

Convention of 31st January 1963 Supplementary to the Paris Convention of 29th July 1960, as amended by the additional Protocol of 28th January 1964 and by the Protocol of 16th November 1982 ("Brussels Supplementary Convention")

THE GOVERNMENTS of the Federal Republic of Germany, the Republic of Austria, the Kingdom of Belgium, the Kingdom of Denmark, the Kingdom of Spain, the Republic of Finland, the French Republic, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of Norway, the Kingdom of the Netherlands, the United Kingdom of Great Britain and Northern Ireland, the Kingdom of Sweden and the Swiss Confederation,

BEING PARTIES to the Convention of 29th July 1960 on Third Party Liability in the Field of Nuclear Energy, concluded within the framework of the Organisation for European Economic Co-operation, now the Organisation for Economic Co-operation and Development and as amended by the Additional Protocol concluded at Paris on 16th November 1982 (hereinafter referred to as the "Paris Convention"),

DESIROUS of supplementing the measures provided in that Convention with a view to increasing the amount of compensation for damage which might result from the use of nuclear energy for peaceful purposes,

HAVE AGREED as follows:

Article 1

The system instituted by this Convention is supplementary to that of the Paris Convention, shall be subject to the provisions of the Paris Convention, and shall be applied in accordance with the following Articles.

Article 2

- a. The system of this Convention shall apply to damage caused by nuclear incidents, other than those occurring entirely in the territory of a State which is not a Party to this Convention:
 - i. for which an operator of a nuclear installation, used for peaceful purposes, situated in the territory of a Contracting Party to this Convention (hereinafter referred to as a "Contracting Party"), and which appears on the list established and kept up to date in accordance with the terms of Article 13, is liable under the Paris Convention; and
 - ii. suffered
 1. in the territory of a Contracting Party;
or
 2. on or over the high seas on board a ship or aircraft registered in the territory of a Contracting Party;
or
 3. on or over the high seas by a national of a Contracting Party, provided that, in the case of damage to a ship or an aircraft, the ship or aircraft is registered in the territory of a Contracting Party,

provided that the courts of a Contracting Party have jurisdiction pursuant to the Paris Convention.

- b. Any Signatory or acceding Government may, at the time of signature of or accession to this Convention or on the deposit of its instrument of ratification, declare that, for the purposes of the application of paragraph (a)(ii) (3) of this Article, individuals or certain categories thereof, considered under its law as having their habitual residence in its territory, are assimilated to its own nationals.
- c. In this Article, the expression "a national of a Contracting Party" shall include a Contracting Party or any of its constituent sub-divisions, or a partnership, or any public or private body whether corporate or not established in the territory of a Contracting Party.

Article 3

- a. Under the conditions established by this Convention, the Contracting Parties undertake that compensation in respect of the damage referred to in Article 2 shall be provided up to the amount of 300 million Special Drawing Rights per incident.
- b. Such compensation shall be provided:
 - i. up to an amount of at least 5 million Special Drawing Rights, out of funds provided by insurance or other financial security, such amount to be established by the legislation of the Contracting Party in whose territory the nuclear installation of the operator liable is situated;
 - ii. between this amount and 175 million Special Drawing Rights, out of public funds to be made available by the Contracting Party in whose territory the nuclear installation of the operator liable is situated;
 - iii. between 175 and 300 million Special Drawing Rights, out of public funds to be made available by the Contracting Parties according to the formula for contributions specified in Article 12.
- c. For this purpose, each Contracting Party shall either:
 - i. establish the maximum liability of the operator, pursuant to Article 7 of the Paris Convention, at 300 million Special Drawing Rights, and provide that such liability shall be covered by all the funds referred to in paragraph (b) of this Article; or
 - ii. establish the maximum liability of the operator at an amount at least equal to that established pursuant to paragraph (b)(i) of this Article and provide that, in excess of such amount and up to 300 million Special Drawing Rights, the public funds referred to in paragraph (b)(ii) and (iii) of this Article shall be made available by some means other than as cover for the liability of the operator, provided that the rules of substance and procedure laid down in this Convention are not thereby affected.
- d. The obligation of the operator to pay compensation, interest or costs out of public funds made available pursuant to paragraphs (b)(ii) and (iii), and (f) of this Article shall only be enforceable against the operator as and when such funds are in fact made available.
- e. The Contracting Parties, in carrying out this Convention, undertake not to make use of the right provided for in Article 15(b) of the Paris Convention to apply special conditions:
 - i. in respect of compensation for damage provided out of the funds referred to in paragraph (b)(i) of this Article;
 - ii. other than those laid down in this Convention in respect of compensation for damage provided out of the public funds referred to in paragraph (b)(ii) and (iii) of this Article.
- f. The interest and costs referred to in Article 7(g) of the Paris Convention are payable in addition to the amounts referred to in paragraph (b) of this Article and shall be borne in so far as they are awarded in respect of compensation payable out of the funds referred to in:

- i. paragraph (b)(i) of this Article, by the operator liable;
 - ii. paragraph (b)(ii) of this Article, by the Contracting Party in whose territory the nuclear installation of that operator is situated;
 - iii. paragraph (b)(iii) of this Article, by the Contracting Parties together.
- g. For the purposes of this Convention, "Special Drawing Right" means the Special Drawing Right as it is defined by the International Monetary Fund. The amounts mentioned in this Convention shall be converted into the national currency of a Contracting Party in accordance with the value of that currency at the date of the incident, unless another date is fixed for a given incident by agreement between the Contracting Parties. The equivalent in Special Drawing Rights of the national currency of a Contracting Party shall be calculated in accordance with the method of valuation applied at the date in question by the International Monetary Fund for its own operations and transactions.

Article 4

- a. If a nuclear incident causes damage which gives rise to liability of more than one operator, the aggregate liability provided for in Article 5(d) of the Paris Convention shall not, to the extent that public funds have to be made available pursuant to Article 3(b)(ii) and (iii), exceed 300 million Special Drawing Rights.
- b. The total amount of the public funds made available pursuant to Article 3(b)(ii) and (iii) shall not, in such event, exceed the difference between 300 million Special Drawing Rights and the sum of the amounts established with respect to such operators pursuant to Article 3(b)(i) or, in the case of an operator whose nuclear installation is situated in the territory of a State which is not a Party to this Convention, the amount established pursuant to Article 7 of the Paris Convention. If more than one Contracting Party is required to make available public funds pursuant to Article 3(b)(ii), such funds shall be made available by them in proportion to the number of nuclear installations situated in their respective territories, which are involved in the nuclear incident and of which the operators are liable.

Article 5

- a. Where the operator liable has a right of recourse pursuant to Article 6(f) of the Paris Convention, the Contracting Party in whose territory the nuclear installation of that operator is situated shall take such legislative measures as are necessary to enable both that Contracting Party and the other Contracting Parties to benefit from this recourse to the extent that public funds have been made available pursuant to Article 3(b)(ii) and (iii), and (f).
- b. Such legislation may provide for the recovery of public funds made available pursuant to Article 3(b)(ii) and (iii), and (f) from such operator if the damage results from fault on his part.

Article 6

In calculating the public funds to be made available pursuant to this Convention, account shall be taken only of those rights to compensation exercised within ten years from the date of the nuclear incident. In the case of damage caused by a nuclear incident involving nuclear fuel or radioactive products or waste which, at the

time of the incident have been stolen, lost, jettisoned, or abandoned and have not yet been recovered, such period shall not in any case exceed twenty years from the date of the theft, loss, jettison or abandonment. It shall also be extended in the cases and under the conditions laid down in Article 8(d) of the Paris Convention. Amendments made to claims after the expiry of this period, under the conditions laid down in Article 8(e) of the Paris Convention, shall also be taken into account.

Article 7

Where a Contracting Party makes use of the right provided for in Article 8(c) of the Paris Convention, the period which it establishes shall be a period of prescription of three years either from the date at which the person suffering damage has knowledge or from the date at which he ought reasonably to have known of both the damage and the operator liable.

Article 8

Any person who is entitled to benefit from the provisions of this Convention shall have the right to full compensation in accordance with national law for damage suffered, provided that, where the amount of damage exceeds or is likely to exceed:

- i. 300 million Special Drawing Rights; or
- ii. if there is aggregate liability under Article 5(d) of the Paris Convention and a higher sum results therefrom, such higher sum,

any Contracting Party may establish equitable criteria for apportionment. Such criteria shall be applied whatever the origin of the funds and, subject to the provisions of Article 2, without discrimination based on the nationality, domicile or residence of the person suffering the damage.

Article 9

- a. The system of disbursements by which the public funds required under Article 3(b)(ii) and (iii), and (f) are to be made available shall be that of the Contracting Party whose courts have jurisdiction.
- b. Each Contracting Party shall ensure that persons suffering damage may enforce their rights to compensation without having to bring separate proceedings according to the origin of the funds provided for such compensation.
- c. No Contracting Party shall be required to make available the public funds referred to in Article 3(b)(ii) and (iii) so long as any of the funds referred to in Article 3(b)(i) remain available.

Article 10

- a. The Contracting Party whose courts have jurisdiction shall be required to inform the other Contracting Parties of a nuclear incident and its circumstances as soon as it

appears that the damage caused by such incident exceeds, or is likely to exceed, 175 million Special Drawing Rights. The Contracting Parties shall without delay make all the necessary arrangements to settle the procedure for their relations in this connection.

- b. Only the Contracting Party whose courts have jurisdiction shall be entitled to request the other Contracting Parties to make available the public funds required under Article 3(b)(iii) and (f) and shall have exclusive competence to disburse such funds.
- c. Such Contracting Party shall, when the occasion arises, exercise the right of recourse provided for in Article 5 on behalf of the other Contracting Parties who have made available public funds pursuant to Article 3(b)(iii) and (f).
- d. Settlements effected in respect of the payment of compensation out of the public funds referred to in Article 3(b)(ii) and (iii) in accordance with the conditions established by national legislation shall be recognized by the other Contracting Parties, and judgments entered by the competent courts in respect of such compensation shall become enforceable in the territory of the other Contracting Parties in accordance with the provisions of Article 13(d) of the Paris Convention.

Article 11

- a. If the courts having jurisdiction are those of a Contracting Party other than the Contracting Party in whose territory the nuclear installation of the operator liable is situated, the public funds required under Article 3(b)(ii) and (f) shall be made available by the first-named Contracting Party. The Contracting Party in whose territory the nuclear installation of the operator liable is situated shall reimburse to the other Contracting Party the sums paid. These two Contracting Parties shall agree on the procedure for reimbursement.
- b. In adopting all legislative, regulatory or administrative provisions, after the nuclear incident has occurred, concerning the nature, form and extent of the compensation, the procedure for making available the public funds required under Article 3(b)(ii) and, if necessary, the criteria for the apportionment of such funds, the Contracting Party whose courts have jurisdiction shall consult the Contracting Party in whose territory the nuclear installation of the operator liable is situated. It shall further take all measures necessary to enable the latter to intervene in proceedings and to participate in any settlement concerning compensation.

Article 12

- a. The formula for contributions according to which the Contracting Parties shall make available the public funds referred to in Article 3(b)(iii) shall be determined as follows:
 - i. as to 50%, on the basis of the ratio between the gross national product at current prices of each Contracting Party and the total of the gross national products at current prices of all Contracting Parties as shown by the official statistics published by the Organisation for Economic Co-operation and Development for the year preceding the year in which the nuclear incident occurs;
 - ii. as to 50%, on the basis of the ratio between the thermal power of the reactors situated in the territory of each Contracting Party and the total thermal power of the reactors situated in the territories of all the Contracting Parties. This calculation shall be made on the basis of the thermal power of the reactors shown at the date of the nuclear incident in the list referred to in Article 2(a)(i):

provided that a reactor shall only be taken into consideration for the purposes of this calculation as from the date when it first reaches criticality.

- b. For the purposes of this Convention, "thermal power" means:
 - i. before the issue of a final operating licence, the planned thermal power;
 - ii. after the issue of such licence, the thermal power authorized by the competent national authorities.

Article 13

- a. Each Contracting Party shall ensure that all nuclear installations used for peaceful purposes situated in its territory, and falling within the definition in Article 1 of the Paris Convention, appear on the list referred to in Article 2(a)(i).
- b. For this purpose, each Signatory or acceding Government shall, on the deposit of its instrument of ratification or accession, communicate to the Belgian Government full particulars of such installations.
- c. Such particulars shall indicate:
 - i. in the case of all installations not yet completed, the expected date on which the risk of a nuclear incident will exist;
 - ii. and further, in the case of reactors, the expected date on which they will first reach criticality, and also their thermal power.
- d. Each Contracting Party shall also communicate to the Belgian Government the exact date of the existence of the risk of a nuclear incident and, in the case of reactors, the date on which they first reached criticality.
- e. Each Contracting Party shall also communicate to the Belgian Government all modifications to be made to the list. Where such modifications include the addition of a nuclear installation, the communication must be made at least three months before the expected date on which the risk of a nuclear incident will exist.
- f. If a Contracting Party is of the opinion that the particulars, or any modification to be made to the list, communicated by another Contracting Party do not comply with the provisions of Article 2(a)(i) and of this Article, it may raise objections thereto only by addressing them to the Belgian Government within three months from the date on which it has received notice pursuant to paragraph (h) of this Article.
- g. If a Contracting Party is of the opinion that a communication required in accordance with this Article has not been made within the time prescribed in this Article, it may raise objections only by addressing them to the Belgian Government within three months from the date on which it knew of the facts which, in its opinion, ought to have been communicated.
- h. The Belgian Government shall give notice as soon as possible to each Contracting Party of the communications and objections which it has received pursuant to this Article.
- i. The list referred to in Article 2(a)(i) shall consist of all the particulars and modifications referred to in paragraphs (b), (c), (d) and (e) of this Article, it being understood that objections submitted pursuant to paragraphs (f) and (g) of this Article shall have effect retrospective to the date on which they were raised, if they are sustained.
- j. The Belgian Government shall supply any Contracting Party on demand with an up-to-date statement of the nuclear installations covered by this Convention and the details supplied in respect of them pursuant to this Article.

Article 14

- a. Except in so far as this Convention otherwise provides, each Contracting Party may exercise the powers vested in it by virtue of the Paris Convention, and any provisions made thereunder may be invoked against the other Contracting Parties in order that the public funds referred to in Article 3(b)(ii) and (iii) be made available.
- b. Any such provisions made by a Contracting Party pursuant to Article 2 and 9 of the Paris Convention as a result of which the public funds referred to in Article 3(b)(ii) and (iii) are required to be made available may not be invoked against any other Contracting Party unless it has consented thereto.
- c. Nothing in this Convention shall prevent a Contracting Party from making provisions outside the scope of the Paris Convention and of this Convention, provided that such provisions shall not involve any further obligation on the part of the Contracting Parties in so far as their public funds are concerned.

Article 15

- a. Any Contracting Party may conclude an agreement with a State which is not a Party to this Convention concerning compensation out of public funds for damage caused by a nuclear incident.
- b. To the extent that the conditions for payment of compensation under any such agreement are not more favourable than those which result from the measures adopted by the Contracting Party concerned for the application of the Paris Convention and of this Convention, the amount of damage caused by a nuclear incident covered by this Convention and for which compensation is payable by virtue of such an agreement may be taken into consideration, where the proviso to Article 8 applies, in calculating the total amount of damage caused by that incident.
- c. The provisions of paragraphs (a) and (b) of this Article shall in no case affect the obligations under Article 3(b)(ii) and (iii) of those Contracting Parties which have not given their consent to such agreement.
- d. Any Contracting Party intending to conclude such an agreement shall notify the other Contracting Parties of its intention. Agreements concluded shall be notified to the Belgian Government.

Article 16

- a. The Contracting Parties shall consult each other upon all problems of common interest raised by the application of this Convention and of the Paris Convention, especially Articles 20 and 22(c) of the latter Convention.
- b. They shall consult each other on the desirability of revising this Convention after a period of five years from the date of its coming into force, and at any other time upon the request of a Contracting Party.

Article 17

Any dispute arising between two or more Contracting Parties concerning the interpretation or application of this Convention shall, upon the request of a Contracting Party concerned, be submitted to the European Nuclear Energy Tribunal established by the Convention of 20th December 1957 on the Establishment of a Security Control in the Field of Nuclear Energy.

Article 18

- a. Reservations to one or more of the provisions of this Convention may be made at any time prior to ratification of this Convention if the terms of these reservations have been expressly accepted by all Signatories or, at the time of accession or of the application of the provisions of Articles 21 and 24, if the terms of these reservations have been expressly accepted by all Signatories and acceding Governments.
- b. Such acceptance shall not be required from a Signatory which has not itself ratified this Convention within a period of twelve months after the date of notification to it of such reservation by the Belgian Government in accordance with Article 25.
- c. Any reservation accepted in accordance with the provisions of paragraph (a) of this Article may be withdrawn at any time by notification addressed to the Belgian Government.

Article 19

No State may become or continue to be a Contracting Party to this Convention unless it is a Contracting Party to the Paris Convention.

Article 20

- a. The Annex to this Convention shall form an integral part thereof.
- b. This Convention shall be ratified. Instruments of ratification shall be deposited with the Belgian Government.
- c. This Convention shall come into force three months after the deposit of the sixth instrument of ratification.
- d. For each Signatory ratifying this Convention after the deposit of the sixth instrument of ratification, it shall come into force three months after the date of the deposit of its instrument of ratification.

Article 21

Amendments to this Convention shall be adopted by agreement among all the Contracting Parties. They shall come into force on the date when all Contracting Parties have ratified or confirmed them.

Article 22

- a. After the coming into force of this Convention, any Contracting Party to the Paris Convention which has not signed this Convention may request accession to this Convention by notification addressed to the Belgian Government.
- b. Such accession shall require the unanimous assent of the Contracting Parties.

- c. Once such assent has been given, the Contracting Party to the Paris Convention requesting accession shall deposit its instrument of accession with the Belgian Government.
- d. The accession shall take effect three months from the date of deposit of the instrument of accession.

Article 23

- a. This Convention shall remain in force until the expiry of the Paris Convention.
- b. Any Contracting Party may, by giving twelve months' notice to the Belgian Government, terminate the application of this Convention to itself after the end of the period of ten years specified in Article 22(a) of the Paris Convention. Within six months after receipt of such notice, any other Contracting Party may, by notice to the Belgian Government, terminate the application of this Convention to itself as from the date when it ceases to have effect in respect of the Contracting Party which first gave notice.
- c. The expiry of this Convention or the withdrawal of a Contracting Party shall not terminate the obligations assumed by each Contracting Party under this Convention to pay compensation for damage caused by nuclear incidents occurring before the date of such expiry or withdrawal.
- d. The Contracting Parties shall, in good time, consult each other on what measures should be taken after the expiry of this Convention or the withdrawal of one or more of the Contracting Parties, to provide compensation comparable to that accorded by this Convention for damage caused by nuclear incidents occurring after the date of such expiry or withdrawal and for which the operator of a nuclear installation in operation before such date within the territories of the Contracting Parties is liable.

Article 24

- a. This Convention shall apply to the metropolitan territories of the Contracting Parties.
- b. Any Contracting Party desiring the application of this Convention to one or more of the territories in respect of which, pursuant to Article 23 of the Paris Convention, it has given notification of application of that Convention, shall address a request to the Belgian Government.
- c. The application of this Convention to any such territory shall require the unanimous assent of the Contracting Parties.
- d. Once such assent has been given, the Contracting Party concerned shall address to the Belgian Government a notification which shall take effect as from the date of its receipt.
- e. Such notification may, as regards any territory mentioned therein, be withdrawn by the Contracting Party which has made it by giving twelve months' notice to that effect to the Belgian Government.
- f. If the Paris Convention ceases to apply to any such territory, this Convention shall also cease to apply thereto.

Article 25

The Belgian Government shall notify all Signatories and acceding Governments of the receipt of any instrument of ratification, accession or withdrawal, and shall also

notify them of the date on which this Convention comes into force, the text of any amendment thereto and the date on which such amendment comes into force, any reservations made in accordance with Article 18, and all notifications which it has received.

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

DONE at Brussels, this 31st day of January 1963, in the English, Dutch, French, German, Italian and Spanish languages, the six texts being equally authoritative, in a single copy which shall be deposited with the Belgian Government by whom certified copies shall be communicated to all the other Signatories and acceding Governments.

Annex

TO THE CONVENTION OF 31ST JANUARY 1963 SUPPLEMENTARY TO THE PARIS CONVENTION OF 29TH JULY 1960 ON THIRD PARTY LIABILITY IN THE FIELD OF NUCLEAR ENERGY, AS AMENDED BY THE ADDITIONAL PROTOCOL OF 28TH JANUARY 1964 AND BY THE PROTOCOL OF 16TH NOVEMBER 1982 THE GOVERNMENTS OF THE CONTRACTING PARTIES declare that compensation for damage caused by a nuclear incident not covered by the Supplementary Convention solely by reason of the fact that the relevant nuclear installation, on account of its utilization, is not on the list referred to in Article 2 of the Supplementary Convention, (including the case where such installation is considered by one or more but not all of the Governments to be outside the Paris Convention):

- shall be provided without discrimination among the nationals of the Contracting Parties to the Supplementary Convention; and
- shall not be limited to less than 300 million Special Drawing Rights.

In addition, if they have not already done so, they shall endeavour to make the rules for compensation of persons suffering damage caused by such incidents as similar as possible to those established in respect of nuclear incidents occurring in connection with nuclear installations covered by the Supplementary Convention.