Nuclear Liability for Transport

Betty Bonnardel-Azzarelli, WNTI
International liability framework

- Different regimes apply in different countries:
  - International conventions
  - National liability laws
  - Special treaties
  - Maritime conventions
  - Common laws

- Primacy of nuclear liability regime over maritime liability regime
  - 1971 Convention relating to Civil Liability in the field of Maritime Carriage of Nuclear Material (entered into force in 1975)

- International transport operations have to switch from one regime to another
International Nuclear Liability Conventions

- 1963 Brussels Convention (BC) Supplementary to the Paris Convention *(in force since 1974 - 2004 revision not yet in force)*
- 1963 Vienna Convention (VC) on Civil Liability for Nuclear *(in force since 1977)*
- 1997 Protocol to Amend the Vienna Convention (RVC) on Civil Liability for Nuclear Damage *(in force since 2003)*
- 1997 Convention on Supplementary Compensation (CSC) for Nuclear Damage *(in force on 15 April 2015)*
International liability framework
International Nuclear Liability Regime

- The international conventions cater for transport too

- Same principles as for land-based installations:
  - Strict liability
  - Exclusive liability
  - Limitation in amount possible
  - Limitation in time
  - Unity of jurisdiction
  - Non discrimination against victims
  - Compulsory financial security
Nuclear Liability for Transport

• Benefits of an international regime for nuclear liability in transport:
  – Establish liability for a damage occurring during inter-state transport
  – Establish rules for cross-border legal actions
  – Determine which country’s courts have jurisdiction to hear the nuclear damage claims
  – Determine which country’s laws will apply to the adjudication of those claims
Nuclear Liability for Transport

• The nuclear liability regime applicable for transport is dependent on:

  – The route – geographic location

  – The cargo – nuclear substances/nuclear material

  – The event– there must be a “nuclear incident”

  – The operations considered for transport – loading/unloading, interim storage
Definition of “nuclear substances”

- **Paris Convention** (and **Brussels Convention**) considers “nuclear substances” (PC Art. 1 (a)(iv) and (v)).

- **Vienna Convention** and **CSC** considers “nuclear material” (VC Art. I (1)(h) (i) and (ii)).

- **Nuclear fuel** (other than natural uranium and depleted uranium) and radioactive products and **wastes**

- Exclusion of **Small quantities** of nuclear substances

- National laws may have a **different** definition

- Natural uranium and depleted uranium, radioisotopes, medical isotopes etc. are **excluded** from the conventions
Determining the nuclear operator liable

a) The sending operator is liable:

1. Until the receiving operator takes charge of the nuclear material, absent a contract

2. Until the liability is transferred pursuant to a written contract with the receiving operator

3. In case of shipment to a non-Contracting State, until the nuclear material are unloaded from the means of transport
b) The receiving operator is liable:

1. Until the liability is transferred from the Consignor pursuant to a written contract
2. After the receiving operator takes charge of the nuclear material
3. When the shipment comes from a non-Contracting State, after the nuclear material are loaded on the means of transport
Determining the nuclear operator liable

c) Joint and several liability:
   – In the case of transport of nuclear material on the same means of transport (or storage during transport), liability amount up to the maximum liability coverage established for any one of them (Art 5 (d) – PC; Art II.3 – VC)

d) Transfer of liability to another liable nuclear operator:
   – It may only take place if that operator has an economic interest in the nuclear material that are being transported [Art. 4 (d) – 2004 PC only]
   – Mixed loads on the same means of transport for instance

e) Transfer of liability to the carrier:
   – National legislation may permit substitution of the carrier to the liable nuclear operator
Geographical scope

- **Principle (PC art 2):** PC not applying to nuclear incidents occurring in non-PC states or to damage suffered in non-PC states (including territorial seas)

- **Extensions:**
  - PC applies to high seas
  - Recommendation for national legislations to extend scope for ships in high seas registered in PC state even if incident/damage in non-PC state

- **Exceptions:**
  - Can be different in national legislation
  - Applies if any person has principal source of business in PC state
Liability amounts

- Lower amount of liability compared to nuclear installations
- Amount fixed by national legislation not less than a given minimum amount variable according to the convention
Liability amounts in conventions

- 1963 PC: 5 M SDR
- 2004 RPC: 80 M€
- 1963 VC: 5 million US $
- 1997 VC and CSC (Annex): 300 million SDRs (or 150 million SDRs + public funds up to 300 million SDRs)
  - 1997 VC and CSC (Annex) allow the Installation State to establish a lower amount in view of the nature of the nuclear substances involved and of the likely consequences of an incident: 5 million SDRs (In this case, if the damage exceeds that amount, the Installation State has to provide public funds to cover the difference
Liability amounts in conventions

- **Example of France:**
  - Nuclear Operator has to have an amount of 22.8 M€ available
  - Freight Forwarder, in case of a transit within the French territory with non Nuclear Operators from PC and BC Signatory countries, has to have an amount of 228.6 M€

- **Example of Germany**
  - In principle coverage should not exceed 35 M€
  - May be raised to 70 M€ depending on type, amount, activity, and nature (§ 8 para 6 AtDeckV)
Certificate of Financial Security

- Mandatory certificate (could be exempted in PC if transport is in own territory)
- Issued by or on behalf of the insurer (or other financial guarantor)
- Stating the name and address of operator liable and the amount, type and duration of financial security
- Indicating the nuclear material in respect of which the security applies
- Including a statement by competent public authority of Installation State that the person named is an operator within the meaning of the applicable convention
Damages to the means of transport

- Covered conditionally under PC: a minimum amount of 80 M€ (2004 revision) must be reserved to compensate “other” nuclear damage (Art. 7(c) - PC)
- Excluded under the 1963 VC (Art. IV.5(b)) and CSC (Annex), unless Installation State provides otherwise
- Covered conditionally under the 1997 RVC: provided an amount no less than 150 Million SDR is reserved to satisfy other claims (Art. IV.6 rev. VC)
- It cannot reduce the operator’s liability amount for other kinds of damages
Nuclear insurance for transport

- Insurances provided by pools
- Sum insured variable depending on state
- Relationship with states non-party to nuclear liability conventions
- Forum shopping
- Accumulation of exposure
- Premium volumes vs. insurance capacity
Preparation for nuclear liability arrangements for transport

• Confirm that the nature of the nuclear materials transported is governed by the relevant international conventions
• Establish liability of the nuclear operator
• Verify the applicability of the nuclear liability regimes along the route chosen, the sending state, the receiving state, transit states and specific zones;
• Ensure the contractual transfer of Nuclear Third Party liabilities between the two sending and the receiving nuclear operators.
Thank you

Betty Bonnardel-Azzarelli
bettyba@wnti.co.uk