

Sustainable development and nuclear liability

The third party liability regime for nuclear energy is unique in many ways and addresses a number of relevant issues in the context of sustainable development. Although the high safety standards of the nuclear industry mean that the risk of an accident is low, the magnitude of damage that could result to third parties from such an accident is considerable. It was thus recognised from the very inception of the nuclear power industry that a special legal regime would need to be established to provide for the compensation of victims of a nuclear accident.

The ordinary rules of tort and contract law were simply not suited to addressing such a situation in an efficient and effective manner. If ordinary law were to be applied, victims would likely have a great deal of difficulty determining which one of the many entities potentially involved in the nuclear accident was actually liable for the damage caused. Also, without a limit on the amount of liability imposed upon the liable entity, that entity would not be able to obtain financial security (such as insurance) against that risk, thereby leaving victims with claims that could not be realised. In addition, accounting principles would prevent the operators of nuclear installations and the suppliers of nuclear goods and services from carrying such potentially large liabilities on their books, regardless of how unlikely a severe accident might be.

Special nuclear liability regimes were therefore established to overcome these disadvantages and now assure the following benefits: providing adequate protection to the public from possible damage; ensuring that the growth of the nuclear industry, from which this same public benefits,

will be protected from excessively burdensome liabilities; marshalling international insurance market resources to ensure that sufficient financial security would be available to satisfy potentially large claims; and ensuring that liability and compensation mechanisms address the transboundary nature of nuclear damage. In order to provide these benefits, these regimes had to be based upon the following principles: a nuclear operator's strict and exclusive liability; limitations upon the time and amount of a nuclear operator's liability; and the nuclear operator's obligation to financially secure its liability.

National regimes reflecting these principles are implemented through legislation in most OECD Member countries, and progressively in non-member countries. The current international regimes which reflect these same principles are established by the following Conventions: the 1960 Paris Convention on Third Party Liability in the Field of Nuclear Energy established under the auspices of the OECD and to which 14 OECD Member countries from Western Europe are Contracting Parties; and the 1963 Vienna Convention on Civil Liability for Nuclear Damage established under the auspices of the International Atomic Energy Agency, which is worldwide in character and to which four OECD Member Countries¹ are Contracting Parties. These two Conventions are themselves linked by the 1988 Joint Protocol on the Application of the Paris Convention and the Vienna Convention.

Since the Chernobyl accident, the international nuclear community has recognised the need for extensive revision of the international regimes to enhance their provisions for protecting victims and to promote a global regime attractive to all countries. Those efforts resulted in the adoption, in 1997, of two new instruments: the Protocol to Amend the Vienna Convention and the Convention

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on Supplementary Compensation for Nuclear Damage. Each instrument is designed to accord better protection to nuclear accident victims in all affected countries on a more equitable basis. In addition, ongoing negotiations to revise the Paris Convention and the Brussels Supplementary Convention, again with the objective of providing enhanced protection to victims of a nuclear accident, are expected to be completed in 2001.

The liability limit imposed upon nuclear operators under national legislation varies considerably between OECD Member countries. These variations result from the differing limits imposed under the various existing international nuclear liability instruments, from the extent to which these countries utilise nuclear power for energy production, and from other political and economic factors.

A few countries have adopted national legislation providing for the unlimited liability of their nuclear operators for nuclear damage. Of course, the corresponding financial security limits are, of necessity, limited, since no private or public resource is either able or willing to guarantee a totally unlimited amount of liability. The argument against limiting the liability of the operator is that the operator is subsidised by not having to face the full value of an accident, and will have less incentive to ensure safety, thus making an accident more likely. Yet on this specific safety issue, most OECD Member countries take the position that both the operator and the operating staff have a strong self-interest in plant safety, and that the

operators are strictly regulated by competent, independent organisations.

Conclusion

It is important to remember that the nuclear industry is one of the most highly regulated industries in modern-day society. In most OECD countries with developed nuclear power programmes, and even in those which possess only small research reactors, there are strict legislative requirements in place to ensure the health, safety and security of the public, including industry workers, as well as the protection of the environment. While this does not automatically mean that the goals of sustainable development are explicitly incorporated into the nuclear regulatory regimes of all such countries, it would be safe to say that such goals will have been taken into account to a significant degree. To the extent that a country's nuclear regulatory agency enforces such an interpretation, then that country is well on its way to achieving its sustainable development goals in relation to nuclear energy production and utilisation. If such a country adheres to a national or international third party liability regime designed to ensure equitable, adequate and realisable compensation to victims of a nuclear incident, it will have gone that much further. ■

Note

1. The Czech Republic, Hungary, Mexico and Poland each acceded to the Vienna Convention prior to becoming Member countries of the OECD.

Ratifications of nuclear third party liability conventions

