

**CONVENTION ON THE LIABILITY OF OPERATORS OF NUCLEAR
VESSELS (WITH ADDITIONAL PROTOCOL)**

Note: The Agreement Is not yet In force and Is pending ratification by the Philippine Senate.

Adopted at the close of the eleventh session of the Diplomatic Conference on Maritime Law, Brussels, and 25 May, 1962.

THE CONTRACTING PARTIES,

HAVING RECOGNIZED the desirability of determining by agreement certain uniform rules concerning the liability of operators of nuclear ships,

HAVE DECIDED to conclude a Convention for this purpose, and thereto have agreed as follows:

ARTICLE I

For the purposes of this Convention:

1. "Nuclear ship" means any ship equipped with a nuclear power plant.
2. "Licensing State" means the Contracting State which operates or which has authorized the operation of a nuclear ship under its flag.
3. "Person" means any individual or partnership, or any public or private body whether corporate or not, including a State or any of its constituent subdivisions.
4. "Operator" means the person authorized by the licensing State to operate a nuclear ship, or where a Contracting State operates a nuclear ship, that State.
5. "Nuclear fuel" means any material which is capable of producing energy by a self-sustaining process of nuclear fission and which is used or intended for use in a nuclear ship.
6. "Radioactive products or waste" means any material, including nuclear fuel, made radioactive by neutron irradiation incidental to the utilization of nuclear fuel in a nuclear ship.
7. "Nuclear damage" means loss of life or personal injury and loss 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 of radioactive products or waste; any other loss, damage or expense so arising or resulting shall be included only if and to the extent that the applicable national law so provides.
8. "Nuclear incident" means any occurrence or series of occurrences having (he same origin which causes nuclear damage.
9. "Nuclear power plant" means any power plant in which a nuclear reactor is, or is to be used as, the source of power, whether for propulsion of the ship or for any

other purpose.

10. "Nuclear reaction" means any installation containing nuclear fuel in such an arrangement that a self-sustained chain process of nuclear fission can occur therein without an additional source of neutrons.

11. "Warship" means any ship belonging to the naval forces of a State and bearing the external marks distinguishing warships of its nationality, under the command of an officer duly commissioned by the Government of such State and whose name appears in the Navy List, and manned by a crew who are under regular naval discipline.

12. "Applicable national law" means the national law of the court having jurisdiction under the Convention including any rules of such national law relating to conflict of laws.

ARTICLE II

1. The operator of a nuclear ship shall be absolutely liable for any nuclear damage upon proof that such damage has been caused by a nuclear incident involving the nuclear fuel of, or radioactive products or waste produced in such ship.

2. Except as otherwise provided in this Convention no person other than the operator shall be liable for such nuclear damage.

3. Nuclear damage suffered by the nuclear ship itself, its equipment, fuel or stores shall not be covered by the operator's liability as defined in this Convention.

4. The operator shall not be liable with respect to nuclear incidents occurring before the nuclear fuel has been taken in charge by him or after the nuclear fuel or radioactive products or waste have been taken in charge by another person duly authorized by law and liable for any nuclear damage that may be caused by them.

5. If the operator proves that the nuclear damage resulted wholly or partially from an act or omission done with intent to cause damage by the individual who suffered the damage, the competent courts may exonerate the operator wholly or partially from his liability to such individual.

6. Notwithstanding the provisions of paragraph 1 of this Article, the operator shall have a right of recourse:

(a) If the nuclear incident results from a personal act or omission done with intent to cause damage, in which event recourse shall lie against the individual who has acted, or omitted to act, with such intent;

(b) If the nuclear incident occurred as a consequence of any wreck-raising operation, against the persons who carried out such operation without the authority of the operator or of the State having licensed the sunken ship or of the State in whose waters the wreck is situated;

(c) If recourse is expressly provided for by contract.

ARTICLE III

1. The liability of the operator as regards one nuclear ship shall be limited to 1500 million francs in respect of any one nuclear incident, notwithstanding that the

nuclear incident may have resulted from any fault or privity of that operator, such limit shall include neither any interest nor costs awarded by a court in actions for compensation under this Convention.

2. 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 licensing State shall specify. The licensing State shall ensure the payment of claims for compensation for nuclear damage established against the operator by providing the necessary funds up to the limit laid down in paragraph 1 of this Article to the extent that the yield of the insurance or the financial security is inadequate to satisfy such claims.

3. However, nothing in paragraph 2 of this Article shall require any Contracting State or any of its constituent subdivisions, such as States, Republic or Cantons, to maintain insurance or other financial security to cover their liability as operators of nuclear ships.

4. The franc mentioned in paragraph 1 of this Article is a unit of account constituted by sixty-five and one half milligrams of gold of millesimal fineness nine hundred. The amount awarded may be converted into each national currency in roman figures. Conversion into national currencies other than gold shall be effected on the basis of their gold value at the date of payment.

ARTICLE IV

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 and the nuclear damage and such other damage are not reasonably separable, the entire damage shall, for the purposes of this Convention, be deemed to be nuclear damage exclusively caused by the nuclear incident. However, where damage is caused jointly by a nuclear incident covered by this Convention and by an emission of ionizing radiation or by an emission of ionizing radiation in combination with the toxic, explosive or other hazardous properties of the source of radiation not covered by it, nothing in this Convention shall limit or otherwise effect the liability, either as regards the victims or by way of recourse or contribution, of any person who may be held liable in connection with the emission of ionizing radiation or by the toxic, explosive or other hazardous properties of the source of radiation not covered by this Convention.

ARTICLE V

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 licensing State the liability of the operator is covered by insurance or other financial security or State indemnification for a period longer than ten years, the applicable national law 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 licensing State. However, such extension of the extinction period shall in no case affect the right 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 nuclear fuel, radioactive products or waste which were stolen, lost, jettisoned, or abandoned, the period established under paragraph 1 of this Article shall be computed from the date of the nuclear incident causing the nuclear damage, 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 applicable national law may establish a period of extinction or prescription of not less than three years from the date on which the person who claims to have suffered nuclear damage had knowledge or ought reasonably to have had knowledge of the damage and of the person responsible for the damage, provided that the period established under paragraphs 1 and 2 of this Article shall not be exceeded.

4. Any person who claims to have suffered nuclear damage and who has brought an action for compensation within the period applicable under 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.

ARTICLE VI

Where provisions of national health insurance, social insurance, social security, workmen's compensation or occupational disease compensation systems include compensation for nuclear damage, rights of beneficiaries under such systems and rights of subrogation, or of recourse against the operator, by virtue of such systems, shall be determined by the law of the Contracting State having established such system. However, if the law of such Contracting State allows claims of beneficiaries of such systems and such rights of subrogation and recourse to be brought against the operator in conformity with the terms of this Convention, this shall not result in the liability of the operator exceeding the amount specified in paragraph 1 of Article III.

ARTICLE VII

1. Where nuclear damage engages the liability of more than one operator and the damage attributable to each operator is not reasonably separable, the operators involved shall be jointly and severally liable for such damage. However, the liability of any one operator shall not exceed the limit laid down in Article III.

2. In the case of a nuclear incident where the nuclear damage arises out of 01 results from nuclear fuel or radioactive products or waste of more than one nuclear ship of the same operator, that operator shall be liable in respect of each ship up to the limit laid down in Article III.

3. In case of joint and several liability, and subject to the provisions of paragraph 1 of this Article:

(a) Each operator shall have a right of contribution against the others in proportion to the fault attaching to each of them;

(b) Where circumstances are such that the degrees of fault cannot be apportioned, the total liability shall be borne in equal part.

ARTICLE VIII

No liability under this Convention shall attach to an operator in respect to nuclear damage caused by a nuclear incident directly due to an act of war, hostilities, civil war or insurrection.

ARTICLE IX

The sums provided by insurance, by other financial security or by State indemnification in conformity with paragraph 2 of Article III shall be exclusively available for compensation due under this Convention.

ARTICLE X

1. Any action for compensation shall be brought, at the option of the claimant, either before the courts of the licensing State or before the courts of the Contracting State or States in whose territory nuclear damage has been sustained.

2. If the licensing State has been or might be called upon to ensure the payment of claims for compensation in accordance with paragraph 2 of Article III of Convention, it may intervene as party in any proceedings brought against the operator.

3. Any immunity from legal processes pursuant to rules of national or international law shall be waived with respect to duties or obligations arising under, or for the purpose of, this Convention. Nothing in this Convention shall make warships or other State-owned or State-operated ships on non-commercial service liable to arrest, attachment or seizure or confer jurisdiction in respect of warships on the courts of any foreign State.

ARTICLE XI

1. When, having regard to the likelihood of any claims arising out of a nuclear incident exceeding the amount specified in Article III of this Convention, a court of the licensing State, so certified, the operator or the licensing State shall make that amount available in that court to pay any such claims; that amount shall be regarded as constituting the limitation fund in respect of that incident.

2. The amount may be available for the purpose of the preceding paragraph by payment into court or by the provision of security or guarantees sufficient to satisfy the court that the money will be available when required to meet any established claim.

3. After the fund has been constituted in accordance with paragraph 1 of this Article the court of the licensing State shall be exclusively competent to determine all matters relating to the apportionment and distribution of the fund.

4. (a) A final judgment entered by a court having jurisdiction under Article X shall be recognized in the territory of any other Contracting State, except:

(i) where the judgment was obtained by fraud; or

(ii) the operator was not given a fair opportunity to present his case;

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