Nuclear Regulatory Commission.

Article V, paragraph 1, describes the geographical locations within which damage must be suffered in order to qualify a claimant for compensation from the international supplementary fund, provided a Party's courts have jurisdiction under Article XIII. Nuclear damage is covered if suffered: within the territory of a Party, or in or above the EEZ or the continental shelf of a Party in connection with the exploitation or exploration of the natural resources of that zone or shelf. Also covered is nuclear damage suffered in or above maritime areas beyond the territorial sea of any Party (but outside the territorial sea of any non-Party) where the damage is suffered (a) by a national of a Party; (b) on board or by a ship flying the flag of a Party; (c) on or by an aircraft registered in a Party; or (d) on or by an artificial island, installation or structure under the jurisdiction of a Party. Paragraph 2 permits a state to assimilate persons having their habitual residence in its territory as its nationals for the purposes of paragraph 1(b)(ii) (concerning treatment of a national of a Party damaged while on the high seas). Paragraph 3 clarifies that the term "national of a Contracting Party" includes juridical and natural persons, as well as the Party itself or any of its constituent subdivisions.

Article VI obligates the Party whose courts have jurisdiction over claims arising from a nuclear incident to notify the other Parties of the incident if it appears that the damage caused by the incident

exceeds, or is likely to exceed, its first tier amount and that contributions to the international supplementary fund may be required. Following such notification, Parties are required to make arrangements for determining which procedures shall apply for making funds available, if subsequently required.

Article VII requires the Party whose courts have jurisdiction, once it has given notice pursuant to Article VI, to request the other Parties to make available funds for the international supplementary fund (up to the maximum amount required from each Party under the contribution formula) when and to the extent required without any restriction and gives that Party exclusive competence to disburse those funds.

Article VIII sets up a system for establishing a list of nuclear reactors in each Party for the purpose of calculating the contributions to the international supplementary fund in the event an incident occurs.

Paragraph 1 obligates a state when it deposits its instrument of ratification, acceptance, approval or accession to communicate to the Depository a list of its reactors containing the necessary particulars (i.e., the thermal capacity) of those reactors. Paragraph 2 requires Parties to communicate promptly modifications to their list of reactors. When a reactor is to be added, the notification must be made at least 3 months in advance of the introduction of nuclear material into the reactor. Paragraph 3 permits other Parties to challenge particulars contained in the list submitted under paragraph 1 or subsequent modifications thereof and to submit any unresolved differences to the CSC's dispute resolution provisions discussed below. Paragraph 4 obligates the IAEA to maintain, update and circulate the list on an annual basis. Paragraph 5 obligates the IAEA to notify Parties of communications and objections it receives with respect to this list.

Article IX, paragraph 1, requires each Party to enact legislation permitting it or other Parties to the extent they have made contributions to the international supplementary fund to benefit from any right of recourse (a right to recover damages from a third party) enjoyed by the liable operator. The implementing legislation to be submitted separately to Congress will contain a provision giving effect to this requirement in the CSC with respect to situations where the Price-Anderson Act does not apply but there is a right of recourse. (There is no right of recourse under the Price-Anderson Act.) Paragraph 2 permits the Party of the liable operator to provide for the recovery from the operator of any public funds made available to compensate damage from a nuclear incident if the damage results from fault on the part of the operator. Paragraph 3 permits the Party whose courts have jurisdiction over claims arising from an incident under the CSC to exercise the rights of recourse provided under paragraphs 1 and 2.

Article X, paragraph 1, provides that the system of disbursements of the Party whose courts have jurisdiction shall be applied to all funds made available under the CSC. Paragraph 2 provides that the Party whose courts have jurisdiction shall not require claimants to bring separate proceedings depending on the source of the funds provided (i.e., whether they came from first tier funds, the second tier comprised of the international supplementary fund,

or third tier funds provided under the law of the "installation state") and that Parties may intervene in the proceeding against the operator liable. Paragraph 3 guarantees that no Party will be asked to contribute to the international supplementary fund if required first tier funds are sufficient to cover all claims.

Article XI, paragraph 1, stipulates the allocation of the international supplementary fund. Subparagraph 1(a) allocates one half of the fund for the compensation of damage in all Parties without differentiation. Subparagraph 1(b) makes the other half of the fund available for the compensation of transboundary damage. Subparagraph 1(c) provides that if the funds in the first tier are less than the equivalent of 300 million SDRs (i.e., if the "installation state" is benefiting from the 10-year phase in when the incident occurs), the proportion of the international supplementary fund available for transboundary damage is proportionately increased.

Paragraph 2 deals with the special case when a Party has exercised its option under Article III(1)(a) and has declared a first tier amount that is 600 million SDRs or greater. In that case, the allocation to transboundary damage is eliminated and the entire international supplementary fund is available on a non-differentiated basis.

Article XII deals with the relation between the CSC and other existing or possible future conventions in the field of nuclear liability. Paragraph 1 allows Parties to the Vienna Convention or Paris Convention to invoke their rights under those conventions against other Parties to them that are also party to the CSC in order to accumulate public funds that they may be called upon to supply to the CSC's international supplementary fund. Paragraph 2 permits Parties to make provisions for a third tier of compensation of nuclear damage above and beyond the first tier amount and the international supplementary fund should they so choose (e.g., the provisions under the Price-Anderson Act that would result in additional compensation with respect to a U.S. accident once the first tier and the international supplementary fund had been exhausted). Where availability of the third tier under a Party's domestic law would otherwise depend on reciprocity from a Party, lack of reciprocity may not be used to deny compensation to a Party that has no nuclear installations on its territory. (The Price-Anderson Act does not require reciprocity in any case, and, because Price-Anderson makes the U.S. third tier open to all, U.S. citizens would meet reciprocity requirements of any Party that mandates them.) Paragraph 3 makes clear that Parties are free to enter into regional or other agreements for the purpose of accumulating funds to satisfy their obligation to provide first tier funds or to provide other additional funds for the compensation of nuclear damage. Notice of an intention to enter into such agreements must be given to the other Parties.

Article XIII determines which Party's courts shall have jurisdiction over claims brought under the CSC and how judgments rendered by the courts of one Party are to be recognized by those of another. Paragraph 1 states the general rule that (vis-à-vis the courts of other Parties) only the courts of the Party within which the incident occurs shall have jurisdiction. Paragraph 2 deals with the exceptional case where the incident occurs within a maritime

area coextensive with an EEZ (i.e., an area extending seaward up to 200 nautical miles from the baselines from which a state's territorial sea is measured) that has been or could be established by a Party and that has been notified to the Depositary. (The United States will notify the Depositary of its EEZ upon deposit of its instrument of ratification.) Under this paragraph, the courts of the coastal Parties exercise exclusive jurisdiction vis-à-vis the courts of other Parties. Parties to the Paris or Vienna Convention are permitted to follow the corresponding jurisdictional provisions of those Conventions with respect to non-Parties to the CSC. Paragraph 3 grants exclusive jurisdiction to the courts of the "installation state" vis-á-vis the courts of other Parties where the incident occurs outside the territory of any Party and outside the maritime area defined in paragraph 2. Paragraph 4 requires the Parties involved to determine by agreement which of their courts will have exclusive jurisdiction where jurisdiction would lie with the courts of more than one Party under the foregoing rules (e.g., if the incident were to occur in a maritime area where the actual or potential economic zone claims of two or more Parties overlap). Paragraph 5 stipulates that once no longer subject to appeal, a judgment rendered under the CSC in one Party's courts shall be recognized in the courts of all other Parties, except when the judgment was obtained by fraud, the defendant was not given a fair opportunity to present his case, or where the judgment is contrary to the public policy (order publique) of the Party where enforcement is sought or is not in accord with fundamental standards of justice. Under paragraph 6, a judgment recognized under paragraph 5 shall be enforceable as though it were a judgment of the courts of the Party where enforcement is sought and the merits shall not be subject to further proceedings there. Paragraph 7 extends the recognition of judgments to include settlements effected in accordance with conditions established by national legislaiton that are paid out of the international supplementary fund.

As with similar jurisdictional provisions in earlier treaties submitted to the Senate for advice and consent to ratification, it is anticipated that the provisions of Article XIII would be applied without the need for further implementing legislation. It should be noted that, after the United States deposits its instrument of ratification to the CSC, the effect of Article XIII will be to remove jurisdiction from all U.S. Federal and State courts over cases concerning nuclear damage from a nuclear incident covered by the CSC except to the extent provided in the CSC. Where jurisdiction would lie with courts in the United States under the CSC, however, the CSC will not affect the allocation of jurisdiction between State and Federal courts within the United States.

Article XIV determines which law shall be applied by the competent court to cases arising under the CSC. Paragraph 1 stipulates that the Vienna Convention, the Paris Convention, or the Annex to the CSC, as appropriate, shall apply exclusively to a nuclear incident. Paragraph 2 stipulates that the law applied shall be that of the competent court, subject to the provisions of the Vienna Convention, the Paris Convention, or the Annex, whichever applies pursuant to paragraph 1.

Article XV provides that the CSC does not affect the rights and obligations of a Party under public international law. Article XVI deals with dispute settlement. Paragraph 1 obligates the Parties involved in a dispute over the interpretation or application of the CSC to consult with a view to settling the dispute by negotiation or other peaceful means. Paragraph 2 permits any Party to a dispute to submit it after 6 months of consultations to binding arbitration or to the International Court of Justice. Paragraph 3 permits a Party to opt out of either of the dispute settlement procedures provided in paragraph 2 by declaring, at the time of ratification, acceptance, approval or accession, that it does not consider itself bound by either or both of the dispute settlement procedures provided for in paragraph 2. I recommend therefore that that the U.S. instrument of ratification be subject to the following declaration:

> As provided for in paragraph 3 of Article XVI, the United States of America declares that it does not consider itself bound by either of the dispute settlement procedures provided for in paragraph 2 of that Article, but reserves the right in a particular case to agree to follow the dispute settlement procedures of the Convention or any other procedures.

Paragraph 4 permits a Party that has taken advantage of the option presented under paragraph 3 to reverse its decision at any time.

Pursuant to Article XVII the CSC was opened for signature by all states on September 29, 1997, and it remains open for signature until its entry into force.

Article XVIII deals with ratification, acceptance and approval of the CSC. Under paragraph 1, instruments of ratification, acceptance or approval may be accepted by the Depositary only from a state that is party to the Vienna Convention or the Paris Convention, or that declares that its national law complies with the provisions of the Annex, and provides further that such state, if it has a nuclear installation on its territory, must also be party to the 1994 Convention on Nuclear Safety. Paragraph 2 designates the Director General of the IAEA as the CSC's Depositary. Paragraph 3 requires each Party to provide the Depositary with a copy of its national legislation implementing the Vienna or Paris Convention or the provisions of the Annex, as well as any notification pursuant to Article III(1)(a) (designating a first tier amount greater than 300 million SDRs), Article XI(2) (indicating a first tier amount not less than 600 million SDRs), or Article III(1)(a)(ii) (taking advantage of the phase-in of the minimum national compensation amount). The Depositary is required to circulate these notifications to the Parties.

Article XIX deals with accession. It applies the same criteria and provisions that are applied by Article XVIII to states that ratify, accept, or approve the CSC to states that accede to it (i.e., states that do not sign the CSC, but seek to become party after its entry into force).

Article XX states that the CSC will enter into force on the 90th day following the date on which at least five states representing among them at least 400,000 units of installed nuclear capacity

have deposited an instrument of ratification, acceptance, or approval and that the CSC will enter into force for any state which subsequently ratifies accepts, approves, or accedes to the CSC 90 days following the deposit of its instrument. Article XXI permits any Party to denounce the CSC upon 1 year's notice.

Article XXII deals with cessation. Under paragraph 1, if a Party notifies the Depositary that it has ceased to be party to the Vienna or Paris Convention, it shall cease to be party to the CSC unless it notifies the Depositary that its national legislation complies with the provisions of the Annex and has provided the Depositary with a copy of that legislation. Under paragraph 2, a Party whose national law no longer complies with the provisions of the Annex and which is not party to the Vienna or Paris Convention ceases to be party to the CSC.

Under paragraph 3, any Party having a nuclear installation on its territory which notifies the Depositary that it has ceased to be party to the 1994 Convention on Nuclear Safety ceases to be party to the CSC.

Pursuant to Article XXIII, the CSC continues to apply to any nuclear damage caused by a nuclear incident which occurs before a Party's denunciation or cessation becomes effective.

Article XXIV authorizes the Depositary to convene, after consultations with the Parties, a conference for the purpose of revising or amending the CSC, and requires the Depositary to convene such a conference at the request of not less than one-third of the Parties.

Article XXV deals with amendment of the CSC by simplified procedure. Under paragraph 1, the Depositary is required to convene a meeting of the Parties on the request of at least one-third of them for the limited purpose of amending the amounts stipulated in Article III(1)(a) and (b) (the first tier amount, the minimum level at which a state may phase in its first tier amount, and the amount of the international supplementary fund yielded by application of the contribution formula set out in Article IV) and the categories of installations, including contributions payable for them, referred to in Article IV(3). This reference to the categories of installations referred to in Article IV(3) was intended to allow the Parties to change the date when a nuclear reactor would be included or excluded from the contribution calculation. Under paragraph 2, amendments proposed at the meeting shall be adopted if no negative votes are cast. Under paragraph 3, amendments adopted at the meeting shall be notified to all Parties. If, within a period of 36 months following the notification, it is accepted by all states that were Parties at the time the amendment was adopted, the amendment will enter into force 12 months after the final acceptance is received. Under paragraph 4, if the amendment is not accepted by the states that were Parties at the time it was adopted within the 36-month period, it is to be considered rejected. Under paragraph 5 if a state becomes a Party to the CSC during the 36-month period, that state will be bound by the amendment if it enters into force. If a state becomes a Party after the 36-month period, it will be bound by the amendment when it enters into force. In both cases, the amendment enters into force for the state in question when the amendment enters into force or when the CSC enters into force for that state, whichever is later.

Article XXVI specifies the functions of the Depositary, which is required to notify Parties and all other states and the Secretary-General of the OECD (the Depositary of the Paris Convention) of all significant developments concerning the CSC. Article XXVII establishes the authentic languages of the CSC and directs the IAEA's Director General to send certified copies of the CSC to all states.

The Annex obligates a Party to the CSC that is not party to the Vienna or Paris Convention to ensure that its national legislation is consistent with the provisions of the Annex, insofar as those provisions are not directly applicable as national law in that Party. A Party having no nuclear legislation necessary to enable it to give effect to its obligations under the CSC. As noted above, in the few instances where implementing legislation is needed to meet the CSC's obligations, such legislation will be submitted to Congress separately. With respect to the CSC's other obligations, its provisions would operate directly.

Article 1(1) sets out definitions of certain terms used in the Annex (the terms defined in Article I of the CSC also apply to their use in the Annex). Five terms are defined in Article 1: "nuclear fuel," "nuclear installation," "nuclear material," "operator," and "radioactive products or waste." Paragraph 2 permits an "installation state" to exclude a nuclear installation or small quantities of nuclear material from the application of the CSC if criteria and limits for such exclusions have been established by the IAEA's Board of Governors and the exclusions satisfy those criteria and do not exceed those limits.

Article 2 is a grandfather clause that permits the United States to become a Party to the CSC with only minor changes to the Price-Anderson system (although as noted below, certain provisions of the Annex could supersede other U.S. laws which could govern any nuclear incident that were to occur in the EEZ, to the extent such U.S. laws are inconsistent with the Annex and such unclear incident is not covered by the Price-Anderson system). In particular, the grandfather clause permits the United States to retain the concept of economic channeling, under which operators are required to indemnify those legally liable for nuclear damage. The Paris and Vienna Conventions, as well as the Annex provisions from which the United States is exempted under the grandfather clause, employ the concept of legal channeling, under which all legal liability for nuclear damage is imputed exclusively to the operator. In both systems, the end result is essentially the same in that no one but the operator is responsible for compensating nuclear damage caused by an incident in an installation of involving nuclear material for which the operator is responsible. Paragraph 1 deems the national legislation of a Party to be in conformity with the provisions of Annex Articles 3, 4, 5, and 7 if that legislation contained on January 1, 1995, and continues to provide for three elements: (1) strict liability in the event of a nuclear incident, (2) the indemnification of any person liable for nuclear damage other than the operator (i.e., economic channeling of liability to the operator), and (3) the availability of the equivalent of at least 1,000 million SDRs in the event of an accident in a civil nuclear power plant and at least 300 million SDRs in the event of an accident in other types

of civil nuclear installations. The United States is the only state that meets these three criteria, through the Price-Anderson Act. It is intended that, where the Price-Anderson Act does apply, it will apply to the exclusion of any other causes of actions or remedies (except for availability of funds from the international supplementary fund) that might be implied in or created by the CSC.

Subparagraph 2(a) permits a Party that satisfies the criteria of paragraph 1 to apply a broader definition of nuclear damage than other Parties, thus allowing the damage concept under applicable U.S. law to be applied without any restrictions with respect to incidents where the United States is the "installation state." Paragraph 2(b) permits a grandfathered Party to apply a more narrow definition of "nuclear installation." This definition is found in paragraph 3 and is consistent with the types of installations currently covered by the Price-Anderson Act.

Paragraph 4 of Article 2 applies the provisions of Annex Articles 3–11 to a nuclear incident occurring outside the territory of a grandfathered Party over which its courts have been granted jurisdiction under Article XIII, but to which the national law under which it qualified as a grandfathered Party (i.e., the Price-Anderson Act) does not apply. To the extent Annex Articles 3–11 are inconsistent with other laws of the grandfathered Party, the Annex provisions prevail. In the case of the United States, the Price-Anderson Act, under which the United States qualified for grandfathered status, does not apply to most potential incidents within the U.S. EEZ, but Article XIII grants U.S. courts jurisdiction over incidents occurring there.[7] Annex Articles 3–11 would as a result apply directly to a non-Price-Anderson incident covered by the CSC occurring in the U.S. EEZ, and would prevail over other existing U.S. statutes to the extent they are inconsistent. For example, CERCLA currently imposes potential liability on several categories of parties connected to the nuclear material in the event of a nuclear incident in the U.S. EEZ (vessel owners, vessel operators, shippers, cask manufacturers, etc.). Annex Article 3 of the CSC, however, provides for channeling of all nuclear liability to the operator on the basis of strict liability, and would thus prevail over the provisions of the CERCLA to the extent such provisions would otherwise permit different defendants to be sued. In addition, to the extent CERCLA or any other existing law established lower limits on operator liability than does Annex Article 4, the provisions of the Annex would prevail.[8]

With respect to incidents occurring outside the U.S. EEZ (other than those involving DOE contractors and U.S. Government-owned material, to which the Price-Anderson Act applies) with regard to which the United States is the "installation state," but which cause damage only in the EEZ or territory of another CSC Party and not

[7] In the 1999 Price-Anderson Report, the Department of Energy suggested that Congress consider amending the Price-Anderson Act by revising the definition of the United States to include the EEZ. Such action would eliminate almost all situations where the United States would have jurisdiction under the CSC but Price-Anderson would not apply.

[8] To avoid any ambiguity concerning the application of Article 4, legislation, which is being submitted separately to Congress, should be adopted to make explicit that, notwithstanding any other provision of law, the legal liability of the operator may not be limited to less than 300 million SDRs, plus the amount to be made available under the international supplementary fund with respect to nuclear incidents outside the United States for which U.S. courts have jurisdiction pursuant to the CSC but as to which Price-Anderson is not applicable.

in the U.S. EEZ or territory, neither Price Anderson nor CERCLA currently apply. In such circumstances, Annex Articles 3–11 would create causes of action cognizable in U.S. courts for loss of life, personal injury, and property loss or damage. Consistent with the CSC definition of "nuclear damage" in Article 1(f), Annex Articles 3–11 would not, however, create any obligations with respect to any other economic loss (such as the cost of environmental restoration in international waters), unless there is a cause of action for such other economic loss recognized under U.S. law independent of Price-Anderson or CERCLA.

Article 3 establishes and describes the liability of the operator in the event of a nuclear incident. As noted above, since the United States would benefit from the Article 2 grandfather clause, for the United States Article 3 would only apply to an incident that is not covered by the Price-Anderson Act. Paragraph 1 establishes the operator's liability for nuclear damage when it is proved that the damage was caused by a nuclear incident in that operator's installation or involving nuclear material coming from or originating in that installation over which that operator has control, unless the incident involves nuclear material in transit stored in that installation, but for which another operator is responsible.

Paragraphs 1(b)(iv) and 1(c)(iv) are intended to establish when an operator of a nuclear installation covered by the CSC is liable for nuclear damage with respect to nuclear material sent between such covered installation and a person within the territory of a non-Party.

Paragraph 2 permits Parties under their national law to allow a carrier of nuclear material or a person handling nuclear waste to be designated as an operator at the carrier's request and with the approval of the actual operator concerned so that the carrier is treated under the CSC as the operator with respect to that nuclear material.

Paragraph 3 states that the liability of the operator for nuclear damage shall be absolute (i.e., applying the doctrine of strict liability to nuclear incidents covered by the Article).

Paragraph 4 deems non-nuclear damage that is not reasonably separable from nuclear damage to be nuclear damage. Paragraph 4 also provides that, to the extent that damage is caused jointly by a nuclear incident covered by the CSC Annex and by an emission of ionizing radiation not covered by it, the Annex does not limit or otherwise affect the liability of any person who may be held liable in connection with the emission of ionizing radiation.

Subparagraph 5(a) excuses an operator from liability if the nuclear incident was caused directly by an act of armed conflict, hostilities, civil war or insurrection. Subparagraph 5(b) similarly excludes damage caused by a nuclear incident directly due to a grave natural disaster of an exceptional character unless the law of the "installation state" provides to the contrary.

Paragraph 6 permits Parties through their national law to relieve an operator from the obligation to pay compensation to a person the operator proves was responsible for the incident due to gross negligence or an intentional act or omission.

Subparagraphs 7(a) and (b) relieve the operator from liability for nuclear damage to the installation itself and associated property or

to any other nuclear installation on the same site. Subparagraph 7(c) relieves the operator in the event of a transport incident from liability for nuclear damage to the means of transport upon which the nuclear material involved was at the time of the incident, unless otherwise provided by the national law of the "installation state." In that case, damages paid to compensate nuclear damage to the means of transport may not reduce the operator's remaining liability below 150 million SDRs or any higher amount established under that national law.

Paragraph 8 stipulates that the operator's liability outside the CSC for damage to means of transport for which the operator is not liable under subparagraph 7(c) remains unaffected.

Paragraph 9 states that the right to compensation for nuclear damage may only be exercised against the operator liable, or, if national law permits, against any supplier of funds (e.g., an insurer or pooling arrangement among operators) made available under national law to ensure compensation. This paragraph incorporates the principle of legal channeling, which is central to the Vienna and Paris Conventions. As noted above, the Price-Anderson Act employs economic channeling to reach substantially the same objective.

Paragraph 10 states that the operator shall not incur liability for damage that lies outside the provisions of national law that is in accordance with the CSC. This provision is intended to prevent Parties from defining damage covered by the CSC as non-nuclear in their domestic law, thus circumventing the CSC's channeling requirement.

Article 4 elaborates upon the obligation created in Article III(1)(a) to make available a first tier of compensation funds of not less than 300 million SDRs (subject to a possible phase-in) with respect to Parties that are subject to the Annex (i.e., non-Parties to the Vienna or Paris Convention), to the extent they are not exempted from Article 4 by the grandfather clause (as the United States is with respect to those nuclear incidents covered by the Price-Anderson Act). In situations to which Article 4 applies, paragraph 1 allows such Parties to limit the liability of its operators to an amount not less than 150 million SDRs per incident if public funds are available to make up the difference between that amount and 300 million SDRs.[9] Paragraph 2 creates an exception to paragraph 1, allowing such Parties to reduce maximum operator liability to not less than five million SDRs having regard to the nature of the nuclear installation or the nuclear substances involved and to the likely consequences of an incident arising from that installation or material, again so long as public funds are available to cover the gap between the operator's liability and the applicable first tier amount. Under paragraph 3, the amounts established under paragraphs 1 and 2 are to be applied wherever the nuclear incident occurs.

Article 5 deals with financial security to be provided by operators. Under subparagraph 1(a) operators in "installation states"

[9] To the extent that there are currently not any limits in U.S. law on the liability of operators for damages arising from certain nuclear incidents (e.g., an accident on the high sea not covered by Price-Anderson or CERCLA), neither the ratification of the CSC by the United States nor the changes in U.S. domestic law contemplated in connection with ratification will establish upper limits on that liability.

that are Parties subject to the Annex, to the extent such states are not exempted by the grandfather clause (as the United States is with respect to those incidents covered by the Price-Anderson Act), must be required to obtain financial security (e.g., insurance) to cover their liability for nuclear damage in such amount, of such type, and under such terms as the "installation state" may require. Claims that exceed the yield of financial security maintained by the operator must be met through the provision of public funds, up to the applicable limit, if any, established under Article 4. When an installation state has not limited the liability of an operator, the amount of financial security that operator is required to obtain may not be less than 300 million SDRs. Again, if the yield of financial security is insufficient to meet claims up to the amount of security required, the difference must be made up through public funds. A provision similar to that found in Article 4(2) is included in subparagraph 1(b) to permit "installation states" to impose a requirement that operators obtain financial security as low as five million SDRs with respect to installations and materials that pose a reduced risk of nuclear damage in the event of an incident, but in this case public funds must be made available to cover any claims not covered by this lower amount of security up to the limit specified in subparagraph 1(a). Paragraph 2 exempts Parties and their political subdivisions that are operators for the purposes of the CSC from the requirement found in subparagraph 1 to obtain insurance or other financial security. Paragraph 3 states that funds provided by insurance or other financial security or by the "installation state" pursuant to paragraph 1 of Article 4(1)(b) shall be used exclusively for compensation due under the Annex. Paragraph 4 states that no insurer or financial guarantor shall suspend or cancel the insurance or other financial security provided pursuant to paragraph 1 without giving at least 2 months' written notice to the competent public authority, or, in the case when insurance applies to nuclear material being transported, while the material is being transported.

Article 5 does not apply to the United States with respect to incidents covered by the Price-Anderson Act. It would apply to the United States with respect to any nuclear incidents outside the United States not covered by the Price-Anderson Act where the United States is the "installation state." Such situations would be rare because U.S. shippers normally transfer title to nuclear materials to their foreign consignees (which then become the operator for purposes of the CSC) when the shipment first enters international waters. To cover the unlikely possibility that title is not transferred, administrative authority exists under the Atomic Energy Act that could be used to require that insurance be taken out by U.S. operators to the extent it was determined that the nature of the transportation and the nuclear material involved and the likely consequences of a nuclear incident during transportation required mandatory insurance.[10] As noted above, if the proceeds of such insurance and the contribution of the liable operator were to fail to cover claims up the applicable limit of liability, or if there

[10] This administrative authority also could be used to specify requirements as to when title transferred and could establish certain necessary terms of any insurance required to be obtained by shippers.

were no insurance, the U.S. Government would be obligated to make up the differences or pay any otherwise unpaid portion of the required United States share.

Article 6 (from which the United States is not exempted under the grandfather clause) pertains to incidents occurring during the transportation of nuclear materials. Paragraph 1 states the general rule that during carriage the maximum amount of liability is determined by the national law of the "installation state."[11] Paragraph 2 creates an exception to the general rule, permitting a Party through whose territory nuclear material is passing to require that the liability of the operator be increased to an amount not to exceed the limit of liability of an operator of a "nuclear installation" situated in that state. Paragraph 3 stipulates that the option created under paragraph 2 may not be exercised with respect to shipments of nuclear material by sea when there is a right of entry in cases of urgent distress into the ports of a Party or a right of innocent passage through its territorial sea, or to shipments by air where, by agreement or under international law, there is a right to fly over or land on the territory of a Party.

Article 7 covers the theoretically conceivable case where more than one operator may be liable for a single nuclear incident. (The Article does not apply to the United States under the grandfather clause with respect to those incidents covered by the Price-Anderson Act.) Under paragraph 1, the operators liable shall be held jointly and severally liable unless the damage attributable to the respective operators is reasonably separably. The "installation state" is authorized to limit the amount of public funds made available in this case to the difference between the amount made available by the liable operators directly or through their insurers and the first tier compensation amount established pursuant to Annex Article 4(1) and Article III(1)(b).

Paragraph 2 deals with an incident occurring during transportation (e.g., when nuclear material belonging to more than one operator is being shipped together). In this case, the total amount of liability shall not exceed the highest amount applicable to any one of the operators involved pursuant to Article 4(1). Under paragraph 3, the liability of any one operator involved shall not exceed the amount applicable to that operator under Article 4(1). Paragraph 4 covers the possibility of an operator having more than one installation involved in the same incident. In this case, the liability limit applicable to that operator is multiplied by the number of installations involved. The "installation state," however, is authorized to limit public funds made available to the difference between the total amount made available by the operator and the amount it has established pursuant to Article 4(1).

Article 8 deals with compensation under national law. (The United States is not exempt from Article 8 or subsequent Annex Articles.) Under paragraph 1, the amount of compensation provided pursuant to the CSC shall be determined without regard to any interest or costs awarded. Paragraph 2 requires that compensation for nuclear damage outside the "installation state" be provided in freely convertible form. Paragraph 3 allows the national law of the

[11] See footnote, page 39.

Party where damage has been compensated to be applied to the question of whether and to what extent public health insurance, social insurance, and other national or applicable intergovernmental programs that may have compensated victims of a nuclear incident have rights of recourse.

Article 9 establishes periods of extinction for rights of compensation for claims brought under the CSC. Paragraph 1 establishes the period of extinction at 10 years, but allows this period to be extended if, under the law of the "installation state," the liability of the operator is covered by insurance or other financial security or by state funds for a longer period, which then becomes the limit under the CSC. Under paragraph 2, the period of extinction for an incident involving stolen, lost, jettisoned, or abandoned nuclear material is calculated from the date of the incident, but in no case, unless the national law of the "installation state" permits and operator and state funds remain available, shall the period exceed 20 years from the date of the theft, loss, jettison, or abandonment. Paragraph 3 permits the law of the competent court to establish a period of prescription or extinction of not less than 3 years from the date a person suffering nuclear damage had actual or constructive knowledge of the damage and of the operator liable for that damage, but this period may not exceed the periods established under paragraphs 1 and 2. Under paragraph 4 the law of a Party that provides for a period of extinction or prescription longer than 10 years must contain provisions for the equitable and timely satisfaction of claims for loss of life or personal injury filed within 10 years from the date of the nuclear incident. The provisions of the Price-Anderson Act already satisfy these requirements. With respect to nuclear incidents not covered by Price-Anderson (i.e., certain incidents outside U.S. territorial waters), the provisions of Article 9 govern and, in the absence of U.S. statutory provisions for a period of extinction longer than 10 years, rights of compensation will be extinguished in the United States if an action is not brought within 10 years from the date of the nuclear incident.

Article 10 addresses rights of recourse. It permits the national law of a Party to allow an operator to have rights of recourse against others only if these rights are provided for by a written contract or, if the nuclear incident for which the operator is liable under the CSC results from an act or omission done with intent to cause damage, against the individual who has acted or omitted to act with such intent.

Article 11 states that, subject to the provisions of the CSC, the nature, form, extent and equitable distribution of compensation for nuclear damage caused by a nuclear incident shall be governed by the law of the competent court.

The Department of Energy, the Nuclear Regulatory Commission and other interested U.S. Government agencies join the Department of State in recommending that the Convention on Supplementary Compensation for Nuclear Damage be transmitted to the Senate at an early date with a view to receiving its advice and consent to ratification, subject to the declaration permitted under Article XVI, paragraph 2, as described above.

Respectfully submitted.

COLIN L. POWELL.

CONVENTION ON SUPPLEMENTARY COMPENSATION FOR NUCLEAR DAMAGE

CONVENTION ON SUPPLEMENTARY COMPENSATION FOR NUCLEAR DAMAGE

THE CONTRACTING PARTIES,

RECOGNIZING the importance of the measures provided in the Vienna Convention on Civil Liability for Nuclear Damage and the Paris Convention on Third Party Liability in the Field of Nuclear Energy as well as in national legislation on compensation for nuclear damage consistent with the principles of these Conventions;

DESIROUS of establishing a worldwide liability regime to supplement and enhance these measures with a view to increasing the amount of compensation for nuclear damage;

RECOGNIZING further that such a worldwide liability regime would encourage regional and global co-operation to promote a higher level of nuclear safety in accordance with the principles of international partnership and solidarity;

HAVE AGREED as follows:

CHAPTER I

GENERAL PROVISIONS

Article I

Definitions

For the purposes of this Convention:

(a) "Vienna Convention" means the Vienna Convention on Civil Liability for Nuclear Damage of 21 May 1963 and any amendment thereto which is in force for a Contracting Party to this Convention.

(b) "Paris Convention" means the Paris Convention on Third Party Liability in the Field of Nuclear Energy of 29 July 1960 and any amendment thereto which is in force for a Contracting Party to this Convention.

(c) "Special Drawing Right", hereinafter referred to as SDR, means the unit of account defined by the International Monetary Fund and used by it for its own operations and transactions.

(d) "Nuclear reactor" means any structure containing nuclear fuel in such an arrangement that a self-sustaining chain process of nuclear fission can occur therein without an additional source of neutrons.

(e) "Installation State", in relation to a nuclear installation, means the Contracting Party within whose territory that installation is situated or, if it is not situated within the territory of any State, the Contracting Party by which or under the authority of which the nuclear installation is operated.

(f) "Nuclear Damage" means:

(i) loss of life or personal injury;

(ii) loss of or damage to property;

and each of the following to the extent determined by the law of the competent court:

(iii) economic loss arising from loss or damage referred to in sub-paragraph (i) or (ii), insofar as not included in those sub-paragraphs, if incurred by a person entitled to claim in respect of such loss or damage;

(iv) the costs of measures of reinstatement of impaired environment, unless such impairment is insignificant, if such measures are actually taken or to be taken, and insofar as not included in sub-paragraph (ii);

(v) loss of income deriving from an economic interest in any use or enjoyment of the environment, incurred as a result of a significant impairment of that environment, and insofar as not included in sub-paragraph (ii);

(vi) the costs of preventive measures, and further loss or damage caused by such measures;

(vii) 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,

in the case of sub-paragraphs (i) to (v) and (vii) above, to the extent that the loss or damage arises out of or results from ionizing radiation emitted by any source of radiation inside a nuclear installation, or emitted from nuclear fuel or radioactive products or waste in, or of nuclear material coming from, originating

in, or sent to, a nuclear installation, whether so arising from the radioactive properties of such matter, or from a combination of radioactive properties with toxic, explosive or other hazardous properties of such matter.

(g) "Measures of reinstatement" means any reasonable measures which have been approved by the competent authorities of the State where the measures were taken, and which aim to reinstate or restore damaged or destroyed components of the environment, or to introduce, where reasonable, the equivalent of these components into the environment. The law of the State where the damage is suffered shall determine who is entitled to take such measures.

(h) "Preventive measures" means any reasonable measures taken by any person after a nuclear incident has occurred to prevent or minimize damage referred to in sub-paragraphs (f)(i) to (v) or (vii), subject to any approval of the competent authorities required by the law of the State where the measures were taken.

(i) "Nuclear incident" means any occurrence or series of occurrences having the same origin which causes nuclear damage or, but only with respect to preventive measures, creates a grave and imminent threat of causing such damage.

(j) "Installed nuclear capacity" means for each Contracting Party the total of the number of units given by the formula set out in Article IV.2; and "thermal power" means the maximum thermal power authorized by the competent national authorities.

(k) "Law of the competent court" means the law of the court having jurisdiction under this Convention, including any rules of such law relating to conflict of laws.

(l) "Reasonable measures" means measures which are found under the law of the competent court to be appropriate and proportionate, having regard to all the circumstances, for example:

(i) the nature and extent of the damage incurred or, in the case of preventive measures, the nature and extent of the risk of such damage;

(ii) the extent to which, at the time they are taken, such measures are likely to be effective; and

(iii) relevant scientific and technical expertise.

Article II

Purpose and Application

1. The purpose of this Convention is to supplement the system of compensation provided pursuant to national law which:

(a) implements one of the instruments referred to in Article I (a) and (b); or

(b) complies with the provisions of the Annex to this Convention.

2. The system of this Convention shall apply to nuclear damage for which an operator of a nuclear installation used for peaceful purposes situated in the territory of a Contracting Party is liable under either one of the Conventions referred to in Article I or national law mentioned in paragraph 1(b) of this Article.

3. The Annex referred to in paragraph 1(b) shall constitute an integral part of this Convention.

CHAPTER II

COMPENSATION

Article III

Undertaking

Compensation in respect of nuclear damage per nuclear incident shall be ensured by the following means:

(a) (i) the Installation State shall ensure the availability of 300 million SDRs or a greater amount that it may have specified to the Depositary at any time prior to the nuclear incident, or a transitional amount pursuant to sub-paragraph (ii);

(ii) a Contracting Party may establish for the maximum of 10 years from the date of the opening for signature of this Convention, a transitional amount of at least 150 million SDRs in respect of a nuclear incident occurring within that period.

(b) beyond the amount made available under sub-paragraph (a), the Contracting Parties shall make available public funds according to the formula specified in Article IV.

2. (a) Compensation for nuclear damage in accordance with paragraph 1(a) shall be distributed equitably without discrimination on the basis of nationality, domicile or residence, provided that the law of the Installation State may, subject to obligations of that State under other conventions on nuclear liability, exclude nuclear damage suffered in a non-Contracting State.

(b) Compensation for nuclear damage in accordance with paragraph 1(b), shall, subject to Articles V and XI.1(b), be distributed equitably without discrimination on the basis of nationality, domicile or residence.

3. If the nuclear damage to be compensated does not require the total amount under paragraph 1(b), the contributions shall be reduced proportionally.

4. The interest and costs awarded by a court in actions for compensation of nuclear damage are payable in addition to the amounts awarded pursuant to paragraphs 1(a) and (b) and shall be proportionate to the actual contributions made pursuant to paragraphs 1(a) and (b), respectively, by the operator liable, the Contracting Party in whose territory the nuclear installation of that operator is situated, and the Contracting Parties together.

Article IV

Calculation of Contributions

1. The formula for contributions according to which the Contracting Parties shall make available the public funds referred to in Article III.1(b) shall be determined as follows:

(a) (i) the amount which shall be the product of the installed nuclear capacity of that Contracting Party multiplied by 300 SDRs per unit of installed capacity; and

(ii) the amount determined by applying the ratio between the United Nations rate of assessment for that Contracting Party as assessed for the year preceding the year in which the nuclear incident occurs, and the total of such rates for all Contracting Parties to 10% of the sum of the amounts calculated for all Contracting Parties under sub-paragraph (i).

(b) Subject to sub-paragraph (c), the contribution of each Contracting Party shall be the sum of the amounts referred to in sub-paragraphs (a)(i) and (ii), provided that States on the minimum United Nations rate of assessment with no nuclear reactors shall not be required to make contributions.

(c) The maximum contribution which may be charged per nuclear incident to any Contracting Party, other than the Installation State, pursuant to sub-paragraph (b) shall not exceed its specified percentage of the total of contributions of all Contracting Parties determined pursuant to sub-paragraph (b). For a particular Contracting Party, the specified percentage shall be its UN rate of assessment expressed as a percentage plus 8 percentage points. If, at the time an incident occurs, the total installed capacity represented by the Parties to this Convention is at or above a level of 625,000 units, this percentage shall be increased by one percentage point. It shall be increased by one additional percentage point for each increment of 75,000 units by which the capacity exceeds 625,000 units.

2. The formula is for each nuclear reactor situated in the territory of the Contracting Party, 1 unit for each MW of thermal power. The formula shall be calculated on the basis of the thermal power of the nuclear reactors shown at the date of the nuclear incident in the list established and kept up to date in accordance with Article VIII.

3. For the purpose of calculating the contributions, a nuclear reactor shall be taken into account from that date when nuclear fuel elements have been first loaded into the nuclear reactor. A nuclear reactor shall be excluded from the calculation when all fuel elements have been removed permanently from the reactor core and have been stored safely in accordance with approved procedures.

Article V

Geographical Scope

1. The funds provided for under Article III.1(b) shall apply to nuclear damage which is suffered:

(a) in the territory of a Contracting Party; or

(b) in or above maritime areas beyond the territorial sea of a Contracting Party:

(i) on board or by a ship flying the flag of a Contracting Party, or on board or by an aircraft registered in the territory of a Contracting Party, or on or by an artificial island, installation or structure under the jurisdiction of a Contracting Party; or

(ii) by a national of a Contracting Party;

excluding damage suffered in or above the territorial sea of a State not Party to this Convention; or

(c) in or above the exclusive economic zone of a Contracting Party or on the continental shelf of a Contracting Party in connection with the exploitation or the exploration of the natural resources of that exclusive economic zone or continental shelf;

provided that the courts of a Contracting Party have jurisdiction pursuant to Article XIII.

2. Any signatory or acceding State may, at the time of signature of or accession to this Convention or on the deposit of its instrument of ratification, declare that for the purposes of the application of paragraph 1(b)(ii), individuals or certain categories thereof, considered under its law as having their habitual residence in its territory, are assimilated to its own nationals.

3. In this article, the expression "a national of a Contracting Party" shall include a Contracting Party or any of its constituent sub-divisions, or a partnership, or any public or private body whether corporate or not established in the territory of a Contracting Party.

CHAPTER III

ORGANIZATION OF SUPPLEMENTARY FUNDING

Article VI

Notification of Nuclear Damage

Without prejudice to obligations which Contracting Parties may have under other international agreements, the Contracting Party whose courts have jurisdiction shall inform the other Contracting Parties of a nuclear incident as soon as it appears that the damage caused by such incident exceeds, or is likely to exceed, the amount available under Article III.1(a) and that contributions under Article III.1(b) may be required. The Contracting Parties shall without delay make all the necessary arrangements to settle the procedure for their relations in this connection.

Article VII

Call for Funds

1. Following the notification referred to in Article VI, and subject to Article X.3, the Contracting Party whose courts have jurisdiction shall request the other Contracting Parties to make available the public funds required under Article III.1(b) to the extent and when they are actually required and shall have exclusive competence to disburse such funds.

2. Independently of existing or future regulations concerning currency or transfers, Contracting Parties shall authorize the transfer and payment of any contribution provided pursuant to Article III.1(b) without any restriction.

Article VIII

List of Nuclear Installations

1. Each Contracting State shall, at the time when it deposits its instrument of ratification, acceptance, approval or accession, communicate to the Depositary a complete listing of all nuclear installations referred to in Article IV.3. The listing shall contain the necessary particulars for the purpose of the calculation of contributions.

2. Each Contracting State shall promptly communicate to the Depositary all modifications to be made to the list. Where such modifications include the addition of a nuclear installation, the communication must be made at least three months before the expected date when nuclear material will be introduced into the installation.

3. If a Contracting Party is of the opinion that the particulars, or any modification to be made to the list communicated by a Contracting State pursuant to paragraphs 1 and 2, do not comply with the provisions, it may raise objections thereto by addressing them to the Depositary within three months from the date on which it has received notice pursuant to paragraph 5. The Depositary shall forthwith communicate this objection to the State to whose information the objection has been raised. Any unresolved differences shall be dealt with in accordance with the dispute settlement procedure laid down in Article XVI.

4. The Depositary shall maintain, update and annually circulate to all Contracting States the list of nuclear installations established in accordance with this Article. Such list shall consist of all the particulars and modifications referred to in this Article, it being understood that objections submitted under this Article shall have effect retrospective to the date on which they were raised, if they are sustained.

5. The Depositary shall give notice as soon as possible to each Contracting Party of the communications and objections which it has received pursuant to this Article.

Article IX

Rights of Recourse

1. Each Contracting Party shall enact legislation in order to enable both the Contracting Party in whose territory the nuclear installation of the operator liable is situated and the other Contracting Parties who have paid contributions referred to in Article III.1(b), to benefit from the operator's right of recourse to the extent that he has such a right under either one of the Conventions referred to in Article I or national legislation mentioned in Article II.1(b) and to the extent that contributions have been made by any of the Contracting Parties.

2. The legislation of the Contracting Party in whose territory the nuclear installation of the operator liable is situated may provide for the recovery of public funds made available under this Convention from such operator if the damage results from fault on his part.

3. The Contracting Party whose courts have jurisdiction may exercise the rights of recourse provided for in paragraphs 1 and 2 on behalf of the other Contracting Parties which have contributed.

Article X

Disbursements, Proceedings

1. The system of disbursements by which the funds required under Article III.1 are to be made available and the system of apportionment thereof shall be that of the Contracting Party whose courts have jurisdiction.

2. Each Contracting Party shall ensure that persons suffering damage may enforce their rights to compensation without having to bring separate proceedings according to the origin of the funds provided for such compensation and that Contracting Parties may intervene in the proceedings against the operator liable.

3. No Contracting Party shall be required to make available the public funds referred to in Article III.1(b) if claims for compensation can be satisfied out of the funds referred to in Article III.1(a).

Article XI

Allocation of Funds

The funds provided under Article III.1(b) shall be distributed as follows:

1. (a) 50% of the funds shall be available to compensate claims for nuclear damage suffered in or outside the Installation State;

   (b) 50% of the funds shall be available to compensate claims for nuclear damage suffered outside the territory of the Installation State to the extent that such claims are uncompensated under sub-paragraph (a).

   (c) In the event the amount provided pursuant to Article III.1(a) is less than 300 million SDRs:

      (i) the amount in paragraph 1(a) shall be reduced by the same percentage as the percentage by which the amount provided pursuant to Article III.1(a) is less than 300 million SDRs; and

      (ii) the amount in paragraph 1(b) shall be increased by the amount of the reduction calculated pursuant to sub-paragraph (i).

2. If a Contracting Party, in accordance with Article III.1(a), has ensured the availability without discrimination of an amount not less than 600 million SDRs, which has been specified to the Depositary prior to the nuclear incident, all funds referred to in Article III.1(a) and (b) shall, notwithstanding paragraph 1, be made available to compensate nuclear damage suffered in and outside the Installation State.

CHAPTER IV

EXERCISE OF OPTIONS

Article XII

1. Except insofar as this Convention otherwise provides, each Contracting Party may exercise the powers vested in it by virtue of the Vienna Convention or the Paris Convention, and any provisions made thereunder may be invoked against the other Contracting Parties in order that the public funds referred to in Article III.1(b) be made available.

2. Nothing in this Convention shall prevent any Contracting Party from making provisions outside the scope of the Vienna or the Paris Convention and of this Convention, provided that such provision shall not involve any further obligation on the part of the other Contracting Parties, and provided that damage in a Contracting Party having no nuclear installations within its territory shall not be excluded from such further compensation on any grounds of lack of reciprocity.

3. (a) Nothing in this Convention shall prevent Contracting Parties from entering into regional or other agreements with the purpose of implementing their obligations under Article III.1(a) or providing additional funds for the compensation of nuclear damage, provided that this shall not involve any further obligation under this Convention for the other Contracting Parties.

   (b) A Contracting Party intending to enter into any such agreement shall notify all other Contracting Parties of its intention. Agreements concluded shall be notified to the Depositary.

CHAPTER V

JURISDICTION AND APPLICABLE LAW

Article XIII

Jurisdiction

1. Except as otherwise provided in this article, jurisdiction over actions concerning nuclear damage from a nuclear incident shall lie only with the courts of the Contracting Party within which the nuclear incident occurs.

2. Where a nuclear incident occurs within the area of the exclusive economic zone of a Contracting Party or, if such a zone has not been established, in an area not exceeding the limits of an exclusive economic zone, were one to be established by that Party, jurisdiction over actions concerning nuclear damage from that nuclear incident shall, for the purposes of this Convention, lie only with the courts of that Party. The preceding sentence shall apply if that Contracting Party has notified the Depositary of such area prior to the nuclear incident. Nothing in this paragraph shall be interpreted as permitting the exercise of jurisdiction in a manner which is contrary to the international law of the sea, including the United Nations Convention on the Law of the Sea. However, if the exercise of such jurisdiction is inconsistent with the obligations of that Party under Article XI of the Vienna Convention or Article 13 of the Paris Convention in relation to a State not Party to this Convention jurisdiction shall be determined according to those provisions.

3. Where a nuclear incident does not occur within the territory of any Contracting Party or within an area notified pursuant to paragraph 2, or where the place of a nuclear incident cannot be determined with certainty, jurisdiction over actions concerning nuclear damage from the nuclear incident shall lie only with the courts of the Installation State.

4. Where jurisdiction over actions concerning nuclear damage would lie with the courts of more than one Contracting Party, these Contracting Parties shall determine by agreement which Contracting Party's courts shall have jurisdiction.

5. A judgment that is no longer subject to ordinary forms of review entered by a court of a Contracting Party having jurisdiction shall be recognized except:

(a) where the judgment was obtained by fraud;

(b) where the party against whom the judgment was pronounced was not given a fair opportunity to present his case; or

(c) where the judgment is contrary to the public policy of the Contracting Party within the territory of which recognition is sought, or is not in accord with fundamental standards of justice.

6. A judgment which is recognized under paragraph 5 shall, upon being presented for enforcement in accordance with the formalities required by the law of the Contracting Party where enforcement is sought, be enforceable as if it were a judgment of a court of that Contracting Party. The merits of a claim on which the judgment has been given shall not be subject to further proceedings.

7. Settlements effected in respect of the payment of compensation out of the public funds referred to in Article III.1(b) in accordance with the conditions established by national legislation shall be recognized by the other Contracting Parties.

Article XIV

Applicable Law

1. Either the Vienna Convention or the Paris Convention or the Annex to this Convention, as appropriate, shall apply to a nuclear incident to the exclusion of the others.

2. Subject to the provisions of this Convention, the Vienna Convention or the Paris Convention, as appropriate, the applicable law shall be the law of the competent court.

Article XV

Public International Law

This Convention shall not affect the rights and obligations of a Contracting Party under the general rules of public international law.

CHAPTER VI

DISPUTE SETTLEMENT

Article XVI

1. In the event of a dispute between Contracting Parties concerning the interpretation or application of this Convention, the parties to the dispute shall consult with a view to the settlement of the dispute by negotiation or by any other peaceful means of settling disputes acceptable to them.

2. If a dispute of this character referred to in paragraph 1 cannot be settled within six months from the request for consultation pursuant to paragraph 1, it shall, at the request of any party to such dispute, be submitted to arbitration or referred to the International Court of Justice for decision. Where a dispute is submitted to arbitration, if, within six months from the date of the request, the parties to the dispute are unable to agree on the organization of the arbitration, a party may request the President of the International Court of Justice or the Secretary-General of the United Nations to appoint one or more arbitrators. In cases of conflicting requests by the parties to the dispute, the request to the Secretary-General of the United Nations shall have priority.

3. When ratifying, accepting, approving or acceding to this Convention, a State may declare that it does not consider itself bound by either or both of the dispute settlement

procedures provided for in paragraph 2. The other Contracting Parties shall not be bound by a dispute settlement procedure provided for in paragraph 2 with respect to a Contracting Party for which such a declaration is in force.

4. A Contracting Party which has made a declaration in accordance with paragraph 3 may at any time withdraw it by notification to the Depositary.

CHAPTER VII

FINAL CLAUSES

Article XVII

Signature

This Convention shall be open for signature, by all States at the Headquarters of the International Atomic Energy Agency in Vienna from 29 September 1997 until its entry into force.

Article XVIII

Ratification, Acceptance, Approval

1. This Convention shall be subject to ratification, acceptance or approval by the signatory States. An instrument of ratification, acceptance or approval shall be accepted only from a State which is a Party to either the Vienna Convention or the Paris Convention, or a State which declares that its national law complies with the provisions of the Annex to this Convention, provided that, in the case of a State having on its territory a nuclear installation as defined in the Convention on Nuclear Safety of 17 June 1994, it is a Contracting State to that Convention.

2. The instruments of ratification, acceptance or approval shall be deposited with the Director General of the International Atomic Energy Agency who shall act as the Depositary of this Convention.

3. A Contracting Party shall provide the Depositary with a copy, in one of the official languages of the United Nations, of the provisions of its national law referred to in Article II.1 and amendments thereto, including any specification made pursuant to Article III.1(a), Article XI.2, or a transitional amount pursuant to Article III.1(a)(ii). Copies of such provisions shall be circulated by the Depositary to all other Contracting Parties.

Article XIX

Accession

1. After its entry into force, any State which has not signed this Convention may accede to it. An instrument of accession shall be accepted only from a State which is a Party to either the Vienna Convention or the Paris Convention, or a State which declares that its national law complies with the provisions of the Annex to this Convention, provided that, in the case of a State having on its territory a nuclear installation as defined in the Convention on Nuclear Safety of 17 June 1994, it is a Contracting State to that Convention.

2. The instruments of accession shall be deposited with the Director General of the International Atomic Energy Agency.

3. A Contracting Party shall provide the Depositary with a copy, in one of the official languages of the United Nations, of the provisions of its national law referred to in Article II.1 and amendments thereto, including any specification made pursuant to Article III.1(a), Article XI.2, or a transitional amount pursuant to Article III.1(a)(ii). Copies of such provisions shall be circulated by the Depositary to all other Contracting Parties.

Article XX

Entry Into Force

1. This Convention shall come into force on the ninetieth day following the date on which at least 5 States with a minimum of 400,000 units of installed nuclear capacity have deposited an instrument referred to in Article XVIII.

2. For each State which subsequently ratifies, accepts, approves or accedes to this Convention, it shall enter into force on the ninetieth day after deposit by such State of the appropriate instrument.

Article XXI

Denunciation

1. Any Contracting Party may denounce this Convention by written notification to the Depositary.

2. Denunciation shall take effect one year after the date on which the notification is received by the Depositary.

Article XXII

Cessation

1. Any Contracting Party which ceases to be a Party to either the Vienna Convention or the Paris Convention shall notify the Depositary thereof and of the date of such cessation. On that date such Contracting Party shall have ceased to be a Party to this Convention unless its national law complies with the provisions of the Annex to this Convention and it has so notified the Depositary and provided it with a copy of the provisions of its national law in one of the official languages of the United Nations. Such copy shall be circulated by the Depositary to all other Contracting Parties.

2. Any Contracting Party whose national law ceases to comply with the provisions of the Annex to this Convention and which is not a Party to either the Vienna Convention or the Paris Convention shall notify the Depositary thereof and of the date of such cessation. On that date such Contracting Party shall have ceased to be a Party to this Convention.

3. Any Contracting Party having on its territory a nuclear installation as defined in the Convention on Nuclear Safety which ceases to be Party to that Convention shall notify the depositary thereof and of the date of such cessation. On that date, such Contracting Party shall, notwithstanding paragraphs 1 and 2, have ceased to be a Party to the present Convention.

Article XXIII

Continuance of Prior Rights and Obligations

Notwithstanding denunciation pursuant to Article XXI or cessation pursuant to Article XXII, the provisions of this Convention shall continue to apply to any nuclear damage caused by a nuclear incident which occurs before such denunciation or cessation.

Article XXIV

Revision and Amendments

1. The Depositary, after consultations with the Contracting Parties, may convene a conference for the purpose of revising or amending this Convention.

2. The Depositary shall convene a conference of Contracting Parties for the purpose of revising or amending this Convention at the request of not less than one-third of all Contracting Parties.

Article XXV

Amendment by Simplified Procedure

1. A meeting of the Contracting Parties shall be convened by the Depositary to amend the compensation amounts referred to in Article III.1(a) and (b) or categories of installations including contributions payable for them, referred to in Article IV.3, if one-third of the Contracting Parties express a desire to that effect.

2. Decisions to adopt a proposed amendment shall be taken by vote. Amendments shall be adopted if no negative vote is cast.

3. Any amendment adopted in accordance with paragraph 2 shall be notified by the Depositary to all Contracting Parties. The amendment shall be considered accepted if within a period of 36 months after it has been notified, all Contracting Parties at the time of the adoption of the amendment have communicated their acceptance to the Depositary. The amendment shall enter into force for all Contracting Parties 12 months after its acceptance.

4. If, within a period of 36 months from the date of notification for acceptance the amendment has not been accepted in accordance with paragraph 3, the amendment shall be considered rejected.

5. When an amendment has been adopted in accordance with paragraph 2 but the 36 months period for its acceptance has not yet expired, a State which becomes a Party to this Convention during that period shall be bound by the amendment if it comes into force. A State which becomes a Party to this Convention after that period shall be bound by any amendment which has been accepted in accordance with paragraph 3. In the cases referred to in the present paragraph, a Contracting Party shall be bound by an amendment when that amendment enters into force, or when this Convention enters into force for that Contracting Party, whichever date is the later.

Article XXVI

Functions of the Depositary

In addition to functions in other Articles of this Convention, the Depositary shall promptly notify Contracting Parties and all other States as well as the Secretary-General of the Organization for Economic Co-operation and Development of:

(a) each signature of this Convention;

(b) each deposit of an instrument of ratification, acceptance, approval or accession concerning this Convention;

(c) the entry into force of this Convention;

(d) declarations received pursuant to Article XVI;

(e) any denunciation received pursuant to Article XXI, or notification received pursuant to Article XXII;

(f) any notification under paragraph 2 of Article XIII;

(g) other pertinent notifications relating to this Convention.

Article XXVII

Authentic Texts

The original of this Convention, of which Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Director General of the International Atomic Energy Agency who shall send certified copies thereof to all States.

IN WITNESS WHEREOF, THE UNDERSIGNED, BEING DULY AUTHORIZED THERETO, HAVE SIGNED THIS CONVENTION.

Done at Vienna, this twelfth day of September, one thousand nine hundred ninety-seven.

ANNEX

A Contracting Party which is not a Party to any of the Conventions mentioned in Article I(a) or (b) of this Convention shall ensure that its national legislation is consistent with the provisions laid down in this Annex insofar as those provisions are not directly applicable within that Contracting Party. A Contracting Party having no nuclear installation on its territory is required to have only that legislation which is necessary to enable such a Party to give effect to its obligations under this Convention.

Article 1

Definitions

1. In addition to the definitions in Article I of this Convention, the following definitions apply for the purposes of this Annex:

(a) "Nuclear Fuel" means any material which is capable of producing energy by a self-sustaining chain process of nuclear fission.

(b) "Nuclear Installation" means:

(i) any nuclear reactor other than one with which a means of sea or air transport is equipped for use as a source of power, whether for propulsion thereof or for any other purpose;

(ii) any factory using nuclear fuel for the production of nuclear material, or any factory for the processing of nuclear material, including any factory for the re-processing of irradiated nuclear fuel; and

(iii) any facility where nuclear material is stored, other than storage incidental to the carriage of such material;

provided that the Installation State may determine that several nuclear installations of one operator which are located at the same site shall be considered as a single nuclear installation.

(c) "Nuclear material" means:

(i) nuclear fuel, other than natural uranium and depleted uranium, capable of producing energy by a self-sustaining chain process of nuclear fission outside a nuclear reactor, either alone or in combination with some other material; and

(ii) radioactive products or waste.

(d) "Operator", in relation to a nuclear installation, means the person designated or recognized by the Installation State as the operator of that installation.

(e) "Radioactive products or waste" means any radioactive material produced in, or any material made radioactive by exposure to the radiation incidental to, the production or utilization of nuclear fuel, but does not include radioisotopes which have reached the final stage of fabrication so as to be usable for any scientific, medical, agricultural, commercial or industrial purpose.

2. An Installation State may, if the small extent of the risks involved so warrants, exclude any nuclear installation or small quantities of nuclear material from the application of this Convention, provided that:

(a) with respect to nuclear installations, criteria for such exclusion have been established by the Board of Governors of the International Atomic Energy Agency and any exclusion by an Installation State satisfies such criteria; and

(b) with respect to small quantities of nuclear material, maximum limits for the exclusion of such quantities have been established by the Board of Governors of

the International Atomic Energy Agency and any exclusion by an Installation State is within such established limits.

The criteria for the exclusion of nuclear installations and the maximum limits for the exclusion of small quantities of nuclear material shall be reviewed periodically by the Board of Governors.

Article 2

Conformity of Legislation

1. The national law of a Contracting Party is deemed to be in conformity with the provisions of Articles 3, 4, 5 and 7 if it contained on 1 January 1995 and continues to contain provisions that:

(a) provide for strict liability in the event of a nuclear incident where there is substantial nuclear damage off the site of the nuclear installation where the incident occurs;

(b) require the indemnification of any person other than the operator liable for nuclear damage to the extent that person is legally liable to provide compensation; and

(c) ensure the availability of at least 1000 million SDRs in respect of a civil nuclear power plant and at least 300 million SDRs in respect of other civil nuclear installations for such indemnification.

2. If in accordance with paragraph 1, the national law of a Contracting Party is deemed to be in conformity with the provision of Articles 3, 4, 5 and 7, then that Party:

(a) may apply a definition of nuclear damage that covers loss or damage set forth in Article I(f) of this Convention and any other loss or damage to the extent that

the loss or damage arises out of or results from the radioactive properties, or a combination of radioactive properties with toxic, explosive or other hazardous properties of nuclear fuel or radioactive products or waste in, or of nuclear material coming from, originating in, or sent to, a nuclear installation; or other ionizing radiation emitted by any source of radiation inside a nuclear installation, provided that such application does not affect the undertaking by that Contracting Party pursuant to Article III of this Convention; and

(b) may apply the definition of nuclear installation in paragraph 3 of this Article to the exclusion of the definition in Article 1.1(b) of this Annex.

3. For the purpose of paragraph 2 (b) of this Article, "nuclear installation" means:

(a) any civil nuclear reactor other than one with which a means of sea or air transport is equipped for use as a source of power, whether for propulsion thereof or any other purpose; and

(b) any civil facility for processing, reprocessing or storing:

(i) irradiated nuclear fuel; or

(ii) radioactive products or waste that:

(1) result from the reprocessing of irradiated nuclear fuel and contain significant amounts of fission products; or

(2) contain elements that have an atomic number greater than 92 in concentrations greater than 10 nano-curies per gram.

(c) any other civil facility for processing, reprocessing or storing nuclear material unless the Contracting Party determines the small extent of the risks involved with such an installation warrants the exclusion of such a facility from this definition.

4. Where that national law of a Contracting Party which is in compliance with paragraph 1 of this Article does not apply to a nuclear incident which occurs outside the territory of that Contracting Party, but over which the courts of that Contracting Party have jurisdiction pursuant to Article XIII of this Convention, Articles 3 to 11 of the Annex shall apply and prevail over any inconsistent provisions of the applicable national law.

Article 3

Operator Liability

1. The operator of a nuclear installation shall be liable for nuclear damage upon proof that such damage has been caused by a nuclear incident:

(a) in that nuclear installation; or

(b) involving nuclear material coming from or originating in that nuclear installation, and occurring:

(i) before liability with regard to nuclear incidents involving the nuclear material has been assumed, pursuant to the express terms of a contract in writing, by the operator of another nuclear installation;

(ii) in the absence of such express terms, before the operator of another nuclear installation has taken charge of the nuclear material; or

(iii) where the nuclear material is intended to be used in a nuclear reactor with which a means of transport is equipped for use as a source of power, whether for propulsion thereof or for any other purpose, before the person duly authorized to operate such reactor has taken charge of the nuclear material; but

(iv) where the nuclear material has been sent to a person within the territory of a non-Contracting State, before it has been unloaded from the means of transport by which it has arrived in the territory of that non-Contracting State;

(c) involving nuclear material sent to that nuclear installation, and occurring:

(i) after liability with regard to nuclear incidents involving the nuclear material has been assumed by the operator pursuant to the express terms of a contract in writing, from the operator of another nuclear installation;

(ii) in the absence of such express terms, after the operator has taken charge of the nuclear material; or

(iii) after the operator has taken charge of the nuclear material from a person operating a nuclear reactor with which a means of transport is equipped for use as a source of power, whether for propulsion thereof or for any other purpose; but

(iv) where the nuclear material has, with the written consent of the operator, been sent from a person within the territory of a non-Contracting State, only after it has been loaded on the means of transport by which it is to be carried from the territory of that State;

provided that, if nuclear damage is caused by a nuclear incident occurring in a nuclear installation and involving nuclear material stored therein incidentally to the carriage of such material, the provisions of sub-paragraph (a) shall not apply where another operator or person is solely liable pursuant to sub-paragraph (b) or (c).

2. The Installation State may provide by legislation that, in accordance with such terms as may be specified in that legislation, a carrier of nuclear material or a person handling radioactive waste may, at such carrier or such person's request and with the consent of the

operator concerned, be designated or recognized as operator in the place of that operator in respect of such nuclear material or radioactive waste respectively. In this case such carrier or such person shall be considered, for all the purposes of this Convention, as an operator of a nuclear installation situated within the territory of that State.

3. The liability of the operator for nuclear damage shall be absolute.

4. Whenever both nuclear damage and damage other than nuclear damage have been caused by a nuclear incident or jointly by a nuclear incident and one or more other occurrences, such other damage shall, to the extent that it is not reasonably separable from the nuclear damage, be deemed to be nuclear damage caused by that nuclear incident. Where, however, damage is caused jointly by a nuclear incident covered by the provisions of this Annex and by an emission of ionizing radiation not covered by it, nothing in this Annex shall limit or otherwise affect the liability, either as regards any person suffering nuclear damage or by way of recourse or contribution, of any person who may be held liable in connection with that emission of ionizing radiation.

5. (a) No liability shall attach to an operator for nuclear damage caused by a nuclear incident directly due to an act of armed conflict, hostilities, civil war or insurrection.

(b) Except insofar as the law of the Installation State may provide to the contrary, the operator shall not be liable for nuclear damage caused by a nuclear incident caused directly due to a grave natural disaster of an exceptional character.

6. National law may relieve an operator wholly or partly from the obligation to pay compensation for nuclear damage suffered by a person if the operator proves the nuclear damage resulted wholly or partly from the gross negligence of that person or an act or omission of that person done with the intent to cause damage.

7. The operator shall not be liable for nuclear damage:

(a) to the nuclear installation itself and any other nuclear installation, including a nuclear installation under construction, on the site where that installation is located; and

(b) to any property on that same site which is used or to be used in connection with any such installation;

(c) unless otherwise provided by national law, to the means of transport upon which the nuclear material involved was at the time of the nuclear incident. If national law provides that the operator is liable for such damage, compensation for that damage shall not have the effect of reducing the liability of the operator in respect of other damage to an amount less than either 150 million SDRs, or any higher amount established by the legislation of a Contracting Party.

8. Nothing in this Convention shall affect the liability outside this Convention of the operator for nuclear damage for which by virtue of paragraph 7(c) he is not liable under this Convention.

9. The right to compensation for nuclear damage may be exercised only against the operator liable, provided that national law may permit a direct right of action against any supplier of funds that are made available pursuant to provisions in national law to ensure compensation through the use of funds from sources other than the operator.

10. The operator shall incur no liability for damage caused by a nuclear incident outside the provisions of national law in accordance with this Convention.

Article 4

Liability Amounts

1. Subject to Article III.1(a)(ii), the liability of the operator may be limited by the Installation State for any one nuclear incident, either:

(a) to not less than 300 million SDRs; or

(b) to not less then 150 million SDRs provided that in excess of that amount and up to at least 300 million SDRs public funds shall be made available by that State to compensate nuclear damage.

2. Notwithstanding paragraph 1, the Installation State, having regard to the nature of the nuclear installation or the nuclear substances involved and to the likely consequences of an incident originating therefrom, may establish a lower amount of liability of the operator, provided that in no event shall any amount so established be less than 5 million SDRs, and provided that the Installation State ensures that public funds shall be made available up to the amount established pursuant to paragraph 1.

3. The amounts established by the Installation State of the liable operator in accordance with paragraphs 1 and 2, as well as the provisions of any legislation of a Contracting Party pursuant to Article 3.7(c) shall apply wherever the nuclear incident occurs.

Article 5

Financial Security

1. (a) The operator shall be required to have and maintain insurance or other financial security covering his liability for nuclear damage in such amount, of such type and in such terms as the Installation State shall specify. The Installation State shall ensure the payment of claims for compensation for nuclear damage which

have been established against the operator by providing the necessary funds to the extent that the yield of insurance or other financial security is inadequate to satisfy such claims, but not in excess of the limit, if any, established pursuant to Article 4. Where the liability of the operator is unlimited, the Installation State may establish a limit of the financial security of the operator liable provided that such limit is not lower than 300 million SDRs. The Installation State shall ensure the payment of claims for compensation for nuclear damage which have been established against the operator to the extent that yield of the financial security is inadequate to satisfy such claims, but not in excess of the amount of the financial security to be provided under this paragraph.

(b) Notwithstanding sub-paragraph (a), the Installation State, having regard to the nature of the nuclear installation or the nuclear substances involved and to the likely consequences of an incident originating therefrom, may establish a lower amount of financial security of the operator, provided that in no event shall any amount so established be less than 5 million SDRs, and provided that the Installation State ensures the payment of claims for compensation for nuclear damage which have been established against the operator by providing necessary funds to the extent that the yield of insurance or other financial security is inadequate to satisfy such claims, and up to the limit provided in sub-paragraph (a).

2. Nothing in paragraph 1 shall require a Contracting Party or any of its constituent sub-divisions to maintain insurance or other financial security to cover their liability as operators.

3. The funds provided by insurance, by other financial security or by the Installation State pursuant to paragraph 1 or Article 4.1(b) shall be exclusively available for compensation due under this Annex.

4. No insurer or other financial guarantor shall suspend or cancel the insurance or other financial security provided pursuant to paragraph 1 without giving notice in writing of at least two months to the competent public authority or, in so far as such insurance or other financial

security relates to the carriage of nuclear material, during the period of the carriage in question.

Article 6

Carriage

1. With respect to a nuclear incident during carriage, the maximum amount of liability of the operator shall be governed by the national law of the Installation State.

2. A Contracting Party may subject carriage of nuclear material through its territory to the condition that the amount of liability of the operator be increased to an amount not to exceed the maximum amount of liability of the operator of a nuclear installation situated in its territory.

3. The provisions of paragraph 2 shall not apply to:

(a) carriage by sea where, under international law, there is a right of entry in cases of urgent distress into ports of a Contracting Party or a right of innocent passage through its territory;

(b) carriage by air where, by agreement or under international law, there is a right to fly over or land on the territory of a Contracting Party.

Article 7

Liability of More Than One Operator

1. Where nuclear damage engages the liability of more than one operator, the operators involved shall, in so far as the damage attributable to each operator is not reasonably separable, be jointly and severally liable. The Installation State may limit the amount of public funds made available per incident to the difference, if any, between the amounts hereby established and the amount established pursuant to Article 4.1.

2. Where a nuclear incident occurs in the course of carriage of nuclear material, either in one and the same means of transport, or, in the case of storage incidental to the carriage, in one and the same nuclear installation, and causes nuclear damage which engages the liability of more than one operator, the total liability shall not exceed the highest amount applicable with respect to any one of them pursuant to Article 4.

3. In neither of the cases referred to in paragraphs 1 and 2 shall the liability of any one operator exceed the amount applicable with respect to him pursuant to Article 4.

4. Subject to the provisions of paragraphs 1 to 3, where several nuclear installations of one and the same operator are involved in one nuclear incident, such operator shall be liable in respect of each nuclear installation involved up to the amount applicable with respect to him pursuant to Article 4. The Installation State may limit the amount of public funds made available as provided for in paragraph 1.

Article 8

Compensation Under National Law

1. For purposes of this Convention, the amount of compensation shall be determined without regard to any interest or costs awarded in a proceeding for compensation of nuclear damage.

2. Compensation for damage suffered outside the Installation State shall be provided in a form freely transferable among Contracting Parties.

3. Where provisions of national or public health insurance, social insurance, social security, workmen's compensation or occupational disease compensation systems include compensation for nuclear damage, rights of beneficiaries of such systems and rights of recourse by virtue of such systems shall be determined by the national law of the Contracting Party in which such systems have been established or by the regulations of the intergovernmental organization which has established such systems.

Article 9

Period of Extinction

1. Rights of compensation under this Convention shall be extinguished if an action is not brought within ten years from the date of the nuclear incident. If, however, under the law of the Installation State the liability of the operator is covered by insurance or other financial security or by State funds for a period longer than ten years, the law of the competent court may provide that rights of compensation against the operator shall only be extinguished after a period which may be longer than ten years, but shall not be longer than the period for which his liability is so covered under the law of the Installation State.

2. Where nuclear damage is caused by a nuclear incident involving nuclear material which at the time of the nuclear incident was stolen, lost, jettisoned or abandoned, the period established pursuant to paragraph 1 shall be computed from the date of that nuclear incident, but the period shall in no case, subject to legislation pursuant to paragraph 1, exceed a period of twenty years from the date of the theft, loss, jettison or abandonment.

3. The law of the competent court may establish a period of extinction or prescription of not less than three years from the date on which the person suffering nuclear damage had knowledge or should have had knowledge of the damage and of the operator liable for the damage, provided that the period established pursuant to paragraphs 1 and 2 shall not be exceeded.

4. If the national law of a Contracting Party provides for a period of extinction or prescription greater than ten years from the date of a nuclear incident, it shall contain provisions for the equitable and timely satisfaction of claims for loss of life or personal injury filed within ten years from the date of the nuclear incident.

Article 10

Right of Recourse

National law may provide that the operator shall have a right of recourse only:

(a) if this is expressly provided for by a contract in writing; or

(b) if the nuclear incident results from an act or omission done with intent to cause damage, against the individual who has acted or omitted to act with such intent.

Article 11

Applicable Law

Subject to the provisions of this Convention, the nature, form, extent and equitable distribution of compensation for nuclear damage caused by a nuclear incident shall be governed by the law of the competent court.

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