

NUCLEAR
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LEGISLATIVE AND REGULATORY ACTIVITIES

• *Belgium*

THIRD PARTY LIABILITY

Bill on nuclear third party liability

A Bill is presently being studied for the purpose of replacing the Act of 18th July 1966 on nuclear third party liability intended to implement the Paris Convention, by new regulations which will include in domestic law the rules laid down by the Brussels Supplementary Convention.

The Act in force on third party liability contains few specific provisions and deals with the entry into force of the Paris Convention, certain provisions of which it declares directly applicable. Furthermore, if by the Act of 1st August 1966 Belgium has approved the Paris Convention and the Brussels Supplementary Convention and the Additional Protocols to both these Conventions, the lack of complete legislation on third party liability impedes implementation of the Supplementary Convention in Belgium since it had been agreed that the deposit by Belgium of its instruments of ratification was subject to promulgation by a national implementing law.

The object of this note is to summarise the Belgian Bill while highlighting the matters which, according to the Paris Convention, should be determined by national legislation.

The first of the eight chapters contained in the Bill introduces both the Paris and Brussels Supplementary Conventions which constitute the basis for the new third party liability regime in the field of nuclear energy.

As regards the territorial scope of application, use is made of the possibility provided by Article 2 of the Paris Convention to extend application of the Bill to damage suffered in a Contracting State or on the high seas, even if it is caused by an incident occurring in a non-Contracting State. The King may decide on extension of the third party liability regime to nuclear damage suffered on the territory of a non-Contracting State.

Chapter II contains provisions defining a nuclear installation and the operator of such installation. The operator is defined as any individual or legal entity holding or working with nuclear fuels, radioactive products or wastes in a nuclear installation or taking in

charge nuclear substances for his installation. Concerning the nuclear installation, the Belgian law is based on the definition set out in Article 1(a) of the Paris Convention.

The King may decide that two or more nuclear installations on the same site constitute a single installation. He may make a similar decision when non-nuclear installations are operated for a common purpose together with nuclear installations on the same site.

Chapter III lays down the provisions on the liability of the nuclear operator. In accordance with the requirements of the Paris Convention, the operator is absolutely and solely liable for damage caused by a nuclear incident.

The Bill extends the liability of the operator of a nuclear installation to damage resulting from ionizing radiation emitted by any source inside that installation.

The maximum amount of the operator's liability is set at 500 million Belgian francs. In order to maintain the value of that amount, or in special cases, the King may establish a different amount, which however may not be less than the minimum amount determined in Article 7(b) of the Paris Convention (5 million EMA u/a).

Chapter IV deals with the security for liability and the recognition of the operator. As regards the regulations on compulsory insurance, the governmental authorities are vested with greater control powers as compared with the Act of 1966. The powers of the competent Minister, normally the Minister whose duties include responsibility for nuclear insurance, are no longer limited to simple approval of insurance policies, but also authorise him to decide on their form and content. The operator may be exempted from the requirement to contract an insurance if he supplies financial security considered satisfactory by the Minister.

Official recognition as nuclear operator is a prerequisite for holding or taking in charge of nuclear substances, radioactive products or waste in a nuclear installation.

The recognition granted by a Decree may be temporary and may be revoked. As a corollary to the Minister's control over insurance policies the operator is required to notify the latter of any specific alteration to the contract initially approved. The State is exempted from the obligation to take out insurance.

The Minister must establish a public record including a list of nuclear installations and specifying their location and the limits of the site of each of them. Any modifications affecting these limits must be notified to the Minister within sixty days and are effective only if entered into the public record.

Chapter V deals with the carriage of nuclear substances. Use is made of Article 4(d) of the Paris Convention which allows the carrier, at his request, and with the consent of the operator, to be substituted for an operator of a nuclear installation situated on Belgian territory and to be liable in place of the operator.

The carrier must have a certificate issued by the insurer or other financial guarantor under the conditions and according to the requirements fixed by the Minister.

The scope of the Bill extends to damage caused to the means of transport upon which the nuclear substances involved were at the time of the incident.

The transit of nuclear substances through Belgian territory, is subject to the condition that the maximum amount of the foreign operator's liability is at least 500 million Belgian francs, the Minister may derogate from this requirement.

Chapter VI concerning compensation for damage specifies that the total amount of compensation for damage caused by a nuclear incident is restricted to the maximum amount of liability established by the Bill, i.e. 500 million Belgian francs. If the damage caused exceeds this amount and the Brussels Supplementary Convention is applicable, the State must compensate the portion of the damage included between that amount and 3,500 million Belgian francs. If the damage caused exceeds 3,500 million Belgian francs, compensation for damage will be provided by public funds made available by the Contracting Parties to the Supplementary Convention for the portion included between 3,500 million and 6,000 million Belgian francs.

The nature, form and extent of the compensation granted are governed by the liability provisions of common law. If the amount of compensation exceeds 6,000 million Belgian francs, the Belgian legislation must establish criteria for an equitable distribution of the funds available, in accordance with Article 8 of the Brussels Supplementary Convention.

When the victim has committed a fault having caused the nuclear incident originating the damage, the competent court may reduce the compensation to be granted by taking account of the gravity of such fault

If the nuclear damage suffered gives rise to the application of the different regimes concerning sickness insurance, social security, or compensation of occupational accidents and diseases, the right to compensation is governed by these regimes. However, victims of such damage may, if permitted by law, base their actions on the present Bill, the Paris Convention and the Brussels Supplementary Conventions in cases where such damage is not covered by the provisions of such regimes.

The Bill provides for a right of recourse against the operator, the insurer or the State of the above-mentioned bodies having supplied benefits to victims of a nuclear incident.

The State must provide for compensation of victims where the insurance taken out for the maximum amount of the operator's liability proves insufficient. The State then acquires by subrogation all rights of the victims against the operator. However, the State may exercise a right of recourse against the operator only if such lack of insurance or financial security was due to the latter's fault.

The Bill, making use of the option of the Paris Convention [Article 8(c)], and the Supplementary Convention [Article 7], establishes a prescription period of three years to bring actions for compensation, either from the date at which the victim has knowledge of both the damage and the operator liable or from the date such victim ought reasonably to

have had knowledge thereof. In no case this period may exceed the periods established by Article 8(a) and (b) of the Paris Convention.

The last Chapter deals with procedural questions. The Bill declares the Brussels Court of the First Instance, sitting in civil matters, competent to hear actions based on the Paris Convention, the Brussels Supplementary Convention and the Bill. The victim of a nuclear incident may bring direct action against the insurer or any other financial guarantor, as well as against the State if it has to pay compensation.

The State may intervene in any proceedings based on the Paris Convention, the Brussels Supplementary and the Bill, and any judicial decision based on these provisions is binding on the State whether or not it has intervened during the proceedings.

The King decides the system whereby insurers may be informed of the amount of compensation granted to victims. He is also empowered to organise an administrative or judicial conciliation procedure to achieve more rapid compensation for victims.

The final part of the Bill contains additional measures together with penal provisions.

When an incident which is caused by nuclear substances in transit through Belgium or stored in the course of carriage does not give rise to compensation under the Paris Convention, Belgian law holds the carrier absolutely liable and submits him to a regime for compensation similar to that of the Paris Convention.

The same rules are laid down in respect of the operator of an installation comprised in the categories determined by the King, for any damage from sources of ionizing radiation which are not covered by the Paris Convention.

Finally, the Bill prescribes that the King must take the measures required to ensure compensation by the State of the portion of the damage included between the maximum amount of the operator's liability and 6,000 million Belgian francs if no compensation is provided for in accordance with the Brussels Supplementary Convention.

The Act of 18th July 1966 will be repealed when the present Bill comes into force.

• *France*

ORGANISATION AND STRUCTURE

Decree of 4th August 1975 setting up an Interministerial Committee for Nuclear Safety

A Decree of 4th August 1975 (Official Gazette of 9th August 1975) has just set up an Interministerial Committee for Nuclear Safety in France, chaired by the Prime Minister and comprising the Ministers

most directly concerned by nuclear safety problems (Interior, Foreign Affairs, Finance, Defence, Equipment, Agriculture, Quality of Life, Environment, Labour, Health, Industry and Research, Transport, and Information).

This Committee is responsible mainly for co-ordinating the actions of the different ministerial departments and for preparing the general measures required to ensure nuclear safety; it also has a Secretary General.

Nuclear safety is taken here in a very wide sense, i.e. it covers measures and actions to protect persons and property against hazards, nuisances or constraints of all types resulting not only from the setting up, operation and decommissioning of large nuclear installations, but also from the storage, transport and conversion and use of natural and artificial radioactive substances. Installations and materials for national defence are excluded from the Committee's scope

The duties of the Commission cover:

- measures for prevention and intervention in case of an incident in the nuclear field,
- prevention of pollution and constraints of all types caused by nuclear installations whether or not of radioactive origin;
- the safety of nuclear installations, namely, all the steps to be taken to ensure normal operation of the installations and their protection against malicious acts;
- the control and safety of the nuclear fuel cycle, including radioactive waste;
- the preparation of the French government's positions on nuclear safety matters in international negotiations,
- the definition of orientations concerning public information on nuclear matters.

The Secretary General of the Interministerial Committee is appointed by Decree. His duties cover the preparation of the discussions of the Committee and the measures required in implementation of its tasks, he must also follow through the application of the decisions taken. The Secretary General will be assisted in his duties by the appropriate services in the different Ministries and public bodies which, like, for example, the Commissariat à l'Energie Atomique, are supervised by these Ministries. The Secretariat General will therefore have a light structure, and will be supported by the services in the different Ministries and the specialised Interministerial Committees. The duties of such bodies will not be modified by these new provisions which aim to ensure a better co-ordination of the work of the public authorities.

Therefore, the Ministry for Industry and Research maintains its duties in the nuclear safety field and will remain the supervisory authority of the Central Service for the Safety of Nuclear Installations and the Higher Council for Nuclear Safety.

Similarly, the Ministry of Health, remains especially responsible for protection of the public, its Central Service for Protection against

Ionizing Radiations being charged with the control of all types of pollution caused by radioactive substances.

The Minister of Labour, the Minister of the Interior, the Minister for the Quality of Life and the Secretary of State for Transport keep their duties in their respective fields (safety of installations for the Minister of the Interior, protection of the environment for the Minister for the Quality of Life, protection of workers for the Minister of Labour, regulation of the transport of radioactive materials for the Secretary of State for Transport).

The existing Interministerial Committees: the Committee on Large Nuclear Installations which advises on licences for the setting up and modification of large nuclear installations, and the Interministerial Committee on Artificial Radioisotopes which licenses the possession of artificial radioisotopes keep their duties, the Secretariats of these Committees acting in liaison with the Secretariat General of the Interministerial Committee. The creation of this new Committee, therefore, should not modify considerably the present already complex procedures for the licensing of nuclear installations in France.

Order of 9th October 1975 setting up an Institute for Fundamental Research in the Commissariat à l'Energie Atomique (Official Gazette of the French Republic of 17th October 1975)

This Order by the Minister of Industry and Research sets up an Institute for Fundamental Research for the development and co-ordination of fundamental research in the Commissariat à l'Energie Atomique (CEA).

The Director of the Institute, appointed by the Administrator General Delegate of the CEA and under his authority, is assisted by a Scientific Council which is chaired by the High Commissioner for Atomic Energy.

The Scientific Council is empowered to advise on all matters relating to fundamental research or teaching relevant to the work of the Institute. It is also consulted on the preparation of research and equipment programmes, as well as on the collaboration policy with other research institutes.

The Director and those responsible for the higher scientific disciplines at the Institute as well as the interested members of the Atomic Energy Committee attend the meetings of the Council.

The Scientific Council is made up of 14 members appointed for a period of four years by the Minister of Industry and Research, and half those members may be renewed every two years.

The Institute has its own budget covering its overall expenditure which is financed by a subsidy decided in the framework of governmental policy on fundamental research. The administrative and financial management of the Institute and of the staff are carried out in the context of the CEA.

RADIATION PROTECTION

Decree of 28th April 1975 on the protection of workers against the hazards of ionizing radiations in large nuclear installations

Decree No 75-306 of 28th April 1975 countersigned by the Minister of Labour and the Minister for Industry and Research was published in the Official Gazette of the French Republic of 30th April 1975. This Decree whose purpose is to protect against ionizing radiations, all workers employed in large nuclear installations governed by the 1963 Decree, amended in March 1973, supplements the legislation on radiation protection established by the Decree of 20th June 1966 concerning the general principles of protection against ionizing radiations and the Decree of 15th March 1967 relating to the protection of workers against ionizing radiations in other nuclear installations (see Nuclear Law Bulletin Nos 1 and 9). In fact, the present Decree refers to the provisions of the 1966 and 1967 Decrees concerning the maximum permissible equivalent doses and the maximum permissible concentrations of different radionuclides which must be complied with in workplaces.

Chapter I of the Decree specifies the obligations of the employer. He is responsible for all general measures of an administrative and technical nature required for the prevention of accidents and occupational diseases likely to be caused by ionizing radiations. He is also responsible for measures relating to protection and individual monitoring of workers.

Chapter II deals with general provisions which the head of the installation must comply with at the administrative, technical and medical levels. He must first send a copy of the Decree authorising the creation of large nuclear installations to the Labour Inspector who in turn forwards a copy to the Central Service for Protection against Ionizing Radiations (SCPRI). He must also inform the Labour Inspector about the operating conditions of the installation, in particular with respect to the date tests are initiated, the date of entry into service of the installation and when, as the case may be, activities are stopped.

Furthermore, the head of the installation must organise satisfactorily the work and the accident prevention methods, in particular, by control of the safety system for protection against radiation or contamination, as well as by implementation of the systems required to control the atmosphere and associated alarm systems to ensure compliance with the limits of maximum permissible equivalent doses. He must also prepare and apply the instructions for protection and surveillance to be complied with for normal operation of the installation as well as for maintenance and repair work, and experiments. He must also ensure that all the measurement equipment used for purposes of overall protection against ionizing radiation is in good working order. The head of the installation must also ensure the up-dating of documents concerning the characteristics of a large nuclear installation, its subsequent modifications and the protection arrangements, in case such modifications lead to an aggravation of the radiation and contamination hazards. He must also make available to the Labour Inspector and to staff of SCPRI a physical inventory of radioactive substances separately for sealed sources and fuel elements or other fissionable materials.

Each worker likely to receive equivalent doses must be informed of the risks he may encounter and of the precautions to be taken

to avoid them. In general, the staff must observe the internal regulations and safety instructions peculiar to each installation. There are two series of measures in the provisions of the Decree relating to the controlled areas, certain of these measures concern their organisation and others refer to technical aspects. Before the installation is put into service, the person in charge of the installation must delimit the controlled areas. He must take all the necessary measures for the protection against external radiation or radioactive contamination of staff assigned to each area. When radiation or contamination risks exceed certain thresholds within each controlled area, the head of the installation must set new delimitations and special rules. Also the number of workers and their exposure must be reduced to a minimum. Workers in controlled areas must be informed of the safety measures to be taken, and eventually their maximum period of exposure. The Labour Inspector may at any time require that the head of the installation should ask the SCPRI to check the devices for radiation detection, notices, alarm signals and also undertake atmospheric controls. Staff directly working under radiation must be individually monitored for irradiation and contamination. Furthermore, the regulations provide that if the maximum permissible equivalent doses are exceeded in normal working conditions and if a defect has been noted in the protection system of the installation, the head of the installation must avoid any abnormal exposure of staff, initiate an enquiry on the events having led to the doses being exceeded and evaluate the equivalent doses received by the workers concerned whether by irradiation or contamination.

Technical measures are also laid down for controlled areas and protection must be ensured from the viewpoint of radiation exposure and from that of contamination. The Decree prescribes different methods for this purpose, such as the setting up of fixed or mobile screens and the use of remotely controlled handling equipment. In addition, the Decree sets out the precautions to be taken for the storage of radioactive substances. They must be put into appropriate containers and stored in locked enclosures or in other areas providing the same guarantees. Only the quantities of radioactive substances essential to the work planned may be taken from the stores. Such substances may not be handled without adequate protection.

Medical provisions are laid down for staff working in controlled areas which mainly consist of compulsory examinations in expressly provided cases. Thus, the employer must require that any worker having stayed away on sick leave for more than 21 days should undergo a medical examination. This also applies if a worker has been exposed to a total radiation dose higher than the maximum permissible equivalent doses or to internal contamination corresponding, over an average of three consecutive months, to concentrations higher than the maximum permissible concentrations. The medical examinations are varied (haematological, ear, nose and throat, ophthalmological, radiotoxicological) and the employer must ensure they are carried out. Furthermore, a special medical file is established for every staff member, which includes an irradiation card describing the possible harmful effects of the type of work undertaken and the results of the various examinations. The file is kept by the medical service throughout the lifetime of the person concerned, and in any event, for at least 30 years following the period of exposure to radiation.

Chapter III stipulates that the provisions of the Decree apply to installations put into service prior to the date of its entry into force.

Finally, Chapter IV deals with the operator's possibility to obtain derogations from certain provisions. The authorities competent for granting such derogations are the Regional Labour and Manpower Director and the Minister responsible for Health. Orders in implementation of this Decree are made by the Minister responsible for Labour, after obtaining the opinion of the SCPRI.

• *Germany*

RADIATION PROTECTION

Draft Radiation Protection Ordinance

The Government of the Federal Republic of Germany is presently considering the draft of a new comprehensive Radiation Protection Ordinance (Strahlenschutzverordnung) implementing the Atomic Energy Act. Taking account of the latest scientific and technological developments as well as of past experience, the new Ordinance will codify all radiation protection law which is not already covered by the Atomic Energy Act, with the exception of the Ordinance concerning Protection from Damage by X-Rays (Röntgenverordnung: see the Supplement to Nuclear Law Bulletin No 12) and special provisions contained in food, drugs and transport legislation. The new Ordinance will therefore replace the First Ordinance on Protection Against Radiation Hazards (Erste Strahlenschutzverordnung) and the Second Ordinance on Protection Against Hazards Caused by Ionizing Radiation in Schools (Zweite Strahlenschutzverordnung), and will also cover all installations producing ionizing radiation other than those subject to the X-Ray Ordinance.

The draft takes particular account of the Euratom Radiation Protection Norms of 1966 as well as their planned revision (not yet adopted by the Council of the European Communities), the OECD Radiation Protection Norms as revised by decision of the NEA Steering Committee of 25th April 1968 (see Nuclear Law Bulletin No 2), and the OECD Council Decision of 15th July 1966 on the Adoption of Radiation Protection Standards for Radioluminous Timepieces.

The draft contains the fundamental principle that whoever engages in an activity subject to Sections 3 to 7 and 9 of the Atomic Energy Act or the Ordinance is under obligation to avoid any unnecessary exposure to radiation or contamination of persons, goods and the environment and to keep any (unavoidable) exposure or contamination as low as practicable, even below the limits fixed by the Ordinance, taking into account the status of science and technology and all circumstances of the individual case.

TRANSPORT OF RADIOACTIVE MATERIALS

Act concerning the Carriage of Dangerous Goods

The Act [Gesetz über die Beförderung gefährlicher Güter of 6th August 1975 (Federal Gazette 1975, Part I, p. 2121)] applies to the transport of dangerous goods by rail, road, water and air vehicles, with the following exceptions:

- transport within installations which manufacture, treat, process, store, use or destroy dangerous goods, provided that such transport takes place in an enclosed area,
- transport within the competence of the German Federal Mail (Deutsche Bundespost),
- international transport to the extent that provisions of the European Communities or bilateral agreements or domestic provisions based on such provisions or agreements are directly applicable, unless such agreements refer to domestic legal provisions,
- transport by mountain railways.

The Act does not affect legal provisions concerning dangerous goods issued, for reasons other than safety, in connection with the transport, or safety requirements of the Bund, Lander or communities issued because of special local conditions.

Dangerous Goods are defined as substances and objects which because of their nature, properties or physical state might, in connection with their transport, endanger the public safety or order, in particular for the public and for important common property.

Transport comprises taking over and delivery of goods, their temporary storage during transport, packing and unpacking, loading and unloading, even if these acts are not performed by the carrier.

The Federal Government is authorised to issue ordinances and general administrative regulations concerning the transport of dangerous goods if this is necessary for protection against the hazards and nuisances originating therefrom (Section 3), after having heard experts (Section 4).

Further provisions deal with the competent authorities (Section 5), general exceptions (Section 6), emergency and safety measures (Sections 7 and 8) and control (Section 9). The Act amends a number of other Acts, in particular, the Atomic Energy Act; the amendments to the latter have already been taken account of in the text of the revised Atomic Energy Act, published as Supplement to Nuclear Law Bulletin No 15.

THIRD PARTY LIABILITY

The Act of 8th July 1975 concerning the Paris and Brussels Nuclear Third Party Liability Conventions (Gesetz zu den Pariser und Brüsseler Atomhaftungs - Übereinkommen) was published in the Federal Gazette (Bundesgesetzblatt) 1975, part II, p. 957 (see Nuclear Law

Bulletin Nos 14 and 15). By this Act, the Parliament (Bundestag) approved the following Conventions signed by the Federal Republic of Germany

- the (Paris) Convention on Third Party Liability in the Field of Nuclear Energy and its Additional Protocol,
- the (Brussels) Supplementary Convention to the Paris Convention and its Additional Protocol;
- the (Brussels) Convention on the Liability of Operators of Nuclear Ships and its Additional Protocol;
- the (Brussels) Convention relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material.

The German Government deposited the instrument of ratification of the Paris Convention and its Additional Protocol with the Secretary-General of the OECD on 30th September 1975, of the Brussels Supplementary Convention and its Additional Protocol with the Belgian Government on 1st October 1975, and of the Convention relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material with the Secretary-General of IMCO on 1st October 1975 (see below under INTERNATIONAL ORGANISATIONS AND AGREEMENTS). The instrument of ratification of the 1962 Brussels Convention on the Liability of Operators of Nuclear Ships has not yet been deposited.

The Third Act Amending the Atomic Energy Act (Drittes Gesetz zur Änderung des Atomgesetzes) was published in the Federal Gazette 1975, part I, page 1885 (the text of the revised Atomic Energy Act was published as Supplement to Nuclear Law Bulletin No 15). The Act came into force on 1st October 1975.

A Bill amending the Third Act Amending the Atomic Energy Act has been submitted to Parliament. The Bill proposes, firstly, to add a second sentence to No 1 of sub-section (1) of Section 25a which provides that the Brussels Convention on the Liability of Operators of Nuclear Ships shall apply internally to the Federal Republic of Germany independently of its international binding force, unless its provisions presuppose a reciprocity effected by its entry into force. The purpose of this amendment is to avoid a gap in the liability regime for the German nuclear ship "Otto Hahn" between 1st October 1975 (the date of entry into force of the Third Act Amending the Atomic Energy Act) and the date on which the 1962 Brussels Convention enters into force for the Federal Republic of Germany (three months after the date of deposit of the instrument of ratification - Article XXIV of the Convention).

Secondly, the Bill envisages an amendment to Annex 2 to the Act (Exempted Substances) by introducing an absolute criticality limit of 350 grammes for uranium 235.

Revision of the Financial Protection Ordinance

Following the entry into force of the Third Act Amending the Atomic Energy Act, the German Government is considering a revision of the Financial Security Ordinance (Deckungsvorsorge-Verordnung) of 22nd February 1962, last amended on 10th November 1970 (see Nuclear Law Bulletin Nos 6 and 7).

The revised Ordinance will in particular take account of the amendments to the financial security and third party liability provisions

of the Act (Sections 13 to 15 and 25 to 40). It is recalled that the maximum amount of the operator's liability has been increased to DM one thousand million (Section 31) of which up to DM 500 million have to be covered by financial security (Section 13), the difference being borne by the Bund and the Lander (Sections 34 and 36).

Details of the financial security coverage are still under consideration. A number of German utility companies operating nuclear power stations have recently founded the Nuklear-Haftpflicht Gesellschaft burgerlichen Rechts (Nuclear Liability Association) with the aim of achieving, for its members, by negotiation with the German insurance companies and pools, coverage of all nuclear third party liability. It is envisaged that, in relation to third parties, all nuclear damage up to DM 500 million would be covered by insurance companies and pools while internally, the members of the Association would bear the damage between DM 200 million and DM 500 million according to an agreed formula.

• Italy

REGIME OF NUCLEAR INSTALLATIONS

Act No 393 of 2nd August 1975 on requirements for the siting of nuclear electricity generating plants and for the production and use of electrical power

Until publication on 23rd August 1975 of Act No 393, the construction of nuclear power plants had been subject only to the provisions of Presidential Decree No 185 of 13th February 1964 on nuclear safety and radiation protection, since Basic Act No 1860 of 31st December 1962 provides that licensing of such plants is outside its ambit. Electrical power generation, including nuclear power, is the exclusive responsibility of the Ente Nazionale per l'Energia Elettrica (ENEL), a public body whose nuclear power programme is defined by the Interministerial Committee for Economic Planning (CIPE).

Act No 393 regulates the national nuclear programme as a whole and provides for a specialised siting procedure involving the regional authorities as well as the CIPE, ENEL and the National Committee for Nuclear Energy (CNEN) which is the public body responsible for all nuclear activities in Italy, with special emphasis on the technical and safety aspects. This Act lays down the administrative procedure for determining the location of nuclear power plants in a regional and national context, and amends and extends the scope of Act No 880 of 18th December 1973 on the siting of installations for the production of electricity, which had specifically excluded nuclear power plants from its scope.

As mentioned above, the licensing procedure for nuclear power plants had hitherto been determined by Presidential Decree No 185 and Act No 393 now completes that procedure. This Act confers responsibilities at regional level regarding the determination of areas appropriate for siting nuclear power plants.

On proposal of the Minister for Industry, Commerce and Crafts, who is responsible for issuing regulations in the nuclear field, the CIPE, in agreement with the Inter-regional Consultative Committee, and after consulting the CNEN, approves the ENEL's pluri-annual nuclear power plant construction programme and determines the suitability of regions for siting nuclear power plants, having regard to the requirements for a balanced national economic development. The agreement between CIPE and the Inter-regional Committee, which is a consultative body representing all regional interests, should help to facilitate relations with local populations; furthermore, the prior advice of the CNEN from the technical and safety viewpoint should also provide reassurance that the territories in those regions are suitable for siting nuclear power plants.

On completion of this first step, the regions selected must determine, within 150 days of the CIPE's deliberations, at least two areas in their territories suitable for siting nuclear power plants, in agreement with the Communes concerned, having consulted with ENEL and after obtaining the opinion of the Health Minister and the CNEN's favourable opinion.

This procedure of prior consultation with the appropriate health and technical authorities is intended to avoid any possible dispute with the Communes selected for siting nuclear power plants and if the above regions do not send in their proposals within the required time-limit - thus implying possible disagreement by the Communes - the Act provides that the matter will be brought before Parliament. The latter may determine the areas in those regions by a special Act, on proposal of the Minister of Industry, Commerce and Crafts, in agreement with the Minister for the Budget and Economic Planning.

When the areas suitable have been determined, the Minister for Industry, Commerce and Crafts authorises the ENEL to initiate an enquiry for the purpose of deciding, from the technical viewpoint, the exact location for construction of the plant. The ENEL may, during its enquiry, have access to any holdings in the areas without possible opposition by the owners; these may, however, require that security be provided for compensation in case of damage resulting from the enquiry

Within twelve months of such access, the ENEL must send the Minister of Industry, Commerce and Crafts a report, together with full documentation on the technical and environmental data concerning the location proposed in the area. The report and relevant documentation must be sent in parallel to the CNEN, for the technical enquiry on nuclear safety within the limits of the site required under Presidential Decree No 185. That Decree provides that, during the enquiry, the CNEN must obtain the opinion of the Ministries of the Interior, of Labour and Social Security, of Health, etc. and under Act No 393, it must also consult the recently created Ministry for Cultural Heritage and the Environment. To enable the CNEN to give its technical opinion, as required, within eight months of receiving the ENEL's report, it is provided that the views of the above Ministries must be communicated within sixty days of the consultation, failing which such views are considered favourable and the CNEN may therefore proceed with its enquiry and formulate its final opinion to the Minister of Industry, Commerce and Crafts and the regions concerned.

The technical phase now being completed, the third step involves the decision-making procedure; based on the CNEN's technical opinion, the Minister for Industry, Commerce and Crafts asks the region concerned to determine the exact location of the nuclear power plant. Within sixty days of the Minister's request, the region, in agreement with the

Commune involved, and having consulted the ENEL, decides the location. If it does not communicate its decision within the required time-limit - either because the Commune disagrees or for any other reason - the final decision rests with the CIPE, i.e. with the highest national body for political economy matters.

The decision determining the exact location of the site for the nuclear power plant lays down that it may, where necessary, alter the town planning or manufacturing schedule of the Commune, and may replace the Commune's clearance certificate. Finally, it constitutes an ex lege declaration that the plant is of public interest and that the works necessary for its achievement are urgent and may not be postponed; this is a prerequisite for possible expropriation of the land where the plant is to be constructed.

The fourth and last step in the procedure involves the clearance certificate for construction of the nuclear power plant. The ENEL must submit, inter alia, to the Minister for Industry, Commerce and Crafts the preliminary design of the installation with the required technical documents.

The design and attached documentation must be forwarded in parallel to the CNEN for the technical enquiry and consultations provided by Presidential Decree No 185, with a view to obtaining the clearance certificate for plant construction.

It is interesting to note that the provisions of Act No 393, while providing a step by step prior consultation of the Communes selected for siting nuclear power plants, also lay down that if no reply is forthcoming at regional level within the given time-limits, the decision is taken in any even by the higher national authority. Furthermore, the decision determining the exact location of a nuclear power plant - whether taken by the region concerned or the CIPE - has a fundamental impact in that it can alter the plans of a Commune without necessarily requiring an autonomous action on its part and, most important, it replaces the Commune's clearance certificate for construction, thus implying that the Commune can neither subsequently oppose construction of the nuclear power plant nor can it stop such construction.

THIRD PARTY LIABILITY

Decree implementing the International Conventions on Third Party Liability in the Field of Nuclear Energy

Act No 109 of 12th February 1974 authorising ratification of the Paris Convention and the Brussels Supplementary Convention also vested the Italian Government with the powers required to lay down by Decree, the legal provisions to implement the above Conventions in domestic law. Accordingly, Decree No 519 of 10th May 1975 of the President of the Republic was published on 6th November 1975. This Decree amends Section 1 and Sections 15 to 24 (which deal with nuclear third party liability) of Act No 1860 of 31st December 1962 on the Peaceful Uses of Nuclear Energy. A translation of the Act of 1962, embodying this amendment, as well as previous ones, is reproduced in the supplement to this issue of the Nuclear Law Bulletin.

• *New Zealand*

RADIATION PROTECTION

The Radiation Protection (Appeals) Regulations 1974

Regulations No 319 of 16th December 1974 were made in implementation of the Radiation Protection Act 1965. These Regulations lay down an appeals procedure against the decisions of the Director-General of Health refusing to grant a licence, subjecting such granting to conditions or varying them, and finally, revoking a licence under the 1965 Act. Applicants for licences or licensees may appeal against such decision by notifying their intentions in writing to the Minister of Health and by appointing an assessor. The Board of Appeal then determines whether the appeal is justified.

Entry into force of these Regulations on the day following their publication in the Official Gazette has revoked the previous Regulations of 1954.

Amendment No 1 of the Radiation Protection Regulations 1973

These Regulations No 318 of 16th December 1974 were made in amendment of the Radiation Protection Regulations of 1973 which were made in implementation of the Radiation Protection Act 1965 (see Nuclear Law Bulletin No 12). They redefine the term "sealed radioactive material", and amend provisions affecting exemptions in relation to certain irradiating apparatus, ships and aircraft, and specified articles, and the form and manner of use of certain articles. They also make amendments of a minor drafting nature to provisions relating to disposal of waste products and exposure to radiation.

• *Portugal*

ORGANISATION AND STRUCTURE

Management Committee of the Junta de Energia Nuclear

By the Decree-Law No 446/75 of 20th August 1975, the Portuguese Government set up a Management Committee to head the Junta de Energia Nuclear. Pending the reorganisation of the Junta, the duties which to date had been carried out by the Chairman of the Junta, will now be the responsibility of the Management Committee which is composed of three persons from the staff of the Junta, designated by the Ministry of Industry and Technology. The Chairman of the Committee who is elected from among its members will represent it on the Advisory Council and on the Executive Committee of the Junta de Energia Nuclear.

• *Switzerland*

NUCLEAR LEGISLATION

Revision of the Federal Act on the Peaceful Uses of Atomic Energy and Protection Against Radiation

The Head of the Federal Department of Transport, Communication and Energy, in agreement with the Federal Council, charged a group of specialists in public and administrative law with the preparation of a draft revision of the Federal Act of 23rd December 1959 on the Peaceful Uses of Atomic Energy and Protection Against Radiation (Atomic Energy Act).

The Commission of Experts will, in particular, consider modifications of the licensing procedure for nuclear installations with a view to making this procedure simpler and to allow for a larger participation of interested circles. The Experts will have to take into account a number of initiatives by Cantons, parliamentary interventions at the level of the Federal Chambers and several petitions.

It is recalled in this context that in August 1973, the Federal Court of Lausanne ruled in a judgment of fundamental importance that the licensing of nuclear installations is reserved exclusively to the Confederation under the Federal Constitution and the Atomic Energy Act (see Nuclear Law Bulletin No 13).

• *Turkey*

REGIME OF NUCLEAR INSTALLATIONS

Technical Regulations for the General Design and Safety Criteria to be used for Safe Design and Construction of Reactors

These Technical Regulations were made in implementation of Section 33 of Decree No 7/9141 on the procedure for licensing nuclear installations which was published in the Official Gazette of 6th January 1975. Contrary to the indications given in Nuclear Law Bulletin No 14, the purpose of these Regulations, published on 3rd September 1975, and prepared in addition to safety criteria for conventional industrial installations, is to serve as a guide for licensing authorities, project designers and operators in the nuclear field.

The Regulations which are divided into ten parts, first define the concept of nuclear power plants, nuclear accidents, operational occurrences etc. The second part covers general criteria for quality standards, engineering codes, siting considerations and the design basis for overall environmental radiation protection, and protection against natural and man-induced phenomena. Parts three and four respectively deal with the reactor core design and instrumentation and control, as well as with the alarm system.

Part five concerns the protection system which must be designed to initiate automatically the systems to ensure that specified fuel limits are not exceeded due to anticipated operational occurrences and that no single failure results in loss of the protection function, it must operate independently of the control system. Part six lays down the criteria to be observed for the design of the reactor coolant system with particular emphasis on the need to manufacture the components in such a way that inspections and tests may be carried out at regular intervals throughout the service life of the reactor, it also provides for an emergency core cooling system.

Part seven covers the electrical power system to be designed in conformity with national requirements, and part eight covers criteria for the containment system which must provide an essentially leak-tight barrier against the uncontrolled release of radioactivity to the environment; while part nine concerns the safe design of fuel elements.

Finally, part ten deals with the control of radioactivity, radiation area monitors, as well as fuel storage and handling techniques

• *Uganda*

NUCLEAR LEGISLATION

Atomic Energy Decree, 1972

The basic text dealing with energy in the Republic of Uganda is the Atomic Energy Decree 1972. The Decree established an Atomic Energy Control Board and a Radioisotope Advisory Committee as well as the licensing system for the use of radioactive materials or other sources of dangerous ionizing radiation.

The Decree empowers the Atomic Energy Control Board to make recommendations to the Ministry concerned on all matters concerning

- encouragement and promotion of the use of atomic energy including radioactive materials, devices using atomic energy, and devices using ionizing radiation in such manner as best to further the overall interests and policies of the Government,
- co-ordination of activities in connection with the use of atomic energy and associated matters, to make best use of available resources;
- the ensurement that all activities involving the use of atomic energy, radioactive material or devices capable of producing dangerous amounts of ionizing radiation are carried out in such a manner as to avoid danger to the public workers concerned or to limit risks to those acceptable, as a matter of public policy.

In addition, the Board is competent to issue licences for nuclear activities.

The Board consists of the Atomic Energy Controller as Chairman, the Chief Radiation Safety Officer, representatives of various Ministries and the National Research Council. The fifteen appointed members serve for a five-year term.

Under the Board, there has been established the Radioisotope Advisory Committee consisting of a scientist appointed by the Board as Chairman, the Chief Radiation Safety Officer of the Board as Secretary, and various specialists.

The Committee is to advise the Board

- on matters referred to it by the Board;
- on requirements for the promotion of the use of radioisotopes in the best interest of the country;
- on requirements to ensure an adequate degree of public safety in the use of radioisotopes and devices capable of producing ionizing radiation in dangerous amounts including the safety of the user and other workers.

In addition, the Committee may also initiate studies or enquiries concerned with the use of radioisotopes or ionizing radiation and may recommend measures in support of such work to the Board.

Under this Decree, any person wishing to use radioactive material or other sources of dangerous ionizing radiation should apply to the Board for an appropriate licence. An application for the licence should be submitted to the Chief Radiation Safety Officer who will forward the application and the appropriate draft licence as well as any technical evaluation deemed necessary for the Committee. The Committee will then forward the appropriate draft licence with any recommended amendments thereto to the Board for approval and issue. A licence issued by the Board should be specific with regard to an operation, process or facility in respect of which it is issued, and authorise the purchase or acquisition, the importation, production, possession, transport, storage, use and disposal, as required, of specified quantities and kinds of radioactive material required for the operation, process or facility specified. A licence also may contain such conditions as the Chief Radiation Safety Officer may deem necessary to impose for the safe conduct of the proposed operation, process or facility and for the safe disposal of all radioactive waste and radioactive material resulting from the proposed operation or process facility.

The Radiation Safety Officer is empowered to do the following for the purpose of the execution of the Decree:

- to enter, inspect and examine any premises, vehicle, boat, aircraft or any other carriage of any description in or upon which he has reasonable cause to believe that radioactive material or any source of dangerous ionizing radiation is stored, used, disposed of or transported,
- to require the production of any licence authorising the use of radioactive material and any register, certificate, notice or document kept in pursuance of

the Decree and to inspect, examine or take a copy thereof,

- to make such examinations and enquiries as may be necessary to ascertain whether the obligations under the Decree are complied with.

If the licensee fails to comply with the conditions laid down in the licence or set force in the Decree or any regulations made thereunder, the licence may be suspended or revoked by the Atomic Energy Controller. Besides, the Chief Radiation Safety Officer may, if in his opinion it is necessary, amend the conditions of the licence at any time on written notice.

The Decree, in addition to the two bodies mentioned above, also established a Radiation Protection Service which is in charge of the following:

- determine the extent of exposure to ionizing radiation of the public and of workers and determine the degree of risk of such exposure;
- examine, as may be deemed necessary by the Chief Radiation Safety Officer, all premises in respect of which a licence to use radiation and all places of disposal for radioactive material and wastes is in force;
- advise the Board on the extent of exposure to persons in Uganda;
- advise and recommend to licensee steps desirable to reduce exposure to acceptable limits.

The Radiation Protection Service may also provide a personal dosimetry service.

• *United Kingdom*

RADIATION PROTECTION

Radioactive Substances (Road Transport Workers) (Great Britain) (Amendment) Regulations 1975, Statutory Instrument 1975 No 1522

These Regulations amend the Radioactive Substances (Road Transport Workers) (Great Britain) Regulations 1970. For the most part, the amendments reflect the establishment of the Employment Medical Advisory Service. Thus they authorise the Chief Employment Medical Adviser or his Deputy to carry out certain functions for the purposes of the 1970 Regulations, and authorise any employment medical adviser to act in place of an "appointed doctor" for the purposes of the Regulations 11-18. In addition, a new table of minimum distances between yellow labelled packages and the personnel compartment in any vehicle is laid down.

TRANSPORT OF RADIOACTIVE MATERIALS

Code of Practice for the storage of radioactive materials in transit, 1975

A revised Code of Practice for the storage of radioactive materials in transit has recently been published by the Department of the Environment and the Department of Employment; it supersedes the Code published under the title in 1970.

This revised Code is designed to assist those who may be responsible for the temporary storage or warehousing of radioactive material in transit by providing requirements specially applying to the temporary storage of radioactive materials.

The Code conforms generally to recommendations made by the International Atomic Energy Agency.

Code of Practice for the carriage of radioactive materials through ports, 1975

The Department of the Environment has issued a Code of Practice which replaces the Code issued by the Ministry of Transport in 1966. This Code is intended as a guide for the safe handling of radioactive materials, including fissile materials in ports, docks and harbours in the United Kingdom. The guidance which it contains is based on the principles of the IAEA Regulations for the Safe Transport of Radioactive Materials (1973 Edition).

• *United States*

REGIME OF RADIOACTIVE MATERIALS

In August 1975, the NRC amended its regulations governing the possession and use of uranium 233, enriched uranium 235 and plutonium to spell out requirements for measurement control programmes which licensees must use in accounting for these materials. The amendments apply to licensees authorised to possess more than one effective kilogram of any of these materials in an unsealed form.

The amendments impose on licensees requirements for planning, establishing and maintaining a measurement control programme to permit licensees to determine accurately the quantities of materials on inventory and to distinguish a loss of material from measurement uncertainty. The programme must include organisational controls for the management of measurement quality, training and performance qualifications requirements, a standards and calibration system, a quality testing system for the determination and control of systematic and random errors, an evaluation system for the collection and statistical analysis of the data, and programme audits and management reviews.

Licensees have three months from publication of the amendments in which to submit measurement control programmes to NRC for approval. The plans must be in effect nine months after publication or 30 days after NRC approval, whichever is later.

REGIME OF NUCLEAR INSTALLATIONS

In May 1975, the Nuclear Regulatory Commission (NRC), promulgated a new Appendix I to its regulations that provides guidance to licensees for complying with the Commission requirement that releases of radioactivity in gaseous and liquid effluents from light water cooled power reactors be kept "as low as practicable".

The Appendix specifies both design objectives and a cost-benefit analysis to determine the point at which the costs of further reductions of radioactive emissions are not justified.

The design objectives are:

- 1) Limit the amount of radioactivity released in liquid effluents from any light water cooled power reactor to levels that would keep the annual exposure to an individual in an unrestricted area to not more than three millirems for the whole body and not more than 10 millirems to any organ.
- 2) Limit releases of radioactivity in gaseous effluents from any light water cooled reactor to keep annual exposures to an individual in an unrestricted area to a maximum of five millirems to the whole body, and not more than 15 millirems to the skin.
- 3) Limit releases of radioactive iodine and other radioactivity from any light water cooled power reactor to keep annual exposures to the thyroid of an individual in an unrestricted area to no more than 15 millirems.

TRANSPORT OF RADIOACTIVE MATERIALS

Air transport of plutonium

The NRC instituted on 2nd June 1975, a rule making proceeding and initiated the preparation of an environmental impact statement, on the air transportation of radioactive materials, including packaging, with a view to the possible amendment to its regulations pertaining to transportation safety and security. After the initiation of the rule making proceeding, a law was enacted (Public Law 94-79, 9th August 1975) that prohibits the Commission from permitting licensed shipments by air transport of plutonium in any form, whether exports, imports or domestic shipments (except for plutonium contained in a medical device designed for individual human application) until the Commission has certified to the Joint Committee on Atomic Energy of the Congress that a safe container has been developed and tested which will not rupture under crash and blast-testing equivalent to the crash and explosion of a high-flying aircraft.

The Commission subsequently ordered its licensees to cease air shipments of plutonium other than in medical devices.

THIRD PARTY LIABILITY

Amendment to the Price-Anderson Act

The House of Representatives is considering the Administration's proposal, H.R. 8631, to amend the Price-Anderson provisions of the Atomic Energy Act of 1954. The proposal is substantially identical to the legislation (H R 15323) enacted by the Congress during the last session, but vetoed by the President (see Nuclear Law Bulletin No 14 and Mr Shapar's Article in No 15). The Section in that Bill which caused the Presidential veto has been omitted, and the proposed extension period is now ten years until 1st August 1987. The Bill maintains the industry retrospective rating plan which will gradually phase out Government indemnity.

In addition to the proposed modifications to the Price-Anderson Act, the JCAE will also consider the question of whether the Price-Anderson insurance indemnity system should be extended to cover sabotage or theft of nuclear materials. The Conference Report (H.R. 931306) on H.R. 15323 called for a report on this matter and the Nuclear Regulatory Commission has submitted its Staff Study on Financial Protection Against Potential Harm Caused by Sabotage or Theft of Nuclear Materials.

The study concluded that the present Price-Anderson legislation would cover damages emanating from a facility site or planned transportation route due to acts of sabotage or attempted diversion, but not damages resulting from a theft and subsequent contamination or detonation of a nuclear explosive from another location.

Several approaches to the problem of affording financial protection against harm caused by sabotage or theft of nuclear materials and their advantages and disadvantages were identified:

- 1) Ad hoc compensation legislation for particular incidents.
- 2) Extension of Price-Anderson coverage, by legislation to such damages.
- 3) A separate insurance scheme to cover damage from theft or sabotage.
- 4) A "deferred premium" system similar to last year's Price-Anderson bill to cover unidentifiable source incidents.
- 5) Expansion of governmental indemnity coverage without private insurance participation.
- 6) Government indemnity coverage applicable to any terrorist activities, whether nuclear related or otherwise.

The Commission made no recommendations. In its transmittal letter, the Commission noted:

"How best to protect the public financially from risks posed by sabotage or theft of nuclear material is but one aspect of broader, and possibly interrelated, issues presented by possible extension or modification of the Price-Anderson system. For example, a much broader issue related to the question of Price-Anderson is

whether the government ought to provide indemnity coverage generally applicable to terrorist activity. The ultimate resolution of these broader issues will follow a full airing in Congressional hearings of the range of views of the cognizant government agencies, the interested public, the nuclear industry, the liability insurers, and others. We believe that firm and detailed recommendations concerning protection against sabotage and theft risks would be premature at this time. Such recommendations, we would also note, could be affected by the results of the Security Agency Study mandated by the Energy Reorganization Act of 1974, which is presently underway. From the present perspective, however, we can offer certain views we hope will contribute to an appropriate resolution.

A basic question presented by Price-Anderson in general, and coverage of sabotage and theft risks in particular, is that of identifying who is responsible for these risks and therefore, who will bear the financial burden of this coverage. Under the present system, in the event of a catastrophic nuclear incident, the federal government would pay for the major portion of the damages, to the statutory ceiling of \$560 million dollars. Under the "deferred premium" system enacted last year - but vetoed for an unrelated reason - the government's liability would have been progressively phased out and the full potential cost ultimately assumed by the industry, subject to a rising ceiling of liability. We generally support the proposition that private industry should assume the burden of risks which may be created in undertaking a commercial operation. But as the staff study suggests, a case might be made for at least partial government responsibility for the costs of public protection against sabotage and theft risks, particularly where there is no clear connection between the damage-causing event and a specific firm or if the government were to assume pervasive responsibility for safeguarding nuclear materials in the future.

Since the resulting costs of the Ribicoff amendment (an amendment offered to the 1974 Price-Anderson legislation that would provide coverage for damages caused by sabotage or diversion) would have fallen on industry licensees, it seems reasonable, and consistent with the underlying premises of Price-Anderson in its present form, to require proof of a nexus between damages and a specific licensee. Absent such a nexus - for example, the source might be a government activity in this country, or material unlawfully brought into this country from abroad - any compensation to the injured public should, in our view, be a government responsibility "

ENVIRONMENTAL PROTECTION

Draft Environmental Statement - US Nuclear Power Export Activities

The United States Energy Research and Development Administration (ERDA) published in August 1975 the above Draft Environmental Statement (ERDA - 1542).

The Statement attempts to address in a comprehensive manner the environmental, social, technological, economic, national, security, and foreign policy benefits and costs of the nuclear power export activities of the United States. It also examines the reasonably available alternatives to these activities and their foreseeable costs and benefits. Its purpose is to provide a meaningful basis upon which government decision-makers, industry, and the public can make informed judgments on the proper nature, scope, and direction of the United States nuclear power export process.

Procedures and guidelines followed in preparing the Statement are those established by the National Environmental Policy Act (NEPA) of 1969, as implemented by the guidelines of the Council on Environmental Quality (CEQ) (49 CFR Part 1500), and ERDA regulations (10 CFR Part 3 Sec. 711).

The Statement presents an analysis of US nuclear power export activities from the inception of the Atoms for Peace Programme in 1953 through the year 2000. It does not address individual export transactions, nor does it cover exports to any single nation, group of nations, or geographic region.

The scope of the Statement encompasses the potential environmental impacts, which may occur at various stages of the fuel cycle, on the US and on the high seas resulting from US nuclear power export activities.

Also included within the scope are the potential impacts on the US and the high seas from the possible diversion, theft or sabotage abroad of US supplied materials or facilities. The assessment of these potential impacts includes an examination of the international safeguards and physical security measures that have been established to detect, deter, and prevent such malevolent actions.

The Statement excludes the environmental impacts on the territories of foreign nations resulting from the construction and operation of nuclear power reactors supplied or fuelled by the US, the US not being in a position to determine on behalf of foreign governments the procedures and policies to be followed in determining what is environmentally acceptable for the citizens of that foreign nation.

Four basic alternatives are extensively considered.

- 1) Reduce or terminate US nuclear power-related exports,
- 2) Deliberately accelerate exports,
- 3) Continue exporting but impose alternative safeguards requirements,
- 4) Continue exporting but make technological improvements to minimize adverse environmental impacts,

of which, 1, 2 and 3 would involve potential costs of a foreign policy/national security nature that would substantially outweigh the associated economic and environmental benefits.

In sum, consideration of the costs and benefits of current and projected nuclear power export activities, as well as the implications of the alternatives considered, leads to the conclusions that (1) none of the alternatives serves the overall interests of the US as well as does continuation of nuclear power-related exports under the present, and evolving, policies, and (2) the levels of projected export activities do not entail unacceptable adverse environmental risks to the US and do constitute an essential means of promoting the national interests of the United States.

CASE LAW AND ADMINISTRATIVE DECISIONS

CASE LAW

• *France*

INJUNCTION CONCERNING THE PREPARATORY WORK FOR THE CREYS MALVILLE NUCLEAR POWER STATION

On 30th May 1975, the Presiding Judge of the District Court of Bourgoin Jallieu delivered an order on a motion for injunction, filed by the Association for the Preservation of the Bugey-Malville Site and the Rhône-Alpes Ecological Association, to stop the preparatory work by EDF on construction of the Creys Malville neutron fast breeder nuclear power station.

The plaintiffs contended that no declaration of public interest or licensing decree had been issued prior to the start-up of work, contrary to the provisions laid down by Section 2 of the Decree of 11th December 1963 on large nuclear installations. They claimed further that, given its magnitude, the work undertaken for the construction of a nuclear power station interfered with the fundamental right on the quality of life, and hence constituted an unlawful administrative act. Since it was established that only the judiciary was empowered to pronounce judgment in cases of violation of a fundamental right, the plaintiffs requested the Court to state that EDF had committed such unlawful act and to order immediate interruption of the work begun, under pain of a financial penalty.

The EDF contended for its part that the works in question were navvying works which, although ultimately intended for construction of a nuclear power station, were identical to those for the construction of any other type of plant. EDF pointed out furthermore, that such works were not included within the provisions of Section 2 of the Decree of 11th December 1963 on the prior licensing system applicable to large installations, and could consequently be undertaken without a licence being required. The defendant specified in addition that a request to declare the station of public interest had been put forward on 17th July 1973, prior to the works in question, although such works had

been undertaken on land which was the property of EDF and as such was not subject to this procedure. Furthermore, a public enquiry had been conducted from 9th to 18th November 1974 and followed by a Report dated 4th January 1975 by the Chairman of the Commission of Enquiry, such report being forwarded in turn by the Prefect to the Chief Electrical Engineer for the District, even though, for the reasons already given, EDF was under no obligation to undertake such procedure. The defendant stated finally that, in accordance with the Decree of 11th December 1963, it had applied for a licence to construct a nuclear power station. In consequence, EDF considered that property rights had not been interfered with since work had been conducted on its own land, it also asserted that there had been no violation of a fundamental liability based on positive law and requiring State intervention to organise its exercise and ensure its observance. According to the defendant the quality of life did not benefit from any such provision and could not be considered either as a public liberty or as a legal right. In conclusion, EDF contested any unlawful administrative act whatever and contended that, in accordance with the principles of the separation of powers, the Court did not have jurisdiction in the case at hand. The Court should consequently declare itself incompetent to order cessation of the public works concerned.

In its judgment the Court considered the motion filed by both associations as admissible on the basis of a prejudice to the quality of life and interference with the purposes of such associations. However, the Court held that the navying works undertaken by EDF were simply preparatory works, and hence did not fall within the scope of the prior licensing system for large nuclear installations laid down by the Decree of 11th December 1963. In addition, as such works had not given rise to expropriation, they did not require to be declared of public interest. Finally, the Court held that even if such works were of public character, such character being stressed by the administrative procedures voluntarily undertaken by EDF, there was not proof of a prejudice to property rights or a fundamental liberty and that the assertion of an unlawful administrative act was therefore unfounded. Consequently, and in accordance with the principle of the separation of powers, the Court declared itself incompetent to order cessation of the works in progress.

INTERNATIONAL ORGANISATIONS AND AGREEMENTS

INTERNATIONAL ORGANISATIONS

• *The OECD Nuclear Energy Agency*

PARTICIPATION OF CANADA IN NEA

Canada decided in 1975 to participate in the OECD Nuclear Energy Agency as a full Member, having been an Associate Member since its creation.

It is recalled that NEA was established by a Decision of the OEEC Council in 1957 which was approved by the OECD Council in 1961. This Decision was subsequently amended twice and is generally referred to as the Statute of the Agency. According to Article 20 of the Statute, Members of NEA (or "Participating Countries") are those whose governments participate in this Decision. To give effect to Canada's wish to join the Agency, the OECD Council decided, on 9th May 1975, that the NEA Statute would apply to Canada as from 1st April 1975.

The Council decided further to amend Articles 12(b) and 20(a) of the Statute by deleting the references to Canada as an Associated Country. Article 12(b) now reads as follows: "The Government of the United States of America is invited to associate itself with the work of the Agency", and Article 20(a) "Participating countries shall be countries the governments of which participate in the present Decision. The United States of America shall be an associated country."

With Canada participating, 22 out of 24 OECD Member Countries have now joined in the work of OECD.

GUIDELINES FOR SEA DISPOSAL PACKAGES OF RADIOACTIVE WASTE

In November 1974, the Nuclear Energy Agency published Guidelines for the design, manufacture, assembly, handling and transport of packages for solid or solidified radioactive wastes insofar as they are relevant to deep sea dumping.

The purpose of these Guidelines is:

- to define requirements for packages of radioactive waste intended for sea disposal, to ensure that all stages of the operation are carried out safely,
- in the light of these requirements, to provide guidance for the design, manufacture and assembly of such packages.

Although the Guidelines do not deal directly with the matter, they should assist the competent national authorities in issuing special permits for dumping radioactive wastes, required by the 1972 London Convention on the prevention of marine pollution by dumping of wastes. When preparing this publication, the Group of Specialists on the Conditioning of Radioactive Waste set up by NEA, took account of the provisions of this Convention.

• *International Atomic Energy Agency*

SAFEGUARDS AGREEMENTS

The IAEA Board of Governors on 19th September 1975 approved an agreement between the Agency, the Republic of Korea and the French Republic for the application of safeguards to nuclear material, facilities and equipment, other material and scientific and technical information that will be supplied to the Republic of Korea by France under bilateral arrangements. The Board also approved an agreement to be concluded between the Agency and the Republic of Korea in connection with the Treaty on the Non-Proliferation of Nuclear Weapons. When the latter agreement is in force, its effect will be suspend the application of safeguards by the Agency pursuant to the first-mentioned agreement.

XIXTH REGULAR SESSION OF THE GENERAL CONFERENCE

Ninety countries were represented at the XIXth General Conference held in Vienna from 22nd to 26th September 1975. At the recommendation of the Board of Governors, the General Conference approved the applications of Qatar, the United Arab Emirates and the United Republic of Tanzania for membership of the Agency, thus bringing the number of Member States to the total of 109.

PHYSICAL PROTECTION OF NUCLEAR MATERIAL

By resolution GC(XIX)RES/328 adopted on 26th September 1975, the General Conference noted with satisfaction the recent publication by the Agency of an up-to-date version of its recommendations on the physical protection of nuclear material (INFCIRC/225) and urged Member States to take appropriate steps to strengthen their physical protection systems for nuclear facilities and materials. The General Conference also called upon Member States to consider ways and means of facilitating international co-operation in all its aspects, particularly in connection with the international transfer of nuclear materials.

The physical protection of nuclear and radioactive material, whether at nuclear facilities or during transport, has caused considerable concern recently. Already in 1972, the IAEA issued a set of recommendations concerning organisational and technical measures to be applied for the physical protection of nuclear material in use or storage within the State or during national or international transit. These recommendations have been brought up-to-date in the light of the experience and progress made in Member States. It is, however, the responsibility of the State concerned to take the necessary measures to protect materials within its boundaries or during international transit, but it is obvious that some uniformity of approach by Member States is desirable and this explains the Agency's efforts in this field.

IAEA CO-OPERATION AGREEMENT WITH EURATOM

An agreement for co-operation between the IAEA and the European Atomic Energy Community (EURATOM) was approved on 26th September 1975 by the IAEA General Conference. It provides for co-operation in the field of the peaceful uses of atomic energy, consultations on matters of mutual interest, participation in meetings, exchange of information and the maintaining of contacts between the Secretariats. This Agreement is similar to other co-operation agreements concluded by the Agency with a number of regional intergovernmental organisations. It may be noted in this connection that Euratom Member countries have their own safeguards system, and that an agreement was signed on 5th April 1973 between the non-nuclear-weapon states of the Community (Belgium, Denmark, Federal Republic of Germany, Ireland, Italy and Luxembourg, all of which have ratified the NPT), the Commission of the European Communities and the Agency, by which these organisations will work together in the application of Agency and Euratom safeguards to ensure that there is no diversion from peaceful uses to nuclear weapons. The text of that Agreement has been published by the IAEA in Document INFCIRC/193. The Non-Proliferation Treaty has been ratified up to now by 96 States.

IAEA CO-OPERATION AGREEMENT WITH THE COUNCIL FOR MUTUAL ECONOMIC ASSISTANCE

On 26th September 1975, the IAEA General Conference also approved a co-operation agreement between the IAEA and the Council for Mutual Economic Assistance (CMEA). It provides also for co-operation in the field of the peaceful uses of atomic energy, consultations on matters of mutual interest, reciprocal participation in meetings,

exchange of information and the maintaining of contacts between the Secretariats.

CMEA, through its Standing Commission on the Peaceful Uses of Atomic Energy, is carrying on a wide range of activities of direct interest to the Agency, such as nuclear power studies, reactor technology, nuclear safety and environmental protection, nuclear instrumentation and many others. Member States of CMEA are: Bulgaria, Cuba, Czechoslovakia, German Democratic Republic, Hungary, Mongolian Peoples' Republic, Poland, Romania, USSR.

IAEA RELATIONS WITH NON-GOVERNMENTAL ORGANISATIONS

Considering that it is in the Agency's interest to provide for the representation at regular sessions of the IAEA General Conference of certain non-governmental organisations which are not entitled to be so represented by virtue of having consultative status with the Agency, the XIXth General Conference, by a resolution adopted on 26th September 1975, requested the Board of Governors to invite those non-governmental organisations that do not have consultative status with the Agency but are concerned with developing uses of nuclear energy for peaceful purposes or with research in the nuclear sciences to be represented by observers at regular sessions of the General Conference. It is for the Board to decide from year to year on the matter as appropriate.

TRAINING COURSE ON NUCLEAR POWER PROJECT PLANNING AND IMPLEMENTATION

In response to the urgent needs of many developing countries considering the introduction of nuclear power, the IAEA with the financial support of the United Nations Development Programme made provisions in its programme for 1975 - 1980 for training courses in nuclear power engineering and related subject areas. The courses are designed to train qualified personnel who are to hold key management positions in the nuclear project management, operations and licensing bodies. The first of such training courses was organised at the Nuclear Research Centre in Karlsruhe, from September to December 1975, in co-operation with the Government of the Federal Republic of Germany. Part of the course was devoted to the legislative requirements for and regulatory aspects of a nuclear power programme, including licensing practices, nuclear liability and insurance, transport regulations and import and export provisions. Further similar training courses will be held by the IAEA at Argonne in the USA and at Saclay in France in the early part of 1976, in collaboration with the French and United States authorities.

REVISION OF THE IAEA HEALTH AND SAFETY MEASURES

Work has been started on the revision of the document setting forth the IAEA Health and Safety Measures (INFCIRC/18), which were approved by the Board of Governors in 1960, with a view to increasing their practical usefulness to Member States. A small working group established within the Secretariat has reviewed the document on the basis of the experience gained from applying the health and safety measures required by the

Agency's Statute, to reactor projects carried out by Member States under agreements concluded with the Agency. In so doing, the working group has taken into account the Agency's current work to establish safety codes and guides for nuclear power plants, and also the increasing interest being shown by developing countries that are embarking on nuclear power programmes in obtaining the Agency's advisory services in nuclear safety and safety-related matters.

A preliminary draft of the intended revision was completed last August and was laid before the Board of Governors in September this year for comments. It focuses essentially on the safety prescriptions for nuclear reactors and other major nuclear facilities which will need to be complied with by Member States receiving the Agency's assistance. Emphasis is placed on helping Member States with respect to the safety issues involved in the process of establishing and operating nuclear facilities. Action by the Board of Governors on the draft revision is not expected before February 1976.

STATUS OF THE CONVENTION ON THE PREVENTION OF MARINE POLLUTION BY DUMPING OF WASTES AND OTHER MATTER

The Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter, adopted in London on 29th December 1972, entered into force on 30th August 1975, in accordance with Article XIX, paragraph 1, after deposit of the fifteenth instrument of ratification by Panama in Mexico City on 31st July 1975.

By September 1975, the following sixteen States were parties to the Convention :

| | |
|--------------------|--------------------------|
| Afghanistan | New Zealand |
| Denmark | Norway |
| Dominican Republic | Panama |
| Guatemala | Philippines |
| Haiti | Spain |
| Iceland | Sweden |
| Jordan | United Arab Emirates |
| Mexico | United States of America |

AD HOC ADVISORY GROUP ON NUCLEAR EXPLOSIONS FOR PEACEFUL PURPOSES

The responsibility and technical competence of the IAEA in connection with nuclear explosions for peaceful purposes (PNE), including its role in connection with Article V of the Treaty on the Non-Proliferation of Nuclear Weapons, have been stated and reaffirmed in a number of resolutions of United Nations bodies. In particular, in Resolution 3261D.2 (XXIX) on General and Complete Disarmament, adopted in late 1974, the UN General Assembly requested the IAEA to continue its studies on PNE, "their utility and feasibility, including legal, health and safety aspects". In response to that request, the IAEA Board of Governors in February 1975 discussed the desirability of establishing a special committee on PNE and, in June 1975, it decided to set up an Ad Hoc Advisory Group which held a first series of meetings on 30th September-1st October last with the participation of representatives of 39 States.

The Advisory Group agreed to recommend that four studies be undertaken by the IAEA Secretariat, with the assistance of experts made available by Member States, on various aspects of PNE possible applications, health, safety and environmental implications, economic and legal aspects. In particular, the scope of the study on the legal aspects of PNE has been defined by the Advisory Group to comprise the following items :

1. Consideration of the international treaties and agreements which have to be taken into account, with particular reference to :
 - a) obligations and rights of supplier States ;
 - b) obligations and rights of recipient States ;
 - c) functions of the Agency ; and
 - d) limitations imposed by these instruments on the mode of use of a PNE.
2. Similar consideration of relevant treaties and agreements under consideration or negotiation.
3. Identification of the legal instruments to be developed for the provision of PNE-related services, and formulation of an outline of the structure and content, or an initial draft, of the agreement(s) required.

These studies on the main aspects of PNE are intended to serve as a basis for further work by the Advisory Group in the course of next year, with a view to having a report completed by the end of 1976 for consideration by the Board of Governors.

• *Euratom*

The following information on the activities of the European Atomic Energy Community has been provided:

- By Decision No 74/590 of 26/11/74, the Council of the European Communities has established as a Joint Undertaking, the Société Belgo-Française d'Énergie Nucléaire MOSANE (SEMO), to operate the Tihange reactor in Belgium. Decision No 74/591 confers to this undertaking, certain of the advantages provided by Annex III to the Euratom Treaty (see Nuclear Law Bulletin No 14).
- By Euratom Decision No 75/238 of 20/5/75, the Council has also established as a Joint Undertaking, the SCHNELLBRÜTER KERNKRAFTWERK - GESELLSCHAFT (BBK), to construct, equip and operate a prototype nuclear power station with a sodium cooled fast breeder reactor of approximately 500 MWe. Euratom Decision No 75/329 of the same date, confers to this undertaking certain exemptions (mainly

concerning taxation) provided by Annex III to the Euratom Treaty. (Official Journal of the European Communities No L/325 of 5/12/74, pp 9 and 19.)

- Regulation No 3137/74 of the Commission, dated 12/12/74 amends Article 2 of Regulation 17/66 relating to the "simplified regime" applicable to small quantities of special fissile materials. (Official Journal of the European Communities No L/333 of 13/12/74, p 27.)
As from now, small quantities enjoying the simplified regime for supply contracts are defined as follows:
"..... referred to the elemental form, do not exceed 200 grammes of uranium 235, uranium 233, or plutonium in any one transaction up to an annual limit of 1000 grammes of any of the substances per user". Furthermore, a reservation is expressed with respect to agreements for co-operation concluded by the Community with third countries.

• *INLA*

NUCLEAR CONGRESS INTER JURA '75

The International Nuclear Law Association (INLA) held its Second Congress entitled "Inter Jura '75" from 29th September to 3rd October 1975 at Aix-en-Provence. This meeting, attended by some 200 participants, took place under the sponsorship of the OECD Nuclear Energy Agency, the French Commissariat à l'Energie Atomique and Electricité de France, like the first Congress of the Association, held in Karlsruhe in 1973, this meeting was devoted to new developments in nuclear law.

INLA is a private Association set up for the purpose of promoting a better knowledge at international level of the legal problems raised by the peaceful uses of nuclear energy regarding the protection of man and the environment, by an exchange of information between the members of the Association and by scientific co-operation with other associations with the same objectives. INLA has about 150 members from different interested circles in more than 25 countries.

The Aix-en-Provence Congress dealt with the various problems raised by regulations on nuclear installations as well as with the legal problems encountered by both suppliers and buyers of nuclear installations. In the context of the work for the United Nations Conference on the Law of the Sea, a session was also devoted to the influence of nuclear law on the law of the sea and vice-versa.

The Proceedings of the Congress, including the texts of some 20 papers presented and the ensuing discussions, will be published in 1976 by INLA. It is expected that the next INLA Congress will be held in Italy in 1977.

AGREEMENTS

• *Brazil - Germany*

On 27th June 1975 the Governments of the Federal Republic of Germany and of the Federative Republic of Brazil concluded an Agreement on Co-operation in the Field of Peaceful Uses of Nuclear Energy. The Agreement came into force by an Exchange of Notes on 18th November 1975. This Co-operative Agreement is a follow-up of the 1969 Agreement between both countries on Co-operation in Scientific Research and Technological Development and will cover wide co-operation and supply of equipment in the nuclear field. Implementation of these projects requires prior conclusion of a safeguards agreement with IAEA and the organisation of appropriate measures for the physical protection of the materials and equipment supplied. A translation of the Agreement figures in the "Texts" Chapter of this issue of the Nuclear Law Bulletin

• *Germany*

RATIFICATION OF THE BRUSSELS SUPPLEMENTARY CONVENTION

On 1st October 1975, the Federal Republic of Germany ratified the Brussels Supplementary Convention and its Additional Protocol. This ratification was also accompanied by a declaration relating to Berlin (West). The German Government declared further that for the application of Article 2(a)(ii) of the Convention, individuals having their habitual residence in the territory of the Federal Republic of Germany or Berlin (West) are assimilated to the person envisaged by the declaration of 31st January 1963.*

The Brussels Supplementary Convention and its Additional Protocol will enter into force for the Federal Republic of Germany on 1st January 1976, i.e. three months after the deposit of the instrument of ratification [Article 20(d)]. It will then be in force in the following countries:

* At the time of signature of the Convention, the German Plenipotentiary declared that nationals with respect to the Federal Republic of Germany shall be all Germans within the meaning of the Basic Law for the Federal Republic of Germany.

| | <u>Date of deposit of instrument</u> | |
|----------------|--------------------------------------|------|
| United Kingdom | 24th March | 1966 |
| France | 30th March | 1966 |
| Spain | 27th July | 1966 |
| Sweden | 3rd April | 1966 |
| Norway | 7th July | 1973 |
| Denmark | 4th September | 1974 |
| Germany | 1st October | 1975 |

• *Germany- Italy- NEA*

RATIFICATION OF THE PARIS CONVENTION

Following the adoption by their Parliaments of the amendments to their respective Atomic Energy Acts, the Italian Government and the Government of the Federal Republic of Germany ratified the Paris Convention and its Additional Protocol. The Italian ratification was deposited on 17th September 1975 and that of Germany on 30th September 1975.

The German ratification was accompanied by a declaration that the Convention and the Additional Protocol shall also apply to Berlin (West) with effect from the date they enter into force for the Federal Republic of Germany. The German Government further notified the Secretary-General of OECD that it had made use of its reservations accepted at the time of signature of the Additional Protocol with respect to Articles 8(a) and 9 of the Convention as modified by the Additional Protocol (Annex I paragraphs 3 and 4).

The first reservation concerns the right to establish, in respect of nuclear incidents occurring in the Federal Republic of Germany, a period longer than 10 years if measures have been taken to cover the liability of the operator in respect of any actions for compensation begun after the expiry of the period of 10 years and during such longer period. The revised Atomic Energy Act establishes in its Section 32(1) a limitation period of 30 years, unless the person entitled to compensation had knowledge, or ought reasonably to have known, of both the damage and the person liable. If such claims cannot be covered by or cannot be satisfied out of the operator's financial security, the Bund and the Lander must indemnify the operator (Section 34(1) of the Atomic Energy Act).

Section 24(4) of the revised Atomic Energy Act stipulates that the provisions of Article 9 of the Paris Convention concerning the exoneration of the nuclear operator for damage caused by a nuclear incident directly due to an act of armed conflict, hostilities, civil war, insurrection or a grave natural disaster of an exceptional character, shall not be applicable.

The present state of ratifications of the Paris Convention is now as follows:

| <u>Country</u> | <u>Convention</u> | | <u>Additional Protocol</u> | |
|------------------------|-------------------|------|----------------------------|------|
| Turkey | 10th October | 1961 | 5th April | 1968 |
| Spain | 31st October | 1961 | 30th April | 1965 |
| United Kingdom | 23rd February | 1966 | 23rd February | 1966 |
| France | 9th March | 1966 | 9th March | 1966 |
| Belgium | 3rd August | 1966 | 3rd August | 1966 |
| Sweden | 1st April | 1968 | 1st April | 1968 |
| Greece | 12th May | 1970 | 12th May | 1970 |
| Finland (accession) | 8th June | 1972 | 8th June | 1972 |
| Norway | 2nd July | 1973 | 2nd July | 1973 |
| Denmark | 4th September | 1974 | 4th September | 1974 |
| Italy | 17th September | 1975 | 17th September | 1975 |
| Germany | 30th September | 1975 | 30th September | 1975 |

• *Germany - United States*

LOFT AGREEMENT BETWEEN THE UNITED STATES AND THE FEDERAL REPUBLIC OF GERMANY

The Nuclear Regulatory Commission (NRC) and the Federal Republic of Germany, Ministry for Research and Technology, signed a four-year agreement for FRG participation and technical exchange in reactor safety research work on the NRC's Loss of Fluid Test (LOFT) programme on 8th August 1974.

Under the agreement, the FRG will assign up to three technical experts to the NRC's LOFT programme and will participate in the periodic review of the status and future planning of the LOFT programme. In return, the FRG will pay \$1 million a year for four years and will provide the NRC with all results obtained from their analysis of information and experimentation developed under this agreement.

The Loss of Fluid Test Facility is operated by Aerojet Nuclear Company at the US Government's Idaho National Engineering Laboratory near Idaho Falls, Idaho. It is designed to study the nuclear, thermal, hydraulic and structural processes occurring during a postulated loss-of-coolant accident in a pressurized water reactor. Construction is nearing completion with non-nuclear experiments expected to begin toward the end of 1975. Nuclear experiments are expected to start in the fall of 1976.

The agreement is the first of several international nuclear safety research agreements being negotiated within the framework of the International Energy Agency.

• *Finland - Sweden*

SAFEGUARDS

On 15th October 1968, the Governments of Finland and of Sweden had concluded an Agreement for Co-operation in the Peaceful Uses of Atomic Energy. This Agreement, which contained provisions on the application of mutual safeguards (Article 5), also provided that both Parties would conclude safeguards agreements with IAEA in order to submit their peaceful activities in the field of atomic energy, to the control provided under the Treaty on the Non-Proliferation of Nuclear Weapons (NPT). Finland and Sweden respectively concluded such agreements with IAEA on 11th June 1971 and 14th April 1975.

Consequently, the two Governments exchanged Notes on 9th June 1975 whereby they stated that these new NPT-type safeguards agreements covered the requirements of the safeguards system provided by the 1968 Co-operation Agreement and terminated this system for the time the above-mentioned safeguards agreements are in force.

• *NEA*

EXTENSION OF THE OECD HALDEN REACTOR PROJECT AGREEMENT

The Signatories of the Agreement, as amended, on the OECD Halden Reactor Project, covering the period from 1st January 1973 to 31st December 1975, have decided to extend their co-operation for a further three years. The new Agreement covers the period from 1st January 1976 to 31st December 1978.

For details of the earlier Agreements - see Nuclear Law Bulletin Nos 4, 11 and 14.

EXTENSION OF THE AGREEMENT ON AN INTERNATIONAL FOOD IRRADIATION PROJECT

The Agreement on an International Project in the Field of Food Irradiation which was signed in Paris on 14th October 1970 (see Nuclear Law Bulletin No 6) and entered into force on 1st January 1971 for an initial period of five years, will be extended and amended by an Agreement to be signed in December 1975. The new Agreement will come into force on 1st January 1976 and extend the duration of the Original Agreement, as amended, until 31st December 1978. The amendments concern mainly the up-dating of the objectives of the programme which covers wholesomeness studies and related experiments on irradiated food. The Agreement will be signed by Governments or Organisations sponsored by Governments of the following Member States of OECD, IAEA or FAO: Austria, Belgium, Brazil, Denmark, Finland, France, Federal Republic of Germany, Hungary, India, Iraq, Israel, Italy, Japan, Netherlands, Norway, Portugal, South Africa, Spain, Sweden, Switzerland, Turkey, United Kingdom and the United States.

• *IMCO*

ENTRY INTO FORCE OF THE 1971 BRUSSELS CONVENTION

The Brussels Convention of 1971 relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material, was ratified on 16th April 1975 by Norway. This country was the fifth to become a Party to this Convention, and therefore, in accordance with the provisions of its Article 6, it came into force 90 days after the date of the Norwegian ratification, namely on 15th July 1975. Since then, the 1971 Brussels Convention was also ratified by the Federal Republic of Germany on 1st October 1975, the instrument of ratification was accompanied by a declaration stating that the Convention would be applied to Berlin West as from the date upon which it will come into force for the Federal Republic of Germany. Under Article 6, this date is 30th December 1975. The six countries Party to the 1971 Brussels Convention are the following:

| | <u>Date of deposit of instrument of rati- fication</u> |
|-------------------------|--|
| France (ratification) | 2nd February 1973 |
| Spain (accession) | 25th May 1974 |
| Denmark* (ratification) | 4th September 1974 |
| Sweden (ratification) | 22nd November 1974 |
| Norway (ratification) | 16th April 1975 |
| Germany (ratification) | 1st October 1975 |

It is recalled that the purpose of this Convention is to eliminate the practical difficulties which until now have impeded the maritime carriage of nuclear substances. Under maritime law, shipowners carrying nuclear substances may be held liable for damage caused by such substances if they can be shown to have been at fault. In this new Convention, it is laid down that maritime carriers of nuclear substances are exonerated from any liability for damage caused by a nuclear incident, if the operator of a nuclear installation is liable for such damage under the Paris or Vienna Conventions or under national law, provided that such law is in all respects as favourable to persons who may suffer damage as the Paris or Vienna Conventions. In addition, shipowners are excluded from liability for damage to the nuclear installation or the means of transport. At the same time, however, the Convention provides that the liability of the operator of a nuclear ship is not affected and this liability remains, consequently, as established by the 1962 Brussels Convention on the Liability of Operators of Nuclear Ships.

* The instrument of ratification of Denmark contains the reservation that the Convention shall not apply to the Faroe Islands.

TEXTS

• *Brazil - Germany*

AGREEMENT BETWEEN THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY AND
THE GOVERNMENT OF THE FEDERATIVE REPUBLIC OF BRAZIL CONCERNING CO-OPERATION
IN THE FIELD OF PEACEFUL USES OF NUCLEAR ENERGY*

The Government of the Federal Republic of Germany and the
Government of the Federative Republic of Brazil,

RELYING ON the friendly relations existing between their States
and determined to enhance these relations,

BEARING IN MIND AND IN CONTINUATION OF the Agreement between
the Contracting Parties of 9th June 1969 Concerning Co-operation in
Scientific Research and Technological Development,

CONSIDERING the Co-operation Agreement of 9th June 1961
between the European Atomic Energy Community and the Government of the
Federative Republic of Brazil Concerning the Peaceful Uses of Atomic
Energy,

CONSIDERING the progress of the scientific co-operation between
their States, in particular in the field of peaceful uses of nuclear
energy,

CONVINCED that the successful scientific co-operation between
their States in the field of peaceful uses of nuclear energy creates
favourable conditions for industrial co-operation in this field,

BEARING IN MIND that such co-operation will be of economic and
scientific advantage for both Contracting Parties,

HAVING REGARD TO the Guidelines for Industrial Co-operation
Between the Federal Republic of Germany and the Federative Republic of
Brazil in the Field of Peaceful Uses of Nuclear Energy of 3rd October
1974,

* Unofficial translation by the Secretariat.

HAVE AGREED as follows:

Article 1

(1) The Contracting Parties shall further, within the framework of the present Agreement, the co-operation between organisations engaged in scientific and technological research and enterprises in both States, such co-operation shall comprise:

- prospecting, extraction and processing of uranium ores as well as the production of uranium compounds,
- construction of nuclear reactors and other nuclear installations, as well as their components,
- uranium enrichment and enrichment services,
- manufacture of fuel elements and reprocessing of irradiated fuels.

(2) The above co-operation shall include the exchange of the necessary technological information.

(3) Considering the importance of financing, including the granting of credits, for such co-operation, the Contracting Parties shall endeavour to finance and to grant credits under conditions which are as favourable as possible within the framework of the regulations prevailing in both States.

Article 2

The Contracting Parties declare that they adhere to the principle of non-proliferation of nuclear weapons.

Article 3

(1) Each Contracting Party, upon request by an exporter, shall grant export licences pursuant to its legal provisions, for the supply of source and special fissionable material, all equipment and materials especially designed or prepared for the production, use or processing of special fissionable material, as well as for the communication of relevant technological information, to the territory of the other Contracting Party.

(2) Such supply or communication requires that the receiving Contracting Party shall have concluded a safeguards agreement with the International Atomic Energy Agency which ensures that such material, equipment and installations, the source or special fissionable material, produced, processed or used by them, as well as the relevant technological information are not used for nuclear weapons or other nuclear explosive devices.

Article 4

(1) Nuclear material, equipment and installations, as well as relevant technological information exported or communicated from the territory of a Contracting Party to the territory of the other

Contracting Parties to third States, which were non-nuclear weapon States on 1st January 1967 if a safeguards agreement as provided by Article 3 has been concluded with respect to the receiving State.

(2) Sensitive nuclear material, equipment and installations, as well as relevant technological information which are exported or communicated from the territory of a Contracting Party to that of the other Contracting Party, may be exported, re-exported or communicated to third States only with the agreement of the supplying Contracting Party.

(3) Sensitive nuclear material, equipment and installations mean:

- (a) uranium with an enrichment more than 20% in the isotope 235, uranium 233 and plutonium, with the exception of small quantities of such material as are, for example, for laboratory purposes,
- (b) installations for the manufacture of fuel elements if such installations are used for the manufacture of fuel elements containing material referred to under (a) above;
- (c) installations for the reprocessing of irradiated fuel elements,
- (d) installations for the enrichment of uranium.

Article 5

(1) Each Contracting Party shall take the measures necessary to ensure the physical protection of nuclear material, equipment and installations in its territory, and in the case of transport between the territories of the Contracting Parties as well as to third States.

(2) Such measures shall be designed to avoid, as far as possible, any damage, accident, theft, sabotage, attack, deviation, interference, exchange and other risks.

(3) The Contracting Parties shall arrange for appropriate measures in this respect.

Article 6

The Joint Commission established by the Agreement of 9th June 1969 Concerning Co-operation in Scientific Research and Technological Development shall take due account of the activities to be carried out under the present Agreement and shall, where necessary, make recommendations for its further implementation.

Article 7

Upon request by a Contracting Party, the Contracting Parties shall consult on the implementation of the present Agreement and, if necessary, enter into negotiations concerning its review.

Article 8

(1) The Contracting Parties shall endeavour to settle differences concerning the interpretation of the present agreement through diplomatic channels.

(2) If the differences cannot be settled by these means, an arbitration procedure shall take place as provided by Article 10 of the Agreement of 7th June 1972 between the Contracting Parties Concerning the Entry of Nuclear Ships into Brazilian Territorial Waters and their Stay in Brazilian Ports.

Article 9

The present Agreement shall not affect the obligations of the Federal Republic of Germany resulting from the Treaties instituting the European Economic Community and the European Atomic Energy Community.

Article 10

The present Agreement shall equally apply to the Land Berlin unless the Government of the Federal Republic of Germany otherwise notifies the Government of the Federative Republic of Brazil within the three months following entry into force of the present Agreement.

Article 11

(1) The present Agreement shall be brought into force as soon as possible by an Exchange of Notes.

(2) The duration of the present Agreement shall be 15 years from the date fixed in the Exchange of Notes referred to in (1) above and shall be extended automatically for periods of 5 years each, unless cancelled by a Contracting Party not later than 12 months before its expiry.

(3) The safeguards and physical protection measures required by the present Agreement shall not be affected by the expiry of the present Agreement.

DONE in Bonn on 27th June 1975 in two originals, one in the German and one in the Portuguese language, both being equally authentic

BIBLIOGRAPHY

• *Germany*

Drittes Deutsches Atomrechts-Symposium - Referate und Diskussionsberichte - Herausgegeben vom Institut für Völkerrecht der Universität Göttingen und dem Bundesministerium des Innern / Third German Symposium on Nuclear Law - Papers and Discussions - Published by the Institute for Public International Law of the University of Göttingen and the Federal Ministry of the Interior, Carl Heymanns Verlag, Köln, 1974, 334 pp.

Within a short period of time, these German symposia on nuclear law have become an institution. The first two, organised by Professor Lukes of the University of Münster were respectively held in Münster in December 1972 (see Nuclear Law Bulletin No 12) and in Dusseldorf in May 1974. The Institute for Public International Law of the University of Göttingen, together with the Federal Ministry of the Interior and the Deutsches Atomforum, organised the Third Symposium in Göttingen on 22nd/23rd October 1974, the Proceedings of the Fourth Symposium, also held in Göttingen on 28th May 1975, have not yet been published.

The symposia provide nuclear lawyers with the opportunity for fruitful discussions together as well as with nuclear scientists and technicians. Because of their interdisciplinary character, the symposia have demonstrated their importance in a field of law which is so closely inter-related with science and technology.

Although the symposia deal mainly with current questions of German nuclear law, they are of interest also for the non-German nuclear lawyer for they highlight problems common to all countries with a highly developed nuclear industry as well as the interdependence of national and international legislation. This is illustrated by the topics of the five working sessions of the Third Symposium.

The first session dealt with legal problems in the licensing procedure for nuclear installations. Professor Fischerhof reported on the extensive jurisdiction of the German courts and their importance for the further development of the nuclear industry in the Federal Republic of Germany. A number of speakers discussed the question of how best to procure and secure a sufficient number of adequate sites for nuclear power plants - an urgent problem in the densely populated Federal Republic. The licensing of standardised sub-systems and components and of the decommissioning of nuclear installations were the subject of further papers in this session.

While technical rules and guidelines concerning reactor safety were dealt with in the second session, the third was devoted to the Treaty on the Non-Proliferation of Nuclear Weapons and the Agreement between the International Atomic Energy Agency and Euratom and its non-nuclear weapon Member Countries (see Nuclear Law Bulletin No 11 and IAEA document INFCIRC/193) as well as the problems which might arise under this Agreement for the German nuclear industry.

The fourth and fifth working sessions covered questions related to the Bills on the ratification of the Nuclear Conventions and the amendment of the German Atomic Energy Act which have in the meantime come into force (see above). Representatives of the nuclear supply and transport industry criticised some aspects of the Bill and Mr Pelzer made a number of proposals (implying a revision of the Paris Convention) to improve the position of victims in case of a nuclear incident. With respect to financial protection and insurance, the consequences of the Bill for the insurance market were discussed, in particular the distribution of the operator's coverage of up to DM 500 million between the insurance pools and the utility companies.

• Sweden

The Nuclear Age, Stockholm International Peace Research Institute (SIPRI), published by the MIT Press, Cambridge, Massachusetts and London, England, January 1975

SIPRI is an independent institute for research into the problems of peace and conflict with particular attention to the problems of disarmament and arms regulations. It was established in 1966 to commemorate Sweden's 150 years of unbroken peace.

SIPRI has published a number of books on nuclear proliferation issues. The first, Nuclear Proliferation Problems, was published in May 1974 and the second, Safeguards Against Nuclear Proliferation in March 1975. The purpose of a third book is to provide information on the use of nuclear power as an energy source, the expansion of nuclear power, the nuclear fuel cycle, nuclear safeguards and peaceful nuclear explosions as background material for those interested in the Review Conference on the Treaty on the Non-Proliferation of Nuclear Weapons, which meanwhile took place in Geneva in May 1975. The second purpose of the book was to present some proposals for the Conference. The book was written by Frank Barnaby, Director of SIPRI.

The six chapters of the book deal with the future role of nuclear power in energy supplies, the nuclear fuel cycle, plutonium production from nuclear power reactors, nuclear safeguards, nuclear explosions for peaceful purposes and the NPT Review Conference

Useful information is also contained in the appendices which cover the following topics: list of states which have signed, ratified or acceded to the Treaty on the Non-Proliferation of Nuclear Weapons, the members of the International Atomic Energy Agency, the situation on 31st December 1974 with respect to the signature of, ratification of,

or accession to the NPT by non-nuclear weapon states, and the conclusion of safeguards agreements between the Agency and these states in connection with the NPT, agreements providing for safeguards, UN Security Control resolution 255 of 19th June 1968 and the text of the Treaty on the Non-Proliferation of Nuclear Weapons.

• *Euratom*

Authorisation procedure for the construction and operation of nuclear installations within the EEC Member States, published by CEC, Luxembourg, 1974, 90p

The Commission of the European Communities published in December 1974 a study prepared by J.M. Didier and Associates, Legal and Economic Consultants. This study, published in English, concerns the authorisation procedure for the construction and operation of nuclear installations in seven of the nine Member Countries of the Communities, namely Belgium, France, Germany, Italy, Luxembourg, the Netherlands and the United Kingdom. Denmark and Ireland are not dealt with in this report since these countries have no special legislation in this field. The studies on each of the countries concerned have been drafted according to a relatively standard plan and are supplemented by charts giving the main steps in the licensing procedure.

• *IAEA*

Licensing and Regulatory Control of Nuclear Installations, Legal Series No 10, International Atomic Energy Agency

The IAEA has organised a number of training courses, study group meetings and regional seminars on the legal aspects of the peaceful uses of atomic energy. The first training course of this kind was held in Vienna in April 1968 and the lectures given at that course were published by IAEA as Legal Series No 5, under the title "Nuclear Law for a Developing World".

The papers presented at the Seminar on the Development of Nuclear Law, held in Bangkok in April 1970, and the Inter-regional Training Course on the Legal Aspects of Nuclear Energy, held in Athens in December 1970, were published in Legal Series No 8 - "Experience and Trends in Nuclear Law" (see Nuclear Law Bulletin No 7).

The present publication contains a selection of papers presented at the Regional Seminar on Nuclear Law for Latin American Countries and at the Study Group meeting on Regulations and Procedure for

Licensing Nuclear Installations, organised in Rio de Janeiro in June 1973 and Athens in December 1974, respectively.

The lectures given at the Rio Seminar cover the legislative framework and regulatory requirements for the introduction of nuclear power, surveys of national nuclear legislation, with particular emphasis on licensing (Canada, Federal Republic of Germany, Mexico, USA), third party liability and insurance, IAEA Safeguards under the Treaty on the Non-Proliferation of Nuclear Weapons, and the Treaty for the Prohibition of Nuclear Weapons in Latin America (Treaty of Tlatelolco).

The papers presented at the Athens Study Group Meeting dealt exclusively with questions related to the licensing of nuclear installations. Experts from Canada, the Federal Republic of Germany, the United Kingdom and the United States reported on special features of the licensing system in their countries. The IAEA Secretariat described IAEA activities and assistance in regulatory matters connected with nuclear power plants and the essential components of safety analysis reports for nuclear power plants. The NEA Secretariat gave an account of the work of OECD/NEA on safety and licensing of nuclear installations as well as third party liability problems connected with nuclear installations.

• IATA-

New edition of IATA Regulations, 1975, Geneva, 222 pp.

The International Air Transport Association (IATA) has published the 18th Edition of its Restricted Articles Regulations for transport by air, which came into force on 1st August 1975. Part II concerns the transport of radioactive materials, and contains, in particular, requirements on the classification, packaging, handling and loading of radioactive materials. Fissile materials are subject to special provisions. As compared with the previous edition, this new edition includes the model of a shipper's certification for radioactive materials. However, this edition does not yet take into account the 1973 Edition of the IAEA Regulations for the Safe Transport of Radioactive Materials. The amendments resulting from these latter Regulations will be included in the 19th Edition of the IATA Regulations.

Some other publications of NEA

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| Reports on the Activities of the OECD Nuclear Energy Agency (NEA) | First Activity Report (1971-1972) 85 pages (crown 4to) |
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| Annual Reports of the OECD High Temperature Reactor Project (DRAGON) | Fourteenth Report (1972-1973) 112 pages (crown 4to) |
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| Technology of Integrated Primary Circuits for Power Reactors | Proceedings of the Paris Symposium, May 1968 F 25 (available on application to NEA) |
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I T A L Y

ACT No 1860 OF 31ST DECEMBER 1962
ON THE PEACEFUL USES OF NUCLEAR ENERGY

Revised as of 10th May 1975

November 1975



I T A L Y

ACT NO 1860

OF 31ST DECEMBER 1962

ON THE PEACEFUL USES OF NUCLEAR ENERGY*

C H A P T E R 1

DEFINITIONS

Section 1

For the purposes of enforcement hereof, the definitions concerning special fissionable materials, enriched uranium, source materials as well as ores, as provided by Article 197 of the Treaty establishing the European Atomic Energy Community, ratified and brought into force by Act No 1203 of 14th October 1957 shall apply.

Also in implementation of this Act in connection with the provisions on third party liability, and in accordance with the Conventions on third party liability in the field of nuclear energy, ratified and brought into force together with their related instruments by Act No 109 of 12th February 1974, the following definitions shall apply:

- (a) "A nuclear incident" means any occurrence or succession of occurrences having the same origin which causes damage, provided that such occurrence or succession of occurrences, or any of the damage caused, 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;

* Unofficial translation by the Secretariat. This text embodies the series of amendments made to the Act since its entry into force. The amendments prior to DPR No 519 of 10th May 1975 (amending Section 1 and Sections 15 to 24) are indicated in footnotes to the relevant provisions.

- (b) "Nuclear installation" means nuclear reactors other than those comprised in any means of transport; factories for the manufacture or processing of nuclear materials; factories for the separation of isotopes of nuclear fuel; factories for the reprocessing of irradiated nuclear fuel; facilities for the storage of nuclear materials other than storage incidental to the carriage of such materials; and such other installations in which there are nuclear fuel or radioactive products or waste which are defined as such by decision of the Steering Committee of the Nuclear Energy Agency set up within the Organisation for Economic Co-operation and Development (OECD) and as provided by the last paragraph of this Section. A nuclear installation may consist of a number of installations, provided that the operator is the same and that they form an organic whole, i.e. a geographical unit;
- (c) "Nuclear fuel" means fissionable material in the form of uranium metal, alloy, or chemical compound (including natural uranium), plutonium metal, alloy, or chemical compound, and such other fissionable materials which are defined as such by decision of the OECD Nuclear Energy Agency as provided by the last paragraph of this Section;
- (d) "Radioactive products or waste" means any radioactive material produced in or made radioactive by exposure to the radiation incidental to the process of producing or utilizing nuclear fuel, but does not include:
- (1) nuclear fuel, or
 - (2) radioisotopes outside a nuclear installation which are used or intended to be used for any industrial, commercial, agricultural, medical or scientific purpose;
- (e) "Nuclear materials" means nuclear fuel (other than natural uranium and other than depleted uranium) and radioactive products or waste;
- (f) "Operator" in relation to a nuclear installation means the holder of a licence issued by the Minister for Industry, Commerce and Crafts for the operation of the nuclear installation. In the phase preceding the issue of the operating licence, the holder of the licence or of the clearance certificate for the construction of the nuclear installation shall be considered as an "operator" for the purposes of this Act and in respect of third party liability for the performance of tests and operations with nuclear fuel and irradiated fuel.

The decisions of the Steering Committee of the OECD Nuclear Energy Agency concerning the exclusion of nuclear installations, nuclear fuels or nuclear materials from the scope of the International Conventions ratified by Act No 109 of 12th February 1974 shall be adopted in Italy

by Decree of the Minister for Industry, Commerce and Crafts after having obtained the opinion of the National Committee for Nuclear Energy (CNEN)*.

C H A P T E R I I

NUCLEAR MATERIALS AND PLANTS

Section 2

The concession for the ores defined in the fourth paragraph, Article 197 of the European Atomic Energy Community Treaty, approved by Act No 1203 of 14th October 1957, shall be granted in accordance with the provisions of Royal Decree No 1443 of 29th July 1927, having consulted with the Superior Council of Mines.

Among the members of the Superior Council of Mines there shall be a representative of the CNEN appointed by Decree of the President of the Republic, on the proposal of the Minister of Industry and Commerce**, having consulted with CNEN.

Section 3***

All those who possess special fissionable materials or other source materials in any quantity shall be required to report them to the Ministry of Industry and Commerce within sixty days from the entry into force hereof.

Anyone who, after the entry into force hereof, becomes the owner of the above materials shall report them to the Minister of Industry and Commerce within five days. CNEN shall exert the necessary controls over such materials.

Reports shall be filed with the Ministry of Industry and Commerce within five days also by those who possess radioactive materials in such quantities that the total radioactivity, at the time of reporting, exceeds the value of the total quantity of radioactivity or mass determined within the meaning of Section 1 of Decree No 185 of 13th February 1964 of the President of the Republic (DPR) and fixed by Decree of the Minister of Industry and Commerce, as provided by Section 30 of the same Decree No 185 of 13th February 1964. When the said materials are in the possession of public institutions for exclusive purposes of teaching and scientific research, the director

* Comitato Nazionale per l'Energia Nucleare.

** At present, the Ministry for Industry, Commerce and Crafts.

*** As amended by Decree No 1704 of 30th December 1964 by the President of the Republic.

responsible shall be required to file the report also with the Ministry of Public Education.

The provisions on health protection of the population laid down in Chapter IX of DPR No 185 of 13th February 1964 shall apply.

The reports shall be brought up to date on 31st December of each year.

Section 4

The trading within the territory of the Republic in ores, source materials and radioactive materials, when the European Atomic Energy Community has not exercised the right of option under Article 57 of the Treaty, shall be subject - it remaining understood that regulations governing the supply of fissionable materials as set forth in the Euratom Treaty shall be complied with - to authorisation by the Ministry of Industry and Commerce.

The authorisation shall be considered granted on the expiry of 30 days from the date of filing of the application without the competent Administration having indicated its opinion within that period.

For the importation and exportation of the said minerals, source materials and radioactive materials, the authorisation, when required by the existing financial and currency control regulations, shall be issued by the Ministry of Foreign Trade, having consulted with the Ministry of Industry and Commerce.

The State shall have a right of option on source materials. Such right shall be exercised within 30 days from the submission of the request for authorisation.

Section 5*

The carriage of special fissionable materials in any quantity and of radioactive materials, the total quantity or mass of which exceed the value determined within the meaning of Section 1 of DPR No 185 of 13th February 1964 shall be undertaken by land, air and sea carriers authorised by Decree of the Minister of Industry and Commerce in agreement with the Minister of Transport and Civil Aviation and the Minister of the Merchant Navy.

Occasional individual shipments of radioactive materials may be undertaken without authorisation, when their total quantity of radioactivity does not exceed the values to be determined by Decree of the Minister of Industry and Commerce, enacted in accordance with Section 30 of DPR No 185 of 13th February 1964. In such case, before the carriage

* As amended by DPR No 1704 of 30th December 1965.

takes place, it must be notified by special report to the Prefect and the Medical Officer of the Provinces of origin and of destination of the shipment, at least forty-eight hours before such carriage is undertaken.

Individual shipments of special fissionable materials in any quantity and of radioactive materials the total quantity or mass of which exceed the limits fixed in accordance with the preceding paragraph shall be made by land, air and sea carriers authorised, where necessary, by Decree of the Minister of Industry and Commerce, in agreement with the Minister concerned.

The provisions in the preceding paragraphs shall not exempt the carrier from observing the transport regulations in force.

By Decree of the President of the Republic, having heard the Council of Ministers, on the proposal of the competent Ministers in agreement with the Minister of Industry and Commerce, having consulted with CNEN, regulations shall be enacted concerning the transport of special fissionable materials and radioactive materials, in conformity with the basic standards laid down by the European Atomic Energy Community.

Until the enactment of the regulations on the transport of special fissionable materials and radioactive materials as provided by the preceding paragraph, the carriage of such materials shall be undertaken in compliance with the provisions laid down by the Minister of Transport and Civil Aviation for transport by land and air, and by the Minister of the Merchant Navy for transport by sea, and in accordance with the provisions on health protection laid down by DPF No 185 of 13th February 1964.

Section 6

The operation of plants for the production and utilization of nuclear energy for industrial purposes as well as of plants for the processing and utilization of ores, source materials, special fissionable materials, enriched uranium and radioactive materials, excluding therefrom any plant whatsoever intended for the production of electrical power, shall be authorised by Decree of the Minister of Industry and Commerce, having consulted with CNEN.

The applicant shall show proof of adequate technical and financial capacity. He shall submit the plans for the plant, showing in particular the location selected, the arrangements for the dispersal and disposal of radioactive wastes, the expenditure and time required for construction, the arrangements for provision of the financial security referred to in Section 19 below.

The authorisation decree shall include the clauses of financial security covering third party liability, as well as the operating conditions considered necessary for the protection of public safety and any other provisions deemed appropriate for the operation of the plant.

Any alteration to the plants shall require the prior approval of the Minister of Industry and Commerce, having consulted with CNEN.

Section 7

The construction of industrial or scientific plants for the use of nuclear energy shall be subject to the supervision of CNEN, with a view to ascertaining that the technical standards correspond to those of the design for which the authorisation was granted.

Before being put into operation, the industrial or scientific plants for the utilization of nuclear energy shall be subject to inspection and testing by CNEN in compliance with provisions set forth in Section 2, No 3 of Act No 933 of 11th August 1960*.

Section 8

On completion of the inspection and testing, the operation of the nuclear plant shall be authorised by Decree of the Minister of Industry and Commerce, having consulted with CNEN.

The Decree may lay down particular conditions which the operator shall be required to comply with.

Section 9

The technical operation of nuclear plants shall be entrusted to persons recognised as qualified for this responsibility.

By Decree of the President of the Republic, on proposal of the Minister of Industry and Commerce, in agreement with the Minister of Public Education and with the Minister of Labour and Social Security, having consulted with CNEN, there shall be enacted the regulations concerning the qualifications required for certification of personnel as qualified to direct and operate nuclear plants, and concerning the issuance of the appropriate licences.

Also by Decree of the President of the Republic, on proposal of the Minister of the Merchant Navy, in agreement with the Ministers of Industry and Commerce, of Public Education, and of Labour and Social Security, having consulted with CNEN, the regulations shall be enacted concerning the certification and licensing of personnel to operate the nuclear plants to be installed on board ships.

* Act No 1240 of 15th December 1971 relates to the reorganisation of the CNEN and repeals the above Act with the exception of its Sections 12 to 16.

Section 10

The works required for the construction of authorised nuclear plants may, by Decree of the Minister of Industry and Commerce, be declared of public utility for all intents and purposes of Act No 2359 of 25th June 1865, as subsequently amended.

By the same procedure, the said works may be declared urgent and undelayable under Section 71 of the same Act.

Section 11

By Decree of the Minister of Industry and Commerce, in agreement with the Minister of Public Education having consulted with CNEN, special authorisations may be issued for nuclear plants exclusively intended for teaching purposes to scientific and scholastic institutions and universities.

The provisions of Sections 6, 7 and 8 shall apply to these plants.

Section 12

For nuclear plants installed on board ships, the provisions of the Minister of Industry and Commerce shall be adopted in agreement with the Minister of the Merchant Navy, having consulted with CNEN.

By Decree of the President of the Republic, to be enacted on the proposal of the Minister of the Merchant Navy, in agreement with the Ministers of Defence and of Industry and Commerce, having consulted with CNEN, technical and administrative regulations shall be adopted concerning navigation by nuclear ships.

Section 13*

In addition to the requirements laid down by Sections 91, 96 and 102 of DPR No 185 of 13th February 1964, the use of radioactive isotopes, when the quantity of radioactivity intended to be used, is equal to or exceeds the value of the total quantity of radioactivity or mass to be determined by Decree of the Minister of Industry and Commerce, as provided by Section 30 of DPR No 185 of 13th February 1964, such use is subject to ministerial authorisation by the Minister of Industry and Commerce in agreement with the Minister of Labour and Social Security for industrial purposes; by the same Minister for Industry and Commerce, in agreement with the Ministers of Labour and Social Security and of Agriculture and Forests for agricultural purposes, in agreement with the Ministers of Labour and Social Security and of Public Education for teaching purposes, and in agreement with the Ministers of Labour and Social Security and of Health for diagnostic, therapeutic and medical research purposes.

* As amended by DPR No 1704 of 30th December 1965.

No authorisation shall be required by universities and other public scientific institutions which use radioisotopes exclusively for purposes of scientific research.

By Decree of the Minister of Industry and Commerce, having consulted with the Ministers concerned, regulations shall be issued concerning the granting of authorisations for the use of radioisotopes.

Section 14

By Decree of the President of the Republic, on proposal of the Prime Minister, in agreement with the Ministers concerned and with the Minister of Industry and Commerce, having consulted with CNEN, there shall be enacted, within one year from the entry into effect hereof, regulations for the safety of plants and for the health protection of the workers and of the population against the hazards of ionizing radiations, due both to the operation of nuclear plants and to operations whatsoever connected with nuclear materials, and to the use of radioactive isotopes, in conformity with the basic standards adopted by the European Atomic Energy Community, with the technical rules contained in the IAEA Manual on Safe Handling of Radioisotopes, and with the principles adopted by the other competent international organisations, for the purpose of ensuring with the greatest effectiveness the protection of public and private safety.

The same Decree shall establish modes and periodicity of controls provided in the previous paragraph, as well as penalties to be imposed on those who violate the protective regulations, in relation to the various offences, for which there may be imposed, jointly or severally, fines not in excess of 10 million Lire and imprisonment not in excess of one year.

The said regulations shall indicate the appropriate bodies for their enforcement and their powers and authority, as well as establish an interministerial organisation for co-ordination and consultation with the Ministry of Industry and Commerce.

C H A P T E R I I I

THIRD PARTY LIABILITY ARISING FROM THE PEACEFUL USES OF NUCLEAR ENERGY

Section 15

The operator of a nuclear installation shall be liable in accordance with this Act for damage to any person or property caused by a nuclear incident occurring in such nuclear installation or in connection with the same.

Damage caused directly by nuclear fuel or by radioactive products or waste which have been stored, abandoned, stolen or lost, is considered connected with the nuclear installation.

The operator shall not be liable for damage to:

- (1) the nuclear installation itself and any property on the site of that installation which is used to or to be used in connection with that installation;
- (2) in the case provided by Section 16 hereof, the means of transport upon which the nuclear materials were at the time of the nuclear incident upon proof that such damage was caused by a nuclear incident involving either nuclear fuel or radioactive products or waste in the nuclear installation or nuclear materials coming from such installation except as otherwise provided for in Section 16.

Where damage is caused jointly by a nuclear incident and by an incident other than a nuclear incident, that part of the damage which is caused by such other incident shall, to the extent that it is not reasonably separable from the damage caused by the nuclear incident, be considered to be damage caused by the nuclear incident. Where the damage is caused jointly by a nuclear incident and by an emission of ionizing radiation, nothing in this Act shall limit or otherwise reduce the liability of any person in connection with that emission of ionizing radiation.

The operator of a nuclear installation shall also be liable for damage caused by ionizing radiation emitted by any radioactive source within such nuclear installation.

The operator shall not be liable for damage caused by a nuclear incident directly due to an act of armed conflict, hostilities, civil war, insurrection or a grave natural disaster of an exceptional character.

Section 16

In the case of carriage of nuclear materials including storage incidental thereto, the operator of a nuclear installation shall be liable in accordance with this Act for damage, upon proof that it was caused by a nuclear incident outside that installation and involving nuclear materials in the course of carriage therefrom, only if the incident occurs:

- (a) before liability with regard to the nuclear incident caused by the nuclear materials has been assumed pursuant to an agreement in writing with the operator of another nuclear installation or in the absence of such agreement, before the operator of another nuclear installation has taken charge of the nuclear materials;

- (b) where the nuclear materials are intended to be used in a reactor comprised in a means of transport, before the person duly authorised to operate the reactor has taken charge of the nuclear materials;
- (c) where the nuclear materials have, with the written consent of the operator, been sent to a person within the territory of a State which does not apply the Conventions on third party liability in the field of nuclear energy, ratified and brought into force by Act No 109 of 12th February 1974, before the materials have been unloaded from the means of transport by which they have arrived in the territory of that State.

The operator of a nuclear installation shall also be liable, in accordance with this Act, for damage upon proof that it was caused by a nuclear incident outside that installation and involving nuclear materials in the course of carriage thereto only if the incident occurs:

- (a) after liability with regard to the nuclear incident caused by the nuclear materials has been assumed by him pursuant to an agreement in writing with the operator of the other nuclear installation or in the absence thereof, after he has taken charge of the nuclear materials;
- (b) after he has taken charge of the nuclear materials from a person operating a reactor comprised in a means of transport;
- (c) where the nuclear materials have, with the written consent of the operator, been sent from a person within the territory of a State which does not apply the Conventions on third party liability in the field of nuclear energy, ratified and brought into force by Act No 109 of 12th February 1974, after they have been loaded on the means of transport by which they are to be carried from the territory of that State.

The operator liable in accordance with this Act shall provide the carrier with a certificate issued by or on behalf of the insurer or other financial guarantor furnishing the security required by Section 19 of this Act. The certificate shall comply with the model established by Decree of the Minister for Industry, Commerce and Crafts in consultation with the Minister for Transport and shall in each case state the name and address of that operator and the amount, type and duration of the security, and these statements may not be disputed by the person by whom or on behalf of whom the certificate was issued, and the obligations arising from such insurance or other financial security shall not be altered even if the damage is covered by other insurance or financial security. The certificate shall also indicate the nuclear materials and the itinerary covered by the security and shall include a statement by

the Minister for Industry, Commerce and Crafts that the person named in the certificate is an operator within the meaning of this Act.

The insurance or financial security provided for the transport of nuclear substances shall also cover damage from the nuclear incident to the carrier by rail, provided that the liability of the operator shall not be reduced in respect of other damage to an amount less than 3,150 million Lire.

A carrier may, with the consent of the operator of a nuclear installation situated on the national territory, be authorised by decision of the Minister for Industry, Commerce and Crafts to assume liability in place of that operator in accordance with this Act. In such case, for all the purposes of this Act, the carrier shall be considered, in respect of nuclear incidents occurring in the course of carriage of nuclear materials, as an operator of a nuclear installation on the national territory.

Section 17

If the nuclear fuel or the radioactive products or waste involved in a nuclear incident have been in more than one nuclear installation and are in a nuclear installation at the time damage is caused, no operator of any nuclear installation in which they have previously been shall be liable for the damage.

Where, however, damage is caused by a nuclear incident occurring in a nuclear installation and involving only nuclear materials stored therein incidentally to their carriage, the operator of the nuclear installation shall not be liable where another operator or person is liable pursuant to Section 16.

If the nuclear fuel or radioactive products or waste involved in a nuclear incident have been in more than one nuclear installation and are not in a nuclear installation at the time damage is caused, liability for such damage shall lie with the operator of the last nuclear installation in which they were before the damage was caused or with the operator who has subsequently taken them in charge.

If damage gives rise to liability of more than one operator, in accordance with this Act, these operators shall be jointly liable, provided that where such liability arises as a result of damage caused by a nuclear incident involving nuclear materials in the course of carriage 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, the maximum amount for which such operators shall be liable shall be the highest amount established with respect to any of them pursuant to Section 19; and provided that in no case shall any one operator of a nuclear installation be required, in respect of a nuclear incident, to pay more than the amount established with respect to him pursuant to Section 19.

Section 18

The right to compensation for damage caused by a nuclear incident may be exercised only against an operator liable for the damage in accordance with this Act or against the insurer or other financial guarantor furnishing the security required pursuant to Section 21.

Except as otherwise provided in this Section, no other person shall be liable for compensation for damage caused by a nuclear incident.

Nothing in this Act shall affect the liability:

- (1) of any individual who has wilfully caused damage due to a nuclear incident for which the operator, by virtue of Section 15, paragraphs 3 and 6 of this Act is not liable;
- (2) of a person duly authorised to operate a reactor comprised in a means of transport for damage caused by a nuclear incident when an operator is not liable for such damage pursuant to Section 16, paragraph 1(b) and Section 16, paragraph 2(b).

The operator shall have a right of recourse only:

- (a) against the individual having wilfully caused the damage;
- (b) if and to the extent such recourse is provided by contract.

The insurance companies specialised in workmen's compensation or in insurance against occupational diseases, as well as those specialised in optional insurance in respect of damage caused to a person or property as a result of nuclear incidents shall not be entitled to bring action against the operator of the nuclear installation or against any person jointly liable with him, pursuant to the first paragraph of this Section, for recovering the amount paid in respect of workmen's compensation or optional insurance in case of damage caused by a nuclear incident.

Section 19

The maximum amount of compensation due by the operator of a nuclear installation for damage caused by a nuclear incident shall be 7,500 million lire.

If, as a result of a nuclear incident, the financial security for third party liability may be deemed to have diminished, the operator

shall be compelled to re-establish such security in such amount and under such conditions as determined by the Minister for Industry, Commerce and Crafts; should the above not be complied with, the authorisation is automatically revoked.

Whenever a nuclear incident causes damage giving a right to compensation in accordance with this Act, and such compensation exceeds the amount of the financial security of the operator, then compensation for the portion in excess shall be borne by the State up to a ceiling of 43,750 million Lire.

When a nuclear incident causes damage giving a right to compensation in accordance with this Act, and such compensation exceeds the amount of the financial security of the operator and the amount to be borne by the State, as provided above, the difference up to a ceiling of 75,000 million Lire shall be borne by the Contracting Parties to the Conventions on third party liability in the field of nuclear energy, ratified and brought into force by Act No 109 of 12th February 1974, in accordance with the terms and conditions laid down by these Conventions.

Section 20

Any interest and costs awarded by a court in actions for compensation under this Act shall not be included in the compensation due for the purposes of this Act and shall be payable in addition to the amount of the above compensation.

Where damage is due to the fault of the operator, the State may exercise a right of recourse against the operator up to the amount due for such compensation within the meaning of this Act.

Where a right of recourse is exercised, the claims of the State shall have priority over the claims of the insurers or any other person having furnished financial security.

Section 21

Transports in transit through the national territory shall not be authorised unless proof of a valid financial security is produced of an amount at least equal to that provided by Section 19.

Section 22

The operator of a nuclear installation shall be required to have and maintain insurance of an amount equal to that provided in Section 19, or other financial security of equal value.

The general conditions of the insurance policy must be approved by Decree of the Minister for Industry, Commerce and Crafts. If another

form of financial security is involved, such security must be deemed adequate by Decree of the Minister for Industry, Commerce and Crafts, in agreement with the Minister of the Treasury, after consulting the State Attorney General.

Insurance or financial security furnished for the carriage of nuclear substances shall in no circumstances be suspended or cancelled before such carriage is completed and the nuclear substances have been consigned to another person liable under this Act.

Insurance or financial security furnished for a nuclear installation shall in no circumstances be suspended or cancelled without giving at least three months' notice in writing, to be served by a Court Officer, to the Minister for Industry, Commerce and Crafts.

The sums due, in accordance with this Act, for compensation for damage resulting from a nuclear incident are not subject to attachment or distraint.

Section 23

Actions brought for compensation of damage to persons or property, resulting from nuclear incidents, shall be barred within a period of three years from the date at which the person suffering damage has knowledge or ought reasonably to have known of both the damage and the operator liable.

No action may be brought after the elapse of a ten-year period as from the date of the nuclear incident.

In the case of damage caused by a nuclear incident involving nuclear materials which have been stolen, lost or abandoned and have not been recovered, the above-mentioned period shall be computed from the date of that nuclear incident, but shall in no case exceed twenty years from the date of the theft, loss or abandonment.

Section 24

The Italian courts shall have exclusive jurisdiction to hear actions as provided by this Act in respect of a nuclear incident having occurred in Italy. They shall also have exclusive jurisdiction when a nuclear incident has occurred outside the territory of States applying the Conventions ratified by Act No 109 of 12th February 1974, or where the place of the incident cannot be determined with certainty and the nuclear installation of the operator liable in accordance with this Act is situated in Italian territory.

Section 25

An action in respect of compensation for damage caused by a nuclear incident must be brought before a Tribunal under whose jurisdiction the nuclear installation falls.

Notice of the summons shall be submitted also to the Ministry of the Treasury, which shall have in all cases authority to intervene in the proceedings.

In the event of many applications and whenever it may be expected that the amount of the compensation may exceed financial securities laid down by Sections 19 and 20 above, the President of the Court may provide for joint proceedings and appoint for this purpose a magistrate to handle such joint proceedings.

In the case of proven insufficiency of the above financial securities, the Court shall pass a judgment whereby the amount allowed to each damaged party shall be proportionally reduced.

C H A P T E R I V

PATENTS

Section 26

The Central Patents Bureau shall notify CNEN of any and all applications for invention patents or industrial trade models of a specifically nuclear nature or directly connected with or essential for the development of nuclear energy under Section 15 of Act No 933 of 11th August 1960.

Section 27

The Minister of Industry and Commerce, whenever public interest reasons exist in this connection, may grant CNEN licences on a non-exclusive basis for the use of invention patents or of utility models.

Upon hearing the opinion of CNEN, the Minister may also grant the said licences on a non-exclusive basis in favour of the operator of nuclear installations, whenever these are essential to the development of nuclear energy within the country.

Decrees shall be issued specifying if and in what amount the compensation for such utilization is due, taking into account possible public fund allocations granted to carry out pertinent research. A Court action by the interested party against the assessment of or failure to grant compensation is permitted within thirty days from notification of the relevant Decree.

C H A P T E R V

PENAL PROVISIONS

Section 28

Failure to report the materials referred to in Section 3 shall be punished by a fine ranging from 1 million to 5 million lire; in the case of failure to report special fissionable materials, the penalty shall also comprise imprisonment for from one to two years.

Section 29*

Whoever trades in or transports the ores referred to in Article 197 of the European Atomic Energy Community Treaty approved by Act No 1203 of 14th October 1957, without authorisation by the Minister of Industry and Commerce, shall be punished by a fine ranging from 5 hundred thousand to 1 million lire.

Whoever trades in or transports without due authorisation source materials, radioactive materials, special fissionable materials, is punished by imprisonment for from one to two years, and by a fine ranging from 2 million to 10 million lire.

The same penalties shall be imposed on the purchaser.

Whoever fails to file the report as provided by the second paragraph of Section 5 of the present Decree** shall be punished by a fine ranging from 1 hundred thousand to 5 hundred thousand Lire.

Section 30

Whoever puts into operation a nuclear plant without having obtained the authorisation required hereunder shall be punished by imprisonment for from two to three years and by a fine ranging from 5 million to 10 million lire, without prejudice to penalties applicable for offences falling under the Criminal Code.

The same penalty shall apply in the case where the operator of a nuclear plant continues to operate it after the authorisation has been suspended.

* As amended by DPR No 1704 of 30th December 1965.

** Reference is made here to Decree No 1704 of 30th December 1965 of the President of the Republic amending Act No 1860 above.

Section 31

Those who use radioactive isotopes without the authorisation referred to in Section 13 above shall be punished by a penalty ranging from 5 hundred thousand to 2 million lire.

Section 32

In the cases referred to in the previous Sections the seizure of the special fissionable materials, source materials, ores and radioactive products shall always be ordered.

C H A P T E R VI

FINAL AND TEMPORARY PROVISIONS

Section 33

All provisions set forth herein, except for the provisions of Section 6, shall also apply to nuclear plants in any way connected with the production of electrical power.

Section 34

There shall be no change as regards supervision in the field of accident prevention, occupational health, health-hazard industries, as well as matters pertaining to the safety of the plants under the supervision of the National Combustion Control Association, restricted to the equipment at the present time under the Association's control, even though such equipment is incorporated into, or is in any way part of, nuclear plants.

Equally there shall be no change as regards the national marine demesne, territorial waters and public waters.

Section 35

Within one year of the entry into effect hereof, the Government of the Republic is delegated to take measures for the reorganisation and expansion of the personnel of the Ministry of Industry and Commerce, with a view to adapting them to the responsibilities attributed to the said Ministry, such expansion not involving more than 40 new positions.

The appropriate measures shall be enacted by Decree of the President of the Republic, on the proposal of the Prime Minister, in agreement with the Minister of Industry and Commerce and with the Minister of the Treasury.

The same Decree shall also set forth the subsequent higher allocations in favour of the Ministry of Industry and Commerce.

Section 36

Expenditure implied in the duties assigned hereby to the Ministry of Industry and Commerce in the sector of nuclear energy shall be set in the amount of 100 million Lire to be entered into the estimate of expenses for the Ministry of Industry and Commerce during fiscal year 1962-1963 and subsequent fiscal years.

This burden shall be met by a corresponding reduction in funds entered in the estimate of expenses for the Ministry of Treasury for the above fiscal year, covering charges to be borne for law provisions at present under way.

The Ministry of the Treasury shall hereby be authorised to effect, by his own Decree, the necessary budgetary amendments.

ACT NO 1008 OF 19TH DECEMBER 1969
AMENDING ACT NO 1860 OF 31ST DECEMBER 1962
ON THE PEACEFUL USES OF NUCLEAR ENERGY

SINGLE SECTION*

By Decree of the Minister for Industry, Commerce and Crafts in agreement with the Minister for Health, after consultation with the CNEN, exemptions from declarations and authorisations prescribed by Act No 1860 of 31st December 1962, may be allowed in respect of the possession, commerce and transport of small quantities of special fissionable materials, source material and other radioactive materials, subject to precautions being taken for the protection of workers and the population at large against the dangers of ionizing radiations arising from the peaceful uses of nuclear energy.

By source material is meant raw material and ores as defined in article 197 of the Treaty establishing the European Atomic Energy Community approved by Act No 1203 of 14th October 1957.

* This Section concerns the provisions of Sections 3 and 4 of Act No 1860. The Decree referred to in the above Section is the Ministerial Decree of 15th December 1970.





