

# LIABILITY AND COMPENSATION FOR NUCLEAR DAMAGE

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## What is nuclear law?

A complete set of special rules created to regulate the conduct of people, companies or governments who are engaged in activities related to fissionable materials, ionising radiation and exposure to natural sources of radiation

Nuclear law enables the safe, secure development of nuclear energy for the benefit of society

## Where does it come from?

### international law

- ◆ international treaties, conventions, agreements
- ◆ international custom
- ◆ general principles of international law
- ◆ judicial decisions

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### national law

- ◆ acts, statutes
- ◆ regulations, ordinances
- ◆ decrees, orders

# WHY IS NUCLEAR LIABILITY AND COMPENSATION IMPORTANT?

Resistance to nuclear energy use is largely due to public fear of the potential damage that could result from an accident at a nuclear facility or during the transport of nuclear material



# WHY IS NUCLEAR LIABILITY AND COMPENSATION IMPORTANT?

A nuclear accident can produce...

- ❑ detrimental effects to human health, property, the environment, the economy
- ❑ damage that does not stop at political or geographical borders

Governments have responded by...

- ❑ balancing public assurance of adequate compensation for damage with protecting investors/suppliers from ruinous liability claims
- ❑ adopting liability/compensation regimes at national and international levels for accidents at installations/during transport

## NUCLEAR LIABILITY/COMPENSATION REGIMES ADDRESS EXCEPTIONAL SITUATIONS...

Most national/international regimes cover:

- liability and compensation for damage from a nuclear incident at a nuclear installation or during transport of nuclear substances
- exceptional risks arising from nuclear activities involving high levels of radioactivity
- damage suffered by third parties (including nuclear operator's employees)

# NUCLEAR LIABILITY/COMPENSATION REGIMES: TRIGGERING EVENTS

There must be:

- a “nuclear incident” which causes “damage”
- involving “nuclear fuel”...
- or “radioactive products or waste”...
- at a “nuclear installation” ... or during transport of nuclear substances

# NUCLEAR LIABILITY AND COMPENSATION REGIMES: BASIC PRINCIPLES

A nuclear incident causes damage... what then?

- ❑ national level (domestic legislation)...
  - ❑ strict liability of nuclear operator
  - ❑ exclusive liability of nuclear operator
  - ❑ liability limited in amount
  - ❑ compulsory financial security
  - ❑ liability limited in time
- ❑ international level (conventions) ... as above plus
  - ❑ unity of jurisdiction
  - ❑ non-discrimination

Operator =  
licensee/other  
recognized entity

## NUCLEAR LIABILITY/COMPENSATION REGIMES: BASIC PRINCIPLES

- Strict Liability :* victims need not prove fault or negligence
- Exclusive Liability:* liability channeled to operator regardless of “cause”; suppliers of goods/services/technology protected
- Limited Liability Amount:* liability limited to specified amount; protects vs ruinous claims (strict/exclusive liability trade-off);
- Financial Security:* liability amount there when needed; private insurance, operator pool (U.S., Germany), state/bank/corporate guarantee, self-insurance
- Limited Liability in Time:* 10 yrs from accident-insurance limitation (distinguishing cancers); “discovery rule”- claims w/in 2-3 years from discovery damage/operator

# INTERNATIONAL NUCLEAR LIABILITY REGIMES: SPECIAL PRINCIPLES

## *Unity of Jurisdiction:*

courts of State where incident occurred have jurisdiction;

if incident outside Convention Party/place not certain,  
courts of State where liable operator's installation is  
located have jurisdiction

judgments to be recognized by other States Parties and  
be enforceable in their territories

## *Non-discrimination:*

courts apply relevant convention and national law  
without discrimination - nationality, domicile or residence



## INTERNATIONAL REGIMES UNDER OECD AUSPICES

- |      |   |
|------|---|
| 1960 | <i>Paris Convention on Nuclear Third Party Liability (in force 1968)</i><br>basic liability/compensation convention: 16 Contracting Parties/States (mostly Western Europe)                |
| 1963 | <i>Brussels Convention Supplementary to Paris Convention (in force 1974)</i><br>supplementary funding instrument: all 13 Contracting Parties/States are PC states;                        |
| 2004 | <i>Protocols amending Paris + Brussels Supplementary Conventions (not yet in force)</i><br>provides more money for more victims for more damage;<br>16 PC signatories/13 BSC signatories; |

## INTERNATIONAL REGIMES UNDER IAEA AUSPICES

- |      |   |
|------|---|
| 1963 | <i>Vienna Convention on Civil Liability for Nuclear Damage (in force 1977)</i><br>basic liability/compensation convention: 38 Contracting Parties<br>(mostly Central/Eastern Europe +++)      |
| 1997 | <i>Protocol amending Vienna Convention on Civil Liability for Nuclear Damage (in force 2003)</i><br>provides more money for more victims for more damage; 9<br>Contracting Parties            |
| 1997 | <i>Convention on Supplementary Compensation for Nuclear Damage (not yet in force)</i><br>global liability/compensation regime (both basic and<br>supplementary funding): 4 Contracting States |



# THE LINK BETWEEN PARIS AND VIENNA CONVENTIONS

*Joint Protocol Relating to the Application of the Vienna Convention  
and the Paris Convention (in force 1992)*

26 Contracting Parties

“bridge” – ensures only one convention applies to a nuclear  
incident



effectively extends geographical scope of both  
conventions (Western/Eastern Europe)

## PARIS CONVENTION: HOW MUCH MONEY IS AVAILABLE?

### *Existing Paris Convention (Article 7)*

- |                                    |                  |
|------------------------------------|------------------|
| ❑ maximum liability limit:         | 15 million SDRs  |
| ❑ 1990 NEA S.C. recommended limit: | 150 million SDRs |
| ❑ minimum liability limit:         | 5 million SDRs   |

### *Revised Paris Convention*

- |   |                 |
|---|-----------------|
| ❑ maximum liability limit:                    | none            |
| ❑ minimum liability limit:                    | 700 million EUR |
| ❑ minimum reduced liability limits*           |                 |
| low-risk installations:                       | 70 million EUR  |
| transport:                                    | 80 million EUR  |
| <i>State guarantees up to 700 million EUR</i> |                 |

### *Excludes interest and costs*

At 10/02/2012: 1 Special Drawing Right (SDR )= € 1.17 / US\$ 1.55

## VIENNA CONVENTION: HOW MUCH MONEY IS AVAILABLE?

### *1963 Vienna Convention (Article V)*

- ❑ minimum: US\$ 5 million (based on U.S. \$ gold value on 29/04/1963)  
US\$ 177.9 million (based on today's price of gold)
- ❑ maximum: none

### *Revised Vienna Convention*

- |                               |                  |
|-------------------------------|------------------|
| ❑ minimum:                    | 300 million SDRs |
| ❑ maximum liability           | none             |
| ❑ minimum reduced liability*: | 5 million SDRs   |

\* *State guarantee up to 300 million SDRs*

### *Excludes interest and costs*

At 25/08/2011: 1 Special Drawing Right (SDR )= € 1.12 / US\$ 1.61

## SUPPLEMENTARY FUNDING CONVENTIONS: HOW MUCH MONEY IS AVAILABLE?

### *Existing Brussels Supplementary Convention: Article 3*

1 <sup>st</sup> tier: operator liability (PC)	=	min. 5 million SDRs
2 <sup>nd</sup> tier: operator's State's funds	=	1 <sup>st</sup> tier to 175 million SDRs
3 <sup>rd</sup> tier: all Parties' contributions	=	125 million SDRs
TOTAL:	=	300 million SDRs

### *Revised Brussels Supplementary Convention: Article 3*

1 <sup>st</sup> tier: operator liability (PC)	=	min. 700 million EUR
2 <sup>nd</sup> tier: operator's State's funds	=	500 million EUR
3 <sup>rd</sup> tier: all Parties' contributions	=	300 million EUR
TOTAL:	=	1.5 billion EUR

### *Convention on Supplementary Compensation: Article III*

1 <sup>st</sup> tier:	300 M SDRs: inside/outside installation state
2 <sup>nd</sup> tier:	300 M SDRs (expected): 50% as for 1 <sup>st</sup> tier/50% for trans-boundary victims only

At 10/02/2012: 1 Special Drawing Right (SDR )= € 1.17 / US\$ 1.55

## WHO MAY CLAIM COMPENSATION?

### *Current Paris/Vienna Conventions*

- ❑ Paris: incident and damage must occur in PC State; *may* apply if incident or damage on high seas or incident outside PC State
- ❑ Vienna: damage must occur in VC State or on high seas

### *Revised Paris/Vienna Conventions*

- ❑ Paris: applies to PC States and non-PC States if latter is Party to VC/JP or has no installations or has installations + PC based legislation + equivalent reciprocal benefits
- ❑ Vienna: applies to damage wherever suffered; nuclear states without reciprocal equivalent benefits may be excluded

### *Convention on Supplementary Compensation*

- ❑ applies to incidents in CSC States; may apply to others if base convention or Annex provides

## WHAT TYPE OF DAMAGE IS COMPENSATED?

### *Current Paris/Vienna Conventions*

- ❑ damage to or loss of life
- ❑ damage to or loss of property (other than on-site)
- ❑ (1963 VC only) any other loss /damage if and to extent provided by law of court with jurisdiction to hear claims

### *Revised Paris/Vienna Conventions; Convention on Supplementary Compensation*

- ❑ as above +
- ❑ economic loss from above
- ❑ cost of reinstating impaired environment
- ❑ cost of preventive measures + loss/damage caused thereby
- ❑ loss of income from direct economic interest in use of environment



## WHAT EXONERATIONS ARE GRANTED TO OPERATOR?

### *Current Paris/Vienna Conventions*

- No liability for damage caused by nuclear incident directly due to:
  - armed conflict, hostilities, civil war, insurrection: **does not include "terrorism"**
  - grave natural disaster of exceptional character (national law may provide otherwise)
- If damages results wholly/partly from gross negligence/intent to cause damage by person suffering damage (act or omission)

### *Revised Paris/Vienna Conventions*

- As above but grave natural disaster exemption revoked

### *Convention on Supplementary Compensation*

- as for current Paris/Vienna Conventions

# NUCLEAR POWER GENERATING STATES PARTY and international nuclear liability conventions

- ❖ Paris Convention (PC)
- ❖ Revised Paris Convention (RPC) (*nif*)
- ❖ Brussels Supplementary Convention (BSC)
- ❖ Revised Brussels Supplementary Convention (RBSC) (*nif*)
- ❖ Vienna Convention (VC)
- ❖ Revised Vienna Convention (RVC)
- ❖ 1988 Joint Protocol(JP)
- ❖ Convention on Supplementary Compensation (CSC) (*nif*)

ARGENTINA	VC ; RVC ; CSC	MEXICO	VC
ARMENIA	VC	NETHERLANDS	PC ; BSC; JP; RPC, RBSC
BELGIUM	PC ; BSC; RPC; RBSC	PAKISTAN	
BRAZIL	VC	ROMANIA	VC ; JP; RVC ; CSC
BULGARIA	VC; JP	RUSSIA	VC
CANADA		SLOVAK REP.	VC; JP
CHINA		SLOVENIA	PC ; BSC; JP; RPC; RBSC
CZECH REP.	VC ; JP	SOUTH AFRICA	
FINLAND	PC ; BSC; JP; RPC; RBSC	SPAIN	PC ; BSC; RPC; RBSC
FRANCE	PC ; BSC; RPC; RBSC	SWEDEN	PC ; BSC; JP; RPC; RBSC
GERMANY	PC ; BSC; JP; RPC; RBSC	SWITZERLAND	PC; RPC; RBSC
HUNGARY	VC; JP	TAIWAN	
INDIA		UKRAINE	VC; JP
IRAN		UNITED KINGDOM	PC ; BSC; RPC; RBSC
JAPAN		UNITED STATES	CSC
KOREA			

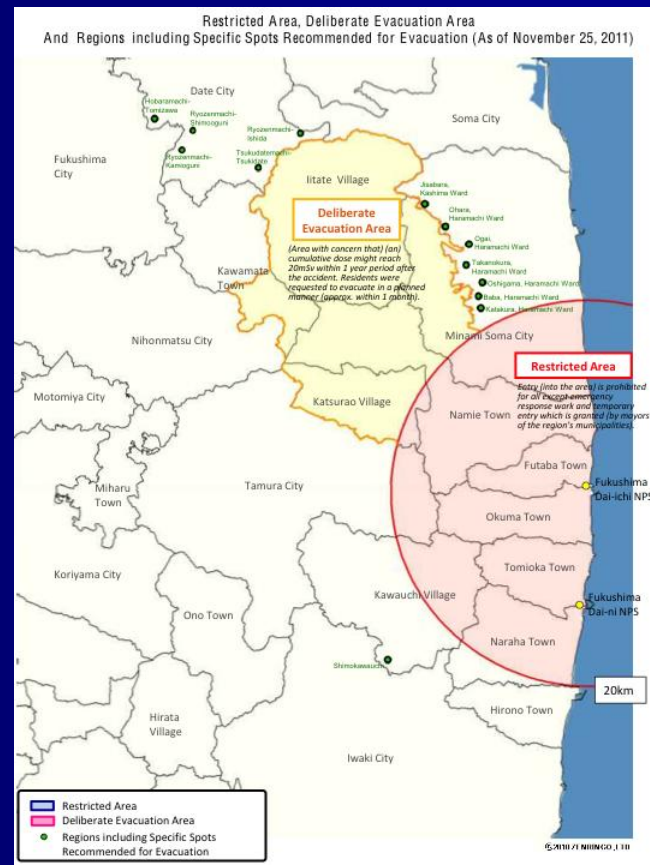


## FUKUSHIMA DAI-ICHI NPP ACCIDENT

- 11 March 2011: Level 7 nuclear event due to a massive earthquake followed by a tsunami on the pacific coast of Japan
- 20 000 deaths or missing persons from the earthquake and the tsunami, no casualties from the accident at the NPP but an important release of radioactive material

# Evacuation Areas

(Map provided by Japanese Ministry of Economy, Trade and Industry)



# APPLICABLE LEGAL FRAMEWORK

- Japan is NOT a party to an international nuclear liability convention: claims for transboundary damage to be based on general tort law but until now **no transboundary damage**
- Main applicable laws:
  - Civil Code
  - Act on Compensation for Nuclear Damage (Compensation Agreement)
  - Act on Indemnity Agreements for Compensation of Nuclear Damage (Indemnity Agreement)

## NUCLEAR LIABILITY REGIME

*Operator's Strict Liability :* Yes

*Operator's Exclusive Liability:* Yes

*Limited Liability Amount:* Unlimited liability

*Financial Security:* Operator must have financial security (usually insurance) up to the amount specified for each category of site or transportation (¥120 billion for NPPs) + *Governmental Indemnity Agreement* up to ¥120 billion for non-insurable risks (e.g. earthquakes, tsunami, eruption)

*Limited Liability in Time:* right of action fully extinguished 20 years following the date of the tort / actions must be brought within 3 years from the date the victim has knowledge of both the damage and the person liable

## Grave natural disaster of an exceptional character

- Compensation Act: exclusion of operator's liability in case of a grave natural disaster of an exceptional character
- Accident due to an earthquake followed by a tsunami of exceptional force, of an exceptional character ?
- Government considers that TEPCO shall not benefit from the exception
- BUT only civil courts may interpret this provision: TEPCO has not until now taken the opportunity to request the benefit of this exemption
- Consequences:
  - Event not covered by private insurance
  - Indemnity Agreement provided by Government was triggered
  - TEPCO has been in great financial difficulties due, among others, to the amounts of compensation to be paid to the victims



## Definition of the damages to be compensated

- Compensation Act defines “nuclear damage” as any damage caused to third parties by the effects of the fission process of nuclear fuel or the radiation or toxic nature of nuclear fuel and contaminated materials
- Does not specify the heads/nature of damages: to be specified on a case by case basis pursuant to the “adequate causation” principles by the civil courts
- Guidelines (non legally binding) issued by the Dispute Reconciliation Committee for Nuclear Damage Compensation (Reconciliation Committee) determine the type of damages which give right to compensation, e.g.
  - Damages resulting from instructions issued by the central and local governments (evacuation instruction, restrictions of marine areas, restrictions of shipments of agricultural products and marine products)
  - Damages suffered by workers, bankruptcies, costs of decontamination measures, damage caused by unfounded rumors

## Facing the financial burden

- No estimation of compensations to be paid is available, but TEPCO has already nearly went bankrupt because of the financial burden
- Compensation Act: where nuclear damage occurs in excess of the financial security amount, Government must give the operator such aid as is required for him to compensate the damage and as approved by the National Diet  
*=> Act to Establish the Nuclear Damage Compensation Facilitation Corporation, approved by the Japanese National Diet on 3 August 2011*
- Compensation Facilitation Corporation was set up in September 2011 and manages a fund which received contributions from the government and the Japanese nuclear installations operators in order to support operators in providing compensation to victims of nuclear accidents
- Operator shall only obtain financial support after proceeding to cost-cutting measures and will be expected to pay back over the years

## Claims handling

- TEPCO is solely liable for claims handling
- In case of dispute between TEPCO and a victim, the latter may at his/her own discretion, either individually or as part of a group, file a claim against the operator:
  - directly to the operator
  - before the Reconciliation Committee (conciliation committee)
  - before the civil courts



# JAPANESE DEDICATED WEB SITES

TEPCO:

<http://www.tepco.co.jp/en/comp/index-e.html>

Ministry of Economy, Trade and Industry:

<http://www.meti.go.jp/english/earthquake/nuclear/roadmap/>

About Compensation for Nuclear Damages | TEPCO

12/02/12 22:59


**TOKYO ELECTRIC POWER COMPANY**

## About Compensation for Nuclear Damages

### Claim Measures of Compensation Payment

**Claim Measures of Compensation Payment (How to Receive Compensation Payment)**

[Afflicted Individuals](#)  
[Afflicted Companies/Sole Proprietors](#)

Partial modification to Special Measures for the electricity bills for the customers who have evacuated from the areas to which evacuation orders etc. have been directed, based on the Act on Special Measures Concerning Nuclear Emergency Preparedness, and who are eligible to permanent indemnification

In case you demand compensation, please contact the call center below.  
 If you are a hearing-impaired person, please ask your family or supporter to contact the call center on behalf of you.

[FAQ regarding Permanent Compensation for Nuclear Damages by the Accident at Fukushima Daiichi Nuclear Power Station and Fukushima Daini Nuclear Power Station \(for damages suffered by individuals\)](#)

**FRAUD ALERT!**

**Fukushima Nuclear Compensation Office (Call center)**

Phone Number	<b>0120-926-404</b>	* Please be sure to dial the correct number
Office Hours	9:00am - 9:00pm	

### Latest Press release

Feb 7, 2012	<a href="#">Regarding start of reparation payouts for vehicles in the "no-go zone"</a>
Jan 10, 2012	<a href="#">Compensation Area of Eligibility to be expanded for Tourist Businesses Affected by Harmful Rumors</a>
Dec 26, 2011	<a href="#">Partial modification to Special Measures for the electricity bills for the customers who have evacuated from the areas to which evacuation orders etc. have been directed, based on the Act on Special Measures Concerning Nuclear Emergency Preparedness, and who are eligible to permanent indemnification</a>
Dec 08, 2011	<a href="#">Regarding the smooth payment of compensation</a>
Dec 06, 2011	<a href="#">(Comment)In response to the decision on the "Supplement of the Interim Guidelines on Criteria for Determining Nuclear Damage Indemnification Coverage (Losses due to Voluntary Evacuation)"</a>
Dec 05, 2011	<a href="#">The second sending of application forms to corporations and sole proprietors</a>
Dec 02, 2011	<a href="#">Compensation payment to agricultural organization (17 prefectures council)</a>

# WEBSITES FOR NUCLEAR LAW

**OECD/Nuclear Energy Agency website**

*[www.oecd-nea.org/law/legal-documents.html](http://www.oecd-nea.org/law/legal-documents.html)*

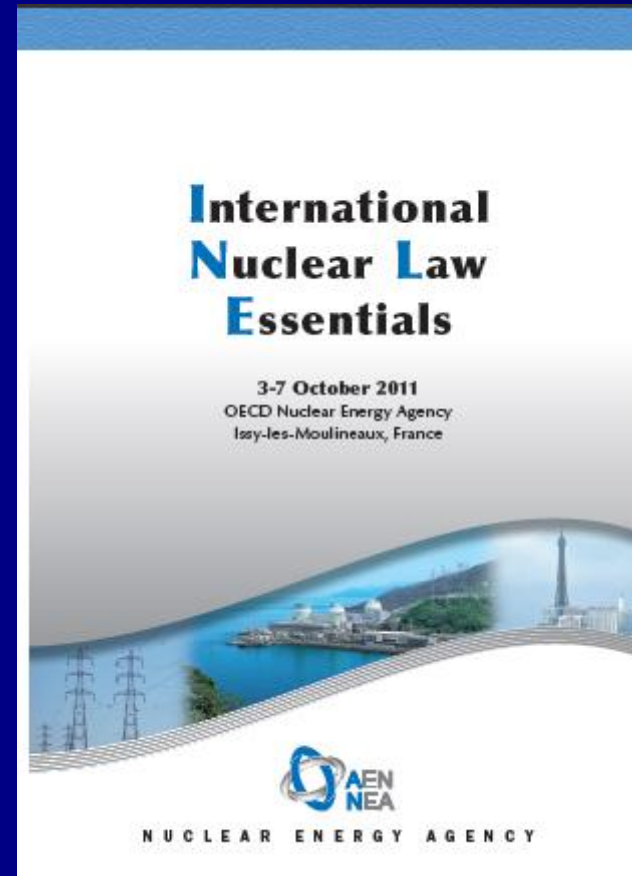
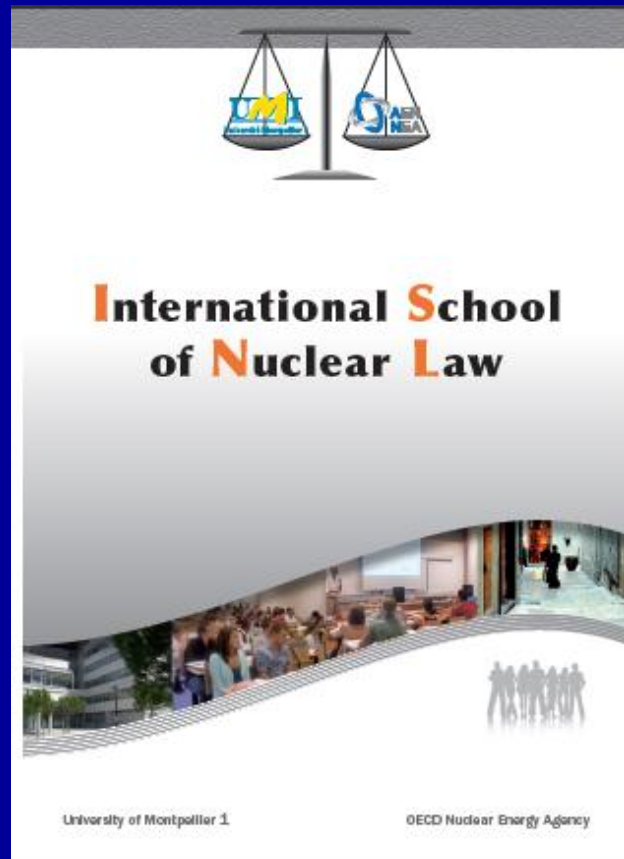
**International Atomic Energy Agency website**

*[www.iaea.org/Publications/Documents/Conventions/index.html](http://www.iaea.org/Publications/Documents/Conventions/index.html)*

**European Union**

*[http://ec.europa.eu/energy/nuclear/index\\_en.htm](http://ec.europa.eu/energy/nuclear/index_en.htm)*

# OECD/NEA Education Programmes



# THANK YOU !