CONVENȚIE
PRIVIND RĂSPUNDEREA CIVILĂ
PENTRU DAUNE NUCLEARE*
ÎNCHEIATĂ LA VIENA LA 21 MAI 1963

CONVENTION
ON CIVIL LIABILITY
FOR NUCLEAR DAMAGE,
DONE AT VIENNA ON MAY 21, 1963

** În vigoare pentru Republica Moldova din 7 august 1998*

THE CONTRACTING PARTIES,

HAVING RECOGNIZED the desirability of establishing some minimum standards to provide financial protection against damage resulting from certain peaceful uses of nuclear energy,

BELIEVING that a convention on civil liability for nuclear damage would also contribute to the development of friendly relations among nations, irrespective of their differing constitutional and social systems,

HAVE DECIDED to conclude a convention for such purposes, and thereto have agreed as follows -

Article I

1. For the purposes of this Convention:

(a) "Person" means any individual, partnership, any private or public body whether corporate or not, any international organization enjoying legal personality under the law of the Installation State, and any State or any of its constituent sub-divisions.

(b) "National of a Contracting Party" includes a Contracting Party or any of its constituent sub-divisions, a partnership, or any private or public body whether corporate or not established within the territory of a Contracting Party.

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

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

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

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

(g) "Radioactive products or waste" means any radioactive material produced in, or any material made radioactive by exposure to the radiation

incidental to, the production or utilization of nuclear fuel, but does not include radioisotopes which have reached the final stage of fabrication so as to be usable for any scientific, medical, agricultural, commercial or industrial purpose.

(h) "Nuclear material" means:

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

(ii) radioactive products or waste.

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

(j) "Nuclear installation" means:

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

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

(iii) any facility where nuclear material is stored, other than storage incidental to the carriage of such material; provided that the Installation State may determine that several nuclear installations of one operator which are located at the same site shall be considered as a single nuclear installation.

(k) "Nuclear damage" means:

(i) loss of life, any personal injury or any loss of, or damage to, property which arises out of or results from the radioactive properties or a combination of radioactive properties with toxic, explosive or other hazardous properties of nuclear fuel or radioactive products or waste in, or of nuclear material coming from, originating in, or sent to, a nuclear installation;

(ii) any other loss or damage so arising or resulting if and to the extent that the law of the competent court so provides; and

(iii) if the law of the Installation State so provides, loss of life, any personal injury or any loss of, or damage to, property which arises out of or results from other ionizing radiation emitted by any other source of radiation inside a nuclear installation.

(l) "Nuclear incident" means any occurrence or series of occurrences having the same origin which causes nuclear damage.

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

(a) maximum limits for the exclusion of such quantities have been established by the Board of Governors of the International Atomic Energy Agency; and

(b) any exclusion by an Installation State is within such established limits.

The maximum limits shall be reviewed periodically by the Board of Governors.

Article II

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

(a) in his nuclear installation; or

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

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

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

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

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

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

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

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

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

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

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

2. The Installation State may provide by legislation that, in accordance with such terms as may be specified therein, a carrier of nuclear material or a person handling radioactive waste may, at his request and with the consent of the operator concerned, be designated or recognized as operator in the place of that operator in respect of such nuclear material or radioactive waste respectively. In this case such carrier or such person shall be considered, for all the purposes of this Convention, as an operator of a nuclear installation situated within the territory of that State.

3. (a) Where nuclear damage engages the liability of more than one operator, the operators involved shall, in so far as the damage attributable to each operator is not reasonably separable, be jointly and severally liable.

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

(c) In neither of the cases referred to in sub-paragraphs (a) and (b) of this paragraph shall the liability of any one operator exceed the amount applicable with respect to him pursuant to Article V.

4. Subject to the provisions of paragraph 3 of this Article , where several nuclear installations of one and the same operator are involved in one nuclear incident, such operator shall be liable in respect of each nuclear installation involved up to the amount applicable with respect to him pursuant to Article V.

5. Except as otherwise provided in this Convention, no person other than the operator shall be liable for nuclear damage. This, however, shall not affect the application of any international convention in the field of transport in force or open for signature, ratification or accession at the date on which this Convention is opened for signature.

6. No person shall be liable for any loss or damage which is not nuclear damage pursuant to sub-paragraph (k) of paragraph 1 of Article I but which

could have been included as such pursuant to sub-paragraph (k) *(ii)* of that paragraph.

7. Direct action shall lie against the person furnishing financial security pursuant to Article VII, if the law of the competent court so provides.

Article III

The operator liable in accordance with this Convention shall provide the carrier with a certificate issued by or on behalf of the insurer or other financial guarantor furnishing the financial security required pursuant to Article VII. The certificate shall 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 whose behalf the certificate was issued. The certificate shall also indicate the nuclear material in respect of which the security applies and shall include a statement by the competent public authority of the Installation State that the person named is an operator within the meaning of this Convention.

Article IV

1. The liability of the operator for nuclear damage under this Convention shall be absolute.

2. If the operator proves that the nuclear damage resulted wholly or partly either from the gross negligence of the person suffering the damage or from an act or omission of such person done with intent to cause damage, the competent court may, if its law so provides, relieve the operator wholly or partly from his obligation to pay compensation in respect of the damage suffered by such person.

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

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

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

recourse or contribution, of any person who may be held liable in connection with that emission of ionizing radiation.

5. The operator shall not be liable under this Convention for nuclear damage:

(a) to the nuclear installation itself or to any property on the site of that installation which is used or to be used in connection with that installation; or

(b) to the means of transport upon which the nuclear material involved was at the time of the nuclear incident.

6. Any Installation State may provide by legislation that sub-paragraph (b) of paragraph 5 of this Article shall not apply, provided that in no case shall the liability of the operator in respect of nuclear damage, other than nuclear damage to the means of transport, be reduced to less than US $5 million for any one nuclear incident.

7. Nothing in this Convention shall affect:

(a) the liability of any individual for nuclear damage for which the operator, by virtue of paragraph 3 or 5 of this Article , is not liable under this Convention and which that individual caused by an act or omission done with intent to cause damage; or

(b) the liability outside this Convention of the operator for nuclear damage for which, by virtue of sub-paragraph (b) of paragraph 5 of this Article , he is not liable under this Convention.

Article V

1. The liability of the operator may be limited by the Installation State to not less than US $5 million for any one nuclear incident.

2. Any limits of liability which may be established pursuant to this Article shall not include any interest or costs awarded by a court in actions for compensation of nuclear damage.

3. The United States dollar referred to in this Convention is a unit of account equivalent to the value of the United States dollar in terms of gold on 29 April 1963, that is to say US $35 per one troy ounce of fine gold.

4. The sum mentioned in paragraph 6 of Article IV and in paragraph 1 of this Article may be converted into national currency in round figures.

Article VI

1. Rights of compensation under this Convention shall be extinguished if an action is not brought within ten years from the date of the nuclear incident. If, however, under the law of the Installation State the liability of

the operator is covered by insurance or other financial security or by State funds for a period longer than ten years, the law of the competent court may provide that rights of compensation against the operator shall only be extinguished after a period which may be longer than ten years, but shall not be longer than the period for which his liability is so covered under the law of the Installation State. Such extension of the extinction period shall in no case affect rights of compensation under this Convention of any person who has brought an action for loss of life or personal injury against the operator before the expiry of the aforesaid period of ten years.

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

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

4. Unless the law of the competent court otherwise provides, any person who claims to have suffered nuclear damage and who has brought an action for compensation within the period applicable pursuant to this Article may amend his claim to take into account any aggravation of the damage, even after the expiry of that period, provided that final judgment has not been entered.

5. Where jurisdiction is to be determined pursuant to sub-paragraph (b) of paragraph 3 of Article XI and a request has been made within the period applicable pursuant to this Article to any one of the Contracting Parties empowered so to determine, but the time remaining after such determination is less than six months, the period within which an action may be brought shall be six months, reckoned from the date of such determination.

Article VII

1. The operator shall be required to maintain insurance or other financial security covering his liability for nuclear damage in such amount, of such type and in such terms as the Installation State shall specify. The Installation State shall ensure the payment of claims for compensation for nuclear damage which have been established against the operator by providing the necessary funds to the extent that the yield of insurance or other financial security is inadequate to satisfy such claims, but not in excess of the limit, if any, established pursuant to Article V.

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

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

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

Article VIII

Subject to the provisions of this Convention, the nature, form and extent of the compensation, as well as the equitable distribution thereof, shall be governed by the law of the competent court.

Article IX

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

2. (a) If a person who is a national of a Contracting Party, other than the operator, has paid compensation for nuclear damage under an international convention or under the law of a non-Contracting State, such person shall, up to the amount which he has paid, acquire by subrogation the rights under this Convention of the person so compensated. No rights shall be so acquired by any person to the extent that the operator has a right of recourse against such person under this Convention.

(b) Nothing in this Convention shall preclude an operator who has paid compensation for nuclear damage out of funds other than those provided pursuant to paragraph 1 of Article VII from recovering from the person providing financial security pursuant to that paragraph or from the Installation State, up to the amount he has paid, the sum which the person so compensated would have obtained under this Convention.

Article X

The operator shall have a right of recourse only:

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

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

Article XI

1. Except as otherwise provided in this Article , jurisdiction over actions under Article II shall lie only with the courts of the Contracting Party within whose territory the nuclear incident occurred.

2. Where the nuclear incident occurred outside the territory of any Contracting Party, or where the place of the nuclear incident cannot be determined with certainty, jurisdiction over such actions shall lie with the courts of the Installation State of the operator liable.

3. Where under paragraph 1 or 2 of this Article , jurisdiction would lie with the courts of more than one Contracting Party, jurisdiction shall lie:

(a) if the nuclear incident occurred partly outside the territory of any Contracting Party, and partly within the territory of a single Contracting Party, with the courts of the latter; and

(b) in any other case, with the courts of that Contracting Party which is determined by agreement between the Contracting Parties whose courts would be competent under paragraph 1 or 2 of this Article .

Article XII

1. A final judgment entered by a court having jurisdiction under Article XI shall be recognized within the territory of any other Contracting Party, except:

(a) where the judgment was obtained by fraud;

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

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

2. A final judgment which is recognized shall, upon being presented for enforcement in accordance with the formalities required by the law of the Contracting Party where enforcement is sought, be enforceable as if it were a judgment of a court of that Contracting Party.

3. The merits of a claim on which the judgment has been given shall not be subject to further proceedings.

Article XIII

This Convention and the national law applicable thereunder shall be applied without any discrimination based upon nationality, domicile or residence.

Article XIV

Except in respect of measures of execution, jurisdictional immunities under rules of national or international law shall not be invoked in actions under this Convention before the courts competent pursuant to Article XI.

Article XV

The Contracting Parties shall take appropriate measures to ensure that compensation for nuclear damage, interest and costs awarded by a court in connection therewith, insurance and reinsurance premiums and funds provided by insurance, reinsurance or other financial security, or funds provided by the Installation State, pursuant to this Convention, shall be freely transferable into the currency of the Contracting Party within whose territory the damage is suffered, and of the Contracting Party within whose territory the claimant is habitually resident, and, as regards insurance or reinsurance premiums and payments, into the currencies specified in the insurance or reinsurance contract.

Article XVI

No person shall be entitled to recover compensation under this Convention to the extent that he has recovered compensation in respect of the same nuclear damage under another international convention on civil liability in the field of nuclear energy.

Article XVII

This Convention shall not, as between the parties to them, affect the application of any international agreements or international conventions on civil liability in the field of nuclear energy in force, or open for signature, ratification or accession at the date on which this Convention is opened for signature.

Article XVIII

This Convention shall not be construed as affecting the rights, if any, of a Contracting Party under the general rules of public international law in respect of nuclear damage.

Article XIX

1. Any Contracting Party entering into an agreement pursuant to subparagraph (b) of paragraph 3 of Article XI shall furnish without delay to the Director General of the International Atomic Energy Agency for information and dissemination to the other Contracting Parties a copy of such agreement.

2. The Contracting Parties shall furnish to the Director General for information and dissemination to the other Contracting Parties copies of their respective laws and regulations relating to matters covered by this Convention.

Article XX

Notwithstanding the termination of the application of this Convention to any Contracting Party, either by termination pursuant to Article XXV or by denunciation pursuant to Article XXVI, the provisions of this Convention shall continue to apply to any nuclear damage caused by a nuclear incident occurring before such termination.

Article XXI

This Convention shall be open for signature by the States represented at the International Conference on Civil Liability for Nuclear Damage held in Vienna from 29 April to 19 May 1963.

Article XXII

This Convention shall be ratified, and the instruments of ratification shall be deposited with the Director General of the International Atomic Energy Agency.

Article XXIII

This Convention shall come into force three months after the deposit of the fifth instrument of ratification, and, in respect of each State ratifying it thereafter, three months after the deposit of the instrument of ratification by that State.

Article XXIV

1. All States Members of the United Nations, or of any of the specialized agencies or of the International Atomic Energy Agency not represented at the International Conference on Civil Liability for Nuclear Damage held in Vienna from 29 April to 19 May 1963, may accede to this Convention.

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

3. This Convention shall come into force in respect of the acceding State

three months after the date of deposit of the instrument of accession of that State but not before the date of the entry into force of this Convention pursuant to Article XXIII.

Article XXV

1. This Convention shall remain in force for a period of ten years from the date of its entry into force. Any Contracting Party may, by giving before the end of that period at least twelve months' notice to that effect to the Director General of the International Atomic Energy Agency, terminate the application of this Convention to itself at the end of that period of ten years.

2. This Convention shall, after that period of ten years, remain in force for a further period of five years for such Contracting Parties as have not terminated its application pursuant to paragraph 1 of this Article , and thereafter for successive periods of five years each for those Contracting Parties which have not terminated its application at the end of one of such periods, by giving, before the end of one of such periods, at least twelve months' notice to that effect to the Director General of the International Atomic Energy Agency.

Article XXVI

1. A conference shall be convened by the Director General of the International Atomic Energy Agency at any time after the expiry of a period of five years from the date of the entry into force of this Convention in order to consider the revision thereof, if one-third of the Contracting Parties express a desire to that effect.

2. Any Contracting Party may denounce this Convention by notification to the Director General of the International Atomic Energy Agency within a period of twelve months following the first revision conference held pursuant to paragraph 1 of this Article .

3. Denunciation shall take effect one year after the date on which notification to that effect has been received by the Director General of the International Atomic Energy Agency.

Article XXVII

The Director General of the International Atomic Energy Agency shall notify the States invited to the International Conference on Civil Liability for Nuclear Damage held in Vienna from 29 April to 19 May 1963 and the States which have acceded to this Convention of the following:

(a) signatures and instruments of ratification and accession received pursuant to Articles XXI, XXII and XXIV;

(b) the date on which this Convention will come into force pursuant to Article XXIII;

(c) notifications of termination and denunciation received pursuant to Articles XXV and XXVI;

(d) requests for the convening of a revision conference pursuant to Article XXVI.

Article XXVIII

This Convention shall be registered by the Director General of the International Atomic Energy Agency in accordance with Article 102 of the Charter of the United Nations.

Article XXIX

The original of this Convention, of which the English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Director General of the International Atomic Energy Agency, who shall issue certified copies.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, duly authorized thereto, have signed this Convention.

DONE in Vienna, this twenty-first day of May, one thousand nine hundred and sixty-three.