

THE MARITIME LAW ASSOCIATION
OF THE UNITED STATES

**DRAFT OF INTERNATIONAL CONVENTION RELATING
TO THE LIABILITY OF OPERATORS OF SEAGOING
NUCLEAR SHIPS**

ARTICLE I:

In this Convention the following words shall have the meaning hereby assigned to them:

(i) "nuclear ship" means any seagoing ship equipped for the utilization of nuclear fuels.

(ii) "licensing State" means the contracting State which has licensed, registered or otherwise given authority for the operation of a nuclear ship.

(iii) "operator" means the person designated or recognized by the competent public Authorities of the licensing State as operator of a nuclear ship; if no such authority has been given or is in effect, the owner of the nuclear ship shall be considered the operator.

(iv) "nuclear incident" means any occurrence or succession of occurrences having the same origin, which in whole or in part arises out of or results from the radioactive toxic, explosive or other hazardous properties of nuclear fuel of a nuclear ship or radioactive products produced therefrom or any of them held by the operator of that ship on board or in connection with that ship or coming therefrom and which caused loss of life or personal injury or loss or damage to property.

(v) "nuclear fuel" means fissionable material and other material in such form, amount or combination that they are capable of producing energy by undergoing a process of nuclear transformation used or intended for use on a nuclear ship.

(vi) "radioactive products or waste" means any radioactive material produced in or made radioactive by exposure to the radiation incidental to the process of utilizing nuclear fuel.

(vii) "Persons" includes individuals, partnerships, associations of persons and Bodies corporate, Governments, their Departments and Public Authorities.

(viii) "nuclear damage" means loss of life or personal injury to any individual, loss of or damage to any property or infringements of any right caused by a nuclear incident.

ARTICLE II:

(i) The operator of a nuclear ship shall solely and absolutely be liable in accordance with this Convention for nuclear damage, except nuclear damages to the nuclear ship and its appurtenances, upon proof that such nuclear damage was caused by a nuclear incident involving nuclear fuel of such ship or radioactive products or waste produced in such ship.

(ii) Such liability of the operator shall arise from any nuclear incident occurring from the time the nuclear fuel of the ship shall be taken in charge by the operator and until the redelivery thereof or of any radioactive products or waste produced thereby, to another person duly authorized by law to take charge of the same and required by law to accept responsibility for any nuclear incident caused thereby and shall include liability for any nuclear damage caused by a nuclear incident involving nuclear fuel of the nuclear ship, radioactive products or waste produced thereby otherwise discharged from the ship lost or abandoned.

(iii) No other person shall be liable for nuclear damage for which the operator of a nuclear ship is liable under section (i) and (ii) of this article.

(iv) The operator shall have a right of recourse only:

(i) if nuclear damage caused by a nuclear incident results from an act or omission done with intent to cause damage in which event the operator shall have a right of recourse against the person acting or omitting to act with such intent; or

(ii) if so provided expressly by contract.

ARTICLE III:

(i) Under no circumstances the amount for which the operator of a nuclear ship shall be liable in respect of any one nuclear incident shall exceed _____, notwithstanding the fact that

the nuclear incident should have resulted from any fault or privity of that operator.

(ii) The operator of a nuclear ship shall have to maintain insurance or other financial security of such type and on such terms as the licensing State shall specify, to cover the operator's liability in accordance with the provisions of this Convention.

(iii) If the insurance or other financial security referred to in section (ii) of this article is not maintained or proves to yield less than full coverage with regard to the operator's liability in accordance with this Convention, the licensing State shall itself be responsible for the deficit.

ARTICLE IV:

Whenever damage is caused or contributed to by a nuclear incident and by one or more other occurrences and the damage from such separate causes is not reasonably separable, it shall for the purpose of this Convention be deemed to have been exclusively caused by the nuclear incident.

ARTICLE V:

Compensation against the operator of a nuclear ship under this Convention shall be extinguished if an action is not brought within ten years from the date of the nuclear incident; in the case of nuclear damage caused by a nuclear incident involving nuclear fuel or radioactive products or waste, which have been lost or abandoned and have not been recovered, the period for the extinction of the right shall be ten years from the date of the loss or abandonment.

National legislation of the contracting State having jurisdiction may however establish a period of not less than two years for the extinction of the right either from the date of which the individual or the person supporting damage has knowledge or from the date at which he ought reasonably to have known of the damage, provided that a period of ten years shall not be exceeded.

ARTICLE VI:

Where provisions of national health insurance, social security, workmen's compensation or occupational disease compensation systems include compensation for nuclear damage, rights of beneficiaries thereunder shall be determined by the national law of the

contracting State having established such systems; if such compensation is payable by any person other than the operator liable under this Convention, such person shall be subrogated to the rights of such beneficiaries against that operator to the extent of the amount so paid.

ARTICLE VII:

If nuclear damage is caused or contributed to by nuclear incidents for which more than one operator is liable under the provisions of this Convention and the damage caused by each incident is not reasonably ascertainable, those operators shall be jointly and severally liable for the entire damage and they shall have the right of contribution between each other so that the total amount of their liability for such damage is equally divided between them, subject to the limitation provided in article III of this Convention.

ARTICLE VIII:

No liability shall attach to an operator of a nuclear ship in respect of nuclear damage caused by nuclear incidents due to war, hostilities, civil war, or insurrection.

ARTICLE IX:

Nothing in this Convention shall apply to claims for salvage or to claims for contribution in general average.

ARTICLE X:

The sums provided by insurance or other financial security referred to in article III in respect of the liability of an operator under this Convention shall be exclusively available for compensation of the nuclear damage, for which that operator is liable.

ARTICLE XI:

(i) the Contracting States shall enact legislation such as to ensure that the sums provided by insurance or other financial security shall be made available for the compensation referred to in the preceding article within the jurisdiction of the licensing State.

(ii) the administration and distribution of the sums referred to in the preceding section of this article XI shall be done without discrimination based upon nationality, domicile or residence.

(iii) the sums referred to in section (i) of this article XI shall be freely transferable between the monetary areas of the Contracting States.

(iv) when the sums referred to in section (i) of this article XI shall be made available for the compensation of nuclear damage arising on any distinct occasion within the jurisdiction of the licensing State, no claimant shall thereafter be entitled to exercise any right against any other assets of the operator of the nuclear ship involved in respect of his claim for nuclear damage and any bail or other security given by that operator in other Contracting States shall be released.

(v) if before the sums referred to in section (i) of this article XI have been distributed, the operator has paid in whole or in part any of the claims for nuclear damage, he shall be placed in the same position in relation to those sums as the claimant for nuclear damage, whose claim he has paid.

(vi) where the operator establishes that he may at a later date be compelled to pay in whole or in part any claim for nuclear damage, the Court or other competent Authority of the licensing State may order that a sufficient part of the sums referred to in section (i) of this article XI shall be provisionally set aside to enable the operator at such later date to enforce his claim against those sums in the manner set out in the preceding section.

ARTICLE XII:

(i) Without prejudice to the rules of jurisdiction of the national laws of the Contracting States, jurisdiction for nuclear damage for which the operator of a nuclear ship is liable in accordance with the provisions of this Convention shall lie in the choice of the claimant

(a) with the Courts of competent jurisdiction of the licensing State, or

(b) with the Courts of competent jurisdiction of the Contracting State within the territory of which the nuclear damage occurred.

(ii) a final judgment of a Court of competent jurisdiction within one of the Contracting States in accordance with subparagraph (b) of the preceding section shall be recognized and given effect by the competent Authority of the licensing State which is entrusted with the administration and distribution of the sums referred to in section (ii) of article XI of this Convention.

ARTICLE XIII:

This Convention applies to nuclear damage occurring wherever in the World.