

THE MARITIME LAW ASSOCIATION
OF THE UNITED STATES

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

Adopted by the Comité Maritime International at
Rijeka, Jugoslavia, September 20th-27th, 1959

ARTICLE I

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

(i) "Nuclear ship" means any ship equipped for the utilisation of nuclear fuel.

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

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

(iv) "Operator" means the person licensed or otherwise authorised by the competent public Authority of the licensing State as operator of a nuclear ship; if no such license or authority has been given or is in effect, the owner of the nuclear ship shall be considered the operator.

(v) "Nuclear fuel" means any material which is capable of producing energy by a process of nuclear fission or fusion and which is used or intended for use in 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 utilising nuclear fuel.

(vii) "Nuclear damage" means loss of life or personal injury to any individual and any loss or damage caused by a nuclear incident.

(viii) "Nuclear incident" means any occurrence which 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 except when carried as cargo.

ARTICLE II

(i) The operator of a nuclear ship shall be solely and absolutely liable for nuclear damage 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 be confined to nuclear incidents occurring during the period between the taking in charge of the nuclear fuel by the operator and the redelivery thereof, or of any radioactive products or waste therefrom, to another person duly authorised by law to take charge of the same and required by law to accept responsibility for any nuclear damage caused thereby.

(iii) If the nuclear fuel of the nuclear ship or radioactive products or waste therefrom are redelivered or discharged in any other manner or are lost or abandoned, the operator shall remain liable for nuclear damage caused by a nuclear incident arising out of or resulting from such nuclear fuel or radioactive products or waste, subject to the provisions of this Convention.

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

(v) If the nuclear damage is wilfully caused by a claimant otherwise entitled to compensation under this Convention the Court having jurisdiction may refuse or reduce the compensation recoverable by such claimant from the operator.

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

(i) if nuclear damage results from a personal act or omission done with intent to cause damage in which event the operator shall have a right of recourse against the individual having acted or having omitted to act with such intent; or

(ii) if so provided by contract.

ARTICLE III

(i) An operator of a nuclear ship, provided that he is duly licensed or otherwise authorised by the competent public authority of the licensing State as operator of the nuclear ship shall in no circumstances be liable for more than in respect of any one nuclear incident, notwithstanding the fact that the nuclear incident resulted from any fault or privity of that operator.

(ii) The operator of a nuclear ship 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 on such terms as the licensing State shall specify.

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, the entire damage shall for the purpose of this Convention be deemed to have been exclusively caused by the nuclear incident.

ARTICLE V

(i) Rights for 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.

(ii) In the cases referred to in Article II (iii) the period for the extinction of the rights shall be ten years from the date of the re-delivery, discharge, loss or abandonment, as the case may be.

(iii) Each Contracting State may, however, establish a period of not less than two years for the extinction of the rights from the date of which the individual or the person suffering damage has knowledge or from the date when he ought reasonably to have known of the damage, provided that the said period of ten years shall not be exceeded.

(iv) Any person suffering damage caused by a nuclear incident who has brought an action for compensation within the period provided for in this Article may amend his claim in respect of any aggravation of the damage after the expiry of the appropriate period referred to in paragraphs (i), (ii) and (iii) above provided that final judgment has not been entered by the competent Court.

ARTICLE VI

Where provisions of national health insurance, social security, workmen's compensation or occupational disease compensation systems include compensation for damage caused by a nuclear incident, 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 State having established such systems.

ARTICLE VII

Whenever nuclear damage is caused or is contributed to by a nuclear incident for which more than one operator is liable under the provisions of this Convention, and it is not possible definitely to allocate the damage between the operators, those operators shall be jointly and severally liable for such damage, but the liability of each shall not exceed the limit set out in paragraph 1 of Article III.

Whenever nuclear damage is caused or contributed to by more than one nuclear incident involving liability of more than one operator under the provisions of the Convention, and the damage caused by each nuclear incident is not reasonably separable, those operators shall be jointly and severally liable for such damage, but the liability of each shall not exceed the limit set out in paragraph 1 of Article III.

In any of the above cases each of the operators jointly and severally liable shall have a right of contribution against the others so that the total liability shall be borne in equal parts.

ARTICLE VIII

No liability shall attach to an operator of a nuclear ship in respect of nuclear damage caused by nuclear incidents directly 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 under this Convention shall be exclusively available for compensation of the nuclear damage, for which the 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 this Convention within the jurisdiction of the licensing State.

(ii) The rules relating to the marshalling, apportionment and distribution of the sums representing the limit of liability set out in Article III (i) of this Convention shall be governed by the national law of the licensing State.

(iii) The apportionment and distribution of the sums representing the limit of liability set out in Article III (i) of this Convention shall be done without discrimination based upon nationality, domicile or residence.

(iv) The sums referred to in Article III of this Convention shall be freely transferable between the monetary areas of the Contracting States.

(v) When the sums referred to in Article III of this Convention 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.

(vi) If before the sums referred to in Article III of this Convention 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.

(vii) 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 Article III of this Convention 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 paragraph.

ARTICLE XII

(i) Actions for compensation for nuclear damage must be brought in the option of the claimant either—

(a) in the Courts of the licensing State; or

(b) in the Courts of the Contracting State within the territory of which the nuclear incident occurred.

(ii) Final judgments of a Court of competent jurisdiction within one of the Contracting States in accordance with subparagraph (b) of the preceding section shall become enforceable in the territory of the licensing State as soon as the requirements of the law of the licensing State have been complied with. The merits of the case shall not be the subject of further proceedings.

ARTICLE XIII

This Convention applies to nuclear damage occurring in any part of the world.

ARTICLE XIV

The provisions of this Convention shall apply exclusively with respect to claims for nuclear damage for which the operator of a nuclear vessel is liable thereunder, and shall supersede the provisions of any other Convention, International Agreement, or provision of law, with respect thereto.

RECOMMENDATIONS

I

ARTICLE III

The limit of the operators liability in Article III (i) has purposely been left in blank.

The Conference was unanimous upon the following points:

a) that the absolute and exclusive liability cast by the Convention upon the operator must be subject to some limit.

b) that the amount of this limit must be sufficient to make nuclear ships acceptable in all the ports of the World.

c) that the limit required for this purpose may be beyond the capacity of the Operator to provide by commercial insurance even utilising all the resources of the international insurance market.

d) that, in such a case, the insurance commercially available may have to be supplemented by some form of State indemnity. In the view of the Conference such indemnity would have in practice to be given by the licensing State.

The Conference, however, was of opinion that it was not its function to insert in the draft Convention the means by which this should be achieved as this is essentially a matter for the Governments concerned.

The possibility that the nuclear damage caused by a nuclear incident may in extraordinarily unfortunate circumstances exceed the cover obtainable in the commercial insurance market cannot be totally ignored. It is therefore possible, that States may find insufficient a Convention which limits itself to impose upon the operators the liability for which insurance is available.

Some delegations, therefore, wish to recommend that the contracting States undertake an obligation to indemnify those who have suffered nuclear damage in an amount beyond that for which insurance can be obtained.

Other delegations did not venture at this stage to express any opinion on this matter.

II

In view of the international obligations which it will obviously be necessary for the States to assume under treaty, the Conference also suggests that some form of international machinery should be agreed upon to facilitate and ensure the carrying out of these obligations.

III

ARTICLE XII, PARAGRAPH 2 (ii)

The Conference appreciates that this provision may cause difficulties in certain jurisdictions, in which the enforcement of foreign judgments is already subject to certain procedural or even constitu-

tional rules. Unless, however, the Convention is to provide that the jurisdiction shall lie solely with the Court of the licensing State to which there are grave objections, the Conference sees no alternative to this provision with, of course, such safeguards as the Governments may see fit to agree.

IV

The Conference has considered whether the Convention should include a provision to the effect that each of the contracting states should have the right to exclude from the benefits of the Convention owners or operators of vessels licensed or registered in a non contracting state and victims of a nuclear incident who are nationals of or resident in a non contracting state. The Conference came to no conclusion upon this point as it was considered to be essentially a matter for Governments to decide.

V

The Conference desires to make it clear that nothing in the draft is intended to authorise or require the inspection of military vessels or auxiliaries, nor to create the right to attach such vessels. The matter of inspection of other types of vessels will undoubtedly be considered at the Conference on the Safety of Life at Sea Conventions.