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Preface

Since the introduction of the *International Sources of Environmental Liability* at the Antwerp Conference in December 2002, the landscape of liability for environmental damage has seen a number of significant changes.

The most important legislation to pass since then is the adoption of the Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage, commonly known as the *Environmental Liability Directive* or the ELD. The framework of the Environmental Liability Directive, which is based on the 'polluter pays principle', will be implemented in at least 27 Member States of the European Union. However, the Directive does not apply to (the imminent threat of) environmental damage arising from incidents for which liability or compensation falls within the scope of certain International Conventions. The exclusion of the risks covered by the nuclear liability conventions is absolute. Oil pollution damage and the damage as the result of transport of dangerous goods on the other hand, is only excluded in so far the Convention is 'in force' in the Member State concerned.

New legislation worth mentioning are the agreement on 23 May 2003 of the Protocol on civil liability and compensation for damage caused by the transboundary effects of industrial accidents on transboundary waters, the so called Kyiv Liability Protocol, and the conclusions of the negotiations in June 2005 of Annex VI to the Protocol on environmental protection to the Antartic Treaty concerning liability arising from environmental emergencies.

Apart from an update with the inclusion of recently adopted instruments, the revised edition differs in several respects from the first two-part publication presented in Antwerp. The first mentioned documents are ordered according to the Annexes IV and V to the Environmental Liability Directive (ELD, Oil Pollution, Nuclear Risks and Limitation of Liability). The ensuing conventions are structured from general to thematic (Lugano, Transboundary movements of hazardous wastes, International Watercourses, Antartica, International Law Commission, Space, and Armed Conflict). Also different from the first edition is the accompanying information with every document that 'sets the scene' for the treaty in question. This includes mention of the exact reference and abbreviation, the status of the convention, the most authoritative literature on the subject and, for some conventions, case law falling within the scope of the convention. In the case of the ELD this last category encompasses references to the most illustrative cases of the European Court of Justice. At the end of this compilation an overview of references has been added.

Finally, given the broader scope, we decided to change the title to *International Documents on Environmental Liability*.

The revised edition is intended as a practical handbook for international policy makers, environmental lawyers, scholars, students and anyone interested in international and European environmental liability law. We have tried to provide the reader with a comprehensive and accurate compilation. Overly technical annexes or appendices were omitted.

Special gratitude goes out to Ms. Nyabagala Massinde, Mr. Tom Malfait and Mr. Hendrik Schoukens for assisting us with this project.

This Sourcebook was completed on 1 November 2007 and takes into account the available information at that time.

Hannes DESCAMPS, Brussels
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1 November 2007

Contents

Part I
European Union

1
Environmental Liability Directive (ELD) Environmental Damage Directive (EDD)

1.1 General Information

Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on Environmental Liability with Regard to the Prevention and Remedying of Environmental Damage

Most common abbreviation(s)	**Environmental Liability Directive (ELD)** **Environmental Damage Directive (EDD)**
Organisation	European Community (EC)
Reference	Official Journal Legislation 143/56, 30 April 2004
Status	
Adoption	21 April 2004
Entry into force	30 April 2007 Article XIX(1): '*Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 30 April 2007*.'
State Parties	Austria, Belgium, Bulgaria, Czech Republic, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxemburg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United Kingdom
Case Law	Polluter Pays Principle Case C-293/97, Standley [29 April 1999], ECR I-2603 Natural Habitats and Protected Species Case C-355/90, Commission v. Spain (Marismas de Santoña) [2 August 1993], ECR I-4221 Case C-44/95, Regina/ Secretary of State for the Environment (Lappel Bank) [11 July 1996], ECR-I, 3805 Case C-371/98, First Corporate Shipping Ltd (Severn) [7 November 2000], ECR I-9235 Case C-374/98, Commission/France (Basses Corbières) [7 December 2000], ECR I-1512 Case C-127/02, Kokkelvisserij [7 September 2004], ECR I-0000 Case C-117/03, Società Italiana Dragaggi [13 January 2005], ECR I-000

Water
Case C-56/90, Commission v. United Kingdom, (Blackpool) [14 July 1993], ECR I-4109
Land
Case C-1/03, Van de Walle (Texaco) [7 September 2004], ECR I-0000
Permit Defence and State of the Art Defence
Case C-300/95, Commission v. United Kingdom [29 May 1997], ECR I-2649
Case C-230/00, Commission v. Belgium [14 June 2001], ECR I-4591
Request for action and Access to Information
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1.2 Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on Environmental Liability with Regard to the Prevention and Remedying of Environmental Damage

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 175(1) thereof,

Having regard to the proposal from the Commission,[1]

Having regard to the Opinion of the European Economic and Social Committee,[2]

After consulting the Committee of the Regions,
Acting in accordance with the procedure laid down in Article 251 of the Treaty,[3] in the light of the joint text approved by the Conciliation Committee on 10 March 2004,

Whereas:

(1) There are currently many contaminated sites in the Community, posing significant health risks, and the loss of biodiversity has dramatically accelerated over the last decades. Failure to act could result in increased site contamination and greater loss of biodiversity in the future. Preventing and remedying, insofar as is possible, environmental

[1] OJ C 151 E, 25.6.2002, p. 132.
[2] OJ C 241, 7.10.2002, p. 162.

[3] Opinion of the European Parliament of 14 May 2003 (not yet published in the Official Journal), Council Common Position of 18 September 2003 (OJ C 277 E, 18.11.2003, p. 10) and Position of the European Parliament of 17 December 2003 (not yet published in the Official Journal). Legislative resolution of the European Parliament of 31 March 2004 and Council Decision of 30 March 2004.

damage contributes to implementing the objectives and principles of the Community's environment policy as set out in the Treaty. Local conditions should be taken into account when deciding how to remedy damage.

(2) The prevention and remedying of environmental damage should be implemented through the furtherance of the 'polluter pays' principle, as indicated in the Treaty and in line with the principle of sustainable development. The fundamental principle of this Directive should therefore be that an operator whose activity has caused the environmental damage or the imminent threat of such damage is to be held financially liable, in order to induce operators to adopt measures and develop practices to minimise the risks of environmental damage so that their exposure to financial liabilities is reduced.

(3) Since the objective of this Directive, namely to establish a common framework for the prevention and remedying of environmental damage at a reasonable cost to society, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level by reason of the scale of this Directive and its implications in respect of other Community legislation, namely Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds,[4] Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora,[5] and Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy,[6] the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

(4) Environmental damage also includes damage caused by airborne elements as far as they cause damage to water, land or protected species or natural habitats.

(5) Concepts instrumental for the correct interpretation and application of the scheme provided for by this Directive should be defined especially as regards the definition of environmental damage. When the concept in question derives from other relevant Community legislation, the same definition should be used so that common criteria can be used and uniform application promoted.

(6) Protected species and natural habitats might also be defined by reference to species and habitats protected in pursuance of national legislation on nature conservation. Account should nevertheless be taken of specific situations where Community, or equivalent national, legislation allows for certain derogations from the level of protection afforded to the environment.

(7) For the purposes of assessing damage to land as defined in this Directive the use of risk assessment procedures to determine to what extent human health is likely to be adversely affected is desirable.

(8) This Directive should apply, as far as environmental damage is concerned, to occupational activities which present a risk for human health or the environment. Those activities should be identified, in principle, by reference to the relevant Community legislation which provides for regulatory requirements in relation to certain activities or practices considered as posing a potential or actual risk for human health or the environment.

(9) This Directive should also apply, as regards damage to protected species and natural habitats, to any occupational activities other than those already directly or indirectly identified by reference to Community legislation as posing an actual or potential risk for human health or the environment. In such cases the operator should only be liable under this Directive whenever he is at fault or negligent.

(10) Express account should be taken of the Euratom Treaty and relevant international conventions and of Community legislation regulating more comprehensively and more stringently the operation of any of the activities falling under the

[4] OJ L 103, 25.4.1979, p. 1. Directive as last amended by Regulation (EC) No 807/2003 (OJ L 122, 16.5.2003, p. 36).

[5] OJ L 206, 22.7.1992, p. 7. Directive as last amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).

[6] OJ L 327, 22.12.2000, p. 1. Directive as amended by Decision No 2455/2001/EC (OJ L 331, 15.12.2001, p. 1).

scope of this Directive. This Directive, which does not provide for additional rules of conflict of laws when it specifies the powers of the competent authorities, is without prejudice to the rules on international jurisdiction of courts as provided, inter alia, in Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.[7] This Directive should not apply to activities the main purpose of which is to serve national defence or international security.

(11) This Directive aims at preventing and remedying environmental damage, and does not affect rights of compensation for traditional damage granted under any relevant international agreement regulating civil liability.

(12) Many Member States are party to international agreements dealing with civil liability in relation to specific fields. These Member States should be able to remain so after the entry into force of this Directive, whereas other Member States should not lose their freedom to become parties to these agreements.

(13) Not all forms of environmental damage can be remedied by means of the liability mechanism. For the latter to be effective, there need to be one or more identifiable polluters, the damage should be concrete and quantifiable, and a causal link should be established between the damage and the identified polluter(s). Liability is therefore not a suitable instrument for dealing with pollution of a widespread, diffuse character, where it is impossible to link the negative environmental effects with acts or failure to act of certain individual actors.

(14) This Directive does not apply to cases of personal injury, to damage to private property or to any economic loss and does not affect any right regarding these types of damages.

(15) Since the prevention and remedying of environmental damage is a task directly contributing to the pursuit of the Community's environment policy, public authorities should ensure the proper implementation and enforcement of the scheme provided for by this Directive.

(16) Restoration of the environment should take place in an effective manner ensuring that the relevant restoration objectives are achieved. A common framework should be defined to that end, the proper application of which should be supervised by the competent authority.

(17) Appropriate provision should be made for those situations where several instances of environmental damage have occurred in such a manner that the competent authority cannot ensure that all the necessary remedial measures are taken at the same time. In such a case, the competent authority should be entitled to decide which instance of environmental damage is to be remedied first.

(18) According to the 'polluter-pays' principle, an operator causing environmental damage or creating an imminent threat of such damage should, in principle, bear the cost of the necessary preventive or remedial measures. In cases where a competent authority acts, itself or through a third party, in the place of an operator, that authority should ensure that the cost incurred by it is recovered from the operator. It is also appropriate that the operators should ultimately bear the cost of assessing environmental damage and, as the case may be, assessing an imminent threat of such damage occurring.

(19) Member States may provide for flat-rate calculation of administrative, legal, enforcement and other general costs to be recovered.

(20) An operator should not be required to bear the costs of preventive or remedial actions taken pursuant to this Directive in situations where the damage in question or imminent threat thereof is the result of certain events beyond the operator's control. Member States may allow that operators who are not at fault or negligent shall not bear the cost of remedial measures, in situations where the damage in question is the result of emissions or events explicitly authorised or where the potential for damage could not have been known when the event or emission took place.

(21) Operators should bear the costs relating to preventive measures when those measures should have been taken as a matter of course in order to comply with the legislative, regulatory and administrative provisions regulating their activities or the terms of any permit or authorisation.

[7] OJ L 12, 16.1.2001, p. 1. Regulation as amended by Commission Regulation (EC) No 1496/2002 (OJ L 225, 22.8.2002, p. 13).

(22) Member States may establish national rules covering cost allocation in cases of multiple party causation. Member States may take into account, in particular, the specific situation of users of products who might not be held responsible for environmental damage in the same conditions as those producing such products. In this case, apportionment of liability should be determined in accordance with national law.

(23) Competent authorities should be entitled to recover the cost of preventive or remedial measures from an operator within a reasonable period of time from the date on which those measures were completed.

(24) It is necessary to ensure that effective means of implementation and enforcement are available, while ensuring that the legitimate interests of the relevant operators and other interested parties are adequately safeguarded. Competent authorities should be in charge of specific tasks entailing appropriate administrative discretion, namely the duty to assess the significance of the damage and to determine which remedial measures should be taken.

(25) Persons adversely affected or likely to be adversely affected by environmental damage should be entitled to ask the competent authority to take action. Environmental protection is, however, a diffuse interest on behalf of which individuals will not always act or will not be in a position to act. Non-governmental organisations promoting environmental protection should therefore also be given the opportunity to properly contribute to the effective implementation of this Directive.

(26) The relevant natural or legal persons concerned should have access to procedures for the review of the competent authority's decisions, acts or failure to act.

(27) Member States should take measures to encourage the use by operators of any appropriate insurance or other forms of financial security and the development of financial security instruments and markets in order to provide effective cover for financial obligations under this Directive.

(28) Where environmental damage affects or is likely to affect several Member States, those Member States should cooperate with a view to ensuring proper and effective preventive or remedial action in respect of any environmental damage. Member States may seek to recover the costs for preventive or remedial actions.

(29) This Directive should not prevent Member States from maintaining or enacting more stringent provisions in relation to the prevention and remedying of environmental damage; nor should it prevent the adoption by Member States of appropriate measures in relation to situations where double recovery of costs could occur as a result of concurrent action by a competent authority under this Directive and by a person whose property is affected by the environmental damage.

(30) Damage caused before the expiry of the deadline for implementation of this Directive should not be covered by its provisions.

(31) Member States should report to the Commission on the experience gained in the application of this Directive so as to enable the Commission to consider, taking into account the impact on sustainable development and future risks to the environment, whether any review of this Directive is appropriate.

HAVE ADOPTED THIS DIRECTIVE:

Article I

Subject matter

The purpose of this Directive is to establish a framework of environmental liability based on the 'polluter-pays' principle, to prevent and remedy environmental damage.

Article II

Definitions

For the purpose of this Directive the following definitions shall apply:

1. 'environmental damage' means:

(a) damage to protected species and natural habitats, which is any damage that has significant adverse effects on reaching or maintaining the favourable conservation status of such habitats or species. The significance of such effects is to be assessed with reference to the baseline condition, taking account of the criteria set out in Annex I;

Damage to protected species and natural habitats does not include previously identified adverse effects which result from an act by an

operator which was expressly authorised by the relevant authorities in accordance with provisions implementing Article 6(3) and (4) or Article 16 of Directive 92/43/EEC or Article 9 of Directive 79/409/EEC or, in the case of habitats and species not covered by Community law, in accordance with equivalent provisions of national law on nature conservation.

(b) water damage, which is any damage that significantly adversely affects the ecological, chemical and/or quantitative status and/or ecological potential, as defined in Directive 2000/60/EC, of the waters concerned, with the exception of adverse effects where Article 4(7) of that Directive applies;

(c) land damage, which is any land contamination that creates a significant risk of human health being adversely affected as a result of the direct or indirect introduction, in, on or under land, of substances, preparations, organisms or micro-organisms;

2. 'damage' means a measurable adverse change in a natural resource or measurable impairment of a natural resource service which may occur directly or indirectly;

3. 'protected species and natural habitats' means:

(a) the species mentioned in Article 4(2) of Directive 79/409/EEC or listed in Annex I thereto or listed in Annexes II and IV to Directive 92/43/EEC;

(b) the habitats of species mentioned in Article 4(2) of Directive 79/409/EEC or listed in Annex I thereto or listed in Annex II to Directive 92/43/EEC, and the natural habitats listed in Annex I to Directive 92/43/EEC and the breeding sites or resting places of the species listed in Annex IV to Directive 92/43/EEC; and

(c) where a Member State so determines, any habitat or species, not listed in those Annexes which the Member State designates for equivalent purposes as those laid down in these two Directives;

4. 'conservation status' means:

(a) in respect of a natural habitat, the sum of the influences acting on a natural habitat and its typical species that may affect its long-term natural distribution, structure and functions as well as the long-term survival of its typical species within, as the case may be, the European territory of the Member States to which the Treaty applies or the territory of a Member State or the natural range of that habitat;

The conservation status of a natural habitat will be taken as 'favourable' when:

– its natural range and areas it covers within that range are stable or increasing,
– the specific structure and functions which are necessary for its long-term maintenance exist and are likely to continue to exist for the foreseeable future, and
– the conservation status of its typical species is favourable, as defined in (b);

(b) in respect of a species, the sum of the influences acting on the species concerned that may affect the long-term distribution and abundance of its populations within, as the case may be, the European territory of the Member States to which the Treaty applies or the territory of a Member State or the natural range of that species;

The conservation status of a species will be taken as 'favourable' when:

– population dynamics data on the species concerned indicate that it is maintaining itself on a long-term basis as a viable component of its natural habitats,
– the natural range of the species is neither being reduced nor is likely to be reduced for the foreseeable future, and
– there is, and will probably continue to be, a sufficiently large habitat to maintain its populations on a long-term basis;

5. 'waters' mean all waters covered by Directive 2000/60/EC;

6. 'operator' means any natural or legal, private or public person who operates or controls the occupational activity or, where this is provided for in national legislation, to whom decisive economic power over the technical functioning of such an activity has been delegated, including the holder of a permit or authorisation for such an activity or the person registering or notifying such an activity;

7. 'occupational activity' means any activity carried out in the course of an economic activity, a business or an undertaking, irrespectively of its private or public, profit or non-profit character;

8. 'emission' means the release in the environment, as a result of human activities, of substances, preparations, organisms or micro-organisms;

9. 'imminent threat of damage' means a sufficient likelihood that environmental damage will occur in the near future;

10. 'preventive measures' means any measures taken in response to an event, act or omission that has created an imminent threat of environmental damage, with a view to preventing or minimising that damage;

11. 'remedial measures' means any action, or combination of actions, including mitigating or interim measures to restore, rehabilitate or replace damaged natural resources and/or impaired services, or to provide an equivalent alternative to those resources or services as foreseen in Annex II;

12. 'natural resource' means protected species and natural habitats, water and land;

13. 'services' and 'natural resources services' mean the functions performed by a natural resource for the benefit of another natural resource or the public;

14. 'baseline condition' means the condition at the time of the damage of the natural resources and services that would have existed had the environmental damage not occurred, estimated on the basis of the best information available;

15. 'recovery', including 'natural recovery', means, in the case of water, protected species and natural habitats the return of damaged natural resources and/or impaired services to baseline condition and in the case of land damage, the elimination of any significant risk of adversely affecting human health;

16. 'costs' means costs which are justified by the need to ensure the proper and effective implementation of this Directive including the costs of assessing environmental damage, an imminent threat of such damage, alternatives for action as well as the administrative, legal, and enforcement costs, the costs of data collection and other general costs, monitoring and supervision costs.

Article III

Scope

1. This Directive shall apply to:

   (a) environmental damage caused by any of the occupational activities listed in Annex III, and to any imminent threat of such damage occurring by reason of any of those activities;
   (b) damage to protected species and natural habitats caused by any occupational activities other than those listed in Annex III, and to any imminent threat of such damage occurring by reason of any of those activities, whenever the operator has been at fault or negligent.

2. This Directive shall apply without prejudice to more stringent Community legislation regulating the operation of any of the activities falling within the scope of this Directive and without prejudice to Community legislation containing rules on conflicts of jurisdiction.

3. Without prejudice to relevant national legislation, this Directive shall not give private parties a right of compensation as a consequence of environmental damage or of an imminent threat of such damage.

Article IV

Exceptions

1. This Directive shall not cover environmental damage or an imminent threat of such damage caused by:

   (a) an act of armed conflict, hostilities, civil war or insurrection;
   (b) a natural phenomenon of exceptional, inevitable and irresistible character.

2. This Directive shall not apply to environmental damage or to any imminent threat of such damage arising from an incident in respect of which liability or compensation falls within the scope of any of the International Conventions listed in Annex IV, including any future amendments thereof, which is in force in the Member State concerned.

3. This Directive shall be without prejudice to the right of the operator to limit his liability in accordance with national legislation implementing the Convention on Limitation of Liability

for Maritime Claims (LLMC), 1976, including any future amendment to the Convention, or the Strasbourg Convention on Limitation of Liability in Inland Navigation (CLNI), 1988, including any future amendment to the Convention.

4. This Directive shall not apply to such nuclear risks or environmental damage or imminent threat of such damage as may be caused by the activities covered by the Treaty establishing the European Atomic Energy Community or caused by an incident or activity in respect of which liability or compensation falls within the scope of any of the international instruments listed in Annex V, including any future amendments thereof.

5. This Directive shall only apply to environmental damage or to an imminent threat of such damage caused by pollution of a diffuse character, where it is possible to establish a causal link between the damage and the activities of individual operators.

6. This Directive shall not apply to activities the main purpose of which is to serve national defence or international security nor to activities the sole purpose of which is to protect from natural disasters.

Article V

Preventive action

1. Where environmental damage has not yet occurred but there is an imminent threat of such damage occurring, the operator shall, without delay, take the necessary preventive measures.

2. Member States shall provide that, where appropriate, and in any case whenever an imminent threat of environmental damage is not dispelled despite the preventive measures taken by the operator, operators are to inform the competent authority of all relevant aspects of the situation, as soon as possible.

3. The competent authority may, at any time:

   (a) require the operator to provide information on any imminent threat of environmental damage or in suspected cases of such an imminent threat;
   (b) require the operator to take the necessary preventive measures;
   (c) give instructions to the operator to be followed on the necessary preventive measures to be taken; or
   (d) itself take the necessary preventive measures.

4. The competent authority shall require that the preventive measures are taken by the operator. If the operator fails to comply with the obligations laid down in paragraph 1 or 3(b) or (c), cannot be identified or is not required to bear the costs under this Directive, the competent authority may take these measures itself.

Article VI

Remedial action

1. Where environmental damage has occurred the operator shall, without delay, inform the competent authority of all relevant aspects of the situation and take:

   (a) all practicable steps to immediately control, contain, remove or otherwise manage the relevant contaminants and/or any other damage factors in order to limit or to prevent further environmental damage and adverse effects on human health or further impairment of services and
   (b) the necessary remedial measures, in accordance with Article VII.

2. The competent authority may, at any time:

   (a) require the operator to provide supplementary information on any damage that has occurred;
   (b) take, require the operator to take or give instructions to the operator concerning, all practicable steps to immediately control, contain, remove or otherwise manage the relevant contaminants and/or any other damage factors in order to limit or to prevent further environmental damage and adverse effect on human health, or further impairment of services;
   (c) require the operator to take the necessary remedial measures;
   (d) give instructions to the operator to be followed on the necessary remedial measures to be taken; or
   (e) itself take the necessary remedial measures.

3. The competent authority shall require that the remedial measures are taken by the operator. If the operator fails to comply with the obligations laid down in paragraph 1 or 2(b), (c) or (d), cannot be identified or is not required to bear the costs under this Directive, the competent authority may take these measures itself, as a means of last resort.

Article VII

Determination of remedial measures

1. Operators shall identify, in accordance with Annex II, potential remedial measures and submit them to the competent authority for its approval, unless the competent authority has taken action under Article VI(2)(e) and (3).

2. The competent authority shall decide which remedial measures shall be implemented in accordance with Annex II, and with the cooperation of the relevant operator, as required.

3. Where several instances of environmental damage have occurred in such a manner that the competent authority cannot ensure that the necessary remedial measures are taken at the same time, the competent authority shall be entitled to decide which instance of environmental damage must be remedied first.

   In making that decision, the competent authority shall have regard, inter alia, to the nature, extent and gravity of the various instances of environmental damage concerned, and to the possibility of natural recovery. Risks to human health shall also be taken into account.

4. The competent authority shall invite the persons referred to in Article XII(1) and in any case the persons on whose land remedial measures would be carried out to submit their observations and shall take them into account.

Article VIII

Prevention and remediation costs

1. The operator shall bear the costs for the preventive and remedial actions taken pursuant to this Directive.

2. Subject to paragraphs 3 and 4, the competent authority shall recover, inter alia, via security over property or other appropriate guarantees from the operator who has caused the damage or the imminent threat of damage, the costs it has incurred in relation to the preventive or remedial actions taken under this Directive.

   However, the competent authority may decide not to recover the full costs where the expenditure required to do so would be greater than the recoverable sum or where the operator cannot be identified.

3. An operator shall not be required to bear the cost of preventive or remedial actions taken pursuant to this Directive when he can prove that the environmental damage or imminent threat of such damage:

   (a) was caused by a third party and occured despite the fact that appropriate safety measures were in place; or
   (b) resulted from compliance with a compulsory order or instruction emanating from a public authority other than an order or instruction consequent upon an emission or incident caused by the operator's own activities.

   In such cases Member States shall take the appropriate measures to enable the operator to recover the costs incurred.

4. The Member States may allow the operator not to bear the cost of remedial actions taken pursuant to this Directive where he demonstrates that he was not at fault or negligent and that the environmental damage was caused by:

   (a) an emission or event expressly authorised by, and fully in accordance with the conditions of, an authorisation conferred by or given under applicable national laws and regulations which implement those legislative measures adopted by the Community specified in Annex III, as applied at the date of the emission or event;
   (b) an emission or activity or any manner of using a product in the course of an activity which the operator demonstrates was not considered likely to cause environmental damage according to the state of scientific and technical knowledge at the time when the emission was released or the activity took place.

5. Measures taken by the competent authority in pursuance of Article V(3) and (4) and Article VI(2) and (3) shall be without prejudice to the liability of the relevant operator under this Directive and without prejudice to Articles 87 and 88 of the Treaty.

Article IX

Cost allocation in cases of multiple party causation

This Directive is without prejudice to any provisions of national regulations concerning cost allocation in cases of multiple party causation especially concerning the apportionment of liability between the producer and the user of a product.

Article X

Limitation period for recovery of costs

The competent authority shall be entitled to initiate cost recovery proceedings against the operator, or if appropriate, a third party who has caused the damage or the imminent threat of damage in relation to any measures taken in pursuance of this Directive within five years from the date on which those measures have been completed or the liable operator, or third party, has been identified, whichever is the later.

Article XI

Competent authority

1. Member States shall designate the competent authority(ies) responsible for fulfilling the duties provided for in this Directive.

2. The duty to establish which operator has caused the damage or the imminent threat of damage, to assess the significance of the damage and to determine which remedial measures should be taken with reference to Annex II shall rest with the competent authority. To that effect, the competent authority shall be entitled to require the relevant operator to carry out his own assessment and to supply any information and data necessary.

3. Member States shall ensure that the competent authority may empower or require third parties to carry out the necessary preventive or remedial measures.

4. Any decision taken pursuant to this Directive which imposes preventive or remedial measures shall state the exact grounds on which it is based. Such decision shall be notified forthwith to the operator concerned, who shall at the same time be informed of the legal remedies available to him under the laws in force in the Member State concerned and of the time-limits to which such remedies are subject.

Article XII

Request for action

1. Natural or legal persons:

   (a) affected or likely to be affected by environmental damage or
   (b) having a sufficient interest in environmental decision making relating to the damage or, alternatively,
   (c) alleging the impairment of a right, where administrative procedural law of a Member State requires this as a precondition,shall be entitled to submit to the competent authority any observations relating to instances of environmental damage or an imminent threat of such damage of which they are aware and shall be entitled to request the competent authority to take action under this Directive.

   What constitutes a 'sufficient interest' and 'impairment of a right' shall be determined by the Member States.
   To this end, the interest of any non-governmental organisation promoting environmental protection and meeting any requirements under national law shall be deemed sufficient for the purpose of subparagraph (b). Such organisations shall also be deemed to have rights capable of being impaired for the purpose of subparagraph (c).

2. The request for action shall be accompanied by the relevant information and data supporting the observations submitted in relation to the environmental damage in question.

3. Where the request for action and the accompanying observations show in a plausible manner that environmental damage exists, the competent authority shall consider any such observations and requests for action. In such circumstances the competent authority shall give the relevant operator an opportunity to make his views known with respect to the request for action and the accompanying observations.

4. The competent authority shall, as soon as possible and in any case in accordance with the relevant provisions of national law, inform the

persons referred to in paragraph 1, which submitted observations to the authority, of its decision to accede to or refuse the request for action and shall provide the reasons for it.

5. Member States may decide not to apply paragraphs 1 and 4 to cases of imminent threat of damage.

Article XIII

Review procedures

1. The persons referred to in Article XII(1) shall have access to a court or other independent and impartial public body competent to review the procedural and substantive legality of the decisions, acts or failure to act of the competent authority under this Directive.

2. This Directive shall be without prejudice to any provisions of national law which regulate access to justice and those which require that administrative review procedures be exhausted prior to recourse to judicial proceedings.

Article XIV

Financial security

1. Member States shall take measures to encourage the development of financial security instruments and markets by the appropriate economic and financial operators, including financial mechanisms in case of insolvency, with the aim of enabling operators to use financial guarantees to cover their responsibilities under this Directive.

2. The Commission, before 30 April 2010 shall present a report on the effectiveness of the Directive in terms of actual remediation of environmental damages, on the availability at reasonable costs and on conditions of insurance and other types of financial security for the activities covered by Annex III. The report shall also consider in relation to financial security the following aspects: a gradual approach, a ceiling for the financial guarantee and the exclusion of low-risk activities. In the light of that report, and of an extended impact assessment, including a cost-benefit analysis, the Commission shall, if appropriate, submit proposals for a system of harmonised mandatory financial security.

Article XV

Cooperation between Member States

1. Where environmental damage affects or is likely to affect several Member States, those Member States shall cooperate, including through the appropriate exchange of information, with a view to ensuring that preventive action and, where necessary, remedial action is taken in respect of any such environmental damage.

2. Where environmental damage has occurred, the Member State in whose territory the damage originates shall provide sufficient information to the potentially affected Member States.

3. Where a Member State identifies damage within its borders which has not been caused within them it may report the issue to the Commission and any other Member State concerned; it may make recommendations for the adoption of preventive or remedial measures and it may seek, in accordance with this Directive, to recover the costs it has incurred in relation to the adoption of preventive or remedial measures.

Article XVI

Relationship with national law

1. This Directive shall not prevent Member States from maintaining or adopting more stringent provisions in relation to the prevention and remedying of environmental damage, including the identification of additional activities to be subject to the prevention and remediation requirements of this Directive and the identification of additional responsible parties.

2. This Directive shall not prevent Member States from adopting appropriate measures, such as the prohibition of double recovery of costs, in relation to situations where double recovery could occur as a result of concurrent action by a competent authority under this Directive and by a person whose property is affected by environmental damage.

Article XVII

Temporal application

This Directive shall not apply to:

– damage caused by an emission, event or incident that took place before the date referred to in Article XIX(1),
– damage caused by an emission, event or incident which takes place subsequent to the date referred to in Article XIX(1) when it derives from a specific activity that took place and finished before the said date,
– damage, if more than 30 years have passed since the emission, event or incident, resulting in the damage, occurred.

Article XVIII

Reports and review

1. Member States shall report to the Commission on the experience gained in the application of this Directive by 30 April 2013 at the latest. The reports shall include the information and data set out in Annex VI.

2. On that basis, the Commission shall submit a report to the European Parliament and to the Council before 30 April 2014, which shall include any appropriate proposals for amendment.

3. The report, referred to in paragraph 2, shall include a review of:

   (a) the application of:

   – Article IV(2) and (4) in relation to the exclusion of pollution covered by the international instruments listed in Annexes IV and V from the scope of this Directive, and
   – Article IV(3) in relation to the right of an operator to limit his liability in accordance with the international conventions referred to in Article IV(3).

   The Commission shall take into accountexperience gained within the relevant international fora, such as the IMO and Euratom and the relevant international agreements, as well as the extent to which these instruments have entered into force and/or have been implemented by Member States and/or have been modified, taking account of all relevant instances of environmental damage resulting from such activities and the remedial action taken and the differences between the liability levels in Member States, and considering the relationship between shipowners' liability and oil receivers' contributions, having due regard to any relevant study undertaken by the International Oil Pollution Compensation Funds.

   (b) the application of this Directive to environmental damage caused by genetically modified organisms (GMOs), particularly in the light of experience gained within relevant international fora and Conventions, such as the Convention on Biological Diversity and the Cartagena Protocol on Biosafety, as well as the results of any incidents of environmental damage caused by GMOs;
   (c) the application of this Directive in relation to protected species and natural habitats;
   (d) the instruments that may be eligible for incorporation into Annexes III, IV and V.

Article XIX

Implementation

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 30 April 2007. They shall forthwith inform the Commission thereof.

   When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive together with a table showing how the provisions of this Directive correspond to the national provisions adopted.

Article XX

Entry into force

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Union*.

Article XXI

Addressees

This Directive is addressed to the Member States.
Done at Strasbourg, 21 April 2004.
For the European Parliament
The President
P. COX
For the Council
The President
D. ROCHE

1.2.1 Annex I – Criteria referred to in Article II(1)(a)

The significance of any damage that has adverse effects on reaching or maintaining the favourable conservation status of habitats or species has to be assessed by reference to the conservation status at the time of the damage, the services provided by the amenities they produce and their capacity for natural regeneration. Significant adverse changes to the baseline condition should be determined by means of measurable data such as:

- the number of individuals, their density or the area covered,
- the role of the particular individuals or of the damaged area in relation to the species or to the habitat conservation, the rarity of the species or habitat (assessed at local, regional and higher level including at Community level),
- the species' capacity for propagation (according to the dynamics specific to that species or to that population), its viability or the habitat's capacity for natural regeneration (according to the dynamics specific to its characteristic species or to their populations),
- the species' or habitat's capacity, after damage has occurred, to recover within a short time, without any intervention other than increased protection measures, to a condition which leads, solely by virtue of the dynamics of the species or habitat, to a condition deemed equivalent or superior to the baseline condition.

Damage with a proven effect on human health must be classified as significant damage.

The following does not have to be classified as significant damage:

- negative variations that are smaller than natural fluctuations regarded as normal for the species or habitat in question,
- negative variations due to natural causes or resulting from intervention relating to the normal management of sites, as defined in habitat records or target documents or as carried on previously by owners or operators,
- damage to species or habitats for which it is established that they will recover, within a short time and without intervention, either to the baseline condition or to a condition which leads, solely by virtue of the dynamics of the species or habitat, to a condition deemed equivalent or superior to the baseline condition.

1.2.2 Annex II – Remedying of Environmental Damage

This Annex sets out a common framework to be followed in order to choose the most appropriate measures to ensure the remedying of environmental damage.

1. Remediation of damage to water or protected species or natural habitats

Remedying of environmental damage, in relation to water or protected species or natural habitats, is achieved through the restoration of the environment to its baseline condition by way of primary, complementary and compensatory remediation, where:

(a) 'Primary' remediation is any remedial measure which returns the damaged natural resources and/or impaired services to, or towards, baseline condition;

(b) 'Complementary' remediation is any remedial measure taken in relation to natural resources and/or services to compensate for the fact that primary remediation does not result in fully restoring the damaged natural resources and/or services;

(c) 'Compensatory' remediation is any action taken to compensate for interim losses of natural resources and/or services that occur from the date of damage occurring until primary remediation has achieved its full effect;

(d) 'interim losses' means losses which result from the fact that the damaged natural resources and/or services are not able to perform their ecological functions or provide

services to other natural resources or to the public until the primary or complementary measures have taken effect. It does not consist of financial compensation to members of the public.

Where primary remediation does not result in the restoration of the environment to its baseline condition, then complementary remediation will be undertaken. In addition, compensatory remediation will be undertaken to compensate for the interim losses.

Remedying of environmental damage, in terms of damage to water or protected species or natural habitats, also implies that any significant risk of human health being adversely affected be removed.

1.1 Remediation objectives

Purpose of primary remediation

1.1.1 The purpose of primary remediation is to restore the damaged natural resources and/or services to, or towards, baseline condition.

Purpose of complementary remediation

1.1.2 Where the damaged natural resources and/or services do not return to their baseline condition, then complementary remediation will be undertaken. The purpose of complementary remediation is to provide a similar level of natural resources and/or services, including, as appropriate, at an alternative site, as would have been provided if the damaged site had been returned to its baseline condition. Where possible and appropriate the alternative site should be geographically linked to the damaged site, taking into account the interests of the affected population.

Purpose of compensatory remediation

1.1.3 Compensatory remediation shall be undertaken to compensate for the interim loss of natural resources and services pending recovery. This compensation consists of additional improvements to protected natural habitats and species or water at either the damaged site or at an alternative site. It does not consist of financial compensation to members of the public.

1.2 Identification of remedial measures

Identification of primary remedial measures

1.2.1 Options comprised of actions to directly restore the natural resources and services towards baseline condition on an accelerated time frame, or through natural recovery, shall be considered.

Identification of complementary and compensatory remedial measures

1.2.2 When determining the scale of complementary and compensatory remedial measures, the use of resource-to-resource or service-to-service equivalence approaches shall be considered first. Under these approaches, actions that provide natural resources and/or services of the same type, quality and quantity as those damaged shall be considered first. Where this is not possible, then alternative natural resources and/or services shall be provided. For example, a reduction in quality could be offset by an increase in the quantity of remedial measures.

1.2.3 If it is not possible to use the first choice resource-to-resource or service-to-service equivalence approaches, then alternative valuation techniques shall be used. The competent authority may prescribe the method, for example monetary valuation, to determine the extent of the necessary complementary and compensatory remedial measures. If valuation of the lost resources and/or services is practicable, but valuation of the replacement natural resources and/or services cannot be performed within a reasonable timeframe or at a reasonable cost, then the competent authority may choose remedial measures whose cost is equivalent to the estimated monetary value of the lost natural resources and/or services.

The complementary and compensatory remedial measures should be so designed that they provide for additional natural resources and/or services to reflect time preferences and the time profile of the remedial measures. For example, the longer the period of time before the baseline condition is reached, the greater the amount of compensatory remedial measures that will be undertaken (other things being equal).

1.3 Choice of the remedial options

1.3.1 The reasonable remedial options should be evaluated, using best available technologies, based on the following criteria:

– The effect of each option on public health and safety,
– The cost of implementing the option,
– The likelihood of success of each option,
– The extent to which each option will prevent future damage, and avoid collateral damage as a result of implementing the option,
– The extent to which each option benefits to each component of the natural resource and/or service,
– The extent to which each option takes account of relevant social, economic and cultural concerns and other relevant factors specific to the locality,
– The length of time it will take for the restoration of the environmental damage to be effective,
– The extent to which each option achieves the restoration of site of the environmental damage,
– The geographical linkage to the damaged site.

1.3.2 When evaluating the different identified remedial options, primary remedial measures that do not fully restore the damaged water or protected species or natural habitat to baseline or that restore it more slowly can be chosen. This decision can be taken only if the natural resources and/or services foregone at the primary site as a result of the decision are compensated for by increasing complementary or compensatory actions to provide a similar level of natural resources and/or services as were foregone. This will be the case, for example, when the equivalent natural resources and/or services could be provided elsewhere at a lower cost. These additional remedial measures shall be determined in accordance with the rules set out in Section 1.2.2.

1.3.3 Notwithstanding the rules set out in Section 1.3.2 and in accordance with Article VII(3), the competent authority is entitled to decide that no further remedial measures should be taken if:

(a) the remedial measures already taken secure that there is no longer any significant risk of adversely affecting human health, water or protected species and natural habitats, and
(b) the cost of the remedial measures that should be taken to reach baseline condition or similar level would be disproportionate to the environmental benefits to be obtained.

2. Remediation of land damage

The necessary measures shall be taken to ensure, as a minimum, that the relevant contaminants are removed, controlled, contained or diminished so that the contaminated land, taking account of its current use or approved future use at the time of the damage, no longer poses any significant risk of adversely affecting human health. The presence of such risks shall be assessed through risk-assessment procedures taking into account the characteristic and function of the soil, the type and concentration of the harmful substances, preparations, organisms or micro-organisms, their risk and the possibility of their dispersion. Use shall be ascertained on the basis of the land use regulations, or other relevant regulations, in force, if any, when the damage occurred.
If the use of the land is changed, all necessary measures shall be taken to prevent any adverse effects on human health.
If land use regulations, or other relevant regulations, are lacking, the nature of the relevant area where the damage occurred, taking into account its expected development, shall determine the use of the specific area.
A natural recovery option, that is to say an option in which no direct human intervention in the recovery process would be taken, shall be considered.

1.2.3 Annex III – Activities referred to in Article III(1)

1. The operation of installations subject to permit in pursuance of Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control.[8] That means all activities listed in Annex I of Directive 96/61/EC with the exception of installations or parts of installations used for research, development and testing of new products and processes.
2. Waste management operations, including the collection, transport, recovery and disposal of waste and hazardous waste, including the supervision of such operations and after-care of disposal sites, subject to permit or registration in pursuance of Council Directive 75/442/EEC of 15 July 1975

[8] OJ L 257, 10.10.1996, p. 26. Directive as last amended by Regulation (EC) No 1882/2003.

on waste[9] and Council Directive 91/689/EEC of 12 December 1991 on hazardous waste.[10]
Those operations include, inter alia, the operation of landfill sites under Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste[11] and the operation of incineration plants under Directive 2000/76/EC of the European Parliament and of the Council of 4 December 2000 on the incineration of waste.[12]

For the purpose of this Directive, Member States may decide that those operations shall not include the spreading of sewage sludge from urban waste water treatment plants, treated to an approved standard, for agricultural purposes.

3. All discharges into the inland surface water, which require prior authorisation in pursuance of Council Directive 76/464/EEC of 4 May 1976 on pollution caused by certain dangerous substances, discharged into the aquatic environment of the Community.[13]
4. All discharges of substances into groundwater which require prior authorisation in pursuance of Council Directive 80/68/EEC of 17 December 1979 on the protection of groundwater against pollution caused by certain dangerous substances.[14]
5. The discharge or injection of pollutants into surface water or groundwater which require a permit, authorisation or registration in pursuance of Directive 2000/60/EC.
6. Water abstraction and impoundment of water subject to prior authorisation in pursuance of Directive 2000/60/EC.
7. Manufacture, use, storage, processing, filling, release into the environment and onsite transport of
   (a) dangerous substances as defined in Article 2(2) of Council Directive 67/548/EEC of 27 June 1967 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the classification, packaging and labelling of dangerous substances[15];
   (b) dangerous preparations as defined in Article 2(2) of Directive 1999/45/EC of the European Parliament and of the Council of 31 May 1999 concerning the approximation of the laws, regulations and administrative provisions of the Member States relating to the classification, packaging and labelling of dangerous preparations[16];
   (c) plant protection products as defined in Article2(1) of Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market[17];
   (d) biocidal products as defined in Article 2(1)(a) of Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market.[18]
8. Transport by road, rail, inland waterways, sea or air of dangerous goods or polluting goods as defined either in Annex A to Council Directive 94/55/EC of 21 November 1994 on the approximation of the laws of the Member States with regard to the transport of dangerous goods by road[19] or in the Annex to Council Directive 96/49/EC of 23 July 1996 on the approximation of the laws of the Member States with regard to the transport of dangerous goods by rail[20] or as defined in Council Directive 93/75/EEC of 13 September 1993 concerning minimum requirements for vessels bound for or leaving Community ports and carrying dangerous or polluting goods.[21]
9. The operation of installations subject to authorisation in pursuance of Council Directive 84/360/EEC of 28 June 1984 on the combating of air

[9] OJ L 194, 25.7.1975, p. 39. Directive as last amended by Regulation (EC) No 1882/2003.
[10] OJ L 377, 31.12.1991, p. 20. Directive as amended by Directive 94/31/EC (OJ L 168, 2.7.1994, p. 28).
[11] OJ L 182, 16.7.1999, p. 1 Directive as amended by Regulation (EC) No 1882/2003.
[12] OJ L 332, 28.12.2000, p. 91.
[13] OJ L 129, 18.5.1976, p. 23. Directive as last amended by Directive 2000/60/EC.
[14] OJ L 20, 26.1.1980, p. 43. Directive as amended by Directive 91/692/EEC (OJ L 377, 31.12.1991, p. 48).
[15] OJ 196, 16.8.1967, p. 1. Directive as last amended by Regulation (EC) No 807/2003.
[16] OJ L 200, 30.7.1999, p. 1. Directive as last amended by Regulation (EC) No 1882/2003.
[17] OJ L 230, 19.8.1991, p. 1. Directive as last amended by Regulation (EC) No 806/2003 (OJ L 122, 16.5.2003, p. 1).
[18] OJ L 123, 24.4.1998, p. 1. Directive as amended by Regulation (EC) No 1882/2003.
[19] OJ L 319, 12.12.1994, p. 7. Directive as last amended by Commission Directive 2003/28/EC (OJL 90, 8.4.2003, p. 45).
[20] OJ L 235, 17.9.1996, p. 25. Directive as last amended by Commission Directive 2003/29/EC (OJL 90, 8.4.2003, p. 47).
[21] OJ L 247, 5.10.1993, p. 19. Directive as last amended by Directive 2002/84/EC of the European Parliament and of the Council (OJ L 324, 29.11.2002, p. 53).

pollution from industrial plants[22] in relation to the release into air of any of the polluting substances covered by the aforementioned Directive.

10. Any contained use, including transport, involving genetically modified micro-organisms as defined by Council Directive 90/219/EEC of 23 April 1990 on the contained use of genetically modified micro-organisms.[23]
11. Any deliberate release into the environment, transport and placing on the market of genetically modified organisms as defined by Directive 2001/18/EC of the European Parliament and of the Council.[24]
12. Transboundary shipment of waste within, into or out of the European Union, requiring an authorisation or prohibited in the meaning of Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community.[25]

1.2.4 Annex IV – International Conventions Referred to in Article IV(2)

(a) the International Convention of 27 November 1992 on Civil Liability for Oil Pollution Damage;
(b) the International Convention of 27 November 1992 on the Establishment of an International Fund for Compensation for Oil Pollution Damage;
(c) the International Convention of 23 March 2001 on Civil Liability for Bunker Oil Pollution Damage;
(d) the International Convention of 3 May 1996 on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea;
(e) the Convention of 10 October 1989 on Civil Liability for Damage Caused during Carriage of Dangerous Goods by Road, Rail and Inland Navigation Vessels.

1.2.5 Annex V – International Instruments Referred to in Article IV(4)

(a) the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy and the Brussels Supplementary Convention of 31 January 1963;
(b) the Vienna Convention of 21 May 1963 on Civil Liability for Nuclear Damage;
(c) the Convention of 12 September 1997 on Supplementary Compensation for Nuclear Damage;
(d) the Joint Protocol of 21 September 1988 relating to the Application of the Vienna Convention and the Paris Convention;
(e) the Brussels Convention of 17 December 1971 relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material.

1.2.6 Annex VI – Information and Data Referred to in Article XVIII(1)

The reports referred to in Article XVIII(1) shall include a list of instances of environmental damage and instances of liability under this Directive, with the following information and data for each instance:

1. Type of environmental damage, date of occurrence and/or discovery of the damage and date on which proceedings were initiated under this Directive.
2. Activity classification code of the liable legal person(s).[26]
3. Whether there has been resort to judicial review proceedings either by liable parties or qualified entities. (The type of claimants and the outcome of proceedings shall be specified.)

[22] OJ L 188, 16.7.1984, p. 20. Directive as amended by Directive 91/692/EEC (OJ L 377, 31.12.1991, p. 48).
[23] OJ L 117, 8.5.1990, p. 1. Directive as last amended by Regulation (EC) No 1882/2003.
[24] OJ L 106, 17.4.2001, p. 1. Directive as last amended by Regulation (EC) No 1830/2003 (OJ L 268, 18.10.2003, p. 24).
[25] OJ L 30, 6.2.1993, p. 1. Regulation as last amended by Commission Regulation (EC) No 2557/2001 (OJ L 349, 31.12.2001, p. 1).
[26] The NACE code can be used (Council Regulation (EEC) No 3037/90 of 9 October 1990 on the statistical classification of economic activities in the European Community (OJ L 293, 24.10.1990, p. 1).

4. Outcome of the remediation process.
5. Date of closure of proceedings.

Member States may include in their reports any other information and data they deem useful to allow a proper assessment of the functioning of this Directive, for example:

1. Costs incurred with remediation and prevention measures, as defined in this Directive:
   - paid for directly by liable parties, when this information is available;
   - recovered ex post facto from liable parties;
   - unrecovered from liable parties. (Reasons for non-recovery should be specified.)
2. Results of the actions to promote and the implementation of the financial security instruments used in accordance with this Directive.
3. An assessment of the additional administrative costs incurred annually by the public administration in setting up and operating the administrative structures needed to implement and enforce this Directive.

1.2.7 Commission Declaration on Article XIV(2) – Environmental Liability Directive

The Commission takes note of Article XIV(2). In accordance with this article, the Commission will present a report, six years after the entry into force of the Directive, covering, *inter alia*, the availability at reasonable costs and conditions of insurance and other types of financial security. The report will in particular take into account the development by the market forces of appropriate financial security products in relation to the aspects referred to. It will also consider a gradual approach according to the type of damage and the nature of the risks. In the light of the report, the Commission will, if appropriate, submit as soon as possible proposals. The Commission will carry out an impact assessment, extended to the economic, social and environmental aspects, in accordance with the relevant existing rules and in particular the inter-institutional agreement on Better Law-Making and its Communication on Impact Assessment [COM(2002) 276 final].

Part II
General

2
Lugano Convention

2.1 General Information

Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment

Most common abbreviation(s)	**Lugano Convention**
Organisation	Council of Europe
Reference	32 I.L.M. (1993) 1228 http://conventions.coe.int/Treaty/EN/Treaties/html/150.htm http://www1.umn.edu/humanrts/euro/ets150.html European treaty series, ISSN 0070-105X; 150
Status	
Adoption	21 June 1993
Entry into force	Not yet in force (3 ratifications are required)
Signatories	Cyprus, Finland, Greece, Iceland, Italy, Liechtenstein, Luxembourg, the Netherlands, Portugal
Ratifications	/
Literature	Council of Europe, Explanatory Report on the Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment, Strasbourg, 992, 10 p. Larsson, M-L, The Law of environmental damage: liability and reparation, Kluwer Law International, The Hague, 1999, pp. 219–229. Robinson, J, 'Council of Europe Convention and the E.C.', Rev. Eur. Comm. Internat. Envir. L., 1992, pp. 416–421. Ouwekerk, J, 'Environmental Liability from the Perspective of an Operator: Council of Europe Draft Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment', in R Kröner (ed), Transnational Environmental Liability and Insurance, Graham & Trotman, London, 1992, pp. 85–128.

2.2 Convention of 21 June 1993 on Civil Liability for Damage Resulting from Activities Dangerous to the Environment

The member States of the Council of Europe, the other States and the European Economic Community signatory hereto,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members;

Noting that one of the objectives of the Council of Europe is to contribute to the quality of life of human beings, in particular by promoting a natural, healthy and agreeable environment;

Considering the wish of the Council of Europe to co-operate with other States in the field of nature conservation and protection of the environment;

Realising that man, the environment and property are exposed to specific dangers caused by certain activities;

Considering that emissions released in one country may cause damage in another country and that, therefore, the problems of adequate compensation for such damage are also of an international nature;

Having regard to the desirability of providing for strict liability in this field taking into account the 'Polluter Pays' Principle;

Mindful of the work which has already been carried out at an international level, in particular to prevent damage and to deal with damage caused by nuclear substances and the carriage of dangerous goods;

Having noted Principle 13 of the 1992 Rio Declaration on Environment and Development, according to which 'States shall develop national law regarding liability and compensation for the victims of pollution and other environmental damage; they shall also co-operate in an expeditious and more determined manner to develop further international law regarding liability and compensation for adverse effects of environmental damage caused by activities within their jurisdiction or control to areas beyond their jurisdiction';

Recognising the need to adopt further measures to deal with grave and imminent threats of damage from dangerous activities and to facilitate the burden of proof for persons requesting compensation for such damage,

Have agreed as follows:

CHAPTER 1

GENERAL PROVISIONS

Article I

Object and purpose

This Convention aims at ensuring adequate compensation for damage resulting from activities dangerous to the environment and also provides for means of prevention and reinstatement.

Article II

Definitions

For the purpose of this Convention:

1. 'Dangerous activity' means one or more of the following activities provided that it is performed professionally, including activities conducted by public authorities:

   (a) the production, handling, storage, use or discharge of one or more dangerous substances or any operation of a similar nature dealing with such substances;
   (b) the production, culturing, handling, storage, use, destruction, disposal, release or any other operation dealing with one or more:

   – genetically modified organisms which as a result of the properties of the organism, the genetic modification and the conditions under which the operation is exercised, pose a significant risk for man, the environment or property;
   – micro-organisms which as a result of their properties and the conditions under which the operation is exercised pose a significant risk for man, the environment or property, such as those micro-organisms which are pathogenic or which produce toxins;

   (c) the operation of an installation or site for the incineration, treatment, handling or recycling of waste, such as those installations or sites specified in Annex II, provided that the quantities involved pose a significant risk for man, the environment or property;
   (d) the operation of a site for the permanent deposit of waste.

2. 'Dangerous substance' means:

   (a) substances or preparations which have properties which constitute a significant risk for man, the environment or property. A substance or preparation which is explosive, oxidizing, extremely flammable, highly flammable, flammable, very toxic, toxic, harmful, corrosive, irritant, sensitizing, carcinogenic, mutagenic, toxic for reproduction or dangerous for the environment within the meaning of Annex I, Part A to this Convention shall in any event be deemed to constitute such a risk;
   (b) substances specified in Annex I, Part B to this Convention. Without prejudice to the application of sub-paragraph (a) above, Annex I, Part B may restrict the specification of dangerous substances to certain quantities or concentrations, certain risks or certain situations.

3. 'Genetically modified organism' means any organism in which the genetic material has been altered in a way which does not occur naturally by mating and/or natural recombination.

   However, the following genetically modified organisms are not covered by the Convention:

   – organisms obtained by mutagenesis on condition that the genetic modification does not involve the use of genetically modified organisms as recipient organisms; and
   – plants obtained by cell fusion (including protoplast fusion) if the resulting plant can also be produced by traditional breeding methods and on condition that the genetic modification does not involve the use of genetically modified organisms as parental organisms.

   'Organism' refers to any biological entity capable of replication or of transferring genetic material.

4. 'Micro-organism' means any microbiological entity, cellular or non-cellular, capable of replication or of transferring genetic material.
5. 'Operator' means the person who exercises the control of a dangerous activity.
6. 'Person' means any individual or partnership or any body governed by public or private law, whether corporate or not, including a State or any of its constituent subdivisions.
7. 'Damage' means:

   (a) loss of life or personal injury;
   (b) loss of or damage to property other than to the installation itself or property held under the control of the operator, at the site of the dangerous activity;
   (c) loss or damage by impairment of the environment in so far as this is not considered to be damage within the meaning of sub-paragraphs (a) or (b) above provided that compensation for impairment of the environment, other than for loss of profit from such impairment, shall be limited to the costs of measures of reinstatement actually undertaken or to be undertaken;
   (d) the costs of preventive measures and any loss or damage caused by preventive measures, to the extent that the loss or damage referred to in sub-paragraphs (a)–(c) of this paragraph arises out of or results from the hazardous properties of the dangerous substances, genetically modified organisms or micro-organisms or arises or results from waste.

8. 'Measures of reinstatement' means any reasonable measures aiming to reinstate or restore damaged or destroyed components of the environment, or to introduce, where reasonable, the equivalent of these components into the environment. Internal law may indicate who will be entitled to take such measures.
9. 'Preventive measures' means any reasonable measures taken by any person, after an incident has occurred to prevent or minimise loss or damage as referred to in paragraph 7, sub-paragraphs (a)–(c) of this article.
10. 'Environment' includes:

    – natural resources both abiotic and biotic, such as air, water, soil, fauna and flora and the interaction between the same factors;
    – property which forms part of the cultural heritage; and
    – the characteristic aspects of the landscape.

11. 'Incident' means any sudden occurrence or continuous occurrence or any series of occurrences having the same origin, which causes damage or creates a grave and imminent threat of causing damage.

Article III

Geographical scope

Without prejudice to the provisions of Chapter 3, this Convention shall apply:

(a) when the incident occurs in the territory of a Party, as determined in accordance with Article XXXIV, regardless of where the damage is suffered;
(b) when the incident occurs outside the territory referred to in sub-paragraph (a) above and the conflict of laws rules lead to the application of the law in force for the territory referred to in sub-paragraph (a) above.

Article IV

Exceptions

1. This Convention shall not apply to damage arising from carriage; carriage includes the period from the beginning of the process of loading until the end of the process of unloading. However, the Convention shall apply to carriage by pipeline, as well as to carriage performed entirely in an installation or on a site unaccessible to the public where it is accessory to other activities and is an integral part thereof.
2. This Convention shall not apply to damage caused by a nuclear substance:

   (a) arising from a nuclear incident the liability of which is regulated either by the Paris Convention of 29 July 1960 on third party liability in the field of nuclear energy, and its Additional Protocol of 28 January 1964, or the Vienna Convention of 21 May 1963 on civil liability for nuclear damage; or
   (b) if liability for such damage is regulated by a specific internal law, provided that such law is as favourable, with regard to compensation for damage, as any of the instruments referred to under sub-paragraph (a) above.

3. This Convention shall not apply to the extent that it is incompatible with the rules of the applicable law relating to workmen's compensation or social security schemes.

CHAPTER 2

LIABILITY

Article V

Transitional provisions

1. The provisions of this chapter shall apply to incidents occurring after the entry into force of the Convention in respect of a Party. When the incident consists of a continuous occurrence or a series of occurrences having the same origin and part of these occurrences took place before the entry into force of this Convention, this chapter shall only apply to damage caused by occurrences or part of a continuous occurrence taking place after the entry into force.
2. In respect of damage caused by waste deposited at a site for the permanent deposit of waste the provisions of this chapter shall apply to damage which becomes known after the entry into force of the Convention in respect of the Party on the territory of which the site is situated. However this chapter shall not apply if:

   (a) the site was closed in accordance with the provisions of internal law before the entry into force of the Convention;
   (b) the operator proves, in the case where the operation of the site continues after that entry into force of the Convention, that the damage was caused solely by waste deposited there before that entry into force.

Article VI

Liability in respect of substances, organisms and certain waste installations or sites

1. The operator in respect of a dangerous activity mentioned under Article II, paragraph 1, sub-paragraphs (a)–(c) shall be liable for the damage caused by the activity as a result of incidents at the time or during the period when he was exercising the control of that activity.
2. If an incident consists of a continuous occurrence, all operators successively exercising the control of the dangerous activity during that occurrence shall be jointly and severally liable. However, the operator who proves that the occurrence during the period when he was exercising the control of the dangerous activity caused only a part of the damage shall be liable for that part of the damage only.
3. If an incident consists of a series of occurrences having the same origin, the operators at the time of any such occurrence shall be jointly and severally liable. However, the operator who proves that the occurrence at the time when he was exercising the control of the dangerous activity caused only a part of

the damage shall be liable for that part of the damage only.

4. If the damage resulting from a dangerous activity becomes known after all such dangerous activity in the installation or on the site has ceased, the last operator of this activity shall be liable for that damage unless he or the person who suffered damage proves that all or part of the damage resulted from an incident which occurred at a time before he became the operator. If it is so proved, the provisions of paragraphs 1–3 of this article shall apply.
5. Nothing in this Convention shall prejudice any right of recourse of the operator against any third party.

Article VII

Liability in respect of sites for the permanent deposit of waste

1. The operator of a site for the permanent deposit of waste at the time when damage caused by waste deposited at that site becomes known, shall be liable for this damage. Should the damage caused by waste deposited before the closure of such a site become known after that closure, the last operator shall be liable.
2. Liability under this article shall apply to the exclusion of any liability of the operator under Article VI, irrespective of the nature of the waste.
3. Liability under this article shall apply to the exclusion of any liability of the operator under Article VI if the same operator conducts another dangerous activity on the site for the permanent deposit of waste.
   However, if this operator or the person who has suffered damage proves that only a part of the damage was caused by the activity concerning the permanent deposit of waste, this article shall only apply to that part of the damage.
4. Nothing in this Convention shall prejudice any right of recourse of the operator against any third party.

Article VIII

Exemptions

The operator shall not be liable under this Convention for damage which he proves:

(a) was caused by an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character;
(b) was caused by an act done with the intent to cause damage by a third party, despite safety measures appropriate to the type of dangerous activity in question;
(c) resulted necessarily from compliance with a specific order or compulsory measure of a public authority;
(d) was caused by pollution at tolerable levels under local relevant circumstances; or
(e) was caused by a dangerous activity taken lawfully in the interests of the person who suffered the damage, whereby it was reasonable towards this person to expose him to the risks of the dangerous activity.

Article IX

Fault of the person who suffered the damage

If the person who suffered the damage or a person for whom he is responsible under internal law, has, by his own fault, contributed to the damage, the compensation may be reduced or disallowed having regard to all the circumstances.

Article X

Causality

When considering evidence of the causal link between the incident and the damage or, in the context of a dangerous activity as defined in Article II, paragraph 1, sub-paragraph (d), between the activity and the damage, the court shall take due account of the increased danger of causing such damage inherent in the dangerous activity.

Article XI

Plurality of installations or sites

When damage results from incidents which have occurred in several installations or on several sites where dangerous activities are conducted or from dangerous activities under Article II, paragraph 1, sub-paragraph (d), the operators of the installations or sites concerned shall be jointly and severally liable for all such damage. However, the operator who proves that only part of the damage was caused by an incident in the installation or on the site where

he conducts the dangerous activity or by a dangerous activity under Article II, paragraph 1, sub-paragraph (d), shall be liable for that part of the damage only.

Article XII

Compulsory financial security scheme

Each Party shall ensure that where appropriate, taking due account of the risks of the activity, operators conducting a dangerous activity on its territory be required to participate in a financial security scheme or to have and maintain a financial guarantee up to a certain limit, of such type and terms as specified by internal law, to cover the liability under this Convention.

CHAPTER 3

ACCESS TO INFORMATION

Article XIII

Definition of public authorities

For the purpose of this chapter 'public authorities' means any public administration of a Party at national, regional or local level with responsibilities, and possessing information relating to the environment, with the exception of bodies acting in a judicial or legislative capacity.

Article XIV

Access to information held by public authorities

1. Any person shall, at his request and without his having to prove an interest, have access to information relating to the environment held by public authorities.

   The Parties shall define the practical arrangements under which such information is effectively made available.

2. The right of access may be restricted under internal law where it affects:

   – the confidentiality of the proceedings of public authorities, international relations and national defence;
   – public security;
   – matters which are or have been sub judice, or under enquiry (including disciplinary enquiries), or which are the subject of preliminary investigation proceedings;
   – commercial and industrial confidentiality, including intellectual property;
   – the confidentiality of personal data and/or files;
   – material supplied by a third party without that party being under a legal obligation to do so; or
   – material, the disclosure of which would make it more likely that the environment to which that material related would be damaged.

   Information held by public authorities shall be supplied in part where it is possible to separate out information on items concerning the interests referred to above.

3. A request for information may be refused where it would involve the supply of unfinished documents or data or internal communications, or where the request is manifestly unreasonable or formulated in too general a manner.
4. A public authority shall respond to a person requesting information as soon as possible and at the latest within two months. The reasons for a refusal to provide the information requested must be given.
5. A person who considers that his request for information has been unreasonably refused or ignored, or has been inadequately answered by a public authority, may seek a judicial or administrative review of the decision, in accordance with the relevant internal legal system.
6. The Parties may make a charge for supplying the information, but such a charge may not exceed a reasonable cost.

Article XV

Access to information held by bodies with public responsibilities for the environment

On the same terms and conditions as those set out in Article XIV any person shall have access to information relating to the environment held by bodies with public responsibilities for the environment and under the control of a public authority. Access shall be given via the competent public administration or directly by the bodies themselves.

Article XVI

Access to specific information held by operators

1. The person who suffered the damage may, at any time, request the court to order an operator to provide him with specific information, in so far as this is necessary to establish the existence of a claim for compensation under this Convention.
2. Where, under this Convention, a claim for compensation is made to an operator, whether or not in the framework of judicial proceedings, this operator may request the court to order another operator to provide him with specific information, in so far as this is necessary to establish the extent of his possible obligation to compensate the person who has suffered the damage, or of his own right to compensation from the other operator.
3. The operator shall be required to provide information under paragraphs 1 and 2 of this article concerning the elements which are available to him and dealing essentially with the particulars of the equipment, the machinery used, the kind and concentration of the dangerous substances or waste as well as the nature of genetically modified organisms or micro-organisms.
4. These measures shall not affect measures of investigation which may legally be ordered under internal law.
5. The court may refuse a request which places a disproportionate burden on the operator, taking into account all the interests involved.
6. In addition to the restrictions under Article XIV, paragraph 2 of this Convention, which shall apply *mutatis mutandis*, the operator may refuse to provide information where such information would incriminate him.
7. Any reasonable charge shall be paid by the person requesting the information. The operator may require an appropriate guarantee for such payment. However a court, when allowing a claim for compensation, may establish that this charge shall be borne by the operator, except to the extent that the request resulted in unnecessary costs.

CHAPTER 4

ACTIONS FOR COMPENSATION AND OTHER CLAIMS

Article XVII

Limitation periods

1. Actions for compensation under this Convention shall be subject to a limitation period of three years from the date on which the claimant knew or ought reasonably to have known of the damage and of the identity of the operator. The laws of the Parties regulating suspension or interruption of limitation periods shall apply to the limitation period prescribed in this paragraph.
2. However, in no case shall actions be brought after thirty years from the date of the incident which caused the damage. Where the incident consists of a continuous occurrence the thirty years' period shall run from the end of that occurrence. Where the incident consists of a series of occurrences having the same origin the thirty years' period shall run from the date of the last of such occurrences. In respect of a site for the permanent deposit of waste the thirty years' period shall at the latest run from the date on which the site was closed in accordance with the provisions of internal law.

Article XVIII

Requests by organisations

1. Any association or foundation which according to its statutes aims at the protection of the environment and which complies with any further conditions of internal law of the Party where the request is submitted may, at any time, request:

   (a) the prohibition of a dangerous activity which is unlawful and poses a grave threat of damage to the environment;
   (b) that the operator be ordered to take measures to prevent an incident or damage;
   (c) that the operator be ordered to take measures, after an incident, to prevent damage; or
   (d) that the operator be ordered to take measures of reinstatement.

2. Internal law may stipulate cases where the request is inadmissible.
3. Internal law may specify the body, whether administrative or judicial, before which the request referred

to in paragraph 1 above should be made. In all cases provision shall be made for a right of review.

4. Before deciding upon a request mentioned under paragraph 1 above the requested body may, in view of the general interests involved, hear the competent public authorities.
5. When the internal law of a Party requires that the association or foundation has its registered seat or the effective centre of its activities in its territory, the Party may declare at any time, by means of a notification addressed to the Secretary General of the Council of Europe, that, on the basis of reciprocity, an association or foundation having its seat or centre of activities in the territory of another Party and complying in that other Party with the other conditions mentioned in paragraph 1 above shall have the right to submit requests in accordance with paragraphs 1–3 above. The declaration will become effective on the first day of the month following the expiration of a period of three months after the date of its reception by the Secretary General.

Article XIX

Jurisdiction

1. Actions for compensation under this Convention may only be brought within a Party at the court of the place:

   (a) where the damage was suffered;
   (b) where the dangerous activity was conducted; or
   (c) where the defendant has his habitual residence.

2. Requests for access to specific information held by operators under Article XVI, paragraphs 1 and 2 may only be submitted within a Party at the court of the place:

   (a) where the dangerous activity is conducted; or
   (b) where the operator who may be required to provide the information has his habitual residence.

3. Requests by organisations under Article XVIII, paragraph 1, sub-paragraph (a) may only be submitted within a Party at the court or, if internal law so provides, at a competent administrative authority of the place where the dangerous activity is or will be conducted.
4. Requests by organisations under Article XVIII, paragraph 1, sub-paragraphs (b), (c) and (d) may only be submitted within a Party at the court or, if internal law so provides, at a competent administrative authority:

   (a) of the place where the dangerous activity is or will be conducted; or
   (b) of the place where the measures are to be taken.

Article XX

Notification

The court shall stay the proceedings so long as it is not shown that the defendant has been able to receive the document instituting the proceedings or an equivalent document in sufficient time to enable him to arrange for his defence, or that all necessary steps have been taken to this end.

Article XXI

Lis pendens

1. Where proceedings involving the same cause of action and between the same parties are brought in the courts of different Parties, any court other than the court first seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.
2. Where the jurisdiction of the court first seised is established, any court other than the court first seised shall decline jurisdiction in favour of that court.

Article XXII

Related actions

1. Where related actions are brought in the courts of different Parties, any court other than the court first seised may, while the actions are pending at first instance, stay its proceedings.
2. A court other than the court first seised may also, on the application of one of the parties, decline jurisdiction if the law of that court permits the consolidation of related actions and the court first seised has jurisdiction over both actions.
3. For the purposes of this article, actions are deemed to be related where they are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings.

Article XXIII

Recognition and enforcement

1. Any decision given by a court with jurisdiction in accordance with Article XIX above where it is no longer subject to ordinary forms of review, shall be recognised in any Party, unless:
   (a) such recognition is contrary to public policy in the Party in which recognition is sought;
   (b) it was given in default of appearance and the defendant was not duly served with the document which instituted the proceedings or with an equivalent document in sufficient time to enable him to arrange for his defence;
   (c) the decision is irreconcilable with a decision given in a dispute between the same parties in the Party in which recognition is sought; or
   (d) the decision is irreconcilable with an earlier decision given in another State involving the same cause of action and between the same parties, provided that this latter decision fulfils the conditions necessary for its recognition in the Party addressed.
2. A decision recognised under paragraph 1 above which is enforceable in the Party of origin shall be enforceable in each Party as soon as the formalities required by that Party have been completed. The formalities shall not permit the merits of the case to be re-opened.

Article XXIV

Other treaties relating to jurisdiction, recognition and enforcement

Whenever two or more Parties are bound by a treaty establishing rules of jurisdiction or providing for recognition and enforcement in a Party of decisions given in another Party, the provisions of that treaty shall replace the corresponding provisions of Articles XIX–XXIII.

CHAPTER 5

RELATION BETWEEN THIS CONVENTION AND OTHER PROVISIONS

Article XXV

Relation between this Convention and other provisions

1. Nothing in this Convention shall be construed as limiting or derogating from any of the rights of the persons who have suffered the damage or as limiting the provisions concerning the protection or reinstatement of the environment which may be provided under the laws of any Party or under any other treaty to which it is a Party.
2. In their mutual relations, Parties which are members of the European Economic Community shall apply Community rules and shall therefore not apply the rules arising from this Convention except in so far as there is no Community rule governing the particular subject concerned.

CHAPTER 6

THE STANDING COMMITTEE

Article XXVI

The Standing Committee

1. For the purposes of this Convention, a Standing Committee is hereby set up.
2. Each Party may be represented on the Standing Committee by one or more delegates.
3. Each delegation shall have one vote. However, within the areas of its competence the European Economic Community shall exercise its right to vote in the Standing Committee with a number of votes equal to the number of its member States which are Parties to this Convention. It shall not exercise its right to vote in cases where the member States exercise theirs and conversely. As long as no member State of the European Economic Community is a Party, the Community as a Party shall have one vote.
4. Any State referred to in Article XXXII or invited to accede to the Convention in accordance with the provisions of Article XXXIII which is not a Party to this Convention may be represented on the Standing Committee by an observer. If the European Economic Community is not a Party it may be represented on the Standing Committee by an observer.
5. Unless, at least one month before the meeting, a Party has informed the Secretary General of its objection, the Standing Committee may invite the following to attend as observers at all its meetings or one or part of a meeting:

   – any State not referred to in paragraph 4 above;
   – any international or national, governmental or non-governmental body technically qualified in the fields covered by this Convention.

6. The Standing Committee may seek the advice of experts in order to discharge its functions.
7. The Standing Committee shall be convened by the Secretary General of the Council of Europe. It shall meet whenever one-third of the Parties or the Committee of Ministers of the Council of Europe so request.
8. One-third of the Parties shall constitute a quorum for holding a meeting of the Standing Committee.
9. Decisions may only be taken in the Standing Committee if at least one-half of the Parties are present.
10. Subject to Articles XXVII and XXIX–XXXI the decisions of the Standing Committee shall be taken by a majority of the members present.
11. Subject to the provisions of this Convention the Standing Committee shall draw up its own rules of procedure.

Article XXVII

Functions of the Standing Committee

The Standing Committee shall keep under review problems relating to this Convention. It may, in particular:

(a) consider any question of a general nature referred to it concerning interpretation or implementation of the Convention. The Standing Committee's conclusions concerning implementation of the Convention may take the form of a recommendation; recommendations shall be adopted by a three quarters majority of the votes cast;
(b) propose any necessary amendments to the Convention including its annexes and examine those proposed in accordance with Articles XXIX–XXXI.

Article XXVIII

Reports of the Standing Committee

After each meeting, the Standing Committee shall forward to the Parties and the Committee of Ministers of the Council of Europe a report on its discussions and any decisions taken.

CHAPTER 7

AMENDMENTS TO THE CONVENTION

Article XXIX

Amendments to the Articles

1. Any amendment to the articles of this Convention proposed by a Party or the Standing Committee shall be communicated to the Secretary General of the Council of Europe and forwarded by him at least two months before the meeting of the Standing Committee to the member States of the Council of Europe, to the European Economic Community, to any Signatory, to any Party, to any State invited to sign this Convention in accordance with the provisions of Article XXXII and to any State invited to accede to it in accordance with the provisions of Article XXXIII.
2. Any amendment proposed in accordance with the provisions of the preceding paragraph shall be examined by the Standing Committee which:

   (a) for amendments to Articles I–XXV shall submit the text adopted by a three-quarters majority of the votes cast to the Parties for acceptance;
   (b) for amendments to Articles XXVI–XXXVII shall submit the text adopted by a three-quarters majority of the votes cast to the Committee of Ministers for approval. After its approval, this text shall be forwarded to the Parties for acceptance.

3. Any amendment to Articles I–XXV shall enter into force, in respect of those Parties which have accepted it, on the first day of the month following the expiration of a period of one month after the date on which three Parties, including at least two member States of the Council of Europe, have informed the Secretary General that they have accepted it.
   In respect of any Party which subsequently accepts it, the amendment shall enter into force on the first day of the month following the expiration of a period of one month after the date on which that Party has informed the Secretary General of its acceptance.

4. Any amendment to Articles XXVI–XXXVII shall enter into force on the first day of the month following the expiration of a period of one month after the date on which all Parties have informed the Secretary General that they have accepted it.

Article XXX

Amendments to the annexes

1. Any amendment to the annexes of this Convention proposed by a Party or the Standing Committee

shall be communicated to the Secretary General of the Council of Europe and forwarded by him at least two months before the meeting of the Standing Committee to the member States of the Council of Europe, to the European Economic Community, to any Signatory, to any Party, to any State invited to sign this Convention in accordance with the provisions of Article XXXII and to any State invited to accede to it in accordance with the provisions of Article XXXIII.

2. Any amendment proposed in accordance with the provisions of the preceding paragraph or, where appropriate, of Article XXXI shall be examined by the Standing Committee, which may adopt it by a three-quarters majority of the votes cast. The text adopted shall be forwarded to the Parties.
3. On the first day of the month following the expiration of a period of eighteen months after its adoption by the Standing Committee, unless more than one-third of the Parties have notified objections, any amendment shall enter into force for those Parties which have not notified objections.

Article XXXI

Tacit amendments to Annex I, Parts A and B

1. Whenever the European Economic Community adopts an amendment to one of the annexes to the directives referred to in Annex I, Parts A and B of this Convention, the Secretary General shall communicate it to all the Parties not later than four months after its publication in the *Official Journal of the European Communities*.
2. Within a time limit of six months after this communication, any Party may request that the amendment be submitted to the Standing Committee, in which case the procedure under Article XXX, paragraphs 2 and 3, shall be followed. If no Party requests the submission of the amendment to the Standing Committee, the provisions of paragraph 3 below shall apply.
3. On the first day of the month following the expiration of a period of eighteen months after the communication of the amendment to all Parties, and unless more than one-third of the Parties have notified objections, the amendment shall enter into force for those Parties which have not notified objections.

   However, the entry into force of the amendment shall be postponed to the date fixed for the member States of the European Economic Community for the compliance of their domestic law with the directive, if this date is later than that resulting from the time limit stated in the first part of this paragraph.

CHAPTER 8

FINAL CLAUSES

Article XXXII

Signature, ratification and entry into force

1. This Convention shall be open for signature by the member States of the Council of Europe, the non-member States which have participated in its elaboration and by the European Economic Community.
2. This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
3. This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which three States, including at least two member States of the Council of Europe, have expressed their consent to be bound by the Convention in accordance with the provisions of paragraph 2 of the present article.
4. In respect of any Signatory which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of its instrument of ratification, acceptance or approval.

Article XXXIII

Non-member States

1. After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may, on its own initiative or following a proposal from the Standing Committee and after consultation of the Parties, invite any non-member State of the Council of Europe to accede to this Convention by a decision taken by the majority provided for in Article XX, sub-paragraph (d) of the Statute of the Council of Europe, and by the unanimous vote of the representatives of the Contracting States entitled to sit on the Committee of Ministers.
2. In respect of any acceding State, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument

of accession with the Secretary General of the Council of Europe.

Article XXXIV

Territories

1. Any Signatory may, at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which this Convention shall apply. Any other State may formulate the same declaration when depositing its instrument of accession.
2. Any Party may, at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territory specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings. In respect of such territory the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.
3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

Article XXXV

Reservations

1. Any Signatory may declare, at the time of signature or when depositing its instrument of ratification, acceptance or approval, that it reserves the right:

   (a) to apply Article III, sub-paragraph (a), to damage suffered in the territory of the States which are not Parties to this Convention only on the basis of reciprocity;
   (b) to provide in its internal law that, without prejudice to Article VIII, the operator shall not be liable if he proves that in the case of damage caused by a dangerous activity mentioned under Article II, paragraph 1, sub-paragraphs (a) and (b), the state of scientific and technical knowledge at the time of the incident was not such as to enable the existence of the dangerous properties of the substance or the significant risk involved in the operation dealing with the organism to be discovered;
   (c) not to apply Article XVIII.

   Any other State may formulate the same reservations when depositing its instrument of accession.

2. Any Signatory or any other State which makes use of a reservation shall notify the Secretary General of the Council of Europe of the relevant contents of its internal law.
3. Any Party which extends the application of this Convention to a territory mentioned in the declaration referred to in Article XXXIV, paragraph 2, may, in respect of the territory concerned, make a reservation in accordance with the provisions of the preceding paragraphs.
4. No reservation shall be made to the provisions of this Convention, except those mentioned in this article.
5. Any Party which has made one of the reservations mentioned in this article may withdraw it by means of a declaration addressed to the Secretary General of the Council of Europe. The withdrawal shall become effective on the first day of the month following the expiration of a period of one month after the date of its receipt by the Secretary General.

Article XXXVI

Denunciation

1. Any Party may at any time denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.
2. Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of notification by the Secretary General.

Article XXXVII

Notifications

The Secretary General of the Council of Europe shall notify the member States of the Council, any Signatory, any Party and any other State which has been invited to accede to this Convention of:

(a) any signature;
(b) the deposit of any instrument of ratification, acceptance, approval or accession;

(c) any date of entry into force of this Convention in accordance with Articles XXXII or XXXIII;
(d) any amendment adopted in accordance with Articles XXIX, XXX or XXXI, and the date on which such an amendment enters into force;
(e) any declaration made under the provisions of Articles XVIII or XXXIV;
(f) any reservation and withdrawal of reservation made in pursuance of the provisions of Article XXXV;
(g) any other act, notification or communication relating to this Convention.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at Lugano, this 21st day of June 1993, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe, to the non-member States which have participated in the elaboration of this Convention, to the European Economic Community and to any State invited to accede to this Convention.

2.2.1 Annex I – Dangerous substances

A Criteria and methods to be applied to catagories of dangerous substances

(Article II, paragraph 2, sub-paragraph (a))

The properties referred to in Article II, paragraph 2, sub-paragraph (a), shall be determined by the criteria and methods referred to in or annexed to:

– the Council Directive of the European Communities 67/548/EEC of 27 June 1967 (OJEC No. L196/1) on the approximation of the laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances
  - as amended, for the seventh time, in the Council Directive of the European Communities 92/32/EEC of 30 April 1992 (OJEC No. L154/1), and
  - as adapted to technical progress, for the sixteenth time, by Commission Directive of the European Communities 92/37/EEC of 30 April 1992 (OJEC No. L154/30),
– the Council Directive of the European Communities 88/379/EEC of 7 June 1988 (OJEC No. L187/14) on the approximation of the laws, regulations and administrative provisions of the member States relating to the classification, packaging and labelling of dangerous preparations as adapted to technical progress by the Directive of the Commission of the European Communities 90/492/EEC of 5 October 1990 (OJEC No. L275/35).

B List of dangerous substances

(Article II, paragraph 2, sub-paragraph (b))

The substances referred to in Article II, paragraph 2, sub-paragraph (b), shall be those listed in Annex I of the Council Directive of the European Communities 67/548/EEC of 27 June 1967 (OJEC No. 196/1), on the approximation of the laws regulations and administrative provisions relating to the classification packaging and labelling of dangerous substances as adapted to technical progress, for the sixteenth time, by Commission Directive of the European Communities 92/37/EEC of 30 April 1992 (OJEC No. L154/30).

2.2.2 Annex II – Installations or sites for the Incineration, Treatment, Handling or Recycling of Waste

(See Article II, paragraph 1, sub-paragraph (c))

1. Installations or sites for the partial or complete disposal of solid, liquid or gaseous wastes by incineration on land or at sea.
2. Installations or sites for thermal degradation of solid, gaseous or liquid wastes under reduced oxygen supply.
3. Installations or sites for high temperature degradation or thermal degasification of solid, gaseous or liquid wastes.
4. Installations or sites for thermal recovery of compounds from solid or liquid wastes.
5. Installations or sites for chemical, physical or biological treatment of wastes for recycling or disposal.
6. Installations or sites for blending or mix prior to submission to the operation of a site for permanent deposit.
7. Installations or sites for repacking prior to submission to the operation of a site for permanent deposit.

8. Installations or sites for handling and treatment of solid, liquid or gaseous wastes for re-use or recycling such as:
   - solvent reclamation/regeneration;
   - recycling/reclamation of organic substances (not used as solvents) and inorganic materials;
   - regeneration of acid and bases;
   - recovery of components used for pollution abatement;
   - recovery of components from catalysts;
   - waste oil re-refining or other re-uses of waste oil;
   - recovery of components from discarded cars.
9. Installations or sites for storage of materials intended for submission to any operation in this annex or to the operation of a site for the permanent deposit of waste, temporary storage excluded, pending collection, on the site where it is produced.

Part III
Oil Pollution

3
CLC, CLC 1992
1992 Oil Pollution Convention
1992 Civil Liability Convention

3.1 General Information

International Convention on Civil Liability for Oil Pollution Damage

Most common abbreviation(s)	**CLC, CLC 1992, 1992 Oil Pollution Convention, 1992 Civil Liability Convention**
Organisation	International Maritime Organization (IMO)
Reference	CLC 1969: 973 UNTS 3, RMC I.7.30, II.7.30 CLC 1992: Misc 36 (1994), Cm 2657, RMC I,7.51, II.7.51 http://www.iopcfund.org/ http://www.imo.org/
Status	
Adoption	CLC 1992: 27 November 1992 CLC 1969: 29 November 1969 CLC Protocol of 1976: 9 November 1976 CLC Protocol of 1984: 25 May 1984 2000 Amendments: 18 October 2000
Entry into force	CLC 1992: 30 May 1996 CLC 1969: 19 June 1975 CLC Protocol of 1976: 8 April 1981 CLC Protocol of 1984: / 2000 Amendments: 1 November 2003 (under tacit acceptance)
State Parties to the CLC 1992	Albania, Algeria, Angola, Antigua and Barbuda, Argentina, Australia, Azerbaijan, Bahamas, Bahrain, Barbados, Belgium, Belize, Brunei Darussalam, Bulgaria, Cambodia, Cameroon, Canada, Cape Verde, Chile, China (Hong Kong Special Administrative Region), China, Colombia, Comoros, Congo, Cook Islands, Croatia, Cyprus, Denmark, Djibouti, Dominica, Dominican Republic, Egypt, El Salvador, Estonia, Faroe Islands, Fiji, Finland, France, Gabon, Georgia, Germany, Ghana, Greece, Grenada, Guinea, Hungary, Iceland, India, Indonesia, Ireland, Israel, Italy, Jamaica, Japan, Kenya, Kiribati, Kuwait, Latvia, Lebanon, Liberia, Lithuania, Luxembourg, Macao (China)

Madagascar, Malaysia, Maldives, Malta, Marshall Islands, Mauritius, Mexico, Moldova, Monaco, Morocco, Mozambique, Namibia, the Netherlands, New Zealand, Nigeria, Norway, Oman, Panama, Pakistan, Panama, Papua New Guinea, Pakistan, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Romania, Russian Federation, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Saudi Arabia, Seychelles, Sierra Leone, Singapore, Slovenia, Solomon Islands, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Syrian Arab Republic, Tonga, Trinidad and Tobago, Tunisia, Turkey, Tuvalu, United Arab Emirates, United Kingdom, United Republic of Tanzania, Uruguay, Vanuatu, Venezuela, Viet Nam, Yemen.

State Parties to the CLC 1969

Azerbaijan, Benin, Brazil, Cambodia, Chile, Costa Rica, Côte d'Ivoire, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Gambia, Georgia, Ghana, Guatemala, Guyana, Honduras, Indonesia, Jordan, Kazakhstan, Kuwait, Latvia, Lebanon, Libyan Arab Jamahiriya, Luxembourg, Maldives, Mauritania, Mongolia, Nicaragua, Peru, Saint Kitts and Nevis, Sao Tomé and Principe, Saudi Arabia, Senegal, Serbia and Montenegro, Syrian Arab Republic, United Arab Emirates, Yemen

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3.2 International Convention of 27 November 1992 on Civil Liability for Oil Pollution Damage

The States Parties to the present Convention,

CONSCIOUS of the dangers of pollution posed by the worldwide maritime carriage of oil in bulk,

CONVINCED of the need to ensure that adequate compensation is available to persons who suffer damage caused by pollution resulting from the escape or discharge of oil from ships,

DESIRING to adopt uniform international rules and procedures for determining questions of liability and providing adequate compensation in such cases,

HAVE AGREED as follows:

Article I

For the purposes of this Convention:

1. 'Ship' means any sea-going vessel and seaborne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo, provided that a ship capable of carrying oil and other cargoes shall be regarded as a ship only when it is actually carrying oil in bulk as cargo and during any voyage following such carriage unless it is proved that it has no residues of such carriage of oil in bulk aboard.
2. '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.
3. 'Owner' means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship. However in the case of a ship owned by a State and operated by a company which in that State is registered as the ship's operator, 'owner' shall mean such company.
4. 'State of the ship's registry' means in relation to registered ships the State of registration of the ship, and in relation to unregistered ships the State whose flag the ship is flying.
5. 'Oil' means any persistent hydrocarbon mineral oil such as crude oil, fuel oil, heavy diesel oil and lubricating oil, whether carried on board a ship as cargo or in the bunkers of such a ship.
6. 'Pollution damage' means:

(a) loss or damage caused outside the ship by contamination resulting from the escape or discharge of oil from the ship, wherever such escape or discharge may occur, provided that compensation for impairment of the environment other than loss of profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken;
(b) the costs of preventive measures and further loss or damage caused by preventive measures.

7. 'Preventive measures' means any reasonable measures taken by any person after an incident has occurred to prevent or minimize pollution damage.
8. 'Incident' means any occurrence, or series of occurrences having the same origin, which causes pollution damage or creates a grave and imminent threat of causing such damage.
9. 'Organization' means the International Maritime Organization.
10. '1969 Liability Convention' means the International Convention on Civil Liability for Oil Pollution Damage, 1969. For States Parties to the Protocol of 1976 to that Convention, the term shall be deemed to include the 1969 Liability Convention as amended by that Protocol.

Article II

This Convention shall apply exclusively:

(a) to pollution damage caused:

(i) in the territory, including the territorial sea, of a Contracting State, and
(ii) in the exclusive economic zone of a Contracting State, established in accordance with international law, or, if a Contracting State has not established such a zone, in an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured;

(b) to preventive measures, wherever taken, to prevent or minimize such damage.

Article III

1. Except as provided in paragraphs 2 and 3 of this Article, the owner of a ship at the time of an incident, or, where the incident consists of a series of occurrences, at the time of the first such occurrence, shall be liable for any pollution damage caused by the ship as a result of the incident.
2. No liability for pollution damage shall attach to the owner if he proves that the damage:

(a) resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character, or
(b) was wholly caused by an act or omission done with intent to cause damage by a third party, or
(c) was wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function.

3. If the owner proves that the pollution damage resulted wholly or partially either from an act or omission done with intent to cause damage by the person who suffered the damage or from the negligence of that person, the owner may be exonerated wholly or partially from his liability to such person.
4. No claim for compensation for pollution damage may be made against the owner otherwise than in accordance with this Convention. Subject to paragraph 5 of this Article, no claim for compensation for pollution damage under this Convention or otherwise may be made against:

(a) the servants or agents of the owner or the members of the crew;
(b) the pilot or any other person who, without being a member of the crew, performs services for the ship;
(c) any charterer (howsoever described, including a bareboat charterer), manager or operator of the ship;
(d) any person performing salvage operations with the consent of the owner or on the instructions of a competent public authority;
(e) any person taking preventive measures;
(f) all servants or agents of persons mentioned in subparagraphs (c), (d) and (e); unless the damage resulted from their personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

5. Nothing in this Convention shall prejudice any right of recourse of the owner against third parties.

Article IV

When an incident involving two or more ships occurs and pollution damage results therefrom, the owners of all the ships concerned, unless exonerated under Article III, shall be jointly and severally liable for all such damage which is not reasonably separable.

Article V

1. The owner of a ship shall be entitled to limit his liability under this Convention in respect of any one incident to an aggregate amount calculated as follows:
   (a) 4,510,000 units of account for a ship not exceeding 5,000 units of tonnage;
   (b) for a ship with a tonnage in excess thereof, for each additional unit of tonnage, 631 units of account in addition to the amount mentioned in sub-paragraph (a);

   provided, however, that this aggregate amount shall not in any event exceed 89,770,000 units of account.
2. The owner shall not be entitled to limit his liability under this Convention if it is proved that the pollution damage resulted from his personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.
3. For the purpose of availing himself of the benefit of limitation provided for in paragraph 1 of this Article the owner shall constitute a fund for the total sum representing the limit of his liability with the Court or other competent authority of any one of the Contracting States in which action is brought under Article IX or, if no action is brought, with any Court or other competent authority in any one of the Contracting States in which an action can be brought under Article IX. The fund can be constituted either by depositing the sum or by producing a bank guarantee or other guarantee, acceptable under the legislation of the Contracting State where the fund is constituted, and considered to be adequate by the Court or other competent authority.
4. The fund shall be distributed among the claimants in proportion to the amounts of their established claims.
5. If before the fund is distributed the owner or any of his servants or agents or any person providing him insurance or other financial security has as a result of the incident in question, paid compensation for pollution damage, such person shall, up to the amount he has paid, acquire by subrogation the rights which the person so compensated would have enjoyed under this Convention.
6. The right of subrogation provided for in paragraph 5 of this Article may also be exercised by a person other than those mentioned therein in respect of any amount of compensation for pollution damage which he may have paid but only to the extent that such subrogation is permitted under the applicable national law.
7. Where the owner or any other person establishes that he may be compelled to pay at a later date in whole or in part any such amount of compensation, with regard to which such person would have enjoyed a right of subrogation under paragraphs 5 or 6 of this Article, had the compensation been paid before the fund was distributed, the Court or other competent authority of the State where the fund has been constituted may order that a sufficient sum shall be provisionally set aside to enable such person at such later date to enforce his claim against the fund.
8. Claims in respect of expenses reasonably incurred or sacrifices reasonably made by the owner voluntarily to prevent or minimize pollution damage shall rank equally with other claims against the fund.
9. (a) The 'unit of account' referred to in paragraph 1 of this Article is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in paragraph 1 shall be converted into national currency on the basis of the value of that currency by reference to the Special Drawing Right on the date of the constitution of the fund referred to in paragraph 3. The value of the national currency, in terms of the Special Drawing Right, of a Contracting State which is a member of the International Monetary Fund shall be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect on the date in question for its operations and transactions. The value of the national currency, in terms of the Special Drawing

Right, of a Contracting State which is not a member of the International Monetary Fund shall be calculated in a manner determined by that State.

(b) Nevertheless, a Contracting State which is not a member of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 9(a) may, at the time of ratification, acceptance, approval of or accession to this Convention or at any time thereafter, declare that the unit of account referred to in paragraph 9(a) shall be equal to 15 gold francs. The gold franc referred to in this paragraph corresponds to sixty-five and a half milligrammes of gold of millesimal fineness nine hundred. The conversion of the gold franc into the national currency shall be made according to the law of the State concerned.

(c) The calculation mentioned in the last sentence of paragraph 9(a) and the conversion mentioned in paragraph 9(b) shall be made in such manner as to express in the national currency of the Contracting State as far as possible the same real value for the amounts in paragraph 1 as would result from the application of the first three sentences of paragraph 9(a). Contracting States shall communicate to the depositary the manner of calculation pursuant to paragraph 9(a), or the result of the conversion in paragraph 9(b) as the case may be, when depositing an instrument of ratification, acceptance, approval of or accession to this Convention and whenever there is a change in either.

10. For the purpose of this Article the ship's tonnage shall be the gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex I of the International Convention on Tonnage Measurement of Ships, 1969.

11. The insurer or other person providing financial security shall be entitled to constitute a fund in accordance with this Article on the same conditions and having the same effect as if it were constituted by the owner. Such a fund may be constituted even if, under the provisions of paragraph 2, the owner is not entitled to limit his liability, but its constitution shall in that case not prejudice the rights of any claimant against the owner.

Article VI

1. Where the owner, after an incident, has constituted a fund in accordance with Article V, and is entitled to limit his liability,

   (a) no person having a claim for pollution damage arising out of that incident shall be entitled to exercise any right against any other assets of the owner in respect of such claim;

   (b) the Court or other competent authority of any Contracting State shall order the release of any ship or other property belonging to the owner which has been arrested in respect of a claim for pollution damage arising out of that incident, and shall similarly release any bail or other security furnished to avoid such arrest.

2. The foregoing shall, however, only apply if the claimant has access to the Court administering the fund and the fund is actually available in respect of his claim.

Article VII

1. The owner of a ship registered in a Contracting State and carrying more than 2,000 tons of oil in bulk as cargo shall be required to maintain insurance or other financial security, such as the guarantee of a bank or a certificate delivered by an international compensation fund, in the sums fixed by applying the limits of liability prescribed in Article V, paragraph 1 to cover his liability for pollution damage under this Convention.

2. A certificate attesting that insurance or other financial security is in force in accordance with the provisions of this Convention shall be issued to each ship after the appropriate authority of a Contracting State has determined that the requirements of paragraph 1 have been complied with. With respect to a ship registered in a Contracting State such certificate shall be issued or certified by the appropriate authority of the State of the ship's registry; with respect to a ship not registered in a Contracting State it may be issued or certified by the appropriate authority of any Contracting State. This certificate shall be in the form of the annexed model and shall contain the following particulars:

(a) name of ship and port of registration;
(b) name and principal place of business of owner;
(c) type of security;
(d) name and principal place of business of insurer or other person giving security and, where appropriate, place of business where the insurance or security is established;
(e) period of validity of certificate which shall not be longer than the period of validity of the insurance or other security.

3. The certificate shall be in the official language or languages of the issuing State. If the language used is neither English nor French, the text shall include a translation into one of these languages.
4. The certificate shall be carried on board the ship and a copy shall be deposited with the authorities who keep the record of the ship's registry or, if the ship is not registered in a Contracting State, with the authorities of the State issuing or certifying the certificate.
5. An insurance or other financial security shall not satisfy the requirements of this Article if it can cease, for reasons other than the expiry of the period of validity of the insurance or security specified in the certificate under paragraph 2 of this Article, before three months have elapsed from the date on which notice of its termination is given to the authorities referred to in paragraph 4 of this Article, unless the certificate has been surrendered to these authorities or a new certificate has been issued within the said period. The foregoing provisions shall similarly apply to any modification which results in the insurance or security no longer satisfying the requirements of this Article.
6. The State of registry shall, subject to the provisions of this Article, determine the conditions of issue and validity of the certificate.
7. Certificates issued or certified under the authority of a Contracting State in accordance with paragraph 2 shall be accepted by other Contracting States for the purposes of this Convention and shall be regarded by other Contracting States as having the same force as certificates issued or certified by them even if issued or certified in respect of a ship not registered in a Contracting State. A Contracting State may at any time request consultation with the issuing or certifying State should it believe that the insurer or guarantor named in the certificate is not financially capable of meeting the obligations imposed by this Convention.
8. Any claim for compensation for pollution damage may be brought directly against the insurer or other person providing financial security for the owner's liability for pollution damage. In such case the defendant may, even if the owner is not entitled to limit his liability according to Article V, paragraph 2, avail himself of the limits of liability prescribed in Article V, paragraph 1. He may further avail himself of the defences (other than the bankruptcy or winding up of the owner) which the owner himself would have been entitled to invoke. Furthermore, the defendant may avail himself of the defence that the pollution damage resulted from the wilful misconduct of the owner himself, but the defendant shall not avail himself of any other defence which he might have been entitled to invoke in proceedings brought by the owner against him. The defendant shall in any event have the right to require the owner to be joined in the proceedings.
9. Any sums provided by insurance or by other financial security maintained in accordance with paragraph 1 of this Article shall be available exclusively for the satisfaction of claims under this Convention.
10. A Contracting State shall not permit a ship under its flag to which this Article applies to trade unless a certificate has been issued under paragraph 2 or 12 of this Article.
11. Subject to the provisions of this Article, each Contracting State shall ensure, under its national legislation, that insurance or other security to the extent specified in paragraph 1 of this Article is in force in respect of any ship, wherever registered, entering or leaving a port in its territory, or arriving at or leaving an offshore terminal in its territorial sea, if the ship actually carries more than 2,000 tons of oil in bulk as cargo.
12. If insurance or other financial security is not maintained in respect of a ship owned by a Contracting State, the provisions of this Article relating thereto shall not be applicable to such ship, but the ship shall carry a certificate issued by the appropriate authorities of the State of

the ship's registry stating that the ship is owned by that State and that the ship's liability is covered within the limits prescribed by Article V, paragraph 1. Such a certificate shall follow as closely as practicable the model prescribed by paragraph 2 of this Article.

Article VIII

Rights of compensation under this Convention shall be extinguished unless an action is brought thereunder within three years from the date when the damage occurred. However, in no case shall an action be brought after six years from the date of the incident which caused the damage. Where this incident consists of a series of occurrences, the six years' period shall run from the date of the first such occurrence.

Article IX

1. Where an incident has caused pollution damage in the territory, including the territorial sea or an area referred to in Article II, of one or more Contracting States or preventive measures have been taken to prevent or minimize pollution damage in such territory including the territorial sea or area, actions for compensation may only be brought in the Courts of any such Contracting State or States. Reasonable notice of any such action shall be given to the defendant.
2. Each Contracting State shall ensure that its Courts possess the necessary jurisdiction to entertain such actions for compensation.
3. After the fund has been constituted in accordance with Article V the Courts of the State in which the fund is constituted shall be exclusively competent to determine all matters relating to the apportionment and distribution of the fund.

Article X

1. Any judgment given by a Court with jurisdiction in accordance with Article IX which is enforceable in the State of origin where it is no longer subject to ordinary forms of review, shall be recognized in any Contracting State, except:
   (a) where the judgment was obtained by fraud; or
   (b) where the defendant was not given reasonable notice and a fair opportunity to present his case.
2. A judgment recognized under paragraph 1 of this Article shall be enforceable in each Contracting State as soon as the formalities required in that State have been complied with. The formalities shall not permit the merits of the case to be reopened.

Article XI

1. The provisions of this Convention shall not apply to warships or other ships owned or operated by a State and used, for the time being, only on government non-commercial service.
2. With respect to ships owned by a Contracting State and used for commercial purposes, each State shall be subject to suit in the jurisdictions set forth in Article IX and shall waive all defences based on its status as a sovereign State.

Article XII

This Convention shall supersede any International Conventions in force or open for signature, ratification or accession at the date on which the Convention is opened for signature, but only to the extent that such Conventions would be in conflict with it; however, nothing in this Article shall affect the obligations of Contracting States to non-Contracting States arising under such International Conventions.

Article XII bis

Transitional provisions

The following transitional provisions shall apply in the case of a State which at the time of an incident is a Party both to this Convention and to the 1969 Liability Convention:

(a) where an incident has caused pollution damage within the scope of this Convention, liability under this Convention shall be deemed to be discharged if, and to the extent that, it also arises under the 1969 Liability Convention;
(b) where an incident has caused pollution damage within the scope of this Convention, and the State is a Party both to this Convention and to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, liability remaining to be discharged after the

application of subparagraph (a) of this Article shall arise under this Convention only to the extent that pollution damage remains uncompensated after application of the said 1971 Convention;

(c) in the application of Article III, paragraph 4, of this Convention the expression 'this Convention' shall be interpreted as referring to this Convention or the 1969 Liability Convention, as appropriate;

(d) in the application of Article V, paragraph 3, of this Convention the total sum of the fund to be constituted shall be reduced by the amount by which liability has been deemed to be discharged in accordance with sub-paragraph (a) of this Article.

Article XII ter

Final clauses

The final clauses of this Convention shall be Articles XII–XVIII of the Protocol of 1992 to amend the 1969 Liability Convention. References in this Convention to Contracting States shall be taken to mean references to the Contracting States of that Protocol.

Final clauses of the Protocol of 1992 to amend the 1969 Civil Liability Convention

Article XII

Signature, ratification, acceptance, approval and accession

1. This Protocol shall be open for signature at London from 15 January 1993 to 14 January 1994 by all States.
2. Subject to paragraph 4, any State may become a Party to this Protocol by:

   (a) signature subject to ratification, acceptance or approval followed by ratification, acceptance or approval; or

   (b) accession.

3. Ratification, acceptance, approval or accession shall be effected by the deposit of a formal instrument to that effect with the Secretary-General of the Organization.
4. Any Contracting State to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, hereinafter referred to as the 1971 Fund Convention, may ratify, accept, approve or accede to this Protocol only if it ratifies, accepts, approves or accedes to the Protocol of 1992 to amend that Convention at the same time, unless it denounces the 1971 Fund Convention to take effect on the date when this Protocol enters into force for that State.
5. A State which is a Party to this Protocol but not a Party to the 1969 Liability Convention shall be bound by the provisions of the 1969 Liability Convention as amended by this Protocol in relation to other States Parties hereto, but shall not be bound by the provisions of the 1969 Liability Convention in relation to States Parties thereto.
6. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to the 1969 Liability Convention as amended by this Protocol shall be deemed to apply to the Convention so amended, as modified by such amendment.

Article XIII

Entry into force

1. This Protocol shall enter into force twelve months following the date on which ten States including four States each with not less than one million units of gross tanker tonnage have deposited instruments of ratification, acceptance, approval or accession with the Secretary-General of the Organization.
2. However, any Contracting State to the 1971 Fund Convention may, at the time of the deposit of its instrument of ratification, acceptance, approval or accession in respect of this Protocol, declare that such instrument shall be deemed not to be effective for the purposes of this Article until the end of the six-month period in Article XXXI of the Protocol of 1992 to amend the 1971 Fund Convention. A State which is not a Contracting State to the 1971 Fund Convention but which deposits an instrument of ratification, acceptance, approval or accession in respect of the Protocol of 1992 to amend the 1971 Fund Convention may also make a declaration in accordance with this paragraph at the same time.
3. Any State which has made a declaration in accordance with the preceding paragraph may withdraw it at any time by means of a notification addressed to the Secretary-General of the

Organization. Any such withdrawal shall take effect on the date the notification is received, provided that such State shall be deemed to have deposited its instrument of ratification, acceptance, approval or accession in respect of this Protocol on that date.

4. For any State which ratifies, accepts, approves or accedes to it after the conditions in paragraph 1 for entry into force have been met, this Protocol shall enter into force twelve months following the date of deposit by such State of the appropriate instrument.

Article XIV

Revision and amendment

1. A Conference for the purpose of revising or amending the 1992 Liability Convention may be convened by the Organization.
2. The Organization shall convene a Conference of Contracting States for the purpose of revising or amending the 1992 Liability Convention at the request of not less than one third of the Contracting States.

Article XV

Amendments of limitation amounts

1. Upon the request of at least one quarter of the Contracting States any proposal to amend the limits of liability laid down in Article V, paragraph 1, of the 1969 Liability Convention as amended by this Protocol shall be circulated by the Secretary-General to all Members of the Organization and to all Contracting States.
2. Any amendment proposed and circulated as above shall be submitted to the Legal Committee of the Organization for consideration at a date at least six months after the date of its circulation.
3. All Contracting States to the 1969 Liability Convention as amended by this Protocol, whether or not Members of the Organization, shall be entitled to participate in the proceedings of the Legal Committee for the consideration and adoption of amendments.
4. Amendments shall be adopted by a two-thirds majority of the Contracting States present and voting in the Legal Committee, expanded as provided for in paragraph 3, on condition that at least one half of the Contracting States shall be present at the time of voting.
5. When acting on a proposal to amend the limits, the Legal Committee shall take into account the experience of incidents and in particular the amount of damage resulting therefrom, changes in the monetary values and the effect of the proposed amendment on the cost of insurance. It shall also take into account the relationship between the limits in Article V, paragraph 1, of the 1969 Liability Convention as amended by this Protocol and those in Article 4, paragraph 4, of the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992.
6. (a) No amendment of the limits of liability under this Article may be considered before 15 January 1998 nor less than five years from the date of entry into force of a previous amendment under this Article. No amendment under this Article shall be considered before this Protocol has entered into force.
   (b) No limit may be increased so as to exceed an amount which corresponds to the limit laid down in the 1969 Liability Convention as amended by this Protocol increased by 6 per cent per year calculated on a compound basis from 15 January 1993.
   (c) No limit may be increased so as to exceed an amount which corresponds to the limit laid down in the 1969 Liability Convention as amended by this Protocol multiplied by 3.
7. Any amendment adopted in accordance with paragraph 4 shall be notified by the Organization to all Contracting States. The amendment shall be deemed to have been accepted at the end of a period of eighteen months after the date of notification, unless within that period not less than one quarter of the States that were Contracting States at the time of the adoption of the amendment by the Legal Committee have communicated to the Organization that they do not accept the amendment in which case the amendment is rejected and shall have no effect.
8. An amendment deemed to have been accepted in accordance with paragraph 7 shall enter into force eighteen months after its acceptance.
9. All Contracting States shall be bound by the amendment, unless they denounce this Protocol in accordance with Article XVI, paragraphs 1

and 2, at least six months before the amendment enters into force. Such denunciation shall take effect when the amendment enters into force.

10. When an amendment has been adopted by the Legal Committee but the eighteen-month period for its acceptance has not yet expired, a State which becomes a Contracting State during that period shall be bound by the amendment if it enters into force. A State which becomes a Contracting State after that period shall be bound by an amendment which has been accepted in accordance with paragraph 7. In the cases referred to in this paragraph, a State becomes bound by an amendment when that amendment enters into force, or when this Protocol enters into force for that State, if later.

Article XVI

Denunciation

1. This Protocol may be denounced by any Party at any time after the date on which it enters into force for that Party.
2. Denunciation shall be effected by the deposit of an instrument with the Secretary-General of the Organization.
3. A denunciation shall take effect twelve months, or such longer period as may be specified in the instrument of denunciation, after its deposit with the Secretary-General of the Organization.
4. As between the Parties to this Protocol, denunciation by any of them of the 1969 Liability Convention in accordance with Article XVI thereof shall not be construed in any way as a denunciation of the 1969 Liability Convention as amended by this Protocol.
5. Denunciation of the Protocol of 1992 to amend the 1971 Fund Convention by a State which remains a Party to the 1971 Fund Convention shall be deemed to be a denunciation of this Protocol. Such denunciation shall take effect on the date on which denunciation of the Protocol of 1992 to amend the 1971 Fund Convention takes effect according to Article XXXIV of that Protocol.

Article XVII

Depositary

1. This Protocol and any amendments accepted under Article XV shall be deposited with the Secretary-General of the Organization.
2. The Secretary-General of the Organization shall:
   (a) inform all States which have signed or acceded to this Protocol of:
      (i) each new signature or deposit of an instrument together with the date thereof;
      (ii) each declaration and notification under Article XIII and each declaration and communication under Article V, paragraph 9, of the 1992 Liability Convention;
      (iii) the date of entry into force of this Protocol;
      (iv) any proposal to amend limits of liability which has been made in accordance with Article XV, paragraph 1;
      (v) any amendment which has been adopted in accordance with Article XV, paragraph 4;
      (vi) any amendment deemed to have been accepted under Article XV, paragraph 7, together with the date on which that amendment shall enter into force in accordance with paragraphs 8 and 9 of that Article;
      (vii) the deposit of any instrument of denunciation of this Protocol together with the date of the deposit and the date on which it takes effect;
      (viii) any denunciation deemed to have been made under Article XVI, paragraph 5;
      (ix) any communication called for by any Article of this Protocol;
   (b) transmit certified true copies of this Protocol to all Signatory States and to all States which accede to this Protocol.
3. As soon as this Protocol enters into force, the text shall be transmitted by the Secretary-General of the Organization to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

Article XVIII

Languages

This Protocol is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

DONE AT LONDON this twenty-seventh day of November one thousand nine hundred and ninety-two.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments for that purpose, have signed this Protocol.

3.2.1 Annex – Certificate of Insurance or Other Financial Security in Respect of Civil Liability for Oil Pollution Damage

Issued in accordance with the provisions of Article VII of the International Convention on Civil Liability for Oil Pollution Damage, 1992.

Name of ship	**Distinctive number or letters**	**Port of registry**	**Name and address of owner**

This is to certify that there is in force in respect of the above-named ship a policy of insurance or other financial security satisfying the requirements of Article VII of the International Convention on Civil Liability for Oil Pollution Damage, 1992.

Type of Security …….....

Duration of Security …….....

Name and Address of the Insurer(s) and/or Guarantor(s)

Name …….....

Address …….....

This certificate is valid until …….....

Issued or certified by the Government of …….....

(Full designation of the State)

At.....…….....On…….....

(Place) (Date)

.....……

Signature and Title of issuing or certifying official

Explanatory Notes:

1. *If desired, the designation of the State may include a reference to the competent public authority of the country where the certificate is issued.*
2. *If the total amount of security has been furnished by more than one source, the amount of each of them should be indicated.*
3. *If security is furnished in several forms, these should be enumerated.*
4. *The entry 'Duration of Security' must stipulate the date on which such security takes effect.*

3.3 Resolution (Adopted by the Legal Committee of the International Maritime Organization on 18 October 2000): Adoption of Amendments of the Limitation Amounts in the Protocol of 1992 to Amend the International Convention on Civil Liability for Oil Pollution Damage, 1969

THE LEGAL COMMITTEE at its eighty-second session:

RECALLING Article 33(b) of the Convention on the International Maritime Organization (hereinafter referred to as the 'IMO Convention') concerning the functions of the Committee,

MINDFUL of Article 36 of the IMO Convention concerning rules governing the procedures to be followed when exercising the functions conferred on it by or under any international convention or instrument,

RECALLING FURTHER Article XV of the Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969 (hereinafter referred to as the '1992 CLC Protocol') concerning the procedures for amending the limitation amounts set out in Article VI(1) of the 1992 CLC Protocol,

HAVING CONSIDERED amendments to the limitation amounts proposed and circulated in accordance with the provisions of Article XV(1) and (2) of the 1992 CLC Protocol,

1. ADOPTS, in accordance with Article XV(4) of the 1992 CLC Protocol, amendments to the limitation amounts set out in Article VI(1) of the 1992 CLC Protocol, as set out in the Annex to this resolution;
2. DETERMINES, in accordance with Article XV(7) of the 1992 CLC Protocol, that these amendments shall be deemed to have been accepted on 1 May 2002 unless, prior to that date, not less than one quarter of the States that were Contracting States on the date of the adoption of these amendments (being 18 October 2000) have communicated to the Organization that they do not accept these amendments;
3. FURTHER DETERMINES that, in accordance with Article XV(8) of the 1992 CLC Protocol, these amendments, deemed to have been accepted in accordance with paragraph 2 above, shall enter into force on 1 November 2003;
4. REQUESTS the Secretary-General, in accordance with Articles XV(7) and XVII(2)(v) of the 1992 CLC Protocol, to transmit certified copies of the present resolution and the amendments contained in the Annex thereto to all States which have signed or acceded to the 1992 CLC Protocol; and
5. FURTHER REQUESTS the Secretary-General to transmit copies of the present resolution and its Annex to the Members of the Organization which have not signed or acceded to the 1992 CLC Protocol.

3.3.1 Annex – Amendments of the limitations amounts in the protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969

Article VI(1) of the 1992 CLC Protocol is amended as follows:

- the reference to '3 million units of account' shall read '4,510,000 units of account';
- the reference to '420 units of account' shall read '631 units of account'; and
- the reference to '59.7 million units of account' shall read '89,770,000 units of account'.

4
IOPCF, IOPCF 1992
1992 Fund Convention

4.1 General Information

International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage

Most common abbreviation(s)	**IOPCF, IOPCF 1992, 1992 Fund Convention**
Organisation	International Maritime Organization (IMO)
Reference	IOPCF 1971: 1110 UNTS 57, Cmnd 5061 IOPCF 1992: RMC I.7.111, II.1.7.111, Misc 37 (1994), Cm 2658 http://www.iopcfund.org/
Status	
Adoption	IOPCF 1992: 27 November 1992 IOPCF 1971: 18 December 1971 IOPCF Protocol of 1976: 19 November 1976 IOPCF Protocol of 1984: 25 May 1984 2000 Amendments: 18 October 2000
Entry into force	IOPCF 1992: 30 May 1996 IOPCF 1971: 16 October 1978 (and ceased to be in force on 24 May 2002) IOPCF Protocol of 1976: 22 november 1994 IOPCF Protocol of 1984: / 2000 Amendments: 1 November 2003 (under tacit acceptance)
State Parties to IOPCF 1992	Albania, Algeria, Angola, Antigua and Barbuda, Argentina, Australia, Bahamas, Bahrain, Barbados, Belgium, Belize, Brunei Darussalam, Bulgaria, Cambodia, Cameroon, Canada, Cape Verde, China (Hong Kong Special Administrative Region), Colombia, Comoros, Congo, Cook Islands, Croatia, Cyprus, Denmark, Djibouti, Dominica, Dominican Republic, Estonia, Fiji, Finland, Faroe Islands, France, Gabon, Georgia, Germany, Ghana, Greece, Grenada, Guinea, Hungary, Iceland, India, Ireland, Israel, Italy, Jamaica, Japan, Kenya, Kiribati, Latvia, Liberia, Lithuania, Luxembourg, Madagascar, Malaysia, Maldives, Malta, Marshall Islands, Mauritius, Mexico, Monaco, Morocco, Mozambique, Namibia, the Netherlands, New Zealand, Nigeria, Norway, Oman, Panama, Papua, New Guinea, Philippines, Poland, Portugal, Qatar, Republic of Korea, Russian Federation, Saint Kitts and Nevis, Saint Lucia, Saint

Vincent and the Grenadines, Samoa, Seychelles, Sierra Leone, Singapore, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Tonga, Trinidad and Tobago, Tunisia, Turkey, Tuvalu, United Arab Emirates, United Kingdom, United Republic of Tanzania, Uruguay, Vanuatu, Venezuela

Case Law

See the brochure 'The IOPC Funds' 25 years of compensating victims of oil pollution incidents', the Claims Manual, the Annual Reports and the General Explanatory Note on http://www.iopcfund.org/publications.htm

Court of Appeal, Messina, 24 December 1993 (Patmos)

Court of first instance Genoa, 5 April 1996 (Haven)

Literature

See the brochure 'The IOPC Funds' 25 years of compensating victims of oil pollution incidents', the Claims Manual, the Annual Reports and the General Explanatory Note on http://www.iopcfund.org/publications.htm

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4.2 International Convention of 27 November 1992 on the Establishment of an International Fund for Compensation for Oil Pollution Damage

The States Parties to the present Convention,

BEING PARTIES to the International Convention on Civil Liability for Oil Pollution Damage, adopted at Brussels on 29 November 1969,

CONSCIOUS of the dangers of pollution posed by the world-wide maritime carriage of oil in bulk,

CONVINCED of the need to ensure that adequate compensation is available to persons who suffer damage caused by pollution resulting from the escape or discharge of oil from ships,

CONSIDERING that the International Convention of 29 November 1969, on Civil Liability for Oil Pollution Damage, by providing a régime for compensation for pollution damage in Contracting States and for the costs of measures, wherever taken, to prevent or minimize such damage, represents a considerable progress towards the achievement of this aim,

CONSIDERING HOWEVER that this régime does not afford full compensation for victims of oil pollution damage in all cases while it imposes an additional financial burden on shipowners,

CONSIDERING FURTHER that the economic consequences of oil pollution damage resulting from the escape or discharge of oil carried in bulk at sea by ships should not exclusively be borne by the shipping industry but should in part be borne by the oil cargo interests,

CONVINCED of the need to elaborate a compensation and indemnification system supplementary to the International Convention on Civil Liability for Oil Pollution Damage with a view to ensuring that full compensation will be available to victims of oil pollution incidents and that the shipowners are at the same time given relief in respect of the additional financial burdens imposed on them by the said Convention,

TAKING NOTE of the Resolution on the Establishment of an International Compensation Fund for Oil Pollution Damage which was adopted on 29 November 1969 by the International Legal Conference on Marine Pollution Damage,

HAVE AGREED as follows:

General provisions

Article I

For the purposes of this Convention:

1. '1992 Liability Convention' means the International Convention on Civil Liability for Oil Pollution Damage, 1992.

   1bis. '1971 Fund Convention' means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971. For States Parties to the Protocol of 1976 to that Convention, the term shall be deemed to include the 1971 Fund Convention as amended by that Protocol.

2. 'Ship', 'Person', 'Owner', 'Oil', 'Pollution Damage', 'Preventive Measures', 'Incident', and 'Organization' have the same meaning as in Article I of the 1992 Liability Convention.
3. 'Contributing Oil' means crude oil and fuel oil as defined in sub-paragraphs (a) and (b) below:
   (a) 'Crude Oil' means any liquid hydrocarbon mixture occurring naturally in the earth whether or not treated to render it suitable for transportation. It also includes crude oils from which certain distillate fractions have been removed (sometimes referred to as 'topped crudes') or to which certain distillate fractions have been added (sometimes referred to as 'spiked' or 'reconstituted' crudes).
   (b) 'Fuel Oil' means heavy distillates or residues from crude oil or blends of such materials intended for use as a fuel for the production of heat or power of a quality equivalent to the 'American Society for Testing and Materials' Specification for Number Four Fuel Oil (Designation D 396-69)', or heavier.
4. 'Unit of account' has the same meaning as in Article V, paragraph 9, of the 1992 Liability Convention.
5. 'Ship's tonnage' has the same meaning as in Article V, paragraph 10, of the 1992 Liability Convention.
6. 'Ton', in relation to oil, means a metric ton.
7. 'Guarantor' means any person providing insurance or other financial security to cover an owner's liability in pursuance of Article VII, paragraph 1, of the 1992 Liability Convention.
8. 'Terminal installation' means any site for the storage of oil in bulk which is capable of receiving oil from waterborne transportation, including any facility situated off-shore and linked to such site.
9. Where an incident consists of a series of occurrences, it shall be treated as having occurred on the date of the first such occurrence.

Article II

1. An International Fund for compensation for pollution damage, to be named 'The International Oil Pollution Compensation Fund 1992' and hereinafter referred to as 'the Fund', is hereby established with the following aims:
   (a) to provide compensation for pollution damage to the extent that the protection afforded by the 1992 Liability Convention is inadequate;
   (b) to give effect to the related purposes set out in this Convention.
2. The Fund shall in each Contracting State be recognized as a legal person capable under the laws of that State of assuming rights and obligations and of being a party in legal proceedings before the courts of that State. Each Contracting State shall recognize the Director of the Fund (hereinafter referred to as 'The Director') as the legal representative of the Fund.

Article III

This Convention shall apply exclusively:

(a) to pollution damage caused:
   (i) in the territory, including the territorial sea, of a Contracting State, and
   (ii) in the exclusive economic zone of a Contracting State, established in accordance with international law, or, if a Contracting State has not established such a zone, in an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured;

(b) to preventive measures, wherever taken, to prevent or minimize such damage.

Compensation

Article IV

1. For the purpose of fulfilling its function under Article II, paragraph 1(a), the Fund shall pay compensation to any person suffering pollution damage if such person has been unable to obtain full and adequate compensation for the damage under the terms of the 1992 Liability Convention,
   (a) because no liability for the damage arises under the 1992 Liability Convention;
   (b) because the owner liable for the damage under the 1992 Liability Convention is financially

incapable of meeting his obligations in full and any financial security that may be provided under Article VII of that Convention does not cover or is insufficient to satisfy the claims for compensation for the damage; an owner being treated as financially incapable of meeting his obligations and a financial security being treated as insufficient if the person suffering the damage has been unable to obtain full satisfaction of the amount of compensation due under the 1992 Liability Convention after having taken all reasonable steps to pursue the legal remedies available to him;

(c) because the damage exceeds the owner's liability under the 1992 Liability Convention as limited pursuant to Article V, paragraph 1, of that Convention or under the terms of any other international Convention in force or open for signature, ratification or accession at the date of this Convention. Expenses reasonably incurred or sacrifices reasonably made by the owner voluntarily to prevent or minimize pollution damage shall be treated as pollution damage for the purposes of this Article.

2. The Fund shall incur no obligation under the preceding paragraph if:

(a) it proves that the pollution damage resulted from an act of war, hostilities, civil war or insurrection or was caused by oil which has escaped or been discharged from a warship or other ship owned or operated by a State and used, at the time of the incident, only on Government non-commercial service; or

(b) the claimant cannot prove that the damage resulted from an incident involving one or more ships.

3. If the Fund proves that the pollution damage resulted wholly or partially either from an act or omission done with the intent to cause damage by the person who suffered the damage or from the negligence of that person, the Fund may be exonerated wholly or partially from its obligation to pay compensation to such person. The Fund shall in any event be exonerated to the extent that the shipowner may have been exonerated under Article III, paragraph 3, of the 1992 Liability Convention. However, there shall be no such exoneration of the Fund with regard to preventive measures.

4. (a) Except as otherwise provided in sub-paragraphs (b) and (c) of this paragraph, the aggregate amount of compensation payable by the Fund under this Article shall in respect of any one incident be limited, so that the total sum of that amount and the amount of compensation actually paid under the 1992 Liability Convention for pollution damage within the scope of application of this Convention as defined in Article III shall not exceed 203,000,000 units of account.

(b) Except as otherwise provided in sub-paragraph (c), the aggregate amount of compensation payable by the Fund under this Article for pollution damage resulting from a natural phenomenon of an exceptional, inevitable and irresistible character shall not exceed 203,000,000 units of account.

(c) The maximum amount of compensation referred to in sub-paragraphs (a) and (b) shall be 300,740,000 units of account with respect to any incident occurring during any period when there are three Parties to this Convention in respect of which the combined relevant quantity of contributing oil received by persons in the territories of such Parties, during the preceding calendar year, equalled or exceeded 600 million tons.

(d) Interest accrued on a fund constituted in accordance with Article V, paragraph 3, of the 1992 Liability Convention, if any, shall not be taken into account for the computation of the maximum compensation payable by the Fund under this Article.

(e) The amounts mentioned in this Article shall be converted into national currency on the basis of the value of that currency by reference to the Special Drawing Right on the date of the decision of the Assembly of the Fund as to the first date of payment of compensation.

5. Where the amount of established claims against the Fund exceeds the aggregate amount of compensation payable under paragraph 4, the amount available shall be distributed in such a manner that the proportion between any established claim and the amount of compensation

actually recovered by the claimant under this Convention shall be the same for all claimants.

6. The Assembly of the Fund may decide that, in exceptional cases, compensation in accordance with this Convention can be paid even if the owner of the ship has not constituted a fund in accordance with Article V, paragraph 3, of the 1992 Liability Convention. In such case paragraph 4(e) of this Article applies accordingly.
7. The Fund shall, at the request of a Contracting State, use its good offices as necessary to assist that State to secure promptly such personnel, material and services as are necessary to enable the State to take measures to prevent or mitigate pollution damage arising from an incident in respect of which the Fund may be called upon to pay compensation under this Convention.
8. The Fund may on conditions to be laid down in the Internal Regulations provide credit facilities with a view to the taking of preventive measures against pollution damage arising from a particular incident in respect of which the Fund may be called upon to pay compensation under this Convention.

Article V

Deleted.

Article VI

Rights to compensation under Article IV shall be extinguished unless an action is brought thereunder or a notification has been made pursuant to Article VII, paragraph 6, within three years from the date when the damage occurred. However, in no case shall an action be brought after six years from the date of the incident which caused the damage.

Article VII

1. Subject to the subsequent provisions of this Article, any action against the Fund for compensation under Article IV of this Convention shall be brought only before a court competent under Article IX of the 1992 Liability Convention in respect of actions against the owner who is or who would, but for the provisions of Article III, paragraph 2, of that Convention, have been liable for pollution damage caused by the relevant incident.
2. Each Contracting State shall ensure that its courts possess the necessary jurisdiction to entertain such actions against the Fund as are referred to in paragraph 1.
3. Where an action for compensation for pollution damage has been brought before a court competent under Article IX of the 1992 Liability Convention against the owner of a ship or his guarantor, such court shall have exclusive jurisdictional competence over any action against the Fund for compensation under the provisions of Article IV of this Convention in respect of the same damage. However, where an action for compensation for pollution damage under the 1992 Liability Convention has been brought before a court in a State Party to the 1992 Liability Convention but not to this Convention, any action against the Fund under Article IV of this Convention shall at the option of the claimant be brought either before a court of the State where the Fund has its headquarters or before any court of a State Party to this Convention competent under Article IX of the 1992 Liability Convention.
4. Each Contracting State shall ensure that the Fund shall have the right to intervene as a party to any legal proceedings instituted in accordance with Article IX of the 1992 Liability Convention before a competent court of that State against the owner of a ship or his guarantor.
5. Except as otherwise provided in paragraph 6, the Fund shall not be bound by any judgment or decision in proceedings to which it has not been a party or by any settlement to which it is not a party.
6. Without prejudice to the provisions of paragraph 4, where an action under the 1992 Liability Convention for compensation for pollution damage has been brought against an owner or his guarantor before a competent court in a Contracting State, each party to the proceedings shall be entitled under the national law of that State to notify the Fund of the proceedings. Where such notification has been made in accordance with the formalities required by the law of the court seized and in such time and in such a manner that the Fund has in fact been in a position effectively to intervene as a party to the proceedings, any judgment rendered by the court in such proceedings shall, after it has become final and enforceable in the State where the judgment was given, become binding upon

the Fund in the sense that the facts and findings in that judgment may not be disputed by the Fund even if the Fund has not actually intervened in the proceedings.

Article VIII

Subject to any decision concerning the distribution referred to in Article IV, paragraph 5, any judgment given against the Fund by a court having jurisdiction in accordance with Article VII, paragraphs 1 and 3, shall, when it has become enforceable in the State of origin and is in that State no longer subject to ordinary forms of review, be recognized and enforceable in each Contracting State on the same conditions as are prescribed in Article X of the 1992 Liability Convention.

Article IX

1. The Fund shall, in respect of any amount of compensation for pollution damage paid by the Fund in accordance with Article IV, paragraph 1, of this Convention, acquire by subrogation the rights that the person so compensated may enjoy under the 1992 Liability Convention against the owner or his guarantor.
2. Nothing in this Convention shall prejudice any right of recourse or subrogation of the Fund against persons other than those referred to in the preceding paragraph. In any event the right of the Fund to subrogation against such person shall not be less favourable than that of an insurer of the person to whom compensation has been paid.
3. Without prejudice to any other rights of subrogation or recourse against the Fund which may exist, a Contracting State or agency thereof which has paid compensation for pollution damage in accordance with provisions of national law shall acquire by subrogation the rights which the person so compensated would have enjoyed under this Convention.

Contributions

Article X

1. Annual contributions to the Fund shall be made in respect of each Contracting State by any person who, in the calendar year referred to in Article XII, paragraph 2(a) or (b), has received in total quantities exceeding 150,000 tons:
   (a) in the ports or terminal installations in the territory of that State contributing oil carried by sea to such ports or terminal installations; and
   (b) in any installations situated in the territory of that Contracting State contributing oil which has been carried by sea and discharged in a port or terminal installation of a non-Contracting State, provided that contributing oil shall only be taken into account by virtue of this sub-paragraph on first receipt in a Contracting State after its discharge in that non-Contracting State.
2. (a) For the purposes of paragraph 1, where the quantity of contributing oil received in the territory of a Contracting State by any person in a calendar year when aggregated with the quantity of contributing oil received in the same Contracting State in that year by any associated person or persons exceeds 150,000 tons, such person shall pay contributions in respect of the actual quantity received by him notwithstanding that that quantity did not exceed 150,000 tons.
   (b) 'Associated person' means any subsidiary or commonly controlled entity. The question whether a person comes within this definition shall be determined by the national law of the State concerned.

Article XI

Deleted.

Article XII

1. With a view to assessing the amount of annual contributions due, if any, and taking account of the necessity to maintain sufficient liquid funds, the Assembly shall for each calendar year make an estimate in the form of a budget of:

   (i) **Expenditure**

   (a) costs and expenses of the administration of the Fund in the relevant year and any deficit from operations in preceding years;
   (b) payments to be made by the Fund in the relevant year for the satisfaction of claims against the Fund due under Article IV, including repayment on loans previously

taken by the Fund for the satisfaction of such claims, to the extent that the aggregate amount of such claims in respect of any one incident does not exceed four million units of account;

(c) payments to be made by the Fund in the relevant year for the satisfaction of claims against the Fund due under Article IV, including repayments on loans previously taken by the Fund for the satisfaction of such claims, to the extent that the aggregate amount of such claims in respect of any one incident is in excess of four million units of account;

(ii) **Income**

(a) surplus funds from operations in preceding years, including any interest;
(b) annual contributions, if required to balance the budget;
(c) any other income.

2. The Assembly shall decide the total amount of contributions to be levied. On the basis of that decision, the Director shall, in respect of each Contracting State, calculate for each person referred to in Article X the amount of his annual contribution:

(a) in so far as the contribution is for the satisfaction of payments referred to in paragraph 1(i)(a) and (b) on the basis of a fixed sum for each ton of contributing oil received in the relevant State by such persons during the preceding calendar year; and
(b) in so far as the contribution is for the satisfaction of payments referred to in paragraph 1(i)(c) of this Article on the basis of a fixed sum for each ton of contributing oil received by such person during the calendar year preceding that in which the incident in question occurred, provided that State was a Party to this Convention at the date of the incident.

3. The sums referred to in paragraph 2 above shall be arrived at by dividing the relevant total amount of contributions required by the total amount of contributing oil received in all Contracting States in the relevant year.
4. The annual contribution shall be due on the date to be laid down in the Internal Regulations of the Fund. The Assembly may decide on a different date of payment.
5. The Assembly may decide, under conditions to be laid down in the Financial Regulations of the Fund, to make transfers between funds received in accordance with Article XII.2(a) and funds received in accordance with Article XII.2(b).

Article XIII

1. The amount of any contribution due under Article XII and which is in arrears shall bear interest at a rate which shall be determined in accordance with the Internal Regulations of the Fund, provided that different rates may be fixed for different circumstances.
2. Each Contracting State shall ensure that any obligation to contribute to the Fund arising under this Convention in respect of oil received within the territory of that State is fulfilled and shall take any appropriate measures under its law, including the imposing of such sanctions as it may deem necessary, with a view to the effective execution of any such obligation; provided, however, that such measures shall only be directed against those persons who are under an obligation to contribute to the Fund.
3. Where a person who is liable in accordance with the provisions of Articles X and XII to make contributions to the Fund does not fulfil his obligations in respect of any such contribution or any part thereof and is in arrear, the Director shall take all appropriate action against such person on behalf of the Fund with a view to the recovery of the amount due. However, where the defaulting contributor is manifestly insolvent or the circumstances otherwise so warrant, the Assembly may, upon recommendation of the Director, decide that no action shall be taken or continued against the contributor.

Article XIV

1. Each Contracting State may at the time when it deposits its instrument of ratification or accession or at any time thereafter declare that it assumes itself obligations that are incumbent under this Convention on any person who is liable to contribute to the Fund in accordance with Article X, paragraph 1, in respect of oil

received within the territory of that State. Such declaration shall be made in writing and shall specify which obligations are assumed.
2. Where a declaration under paragraph 1 is made prior to the entry into force of this Convention in accordance with Article XL, it shall be deposited with the Secretary-General of the Organization who shall after the entry into force of the Convention communicate the declaration to the Director.
3. A declaration under paragraph 1 which is made after the entry into force of this Convention shall be deposited with the Director.
4. A declaration made in accordance with this Article may be withdrawn by the relevant State giving notice thereof in writing to the Director. Such notification shall take effect three months after the Director's receipt thereof.
5. Any State which is bound by a declaration made under this Article shall, in any proceedings brought against it before a competent court in respect of any obligation specified in the declaration, waive any immunity that it would otherwise be entitled to invoke.

Article XV

1. Each Contracting State shall ensure that any person who receives contributing oil within its territory in such quantities that he is liable to contribute to the Fund appears on a list to be established and kept up to date by the Director in accordance with the subsequent provisions of this Article.
2. For the purposes set out in paragraph 1, each Contracting State shall communicate, at a time and in the manner to be prescribed in the Internal Regulations, to the Director the name and address of any person who in respect of that State is liable to contribute to the Fund pursuant to Article X, as well as data on the relevant quantities of contributing oil received by any such person during the preceding calendar year.
3. For the purposes of ascertaining who are, at any given time, the persons liable to contribute to the Fund in accordance with Article X, paragraph 1, and of establishing, where applicable, the quantities of oil to be taken into account for any such person when determining the amount of his contribution, the list shall be *prima facie* evidence of the facts stated therein.
4. Where a Contracting State does not fulfil its obligations to submit to the Director the communication referred to in paragraph 2 and this results in a financial loss for the Fund, that Contracting State shall be liable to compensate the Fund for such loss. The Assembly shall, on the recommendation of the Director, decide whether such compensation shall be payable by that Contracting State.

Organization and administration

Article XVI

The Fund shall have an Assembly and a Secretariat headed by a Director.

Assembly

Article XVII

The Assembly shall consist of all Contracting States to this Convention.

Article XVIII

The functions of the Assembly shall be:

1. to elect at each regular session its Chairman and two Vice-Chairmen who shall hold office until the next regular session;
2. to determine its own rules of procedure, subject to the provisions of this Convention;
3. to adopt Internal Regulations necessary for the proper functioning of the Fund;
4. to appoint the Director and make provisions for the appointment of such other personnel as may be necessary and determine the terms and conditions of service of the Director and other personnel;
5. to adopt the annual budget and fix the annual contributions;
6. to appoint auditors and approve the accounts of the Fund;
7. to approve settlements of claims against the Fund, to take decisions in respect of the distribution among claimants of the available amount of compensation in accordance with Article IV, paragraph 5, and to determine the terms and conditions according to which provisional payments in respect of claims shall be made with a view to ensuring that victims of pollution damage are compensated as promptly as possible;
8. Deleted.

9. to establish any temporary or permanent subsidiary body it may consider to be necessary, to define its terms of reference and to give it the authority needed to perform the functions entrusted to it; when appointing the members of such body, the Assembly shall endeavour to secure an equitable geographical distribution of members and to ensure that the Contracting States, in respect of which the largest quantities of contributing oil are being received, are appropriately represented; the Rules of Procedure of the Assembly may be applied, *mutatis mutandis*, for the work of such subsidiary body;
10. to determine which non-Contracting States and which inter-governmental and international non-governmental organizations shall be admitted to take part, without voting rights, in meetings of the Assembly and subsidiary bodies;
11. to give instructions concerning the administration of the Fund to the Director and subsidiary bodies;
12. Deleted.
13. to supervise the proper execution of the Convention and of its own decisions;
14. to perform such other functions as are allocated to it under the Convention or are otherwise necessary for the proper operation of the Fund.

Article XIX

1. Regular sessions of the Assembly shall take place once every calendar year upon convocation by the Director.
2. Extraordinary sessions of the Assembly shall be convened by the Director at the request of at least one third of the members of the Assembly and may be convened on the Director's own initiative after consultation with the Chairman of the Assembly. The Director shall give members at least thirty days' notice of such sessions.

Article XX

A majority of the members of the Assembly shall constitute a quorum for its meetings.

(heading deleted)

Articles XXI–XXVII

Deleted.

Secretariat

Article XXVIII

1. The Secretariat shall comprise the Director and such staff as the administration of the Fund may require.
2. The Director shall be the legal representative of the Fund.

Article XXIX

1. The Director shall be the chief administrative officer of the Fund. Subject to the instructions given to him by the Assembly, he shall perform those functions which are assigned to him by this Convention, the Internal Regulations of the Fund and the Assembly.
2. The Director shall in particular:

   (a) appoint the personnel required for the administration of the Fund;
   (b) take all appropriate measures with a view to the proper administration of the Fund's assets;
   (c) collect the contributions due under this Convention while observing in particular the provisions of Article XIII, paragraph 3;
   (d) to the extent necessary to deal with claims against the Fund and carry out the other functions of the Fund, employ the services of legal, financial and other experts;
   (e) take all appropriate measures for dealing with claims against the Fund within the limits and on conditions to be laid down in the Internal Regulations, including the final settlement of claims without the prior approval of the Assembly where these Regulations so provide;
   (f) prepare and submit to the Assembly the financial statements and budget estimates for each calendar year;
   (g) prepare, in consultation with the Chairman of the Assembly, and publish a report of the activities of the Fund during the previous calendar year;
   (h) prepare, collect and circulate the papers, documents, agenda, minutes and information that may be required for the work of the Assembly and subsidiary bodies.

Article XXX

In the performance of their duties the Director and the staff and experts appointed by him shall not

seek or receive instructions from any Government or from any authority external to the Fund. They shall refrain from any action which might reflect on their position as international officials. Each Contracting State on its part undertakes to respect the exclusively international character of the responsibilities of the Director and the staff and experts appointed by him, and not to seek to influence them in the discharge of their duties.

Finances

Article XXXI

1. Each Contracting State shall bear the salary, travel and other expenses of its own delegation to the Assembly and of its representatives on subsidiary bodies.
2. Any other expenses incurred in the operation of the Fund shall be borne by the Fund.

Voting

Article XXXII

The following provisions shall apply to voting in the Assembly:

(a) each member shall have one vote;
(b) except as otherwise provided in Article XXXIII, decisions of the Assembly shall be by a majority vote of the members present and voting;
(c) decisions where a three-fourths or a two-thirds majority is required shall be by a threefourths or two-thirds majority vote, as the case may be, of those present;
(d) for the purpose of this Article the phrase 'members present' means 'members present at the meeting at the time of the vote', and the phrase 'members present and voting' means 'members present and casting an affirmative or negative vote'. Members who abstain from voting shall be considered as not voting.

Article XXXIII

The following decisions of the Assembly shall require a two-thirds majority:

(a) a decision under Article XIII, paragraph 3, not to take or continue action against a contributor;
(b) the appointment of the Director under Article XVIII, paragraph 4;
(c) the establishment of subsidiary bodies, under Article XVIII, paragraph 9, and matters relating to such establishment.

Article XXXIV

1. The Fund, its assets, income, including contributions, and other property shall enjoy in all Contracting States exemption from all direct taxation.
2. When the Fund makes substantial purchases of movable or immovable property, or has important work carried out which is necessary for the exercise of its official activities and the cost of which includes indirect taxes or sales taxes, the Governments of Member States shall take, whenever possible, appropriate measures for the remission or refund of the amount of such duties and taxes.
3. No exemption shall be accorded in the case of duties, taxes or dues which merely constitute payment for public utility services.
4. The Fund shall enjoy exemption from all customs duties, taxes and other related taxes on articles imported or exported by it or on its behalf for its official use. Articles thus imported shall not be transferred either for consideration or gratis on the territory of the country into which they have been imported except on conditions agreed by the Government of that country.
5. Persons contributing to the Fund and victims and owners of ships receiving compensation from the Fund shall be subject to the fiscal legislation of the State where they are taxable, no special exemption or other benefit being conferred on them in this respect.
6. Information relating to individual contributors supplied for the purpose of this Convention shall not be divulged outside the Fund except in so far as it may be strictly necessary to enable the Fund to carry out its functions including the bringing and defending of legal proceedings.
7. Independently of existing or future regulations concerning currency or transfers, Contracting States shall authorize the transfer and payment of any contribution to the Fund and of any compensation paid by the Fund without any restriction.

Transitional provisions

Article XXXV

Claims for compensation under Article IV arising from incidents occurring after the date of entry into force of this Convention may not be brought against the Fund earlier than the one hundred and twentieth day after that date.

Article XXXVI

The Secretary-General of the Organization shall convene the first session of the Assembly. This session shall take place as soon as possible after entry into force of this Convention and, in any case, not more than thirty days after such entry into force.

Article XXXVI bis

The following transitional provisions shall apply in the period, hereinafter referred to as the transitional period, commencing with the date of entry into force of this Convention and ending with the date on which the denunciations provided for in Article XXXI of the 1992 Protocol to amend the 1971 Fund Convention take effect:

(a) In the application of paragraph 1(a) of Article II of this Convention, the reference to the 1992 Liability Convention shall include reference to the International Convention on Civil Liability for Oil Pollution Damage, 1969, either in its original version or as amended by the Protocol thereto of 1976 (referred to in this Article as 'the 1969 Liability Convention'), and also the 1971 Fund Convention.

(b) Where an incident has caused pollution damage within the scope of this Convention, the Fund shall pay compensation to any person suffering pollution damage only if, and to the extent that, such person has been unable to obtain full and adequate compensation for the damage under the terms of the 1969 Liability Convention, the 1971 Fund Convention and the 1992 Liability Convention, provided that, in respect of pollution damage within the scope of this Convention in respect of a Party to this Convention but not a Party to the 1971 Fund Convention, the Fund shall pay compensation to any person suffering pollution damage only if, and to the extent that, such person would have been unable to obtain full and adequate compensation had that State been party to each of the above-mentioned Conventions.

(c) In the application of Article IV of this Convention, the amount to be taken into account in determining the aggregate amount of compensation payable by the Fund shall also include the amount of compensation actually paid under the 1969 Liability Convention, if any, and the amount of compensation actually paid or deemed to have been paid under the 1971 Fund Convention.

(d) Paragraph 1 of Article IX of this Convention shall also apply to the rights enjoyed under the 1969 Liability Convention.

Article XXXVI ter

1. Subject to paragraph 4 of this Article, the aggregate amount of the annual contributions payable in respect of contributing oil received in a single Contracting State during a calendar year shall not exceed 27.5% of the total amount of annual contributions pursuant to the 1992 Protocol to amend the 1971 Fund Convention, in respect of that calendar year.
2. If the application of the provisions in paragraphs 2 and 3 of Article XII would result in the aggregate amount of the contributions payable by contributors in a single Contracting State in respect of a given calendar year exceeding 27.5% of the total annual contributions, the contributions payable by all contributors in that State shall be reduced *pro rata* so that their aggregate contributions equal 27.5% of the total annual contributions to the Fund in respect of that year.
3. If the contributions payable by persons in a given Contracting State shall be reduced pursuant to paragraph 2 of this Article, the contributions payable by persons in all other Contracting States shall be increased *pro rata* so as to ensure that the total amount of contributions payable by all persons liable to contribute to the Fund in respect of the calendar year in question will reach the total amount of contributions decided by the Assembly.
4. The provisions in paragraphs 1–3 of this Article shall operate until the total quantity of contributing oil received in all Contracting States in a calendar year has reached 750 million tons or until a period of 5 years after the date of entry into force of the said 1992 Protocol has elapsed, whichever occurs earlier.

Article XXXVI quater

Notwithstanding the provisions of this Convention, the following provisions shall apply to the administration of the Fund during the period in which both the 1971 Fund Convention and this Convention are in force:

(a) The Secretariat of the Fund, established by the 1971 Fund Convention (hereinafter referred to as 'the 1971 Fund'), headed by the Director, may also function as the Secretariat and the Director of the Fund.
(b) If, in accordance with sub-paragraph (a), the Secretariat and the Director of the 1971 Fund also perform the function of Secretariat and Director of the Fund, the Fund shall be represented, in cases of conflict of interests between the 1971 Fund and the Fund, by the Chairman of the Assembly of the Fund.
(c) The Director and the staff and experts appointed by him, performing their duties under this Convention and the 1971 Fund Convention, shall not be regarded as contravening the provisions of Article XXX of this Convention in so far as they discharge their duties in accordance with this Article.
(d) The Assembly of the Fund shall endeavour not to take decisions which are incompatible with decisions taken by the Assembly of the 1971 Fund. If differences of opinion with respect to common administrative issues arise, the Assembly of the Fund shall try to reach a consensus with the Assembly of the 1971 Fund, in a spirit of mutual co-operation and with the common aims of both organizations in mind.
(e) The Fund may succeed to the rights, obligations and assets of the 1971 Fund if the Assembly of the 1971 Fund so decides, in accordance with Article XLIV, paragraph 2, of the 1971 Fund Convention.
(f) The Fund shall reimburse to the 1971 Fund all costs and expenses arising from administrative services performed by the 1971 Fund on behalf of the Fund.

Article XXXVI quinquies

Final clauses

The final clauses of this Convention shall be Articles XXVIII–XXXIX of the Protocol of 1992 to amend the 1971 Fund Convention. References in this Convention to Contracting States shall be taken to mean references to the Contracting States of that Protocol.

Final clauses of the Protocol of 1992 to amend the 1971 Fund Convention

Article XXVIII

Signature, ratification, acceptance, approval and accession

1. This Protocol shall be open for signature at London from 15 January 1993 to 14 January 1994 by any State which has signed the 1992 Liability Convention.
2. Subject to paragraph 4, this Protocol shall be ratified, accepted or approved by States which have signed it.
3. Subject to paragraph 4, this Protocol is open for accession by States which did not sign it.
4. This Protocol may be ratified, accepted, approved or acceded to only by States which have ratified, accepted, approved or acceded to the 1992 Liability Convention.
5. Ratification, acceptance, approval or accession shall be effected by the deposit of a formal instrument to that effect with the Secretary-General of the Organization.
6. A State which is a Party to this Protocol but is not a Party to the 1971 Fund Convention shall be bound by the provisions of the 1971 Fund Convention as amended by this Protocol in relation to other Parties hereto, but shall not be bound by the provisions of the 1971 Fund Convention in relation to Parties thereto.
7. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to the 1971 Fund Convention as amended by this Protocol shall be deemed to apply to the Convention so amended, as modified by such amendment.

Article XXIX

Information on contributing oil

1. Before this Protocol comes into force for a State, that State shall, when depositing an instrument referred to in Article XXVIII, paragraph 5, and annually thereafter at a date to be determined by the Secretary-General of the Organization, communicate to him the name and address of any person who in respect of that State would be liable to contribute to the Fund pursuant to Article X of the 1971 Fund Convention as amended by this Protocol as well as data on the relevant quantities of contributing oil received by any such person in the territory of that State during the preceding calendar year.

2. During the transitional period, the Director shall, for Parties, communicate annually to the Secretary-General of the Organization data on quantities of contributing oil received by persons liable to contribute to the Fund pursuant to Article X of the 1971 Fund Convention as amended by this Protocol.

Article XXX

Entry into force

1. This Protocol shall enter into force twelve months following the date on which the following requirements are fulfilled:
   (a) at least eight States have deposited instruments of ratification, acceptance, approval or accession with the Secretary-General of the Organization; and
   (b) the Secretary-General of the Organization has received information in accordance with Article XXIX that those persons who would be liable to contribute pursuant to Article X of the 1971 Fund Convention as amended by this Protocol have received during the preceding calendar year a total quantity of at least 450 million tons of contributing oil.
2. However, this Protocol shall not enter into force before the 1992 Liability Convention has entered into force.
3. For each State which ratifies, accepts, approves or accedes to this Protocol after the conditions in paragraph 1 for entry into force have been met, the Protocol shall enter into force twelve months following the date of the deposit by such State of the appropriate instrument.
4. Any State may, at the time of the deposit of its instrument of ratification, acceptance, approval or accession in respect of this Protocol declare that such instrument shall not take effect for the purpose of this Article until the end of the six-month period in Article XXXI.
5. Any State which has made a declaration in accordance with the preceding paragraph may withdraw it at any time by means of a notification addressed to the Secretary-General of the Organization. Any such withdrawal shall take effect on the date the notification is received, and any State making such a withdrawal shall be deemed to have deposited its instrument of ratification, acceptance, approval or accession in respect of this Protocol on that date.
6. Any State which has made a declaration under Article XIII, paragraph 2, of the Protocol of 1992 to amend the 1969 Liability Convention shall be deemed to have also made a declaration under paragraph 4 of this Article. Withdrawal of a declaration under the said Article XIII, paragraph 2, shall be deemed to constitute withdrawal also under paragraph 5 of this Article.

Article XXXI

Denunciation of the 1969 and 1971 Conventions

Subject to Article XXX, within six months following the date on which the following requirements are fulfilled:

(a) at least eight States have become Parties to this Protocol or have deposited instruments of ratification, acceptance, approval or accession with the Secretary-General of the Organization, whether or not subject to Article XXX, paragraph 4, and
(b) the Secretary-General of the Organization has received information in accordance with Article XXIX that those persons who are or would be liable to contribute pursuant to Article X of the 1971 Fund Convention as amended by this Protocol have received during the preceding calendar year a total quantity of at least 750 million tons of contributing oil;

each Party to this Protocol and each State which has deposited an instrument of ratification, acceptance, approval or accession, whether or not subject to Article XXX, paragraph 4, shall, if party thereto, denounce the 1971 Fund Convention and the 1969 Liability Convention with effect twelve months after the expiry of the above-mentioned six-month period.

Article XXXII

Revision and amendment

1. A conference for the purpose of revising or amending the 1992 Fund Convention may be convened by the Organization.
2. The Organization shall convene a Conference of Contracting States for the purpose of revising or amending the 1992 Fund Convention at the request of not less than one third of all Contracting States.

Article XXXIII

Amendment of compensation limits

1. Upon the request of at least one quarter of the Contracting States, any proposal to amend the limits of amounts of compensation laid down in Article IV, paragraph 4, of the 1971 Fund Convention as amended by this Protocol shall be circulated by the Secretary-General to all Members of the Organization and to all Contracting States.
2. Any amendment proposed and circulated as above shall be submitted to the Legal Committee of the Organization for consideration at a date at least six months after the date of its circulation.
3. All Contracting States to the 1971 Fund Convention as amended by this Protocol, whether or not Members of the Organization, shall be entitled to participate in the proceedings of the Legal Committee for the consideration and adoption of amendments.
4. Amendments shall be adopted by a two-thirds majority of the Contracting States present and voting in the Legal Committee, expanded as provided for in paragraph 3, on condition that at least one half of the Contracting States shall be present at the time of voting.
5. When acting on a proposal to amend the limits, the Legal Committee shall take into account the experience of incidents and in particular the amount of damage resulting therefrom and changes in the monetary values. It shall also take into account the relationship between the limits in Article IV, paragraph 4, of the 1971 Fund Convention as amended by this Protocol and those in Article V, paragraph 1 of the International Convention on Civil Liability for Oil Pollution Damage, 1992.
6. (a) No amendment of the limits under this Article may be considered before 15 January 1998 nor less than five years from the date of entry into force of a previous amendment under this Article. No amendment under this Article shall be considered before this Protocol has entered into force.
   (b) No limit may be increased so as to exceed an amount which corresponds to the limit laid down in the 1971 Fund Convention as amended by this Protocol increased by six per cent per year calculated on a compound basis from 15 January 1993.
   (c) No limit may be increased so as to exceed an amount which corresponds to the limit laid down in the 1971 Fund Convention as amended by this Protocol multiplied by three.
7. Any amendment adopted in accordance with paragraph 4 shall be notified by the Organization to all Contracting States. The amendment shall be deemed to have been accepted at the end of a period of eighteen months after the date of notification unless within that period not less than one quarter of the States that were Contracting States at the time of the adoption of the amendment by the Legal Committee have communicated to the Organization that they do not accept the amendment in which case the amendment is rejected and shall have no effect.
8. An amendment deemed to have been accepted in accordance with paragraph 7 shall enter into force eighteen months after its acceptance.
9. All Contracting States shall be bound by the amendment, unless they denounce this Protocol in accordance with Article XXXIV, paragraphs 1 and 2, at least six months before the amendment enters into force. Such denunciation shall take effect when the amendment enters into force.
10. When an amendment has been adopted by the Legal Committee but the eighteen-month period for its acceptance has not yet expired, a State which becomes a Contracting State during that period shall be bound by the amendment if it enters into force. A State which becomes a Contracting State after that period shall be bound by an amendment which has been accepted in accordance with paragraph 7. In the cases referred to in this paragraph, a State becomes bound by an amendment when that amendment enters into force, or when this Protocol enters into force for that State, if later.

Article XXXIV

Denunciation

1. This Protocol may be denounced by any Party at any time after the date on which it enters into force for that Party.
2. Denunciation shall be effected by the deposit of an instrument with the Secretary-General of the Organization.

3. A denunciation shall take effect twelve months, or such longer period as may be specified in the instrument of denunciation, after its deposit with the Secretary-General of the Organization.
4. Denunciation of the 1992 Liability Convention shall be deemed to be a denunciation of this Protocol. Such denunciation shall take effect on the date on which denunciation of the Protocol of 1992 to amend the 1969 Liability Convention takes effect according to Article XVI of that Protocol.
5. Any Contracting State to this Protocol which has not denounced the 1971 Fund Convention and the 1969 Liability Convention as required by Article XXXI shall be deemed to have denounced this Protocol with effect twelve months after the expiry of the six-month period mentioned in that Article. As from the date on which the denunciations provided for in Article XXXI take effect, any Party to this Protocol which deposits an instrument of ratification, acceptance, approval or accession to the 1969 Liability Convention shall be deemed to have denounced this Protocol with effect from the date on which such instrument takes effect.
6. As between the Parties to this Protocol, denunciation by any of them of the 1971 Fund Convention in accordance with Article XLI thereof shall not be construed in any way as a denunciation of the 1971 Fund Convention as amended by this Protocol.
7. Notwithstanding a denunciation of this Protocol by a Party pursuant to this Article, any provisions of this Protocol relating to the obligations to make contributions under Article X of the 1971 Fund Convention as amended by this Protocol with respect to an incident referred to in Article XII, paragraph 2(b), of that amended Convention and occurring before the denunciation takes effect shall continue to apply.

Article XXXV

Extraordinary sessions of the Assembly

1. Any Contracting State may, within ninety days after the deposit of an instrument of denunciation the result of which it considers will significantly increase the level of contributions for the remaining Contracting States, request the Director to convene an extraordinary session of the Assembly. The Director shall convene the Assembly to meet not later than sixty days after receipt of the request.
2. The Director may convene, on his own initiative, an extraordinary session of the Assembly to meet within sixty days after the deposit of any instrument of denunciation, if he considers that such denunciation will result in a significant increase in the level of contributions of the remaining Contracting States.
3. If the Assembly at an extraordinary session convened in accordance with paragraph 1 or 2 decides that the denunciation will result in a significant increase in the level of contributions for the remaining Contracting States, any such State may, not later than one hundred and twenty days before the date on which the denunciation takes effect, denounce this Protocol with effect from the same date.

Article XXXVI

Termination

1. This Protocol shall cease to be in force on the date when the number of Contracting States falls below three.
2. States which are bound by this Protocol on the day before the date it ceases to be in force shall enable the Fund to exercise its functions as described under Article XXXVII of this Protocol and shall, for that purpose only, remain bound by this Protocol.

Article XXXVII

Winding up of the Fund

1. If this Protocol ceases to be in force, the Fund shall nevertheless:
   (a) meet its obligations in respect of any incident occurring before the Protocol ceased to be in force;
   (b) be entitled to exercise its rights to contributions to the extent that these contributions are necessary to meet the obligations under sub-paragraph (a), including expenses for the administration of the Fund necessary for this purpose.
2. The Assembly shall take all appropriate measures to complete the winding up of the Fund including the distribution in an equitable manner of any

remaining assets among those persons who have contributed to the Fund.
3. For the purposes of this Article the Fund shall remain a legal person.

Article XXXVIII

Depositary

1. This Protocol and any amendments accepted under Article XXXIII shall be deposited with the Secretary-General of the Organization.
2. The Secretary-General of the Organization shall:

(a) inform all States which have signed or acceded to this Protocol of:

(i) each new signature or deposit of an instrument together with the date thereof;
(ii) each declaration and notification under Article XXX including declarations and withdrawals deemed to have been made in accordance with that Article;
(iii) the date of entry into force of this Protocol;
(iv) the date by which denunciations provided for in Article XXXI are required to be made;
(v) any proposal to amend limits of amounts of compensation which has been made in accordance with Article XXXIII, paragraph 1;
(vi) any amendment which has been adopted in accordance with Article XXXIII, paragraph 4;
(vii) any amendment deemed to have been accepted under Article XXXIII, paragraph 7, together with the date on which that amendment shall enter into force in accordance with paragraphs 8 and 9 of that Article;
(viii) the deposit of an instrument of denunciation of this Protocol together with the date of the deposit and the date on which it takes effect;
(ix) any denunciation deemed to have been made under Article XXXIV, paragraph 5;
(x) any communication called for by any Article in this Protocol;

(b) transmit certified true copies of this Protocol to all Signatory States and to all States which accede to the Protocol.

3. As soon as this Protocol enters into force, the text shall be transmitted by the Secretary-General of the Organization to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

Article XXXIX

Languages

This Protocol is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

DONE AT LONDON this twenty-seventh day of November one thousand nine hundred and ninety-two.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments for that purpose, have signed this Protocol.

4.3 Resolution (Adopted by the Legal Committee of the International Maritime Organization on 18 October 2000): Adoption of Amendments of the Limits of Compensation in the Protocol of 1992 to Amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971

THE LEGAL COMMITTEE at its eighty-second session:

RECALLING Article 33(b) of the Convention on the International Maritime Organization (hereinafter referred to as the 'IMO Convention') concerning the functions of the Committee,

MINDFUL of Article 36 of the IMO Convention concerning rules governing the procedures to be followed

when exercising the functions conferred on it by or under any international convention or instrument,

RECALLING FURTHER Article XXXIII of the Protocol of 1992 to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (hereinafter referred to as the '1992 Fund Protocol') concerning the procedures for amending the limits of the amounts of compensation set out in Article VI(3) of the 1992 Fund Protocol,

HAVING CONSIDERED amendments to the limits of the amounts of compensation proposed and circulated in accordance with the provisions of Article XXXI(1) and (2) of the 1992 Fund Protocol,

1. ADOPTS, in accordance with Article XXXIII(4) of the 1992 Fund Protocol, amendments to the limits of the amounts of compensation set out in Article VI(3) of the 1992 Fund Protocol, as set out in the Annex to this resolution;
2. DETERMINES, in accordance with Article XXXIII(7) of the 1992 Fund Protocol, that these amendments shall be deemed to have been accepted on 1 May 2002 unless, prior to that date, not less than one quarter of the States that were Contracting States on the date of the adoption of these amendments (being 18 October 2000) have communicated to the Organization that they do not accept these amendments;
3. FURTHER DETERMINES that, in accordance with Article XXXIII(8) of the 1992 Fund Protocol, these amendments, deemed to have been accepted in accordance with paragraph 2 above, shall enter into force on 1 November 2003;
4. REQUESTS the Secretary-General, in accordance with Articles XXXIII(7) and XXXVIII(2)(vi) of the 1992 Fund Protocol, to transmit certified copies of the present resolution and the amendments contained in the Annex thereto to all States which have signed or acceded to the 1992 Fund Protocol; and
5. FURTHER REQUESTS the Secretary-General to transmit copies of the present resolution and its Annex to the Members of the Organization which have not signed or acceded to the 1992 Fund Protocol.

4.3.1 Annex – Amendments of the limits of Compensation in the Protocol of 1992 to Amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971

Article VI(3) of the 1992 Fund Protocol is amended as follows:

- the reference in paragraph 4(a) to '135 million units of account' shall read '203,000,000 units of account';
- the reference in paragraph 4(b) to '135 million units of account' shall read '203,000,000 units of account'; and
- the reference in paragraph 4(c) to '200 million units of account' shall read '300,740,000 units of account'.

5
Supplementary Fund Protocol

5.1 General Information

Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992

Most common abbreviation(s)	**Supplementary Fund Protocol**
Organisation	International Maritime Organization (IMO)
Reference	RMC II.7.115 http://www.iopcfund.org/
Status	
Adoption	16 March 2003
Entry into force date	3 March 2005
State Parties	Barbados, Belgium, Croatia, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Latvia, Lithuania, the Netherlands, Norway, Portugal, Slovenia, Spain, Sweden, United Kingdom, Faroe Islands
Literature	Gonsaeles, G, 'The impact of EC Decision-making on the international regime for oil pollution damage: the Supplementary Fund example', in F Maes (ed), Marine Resource Damage Assessment, Springer, Dordrecht (The Netherlands), 2005, pp. 85–131.

5.2 Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992

THE CONTRACTING STATES TO THE PRESENT PROTOCOL,

BEARING IN MIND the International Convention on Civil Liability for Oil Pollution Damage, 1992 (hereinafter 'the 1992 Liability Convention'),

HAVING CONSIDERED the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (hereinafter 'the 1992 Fund Convention'),

AFFIRMING the importance of maintaining the viability of the international oil pollution liability and compensation system,

NOTING that the maximum compensation afforded by the 1992 Fund Convention might be insufficient to meet compensation needs in certain circumstances in some Contracting States to that Convention,

RECOGNIZING that a number of Contracting States to the 1992 Liability and 1992 Fund Conventions consider it necessary as a matter of urgency to make available additional funds for compensation through the creation of a supplementary scheme to which States may accede if they so wish,

BELIEVING that the supplementary scheme should seek to ensure that victims of oil pollution damage are compensated in full for their loss or damage and

should also alleviate the difficulties faced by victims in cases where there is a risk that the amount of compensation available under the 1992 Liability and 1992 Fund Conventions will be insufficient to pay established claims in full and that as a consequence the International Oil Pollution Compensation Fund, 1992, has decided provisionally that it will pay only a proportion of any established claim,

CONSIDERING that accession to the supplementary scheme will be open only to Contracting States to the 1992 Fund Convention,

Have agreed as follows:

General provisions

Article I

For the purposes of this Protocol:

1. '1992 Liability Convention' means the International Convention on Civil Liability for Oil Pollution Damage, 1992;
2. '1992 Fund Convention' means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992;
3. '1992 Fund' means the International Oil Pollution Compensation Fund, 1992, established under the 1992 Fund Convention;
4. 'Contracting State' means a Contracting State to this Protocol, unless stated otherwise;
5. When provisions of the 1992 Fund Convention are incorporated by reference into this Protocol, 'Fund' in that Convention means 'Supplementary Fund', unless stated otherwise;
6. 'Ship', 'Person', 'Owner', 'Oil', 'Pollution Damage', 'Preventive Measures' and 'Incident' have the same meaning as in Article I of the 1992 Liability Convention;
7. 'Contributing Oil', 'Unit of Account', 'Ton', 'Guarantor' and 'Terminal installation' have the same meaning as in Article I of the 1992 Fund Convention, unless stated otherwise;
8. 'Established claim' means a claim which has been recognised by the 1992 Fund or been accepted as admissible by decision of a competent court binding upon the 1992 Fund not subject to ordinary forms of review and which would have been fully compensated if the limit set out in Article IV, paragraph 4, of the 1992 Fund Convention had not been applied to that incident;
9. 'Assembly' means the Assembly of the International Oil Pollution Compensation Supplementary Fund, 2003, unless otherwise indicated;
10. 'Organization' means the International Maritime Organization;
11. 'Secretary-General' means the Secretary-General of the Organization.

Article II

1. An International Supplementary Fund for compensation for pollution damage, to be named 'The International Oil Pollution Compensation Supplementary Fund, 2003' (hereinafter 'the Supplementary Fund'), is hereby established.
2. The Supplementary Fund shall in each Contracting State be recognized as a legal person capable under the laws of that State of assuming rights and obligations and of being a party in legal proceedings before the courts of that State. Each Contracting State shall recognize the Director of the Supplementary Fund as the legal representative of the Supplementary Fund.

Article III

This Protocol shall apply exclusively:

(a) to pollution damage caused:

   (i) in the territory, including the territorial sea, of a Contracting State, and
   (ii) in the exclusive economic zone of a Contracting State, established in accordance with international law, or, if a Contracting State has not established such a zone, in an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured;

(b) to preventive measures, wherever taken, to prevent or minimize such damage.

Supplementary compensation

Article IV

1. The Supplementary Fund shall pay compensation to any person suffering pollution damage if such person has been unable to obtain full and adequate compensation for an established claim

for such damage under the terms of the 1992 Fund Convention, because the total damage exceeds, or there is a risk that it will exceed, the applicable limit of compensation laid down in Article IV, paragraph 4, of the 1992 Fund Convention in respect of any one incident.

2. (a) The aggregate amount of compensation payable by the Supplementary Fund under this article shall in respect of any one incident be limited, so that the total sum of that amount together with the amount of compensation actually paid under the 1992 Liability Convention and the 1992 Fund Convention within the scope of application of this Protocol shall not exceed 750 million units of account.
   (b) The amount of 750 million units of account mentioned in paragraph 2(a) shall be converted into national currency on the basis of the value of that currency by reference to the Special Drawing Right on the date determined by the Assembly of the 1992 Fund for conversion of the maximum amount payable under the 1992 Liability and 1992 Fund Conventions.
3. Where the amount of established claims against the Supplementary Fund exceeds the aggregate amount of compensation payable under paragraph 2, the amount available shall be distributed in such a manner that the proportion between any established claim and the amount of compensation actually recovered by the claimant under this Protocol shall be the same for all claimants.
4. The Supplementary Fund shall pay compensation in respect of established claims as defined in Article I, paragraph 8, and only in respect of such claims.

Article V

The Supplementary Fund shall pay compensation when the Assembly of the 1992 Fund has considered that the total amount of the established claims exceeds, or there is a risk that the total amount of established claims will exceed the aggregate amount of compensation available under Article IV, paragraph 4, of the 1992 Fund Convention and that as a consequence the Assembly of the 1992 Fund has decided provisionally or finally that payments will only be made for a proportion of any established claim. The Assembly of the Supplementary Fund shall then decide whether and to what extent the Supplementary Fund shall pay the proportion of any established claim not paid under the 1992 Liability Convention and the 1992 Fund Convention.

Article VI

1. Subject to Article XV, paragraphs 2 and 3, rights to compensation against the Supplementary Fund shall be extinguished only if they are extinguished against the 1992 Fund under Article VI of the 1992 Fund Convention.
2. A claim made against the 1992 Fund shall be regarded as a claim made by the same claimant against the Supplementary Fund.

Article VII

1. The provisions of Article VII, paragraphs 1, 2, 4, 5 and 6, of the 1992 Fund Convention shall apply to actions for compensation brought against the Supplementary Fund in accordance with Article IV, paragraph 1, of this Protocol.
2. Where an action for compensation for pollution damage has been brought before a court competent under Article IX of the 1992 Liability Convention against the owner of a ship or his guarantor, such court shall have exclusive jurisdictional competence over any action against the Supplementary Fund for compensation under the provisions of Article IV of this Protocol in respect of the same damage. However, where an action for compensation for pollution damage under the 1992 Liability Convention has been brought before a court in a Contracting State to the 1992 Liability Convention but not to this Protocol, any action against the Supplementary Fund under Article IV of this Protocol shall at the option of the claimant be brought either before a court of the State where the Supplementary Fund has its headquarters or before any court of a Contracting State to this Protocol competent under Article IX of the 1992 Liability Convention.
3. Notwithstanding paragraph 1, where an action for compensation for pollution damage against the 1992 Fund has been brought before a court in a Contracting State to the 1992 Fund Convention but not to this Protocol, any related action against the Supplementary Fund shall, at the option of the claimant, be brought either before a court of the State where the

Supplementary Fund has its headquarters or before any court of a Contracting State competent under paragraph 1.

Article VIII

1. Subject to any decision concerning the distribution referred to in Article IV, paragraph 3 of this Protocol, any judgment given against the Supplementary Fund by a court having jurisdiction in accordance with Article VII of this Protocol, shall, when it has become enforceable in the State of origin and is in that State no longer subject to ordinary forms of review, be recognized and enforceable in each Contracting State on the same conditions as are prescribed in Article X of the 1992 Liability Convention.
2. A Contracting State may apply other rules for the recognition and enforcement of judgments, provided that their effect is to ensure that judgments are recognised and enforced at least to the same extent as under paragraph 1.

Article IX

1. The Supplementary Fund shall, in respect of any amount of compensation for pollution damage paid by the Supplementary Fund in accordance with Article IV, paragraph 1, of this Protocol, acquire by subrogation the rights that the person so compensated may enjoy under the 1992 Liability Convention against the owner or his guarantor.
2. The Supplementary Fund shall acquire by subrogation the rights that the person compensated by it may enjoy under the 1992 Fund Convention against the 1992 Fund.
3. Nothing in this Protocol shall prejudice any right of recourse or subrogation of the Supplementary Fund against persons other than those referred to in the preceding paragraphs. In any event the right of the Supplementary Fund to subrogation against such person shall not be less favourable than that of an insurer of the person to whom compensation has been paid.
4. Without prejudice to any other rights of subrogation or recourse against the Supplementary Fund which may exist, a Contracting State or agency thereof which has paid compensation for pollution damage in accordance with provisions of national law shall acquire by subrogation the rights which the person so compensated would have enjoyed under this Protocol.

Contributions

Article X

1. Annual contributions to the Supplementary Fund shall be made in respect of each Contracting State by any person who, in the calendar year referred to in Article XI, paragraph 2(a) or (b), has received in total quantities exceeding 150,000 tons:
   (a) in the ports or terminal installations in the territory of that State contributing oil carried by sea to such ports or terminal installations; and
   (b) in any installations situated in the territory of that Contracting State contributing oil which has been carried by sea and discharged in a port or terminal installation of a non-Contracting State, provided that contributing oil shall only be taken into account by virtue of this sub-paragraph on first receipt in a Contracting State after its discharge in that non-Contracting State.
2. The provisions of Article X, paragraph 2, of the 1992 Fund Convention shall apply in respect of the obligation to pay contributions to the Supplementary Fund.

Article XI

1. With a view to assessing the amount of annual contributions due, if any, and taking account of the necessity to maintain sufficient liquid funds, the Assembly shall for each calendar year make an estimate in the form of a budget of:

   (i) **Expenditure**

   (a) costs and expenses of the administration of the Supplementary Fund in the relevant year and any deficit from operations in preceding years;
   (b) payments to be made by the Supplementary Fund in the relevant year for the satisfaction of claims against the Supplementary Fund due under Article IV, including repayments on loans previously taken by the Supplementary Fund for the satisfaction of such claims;

   (ii) **Income**

   (a) surplus funds from operations in preceding years, including any interest;

(b) annual contributions, if required to balance the budget;
(c) any other income.

2. The Assembly shall decide the total amount of contributions to be levied. On the basis of that decision, the Director of the Supplementary Fund shall, in respect of each Contracting State, calculate for each person referred to in Article X, the amount of that person's annual contribution:

(a) in so far as the contribution is for the satisfaction of payments referred to in paragraph 1(i)(a) on the basis of a fixed sum for each ton of contributing oil received in the relevant State by such person during the preceding calendar year; and
(b) in so far as the contribution is for the satisfaction of payments referred to in paragraph 1(i)(b) on the basis of a fixed sum for each ton of contributing oil received by such person during the calendar year preceding that in which the incident in question occurred, provided that State was a Contracting State to this Protocol at the date of the incident.

3. The sums referred to in paragraph 2 shall be arrived at by dividing the relevant total amount of contributions required by the total amount of contributing oil received in all Contracting States in the relevant year.
4. The annual contribution shall be due on the date to be laid down in the Internal Regulations of the Supplementary Fund. The Assembly may decide on a different date of payment.
5. The Assembly may decide, under conditions to be laid down in the Financial Regulations of the Supplementary Fund, to make transfers between funds received in accordance with paragraph 2(a) and funds received in accordance with paragraph 2(b).

Article XII

1. The provisions of Article XIII of the 1992 Fund Convention shall apply to contributions to the Supplementary Fund.
2. A Contracting State itself may assume the obligation to pay contributions to the Supplementary Fund in accordance with the procedure set out in Article XIV of the 1992 Fund Convention.

Article XIII

1. Contracting States shall communicate to the Director of the Supplementary Fund information on oil receipts in accordance with Article XV of the 1992 Fund Convention provided, however, that communications made to the Director of the 1992 Fund under Article XV, paragraph 2, of the 1992 Fund Convention shall be deemed to have been made also under this Protocol.
2. Where a Contracting State does not fulfil its obligations to submit the communication referred to in paragraph 1 and this results in a financial loss for the Supplementary Fund, that Contracting State shall be liable to compensate the Supplementary Fund for such loss. The Assembly shall, on the recommendation of the Director of the Supplementary Fund, decide whether such compensation shall be payable by that Contracting State.

Article XIV

1. Notwithstanding Article X, for the purposes of this Protocol there shall be deemed to be a minimum receipt of 1 million tons of contributing oil in each Contracting State.
2. When the aggregate quantity of contributing oil received in a Contracting State is less than 1 million tons, the Contracting State shall assume the obligations that would be incumbent under this Protocol on any person who would be liable to contribute to the Supplementary Fund in respect of oil received within the territory of that State in so far as no liable person exists for the aggregated quantity of oil received.

Article XV

1. If in a Contracting State there is no person meeting the conditions of Article X, that Contracting State shall for the purposes of this Protocol inform the Director of the Supplementary Fund thereof.
2. No compensation shall be paid by the Supplementary Fund for pollution damage in the territory, territorial sea or exclusive economic zone or area determined in accordance with Article III(a)(ii), of this Protocol, of a Contracting State in respect of a given incident or for preventive measures, wherever taken, to prevent or minimize such damage, until the obligations to communicate to the Director of the Supplementary

Fund according to Article XIII, paragraph 1 and paragraph 1 of this article have been complied with in respect of that Contracting State for all years prior to the occurrence of that incident. The Assembly shall determine in the Internal Regulations the circumstances under which a Contracting State shall be considered as having failed to comply with its obligations.

3. Where compensation has been denied temporarily in accordance with paragraph 2, compensation shall be denied permanently in respect of that incident if the obligations to communicate to the Director of the Supplementary Fund under Article XIII, paragraph 1 and paragraph 1 of this article, have not been complied with within one year after the Director of the Supplementary Fund has notified the Contracting State of its failure to report.
4. Any payments of contributions due to the Supplementary Fund shall be set off against compensation due to the debtor, or the debtor's agents.

Organization and administration

Article XVI

1. The Supplementary Fund shall have an Assembly and a Secretariat headed by a Director.
2. Articles XVII–XX and XXVIII–XXXIII of the 1992 Fund Convention shall apply to the Assembly, Secretariat and Director of the Supplementary Fund.
3. Article XXXIV of the 1992 Fund Convention shall apply to the Supplementary Fund.

Article XVII

1. The Secretariat of the 1992 Fund, headed by the Director of the 1992 Fund, may also function as the Secretariat and the Director of the Supplementary Fund.
2. If, in accordance with paragraph 1, the Secretariat and the Director of the 1992 Fund also perform the function of Secretariat and Director of the Supplementary Fund, the Supplementary Fund shall be represented, in cases of conflict of interests between the 1992 Fund and the Supplementary Fund, by the Chairman of the Assembly.
3. The Director of the Supplementary Fund, and the staff and experts appointed by the Director of the Supplementary Fund, performing their duties under this Protocol and the 1992 Fund Convention, shall not be regarded as contravening the provisions of Article XXX of the 1992 Fund Convention as applied by Article XVI, paragraph 2, of this Protocol in so far as they discharge their duties in accordance with this article.
4. The Assembly shall endeavour not to take decisions which are incompatible with decisions taken by the Assembly of the 1992 Fund. If differences of opinion with respect to common administrative issues arise, the Assembly shall try to reach a consensus with the Assembly of the 1992 Fund, in a spirit of mutual co-operation and with the common aims of both organizations in mind.
5. The Supplementary Fund shall reimburse the 1992 Fund all costs and expenses arising from administrative services performed by the 1992 Fund on behalf of the Supplementary Fund.

Article XVIII

Transitional provisions

1. Subject to paragraph 4, the aggregate amount of the annual contributions payable in respect of contributing oil received in a single Contracting State during a calendar year shall not exceed 20% of the total amount of annual contributions pursuant to this Protocol in respect of that calendar year.
2. If the application of the provisions in Article XI, paragraphs 2 and 3, would result in the aggregate amount of the contributions payable by contributors in a single Contracting State in respect of a given calendar year exceeding 20% of the total annual contributions, the contributions payable by all contributors in that State shall be reduced pro rata so that their aggregate contributions equal 20% of the total annual contributions to the Supplementary Fund in respect of that year.
3. If the contributions payable by persons in a given Contracting State shall be reduced pursuant to paragraph 2, the contributions payable by persons in all other Contracting States shall be increased pro rata so as to ensure that the total amount of contributions payable by all persons liable to contribute to the Supplementary Fund in respect of the calendar year in question will reach the total amount of contributions decided by the Assembly.

4. The provisions in paragraphs 1–3 shall operate until the total quantity of contributing oil received in all Contracting States in a calendar year, including the quantities referred to in Article XIV, paragraph 1, has reached 1,000 million tons or until a period of 10 years after the date of entry into force of this Protocol has elapsed, whichever occurs earlier.

Final clauses

Article XIX

Signature, ratification, acceptance, approval and accession

1. This Protocol shall be open for signature at London from 31 July 2003 to 30 July 2004.
2. States may express their consent to be bound by this Protocol by:
   (a) signature without reservation as to ratification, acceptance or approval; or
   (b) signature subject to ratification, acceptance or approval followed by ratification, acceptance or approval; or
   (c) accession.
3. Only Contracting States to the 1992 Fund Convention may become Contracting States to this Protocol.
4. Ratification, acceptance, approval or accession shall be effected by the deposit of a formal instrument to that effect with the Secretary-General.

Article XX

Information on contributing oil

Before this Protocol comes into force for a State, that State shall, when signing this Protocol in accordance with Article XIX, paragraph 2(a), or when depositing an instrument referred to in Article XIX, paragraph 4 of this Protocol, and annually thereafter at a date to be determined by the Secretary-General, communicate to the Secretary-General the name and address of any person who in respect of that State would be liable to contribute to the Supplementary Fund pursuant to Article X as well as data on the relevant quantities of contributing oil received by any such person in the territory of that State during the preceding calendar year.

Article XXI

Entry into force

1. This Protocol shall enter into force three months following the date on which the following requirements are fulfilled:
   (a) at least eight States have signed the Protocol without reservation as to ratification, acceptance or approval, or have deposited instruments of ratification, acceptance, approval or accession with the Secretary-General; and
   (b) the Secretary-General has received information from the Director of the 1992 Fund that those persons who would be liable to contribute pursuant to Article X have received during the preceding calendar year a total quantity of at least 450 million tons of contributing oil, including the quantities referred to in Article XIV, paragraph 1.
2. For each State which signs this Protocol without reservation as to ratification, acceptance or approval, or which ratifies, accepts, approves or accedes to this Protocol, after the conditions in paragraph 1 for entry into force have been met, the Protocol shall enter into force three months following the date of the deposit by such State of the appropriate instrument.
3. Notwithstanding paragraphs 1 and 2, this Protocol shall not enter into force in respect of any State until the 1992 Fund Convention enters into force for that State.

Article XXII

First session of the Assembly

The Secretary-General shall convene the first session of the Assembly. This session shall take place as soon as possible after the entry into force of this Protocol and, in any case, not more than thirty days after such entry into force.

Article XXIII

Revision and amendment

1. A conference for the purpose of revising or amending this Protocol may be convened by the Organization.
2. The Organization shall convene a Conference of Contracting States for the purpose of revising or

amending this Protocol at the request of not less than one third of all Contracting States.

Article XXIV

Amendment of compensation limit

1. Upon the request of at least one quarter of the Contracting States, any proposal to amend the limit of the amount of compensation laid down in Article IV, paragraph 2(a), shall be circulated by the Secretary-General to all Members of the Organization and to all Contracting States.
2. Any amendment proposed and circulated as above shall be submitted to the Legal Committee of the Organization for consideration at a date at least six months after the date of its circulation.
3. All Contracting States to this Protocol, whether or not Members of the Organization, shall be entitled to participate in the proceedings of the Legal Committee for the consideration and adoption of amendments.
4. Amendments shall be adopted by a two-thirds majority of the Contracting States present and voting in the Legal Committee, expanded as provided for in paragraph 3, on condition that at least one half of the Contracting States shall be present at the time of voting.
5. When acting on a proposal to amend the limit, the Legal Committee shall take into account the experience of incidents and in particular the amount of damage resulting therefrom and changes in the monetary values.
6. (a) No amendments of the limit under this article may be considered before the date of entry into force of this Protocol nor less than three years from the date of entry into force of a previous amendment under this article.
   (b) The limit may not be increased so as to exceed an amount which corresponds to the limit laid down in this Protocol increased by six per cent per year calculated on a compound basis from the date when this Protocol is opened for signature to the date on which the Legal Committee's decision comes into force.
   (c) The limit may not be increased so as to exceed an amount which corresponds to the limit laid down in this Protocol multiplied by three.
7. Any amendment adopted in accordance with paragraph 4 shall be notified by the Organization to all Contracting States. The amendment shall be deemed to have been accepted at the end of a period of twelve months after the date of notification, unless within that period not less than one quarter of the States that were Contracting States at the time of the adoption of the amendment by the Legal Committee have communicated to the Organization that they do not accept the amendment, in which case the amendment is rejected and shall have no effect.
8. An amendment deemed to have been accepted in accordance with paragraph 7 shall enter into force twelve months after its acceptance.
9. All Contracting States shall be bound by the amendment, unless they denounce this Protocol in accordance with Article XXVI, paragraphs 1 and 2, at least six months before the amendment enters into force. Such denunciation shall take effect when the amendment enters into force.
10. When an amendment has been adopted by the Legal Committee but the twelve-month period for its acceptance has not yet expired, a State which becomes a Contracting State during that period shall be bound by the amendment if it enters into force. A State which becomes a Contracting State after that period shall be bound by an amendment which has been accepted in accordance with paragraph 7. In the cases referred to in this paragraph, a State becomes bound by an amendment when that amendment enters into force, or when this Protocol enters into force for that State, if later.

Article XXV

Protocols to the 1992 Fund Convention

1. If the limits laid down in the 1992 Fund Convention have been increased by a Protocol thereto, the limit laid down in Article IV, paragraph 2(a), may be increased by the same amount by means of the procedure set out in Article XXIV. The provisions of Article XXIV, paragraph 6, shall not apply in such cases.
2. If the procedure referred to in paragraph 1 has been applied, any subsequent amendment of the limit laid down in Article IV, paragraph 2, by application of the procedure in Article XXIV

shall, for the purpose of Article XXIV, paragraphs 6(b) and (c), be calculated on the basis of the new limit as increased in accordance with paragraph 1.

Article XXVI

Denunciation

1. This Protocol may be denounced by any Contracting State at any time after the date on which it enters into force for that Contracting State.
2. Denunciation shall be effected by the deposit of an instrument with the Secretary-General.
3. A denunciation shall take effect twelve months, or such longer period as may be specified in the instrument of denunciation, after its deposit with the Secretary-General.
4. Denunciation of the 1992 Fund Convention shall be deemed to be a denunciation of this Protocol. Such denunciation shall take effect on the date on which denunciation of the Protocol of 1992 to amend the 1971 Fund Convention takes effect according to Article XXXIV of that Protocol.
5. Notwithstanding a denunciation of the present Protocol by a Contracting State pursuant to this article, any provisions of this Protocol relating to the obligations to make contributions to the Supplementary Fund with respect to an incident referred to in Article XI,paragraph 2(b), and occurring before the denunciation takes effect, shall continue to apply.

Article XXVII

Extraordinary sessions of the Assembly

1. Any Contracting State may, within ninety days after the deposit of an instrument of denunciation the result of which it considers will significantly increase the level of contributions for the remaining Contracting States, request the Director of the Supplementary Fund to convene an extraordinary session of the Assembly. The Director of the Supplementary Fund shall convene the Assembly to meet not later than sixty days after receipt of the request.
2. The Director of the Supplementary Fund may take the initiative to convene an extraordinary session of the Assembly to meet within sixty days after the deposit of any instrument of denunciation, if the Director of the Supplementary Fund considers that such denunciation will result in a significant increase in the level of contributions of the remaining Contracting States.
3. If the Assembly at an extraordinary session convened in accordance with paragraph 1 or 2 decides that the denunciation will result in a significant increase in the level of contributions for the remaining Contracting States, any such State may, not later than one hundred and twenty days before the date on which the denunciation takes effect, denounce this Protocol with effect from the same date.

Article XXVIII

Termination

1. This Protocol shall cease to be in force on the date when the number of Contracting States falls below seven or the total quantity of contributing oil received in the remaining Contracting States, including the quantities referred to in Article XIV, paragraph 1, falls below 350 million tons, whichever occurs earlier.
2. States which are bound by this Protocol on the day before the date it ceases to be in force shall enable the Supplementary Fund to exercise its functions as described in Article XXIX and shall, for that purpose only, remain bound by this Protocol.

Article XXIX

Winding up of the Supplementary Fund

1. If this Protocol ceases to be in force, the Supplementary Fund shall nevertheless:
   (a) meet its obligations in respect of any incident occurring before the Protocol ceased to be in force;
   (b) be entitled to exercise its rights to contributions to the extent that these contributions are necessary to meet the obligations under paragraph 1(a), including expenses for the administration of the Supplementary Fund necessary for this purpose.
2. The Assembly shall take all appropriate measures to complete the winding up of the Supplementary Fund, including the distribution in an equitable manner of any remaining assets among those persons who have contributed to the Supplementary Fund.

3. For the purposes of this article the Supplementary Fund shall remain a legal person.

Article XXX

Depositary

1. This Protocol and any amendments accepted under Article XXIV shall be deposited with the Secretary-General.
2. The Secretary-General shall:

   (a) inform all States which have signed or acceded to this Protocol of:

      (i) each new signature or deposit of an instrument together with the date thereof;
      (ii) the date of entry into force of this Protocol;
      (iii) any proposal to amend the limit of the amount of compensation which has been made in accordance with Article XXIV, paragraph 1;
      (iv) any amendment which has been adopted in accordance with Article XXIV, paragraph 4;
      (v) any amendment deemed to have been accepted under Article XXIV, paragraph 7, together with the date on which that amendment shall enter into force in accordance with paragraphs 8 and 9 of that article;
      (vi) the deposit of an instrument of denunciation of this Protocol together with the date of the deposit and the date on which it takes effect;
      (vii) any communication called for by any article in this Protocol;

   (b) transmit certified true copies of this Protocol to all Signatory States and to all States which accede to the Protocol.

3. As soon as this Protocol enters into force, the text shall be transmitted by the Secretary-General to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

Article XXXI

Languages

This Protocol is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

DONE AT LONDON this sixteenth day of May two thousand and three.

IN WITNESS WHEREOF the undersigned, being duly authorised by their respective Governments for that purpose, have signed this Protocol.

6
Bunker Oil Convention
Bunker Convention

6.1 General Information

International Convention on Civil Liability for Bunker Oil Pollution Damage

Most common abbreviation(s)	**Bunker Oil Convention, Bunker Convention**
Organisation	International Maritime Organization (IMO)
Reference	RMC I.7.130, II.7.130 http://www.fog.it/convenzioni/inglese/londra-2001.htm
Status	
Adoption	23 March 2001
Entry into force	Not yet in force (Enters into force 12 months following the date on which 18 States, including five States each with ships whose combined gross tonnage is not less than 1 million gt, have either signed it without reservation as to ratification, acceptance or approval or have deposited instruments of ratification, acceptance, approval or accession with the IMO Secretary-General.)
State Parties	Bulgaria, Croatia, Cyprus, Estonia, Germany, Greece, Jamaica, Latvia, Lithuania, Luxembourg, Poland, Samoa, Singapore, Slovenia, Spain, Tonga, United Kingdom
Literature	Gauci, G & Paca, J, 'The International Convention on Civil Liability for Bunker Oil Pollution Damage', Journal of International Commercial Law, 2001, pp. 103–126. Tsimplis, M, 'The Bunker Pollution Convention 2001: completing and harmonizing the Liability Regime for Oil Pollution from Ships', Lloyd's maritime and commercial law quarterly, 2005, pp. 83–100. Wu, C, 'Liability and compensation for Bunker Pollution', Journal of Maritime Law and Commerce, 2002, pp. 553–567. Zhu, L, Compulsory insurance and compensation for bunker oil pollution damage, Springer, Berlin, New York, 2007, 242 p.

6.2 International Convention of 23 March 2001 on Civil Liability for Bunker Oil Pollution Damage

Article I

Definitions

For the purposes of this Convention:

1. «Ship» means any seagoing vessel and seaborne craft, of any type whatsoever.
2. «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.
3. «Shipowner» means the owner, including the registered owner, bareboat charterer, manager and operator of the ship.
4. «Registered owner» means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship. However, in the case of a ship owned by a State and operated by a company which in that State is registered as the ship's operator, «registered owner» shall mean such company.
5. «Bunker oil» means any hydrocarbon mineral oil, including lubricating oil, used or intended to be used for the operation or propulsion of the ship, and any residues of such oil.
6. «Civil Liability Convention» means the International Convention on Civil Liability for Oil Pollution Damage, 1992, as amended.
7. «Preventive measures» means any reasonable measures taken by any person after an incident has occurred to prevent or minimize pollution damage.
8. «Incident» means any occurrence or series of occurrences having the same origin, which causes pollution damage or creates a grave and imminent threat of causing such damage.
9. «Pollution damage» means:

   (a) loss or damage caused outside the ship by contamination resulting from the escape or discharge of bunker oil from the ship, wherever such escape or discharge may occur, provided that compensation for impairment of the environment other than loss of profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken; and

   (b) the costs of preventive measures and further loss or damage caused by preventive measures.

10. «State of the ship's registry» means, in relation to a registered ship, the State of registration of the ship and, in relation to an unregistered ship, the State whose flag the ship is entitled to fly.
11. «Gross tonnage» means gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex 1 of the International Convention on Tonnage Measurement of Ships, 1969.
12. «Organization» means the International Maritime Organization.
13. «Secretary-General» means the Secretary-General of the Organization.

Article II

Scope of application

This Convention shall apply exclusively:

(a) to pollution damage caused:

   (i) in the territory, including the territorial sea, of a State Party, and

   (ii) in the exclusive economic zone of a State Party, established in accordance with international law, or, if a State Party has not established such a zone, in an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured;

(b) to preventive measures, wherever taken, to prevent or minimize such damage.

Article III

Liability of the shipowner

1. Except as provided in paragraphs 3 and 4, the shipowner at the time of an incident shall be liable for pollution damage caused by any bunker oil on board or originating from the ship, provided that, if an incident consists of a series of occurrences having the same origin, the liability shall attach to the shipowner at the time of the first of such occurrences.
2. Where more than one person is liable in accordance with paragraph 1, their liability shall be joint and several.

3. No liability for pollution damage shall attach to the shipowner if the shipowner proves that:
   (a) the damage resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character; or
   (b) the damage was wholly caused by an act or omission done with the intent to cause damage by a third party; or
   (c) the damage was wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function.
4. If the shipowner proves that the pollution damage resulted wholly or partially either from an act or omission done with intent to cause damage by the person who suffered the damage or from the negligence of that person, the shipowner may be exonerated wholly or partially from liability to such person.
5. No claim for compensation for pollution damage shall be made against the shipowner otherwise than in accordance with this Convention.
6. Nothing in this Convention shall prejudice any right of recourse of the shipowner which exists independently of this Convention.

Article IV

Exclusions

1. This Convention shall not apply to pollution damage as defined in the Civil Liability Convention, whether or not compensation is payable in respect of it under that Convention.
2. Except as provided in paragraph 3, the provisions of this Convention shall not apply to warships, naval auxiliary or other ships owned or operated by a State and used, for the time being, only on Government non-commercial service.
3. A State Party may decide to apply this Convention to its warships or other ships described in paragraph 2, in which case it shall notify the Secretary-General thereof specifying the terms and conditions of such application.
4. With respect to ships owned by a State Party and used for commercial purposes, each State shall be subject to suit in the jurisdictions set forth in Article IX and shall waive all defences based on its status as a sovereign State.

Article V

Incidents involving two or more ships

When an incident involving two or more ships occurs and pollution damage results therefrom, the shipowners of all the ships concerned, unless exonerated under Article III, shall be jointly and severally liable for all such damage which is not reasonably separable.

Article VI

Limitation of liability

Nothing in this Convention shall affect the right of the shipowner and the person or persons providing insurance or other financial security to limit liability under any applicable national or international regime, such as the Convention on Limitation of Liability for Maritime Claims, 1976, as amended.

Article VII

Compulsory insurance or financial security

1. The registered owner of a ship having a gross tonnage greater than 1,000 registered in a State Party shall be required to maintain insurance or other financial security, such as the guarantee of a bank or similar financial institution, to cover the liability of the registered owner for pollution damage in an amount equal to the limits of liability under the applicable national or international limitation regime, but in all cases, not exceeding an amount calculated in accordance with the Convention on Limitation of Liability for Maritime Claims, 1976, as amended.
2. A certificate attesting that insurance or other financial security is in force in accordance with the provisions of this Convention shall be issued to each ship after the appropriate authority of a State Party has determined that the requirements of paragraph 1 have been complied with. With respect to a ship registered in a State Party such certificate shall be issued or certified by the appropriate authority of the State of the ship's registry; with respect to a ship not registered in a State Party it may be issued or certified by the appropriate authority of any State Party. This certificate shall be in the form of the model set out in the annex to this Convention and shall contain the following particulars:
   (a) name of ship, distinctive number or letters and port of registry;
   (b) name and principal place of business of the registered owner;

(c) IMO ship identification number;
(d) type and duration of security;
(e) name and principal place of business of insurer or other person giving security and, where appropriate, place of business where the insurance or security is established;
(f) period of validity of the certificate which shall not be longer than the period of validity of the insurance or other security.

3. (a) A State Party may authorize either an institution or an organization recognized by it to issue the certificate referred to in paragraph 2. Such institution or organization shall inform that State of the issue of each certificate. In all cases, the State Party shall fully guarantee the completeness and accuracy of the certificate so issued and shall undertake to ensure the necessary arrangements to satisfy this obligation.

(b) A State Party shall notify the Secretary-General of:

(i) the specific responsibilities and conditions of the authority delegated to an institution or organization recognised by it;
(ii) the withdrawal of such authority; and
(iii) the date from which such authority or withdrawal of such authority takes effect.

An authority delegated shall not take effect prior to three months from the date on which notification to that effect was given to the Secretary-General.

(c) The institution or organization authorized to issue certificates in accordance with this paragraph shall, as a minimum, be authorized to withdraw these certificates if the conditions under which they have been issued are not maintained. In all cases the institution or organization shall report such withdrawal to the State on whose behalf the certificate was issued.

4. The certificate shall be in the official language or languages of the issuing State. If the language used is not English, French or Spanish, the text shall include a translation into one of these languages and, where the State so decides, the official language of the State may be omitted.

5. The certificate shall be carried on board the ship and a copy shall be deposited with the authorities who keep the record of the ship's registry or, if the ship is not registered in a State Party, with the authorities issuing or certifying the certificate.

6. An insurance or other financial security shall not satisfy the requirements of this article if it can cease, for reasons other than the expiry of the period of validity of the insurance or security specified in the certificate under paragraph 2 of this article, before three months have elapsed from the date on which notice of its termination is given to the authorities referred to in paragraph 5 of this article, unless the certificate has been surrendered to these authorities or a new certificate has been issued within the said period. The foregoing provisions shall similarly apply to any modification which results in the insurance or security no longer satisfying the requirements of this article.

7. The State of the ship's registry shall, subject to the provisions of this article, determine the conditions of issue and validity of the certificate.

8. Nothing in this Convention shall be construed as preventing a State Party from relying on information obtained from other States or the Organization or other international organisations relating to the financial standing of providers of insurance or financial security for the purposes of this Convention. In such cases, the State Party relying on such information is not relieved of its responsibility as a State issuing the certificate required by paragraph 2.

9. Certificates issued or certified under the authority of a State Party shall be accepted by other States Parties for the purposes of this Convention and shall be regarded by other States Parties as having the same force as certificates issued or certified by them even if issued or certified in respect of a ship not registered in a State Party. A State Party may at any time request consultation with the issuing or certifying State should it believe that the insurer or guarantor named in the insurance certificate is not financially capable of meeting the obligations imposed by this Convention.

10. Any claim for compensation for pollution damage may be brought directly against the insurer or other person providing financial security for the registered owner's liability for pollution dam-

age. In such a case the defendant may invoke the defences (other than bankruptcy or winding up of the shipowner) which the shipowner would have been entitled to invoke, including limitation pursuant to Article VI. Furthermore, even if the shipowner is not entitled to limitation of liability according to Article VI, the defendant may limit liability to an amount equal to the amount of the insurance or other financial security required to be maintained in accordance with paragraph 1. Moreover, the defendant may invoke the defence that the pollution damage resulted from the wilful misconduct of the shipowner, but the defendant shall not invoke any other defence which the defendant might have been entitled to invoke in proceedings brought by the shipowner against the defendant. The defendant shall in any event have the right to require the shipowner to be joined in the proceedings.

11. A State Party shall not permit a ship under its flag to which this article applies to operate at any time, unless a certificate has been issued under paragraphs 2 or 14.
12. Subject to the provisions of this article, each State Party shall ensure, under its national law, that insurance or other security, to the extent specified in paragraph 1, is in force in respect of any ship having a gross tonnage greater than 1,000, wherever registered, entering or leaving a port in its territory, or arriving at or leaving an offshore facility in its territorial sea.
13. Notwithstanding the provisions of paragraph 5, a State Party may notify the Secretary-General that, for the purposes of paragraph 12, ships are not required to carry on board or to produce the certificate required by paragraph 2, when entering or leaving ports or arriving at or leaving from offshore facilities in its territory, provided that the State Party which issues the certificate required by paragraph 2 has notified the Secretary-General that it maintains records in an electronic format, accessible to all States Parties, attesting the existence of the certificate and enabling States Parties to discharge their obligations under paragraph 12.
14. If insurance or other financial security is not maintained in respect of a ship owned by a State Party, the provisions of this article relating thereto shall not be applicable to such ship, but the ship shall carry a certificate issued by the appropriate authority of the State of the ship's registry stating that the ship is owned by that State and that the ship's liability is covered within the limit prescribed in accordance with paragraph 1. Such a certificate shall follow as closely as possible the model prescribed by paragraph 2.
15. A State may, at the time of ratification, acceptance, approval of, or accession to this Convention, or at any time thereafter, declare that this article does not apply to ships operating exclusively within the area of that State referred to in Article II(a)(i).

Article VIII

Time limits

Rights to compensation under this Convention shall be extinguished unless an action is brought thereunder within three years from the date when the damage occurred. However, in no case shall an action be brought more than six years from the date of the incident which caused the damage. Where the incident consists of a series of occurrences, the six years' period shall run from the date of the first such occurrence.

Article IX

Jurisdiction

1. Where an incident has caused pollution damage in the territory, including the territorial sea, or in an area referred to in Article II(a)(ii) of one or more States Parties, or preventive measures have been taken to prevent or minimise pollution damage in such territory, including the territorial sea, or in such area, actions for compensation against the shipowner, insurer or other person providing security for the shipowner's liability may be brought only in the courts of any such States Parties.
2. Reasonable notice of any action taken under paragraph 1 shall be given to each defendant.
3. Each State Party shall ensure that its courts have jurisdiction to entertain actions for compensation under this Convention.

Article X

Recognition and enforcement

1. Any judgement given by a Court with jurisdiction in accordance with Article IX which is

enforceable in the State of origin where it is no longer subject to ordinary forms of review, shall be recognised in any State Party, except:
(a) where the judgement was obtained by fraud; or
(b) where the defendant was not given reasonable notice and a fair opportunity to present his or her case.

2. A judgement recognised under paragraph 1 shall be enforceable in each State Party as soon as the formalities required in that State have been complied with. The formalities shall not permit the merits of the case to be re-opened.

Article XI

Supersession clause

This Convention shall supersede any Convention in force or open for signature, ratification or accession at the date on which this Convention is opened for signature, but only to the extent that such Convention would be in conflict with it; however, nothing in this article shall affect the obligations of States Parties to States not party to this Convention arising under such Convention.

Article XII

Signature, ratification, acceptance, approval and accession

1. This Convention shall be open for signature at the Headquarters of the Organization from 1 October 2001 until 30 September 2002 and shall thereafter remain open for accession.
2. States may express their consent to be bound by this Convention by:
   (a) signature without reservation as to ratification, acceptance or approval;
   (b) signature subject to ratification, acceptance or approval followed by ratification, acceptance or approval; or
   (c) accession.
3. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.
4. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to this Convention with respect to all existing State Parties, or after the completion of all measures required for the entry into force of the amendment with respect to those State Parties shall be deemed to apply to this Convention as modified by the amendment.

Article XIII

States with more than one system of law

1. If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.
2. Any such declaration shall be notified to the Secretary-General and shall state expressly the territorial units to which this Convention applies.
3. In relation to a State Party which has made such a declaration:
   (a) in the definition of 'registered owner' in Article I(4), references to a State shall be construed as references to such a territorial unit;
   (b) references to the State of a ship's registry and, in relation to a compulsory insurance certificate, to the issuing or certifying State, shall be construed as referring to the territorial unit respectively in which the ship is registered and which issues or certifies the certificate;
   (c) references in this Convention to the requirements of national law shall be construed as references to the requirements of the law of the relevant territorial unit; and
   (d) references in Articles IX and X to courts, and to judgements which must be recognized in States Parties, shall be construed as references respectively to courts of, and to judgements which must be recognized in, the relevant territorial unit.

Article XIV

Entry into force

1. This Convention shall enter into force one year following the date on which eighteen States, including five States each with ships whose combined gross tonnage is not less than 1 million,

have either signed it without reservation as to ratification, acceptance or approval or have deposited instruments of ratification, acceptance, approval or accession with the Secretary-General.

2. For any State which ratifies, accepts, approves or accedes to it after the conditions in paragraph 1 for entry into force have been met, this Convention shall enter into force three months after the date of deposit by such State of the appropriate instrument.

Article XV

Denunciation

1. This Convention may be denounced by any State Party at any time after the date on which this Convention comes into force for that State.
2. Denunciation shall be effected by the deposit of an instrument with the Secretary-General.
3. A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after its deposit with the Secretary-General.

Article XVI

Revision or amendment

1. A conference for the purpose of revising or amending this Convention may be convened by the Organization.
2. The Organization shall convene a conference of the States Parties for revising or amending this Convention at the request of not less than one-third of the States Parties.

Article XVII

Depositary

1. This Convention shall be deposited with the Secretary-General.
2. The Secretary-General shall:

(a) inform all States which have signed or acceded to this Convention of:

(i) each new signature or deposit of instrument together with the date thereof;
(ii) the date of entry into force of this Convention;
(iii) the deposit of any instrument of denunciation of this Convention together with the date of the deposit and the date on which the denunciation takes effect; and
(iv) other declarations and notifications made under this Convention.

(b) transmit certified true copies of this Convention to all Signatory States and to all States which accede to this Convention.

Article XVIII

Transmission to United Nations

As soon as this Convention comes into force, the text shall be transmitted by the Secretary-General to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

Article XIX

Languages

This Convention is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

Done at London this twenty-third day of March, two thousand and one.

7
Seabed Mineral Resources Convention

7.1 General Information

Convention on Civil Liability for Oil Pollution Damage Resulting from Exploration for and Exploitation of Seabed Mineral Resources

Most common abbreviation(s)	**Seabed Mineral Resources Convention**
Organisation	Negotations amongst North Sea States
Reference	Misc No 8 (1977), Cmnd 6791
Status	
Adoption	1 May 1977
Entry into force	Not yet in force
Signatories	Germany, Ireland, the Netherlands, Norway, Sweden, United Kingdom
Ratifications	/
Literature	CARACCIOLO, I, 'International liability of the state for pollution due to exploration and exploitation of the deep seabed', Università degli Studi di Roma Tor Vergata/ Dipartimento di Diritto Pubblico: Yearbook. 1989, 1990–1991, pp. 435–459. WOLFRUM, R & LANGENFELD, C, Environmental Protections by Means of International Liability Law, Erich Schmidt Verlag, Berlin, 1999, pp. 30–38.

7.2 Convention of 1 May 1977 on Civil Liability for Oil Pollution Damage Resulting from Exploration for and Exploitation of Seabed Mineral Resources

Adopted at London on 1 May 1977

The States Parties to this Convention,

Conscious of the dangers of oil pollution posed by the exploration for, and exploitation of, certain seabed mineral resources,

Convinced of the need to ensure that adequate compensation is available to persons who suffer damage caused by such pollution,

Desiring to adopt uniform rules and procedures for determining questions of liability and provide adequate compensation in such cases,

Have agreed as follows:

Article I

For the purposes of this Convention:

1. (a) 'Oil' means crude oil and natural gas liquids, whether or not such oil or liquids are mixed with or present in other substances; and

(b) 'crude oil' includes crude oil treated to render it suitable for transmission, for example, by adding or removing certain fractions.

2. 'Installation' means:

(a) any well or other facility, whether fixed or mobile, which is used for the purpose of exploring for, producing, treating, storing, transmitting or regaining control of the flow of crude oil from the seabed or its subsoil;
(b) any well which has been used for the purpose of exploring for, producing or regaining control of the flow of crude oil from the seabed or its subsoil and which has been abandoned after the entry into force of this Convention for the Controlling State concerned;
(c) any well which is used for the purpose of exploring for, producing or regaining control of the flow of gas or natural gas liquids from the seabed or its subsoil during the period that any such well is being drilled, including completion, or worked upon except for normal maintenance operations;
(d) any well which is used for the purpose of exploring for any mineral resources other than crude oil, gas or natural gas liquids, where such exploration involves the deep penetration of the subsoil of the seabed; and
(e) any facility which is normally used for storing crude oil from the seabed or its subsoil; which, or a substantial part of which, is located seaward of the low-water line along the coast as marked on large-scale charts officially recognized by the Controlling State; provided, however, that

(i) where a well or a number of wells is directly connected to a platform or similar facility, the well or wells together with such platform or facility shall constitute one installation; and
(ii) a ship as defined in the International Convention on Civil Liability for Oil Pollution Damage, done at Brussels on 29 November 1969 shall not be considered to be an installation.

3. 'Operator' means the person, whether licensee or not, designated as operator for the purposes of this Convention by the Controlling State, or, in the absence of such designation, the person who is in overall control of the activities carried on at the installation.
4. 'Controlling State' means the State Party which exercises sovereign rights for the purpose of exploring for and exploiting the resources of the seabed and its subsoil in the area in or above which the installator is situated. In the case of an installation extending over areas in which two or more States Parties exercise such rights, these States may agree which of them shall be the Controlling State.
5. '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.
6. 'Pollution damage' means loss or damage outside the installation caused by contamination resulting from the escape or discharge of oil from the installation and includes the cost of preventive measures and further loss or damage outside the installation caused by preventive measures.
7. 'Preventive measures' means any reasonable measures taken by any person in relation to a particular incident to prevent or minimize pollution damage with the exception of well control measures and measures taken to protect, repair or replace an installation.
8. 'Incident' means any occurrence, or series of occurrences having the same origin, which causes pollution damage.
9. 'Special Drawing Right' means Special Drawing Right as defined by the International Monetary Fund and used for its own operations and transactions.

Article II

This Convention shall apply exclusively to pollution damage:

(a) resulting from an incident which occurred beyond the coastal low-water line at an installation under the jurisdiction of a Controlling State, and
(b) suffered in the territory, including the internal waters and territorial sea, of a State Party or in the areas in which, in accordance with international law, it has sovereign rights over natural resources, and to preventive measures, wherever taken, to prevent or minimize such pollution damage.

Article III

1. Except as provided in paragraphs 3, 4 and 5 of this Article, the operator of the installation at the time of an incident shall be liable for any pollution damage resulting from the incident. When the incident consists of a series of occurrences, liability for pollution damage arising out of each occurrence shall attach to the operator of the installation at the time of that occurrence.
2. Where an installation has more than one operator they shall be jointly and severally liable.
3. No liability for pollution damage shall attach to the operator if he proves that the damage resulted from an act of war, hostilities, civil war, insurrection, or a natural phenomenon of an exceptional, inevitable and irresistible character.
4. No liability for pollution damage shall attach to the operator of an abandoned well if he proves that the incident which caused the damage occurred more than five years after the date on which the well was abandoned under the authority and in accordance with the requirements of the Controlling State. Where a well has been abandoned in other circumstances, the liability of the operator shall be governed by the applicable national law.
5. If the operator proves that the pollution damage resulted wholly or partly either from an act of omission done with intent to cause damage by the person who suffered the damage or from the negligence of that person, the operator may be exonerated wholly or partly from his liability to such person.

Article IV

1. No claim for compensation for pollution damage shall be made against the operator otherwise in accordance with this Convention.
2. No claim for compensation for pollution damage under this Convention or otherwise may be made against the servants or agents of the operator.
3. Nothing in this Convention shall prejudice the question whether the operator liable for damage in accordance with its provisions has a right of recourse.

Article V

1. When oil has escaped or has been discharged from two or more installations, and pollution damage results therefrom, the operators of all the installations concerned, unless exonerated under Article III, shall be jointly and severally liable for all such damage which is not reasonably separable.
2. When oil has escaped or has been discharged from one installation as a result of an incident, and pollution damage results therefrom, and during the course of the incident there is a change of operator, all operators of the installation, unless exonerated under Article III, shall be jointly and severally liable for all such damage which is not reasonably separable.

Article VI

1. The operator shall be entitled to limit his liability under this Convention for each installation and each incident to the amount of 30 million Special Drawing Rights until five years have elapsed from the date on which the Convention is opened for signature and to the amount of 40 million Special Drawing Rights thereafter.
2. Where operators of different installations are liable in accordance with paragraph 1 of Article V, the liability of the operator of any one installation shall not for any one incident exceed any limit which may be applicable to him in accordance with the provisions of this Article and of Article XV.
3. When in the case of any one installation more than one operator is liable under this Convention, the aggregate liability of all of them in respect of any one incident shall not exceed the highest amount that could be awarded against any of them, but none of them shall be liable for an amount in excess of the limit applicable to him.
4. The operator shall not be entitled to limit his liability if it is proved that the pollution damage occurred as a result of an act or omission by the operator himself, done deliberately with actual knowledge that pollution damage would result.
5. For the purpose of availing himself of the benefit of limitation to which he may be entitled under paragraph 1 of this Article, the operator shall constitute a fund for the total sum representing the limit of his liability with the court or other competent authority of any one of the States

Parties in which action is brought under Article XI. A fund constituted by one of the operators mentioned in paragraph 2 of Article III shall be deemed to be constituted by all of them. The fund can be constituted either by depositing the sum or by producing a bank guarantee or other guarantee, acceptable under the legislation of the State Party where the fund is constituted, and considered to be adequately by the court or other competent liability.

6. The fund shall be distributed among the claimants in proportion to the amounts of their established claims.
7. If before the fund is distributed the operator or any of his servants or agents or any person providing him with insurance or other financial security, has, as a result of the incident in question, paid compensation for pollution damage, such person shall, up to the amount he has paid, acquire by subrogation the rights which the person so compensated would have enjoyed under this Convention.
8. The right of subrogation provided for in paragraph 7 of this Article may also be exercised by a person other than those mentioned therein in respect of any amount of compensation for pollution damage which he may have paid but only to the extent that such subrogation is permitted under the applicable national law.
9. Where the operator or any other person establishes that he may be compelled to pay at a later date in whole or in part any such amount of compensation, with regard to which such person would have enjoyed a right of subrogation under paragraph 7 or 8 of this Article, had the compensation been paid before the fund was distributed, the court or other competent authority of the State arty where the fund has been constituted may order that a sufficient sum shall be provisionally set aside to enable such person at such later date to enforce his claim against the fund.
10. An operator who has taken preventive measures shall in respect of those measures have the same rights against the fund as any other claimant.
11. The amount referred to in paragraph 1 of this Article shall be converted into the national currency of the State Party in which the fund is constituted on the basis of the value of that currency by reference to the average, during the thirty days immediately preceding the date on which the fund is constituted, of the Special Drawing Rights as published by the International Monetary Fund.
12. The insurer or other person providing financial security shall be entitled, alone or together with the operator, to constitute a fund in accordance with this Article on the same conditions and having the same effect as if it were constituted by the operator. Such a fund may be constituted even where the pollution damage occurred as a result of an act or omission by the operator himself, done deliberately with actual knowledge that pollution damage would result, but the constitution of the fund shall in that case not prejudice the rights of any claimant against the operator.

Article VII

1. Where the operator, after an incident, has constituted a fund in accordance with Article VI and is entitled to limit his liability:

   (a) no person having a claim for pollution damage arising out of that incident shall be entitled to exercise any right against any other assets of the operator in respect of such claim;
   (b) the court or other competent authority of any State Party shall order the release of any property belonging to the operator which has been arrested in respect of a claim for pollution damage arising out of that incident, and shall similarly release any bail or other security furnished to avoid such arrest.

2. Paragraph 1 of this Article shall, however, only apply if the claimant has access to the court administering the fund and the fund is actually available in respect of his claim.

Article VIII

1. To cover his liability under this Convention, the operator shall be required to have and maintain insurance or other financial security to such amount, of such type and on such terms as the Controlling State shall specify, provided that the amount shall not be less than 22 million Special Drawing Rights until five years have elapsed from the date on which this Convention is opened for signature and not less than 35 million Special Drawing Rights thereafter.

However the Controlling State may exempt the operator wholly or in part from the requirement to have and maintain such insurance or other financial security to cover his liability for pollution damage wholly caused by an act of sabotage or terrorism.

2. An insurance or other financial security shall not satisfy the requirements of this Article if it can cease, for reasons other than the expiry of the period of validity of the insurance or security, before two months have elapsed from the date on which notice of its termination is given to the competent public authority of the Controlling State. The foregoing provision shall similarly apply to any modification which results in the insurance or security no longer satisfying the requirements of this Article.
3. Any claim for compensation for pollution damage may be brought directly against the insurer or other person providing financial security for the operator's liability for pollution damage. In such case the liability of the defendant shall be limited to the amount specified in accordance with paragraph 1 of this Article irrespective of the fact that the pollution damage occurred as a result of an act or omission by the operator himself, done deliberately with actual knowledge that pollution damage would result. The defendant may further avail himself of the defences, other than the bankruptcy or winding-up of the operator, which the operator himself would have been entitled to invoke. Furthermore, the defendant may avail himself of the defence that the pollution damage resulted from the wilful misconduct of the operator himself, but the defendant may not avail himself of any other defence which he might have been entitled to invoke in proceedings brought by the operator against him. The defendant shall in any event have the right to require the operator to be joined in the proceedings.
4. Any sums provided by insurance or by other financial security maintained in accordance with paragraph 1 of this Article shall be available in the first place for the satisfaction of claims under this Convention.
5. Where the operator is a State Party, the operator shall not be required to maintain insurance or other financial security to cover its liability.

Article IX

1. A Committee composed of a representative of each State Party is hereby established.
2. If a State Party considers that any of the amounts currently applicable under Article VI or VIII is no longer adequate, or is otherwise unrealistic, it may convene a meeting of the Committee to consider the matter. States which have signed this Convention but are not yet Parties will be invited to participate in the work of the Committee as observers. The Committee may recommend to the States Parties an amendment to any of the amounts if representatives of at least three-quarters of the States Parties to this Convention vote in favour of such a recommendation. In making such a recommendation, the Committee shall take into account:

   (a) any information concerning events causing or likely to cause pollution damage having a bearing on the objects of this Convention;
   (b) any information on increases and decreases occurring after the entry into force of this Convention in the costs of goods and services of the kinds involved in the treatment and remedying of marine oil spillages;
   (c) the availability of reliable insurance cover against the risk of liability for pollution damage.

3. Any amount recommended in accordance with paragraph 2 of this Article shall be notified by the depositary Government to all States Parties. It shall replace the amount currently applicable thirty days after its acceptance by all States Parties. A State Party which has, within six months of such notification or such other period as has been specified in the recommendation, notified the depositary Government that it is unable to accept the recommended amount, shall be deemed to have accepted it.
4. If the recommended amount has not been accepted by all States Parties within six months, or such other period as has been specified in the recommendation, after it has been notified by the depositary Government it shall, thirty days thereafter, replace the amount currently applicable as between those States Parties which have accepted it. Any other State Party may subsequently accept the recommended amount

which shall become applicable to it thirty days thereafter.

5. A State acceding to this Convention shall be bound by any recommendation of the Committee which has been unanimously accepted by States Parties. Where a recommendation has not been so accepted, an acceding State shall be deemed to have accepted it unless, at the time of its accession, that State notifies the depositary Government that it does not accept such a recommendation.

Article X

Rights of compensation under this Convention shall be extinguished unless, within twelve months of the date on which the person suffering the damage knew or ought reasonably to have known of the damage, the claimant has in writing notified the operator of his claim or has brought an action in respect of it. However in no case shall an action be brought after four years from the date of the incident which caused the damage. Where the incident consists of a series of occurrences, the four years' period shall run from the date of the last occurrence.

Article XI

1. Actions for compensation under this Convention may be brought only in the courts of any State Party where pollution damage was suffered as a result of the incident or in the courts of the Controlling State. For the purpose of determining where the damage was suffered, damage suffered in an area in which, in accordance with international law, a State has sovereign rights over natural resources shall be deemed to have been suffered in that State.
2. Each State Party shall ensure that its courts possess the necessary jurisdiction to entertain such actions for compensation.
3. After the fund has been constituted in accordance with Article VI, the courts of the State Party in which the fund is constituted shall be exclusively competent to determine all matters relating to the apportionment and distribution of the fund.

Article XII

1. Any judgement given by a court with jurisdiction in accordance with Article XI, which is enforceable in the State of origin where it is no longer subject to ordinary forms of review, shall be recognized in any State Party, except:
   (a) where the judgement was obtained by fraud; or
   (b) where the defendant was not given reasonable notice and a fair opportunity to present his case.
2. A judgement recognized under paragraph 1 of this Article shall be enforceable in each State Party as soon as the formalities required in that State have been complied with. The formalities shall not permit the merits of the case to be re-opened, nor a reconsideration of the applicable law.

Article XIII

Where a State Party is the operator, such State shall be subject to suit in the jurisdictions set forth in Article XI and shall waive all defences based on its status as a sovereign State.

Article XIV

No liability shall arise under this Convention for damage caused by a nuclear incident:

(a) if the operator of a nuclear installation is liable for such damage under either the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy or the Vienna Convention of 21 May 1963 on Civil Liability for Nuclear Damage, or if the operator of a nuclear ship is liable for such damage under the Brussels Convention of 25 May 1962 on the Liability of Operators of Nuclear Ships; or
(b) if the operator of a nuclear installation or the operator of a nuclear ship is liable for such damage by virtue of a national law governing the liability for such damage, provided that such law is in all respects as favourable to persons who may suffer damage as, in the case of the operator of a nuclear installation, either the Paris or the Vienna Convention or, in the case of the operator of a nuclear ship, the Brussels Convention.

Article XV

1. This Convention shall not prevent a State from providing for unlimited liability or a higher limit of liability than that currently applicable under Article VI for pollution damage caused by installations for which it is the Controlling State and suffered in that State or in another State Party; provided however that in so doing it shall not discriminate on the basis of nationality.

Such provision may be based on the principle of reciprocity.

2. The courts of each State Party shall apply the law of the Controlling State in order to determine whether the operator is entitled under the provisions of this Article and paragraph 1 of Article VI to limit his liability and, if so, the amount of such liability.
3. Nothing in this Article shall affect the amount of compensation available for pollution damage suffered in States Parties in respect of which the provision made in accordance with paragraph 1 of this Article does not apply.
4. For the purposes of this Article, pollution damage suffered in a State Party means pollution damage suffered in the territory of that State or in the areas in which, in accordance with international law, it has sovereign rights over natural resources.

Article XVI

This Convention shall be open for signature at London from 1 May 1977 until 30 April 1978 by the States invited to participate in the Intergovernmental Conference on the Convention on Civil Liability for Oil Pollution Damage from Offshore Operations, held there from 20 October to 31 October 1975 and from 13 December to 17 December 1976, and shall thereafter be open for accession by such States.

Article XVII

This Convention shall be subject to ratification, acceptance or approval.

Article XVIII

The States Parties may unanimously invite to accede to this Convention other States which have coastlines on the North Sea, the Baltic Sea or that part of the Atlantic Ocean to the north of 360 North latitude.

Article XIX

The instruments of ratification, acceptance, approval and accession shall be deposited with the Government of the United Kingdom of Great Britain and Northern Ireland.

Article XX

1. This Convention shall enter into force on the ninetieth day following the date of deposit of the fourth instrument of ratification, acceptance, approval or accession.
2. For each State ratifying, accepting, approving or acceding to the Convention after the deposit of the fourth instrument, the Convention shall enter into force on the ninetieth day after deposit by such State of its instrument.

Article XXI

A State Party may denounce this Convention at any time by means of a notice in writing addressed to the depositary Government. Any such denunciation shall take effect twelve months after the date on which the depositary Government has received such notice, or at such later date as may be specified in the notice.

Article XXII

1. Any State may, at the time of ratification, acceptance, approval or accession or at any later date, declare by means of a notice in writing addressed to the depositary Government that this Convention shall apply to all or any of the territories for whose international relations it is responsible, provided that they are situated within the area defined in Article XVIII.
2. Such declaration shall take effect on the ninetieth day after its receipt by the depositary Government or, if on such date the Convention has not yet entered into force, from the date of its entry into force.
3. Each State Party which has made a declaration in accordance with paragraph 1 of this Article may, in accordance with Article XXI, denounce this Convention in relation to all or any of the territories concerned.

Article XXIII

Any State Party may, after having obtained the agreement of at least one-third of the States Parties, convene a Conference of States Parties for the revision or amendment of this Convention.

Article XXIV

No reservation may be made to this Convention.

Article XXV

The depositary Government shall inform the States referred to in Article XVI and the acceding States:

(a) of signatures to this Convention, of the deposit of instruments of ratification, acceptance,

approval or accession, of the receipt of notices in accordance with Article XXII, and of the receipt of notices of denunciation;

(b) of the date on which the Convention will enter into force; and

(c) of the recommendations of the Committee convened under Article IX, of the acceptances and non-acceptances of such recommendations, and of the dates on which these recommendations take effect.

Article XXVI

The original of this Convention, of which the English and French texts are equally authentic, shall be deposited with the Government of the United Kingdom of Great Britain and Northern Ireland, which shall send certified copies thereof to the States referred to in Article XVI and the acceding States and which, upon its entry into force, shall transmit a certified copy to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at London this First Day of May, 1977.

Part IV
Transport of Dangerous Goods (by Sea/on Land)

8
HNS

8.1 General Information

International Convention on Liability and Compensation in Connection with Carriage of Hazardous and Noxious Substances by Sea

Most common abbreviation(s)	**HNS**
Organisation	International Maritime Organization (IMO)
Reference	International Transport Treaties, Suppl. 20 (October 1996), I-573–600/Cm. 3580 RMC I, II.7.125 www.lexmercatoria.org http://www.admiraltylawguide.com/conven/noxious1996.html
Status	
Adoption	3 May 1996
Entry into force	Not yet in force (Entry into force: 18 months after the following conditions have been fulfilled: (1) 12 States have accepted the Convention, four of which have not less than two million units of gross tonnage; (2) Provided that persons in these States who would be responsible to pay contributions to the general account have received a total quantity of at least 40 million tonnes of contributing cargo in the preceding calendar year.)
State Parties	Angola, Cyprus, Lithuania, Morocco, Russian Federation, Saint Kitts and Nevis, Samoa, Slovenia, Tonga
Literature	Balkin, R, 'The Hazardous and Noxious Substances Convention: travail or travaux: the making of an international convention', The Australian yearbook of international law: annual survey of current problems of public and private international law with a digest of Australian practice, 1999, vol. 20, pp. 1–33.

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GANTEN, R, 'HNS and Oil Pollution: developments in the Field of Compensation for Damage to the Marine Environment', Environmental Law and Policy, 1997, pp. 310–314.
GÖRANSSON, M, 'The HNS convention', Uniform Law Review,1997, pp. 249–270.
KOTZE, L, 'The interpretation of claims for pure economic loss under section 1(6)(c) of the Hazardous and Noxious Substances Convention', South African Yearbook of International Law, 2002, pp. 171–192.
RENGIFO, A, 'The international convention on liability and compensation for damage in connection with the carriage of hazardous and noxious substances by sea, 1996', RECIEL, 1997, pp. 191–197.
WETTERSTEIN, P, 'Carriage of hazardous cargoes by sea - the HNS Convention', Georgia Journal of International & [and] Comparative Law, 1997, pp. 595–614.

8.2 International Convention of 3 May 1996 on Liability and Compensation in Connection with Carriage of Hazardous and Noxious Substances by Sea

(London, 3 May 1996)

THE STATES PARTIES TO THE PRESENT CONVENTION,

CONSCIOUS of the dangers posed by the world-wide carriage by sea of hazardous and noxious substances,

CONVINCED of the need to ensure that adequate, prompt and effective compensation is available to persons who suffer damage caused by incidents in connection with the carriage by sea of such substances,

DESIRING to adopt uniform international rules and procedures for determining questions of liability and compensation in respect of such damage,

CONSIDERING that the economic consequences of damage caused by the carriage by sea of hazardous and noxious substances should be shared by the shipping industry and the cargo interests involved,

HAVE AGREED as follows:

CHAPTER 1

GENERAL PROVISIONS

Definitions

Article I

For the purposes of this Convention:

1. 'Ship' means any seagoing vessel and seaborne craft, of any type whatsoever.
2. '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.
3. 'Owner' means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship. However, in the case of a ship owned by a State and operated by a company which in that State is registered as the ship's operator, 'owner' shall mean such company.
4. 'Receiver' means either:

   (a) the person who physically receives contributing cargo discharged in the ports and terminals of a State Party; provided that if at the time of receipt the person who physically receives the cargo acts as an agent for another who is subject

to the jurisdiction of any State Party, then the principal shall be deemed to be the receiver, if the agent discloses the principal to the HNS Fund; or

(b) the person in the State Party who in accordance with the national law of that State Party is deemed to be the receiver of contributing cargo discharged in the ports and terminals of a State Party, provided that the total contributing cargo received according to such national law is substantially the same as that which would have been received under (a).

5. 'Hazardous and noxious substances' (HNS) means:

(a) any substances, materials and articles carried on board a ship as cargo, referred to in (i)–(vii) below:

(i) oils carried in bulk listed in Appendix I of Annex I to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, as amended;

(ii) noxious liquid substances carried in bulk referred to in Appendix II of Annex II to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, as amended, and those substances and mixtures provisionally categorized as falling in pollution category A, B, C or D in accordance with regulation 3(4) of the said Annex II;

(iii) dangerous liquid substances carried in bulk listed in Chapter 17 of the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk, 1983, as amended, and the dangerous products for which the preliminary suitable conditions for the carriage have been prescribed by the Administration and port administrations involved in accordance with paragraph 1.1.3 of the Code;

(iv) dangerous, hazardous and harmful substances, materials and articles in packaged form covered by the International Maritime Dangerous Goods Code, as amended;

(v) liquefied gases as listed in Chapter 19 of the International Code for the Construction and Equipment of Ships carrying Liquefied Gases in Bulk, 1983, as amended, and the products for which preliminary suitable conditions for the carriage have been prescribed by the Administration and port administrations involved in accordance with paragraph 1.1.6 of the Code;

(vi) liquid substances carried in bulk with a flashpoint not exceeding 60°C (measured by a closed cup test);

(vii) solid bulk materials possessing chemical hazards covered by Appendix B of the Code of Safe Practice for Solid Bulk Cargoes, as amended, to the extent that these substances are also subject to the provisions of the International Maritime Dangerous Goods Code when carried in packaged form; and

(b) residues from the previous carriage in bulk of substances referred to in (a)(i)–(iii) and (v)–(vii) above.

6. 'Damage' means:

(a) loss of life or personal injury on board or outside the ship carrying the hazardous and noxious substances caused by those substances;

(b) loss of or damage to property outside the ship carrying the hazardous and noxious substances caused by those substances;

(c) loss or damage by contamination of the environment caused by the hazardous and noxious substances, provided that compensation for impairment of the environment other than loss of profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken; and

(d) the costs of preventive measures and further loss or damage caused by preventive measures.

Where it is not reasonably possible to separate damage caused by the hazardous and noxious substances from that caused by other factors, all such damage shall be deemed to be caused by the hazardous and noxious substances except

if, and to the extent that, the damage caused by other factors is damage of a type referred to in Article IV, paragraph 3.

In this paragraph, 'caused by those substances' means caused by the hazardous or noxious nature of the substances.

7. 'Preventive measures' means any reasonable measures taken by any person after an incident has occurred to prevent or minimize damage.
8. 'Incident' means any occurrence or series of occurrences having the same origin, which causes damage or creates a grave and imminent threat of causing damage.
9. 'Carriage by sea' means the period from the time when the hazardous and noxious substances enter any part of the ship's equipment, on loading, to the time they cease to be present in any part of the ship's equipment, on discharge. If no ship's equipment is used, the period begins and ends respectively when the hazardous and noxious substances cross the ship's rail.
10. 'Contributing cargo' means any hazardous and noxious substances which are carried by sea as cargo to a port or terminal in the territory of a State Party and discharged in that State. Cargo in transit which is transferred directly, or through a port or terminal, from one ship to another, either wholly or in part, in the course of carriage from the port or terminal of original loading to the port or terminal of final destination shall be considered as contributing cargo only in respect of receipt at the final destination.
11. The 'HNS Fund' means the International Hazardous and Noxious Substances Fund established under Article XIII.
12. 'Unit of account' means the Special Drawing Right as defined by the International Monetary Fund.
13. 'State of the ship's registry' means in relation to a registered ship the State of registration of the ship, and in relation to an unregistered ship the State whose flag the ship is entitled to fly.
14. 'Terminal' means any site for the storage of hazardous and noxious substances received from waterborne transportation, including any facility situated off-shore and linked by pipeline or otherwise to such site.
15. 'Director' means the Director of the HNS Fund.
16. 'Organization' means the International Maritime Organization.
17. 'Secretary-General' means the Secretary-General of the Organization.

Annexes

Article II

The Annexes to this Convention shall constitute an integral part of this Convention.

Scope of application

Article III

This Convention shall apply exclusively:

(a) to any damage caused in the territory, including the territorial sea, of a State Party;
(b) to damage by contamination of the environment caused in the exclusive economic zone of a State Party, established in accordance with international law, or, if a State Party has not established such a zone, in an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured;
(c) to damage, other than damage by contamination of the environment, caused outside the territory, including the territorial sea, of any State, if this damage has been caused by a substance carried on board a ship registered in a State Party or, in the case of an unregistered ship, on board a ship entitled to fly the flag of a State Party; and
(d) to preventive measures, wherever taken.

Article IV

1. This Convention shall apply to claims, other than claims arising out of any contract for the carriage of goods and passengers, for damage arising from the carriage of hazardous and noxious substances by sea.
2. This Convention shall not apply to the extent that its provisions are incompatible with those of the applicable law relating to workers' compensation or social security schemes.
3. This Convention shall not apply:

   (a) to pollution damage as defined in the International Convention on Civil Liability for Oil Pollution Damage, 1969, as amended,

whether or not compensation is payable in respect of it under that Convention; and

(b) to damage caused by a radioactive material of class 7 either in the International Maritime Dangerous Goods Code, as amended, or in Appendix B of the Code of Safe Practice for Solid Bulk Cargoes, as amended.

4. Except as provided in paragraph 5, the provisions of this Convention shall not apply to warships, naval auxiliary or other ships owned or operated by a State and used, for the time being, only on Government non-commercial service.
5. A State Party may decide to apply this Convention to its warships or other vessels described in paragraph 4, in which case it shall notify the Secretary-General thereof specifying the terms and conditions of such application.
6. With respect to ships owned by a State Party and used for commercial purposes, each State shall be subject to suit in the jurisdictions set forth in Article XXXVIII and shall waive all defences based on its status as a sovereign State.

Article V

1. A State may, at the time of ratification, acceptance, approval of, or accession to, this Convention, or any time thereafter, declare that this Convention does not apply to ships:

   (a) which do not exceed 200 gross tonnage; and
   (b) which carry hazardous and noxious substances only in packaged form; and
   (c) while they are engaged on voyages between ports or facilities of that State.

2. Where two neighbouring States agree that this Convention does not apply also to ships which are covered by paragraph 1(a) and (b) while engaged on voyages between ports or facilities of those States, the States concerned may declare that the exclusion from the application of this Convention declared under paragraph 1 covers also ships referred to in this paragraph.
3. Any State which has made the declaration under paragraph 1 or 2 may withdraw such declaration at any time.
4. A declaration made under paragraph 1 or 2, and the withdrawal of the declaration made under paragraph 3, shall be deposited with the Secretary-General who shall, after the entry into force of this Convention, communicate it to the Director.
5. Where a State has made a declaration under paragraph 1 or 2 and has not withdrawn it, hazardous and noxious substances carried on board ships covered by that paragraph shall not be considered to be contributing cargo for the purpose of application of Articles XVIII, XX, Article XXI, paragraph 5 and Article XLIII.
6. The HNS Fund is not liable to pay compensation for damage caused by substances carried by a ship to which the Convention does not apply pursuant to a declaration made under paragraph 1 or 2, to the extent that:

   (a) the damage as defined in Article I, paragraph 6(a), (b) or (c) was caused in:

      (i) the territory, including the territorial sea, of the State which has made the declaration, or in the case of neighbouring States which have made a declaration under paragraph 2, of either of them; or
      (ii) the exclusive economic zone, or area mentioned in Article III(b), of the State or States referred to in (i);

   (b) the damage includes measures taken to prevent or minimize such damage.

Duties of state parties

Article VI

Each State Party shall ensure that any obligation arising under this Convention is fulfilled and shall take appropriate measures under its law including the imposing of sanctions as it may deem necessary, with a view to the effective execution of any such obligation.

CHAPTER 2

LIABILITY

Liability of the owner

Article VII

1. Except as provided in paragraphs 2 and 3, the owner at the time of an incident shall be liable for damage caused by any hazardous and noxious substances in connection with their carriage by sea on board the ship, provided that if an incident

consists of a series of occurrences having the same origin the liability shall attach to the owner at the time of the first of such occurrences.

2. No liability shall attach to the owner if the owner proves that:

   (a) the damage resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character; or
   (b) the damage was wholly caused by an act or omission done with the intent to cause damage by a third party; or
   (c) the damage was wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function; or
   (d) the failure of the shipper or any other person to furnish information concerning the hazardous and noxious nature of the substances shipped either

      (i) has caused the damage, wholly or partly; or
      (ii) has led the owner not to obtain insurance in accordance with Article XII;

   provided that neither the owner nor its servants or agents knew or ought reasonably to have known of the hazardous and noxious nature of the substances shipped.

3. If the owner proves that the damage resulted wholly or partly either from an act or omission done with intent to cause damage by the person who suffered the damage or from the negligence of that person, the owner may be exonerated wholly or partially from liability to such person.
4. No claim for compensation for damage shall be made against the owner otherwise than in accordance with this Convention.
5. Subject to paragraph 6, no claim for compensation for damage under this Convention or otherwise may be made against:

   (a) the servants or agents of the owner or the members of the crew;
   (b) the pilot or any other person who, without being a member of the crew, performs services for the ship;
   (c) any charterer (howsoever described, including a bareboat charterer), manager or operator of the ship;
   (d) any person performing salvage operations with the consent of the owner or on the instructions of a competent public authority;
   (e) any person taking preventive measures; and
   (f) the servants or agents of persons mentioned in (c), (d) and (e);

   unless the damage resulted from their personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

6. Nothing in this Convention shall prejudice any existing right of recourse of the owner against any third party, including, but not limited to, the shipper or the receiver of the substance causing the damage, or the persons indicated in paragraph 5.

Incidents involving two or more ships

Article VIII

1. Whenever damage has resulted from an incident involving two or more ships each of which is carrying hazardous and noxious substances, each owner, unless exonerated under Article VII, shall be liable for the damage. The owners shall be jointly and severally liable for all such damage which is not reasonably separable.
2. However, owners shall be entitled to the limits of liability applicable to each of them under Article IX.
3. Nothing in this Article shall prejudice any right of recourse of an owner against any other owner.

Limitation of liability

Article IX

1. The owner of a ship shall be entitled to limit liability under this Convention in respect of any one incident to an aggregate amount calculated as follows:

   (a) 10 million units of account for a ship not exceeding 2,000 units of tonnage; and
   (b) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (a):

   for each unit of tonnage from 2,001 to 50,000 units of tonnage, 1,500 units of account;

   for each unit of tonnage in excess of 50,000 units of tonnage, 360 units of account;

provided, however, that this aggregate amount shall not in any event exceed 100 million units of account.

2. The owner shall not be entitled to limit liability under this Convention if it is proved that the damage resulted from the personal act or omission of the owner, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.
3. The owner shall, for the purpose of benefitting from the limitation provided for in paragraph 1, constitute a fund for the total sum representing the limit of liability established in accordance with paragraph 1 with the court or other competent authority of any one of the States Parties in which action is brought under Article XXXVIII or, if no action is brought, with any court or other competent authority in any one of the States Parties in which an action can be brought under Article XXXVIII. The fund can be constituted either by depositing the sum or by producing a bank guarantee or other guarantee, acceptable under the law of the State Party where the fund is constituted, and considered to be adequate by the court or other competent authority.
4. Subject to the provisions of Article XI, the fund shall be distributed among the claimants in proportion to the amounts of their established claims.
5. If before the fund is distributed the owner or any of the servants or agents of the owner or any person providing to the owner insurance or other financial security has as a result of the incident in question, paid compensation for damage, such person shall, up to the amount that person has paid, acquire by subrogation the rights which the person so compensated would have enjoyed under this Convention.
6. The right of subrogation provided for in paragraph 5 may also be exercised by a person other than those mentioned therein in respect of any amount of compensation for damage which such person may have paid but only to the extent that such subrogation is permitted under the applicable national law.
7. Where owners or other persons establish that they may be compelled to pay at a later date in whole or in part any such amount of compensation, with regard to which the right of subrogation would have been enjoyed under paragraphs 5 or 6 had the compensation been paid before the fund was distributed, the court or other competent authority of the State where the fund has been constituted may order that a sufficient sum shall be provisionally set aside to enable such person at such later date to enforce the claim against the fund.
8. Claims in respect of expenses reasonably incurred or sacrifices reasonably made by the owner voluntarily to prevent or minimize damage shall rank equally with other claims against the fund.
9. (a) The amounts mentioned in paragraph 1 shall be converted into national currency on the basis of the value of that currency by reference to the Special Drawing Right on the date of the constitution of the fund referred to in paragraph 3. The value of the national currency, in terms of the Special Drawing Right, of a State Party which is a member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect on the date in question for its operations and transactions. The value of the national currency, in terms of the Special Drawing Right, of a State Party which is not a member of the International Monetary Fund, shall be calculated in a manner determined by that State.

   (b) Nevertheless, a State Party which is not a member of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 9(a) may, at the time of ratification, acceptance, approval of or accession to this Convention or at any time thereafter, declare that the unit of account referred to in paragraph 9(a) shall be equal to 15 gold francs. The gold franc referred to in this paragraph corresponds to sixty-five-and-a-half milligrammes of gold of millesimal fineness nine hundred. The conversion of the gold franc into the national currency shall be made according to the law of the State concerned.

   (c) The calculation mentioned in the last sentence of paragraph 9(a) and the conversion mentioned in paragraph 9(b) shall be made in such manner as to express in the national currency of the State Party as far as

possible the same real value for the amounts in paragraph 1 as would result from the application of the first two sentences of paragraph 9(a). States Parties shall communicate to the Secretary-General the manner of calculation pursuant to paragraph 9(a), or the result of the conversion in paragraph 9(b) as the case may be, when depositing an instrument of ratification, acceptance, approval of or accession to this Convention and whenever there is a change in either.

10. For the purpose of this Article the ship's tonnage shall be the gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex I of the International Convention on Tonnage Measurement of Ships, 1969.
11. The insurer or other person providing financial security shall be entitled to constitute a fund in accordance with this Article on the same conditions and having the same effect as if it were constituted by the owner. Such a fund may be constituted even if, under the provisions of paragraph 2, the owner is not entitled to limitation of liability, but its constitution shall in that case not prejudice the rights of any claimant against the owner.

Article X

1. Where the owner, after an incident, has constituted a fund in accordance with Article IX and is entitled to limit liability:

   (a) no person having a claim for damage arising out of that incident shall be entitled to exercise any right against any other assets of the owner in respect of such claim; and
   (b) the court or other competent authority of any State Party shall order the release of any ship or other property belonging to the owner which has been arrested in respect of a claim for damage arising out of that incident, and shall similarly release any bail or other security furnished to avoid such arrest.

2. The foregoing shall, however, only apply if the claimant has access to the court administering the fund and the fund is actually available in respect of the claim.

Death and injury

Article XI

Claims in respect of death or personal injury have priority over other claims save to the extent that the aggregate of such claims exceeds two-thirds of the total amount established in accordance with Article IX, paragraph 1.

Compulsory insurance of the owner

Article XII

1. The owner of a ship registered in a State Party and actually carrying hazardous and noxious substances shall be required to maintain insurance or other financial security, such as the guarantee of a bank or similar financial institution, in the sums fixed by applying the limits of liability prescribed in Article IX, paragraph 1, to cover liability for damage under this Convention.
2. A compulsory insurance certificate attesting that insurance or other financial security is in force in accordance with the provisions of this Convention shall be issued to each ship after the appropriate authority of a State Party has determined that the requirements of paragraph 1 have been complied with. With respect to a ship registered in a State Party such compulsory insurance certificate shall be issued or certified by the appropriate authority of the State of the ship's registry; with respect to a ship not registered in a State Party it may be issued or certified by the appropriate authority of any State Party. This compulsory insurance certificate shall be in the form of the model set out in Annex I and shall contain the following particulars:

   (a) name of the ship, distinctive number or letters and port of registry;
   (b) name and principal place of business of the owner;
   (c) IMO ship identification number;
   (d) type and duration of security;
   (e) name and principal place of business of insurer or other person giving security and, where appropriate, place of business where the insurance or security is established; and

(f) period of validity of certificate, which shall not be longer than the period of validity of the insurance or other security.

3. The compulsory insurance certificate shall be in the official language or languages of the issuing State. If the language used is neither English, nor French nor Spanish, the text shall include a translation into one of these languages.
4. The compulsory insurance certificate shall be carried on board the ship and a copy shall be deposited with the authorities who keep the record of the ship's registry or, if the ship is not registered in a State Party, with the authority of the State issuing or certifying the certificate.
5. An insurance or other financial security shall not satisfy the requirements of this Article if it can cease, for reasons other than the expiry of the period of validity of the insurance or security specified in the certificate under paragraph 2, before three months have elapsed from the date on which notice of its termination is given to the authorities referred to in paragraph 4, unless the compulsory insurance certificate has been issued within the said period. The foregoing provisions shall similarly apply to any modification which results in the insurance or security no longer satisfying the requirements of this Article.
6. The State of the ship's registry shall, subject to the provisions of this Article, determine the conditions of issue and validity of the compulsory insurance certificate.
7. Compulsory insurance certificates issued or certified under the authority of a State Party in accordance with paragraph 2 shall be accepted by other States Parties for the purposes of this Convention and shall be regarded by other States Parties as having the same force as compulsory insurance certificates issued or certified by them even if issued or certified in respect of a ship not registered in a State Party. A State Party may at any time request consultation with the issuing or certifying State should it believe that the insurer or guarantor named in the compulsory insurance certificate is not financially capable of meeting the obligations imposed by this Convention.
8. Any claim for compensation for damage may be brought directly against the insurer or other person providing financial security for the owner's liability for damage. In such case the defendant may, even if the owner is not entitled to limitation of liability, benefit from the limit of liability prescribed in accordance with paragraph 1. The defendant may further invoke the defences (other than the bankruptcy or winding up of the owner) which the owner would have been entitled to invoke. Furthermore, the defendant may invoke the defence that the damage resulted from the wilful misconduct of the owner, but the defendant shall not invoke any other defence which the defendant might have been entitled to invoke in proceedings brought by the owner against the defendant. The defendant shall in any event have the right to require the owner to be joined in the proceedings.
9. Any sums provided by insurance or by other financial security maintained in accordance with paragraph 1 shall be available exclusively for the satisfaction of claims under this Convention.
10. A State Party shall not permit a ship under its flag to which this Article applies to trade unless a certificate has been issued under paragraph 2 or 12.
11. Subject to the provisions of this Article, each State Party shall ensure, under its national law, that insurance or other security in the sums specified in paragraph 1 is in force in respect of any ship, wherever registered, entering or leaving a port in its territory, or arriving at or leaving an offshore facility in its territorial sea.
12. If insurance or other financial security is not maintained in respect of a ship owned by a State Party, the provisions of this Article relating thereto shall not be applicable to such ship, but the ship shall carry a compulsory insurance certificate issued by the appropriate authorities of the State of the ship's registry stating that the ship is owned by that State and that the ship's liability is covered within the limit prescribed in accordance with paragraph 1. Such a compulsory insurance certificate shall follow as closely as possible the model prescribed by paragraph 2.

CHAPTER 3

COMPENSATION BY THE INTERNATIONAL HAZARDOUS AND NOXIOUS SUBSTANCES FUND (HNS FUND)

Establishment of the HNS Fund

Article XIII

1. The International Hazardous and Noxious Substances Fund (HNS Fund) is hereby established with the following aims:

   (a) to provide compensation for damage in connection with the carriage of hazardous and noxious substances by sea, to the extent that the protection afforded by Chapter 2 is inadequate or not available; and
   (b) to give effect to the related tasks set out in Article XV.

2. The HNS Fund shall in each State Party be recognized as a legal person capable under the laws of that State of assuming rights and obligations and of being a party in legal proceedings before the courts of that State. Each State Party shall recognize the Director as the legal representative of the HNS Fund.

Compensation

Article XIV

1. For the purpose of fulfilling its function under Article XIII, paragraph 1(a), the HNS Fund shall pay compensation to any person suffering damage if such person has been unable to obtain full and adequate compensation for the damage under the terms of Chapter 2:

   (a) because no liability for the damage arises under Chapter 2;
   (b) because the owner liable for the damage under Chapter 2 is financially incapable of meeting the obligations under this Convention in full and any financial security that may be provided under Chapter 2 does not cover or is insufficient to satisfy the claims for compensation for damage; an owner being treated as financially incapable of meeting these obligations and a financial security being treated as insufficient if the person suffering the damage has been unable to obtain full satisfaction of the amount of compensation due under Chapter 2 after having taken all reasonable steps to pursue the available legal remedies;
   (c) because the damage exceeds the owner's liability under the terms of Chapter 2.

2. Expenses reasonably incurred or sacrifices reasonably made by the owner voluntarily to prevent or minimize damage shall be treated as damage for the purposes of this Article.
3. The HNS Fund shall incur no obligation under the preceding paragraphs if:

   (a) it proves that the damage resulted from an act of war, hostilities, civil war or insurrection or was caused by hazardous and noxious substances which had escaped or been discharged from a warship or other ship owned or operated by a State and used, at the time of the incident, only on Government non-commercial service; or
   (b) the claimant cannot prove that there is a reasonable probability that the damage resulted from an incident involving one or more ships.

4. If the HNS Fund proves that the damage resulted wholly or partly either from an act or omission done with intent to cause damage by the person who suffered the damage or from the negligence of that person, the HNS Fund may be exonerated wholly or partially from its obligation to pay compensation to such person. The HNS Fund shall in any event be exonerated to the extent that the owner may have been exonerated under Article VII, paragraph 3. However, there shall be no such exoneration of the HNS Fund with regard to preventive measures.
5. (a) Except as otherwise provided in subparagraph (b), the aggregate amount of compensation payable by the HNS Fund under this Article shall in respect of any one incident be limited, so that the total sum of that amount and any amount of compensation actually paid under Chapter 2 for damage within the scope of application of this Convention as defined in Article III shall not exceed 250 million units of account.
   (b) The aggregate amount of compensation payable by the HNS Fund under this Article for damage resulting from a natural phenomenon of an exceptional, inevitable

and irresistible character shall not exceed 250 million units of account.

(c) Interest accrued on a fund constituted in accordance with Article IX, paragraph 3, if any, shall not be taken into account for the computation of the maximum compensation payable by the HNS Fund under this Article.

(d) The amounts mentioned in this Article shall be converted into national currency on the basis of the value of that currency with reference to the Special Drawing Right on the date of the decision of the Assembly of the HNS Fund as to the first date of payment of compensation.

6. Where the amount of established claims against the HNS Fund exceeds the aggregate amount of compensation payable under paragraph 5, the amount available shall be distributed in such a manner that the proportion between any established claim and the amount of compensation actually recovered by the claimant under this Convention shall be the same for all claimants. Claims in respect of death or personal injury shall have priority over other claims, however, save to the extent that the aggregate of such claims exceeds two-thirds of the total amount established in accordance with paragraph 5.
7. The Assembly of the HNS Fund may decide that, in exceptional cases, compensation in accordance with this Convention can be paid even if the owner has not constituted a fund in accordance with Chapter 2. In such cases paragraph 5(d) applies accordingly.

Related tasks of the HNS Fund

Article XV

For the purpose of fulfilling its function under Article XIII, paragraph 1(a), the HNS Fund shall have the following tasks:

(a) to consider claims made against the HNS Fund;
(b) to prepare an estimate in the form of a budget for each calendar year of:

Expenditure:

(i) costs and expenses of the administration of the HNS Fund in the relevant year and any deficit from operations in the preceding years; and

(ii) payments to be made by the HNS Fund in the relevant year;

Income:

(iii) surplus funds from operations in preceding years, including any interest;
(iv) initial contributions to be paid in the course of the year;
(v) annual contributions if required to balance the budget; and
(vi) any other income;

(c) to use at the request of a State Party its good offices as necessary to assist that State to secure promptly such personnel, material and services as are necessary to enable the State to take measures to prevent or mitigate damage arising from an incident in respect of which the HNS Fund may be called upon to pay compensation under this Convention; and
(d) to provide, on conditions laid down in the internal regulations, credit facilities with a view to the taking of preventive measures against damage arising from a particular incident in respect of which the HNS Fund may be called upon to pay compensation under this Convention.

General provisions on contributions

Article XVI

1. The HNS Fund shall have a general account, which shall be divided into sectors.
2. The HNS Fund shall, subject to Article XIX, paragraphs 3 and 4, also have separate accounts in respect of:

(a) oil as defined in Article I, paragraph 5(a)(i) (oil account);
(b) liquefied natural gases of light hydrocarbons with methane as the main constituent (LNG) (LNG account); and
(c) liquefied petroleum gases of light hydrocarbons with propane and butane as the main constituents (LPG) (LPG account).

3. There shall be initial contributions and, as required, annual contributions to the HNS Fund.
4. Contributions to the HNS Fund shall be made into the general account in accordance with Article XVIII, to separate accounts in accordance with Article XIX and to either the general account or separate accounts in accordance with

Article XX or Article XXI, paragraph 5. Subject to Article XIX, paragraph 6, the general account shall be available to compensate damage caused by hazardous and noxious substances covered by that account, and a separate account shall be available to compensate damage caused by a hazardous and noxious substance covered by that account.

5. For the purposes of Article XVIII, Article XIX, paragraph 1(a)(i), paragraph 1(a)(ii) and paragraph 1(c), Article XX and Article XXI, paragraph 5, where the quantity of a given type of contributing cargo received in the territory of a State Party by any person in a calendar year when aggregated with the quantities of the same type of cargo received in the same State Party in that year by any associated person or persons exceeds the limit specified in the respective subparagraphs, such a person shall pay contributions in respect of the actual quantity received by that person notwithstanding that that quantity did not exceed the respective limit.
6. 'Associated person' means any subsidiary or commonly controlled entity. The question whether a person comes within this definition shall be determined by the national law of the State concerned.

General provisions on annual contributions

Article XVII

1. Annual contributions to the general account and to each separate account shall be levied only as required to make payments by the account in question.
2. Annual contributions payable pursuant to Articles XVIII, XIX and Article XXI, paragraph 5 shall be determined by the Assembly and shall be calculated in accordance with those Articles on the basis of the units of contributing cargo received or, in respect of cargoes referred to in Article XIX, paragraph 1(b), discharged during the preceding calendar year or such other year as the Assembly may decide.
3. The Assembly shall decide the total amount of annual contributions to be levied to the general account and to each separate account. Following that decision the Director shall, in respect of each State Party, calculate for each person liable to pay contributions in accordance with Article XVIII, Article XIX, paragraph 1 and Article XXI, paragraph 5, the amount of that person's annual contribution to each account, on the basis of a fixed sum for each unit of contributing cargo reported in respect of the person during the preceding calendar year or such other year as the Assembly may decide. For the general account, the abovementioned fixed sum per unit of contributing cargo for each sector shall be calculated pursuant to the regulations contained in Annex II to this Convention. For each separate account, the fixed sum per unit of contributing cargo referred to above shall be calculated by dividing the total annual contribution to be levied to that account by the total quantity of cargo contributing to that account.
4. The Assembly may also levy annual contributions for administrative costs and decide on the distribution of such costs between the sectors of the general account and the separate accounts.
5. The Assembly shall also decide on the distribution between the relevant accounts and sectors of amounts paid in compensation for damage caused by two or more substances which fall within different accounts or sectors, on the basis of an estimate of the extent to which each of the substances involved contributed to the damage.

Annual contributions to the general account

Article XVIII

1. Subject to Article XVI, paragraph 5, annual contributions to the general account shall be made in respect of each State Party by any person who was the receiver in that State in the preceding calendar year, or such other year as the Assembly may decide, of aggregate quantities exceeding 20,000 tonnes of contributing cargo, other than substances referred to in Article XIX, paragraph 1, which fall within the following sectors:

   (a) solid bulk materials referred to in Article I, paragraph 5(a)(vii);
   (b) substances referred to in paragraph 2; and
   (c) other substances.

2. Annual contributions shall also be payable to the general account by persons who would have been liable to pay contributions to a separate account in accordance with Article XIX, paragraph 1 had its operation not been postponed or suspended

in accordance with Article XIX. Each separate account the operation of which has been postponed or suspended under Article XIX shall form a separate sector within the general account.

Annual contributions to separate accounts

Article XIX

1. Subject to Article XVI, paragraph 5, annual contributions to separate accounts shall be made in respect of each State Party:

   (a) in the case of the oil account,

      (i) by any person who has received in that State in the preceding calendar year, or such other year as the Assembly may decide, total quantities exceeding 150,000 tonnes of contributing oil as defined in Article I, paragraph 3 of the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, as amended, and who is or would be liable to pay contributions to the International Oil Pollution Compensation Fund in accordance with Article X of that Convention; and

      (ii) by any person who was the receiver in that State in the preceding calendar year, or such other year as the Assembly may decide, of total quantities exceeding 20,000 tonnes of other oils carried in bulk listed in Appendix I of Annex I to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, as amended;

   (b) in the case of the LNG account, by any person who in the preceding calendar year, or such other year as the Assembly may decide, immediately prior to its discharge, held title to an LNG cargo discharged in a port or terminal of that State;

   (c) in the case of the LPG account, by any person who in the preceding calendar year, or such other year as the Assembly may decide, was the receiver in that State of total quantities exceeding 20,000 tonnes of LPG.

2. Subject to paragraph 3, the separate accounts referred to in paragraph 1 above shall become effective at the same time as the general account.

3. The initial operation of a separate account referred to in Article XVI, paragraph 2 shall be postponed until such time as the quantities of contributing cargo in respect of that account during the preceding calendar year, or such other year as the Assembly may decide, exceed the following levels:

   (a) 350 million tonnes of contributing cargo in respect of the oil account;
   (b) 20 million tonnes of contributing cargo in respect of the LNG account; and
   (c) 15 million tonnes of contributing cargo in respect of the LPG account.

4. The Assembly may suspend the operation of a separate account if:

   (a) the quantities of contributing cargo in respect of that account during the preceding calendar year fall below the respective level specified in paragraph 3; or
   (b) when six months have elapsed from the date when the contributions were due, the total unpaid contributions to that account exceed ten percent of the most recent levy to that account in accordance with paragraph 1.

5. The Assembly may reinstate the operation of a separate account which has been suspended in accordance with paragraph 4.

6. Any person who would be liable to pay contributions to a separate account the operation of which has been postponed in accordance with paragraph 3 or suspended in accordance with paragraph 4, shall pay into the general account the contributions due by that person in respect of that separate account. For the purpose of calculating future contributions, the postponed or suspended separate account shall form a new sector in the general account and shall be subject to the HNS points system defined in Annex II.

Initial contributions

Article XX

1. In respect of each State Party, initial contributions shall be made of an amount which shall for each person liable to pay contributions in accordance with Article XVI, paragraph 5, Articles XVIII, XIX and Article XXI, paragraph 5 be calculated on the basis of a fixed sum, equal for the general

account and each separate account, for each unit of contributing cargo received or, in the case of LNG, discharged in that State, during the calendar year preceding that in which this Convention enters into force for that State.

2. The fixed sum and the units for the different sectors within the general account as well as for each separate account referred to in paragraph 1 shall be determined by the Assembly.
3. Initial contributions shall be paid within three months following the date on which the HNS Fund issues invoices in respect of each State Party to persons liable to pay contributions in accordance with paragraph 1.

Reports

Article XXI

1. Each State Party shall ensure that any person liable to pay contributions in accordance with Articles XVIII, XIX or paragraph 5 of this Article appears on a list to be established and kept up to date by the Director in accordance with the provisions of this Article.
2. For the purposes set out in paragraph 1, each State Party shall communicate to the Director, at a time and in the manner to be prescribed in the internal regulations of the HNS Fund, the name and address of any person who in respect of the State is liable to pay contributions in accordance with Articles XVIII, XIX or paragraph 5 of this Article, as well as data on the relevant quantities of contributing cargo for which such a person is liable to contribute in respect of the preceding calendar year.
3. For the purposes of ascertaining who are, at any given time, the persons liable to pay contributions in accordance with Articles XVIII, XIX or paragraph 5 of this Article and of establishing, where applicable, the quantities of cargo to be taken into account for any such person when determining the amount of the contribution, the list shall be *prima facie* evidence of the facts stated therein.
4. Where a State Party does not fulfil its obligations to communicate to the Director the information referred to in paragraph 2 and this results in a financial loss for the HNS Fund, that State Party shall be liable to compensate the HNS Fund for such loss. The Assembly shall, on the recommendation of the Director, decide whether such compensation shall be payable by a State Party.
5. In respect of contributing cargo carried from one port or terminal of a State Party to another port or terminal located in the same State and discharged there, States Parties shall have the option of submitting to the HNS Fund a report with an annual aggregate quantity for each account covering all receipts of contributing cargo, including any quantities in respect of which contributions are payable pursuant to Article XVI, paragraph 5. The State Party shall, at the time of reporting, either:

   (a) notify the HNS Fund that that State will pay the aggregate amount for each account in respect of the relevant year in one lump sum to the HNS Fund; or
   (b) instruct the HNS Fund to levy the aggregate amount for each account by invoicing individual receivers or, in the case of LNG, the title holder who discharges within the jurisdiction of that State Party, for the amount payable by each of them. These persons shall be identified in accordance with the national law of the Slate concerned.

Non-payment of contributions

Article XXII

1. The amount of any contribution due under Articles XVIII, XIX, XX or Article XXI, paragraph 5 and which is in arrears shall bear interest at a rate which shall be determined in accordance with the internal regulations of the HNS Fund, provided that different rates may be fixed for different circumstances.
2. Where a person who is liable to pay contributions in accordance with Articles XVIII, XIX, XX or Article XXI, paragraph 5 does not fulfil the obligations in respect of any such contribution or any part thereof and is in arrears, the Director shall take all appropriate action, including court action, against such a person on behalf of the HNS Fund with a view to the recovery of the amount due. However, where the defaulting contributor is manifestly insolvent or the circumstances otherwise so warrant, the Assembly may, upon recommendation of the Director, decide

that no action shall be taken or continued against the contributor.

Optional liability of states parties for the payment of contributions

Article XXIII

1. Without prejudice to Article XXI, paragraph 5, a State Party may at the time when it deposits its instrument of ratification, acceptance, approval or accession or at any time thereafter declare that it assumes responsibility for obligations imposed by this Convention on any person liable to pay contributions in accordance with Articles XVIII, XIX, XX or Article XXI, paragraph 5 in respect of hazardous and noxious substances received or discharged in the territory of that State. Such a declaration shall be made in writing and shall specify which obligations are assumed.
2. Where a declaration under paragraph 1 is made prior to the entry into force of this Convention in accordance with Article XLVI, it shall be deposited with the Secretary-General who shall after the entry into force of this Convention communicate the declaration to the Director.
3. A declaration under paragraph 1 which is made after the entry into force of this Convention shall be deposited with the Director.
4. A declaration made in accordance with this Article may be withdrawn by the relevant State giving notice thereof in writing to the Director. Such a notification shall take effect three months after the Director's receipt thereof.
5. Any State which is bound by a declaration made under this Article shall, in any proceedings brought against it before a competent court in respect of any obligation specified in the declaration, waive any immunity that it would otherwise be entitled to invoke.

Organization and administration

Article XXIV

The HNS Fund shall have an Assembly and a Secretariat headed by the Director.

Assembly

Article XXV

The Assembly shall consist of all States Parties to this Convention.

Article XXVI

The functions of the Assembly shall be:

(a) to elect at each regular session its President and two Vice-Presidents who shall hold office until the next regular session;
(b) to determine its own rules of procedure, subject to the provisions of this Convention;
(c) to develop, apply and keep under review internal and financial regulations relating to the aim of the HNS Fund as described in Article XIII, paragraph 1(a), and the related tasks of the HNS Fund listed in Article XV;
(d) to appoint the Director and make provisions for the appointment of such other personnel as may be necessary and determine the terms and conditions of service of the Director and other personnel;
(e) to adopt the annual budget prepared in accordance with Article XV(b);
(f) to consider and approve as necessary any recommendation of the Director regarding the scope of definition of contributing cargo;
(g) to appoint auditors and approve the accounts of the HNS Fund;
(h) to approve settlements of claims against the HNS Fund, to take decisions in respect of the distribution among claimants of the available amount of compensation in accordance with Article XIV and to determine the terms and conditions according to which provisional payments in respect of claims shall be made with a view to ensuring that victims of damage are compensated as promptly as possible;
(i) to establish a Committee on Claims for Compensation with at least 7 and not more than 15 members and any temporary or permanent subsidiary body it may consider to be necessary, to define its terms of reference and to give it the authority needed to perform the functions entrusted to it; when appointing the members of such body, the Assembly shall endeavour to secure an equitable geographical distribution of members and to ensure that the States Parties are appropriately represented; the Rules of Procedure of the Assembly may be applied, *mutatis mutandis*, for the work of such subsidiary body;
(j) to determine which States not party to this Convention, which Associate Members of the Organization and which intergovernmental and

international non-governmental organizations shall be admitted to take part, without voting rights, in meetings of the Assembly and subsidiary bodies;

(k) to give instructions concerning the administration of the HNS Fund to the Director and subsidiary bodies;

(l) to supervise the proper execution of this Convention and of its own decisions;

(m) to review every five years the implementation of this Convention with particular reference to the performance of the system for the calculation of levies and the contribution mechanism for domestic trade; and

(n) to perform such other functions as are allocated to it under this Convention or are otherwise necessary for the proper operation of the HNS Fund.

Article XXVII

1. Regular sessions of the Assembly shall take place once every calendar year upon convocation by the Director.
2. Extraordinary sessions of the Assembly shall be convened by the Director at the request of at least one-third of the members of the Assembly and may be convened on the Director's own initiative after consultation with the President of the Assembly. The Director shall give members at least thirty days' notice of such sessions.

Article XXVIII

A majority of the members of the Assembly shall constitute a quorum for its meetings.

Secretariat

Article XXIX

1. The Secretariat shall comprise the Director and such staff as the administration of the HNS Fund may require.
2. The Director shall be the legal representative of the HNS Fund.

Article XXX

1. The Director shall be the chief administrative officer of the HNS Fund. Subject to the instructions given by the Assembly, the Director shall perform those functions which are assigned to the Director by this Convention, the internal regulations of the HNS Fund and the Assembly.
2. The Director shall in particular:

(a) appoint the personnel required for the administration of the HNS Fund;

(b) take all appropriate measures with a view to the proper administration of the assets of the HNS Fund;

(c) collect the contributions due under this Convention while observing in particular the provisions of Article XXII, paragraph 2;

(d) to the extent necessary to deal with claims against the HNS Fund and to carry out the other functions of the HNS Fund, employ the services of legal, financial and other experts;

(e) take all appropriate measures for dealing with claims against the HNS Fund, within the limits and on conditions to be laid down in the internal regulations of the HNS Fund, including the final settlement of claims without the prior approval of the Assembly where these regulations so provide;

(f) prepare and submit to the Assembly the financial statements and budget estimates for each calendar year;

(g) prepare, in consultation with the President of the Assembly, and publish a report on the activities of the HNS Fund during the previous calendar year; and

(h) prepare, collect and circulate the documents and information which may be required for the work of the Assembly and subsidiary bodies.

Article XXXI

In the performance of their duties the Director and the staff and experts appointed by the Director shall not seek or receive instructions from any Government or from any authority external to the HNS Fund. They shall refrain from any action which might adversely reflect on their position as international officials. Each State Party on its part undertakes to respect the exclusively international character of the responsibilities of the Director and the staff and experts appointed by the Director, and not to seek to influence them in the discharge of their duties.

Finances

Article XXXII

1. Each State Party shall bear the salary, travel and other expenses of its own delegation to the Assembly and of its representatives on subsidiary bodies.
2. Any other expenses incurred in the operation of the HNS Fund shall be borne by the HNS Fund.

Voting

Article XXXIII

The following provisions shall apply to voting in the Assembly:

(a) each member shall have one vote;
(b) except as otherwise provided in Article XXXIV, decisions of the Assembly shall be made by a majority vote of the members present and voting;
(c) decisions where a two-thirds majority is required shall be a two-thirds majority vote of members present; and
(d) for the purpose of this Article the phrase 'members present' means 'members present at the meeting at the time of the vote', and the phrase 'members present and voting' means 'members present and casting an affirmative or negative vote'. Members who abstain from voting shall be considered as not voting.

Article XXXIV

The following decisions of the Assembly shall require a two-thirds majority:

(a) a decision under Article XIX, paragraphs 4 or 5 to suspend or reinstate the operation of a separate account;
(b) a decision under Article XXII, paragraph 2, not to take or continue action against a contributor;
(c) the appointment of the Director under Article XXVI(d);
(d) the establishment of subsidiary bodies, under Article XXVI(i), and matters relating to such establishment; and
(e) a decision under Article LI, paragraph 1, that this Convention shall continue to be in force.

Tax exemptions and currency regulations

Article XXXV

1. The HNS Fund, its assets, income, including contributions, and other property necessary for the exercise of its functions as described in Article XIII, paragraph 1, shall enjoy in all States Parties exemption from all direct taxation.
2. When the HNS Fund makes substantial purchases of movable or immovable property, or of services which are necessary for the exercise of its official activities in order to achieve its aims as set out in Article XIII, paragraph 1, the cost of which include indirect taxes or sales taxes, the Governments of the States Parties shall take, whenever possible, appropriate measures for the remission or refund of the amount of such duties and taxes. Goods thus acquired shall not be sold against payment or given away free of charge unless it is done according to conditions approved by the Government of the State having granted or supported the remission or refund.
3. No exemption shall be accorded in the case of duties, taxes or dues which merely constitute payment for public utility services.
4. The HNS Fund shall enjoy exemption from all customs duties, taxes and other related taxes on articles imported or exported by it or on its behalf for its official use. Articles thus imported shall not be transferred either for consideration or gratis on the territory of the country into which they have been imported except on conditions agreed by the Government of that country.
5. Persons contributing to the HNS Fund as well as victims and owners receiving compensation from the HNS Fund shall be subject to the fiscal legislation of the State where they are taxable, no special exemption or other benefit being conferred on them in this respect.
6. Notwithstanding existing or future regulations concerning currency or transfers, States Parties shall authorize the transfer and payment of any contribution to the HNS Fund and of any compensation paid by HNS Fund without any restriction.

Confidentiality of information

Article XXXVI

Information relating to individual contributors supplied for the purpose of this Convention shall not

be divulged outside the HNS Fund except in so far as it may be strictly necessary to enable the HNS Fund to carry out its functions including the bringing and defending of legal proceedings.

CHAPTER 4

CLAIMS AND ACTIONS

Limitation of actions

Article XXXVII

1. Rights to compensation under Chapter 2 shall be extinguished unless an action is brought thereunder within three years from the date when the person suffering the damage knew or ought reasonably to have known of the damage and of the identity of the owner.
2. Rights to compensation under Chapter 3 shall be extinguished unless an action is brought thereunder or a notification has been made pursuant to Article XXXIX, paragraph 7, within three years from the date when the person suffering the damage knew or ought reasonably to have known of the damage.
3. In no case, however, shall an action be brought later than ten years from the date of the incident which caused the damage.
4. Where the incident consists of a series of occurrences, the ten-year period mentioned in paragraph 3 shall run from the date of the last of such occurrences.

Jurisdiction in respect of action against the owner

Article XXXVIII

1. Where an incident has caused damage in the territory, including the territorial sea or in an area referred to in Article III(b), of one or more States Parties, or preventive measures have been taken to prevent or minimize damage in such territory including the territorial sea or in such area, actions for compensation may be brought against the owner or other person providing financial security for the owner's liability only in the courts of any such States Parties.
2. Where an incident has caused damage exclusively outside the territory, including the territorial sea, of any State and either the conditions for application of this Convention set out in Article III(c) have been fulfilled or preventive measures to prevent or minimize such damage have been taken, actions for compensation may be brought against the owner or other person providing financial security for the owner's liability only in the courts of:
   (a) the State Party where the ship is registered or, in the case of an unregistered ship, the State Party whose flag the ship is entitled to fly; or
   (b) the State Party where the owner has habitual residence or where the principal place of business of the owner is established; or
   (c) the State Party where a fund has been constituted in accordance with Article IX, paragraph 3.
3. Reasonable notice of any action taken under paragraph 1 or 2 shall be given to the defendant.
4. Each State Party shall ensure that its courts have jurisdiction to entertain actions for compensation under this Convention.
5. After a fund under Article IX has been constituted by the owner or by the insurer or other person providing financial security in accordance with Article XII, the courts of the State in which such fund is constituted shall have exclusive jurisdiction to determine all matters relating to the apportionment and distribution of the fund.

Jurisdiction in respect of action against the HNS Fund or taken by the HNS Fund

Article XXXIX

1. Subject to the subsequent provisions of this Article, any action against the HNS Fund for compensation under Article XIV shall be brought only before a court having jurisdiction under Article XXXVIII in respect of actions against the owner who is liable for damage caused by the relevant incident or before a court in a State Party which would have been competent if an owner had been liable.
2. In the event that the ship carrying the hazardous or noxious substances which caused the damage has not been identified, the provisions of Article XXXVIII, paragraph 1, shall apply *mutatis mutandis* to actions against the HNS Fund.
3. Each State Party shall ensure that its courts have jurisdiction to entertain such actions against the HNS Fund as are referred to in paragraph 1.
4. Where an action for compensation for damage has been brought before a court against the owner or the owner's guarantor, such court

shall have exclusive jurisdiction over any action against the HNS Fund for compensation under the provisions of Article XIV in respect of the same damage.

5. Each State Party shall ensure that the HNS Fund shall have the right to intervene as a party to any legal proceedings instituted in accordance with this Convention before a competent court of that State against the owner or the owner's guarantor.
6. Except as otherwise provided in paragraph 7, the HNS Fund shall not be bound by any judgement or decision in proceedings to which it has not been a party or by any settlement to which it is not a party.
7. Without prejudice to the provisions of paragraph 5, where an action under this Convention for compensation for damage has been brought against an owner or the owner's guarantor before a competent court in a State Party, each party to the proceedings shall be entitled under the national law of that State to notify the HNS Fund of the proceedings. Where such notification has been made in accordance with the formalities required by the law of the court seized and in such time and in such a manner that the HNS Fund has in fact been in a position effectively to intervene as a party to the proceedings, any judgement rendered by the court in such proceedings shall, after it has become final and enforceable in the State where the judgement was given, become binding upon the HNS Fund in the sense that the facts and findings in that judgement may not be disputed by the HNS Fund even if the HNS Fund has not actually intervened in the proceedings.

Recognition and enforcement

Article XL

1. Any judgement given by a court with jurisdiction in accordance with Article XXXVIII, which is enforceable in the State of origin where it is no longer subject to ordinary forms of review, shall be recognized in any State Party, except:
   (a) where the judgement was obtained by fraud; or
   (b) where the defendant was not given reasonable notice and a fair opportunity to present the case.
2. A judgement recognized under paragraph 1 shall be enforceable in each State Party as soon as the formalities required in that State have been complied with. The formalities shall not permit the merits of the case to be re-opened.
3. Subject to any decision concerning the distribution referred to in Article XIV, paragraph 6, any judgement given against the HNS Fund by a court having jurisdiction in accordance with Article XXXIX, paragraphs 1 and 3 shall, when it has become enforceable in the State of origin and is in that State no longer subject to ordinary forms of review, be recognized and enforceable in each State Party.

Subrogation and recourse

Article XLI

1. The HNS Fund shall, in respect of any amount of compensation for damage paid by the HNS Fund in accordance with Article XIV, paragraph 1, acquire by subrogation the rights that the person so compensated may enjoy against the owner or the owner's guarantor.
2. Nothing in this Convention shall prejudice any rights of recourse or subrogation of the HNS Fund against any person, including persons referred to in Article VII, paragraph 2(d), other than those referred to in the previous paragraph, in so far as they can limit their liability. In any event the right of the HNS Fund to subrogation against such persons shall not be less favourable than that of an insurer of the person to whom compensation has been paid.
3. Without prejudice to any other rights of subrogation or recourse against the HNS Fund which may exist, a State Party or agency thereof which has paid compensation for damage in accordance with provisions of national law shall acquire by subrogation the rights which the person so compensated would have enjoyed under this Convention.

Supersession clause

Article XLII

This Convention shall supersede any convention in force or open for signature, ratification or accession at the date on which this Convention is opened for signature, but only to the extent that such convention would be in conflict with it; however, nothing in this Article shall affect the obligations of States

Parties to States not party to this Convention arising under such convention.

CHAPTER 5

TRANSITIONAL PROVISIONS

Information on contributing cargo

Article XLIII

When depositing an instrument referred to in Article XLV, paragraph 3, and annually thereafter until this Convention enters into force for a State, that State shall submit to the Secretary-General data on the relevant quantities of contributing cargo received or, in the case of LNG, discharged in that State during the preceding calendar year in respect of the general account and each separate account

First session of the assembly

Article XLIV

The Secretary-General shall convene the first session of the Assembly. This session shall take place as soon as possible after the entry into force of this Convention and, in any case, not more than thirty days after such entry into force.

CHAPTER 6

FINAL CLAUSES

Signature, ratification, acceptance, approval and accession

Article XLV

1. This Convention shall be open for signature at the Headquarters of the Organization from 1 October 1996 to 30 September 1997 and shall thereafter remain open for accession.
2. States may express their consent to be bound by this Convention by:
   (a) signature without reservation as to ratification, acceptance or approval; or
   (b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or
   (c) accession.
3. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.

Entry into force

Article XLVI

1. This Convention shall enter into force eighteen months after the date on which the following conditions are fulfilled:
   (a) at least twelve States, including four States each with not less than 2 million units of gross tonnage, have expressed their consent to be bound by it, and
   (b) the Secretary-General has received information in accordance with Article XLIII that those persons in such States who would be liable to contribute pursuant to Article XVIII, paragraphs 1(a) and (c) have received during the preceding calendar year a total quantity of at least 40 million tonnes of cargo contributing to the general account.
2. For a State which expresses its consent to be bound by this Convention after the conditions for entry into force have been met, such consent shall take effect three months after the date of expression of such consent, or on the date on which this Convention enters into force in accordance with paragraph 1, whichever is the later.

Revision and amendment

Article XLVII

1. A conference for the purpose of revising or amending this Convention may be convened by the Organization.
2. The Secretary-General shall convene a conference of the States Parties to this Convention for revising or amending the Convention, at the request of six States Parties or one-third of the States Parties whichever is the higher figure.
3. Any consent to be bound by this Convention expressed after the date of entry into force of an amendment to this Convention shall be deemed to apply to the Convention as amended.

Amendment of limits

Article XLVIII

1. Without prejudice to the provisions of Article XLVII, the special procedure in this Article shall apply solely for the purposes of amending the limits set out in Article IX, paragraph 1 and Article XIV, paragraph 5.

2. Upon the request of at least one half, but in no case less than six, of the States Parties, any proposal to amend the limits specified in Article IX, paragraph 1, and Article XIV, paragraph 5, shall be circulated by the Secretary-General to all Members of the Organization and to all Contracting States.
3. Any amendment proposed and circulated as above shall be submitted to the Legal Committee of the Organization (the Legal Committee) for consideration at a date at least six months after the date of its circulation.
4. All Contracting States, whether or not Members of the Organization, shall be entitled to participate in the proceedings of the Legal Committee for the consideration and adoption of amendments.
5. Amendments shall be adopted by a two-thirds majority of the Contracting States present and voting in the Legal Committee, expanded as provided in paragraph 4, on condition that at least one half of the Contracting States shall be present at the time of voting.
6. When acting on a proposal to amend the limits, the Legal Committee shall take into account the experience of incidents and, in particular, the amount of damage resulting therefrom, changes in the monetary values and the effect of the proposed amendment on the cost of insurance. It shall also take into account the relationship between the limits established in Article IX, paragraph 1, and those in Article XIV, paragraph 5.
7. (a) No amendment of the limits under this Article may be considered less than five years from the date this Convention was opened for signature nor less than five years from the date of entry into force of a previous amendment under this Article.
   (b) No limit may be increased so as to exceed an amount which corresponds to a limit laid down in this Convention increased by six percent per year calculated on a compound basis from the date on which this Convention was opened for signature.
   (c) No limit may be increased so as to exceed an amount which corresponds to a limit laid down in this Convention multiplied by three.
8. Any amendment adopted in accordance with paragraph 5 shall be notified by the Organization to all Contracting States. The amendment shall be deemed to have been accepted at the end of a period of eighteen months after the date of notification, unless within that period no less than one-fourth of the States which were Contracting States at the time of the adoption of the amendment have communicated to the Secretary-General that they do not accept the amendment, in which case the amendment is rejected and shall have no effect.
9. An amendment deemed to have been accepted in accordance with paragraph 8 shall enter into force eighteen months after its acceptance.
10. All Contracting States shall be bound by the amendment, unless they denounce this Convention in accordance with Article XLIX, paragraphs 1 and 2, at least six months before the amendment enters into force. Such denunciation shall take effect when the amendment enters into force.
11. When an amendment has been adopted but the eighteen month period for its acceptance has not yet expired, a State which becomes a Contracting State during that period shall be bound by the amendment if it enters into force. A State which becomes a Contracting State after that period shall be bound by an amendment which has been accepted in accordance with paragraph 8. In the cases referred to in this paragraph, a State becomes bound by an amendment when that amendment enters into force, or when this Convention enters into force for that State, if later.

Denunciation

Article XLIX

1. This Convention may be denounced by any State Party at any time after the date on which it enters into force for that State Party.
2. Denunciation shall be effected by the deposit of an instrument of denunciation with the Secretary-General.
3. Denunciation shall take effect twelve months, or such longer period as may be specified in the instrument of denunciation, after its deposit with the Secretary-General.
4. Notwithstanding a denunciation by a State Party pursuant to this Article, any provisions of this

Convention relating to obligations to make contributions under Articles XVIII, XIX or Article XXI, paragraph 5 in respect of such payments of compensation as the Assembly may decide relating to an incident which occurs before the denunciation takes effect shall continue to apply.

Extraordinary sessions of the assembly

Article L

1. Any State Party may, within ninety days after the deposit of an instrument of denunciation the result of which it considers will significantly increase the level of contributions from the remaining States Parties, request the Director to convene an extraordinary session of the Assembly. The Director shall convene the Assembly to meet not less than sixty days after receipt of the request.
2. The Director may take the initiative to convene an extraordinary session of the Assembly to meet within sixty days after the deposit of any instrument of denunciation, if the Director considers that such denunciation will result in a significant increase in the level of contributions from the remaining States Parties.
3. If the Assembly, at an extraordinary session, convened in accordance with paragraph 1 or 2 decides that the denunciation will result in a significant increase in the level of contributions from the remaining States Parties, any such State may, not later than one hundred and twenty days before the date on which the denunciation takes effect, denounce this Convention with effect from the same date.

Cessation

Article LI

1. This Convention shall cease to be in force:

   (a) on the date when the number of States Parties falls below 6; or
   (b) twelve months after the date on which data concerning a previous calendar year were to be communicated to the Director in accordance with Article XXI, if the data shows that the total quantity of contributing cargo to the general account in accordance with Article XVIII, paragraphs 1(a) and (c) received in the States Parties in that preceding calendar year was less than 30 million tonnes.

   Notwithstanding (b), if the total quantity of contributing cargo to the general account in accordance with Article XVIII, paragraphs 1(a) and (c) received in the States Parties in the preceding calendar year was less than 30 million tonnes but more than 25 million tonnes, the Assembly may, if it considers that this was due to exceptional circumstances and is not likely to be repeated, decide before the expiry of the abovementioned twelve month period that the Convention shall continue to be in force. The Assembly may not, however, take such a decision in more than two subsequent years.

2. States which are bound by this Convention on the day before the date it ceases to be in force shall enable the HNS Fund to exercise its functions as described under Article LII and shall, for that purpose only, remain bound by this Convention.

Winding up of the HNS Fund

Article LII

1. If this Convention ceases to be in force, the HNS Fund shall nevertheless:

   (a) meet its obligations in respect of any incident occurring before this Convention ceased to be in force; and
   (b) be entitled to exercise its rights to contributions to the extent that these contributions are necessary to meet the obligations under (a), including expenses for the administration of the HNS Fund necessary for this purpose.

2. The Assembly shall take all appropriate measures to complete the winding up of the HNS Fund including the distribution in an equitable manner of any remaining assets among those persons who have contributed to the HNS Fund.
3. For the purposes of this Article the HNS Fund shall remain a legal person.

Depositary

Article LIII

1. This Convention and any amendment adopted under Article XLVIII shall be deposited with the Secretary-General.
2. The Secretary-General shall:

(a) inform all States which have signed this Convention or acceded thereto, and all Members of the Organization, of:

(i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession together with the date thereof;

(ii) the date of entry into force of this Convention;

(iii) any proposal to amend the limits on the amounts of compensation which has been made in accordance with Article XLVIII, paragraph 2;

(iv) any amendment which has been adopted in accordance with Article XLVIII, paragraph 5;

(v) any amendment deemed to have been accepted under Article XLVIII, paragraph 8, together with the date on which that amendment shall enter into force in accordance with paragraphs 9 and 10 of that Article;

(vi) the deposit of any instrument of denunciation of this Convention together with the date on which it is received and the date on which the denunciation takes effect; and

(vii) any communication called for by any Article in this Convention; and

(b) transmit certified true copies of this Convention to all States which have signed this Convention or acceded thereto.

3. As soon as this Convention enters into force, a certified true copy thereof shall be transmitted by the depositary to the Secretary-General of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

Languages

Article LIV

This Convention is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

DONE at London this third day of May one thousand nine hundred and ninety-six.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments for that purpose, have signed this Convention.

8.2.1 Annex I – Certificate of insurance or other financial security in respect of liability for damage caused by hazardous and noxious substances (HNS)

Issued in accordance with the provisions of Article XII of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996

Name of ship	Distinctive number or letters	IMO ship identification number	Port of registry	Name and full address of the principal place of business of the owner

This is to certify that there is in force in respect of the abovenamed ship a policy of insurance or other financial security satisfying the requirements of Article XII of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996.

Type of security

Duration of security

Name and address of the insurer(s) and/or guarantor(s)

Name

Address

This certificate is valid until

Issued or certified by the Government of

(Full designation of the State)

At ……. on

(Place) (Date)

……

(Signature and title of issuing or certifying official)

Explanatory notes:

1. If desired, the designation of the State may include a reference to the competent public authority of the country where the certificate is issued.
2. If the total amount of security has been furnished by more than one source, the amount of each of them should be indicated.
3. If security is furnished in several forms, these should be enumerated.
4. The entry 'Duration of the Security' must stipulate the date on which such security takes effect.
5. The entry 'Address' of the insurer(s) and/or guarantor(s) must indicate the principal place of business of the insurer(s) and/or guarantor(s). If appropriate, the place of business where the insurance or other security is established shall be indicated.

8.2.2 Annex II – Regulations for the calculation of annual contributions to the general account

Regulation 1

1. The fixed sum referred to in Article XVII, paragraph 3 shall be determined for each sector in accordance with these regulations.
2. When it is necessary to calculate contributions for more than one sector of the general account, a separate fixed sum per unit of contributing cargo shall be calculated for each of the following sectors as may be required:
   (a) solid bulk materials referred to in Article I, paragraph 5(a)(vii);
   (b) oil, if the operation of the oil account is postponed or suspended;
   (c) LNG, if the operation of the LNG account is postponed or suspended;
   (d) LPG, if the operation of the LPG account is postponed or suspended;
   (e) other substances.

Regulation 2

1. For each sector, the fixed sum per unit of contributing cargo shall be the product of the levy per HNS point and the sector factor for that sector.
2. The levy per HNS point shall be the total annual contributions to be levied to the general account divided by the total HNS points for all sectors.
3. The total HNS points for each sector shall be the product of the total volume, measured in metric tonnes, of contributing cargo for that sector and the corresponding sector factor.
4. A sector factor shall be calculated as the weighted arithmetic average of the claims/volume ratio for that sector for the relevant year and the previous nine years, according to this regulation.
5. Except as provided in paragraph 6, the claims/volume ratio for each of these years shall be calculated as follows:
   (a) established claims, measured in units of account converted from the claim currency using the rate applicable on the date of the incident in question, for damage caused by substances in respect of which contributions to the HNS Fund are due for the relevant year; divided by
   (b) the volume of contributing cargo corresponding to the relevant year.
6. In cases where the information required in paragraphs 5(a) and (b) is not available, the following values shall be used for the claims/volume ratio for each of the missing years:
   (a) solid bulk materials referred to in Article I, paragraph 5(a)(vii) 0
   (b) oil, if the operation of the oil account is postponed 0
   (c) LNG, if the operation of the LNG account is postponed 0

(d) LPG, if the operation of the LPG account is postponed 0
(e) other substances 0.0001

7. The arithmetic average of the ten years shall be weighted on a decreasing linear scale, so that the ratio of the relevant year shall have a weight of 10, the year prior to the relevant year shall have a weight of 9, the next preceding year shall have a weight of 8, and so on, until the tenth year has a weight of 1.
8. If the operation of a separate account has been suspended, the relevant sector factor shall be calculated in accordance with those provisions of this regulation which the Assembly shall consider appropriate.

9
CRTD

9.1 General Information

Convention on Civil Liability for Damage Caused During Carriage of Dangerous Goods by Road, Rail and Inland Navigation Vessels

Most common abbreviation(s)	**CRTD**
Organisation	United Nations Economic Commission for Europe (UNECE)
Reference	UN Doc ECE/TRANS/79 RMC I.7.130, II.7.130 http://www.unece.org/trans/danger/danger.htm
Status	
Adoption	10 October 1989
Entry into force	Not yet in force (The convention requires five ratifications, acceptances, approvals or accessions to enter into force)
Signatories	Germany (1 February 1990), Morocco (28 December 1990)
Ratifications	Liberia (16 September 2005)
Literature	CLETON, R, 'Transportation of hazardous goods: the CRTD Convention', in R KRÖNER (ed), Transnational Environmental Liability and Insurance, Graham & Trotman, London, 1993, pp. 205–236. EVANS, M, Convention on civil liability for damage caused during carriage of dangerous goods by road, rail and inland navigation vessels. Explanatory Report, Economic Commission for Europe, 1990, 78 p.

9.2 Convention of 10 October 1989 on Civil Liability for Damage Caused During Carriage of Dangerous Goods by Road, Rail and Inland Navigation Vessels

THE STATES PARTIES TO THIS CONVENTION,

NOTING the continuous increase in the carriage of dangerous goods,

CONSCIOUS of the existence at international level of technical standards aimed at securing safety during such carriage,

DESIRING to establish uniform rules ensuring adequate and speedy compensation for damage caused during carriage of dangerous goods by road, rail and inland navigation vessels,

HAVE AGREED as follows:

Definitions

Article I

For the purpose of this Convention:

1. 'Carriage by road' means carriage of dangerous goods on board a road vehicle;
2. 'Road vehicle' means any motor vehicle, articulated vehicle, trailer or semi-trailer, as defined in

Article 1 of the Convention on Road Traffic of 8 November 1968;

3. 'Carriage by rail' means carriage of dangerous goods on board a railway wagon, including a rail motor-coach unit or railcar;
4. 'Carriage by inland navigation vessel' means carriage of dangerous goods on board a ship;
5. 'Ship' means any vessel or craft, not being a sea-going ship or sea-borne craft, of any type whatsoever;
6. 'Vehicle' means a road vehicle, a railway wagon or a ship. Where several vehicles are coupled together to form a train, such a train shall be regarded as a single vehicle;
7. '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;
8. 'Carrier' means:

   (a) with respect to carriage by road and by inland navigation vessel:

   the person who at the time of the incident controls the use of the vehicle on board which the dangerous goods are carried.

   The person in whose name the vehicle is registered in a public register or, in the absence of such registration, the owner of the vehicle shall be presumed to control the use of the vehicle unless he proves that another person controls the use of the vehicle and he discloses the identity of that person or, if he is unable to disclose the identity of such person, he proves that such other person has taken control of the vehicle without his consent and in such circumstances that he could not reasonably have prevented such use.

   Where the vehicle on board which the dangerous goods have been loaded is moved by another vehicle, the person who controls the use of that other vehicle shall be deemed to be the carrier.

   (b) with respect to carriage by rail: the person or persons operating the railway line on which the incident occurred; if there is joint operation each of the joint operators shall be considered as carriers;

9. 'Dangerous goods' means, with respect to carriage by road, rail or inland navigation vessel, any substance or article which is either listed in the classes, or covered by a collective heading of the classes of the European Agreement concerning the International Carriage of Dangerous Goods by Road (ADR) or is subject to the provisions of that Agreement;
10. 'Damage' means:

    (a) loss of life or personal injury on board or outside the vehicle carrying the dangerous goods caused by those goods;
    (b) loss of or damage to property outside the vehicle carrying the dangerous goods caused by those goods, to the exclusion of any loss of or damage to other vehicles in the same train of vehicles or any loss of or damage to property on board such vehicles;
    (c) loss or damage by contamination to the environment caused by the dangerous goods, provided that compensation for impairment of the environment other than for loss of profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken;
    (d) the costs of preventive measures and further loss or damage caused by preventive measures.

    Where it is not reasonably possible to separate damage caused by the dangerous goods from that caused by other factors, all such damage shall be deemed to be caused by the dangerous goods;

11. 'Preventive measures' means any reasonable measures taken by any person after an incident has occurred to prevent or minimize damage;
12. 'Incident' means any occurrence or series of occurrences having the same origin, which causes damage or creates a grave and imminent threat of causing damage;
13. 'Green card system' means the international motor insurance system described in Annex 2 to the Consolidated Resolution on the Facilitation of Road Transport (R.E.4) of the Economic Commission for Europe of the United Nations.

Sphere of application

Article II

This Convention shall apply:

(a) to damage sustained in the territory of a State Party and caused by an incident occurring in a State Party;
(b) to preventive measures, wherever taken, to prevent or minimize such damage.

Article III

1. This Convention shall apply to claims, other than claims arising out of any contract for the carriage of goods or passengers, for damage caused during carriage of dangerous goods by road, rail or inland navigation vessel.
2. This Convention shall not apply to the extent that its provisions are incompatible with those of the applicable law relating to workmen's compensation or social security schemes.
3. Carriage of dangerous goods by road, rail or inland navigation vessel includes the period from the beginning of the process of loading the goods onto the vehicle for carriage until the end of the process of unloading the goods.
4. Where the vehicle on board which the dangerous goods have been loaded is carried over part of the journey by another vehicle without the goods being unloaded, such goods shall be deemed, during that part of the journey, to be carried solely on board that other vehicle.
5. This Convention shall not apply when the vehicle on board which the dangerous goods have been loaded is carried by a sea-going ship, seaborne craft or aircraft.

Article IV

This Convention shall not apply:

(a) to damage arising from carriage performed entirely in a place to which members of the public do not have access, provided that such carriage is accessory to other activities and is an integral part thereof;
(b) to damage caused by a nuclear substance

(i) if the operator of a nuclear installation is liable for such damage under either the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy and its additional Protocol of 28 January 1964 or the Vienna Convention of 21 May 1963 on Civil Liability for Nuclear Damage or any amendments to those Conventions, or

(ii) if the operator of a nuclear installation is liable for such damage by virtue of national law governing the liability for such damage, provided that such law is in all respects as favourable to persons who may suffer damage as either the Paris or Vienna Conventions as referred to under (i);

(c) to carriage of dangerous goods by road, rail or inland navigation vessel which complies with the conditions of marginal 10,010 or which does not exceed the quantities of marginal 10,011 of ADR.

Liability provisions

Article V

1. Except as provided in paragraphs 4 and 5 of this article and in Article VI, the carrier at the time of an incident shall be liable for damage caused by any dangerous goods during their carriage by road, rail or inland navigation vessel.
2. If an incident consists of a series of occurrences having the same origin, the liability shall attach to the carrier at the time of the first of such occurrences.
3. If two or more persons referred to in Article I, paragraph 8(b) are liable as a carrier under this Convention, they shall be jointly and severally liable.
4. No liability shall attach to the carrier if he proves that:

(a) the damage resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character; or
(b) the damage was wholly caused by an act or omission with the intent to cause damage by a third party; or
(c) the consignor or any other person failed to meet his obligation to inform him of the dangerous nature of the goods, and that neither he nor his servants or agents knew or ought to have known of their nature.

5. If the carrier proves that the damage resulted wholly or partially either from an act or omission with the intent to cause damage by the person who suffered the damage or from the negligence of that person, the carrier may be

exonerated wholly or partially from his liability to such person.

6. No claim for compensation for damage shall be made against the carrier otherwise than in accordance with this Convention. However, in the case referred to in paragraph 4(c) of this article, any liability for damage which may be incurred by the carrier according to the applicable law shall not be affected, provided that the limits of his liability shall not exceed the limits stipulated in Article IX.
7. Subject to paragraph 9 of this article and to Articles VI and VII, no claim for compensation for damage under this Convention or otherwise may be made against:

   (a) the servants or agents of the carrier or the members of the crew;
   (b) the pilot of the ship or any other person who, without being a member of the crew, performs services for the vehicle;
   (c) the owner, hirer, charterer, user, manager or operator of the vehicle, provided that he is not the carrier;
   (d) any person performing salvage operations with the consent of the owner of the ship;
   (e) any person performing salvage operations on instruction of a competent public authority;
   (f) any person other than the carrier taking preventive measures for damage caused by those measures;
   (g) any servants or agents of the persons mentioned under (b), (c), (d), (e) and (f),

   unless the damage resulted from their personal act or omission, committed with the intent to cause such damage or recklessly and with knowledge that such damage would probably result.

8. For the purpose of Article I, paragraph 8 and Article III, paragraph 4, no person performing operations under paragraph 7(d), (e) or (f) of this article, nor his servants or agents, shall be deemed to be a carrier.

   In such cases the person who was the carrier at the time of the incident giving rise to such operations shall remain the carrier for the purpose of this Convention.

9. Nothing in this Convention shall prejudice any right of recourse of the carrier against the consignor or the consignee of the goods causing the damage or against any other third party.

Article VI

1. If the carrier proves that the dangerous goods have been loaded on or unloaded from the vehicle under the sole responsibility of a person other than the carrier or his servants or agents, such as the consignor or the consignee, and he discloses the identity of such person, he shall be relieved of his liability for damage caused by such goods during that period of loading or unloading and such other person shall be liable for that damage under this Convention.

   Where, however, the operations of loading or unloading have been carried out under the joint responsibility of the carrier and the other person referred to in this paragraph, the carrier and that other person shall be jointly and severally liable under this Convention for damage caused during the period of loading or unloading.

   For the purpose of this paragraph a person shall not be deemed to be responsible for the process of loading or unloading, if he has carried out such process on behalf of the carrier or of another person such as the consignor or the consignee. In such a case the carrier or the other person shall remain liable.

2. The provisions of this Convention shall apply in respect of such other person as referred to in paragraph 1 correspondingly provided that:

   (a) Article V, paragraph 6 shall not apply in respect of claims for compensation for damage made against such other person, nor shall Articles XIII–XVII apply to the liability of that person;
   (b) the limits of Article IX shall apply to the aggregate of all claims arising from any one incident against the carrier and such other person;
   (c) a fund constituted by the carrier or by such other person in accordance with Article XI shall be deemed to be constituted by both.

3. In the relations between the carrier and any other person liable under paragraph 1 of this article, liability shall be borne by that other person unless the damage was caused by the fault of the carrier or of his servants or agents.

When both the carrier or his servants or agents and the other person or his servants or agents have contributed to the damage by their fault, the carrier and that other person shall each bear such part of the liability as corresponds to the degree of fault attaching to each of them.

4. This article does not apply if the process of loading or unloading has been carried out under the sole or joint responsibility of a person performing operations mentioned in Article V, paragraph 7(d), (e) or (f).

Article VII

Where no liability attaches to the carrier in accordance with Article V, paragraph 4(c), the consignor or the other person referred to therein shall be deemed to be the carrier for the purposes of this Convention. However, Article V, paragraph 6 shall not apply in respect of claims for compensation for damage made against the consignor or the other person, nor shall Articles XIII–XVII apply to their liability under this Convention.

Article VIII

1. Whenever damage has resulted from an incident involving two or more vehicles each of which is carrying dangerous goods, each carrier, unless exonerated under Article V, paragraphs 4 and 5 or Article VI, shall be liable for the damage. The carriers shall be jointly and severally liable for all such damage which is not reasonably separable.
2. However, the carrier shall, in respect of each vehicle, be entitled to the limits of Liability applicable to him by virtue of Article IX.
3. Nothing in this Convention shall prejudice any right of recourse of a carrier against any other carrier.

Limitation of liability

Article IX

1. The liability of the road carrier and of the rail carrier under this Convention for claims arising from any one incident shall be limited as follows:

   (a) with respect to claims for loss of life or personal injury: 18 million units of account;
   (b) with respect to any other claim: 12 million units of account.

2. The liability of the carrier by inland navigation vessel under this Convention for claims arising from any one incident shall be limited as follows:

   (a) with respect to claims for loss of life or personal injury: 8 million units of account;
   (b) with respect to any other claim: 7 million units of account.

3. Where the sums provided for in paragraph 1(a) and paragraph 2(a) of this article are insufficient to pay the claims mentioned therein in full, the sums provided for in paragraph 1 (b) and paragraph 2(b) shall be available for payment of the unpaid balance of claims under paragraph 1(a) and paragraph 2(a). Such unpaid balance shall rank rateably with claims mentioned under paragraph 1(b) and paragraph 2(b).

Article X

1. The carrier shall not be entitled to limit his liability under this Convention if it is proved that the damage resulted from his personal act or omission or an act or omission of his servants or agents, committed with the intent to cause such damage or recklessly and with knowledge that such damage would probably result, provided that, in the case of such act or omission of a servant or agent, it is also proved that he was acting within the scope of his employment.
2. Where the carrier has a claim against the claimant arising out of the same incident, their respective claims shall be set off against each other and the provisions of this Convention shall apply to the balance, if any.
3. The carrier may invoke the right to limit his liability notwithstanding that a limitation fund as mentioned in Article XI has not been constituted.
4. If limitation of liability is invoked without the constitution of a limitation fund, the provisions of Article XI, paragraphs 4–7 shall apply correspondingly.
5. Questions of procedure arising under the rules of this article shall be decided in accordance with the law of the State Party in which action is brought.

Article XI

1. The carrier may constitute a fund with the court or other competent authority of any one of the

States Parties in which an action is brought under Article XIX. If such action under Article XIX has not been brought in a State Party, then the carrier may constitute his fund with the court or other competent authority of any one of the States Parties referred to in Article XIX, paragraph 1 (a), (b) or (c), or in subparagraph (d) provided that the carrier and all the victims have their habitual residence in the territory of the same State Party. The fund shall be constituted in the sum of the amounts set out in Article IX as applicable to him, together with interest thereon from the date of the incident until the date of the constitution of the fund. Any fund thus constituted shall be available only for the payment of claims in respect of which limitation of liability may be invoked under this Convention.

2. A fund may be constituted either by depositing the sum or by producing a bank guarantee or other guarantee, admitted by the legislation of the State Party where the fund is constituted, and considered to be adequate by the court or another competent authority.
3. Any person providing the carrier with insurance or other financial security under this Convention shall be entitled to constitute a fund in accordance with this article on the same conditions and having the same effect as if it were constituted by the carrier. Such fund may be constituted even in the event that according to Article X, paragraph 1 the carrier shall not be entitled to limit his liability, but its constitution shall in that case not prejudice the rights of any claimant against the carrier. The fund shall be deemed to be constituted by the carrier.
4. Subject to the provisions of Article IX, paragraph 3, the fund shall be distributed among the claimants in proportion to their established claims against the fund.
5. If, before the fund is distributed, the carrier or any person providing him with insurance or other financial security has as a result of the incident paid compensation for damage, such person shall, up to the amount he has paid, acquire by subrogation the rights which the person so compensated would have enjoyed under this Convention.
6. The right of subrogation provided for in paragraph 5 of this article may also be exercised by a person other than those mentioned therein in respect of any amount of compensation for damage which he may have paid but only to the extent that such subrogation is permitted under the applicable law.
7. Where the carrier or any other person establishes that he may be compelled to pay at a later date in whole or in part any such amount of compensation with regard to which such person would have enjoyed a right of subrogation pursuant to paragraphs 5 and 6 of this article had the compensation been paid before the fund was distributed, the court or other competent authority of the State where the fund has been constituted may order that a sufficient sum shall be provisionally set aside to enable such person at such later date to enforce his claim against the fund.
8. Where the carrier, after an incident, has constituted a fund in accordance with this article, and is entitled to limit his liability:

   (a) no person having a claim for damage arising out of that incident shall be entitled to exercise any right against any other assets of the carrier in respect of such claim;
   (b) the court or other competent authority of any State Party shall order the release of any property belonging to the carrier which has been arrested or attached in respect of a claim for damage arising out of that incident, and shall similarly release any bail or other security furnished to avoid such arrest or attachment.

9. Paragraph 8 of this article shall only apply if the claimant has access to the court administering the fund and if the fund is actually available and freely transferable in respect of his claim.
10. Subject to the provisions of this article, the rules relating to the constitution and distribution of a limitation fund, and all rules of procedure in connection therewith, shall be governed by the law of the State Party in which the fund is constituted.

Article XII

1. The ‘unit of account’ referred to in Article IX is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in Article IX shall be converted into national currency on the basis of the value of that currency on the date of the constitution of the limitation fund or, if no fund has been

constituted, on the date when payment is made or equivalent security is given. The value of the national currency, in terms of the Special Drawing Right, of a State Party which is a member of the International Monetary Fund shall be calculated in accordance with the method of valuation applied by the international Monetary Fund in effect on the date in question for its operations and transactions. The value of the national currency, in terms of the Special Drawing Right, of a State Party which is not a member of the International Monetary Fund shall be calculated in a manner determined by that State.

2. Nevertheless a Contracting State which is not a member of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 1 of this article may, at the time of ratification, acceptance, approval or accession, or at any time thereafter, declare that the unit of account referred to in that paragraph shall be equal to 15 gold francs. The gold franc referred to in this paragraph corresponds to sixty-five and a half milligrammes of gold of millesimal fineness nine hundred. The conversion of the gold franc into the national currency shall be made according to the law of the State concerned.
3. The calculation mentioned in the last sentence of paragraph 1 of this article and the conversion mentioned in paragraph 2 shall be made in such manner as to express in the national currency of the State Party as far as possible the same real value for the amounts in Article IX as would result from the application of the first three sentences of paragraph 1 of this article. Contracting States shall communicate to the depositary the manner of calculation pursuant to paragraph 1 of this article or the result of the conversion in paragraph 2 as the case may be, when depositing an instrument of ratification, acceptance, approval of, or accession to, this Convention and whenever there is a change in either.

Compulsory insurance

Article XIII

1. The carrier's liability shall be covered by insurance or other financial security, such as a bank guarantee, if the dangerous goods are carried in the territory of a State Party.
2. The insurance or other financial security shall cover the entire period of the carrier's liability under this Convention in the sums fixed by applying the limits of liability prescribed in Article IX and shall cover the liability of the person named in the certificate as carrier or, if that person is not the carrier as defined in Article I, paragraph 8, of such person as does incur liability under this Convention.
3. Any sums provided by insurance or by other financial security maintained in accordance with paragraph 1 of this article shall be available only for the satisfaction of claims under this Convention.

Article XIV

1. Each State Party shall designate one or several competent authorities to issue or approve certificates attesting that carriers falling within the definition of Article I, paragraph 8(a) have a valid insurance or other financial security in accordance with the provisions of this Convention.
2. The certificate shall be issued or approved by the competent authority:

   (a) of the State of registration in respect of a carrier whose vehicle is registered in a State Party; or
   (b) of the State Party where the carrier has his principal place of business or, if he has none, his habitual residence, if the vehicle is not registered.

   With respect to a carrier not mentioned under (a) or (b) of the first sentence of this paragraph the certificate shall be issued or approved by the competent authority of a State Party in the territory of which the dangerous goods are carried.

3. The certificate shall contain the following particulars:

   (a) the number of the certificate;
   (b) the type of, and the particulars identifying, the road vehicle or ship;
   (c) the name of the carrier and his principal place of business or, if he has none, his habitual residence;
   (d) the type of security;
   (e) the name and principal place of business of the insurer or other person providing security;

(f) the period of validity of the certificate which shall not be longer than the period of validity of the insurance or other security.

4. The certificate shall be produced for inspection on demand by the competent authorities.
5. The certificate shall be issued in English or in French or shall, if issued in any other language, include a translation into one at least of those languages.
6. The State where the certificate is issued or approved shall, subject to the provisions of this Convention, determine the conditions of issue and validity of the certificate.
7. Certificates issued in a State Party shall be accepted in all States Parties for all purposes covered by this Convention. Nevertheless a State Party, should it consider that an insurer or other person providing security named in the certificate may not be financially capable of meeting his obligations imposed by this Convention, may at any time request consultation with the State which has issued the certificate.

   Each State Party shall designate the authority competent to make or receive any communication relating to the compulsory insurance or any other financial security.

   Any State Party may accept certificates issued by the competent authorities, or by bodies recognized, for the purpose of this Convention, by the competent authorities of States not party to it.

8. Insurance or other financial security shall not satisfy the requirements of this Convention if it can cease, for reasons other than the expiry of the period of its validity specified in the certificate, before three months have elapsed from the date on which notice of its termination is given to the authority referred to in paragraph 2 of this article, unless the certificate has been surrendered to those authorities or a new certificate has been issued within the said period. The foregoing provisions shall similarly apply to any modification which results in the insurance or security no longer satisfying the requirements of this Convention.
9. This article shall not apply in the case of carriage by a road vehicle in the territory of a State Party which is a party to the green card system if there is in force in respect of the vehicle and produced for inspection on demand by the competent authorities a green card certifying coverage of carrier's liability under this Convention.
10. Two or more States Parties may agree to dispense with the requirements of this article for the certificate or green card referred to in paragraph 9 of this article in respect of road vehicles registered in their territories for the carriage, within their territories, of goods by road covered by this Convention.

Article XV

1. Any claim for compensation under Articles V or VI may be brought directly against the insurer or other person providing financial security for the carrier's liability or, in the case of a road vehicle to which the green card system applies, against the insurer or the green card bureau of the State where the incident occurred.
2. In the case referred to in paragraph 1 of this article the defendant may avail himself of:

   (a) the limit of liability under Article IX applicable to the carrier, irrespective of whether the carrier is entitled to limit his liability, and
   (b) the defences, other than the bankruptcy or winding up of the carrier, which the carrier would have been entitled to invoke.

   The defendant shall not avail himself of any other defence which he might have been entitled to invoke in proceedings brought by the carrier against him nor may he dispute any clause of the insurance contract or other financial security.

3. The defendant shall in any event have the right to require that the carrier be joined in the proceedings.

Article XVI

1. With respect to carriage by road and by inland navigation vessel: where the carrier is a State Party or any constituent part of such State and the carriage is performed on non-commercial governmental service, that State may provide that the carrier shall be dispensed from the obligation to cover his liability by insurance or other financial security.
2. If, according to paragraph 1 of this article, insurance or other financial security is not maintained

in respect of a vehicle, the provisions of this Convention relating to compulsory insurance shall not apply to such vehicle. However, a certificate issued by the competent authorities stating that the carrier is a State Party or a constituent part of such State and that the carrier's liability is covered within the limits prescribed by this Convention shall be produced for inspection on demand by the authorities referred to in Article XIV, paragraph 4.

3. The certificate referred to in paragraph 2 of this article shall be in conformity with the provisions of Article XIV, paragraph 3.
4. With respect to carriage by rail: where the carrier is a State Party or any constituent part of such a State, or where he is a body fully owned or financially controlled by a State Party, that State may provide that the carrier shall be dispensed from the obligation to cover his liability by insurance or other financial security.

   Whenever a rail transport enterprise owned or financially controlled by two or more States Parties is concerned, the same right to dispensation is granted to the State where the enterprise is located.

Article XVII

1. A Contracting State shall take the appropriate legislative measures to ensure that the provisions of this Convention relating to compulsory insurance have been complied with.

Claims and actions

Article XVIII

1. Rights of compensation under this Convention shall be extinguished unless an action is brought within three years from the date at which the person suffering the damage knew or ought reasonably to have known of the damage and of the identity of the carrier. The period may be extended if the parties so agree after the incident.
2. In no case, however, shall an action be brought after ten years from the date of the incident which caused the damage.
3. Where the incident consists of a series of occurrences, the periods mentioned in paragraphs 1 and 2 of this article shall run from the date of the last of such occurrences.

Article XIX

1. Actions for compensation under any provision of this Convention may only be brought in the courts of any State Party:

   (a) where the damage was sustained as a result of the incident; or
   (b) where the incident occurred; or
   (c) where preventive measures were taken to prevent or minimize damage; or
   (d) where the carrier has his habitual residence.

   Reasonable notice of the commencement of such an action shall be given to the defendant.

2. If the road vehicle or ship involved in the incident is subject to registration, the State of registration of the road vehicle or ship shall be deemed to be that of the habitual residence of the carrier.
3. Each Contracting State shall ensure that its courts possess the necessary jurisdiction to entertain such actions for compensation.
4. After a fund has been constituted, the courts of the State in which the fund is constituted shall be exclusively competent to determine all matters relating to the apportionment and distribution of the fund.

Article XX

1. Any judgment given by a court with jurisdiction in accordance with Article XIX which is enforceable in the State of origin where it is no longer subject to ordinary forms of review, shall be recognized in any State Party, except:

   (a) where the judgment was obtained by fraud; or
   (b) where the defendant was not given reasonable notice and a fair opportunity to present his case; or
   (c) where the judgment is irreconcilable with an earlier judgment given in the State where the recognition is sought, or given in another State Party with jurisdiction in accordance with Article XIX and already recognized in the State where the recognition is sought, involving the same cause of action and between the same parties.

2. A judgment recognized under paragraph 1 of this article shall be enforceable in each State Party as soon as the formalities required in that

State have been complied with. The formalities shall not permit the merits of the case to be re-opened.

Article XXI

Whenever two or more States Parties are bound by an international Convention establishing rules of jurisdiction or providing for recognition and execution in a State of judgments given by a court of another State, the provisions of those instruments replace the corresponding provisions of Article XIX, paragraphs 1, 2 and 3 and of Article XX of this Convention.

Final provisions

Article XXII

1. This Convention is open for signature by all States at Geneva from 1 February 1990 until 31 December 1990 inclusive.
2. This Convention is subject to ratification, acceptance or approval by States which have signed it.
3. This Convention is open for accession by all States which are not signatory States as from 1 January 1991.
4. Ratification, acceptance, approval or accession is effected by the deposit of a formal instrument to that effect with the depositary.

Article XXIII

1. This Convention enters into force on the first day of the month following the expiration of twelve months after the date of deposit of the fifth instrument of ratification, acceptance, approval or accession.
2. For each State that ratifies, accepts, approves, or accedes to this Convention after the deposit of the fifth instrument of ratification, acceptance, approval or accession, this Convention enters into force in respect of that State on the first day of the month following the expiration of twelve months after the date of the deposit of its instrument of ratification, acceptance, approval or accession.
3. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of any Protocol amending this Convention shall be deemed to apply to this Convention as amended.

Article XXIV

1. A State may declare at the time of signature, ratification, acceptance, approval or accession that:

   (a) in respect of claims for damage under any or all of the heads of damage defined in Article I, paragraph 10, it will apply higher limits of liability than those specified in Article IX or no limit of liability for damage arising out of an incident occurring in its territory, provided that in that State the regime of liability governing compensation for such damage is of a similar nature to that under this Convention.

   Such a State may oblige carriers whose vehicles are registered in its territory or, in the case of unregistered vehicles, having their principal place of business or habitual residence in its territory, to cover their liability by insurance or other financial security to amounts higher than those required by Article XIII, paragraph 2 of this Convention;

   (b) it will not apply the provisions of Article V, paragraph 4(a) or (b);
   (c) it will apply its national law in place of the provisions of Article V, paragraph 5, in so far as such law provides that compensation for loss of life or personal injury may be reduced or disallowed only in cases of intentional conduct or gross negligence by the injured person or the person entitled to claim compensation.

2. The right of a State to make the declarations provided for in paragraph 1 is subject to its national law being in conformity with the conditions set out in the relevant subparagraphs of that paragraph at the time of entry into force of this Convention, and, in any event, not later than five years after this Convention has been opened for signature.
3. A State which makes use of any of the options provided for under paragraph 1 shall notify the depositary of the contents of its national law.
4. No other reservations are permitted to this Convention.

Article XXV

1. Reservations made under this Convention at the time of signature are subject to confirmation upon ratification, acceptance or approval.

2. Reservations and confirmations of reservations are to be in writing and to be formally notified to the depositary.
3. A reservation takes effect simultaneously with the entry into force of this Convention in respect of the State concerned.
4. Any State which makes a reservation under this Convention may withdraw it at any time by a formal notification in writing addressed to the depositary. Such withdrawal is to take effect on the first day of the month following the expiration of six months after the date of the receipt of the notification by the depositary.

Article XXVI

Each State, at the time of signature, ratification, acceptance, approval or accession, shall notify the depositary of the competent authority or authorities designated by it under Article XIV, paragraphs 1 and 7.

Article XXVII

This Convention applies to any incident as defined in Article I, paragraph 12 occurring after its entry into force.

Article XXVIII

1. A Conference for the purpose of revising or amending this Convention may be convened by the Inland Transport Committee of the Economic Commission for Europe of the United Nations.
2. Upon the request of not less than one-third of the State Parties, with a minimum of three, the Inland Transport Committee shall convene a Conference of the Contracting States for revising or amending this Convention.

Article XXIX

1. Upon the request of at least one-quarter of the States Parties, with a minimum of three, any proposal to amend the limits of liability laid down in Article IX shall be circulated by the depositary to all Contracting States.
2. Any amendment proposed and circulated as above shall be submitted to a Committee, convened by the Inland Transport Committee of the Economic Commission for Europe of the United Nations and composed of a representative of each Contracting State, for consideration at a date at least six months after the date of its circulation.
3. Amendments shall be adopted by a two-thirds majority of the Contracting States present and voting in the Committee on condition that at least one-half of the Contracting States shall be present at the time of voting.
4. When acting on a proposal to amend the limits, the Committee shall take into account the experience of incidents and in particular the amount of damage resulting therefrom, changes in the monetary values and the effect of the proposed amendment on the cost of insurance.
5. (a) No amendment of the limits of liability under this article may be considered less than five years from the date on which this Convention was opened for signature nor less than five years from the date of entry into force of a previous amendment under this article. No amendment under this article shall be considered before this Convention has entered into force.
   (b) No limit may be increased so as to exceed an amount which corresponds to the limit laid down in this Convention increased by six per cent per year calculated on a compound basis from the date on which this Convention was opened for signature.
   (c) No limit may be increased so as to exceed an amount which corresponds to the limit laid down in this Convention multiplied by three.
6. Any amendment adopted in accordance with paragraph 3 of this article shall be notified by the depositary to all Contracting States. The amendment shall be deemed to have been accepted at the end of a period of eighteen months after the date of notification, unless within that period not less than one quarter of the States that were Contracting States at the time of the adoption of the amendment by the Committee have communicated to the depositary that they do not accept the amendment in which case the amendment is rejected and shall have no effect.
7. An amendment deemed to have been accepted in accordance with paragraph 6 of this article shall enter into force eighteen months after its acceptance.
8. All Contracting States shall be bound by the amendment, unless they denounce this Convention in accordance with Article XXX, paragraph 1 at

least six months before the amendment enters into force. Such denunciation shall take effect when the amendment enters into force.

9. When an amendment under this article has been adopted by the Committee but the eighteen month period for its acceptance has not yet expired, a State which becomes a Contracting State during that period shall be bound by the amendment if it enters into force. A State which becomes a Contracting State after that period shall be bound by an amendment which has been accepted in accordance with paragraph 6 of this article. In the cases referred to in this paragraph a State becomes bound by an amendment when that amendment enters into force, or when this Convention enters into force for that State if later.

Article XXX

1. This Convention may be denounced by any Contracting State at any time.
2. Denunciation is effected by the deposit of an instrument to that effect with the depositary.
3. A denunciation takes effect on the first day of the month following the expiration of six months after the deposit of the instrument of denunciation with the depositary. Where a longer period for the denunciation to take effect is specified in the instrument of denunciation it takes effect upon the expiration of such longer period after its deposit with the depositary.

Article XXXI

1. The Secretary-General of the United Nations shall be the Depositary of this Convention.
2. The Depositary shall:

(a) inform all States which have signed or acceded to this Convention of:

(i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;
(ii) each declaration made under Article XII, paragraph 2;
(iii) each reservation made under Article XXIV, including each notification under paragraph 3 of that article;
(iv) the withdrawal of any reservation under Article XXV, paragraph 4;
(v) each notification received under Article XXVI;
(vi) each request received under Article XXVIII, paragraph 2 and Article XXIX, paragraph 1;
(vii) the date of entry into force of this Convention and of any amendment thereto under Articles XXVIII and XXIX;
(viii) the deposit of an instrument of denunciation of this Convention together with the date of its deposit and the date on which it takes effect;

(b) transmit certified true copies of this Convention to all signatory States and to all States acceding to the Convention.

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

DONE at Geneva, this tenth day of October, one thousand nine hundred and eighty-nine, in a single original, of which the English, French and Russian texts are equally authentic.

Part V
Nuclear Risks

10
Paris Convention

10.1 General Information

Paris Convention on Third Party Liability in the Field of Nuclear Energy as amended by the Additional Protocol of 28 January 1964 and by the Protocol of 16 November 1982
Paris Convention on Third Party Liability in the Field of Nuclear Energy as amended by the Additional Protocol of 28 January 1964 and by the Protocol of 16 November 1982, and by the Protocol of 12 February 2004

Most common abbreviation(s)	**Paris Convention** **Paris Convention 2004**
Organisation	Nuclear Energy Agency (NEA), a specialised agency within the Organisation for Economic Co-operation and Development (OECD)
Reference	956 UNTS 251 http://www.nea.fr/html/law/legal-documents.html
Status	
Adoption	29 July 1960
Entry into force	Paris Convention: 1 April 1968 1964 Additional Protocol: 1 April 1968 1982 Protocol: 7 October 1988 Protocol 12 February 2004: not yet in force
Signatories (without ratification)	Austria, Luxembourg, Switzerland
Ratifications	Paris Convention, 1964 Additional Protocol & 1982 Protocol: Belgium, Denmark, Finland, France, Germany, Greece, Italy, Netherlands, Norway, Portugal, Slovenia, Spain, Sweden, Turkey, United Kingdom Protocol 12 February 2004: /
Literature	Arangio-Ruiz, G, 'Some Preliminary reflections on the international responsibility of States for nuclear damage', in J Weinstein (ed), Progress in Nuclear Energy. Law and Administration, vol. 3 Nuclear Liability, Pergamon Press, Oxford, 1962, pp. 228–235. Blanchard, P, 'Responsibility for Environmental Damage caused by Nuclear Accidents', Nuclear Inter Jura 1999, AIDN/INLA, Washington, 1999, pp. 283–296. De la Fayette, L, 'Nuclear Liability Revisited', Review of European Community and International Environmental Law, 1992, pp. 443–452. Hinteregger, M & Kissich, S, 'The Paris Convention 2004 - a new nuclear liability system for Europe', Environmental Liability, 2004, pp. 116–126.

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10.2 Convention on Third Party Liability in the Field of Nuclear Energy of 29 July 1960 (as Amended by the Additional Protocol of 28 January 1964 and by the Protocol of 16 November 1982)

- 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 Hellenic Republic, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of Norway, the Kingdom of the Netherlands, the Portuguese Republic, the United Kingdom of Great Britain and Northern Ireland, the Kingdom of Sweden, the Swiss Confederation and the Turkish Republic[1];
- CONSIDERING that the OECD Nuclear Energy Agency, established within the framework of the Organisation for Economic Co-operation and Development (hereinafter referred to as the 'Organisation'),[2] is charged with encouraging the elaboration and harmonization of legislation relating to nuclear energy in participating countries, in particular with regard to third party liability and insurance against atomic risks;
- DESIROUS of ensuring adequate and equitable compensation for persons who suffer damage caused by nuclear incidents whilst taking the necessary steps to ensure that the development of the production and uses of nuclear energy for peaceful purposes is not thereby hindered;
- CONVINCED of the need for unifying the basic rules applying in the various countries to the liability incurred for such damage, whilst leaving these countries free to take, on a national basis, any additional measures which they deem appropriate;

HAVE AGREED as follows:

Article I

(a) For the purposes of this Convention:

(i) 'A nuclear incident' means any occurrence or succession of occurrences having the same origin which causes damage, provided that such occurrence or succession of occurrences, or any of the damage caused, arises out of or results either 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 or with any of them, or from ionizing radiations emitted by any source of radiation inside a nuclear installation.

(ii) 'Nuclear installation' means reactors other than those comprised in any means of transport; factories for the manufacture or processing of nuclear substances; factories for the separation of isotopes of nuclear fuel; factories for the reprocessing of irradiated nuclear fuel; facilities for the storage of nuclear substances other than storage incidental to the carriage of such substances; and such other installations in which there are nuclear fuel or radioactive products or waste as the Steering Committee for Nuclear Energy of the Organisation (hereinafter referred to as the 'Steering Committee') shall from time to time determine; any Contracting Party may determine that two or more nuclear installations of one operator which are located on the same site shall, together with any other premises on that site where radioactive material is held, be treated as a single nuclear installation.

(iii) 'Nuclear fuel' means fissionable material in the form of uranium metal, alloy, or chemical compound (including natural uranium), plutonium metal, alloy, or chemical compound, and such other fissionable material as the Steering Committee shall from time to time determine.

(iv) 'Radioactive products or waste' means any radioactive material produced in or made radioactive by exposure to the radiation incidental to the process of producing or utilizing nuclear fuel, but does not include (1) nuclear fuel, or (2) radioisotopes outside a nuclear installation which have reached the final stage of fabrication so as to be usable for any industrial, commercial, agricultural, medical, scientific or educational purpose.

(v) 'Nuclear substances' means nuclear fuel (other than natural uranium and other than depleted uranium) and radioactive products or waste.

(vi) 'Operator' in relation to a nuclear installation means the person designated or recognised by the competent public authority as the operator of that installation.

(b) The Steering Committee may, if in its view the small extent of the risks involved so warrants, exclude any nuclear installation, nuclear fuel, or nuclear substances from the application of this Convention.

Article II

This Convention does not apply to nuclear incidents occurring in the territory of non-Contracting States or to damage suffered in such territory, unless otherwise provided by the legislation of the Contracting Party in whose territory the nuclear installation of the operator liable is situated, and except in regard to rights referred to in Article VI(e).

Article III

(a) The operator of a nuclear installation shall be liable, in accordance with this Convention, for:

(i) damage to or loss of life of any person; and
(ii) damage to or loss of any property other than

1. the nuclear installation itself and any other nuclear installation, including a nuclear installation under construction, on the site where that installation is located; and
2. any property on that same site which is used or to be used in connection with any such installation,

upon proof that such damage or loss (hereinafter referred to as 'damage') was caused by a nuclear incident in such installation or involving nuclear substances coming from such installation, except as otherwise provided for in Article IV.

(b) Where the damage or loss is caused jointly by a nuclear incident and by an incident other than a nuclear incident, that part of the damage or loss which is caused by such other incident, shall, to the extent that it is not reasonably separable from the damage or loss caused by the nuclear incident, be considered to be damage caused by the nuclear incident. Where the damage or loss is caused jointly by a nuclear incident and by an emission of ionizing radiation not covered by this Convention, nothing in this Convention shall limit or otherwise affect the liability of any person in connection with that emission of ionizing radiation.

Article IV

In the case of carriage of nuclear substances, including storage incidental thereto, without prejudice to Article II:

(a) The operator of a nuclear installation shall be liable, in accordance with this Convention, for damage upon proof that it was caused by a nuclear incident outside that installation and involving nuclear substances in the course of carriage therefrom, only if the incident occurs:

(i) before liability with regard to nuclear incidents involving the nuclear substances 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 substances; or
(iii) where the nuclear substances are intended to be used in a reactor comprised in a means of transport, before the person duly authorized to operate that reactor has taken charge of the nuclear substances; but
(iv) where the nuclear substances have been sent to a person within the territory of a non-Contracting State, before they have been unloaded from the means of transport by which they have arrived in the territory of that non-Contracting State.

(b) The operator of a nuclear installation shall be liable, in accordance with this Convention, for damage upon proof that it was caused by a nuclear incident outside that installation and involving nuclear substances in the course of carriage thereto, only if the incident occurs:

(i) after liability with regard to nuclear incidents involving the nuclear substances 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 substances; or

(iii) after he has taken charge of the nuclear substances from a person operating a reactor comprised in a means of transport; but

(iv) where the nuclear substances have, with the written consent of the operator, been sent from a person within the territory of a non-Contracting State, after they have been loaded on the means of transport by which they are to be carried from the territory of that State.

(c) 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 security required pursuant to Article X. However, a Contracting Party may exclude this obligation in relation to carriage which takes place wholly within its own territory. 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 substances and the carriage in respect of which the security applies and shall include a statement by the competent public authority that the person named is an operator within the meaning of this Convention.

(d) A Contracting Party may provide by legislation that, under such terms as may be contained therein and upon fulfilment of the requirements of Article X(a), a carrier may, at his request and with the consent of an operator of a nuclear installation situated in its territory, by decision of the competent public authority, be liable in accordance with this Convention in place of that operator. In such case for all the purposes of this Convention the carrier shall be considered, in respect of nuclear incidents occurring in the course of carriage of nuclear substances, as an operator of a nuclear installation on the territory of the Contracting Party whose legislation so provides.

Article V

(a) If the nuclear fuel or radioactive products or waste involved in a nuclear incident have been in more than one nuclear installation and are in a nuclear installation at the time damage is caused, no operator of any nuclear installation in which they have previously been shall be liable for the damage.

(b) Where, however, damage is caused by a nuclear incident occurring in a nuclear installation and involving only nuclear substances stored therein incidentally to their carriage, the operator of the nuclear installation shall not be liable where another operator or person is liable pursuant to Article IV.

(c) If the nuclear fuel or radioactive products or waste involved in a nuclear incident have been in more than one nuclear installation and are not in a nuclear installation at the time damage is caused, no operator other than the operator of the last nuclear installation in which they were before the damage was caused or an operator who has subsequently taken them in charge, or has assumed liability therefor pursuant to the express terms of a contract in writing shall be liable for the damage.

(d) If damage gives rise to liability of more than one operator in accordance with this Convention, the liability of these operators shall be joint and several: provided that where such liability arises as a result of damage caused by a nuclear incident involving nuclear substances in the course of carriage 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, the maximum total amount for which such operators shall be liable shall be the highest amount established with respect to any of them pursuant to Article VII and provided that in no case shall any one operator be required, in respect of a nuclear incident, to pay more than the amount established with respect to him pursuant to Article VII.

Article VI

(a) The right to compensation for damage caused by a nuclear incident may be exercised only against an operator liable for the damage in accordance with this Convention, or, if a direct right of action against the insurer or other financial guarantor furnishing the security required pursuant to Article X is given by national law, against the insurer or other financial guarantor.

(b) Except as otherwise provided in this Article, no other person shall be liable for damage caused by a nuclear incident, but this provision shall not affect the application of any international agreement in the field of transport in force or open for signature, ratification or accession at the date of this Convention.

(c)

(i) Nothing in this Convention shall affect the liability:

1. of any individual for damage caused by a nuclear incident for which the operator, by virtue of Article III(a)(ii)(1) and (2) or Article IX, is not liable under this Convention and which results from an act or omission of that individual done with intent to cause damage;
2. of a person duly authorized to operate a reactor comprised in a means of transport for damage caused by a nuclear incident when an operator is not liable for such damage pursuant to Article IV(a)(iii) or (b)(iii).

(ii) The operator shall incur no liability outside this Convention for damage caused by a nuclear incident.

(d) Any person who has paid compensation in respect of damage caused by a nuclear incident under any international agreement referred to in paragraph (b) of this Article or under any legislation of a non-Contracting State shall, up to the amount which he has paid, acquire by subrogation the rights under this Convention of the person suffering damage whom he has so compensated.

(e) Any person who has his principal place of business in the territory of a Contracting Party or who is the servant of such a person and who has paid compensation in respect of damage caused by a nuclear incident occurring in the territory of a non-Contracting State or in respect of damage suffered in such territory shall, up to the amount which he has paid, acquire the rights which the person so compensated would have had against the operator but for the provisions of Article II.

(f) The operator shall have a right of recourse only:

(i) if the damage caused by a nuclear incident results from an act or omission done with intent to cause damage, against the individual acting or omitting to act with such intent;

(ii) if and to the extent that it is so provided expressly by contract.

(g) If the operator has a right of recourse to any extent pursuant to paragraph (f) of this Article against any person, that person shall not, to that extent, have a right against the operator under paragraphs (d) or (e) of this Article.

(h) Where provisions of national or public health insurance, social security, workmen's compensation or occupational disease compensation systems include compensation for damage caused by a nuclear incident, rights of beneficiaries of such systems and rights of recourse by virtue of such systems shall be determined by the law of the Contracting Party or by the regulations of the inter-Governmental organisation which has established such systems.

Article VII

(a) The aggregate of compensation required to be paid in respect of damage caused by a nuclear incident shall not exceed the maximum liability established in accordance with this Article.

(b) The maximum liability of the operator in respect of damage caused by a nuclear incident shall be 15,000,000 Special Drawing Rights as defined by the International Monetary Fund and used by it for its own operations and transactions (hereinafter referred to as 'Special Drawing Rights'). However,

(i) any Contracting Party, taking into account the possibilities for the operator of obtaining the insurance or other financial security required pursuant to Article X, may establish by legislation a greater or lesser amount;

(ii) any Contracting Party, having regard to the nature of the nuclear installation or the nuclear substances involved and to the likely consequences of an incident originating therefrom, may establish a lower amount,

provided that in no event shall any amounts so established be less than 5,000,000 Special Drawing Rights. The sums mentioned above may be converted into national currency in round figures.

(c) Compensation for damage caused to the means of transport on which the nuclear substances involved were at the time of the nuclear incident shall not have the effect of reducing the liability of the operator in respect of other damage to an amount less than either 5,000,000 Special Drawing Rights, or any higher amount established by the legislation of a Contracting Party.

(d) The amount of liability of operators of nuclear installations in the territory of a Contracting Party established in accordance with paragraph (b) of this Article as well as the provisions of any legislation of a Contracting Party pursuant to paragraph (c) of this Article shall apply to the liability of such operators wherever the nuclear incident occurs.

(e) A Contracting Party may subject the transit of nuclear substances through its territory to the condition that the maximum amount of liability of the foreign operator concerned be increased, if it considers that such amount does not adequately cover the risks of a nuclear incident in the course of the transit: provided that the maximum amount thus increased shall not exceed the maximum amount of liability of operators of nuclear installations situated in its territory.

(f) The provisions of paragraph (e) of this Article shall not apply:

  (i) to carriage by sea where, under international law, there is a right of entry in cases of urgent distress into the ports of such Contracting Party or a right of innocent passage through its territory; or

  (ii) to carriage by air where, by agreement or under international law there is a right to fly over or land on the territory of such Contracting Party.

(g) Any interest and costs awarded by a court in actions for compensation under this Convention shall not be considered to be compensation for the purposes of this Convention and shall be payable by the operator in addition to any sum for which he is liable in accordance with this Article.

Article VIII

(a) The right of compensation under this Convention shall be extinguished if an action is not brought within ten years from the date of the nuclear incident. National legislation may, however, establish a period longer than ten years if measures have been taken by the Contracting Party in whose territory the nuclear installation of the operator liable is situated to cover the liability of that operator in respect of any actions for compensation begun after the expiry of the period of ten years and during such longer period: provided that 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 in respect of loss of life or personal injury against the operator before the expiry of the period of ten years.

(b) 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, the period established pursuant to paragraph (a) of this Article shall be computed from the date of that nuclear incident, but the period shall in no case exceed twenty years from the date of the theft, loss, jettison or abandonment.

(c) National legislation may establish a period of not less than two years for the extinction of the right or as a period of limitation 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: provided that the period established pursuant to paragraphs (a) and (b) of this Article shall not be exceeded.

(d) Where the provisions of Article XIII(c)(ii) are applicable, the right of compensation shall not, however, be extinguished if, within the time provided for in paragraphs (a), (b) and (c) of this Article,

  (i) prior to the determination by the Tribunal referred to in Article XVII, an action has been brought before any of the courts from which the Tribunal can choose; if the Tribunal determines that the competent court is a court other than that before which such action has already been brought, it may fix a date by which such action has to be brought before the competent court so determined; or

  (ii) a request has been made to a Contracting Party concerned to initiate a determination

by the Tribunal of the competent court pursuant to Article XIII(c)(ii) and an action is brought subsequent to such determination within such time as may be fixed by the Tribunal.

(e) Unless national law provides to the contrary, any person suffering damage caused by a nuclear incident who has brought an action for compensation within the period provided for in this Article may amend his claim in respect of any aggravation of the damage after the expiry of such period provided that final judgment has not been entered by the competent court.

Article IX

The operator shall not be liable for damage caused by a nuclear incident directly due to an act of armed conflict, hostilities, civil war, insurrection or, except in so far as the legislation of the Contracting Party in whose territory his nuclear installation is situated may provide to the contrary, a grave natural disaster of an exceptional character.

Article X

(a) To cover the liability under this Convention, the operator shall be required to have and maintain insurance or other financial security of the amount established pursuant to Article VII and of such type and terms as the competent public authority shall specify.
(b) No insurer or other financial guarantor shall suspend or cancel the insurance or other financial security provided for in paragraph (a) 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 substances, during the period of the carriage in question.
(c) The sums provided as insurance, reinsurance, or other financial security may be drawn upon only for compensation for damage caused by a nuclear incident.

Article XI

The nature, form and extent of the compensation, within the limits of this Convention, as well as the equitable distribution thereof, shall be governed by national law.

Article XII

Compensation payable under this Convention, insurance and reinsurance premiums, sums provided as insurance, reinsurance, or other financial security required pursuant to Article X, and interest and costs referred to in Article VII(g), shall be freely transferable between the monetary areas of the Contracting Parties.

Article XIII

(a) Except as otherwise provided in this Article, jurisdiction over actions under Articles III, IV, VI(a) and VI(e) shall lie only with the courts of the Contracting Party in whose territory the nuclear incident occurred.
(b) Where a nuclear incident occurs outside the territory of the Contracting Parties, or where the place of the nuclear incident cannot be determined with certainty, jurisdiction over such actions shall lie with the courts of the Contracting Party in whose territory the nuclear installation of the operator liable is situated.
(c) Where jurisdiction would lie with the courts of more than one Contracting Party by virtue of paragraphs (a) or (b) of this Article, jurisdiction shall lie,
    (i) if the nuclear incident occurred partly outside the territory of any Contracting Party and partly in the territory of a single Contracting Party, with the courts of that Contracting Party; and
    (ii) in any other case, with the courts of the Contracting Party determined, at the request of a Contracting Party concerned, by the Tribunal referred to in Article XVII as being the most closely related to the case in question.
(d) Judgments entered by the competent court under this Article after trial, or by default, shall, when they have become enforceable under the law applied by that court, become enforceable in the territory of any of the other Contracting Parties as soon as the formalities required by the Contracting Party concerned have been complied with. The merits of the case shall not be the subject of further proceedings. The foregoing provisions shall not apply to interim judgments.

(e) If an action is brought against a Contracting Party under this Convention, such Contracting Party may not, except in respect of measures of execution, invoke any jurisdictional immunities before the court competent in accordance with this Article.

Article XIV

(a) This Convention shall be applied without any discrimination based upon nationality, domicile, or residence.
(b) 'National law' and 'national legislation' mean the national law or the national legislation of the court having jurisdiction under this Convention over claims arising out of a nuclear incident, and that law or legislation shall apply to all matters both substantive and procedural not specifically governed by this Convention.
(c) That law and legislation shall be applied without any discrimination based upon nationality, domicile, or residence.

Article XV

(a) Any Contracting Party may take such measures as it deems necessary to provide for an increase in the amount of compensation specified in this Convention.
(b) In so far as compensation for damage involves public funds and is in excess of the 5,000,000 Special Drawing Rights referred to in Article VII, any such measure in whatever form may be applied under conditions which may derogate from the provisions of this Convention.

Article XVI

Decisions taken by the Steering Committee under Article I(a)(ii), (a)(iii) and (b) shall be adopted by mutual agreement of the members representing the Contracting Parties.

Article XVII

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

Article XVIII

(a) Reservations to one or more of the provisions of this Convention may be made at any time prior to ratification of or accession to this Convention or prior to the time of notification under Article XXIII in respect of any territory or territories mentioned in the notification, and shall be admissible only if the terms of these reservations have been expressly accepted by the Signatories.
(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 Secretary-General of the Organisation in accordance with Article XXIV.
(c) Any reservation admitted in accordance with this Article may be withdrawn at any time by notification addressed to the Secretary-General of the Organisation.

Article XIX

(a) This Convention shall be ratified. Instruments of ratification shall be deposited with the Secretary-General of the Organisation.
(b) This Convention shall come into force upon the deposit of instruments of ratification by not less than five of the Signatories. For each Signatory ratifying thereafter, this Convention shall come into force upon the deposit of its instrument of ratification.

Article XX

Amendments to this Convention shall be adopted by mutual agreement of all the Contracting Parties. They shall come into force when ratified or confirmed by two-thirds of the Contracting Parties. For each Contracting Party ratifying or confirming thereafter, they shall come into force at the date of such ratification or confirmation.

Article XXI

(a) The Government of any Member or Associate country of the Organisation which is not a Signatory to this Convention may accede thereto by notification addressed to the Secretary-General of the Organisation.
(b) The Government of any other country which is not a Signatory to this Convention may

accede thereto by notification addressed to the Secretary-General of the Organisation and with the unanimous assent of the Contracting Parties. Such accession shall take effect from the date of such assent.

Article XXII

(a) This Convention shall remain in effect for a period of ten years as from the date of its coming into force. Any Contracting Party may, by giving twelve months' notice to the Secretary-General of the Organisation, terminate the application of this Convention to itself at the end of the period of ten years.
(b) This Convention shall, after the period of ten years, remain in force for a period of five years for such Contracting Parties as have not terminated its application in accordance with paragraph (a) of this Article, and thereafter for successive periods of five years for such Contracting Parties as have not terminated its application at the end of one of such periods of five years by giving twelve months' notice to that effect to the Secretary-General of the Organisation.
(c) A conference shall be convened by the Secretary-General of the Organisation in order to consider revisions to this Convention after a period of five years as from the date of its coming into force or, at any other time, at the request of a Contracting Party, within six months from the date of such request.

Article XXIII

(a) This Convention shall apply to the metropolitan territories of the Contracting Parties.
(b) Any Signatory or Contracting Party may, at the time of signature or ratification of or accession to this Convention or at any later time, notify the Secretary-General of the Organisation that this Convention shall apply to those of its territories, including the territories for whose international relations it is responsible, to which this Convention is not applicable in accordance with paragraph (a) of this Article and which are mentioned in the notification. Any such notification may in respect of any territory or territories mentioned therein be withdrawn by giving twelve months' notice to that effect to the Secretary-General of the Organisation.
(c) Any territories of a Contracting Party, including the territories for whose international relations it is responsible, to which this Convention does not apply shall be regarded for the purposes of this Convention as being a territory of a non-Contracting State.

Article XXIV

The Secretary-General of the Organisation shall give notice to all Signatories and acceding Governments of the receipt of any instrument of ratification, accession, withdrawal, notification under Article XXIII, and decisions of the Steering Committee under Article I(a)(ii), (a)(iii) and (b). He shall also notify them of the date on which this Convention comes into force, the text of any amendment thereto and of the date on which such amendment comes into force, and any reservation made in accordance with Article XVIII.

10.2.1 Annex I

The following reservations were accepted either at the time of signature of the Convention or at the time of signature of the Additional Protocol:

• 1.6(a) and (c)(i):

Reservation by the Government of the Federal Republic of Germany, the Government of the Republic of Austria and the Government of the Hellenic Republic.

Reservation of the right to provide, by national law, that persons other than the operator may continue to be liable for damage caused by a nuclear incident on condition that these persons are fully covered in respect of their liability, including defence against unjustified actions, by insurance or other financial security obtained by the operator or out of State funds.

• 2.6(b) and (d):

Reservation by the Government of the Republic of Austria, the Government of the Hellenic Republic, the Government of the Kingdom of Norway and the Government of the Kingdom of Sweden.[3]

Reservation of the right to consider their national legislation which includes provisions equivalent to those included in the international agreements referred to in Article VI(b) as being international agreements within the meaning of Article VI(b) and (d).

• 3.8(a):

Reservation by the Government of the Federal Republic of Germany and the Government of the Republic of Austria.

Reservation of the right to establish, in respect of nuclear incidents occurring in the Federal Republic of Germany and in the Republic of Austria respectively, a period longer than ten years if measures have been taken to cover the liability of the operator in respect of any actions for compensation begun after the expiry of the period of ten years and during such longer period.

• 4.9:

Reservation by the Government of the Federal Republic of Germany and the Government of the Republic of Austria.

Reservation of the right to provide, in respect of nuclear incidents occurring in the Federal Republic of Germany and in the Republic of Austria respectively, that the operator shall be liable for damage caused by a nuclear incident directly due to an act of armed conflict, hostilities, civil war, insurrection or a grave natural disaster of an exceptional character.

• 5.19:

Reservation by the Government of the Federal Republic of Germany, the Government of the Republic of Austria, and the Government of the Hellenic Republic.

Reservation of the right to consider ratification of this Convention as constituting an obligation under international law to enact national legislation on third party liability in the field of nuclear energy in accordance with the provisions of this Convention.

10.2.2 Annex II

This Convention shall not be interpreted as depriving a Contracting Party, on whose territory damage was caused by a nuclear incident occurring on the territory of another Contracting Party, of any recourse which might be available to it under international law.

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

DONE in Paris, this twenty-ninth day of July Nineteen Hundred and Sixty, in the English, French, German, Spanish, Italian and Dutch languages in a single copy which shall remain deposited with the Secretary-General of the Organisation for European Economic Co-operation by whom certified copies will be communicated to all Signatories.

Notes by the Secretariat

1. The designation of the Signatories is the same as that in the Protocol of 16 November 1982. It should be noted that Finland acceded to the Paris Convention and the Additional Protocol of 1964 on 16 June 1972 and has signed the Protocol of 1982.
2. The Organisation for European Economic Co-operation (OEEC) was reconstituted as the Organisation for Economic Co-operation and Development (OECD) on 30 September 1961, in accordance with the provisions of the Convention on the Organisation for Economic Co-operation and Development of 14 December 1960.

   In addition, following the Decision of the OECD Council dated 17 May 1972 [C(72)106 (Final)], the European Nuclear Energy Agency (ENEA) is now called the OECD Nuclear Energy Agency (NEA).
3. At the time of the deposit of its instruments of accession, the Government of Finland subordinated its accession to the present reservation.

10.3 Convention on Third Party Liability in the Field of Nuclear Energy (as Amended by the Additional Protocol of 28 January 1964 and by the Protocol of 16 November 1982, and by the Protocol of 12 February 2004)

The GOVERNMENTS of the Federal Republic of Germany, the Kingdom of Belgium, the Kingdom of Denmark, the Kingdom of Spain, the Republic of Finland, the French Republic, the Hellenic Republic, the Italian Republic, the Kingdom of Norway, the Kingdom of the Netherlands, the Portuguese Republic, the United Kingdom of Great Britain and Northem Ireland, the Republic of Slovenia, the Kingdom of Sweden, the Swiss Confederation and the Turkish Republic

CONSIDERING that the OECD Nuclear Energy Agency, established within the framework of

the Organisation for Economic Co-operation and Development (hereinafter referred to as the 'Organisation') is charged with encouraging the elaboration and harmonisation of legislation relating to nuclear energy in participating countries, in particular with regard to third party liability and insurance against atomic risks;

DESIROUS of ensuring adequate and equitable compensation for persons who suffer damage caused by nuclear incidents whilst taking the necessary steps to ensure that the development of the production and uses of nuclear energy for peaceful purposes is not thereby hindered;

CONVINCED of the need for unifying the basic rules applying in the various countries to the liability incurred for such damage, whilst leaving these countries free to take, on a national basis, any additional measures which they deem appropriate;

HAVE AGREED as follows:

Article I

(a) For the purposes of this Convention:

(i) 'A nuclear incident' means any occurrence or series of occurrences having the same origin which causes nuclear damage.

(ii) 'Nuclear installation' means reactors other than those comprised in any means of transport; factories for the manufacture or processing of nuclear substances; factories for the separation of isotapes of nuclear fuel; factories for the reprocessing of irradiated nuclear fuel; facilities for the storage of nuclear substances other than storage incidental to the carriage of such substances; installations for the disposal of nuclear substances; any such reactor, factory, facility or installation that is in the course of being decommissioned; and such other installations in which there are nuclear fuel or radioactive products or waste as the Steering Committee for Nuclear Energy of the Organisation (hereinafter referred to as the 'Steering Committee') shall from time to time determine; any Contracting Party may determine that two or more nuclear installations of one operator which are located on the same site shall, together with any other promises on that site where nuclear fuel or radioactive products or waste are held, be treated as a single nuclear installation.

(iii) 'Nuclear fuel' means fissionable material in the form of uranium metal, alloy, or chemical compound (including natural uranium), plutonium metal, alloy, or chemical compound, and such other fissionable material as the Steering Committee shall from time to time determine.

(iv) 'Radioactive products or waste' means any radioactive material produced in or made radioactive by exposure to the radiation incidental to the process of producing or utilising nuclear fuel, but does not include (1) nuclear fuel, or (2) radioisotapes outside a nuclear installation which have reached the final stage of fabrication sa as to be usable for any industrial, commercial, agricultural, medical, scientific or educational purpose.

(v) 'Nuclear substances' means nuclear fuel (other than natural uranium and other than depleted uranium) and radioactive products or waste.

(vi) 'Operator' in relation to a nuclear installation means the person designated or recognised by the competent public authority as the operator of that installation.

(vii) 'Nuclear damage' means,

1. loss of life or personal injury;
2. loss of or damage to property;

and each of the following to the extent determined by the law of the competent court,

3. economic loss arising from loss or damage referred to in sub-paragraph 1 or 2 above insofar as not included in those sub-paragraphs, if incorrect by a person entitled to claim in respect of such loss or damage;
4. the costs of measures of reinstatement of impaired environment, unless such impairment is insignificant, if such measures are actually taken or to be taken, and insofar as not included in sub-paragraph 2 above;
5. loss of income deriving from a direct economie interest in any use or enjoyment of the environment, incurred as a result of a significant impairrnent of that environment, and insofar as not included in sub-paragraph 2 above;
6. the costs of preventive measures, and further loss or damage caused by such measures,

in the case of sub-paragraphs 1–5 above, to the extent that the loss or damage arises out of or results from ionising radiation emitted by any source of radiation inside a nuclear installation, or emitted from nuclear fuel or radioactive products or waste in, or of nuclear substances coming from, originating in, or sent to, a nuclear installation, whether so arising from the radioactive properties of such matter, or from a combination of radioactive properties with toxic, explosive or other hazardous properties of such matter.

(viii) 'Measures of reinstatement' means any reasonable measures which have been approved by the competent authorities of the State where the measures were taken, and which aim to reinstate or restore damaged or destroyed components of the environment, or to introduce, where reasonable, the equivalent of these components into the environment.

The legislation of the State where the nuclear damage is suffered shall determine who is entitled to take such matter.

(ix) 'Preventive measures' means any reasonable measures taken by any person after a nuclear incident or an event creating a grave and imminent threat of nuclear damage has occurred, to prevent or minimise nuclear damage referred to in sub-paragraphs (a)(vii) 1–5, subject to any approval of the competent authorities required by the law of the State where the measures were taken.

(x) 'Reasonable measures' means measures which are found under the law of the competent court to be appropriate and proportionate, having regard to all the circumstances, for example:

1. the nature and extent of the nuclear damage incurred or, in the case of preventive measures, the nature and extent of the risk of such damage;
2. the extent to which, at the time they are taken, such measures are likely to be effective; and
3. relevant scientific and technical expertise.

(b) The Steering Committee may, if in its view the small extent of the risks involved so warrants, exclude any nuclear installation, nuclear fuel, or nuclear substances from the application of this Convention.

Article II

(a) This Convention shall apply to nuclear damage suffered in the territory of, or in any maritime zones established in accordance with international law of, or, except in the territory of a non-Contracting State not mentioned under (ii)–(iv) of this paragraph, on board a ship or aircraft registered by,

(i) a Contracting Party;
(ii) a non-Contracting State which, at the time of the nuclear incident, is a Contracting Party to the Vienna Convention on Civil Liability for nuclear Damage of 21 May 1963 and any amendment thereto which is in force for that Party, and to the Joint Protocol relating to the Application of the Vienna Convention end the Paris Convention of 21 September 1988, provided however, that the Contracting Party to the Paris Convention in whose territory the installation of the operator liable is situated is a Contracting Party to that Joint Protocol;
(iii) a non-Contracting State which, at the time of the nuclear incident, has no nuclear installation in its territory or in any maritime zones established by it in accordance with international law; or
(iv) any other non-Contracting State which, at the time of the nuclear incident, has in force nuclear liability legislation which affords equivalent reciprocal benefits, and which is based on principles identical to those of this Convention, including, *inter alia*, liability without fault of the operator liable, exclusive liability of the operator or a provision to the same effect, exclusive jurisdiction of the competent court, equal treatment of all victims of a nuclear incident, recognition end enforcement of judgements, free transfer of compensation, interests and costs.

(b) Nothing in this Article shall prevent a Contracting Party in whose territory the nuclear installation of the operator liable is situated from providing for a broader scope of application of this Convention under its legislation.

Article III

(a) The operator of a nuclear installation shall be liable, in accordance with this Convention, for nuclear damage other than

(i) damage to the nuclear installation itself and any other nuclear installation, including a nuclear installation under construction, on the site where that installation is located; and

(ii) damage to any property on that same site which is used or to be used in connection with any such installation, upon proof that such damage was caused by a nuclear incident in such installation or involving nuclear substances coming from such installation, except as otherwise provided for in Article IV.

(b) Where nuclear damage is caused jointly by a nuclear incident and by an incident other than a nuclear incident, that part of the damage which is caused by such other incident, shall, to the extent that it is not reasonably separable from the nuclear damage caused by the nuclear incident, be considered to be nuclear damage caused by the nuclear incident. Where nuclear damage is caused jointly by a nuclear incident and by an emission of ionising radiation not covered by this Convention, nothing in this Convention shall limit or otherwise affect the liability of any person in connection with that emission of ionising radiation.

Article IV

In the case of carriage of nuclear substances, including storage incidental thereto, without prejudice to Article II:

(a) The operator of a nuclear installation shall be liable, in accordance with this Convention, for nuclear damage upon proof that it was caused by a nuclear incident outside that installation and involving nuclear substances in the course of carriage there from, only if the incident occurs:

(i) before liability with regard to nuclear incidents involving the nuclear substances 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 substances; or

(iii) where the nuclear substances are intended to be used in a reactor comprised in a means of transport, before the person duly authorised to operate that reactor has taken charge of the nuclear substances; but

(iv) where the nuclear substances have been gent to a person within the territory of a non-Contracting State, before they have been unloaded from the means of transport by which they have arrived in the territory of that non-Contracting State.

(b) The operator of a nuclear installation shall be liable, in accordance with this Convention, for nuclear damage upon proof that it was caused by a nuclear incident outside that installation and involving nuclear substances in the course of carriage thereto, only if the incident occurs:

(i) after liability with regard to nuclear incidents involving the nuclear substances has been assumed, 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 substances; or

(iii) after he has taken charge of the nuclear substances from a person operating a reactor comprised in a means of transport; but

(iv) where the nuclear substances have, with the written consent of the operator, been gent from a person within the territory of a non-Contracting State, after they have been loaded on the means of transport by which they are to be carried from the territory of that State.

(c) The transfer of liability to the operator of another nuclear installation pursuant to paragraphs (a)(i) and (ii) and (b)(i) and (ii) of this Article may only take place if that operator has a direct economic interest in the nuclear substances that are in the course of carriage.

(d) 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 security required pursuant to Article X. However, a Contracting Party may exclude this obligation in relation to carriage which takes place wholly within its own territory. 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 substances and the carriage in respect of which the security applies and shall include a statement by the competent public authority that the person named is an operator within the meaning of this Convention.

(e) A Contracting Party may provide by legislation that, under such terms as may be contained therein and upon fulfilment of the requirements of Article X(a), a carrier may, at his request and with the consent of an operator of a nuclear installation situated in its territory, by decision of the competent public authority, be liable in accordance with this Convention in place of that operator. In such case for all the purposes of this Convention the carrier shall be considered, in respect of nuclear incidents occurring in the course of carriage of nuclear substances, as an operator of a nuclear installation on the territory of the Contracting Party whose legislation so provides.

Article V

(a) If the nuclear fuel or radioactive products or waste involved in a nuclear incident have been in more than one nuclear installation and are in a nuclear installation at the time nuclear damage is caused, no operator of any nuclear installation in which they have previously been shall be liable for the nuclear damage.

(b) Where, however, nuclear damage is caused by a nuclear incident occurring in a nuclear installation and involving only nuclear substances stored therein incidentally to their carriage, the operator of the nuclear installation shall not be liable where another operator or person is liable pursuant to Article IV.

(c) If the nuclear fuel or radioactive products or waste involved in a nuclear incident have been in more than one nuclear installation and are not in a nuclear installation at the time nuclear damage is caused, no operator other than the operator of the last nuclear installation in which they were before the nuclear damage was caused or an operator who has subsequently taken them in charge, or has assumed liability there for pursuant to the express terms of a contract in writing shall be liable for the nuclear damage.

(d) If nuclear damage gives rise to liability of more than one operator in accordance with this Convention, the liability of these operators shall be joint and several, provided that where such liability arises as a result of nuclear damage caused by a nuclear incident involving nuclear substances in the course of carriage 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, the maximum total amount for which such operators shall be liable shall be the highest amount established with respect to any of them pursuant to Article VII. In no case shall any one operator be required, in respect of a nuclear incident, to pay more than the amount established with respect to him pursuant to Article VII.

Article VI

(a) The right to compensation for nuclear damage caused by a nuclear incident may be exercised only against an operator liable for the nuclear damage in accordance with this Convention, or, if a direct right of action against the insurer or other financial guarantor furnishing the security required pursuant to Article X is given by national law, against the insurer or other financial guarantor.

(b) Except as otherwise provided in this Article, no other person shall be liable for nuclear damage caused by a nuclear incident, but this provision shall not affect the application of any international agreement in the field of transport in force or open for signature, ratification or accession at the date of this Convention.

(c) (i) Nothing in this Convention shall affect the liability:

1. of any individual for nuclear damage caused by a nuclear incident for which the operator, by virtue of Article III(a) or Article IX, is not liable under this Convention and which

results from an act or omission of that individual done with intent to cause damage;

2. of a person duly authorised to operate a reactor comprised in a means of transport for nuclear damage caused by a nuclear incident when an operator is not liable for such damage pursuant to Article IV(a)(iii) or (b)(iii).

The operator shall incur no liability outside this Convention for nuclear damage caused by a nuclear incident.

(d) Any person who has paid compensation in respect of nuclear damage caused by a nuclear incident under any international agreement referred to in paragraph (b) of this Article or under any legislation of a non-Contracting State shall, up to the amount which he has paid, acquire by subrogation the rights under this Convention of the person suffering nuclear damage whom he has so compensated.

(e) 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 national law so provides, relieve the operator wholly or partly from his obligation to par compensation in respect of the damage suffered by such person.

(f) The operator shall have a right of recourse only:

(i) if the nuclear damage caused by a nuclear incident results from an act or omission done with intent to cause nuclear damage, against the individual acting or omitting to act with such intent;

(ii) if and to the extent that it is so provided expressly by contract.

(g) If the operator has a right of recourse to any extent pursuant to paragraph (f) of this Article against any person, that person shall not, to that extent, have a right against the operator under paragraph (d) of this Article.

(h) Where provisions of national or public health insurance, social security, workers' compensation or occupational disease compensation systems include compensation for nuclear damage caused by a nuclear incident, rights of beneficiaries of such systems and rights of recourse by virtue of such systems shall be determined by the law of the Contracting Party or by the regulations of the intergovernmental organisation which has established such systems.

Article VII

(a) Each Contracting Party shall provide under its legislation that the liability of the operator in respect of nuclear damage caused by any one nuclear incident shall not be less than 700 million euro.

(b) Notwithstanding paragraph (a) of this Article and Article XXI(c), any Contracting Party may,

(i) having regard to the nature of the nuclear installation involved and to the likely consequences of a nuclear incident originating there from, establish a lower amount of liability for that installation, provided that in no event shall any amount so established be less than 70 million euro; and

(ii) having regard to the nature of the nuclear substances involved and to the likely consequences of a nuclear incident originating there from, establish a lower amount of liability for the carriage of nuclear substances provided that in no event shall any amount so established be less than 80 million euro.

(c) Compensation for nuclear damage caused to the means of transport on which the nuclear substances involved were at the time of the nuclear incident shall not have the effect of reducing the liability of the operator in respect of other nuclear damage to an amount less than either 80 million euro, or any higher amount established by the legislation of a Contracting Party.

(d) The amount of liability of operators of nuclear installations in the territory of a Contracting Party established in accordance with paragraph (a) or (b) of this Article or with Article XXI(c), as well as the provisions of any legislation of a Contracting Party pursuant to paragraph (c) of this Article shall apply to the liability of such operators wherever the nuclear incident occurs.

(e) A Contracting Party may subject the transit of nuclear substances through its territory to the condition that the maximum amount of liability of the foreign operator concerned be increased, if it considers that such amount does not adequately cover the risks of a nuclear incident in the course of the transit, provided

that the maximum amount thus increased shall not exceed the maximum amount of liability of operators of nuclear installations situated in its territory.

(f) The provisions of paragraph (e) of this Article shall not apply:

(i) to carriage by sea where, under international law, there is a right of entry in cases of urgent distress into the ports of such Contracting Party or a right of innocent passage through its territory; or

(ii) to carriage by air where, by agreement or under international law, there is a right to fly over or land on the territory of such Contracting Party.

(g) In cases where the Convention is applicable to a non-Contracting State in accordance with Article II(a)(iv), any Contracting Party may establish in respect of nuclear damage amounts of liability lower than the minimum amounts established under this Article or under Article XXI(e) to the extent that such State does not afford reciprocal benefits of an equivalent amount.

(h) Any interest and costs awarded by a court in actions for compensation under this Convention shall not be considered to be compensation for the purposes of this Convention and shall be payable by the operator in addition to any sum for which he is liable in accordance with this Article.

(i) The sums mentioned in this Article may be converted into national currency in round figures.

(j) 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.

Article VIII

(a) The right of compensation under this Convention shall be subject to prescription or extinction if an action is not brought,

(i) with respect to loss of life and personal injury, within thirty years from the date of the nuclear incident;

(ii) with respect to other nuclear damage, within ten years from the date of the nuclear incident.

(b) National legislation may, however, establish a period longer than that set out in sub-paragraph (i) or (ii) of paragraph (a) of this Article, if measures have been taken by the Contracting Party within whose territory the nuclear installation of the operator liable is situated to cover the liability of that operator in respect of any actions for compensation begun after the expiry of the period set out in sub-paragraph (i) or (ii) of paragraph (a) of this Article and during such longer period.

(c) If, however, a longer period is established in accordance with paragraph (b) of this Article, an action for compensation brought within such period shall in no case affect the right of compensation under this Convention of any person who has brought an action against the operator,

(i) within a thirty year period in respect of personal injury or loss of life;

(ii) within a ten year period in respect of all other nuclear damage.

(d) National legislation may establish a period of not less than three years for the prescription or extinction of rights of compensation under the Convention, determined from the date at which the person suffering nuclear damage had knowledge, or from the date at which that person ought reasonably to have known of both the nuclear damage and the operator liable, provided that the periods established pursuant to paragraphs (a) and (b) of this Article shall not be exceeded.

(e) Where the provisions of Article XIII(f)(ii) are applicable, the right of compensation shall not, however, be subject to prescription or extinction if, within the time provided for in paragraphs (a), (b) and (d) of this Article,

(i) prior to the determination by the Tribunal referred to in Article XVII, an action has been brought before any of the courts from which the Tribunal can choose; if the Tribunal determines that the competent court is a court other than that before which such action has already been brought, it may fix a date by which such action has to

be brought before the competent court so determined; or

(ii) a request has been made to a Contracting Party concerned to initiate a determination by the Tribunal of the competent court pursuant to Article XIII(I)(ii) and an action is brought subsequent to such determination within such time as may be fixed by the Tribunal.

(f) Unless national law provides to the contrary, any person suffering nuclear damage caused by a nuclear incident who has brought an action for compensation within the period provided for in this Article may amend his claim in respect of any aggravation of the nuclear damage after the expiry of such period, provided that final judgement has not been entered by the competent court.

Article IX

The operator shall not be liable for nuclear damage caused by a nuclear incident directly due to an act of armed conflict, hostilities, civil war, or insurrection.

Article X

(a) To cover the liability under this Convention, the operator shall be required to have and maintain insurance or other financial security of the amount established pursuant to Article VII(a) or (b) or Article XXI(c) and of such type and terms as the competent public authority shall specify.

(b) Where the liability of the operator is not limited in amount, the Contracting Party within whose territory the nuclear installation of the liable operator is situated shall establish a limit upon the financial security of the operator liable, provided that any limit so established shall not be less than the amount referred to in Article VII(a) or (b).

(c) The Contracting Party within whose territory the nuclear installation of the liable operator is situated 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 insurance or other financial security is not available or sufficient to satisfy such claims, up to an amount not less than the amount referred to in Article VII(a) or Article XXI(c).

(d) No insurer or other financial guarantor shall suspend or cancel the insurance or other financial security provided for in paragraph (a) or (b) 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 substances, during the period of the carriage in question.

(e) The sums provided as insurance, reinsurance, or other financial security may be drawn upon only for compensation for nuclear damage caused by a nuclear incident

Article XI

The nature, form and extent of the compensation, within the limits of this Convention, as well as the equitable distribution thereof, shall be governed by national law.

Article XII

Compensation payable under this Convention, insurance and reinsurance premiums, sums provided as insurance, reinsurance, or other financial security required pursuant to Article X, and interest and costs referred to in Article VII(h), shall be freely transferable between the monetary areas of the Contracting Parties.

Article XIII

(a) Except as otherwise provided in this Article, jurisdiction over actions under Articles III, IV and VI(a) shall lie only with the courts of the Contracting Party in whose territory the nuclear incident occurred.

(b) Where a nuclear incident occurs within the area of the exclusive economic zone of a Contracting Party or, if such a zone has not been established, in an area not exceeding the limits of an exclusive economic zone were one to be established, jurisdiction over actions concerning nuclear damage from that nuclear incident shall, for the purposes of this Convention, lie only with the courts of that Party, provided that the Contracting Party concerned has notified the Secretary-General of the Organisation of such area prior to the nuclear incident. Nothing in this paragraph shall be interpreted as permitting the exercise of jurisdiction or the delimitation of a maritime zone in a manner which is contrary to the international law of the sea.

(c) Where a nuclear incident occurs outside the territory of the Contracting Parties, or where it occurs within an area in respect of which no notification has been given pursuant to paragraph (b) of this Article, or where the place of the nuclear incident cannot be determined with certainty, jurisdiction over such actions shall lie with the courts of the Contracting Party in whose territory the nuclear installation of the operator liable is situated.

(d) Where a nuclear incident occurs in an area in respect of which the circumstances of Article XVII(d) apply, jurisdiction shall lie with the courts determined, at the request of a Contracting Party concerned, by the Tribunal referred to in Article XVII as being the courts of that Contracting Party which is most closely related to and affected by the consequences of the incident.

(e) The exercise of jurisdiction under this Article as well as the notification of an area made pursuant to paragraph (b) of this Article shall not create any light or obligation or set a precedent with respect to the delimitation of maritime areas between States with opposite or adjacent coasts.

(f) Where jurisdiction would lie with the courts of more than one Contracting Party by virtue of paragraph (a), (b) or (c) of this Article, jurisdiction shall lie,

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

(ii) in any other case, with the courts determined, at the request of a Contracting Party concerned, by the Tribunal referred to in Article XVII as being the courts of that Contracting Party which is most closely related to and affected by the consequences of the incident.

(g) The Contracting Party whose courts have jurisdiction shall ensure that in relation to actions for compensation of nuclear damage:

(i) any State may bring an action on behalf of persons who have suffered nuclear damage, who are nationals of that State or have their domicile or residence in its territory, and who have consented thereto; and

(ii) any person may bring an action to enforce rights under this Convention acquired by subrogation or assignment.

(h) The Contracting Party whose courts have jurisdiction under this Convention shall ensure that only one of its courts shall be competent to rule on compensation for nuclear damage arising from any one nuclear incident, the criteria for such selection being determined by the national legislation of such Contracting Party.

(i) Judgements entered by the competent court under this Article after trial, or by default, shall, when they have become enforceable under the law applied by that court, become enforceable in the territory any of the other Contracting Parties as soon as the formalities required by the Contracting Party concerned have been complied with. The merits of the case shall not be the subject of further proceedings. The foregoing provisions shall not apply to interim judgements

(j) If an action is brought against a Contracting Party under this Convention, such Contracting Party may not, except in respect of measures of execution, invoke any jurisdictional immunities before the court competent in accordance with this Article.

Article XIV

(a) This Convention shall be applied without any discrimination based upon nationality, domicile, or residence.

(b) 'National law' and 'national legislation' mean the law or the national legislation of the court having Jurisdiction under this Convention over claims arising out of a nuclear incident, excluding the rules on conflict of laws relating to such claims. That law or legislation shall apply to all matters both substantive and procedural not specifically governed by this Convention.

(c) That law and legislation shall be applied without any discrimination based upon nationality, domicile, or residence.

Article XV

(a) Any Contracting Party may take such measures as it deems necessary to provide for an increase in the amount of compensation specified in this Convention.

(b) In so far as compensation for nuclear damage is in excess of the 700 million euro referred to in Article VII(a), any such measure in whatever form may be applied under conditions which may derogate from the provisions of this Convention.

Article XVI

Decisions taken by the Steering Committee under Articles I(a)(ii), (a)(iii) and (b) shall be adopted by mutual agreement of the members representing the Contracting Parties.

Article XVI bis

This Convention shall not affect the rights and obligations of a Contracting Party under the general rules of public international law.

Article XVII

(a) In the event of a dispute arising between two or more Contacting Parties concerning the interpretation or application of this Convention, the parties to the dispute shall consult with a view to settling the dispute by negotiation or other amicable means.
(b) Where a dispute referred to in paragraph (a) is not settled within six months from the date upon which such dispute is acknowledged to exist by any party thereto, the Contracting Parties shall meet in order to assist the parties to the dispute to reach a friendly settlement.
(c) Where no resolution to the dispute has been reached within three months of the meeting referred to in paragraph (b), the dispute shall, upon the request of any party thereto, be submitted to the European Nuclear Energy Tribunal established by the Convention of 20 December 1957 on the Establishment of a Security Control in the Field of Nuclear Energy.
(d) Disputes concerning the delimitation of maritime boundaries are outside the scope of this Convention.

Article XVIII

(a) Reservations to one or more of the provisions of this Convention may be made at any time prior to ratification, acceptance or approval of, or accession to, this Convention or prior to the time of notification under Article XXIII in respect of any territory or territories mentioned in the notification, and shall be admissible only if the terms of these reservations have been expressly accepted by the Signatories.
(b) Such acceptance shall not be required from a Signatory which has not itself ratified, accepted or approved this Convention within a period of twelve months after the date of notification to it of such reservation by the Secretary-General of the Organisation in accordance with Article XXIV.
(c) Any reservation admitted in accordance with this Article may be withdrawn at any time by notification addressed to the Secretary-General of the Organisation.

Article XIX

(a) This Convention shall be subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the Organisation.
(b) This Convention shall came into force upon the deposit of instruments of ratification, acceptance or approval by not less than five of the Signatories. For each Signatory ratifying, accepting or approving thereafter, this Convention shall come into force upon the deposit of its instrument of ratification, acceptance or approval.

Article XX

Amendments to this Convention shall be adopted by mutual agreement of all the Contracting Parties. They shall come into force when ratified, accepted or approved by two-thirds of the Contracting Parties. For each Contracting Party ratifying, accepting or approving thereafter, they shall come into force at the date of such ratification, acceptancee or approval.

Article XXI

(a) The Government of any Member or Associate country of the Organisation which is not a Signatory to this Convention may accede thereto by notification addressed to the Secretary-General of the Organisation.
(b) The Government of any other country which is not a Signatory to this Convention may accede thereto by notification addressed to the Secretary-General of the Organisation and with the unanimous assent of the Contracting

Parties. Such accession shall take effect from the date of such assent.

(c) Notwithstanding Article VII(a), where a Government which is not a Signatory to this Convention accedes to this Convention after 1 January 1999, it may provide under its legislation that the liability of an operator in respect of nuclear damage caused by any one nuclear incident may be limited, for a maximum of five years from the date of the adoption of the Protocol of 12 February 2004 to amend this Convention, to a transitional amount of not less than 350 million euro in respect of a nuclear incident occurring within that period.

Article XXII

(a) This Convention shall remain in effect for a period of ten years as from the date of its coming into force. Any Contracting Party may, by giving twelve months' notice to the Secretary-General of the Organisation, terminate the application of this Convention to itself at the end of the period of ten years.

(b) This Convention shall, after the period of ten years, remain in force for a period of five years for such Contracting Parties as have not terminated its application in accordance with paragraph (a) of this Article, and thereafter for successive periods of five years for such Contracting Parties as have not terminated its application at the end of one of such periods of five years by giving twelve months' notice to that effect to the Secretary-General of the Organisation.

(c) The Contracting Parties shall consult each other at the expiry of each five year period following the date upon which this Convention comes into force, upon all problems of common interest raised by the application of this Convention, and in particular, to consider whether increases in the liability and financial security amounts under this Convention are desirable.

(d) A conference shall be convened by the Secretary-General of the Organisation in order to consider revisions to this Convention after a period of five years as from the date of its coming into force or, at any other time, at the request of a Contracting Party, within six months from the date of such request.

Article XXIII

(a) This Convention shall apply to the metropolitan territories of the Contracting Parties.

(b) Any Signatory or Contracting Party may, at the time of signature, ratification, acceptance or approval of, or accession to, this Convention or at any later time, notify the Secretary-General of the Organisation that this Convention shall apply to those of its territories, including the territories for whose international relations it is responsible, to which this Convention is not applicable in accordance with paragraph (a) of this Article and which are mentioned in the notification. Any such notification may, in respect of any territory or territories mentioned therein, be withdrawn by giving twelve months' notice to that effect to the Secretary-General of the Organisation.

(c) Any territories of a Contracting Party, including the territories for whose international relations it is responsible, to which this Convention does not apply shall be regarded for the purposes of this Convention as being a territory of a non-Contracting State.

Article XXIV

The Secretary-General of the Organisation shall give notice to all Signatories and acceding Governments of the receipt of any instrument of ratification, acceptance, approval, accession or withdrawal, of any notification under Articles XIII(b) and XXIII, of decisions of the Steering Committee under Article I(a)(ii), (a)(iii) and (b), of the date on which this Convention comes into force, of the text of any amendment thereto and the date on which such amendment comes into force, and of any reservation made in accordance with Article XVIII.

Annex

The following reservations were accepted either at the time of signature of the Convention or at the time of signature of the Additional Protocol:

1. Article VI(a) and (c)(i):

Reservation by the Government of the Federal Republic of Germany, the Government of the Republic of Austria and the Government of the Hellenic Republic.

Reservation of the right to provide, by national law, that persons other than the operator may continue to be liable for damage caused by a nuclear incident on condition that these persons are fully covered in respect of their liability, including defence against unjustified actions, by insurance or other financial security obtained by the operator or out of State funds.

2. Articles VI(b) and (d):

Reservation by the Government of the Republic of Austria, the Government of the Hellenic Republic, the Government of the Kingdom of Norway, the Government of the Kingdom of Sweden and the Government of the Republic of Finland.

Reservation of the right to consider their national legislation which includes provisions equivalent to those included in the international agreements referred to in Article VI(b) as being international agreements within the meaning of Articles VI(b) and (d).

3. Article VIII(a):

Reservation by the Government of the Federal Republic of Germany and the Government of the Republic of Austria Reservation of the right to establish, in respect of nuclear incidents occurring in the Federal Republic of Germany and in the Republic of Austria respectively, a period longer than ten years if measures have been taken to cover the liability of the operator in respect of any actions for compensation begun after the expiry of the period of ten years and during such longer period.

4. Article IX:

Reservation by the Government of the Federal Republic of Germany and the Government of the Republic of Austria. Reservation of the right to provide, in respect of nuclear incidents occurring in the Federal Republic of Germany and in the Republic of Austria respectively, that the operator shall be liable for damage caused by a nuclear incident directly due to an act of armed conflict, hostilities, civil war, insurrection or a grave natural disaster of an exceptional character.

5. Article XIX:

Reservation by the Government of the Federal Republic of Germany, the Government of the Republic of Austria, and the Government of the Hellenic Republic.

Reservation of the right to consider ratification of this Convention as constituting an obligation under international law to enact national legislation on third party liability in the field of nuclear energy in accordance with the provisions of this Convention.

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

DONE in Paris, this 29 day of July 1960, in the English, French, German, Spanish, Italian and Dutch languages in a single copy which shall remain deposited with the Secretary-General of the Organisation for Economic Co-operation and Development by whom certified copies will be communicated to all Signatories.

11
Brussels Supplementary Convention

11.1 General Information

Convention Supplementary to the Paris Convention on Third Party Liability in the Field of Nuclear Energy (as Amended by the Additional Protocol of 28 January 1964 and by the Protocol of 16 November 1982)
Convention Supplementary to the Paris Convention on Third Party Liability in the Field of Nuclear Energy (as Amended by the Additional Protocol of 28 January 1964 and by the Protocol of 16 November 1982, and by the Protocol of 12 February 2004)

Most common abbreviation(s)	**Brussels Convention, Brussels Supplementary Convention** **Brussels Convention 2004, Brussels Supplementary Convention 2004**
Organisation	Nuclear Energy Agency (NEA), a specialised agency within the Organisation for Economic Co-operation and Development (OECD)
Reference	1041 UNTS 358 http://www.nea.fr/html/law/legal-documents. html
Status	
Adoption	31 January 1963
Entry into force	Convention and 1964 Additional Protocol: 4 December 1974 1982 Protocol: 1 August 1991 Protocol 12 February 2004: not yet in force
Signatories (without ratification)	Austria, Luxembourg, Switzerland
Ratifications	Convention, 1964 Additional Protocol & 1982 Protocol: Belgium, Denmark, Finland, France, Germany, Italy, Netherlands, Norway, Slovenia, Spain, Sweden, United Kingdom Protocol 12 February 2004: Spain (12 January 2006)

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11.2 Convention of 31 January 1963 Supplementary to the Paris Convention on Third Party Liability in the Field of Nuclear Energy (as Amended by the Additional Protocol of 28 January 1964 and by the Protocol of 16 November 1982)

- 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 29 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 16 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 I

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 II

(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 XIII, 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 III

(a) Under the conditions established by this Convention, the Contracting Parties undertake that compensation in respect of the damage referred to in Article II 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 XII.

(c) For this purpose, each Contracting Party shall either:

(i) establish the maximum liability of the operator, pursuant to Article VII of the 1Drawing 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 XV(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 VII(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 IV

(a) If a nuclear incident causes damage which gives rise to liability of more than one operator, the aggregate liability provided for in Article V(d) of the Paris Convention shall not, to the extent that public funds have to be made available pursuant to Article III(b)(ii) and (iii), exceed 300 million Special Drawing Rights.

(b) The total amount of the public funds made available pursuant to Article III(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 III(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 VII of the Paris Convention. If more than one Contracting Party is required to make available public funds pursuant to Article III(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 V

(a) Where the operator liable has a right of recourse pursuant to Article VI(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 III(b)(ii) and (iii), and (f).

(b) Such legislation may provide for the recovery of public funds made available pursuant to Article III(b)(ii) and (iii), and (f) from such operator if the damage results from fault on his part.

Article VI

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 VIII(d) of the Paris Convention. Amendments made to claims after the expiry of this period, under the conditions laid down in Article VIII(e) of the Paris Convention, shall also be taken into account.

Article VII

Where a Contracting Party makes use of the right provided for in Article VIII(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 VIII

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 V(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 II, without discrimination based on the nationality, domicile or residence of the person suffering the damage.

Article IX

(a) The system of disbursements by which the public funds required under Article III(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 III(b)(ii) and (iii) so long as any of the funds referred to in Article III(b)(i) remain available.

Article X

(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 III(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 V on behalf of the other Contracting Parties who have made available public funds pursuant to Article III(b)(iii) and (f).
(d) Settlements effected in respect of the payment of compensation out of the public funds referred to in Article III(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 XIII(d) of the Paris Convention.

Article XI

(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 III(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 III(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 XII

(a) The formula for contributions according to which the Contracting Parties shall make available the public funds referred to in Article III(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 II(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 XIII

(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 I of the Paris Convention, appear on the list referred to in Article II(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 II(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 II(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 XIV

(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 III(b)(ii) and (iii) be made available.

(b) Any such provisions made by a Contracting Party pursuant to Article II and IX of the Paris Convention as a result of which the public funds referred to in Article III(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 XV

(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 VIII 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 III(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 XVI

(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 XX and XXII(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 XVII

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 20 December 1957 on the Establishment of a Security Control in the Field of Nuclear Energy.

Article XVIII

(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 XXI and XXIV, 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 XXV.
(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 XIX

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 XX

(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 XXI

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 XXII

(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 XXIII

(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 XXII(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 XXIV

(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 XXIII 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 XXV

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 XVIII, 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.

11.2.1 Annex

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 II 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.
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:

11.3 Convention of 31 January 1963 Supplementary to the Paris Convention on Third Party Liability in the Field of Nuclear Energy (as Amended by the Additional Protocol of 28 January 1964 and by the Protocol of 16 November 1982, and by the Protocol of 12 February 2004)

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

BEING PARTIES to the Convention of29 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 28 January 1964, by the Protocol concluded at Paris on 16 November 1982 and by the Protocol concluded at Paris on 12 February 2004 (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 I

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 II

(a) The system of this Convention shall apply to nuclear damage 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'), is liable under the Paris Convention, and which is suffered:

(i) in the territory of a Contracting Party; or

(ii) in or above maritime areas beyond the territorial sea of a Contracting Party

1. on board or by a ship flying the flag of a Contracting Party, or on board or by an aircraft registered in the territory of a Contracting Party, or on or by an artificial island, installation or structure under the jurisdiction of a Contracting Party, or
2. by a national of a Contracting Party, excluding damage suffered in or above the territorial sea of a State not Party to this Convention; or

(iii) in or above the exclusive economic zone of a Contracting Party or on the continental shelf of a Contracting Party in connection with the exploitation or the exploration of the natural resources of that exclusive economic zone or continental shelf, 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, acceptance or approval declare that, for the purposes of the application of paragraph (a)(ii) 2 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 III

(a) Under the conditions established by this Convention, the Contracting Parties undertake that compensation in respect of nuclear damage referred to in Article II shall be provided up to the amount of 1,500 million euro per nuclear incident, subject to the application of Article XII bis.

(b) Such compensation shall be provided as follows:

(i) up to an amount of at least 700 million euro, out of funds provided by insurance or other financial security or out of public funds provided pursuant to Article X(c) of the Paris Convention, such amount to be established under the legislation of the Contracting Party in whose territory the nuclear installation of the operator liable is situated, and to be distributed, up to 700 million euro, in accordance with the Paris Convention;

(ii) between the amount referred to in paragraph (b)(i) of this Article and 1,200 million euro 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 1,200 million euro and 1,500 million euro, out of public funds to be made available by the Contracting Parties according to the formula for contributions referred to in Article XII, subject to such amount being increased in accordance with the mechanism referred to in Article XII bis.

(c) For this purpose, each Contacting Party shall either:

(i) establish under its legislation that the liability of the operator shall not be less than the amount referred to in paragraph (a) of this Article, and provide that such liability shall be covered by all the funds referred to in paragraph (b) of this Article; or
(ii) establish under its legislation the liability of the operator at an amount at least equal to that established pursuant to paragraph (b)(i) of this Article or Article VII(b) of the Paris Convention, and provide that, in excess of such amount and up to the amount referred to in paragraph (a) of this Article, the public funds referred to in paragraphs (b)(i), (ii) and
(iii) of this Article shall be made available by same 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 (g) of this Article shall only be enforceable against the operator as and when such funds are in fact made available.
(e) Where a State makes use of the option provided for under Article XXI(c) of the Paris Convention, it may only become a Contracting Party to this Convention if it ensures that funds will be available to cover the difference between the amount for which the operator is liable and 700 million euro.
(f) The Contracting Parties, in carrying out this Convention, undertake not to make use of the right provided for in Article XV(b) of the Paris Convention to apply special conditions, other than those laid down in this Convention, in respect of compensation for nuclear damage provided out of the funds referred to in paragraph (a) of this Article.
(g) The interest and costs referred to in Article VII(h) of the Paris Convention are payable in addition to the amounts referred to in paragraph (b) of this Article, and shall he 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 installation of the operator liable is situated to the extent of the funds made available by that Contracting Party;
(iii) paragraph (b)(iii) of this Article, by the Contracting Parties together.

(h) The amounts mentioned in this Convention shall be converted into the national currency of the Contracting Party whose courts have jurisdiction 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.

Article IV

Deleted.

Article V

Where the operator liable has a right of recourse pursuant to Article VI(f) of the Paris Convention, the Contracting Parties to this Convention shall have the same right of recourse, to the extent that public funds have been made available pursuant to Article III(b) and (g).

Article VI

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 thirty years from the date of the nuclear incident in the case of loss of life or personal injury, and ten years from the date of the nuclear incident in the case of all other nuclear damage. Such period is, moreover, extended in the cases and under the conditions laid down in Article VIII(e) of the Paris Convention. Amendments made to claims after the expiry of this period, under the conditions laid down in Article VIII of the Paris Convention, shall also be taken into account.

Article VII

Where a Contracting Party makes use of the right provided for in Article VIII(d) of the Paris Convention, the period which it establishes shall be a period of prescription of at least 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 VIII

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 nuclear damage suffered, provided that where the amount of such damage exceeds or is likely to exceed 1,500 million euro, a Contracting Party may establish equitable criteria for apportioning the amount of compensation that is available under this Convention. Such criteria shall be applied whatever the origin of the funds and, subject to the provisions of Article II, without discrimination based on the nationality, domicile or residence of the person suffering the damage.

Article IX

(a) The system of payment of public funds made available pursuant to this Convention shall be that of the Contracting Party whose courts have jurisdiction.
(b) Each Contracting Party shall ensure that persons suffering nuclear 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) A Contracting Party shall be required to make available the funds referred to in Article III(b)(iii) and the amount of compensation under this Convention reaches the total of the amounts referred to in Article III(b)(i) and (ii), irrespective of whether funds to be provided by the operator remain available or whether the liability of the operator is not limited in amount.

Article X

(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 nuclear damage caused by such incident exceeds, or is likely to exceed the sum of the amounts provided for under Article III(b)(i) and (ii). 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 been titled to request the other Contracting Parties to make available the public funds required under Article III(b)(iii) and (g) and shall have competence to disburse such funds.
(c) Such Contracting Party shall, when the occasion arises, exercise the right of recourse provided for in Article V on behalf of the other Contracting Parties who have made available public funds pursuant to Article III(b)(iii) and (g).
(d) Settlements effected in respect of the payment of compensation for nuclear damage out of the public funds referred to in Article III(b)(ii) and (iii) in accordance with the conditions established by national legislation shall be recognised by the other Contracting Parties, and judgements 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 XIII(i) of the Paris Convention.

Article XI

(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 III(b)(ii) and (g) 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 Pies shall agree on the procedure for reimbursement.
(b) If more than one Contracting Party is required to make available public funds pursuant to Article III(b)(ii) and (g), the provisions of paragraph (a) of this Article shall apply mutatis mutandis. Reimbursement shall be based on the extent to which each operator has contributed to the nuclear incident.
(c) 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 III(b)(ii) and (g) 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 XII

(a) The formula for contributions according to which the Contracting Parties shall make available the public funds referred to in Article III(b)(iii) shall be determined as follows:

(i) as to 35%, on the basis of the ratio between the gross domestic product at current prices of each Contracting Party and the total of the gross domestic 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 65%, 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 lists referred to in Article XIII, provided that for the purposes of this calculation, a reactor shall only be taken into consideration as from the date when it first reaches criticality and a reactor shall be excluded from the calculation when all nuclear fuel has been removed permanently from the reactor care and has been stored safely in accordance with approved procedures.

(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 authorised by the competent national authorities.

Article XII bis

(a) In case of accession to this Convention, the public funds mentioned in Article III(b)(iii) are increased by:

(i) 35% of an amount determined by applying to the above-mentioned sum the ratio between the gross domestic product at current prices of the acceding Party and the total of the gross domestic products at current prices of all the Contracting Parties, excluding that of the acceding Party, and

(ii) 65% of an amount determined by applying to the above-mentioned sum the ratio between the thermal power of the reactors situated in the territory of the acceding Party and the total thermal power of the reactors situated in the territories of all the Contracting Parties, excluding that of the acceding Party.

(b) The increased amount referred to in paragraph (a) shall be rounded up to the nearest amount expressed in thousands of euro.

(c) The gross domestic product of the acceding Party shall be determined in accordance with the official statistics published by the Organisation for Economic Co-operation and Development for the year preceding the year in which the accession comes into force.

(d) The thermal power of the acceding Party shall be determined in accordance with the list of nuclear installations communicated by that Government to the Belgian Government pursuant to Article XIII(b), provided that for the purpose of calculating the contributions under paragraph (a)(ii) of this Article, a reactor shall only be taken into consideration as from the date when it first reaches criticality and a reactor shall be excluded from the calculation when all nuclear fuel has been removed permanently from the reactor core and has been stored safely in accordance with approved procedures.

Article XIII

(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 I of the Paris Convention, appear on a list.

(b) For this purpose, each Signatory or acceding Government shall, on the deposit of its instrument of ratification, acceptance, approval 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 provisions 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 this Article 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 XIV

(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 there under may be invoked against the other Contracting Parties in order that the public funds referred to in Article III(b)(ii) and (iii) be made available.

(b) Any such provisions made by a Contracting Party pursuant to Article II(b) of the Paris Convention as a result of which the public funds referred to in Article III(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.

(d) Where all of the Contracting Parties to this Convention ratify, accept, approve or accede to any other international agreement in the field of supplementary compensation for nuclear damage, a Contracting Party to this Convention may use the funds to be provided pursuant to Article III(b)(iii) of this Convention to satisfy any obligation it may have under such other international agreement to provide supplementary compensation for nuclear damage out of public funds.

Article XV

(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. 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.

(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 VIII 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 III(b)(ii) and (iii) of those Contracting Parties which have not given their consent to such agreement.

Article XVI

(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 XX and XXII(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 XVII

(a) In the event of a dispute arising between two or more Contracting Parties concerning the interpretation or application of this Convention, the parties to the dispute shall consult with a view to settling the dispute by negotiation or other amicable means.

(b) Where a dispute referred to in paragraph (a) is not settled within six months from the date upon which such dispute is acknowledged to exist by any party thereto, the Contracting Parties shall meet in order to assist the parties to the dispute to reach a friendly settlement.

(c) Where no resolution to the dispute has been reached within three months of the meeting referred to in paragraph (b), the dispute shall, upon the request of any party thereto, be submitted to the European Nuclear Energy Tribunal established by the Convention of 20 December 1957 on the Establishment of a Security Control in the Field of Nuclear Energy.

(d) Where a nuclear incident gives rise to a dispute between two or more Contracting Parties concerning the interpretation or application of the Paris Convention and of this Convention, the procedure for resolving such dispute shall be the procedure provided for under Article XVII of the Paris Convention.

Article XVIII

(a) Reservations to one or more of the provisions of this Convention may be made at any time prior to ratification, acceptance or approval 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 XXI and XXIV, 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, accepted or approved 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 XXV.

(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 XIX

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 XX

(a) The Annex to this Convention shall form an integral part thereof.

(b) This Convention shall be subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval 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, acceptance or approval.
(d) For each Signatory ratitying, accepting or approving this Convention after the deposit of the sixth instrument of ratification, acceptance or approval, it shall come into force three months after the date of the deposit of its instrument of ratification, acceptance or approval.

Article XXI

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, accepted or approved them.

Article XXII

(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 XXIII

(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 XXII(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 XXIV

(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 XXIII 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 XXV

The Belgian Government shall notify all Signatories and acceding Governments of the receipt of any instrument of ratification, acceptance, approval, 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 XVIII, any increase in the compensation to be provided under Article III(a) as a result of the application of Article XII bis, and all notifications which it bas received.

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

DONE at Brussels, this 31 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.

11.3.1 Annex

THE GOVERNMENTS OF THE CONTRACTING PARTIES declare that compensation for nuclear 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 utilisation, is not on the list referred to in Article XIII of the Supplementary Convention (including the case where such installation which is not on the list 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 1,500 million euro.

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.

12
Vienna Convention

12.1 General Information

Vienna Convention on Civil Liability for Nuclear Damage
Vienna Convention as Amended by the Protocol of 12 September 1997 to Amend the Vienna Convention on Civil Liability for Nuclear Damage

Most common abbreviation(s)	**Vienna Convention** **Vienna Convention 1963** **Vienna Convention 1997**
Organisation	International Atomic Energy Agency (IAEA)
Reference	1063 UNTS 358 http://www.iaea.org/Publications/Documents/Conventions/liability.html
Status	
Adoption	Vienna Convention 1963: 21 May 1963 Vienna Convention 1997: 12 September 1997
Entry into force	Vienna Convention 1963: 12 November 1977 Vienna Convention 1997: 4 October 2003
Signatories	Vienna Convention 1963: Argentina, Belarus, Chile, Colombia, Cuba, Eqypt, Israel, Lebanon, Morocco, Philippines, Russian Federation, Serbia, Spain, United Kingdom Vienna Convention 1997: Argentina, Belarus, Czech Republic, Hungary, Indonesia, Italy, Latvia, Lebanon, Lithuania, Morocco, Peru, Philippines, Poland, Romania, Ukraine
Ratifications (and entry into force date)	Vienna Convention 1963: Argentina (12 November 1977), Armenia (24 November 1993), Belarus (9 May 1998), Bolivia (12 November 1977), Bosnia and Herzegovina (1 March 1992), Brazil (26 June 1993), Bulgaria (24 November 1994), Cameroon (12 November 1977), Chile (23 February 1990), Croatia (8 October 1991), Cuba (12 November 1977), Czech Republic (24 June 1994), Egypt (12 November 1977), Estonia (9 August 1994), Hungary (28 October 1998), Latvia (15 June 1995), Lebanon (17 July 1997), Lithuania (15 December 1992), Mexico

(25 July 1989), Montenegro (3 June 2006), Niger (24 October 1979), Nigeria (4 July 2007), Peru (26 November 1980), Philippines (12 November 1977), Poland (23 April 1990), Republic of Moldova (7 August 1998), Romania (29 March 1993), Russian Federation (13 August 2005), Saint Vincent & the Grenadines (18 December 2001), Serbia and Montenegro (27 April 1992), Slovakia (7 June 1995), The Former Yugoslav Republic of Macedonia (8 September 1991), Trinidad and Tobago (12 November 1977), Ukraine (20 December 1996), Uruguay (13 July 1999)
Vienna Convention 1997:
Argentina (4 October 2003), Belarus (4 October 2003), Latvia (4 October 2003), Morocco (4 October 2003), Romania (4 October 2003)

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12.2 Vienna Convention of 21 May 1963 on Civil Liability for Nuclear Damage

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 toArticle 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 toArticle 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 toArticle 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 toArticle 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 ofArticle 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 toArticle XXV or by denunciation pursuant toArticle 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 toArticle XXIII;
(c) notifications of termination and denunciation received pursuant to Articles XXV and XXVI;
(d) requests for the convening of a revision conference pursuant toArticle 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.

12.3 Vienna Convention as Amended by the Protocol of 12 September 1997 to Amend the Vienna Convention on Civil Liability for Nuclear Damage

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 subdivisions, 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) 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; and

(iv) such other installations in which there are nuclear fuel or radioactive products or waste as the Board of Governors of the International Atomic Energy Agency shall from time to time determine;

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;

(ii) loss of or damage to property; and each of the following to the extent determined by the law of the competent court

(iii) economic loss arising from loss or damage referred to in sub-paragraph (i) or (ii), insofar as not included in those sub-paragraphs, if incurred by a person entitled to claim in respect of such loss or damage;

(iv) costs of measures of reinstatement of impaired environment, unless such impairment is insignificant, if such measures are actually taken or to be taken, and insofar as not included in sub-paragraph (ii);

(v) loss of income deriving from an economic interest in any use or enjoyment of the environment, incurred as a result of a significant impairment of that environment, and insofar as not included in sub-paragraph (ii);

(vi) the costs of preventive measures, and further loss or damage caused by such measures;

(vii) any other economic loss, other than any caused by the impairment of the environment, if permitted by the general law on civil liability of the competent

court, in the case of sub-paragraphs (i)–(v) and (vii) above, to the extent that the loss or damage arises out of or results from ionizing radiation emitted by any source of radiation inside a nuclear installation, or emitted from nuclear fuel or radioactive products or waste in, or of nuclear material coming from, originating in, or sent to, a nuclear installation, whether so arising from the radioactive properties of such matter, or from a combination of radioactive properties with toxic, explosive or other hazardous properties of such matter.

(l) 'Nuclear incident' means any occurrence or series of occurrences having the same origin which causes nuclear damage or, but only with respect to preventive measures, creates a grave and imminent threat of causing such damage.

(m) 'Measures of reinstatement' means any reasonable measures which have been approved by the competent authorities of the State where the measures were taken, and which aim to reinstate or restore damaged or destroyed components of the environment, or to introduce, where reasonable, the equivalent of these components into the environment. The law of the State where the damage is suffered shall determine who is entitled to take such measures.

(n) 'Preventive measures' means any reasonable measures taken by any person after a nuclear incident has occcurred to prevent or minimize damage referred to in sub-paragraphs (k)(i)–(v) or (vii), subject to any approval of the competent authorities required by the law of the State where the measures were taken.

(o) 'Reasonable measures' means measures which are found under the law of the competent court to be appropriate and proportionatehaving regard to all the circumstances, for example

(i) the nature and extent of the damage incurred or, in the case of preventive measures, the nature and extent of the risk of such damage;

(ii) the extent to which, at the time they are taken, such measures are likely to be effective; and

(iii) relevant scientific and technical expertise.

(p) 'Special Drawing Right', hereinafter referred to as SDR, means the unit of account defined by the International Monetary Fund and used by it for its own operations and transactions.

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

(a) with respect to nuclear installations, criteria for such exclusion have been established by the Board of Governors of the International Atomic Energy Agency and any exclusion by an Installation State satisfies such criteria; and

(b) with respect to small quantities of nuclear material, maximum limits for the exclusion of such quantities have been established by the Board of Governors of the International Atomic Energy Agency and any exclusion by an Installation State is within such established limits.

The criteria for the exclusion of nuclear installations and the maximum limits for the exclusion of small quantities of nuclear material shall be reviewed periodically by the Board of Governors.

Article I A

1. This Convention shall apply to nuclear damage wherever suffered.
2. However, the legislation of the Installation State may exclude from the application of this Convention damage suffered

(a) in the territory of a non-Contracting State; or

(b) in any maritime zones established by a non-Contracting State in accordance with the international law of the sea.

3. An exclusion pursuant to paragraph 2 of this Article may apply only in respect of a non-Contracting State which at the time of the incident

(a) has a nuclear installation in its territory or in any maritime zones established by it in accordance with the international law of the sea; and

(b) does not afford equivalent reciprocal benefits.

4. Any exclusion pursuant to paragraph 2 of this Article shall not affect the rights referred to in sub-paragraph (a) of paragraph 2 of Article IX and any exclusion pursuant to paragraph 2(b) of this Article shall not extend to damage on board or to a ship or an aircraft.

Article I B

This Convention shall not apply to nuclear installations used for non-peaceful purposes.

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. The Installation State may limit the amount of public funds made available per incident to the difference, if any, between the amounts hereby established and the amount established pursuant to paragraph 1 of Article V.

(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. The Installation State may limit the amount of public funds made available as provided for in sub-paragraph (a) of paragraph 3 of this Article.
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 determined as such pursuant to the provisions of that sub-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. However, the Installation State may exclude this obligation in relation to carriage which takes place wholly within its own territory. 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. No liability under this Convention shall attach to an operator if he proves that the nuclear damage is directly due to an act of armed conflict, hostilities, civil war or insurrection.
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 any other nuclear installation, including a nuclear installation under construction, on the site where that installation is located; and
(b) to any property on that same site which is used or to be used in connection with any such installation.

6. Compensation for damage caused to the means of transport upon which the nuclear material is involved was at the time of the nuclear incident shall not have the effect of reducing the liability of the operator in respect of other damage to an amount less than either 150 million SDRs, or any higher amount established by the legislation of a Contracting Party, or an amount established pursuant to sub-paragraph (c) of paragraph 1 of Article V.
7. Nothing in this Convention shall affect 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 cuased by an act or omission done with intent to cause damage.

Article V

1. The liability of the operator may be limited by the Installation State for any one nuclear incident, either

(a) to not less than 300 million SDRs; or
(b) to not less than 150 million SDRs provided that in excess of that amount and up to at least 300 million SDRs public funds shall be made available by that State to compensate nuclear damage; or
(c) for a maximum of 15 years from the date of entry into force of this Protocol, to a transitional amount of not less than 100 million SDRs in respect of a nuclear incident occurring within that period. An amount lower than 100 million SDRs may be established, provided that public funds shall be made available by that State to compensate nuclear damage between that lesser amount and 100 million SDRs.

2. Notwithstanding paragraph 1 of this Article, the Installation State, having regard to the nature of the nuclear installation or the nuclear substances involved and to the likely consequences of an incident originating therefrom, may establish a lower amount of liability of the opeartor, provided that in no event shall any amount so established be less than 5 million SDRs, and provided that the Installation State ensures that public funds shall be made available up to the amount established pursuant to paragraph 1.
3. The amounts established by the Installations State of the liable operator in accordance with paragraphs 1 and 2 of this Article and paragraph 6 of Article IV shall apply wherever the nuclear incident occurs.

Article V A

1. Interest and costs awarded by a court in actions for compensation of nuclear damage shall be payable in addition to the amounts referred to in Article V.
2. The amounts mentioned in Article V and paragraph 6 of Article IV may be converted into national currency in round figures.

Article V B

Each Contrating 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.

Article V C

1. If the courts having jurisdiction are those of a Contracting Party other than the Installation State, the public funds required under sub-paragraphs (b) and (c) of paragraph 1 of Article V and under paragraph 1 of Article VII, as well as interest and costs awarded by a court, may be made available by the first-named Contracting Party. The Installation State shall reimburse to the other Contracting party any such sums paid. These two Contracting Parties shall agree on the procedure for reimbursement.
2. If the courts having jurisdiction are those of a Contracting Party other than the Installation State, the Contracting Party whose courts have jurisdiction shall take all measures necessary to enable the Installation State to intervene in proceedings and to participate in any settlement concerning compensation.

Article V D

1. A meeting of the Contracting Parties shall be convened by the Director General of the

International Atomic Energy Agency to amend the limits of liability referred to in Article V if one-third of the Contracting Parties express a desire to that effect.

2. Amendments shall be adopted by a two-thirds majority of the Contracting Parties present and voting, provided that at least one-half of the Contracting Parties shall be present at the time of the voting.
3. When acting on a proposal to amend the limits, the meeting of the Contracting Parties shall take into account, *inter alia*, the risk of damage resulting from a nuclear incident, changes in the monetary values, and the capacity of the insurance market.
4.
   (a) Any amendment adopted in accordance with paragraph 2 of this Article shall be notified by the Director General of the IAEA to all Contracting Parties for acceptance. The amendment shall be considered accepted at the end of a period of 18 months after it has been notified provided that at least one-third of the Contracting Parties at the time of the adoption of the amendment by the meeting have communicated to the Director General of the IAEA that they accept the amendment. An amendment accepted in accordance with this paragraph shall enter into force 12 months after its acceptance for those Contracting Parties which have accepted it.
   (b) If, within a period of 18 months from the date of notification for acceptance, an amendment has not been accepted in accordance with sub-paragraph (a), the amendment shall be considered rejected.
5. For each Contracting Party accepting an amendment after it has been accepted but not entered into force or after its entry into force in accordance with paragraph 4 of this Article, the amendment shall enter into force 12 months after its acceptance by that Contracting Party.
6. A State which becomes a Party to this Convention after the entry into force of an amendment in accordance with paragraph 4 of this Article shall, failing an expression of a different intention by that State
   (a) be considered as a Party to this Convention as so amended; and
   (b) be considered as a Party to the unamended Convention in relation to any State Party not bound by the amendment.

Article VI

1.
   (a) Rights of compensation under this Convention shall be extinguished if an action is not brought within
      (i) with respect to loss of life and personal injury, thirty years from the date of the nuclear incident;
      (ii) with respect to other damage, ten years from the date of the nuclear incident.
   (b) If, however, under the law of the Installation State, the liability of the operator is covered by insurance or other financial security including State funds for a longer period, the law of the competent court may provide that rights of compensation against the operator shall only be extinguished after such a longer period which sall not exceed the period for which his liability is so covered under the law of the Installation State.
   (c) Actions for compensation with respect to loss of life and personal injury or, pursuant to an extension under sub-paragraph (b) of this paragraph with respect to other damage, which are brought after a period of ten years from the date of the nuclear incident shall in no case affect the rights of compensation under this Convention of any person who has brought an action against the operator before the expiry of that period.
2. Deleted.
3. Rights of compensation under the Convention shall be subject to prescription or extinction, as provided by the law of the competent court, if an action is not brought within three years from the date on which the person suffering damage had knowledge or ought reasonably to have had knowledge of the damage and of the operator liable for the damage, provided that the periods established pursuant to sub-paragraphs (a) and

(b) of paragraph 1 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 judgement 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.

(a) 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. Where the liability of the operator is unlimited, the Installation State may establish a limit of the financial security of the operator liable, provided that such limit is not lower than 300 million SDRs. The Installation State shall ensure the payment of claims for compensation for nuclear damage which have been established against the operator to the extent that the yield of the financial security is inadequate to satisfy such claims, but not in excess of the amount of the financial security to be provided under this paragraph.

(b) Notwithstanding sub-paragraph (a) of this paragraph, where the liability of the operator is unlimited, the Installation State, having regard to the nature of the nuclear installation or the nuclear substances involved and to the likely consequences of an incident originating therefrom, may establish a lower amount of financial security of the operator, provided that in no event shall any amount so established be less than 5 million SDRs, and provided that the Installation State ensures the payment of claims for compensation for nuclear damage which have been established against the operator by providing necessary funds to the extent that the yield of insurance or other financial security is inadequate to satisfy such claims, and up to the limit provided pursuant to sub-paragraph (a) of this paragraph.

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 or sub-paragraphs (b) and (c) of paragraph 1 of Article V 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

1. 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.
2. Subject to application of the rule of sub-paragraph (c) of paragraph 1 of Article VI, where in respect of claims brought against the operator the damage to be compensated under this

Convention exceeds, or is likely to exceed, the maximum amount made available pursuant to paragraph 1 of Article V, priority in the distribution of the compensation shall be given to claims in respect of loss of life or personal injury.

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.

   (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.

The right of recourse provided for under this Article may also be extended to benefit the Installation State insofar as it has provided public funds pursuant to this Convention.

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.

   1bis. Where a nuclear incident occurs within the area of the exclusive economic zone of a Contracting Party or, if such a zone has not been established, in an area not exceeding the limits of an exclusive economic zone, were one to be established, jurisdiction over actions concerning nuclear damage from that nuclear incident shall, for the purposes of this Convention, lie only with the courts of that Party. The preceding sentence shall apply if that Contracting Party has notified the Depositary of such area prior to the nuclear incident. Nothing in this paragraph shall be interpreted as permitting the exercise of jurisdiction in a manner which is contrary to the international law of the sea, including the United Nations Convention on the Law of the Sea.

2. Where a nuclear incident does not occur within the territory of any Contracting Party, or within an area notified pursuant to paragraph 1bis, 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, 1bis 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, 1bis or 2 of this Article.

4. The Contracting Party whose courts have jurisdiction shall ensure that only one of its courts shall have jurisdiction in relation to any one nuclear incident.

Article XI A

The Contracting Party whose courts have jurisdiction shall ensure that in relation to actions for compensation of nuclear damage

(a) any State may bring an action on behalf of persons who have suffered nuclear damage, who are nationals of that State or have their domicile or residence in its territory, and who have consented thereto; and
(b) any person may bring an action to enforce rights under this Convention acquired by subrogation or assignment.

Article XII

1. A judgment that is no longer subject to ordinary forms of review entered by a court of a Contracting Party having jurisdiction shall be recognized, 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 judgment which is recognized under paragraph 1 of this Article 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. The merits of a claim on which the judgment has been given shall not be subject to further proceedings.

Article XIII

1. This Convention and the national law applicable thereunder shall be applied without any discrimination based upon nationality, domicile or residence.
2. Notwithstanding paragraph 1 of this Article, insofar as compensation for nuclear damage is in excess of 150 million SDRs, the legislation of the Installation State may derogate from the provisions of this Convention with respect to nuclear damage suffered in the territory, or in any maritime zone established in accordance with the international law of the sea, of another State which at the time of the incident, has a nuclear installation in such territory, to the extend that it does not afford reciprocal benefits of an equivalent amount.

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 affect the rights and obligations of a Contracting Party under the general rules of public international law.

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

Deleted.

Article XX A

1. In the event of a dispute between Contracting Parties concerning the interpretation or application of this Convention, the parties to the dispute shall consult with a view to the settlement of the dispute by negotiation or by any other peaceful means of settling disputes acceptable to them.
2. If a dispute of this character referred to in paragraph 1 of this Article cannot be settled within six months from the request for consultation pursuant to paragraph 1 of this Article, it shall, at the request of any party to such dispute, be submitted to arbitration or referred to the Internatioal Court of Justice for decision. Where a dispute is submitted to arbitration, if, within six months from the date of the request, the parties to the dispute are unable to agree on the organization of the arbitration, a party may request the President of the Internatioal Court of Justice or the Secretary-General of the United Nations to appoint one or more arbitrators. In cases of conflicting requests by the parties to the dispute, the request to the Secretary-General of the United Nations shall have priority.
3. When ratifying, accepting, approving or acceding to this Convention, a State may declare that it does not consider itself bound by either or both of the dispute settlement procedures provided for in paragraph 2 of this Article. The other Contracting Parties shall not be bound by a dispute settlement procedure provided for in paragraph 2 of this Article with respect to a Contracting Party for which such a declaration is in force.
4. A Contracting Party which has made a declaration in accordance with paragraph 3 of this Article may at any time withdraw it by notification to the depositary.

Article XXI

Deleted.

Article XXII

Deleted.

Article XXIII

Deleted.

Article XXIV

Deleted.

Article XXV

Deleted.

Article XXVI

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.

Article XXVII

Deleted.

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

Deleted.

13
CSC

13.1 General Information

Convention on Supplementary Compensation for Nuclear Damage

Most common abbreviation(s)	**CSC**
Organisation	International Atomic Energy Agency (IAEA)
Reference	http://www.iaea.org/Publications/Documents/Conventions/liability.html
Status	
Adoption	12 September 1997
Entry into force	Not yet in force (The Convention, pursuant to Article XX.1, 'shall come into force on the ninetieth day following the date on which at least 5 States with a minimum of 400,000 units of installed nuclear capacity have deposited an instrument referred to in Article XVIII'.)
Signatories	Argentina, Australia, Czech Republic, Indonesia, Italy, Lebanon, Lithuania, Morocco, Peru, Philippines, Romania, Ukraine, United States of America
Ratifications (and date of deposit)	Argentina (14 November 2000), Morocco (6 July 1999), Romania (2 March 1999)
Literature	Boulanenkov, V, 'Main Features of the Convention on Supplementary Compensation for Nuclear Damage – an Overview', in Reform of Civil Nuclear iability, International Symposium, Budapest 1999, OECD, Paris, 2000, pp. 161–171. Mcrae, B, 'Overview of the Convention on Supplementary Compensation', in Reform of Civil Nuclear Liability, International Symposium, Budapest 1999, OECD, Paris, 2000, pp. 171–183. Schwartz, J, 'Diplomatic conference convened to adopt a protocol to amend the Vienna Convention on civil liability for nuclear damage and to adopt a Convention on supplementary compensation for nuclear damage', in Le droit nucléaire: du XXe au XXie Scièle, Nuclear Inter Jura 1997, Société de Législation Comparée, Paris, 1998, pp. 427–429.

13.2 Convention of 12 September 1997 on Supplementary Compensation for Nuclear Damage

THE CONTRACTING PARTIES,

RECOGNIZING the importance of the measures provided in the Vienna Convention on Civil Liability for Nuclear Damage and the Paris Convention on Third Party Liability in the Field of Nuclear Energy as well as in national legislation on compensation for nuclear damage consistent with the principles of these Conventions;

DESIROUS of establishing a worldwide liability regime to supplement and enhance these measures with a view to increasing the amount of compensation for nuclear damage;

RECOGNIZING further that such a worldwide liability regime would encourage regional and global cooperation to promote a higher level of nuclear safety in accordance with the principles of international partnership and solidarity;

HAVE AGREED as follows:

CHAPTER 1

GENERAL PROVISIONS

Article I

Definitions

For the purposes of this Convention:

(a) 'Vienna Convention' means the Vienna Convention on Civil Liability for Nuclear Damage of 21 May 1963 and any amendment thereto which is in force for a Contracting Party to this Convention.

(b) 'Paris Convention' means the Paris Convention on Third Party Liability in the Field of Nuclear Energy of 29 July 1960 and any amendment thereto which is in force for a Contracting Party to this Convention.

(c) 'Special Drawing Right', hereinafter referred to as SDR, means the unit of account defined by the International Monetary Fund and used by it for its own operations and transactions.

(d) '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.

(e) '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.

(f) 'Nuclear Damage' means:

(i) loss of life or personal injury;
(ii) loss of or damage to property;

and each of the following to the extent determined by the law of the competent court:

(iii) economic loss arising from loss or damage referred to in sub-paragraph (i) or (ii), insofar as not included in those sub-paragraphs, if incurred by a person entitled to claim in respect of such loss or damage;
(iv) the costs of measures of reinstatement of impaired environment, unless such impairment is insignificant, if such measures are actually taken or to be taken, and insofar as not included in sub-paragraph (ii);
(v) loss of income deriving from an economic interest in any use or enjoyment of the environment, incurred as a result of a significant impairment of that environment, and insofar as not included in sub-paragraph (ii);
(vi) the costs of preventive measures, and further loss or damage caused by such measures;
(vii) any other economic loss, other than any caused by the impairment of the environment, if permitted by the general law on civil liability of the competent court,

in the case of sub-paragraphs (i)–(v) and (vii) above, to the extent that the loss or damage arises out of or results from ionizing radiation emitted by any source of radiation inside a nuclear installation, or emitted from nuclear fuel or radioactive products or waste in, or of nuclear material coming from, originating in, or sent to, a nuclear installation, whether so arising from the radioactive properties of such matter, or from a combination of radioactive properties with toxic, explosive or other hazardous properties of such matter.

(g) 'Measures of reinstatement' means any reasonable measures which have been approved by the competent authorities of the State where the measures were taken, and which aim to reinstate

or restore damaged or destroyed components of the environment, or to introduce, where reasonable, the equivalent of these components into the environment. The law of the State where the damage is suffered shall determine who is entitled to take such measures.

(h) 'Preventive measures' means any reasonable measures taken by any person after a nuclear incident has occurred to prevent or minimize damage referred to in sub-paragraphs (f)(i)–(v) or (vii), subject to any approval of the competent authorities required by the law of the State where the measures were taken.

(i) 'Nuclear incident' means any occurrence or series of occurrences having the same origin which causes nuclear damage or, but only with respect to preventive measures, creates a grave and imminent threat of causing such damage.

(j) 'Installed nuclear capacity' means for each Contracting Party the total of the number of units given by the formula set out in Article IV.2; and 'thermal power' means the maximum thermal power authorized by the competent national authorities.

(k) '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.

(l) 'Reasonable measures' means measures which are found under the law of the competent court to be appropriate and proportionate, having regard to all the circumstances, for example:

(i) the nature and extent of the damage incurred or, in the case of preventive measures, the nature and extent of the risk of such damage;

(ii) the extent to which, at the time they are taken, such measures are likely to be effective; and

(iii) relevant scientific and technical expertise.

Article II

Purpose and application

1. The purpose of this Convention is to supplement the system of compensation provided pursuant to national law which:

(a) implements one of the instruments referred to in Article I(a) and (b); or

(b) complies with the provisions of the Annex to this Convention.

2. The system of this Convention shall apply to nuclear damage for which an operator of a nuclear installation used for peaceful purposes situated in the territory of a Contracting Party is liable under either one of the Conventions referred to in Article I or national law mentioned in paragraph 1(b) of this Article.

3. The Annex referred to in paragraph 1(b) shall constitute an integral part of this Convention.

CHAPTER 2

COMPENSATION

Article III

Undertaking

1. Compensation in respect of nuclear damage per nuclear incident shall be ensured by the following means:

(a) (i) the Installation State shall ensure the availability of 300 million SDRs or a greater amount that it may have specified to the Depositary at any time prior to the nuclear incident, or a transitional amount pursuant to sub-paragraph (ii);

(ii) a Contracting Party may establish for the maximum of 10 years from the date of the opening for signature of this Convention, a transitional amount of at least 150 million SDRs in respect of a nuclear incident occurring within that period.

(b) beyond the amount made available under sub-paragraph (a), the Contracting Parties shall make available public funds according to the formula specified in Article IV.

2. (a) Compensation for nuclear damage in accordance with paragraph 1(a) shall be distributed equitably without discrimination on the basis of nationality, domicile or residence, provided that the law of the Installation State may, subject to obligations of that State under other conventions on nuclear liability, exclude nuclear damage suffered in a non-Contracting State.

(b) Compensation for nuclear damage in accordance with paragraph 1(b), shall, subject to Articles V and XI.1(b), be distributed equitably without discrimination on the basis of nationality, domicile or residence.

3. If the nuclear damage to be compensated does not require the total amount under paragraph 1(b), the contributions shall be reduced proportionally.
4. The interest and costs awarded by a court in actions for compensation of nuclear damage are payable in addition to the amounts awarded pursuant to paragraphs 1(a) and (b) and shall be proportionate to the actual contributions made pursuant to paragraphs 1(a) and (b), respectively, by the operator liable, the Contracting Party in whose territory the nuclear installation of that operator is situated, and the Contracting Parties together.

Article IV

Calculation of contributions

1. The formula for contributions according to which the Contracting Parties shall make available the public funds referred to in Article III.1(b) shall be determined as follows:

   (a) (i) the amount which shall be the product of the installed nuclear capacity of that Contracting Party multiplied by 300 SDRs per unit of installed capacity; and

   (ii) the amount determined by applying the ratio between the United Nations rate of assessment for that Contracting Party as assessed for the year preceding the year in which the nuclear incident occurs, and the total of such rates for all Contracting Parties to 10% of the sum of the amounts calculated for all Contracting Parties under sub-paragraph (i).

   (b) Subject to sub-paragraph (c), the contribution of each Contracting Party shall be the sum of the amounts referred to in sub-paragraphs (a)(i) and (ii), provided that States on the minimum United Nations rate of assessment with no nuclear reactors shall not be required to make contributions.

   (c) The maximum contribution which may be charged per nuclear incident to any Contracting Party, other than the Installation State, pursuant to sub-paragraph (b) shall not exceed its specified percentage of the total of contributions of all Contracting Parties determined pursuant to sub-paragraph (b). For a particular Contracting Party, the specified percentage shall be its UN rate of assessment expressed as a percentage plus 8 percentage points. If, at the time an incident occurs, the total installed capacity represented by the Parties to this Convention is at or above a level of 625,000 units, this percentage shall be increased by one percentage point. It shall be increased by one additional percentage point for each increment of 75,000 units by which the capacity exceeds 625,000 units.

2. The formula is for each nuclear reactor situated in the territory of the Contracting Party, 1 unit for each MW of thermal power. The formula shall be calculated on the basis of the thermal power of the nuclear reactors shown at the date of the nuclear incident in the list established and kept up to date in accordance with Article VIII.
3. For the purpose of calculating the contributions, a nuclear reactor shall be taken into account from that date when nuclear fuel elements have been first loaded into the nuclear reactor. A nuclear reactor shall be excluded from the calculation when all fuel elements have been removed permanently from the reactor core and have been stored safely in accordance with approved procedures.

Article V

Geographical scope

1. The funds provided for under Article III.1(b) shall apply to nuclear damage which is suffered:

   (a) in the territory of a Contracting Party; or

   (b) in or above maritime areas beyond the territorial sea of a Contracting Party:

      (i) on board or by a ship flying the flag of a Contracting Party, or on board or by an aircraft registered in the territory of a Contracting Party, or on or by an artificial island, installation or structure under the jurisdiction of a Contracting Party; or

      (ii) by a national of a Contracting Party;

   excluding damage suffered in or above the territorial sea of a State not Party to this Convention; or

   (c) in or above the exclusive economic zone of a Contracting Party or on the continental shelf

of a Contracting Party in connection with the exploitation or the exploration of the natural resources of that exclusive economic zone or continental shelf;

provided that the courts of a Contracting Party have jurisdiction pursuant to Article XIII.

2. Any signatory or acceding State 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 1(b)(ii), individuals or certain categories thereof, considered under its law as having their habitual residence in its territory, are assimilated to its own nationals.
3. 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.

CHAPTER 3

ORGANIZATION OF SUPPLEMENTARY FUNDING

Article VI

Notification of nuclear damage

Without prejudice to obligations which Contracting Parties may have under other international agreements, the Contracting Party whose courts have jurisdiction shall inform the other Contracting Parties of a nuclear incident as soon as it appears that the damage caused by such incident exceeds, or is likely to exceed, the amount available under Article III.1(a) and that contributions under Article III.1(b) may be required. The Contracting Parties shall without delay make all the necessary arrangements to settle the procedure for their relations in this connection.

Article VII

Call for funds

1. Following the notification referred to in Article VI, and subject to Article X.3, the Contracting Party whose courts have jurisdiction shall request the other Contracting Parties to make available the public funds required under Article III.1(b) to the extent and when they are actually required and shall have exclusive competence to disburse such funds.
2. Independently of existing or future regulations concerning currency or transfers, Contracting Parties shall authorize the transfer and payment of any contribution provided pursuant to Article III.1(b) without any restriction.

Article VIII

List of nuclear installations

1. Each Contracting State shall, at the time when it deposits its instrument of ratification, acceptance, approval or accession, communicate to the Depositary a complete listing of all nuclear installations referred to in Article IV.3. The listing shall contain the necessary particulars for the purpose of the calculation of contributions.
2. Each Contracting State shall promptly communicate to the Depositary 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 when nuclear material will be introduced into the installation.
3. If a Contracting Party is of the opinion that the particulars, or any modification to be made to the list communicated by a Contracting State pursuant to paragraphs 1 and 2, do not comply with the provisions, it may raise objections thereto by addressing them to the Depositary within three months from the date on which it has received notice pursuant to paragraph 5. The Depositary shall forthwith communicate this objection to the State to whose information the objection has been raised. Any unresolved differences shall be dealt with in accordance with the dispute settlement procedure laid down in Article XVI.
4. The Depositary shall maintain, update and annually circulate to all Contracting States the list of nuclear installations established in accordance with this Article. Such list shall consist of all the particulars and modifications referred to in this Article, it being understood that objections submitted under this Article shall have effect retrospective to the date on which they were raised, if they are sustained.
5. The Depositary shall give notice as soon as possible to each Contracting Party of the communications and objections which it has received pursuant to this Article.

Article IX

Rights of recourse

1. Each Contracting Party shall enact legislation in order to enable both the Contracting Party in whose territory the nuclear installation of the operator liable is situated and the other Contracting Parties who have paid contributions referred to in Article III.1(b), to benefit from the operator's right of recourse to the extent that he has such a right under either one of the Conventions referred to in Article I or national legislation mentioned in Article II.1(b) and to the extent that contributions have been made by any of the Contracting Parties.
2. The legislation of the Contracting Party in whose territory the nuclear installation of the operator liable is situated may provide for the recovery of public funds made available under this Convention from such operator if the damage results from fault on his part.
3. The Contracting Party whose courts have jurisdiction may exercise the rights of recourse provided for in paragraphs 1 and 2 on behalf of the other Contracting Parties which have contributed.

Article X

Disbursements, proceedings

1. The system of disbursements by which the funds required under Article III.1 are to be made available and the system of apportionment thereof shall be that of the Contracting Party whose courts have jurisdiction.
2. 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 and that Contracting Parties may intervene in the proceedings against the operator liable.
3. No Contracting Party shall be required to make available the public funds referred to in Article III.1(b) if claims for compensation can be satisfied out of the funds referred to in Article III.1(a).

Article XI

Allocation of funds

The funds provided under Article III.1(b) shall be distributed as follows:

1. (a) 50% of the funds shall be available to compensate claims for nuclear damage suffered in or outside the Installation State;
   (b) 50% of the funds shall be available to compensate claims for nuclear damage suffered outside the territory of the Installation State to the extent that such claims are uncompensated under sub-paragraph (a).
   (c) In the event the amount provided pursuant to Article III.1(a) is less than 300 million SDRs:
      (i) the amount in paragraph 1(a) shall be reduced by the same percentage as the percentage by which the amount provided pursuant to Article III.1(a) is less than 300 million SDRs; and
      (ii) the amount in paragraph 1(b) shall be increased by the amount of the reduction calculated pursuant to sub-paragraph (i).
2. If a Contracting Party, in accordance with Article III.1(a), has ensured the availability without discrimination of an amount not less than 600 million SDRs, which has been specified to the Depositary prior to the nuclear incident, all funds referred to in Article III.1(a) and (b) shall, notwithstanding paragraph 1, be made available to compensate nuclear damage suffered in and outside the Installation State.

CHAPTER 4

EXERCISE OF OPTIONS

Article XII

1. Except insofar as this Convention otherwise provides, each Contracting Party may exercise the powers vested in it by virtue of the Vienna Convention or 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 III.1(b) be made available.
2. Nothing in this Convention shall prevent any Contracting Party from making provisions outside the scope of the Vienna or the Paris Convention and of this Convention, provided that such provision shall not involve any further obligation on the part of the other Contracting Parties, and provided that damage in a Contracting Party having no nuclear installations within its territory shall not be excluded from such further compensation on any grounds of lack of reciprocity.

3. (a) Nothing in this Convention shall prevent Contracting Parties from entering into regional or other agreements with the purpose of implementing their obligations under Article III.1(a) or providing additional funds for the compensation of nuclear damage, provided that this shall not involve any further obligation under this Convention for the other Contracting Parties.
   (b) A Contracting Party intending to enter into any such agreement shall notify all other Contracting Parties of its intention. Agreements concluded shall be notified to the Depositary.

CHAPTER 5

JURISDICTION AND APPLICABLE LAW

Article XIII

Jurisdiction

1. Except as otherwise provided in this Article, jurisdiction over actions concerning nuclear damage from a nuclear incident shall lie only with the courts of the Contracting Party within which the nuclear incident occurs.
2. Where a nuclear incident occurs within the area of the exclusive economic zone of a Contracting Party or, if such a zone has not been established, in an area not exceeding the limits of an exclusive economic zone, were one to be established by that Party, jurisdiction over actions concerning nuclear damage from that nuclear incident shall, for the purposes of this Convention, lie only with the courts of that Party. The preceding sentence shall apply if that Contracting Party has notified the Depositary of such area prior to the nuclear incident. Nothing in this paragraph shall be interpreted as permitting the exercise of jurisdiction in a manner which is contrary to the international law of the sea, including the United Nations Convention on the Law of the Sea. However, if the exercise of such jurisdiction is inconsistent with the obligations of that Party under Article XI of the Vienna Convention or Article XIII of the Paris Convention in relation to a State not Party to this Convention jurisdiction shall be determined according to those provisions.
3. Where a nuclear incident does not occur within the territory of any Contracting Party or within an area notified pursuant to paragraph 2, or where the place of a nuclear incident cannot be determined with certainty, jurisdiction over actions concerning nuclear damage from the nuclear incident shall lie only with the courts of the Installation State.
4. Where jurisdiction over actions concerning nuclear damage would lie with the courts of more than one Contracting Party, these Contracting Parties shall determine by agreement which Contracting Party's courts shall have jurisdiction.
5. A judgment that is no longer subject to ordinary forms of review entered by a court of a Contracting Party having jurisdiction shall be recognized 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.
6. A judgment which is recognized under paragraph 5 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. The merits of a claim on which the judgment has been given shall not be subject to further proceedings.
7. Settlements effected in respect of the payment of compensation out of the public funds referred to in Article III.1(b) in accordance with the conditions established by national legislation shall be recognized by the other Contracting Parties.

Article XIV

Applicable law

1. Either the Vienna Convention or the Paris Convention or the Annex to this Convention, as appropriate, shall apply to a nuclear incident to the exclusion of the others.
2. Subject to the provisions of this Convention, the Vienna Convention or the Paris Convention, as appropriate, the applicable law shall be the law of the competent court.

Article XV

Public international law

This Convention shall not affect the rights and obligations of a Contracting Party under the general rules of public international law.

CHAPTER 6

DISPUTE SETTLEMENT

Article XVI

1. In the event of a dispute between Contracting Parties concerning the interpretation or application of this Convention, the parties to the dispute shall consult with a view to the settlement of the dispute by negotiation or by any other peaceful means of settling disputes acceptable to them.
2. If a dispute of this character referred to in paragraph 1 cannot be settled within six months from the request for consultation pursuant to paragraph 1, it shall, at the request of any party to such dispute, be submitted to arbitration or referred to the International Court of Justice for decision. Where a dispute is submitted to arbitration, if, within six months from the date of the request, the parties to the dispute are unable to agree on the organization of the arbitration, a party may request the President of the International Court of Justice or the Secretary-General of the United Nations to appoint one or more arbitrators. In cases of conflicting requests by the parties to the dispute, the request to the Secretary-General of the United Nations shall have priority.
3. When ratifying, accepting, approving or acceding to this Convention, a State may declare that it does not consider itself bound by either or both of the dispute settlement procedures provided for in paragraph 2. The other Contracting Parties shall not be bound by a dispute settlement procedure provided for in paragraph 2 with respect to a Contracting Party for which such a declaration is in force.
4. A Contracting Party which has made a declaration in accordance with paragraph 3 may at any time withdraw it by notification to the Depositary.

CHAPTER 7

FINAL CLAUSES

Article XVII

Signature

This Convention shall be open for signature, by all States at the Headquarters of the International Atomic Energy Agency in Vienna from 29 September 1997 until its entry into force.

Article XVIII

Ratification, acceptance, approval

1. This Convention shall be subject to ratification, acceptance or approval by the signatory States. An instrument of ratification, acceptance or approval shall be accepted only from a State which is a Party to either the Vienna Convention or the Paris Convention, or a State which declares that its national law complies with the provisions of the Annex to this Convention, provided that, in the case of a State having on its territory a nuclear installation as defined in the Convention on Nuclear Safety of 17 June 1994, it is a Contracting State to that Convention.
2. The instruments of ratification, acceptance or approval shall be deposited with the Director General of the International Atomic Energy Agency who shall act as the Depositary of this Convention.
3. A Contracting Party shall provide the Depositary with a copy, in one of the official languages of the United Nations, of the provisions of its national law referred to in Article II.1 and amendments thereto, including any specification made pursuant to Article III.1(a), Article XI.2, or a transitional amount pursuant to Article III.1(a)(ii). Copies of such provisions shall be circulated by the Depositary to all other Contracting Parties.

Article XIX

Accession

1. After its entry into force, any State which has not signed this Convention may accede to it. An instrument of accession shall be accepted only from a State which is a Party to either the Vienna Convention or the Paris Convention, or a State which declares that its national law complies with the provisions of the Annex to this Convention, provided that, in the case of a State having on its territory a nuclear installation as defined in the Convention on Nuclear Safety of 17 June 1994, it is a Contracting State to that Convention.
2. The instruments of accession shall be deposited with the Director General of the International Atomic Energy Agency.
3. A Contracting Party shall provide the Depositary with a copy, in one of the official languages of the

United Nations, of the provisions of its national law referred to in Article II.1 and amendments thereto, including any specification made pursuant to Article III.1(a), Article XI.2, or a transitional amount pursuant to Article III.1(a) (ii). Copies of such provisions shall be circulated by the Depositary to all other Contracting Parties.

Article XX

Entry into force

1. This Convention shall come into force on the ninetieth day following the date on which at least 5 States with a minimum of 400,000 units of installed nuclear capacity have deposited an instrument referred to in Article XVIII.
2. For each State which subsequently ratifies, accepts, approves or accedes to this Convention, it shall enter into force on the ninetieth day after deposit by such State of the appropriate instrument.

Article XXI

Denunciation

1. Any Contracting Party may denounce this Convention by written notification to the Depositary.
2. Denunciation shall take effect one year after the date on which the notification is received by the Depositary.

Article XXII

Cessation

1. Any Contracting Party which ceases to be a Party to either the Vienna Convention or the Paris Convention shall notify the Depositary thereof and of the date of such cessation. On that date such Contracting Party shall have ceased to be a Party to this Convention unless its national law complies with the provisions of the Annex to this Convention and it has so notified the Depositary and provided it with a copy of the provisions of its national law in one of the official languages of the United Nations. Such copy shall be circulated by the Depositary to all other Contracting Parties.
2. Any Contracting Party whose national law ceases to comply with the provisions of the Annex to this Convention and which is not a Party to either the Vienna Convention or the Paris Convention shall notify the Depositary thereof and of the date of such cessation. On that date such Contracting Party shall have ceased to be a Party to this Convention.
3. Any Contracting Party having on its territory a nuclear installation as defined in the Convention on Nuclear Safety which ceases to be Party to that Convention shall notify the depositary thereof and of the date of such cessation. On that date, such Contracting Party shall, notwithstanding paragraphs 1 and 2, have ceased to be a Party to the present Convention.

Article XXIII

Continuance of prior rights and obligations

Notwithstanding denunciation pursuant to Article XXI or cessation pursuant to Article XXII, the provisions of this Convention shall continue to apply to any nuclear damage caused by a nuclear incident which occurs before such denunciation or cessation.

Article XXIV

Revision and amendments

1. The Depositary, after consultations with the Contracting Parties, may convene a conference for the purpose of revising or amending this Convention.
2. The Depositary shall convene a conference of Contracting Parties for the purpose of revising or amending this Convention at the request of not less than one-third of all Contracting Parties.

Article XXV

Amendment by simplified procedure

1. A meeting of the Contracting Parties shall be convened by the Depositary to amend the compensation amounts referred to in Article III.1(a) and (b) or categories of installations including contributions payable for them, referred to in Article IV.3, if one-third of the Contracting Parties express a desire to that effect.
2. Decisions to adopt a proposed amendment shall be taken by vote. Amendments shall be adopted if no negative vote is cast.
3. Any amendment adopted in accordance with paragraph 2 shall be notified by the Depositary to all Contracting Parties. The amendment shall be considered accepted if within a period of 36 months after it has been notified, all Contracting Parties at the time of the adoption of the amendment have communicated their acceptance to

the Depositary. The amendment shall enter into force for all Contracting Parties 12 months after its acceptance.

4. If, within a period of 36 months from the date of notification for acceptance the amendment has not been accepted in accordance with paragraph 3, the amendment shall be considered rejected.
5. When an amendment has been adopted in accordance with paragraph 2 but the 36 months period for its acceptance has not yet expired, a State which becomes a Party to this Convention during that period shall be bound by the amendment if it comes into force. A State which becomes a Party to this Convention after that period shall be bound by any amendment which has been accepted in accordance with paragraph 3. In the cases referred to in the present paragraph, a Contracting Party shall be bound by an amendment when that amendment enters into force, or when this Convention enters into force for that Contracting Party, whichever date is the later.

Article XXVI

Functions of the Depositary

In addition to functions in other Articles of this Convention, the Depositary shall promptly notify Contracting Parties and all other States as well as the Secretary-General of the Organization for Economic Co-operation and Development of:

(a) each signature of this Convention;
(b) each deposit of an instrument of ratification, acceptance, approval or accession concerning this Convention;
(c) the entry into force of this Convention;
(d) declarations received pursuant to Article XVI;
(e) any denunciation received pursuant to Article XXI, or notification received pursuant to Article XXII;
(f) any notification under paragraph 2 of Article XIII;
(g) other pertinent notifications relating to this Convention.

Article XXVII

Authentic texts

The original of this Convention, of which Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Director General of the International Atomic Energy Agency who shall send certified copies thereof to all States.

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

DONE at Vienna, this twelfth day of September, one thousand nine hundred ninety-seven.

13.2.1 Annex

A Contracting Party which is not a Party to any of the Conventions mentioned in Article I(a) or (b) of this Convention shall ensure that its national legislation is consistent with the provisions laid down in this Annex insofar as those provisions are not directly applicable within that Contracting Party. A Contracting Party having no nuclear installation on its territory is required to have only that legislation which is necessary to enable such a Party to give effect to its obligations under this Convention.

Article I

Definitions

1. In addition to the definitions in Article I of this Convention, the following definitions apply for the purposes of this Annex:
   (a) 'Nuclear fuel' means any material which is capable of producing energy by a self-sustaining chain process of nuclear fission.
   (b) 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 reprocessing 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.

(c) '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.

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

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

(a) with respect to nuclear installations, criteria for such exclusion have been established by the Board of Governors of the International Atomic Energy Agency and any exclusion by an Installation State satisfies such criteria; and
(b) with respect to small quantities of nuclear material, maximum limits for the exclusion of such quantities have been established by the Board of Governors of the International Atomic Energy Agency and any exclusion by an Installation State is within such established limits.

The criteria for the exclusion of nuclear installations and the maximum limits for the exclusion of small quantities of nuclear material shall be reviewed periodically by the Board of Governors.

Article II

Conformity of legislation

1. The national law of a Contracting Party is deemed to be in conformity with the provisions of Articles III, IV, V and VII if it contained on 1 January 1995 and continues to contain provisions that:

(a) provide for strict liability in the event of a nuclear incident where there is substantial nuclear damage off the site of the nuclear installation where the incident occurs;
(b) require the indemnification of any person other than the operator liable for nuclear damage to the extent that person is legally liable to provide compensation; and
(c) ensure the availability of at least 1,000 million SDRs in respect of a civil nuclear power plant and at least 300 million SDRs in respect of other civil nuclear installations for such indemnification.

2. If in accordance with paragraph 1, the national law of a Contracting Party is deemed to be in conformity with the provision of Articles III, VI, V and VII, then that Party:

(a) may apply a definition of nuclear damage that covers loss or damage set forth in Article I(f) of this Convention and any other loss or damage to the extent that the loss or damage 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; or other ionizing radiation emitted by any source of radiation inside a nuclear installation, provided that such application does not affect the undertaking by that Contracting Party pursuant to Article III of this Convention; and
(b) may apply the definition of nuclear installation in paragraph 3 of this Article to the exclusion of the definition in Article I.1(b) of this Annex.

3. For the purpose of paragraph 2(b) of this Article, 'nuclear installation' means:

(a) any civil 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 any other purpose; and
(b) any civil facility for processing, reprocessing or storing:

(i) irradiated nuclear fuel; or
(ii) radioactive products or waste that:

(1) result from the reprocessing of irradiated nuclear fuel and contain significant amounts of fission products; or
(2) contain elements that have an atomic number greater than 92 in concentrations greater than 10 nano-curies per gram.

(c) any other civil facility for processing, reprocessing or storing nuclear material unless the Contracting Party determines the small extent of the risks involved with such an installation warrants the exclusion of such a facility from this definition.

4. Where that national law of a Contracting Party which is in compliance with paragraph 1 of this Article does not apply to a nuclear incident which occurs outside the territory of that Contracting Party, but over which the courts of that Contracting Party have jurisdiction pursuant to Article XIII of this Convention, Articles III–XI of the Annex shall apply and prevail over any inconsistent provisions of the applicable national law.

Article III

Operator liability

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

(i) after liability with regard to nuclear incidents involving the nuclear material has been assumed by the operator 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 the operator has taken charge of the nuclear material; or
(iii) after the operator 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) shall not apply where another operator or person is solely liable pursuant to sub-paragraph (b) or (c).

2. The Installation State may provide by legislation that, in accordance with such terms as may be specified in that legislation, a carrier of nuclear material or a person handling radioactive waste may, at such carrier or such person's 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. The liability of the operator for nuclear damage shall be absolute.
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 to be nuclear damage caused by that nuclear incident. Where, however, damage is caused jointly by a nuclear incident covered by the provisions of this Annex and by an emission of ionizing radiation not covered by it, nothing in this Annex 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. (a) No liability 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 insofar 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 caused directly due to a grave natural disaster of an exceptional character.
6. National law may relieve an operator wholly or partly from the obligation to pay compensation for nuclear damage suffered by a person if the operator proves the nuclear damage resulted wholly or partly from the gross negligence of that person or an act or omission of that person done with the intent to cause damage.
7. The operator shall not be liable for nuclear damage:
   (a) to the nuclear installation itself and any other nuclear installation, including a nuclear installation under construction, on the site where that installation is located; and
   (b) to any property on that same site which is used or to be used in connection with any such installation;
   (c) unless otherwise provided by national law, to the means of transport upon which the nuclear material involved was at the time of the nuclear incident. If national law provides that the operator is liable for such damage, compensation for that damage shall not have the effect of reducing the liability of the operator in respect of other damage to an amount less than either 150 million SDRs, or any higher amount established by the legislation of a Contracting Party.
8. Nothing in this Convention shall affect the liability outside this Convention of the operator for nuclear damage for which by virtue of paragraph 7(c) he is not liable under this Convention.
9. The right to compensation for nuclear damage may be exercised only against the operator liable, provided that national law may permit a direct right of action against any supplier of funds that are made available pursuant to provisions in national law to ensure compensation through the use of funds from sources other than the operator.
10. The operator shall incur no liability for damage caused by a nuclear incident outside the provisions of national law in accordance with this Convention.

Article IV

Liability amounts

1. Subject to Article III.1(a)(ii), the liability of the operator may be limited by the Installation State for any one nuclear incident, either:
   (a) to not less than 300 million SDRs; or
   (b) to not less than 150 million SDRs provided that in excess of that amount and up to at least 300 million SDRs public funds shall be made available by that State to compensate nuclear damage.
2. Notwithstanding paragraph 1, the Installation State, having regard to the nature of the nuclear installation or the nuclear substances involved and to the likely consequences of an incident originating therefrom, may establish a lower amount of liability of the operator, provided that

in no event shall any amount so established be less than 5 million SDRs, and provided that the Installation State ensures that public funds shall be made available up to the amount established pursuant to paragraph 1.

3. The amounts established by the Installation State of the liable operator in accordance with paragraphs 1 and 2, as well as the provisions of any legislation of a Contracting Party pursuant to Article III.7(c) shall apply wherever the nuclear incident occurs.

Article V

Financial security

1. (a) The operator shall be required to have and 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 IV. Where the liability of the operator is unlimited, the Installation State may establish a limit of the financial security of the operator liable provided that such limit is not lower than 300 million SDRs. The Installation State shall ensure the payment of claims for compensation for nuclear damage which have been established against the operator to the extent that yield of the financial security is inadequate to satisfy such claims, but not in excess of the amount of the financial security to be provided under this paragraph.

   (b) Notwithstanding sub-paragraph (a), the Installation State, having regard to the nature of the nuclear installation or the nuclear substances involved and to the likely consequences of an incident originating therefrom, may establish a lower amount of financial security of the operator, provided that in no event shall any amount so established be less than 5 million SDRs, and provided that the Installation State ensures the payment of claims for compensation for nuclear damage which have been established against the operator by providing necessary funds to the extent that the yield of insurance or other financial security is inadequate to satisfy such claims, and up to the limit provided in sub-paragraph (a).

2. Nothing in paragraph 1 shall require a Contracting Party or any of its constituent sub-divisions 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 or Article IV.1(b) shall be exclusively available for compensation due under this Annex.
4. No insurer or other financial guarantor shall suspend or cancel the insurance or other financial security provided pursuant to paragraph 1 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 VI

Carriage

1. With respect to a nuclear incident during carriage, the maximum amount of liability of the operator shall be governed by the national law of the Installation State.
2. A Contracting Party may subject carriage of nuclear material through its territory to the condition that the amount of liability of the operator be increased to an amount not to exceed the maximum amount of liability of the operator of a nuclear installation situated in its territory.
3. The provisions of paragraph 2 shall not apply to:

   (a) carriage by sea where, under international law, there is a right of entry in cases of urgent distress into ports of a Contracting Party or a right of innocent passage through its territory;

   (b) carriage by air where, by agreement or under international law, there is a right to fly over or land on the territory of a Contracting Party.

Article VII

Liability of more than one operator

1. 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. The Installation State may limit the amount of public funds made available per incident to the difference, if any, between the amounts hereby established and the amount established pursuant to Article IV.1.
2. 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 IV.
3. In neither of the cases referred to in paragraphs 1 and 2 shall the liability of any one operator exceed the amount applicable with respect to him pursuant to Article IV.
4. Subject to the provisions of paragraphs 1–3, 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 IV. The Installation State may limit the amount of public funds made available as provided for in paragraph 1.

Article VIII

Compensation under national law

1. For purposes of this Convention, the amount of compensation shall be determined without regard to any interest or costs awarded in a proceeding for compensation of nuclear damage.
2. Compensation for damage suffered outside the Installation State shall be provided in a form freely transferable among Contracting Parties.
3. 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 and rights of recourse by virtue of such systems shall be determined by the national 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.

Article IX

Period of extinction

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.
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 shall be computed from the date of that nuclear incident, but the period shall in no case, subject to legislation pursuant to paragraph 1, 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 shall not be exceeded.
4. If the national law of a Contracting Party provides for a period of extinction or prescription greater than ten years from the date of a nuclear incident, it shall contain provisions for the equitable and timely satisfaction of claims for loss of life or personal injury filed within ten years from the date of the nuclear incident.

Article X

Right of recourse

National law may provide that 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

Applicable law

Subject to the provisions of this Convention, the nature, form, extent and equitable distribution of compensation for nuclear damage caused by a nuclear incident shall be governed by the law of the competent court.

14
Joint Protocol

14.1 General Information

Joint Protocol relating to the Application of the Vienna Convention and the Paris Convention

Most common abbreviation(s)	**Joint Protocol**
Organisation	International Atomic Energy Agency (IAEA) and Organisation for Economic Co-operation and Development (OECD)
Reference	42 Nuc.L.Bull. 56 (1988) http://www.iaea.org/Publications/Documents/Conventions/index.html
Status	
Adoption	21 September 1988
Entry into force	27 April 1992
Signatories	Argentina, Belgium, Cameroon, Chile, Denmark, Egypt, Finland, France, Germany, Greece, Hungary, Italy, Morocco, Netherlands, Norway, Philippines, Portugal, Spain, Sweden, Switzerland, Turkey, United Kingdom
Ratifications (and entry into force dates)	Bulgaria (24 November 1994), Cameroon (27 April 1992), Chile (27 April 1992), Croatia (10 August 1994), Czech Republic (24 June 1994), Denmark (27 April 1992), Egypt (27 April 1992), Estonia (9 August 1994), Finland (3 January 1995), Germany (13 September 2001), Greece (16 August 2001), Hungary (27 April 1992), Italy (27 April 1992), Latvia (15 June 1995), Lithuania (20 December 1993), Netherlands (27 April 1992), Norway (27 April 1992), Poland (27 April 1992), Romania (29 March 1993), Saint Vincent & the Grenadines (18 December 2001), Slovakia (7 June 1995), Slovenia (27 April 1995), Sweden (27 April 1992), Turkey (26 June 2007), Ukraine (24 June 2000)
Literature	Pelzer, N, 'Inadequacies in the Civil Liability Regime evident after the Chernobyl Accident: the Response in the Joint Protocol of 1988', in Nuclear Accidents, Liabilities and Guarantees, Helsinki Syposium IAEA-NEA, Paris, 1983.

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Von Busekist, O, 'A bridge between two conventions on civil liability for nuclear damage: the Joint Protocol relating to the application of the Vienna convention and the Paris convention', Nuclear Law Bulletin, 1989, pp. 10–39.
Von Busekit, O, 'The Joint Protocol Relating to the Application of the Vienna and the Paris Conventions – One Step towards the Necessary Modernisation of the International Nuclear Civil Liability Regime', in Nuclear Inter Jura'89, AIDN/INLA, 1989, II-69.

14.2 Joint Protocol of 21 September 1997 Relating to the Application of the Vienna Convention and the Paris Convention

THE CONTRACTING PARTIES

HAVING REGARD to the Vienna Convention on Civil Liability for Nuclear Damage of 21 May 1963;

HAVING REGARD to the Paris Convention on Third Party Liability in the Field of Nuclear Energy of 29 July 1960 as amended by the Additional Protocol of 28 January 1964 and by the Protocol of 16 November 1982;

CONSIDERING that the Vienna Convention and the Paris Convention are similar in substance and that no State is at present a Party to both Conventions;

CONVINCED that adherence to either Convention by Parties to the other Convention could lead to difficulties resulting from the simultaneous application of both Conventions to a nuclear incident; and

DESIROUS to establish a link between the Vienna Convention and the Paris Convention by mutually extending the benefit of the special regime of civil liability for nuclear damage set forth under each Convention and to eliminate conflicts arising from the simultaneous applications of both Conventions to a nuclear incident;

HAVE AGREED as follows:

Article I

In this Protocol:

'Vienna Convention' means the Vienna Convention on Civil Liability for Nuclear Damage of 21 May 1963 and any amendment thereto which is in force for a Contracting Party to this Protocol;

'Paris Convention' means the Paris Convention on Third Party Liability in the Field of Nuclear Energy of 29 July 1960 and any amendment thereto which is in force for a Contracting Party to this Protocol.

Article II

For the purpose of this Protocol:

- The operator of a nuclear installation situated in the territory of a Party to the Vienna Convention shall be liable in accordance with that Convention for nuclear damage suffered in the territory of a Party to both the Paris Convention and this Protocol;
- The operator of a nuclear installation situated in the territory of a Party to the Paris Convention shall be liable in accordance with that Convention for nuclear damage suffered in the territory of a Party to both the Vienna Convention and this Protocol.

Article III

1. Either the Vienna Convention or the Paris Convention shall apply to a nuclear incident to the exclusion of the other.
2. In the case of a nuclear incident occurring in a nuclear installation, the applicable Convention shall be that to which the State is a Party within whose territory that installation is situated.
3. In the case of a nuclear incident outside a nuclear installation and involving nuclear material in the course of carriage, the applicable Convention shall be that to which the State is a Party within whose territory the nuclear installation is situated whose operator is liable pursuant to either Article II.1(b) and (c) of the Vienna Convention or Article IV(a) and (b) of the Paris Convention.

Article IV

1. Articles I–XV of the Vienna Convention shall be applied, with respect to the Contracting Parties

to this Protocol which are Parties to the Paris Convention, in the same manner as between Parties to the Vienna Convention.
2. Articles I–XIV of the Paris Convention shall be applied, with respect to the Contracting Parties to this Protocol which are Parties to the Vienna Convention, in the same manner as between Parties to the Paris Convention.

Article V

This Protocol shall be open for signature, from 21 September 1988 until the date of its entry into force, at the Headquarters of the International Atomic Energy Agency by all States which have signed, ratified or acceded to either the Vienna Convention or the Paris Convention.

Article VI

1. This Protocol is subject to ratification, acceptance, approval or accession. Instruments of ratification, acceptance or approval shall only be accepted from States party to either the Vienna Convention or the Paris Convention. Any such State which has not signed this Protocol may accede to it.
2. The instruments of ratification, acceptance, approval or accession shall be deposited with the Director General of the International Atomic Energy Agency, who is hereby designated as the depositary of this Protocol.

Article VII

1. This Protocol shall come into force three months after the date of deposit of instruments of ratification, acceptance, approval or accession by at least five States Party to the Vienna Convention and five States Party to the Paris Convention. For each State ratifying, accepting, approving or acceding to this Protocol after the deposit of the above- mentioned instruments this Protocol shall enter into force three months after the date of deposit of the instrument of ratification, acceptance, approval or accession.
2. This Protocol shall remain in force as long as both the Vienna Convention and the Paris Convention are in force.

Article VIII

1. Any Contracting Party may denounce this Protocol by written notification to the depositary.
2. Denunciation shall take effect one year after the date on which the notification is received by the depositary.

Article IX

1. Any Contracting Party which ceases to be a Party to either the Vienna Convention or the Paris Convention shall notify the depositary of the termination of the application of that Convention with respect to it and of the date such termination takes effect.
2. This Protocol shall cease to apply to a Contracting Party which has terminated application of either the Vienna Convention or the Paris Convention on the date such termination takes effect.

Article X

The depositary shall promptly notify Contracting Parties and States invited to the Conference on the relationship between the Paris Convention and the Vienna Convention as well as the Secretary General of the Organisation for Economic Co-operation and Development of:

- Each signature of this Protocol;
- Each deposit of an instrument of ratification, acceptance, approval or accession concerning this Protocol;
- The entry into force of this Protocol;
- Any denunciation; and
- Any information received pursuant to Article IX.

Article XI

The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the depositary, who shall send certified copies to Contracting Parties and States invited to the Conference on the relationship between the Paris Convention and the Vienna Convention as well as the Secretary General of the Organisation for Economic Co- operation and Development.

IN WITNESS WHEREOF the undersigned being duly authorized by their respective Governments for that purpose have signed the present Joint Protocol.

DONE at Vienna this twenty-first day of September, one thousand nine hundred and eighty-eight.

15
Nuclear

15.1 General Information

Convention relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material

Most common abbreviation(s)	**NUCLEAR, NUCLEAR 1971**
Organisation	International Maritime Organization (IMO) – International Atomic Energy Agency (IAEA) – Organisation for Economic Co-operation and Development (OECD)
Reference	974 UNTS 255 http://www.un.org/Depts/Treaty
Status	
Adoption	17 December 1971
Entry into force	15 July 1975
State Parties	Argentina, Belgium, Bulgaria, Denmark, Dominica, Finland, France, Gabon, Germany, Italy, Latvia, Liberia, Netherlands, Norway, Spain, Sweden, Yemen
Literature	LILAR, A (ed), International legal conference on maritime carriage of nuclear substances [held in Brussels form 29 Nov. to 2 Dec.] 1971: final act of the conference with attachment including the text of the adopted Convention, International Atomic Energy Agency, Inter-Governmental Maritime Consultative Organization, European Nuclear Energy Agency of OECD, London, 1972, 39 p. X, Maritime carriage of nuclear materials: proceedings of a Symposium on maritime carriage of nuclear materials/jointly organized by the International Atomic Energy Agency and the OECD Nuclear Energy Agency with the collaboration of FORATOM, and held in Stockholm, 18–22 June 1972, International Atomic Energy Agency publications, Vienna, 1973, 418 p.

15.2 Convention of 17 December 1971 Relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material

Adopted at Brussels on 17 December 1971

The High Contracting Parties,

Considering that the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy and its Additional Protocol of 28 January 1964 (hereinafter referred to as 'the Paris Convention') and the Vienna Convention of 21 May 1963 on Civil Liability for Nuclear Damage (hereinafter referred to as 'the Vienna Convention') provide that, in the case of damage caused by a nuclear incident occurring in the course of maritime carriage of nuclear material covered by such Conventions, the operator of a nuclear installation is the person liable for such damage,

Considering that similar provisions exist in the national law in force in certain States,

Considering that the application of any preceding international Convention in the field of maritime transport is however maintained,

Desirous of ensuring that the operator of a nuclear installation will be exclusively liable for damage caused by a nuclear incident occurring in the course of maritime carriage of nuclear material,

Have agreed as follows:

Article I

Any person who by virtue of an international convention or national law applicable in the field or maritime transport might be held liable for damage caused by a nuclear incident shall be exonerated from such liability:

(a) if the operator of a nuclear installation is liable for such damage under either the Paris or the Vienna Convention, or
(b) if the operator of a nuclear installation is liable for such damage by virtue of a national law governing the liability for such damage, provided that such law is in all respects as favourable to persons who may suffer damage as either the Paris or the Vienna Convention.

Article II

1. The exoneration provided for in Article I shall also apply in respect of damage caused by a nuclear incident:

   (a) to the nuclear installation itself or to any property on the site of that installation which is used or to be used in connexion with that installation, or
   (b) to the means of transport upon which the nuclear material involved was at the time of the nuclear incident, for which the operator of the nuclear installations is not liable because his liability for such damage has been excluded pursuant to the provisions of either the Paris or the Vienna Convention, or, in cases referred to in Article I(b), by equivalent provisions of the national law referred to therein.

2. The provisions of paragraph 1 shall not however, affect the liability of any individual who has caused the damage by an act or omission done with intent to cause damage.

Article III

No provisions of the present Convention shall affect the liability of the operator of a nuclear ship in respect of damage caused by a nuclear incident involving the nuclear fuel of or radioactive products or waste produced in such ship.

Article IV

The present Convention shall supersede any international Conventions in the field of maritime transport which, at the date on which the present Convention is opened of signature, are in force or open for signature, ratification or accession but only to the extent that such Conventions would be in conflict with it; however, nothing in this Article shall affect the obligations of the Contracting Parties to the present Convention to non-Contracting States arising under such international Conventions.

Article V

1. The present Convention shall be opened for signature in Brussels and shall remain open for signature in London at the Headquarters of the Inter-Governmental Maritime Consultative Organization (hereinafter referred to as 'the

Organizations') until 31 December 1972 and shall thereafter remain open for accession.

2. States Members of the United Nations or any of the Specialized Agencies or of the International Atomic Energy or Parties to the Statute of the International Court of Justice may become Parties to the present Convention by:
   (a) signature without reservation as to ratification, acceptance or approval;
   (b) signature subject to ratification, acceptance or approval followed by ratification, acceptance or approval; or
   (c) accession.
3. Ratification, acceptance, approval or accession shall be effected by the deposit of a formal instrument to that effect with the Secretary-General of the Organization.

Article VI

1. The present Conventions shall enter into force on the ninetieth day following the date on which five States have either signed it without reservation as to ratification, acceptance or approval or have deposited instruments of ratification, acceptance, approval or accession with the Secretary-General of the Organization.
2. For any State which subsequently signs the present Convention without reservation as to ratification, acceptance or approval, or deposits its instrument of ratification, acceptance, approval or accession, the Convention shall come into force on the ninetieth day after the date of such signature or deposit.

Article VII

1. The present Convention may be denounced by any Contracting Party to it at any time after the date on which the Convention comes into force for that State.
2. Denunciation shall be effected by a notification in writing delivered to the Secretary-General of the Organization.
3. A denunciation shall take effect one year, or such longer period as may be specified in the notification, after its receipt by the Secretary-General of the Organization.
4. Notwithstanding a denunciation by a Contracting Party pursuant to this Article the provisions of the present Convention shall continue to apply to any damage caused by a nuclear incident occurring before the denunciation takes effect.

Article VIII

1. The United Nations where it is the administering authority for a territory, or any Contracting Party to the present Convention responsible for the international relations of a territory, may at any time by notification in writing to the Secretary-General of the Organization declare that the present Convention shall extend to such territory.
2. The present Convention shall, from the date of receipt of the notification or from such other date as may be specified in the notification, extend to the territory named therein.
3. The United Nations, or any Contracting Party which had made a declaration under paragraph 1 of this Article may at any time after the date on which the Convention has been so extended to any territory declare by notification in writing to the Secretary-General of the Organization that the present Convention shall cease to extend to any such territory named in the notification.
4. The present Convention shall cease to extend to any territory mentioned in such notification one year, or such longer period as may be specified therein, alter the date of receipt of the notification by the Secretary-General of the Organization.

Article IX

1. A Conference for the purpose of revising or amending the present Convention may be convened by the Organization.
2. The Organization shall convene a Conference of the Contracting Parties to the present Convention for revising or amending it at the request of not less than one-third of the Contracting Parties.

Article X

A Contracting Party may make reservations corresponding to those which it has validly made to the Paris or Vienna Convention. A reservation may be made at the time of signature, ratification, acceptance, approval or accession.

Article XI

1. The present Convention shall be deposited with the Secretary-General of the Organization.
2. The Secretary-General of the Organization shall:

   (a) inform all States which have signed or acceded to the present Convention of:

      (i) each new signature and each deposit of an instrument together with the date thereof;
      (ii) any reservation made in conformity with the present Convention;
      (iii) the date of entry into force of the present Convention;
      (iv) any denunciation of the present Convention and the date on which it takes effect;
      (v) the extension of the present Convention to any territory under paragraph 1 of Article VIII and of the termination of any such extension under the provisions of paragraph 4 of that Article stating in each case the date on which the present Convention has been or will cease to be so extended;

   (b) transmit certified copies of the present Convention to all Signatory States and to all States which have acceded to the present Convention.

3. As soon as the present Convention comes into force, a certified, true copy thereof shall be transmitted by the Secretary-General of the Organization to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

Article XII

The present Convention is established in a single original in the English and French languages, both texts being equally authentic. Official translations in the Russian and Spanish languages shall be prepared by the Secretariat of the Organization and deposited with the signed original.

In Witness Whereof the undersigned being duly authorized by their respective Governments for that purpose have signed the present Convention.

Done at Brussels this seventeenth day of December 1971.

Part VI
Limitation of Liability

16
LLMC

16.1 General Information

Convention of 19 November 1976 on Limitation of Liability for Maritime Claims
Protocol of 2 May 1996 to amend the Convention on Limitation of Liability for Maritime Claims

Most common abbreviation(s)	**LLMC** **LLMC 1976** **LLMC 1996**
Organisation	International Maritime Organization (IMO)
Reference	LLMC 1976: 1456 UNTS 221 LLMC 1996: RMC I.2.340 II.2.340 http://www.admiraltylawguide.com/
Status	
Adoption	LLMC 1976: 19 November 1976 LLMC 1996: 2 May 1996
Entry into force	LLMC 1976: 1 December 1986 LLMC 1996: 13 May 2004
State Parties	LLMC 1976: Albania, Algeria, Australia, Azerbaijan, Bahamas, Barbados, Belgium, Benin, Bulgaria, Congo, Cook Islands, Croatia, Cyprus, Dominica, Egypt, Equatorial Guinea, Estonia, France, Georgia, Greece, Guyana, India, Ireland, Jamaica, Kiribati, Latvia, Liberia, Lithuania, Luxembourg, Marshall Islands, Mauritius, Mexico, Netherlands, New Zealand, Nigeria, Poland, Romania, Saint Lucia, Samoa, Sierra Leone, Singapore, Switzerland, Syrian Arab Republic, Tonga, Trinidad & Tobago, Turkey, United Arab Emirates, Vanuatu, Yemen, Hong Kong (China) LLMC 1996: Albania, Australia, Bulgaria, Cook Islands, Croatia, Cyprus, Denmark, Finland, France, Germany, Jamaica, Japan, Latvia, Lithuania, Luxembourg, Malta, Marshall Islands, Norway, Romania, Russian Federation, Saint Lucia, Samoa, Sierra Leone, Spain, Sweden, Syrian Arab Republic, Tonga, United Kingdom, Faroe Islands
Literature	Chen, Xia, Limitation of liability for maritime claims: a study of U.S. law, Chinese law and international conventions, Kluwer Law International, The Hague, 2001, 168 p.

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Griggs, P & Williams, R & Farr, J, Limitation of liability for maritime claims, Lloyd's of London Press, London, 2005, 622 p.
Isaacs, M, 'A critical defect in the Limitation of Shipowners' Liability Act: the exclusion of the master and crew', Tulane maritime law journal, 2002, pp. 335–357.
Vlacic, P, 'Monetary Limitations of Liability: for how long', Il diritto marittimo: rivista trimestrale di dottrina giurisprudenza legislazi one italiana e straniera, 2006, pp. 438–450.

16.2 Convention of 19 November 1976 on Limitation of Liability for Maritime Claims

THE STATES PARTIES TO THIS CONVENTION,

HAVING RECOGNIZED the desirability of determining by agreement certain uniform rules relating to the limitation of liability for maritime claims,

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

CHAPTER 1

THE RIGHT OF LIMITATION

Article I

Persons entitled to limit liability

1. Shipowners and salvors, as hereinafter defined, may limit their liability in accordance with the rules of this Convention for claims set out in Article II.
2. The term 'shipowner' shall mean the owner, charterer, manager and operator of a seagoing ship.
3. Salvor shall mean any person rendering services in direct connexion with salvage operations. Salvage operations shall also include operations referred to in Article II, paragraph 1(d), (e) and (f).
4. If any claims set out in Article II are made against any person for whose act, neglect or default the shipowner or salvor is responsible, such person shall be entitled to avail himself of the limitation of liability provided for in this Convention.
5. In this Convention the liability of a shipowner shall include liability in an action brought against the vessel itself.
6. An insurer of liability for claims subject to limitation in accordance with the rules of this Convention shall be entitled to the benefits of this Convention to the same extent as the assured himself.
7. The act of invoking limitation of liability shall not constitute an admission of liability.

Article II

Claims subject to limitation

1. Subject to Articles III and IV the following claims, whatever the basis of liability may be, shall be subject to limitation of liability:
   (a) claims in respect of loss of life or personal injury or loss of or damage to property (including damage to harbour works, basins and waterways and aids to navigation), occurring on board or in direct connexion with the operation of the ship or with salvage operations, and consequential loss resulting therefrom;
   (b) claims in respect of loss resulting from delay in the carriage by sea of cargo, passengers or their luggage;
   (c) claims in respect of other loss resulting from infringement of rights other than contractual rights, occurring in direct

connexion with the operation of the ship or salvage operations;

(d) claims in respect of the raising, removal, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship;

(e) claims in respect of the removal, destruction or the rendering harmless of the cargo of the ship;

(f) claims of a person other than the person liable in respect of measures taken in order to avert or minimize loss for which the person liable may limit his liability in accordance with this Convention, and further loss caused by such measures.

2. Claims set out in paragraph 1 shall be subject to limitation of liability even if brought by way of recourse or for indemnity under a contract or otherwise. However, claims set out under paragraph 1(d), (e) and (f) shall not be subject to limitation of liability to the extent that they relate to remuneration under a contract with the person liable.

Article III

Claims excepted from limitation

The rules of this Convention shall not apply to:

(a) claims for salvage or contribution in general average;

(b) claims for oil pollution damage within the meaning of the International Convention on Civil Liability for Oil Pollution Damage, dated 29 November 1969 or of any amendment or Protocol thereto which is in force;

(c) claims subject to any international convention or national legislation governing or prohibiting limitation of liability for nuclear damage;

(d) claims against the shipowner of a nuclear ship for nuclear damage;

(e) claims by servants of the shipowner or salvor whose duties are connected with the ship or the salvage operations, including claims of their heirs, dependants or other persons entitled to make such claims, if under the law governing the contract of service between the shipowner or salvor and such servants the shipowner or salvor is not entitled to limit his liability in respect of such claims, or if he is by such law only permitted to limit his liability to an amount greater than that provided for in Article VI.

Article IV

Conduct barring limitation

A person liable shall not be entitled to limit his liability if it is proved that the loss resulted from his personal act or omission, committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result.

Article V

Counterclaims

Where a person entitled to limitation of liability under the rules of this Convention has a claim against the claimant arising out of the same occurrence, their respective claims shall be set off against each other and the provisions of this Convention shall only apply to the balance, if any.

CHAPTER 2

LIMITS OF LIABILITY

Article VI

The general limits

1. The limits of liability for claims other than those mentioned in Article VII, arising on any distinct occasion, shall be calculated as follows:

(a) in respect of claims for loss of life or personal injury,

(i) 333,000 Units of Account for a ship with a tonnage not exceeding 500 tons,

(ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (i):

for each ton from 501 to 3,000 tons, 500 Units of Account;

for each ton from 3,001 to 30,000 tons, 333 Units of Account;

for each ton from 30,001 to 70,000 tons, 250 Units of Account; and

for each ton in excess of 70,000 tons, 167 Units of Account,

(b) in respect of any other claims,

(i) 167,000 Units of Account for a ship with a tonnage not exceeding 500 tons,

(ii) for a ship with a tonnage in excess thereof the following amount in addition to that mentioned in (i):

for each ton from 501 to 30,000 tons, 167 Units of Account;

for each ton from 30,001 to 70,000 tons, 125 Units of Account; and

for each ton in excess of 70,000 tons, 83 Units of Account.

2. Where the amount calculated in accordance with paragraph 1(a) is insufficient to pay the claims mentioned therein in full, the amount calculated in accordance with paragraph 1(b) shall be available for payment of the unpaid balance of claims under paragraph 1(a) and such unpaid balance shall rank rateably with claims mentioned under paragraph 1(b).
3. However, without prejudice to the right of claims for loss of life or personal injury according to paragraph 2, a State Party may provide in its national law that claims in respect of damage to harbour works, basins and waterways and aids to navigation shall have such priority over other claims under paragraph 1(b) as is provided by that law.
4. The limits of liability for any salvor not operating from any ship or for any salvor operating solely on the ship to, or in respect of which he is rendering salvage services, shall be calculated according to a tonnage of 1,500 tons.
5. For the purpose of this Convention the ship's tonnage shall be the gross tonnage calculated in accordance with the tonnage measurement rules contained in Annex I of the International Convention on Tonnage Measurement of Ships, 1969.

Article VII

The limit for passenger claims

1. In respect of claims arising on any distinct occasion for loss of life or personal injury to passengers of a ship, the limit of liability of the shipowner thereof shall be an amount of 46,666 Units of Account multiplied by the number of passengers which the ship is authorized to carry according to the ship's certificate, but not exceeding 25 million Units of Account.
2. For the purpose of this Article 'claims for loss of life or personal injury to passengers of a ship' shall mean any such claims brought by or on behalf of any person carried in that ship:

(a) under a contract of passenger carriage, or

(b) who, with the consent of the carrier, is accompanying a vehicle or live animals which are covered by a contract for the carriage of goods.

Article VIII

Unit of account

1. The Unit of Account referred to in Articles VI and VII is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in Articles VI and VII shall be converted into the national currency of the State in which limitation is sought, according to the value of that currency at the date the limitation fund shall have been constituted, payment is made, or security is given which under the law of that State is equivalent to such payment. The value of a national currency in terms of the Special Drawing Right, of a State Party which is a member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect at the date in question for its operations and transactions. The value of a national currency in terms of the Special Drawing Right, of a State Party which is not a member of the International Monetary Fund, shall be calculated in a manner determined by that State Party.
2. Nevertheless, those States which are not members of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 1 may, at the time of signature without reservation as to ratification, acceptance or approval or at the time of ratification, acceptance, approval or accession or at any time thereafter, declare that the limits of liability provided for in this Convention to be applied in their territories shall be fixed as follows:

(a) in respect of Article VI, paragraph 1(a) at an amount of:

(i) 5 million monetary units for a ship with a tonnage not exceeding 500 tons,

(ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (i):

for each ton from 501 to 3,000 tons, 7,500 monetary units;

for each ton from 3,001 to 30,000 tons, 5,000 monetary units;

for each ton from 30,001 to 70,000 tons, 3,750 monetary units; and

for each ton in excess of 70,000 tons, 2,500 monetary units; and

(b) in respect of Article VI, paragraph 1(b), at an amount of:

(i) 2.5 million monetary units for a ship with a tonnage not exceeding 500 tons,

(ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (i):

for each ton from 501 to 30,000 tons, 2,500 monetary units;

for each ton from 30,001 to 70,000 tons, 1,850 monetary units; and

for each ton in excess of 70,000 tons, 1,250 monetary units; and

(c) in respect of Article VII, paragraph 1, at an amount of 700,000 monetary units multiplied by the number of passengers which the ship is authorized to carry according to its certificate, but not exceeding 375 million monetary units.

Paragraphs 2 and 3 of Article VI apply correspondingly to sub-paragraphs (a) and (b) of this paragraph.

3. The monetary unit referred to in paragraph 2 corresponds to sixty-five and a half milligrammes of gold of millesimal fineness nine hundred. The conversion of the amounts referred to in paragraph 2 into the national currency shall be made according to the law of the State concerned.
4. The calculation mentioned in the last sentence of paragraph 1 and the conversion mentioned in paragraph 3 shall be made in such a manner as to express in the national currency of the State Party as far as possible the same real value for the amounts in Articles VI and VII as is expressed there in units of account. States Parties shall communicate to the depositary the manner of calculation pursuant to paragraph 1, or the result of the conversion in paragraph 3, as the case may be, at the time of the signature without reservation as to ratification, acceptance or approval, or when depositing an instrument referred to in Article XVI and whenever there is a change in either.

Article IX

Aggregation of claims

1. The limits of liability determined in accordance with Article VI shall apply to the aggregate of all claims which arise on any distinct occasion:
   (a) against the person or persons mentioned in paragraph 2 of Article I and any person for whose act, neglect or default he or they are responsible; or
   (b) against the shipowner of a ship rendering salvage services from that ship and the salvor or salvors operating from such ship and any person for whose act, neglect or default he or they are responsible; or
   (c) against the salvor or salvors who are not operating from a ship or who are operating solely on the ship to, or in respect of which, the salvage services are rendered and any person for whose act, neglect or default he or they are responsible.
2. The limits of liability determined in accordance with Article VII shall apply to the aggregate of all claims subject thereto which may arise on any distinct occasion against the person or persons mentioned in paragraph 2 of Article I in respect of the ship referred to in Article VII and any person for whose act, neglect or default he or they are responsible.

Article X

Limitation of liability without constitution of a limitation fund

1. Limitation of liability may be invoked notwithstanding that a limitation fund as mentioned in Article II has not been constituted. However, a State Party may provide in its national law that,

where an action is brought in its Courts to enforce a claim subject to limitation, a person liable may only invoke the right to limit liability if a limitation fund has been constituted in accordance with the provisions of this Convention or is constituted when the right to limit liability is invoked.

2. If limitation of liability is invoked without the constitution of a limitation fund, the provisions of Article XII shall apply correspondingly.
3. Questions of procedure arising under the rules of this Article shall be decided in accordance with the national law of the State Party in which action is brought.

CHAPTER 3

THE LIMITATION FUND

Article XI

Constitution of the fund

1. Any person alleged to be liable may constitute a fund with the Court or other competent authority in any State Party in which legal proceedings are instituted in respect of claims subject to limitation. The fund shall be constituted in the sum of such of the amounts set out in Articles VI and VII as are applicable to claims for which that person may be liable, together with interest thereon from the date of the occurrence giving rise to the liability until the date of the constitution of the fund. Any fund thus constituted shall be available only for the payment of claims in respect of which limitation of liability can be invoked.
2. A fund may be constituted, either by depositing the sum, or by producing a guarantee acceptable under the legislation of the State Party where the fund is constituted and considered to be adequate by the Court or other competent authority.
3. A fund constituted by one of the persons mentioned in paragraph 1(a), (b) or (c) or paragraph 2 of Article IX or his insurer shall be deemed constituted by all persons mentioned in paragraph 1(a), (b) or (c) or paragraph 2, respectively.

Article XII

Distribution of the fund

1. Subject to the provisions of paragraphs 1, 2 and 3 of Article VI and of Article VII, the fund shall be distributed among the claimants in proportion to their established claims against the fund.
2. If, before the fund is distributed, the person liable, or his insurer, has settled a claim against the fund such person shall, up to the amount he has paid, acquire by subrogation the rights which the person so compensated would have enjoyed under this Convention.
3. The right of subrogation provided for in paragraph 2 may also be exercised by persons other than those therein mentioned in respect of any amount of compensation which they may have paid, but only to the extent that such subrogation is permitted under the applicable national law.
4. Where the person liable or any other person establishes that he may be compelled to pay, at a later date, in whole or in part any such amount of compensation with regard to which such person would have enjoyed a right of subrogation pursuant to paragraphs 2 and 3 had the compensation been paid before the fund was distributed, the Court or other competent authority of the State where the fund has been constituted may order that a sufficient sum shall be provisionally set aside to enable such person at such later date to enforce his claim against the fund.

Article XIII

Bar to other actions

1. Where a limitation fund has been constituted in accordance with Article XI, any person having made a claim against the fund shall be barred from exercising any right in respect of such claim against any other assets of a person by or on behalf of whom the fund has been constituted.
2. After a limitation fund has been constituted in accordance with Article XI, any ship or other property, belonging to a person on behalf of whom the fund has been constituted, which has been arrested or attached within the jurisdiction of a State Party for a claim which may be raised against the fund, or any security given, may be released by order of the Court or other competent authority of such State. However, such release shall always be ordered if the limitation fund has been constituted:

   (a) at the port where the occurrence took place, or, if it took place out of port, at the first port of call thereafter; or

(b) at the port of disembarkation in respect of claims for loss of life or personal injury; or
(c) at the port of discharge in respect of damage to cargo; or
(d) in the State where the arrest is made.

3. The rules of paragraphs 1 and 2 shall apply only if the claimant may bring a claim against the limitation fund before the Court administering that fund and the fund is actually available and freely transferable in respect of that claim.

Article XIV

Governing law

Subject to the provisions of this Chapter the rules relating to the constitution and distribution of a limitation fund, and all rules of procedure in connexion therewith, shall be governed by the law of the State Party in which the fund is constituted.

CHAPTER 4

SCOPE OF APPLICATION

Article XV

1. This Convention shall apply whenever any person referred to in Article I seeks to limit his liability before the Court of a State Party or seeks to procure the release of a ship or other property or the discharge of any security given within the jurisdiction of any such State. Nevertheless, each State Party may exclude wholly or partially from the application of this Convention any person referred to in Article I who at the time when the rules of this Convention are invoked before the Courts of that State does not have his habitual residence in a State Party or does not have his principal place of business in a State Party or any ship in relation to which the right of limitation is invoked or whose release is sought and which does not at the time specified above fly the flag of a State Party.
2. A State Party may regulate by specific provisions of national law the system of limitation of liability to be applied to vessels which are:

   (a) according to the law of that State, ships intended for navigation on inland waterways
   (b) ships of less than 300 tons.

   A State Party which makes use of the option provided for in this paragraph shall inform the depositary of the limits of liability adopted in its national legislation or of the fact that there are none.

3. A State Party may regulate by specific provisions of national law the system of limitation of liability to be applied to claims arising in cases in which interests of persons who are nationals of other States Parties are in no way involved.
4. The Courts of a State Party shall not apply this Convention to ships constructed for, or adapted to, and engaged in, drilling:

   (a) when that State has established under its national legislation a higher limit of liability than that otherwise provided for in Article VI; or
   (b) when that State has become party to an International Convention regulating the system of liability in respect of such ships.

   In a case to which sub-paragraph (a) applies that State Party shall inform the depositary accordingly.

5. This Convention shall not apply to:

   (a) air-cushion vehicles;
   (b) floating platforms constructed for the purpose of exploring or exploiting the natural resources of the sea-bed or the subsoil thereof.

CHAPTER 5

FINAL CLAUSES

Article XVI

Signature, ratification and accession

1. This Convention shall be open for signature by all States at the Headquarters of the Inter-Governmental Maritime Consultative Organization (hereinafter referred to as 'the Organization') from 1 February 1977 until 31 December 1977 and shall thereafter remain open for accession.
2. All States may become parties to this Convention by:

   (a) signature without reservation as to ratification, acceptance or approval; or
   (b) signature subject to ratification, acceptance or approval followed by ratification, acceptance or approval; or
   (c) accession.

3. Ratification, acceptance, approval or accession shall be effected by the deposit of a formal

instrument to that effect with the Secretary-General of the Organization (hereinafter referred to as 'the Secretary-General').

Article XVII

Entry into force

1. This Convention shall enter into force on the first day of the month following one year after the date on which twelve States have either signed it without reservation as to ratification, acceptance or approval or have deposited the requisite instruments of ratification, acceptance, approval or accession.
2. For a State which deposits an instrument of ratification, acceptance, approval or accession, or signs without reservation as to ratification, acceptance or approval, in respect of this Convention after the requirements for entry into force have been met but prior to the date of entry into force, the ratification, acceptance, approval or accession or the signature without reservation as to ratification, acceptance or approval, shall take effect on the date of entry into force of the Convention or on the first day of the month following the ninetieth day after the date of the signature or the deposit of the instrument, whichever is the later date.
3. For any State which subsequently becomes a Party to this Convention, the Convention shall enter into force on the first day of the month following the expiration of ninety days after the date when such State deposited its instrument.
4. In respect of the relations between States which ratify, accept, or approve this Convention or accede to it, this Convention shall replace and abrogate the International Convention relating to the Limitation of the Liability of Owners of Sea-going Ships, done at Brussels on 10 October 1957, and the International Convention for the Unification of certain Rules relating to the Limitation of Liability of the Owners of Sea-going Vessels, signed at Brussels on 25 August 1924.

Article XVIII

Reservations

1. Any State may, at the time of signature, ratification, acceptance, approval or accession, reserve the right to exclude the application of Article II paragraph 1(d) and (e). No other reservations shall be admissible to the substantive provisions of this Convention.
2. Reservations made at the time of signature are subject to confirmation upon ratification, acceptance or approval.
3. Any State which has made a reservation to this Convention may withdraw it at any time by means of a notification addressed to the Secretary-General. Such withdrawal shall take effect on the date the notification is received. If the notification states that the withdrawal of a reservation is to take effect on a date specified therein, and such date is later than the date the notification is received by the Secretary-General, the withdrawal shall take effect on such later date.

Article XIX

Denunciation

1. This Convention may be denounced by a State Party at any time one year from the date on which the Convention entered into force for that Party.
2. Denunciation shall be effected by the deposit of an instrument with the Secretary-General.
3. Denunciation shall take effect on the first day of the month following the expiration of one year after the date of deposit of the instrument, or after such longer period as may be specified in the instrument.

Article XX

Revision and amendment

1. A Conference for the purpose of revising or amending this Convention may be convened by the Organization.
2. The Organization shall convene a Conference of the States Parties to this Convention for revising or amending it at the request of not less than one-third of the Parties.
3. After the date of the entry into force of an amendment to this Convention, any instrument of ratification, acceptance, approval or accession deposited shall be deemed to apply to the Convention as amended, unless a contrary intention is expressed in the instrument.

Article XXI

Revision of the limitation amounts and of Unit of account or monetary unit

1. Notwithstanding the provisions of Article XX, a Conference only for the purposes of altering the amounts specified in Articles VI and VII and in Article VIII, paragraph 2, or of substituting either or both of the Units defined in Article VIII, paragraphs 1 and 2, by other units shall be convened by the Organization in accordance with paragraphs 2 and 3 of this Article. An alteration of the amounts shall be made only because of a significant change in their real value.
2. The Organization shall convene such a Conference at the request of not less than one fourth of the States Parties.
3. A decision to alter the amounts or to substitute the Units by other units of account shall be taken by a two-thirds majority of the States Parties present and voting in such Conference.
4. Any State depositing its instrument of ratification, acceptance, approval or accession to the Convention, after entry into force of an amendment, shall apply the Convention as amended.

Article XXII

Depositary

1. This Convention shall be deposited with the Secretary-General.
2. The Secretary-General shall:
   (a) transmit certified true copies of this Convention to all States which were invited to attend the Conference on Limitation of Liability for Maritime Claims and to any other States which accede to this Convention;
   (b) inform all States which have signed or acceded to this Convention of:
      (i) each new signature and each deposit of an instrument and any reservation thereto together with the date thereof;
      (ii) the date of entry into force of this Convention or any amendment thereto;
      (iii) any denunciation of this Convention and the date on which it takes effect;
      (iv) any amendment adopted in conformity with Articles XX or XXI;
      (v) any communication called for by any Article of this Convention.
3. Upon entry into force of this Convention, a certified true copy thereof shall be transmitted by the Secretary-General to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

Article XXIII

Languages

This Convention is established in a single original in the English, French, Russian and Spanish languages, each text being equally authentic.

DONE AT LONDON this nineteenth day of November one thousand nine hundred and seventy-six.

IN WITNESS WHEREOF the undersigned being duly authorized for that purpose have signed this Convention.

16.3 Protocol of 2 May 1996 to Amend the Convention on Limitation of Liability for Maritime Claims

THE PARTIES TO THE PRESENT PROTOCOL,

CONSIDERING that it is desirable to amend the Convention on Limitation of Liability for Maritime Claims, done at London on 19 November 1976, to provide for enhanced compensation and to establish a simplified procedure for updating the limitation amounts,

HAVE AGREED as follows:

Article I

For the purposes of this Protocol:

1. 'Convention' means the Convention on Limitation of Liability for Maritime Claims, 1976.
2. 'Organization' means the International Maritime Organization.
3. 'Secretary-General' means the Secretary-General of the Organization.

Article II

Article III, subparagraph (a) of the Convention is replaced by the following text:

(a) claims for salvage, including, if applicable, any claim for special compensation under Article 14 of the International Convention on Salvage 1989, as amended, or contribution in general average;

Article III

Article VI, paragraph 1 of the Convention is replaced by the following text:

1. The limits of liability for claims other than those mentioned in Article VII, arising on any distinct occasion, shall be calculated as follows:

(a) in respect of claims for loss of life or personal injury,

(i) 2 million Units of Account for a ship with a tonnage not exceeding 2,000 tons,

(ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (i):

for each ton from 2,001 to 30,000 tons, 800 Units of Account;

for each ton from 30,001 to 70,000 tons, 600 Units of Account; and

for each ton in excess of 70,000 tons, 400 Units of Account,

(b) in respect of any other claims,

(i) 1 million Units of Account for a ship with a tonnage not exceeding 2,000 tons,

(ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (i):

for each ton from 2,001 to 30,000 tons, 400 Units of Account;

for each ton from 30,001 to 70,000 tons, 300 Units of Account; and

for each ton in excess of 70,000 tons, 200 Units of Account.

Article IV

Article VII, paragraph 1 of the Convention is replaced by the following text:
In respect of claims arising on any distinct occasion for loss of life or personal injury to passengers of a ship, the limit of liability of the shipowner thereof shall be an amount of 175,000 Units of Account multiplied by the number of passengers which the ship is authorized to carry according to the ship's certificate.

Article V

Article VIII, paragraph 2 of the Convention is replaced by the following text:

2. Nevertheless, those States which are not members of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 1 may, at the time of signature without reservation as to ratification, acceptance or approval or at the time of ratification, acceptance, approval or accession or at any time thereafter, declare that the limits of liability provided for in this Convention to be applied in their territories shall be fixed as follows:

(a) in respect of Article VI, paragraph 1 (a), at an amount of

(i) 30 million monetary units for a ship with a tonnage not exceeding 2,000 tons;

(ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (i):

for each ton from 2,001 to 30,000 tons, 12,000 monetary units;

for each ton from 30,001 to 70,000 tons, 9,000 monetary units; and

for each ton in excess of 70,000 tons, 6,000 monetary units; and

(b) in respect of Article VI, paragraph I (b), at an amount of:

(i) 15 million monetary units for a ship with a tonnage not exceeding 2,000 tons;

(ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (i):

for each ton from 2,001 to 30,000 tons, 6,000 monetary units;

for each ton from 30,001 to 70,000 tons, 4,500 monetary units; and

for each ton in excess of 70,000 tons, 3,000 monetary units; and

(c) in respect of Article VII, paragraph 1, at an amount of 2,625,000 monetary units

multiplied by the number of passengers which the ship is authorized to carry according to its certificate.

Paragraphs 2 and 3 of Article VI apply correspondingly to subparagraphs (a) and (b) of this paragraph.

Article VI

The following text is added as paragraph *3bis* in Article 15 of the Convention:
3bis Notwithstanding the limit of liability prescribed in paragraph 1 of Article VII, a State Party may regulate by specific provisions of national law the system of liability to be applied to claims for loss of life or personal injury to passengers of a ship, provided that the limit of liability is not lower than that prescribed in paragraph I of Article VII. A State Party which makes use of the option provided for in this paragraph shall inform the Secretary-General of the limits of liability adopted or of the fact that there are none.

Article VII

Article XVIII, paragraph 1 of the Convention is replaced by the following text:

1. Any State may, at the time of signature, ratification, acceptance, approval or accession, or at any time thereafter, reserve the right:

   (a) to exclude the application of Article II, paragraphs l(d) and (e);
   (b) to exclude claims for damage within the meaning of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 or of any amendment or protocol thereto.

   No other reservations shall be admissible to the substantive provisions of this Convention.

Article VIII

Amendment of limits

1. Upon the request of at least one half, but in no case less than six, of the States Parties to this Protocol, any proposal to amend the limits specified in Article VI, paragraph 1, Article VII, paragraph I and Article VIII, paragraph 2 of the Convention as amended by this Protocol shall be circulated by the Secretary-General to all Members of the Organization and to all Contracting States.
2. Any amendment proposed and circulated as above shall be submitted to the Legal Committee of the Organization (the Legal Committee) for consideration at a date at least six months after the date of its circulation.
3. All Contracting States to the Convention as amended by this Protocol, whether or not Members of the Organization, shall be entitled to participate in the proceedings of the Legal Committee for the consideration and adoption of amendments.
4. Amendments shall be adopted by a two-thirds majority of the Contracting States to the Convention as amended by this Protocol present and voting in the Legal Committee expanded as provided for in paragraph 3, on condition that at least one half of the Contracting States to the Convention as amended by this Protocol shall be present at the time of voting.
5. When acting on a proposal to amend the limits, the Legal Committee shall take into account the experience of incidents and, in particular, the amount of damage resulting therefrom, changes in the monetary values and the effect of the proposed amendment on the cost of insurance.
6.
   (a) No amendment of the limits under this article may be considered less than five years from the date on which this Protocol was opened for signature nor less than five years from the date of entry into force of a previous amendment under this article.
   (b) No limit may be increased so as to exceed an amount which corresponds to the limit laid down in the Convention as amended by this Protocol increased by six per cent per year calculated on a compound basis from the date on which this Protocol was opened for signature.
   (c) No limit may be increased so as to exceed an amount which corresponds to the limit laid down in the Convention as amended by this Protocol multiplied by three.
7. Any amendment adopted in accordance with paragraph 4 shall be notified by the Organization to all Contracting States. The amendment shall

be deemed to have been accepted at the end of a period of eighteen months after the date of notification, unless within that period not less than one-fourth of the States that were Contracting States at the time of the adoption of the amendment have communicated to the Secretary-General that they do not accept the amendment, in which case the amendment is rejected and shall have no effect.

8. An amendment deemed to have been accepted in accordance with paragraph 7 shall enter into force eighteen months after its acceptance.
9. All Contracting States shall be bound by the amendment, unless they denounce this Protocol in accordance with paragraphs I and 2 of Article XII at least six months before the amendment enters into force. Such denunciation shall take effect when the amendment enters into force.
10. When an amendment has been adopted but the eighteen-month period for its acceptance has not yet expired, a State which becomes a Contracting State during that period shall be bound by the amendment if it enters into force. A State which becomes a Contracting State after that period shall be bound by an amendment which has been accepted in accordance with paragraph 7. In the cases referred to in this paragraph, a State becomes bound by an amendment when that amendment enters into force, or when this Protocol enters into force for that State, if later.

Article IX

1. The Convention and this Protocol shall, as between the Parties to this Protocol, be read and interpreted together as one single instrument.
2. A State which is Party to this Protocol but not a Party to the Convention shall be bound by the provisions of the Convention as amended by this Protocol in relation to other States Parties hereto, but shall not be bound by the provisions of the Convention in relation to States Parties only to the Convention.
3. The Convention as amended by this Protocol shall apply only to claims arising out of occurrences which take place after the entry into force for each State of this Protocol.
4. Nothing in this Protocol shall affect the obligations of a State which is a Party both to the Convention and to this Protocol with respect to a State which is a Party to the Convention but not a Party to this Protocol.

Final Clauses

Article X

Signature, ratification, acceptance, approval and accession

1. This Protocol shall be open for signature at the Headquarters of the Organization from l October 1996 to 30 September 1997 by all States.

   Any State may express its consent to be bound by this Protocol by:

   (a) signature without reservation as to ratification, acceptance or approval; or
   (b) signature subject to ratification, acceptance or approval followed by ratification, acceptance or approval; or
   (c) accession.

3. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.
4. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to the Convention as amended by this Protocol shall be deemed to apply to the Convention so amended, as modified by such amendment.

Article XI

Entry into force

1. This Protocol shall enter into force ninety days following the date on which ten States have expressed their consent to be bound by it.
2. For any State which expresses its consent to be bound by this Protocol after the conditions in paragraph I for entry into force have been met, this Protocol shall enter into force ninety days following the date of expression of such consent.

Article XII

Denunciation

1. This Protocol may be denounced by any State Party at any time after the date on which it enters into force for that State Party.
2. Denunciation shall be effected by the deposit of an instrument of denunciation with the Secretary-General.

3. A denunciation shall take effect twelve months, or such longer period as may be specified in the instrument of denunciation, after its deposit with the Secretary-General.
4. As between the States Parties to this Protocol, denunciation by any of them of the Convention in accordance with Article XIX thereof shall not be construed in any way as a denunciation of the Convention as amended by this Protocol.

Article XIII

Revision and amendment

1. A conference for the purpose of revising or amending this Protocol may be convened by the Organization.
2. The Organization shall convene a conference of Contracting States to this Protocol for revising or amending it at the request of not less than one-third of the Contracting Parties.

Article XIV

Depositary

1. This Protocol and any amendments accepted under Article VIII shall be deposited with the Secretary-General.

   The Secretary-General shall:

   (a) inform all States which have signed or acceded to this Protocol of:

      (i) each new signature or deposit of an instrument together with the date thereof;
      (ii) each declaration and communication under Article VIII, paragraph 2 of the Convention as amended by this Protocol, and Article VIII, paragraph 4 of the Convention;
      (iii) the date of entry into force of this Protocol;
      (iv) any proposal to amend limits which has been made in accordance with Article VIII, paragraph 1
      (v) any amendment which has been adopted in accordance with Article VIII, paragraph 4;
      (vi) any amendment deemed to have been accepted under Article VIII, paragraph 7, together with the date on which that amendment shall enter into force in accordance with paragraphs 8 and 9 of that article;
      (vii) the deposit of any instrument of denunciation of this Protocol together with the date of the deposit and the date on which it takes effect;

   (b) transmit certified true copies of this Protocol to all Signatory States and to all States which accede to this Protocol.
2. As soon as this Protocol enters into force, the text shall be transmitted by the Secretary-General to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

Article XV

Languages

This Protocol is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

DONE AT LONDON this second day of May one thousand nine hundred and ninety-six.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments for that purpose, have signed this Protocol.

17
CLNI

17.1 General Information

Strasbourg Convention on Limitation of Liability in Inland Navigation

Most common abbreviation(s)	**CLNI**
Organisation	Central Commission for the Navigation on the Rhine (Diplomatic Conference)
Status	
Adoption	4 November 1988
Entry into force	1 September 1997
Signatories	Belgium, France, Germany, Luxemburg, the Netherlands, Switzerland
State Parties	Luxemburg, the Netherlands, Switzerland, Germany

17.2 Strasbourg Convention of 4 November 1988 on Limitation of Liability in Inland Navigation

THE KINGDOM OF BELGIUM,

THE FRENCH REPUBLIC,

THE FEDERAL REPUBLIC OF GERMANY,

THE GRAND DUCHY OF LUXEMBOURG,

THE KINGDOM OF THE NETHERLANDS,

THE SWISS CONFEDERATION,

HAVING RECOGNIZED the desirability of harmonizing the law applicable as regards the limitation of liability in inland navigation, particularly on the Rhine and the Moselle,

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

CHAPTER 1

THE RIGHT OF LIMITATION

Article I

Persons entitled to limit liability

1. Vessel owners and salvors, as hereinafter defined, may limit their liability in accordance with the rules of this Convention for claims set out in Article II.
2. (a) The term 'vessel owner' shall mean the owner, hirer, charterer, manager and operator of a vessel.
   (b) 'Vessel' shall mean an inland navigation vessel and shall also include hydrofoils, ferries and small craft but not air-cushion vehicles. The term 'vessels' shall also cover dredgers, floating cranes, elevators and all other floating and mobile appliances or plant of a similar nature;

(c) 'Salvor' shall mean any person rendering services in direct connection with salvage operations. Salvage operations shall also include operations referred to in Article II, paragraph 1 (d), (e) and (f).

3. If any claims set out in Article II are made against any person for whose act, neglect or default the vessel owner or salvor is responsible, such person shall be entitled to avail himself of the limitation of liability provided for in this Convention.
4. In this Convention the liability of a vessel owner shall include liability in an action brought against the vessel herself.
5. An insurer of liability for claims subject to limitation in accordance with the rules of this Convention shall be entitled to the benefits of this Convention to the same extent as the assured himself.
6. The act of invoking limitation of liability shall not constitute an admission of liability.

Article II

Claims subject to limitation

1. Subject to Articles III and IV the following claims, whatever the basis of liability may be, shall be subject to limitation of liability:

(a) claims in respect of loss of life or personal injury or loss of or damage to property (including damage to harbour works, basins, waterways, locks, bridges and aids to navigation), occurring on board or in direct connection with the operation of the vessel or with salvage operations, and consequential loss resulting therefrom;
(b) claims in respect of loss resulting from delay in the carriage of cargo, passengers or their luggage;
(c) claims in respect of other loss resulting from infringement of rights other than contractual rights, occurring in direct connection with the operation of the vessel or salvage operations;
(d) claims in respect of the raising, removal, destruction or the rendering harmless of a vessel which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board of such vessel;
(e) claims in respect of the removal, destruction or rendering harmless of the cargo of the vessel;
(f) claims of a person other than the person liable in respect of measures taken in order to avert or minimize loss for which the person liable may limit his liability in accordance with this Convention, and further loss caused by such measures.

2. Claims set out in paragraph 1 shall be subject to limitation of liability even if brought by way of recourse for indemnity under a contract or otherwise. However, claims set out under paragraph 1 (d), (e) and (f) shall not be subject to limitation of liability to the extent that they relate to remuneration under a contract with the person liable.

Article III

Claims excepted from limitation

The rules of this Convention shall not apply to

(a) claims for salvage or contribution in general average;
(b) claims subject to any International Convention or national legislation governing or prohibiting limitation of liability for nuclear damage;
(c) claims against the owner of a nuclear vessel for nuclear damage;
(d) claims by servants of the vessel owner or salvor whose duties are connected with the vessel or the salvage operations, including claims of their heirs, dependants or other persons entitled to make such claims, if under the law governing the contract of service between the vessel owner or salvor and such servants the vessel owner or salvor is not entitled to limit his liability in respect of such claims, or if he is by such law only permitted to limit his liability to an amount greater than that provided for in Article VI.

Article IV

Conduct barring limitation

A person liable shall not be entitled to limit his liability if it is proved that the loss resulted from his personal act or omission, committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result.

Article V

Counterclaims

Where a person entitled to limitation of liability under the rules of this Convention has a claim against the claimant arising out of the same occurrence, their

respective claims shall be set off against each other and the provisions of this Convention shall only apply to the balance, if any.

CHAPTER 2

LIMITS OF LIABILITY

Article VI

The general limits

1. The limits of liability for claims other than those mentioned in Article VII, arising on any distinct occasion, shall be calculated as follows:

   (a) in respect of claims for loss of life or personal injury,

      (i) for a vessel not used for cargo, in particular a passenger vessel, 200 units of account per cubic metre of displacement at maximum permitted draught, increased for vessels equipped with mechanical means of propulsion by 700 units of account per kW of power of the machines providing the propulsion;

      (ii) for a cargo vessel, 200 units of account per tonne of the vessel's deadweight, plus 700 units of account per kW of power of the machines providing the propulsion for vessels equipped with mechanical means of propulsion,

      (iii) for a pusher or tug, 700 units of account per kW of power of the machines providing the propulsion,

      (iv) for a pusher which, at the moment when the damage was caused, was coupled to barges in a pushed train, the amount of liability calculated in conformity with (iii) shall be increased by 100 units of account per tonne of deadweight of the pushed barges; this increase shall not apply in so far as it can be proved that the pusher has provided salvage services to one or more of these barges;

      (v) for a vessel equipped with mechanical means of propulsion which at the time when the damage was caused was providing propulsion for other vessels coupled to this vessel, the amount of liability calculated in conformity with (i), (ii) or (iii) shall be increased by 100 units of account per tonne of deadweight or cubic metre of displacement of the other vessels; this increase shall not apply in so far as it can be proved that this vessel has furnished salvage services to one or more of the coupled vessels;

      (vi) for floating and mobile appliances or plant in the sense used in the second sentence of Article I, paragraph 2 (b), their value at the time of the occurrence;

   (b) in respect of all other claims, half of the sums mentioned in (a),

   (c) when the amount calculated in accordance with (a) is insufficient to pay the claims mentioned therein in full, the amount calculated in accordance with paragraph (b) shall be available for payment of the unpaid balance of claims under paragraph (a) and such unpaid balance shall rank rateably with claims mentioned under paragraph (b);

   (d) in no case shall the limits of liability be less than 200,000 units of account for claims in respect of loss of life or personal injury or less than 100,000 units of account for all other claims.

2. However, without prejudice to the right of claims for loss of life or personal injury according to paragraph 1 (c), a State Party may provide in its national law that claims in respect of damage to harbour works, basins, waterways, locks, bridges and aids to navigation shall have such priority over other claims under paragraph 1 (b) as is provided by that law.
3. The limits of liability mentioned in paragraph 1 (d) shall also apply to any salvor furnishing salvage services to a vessel and not operating from any inland navigation vessel or seagoing vessel, or to any salvor operating solely on the vessel to which he is rendering salvage services.

Article VII

The limits for passenger claims

1. In respect of claims arising on any distinct occasion for loss of life or personal injury to passengers of a vessel, the limit of liability of the owner thereof shall be an amount of 60,000 units of

account multiplied by the number of passengers which the vessel is authorized te carry according to the vessel's certificate, or, if the number of passengers which the vessel is authorized to carry is not prescribed, this limitation shall be determined by the number of passengers actually carried by the vessel at the time of the occurrence.

The limits shall not be leas than 720,000 units of account or more than the followirig amounts:

(a) 3 million units of account for vessels with an authorized passenger transport capacity of not more than 100;
(b) 6 million units of account for vessels with an authorizèd passenger transport capacity of not more than 180;
(c) 12 million units of account for vessels with an authorized passenger transport capacity of more than 180.

2. For the purpose of this article 'claims fot loss of life or personal injury to passengers of a vessel' shall mean any such claims brought by or on behalf of any person carried in that vessel:

(a) under a contract of passenger carriage, or
(b) who, with the consent of the carrier, is accompanying a vehicle or live animals which are covered by a contract for the carriage of goods.

Article VIII

Unit of account

1. The unit of account referred to in Articles VI and VII is the special drawing right as defined by the International Monetary Fund. The amounts mentioned in Articles VI and VII shall be converted into the national currency of the State in which limitation is sought, according to the value of that currency at the date the limitation fund shall have been constituted, payment is made, or security is given which onder the law of that state is equivalent to such payment.
2. The value of a national currency of a State Party in terms of the special drawing right shall be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect at the date in question for its operations and transactions.
3. The States Parties may, on the basis of the method of calculation mentioned in paragraph 1, establish the equivalent of the amounts mentioned in Articles VI and VII in their national currency in round figures. When, following a change in the value of the national currency in terms of special drawing rights, the amounts expressed in such currency differ by more than 10% from the real value expressed in special drawing rights in Articles VI and VII, the said amounts shall be adapted to the real value. States Parties shall communicate to the depositary the sums expressed in the national currency and any modification of those sums.

Article IX

Aggregation of claims

1. Without prejudice to paragraph 2, the limits of liability determined in accordance with Article VI shall apply to the aggregate of all claims which arise on any distinct occasion:

(a) against the person or persons mentioned in Article I, paragraph 2 (a), and any person for whose act, neglect or default he or they are responsible; or
(b) against the owner of a vessel rendering salvage services from that vessel and the salvor or salvors operating from such vessel and any person for whose act, neglect, or default he or they are responsible; or
(c) against the salvor or salvors who are not operating from an inland navigation vessel or a seagoing ship or who are operating solely on the vessel to which the salvage services are rendered and any person for whose act, neglect or default he or they are responsible.

2. (a) When, in conformity with Article VI, paragraph 1 (a) (iv), the amount of liability fot a pusher which, at the time when the damage was caused, was coupled to barges in a pushed train, is increased in respect of claims arising out of the occurrence by 100 units of account per tonne deadweight of the pushed barges, the amount of liability of each of the barges is reduced, in respect of claims arising out of this occurrence, by 100 units of account for each tonne deadweight of the pushed barge.
(b) When, in conformity with Article VI, paragraph 1 (a) (v), the amount of liability for a vessel equipped with mechanical means of

propulsion which, at the time when the damage was caused, was providing propulsion for other vessels coupled to it, is increased in respect of claims arising out of the occurrence by 100 units of account per tonne deadweight or cubic metre of displacement of the coupled vessels, the amount of liability for each coupled vessel shall be reduced, in respect of claims arising out of the said occurrence, by 100 units of account for each tonne deadweight or each cubic metre of displacement of the coupled vessel.

3. The limits of liability determined in accordance with Article VII shall apply to the aggregate of all claims arising from the occurrence against the person or persons mentioned in Article I, paragraph 2 (a), in respect of the vessel referred to in Article VII and any person for whose act, neglect or default he or they are responsible.

Article X

Limitation of liability without constitution of a limitation fund

1. Limitation of liability may be invoked notwithstanding that a limitation fund as mentioned in Article XI has not been constituted. However, a State Party may provide in its national law that, where an action is brought in its courts to enforce a claim subject to limitation, a person liable may only invoke the right to limit liability if a limitation fund has been constituted in accordance with the provisions of this Convention or is constituted when the right to limit liability is invoked.
2. If limitation of liability is invoked without the constitution of a limitation fund, the provisions of Article XII shall apply.
3. Questions of procedure arising under the rules of this article shall be decided in accordance with the national law of the State Party in which action is brought.

CHAPTER 3

THE LIMITATION FUND

Article XI

Constitution of the fund

1. Any person alleged to be liable may constitute a fund with the competent court or other competent authority in any State Party in which legal proceedings are instituted in respect of a claim subject to limitation, or, if no legal proceedings are instituted, with the competent court or other competent authority in any State Party in which legal proceedings may be instituted for a claim subject to limitation. The fund must be constituted in the sum of such of the amounts set out in Articles VI and VII as are applicable to claims for which the person constituting the fund may be liable, together with interest thereon from the date of the occurrence giving rise to the liability until the date of the constitution of the fund. Any fund thus constituted shall be available only for the payment of claims in respect of which limitation of liability can be invoked.
2. A fund may be constituted, either by depositing the sum, or by producing a guarantee acceptable under the legislation of the State Party where the fund is constituted and considered to be adequate by the court or other competent authority.
3. A fund is constituted by one of the persons mentioned in Article IX, paragraph 1 (a), (b) or (c) or paragraph 3, or his insurer shall be deemed constituted by all persons mentioned in Article IX, paragraph 1 (a), (b) or (c) or paragraph 3.

Article XII

Distribution of the fund

1. Subject to the provisions of Article VI, paragraphs 1, 2 and 3 and of Article VII, the fund shall he distributed among the claimants in proportion to their established claims against the fund.
2. If, before the fund is distributed, the person liable, or his insurer, has settled a claim against the fund such person shall, up to the amount he has paid, acquire by subrogation the rights which the person so compensated would have enjoyed under this Convention.
3. The right of subrogation provided for in paragraph 2 may also be exercised by persons other than those mentioned above in respect of any amount of compensation which they may have paid, but only to the extent that such subrogation is permitted under the applicable national law.
4. Where the person liable or any other person establishes that he may be compelled to pay, at a later date, any such amount of compensation with

regard to which such person would have enjoyed a right of subrogation pursuant to paragraphs 2 and 3 had the compensation been paid before the fund was distributed, the court or other competent authority of the State where the fund has been constituted may order that a sufficient sum shall be provisionally set aside to enable such person at such later date to enforce his claim against the fund.

Article XIII

Bar to other actions

1. Where a limitation fund has been constituted in accordance with Article XI, any person having made a claim against the fund shall be barred from exercising any right in respect of such claim against any other assets of a person by or on behalf of whom the fund has been constituted.
2. After a limitation fund has been constituted in accordance with Article XI, any vessel or other property belonging to a person on behalf of whom the fund has been constituted, which has been arrested or attached within the jurisdiction of a State Party for a claim which may be raised against the fund, or any security given, shall be released by order of the court or other competent authority of such State.
3. The rules of paragraphs 1 and 2 shall apply only if the claimant may bring a claim against the fund before the court administering that fund and the fund is actually available and freely transferable in respect of that claim.

Article XIV

Governing law

Subject to the provisions of this chapter the rules relating to the constitution and distribution of a limitation fund, and all rules of procedure in connection therewith, shall be governed by the law of the State Party in which the fund is constituted.

CHAPTER 4

SCOPE OF APPLICATION

Article XV

1. This Convention shall apply to the limitation of liability of the owner of a vessel or a salvor when, at the time of the occurrence giving rise to the claims: (a) the vessel has sailed on one of the waterways subject to the régime of the Revised Convention relating to the Navigation of the Rhine of 17 October 1868 or of the Convention of 27 October 1956 concerning the canalization of the Moselle, or (b) salvage services have been furnished along one of the said waterways to a vessel in danger or the cargo of such a vessel, or (c) a vessel sunk, wrecked, stranded or abandoned along one of the said waterways or the cargo of such a vessel bas been raised, removed, destroyed or rendered harmless.

   This Convention shall also apply to the limitation of liability of a salvor furnishing assistance services from an inland navigation vessel to a seagoing vessel in danger along one of the said waterways or the cargo of such a vessel.

2. Any State may, at the time of signature, ratification, acceptance, approval or accession or at any subsequent time declare by means of a notification addressed to the depositary that this Convention shall also apply to waterways other than those mentioned in paragraph 1, provided that they are situated on the territory of that State.

   This Convention shall take effect, for the waterways mentioned in the notification, on the first day of the month following the expiry of a period of three months following the receipt of the notification or, if this Convention has not yet entered into force, on its entry into force.

3. Any State which has made a declaration under paragraph 2 may withdraw it at any time by means of a notification addressed to the depositary. The withdrawal shall take effect on the first day of the month following the expiry of a period of one year as from the date on which the notification is received or on the expiry of any longer period which may be specified in the declaration.

CHAPTER 5

FINAL CLAUSES

Article XVI

Signature, ratification and accession

1. This Convention shall be open for signature by all States Parties to the Revised Convention relating

to the Navigation of the Rhine of 11 October 1868 and by the Grand Duchy of Luxembourg from 4 November 1988 to 4 November 1989 at the headquarters of the Central Commission fot the Navigation of the Rhine at Strasbourg and shall thereafter remain open for accession.

2. This Convention shall be subject to the ratification, acceptance or approval of the States which have signed it.
3. States other than those mentioned in paragraph 1 which have a direct navigable link with the waterways mentioned in Article XV, paragraph 1, may, by a unanimous decision of the States in respect of which this Convention has come into force, be invited to accede to it. The depositary shall convene a meeting of the States mentioned in the first sentence to express their views on the decision to issue such an invitation. The decision shall incorporate the adaptations to this Convention which are necessary in the event of the accession of the State to be invited, particularly in respect of the conversion of the liability values into the national currency of a state which is not a member of the International Monetary Fund. The decision shall enter into force when all the States Parties to this Convention mentioned in the first sentence have notified the Secretary-General of the Central Commission for the Navigation of the Rhine of their acceptance of the decision. Any State so invited may accede to the Convention as amended by the decision.
4. Ratification, acceptance, approval or accession shall be effected by the deposit of a formal instrument with the Secretary-General of the Central Commission for the navigation of the Rhine.

Article XVII

Entry into force

1. This Convention shall enter into force on the first day of the month following the expiry of a period of three months as from the date on which three of the States mentioned in Article XVI, paragraph 1 deposit the instrument of ratification, acceptance, approval or accession.
2. For a State which deposits an instrument of ratification, acceptance, approval or accession after the conditions governing the entry into force of this Convention have been met, the Convention shall enter into force on the first day of the month following the expiry of a period of three months as from the date on which that State deposits its instrument.

Article XVIII

Reservations

1. Any State may, at the time of signature, ratification, acceptance, approval or accession, and, for a reservation under (b), at any subsequent time, reserve the right to exclude the application of the rules of this Convention in their entirety or in part:
   (a) to claims for damage due to a change in the physical, chemical or biological quality of the water;
   (b) to claims for damage caused by dangerous goods during their carriage, in so far as such claims are governed by an International Convention or a domestic law which excludes the limitation of liability or sets limits of liability higher than provided for in this Convention;
   (c) to claims mentioned in Article II, paragraph 1 (d) and (e);
   (d) to sport and pleasure craft and to vessels not used in navigation for profit;
   (e) to lighters exclusively used in ports for transshipments.
2. Any State may, at the time of signature, ratification, acceptance, approval or accession, declare that it will not apply to claims resulting from an occurrence on its waterways the maximum limits of liability provided for in Article VII, paragraph 1, second sentence, (a) and (b).
3. Reservations made at the time of signature are subject to confirmation upon ratification, acceptance or approval.
4. Any State which has made a reservation to this Convention may withdraw it at any time by means of a notification addressed to the depositary. The withdrawal shall take effect on the date the notification is received or on a later date specified therein.

Article XIX

Denunciation

1. This Convention may be denounced by any of the States Parties by a notification addressed to

the depositary, at any time after one year from the date on which the Convention entered into force for that Party.

2. Denunciation shall take effect on the first day of the month following the expiry of a period of one year from the date on which the notification is received or after such longer period as may be specified therein.

Article XX

Revision of the limitation amounts

1. At the request of a State Party to this Convention, the depositary shall convene a Conference of all the Contracting States to discuss the revision of the limitation amounts provided for in Articles VI and VII or the replacement of the unit of account mentioned in Article VIII of this Convention.
2. During the discussion of the revision of the limitation amounts provided for in Articles VI and VII, account shall be taken of experience acquired as regards occurrences for which claims may be made and, in particular, the amount of the damages resulting from them, fluctuations in the value of currencies and the impact of the proposed amendment on the cost of insurance.
3. (a) No amendment intended to modify limitation amounts under this article may be considered until the expiry of a period of five years as from the date on which this Convention was opened for signature or a period of five years as from the date of entry into force of a previous amendment adopted under this article.
   (b) No limit may be increased in such a way as to exceed an amount corresponding to the limit established by this Convention increased by 6% per year in compound interest, as from the date on which this Convention was opened for signature.
   (c) No limit may be increased in such a way as to exceed an amount corresponding to three times the limit established by this Convention.
4. Any decision to revise the limitation amounts provided for in Articles VI and VII or to replace the unit of account mentioned in Article VIII shall be taken by a two-thirds majority of the Contracting States present and voting, which also includes a two-thirds majority of the States mentioned in Article XVI, paragraph 1, for which this Convention has entered into force.
5. The depositary shall notify all the Contracting States of the amendments decided upon in conformity with paragraph 2. The amendment shall be deemed to have been accepted following the expiry of a period of six months as from the date of the notification, unless within such period a third of the Contracting States have notified the depositary of their refusal to accept this amendment.
6. An amendment deemed te have been accepted in conformity with paragraph 5 shall enter into force 18 months after its acceptance, for all States which at that time are Parties to this Convention, unless they denounce this Convention, in conformity with Article XIX, paragraph 1, at least six months before this amendment enters into force. This denunciation shall take effect when the said amendment comes into force. The amendment shall be binding on any State becoming a Party to this Convention after the date mentioned in the first sentence.

Article XXI

Depositary

1. This Convention shall be deposited with the Secretary-General of the Central Commission for the Navigation of the Rhine.
2. The Secretary-General of the Central Commission for the Navigation of the Rhine shall:
   (a) transmit certified true copies of this Convention to all the States mentioned in Article XVI, paragraph 1, and to all other States which accede to this Convention;
   (b) inform all States which have signed or acceded to this Convention of:
      (i) each new signature and each deposit of an instrument and any declaration or reservation thereto together with the date thereof;
      (ii) the date of entry into force of this Convention;
      (iii) any denunciation of this Convention and the date on which it takes effect;
      (iv) any amendment deemed to have been accepted under Article XX, paragraph 5, and the date on which the amendment enters into force, in conformity with Article XX, paragraph 6;

(v) any decision whereby a State is invited to accede under the first sentence of Article XVI, paragraph 3, and the date of entry into force of the decision;
(vi) any communication called for by any provision of this Convention.

Article XXII

Languages

This Convention is established in a single original in the Dutch, French and German languages, each text being equally authentic.

Part VII
Transboundary Movements of Hazardous Wastes

18
Basel Liability Protocol

18.1 General Information

Protocol on Liability and Compensation for Damage Resulting from Transboundary Movements to the Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal

Most common abbreviation(s)	**Basel Liability Protocol**
Organisation	United Nations Environment Programme (UNEP)
Reference	http://www.unep.ch/basel
Status	
Adoption	10 December 1999
Entry into force	Not yet in force (Aticle 29.1 reads as follows: '1. The Protocol shall enter into force on the ninetieth day after the date of deposit of the twentieth instrument of ratification, acceptance, formal confirmation, approval or accession.')
Signatories	Chile, Colombia, Costa Rica, Denmark, Finland, France, Hungary, Luxembourg, Monaco, Sweden, Switzerland, The Former Yugoslav Republic of Macedonia, United Kingdom of Great Britain and Northern Ireland
Ratifications (and date of deposit)	Botswana (17 June 2004), Congo (20 April 2007), Democratic Republic of the Congo (23 March 2005), Ethiopia (8 October 2003), Ghana (9 June 2005), Liberia (16 September 2005), Syrian Arab Republic (5 October 2004), Togo (2 July 2004)
Literature	Bonaventure, R, 'Liability and compensation for injurious consequences of the transboundary movement of hazardous wastes', Review of European community & international environmental law, 1997, pp. 7–13. French, D, 'The 1999 Protocol on Liability and Compensation for Damage Resulting from the Transboundary Movements of Hazardous Wastes and their Disposal', Environmental liability, 2000, pp. 3–11. Long, J, 'Protocol on Liability and Compensation for Damage Resulting from the Transboundary Movements of Hazardous Wastes and their Disposal', Colorado journal of international environmental law and policy/yearbook, 1999, pp. 253–261.

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Rutinwa, B, 'Liability and compensation for injurious consequences of the transboundary movement of hazardous wastes', RECIEL, 1997, pp. 7–13.
Sharma, P, 'The Basel Protocol. International legal regime on civil liability and compensation for transboundary movement of hazardous wastes', Delhi law review, 2004, pp. 181–196.
Silva Soares, G & Vieira Vargas, E, 'The Basel Liability Protocol on Liability and Compensation for Damage Resulting from Transboundary Movements of Hazardous Wastes and Their Disposal', in Yearbook of international environmental law, 2001, pp. 69–104.
Tsimplis, M, 'Liability and compensation in the international trans port of hazardous wastes by sea: the 1999 Protocol to the Basel Convention', International journal of marine and coastal law, 2001, pp. 295–346.
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18.2 Protocol of 10 December 1999 on Liability and Compensation for Damage Resulting from Transboundary Movements to the Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal

The Parties to the Protocol,

Having taken into account the relevant provisions of Principle 13 of the 1992 Rio Declaration on Environment and Development, according to which States shall develop international and national legal instruments regarding liability and compensation for the victims of pollution and other environmental damage,

Being Parties to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal,

Mindful of their obligations under the Convention, Aware of the risk of damage to human health, property and the environment caused by hazardous wastes and other wastes and the transboundary movement and disposal thereof,

Concerned about the problem of illegal transboundary traffic in hazardous wastes and other wastes, Committed to Article XXII of the Convention, and emphasizing the need to set out appropriate rules and procedures in the field of liability and compensation for damage resulting from the transboundary movement and disposal of hazardous wastes and other wastes,

Convinced of the need to provide for third party liability and environmental liability in order to ensure that adequate and prompt compensation

is available for damage resulting from the transboundary movement and disposal of hazardous wastes and other wastes,

Have agreed as follows:

Article I

Objective

The objective of the Protocol is to provide for a comprehensive regime for liability and for adequate and prompt compensation for damage resulting from the transboundary movement of hazardous wastes and other wastes and their disposal including illegal traffic in those wastes.

Article II

Definitions

1. The definitions of terms contained in the Convention apply to the Protocol, unless expressly provided otherwise in the Protocol.
2. For the purposes of the Protocol:
   (a) 'The Convention' means the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal;
   (b) 'Hazardous wastes and other wastes' means hazardous wastes and other wastes within the meaning of Article I of the Convention;
   (c) 'Damage' means:
      (i) Loss of life or personal injury;
      (ii) Loss of or damage to property other than property held by the person liable in accordance with the present Protocol;
      (iii) Loss of income directly deriving from an economic interest in any use of the environment, incurred as a result of impairment of the environment, taking into account savings and costs;
      (iv) The costs of measures of reinstatement of the impaired environment, limited to the costs of measures actually taken or to be undertaken; and
      (v) The costs of preventive measures, including any loss or damage caused by such measures, to the extent that the damage arises out of or results from hazardous properties of the wastes involved in the transboundary movement and disposal of hazardous wastes and other wastes subject to the Convention;
   (d) 'Measures of reinstatement' means any reasonable measures aiming to assess, reinstate or restore damaged or destroyed components of the environment. Domestic law may indicate who will be entitled to take such measures;
   (e) 'Preventive measures' means any reasonable measures taken by any person in response to an incident, to prevent, minimize, or mitigate loss or damage, or to effect environmental clean-up;
   (f) 'Contracting Party' means a Party to the Protocol;
   (g) 'Protocol' means the present Protocol;
   (h) 'Incident' means any occurrence, or series of occurrences having the same origin that causes damage or creates a grave and imminent threat of causing damage;
   (i) 'Regional economic integration organization' means an organization constituted by sovereign States to which its member States have transferred competence in respect of matters governed by the Protocol and which has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve, formally confirm or accede to it;
   (j) 'Unit of account' means the Special Drawing Right as defined by the International Monetary Fund.

Article III

Scope of application

1. The Protocol shall apply to damage due to an incident occurring during a transboundary movement of hazardous wastes and other wastes and their disposal, including illegal traffic, from the point where the wastes are loaded on the means of transport in an area under the national jurisdiction of a State of export. Any Contracting Party may by way of notification to the Depositary exclude the application of the Protocol, in respect of all transboundary movements for which it is the State of export, for such incidents which occur in an area under its national jurisdiction, as regards damage in its area of national jurisdiction. The Secretariat shall inform all Contracting Parties of notifications received in accordance with this Article.
2. The Protocol shall apply:

(a) In relation to movements destined for one of the operations specified in Annex IV to the Convention other than D13, D14, D15, R12 or R13, until the time at which the notification of completion of disposal pursuant to Article VI, paragraph 9, of the Convention has occurred, or, where such notification has not been made, completion of disposal has occurred; and

(b) In relation to movements destined for the operations specified in D13, D14, D15, R12 or R13 of Annex IV to the Convention, until completion of the subsequent disposal operation specified in D1 to D12 and R1 to R11 of Annex IV to the Convention.

3. (a) The Protocol shall apply only to damage suffered in an area under the national jurisdiction of a Contracting Party arising from an incident as referred to in paragraph 1;

(b) When the State of import, but not the State of export, is a Contracting Party, the Protocol shall apply only with respect to damage arising from an incident as referred to in paragraph 1 which takes place after the moment at which the disposer has taken possession of the hazardous wastes and other wastes. When the State of export, but not the State of import, is a Contracting Party, the Protocol shall apply only with respect to damage arising from an incident as referred to in paragraph 1 which takes place prior to the moment at which the disposer takes possession of the hazardous wastes and other wastes. When neither the State of export nor the State of import is a Contracting Party, the Protocol shall not apply;

(c) Notwithstanding subparagraph (a), the Protocol shall also apply to the damages specified in Article II, subparagraphs 2 (c) (i), (ii) and (v), of the Protocol occurring in areas beyond any national jurisdiction;

(d) Notwithstanding subparagraph (a), the Protocol shall, in relation to rights under the Protocol, also apply to damages suffered in an area under the national jurisdiction of a State of transit which is not a Contracting Party provided that such State appears in Annex A and has acceded to a multilateral or regional agreement concerning transboundary movements of hazardous waste which is in force. Subparagraph (b) will apply mutatis mutandis.

4. Notwithstanding paragraph 1, in case of reimportation under Article VIII or Article IX, subparagraph 2 (a), and Article IX, paragraph 4, of the Convention, the provisions of the Protocol shall apply until the hazardous wastes and other wastes reach the original State of export.

5. Nothing in the Protocol shall affect in any way the sovereignty of States over their territorial seas and their jurisdiction and the right in their respective exclusive economic zones and continental shelves in accordance with international law.

6. Notwithstanding paragraph 1 and subject to paragraph 2 of this Article:

(a) The Protocol shall not apply to damage that has arisen from a transboundary movement of hazardous wastes and other wastes that has commenced before the entry into force of the Protocol for the Contracting Party concerned;

(b) The Protocol shall apply to damage resulting from an incident occurring during a transboundary movement of wastes falling under Article I, subparagraph 1 (b), of the Convention only if those wastes have been notified in accordance with Article III of the Convention by the State of export or import, or both, and the damage arises in an area under the national jurisdiction of a State, including a State of transit, that has defined or considers those wastes as hazardous provided that the requirements of Article III of the Convention have been met. In this case strict liability shall be channelled in accordance with Article IV of the Protocol.

7. (a) The Protocol shall not apply to damage due to an incident occurring during a transboundary movement of hazardous wastes and other wastes and their disposal pursuant to a bilateral, multilateral or regional agreement or arrangement concluded and notified in accordance with Article XI of the Convention if:

(i) The damage occurred in an area under the national jurisdiction of any of the Parties to the agreement or arrangement;

(ii) There exists a liability and compensation regime, which is in force and is applicable to the damage resulting from such a transboundary movement or disposal provided it fully meets, or exceeds the objective of the Protocol by providing a high level of protection to persons who have suffered damage;

(iii) The Party to the Article XI agreement or arrangement in which the damage has occurred has previously notified the Depositary of the non-application of the Protocol to any damage occurring in an area under its national jurisdiction due to an incident resulting from movements or disposals referred to in this subparagraph; and

(iv) The Parties to the Article XI agreement or arrangement have not declared that the Protocol shall be applicable;

(b) In order to promote transparency, a Contracting Party that has notified the Depositary of the non-application of the Protocol shall notify the Secretariat of the applicable liability and compensation regime referred to in subparagraph (a) (ii) and include a description of the regime. The Secretariat shall submit to the Meeting of the Parties, on a regular basis, summary reports on the notifications received;

(c) After a notification pursuant to subparagraph (a) (iii) is made, actions for compensation for damage to which subparagraph (a) (i) applies may not be made under the Protocol.

8. The exclusion set out in paragraph 7 of this Article shall neither affect any of the rights or obligations under the Protocol of a Contracting Party which is not party to the agreement or arrangement mentioned above, nor shall it affect rights of States of transit which are not Contracting Parties.
9. Article III, paragraph 2, shall not affect the application of Article XVI to all Contracting Parties.

Article IV

Strict liability

1. The person who notifies in accordance with Article VI of the Convention, shall be liable for damage until the disposer has taken possession of the hazardous wastes and other wastes. Thereafter the disposer shall be liable for damage. If the State of export is the notifier or if no notification has taken place, the exporter shall be liable for damage until the disposer has taken possession of the hazardous wastes and other wastes. With respect to Article III, subparagraph 6 (b), of the Protocol, Article VI, paragraph 5, of the Convention shall apply mutatis mutandis. Thereafter the disposer shall be liable for damage.
2. Without prejudice to paragraph 1, with respect to wastes under Article I, subparagraph 1 (b), of the Convention that have been notified as hazardous by the State of import in accordance with Article III of the Convention but not by the State of export, the importer shall be liable until the disposer has taken possession of the wastes, if the State of import is the notifier or if no notification has taken place. Thereafter the disposer shall be liable for damage.
3. Should the hazardous wastes and other wastes be re-imported in accordance with Article VIII of the Convention, the person who notified shall be liable for damage from the time the hazardous wastes leave the disposal site, until the wastes are taken into possession by the exporter, if applicable, or by the alternate disposer.
4. Should the hazardous wastes and other wastes be re-imported under Article IX, subparagraph 2 (a), or Article IX, paragraph 4, of the Convention, subject to Article III of the Protocol, the person who re-imports shall be held liable for damage until the wastes are taken into possession by the exporter if applicable, or by the alternate disposer.
5. No liability in accordance with this Article shall attach to the person referred to in paragraphs 1 and 2 of this Article, if that person proves that the damage was:

(a) The result of an act of armed conflict, hostilities, civil war or insurrection;

(b) The result of a natural phenomenon of exceptional, inevitable, unforeseeable and irresistible character;

(c) Wholly the result of compliance with a compulsory measure of a public authority of the State where the damage occurred; or

(d) Wholly the result of the wrongful intentional conduct of a third party, including the person who suffered the damage.

6. If two or more persons are liable according to this Article, the claimant shall have the right to seek full compensation for the damage from any or all of the persons liable.

Article V

Fault-based liability

Without prejudice to Article IV, any person shall be liable for damage caused or contributed to by his lack of compliance with the provisions implementing the Convention or by his wrongful intentional, reckless or negligent acts or omissions. This Article shall not affect the domestic law of the Contracting Parties governing liability of servants and agents.

Article VI

Preventive measures

1. Subject to any requirement of domestic law any person in operational control of hazardous wastes and other wastes at the time of an incident shall take all reasonable measures to mitigate damage arising therefrom.
2. Notwithstanding any other provision in the Protocol, any person in possession and/or control of hazardous wastes and other wastes for the sole purpose of taking preventive measures, provided that this person acted reasonably and in accordance with any domestic law regarding preventive measures, is not thereby subject to liability under the Protocol.

Article VII

Combined cause of the damage

1. Where damage is caused by wastes covered by the Protocol and wastes not covered by the Protocol, a person otherwise liable shall only be liable according to the Protocol in proportion to the contribution made by the wastes covered by the Protocol to the damage.
2. The proportion of the contribution to the damage of the wastes referred to in paragraph 1 shall be determined with regard to the volume and properties of the wastes involved, and the type of damage occurring.
3. In respect of damage where it is not possible to distinguish between the contribution made by wastes covered by the Protocol and wastes not covered by the Protocol, all damage shall be considered to be covered by the Protocol.

Article VIII

Right of recourse

1. Any person liable under the Protocol shall be entitled to a right of recourse in accordance with the rules of procedure of the competent court:
   (a) Against any other person also liable under the Protocol; and
   (b) As expressly provided for in contractual arrangements.
2. Nothing in the Protocol shall prejudice any rights of recourse to which the person liable might be entitled pursuant to the law of the competent court.

Article IX

Contributory fault

Compensation may be reduced or disallowed if the person who suffered the damage, or a person for whom he is responsible under the domestic law, by his own fault, has caused or contributed to the damage having regard to all circumstances.

Article X

Implementation

1. The Contracting Parties shall adopt the legislative, regulatory and administrative measures necessary to implement the Protocol.
2. In order to promote transparency, Contracting Parties shall inform the Secretariat of measures to implement the Protocol, including any limits of liability established pursuant to paragraph 1 of Annex B.
3. The provisions of the Protocol shall be applied without discrimination based on nationality, domicile or residence.

Article XI

Conflicts with other liability and compensation agreements

Whenever the provisions of the Protocol and the provisions of a bilateral, multilateral or regional agreement apply to liability and compensation

for damage caused by an incident arising during the same portion of a transboundary movement, the Protocol shall not apply provided the other agreement is in force for the Party or Parties concerned and had been opened for signature when the Protocol was opened for signature, even if the agreement was amended afterwards.

Article XII

Financial limits

1. Financial limits for the liability under Article IV of the Protocol are specified in Annex B to the Protocol. Such limits shall not include any interest or costs awarded by the competent court.
2. There shall be no financial limit on liability under Article V.

Article XIII

Time limit of liability

1. Claims for compensation under the Protocol shall not be admissible unless they are brought within ten years from the date of the incident.
2. Claims for compensation under the Protocol shall not be admissible unless they are brought within five years from the date the claimant knew or ought reasonably to have known of the damage provided that the time limits established pursuant to paragraph 1 of this Article are not exceeded.
3. Where the incident consists of a series of occurrences having the same origin, time limits established pursuant to this Article shall run from the date of the last of such occurrences. Where the incident consists of a continuous occurrence, such time limits shall run from the end of that continuous occurrence.

Article XIV

Insurance and other financial guarantees

1. The persons liable under Article IV shall establish and maintain during the period of the time limit of liability, insurance, bonds or other financial guarantees covering their liability under Article IV of the Protocol for amounts not less than the minimum limits specified in paragraph 2 of Annex B. States may fulfil their obligation under this paragraph by a declaration of self-insurance. Nothing in this paragraph shall prevent the use of deductibles or co-payments as between the insurer and the insured, but the failure of the insured to pay any deductible or co-payment shall not be a defence against the person who has suffered the damage.
2. With regard to the liability of the notifier, or exporter under Article IV, paragraph 1, or of the importer under Article IV, paragraph 2, insurance, bonds or other financial guarantees referred to in paragraph 1 of this Article shall only be drawn upon in order to provide compensation for damage covered by Article II of the Protocol.
3. A document reflecting the coverage of the liability of the notifier or exporter under Article IV, paragraph 1, or of the importer under Article IV, paragraph 2, of the Protocol shall accompany the notification referred to in Article VI of the Convention. Proof of coverage of the liability of the disposer shall be delivered to the competent authorities of the State of import.
4. Any claim under the Protocol may be asserted directly against any person providing insurance, bonds or other financial guarantees. The insurer or the person providing the financial guarantee shall have the right to require the person liable under Article IV to be joined in the proceedings.

   Insurers and persons providing financial guarantees may invoke the defences which the person liable under Article IV would be entitled to invoke.

5. Notwithstanding paragraph 4, a Contracting Party shall, by notification to the Depositary at the time of signature, ratification, or approval of, or accession to the Protocol, indicate if it does not provide for a right to bring a direct action pursuant to paragraph 4. The Secretariat shall maintain a record of the Contracting Parties who have given notification pursuant to this paragraph.

Article XV

Financial mechanism

1. Where compensation under the Protocol does not cover the costs of damage, additional and supplementary measures aimed at ensuring adequate and prompt compensation may be taken using existing mechanisms.
2. The Meeting of the Parties shall keep under review the need for and possibility of improv-

ing existing mechanisms or establishing a new mechanism.

Article XVI

State responsibility

The Protocol shall not affect the rights and obligations of the Contracting Parties under the rules of general international law with respect to State responsibility.

Procedures

Article XVII

Competent courts

1. Claims for compensation under the Protocol may be brought in the courts of a Contracting Party only where either:

   (a) The damage was suffered; or
   (b) The incident occurred; or
   (c) The defendant has his habitual residence, or has his principal place of business.

2. Each Contracting Party shall ensure that its courts possess the necessary competence to entertain such claims for compensation.

Article XVIII

Related actions

1. Where related actions are brought in the courts of different Parties, any court other than the court first seized may, while the actions are pending at first instance, stay its proceedings.
2. A court may, on the application of one of the Parties, decline jurisdiction if the law of that court permits the consolidation of related actions and another court has jurisdiction over both actions.
3. For the purpose of this Article, actions are deemed to be related where they are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgements resulting from separate proceedings.

Article XIX

Applicable law

All matters of substance or procedure regarding claims before the competent court which are not specifically regulated in the Protocol shall be governed by the law of that court including any rules of such law relating to conflict of laws.

Article XX

Relation between the Protocol and the law of the competent court

1. Subject to paragraph 2, nothing in the Protocol shall be construed as limiting or derogating from any rights of persons who have suffered damage, or as limiting the protection or reinstatement of the environment which may be provided under domestic law.
2. No claims for compensation for damage based on the strict liability of the notifier or the exporter liable under Article IV, paragraph 1, or the importer liable under Article IV, paragraph 2, of the Protocol, shall be made otherwise than in accordance with the Protocol.

Article XXI

Mutual recognition and enforcement of judgements

1. Any judgement of a court having jurisdiction in accordance with Article XVII of the Protocol, which is enforceable in the State of origin and is no longer subject to ordinary forms of review, shall be recognized in any Contracting Party as soon as the formalities required in that Party have been completed, except:

   (a) Where the judgement was obtained by fraud;
   (b) Where the defendant was not given reasonable notice and a fair opportunity to present his case;
   (c) Where the judgement is irreconcilable with an earlier judgement validly pronounced in another Contracting Party with regard to the same cause of action and the same parties; or
   (d) Where the judgement is contrary to the public policy of the Contracting Party in which its recognition is sought.

2. A judgement recognized under paragraph 1 of this Article shall be enforceable in each Contracting Party as soon as the formalities required in that Party have been completed. The formalities shall not permit the merits of the case to be re-opened.

3. The provisions of paragraphs 1 and 2 of this Article shall not apply between Contracting Parties that are Parties to an agreement or arrangement in force on mutual recognition and enforcement of judgements under which the judgement would be recognizable and enforceable.

Article XXII

Relationship of the Protocol with the Basel Convention

Except as otherwise provided in the Protocol, the provisions of the Convention relating to its Protocols shall apply to the Protocol.

Article XXIII

Amendment of Annex B

1. At its sixth meeting, the Conference of the Parties to the Basel Convention may amend paragraph 2 of Annex B following the procedure set out in Article XVIII of the Basel Convention.
2. Such an amendment may be made before the Protocol enters into force.

Final clauses

Article XXIV

Meeting of the Parties

1. A Meeting of the Parties is hereby established. The Secretariat shall convene the first Meeting of the Parties in conjunction with the first meeting of the Conference of the Parties to the Convention after entry into force of the Protocol.
2. Subsequent ordinary Meetings of the Parties shall be held in conjunction with meetings of the Conference of the Parties to the Convention unless the Meeting of the Parties decides otherwise. Extraordinary Meetings of the Parties shall be held at such other times as may be deemed necessary by a Meeting of the Parties, or at the written request of any Contracting Party, provided that within six months of such a request being communicated to them by the Secretariat, it is supported by at least one third of the Contracting Parties.
3. The Contracting Parties, at their first meeting, shall adopt by consensus rules of procedure for their meetings as well as financial rules.
4. The functions of the Meeting of the Parties shall be:
   (a) To review the implementation of and compliance with the Protocol;
   (b) To provide for reporting and establish guidelines and procedures for such reporting where necessary;
   (c) To consider and adopt, where necessary, proposals for amendment of the Protocol or any annexes and for any new annexes; and
   (d) To consider and undertake any additional action that may be required for the purposes of the Protocol.

Article XXV

Secretariat

1. For the purposes of the Protocol, the Secretariat shall:
   (a) Arrange for and service Meetings of the Parties as provided for in Article XXIV;
   (b) Prepare reports, including financial data, on its activities carried out in implementation of its functions under the Protocol and present them to the Meeting of the Parties;
   (c) Ensure the necessary coordination with relevant international bodies, and in particular enter into such administrative and contractual arrangements as may be required for the effective discharge of its functions;
   (d) Compile information concerning the national laws and administrative provisions of Contracting Parties implementing the Protocol;
   (e) Cooperate with Contracting Parties and with relevant and competent international organisations and agencies in the provision of experts and equipment for the purpose of rapid assistance to States in the event of an emergency situation;
   (f) Encourage non-Parties to attend the Meetings of the Parties as observers and to act in accordance with the provisions of the Protocol; and
   (g) Perform such other functions for the achievement of the purposes of this Protocol as may be assigned to it by the Meetings of the Parties.
2. The secretariat functions shall be carried out by the Secretariat of the Basel Convention.

Article XXVI

Signature

The Protocol shall be open for signature by States and by regional economic integration organizations Parties to the Basel Convention in Berne at the Federal Department of Foreign Affairs of Switzerland from 6 to 17 March 2000 and at United Nations Headquarters in New York from 1 April 2000 to 10 December 2000.

Article XXVII

Ratification, acceptance, formal confirmation or approval

1. The Protocol shall be subject to ratification, acceptance or approval by States and to formal confirmation or approval by regional economic integration organizations. Instruments of ratification, acceptance, formal confirmation, or approval shall be deposited with the Depositary.
2. Any organization referred to in paragraph 1 of this Article which becomes a Contracting Party without any of its member States being a Contracting Party shall be bound by all the obligations under the Protocol.

   In the case of such organizations, one or more of whose member States is a Contracting Party, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under the Protocol. In such cases, the organization and the member States shall not be entitled to exercise rights under the Protocol concurrently.

3. In their instruments of formal confirmation or approval, the organizations referred to in paragraph 1 of this Article shall declare the extent of their competence with respect to the matters governed by the Protocol. These organizations shall also inform the Depositary, who will inform the Contracting Parties, of any substantial modification in the extent of their competence.

Article XXVIII

Accession

1. The Protocol shall be open for accession by any States and by any regional economic integration organization Party to the Basel Convention which has not signed the Protocol. The instruments of accession shall be deposited with the Depositary.
2. In their instruments of accession, the organizations referred to in paragraph 1 of this Article shall declare the extent of their competence with respect to the matters governed by the Protocol. These organizations shall also inform the Depositary of any substantial modification in the extent of their competence.
3. The provisions of Article XXVII, paragraph 2, shall apply to regional economic integration organizations which accede to the Protocol.

Article XXIX

Entry into force

1. The Protocol shall enter into force on the ninetieth day after the date of deposit of the twentieth instrument of ratification, acceptance, formal confirmation, approval or accession.
2. For each State or regional economic integration organization which ratifies, accepts, approves or formally confirms the Protocol or accedes thereto after the date of the deposit of the twentieth instrument of ratification, acceptance, approval, formal confirmation or accession, it shall enter into force on the ninetieth day after the date of deposit by such State or regional economic integration organization of its instrument of ratification, acceptance, approval, formal confirmation or accession.
3. For the purpose of paragraphs 1 and 2 of this Article, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

Article XXX

Reservations and declarations

1. No reservation or exception may be made to the Protocol. For the purposes of the Protocol, notifications according to Article III, paragraph 1, Article III, paragraph 6, or Article XIV, paragraph 5, shall not be regarded as reservations or exceptions.
2. Paragraph 1 of this Article does not preclude a State or a regional economic integration organization, when signing, ratifying, accepting, approving, formally confirming or acceding to

the Protocol, from making declarations or statements, however phrased or named, with a view, inter alia, to the harmonization of its laws and regulations with the provisions of the Protocol, provided that such declarations or statements do not purport to exclude or to modify the legal effects of the provisions of the Protocol in their application to that State or that organization.

Article XXXI

Withdrawal

1. At any time after three years from the date on which the Protocol has entered into force for a Contracting Party, that Contracting Party may withdraw from the Protocol by giving written notification to the Depositary.
2. Withdrawal shall be effective one year from receipt of notification by the Depositary, or on such later date as may be specified in the notification.

Article XXXII

Depositary

The Secretary-General of the United Nations shall be the Depositary of

Article XXXIII

Authentic texts

The original Arabic, Chinese, English, French, Russian and Spanish texts of the Protocol are equally authentic.

Part VIII
International Watercourses

19
Kyiv Liability Protocol

19.1 General Information

Protocol on Civil Liability and Compensation for Damage Caused by the Transboundary Effects of Industrial Accidents on Transboundary Waters to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes and to the 1992 Convention on the Transboundary Effects of Industrial Accidents

Most common abbreviation(s)	**Kyiv Liability Protocol, Helsinki Liability Protocol**
Organisation	United Nations Economic Commission for Europe (UNECE)
Reference	http://www.unece.org/env/civil-liability/protocol.html
Status	
Adoption	23 May 2003
Entry into force	Not yet in force (The protocol will enter into force with 16 ratifications)
Signatories	Armenia, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Cyprus, Denmark, Estonia, Finland, Georgia, Greece, Hungary, Latvia, Lithuania, Luxembourg, Monaco, Norway, Poland, Portugal, Republic of Moldavia, Romania, Sweden, Ukraine, United Kingdom
Ratifications (and date of deposit)	Hungary (25 June 2004)
Literature	Antypas, A & Stec, S, 'Towards a liability regime for damages to transboundary waters by industrial accidents: a new protocol in the UNECE region', The journal of water law, 2003, pp. 185–193. Bar, M, UN ECE protocol on civil liability and compensation for damage caused by the transboundary effects of industrial accidents on transboundary waters: a commentary, Environmental Law Center, Wroclaw, 2003, 59 p. Dascalopoulou-Livada, P, 'The protocol on civil liability and compensation for damage caused by the transboundary effects of industrial accidents on transboundary waters', Environmental liability, 2003, pp. 131–140. Schwabach, A, 'The Tisza Cyanide Disaster and International Law', Environmental law review of Eastern & Central Europe, 2002, pp. 141–169.

19.2 Protocol of 23 May 2003 on Civil Liability and Compensation for Damage Caused by the Transboundary Effects of Industrial Accidents on Transboundary Waters to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes and to the 1992 Convention on the Transboundary Effects of Industrial Accidents

The Parties to the Protocol,

Recalling the relevant provisions of the Convention on the Protection and Use of Transboundary Watercourses and International Lakes, in particular its Article VII, and of the Convention on the Transboundary Effects of Industrial Accidents, in particular its Article XIII,

Having in mind the relevant provisions of principles 13 and 16 of the Rio Declaration on Environment and Development,

Taking into account the polluter pays principle as a general principle of international environmental law, accepted also by the Parties to the above-mentioned Conventions,

Taking note of the UNECE Code of Conduct on Accidental Pollution of Transboundary Inland Waters,

Aware of the risk of damage to human health, property and the environment caused by the transboundary effects of industrial accidents,

Convinced of the need to provide for third-party liability and environmental liability in order to ensure that adequate and prompt compensation is available,

Acknowledging the desirability to review the Protocol at a later stage to broaden its scope of application as appropriate,

Have agreed as follows:

Article I

Objective

The objective of the present Protocol is to provide for a comprehensive regime for civil liability and for adequate and prompt compensation for damage caused by the transboundary effects of industrial accidents on transboundary waters.

Article II

Definitions

1. The definitions of terms contained in the Conventions apply to the present Protocol, unless expressly provided otherwise in the present Protocol.
2. For the purposes of the present Protocol:
   (a) 'The Conventions' means the Convention on the Protection and Use of Transboundary Watercourses and International Lakes and the Convention on the Transboundary Effects of Industrial Accidents, done at Helsinki on 17 March 1992;
   (b) 'Protocol' means the present Protocol;
   (c) 'Party' means a Contracting Party to the Protocol;
   (d) 'Damage' means:
      (i) Loss of life or personal injury;
      (ii) Loss of, or damage to, property other than property held by the person liable in accordance with the Protocol;
      (iii) Loss of income directly deriving from an impairment of a legally protected interest in any use of the transboundary waters for economic purposes, incurred as a result of impairment of the transboundary waters, taking into account savings and costs;
      (iv) The cost of measures of reinstatement of the impaired transboundary waters, limited to the costs of measures actually taken or to be undertaken;
      (v) The cost of response measures, including any loss or damage caused by such measures, to the extent that the damage was caused by the transboundary effects of an industrial accident on transboundary waters;
   (e) 'Industrial accident' means an event resulting from an uncontrolled development in the course of a hazardous activity:
      (i) In an installation, including tailing dams, for example during manufacture, use, storage, handling or disposal;
      (ii) During transportation on the site of a hazardous activity; or

(iii) During off-site transportation via pipelines;

(f) 'Hazardous activity' means any activity in which one or more hazardous substances are present or may be present in quantities at or in excess of the threshold quantities listed in annex I and which is capable of causing transboundary effects on transboundary waters and their water uses in the event of an industrial accident;

(g) 'Measures of reinstatement' means any reasonable measures aiming to reinstate or restore damaged or destroyed components of transboundary waters to the conditions that would have existed had the industrial accident not occurred, or, where this is not possible, to introduce, where appropriate, the equivalent of these components into the transboundary waters. Domestic law may indicate who will be entitled to take such measures;

(h) 'Response measures' means any reasonable measures taken by any person, including public authorities, following an industrial accident, to prevent, minimize or mitigate possible loss or damage or to arrange for environmental clean-up. Domestic law may indicate who will be entitled to take such measures;

(i) 'Unit of account' means the special drawing right as defined by the International Monetary Fund.

Article III

Scope of application

1. The Protocol shall apply to damage caused by the transboundary effects of an industrial accident on transboundary waters.
2. The Protocol shall apply only to damage suffered in a Party other than the Party where the industrial accident has occurred.

Article IV

Strict liability

1. The operator shall be liable for the damage caused by an industrial accident.
2. No liability in accordance with this article shall attach to the operator, if he or she proves that, despite there being in place appropriate safety measures, the damage was:
   (a) The result of an act of armed conflict, hostilities, civil war or insurrection;
   (b) The result of a natural phenomenon of exceptional, inevitable, unforeseeable and irresistible character;
   (c) Wholly the result of compliance with a compulsory measure of a public authority of the Party where the industrial accident has occurred; or
   (d) Wholly the result of the wrongful intentional conduct of a third party.
3. If the person who has suffered the damage or a person for whom he or she is responsible under domestic law has by his or her own fault caused the damage or contributed to it, the compensation may be reduced or disallowed having regard to all the circumstances.
4. If two or more operators are liable according to this article, the claimant shall have the right to seek full compensation for the damage from any or all of the operators liable. However, the operator who proves that only part of the damage was caused by an industrial accident shall be liable for that part of the damage only.

Article V

Fault-based liability

Without prejudice to Article IV, and in accordance with the relevant rules of applicable domestic law including laws on the liability of servants and agents, any person shall be liable for damage caused or contributed to by his or her wrongful intentional, reckless or negligent acts or omissions.

Article VI

Response measures

1. Subject to any requirement of applicable domestic law and other relevant provisions of the Conventions, the operator shall take, following an industrial accident, all reasonable response measures.
2. Notwithstanding any other provision in the Protocol, any person other than the operator acting for the sole purpose of taking response measures, provided that this person acted reasonably and in accordance with applicable domestic law, is not thereby subject to liability under the Protocol.

Article VII

Right of recourse

1. Any person liable under the Protocol shall be entitled to a right of recourse in accordance with the rules of procedure of the competent court or arbitral tribunal established under Article XIV against any other person also liable under the Protocol.
2. Nothing in the Protocol shall prejudice any right of recourse to which the person liable might be entitled either as expressly provided for in contractual arrangements or pursuant to the law of the competent court.

Article VIII

Implementation

1. The Parties shall adopt any legislative, regulatory and administrative measures that may be necessary to implement the Protocol.
2. In order to promote transparency, the Parties shall inform the secretariat, as defined in Article XXII, of any such measures taken to implement the Protocol.
3. The provisions of the Protocol and measures adopted under paragraph 1 shall be applied among the Parties without discrimination based on nationality, domicile or residence.
4. The Parties shall provide for close cooperation in order to promote the implementation of the Protocol according to their obligations under international law.
5. Without prejudice to existing international obligations, the Parties shall provide for access to information and access to justice accordingly, with due regard to the legitimate interest of the person holding the information, in order to promote the objective of the Protocol.

Article IX

Financial limits

1. The liability under Article IV is limited to the amounts specified in part one of annex II. Such limits shall not include any interests or costs awarded by the competent court.
2. The limits of liability specified in part one of annex II shall be reviewed by the Meeting of the Parties on a regular basis taking into account the risks of hazardous activities as well as the nature, quantity and properties of the hazardous substances that are present or may be present in such activities.
3. There shall be no financial limit on liability under Article V.

Article X

Time limit of liability

1. Claims for compensation under the Protocol shall not be admissible unless they are brought within fifteen years from the date of the industrial accident.
2. Claims for compensation under the Protocol shall not be admissible unless they are brought within three years from the date that the claimant knew or ought reasonably to have known of the damage and of the person liable, provided that the time limits established pursuant to paragraph 1 are not exceeded.
3. Where the industrial accident consists of a series of occurrences having the same origin, time limits established pursuant to this article shall run from the date of the last of such occurrences. Where the industrial accident consists of a continuous occurrence, such time limits shall run from the end of that continuous occurrence.

Article XI

Financial security

1. The operator shall ensure that liability under Article IV for amounts not less than the minimum limits for financial securities specified in part two of annex II is and shall remain covered by financial security such as insurance, bonds or other financial guarantees including financial mechanisms providing compensation in the event of insolvency. In addition, Parties may fulfil their obligation under this paragraph with respect to State-owned operators by a declaration of self-insurance.
2. The minimum limits for financial securities specified in part two of annex II shall be reviewed by the Meeting of the Parties on a regular basis taking into account the risks of hazardous activities as well as the nature, quantity and properties of the hazardous substances that are present or may be present in such activities.
3. Any claim under the Protocol may be asserted directly against any person providing financial cover under paragraph 1. The insurer or the person providing the financial cover shall have the

right to require the person liable under Article IV to be joined in the proceedings. Insurers and persons providing financial cover may invoke the defences that the person liable under Article IV would be entitled to invoke. Nothing in this paragraph shall prevent the use of deductibles or co-payments as between the insurer and the insured, but the failure of the insured to pay any deductible or co-payment shall not be a defence against the person who has suffered the damage.

4. Notwithstanding paragraph 3, a Party shall by written notification to the Depositary at the time of signature, ratification, approval of or accession to the Protocol, indicate if it does not provide for a right to bring a direct action pursuant to paragraph 3. The secretariat shall maintain a record of the Parties that have given notification pursuant to this paragraph.

Article XII

International responsibility of States

The Protocol shall not affect the rights and obligations of the Parties under the rules of general international law with respect to the international responsibility of States.

Procedures

Article XIII

Competent courts

1. Claims for compensation under the Protocol may be brought in the courts of a Party only where:

   (a) The damage was suffered;
   (b) The industrial accident occurred; or
   (c) The defendant has his or her habitual residence, or, if the defendant is a company or other legal person or an association of natural or legal persons, where it has its principal place of business, its statutory seat or central administration.

2. Each Party shall ensure that its courts possess the necessary competence to entertain such claims for compensation.

Article XIV

Arbitration

In the event of a dispute between persons claiming for damage pursuant to the Protocol and persons liable under the Protocol, and where agreed by both or all parties, the dispute may be submitted to final and binding arbitration in accordance with the Permanent Court of Arbitration Optional Rules for Arbitration of Disputes Relating to Natural Resources and/or the Environment.

Article XV

Lis pendens – related actions

1. Where proceedings involving the same cause of action and between the same parties are brought in the courts of different Parties, any court other than the court first seized shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seized is established.
2. Where the jurisdiction of the court first seized is established, any court other than the court first seized shall decline jurisdiction in favour of that court.
3. Where related actions are pending in the courts of different Parties, any court other than the court first seized may stay its proceedings.
4. Where these actions are pending at first instance, any court other than the court first seized may also, on the application of one of the parties, decline jurisdiction if the court first seized has jurisdiction over the actions in question and its law permits the consolidation thereof.
5. For the purposes of this article, actions are deemed to be related where they are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgements resulting from separate proceedings.

Article XVI

Applicable law

1. Subject to paragraph 2, all matters of substance or procedure regarding claims before the competent court which are not specifically regulated in the Protocol shall be governed by the law of that court, including any rules of such law relating to conflict of laws.
2. At the request of the person who has suffered the damage, all matters of substance regarding claims before the competent court shall be governed by the law of the Party where the industrial accident has occurred, as if the damage had been suffered in that Party.

Article XVII

Relationship between the Protocol and the applicable domestic law

The Protocol is without prejudice to any rights of persons who have suffered damage or to any measures for the protection or reinstatement of the environment that may be provided under applicable domestic law.

Article XVIII

Mutual recognition and enforcement of judgements and arbitral awards

1. Any judgement of a court having jurisdiction in accordance with Article XIII or any arbitral award which is enforceable in the State of origin of the judgement and is no longer subject to ordinary forms of review shall be recognized in any Party as soon as the formalities required in that Party have been completed, except:
   (a) Where the judgement or arbitral award was obtained by fraud;
   (b) Where the defendant was not given reasonable notice and a fair opportunity to present his or her case;
   (c) Where the judgement or arbitral award is irreconcilable with an earlier judgement or arbitral award validly pronounced in another Party with regard to the same cause of action and the same parties; or
   (d) Where the judgement or arbitral award is contrary to the public policy of the Party in which its recognition is sought.
2. A judgement or arbitral award recognized under paragraph 1 shall be enforceable in each Party as soon as the formalities required in that Party have been completed. The formalities shall not permit the merits of the case to be reopened.
3. The provisions of paragraphs 1 and 2 shall not apply between Parties to an agreement or arrangement in force on the mutual recognition and enforcement of judgements or arbitral awards under which the judgement or arbitral award would be recognizable and enforceable.

Article XIX

Relationship between the Protocol and bilateral, multilateral or regional liability agreements

Whenever the provisions of the Protocol and the provisions of a bilateral, multilateral or regional agreement apply to liability and compensation for damage caused by the transboundary effects of industrial accidents on transboundary waters, the Protocol shall not apply provided the other agreement is in force for the Parties concerned and had been opened for signature when the Protocol was opened for signature, even if the agreement was amended afterwards.

Article XX

Relationship between the Protocol and the rules of the European Community on jurisdiction, recognition and enforcement of judgements

1. The courts of Parties which are members of the European Community shall apply the relevant Community rules instead of Article XIII, whenever the defendant is domiciled in a member State of the European Community, or the parties have attributed jurisdiction to a court of a member State of the European Community and one or more of the parties is domiciled in a member State of the European Community.
2. In their mutual relations, Parties which are members of the European Community shall apply the relevant Community rules instead of Articles XV and XVIII.

Final clauses

Article XXI

Meeting of the Parties

1. A Meeting of the Parties is hereby established.
2. The first meeting of the Parties shall be convened no later than eighteen months after the date of the entry into force of the Protocol and, if possible, in conjunction with a meeting of the governing body of one of the Conventions. Thereafter, ordinary meetings shall be held at dates to be determined by the Meeting of the Parties to the Protocol and, as appropriate, in conjunction with a meeting of the governing body of one of the Conventions. Extraordinary meetings of the Parties shall be held at such other times as may be deemed necessary by the Meeting of the Parties, or at the written request of any Party, provided that, within six months of such a request being communicated to them

by the secretariat, it is supported by at least one third of the Parties.

3. The Parties, at their first meeting, shall adopt by consensus rules of procedure for their meetings and consider any necessary financial provisions.
4. The functions of the Meeting of the Parties shall be:

   (a) To review the implementation of and compliance with the Protocol including relevant case law provided by the Parties;
   (b) To consider and adopt, if necessary, proposals for amendment of the Protocol or any annexes and for any new annexes;
   (c) To consider and undertake any additional action that may be required for the purposes of the Protocol.

Article XXII

Secretariat

The Executive Secretary of the Economic Commission for Europe shall carry out the following secretariat functions for the Protocol:

(a) The convening and preparing of meetings of the Parties;
(b) The transmission to the Parties of reports and other information received in accordance with the provisions of the Protocol;
(c) The performance of such other functions as may be determined by the Meeting of the Parties on the basis of available resources.

Article XXIII

Annexes

Annexes to the Protocol shall constitute an integral part thereof.

Article XXIV

Amendments to the Protocol

1. Any Party may propose amendments to the Protocol.
2. Proposals for amendments to the Protocol shall be considered at a meeting of the Parties.
3. Any proposed amendment to the Protocol shall be submitted in writing to the secretariat, which shall communicate it at least six months before the meeting at which it is proposed for adoption to all Parties, to other States and regional economic integration organizations that have consented to be bound by the Protocol and for which it has not yet entered into force and to Signatories.
4. The Parties shall make every effort to reach agreement on any proposed amendment to the Protocol by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall as a last resort be adopted by a three-fourths majority vote of the Parties present and voting at the meeting.
5. For the purposes of this article, 'Parties present and voting' means Parties present and casting an affirmative or negative vote.
6. Any amendment to the Protocol adopted in accordance with paragraph 4 shall be communicated by the secretariat to the Depositary, who shall circulate it to all Parties, to other States and regional economic integration organizations that have consented to be bound by the Protocol and for which it has not yet entered into force and to Signatories.
7. An amendment, other than one to annex I or II, shall enter into force for those Parties having ratified, accepted or approved it on the ninetieth day after the date of receipt by the Depositary of the instruments of ratification, acceptance or approval by at least three fourths of those which were Parties on the date of its adoption. Thereafter it shall enter into force for any other Party on the ninetieth day after that Party deposits its instrument of ratification, acceptance or approval of the amendment.
8. In the case of an amendment to annex I or II, a Party that does not accept such an amendment shall so notify the Depositary in writing within twelve months from the date of its circulation by the Depositary. The Depositary shall without delay inform all Parties of any such notification received. A Party may at any time withdraw a previous notification of non-acceptance, whereupon the amendment to annex I or II shall enter into force for that Party.
9. On the expiry of twelve months from the date of its circulation by the Depositary as provided for in paragraph 6, an amendment to annex I or II shall enter into force for those Parties which have not submitted a notification to the Depositary in accordance with paragraph 8, provided that, at that time, not more than one third of those which were Parties on the date of the adoption of the amendment have submitted such a notification.

10. If an amendment to an annex is directly related to an amendment to the Protocol not referring to annex I, II or III, it shall not enter into force until such time as the amendment to the Protocol enters into force.

Article XXV

Right to vote

1. Except as provided for in paragraph 2, each Party shall have one vote.
2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote with a number of votes equal to the number of their member States which are Parties. Such organizations shall not exercise their right to vote if their member States exercise theirs, and vice versa.

Article XXVI

Settlement of disputes

1. If a dispute arises between two or more Parties about the interpretation or application of the Protocol, they shall seek a solution by negotiation or by any other means of dispute settlement acceptable to the parties to the dispute.
2. When signing, ratifying, accepting, approving or acceding to the Protocol, or at any time thereafter, a Party may declare in writing to the Depositary that for a dispute not resolved in accordance with paragraph 1, it accepts one or both of the following means of dispute settlement as compulsory in relation to any Party accepting the same obligation:

   (a) Submission of the dispute to the International Court of Justice;
   (b) Arbitration in accordance with the procedure set out in annex III.
3. If the parties to the dispute have accepted both means of dispute settlements referred to in paragraph 2, the dispute may be submitted only to the International Court of Justice, unless the parties to the dispute agree otherwise.

Article XXVII

Signature

1. The Protocol shall be open for signature at Kiev (Ukraine) from 21 to 23 May 2003 and thereafter at United Nations Headquarters in New York until 31 December 2003 by States members of the Economic Commission for Europe, as well as States having consultative status with the Economic Commission for Europe pursuant to paragraph 8 of Economic and Social Council resolution 36 (IV) of 28 March 1947, and by regional economic integration organizations constituted by sovereign States members of the Economic Commission for Europe to which their member States have transferred competence in respect of matters governed by the Protocol, including the competence to enter into treaties in respect of these matters.
2. Upon signature, a regional economic integration organization shall make a declaration specifying the matters governed by the Protocol in respect of which competence has been transferred to that organization by its member States, the nature and extent of that competence, including the competence to enter into treaties in respect of these matters.

Article XXVIII

Ratification, acceptance, approval and accession

1. The Protocol shall be subject to ratification, acceptance or approval by the signatory States and regional economic integration organizations referred to in Article XXVII, provided that the States and organizations concerned are Parties to one or both of the Conventions.
2. The Protocol shall be open for accession by the States and organizations referred to in Article XXVII, provided that the States and organizations concerned are Parties to one or both of the Conventions.
3. Any other State, not referred to in paragraph 2, that is Member of the United Nations may accede to the Protocol upon approval by the Meeting of the Parties. In its instrument of accession, such a State shall make a declaration stating that approval for its accession to the Protocol had been obtained from the Meeting of the Parties and shall specify the date on which approval was received.
4. Any organization referred to in Article XXVII which becomes a Party to the Protocol without any of its member States being a Party shall be bound by all the obligations under the Protocol. If one or more of such organization's member States

is a Party to the Protocol, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under the Protocol. In such cases, the organization and the member States shall not be entitled to exercise rights under the Protocol concurrently.

5. In their instruments of ratification, acceptance, approval or accession, the regional economic integration organizations referred to in Article XXVII shall declare the extent of their competence with respect to the matters governed by the Protocol. These organizations shall also inform the Depositary of any substantial modification to the extent of their competence.

Article XXIX

Entry into force

1. The Protocol shall enter into force on the ninetieth day after the date of deposit of the sixteenth instrument of ratification, acceptance, approval or accession.
2. Article II, paragraph 2 (e) (iii), shall take effect when thresholds, limits of liability and minimum limits of financial securities for pipelines are set in annexes I and II in accordance with Article XXIV, paragraphs 8 and 9.
3. For the purposes of paragraph 1, any instrument deposited by an organization referred to in Article XXVII shall not be counted as additional to those deposited by States members of such an organization.
4. For each State or organization referred to in Article XXVII which ratifies, accepts or approves the Protocol or accedes thereto after the deposit of the sixteenth instrument of ratification, acceptance, approval or accession, the Protocol shall enter into force on the ninetieth day after the date of deposit by such State or organization of its instrument of ratification, acceptance, approval or accession.

Article XXX

Reservations

No reservation may be made to the Protocol.

Article XXXI

Withdrawal

1. At any time after three years from the date on which the Protocol has entered into force for a Party, that Party may withdraw from the Protocol by giving written notification to the Depositary.
2. Any such withdrawal shall take effect one year from the date of its receipt by the Depositary, or on such later date as may be specified in the notification.

Article XXXII

Depositary

The Secretary-General of the United Nations shall act as the Depositary of the Protocol.

Article XXXIII

Authentic texts

The original of the Protocol, of which the English, French and Russian texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed the Protocol.

DONE at Kiev, this twenty-first day of May, two thousand and three.

19.2.1 Annex I – Hazardous Substances and their Threshold Quantities for the Purpose of Defining Hazardous Activities

1. The threshold quantities set out below relate to each hazardous activity or group of hazardous activities.
2. Where a substance or preparation named in part two also falls within a category in part one, the threshold quantity set out in part two shall be used.

PART ONE

CATEGORIES OF SUBSTANCES AND PREPARATIONS NOT SPECIFICALLY NAMED IN PART TWO

Category	Threshold quantity (tons)
I. Very toxic	20
II. Toxic	200
III. Dangerous for the environment	200

PART TWO

NAMED SUBSTANCES

Substance	Threshold quantity (tons)
Petroleum products: (a) Gasolines and naphthas, (b) Kerosenes (including jet fuels), (c) Gas oils (including diesel fuels, homeheating oils and gas oil blending streams)	25,000

Notes on the indicative criteria for the categories of substances and preparations given in part one

In the absence of other appropriate criteria, such as the European Union classification criteria for substances and preparations, Parties may use the following criteria when classifying substances or preparations for the purposes of part one of this annex.

I. VERY TOXIC

Substances with properties corresponding to those in Table 1 or Table 2, and which, owing to their physical and chemical properties, are capable of creating industrial accident hazards:

TABLE 1.

LD_{50}(oral) mg/kg body weight $LD_{50} \leq 25$	LD_{50}(dermal) mg/kg body weight $LD_{50} \leq 50$
LD50 oral in rats LD50 dermal in rats or rabbits	

TABLE 2.

Discriminating dose mg/kg body weight < 5
where the acute oral toxicity in animals of the substance has been determined using the fixed-dose procedure

II. TOXIC

Substances with properties corresponding to those in Table 3 or 4 and having physical and chemical properties capable of creating industrial accident hazards:

TABLE 3.

LD50(oral) mg/kg body weight 25 < LD50 ≤ 200	LD_{50}(dermal) mg/kg body weight $50 < LD_{50} \leq 400$
LD50 oral in rats LD50 dermal in rats or rabbits	

TABLE 4.

Discriminating dose mg/kg body weight = 5
where the acute oral toxicity in animals of the substance has been determined using the fixed-dose procedure

III. DANGEROUS FOR THE ENVIRONMENT

Substances showing the values for acute toxicity to the aquatic environment corresponding to Table 5:

TABLE 5.

LC_{50} mg/l $LC_{50} \leq 10$	EC_{50} mg/l $EC_{50} \leq 10$	IC_{50} mg/l $IC_{50} \leq 10$
LC_{50} fish (96 hours) EC_{50} daphnia (48 hours) IC_{50} algae (72 hours)		
where the substance is not readily degradable, or the log Pow > 3.0 (unless the experimentally determined BCF < 100)		

List of abbreviations

Pow – partition coefficient octanol/water
BCF – bioconcentration factor
LD – lethal dose
LC – lethal concentration
EC – effective concentration
IC – inhibiting concentration

19.2.2 Annex II – Limits of liability and minimum limits of financial securities

PART ONE

LIMITS OF LIABILITY

1. For the purposes of defining the limits of liability under Article IV, pursuant to Article IX, the hazardous activities are grouped in three different categories, according to their hazard potential.

2. These categories are as follows:

Category A: Hazardous activities in which one or more hazardous substances falling into categories specified in part one of annex I are or may be present in quantities not exceeding four times the threshold quantities specified in annex I;

Category B: Hazardous activities in which one or more hazardous substances falling into categories specified in part one of annex I are or may be present in quantities exceeding four times the threshold quantities specified in annex I;

Category C: Hazardous activities in which one or more hazardous substances named in part two of annex I are or may be present in quantities at or in excess of the threshold quantity specified in annex I.

3. The limits of liability for the three categories of hazardous activities are as follows:

Category A hazardous activities	10 million units of account
Category B hazardous activities	40 million units of account
Category C hazardous activities	40 million units of account

PART TWO

MINIMUM LIMITS OF FINANCIAL SECURITIES

4. For the purposes of defining the minimum limits of financial securities under Article XI, the hazardous activities are grouped in three different categories, according to their hazard potential.
5. These categories are as follows:

Category A: Hazardous activities in which one or more hazardous substances falling into categories specified in part one of annex I are or may be present in quantities not exceeding four times the threshold quantities specified in annex I;

Category B: Hazardous activities in which one or more hazardous substances falling into categories specified in part one of annex I are or may be present in quantities exceeding four times the threshold quantities specified in annex I;

Category C: Hazardous activities in which one or more hazardous substances named in part two of annex I are or may be present in quantities at or in excess of the threshold quantity specified in annex I.

6. The minimum limits of financial securities for the three categories of hazardous activities are as follows:

Category A hazardous activities	2.5 million units of account
Category B hazardous activities	10 million units of account
Category C hazardous activities	10 million units of account

19.2.3 Annex III – Arbitration

1. In the event of a dispute being submitted for arbitration pursuant to Article XXVI, paragraph 2, a party or parties shall notify the secretariat of the subject matter of arbitration and indicate, in particular, the articles of the Protocol whose interpretation or application is at issue. The secretariat shall forward the information received to all Parties to the Protocol.
2. The arbitral tribunal shall consist of three members. Both the claimant party or parties and the other party or parties to the dispute shall appoint an arbitrator, and the two arbitrators so appointed shall designate by common agreement the third arbitrator, who shall be the president of the arbitral tribunal. The latter shall not be a national of one of the parties to the dispute, nor have his or her usual place of residence in the territory of one of these parties, nor be employed by any of them, nor have dealt with the case in any other capacity.
3. If the president of the arbitral tribunal has not been designated within two months of the appointment of the second arbitrator, the Executive Secretary of the Economic Commission for Europe shall, at the request of either party to the dispute, designate the president within a further two-month period.
4. If one of the parties to the dispute does not appoint an arbitrator within two months of the receipt of the request, the other party may so inform the Executive Secretary of the Economic Commission for Europe, who shall designate

the president of the arbitral tribunal within a further two-month period. Upon designation, the president of the arbitral tribunal shall request the party which has not appointed an arbitrator to do so within two months. If it fails to do so within that period, the president shall so inform the Executive Secretary of the Economic Commission for Europe, who shall make this appointment within a further two-month period.

5. The arbitral tribunal shall render its decision in accordance with international law and the provisions of the Protocol.
6. Any arbitral tribunal constituted under the provisions set out in this annex shall draw up its own rules of procedure.
7. The decisions of the arbitral tribunal, both on procedure and on substance, shall be taken by majority vote of its members.
8. The tribunal may take all appropriate measures to establish the facts.
9. The parties to the dispute shall facilitate the work of the arbitral tribunal and, in particular, using all means at their disposal, shall:
   (a) Provide it with all relevant documents, facilities and information;
   (b) Enable it, where necessary, to call witnesses or experts and receive their evidence.
10. The parties and the arbitrators shall protect the confidentiality of any information they receive in confidence during the proceedings of the arbitral tribunal.
11. The arbitral tribunal may, at the request of one of the parties, recommend interim measures of protection.
12. If one of the parties to the dispute does not appear before the arbitral tribunal or fails to defend its case, the other party may request the tribunal to continue the proceedings and to render its final decision. Absence of a party or failure of a party to defend its case shall not constitute a bar to the proceedings.
13. The arbitral tribunal may hear and determine counterclaims arising directly out of the subject matter of the dispute.
14. Unless the arbitral tribunal determines otherwise because of the particular circumstances of the case, the expenses of the tribunal, including the remuneration of its members, shall be borne by the parties to the dispute in equal shares. The tribunal shall keep a record of all its expenses, and shall furnish a final statement thereof to the parties.
15. Any Party to the Protocol which has an interest of a legal nature in the subject matter of the dispute, and which may be affected by a decision in the case, may intervene in the proceedings with the consent of the tribunal.
16. The arbitral tribunal shall render its award within five months of the date on which it is established, unless it finds it necessary to extend the time limit for a period which should not exceed five months.
17. The award of the arbitral tribunal shall be accompanied by a statement of reasons. It shall be final and binding upon all parties to the dispute. The award will be transmitted by the arbitral tribunal to the parties to the dispute and to the secretariat. The secretariat will forward the information received to all Parties to the Protocol.
18. Any dispute which may arise between the parties concerning the interpretation or execution of the award may be submitted by either party to the arbitral tribunal which made the award or, if the latter cannot be seized thereof, to another tribunal constituted for this purpose in the same manner as the first.

Part IX
Antarctica

20
Antarctica Liability Annex

20.1 General Information

Annex VI to the Protocol on Environmental Protection to the Antarctic Treaty – Liability Arising From Environmental Emergencies

Most common abbreviation(s)	**Antarctica Liability Annex** **Stockholm Annex**
Organisation	Antarctic Treaty Consultative Meetings (ATCM)
Reference	http://www.ats.org.ar/protocol.php
Status	
Adoption	14 June 2005
Entry into force	Not yet in force (Each of the 29 Consultative Parties has to approve Measure 1 (2005), to which the Annex is attached)
Consultative Parties	United Kingdom, South Africa, Belgium, Japan, United States of America, Norway, France, New Zealand, Russia, Poland, Argentina, Australia, Chile, The Netherlands, German Democratic Republic, Brazil, Bulgaria, Federal Republic of Germany, Uruguay, Italy, Peru, Spain, People's Republic of China, India, Sweden, Finland, Republic of Korea, Ecuador, Ukraine
Approval Measure 1	Sweden (8 June 2006), Peru (10 July 2007)
Literature	Bastmeijer, K, The Antartic environmental protocol and its domestic legal implementation, Kluwer Law International, Den Haag, 2003, 517 p. Bederman, D & Keskar, S, 'Antarctic Environmental Liability: the Stockholm Annex and Beyond', Emory international law review, 2005, pp. 1383–1405. De La Fayette, L, 'Responding to Environmental Damage in Antarctica', in Antarctica: legal and environmental challenges for the future, British Institute of International and Comparative Law, London, 2007, pp. 109–154. Johnson, M, 'Liability for Environmental Damage in Antartica: the Adoption of Annex VI to the Antactic Environment Protocol', The Georgetown international environmental law review, 2006, pp. 33–55. Scott, K, 'Liability for environmental damage in Antartica: annex VI to the environmental protocol on liability arising from emergencies', Environmental Liability, 2006, pp. 87–99. Vigni, P, 'A Liability Regime for Antarctica', The Italian yearbook of international law, 2005, pp. 217–242.

20.2 Annex VI to the Protocol on Environmental Protection to the Antarctic Treaty – Liability Arising from Environmental Emergencies

Preamble

The Parties,

Recognising the importance of preventing, minimising and containing the impact of environmental emergencies on the Antarctic environment and dependent and associated ecosystems;

Recalling Article III of the Protocol, in particular that activities shall be planned and conducted in the Antarctic Treaty area so as to accord priority to scientific research and to preserve the value of Antarctica as an area for the conduct of such research;

Recalling the obligation in Article XV of the Protocol to provide for prompt and effective response action to environmental emergencies, and to establish contingency plans for response to incidents with potential adverse effects on the Antarctic environment or dependent and associated ecosystems;

Recalling Article XVI of the Protocol under which the Parties to the Protocol undertook consistent with the objectives of the Protocol for the comprehensive protection of the Antarctic environment and dependent and associated ecosystems to elaborate, in one or more Annexes to the Protocol, rules and procedures relating to liability for damage arising from activities taking place in the Antarctic Treaty area and covered by the Protocol;

Noting further Decision 3 (2001) of the XXIVth Antarctic Treaty Consultative Meeting regarding the elaboration of an Annex on the liability aspects of environmental emergencies, as a step in the establishment of a liability regime in accordance with Article XVI of the Protocol;

Having regard to Article IV of the Antarctic Treaty and Article VIII of the Protocol;

Have agreed as follows:

Article I

Scope

This Annex shall apply to environmental emergencies in the Antarctic Treaty area which relate to scientific research programmes, tourism and all other governmental and non-governmental activities in the Antarctic Treaty area for which advance notice is required under Article VII(5) of the Antarctic Treaty, including associated logistic support activities. Measures and plans for preventing and responding to such emergencies are also included in this Annex. It shall apply to all tourist vessels that enter the Antarctic Treaty area. It shall also apply to environmental emergencies in the Antarctic Treaty area which relate to other vessels and activities as may be decided in accordance with Article XIII.

Article II

Definitions

For the purposes of this Annex:

(a) 'Decision' means a Decision adopted pursuant to the Rules of Procedure of Antarctic Treaty Consultative Meetings and referred to in Decision 1 (1995) of the XIXth Antarctic Treaty Consultative Meeting;
(b) 'Environmental emergency' means any accidental event that has occurred, having taken place after the entry into force of this Annex, and that results in, or imminently threatens to result in, any significant and harmful impact on the Antarctic environment;
(c) 'Operator' means any natural or juridical person, whether governmental or non-governmental, which organises activities to be carried out in the Antarctic Treaty area. An operator does not include a natural person who is an employee, contractor, subcontractor, or agent of, or who is in the service of, a natural or juridical person, whether governmental or non-governmental, which organises activities to be carried out in the Antarctic Treaty area, and does not include a juridical person that is a contractor or subcontractor acting on behalf of a State operator;
(d) 'Operator of the Party' means an operator that organises, in that Party's territory, activities to be carried out in the Antarctic Treaty area, and:
    (i) those activities are subject to authorisation by that Party for the Antarctic Treaty area; or
    (ii) in the case of a Party which does not formally authorise activities for the Antarctic Treaty area, those activities are subject to a comparable regulatory process by that Party.

The terms 'its operator', 'Party of the operator', and 'Party of that operator' shall be interpreted in accordance with this definition;

(e) 'Reasonable', as applied to preventative measures and response action, means measures or actions which are appropriate, practicable, proportionate and based on the availability of objective criteria and information, including:

(i) risks to the Antarctic environment, and the rate of its natural recovery;
(ii) risks to human life and safety; and
(iii) technological and economic feasibility;

(f) 'Response action' means reasonable measures taken after an environmental emergency has occurred to avoid, minimise or contain the impact of that environmental emergency, which to that end may include clean-up in appropriate circumstances, and includes determining the extent of that emergency and its impact;

(g) 'The Parties' means the States for which this Annex has become effective in accordance with Article IX of the Protocol.

Article III

Preventative measures

1. Each Party shall require its operators to undertake reasonable preventative measures that are designed to reduce the risk of environmental emergencies and their potential adverse impact.
2. Preventative measures may include:

(a) specialised structures or equipment incorporated into the design and construction of facilities and means of transportation;
(b) specialised procedures incorporated into the operation or maintenance of facilities and means of transportation; and
(c) specialised training of personnel.

Article IV

Contingency plans

1. Each Party shall require its operators to:

(a) establish contingency plans for responses to incidents with potential adverse impacts on the Antarctic environment or dependent and associated ecosystems; and
(b) co-operate in the formulation and implementation of such contingency plans.

2. Contingency plans shall include, when appropriate, the following components:

(a) procedures for conducting an assessment of the nature of the incident;
(b) notification procedures;
(c) identification and mobilisation of resources;
(d) response plans;
(e) training;
(f) record keeping; and
(g) demobilisation.

3. Each Party shall establish and implement procedures for immediate notification of, and co-operative responses to, environmental emergencies, and shall promote the use of notification procedures and co-operative response procedures by its operators that cause environmental emergencies.

Article V

Response action

1. Each Party shall require each of its operators to take prompt and effective response action to environmental emergencies arising from the activities of that operator.
2. In the event that an operator does not take prompt and effective response action, the Party of that operator and other Parties are encouraged to take such action, including through their agents and operators specifically authorised by them to take such action on their behalf.
3. (a) Other Parties wishing to take response action to an environmental emergency pursuant to paragraph 2 above shall notify their intention to the Party of the operator and the Secretariat of the Antarctic Treaty beforehand with a view to the Party of the operator taking response action itself, except where a threat of significant and harmful impact to the Antarctic environment is imminent and it would be reasonable in all the circumstances to take immediate response action, in which case they shall notify the Party of the operator and the Secretariat of the Antarctic Treaty as soon as possible.

(b) Such other Parties shall not take response action to an environmental emergency pursuant to paragraph 2 above, unless a threat of significant and harmful impact to the

Antarctic environment is imminent and it would be reasonable in all the circumstances to take immediate response action, or the Party of the operator has failed within a reasonable time to notify the Secretariat of the Antarctic Treaty that it will take the response action itself, or where that response action has not been taken within a reasonable time after such notification.

(c) In the case that the Party of the operator takes response action itself, but is willing to be assisted by another Party or Parties, the Party of the operator shall coordinate the response action.

4. However, where it is unclear which, if any, Party is the Party of the operator or it appears that there may be more than one such Party, any Party taking response action shall make best endeavours to consult as appropriate and shall, where practicable, notify the Secretariat of the Antarctic Treaty of the circumstances.
5. Parties taking response action shall consult and coordinate their action with all other Parties taking response action, carrying out activities in the vicinity of the environmental emergency, or otherwise impacted by the environmental emergency, and shall, where practicable, take into account all relevant expert guidance which has been provided by permanent observer delegations to the Antarctic Treaty Consultative Meeting, by other organisations, or by other relevant experts.

Article VI

Liability

1. An operator that fails to take prompt and effective response action to environmental emergencies arising from its activities shall be liable to pay the costs of response action taken by Parties pursuant to Article V(2) to such Parties.
2. (a) When a State operator should have taken prompt and effective response action but did not, and no response action was taken by any Party, the State operator shall be liable to pay the costs of the response action which should have been undertaken, into the fund referred to in Article XII.

(b) When a non-State operator should have taken prompt and effective response action but did not, and no response action was taken by any Party, the non-State operator shall be liable to pay an amount of money that reflects as much as possible the costs of the response action that should have been taken. Such money is to be paid directly to the fund referred to in Article XII, to the Party of that operator or to the Party that enforces the mechanism referred to in Article VII(3). A Party receiving such money shall make best efforts to make a contribution to the fund referred to in Article XII which at least equals the money received from the operator.

3. Liability shall be strict.
4. When an environmental emergency arises from the activities of two or more operators, they shall be jointly and severally liable, except that an operator which establishes that only part of the environmental emergency results from its activities shall be liable in respect of that part only.
5. Notwithstanding that a Party is liable under this Article for its failure to provide for prompt and effective response action to environmental emergencies caused by its warships, naval auxiliaries, or other ships or aircraft owned or operated by it and used, for the time being, only on government non-commercial service, nothing in this Annex is intended to affect the sovereign immunity under international law of such warships, naval auxiliaries, or other ships or aircraft.

Article VII

Actions

1. Only a Party that has taken response action pursuant to Article V(2) may bring an action against a non-State operator for liability pursuant to Article VI(1) and such action may be brought in the courts of not more than one Party where the operator is incorporated or has its principal place of business or his or her habitual place of residence. However, should the operator not be incorporated in a Party or have its principal place of business or his or her habitual place of residence in a Party, the action may be brought in the courts of the Party of the operator within the meaning of Article II(d). Such actions for compensation shall be brought within three years of the commencement of the response action or

within three years of the date on which the Party bringing the action knew or ought reasonably to have known the identity of the operator, whichever is later. In no event shall an action against a non-State operator be commenced later than 15 years after the commencement of the response action.

2. Each Party shall ensure that its courts possess the necessary jurisdiction to entertain actions under paragraph 1 above.
3. Each Party shall ensure that there is a mechanism in place under its domestic law for the enforcement of Article VI(2)(b) with respect to any of its non-State operators within the meaning of Article II(d), as well as where possible with respect to any non-State operator that is incorporated or has its principal place of business or his or her habitual place of residence in that Party. Each Party shall inform all other Parties of this mechanism in accordance with Article XIII(3) of the Protocol. Where there are multiple Parties that are capable of enforcing Article VI(2)(b) against any given non-State operator under this paragraph, such Parties should consult amongst themselves as to which Party should take enforcement action. The mechanism referred to in this paragraph shall not be invoked later than 15 years after the date the Party seeking to invoke the mechanism became aware of the environmental emergency.
4. The liability of a Party as a State operator under Article VI(1) shall be resolved only in accordance with any enquiry procedure which may be established by the Parties, the provisions of Articles XVIII, XIX and XX of the Protocol and, as applicable, the Schedule to the Protocol on Arbitration.
5. (a) The liability of a Party as a State operator under Article VI(2)(a) shall be resolved only by the Antarctic Treaty Consultative Meeting and, should the question remain unresolved, only in accordance with any enquiry procedure which may be established by the Parties, the provisions of Articles XVIII, XIX and XX of the Protocol and, as applicable, the Schedule to the Protocol on Arbitration.
   (b) The costs of the response action which should have been undertaken and was not, to be paid by a State operator into the fund referred to in Article XII, shall be approved by means of a Decision. The Antarctic Treaty Consultative Meeting should seek the advice of the Committee on Environmental Protection as appropriate.
6. Under this Annex, the provisions of Articles XIX(4), XIX(5), and XX(1) of the Protocol, and, as applicable, the Schedule to the Protocol on Arbitration, are only applicable to liability of a Party as a State operator for compensation for response action that has been undertaken to an environmental emergency or for payment into the fund.

Article VIII

Exemptions from liability

1. An operator shall not be liable pursuant to Article VI if it proves that the environmental emergency was caused by:
   (a) an act or omission necessary to protect human life or safety;
   (b) an event constituting in the circumstances of Antarctica a natural disaster of an exceptional character, which could not have been reasonably foreseen, either generally or in the particular case, provided all reasonable preventative measures have been taken that are designed to reduce the risk of environmental emergencies and their potential adverse impact;
   (c) an act of terrorism; or
   (d) an act of belligerency against the activities of the operator.
2. A Party, or its agents or operators specifically authorised by it to take such action on its behalf, shall not be liable for an environmental emergency resulting from response action taken by it pursuant to Article V(2) to the extent that such response action was reasonable in all the circumstances.

Article IX

Limits of liability

1. The maximum amount for which each operator may be liable under Article VI(1) or Article VI(2), in respect of each environmental emergency, shall be as follows:

(a) for an environmental emergency arising from an event involving a ship:

(i) one million SDR for a ship with a tonnage not exceeding 2,000 tons;

(ii) for a ship with a tonnage in excess thereof, the following amount in addition to that referred to in (i) above:

– for each ton from 2,001 to 30,000 tons, 400 SDR;
– for each ton from 30,001 to 70,000 tons, 300 SDR; and
– for each ton in excess of 70,000 tons, 200 SDR;

(b) for an environmental emergency arising from an event which does not involve a ship, three million SDR.

2. (a) Notwithstanding paragraph 1(a) above, this Annex shall not affect:

(i) the liability or right to limit liability under any applicable international limitation of liability treaty; or

(ii) the application of a reservation made under any such treaty to exclude the application of the limits therein for certain claims;

provided that the applicable limits are at least as high as the following: for a ship with a tonnage not exceeding 2,000 tons, one million SDR; and for a ship with a tonnage in excess thereof, in addition, for a ship with a tonnage between 2,001 and 30,000 tons, 400 SDR for each ton; for a ship with a tonnage from 30,001 to 70,000 tons, 300 SDR for each ton; and for each ton in excess of 70,000 tons, 200 SDR for each ton.

(b) Nothing in subparagraph (a) above shall affect either the limits of liability set out in paragraph 1(a) above that apply to a Party as a State operator, or the rights and obligations of Parties that are not parties to any such treaty as mentioned above, or the application of Article VII(1) and Article VII(2).

3. Liability shall not be limited if it is proved that the environmental emergency resulted from an act or omission of the operator, committed with the intent to cause such emergency, or recklessly and with knowledge that such emergency would probably result.

4. The Antarctic Treaty Consultative Meeting shall review the limits in paragraphs 1(a) and 1(b) above every three years, or sooner at the request of any Party. Any amendments to these limits, which shall be determined after consultation amongst the Parties and on the basis of advice including scientific and technical advice, shall be made under the procedure set out in Article XIII(2).

5. For the purpose of this Article:

(a) 'ship' means a vessel of any type whatsoever operating in the marine environment and includes hydrofoil boats, air-cushion vehicles, submersibles, floating craft and fixed or floating platforms;

(b) 'SDR' means the Special Drawing Rights as defined by the International Monetary Fund;

(c) a ship's tonnage shall be the gross tonnage calculated in accordance with the tonnage measurement rules contained in Annex I of the International Convention on Tonnage Measurement of Ships, 1969.

Article X

State liability

A Party shall not be liable for the failure of an operator, other than its State operators, to take response action to the extent that that Party took appropriate measures within its competence, including the adoption of laws and regulations, administrative actions and enforcement measures, to ensure compliance with this Annex.

Article XI

Insurance and other financial security

1. Each Party shall require its operators to maintain adequate insurance or other financial security, such as the guarantee of a bank or similar financial institution, to cover liability under Article VI(1) up to the applicable limits set out in Article IX(1) and Article IX(2).
2. Each Party may require its operators to maintain adequate insurance or other financial security, such as the guarantee of a bank or similar financial institution, to cover liability under Article VI(2) up to the applicable limits set out in Article IX(1) and Article IX(2).
3. Notwithstanding paragraphs 1 and 2 above, a Party may maintain self-insurance in respect

of its State operators, including those carrying out activities in the furtherance of scientific research.

Article XII

The fund

1. The Secretariat of the Antarctic Treaty shall maintain and administer a fund, in accordance with Decisions including terms of reference to be adopted by the Parties, to provide, *inter alia*, for the reimbursement of the reasonable and justified costs incurred by a Party or Parties in taking response action pursuant to Article V(2).
2. Any Party or Parties may make a proposal to the Antarctic Treaty Consultative Meeting for reimbursement to be paid from the fund. Such a proposal may be approved by the Antarctic Treaty Consultative Meeting, in which case it shall be approved by way of a Decision. The Antarctic Treaty Consultative Meeting may seek the advice of the Committee of Environmental Protection on such a proposal, as appropriate.
3. Special circumstances and criteria, such as: the fact that the responsible operator was an operator of the Party seeking reimbursement; the identity of the responsible operator remaining unknown or not subject to the provisions of this Annex; the unforeseen failure of the relevant insurance company or financial institution; or an exemption in Article VIII applying, shall be duly taken into account by the Antarctic Treaty Consultative Meeting under paragraph 2 above.
4. Any State or person may make voluntary contributions to the fund.

Article XIII

Amendment or modification

1. This Annex may be amended or modified by a Measure adopted in accordance with Article IX(1) of the Antarctic Treaty.
2. In the case of a Measure pursuant to Article IX(4), and in any other case unless the Measure in question specifies otherwise, the amendment or modification shall be deemed to have been approved, and shall become effective, one year after the close of the Antarctic Treaty Consultative Meeting at which it was adopted, unless one or more Antarctic Treaty Consultative Parties notifies the Depositary, within that time period, that it wishes any extension of that period or that it is unable to approve the Measure.
3. Any amendment or modification of this Annex which becomes effective in accordance with paragraph 1 or 2 above shall thereafter become effective as to any other Party when notice of approval by it has been received by the Depositary.

21
CRAMRA

21.1 General Information

Convention on the regulation of Antarctic Mineral Resource Activities

Most common abbreviation(s)	**CRAMRA, Wellington Convention**
Organisation	Antarctic Treaty Consultative Meetings (ATCM)
Reference	http://sedac.ciesin.org/entri/texts/acrc/cramra.txt.html http://www.state.gov/g/oes/rls/rpts/ant/
Status	
Adoption	2 June 1988
Entry into force	Not yet in force (All states with claims to territorial sovereignty in Antarctica have to ratify the convention)
Signatories	Brazil, Finland, Russian Federation, Sweden, United States of America, Uruguay
Ratifications	/
Literature	Aust, A & Shears, J, 'Liability for Environmental Damage to Antarctica', RECIEL, 1996, pp. 312–320. Burmester, H, 'Liability for Damage from Antarctic Mineral Resource Activities', Virginia journal of international law, 1989, pp. 621–660. Wolfrum, R, 'The unfinished task: CRAMRA and the question of liability', The Antarctic Treaty system in world politics, 1991, pp. 120–132.

21.2 Convention on the Regulation of Antarctic Mineral Resource Activities

Done at Wellington 2 June 1988

The States Parties to this Convention, hereinafter referred to as the Parties,

RECALLING the provisions of the Antarctic Treaty;

CONVINCED that the Antarctic Treaty system has proved effective in promoting international harmony in furtherance of the purposes and principles of the Charter of the United Nations, in ensuring the absence of any measures of a military nature and the protection of the Antarctic environment and in promoting freedom of scientific research in Antarctica;

REAFFIRMING that it is in the interest of all mankind that the Antarctic Treaty area shall continue forever to be used exclusively for peaceful purposes and shall not become the scene or object of international discord;

NOTING the possibility that exploitable mineral resources may exist in Antarctica;

BEARING IN MIND the special legal and political status of Antarctica and the special responsibility of

the Antarctic Treaty Consultative Parties to ensure that all activities in Antarctica are consistent with the purposes and principles of the Antarctic Treaty;

BEARING IN MIND also that a regime for Antarctic mineral resources must be consistent with Article IV of the Antarctic Treaty and in accordance therewith be without prejudice and acceptable to hose States which assert rights of or claims to territorial sovereignty in Antarctica, and those States which neither recognise nor assert such rights or claims, including those States which assert a basis of claim to territorial sovereignty in Antarctica;

NOTING the unique ecological, scientific and wilderness value of Antarctica and the importance of Antarctica to the global environment;

RECOGNISING that Antarctic mineral resource activities could adversely affect the Antarctic environment or dependent or associated ecosystems;

BELIEVING that the protection of the Antarctic environment and dependent and associated ecosystems must be a basic consideration in decisions taken on possible Antarctic mineral resource activities;

CONCERNED to ensure that Antarctic mineral resource activities, should they occur, are compatible with scientific investigation in Antarctica and other legitimate uses of Antarctica;

BELIEVING that a regime governing Antarctic mineral resource activities will further strengthen the Antarctic Treaty system;

CONVINCED that participation in Antarctic mineral resource activities should be open to all States which have an interest in such activities and subscribe to a regime governing them and that the special situation of developing country Parties to the regime should be taken into account.

BELIEVING that the effective regulation of Antarctic mineral resource activities is in the interest of the international community as a whole;

HAVE AGREED as follows:

CHAPTER 1

GENERAL PROVISIONS

Article I

Definitions

For the purposes of this Convention:

1. 'Antarctic Treaty' means the Antarctic Treaty done at Washington on 1 December 1959.
2. 'Antarctic Treaty Consultative Parties' means the Contracting Parties to the Antarctic Treaty entitled to appoint representatives to participate in the meetings referred to in Article IX of that Treaty.
3. 'Antarctic Treaty area' means the area to which the provisions of the Antarctic Treaty apply in accordance with Article VI of that Treaty.
4. 'Convention for the Conservation of Antarctic Seals' means the Convention done at London on 1 June 1972.
5. 'Convention on the Conservation of Antarctic Marine Living Resources' means the Convention done at Canberra on 20 May 1980.
6. 'Mineral resources' means all non-living natural non-renewable resources, including fossil fuels, metallic and non-metallic minerals.
7. 'Antarctic mineral resource activities' means prospecting, exploration or development, but does not include scientific research activities within the meaning of Article III of the Antarctic Treaty.
8. 'Prospecting' means activities, including logistic support, aimed at identifying areas of mineral resource potential for possible exploration and development, including geological, geochemical and geophysical investigations and field observations, the use of remote sensing techniques and collection of surface, sea floor and sub-ice samples. Such activities do not include dredging and excavations, except for the purpose of obtaining small-scale samples, or drilling, except shallow drilling into rock and sediment to depths not exceeding 25 metres, or such other depth as the Commission may determine for particular circumstances.
9. 'Exploration' means activities, including logistic support, aimed at identifying and evaluating specific mineral resource occurrences or deposits, including exploratory drilling, dredging and other surface or subsurface excavations required to determine the nature and size of mineral resource deposits and the feasibility of their development, but excluding pilot projects or commercial production.
10. 'Development' means activities, including logistic support, which take place following exploration and are aimed at or associated

with exploitation of specific mineral resource deposits, including pilot projects, processing, storage and transport activities.

11. 'Operator' means:

    (a) a Party; or
    (b) an agency or instrumentality of a Party; or
    (c) a juridical person established under the law of a Party; or
    (d) a joint venture consisting exclusively of any combination of any of the foregoing, which is undertaking Antarctic mineral resource activities and for which there is a Sponsoring State.

12. 'Sponsoring State' means the Party with which an Operator has a substantial and genuine link, through being:

    (a) in the case of a Party, that Party;
    (b) in the case of an agency or instrumentality of a Party, that Party;
    (c) in the case of a juridical person other than an agency or instrumentality of a Party, the Party:

        (i) under whose law that juridical person is established and to whose law it is subject, without prejudice to any other law which might be applicable, and
        (ii) in whose territory the management of that juridical person is located, and
        (iii) to whose effective control that juridical person is subject;

    (d) in the case of a joint venture not constituting a juridical person:

        (i) where the managing member of the joint venture is a Party or an agency or instrumentality of a Party, that Party; or
        (ii) in any other case, where in relation to a Party the managing member of the joint venture satisfies the requirements of subparagraph (c) above, that Party.

13. 'Managing member of the joint venture' means that member which the participating members in the joint venture have by agreement designated as having responsibility for central management of the joint venture, including the functions of organising and supervising the activities to be undertaken, and controlling the financial resources involved.
14. 'Effective control' means the ability of the Sponsoring State to ensure the availability of substantial resources of the Operator for purposes connected with the implementation of this Convention, through the location of such resources in the territory of the Sponsoring State or otherwise.
15. 'Damage to the Antarctic environment or dependent or associated ecosystems' means any impact on the living or non-living components of that environment or those ecosystems, including harm to atmospheric, marine or terrestrial life, beyond that which is negligible or which has been assessed and judged to be acceptable pursuant to this Convention.
16. 'Commission' means the Antarctic Mineral Resources Commission established pursuant to Article XVIII.
17. 'Regulatory Committee' means an Antarctic Mineral Resources Regulatory Committee established pursuant to Article XXIX.
18. 'Advisory Committee' means the Scientific, Technical and Environmental Advisory Committee established pursuant to Article XXIII.
19. 'Special Meeting of Parties' means the Meeting referred to in Article XXVIII.
20. 'Arbitral Tribunal' means an Arbitral Tribunal constituted as provided for in the Annex, which forms an integral part of this Convention.

Article II

Objectives and general principles

1. This Convention is an integral part of the Antarctic Treaty system, comprising the Antarctic Treaty, the measures in effect under that Treaty, and its associated separate legal instruments, the prime purpose of which is to ensure that Antarctica shall continue forever to be used exclusively for peaceful purposes and shall not become the scene or object of international discord. The Parties provide through this Convention, the principles it establishes, the rules it prescribes, the institutions it creates and the decisions adopted pursuant to it, a means for:

   assessing the possible impact on the environment of Antarctic mineral resource activities;

   determining whether Antarctic mineral resource activities are acceptable;

governing the conduct of such Antarctic mineral resource activities as may be found acceptable; and

ensuring that any Antarctic mineral resource activities are undertaken in strict conformity with this Convention.

2. In implementing this Convention, the Parties shall ensure that Antarctic mineral resource activities, should they occur, take place in a manner consistent with all the components of the Antarctic Treaty system and the obligations flowing therefrom.
3. In relation to Antarctic mineral resource activities, should they occur, the Parties acknowledge the special responsibility of the Antarctic Treaty Consultative Parties for the protection of the environment and the need to:

   (a) protect the Antarctic environment and dependent and associated ecosystems;
   (b) respect Antarctica's significance for, and influence on, the global environment;
   (c) respect other legitimate uses of Antarctica;
   (d) respect Antarctica's scientific value and aesthetic and wilderness qualities;
   (e) ensure the safety of operations in Antarctica;
   (f) promote opportunities for fair and effective participation of all Parties; and
   (g) take into account the interests of the international community as a whole.

Article III

Prohibition of Antarctic mineral resource activities outside this Convention

No Antarctic mineral resource activities shall be conducted except in accordance with this Convention and measures in effect pursuant to it and, in the case of exploration or development, with a Management Scheme approved pursuant to Article XLVIII or LIV.

Article IV

Principles concerning judgments on Antarctic mineral resource activities

1. Decisions about Antarctic mineral resource activities shall be based upon information adequate to enable informed judgments to be made about their possible impacts and no such activities shall take place unless this information is available for decisions relevant to those activities.
2. No Antarctic mineral resource activity shall take place until it is judged, based upon assessment of its possible impacts on the Antarctic environment and on dependent and on associated ecosystems, that the activity in question would not cause:

   significant adverse effects on air and water quality;

   significant changes in atmospheric, terrestrial or marine environments;

   significant changes in the distribution, abundance or productivity of populations of species of fauna or flora;

   further jeopardy to endangered or threatened species or populations of such species; or

   degradation of, or substantial risk to, areas of special biological, scientific, historic, aesthetic or wilderness significance.

3. No Antarctic mineral resource activity shall take place until it is judged, based upon assessment of its possible impacts, that the activity in question would not cause significant adverse effects on global or regional climate or weather patterns.
4. No Antarctic mineral resource activity shall take place until it is judged that:

   technology and procedures are available to provide for safe operations and compliance with paragraphs 2 and 3 above;

   there exists the capacity to monitor key environmental parameters and ecosystem components so as to identify any adverse effects of such activity and to provide for the modification of operating procedures as may be necessary in the light of the results of monitoring or increased knowledge of the Antarctic environment or dependent or associated ecosystems; and

   there exists the capacity to respond effectively to accidents, particularly those with potential environmental effects.

5. The judgments referred to in paragraphs 2, 3 and 4 above shall take into account the cumulative impacts of possible Antarctic mineral resource activities both by themselves and in combination with other such activities and other uses of Antarctica.

Article V

Area of application

1. This Convention shall, subject to paragraphs 2, 3 and 4 below, apply to the Antarctic Treaty area.

2. Without prejudice to the responsibilities of the Antarctic Treaty Consultative Parties under the Antarctic Treaty and measures pursuant to it, the Parties agree that this Convention shall regulate Antarctic mineral resource activities which take place on the continent of Antarctica and all Antarctic islands, including all ice shelves, south of 60 deg. south latitude and in the seabed and subsoil of adjacent offshore areas up to the deep seabed.
3. For the purposes of this Convention 'deep seabed' means the seabed and subsoil beyond the geographic extent of the continental shelf as the term continental shelf is defined in accordance with international law.
4. Nothing in this Article shall be construed as limiting the application of other Articles of this Convention in so far as they relate to possible impacts outside the area referred to in paragraphs 1 and 2 above, including impacts on dependent or on associated ecosystems.

Article VI

Cooperation and international participation

In the implementation of this Convention cooperation within its framework shall be promoted and encouragement given to international participation in Antarctic mineral resource activities by interested Parties which are Antarctic Treaty Consultative Parties and by other interested Parties, in particular, developing countries in either category. Such participation may be realised through the Parties themselves and their Operators.

Article VII

Compliance with this Convention

1. Each Party shall take appropriate measures within its competence to ensure compliance with this Convention and any measures in effect pursuant to it.
2. If a Party is prevented by the exercise of jurisdiction by another Party from ensuring compliance in accordance with paragraph 1 above, it shall not, to the extent that it is so prevented, bear responsibility for that failure to ensure compliance.
3. If any jurisdictional dispute related to compliance with this Convention or any measure in effect pursuant to it arises between two or more Parties, the Parties concerned shall immediately consult together with a view to reaching a mutually acceptable solution.
4. Each Party shall notify the Executive Secretary, for circulation to all other Parties, of the measures taken pursuant to paragraph 1 above.
5. Each Party shall exert appropriate efforts, consistent with the Charter of the United Nations, to the end that no one engages in any Antarctic mineral resource activities contrary to the objectives and principles of this Convention.
6. Each Party may, whenever it deems it necessary, draw the attention of the Commission to any activity which in its opinion affects the implementation of the objectives and principles of this Convention.
7. The Commission shall draw the attention of all Parties to any activity which, in the opinion of the Commission, affects the implementation of the objectives and principles of this Convention or the compliance by any Party with its obligations under this Convention and any measures in effect pursuant to it.
8. The Commission shall draw the attention of any State which is not a Party to this Convention to any activity undertaken by that State, its agencies or instrumentalities, natural or juridical persons, ships, aircraft or other means of transportation which, in the opinion of the Commission, affects the implementation of the objectives and principles of this Convention. The Commission shall inform all Parties accordingly.
9. Nothing in this Article shall affect the operation of Article CXXVII of this Convention or Article VIII of the Antarctic Treaty.

Article VIII

Response action and liability

1. An Operator undertaking any Antarctic mineral resource activity shall take necessary and timely response action, including prevention, containment, clean up and removal measures, if the activity results in or threatens to result in damage to the Antarctic environment or dependent or associated ecosystems. The Operator, through its Sponsoring State, shall notify the Executive Secretary, for circulation to the relevant institutions of this Convention and to all Parties, of action taken pursuant to this paragraph.
2. An Operator shall be strictly liable for:

   damage to the Antarctic environment or dependent or associated ecosystems arising from its Antarctic mineral resource activities, including

payment in the event that there has been no restoration to the status quo ante;

loss of or impairment to an established use, as referred to in Article XV, or loss of or impairment to an established use of dependent or associated ecosystems, arising directly out of damage described in subparagraph (a) above;

loss of or damage to property of a third party or loss of life or personal injury of a third party arising directly out of damage described in subparagraph (a) above; and

reimbursement of reasonable costs by whomsoever incurred relating to necessary response action, including prevention, containment, clean up and removal measures, and action taken to restore the status quo ante where Antarctic mineral resource activities undertaken by that Operator result in or threaten to resulting damage to the Antarctic environment or dependent or associated ecosystems.

3. Damage of the kind referred to in paragraph 2 above which would not have occurred or continued if the Sponsoring State had carried out its obligations under this Convention with respect to its Operator shall, in accordance with international law, entail liability of that Sponsoring State. Such liability shall be limited to that portion of liability not satisfied by the Operator or otherwise.

   Nothing in subparagraph (a) above shall affect the application of the rules of international law applicable in the event that damage not referred to in that subparagraph would not have occurred or continued if the Sponsoring State had carried out its obligations under this Convention with respect to its Operator.

4. An Operator shall not be liable pursuant to paragraph 2 above if it proves that the damage has been caused directly by, and to the extent that it has been caused directly by:

   an event constituting in the circumstances of Antarctica a natural disaster of an exceptional character which could not reasonably have been foreseen; or

   armed conflict, should it occur notwithstanding the Antarctic Treaty, or an act of terrorism directed against the activities of the Operator, against which no reasonable precautionary measures could have been effective.

5. Liability of an Operator for any loss of life, personal injury or loss of or damage to property other than that governed by this Article shall be regulated by applicable law and procedures.
6. If an Operator proves that damage has been caused totally or in part by an intentional or grossly negligent act or omission of the party seeking redress, that Operator may be relieved totally or in part from its obligation to pay compensation in respect of the damage suffered by such party.

   Further rules and procedures in respect of the provisions on liability set out in this Article shall be elaborated through a separate Protocol which shall be adopted by consensus by the members of the Commission and shall enter into force according to the procedure provided for in Article LXII for the entry into force of this Convention.

   Such rules and procedures shall be designed to enhance the protection of the Antarctic environment and dependent and associated ecosystems.

   Such rules and procedures:

   (i) may contain provisions for appropriate limits on liability, where such limits can be justified;
   (ii) without prejudice to Article LVII, shall prescribe means and mechanisms such as a claims tribunal or other for a by which claims against Operators pursuant to this Article may be assessed and adjudicated;
   (iii) shall ensure that a means is provided to assist with immediate response action, and to satisfy liability under

   paragraph 2 above in the event, inter alia, that an Operator liable is financially incapable of meeting its obligation in full, that it exceeds any relevant limits of liability, that there is a defence to liability or that the loss or damage is of undetermined origin. Unless it is determined during the elaboration of the Protocol that there are other effective means of meeting these objectives, the Protocol shall establish a Fund or Funds and make provision in respect of such Fund or Funds, inter alia, for the following:

* financing by Operators or on industry wide bases;
* ensuring the permanent liquidity and mandatory supplementation thereof in the event of insufficiency;
* reimbursement of costs of response action, by whomsoever incurred.

8. Nothing in paragraphs 4, 6 and 7 above or in the Protocol adopted pursuant to paragraph 7 shall affect in any way the provisions of paragraph 1 above.
9. No application for an exploration or development permit shall be made until the Protocol provided for in paragraph 7 above is in force for the Party lodging such application.
10. Each Party, pending the entry into force for it of the Protocol provided for in paragraph 7 above, shall ensure,

    consistently with Article VII and in accordance with its legal system, that recourse is available in its national courts for adjudicating liability claims pursuant to paragraphs 2, 4 and 6 above against Operators which are engaged in prospecting. Such recourse shall include the adjudication of claims against any Operator it has sponsored. Each Party shall also ensure, in accordance with its legal system, that the Commission has the right to appear as a party in its national courts to pursue relevant liability claims under paragraph 2(a) above.

11. Nothing in this Article or in the Protocol provided for in paragraph 7 above shall be construed as to:

    (a) preclude the application of existing rules on liability, and the development in accordance with international law of further such rules, which may have application to either States or Operators; or
    (b) affect the right of an Operator incurring liability pursuant to this Article to seek redress from another party which caused or contributed to the damage in question.

12. When compensation has been paid other than under this Convention liability under this Convention shall be offset by the amount of such payment.

Article IX

Protection of legal positions under the Antarctic Treaty

Nothing in this Convention and no acts or activities taking place while this Convention is in force shall:

constitute a basis for asserting, supporting or denying a claim to territorial sovereignty in the Antarctic Treaty area or create any rights of sovereignty in the Antarctic Treaty area;

be interpreted as a renunciation or diminution by any Party of, or as prejudicing, any right or claim or basis of claim to territorial sovereignty in Antarctica or to exercise coastal state jurisdiction under international law;

be interpreted as prejudicing the position of any Party as regards its recognition or non-recognition of any such right, claim or basis of claim; or

affect the provision of Article IV(2) of the Antarctic Treaty that no new claim, or enlargement of an existing claim, to territorial sovereignty in Antarctica shall be asserted while the Antarctic Treaty is in force.

Article X

Consistency with the other components of the Antarctic Treaty system

1. Each Party shall ensure that Antarctic mineral resource activities take place in a manner consistent with the components of the Antarctic Treaty system, including the Antarctic Treaty, the Convention for the Conservation of Antarctic Seals and the Convention on the Conservation of Antarctic Marine Living Resources and the measures in effect pursuant to those instruments.
2. The Commission shall consult and cooperate with the Antarctic Treaty Consultative Parties, the Contracting Parties to the Convention for the Conservation of Antarctic Seals, and the Commission for the Conservation of Antarctic Marine Living Resources with a view to ensuring the achievement of the objectives and principles of this Convention and avoiding any interference with the achievement of the objectives and principles of the Antarctic Treaty, the Convention for the Conservation of Antarctic Seals or the Convention on the Conservation of Antarctic Marine Living Resources, or inconsistency between the measures in effect pursuant to those

instruments andmeasures in effect pursuant to this Convention.

Article XI

Inspection under the Antarctic Treaty

All stations, installations and equipment, in the Antarctic Treaty area, relating to Antarctic mineral resource activities, as well as ships and aircraft supporting such activities at points of discharging or embarking cargoes or personnel at such stations and installations, shall be open at all times to inspection by observers designated under Article VII of the Antarctic Treaty for the purposes of that Treaty.

Article XII

Inspection under this Convention

1. In order to promote the objectives and principles and to ensure the observance of this Convention and measures in effect pursuant to it, all stations, installations and equipment relating to Antarctic mineral resource activities in the area in which these activities are regulated by this Convention, as well as ships and aircraft supporting such activities at points of discharging or embarking cargoes or personnel anywhere in that area shall be open at all times to inspection by:

   observers designated by any member of the Commission who shall be nationals of that member; and

   observers designated by the Commission or relevant Regulatory Committees.

2. Aerial inspection may be carried out at any time over the area in which Antarctic mineral resource activities are regulated by this Convention.
3. The Commission shall maintain an up-to-date list of observers designated pursuant to paragraph 1(a) and (b) above.
4. Reports from the observers shall be transmitted to the Commission and to any Regulatory Committee having competence in the area where the inspection has been carried out.
5. Observers shall avoid interference with the safe and normal operations of stations, installations and equipment visited and shall respect measures adopted by the Commission to protect confidentiality of data and information.
6. Inspections undertaken pursuant to paragraph 1(a) and (b) above shall be compatible and reinforce each other and shall not impose an undue burden on the operation of stations, installations and equipment visited.
7. In order to facilitate the exercise of their functions under this Convention, and without prejudice to the respective positions of the Parties relating to jurisdiction over all other persons in the area in which Antarctic mineral resource activities are regulated by this Convention, observers designated under this Article shall be subject only to the jurisdiction of the Party of which they are nationals in respect of all acts or omissions occurring while they are in that area for the purpose of exercising their functions.
8. No exploration or development shall take place in an area identified pursuant to Article XLI until effective provision has been made for inspection in that area.

Article XIII

Protected areas

1. Antarctic mineral resource activities shall be prohibited in any area designated as a Specially Protected Area or a Site of Special Scientific Interest under Article IX(1) of the Antarctic Treaty. Such activities shall also be prohibited in any other area designated as a protected area in accordance with Article IX(1) of the Antarctic Treaty, except to the extent that the relevant measure provides otherwise. Pending any designation becoming effective in accordance with Article IX(4) of the Antarctic Treaty, no Antarctic mineral resource activities shall take place in any such area which would prejudice the purpose for which it was designated.
2. The Commission shall also prohibit or restrict Antarctic mineral resource activities in any area which, for historic, ecological, environmental, scientific or other reasons, it has designated as a protected area.
3. In exercising its powers under paragraph 2 above or under Article XLI the Commission shall consider whether to restrict or prohibit Antarctic mineral resource activities in any area, in addition to those referred to in paragraph 1 above, protected or set aside pursuant to provisions of other components of the Antarctic Treaty system, to ensure the purposes for which they are designated.

4. In relation to any area in which Antarctic mineral resource activities are prohibited or restricted in accordance with paragraph 1, 2 or 3 above, the Commission shall consider whether, for the purposes of Article IV(2)(e), it would be prudent, additionally, to prohibit or restrict Antarctic mineral resource activities in adjacent areas for the purpose of creating a buffer zone.
5. The Commission shall give effect to Article X(2) in acting pursuant to paragraphs 2, 3 and 4 above.
6. The Commission shall, where appropriate, bring any decisions it takes pursuant to this Article to the attention of the Antarctic Treaty Consultative Parties, the Contracting Parties to the Convention for the Conservation of Antarctic Seals, the Commission for the Conservation of Antarctic Marine Living Resources and the Scientific Committee on Antarctic Research.

Article XIV

Non-discrimination

In the implementation of this Convention there shall be no discrimination against any Party or its Operators.

Article XV

Respect for other uses of Antarctica

1. Decisions about Antarctic mineral resource activities shall take into account the need to respect other established uses of Antarctica, including:

   the operation of stations and their associated installations, support facilities and equipment in Antarctica;

   scientific investigation in Antarctica and cooperation therein;

   the conservation, including rational use, of Antarctic marine living resources;

   tourism;

   the preservation of historic monuments; and

   navigation and aviation,

   that are consistent with the Antarctic Treaty system.

2. Antarctic mineral resource activities shall be conducted so as to respect any uses of Antarctica as referred to in paragraph 1 above.

Article XVI

Availability and confidentiality of data and information

Data and information obtained from Antarctic mineral resource activities shall, to the greatest extent practicable and feasible, be made freely available, provided that:

(a) as regards data and information of commercial value deriving from prospecting, they may be retained by the Operator in accordance with Article XXXVII;
(b) as regards data and information deriving from exploration or development, the Commission shall adopt measures relating, as appropriate, to their release and to ensure the confidentiality of data and information of commercial value.

Article XVII

Notifications and provisional exercise of functions of the executive secretary

1. Where in this Convention there is a reference to the provision of information, a notification or a report to any institution provided for in this Convention and that institution has not been established, the information, notification or report shall be provided to the Executive Secretary who shall circulate it as required.
2. Where in this Convention a function is assigned to the Executive Secretary and no Executive Secretary has been appointed under Article XXXIII, that function shall be performed by the Depositary.

CHAPTER 2

INSTITUTIONS

Article XVIII

Commission

1. There is hereby established the Antarctic Mineral Resources Commission.
2. Membership of the Commission shall be as follows:

   each Party which was an Antarctic Treaty Consultative Party on the date when this Convention was opened for signature; and

   each other Party during such time as it is actively engaged insubstantial scientific, technical or environmental research in the area to which this

Convention applies directly relevant to decisions about Antarctic mineral resource activities, particularly the assessments and judgments called for in Article IV; and

each other Party sponsoring Antarctic mineral resource exploration or development during such time as the relevant Management Scheme is in force.

3. A Party seeking to participate in the work of the Commission pursuant to subparagraph (b) or (c) above shall notify the Depositary of the basis upon which it seeks to become a member of the Commission. In the case of a Party which is not an Antarctic Treaty Consultative Party, such notification shall include a declaration of intent to abide by recommendations pursuant to Article IX(1) of the Antarctic Treaty. The Depository shall communicate to each member of the Commission such notification and accompanying information.
4. The Commission shall consider the notification at its next meeting. In the event that a Party referred to in paragraph 2(b) above submitting a notification pursuant to paragraph 3 above is an Antarctic Treaty Consultative Party, it shall be deemed to have satisfied the requirements for Commission membership unless more than one-third of the members of the Commission object at the meeting at which such notification is considered. Any other Party submitting a notification shall be deemed to have satisfied the requirements for Commission membership if no member of the Commission objects at the meeting at which such notification is considered.
5. Each member of the Commission shall be represented by one representative who may be accompanied by alternate representatives and advisers.
6. Observer status in the Commission shall be open to any Party and to any Contracting Party to the Antarctic Treaty which is not a Party to this Convention.

Article XIX

Commission meetings

The first meeting of the Commission, held for the purpose of taking organisational, financial and other decisions necessary for the effective functioning of this Convention and its institutions, shall be convened within six months of the entry into force of this Convention.

After the Commission has held the meeting or meetings necessary to take the decisions referred to in subparagraph (a) above, the Commission shall not hold further meetings except in accordance with paragraph 2 or 3 below.

2. Meetings of the Commission shall be held within two months of:

receipt of a notification pursuant to Article XXXIX;

a request by at least six members of the Commission; or

a request by a member of a Regulatory Committee in accordance with Article XLIX(1).

3. The Commission may establish a regular schedule of meetings if it determines that it is necessary for the effective functioning of this Convention.
4. Unless the Commission decides otherwise, its meetings shall be convened by the Executive Secretary.

Article XX

Commission procedure

1. The Commission shall elect from among its members a Chairman and two Vice-Chairmen, each of whom shall be a representative of a different Party.

Until such time as the Commission has established a regular schedule of meetings in accordance with Article XIX(3), the Chairman and Vice-Chairmen shall be elected to serve for a period of two years, provided that if no meeting is held during that period they shall continue to serve until the conclusion of the first meeting held there after.

When a regular schedule of meetings has been established, the Chairman and Vice-Chairmen shall be elected to serve for a period of two years.

3. The Commission shall adopt its rules of procedure. Such rules may include provisions concerning the number of terms of office which the Chairman and Vice-Chairmen may serve and for the rotation of such offices.
4. The Commission may establish such subsidiary bodies as are necessary for the performance of its functions.

5. The Commission may decide to establish a permanent headquarters which shall be in New Zealand.
6. The Commission shall have legal personality and shall enjoy in the territory of each Party such legal capacity as may be necessary to perform its functions and achieve the objectives of this Convention.
7. The privileges and immunities to be enjoyed by the Commission, the Secretariat and representatives attending meetings in the territory of a Party shall be determined by agreement between the Commission and the Party concerned.

Article XXI

Functions of the Commission

1. The functions of the Commission shall be:

to facilitate and promote the collection and exchange of scientific, technical and other information and research projects necessary to predict, detect and assess the possible environmental impact of Antarctic mineral resource activities, including the monitoring of key environmental parameters and ecosystem components;

to designate areas in which Antarctic mineral resource activities shall be prohibited or restricted in accordance with Article XIII, and to perform the related functions assigned to it in that Article;

to adopt measures for the protection of the Antarctic environment and dependent and associated ecosystems and for the promotion of safe and effective exploration and development techniques and, as it may deem appropriate, to make available a handbook of such measures;

to determine, in accordance with Article XLI, whether or not to identify an area for possible exploration and development, and to perform the related functions assigned to it in Article XLII;

to adopt measures relating to prospecting applicable to all relevant Operators:

(i) to determine for particular circumstances maximum drilling depths in accordance with Article I(8);

(ii) to restrict or prohibit prospecting consistently with Articles XIII, XXXVII and XXXVIII;

to ensure the effective application of Articles XXII(4), XXXVII(7) and (8), XXXVIII(2) and 39(2), which require the submission to the Commission of information, notifications and reports;

to give advance public notice of matters upon which it is requesting the advice of the Advisory Committee;

to adopt measures relating to the availability and confidentiality of data and information, including measures pursuant to Article XVI;

(i) to elaborate the principle of non-discrimination set forth in Article XIV;

(j) to adopt measures with respect to maximum block sizes;

(k) to perform the functions assigned to it in Article XXIX;

(l) to review action by Regulatory Committees in accordance with Article XLIX;

(m) to adopt measures in accordance with Articles VI and XLI(1)(d)related to the promotion of cooperation and to participation in Antarctic mineral resource activities;

(n) to adopt general measures pursuant to Article LI(6);

(o) to take decisions on budgetary matters and adopt financial regulations in accordance with Article XXXV;

(p) to adopt measures regarding fees payable in connection with notifications submitted pursuant to Articles XXXVII and XXXIX and applications lodged pursuant to Articles XLIV and LIII, the purpose of which fees shall be to cover the administrative costs of handling such notifications and applications;

(q) to adopt measures regarding levies payable by Operators engaged in exploration and development, the principal purpose of which levies shall be to cover the costs of the institutions of this Convention;

(r) to determine in accordance with Article XXXV(7) the disposition of revenues, if any, accruing to the Commission which are surplus to the requirements for financing the budget pursuant to Article XXXV;

(s) to perform the functions assigned to it in Article VII(7) and(8);

(t) to perform the functions relating to inspection assigned to it in Article XII;

(u) to consider monitoring reports received pursuant to Article LII;
(v) to perform the functions relating to dispute settlement assigned to it in Article LIX;
(w) to perform the functions relating to consultation and cooperation assigned to it in Articles X(2) and XXXIV;
(x) to keep under review the conduct of Antarctic mineral resource activities with a view to safeguarding the protection of the Antarctic environment in the interest of all mankind; and
(y) to perform such other functions as are provided for elsewhere in this Convention.

2. In performing its functions the Commission shall seek and take full account of the views of the Advisory Committee provided in accordance with Article XXVI.
3. Each measure adopted by the Commission shall specify the date on which it comes into effect.
4. The Commission shall, subject to Article XVI and measures in effect pursuant to it and paragraph 1(h) above, ensure that a publicly available record of its meetings and decisions and of information, notifications and reports submitted to it is maintained.

Article XXII

Decision making in the Commission

1. The Commission shall take decisions on matters of substance by a three-quarters majority of the members present and voting. When a question arises as to whether a matter is one of substance or not, that matter shall be treated as one of substance unless otherwise decided by a three-quarters majority of the members present and voting.
2. Notwithstanding paragraph 1 above, consensus shall be required for the following:

   (a) the adoption of the budget and decisions on budgetary and related matters pursuant to Article XXI(1)(p), (q) and (r) and Article XXXV(1), (2), (3), (4) and (5);
   (b) decisions taken pursuant to Article XXI(1)(i);
   (c) decisions taken pursuant to Article XLI(2).

3. Decisions on matters of procedure shall be taken by a simple majority of the members present and voting.
4. Nothing in this Article shall be interpreted as preventing the Commission, in taking decisions on matters of substance, from endeavouring to reach a consensus.
5. For the purposes of this Article, consensus means the absence of a formal objection. If, with respect to any decision covered by paragraph 2(c) above, the Chairman of the Commission determines that there would be such an objection he shall consult the members of the Commission. If, as a result of these consultations, the Chairman determines that an objection would remain, he shall convene those members most directly interested for the purpose of seeking to reconcile the differences and producing a generally acceptable proposal.

Article XXIII

Advisory Committee

1. There is hereby established the Scientific, Technical and Environmental Advisory Committee.
2. Membership of the Advisory Committee shall be open to all Parties.
3. Each member of the Advisory Committee shall be represented by one representative with suitable scientific, technical or environmental competence who may be accompanied by alternate representatives and by experts and advisers.
4. Observer status in the Advisory Committee shall be open to any Contracting Party to the Antarctic Treaty or to the Convention on the Conservation of Antarctic Marine Living Resources which is not a Party to this Convention.

Article XXIV

Advisory Committee meetings

1. Unless the Commission decides otherwise, the Advisory Committee shall be convened for its first meeting within six months of the first meeting of the Commission. It shall meet thereafter as necessary to fulfil its functions on the basis of a schedule established by the Commission.
2. Meetings of the Advisory Committee, in addition to those scheduled pursuant to paragraph 1 above, shall be convened at the request of at least six members of the Commission or pursuant to Article XL(1).
3. Unless the Commission decides otherwise, the meetings of the Advisory Committee shall be convened by the Executive Secretary.

Article XXV

Advisory Committee procedure

1. The Advisory Committee shall elect from among its members a Chairman and two Vice-Chairmen, each of whom shall be a representative of a different Party.
   (a) Until such time as the Commission has established a schedule of meetings in accordance with Article XXIV(1), the Chairman and Vice-Chairmen shall be elected to serve for a period of two years, provided that if no meeting is held during that period they shall continue to serve until the conclusion of the first meeting held there after.
   (b) When a schedule of meetings has been established, the Chairman and Vice-Chairmen shall be elected to serve for a period of two years.
3. The Advisory Committee shall give advance public notice of its meetings and of matters to be considered at each meeting so as to permit the receipt and consideration of views on such matters from international organisations having an interest in them. For this purpose the Advisory Committee may, subject to review by the Commission, establish procedures for the transmission of relevant information to these organisations.
4. The Advisory Committee shall, by a two-thirds majority of the members present and voting, adopt its rules of procedure. Such rules may include provisions concerning the number of terms of office which the Chairman and Vice-Chairmen may serve and for the rotation of such offices. The rules of procedure and any amendments thereto shall be subject to approval by the Commission.
5. The Advisory Committee may establish such subcommittees, subject to budgetary approval, as may be necessary for the performance of its functions.

Article XXVI

Functions of the Advisory Committee

1. The Advisory Committee shall advise the Commission and Regulatory Committees, as required by this Convention, or as requested by them, on the scientific, technical and environmental aspects of Antarctic mineral resource activities. It shall provide a forum for consultation and cooperation concerning the collection, exchange and evaluation of information related to the scientific, technical and environmental aspects of Antarctic mineral resource activities.
2. It shall provide advice to:
   (a) the Commission relating to its functions under Articles XXI(1)(a) to (f), (u) and (x) and 35(7)(a) (in matters relating to scientific research) as well as on the implementation if Article IV; and
   (b) Regulatory Committees with respect to:
      (i) the implementation of Article IV;
      (ii) scientific, technical and environmental aspects of Articles XLIII(3) and (5), XLV, XLVII, LI, LII and LIV;
      (iii) data to be collected and reported in accordance with Articles XLVII and LII; and
      (iv) the scientific, technical and environmental implications of reports and reported data provided in accordance with Articles XLVII and LII.
3. It shall provide advice to the Commission and to Regulatory Committees on:
   (a) criteria in respect of the judgments required under Article IV(2) and (3) for the purposes of Article IV(1);
   (b) types of data and information required to carry out its functions, and how they should be collected, reported and archived;
   (c) scientific research which would contribute to the base of data and information required in subparagraph (b) above;
   (d) effective procedures and systems for data and information analysis, evaluation, presentation and dissemination to facilitate the judgments referred to in Article IV; and
   (e) possibilities for scientific, technical and environmental cooperation amongst interested Parties which are developing countries and other Parties.
4. The Advisory Committee, in providing advice on decisions to be taken in accordance with Articles XLI, XLIII, XLV and LIV shall, in each case, undertake a comprehensive environmental and technical assessment of the proposed actions. Such assessments shall be based on all information, and any amplifications thereof, available to the Advisory Committee, including

the information provided pursuant to Articles XXXIX(2)(e), XLIV(2)(b)(iii) and LIII(2)(b). The assessments of the Advisory Committee shall, in each case, address the nature and scope of the decisions to be taken and shall include consideration, as appropriate, of, inter alia:

(a) the adequacy of existing information to enable informed judgments to be made;
(b) the nature, extent, duration and intensity of likely direct environmental impacts resulting from the proposed activity;
(c) possible indirect impacts;
(d) means and alternatives by which such direct or indirect impacts might be reduced, including environmental consequences of the alternative of not proceeding;
(e) cumulative impacts of the proposed activity in the light of existing or planned activities;
(f) capacity to respond effectively to accidents with potential environmental effects;
(g) the environmental significance of unavoidable impacts; and
(h) the probabilities of accidents and their environmental consequences.

5. In preparing its advice the Advisory Committee may seek information and advice from other scientists and experts or scientific organisations as may be required on an ad hoc basis.
6. The Advisory Committee shall, with a view to promoting international participation in Antarctic mineral resource activities as provided for in Article VI, provide advice concerning the availability to interested developing country Parties and other Parties, of the information referred to in paragraph 3 above, of training programs related to scientific, technical and environmental matters bearing on Antarctic mineral resource activities, and of opportunities for cooperation among Parties in these programs.

Article XXVII

Reporting by the Advisory Committee

The Advisory Committee shall present a report on each of its meetings to the Commission and to any relevant Regulatory Committee. The report shall cover all matters considered at the meeting and shall reflect the conclusions reached and all the views expressed by members of the Advisory Committee. The report shall be circulated by the Executive Secretary to all Parties, and to observers attending the meeting, and shall thereupon be made publicly available.

Article XXVIII

Special Meeting of Parties

1. A Special Meeting of Parties shall, as required, be convened in accordance with Article XL(2) and shall have the functions, in relation to the identification of an area for possible exploration and development, specified in Article XL(3).
2. Membership of a Special Meeting of Parties shall be open to all Parties, each of which shall be represented by one representative who may be accompanied by alternate representatives and advisers.
3. Observer status at a Special Meeting of Parties shall be open to any Contracting Party to the Antarctic Treaty which is not a Party to this Convention.
4. Each Special Meeting of Parties shall elect from among its members a Chairman and Vice-Chairmen, each of whom shall serve for the duration of that meeting. The Chairman and Vice-Chairman shall not be representatives of the same Party.
5. The Special Meeting of Parties shall, by a two-thirds majority of the members present and voting, adopt its rules of procedure. Until such time as this has been done the Special Meeting of Parties shall apply provisional rules of procedure drawn up by the Commission.
6. Unless the Commission decides otherwise, a Special Meeting of Parties shall be convened by the Executive Secretary and shall be held at the same venue as the meeting of the Commission convened to consider the identification of an area for possible exploration and development.

Article XXIX

Regulatory Committees

1. An Antarctic Mineral Resources Regulatory Committee shall be established for each area identified by the Commission pursuant to Article XLI.
2. Subject to paragraph 6 below, each Regulatory Committee shall consist of 10 members. Membership shall be determined by the

Commission in accordance with this Article and, taking into account Article IX, shall include:

(a) the member, if any, or if there are more than one, those members of the Commission identified by reference to Article IX(b)which assert rights or claims in the identified area;
(b) the two members of the Commission also identified by reference to Article IX(b) which assert a basis of claim in Antarctica;
(c) other members of the Commission determined in accordance with this Article so that the Regulatory Committee shall, subject to paragraph 6 below, consist, in total, of 10 members:

(i) four members identified by reference to Article IX(b) which assert rights or claims, including the member or members, if any, referred to in subparagraph (a) above and
(ii) six members which do not assert rights or claims as described in Article IX(b), including the two members referred to in subparagraph(b) above.

3. Upon the identification of an area in accordance with Article XLI(2),the Chairman of the Commission shall, as soon as possible and in any event within 90 days, make a recommendation to the Commission concerning the membership of the Regulatory Committee. To this end the Chairman shall consult, as appropriate, with the Chairman of the Advisory Committee and all members of the Commission. Such recommendation shall comply with the requirements of paragraphs 2 and 4 of this Article and shall ensure:

(a) the inclusion of members of the Commission which, whether through prospecting, scientific research or otherwise, have contributed substantial scientific, technical or environmental information relevant to the identification of the area by the Commission pursuant to Article XLI;
(b) adequate and equitable representation of developing country members of the Commission, having regard to the overall balance between developed and developing country members of the Commission, including at least three developing country members of the Commission;
(c) that account is taken of the value of a rotation of membership of Regulatory Committees as a further means of ensuring equitable representation of members of the Commission.

(a) When there are one or more members of the Regulatory Committee referred to in paragraph 2(a) above, the Chairman of the Commission shall make the recommendation in respect of paragraph 2(c)(i) above upon the nomination, if any, of such member or members which shall take into account paragraph 3 above, in particular subparagraph (b) of that paragraph.
(b) In making the recommendation in respect of paragraph 2(c)(ii) above, the Chairman of the Commission shall give full weight to the views (which shall take into account paragraph 3 above) which may be presented on behalf of those members of the Commission which do not assert rights of or claims to territorial sovereignty in Antarctica and, with reference to the requirements of paragraph 3(b) above, to the views which may be presented on behalf of the developing countries among them.

5. The recommendation of the Chairman of the Commission shall be deemed to have been approved by the Commission if it does not decide otherwise at the same meeting as the recommendation is submitted. In taking any decision in accordance with this Article the Commission shall ensure that the requirements of paragraphs 2 and 3 above are complied with and that the nomination, if any, referred to in paragraph 4(a) above is given effect.

(a) If a member of the Commission which has sponsored prospecting in the identified area and submitted the notification pursuant to Article XXXIX upon which the Commission based its identification of the area pursuant to Article XLI, is not a member of the Regulatory Committee by virtue of paragraphs 2 and 3 above, that member of The Commission shall be a member of the Regulatory Committee until such time as an application for an exploration permit is lodged pursuant to Article XLIV.
(b) If a Party lodging an application for an exploration permit pursuant to Article

XLIV is not a member of the Regulatory Committee by virtue of paragraphs 2 and 3 above, that Party shall be a member of the Regulatory Committee for its consideration of that application. Should such application result in approval of a Management Scheme pursuant to Article XLVIII, the Party in question shall remain a member of the Regulatory Committee during such time as that Management Scheme is in force with the right to take part in decisions on matters affecting that Management Scheme.

7. Nothing in this Article shall be interpreted as affecting Article IV of the Antarctic Treaty.

Article XXX

Regulatory Committee procedure

1. The first meeting of each Regulatory Committee shall be convened by the Executive Secretary in accordance with Article XLIII(1). Each Regulatory Committee shall meet thereafter when and where necessary to fulfil its functions.
2. Each member of a Regulatory Committee shall be represented by one representative who may be accompanied by alternate representatives and advisers.
3. Each Regulatory Committee shall elect from among its members a Chairman and Vice-Chairman. The Chairman and Vice-Chairman shall not be representatives of the same Party.
4. Any Party may attend meetings of a Regulatory Committee as an observer.
5. Each Regulatory Committee shall adopt its rules of procedure. Such rules may include provisions concerning the period andnumber of terms of office which the Chairman and Vice-Chairman may serve and for the rotation of such offices.

Article XXXI

Functions of Regulatory Committees

1. The functions of each Regulatory Committee shall be:
   (a) to undertake the preparatory work provided for in Article XLIII;
   (b) to consider applications for exploration and development permits in accordance with Articles XLV, XLVI and LIV;
   (c) to approve Management Schemes and issue exploration and development permits in accordance with Articles XLVII, XLVIII and LIV;
   (d) to monitor exploration and development activities in accordance with Article LII;
   (e) to perform the functions assigned to it in Article LI;
   (f) to perform the functions relating to inspection assigned to it in Article XII;
   (g) to perform the functions relating to dispute settlement assigned to it in Article XLVII(r); and
   (h) to perform such other functions as are provided for elsewhere in this Convention.
2. In performing its functions each Regulatory Committee shall seek and take full account of the views of the Advisory Committee provided in accordance with Article XXVI.
3. Each Regulatory Committee shall, subject to Article XVI and measures in effect pursuant to it and Article XXI(1)(h), ensure that a publicly available record of its decisions, and of Management Schemes in force, is maintained.

Article XXXII

Decision making in Regulatory Committees

1. Decisions by a Regulatory Committee pursuant to Articles XLVIII and LIV(5) shall be taken by a two-thirds majority of the members present and voting, which majority shall include a simple majority of those members present and voting referred to in Article XXIX(2)(c)(I) and also simple majority of those members present and voting referred to in Article XXIX(2)(c)(ii).
2. Decisions by a Regulatory Committee pursuant to Article XLIII(3) and(5) shall be taken by a two-thirds majority of the members present and voting, which majority shall include at least half of those members present and voting referred to in Article XXIX(2)(c)(i) and also at least half of those members present and voting referred to in Article XXIX(2)(c)(ii).
3. Decisions on all other matters of substance shall be taken by a two-thirds majority of the members present and voting. When a question arises as to whether a matter is one of substance or not, that matter shall be treated as one of substance

unless otherwise decided by a two-thirds majority of the members present and voting.
4. Decisions on matters of procedure shall be taken by a simple majority of the members present and voting.
5. Nothing in this Article shall be interpreted as preventing a Regulatory Committee, in taking decisions on matters of substance, from endeavoring to reach a consensus.

Article XXXIII

Secretariat

1. The Commission may establish a Secretariat to serve the Commission, Regulatory Committees, the Advisory Committee, the Special Meeting of Parties and any subsidiary bodies established.
2. The Commission may appoint an Executive Secretary, who shall be the head of the Secretariat, according to such procedures and on such terms and conditions as the Commission may determine. The Executive Secretary shall serve for a four year term and may be re appointed.
3. The Commission may, with due regard to the need for efficiency and economy, authorise such staff establishment for the Secretariat as maybe necessary. The Executive Secretary shall appoint, direct and supervise the staff according to such rules and procedures and on such terms and conditions as the Commission may determine.
4. The Secretariat shall perform the functions specified in this Convention and, subject to the approved budget, the tasks entrusted to it by the Commission, Regulatory Committees, the Advisory Committee and the Special Meeting of Parties.

Article XXXIV

Cooperation with international organisations

1. The Commission and, as appropriate, the Advisory Committee shall cooperate with the Antarctic Treaty Consultative Parties, the Contracting Parties to the Convention for the Conservation of Antarctic Seals, the Commission for the Conservation of Antarctic Marine Living Resources, and the Scientific Committee on Antarctic Research.
2. The Commission shall cooperate with the United Nations, its relevant Specialised Agencies, and, as appropriate, any international organisation which may have competence in respect of mineral resources in areas adjacent to those covered by this Convention.
3. The Commission shall also, as appropriate, cooperate with the International Union for the Conservation of Nature and Natural Resources, and with other relevant international organisations, including non-governmental organisations, having a scientific, technical or environmental interest in Antarctica.
4. The Commission may, as appropriate, accord observer status in the Commission and in the Advisory Committee to such relevant international organisations, including non-governmental organisations, as might assist in the work of the institution in question. Observer status at a Special Meeting of Parties shall be open to such organisations as have been accorded observer status in the Commission or the Advisory Committee.
5. The Commission may enter into agreements with the organisations referred to in this Article.

Article XXXV

Financial provisions

1. The Commission shall adopt a budget, on an annual or other appropriate basis, for:

   (a) its activities and the activities of Regulatory Committees, the Advisory Committee, the Special Meeting of Parties, any subsidiary bodies established and the Secretariat; and
   (b) the progressive reimbursement of any contributions paid under paragraphs 5 and 6 below whenever revenues under paragraph 4 below exceed expenditure.

2. The first draft budget shall be submitted by the Depository at least 90 days before the first meeting of the Commission. At that meeting the Commission shall adopt its first budget and decide upon arrangements for the preparation of subsequent budgets.
3. The Commission shall adopt financial regulations.
4. Subject to paragraph 5 below, the budget shall be financed, inter alia, by:

   (a) fees prescribed pursuant to Articles XXI(1)(p) and XLIII(2)(b);
   (b) levies on Operators, subject to any measures adopted by the Commission in accordance

with Article XXI(1)(q), pursuant to Article XLVII(k)(i); and

(c) such other financial payments by Operators pursuant to Article XLVII(k)(ii) as may be required to be paid to the institutions of This Convention.

5. If the budget is not fully financed by revenues in accordance with paragraph 4 above, and subject to reimbursement in accordance with paragraph 1(b) above, the budget shall, to the extent of any shortfall and subject to paragraph 6 below, be financed by contributions from the members of the Commission. To this end, the Commission shall adopt as soon as possible a method of equitable sharing of contributions to the budget. The budget shall, in the meantime, to the extent of any shortfall, be financed by equal contributions from each member of the Commission.
6. In adopting the method of contributions referred to in paragraph 5 above the Commission shall consider the extent to which members of and observers at institutions of this Convention may be called upon to contribute to the costs of those institutions.
7. The Commission, in determining the disposition of revenues accruing to it, which are surplus to the requirements for financing the budget pursuant to this Article, shall:

(a) promote scientific research in Antarctica, particularly that related to the Antarctic environment and Antarctic resources, and a wide spread of participation in such research by all Parties, in particular developing country Parties;

(b) ensure that the interests of the members of Regulatory Committees having the most direct interest in the matter in relation to the areas in question are respected in any disposition of that surplus.

8. The finances of the Commission, Regulatory Committees, the Advisory Committee, the Special Meeting of Parties, any subsidiary bodies established and the Secretariat shall accord with the financial regulations adopted by the Commission and shall be subject to an annual audit by external auditors selected by the Commission.
9. Each member of the Commission, Regulatory Committees, the Advisory Committee, the Special Meeting of Parties and any subsidiary bodies established, as well as any observer at a meeting of any of the institutions of this Convention, shall meet its own expenses arising from attendance at meetings.
10. A member of the Commission that fails to pay its contribution for two consecutive years shall not, during the period of its continuing subsequent default, have the right to participate in the taking of decisions in any of the institutions of this Convention. If it continues to be in default for a further two consecutive years, the Commission shall decide what further action should be taken, which may include loss by that member of the right to participate in meetings of the institutions of this Convention. Such member shall resume the full enjoyment of its rights upon payment of the outstanding contributions.
11. Nothing in this Article shall be construed as prejudicing the position of any member of a Regulatory Committee on the outcome of consideration by the Regulatory Committee of terms and conditions in a Management Scheme pursuant to Article XLVII(k)(ii).

Article XXXVI

Official and working languages

The official and working languages of the Commission, Regulatory Committees, the Advisory Committee, the Special Meeting of Parties and any meeting convened under Article LXIV shall be English, French, Russian and Spanish.

CHAPTER 3

PROSPECTING

Article XXXVII

Prospecting

1. Prospecting shall not confer upon any Operator any right to Antarctic mineral resources.
2. Prospecting shall at all times be conducted in compliance with this Convention and with measures in effect pursuant to this Convention, but shall not require authorisation by the institutions of This Convention.

(a) The Sponsoring State shall ensure that its Operators undertaking prospecting maintain

the necessary financial and technical means to comply with Article VIII(1), and, to the extent that any such Operator fails to take response action as required in Article VIII(1),shall ensure that this is undertaken.

(b) The Sponsoring State shall also ensure that its Operators undertaking prospecting maintain financial capacity,

commensurate with the nature and level of the activity undertaken and the risks involved, to comply with Article VIII(2).

4. In cases where more than one Operator is engaged in prospecting in the same general area, the Sponsoring State or States shall ensure that those Operators conduct their activities with due regard to each others' rights.
5. Where an Operator wishes to conduct prospecting in an area identified under Article XLI in which another Operator has been authorised to undertake exploration or development, the Sponsoring State shall ensure that such prospecting is carried out subject to the rights of any authorised Operator and any requirements to protect its rights specified by the relevant Regulatory Committee.
6. Each Operator shall ensure upon cessation of prospecting the removal of all installations and equipment and site rehabilitation. On the request of the Sponsoring State, theCommission may waive the obligation to remove installations and equipment.
7. The Sponsoring State shall notify the Commission at least nine months in advance of the commencement of planned prospecting. The notification shall be accompanied by such fees as may be established by the Commission in accordance with Article XXI(1)(p) and shall:

   (a) identify, by reference to coordinates of latitude and longitude or identifiable geographic features, the general area in which the prospecting is to take place;
   (b) broadly identify the mineral resource or resources which are to be the subject of the prospecting;
   (c) describe the prospecting, including the methods to be used, and the general program of work to be undertaken and its expected duration;
   (d) provide an assessment of the possible environmental and other impacts of the prospecting, taking into account possible cumulative impacts as referred to in Article IV(5).
   (e) describe the measures, including monitoring programs, to be adopted to avoid harmful environmental consequences or undue interference with other established uses of Antarctica, and outline the measures to be put into effect in the event of any accident and contingency plans for evacuation in an emergency;
   (f) provide details on the Operator and certify that it:

      (i) has a substantial and genuine link with the Sponsoring State as defined in Article I(12); and
      (ii) is financially and technically qualified to carry out the proposed prospecting in accordance with this Convention; and

   (g) provide such further information as may be required by measures adopted by the Commission.

8. The Sponsoring State shall subsequently provide to the Commission:

   (a) notification of any changes to the information referred to in paragraph 7 above;
   (b) notification of the cessation of prospecting, including removal of any installations and equipment as well as site rehabilitation; and
   (c) a general annual report on the prospecting undertaken by the Operator.

9. Notifications and reports submitted pursuant to this Article shall be circulated by the Executive Secretary without delay to all Parties and observers attending Commission meetings.
10. Paragraphs 7, 8 and 9 above shall not be interpreted as requiring the disclosure of data and information of commercial value.
11. The Sponsoring State shall ensure that basic data and information of commercial value generated by prospecting are maintained in archives and may at any time release part of or all such data and information, on conditions which it shall establish, for scientific or environmental purposes.
12. The Sponsoring State shall ensure that basic data and information, other than interpretative data, generated by prospecting are made readily available when such data and information are not, or are no longer, of commercial value and,

in any event, no later than 10 years after the year the data and information were collected, unless it certifies to the Commission that the data and information continue to have commercial value. It shall review at regular intervals whether such data and information may be released and shall report the results of such reviews to the Commission.

13. The Commission may adopt measures consistent with this Article relating to the release of data and information of commercial value including requirements for certifications, the frequency of reviews and maximum time limits for extensions of the protection of such data and information.

Article XXXVIII

Consideration of prospecting by the Commission

1. If a member of the Commission considers that a notification submitted in accordance with Article XXXVII(7) or (8), or ongoing prospecting, causes concern as to consistency with this Convention or measures in effect pursuant thereto, that member may request the Sponsoring State to provide a clarification. If that member considers that an adequate response is not forthcoming from the Sponsoring State within a reasonable time, the member may request that the Commission be convened in accordance with Article XIX(2)(b) to consider the question and take appropriate action.
2. If measures applicable to all relevant Operators are adopted by the Commission following a request made in accordance with paragraph 1 above, Sponsoring States that have submitted notifications in accordance with Article XXXVII(7) or (8), and Sponsoring States whose Operators are conducting prospecting, shall ensure that the plans and activities of their Operators are modified to the extent necessary to conform with those measures within such time limit as the Commission may prescribe, and shall notify the Commission accordingly.

CHAPTER 4

EXPLORATION

Article XXXIX

Requests for identification of an area for possible exploration and development

1. Any Party may submit to the Executive Secretary a notification requesting that the Commission identify an area for possible exploration and development of a particular mineral resource or resources.
2. Any such notification shall be accompanied by such fees as may be established by the Commission in accordance with Article XXI(1)(p) and shall contain:
   (a) a precise delineation, including coordinates, of the area proposed for identification;
   (b) specification of the resource or resources for which the area would be identified and any relevant data and information, excluding data and information of commercial value, concerning that resource or those resources, including a geological description of the proposed area;
   (c) a detailed description of the physical and environmental characteristics of the proposed area;
   (d) a description of the likely scale of exploration and development for the resource or resources involved in the proposed area and of the methods which could be employed in such exploration and development;
   (e) a detailed assessment of the environmental and other impacts of possible exploration and development for the resource or resources involved, taking into account Articles XV and XXVI(4); and
   (f) such other information as may be required pursuant to measures adopted by the Commission.
3. A notification under paragraph 1 above shall be referred promptly by the Executive Secretary to all Parties and shall be circulated to observers attending the meeting of the Commission to be convened pursuant to Article XIX(2)(a).

Article XL

Action by the Advisory Committee and special meeting of Parties

1. The Advisory Committee shall meet as soon as possible after the meeting of the Commission convened pursuant to Article XIX(2)(a) has commenced. The Advisory Committee shall provide advice to the Commission on the notification submitted pursuant to Article XXXIX(1).

The Commission may prescribe a time limit for the provision of such advice.

2. A Special Meeting of Parties shall meet as soon as possible after circulation of the report of the Advisory Committee and in any event not later than two months after that report has been circulated.
3. The Special Meeting of Parties shall consider whether identification of an area by the Commission in accordance with the request contained in the notification would be consistent with this Convention, and shall report thereon to the Commission as soon as possible and in any event not later than 21 days from the commencement of the meeting.
4. The report of the Special Meeting of Parties to the Commission shall reflect the conclusions reached and all the views expressed by Parties participating in the meeting.

Article XLI

Action by the Commission

1. The Commission shall, as soon as possible after receipt of the report of the Special Meeting of Parties, consider whether or not it will identify an area as requested. Taking full account of the views and giving special weight to the conclusions of the Special Meeting of Parties, and taking full account of the views and the conclusions of the Advisory Committee, the Commission shall determine whether such identification would be consistent with this Convention. For this purpose:

   (a) the Commission shall ensure that an area to be identified shall be such that, taking into account all factors relevant to such identification, including the physical, geological, environmental and other characteristics of such area, it forms a coherent unit for the purposes of resource management. The Commission shall thus consider whether an area to be identified should include all or part of that which was requested in the notification and, subject to the necessary assessments having been made, adjacent areas not covered by that notification;
   (b) the Commission shall consider whether there are, within an area requested or to be identified, any areas in which exploration and development are or should be prohibited or restricted in accordance with Article XIII;
   (c) the Commission shall specify the mineral resource or resources for which the area would be identified;
   (d) the Commission shall give effect to Article VI, by elaborating opportunities for joint ventures or different forms of participation, up to a defined level, including procedures for offering such participation, in possible exploration and development, within the area, by interested Parties which are Antarctic Treaty Consultative Parties and by other interested Parties, in particular, developing countries in either category;
   (e) the Commission shall prescribe any additional associated conditions necessary to ensure that an area to be identified is consistent with other provisions of this Convention and may prescribe general guidelines relating to the operational requirements for exploration and development in an area to be identified including measures establishing maximum block sizes and advice concerning related support activities; and
   (f) the Commission shall give effect to the requirement in Article LIX to establish additional procedures for the settlement of disputes.

2. After it has completed its consideration in accordance with paragraph 1 above, the Commission shall identify an area for possible exploration and development if there is a consensus of Commission members that such identification is consistent with this Convention.

Article XLII

Revision in the scope of an identified area

1. If, after an area has been identified in accordance with Article XLI,a Party requests identification of an area, all or part of which is contained within the boundaries of the area already identified but in respect of a mineral resource or resources different from any resource in respect of which the area has already been identified, the request shall be dealt with in accordance with Articles XXXIX, XL and XLI. Should the Commission identify an area in respect of such different mineral resource or resources, it shall have regard, in addition to the requirements of Article XLI(1)(a), to the desirability of specifying the boundaries of the area in such a way that it

can be assigned to the Regulatory Committee with competence for the area already identified.

2. In the light of increased knowledge bearing on the effective management of the area, and after seeking the views of the Advisory Committee and the relevant Regulatory Committee, the Commission may amend the boundaries of any area it has identified. In making any such amendment the Commission shall ensure that authorised exploration and development in the area are not adversely affected. Unless there are compelling reasons for doing so, the Commission shall not amend the boundaries of an area it has identified in such a way as to involve a change in the composition of the relevant Regulatory Committee.

Article XLIII

Preparatory work by Regulatory Committees

1. As soon as possible after the identification of an area pursuant to Article XLI, the relevant Regulatory Committee established in accordance with Article XXIX shall be convened.
2. The Regulatory Committee shall:

   (a) subject to any measures adopted by the Commission pursuant to Article XXI(1)(j) relating to maximum block sizes, divide its area of competence into blocks in respect of which applications for exploration and development may be submitted and make provision for a limit in appropriate circumstances on the number of blocks to be accorded to any Party;

   (b) subject to any measures adopted by the Commission pursuant to Article XXI(1)(p), establish fees to be paid with any application for an exploration or development permit lodged pursuant to Article XLIV or LIII;

   (c) establish periods within which applications for exploration and development may be lodged, all applications received within each such period being considered as simultaneous;

   (d) establish procedures for the handling of applications; and

   (e) determine a method of resolving competing applications which are not resolved in accordance with Article XLV(4)(a), which method shall, provided that all other requirements of this Convention are satisfied and consistently with measures adopted pursuant to Article XLI(1)(d), include priority for the application with the broadest participation among interested Parties which are Antarctic Treaty Consultative Parties, in particular, developing countries in either category.

3. The Regulatory Committee shall adopt guidelines which are consistent with, and which taken together with, the provisions of this Convention and measures of general applicability adopted by the Commission, as well as associated conditions and general guidelines adopted by The Commission when identifying the area, shall, by addressing the relevant items in Article XLVII, identify the general requirements for exploration and development in its area of competence.
4. Upon adoption of guidelines under paragraph 3 above the Executive Secretary shall, without delay, inform all members of the Commission of the decisions taken by the Regulatory Committee pursuant to paragraphs 2 and 3 above and shall make them publicly available together with relevant measures, associated conditions and general guidelines adopted by the Commission.
5. The Regulatory Committee may from time to time revise guidelines adopted under paragraph 3 above, taking into account any views of the Commission.
6. In performing its functions under paragraphs 3 and 5 above, the Regulatory Committee shall seek and take full account of the views of the Advisory Committee provided in accordance with Article XXVI.

Article XLIV

Application for an exploration permit

1. Following completion of the work undertaken pursuant to Article XLIII, any Party, on behalf of an Operator for which it is the Sponsoring State, may lodge with the Regulatory Committee an application for an exploration permit within the periods established by the Regulatory Committee pursuant to Article XLIII(2)(c).
2. An application shall be accompanied by the fees established by the Regulatory Committee in accordance with Article XLIII(2)(b) and shall contain:

   (a) a detailed description of the Operator, including its managerial structure, financial composition

and resources and technical expertise, and, in the case of an Operator being a joint venture, the inclusion of a detailed description of the degree to which Parties are involved in the Operator through, inter alia, juridical persons with which Parties have substantial and genuine links, so that each component of the joint venture can be easily attributed to a Party or Parties for the purposes of identifying the level of Antarctic mineral resource activities thereof, which description of substantial and genuine links shall include a description of equity sharing;

(b) a detailed description of the proposed exploration activities and a description in as much detail as possible of proposed development activities, including:

  (i) an identification of the mineral resource or resources and the block to which the application applies;
  (ii) a detailed explanation of how the proposed activities conform with the general requirements referred to in Article XLIII(3);
  (iii) a detailed assessment of the environmental and other impacts of the proposed activities, taking into account Articles XV and XXVI(4);and
  (iv) a description of the capacity to respond effectively to accidents, especially those with potential environmental effects;

(c) a certification by the Sponsoring State of the capacity of the Operator to comply with the general requirements referred to in Article XLIII(3).

(d) a certification by the Sponsoring State of the technical competence and financial capacity of the Operator and that the Operator has a substantial and genuine link with it as defined in Article I(12);

(e) a description of the manner in which the application complies with any measures adopted by the Commission pursuant to Article XLI(1)(d); and

(f) such further information as may be required by the Regulatory Committee or in measures adopted by the Commission.

Article XLV

Examination of applications

1. The Regulatory Committee shall meet as soon as possible after an application has been lodged pursuant to Article XLIV, for the purpose of elaborating a Management Scheme, In performing this function it shall:

   (a) determine whether the application contains sufficient or adequate information pursuant to Article XLIV(2). To this end, it may at any time seek further information from the Sponsoring State consistent with Article XLIV(2);
   (b) consider the exploration and development activities proposed in the application, and such elaborations, revisions or adaptations as necessary:

      (i) to ensure their consistency with this Convention as well as measures in effect pursuant thereto and the general requirements referred to in Article XLIII(3); and
      (ii) to prescribe the specific terms and conditions of a Management Scheme in accordance with Article XLVII.

2. At any time during the process of consideration described above, the Regulatory Committee may decline the application if it considers that the activities proposed therein cannot be elaborated, revised or adapted to ensure consistency with this Convention as well as measures in effect pursuant thereto and the general requirements referred to in Article XLIII(3).
3. In performing its functions under this Article, the Regulatory Committee shall seek and take full account of the views of the Advisory Committee. To that end the Regulatory Committee shall refer to the Advisory Committee all parts of the application which are necessary for it to provide advice pursuant to Article XXVI, together with any other relevant information.
4. If two or more applications meeting the requirements of Article XLIV(2) are lodged in respect of the same block:

   (a) the competing applicants shall be invited by the Regulatory Committee to resolve the

competition amongst themselves, by means of their own choice within a prescribed period;

(b) if the competition is not resolved pursuant to subparagraph(a) above it shall be resolved by the Regulatory Committee in accordance with the method determined by it pursuant to Article XLIII(2)(e).

Article XLVI

Management Scheme

In performing its functions under Article XLV, including the preparation of a Management Scheme, and under Article LIV, the Regulatory Committee shall have recourse to the Sponsoring State and the member or members, if any, referred to in Article XXIX(2)(a) and, as may be required, one or two additional members of the Regulatory Committee.

Article XLVII

Scope of the Management Scheme

The Management Scheme shall prescribe the specific terms and conditions for exploration and development of the mineral resource or resources concerned within the relevant block. Such terms and conditions shall be consistent with the general requirements referred to in Article XLIII(3), and shall cover, inter alia:

(a) duration of exploration and development permits;
(b) measures and procedures for the protection of the Antarctic environment and dependent and associated ecosystems, including methods, activities and undertakings by the Operator to minimise environmental risks and damage;
(c) provision for necessary and timely response action, including prevention, containment and clean up and removal measures, for restoration to the status quo ante, and for contingency plans, resources and equipment to enable such action to be taken;
(d) procedures for the implementation of different stages of exploration and development;
(e) performance requirements;
(f) technical and safety specifications, including standards and procedures to ensure safe operations;
(g) monitoring and inspection;
(h) liability;
(i) procedures for the development of mineral deposits which extend outside the area covered by a permit;
(j) resource conservation requirements;
(k) financial obligations of the Operator including:
    (i) levies in accordance with measures adopted pursuant to Article XXI(1)(q);
    (ii) payments in the nature of and similar to taxes, royalties or payments in kind;
(l) financial guarantees and insurance;
(m) assignment and relinquishment;
(n) suspension and modification of the Management Scheme, or cancellation of the Management Scheme, exploration or development permit, and the imposition of monetary penalties, in accordance with Article LI;
(o) procedures for agreed modifications;
(p) enforcement of the Management Scheme;
(q) applicable law to the extent necessary;
(r) effective additional procedures for the settlement of disputes;
(s) provisions to avoid and to resolve conflict with other legitimate uses of Antarctica;
(t) data and information collection, reporting and notification requirements;
(u) confidentiality; and
(v) removal of installations and equipment, as well as site rehabilitation.

Article XLVIII

Approval of the Management Scheme

A Management Scheme prepared in accordance with Articles XLV, XLVI and XLVII shall be subject to approval pursuant to Article XXXII. Such approval shall constitute authorisation for the issue without delay of an exploration permit by the Regulatory Committee. The exploration permit shall accord exclusive rights to the Operator to explore and, subject to Articles LIII and LIV, to develop the mineral resource or resources which are the subject of the Management Scheme exclusively in accordance with the terms and conditions of the Management Scheme.

Article XLIX

Review

1. Any member of the Commission, or any member of a Regulatory Committee, may within one month

of a decision by that Regulatory Committee to approve a Management Scheme or issue a development permit, request that the Commission be convened in accordance with Article XIX(2)(b) or (c), as the case may be, to review the decision of the Regulatory Committee for consistency with the decision taken by the Commission to identify the area pursuant to Article XLI and any measures in effect relevant to that decision.

2. The Commission shall complete its consideration within three months of a request made pursuant to paragraph 1 above. In performing its functions the Commission shall not assume the functions of the Regulatory Committee, nor shall it substitute its discretion for that of the Regulatory Committee.
3. Should the Commission determine that a decision to approve a Management Scheme or issue a development permit is inconsistent with the decision taken by the Commission to identify the area pursuant to Article XLI and any measures in effect relevant to that decision, it may request that Regulatory Committee to reconsider its decision.

Article L

Rights of authorised operators

1. No Management Scheme shall be suspended or modified and no Management Scheme, exploration or development permit shall be cancelled without the consent of the Sponsoring State except pursuant to Article LI, or Article LIV or the Management Scheme itself.
2. Each Operator authorised to conduct activities pursuant to a Management Scheme shall exercise its rights with due regard to the rights of other Operators undertaking exploration or development in the same identified area.

Article LI

Suspension, modification or cancellation of the Management Scheme and monetary penalties

1. If a Regulatory Committee determines that exploration or development authorised pursuant to a Management Scheme has resulted or is about to result in impacts on the Antarctic environment or dependent or associated ecosystems beyond those judged acceptable pursuant to this Convention, it shall suspend the relevant activities and as soon as possible modify the Management Scheme so as to avoid such impacts. If such impacts cannot be avoided by the modification of the Management Scheme, the Regulatory Committee shall suspend it, or cancel it and the exploration or development permit.
2. In performing its functions under paragraph 1 above a Regulatory Committee shall, unless emergency action is required, seek and taken into account the views of the Advisory Committee.
3. If a Regulatory Committee determines that an Operator has failed to comply with this Convention or with measures in effect pursuant to it or a Management Scheme applicable to that Operator, the Regulatory Committee may do all or any of the following:

   (a) modify the Management Scheme;
   (b) suspend the Management Scheme;
   (c) cancel the Management Scheme and the exploration or development permit; and
   (d) impose a monetary penalty.

4. Sanctions determined pursuant to paragraph 3(a) to (d) above shall be proportionate to the seriousness of the failure to comply.
5. A Regulatory Committee shall cancel a Management Scheme and the exploration or development permit if an Operator ceases to have substantial and genuine link with the Sponsoring State as defined in Article I(12).
6. The Commission shall adopt general measures, which may include mitigation, relating to action by Regulatory Committees pursuant to paragraphs 1 and 3 above and, as appropriate, to the consequences of such action. No application pursuant to Article XLIV may be lodged until such measures have come into effect.

Article LII

Monitoring in relation to Management Schemes

1. Each Regulatory Committee shall monitor the compliance of Operators with Management Schemes within its area of competence.
2. Each Regulatory Committee, taking into account the advice of The Advisory Committee, shall monitor and assess the effects on the Antarctic environment and on dependent and on associated ecosystems of Antarctic mineral resource activities within its area of competence, particularly by reference to key environmental parameters and ecosystem components.

3. Each Regulatory Committee shall, as appropriate, inform the Commission and the Advisory Committee in a timely fashion of monitoring under this Article.

CHAPTER 5

DEVELOPMENT

Article LIII

Application for a development permit

1. At any time during the period in which an approved Management Scheme and exploration permit are in force for an Operator, the Sponsoring State may, on behalf of that Operator, lodge with the Regulatory Committee an application for a development permit.
2. An application shall be accompanied by the fees established by the Regulatory Committee in accordance with Article XLIII(2)(b) and shall contain:
   (a) an updated description of the planned development identifying any modifications proposed to the approved Management Scheme and any additional measures to be taken, consequent upon such modifications, to ensure consistency with this Convention, including any measures in effect pursuant thereto and the general requirements referred to in Article XLIII(3);
   (b) a detailed assessment of the environmental and other impacts of the planned development, taking into account Articles XV and XXVI(4);
   (c) a recertification by the Sponsoring State of the technical competence and financial capacity of the Operator and that the Operator has a substantial and genuine link with it as defined in Article I(12);
   (d) a recertification by the Sponsoring State of the capacity of the Operator to comply with the general requirements referred to in Article XLIII(3);
   (e) updated information in relation to all other matters specified in Article XLIV(2); and
   (f) such further information as may be required by the Regulatory Committee or in measures adopted by the Commission.

Article LIV

Examination of applications and issue of development permits

1. The Regulatory Committee shall meet as soon as possible after an application has been lodged pursuant to Article LIII.
2. The Regulatory Committee shall determine whether the application contains sufficient or adequate information pursuant to Article LIII(2). In performing this function it may at any time seek further information from the Sponsoring State consistent with Article LIII(2).
3. The Regulatory Committee shall consider whether:
   (a) the application reveals modifications to the planned development previously envisaged;
   (b) the planned development would cause previously unforeseen impacts on the Antarctic environment or dependent or associated ecosystems, either as a result of any modifications referred to in subparagraph (a) above or in the light of increased knowledge.
4. The Regulatory Committee shall consider any modifications to the Management Scheme necessary in the light of paragraph 3 above to ensure that the development activities proposed would be undertaken consistently with this Convention as well as measures in effect pursuant thereto and the general requirements referred to in Article. XLIII(3). However, the financial obligations specified in the approved Management Scheme may not be revised without the consent of the Sponsoring State, unless provided for in the Management Scheme itself.
5. If the Regulatory Committee in accordance with Article XXXII approves modifications under paragraph 4 above, or if it does not consider that such modifications are necessary, the Regulatory Committee shall issue without delay a development permit.
6. In performing its functions under this Article, the Regulatory Committee shall seek and take full account of the views of the Advisory Committee. To that end the Regulatory Committee shall refer to the Advisory Committee all parts of the

application which are necessary for it to provide advice pursuant to Article XXVI, together with any other relevant information.

CHAPTER 6

DISPUTES SETTLEMENT

Article LV

Disputes between two or more Parties

Articles LVI, LVII and LVIII apply to disputes between two or more Parties.

Article LVI

Choice of procedure

1. Each Party, when signing, ratifying, accepting, approving or acceding to this Convention, or at any time thereafter, may choose, by written declaration, one or both of the followingmeans for the settlement of disputes concerning the interpretation or application of this Convention:

   (a) the International Court of Justice;
   (b) the Arbitral Tribunal.

2. A declaration made under paragraph 1 above shall not affect the operation of Article LVII(1), (3), (4) and (5).
3. A Party that has not made a declaration under paragraph 1 above or in respect of which a declaration is no longer in force shall be deemed to have accepted the competence of the Arbitral Tribunal.
4. If the parties to a dispute have accepted the same means for the settlement of a dispute, the dispute may be submitted only to that procedure, unless the parties otherwise agree.
5. If the parties to a dispute have not accepted the same means for the settlement of a dispute, or if they have both accepted both means, the dispute may be submitted only to the Arbitral Tribunal, unless the parties otherwise agree.
6. A declaration made under paragraph 1 above shall remain in force until it expires in accordance with its terms or until 3 months after written notice of revocation has been deposited with the Depository.
7. A new declaration, a notice of revocation or the expiry of a declaration shall not in any way affect proceedings pending before the International Court of Justice or the Arbitral Tribunal, unless the parties to the dispute otherwise agree.
8. Declarations and notices referred to in this Article shall be deposited with the Depository who shall transmit copies thereof to all Parties.

Article LVII

Procedure for dispute settlement

1. If a dispute arises concerning the interpretation or application of this Convention, the parties to the dispute shall, at the request of any one of them, consult among themselves as soon as possible with a view to having the dispute resolved by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement or other peaceful means of their choice.
2. If the parties to a dispute concerning the interpretation or application of this Convention have not agreed on a means for resolving it within 12 months of the request for consultation pursuant to paragraph 1 above, the dispute shall be referred, at the request of any party to the dispute, for settlement in accordance with the procedure determined by the operation of Article LVI(4) and (5).
3. If a dispute concerning the interpretation or application of this Convention relates to a measure in effect pursuant to this Convention or a Management Scheme and the parties to such a dispute:

   (a) have not agreed on a means for resolving the dispute within 6 months of the request for consultation pursuant to paragraph 1 above, the dispute shall be referred, at the request of any party to the dispute, for discussion in the institution which adopted the instrument in question; (b) have not agreed on a means for resolving the dispute within 12 months of the request for consultation pursuant to paragraph 1 above, the dispute shall be referred for settlement, at the request of any party to the dispute, to the Arbitral Tribunal.

4. The Arbitral Tribunal shall not be competent to decide or otherwise rule upon any matter within the scope of Article IX. In addition, nothing in this Convention shall be interpreted as conferring competence or jurisdiction on the International Court of Justice or any other tribunal established for the purpose of settling disputes between Parties to decide or otherwise rule upon any matter within the scope of Article IX.
5. The Arbitral Tribunal shall not be competent with regard to the exercise by an institution of

its discretionary powers in accordance with this Convention; in no case shall the Arbitral Tribunal substitute its discretion for that of an institution. In addition, nothing in this Convention shall be interpreted as conferring competence or jurisdiction on the International Court of Justice or any other tribunal established for the purpose of settling disputes between Parties with regard to the exercise by an institution of its discretionary powers or to substitute its discretion for that of an institution.

Article LVIII

Exclusion of categories of disputes

1. Any Party, when signing, ratifying, accepting, approving or acceding to this Convention, or at any time thereafter, may, by written declaration, exclude the operation of Article LVII(2) or (3) without its consent with respect to a category or categories of disputes specified in the declaration. Such declaration may not cover disputes concerning the interpretation or application of:

   (a) any provision of this Convention or of any measure in effect pursuant to it relating to the protection of the Antarctic environment or dependent or associated ecosystems;
   (b) Article VII(1); (c) Article VIII; (d) Article XII; (e) Article XIV; (f) Article XV; or (g) Article XXXVII.

2. Nothing in paragraph 1 above or in any declaration made under it shall affect the operation of Article LVII(1), (4) and (5).
3. A declaration made under paragraph 1 above shall remain in force until it expires in accordance with its terms or until 3 months after written notice of revocation has been deposited with the Depositary.
4. A new declaration, a notice of revocation or the expiry of a declaration shall not in any way affect proceedings pending before the International Court of Justice or the Arbitral Tribunal, unless the parties to the dispute otherwise agree.
5. Declarations and notices referred to in this Article shall be deposited with the Depositary who shall transmit copies thereof to all Parties.
6. A Party which, by declaration made under paragraph 1 above, has excluded a specific category or categories of disputes from the operation of Article LVII(2) or (3) without its consent shall not be entitled to submit any dispute falling within that category or those categories for settlement pursuant to Article LVII(2) or (3), as the case may be, without the consent of the other party or parties to the dispute.

Article LIX

Additional dispute settlement procedures

1. The Commission, in conjunction with its responsibilities pursuant to Article XLI(1), shall establish additional procedures for third-party settlement, by the Arbitral Tribunal or through other similar procedures, of disputes which may arise if it is alleged that a violation of this Convention has occurred by virtue of:

   (a) a decision to decline a Management Scheme;
   (b) a decision to decline the issue of a development permit; or
   (c) a decision to suspend, modify or cancel a Management Scheme or to impose monetary penalties.

2. Such procedures shall:

   (a) permit, as appropriate, Parties and Operators under their sponsorship, but not both in respect of any particular dispute, to initiate proceedings against a Regulatory Committee;
   (b) require disputes to which they relate to be referred in the first instance to the relevant Regulatory Committee for consideration; (c) incorporate the rules in Article LVII(4) and (5).

CHAPTER 7

FINAL CLAUSES

Article LX

Signature

This Convention shall be open for signature at Wellington from 25 November 1988 to 25 November 1989 by States which participated in the final session of the Fourth Special Antarctic Treaty Consultative Meeting.

Article LXI

Ratification, acceptance, approval or accession

1. This Convention is subject to ratification, acceptance or approval by Signatory States.

2. After 25 November 1989 this Convention shall be open for accession by any State which is a Contracting Party to the Antarctic Treaty.
3. Instruments of ratification, acceptance, approval or accession shall be deposited with the Government of New Zealand, hereby designated as the Depositary.

Article LXII

Entry into force

1. This Convention shall enter into force on the thirtieth day following the date of deposit of instruments of ratification, acceptance, approval or accession by 16 Antarctic Treaty Consultative Parties which participated as such in the final session of the Fourth Special Antarctic Treaty Consultative Meeting, provided that number includes all the States necessary in order to establish all of the institutions of the Convention in respect of every area of Antarctica, including 5 developing countries and 11 developed countries.
2. For each State which, subsequent to the date of entry into force of this Convention, deposits an instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the thirtieth day following such deposit.

Article LXIII

Reservations, declarations and statements

1. Reservations to this Convention shall not be permitted. This does not preclude a State, when signing, ratifying, accepting, approving or acceding to this Convention, from making declarations or statements, however phrased or named, with a view, inter alia, to the harmonisation of its laws and regulations with this Convention, provided that such declarations or statements do not purport to exclude or to modify the legal effect of this Convention in its application to that State.
2. The provisions of this Article are without prejudice to the right to make written declarations in accordance with Article LVIII.

Article LXIV

Amendment

1. This Convention shall not be subject to amendment until after the expiry of 10 years from the date of its entry into force. Thereafter, any Party may, by written communication addressed to the Depositary, propose a specific amendment to this Convention and request the convening of a meeting to consider such proposed amendment.
2. The Depositary shall circulate such communication to all Parties. If within 12 months of the date of circulation of the communication at least one-third of the Parties reply favourably to the request, the Depositary shall convene the meeting.
3. The adoption of an amendment considered at such a meeting shall require the affirmative votes of two-thirds of the Parties present and voting, including the concurrent votes of the members of the Commission attending the meeting.
4. The adoption of any amendment relating to the Special Meeting of Parties or to the Advisory Committee shall require the affirmative votes of three-quarters of the Parties present and voting, including the concurrent votes of the members of the Commission attending the meeting.
5. An amendment shall enter into force for those Parties having deposited instruments of ratification, acceptance or approval thereof 30 days after the Depositary has received such instruments of ratification, acceptance or approval from all the members of the Commission.
6. Such amendment shall thereafter enter into force for any other Party 30 days after the Depositary has received its instrument of ratification, acceptance or approval thereof.
7. An amendment that has entered into force pursuant to this Article shall be without prejudice to the provisions of any Management Scheme approved before the date on which the amendment entered into force.

Article LXV

Withdrawal

1. Any Party may withdraw from this Convention by giving to the Depositary notice in writing of its intention to withdraw. Withdrawal shall take effect two years after the date of receipt of such notice by the Depositary.
2. Any Party which ceases to be a Contracting Party to the Antarctic Treaty shall be deemed to have withdrawn from this Convention on the date that it ceases to be a Contracting Party to the Antarctic Treaty.
3. Where an amendment has entered into force pursuant to Article LXIV(5), any Party from which

no instrument of ratification, acceptance or approval of the amendment has been received by the Depositary within a period of two years from the date of the entry into force of the amendment shall be deemed to have withdrawn from this Convention on the date of the expiration of a further two year period.

4. Subject to paragraphs 5 and 6 below, the rights and obligations of any Operator pursuant to this Convention shall cease at the time its Sponsoring State withdraws or is deemed to have withdrawn from this Convention.
5. Such Sponsoring State shall ensure that the obligations of its Operators have been discharged no later than the date on which its withdrawal takes effect.
6. Withdrawal from this Convention by any Party shall not affect its financial or other obligations under this Convention pending on the date withdrawal takes effect. Any dispute settlement procedure in which that Party is involved and which has been commenced prior to that date shall continue to its conclusion unless agreed otherwise by the parties to the dispute.

Article LXVI

Notifications by the depositary

The Depositary shall notify all Contracting Parties to the Antarctic Treaty of the following:

(a) signatures of this Convention and the deposit of instruments of ratification, acceptance, approval or accession;
(b) the deposit of instruments of ratification, acceptance or approval of any amendment adopted pursuant to Article LXIV;
(c) the date of entry into force of this Convention and of any amendment thereto;
(d) the deposit of declarations and notices pursuant to Articles LVI and LVIII;
(e) notifications pursuant to Article XVIII; and
(f) the withdrawal of a Party pursuant to Article LXV.

Article LXVII

Authentic texts, certified copies and registration with the United Nations

1. This Convention of which the Chinese, English, French, Russian and Spanish texts are equally authentic shall be deposited with the Government of New Zealand which shall transmit duly certified copies thereof to all Signatory and Acceding States.
2. The Depositary shall also transmit duly certified copies to all Signatory and Acceding States of the text of this Convention in any additional language of a Signatory or Acceding State which submits such text to the Depositary.
3. This Convention shall be registered by the Depositary pursuant to Article 102 of the Charter of the United Nations.

Done at Wellington this second day of June 1988.

In witness whereof, the undersigned, duly authorised, have

signed this Convention.

21.2.1 Annex – An Arbitral Tribunal

Article I

The Arbitral Tribunal shall be constituted and shall function in accordance with this Convention, including this Annex.

Article II

1. Each Party shall be entitled to designate up to three Arbitrators, at least one of whom shall be designated within three months of the entry into force of this Convention for that Party. Each Arbitrator shall be experienced in Antarctic affairs, with knowledge of international law and enjoying the highest reputation for fairness, competence and integrity. The names of the persons so designated shall constitute the list of Arbitrators. Each Party shall at all times maintain the name of at least one Arbitrator on the list.
2. Subject to paragraph 3 below, an Arbitrator designated by a Party shall remain on the list for a period of five years and shall be eligible for redesignation by that Party for additional five year periods.
3. An Arbitrator may by notice given to the Party which designated that person withdraw his name from the list. If an Arbitrator dies or gives notice of withdrawal of his name from the list or if a Party for any reason withdraws from the list the name of an Arbitrator designated by it, the Party which designated the Arbitrator in question

shall notify the Executive Secretary promptly. An Arbitrator whose name is withdrawn fromt he list shall continue to serve on any Arbitral Tribunal to which that Arbitrator has been appointed until the completion of proceedings before that Arbitral Tribunal.

4. The Executive Secretary shall ensure that an up-to-date list is maintained of the Arbitrators designated pursuant to this Article.

Article III

1. The Arbitral Tribunal shall be composed of three Arbitrators who shall be appointed as follows:
   (a) The party to the dispute commencing the proceedings shall appoint one Arbitrator, who may be its national, from the list referred to in Article II of this Annex. This appointment shall be included in the notification referred to in Article IV of this Annex.
   (b) Within 40 days of the receipt of that notification, the other party to the dispute shall appoint the second Arbitrator, who may be its national, from the list referred to in Article II of this Annex.
   (c) Within 60 days of the appointment of the second Arbitrator, the parties to the dispute shall appoint by agreement the third Arbitrator from the list referred to in Article II of this Annex. The third Arbitrator shall not be either a national of, or a person designated by, a party to the dispute, or of the same nationality as either of the first two Arbitrators. The third Arbitrator shall be the Chairman of the Arbitral Tribunal.
   (d) If the second Arbitrator has not been appointed within the prescribed period, or if the parties to the dispute have not reached agreement within the prescribed period on the appointment of the third Arbitrator, the Arbitrator or Arbitrators shall be appointed, at the request of any party to the dispute and within 30 days of the receipt of such request, by the President of the International Court of Justice from the list referred to in Article II of this Annex and subject to the conditions prescribed in subparagraphs (b) and (c) above. In performing the functions accorded him in this subparagraph, the President of the Court shall consult the parties to the dispute and the Chairman of the Commission.
   (e) If the President of the International Court of Justice is unable to perform the functions accorded him in subparagraph (d) above or is a national of a party to the dispute, the functions shall be performed by the Vice-President of the Court, except that if the Vice-President is unable to perform the functions or is a national of a party to the dispute the functions shall be performed by the next most senior member of the Court who is available and is not a national of a party to the dispute.
2. Any vacancy shall be filled in the manner prescribed for the initial appointment.
3. In disputes involving more than two Parties, those Parties having the same interest shall appoint one Arbitrator by agreement within the period specified in paragraph 1(b) above.

Article IV

The party to the dispute commencing proceedings shall so notify the other party or parties to the dispute and the Executive Secretary in writing. Such notification shall include a statement of the claim and the grounds on which it is based. The notification shall be transmitted by the Executive Secretary to all Parties.

Article V

1. Unless the parties to the dispute agree otherwise, arbitratio shall take place at the headquarters of the Commission, where the records of the Arbitral Tribunal shall be kept. The Arbitral Tribunal shall adopt its own rules of procedure. Such rules shall ensure that each party to the dispute has a full opportunity to be heard and to present its case and shall also ensure that the proceedings are conducted expeditiously.
2. The Arbitral Tribunal may hear and decide counterclaims arising out of the dispute.

Article VI

1. The Arbitral Tribunal, where it considers that prima facie it has jurisdiction under this Convention, may: (a) at the request of any party to a dispute, indicate such provisional measures as it considers necessary to preserve the respective rights of the parties to the dispute; (b) prescribe any provisional measures which it considers appropriate under the circumstances

to prevent serious harm to the Antarctic environment or dependent or associated ecosystems.
2. The parties to a dispute shall comply promptly with any provisional measures prescribed under paragraph 1(b) above pending an award under Article IX of this Annex.
3. Notwithstanding Article LVII(1), (2) and (3) of this Convention, a party to any dispute that may arise falling within the categories specified in Article LVIII(1)(a) to (g) of this Convention may at any time, by notification to the other party or parties to the dispute and to the Executive Secretary in accordance with Article IV of this Annex, request that the Arbitral Tribunal be constituted as a matter of exceptional urgency to indicate or prescribe emergency provisional measures in accordance with this Article. In such case, the Arbitral Tribunal shall be constituted as soon as possible in accordance with Article III of this Annex, except that the time periods in Article III(1)(b), (c) and (d) shall be reduced to 14 days in each case. The Arbitral Tribunal shall decide upon the request for emergency provisional measures within two months of the appointment of its Chairman.
4. Following a decision by the Arbitral Tribunal upon a request for emergency provisional measures in accordance with paragraph 3 above, settlement of the dispute shall proceed in accordance with Articles LVI and LVII of this Convention.

Article VII

Any Party which believes it has a legal interest, whether general or individual, which may be substantially affected by the award of an Arbitral Tribunal, may, unless the Arbitral Tribunal decides otherwise, intervene in the proceedings.

Article VIII

The parties to the dispute shall facilitate the work of the Arbitral Tribunal and, in particular, in accordance with their law and using all means at their disposal, shall provide it with all relevant documents and information, and enable it, when necessary, to call witnesses or experts and receive their evidence.

Article IX

If one of the parties to the dispute does not appear before the Arbitral Tribunal or fails to defend its case, any other party to the dispute may request the Arbitral Tribunal to continue the proceedings and make its award.

Article X

1. The Arbitral Tribunal shall decide, on the basis of this Convention and other rules of law not incompatible with it, such disputes as are submitted to it.
2. The Arbitral Tribunal may decide, ex aequo et bono, a dispute submitted to it, if the parties to the dispute so agree.

Article XI

1. Before making its award, the Arbitral Tribunal shall satisfy itself that it has competence in respect of the dispute and that the claim or counterclaim is well founded in fact and law.
2. The award shall be accompanied by a statement of reasons for the decision and shall be communicated to the Executive Secretary who shall transmit it to all Parties.
3. The award shall be final and binding on the parties to the dispute and on any Party which intervened in the proceedings and shall be complied with without delay. The Arbitral Tribunal shall interpret the award at the request of a party to the dispute or of any intervening Party.
4. The award shall have no binding force except in respect of that particular case.
5. Unless the Arbitral Tribunal decides otherwise, the expenses of the Arbitral Tribunal, including the remuneration of the Arbitrators, shall be borne by the parties to the dispute in equal shares.

Article XII

All decisions of the Arbitral Tribunal, including those referred to in Articles V, VI and XI of this Annex, shall be made by a majority of the Arbitrators who may not abstain from voting.

Part X
International Law Commission

22
Responsibility of States for Internationally Wrongful Acts

22.1 General Information

Draft Articles on Responsibility of States for Internationally Wrongful Acts

Organisation	International Law Commission (ILC)
Reference	http://www.un.org/law/ilc/ Report of the International Law Commission on the work of its Fifty-third Session Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 10 (A/56/10), 43–59.
Status	Consideration by the Commission from 1954 to 2001 Text adopted by the Commission at its fifty-third session, in 2001, and submitted to the General Assembly as a part of the Commission's report covering the work of that session.
Adoption	2001
Entry into force	No instruments concluded by the General Assembly on the basis of the reports prepared by the Commission
Literature	Crawford, J (ed), The International Law Commission's articles on state responsibility: introduction, text and commentaries, Cambridge University Press, Cambridge, 2002, 387 p. Crawford, J, 'The ILC's articles on responsibility of states for internationally wrongful acts: completion of the second reading', European journal of international law, 2001, pp. 963–991. Crawford, J, 'The ILC's articles on responsibility of states for internationally wrongful acts: a retrospect', The American journal of international law, 2002, pp. 874–890. Green, L, 'State responsibility and Civil Reparation for Environmental Damage', in Protection of the Environmental during Armed Conflict, Newport, 1996, pp. 416–439. Hafner, G, 'The draft articles on the responsibility of states for internationally wrongful acts: the work of the International Law Commission', Austrian review of international and European law, 2000, pp. 189–270. Okawa, P, State responsibility for transboundary air pollution in international law, Oxford University Press, Oxford, 2000, 285 p.

PELLET, A, 'The new draft articles of the International Law Commission on the responsibility of States for internationally wrongful acts: a requiem for State's crimes?', Netherlands yearbook of international law, 2001, pp. 55–79.
POPP, A, 'State responsibility and the environment: with specific reference to liability and compensation for oil pollution caused by ships', Preserving the Global environment, 1989, pp. 149–162
VICUNA, F, 'Current trends in responsibility and liability for environmental harm under international law', Protection of the environment for the new millennium: 2000 international law session, 2002, pp. 127–182.
WITTICH, S, 'The International Law Commission's articles on the responsibility of States for internationally wrongful acts adopted on second reading', Leiden journal of international law, 2002, pp. 891–919.
WOLFRUM, R & LANGENFELD, C, Environmental protection by means of international liability law, Erich Schmidt, Berlin, 1999, 479 p.

22.2 Draft Articles on Responsibility of States for Internationally Wrongful Acts

PART ONE

THE INTERNATIONALLY WRONGFUL ACT OF A STATE

CHAPTER 1

GENERAL PRINCIPLES

Article I

Responsibility of a State for its internationally wrongful acts

Every internationally wrongful act of a State entails the international responsibility of that State.

Article II

Elements of an internationally wrongful act of a State

There is an internationally wrongful act of a State when conduct consisting of an action or omission:

(a) Is attributable to the State under international law; and
(b) Constitutes a breach of an international obligation of the State.

Article III

Characterization of an act of a State as internationally wrongful

The characterization of an act of a State as internationally wrongful is governed by international law. Such characterization is not affected by the characterization of the same act as lawful by internal law.

CHAPTER 2

ATTRIBUTION OF CONDUCT TO A STATE

Article IV

Conduct of organs of a State

1. The conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central government or of a territorial unit of the State.
2. An organ includes any person or entity which has that status in accordance with the internal law of the State.

Article V

Conduct of persons or entities exercising elements of governmental authority

The conduct of a person or entity which is not an organ of the State under Article IV but which is empowered by the law of that State to exercise elements of the governmental authority shall be considered an act of the State under international law, provided the person or entity is acting in that capacity in the particular instance.

Article VI

Conduct of organs placed at the disposal of a State by another State

The conduct of an organ placed at the disposal of a State by another State shall be considered an act

of the former State under international law if the organ is acting in the exercise of elements of the governmental authority of the State at whose disposal it is placed.

Article VII

Excess of authority or contravention of instructions

The conduct of an organ of a State or of a person or entity empowered to exercise elements of the governmental authority shall be considered an act of the State under international law if the organ, person or entity acts in that capacity, even if it exceeds its authority or contravenes instructions.

Article VIII

Conduct directed or controlled by a State

The conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact acting on the instructions of, or under the direction or control of, that State in carrying out the conduct.

Article IX

Conduct carried out in the absence or default of the official authorities

The conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact exercising elements of the governmental authority in the absence or default of the official authorities and in circumstances such as to call for the exercise of those elements of authority.

Article X

Conduct of an insurrectional or other movement

1. The conduct of an insurrectional movement which becomes the new government of a State shall be considered an act of that State under international law.
2. The conduct of a movement, insurrectional or other, which succeeds in establishing a new State in part of the territory of a pre-existing State or in a territory under its administration shall be considered an act of the new State under international law.
3. This article is without prejudice to the attribution to a State of any conduct, however related to that of the movement concerned, which is to be considered an act of that State by virtue of Articles IV–IX.

Article XI

Conduct acknowledged and adopted by a State as its own

Conduct which is not attributable to a State under the preceding articles shall nevertheless be considered an act of that State under international law if and to the extent that the State acknowledges and adopts the conduct in question as its own.

CHAPTER 3

BREACH OF AN INTERNATIONAL OBLIGATION

Article XII

Existence of a breach of an international obligation

There is a breach of an international obligation by a State when an act of that State is not in conformity with what is required of it by that obligation, regardless of its origin or character.

Article XIII

International obligation in force for a State

An act of a State does not constitute a breach of an international obligation unless the State is bound by the obligation in question at the time the act occurs.

Article XIV

Extension in time of the breach of an international obligation

1. The breach of an international obligation by an act of a State not having a continuing character occurs at the moment when the act is performed, even if its effects continue.
2. The breach of an international obligation by an act of a State having a continuing character extends over the entire period during which the act continues and remains not in conformity with the international obligation.
3. The breach of an international obligation requiring a State to prevent a given event occurs when the event occurs and extends over the entire period during which the event continues and remains not in conformity with that obligation.

Article XV

Breach consisting of a composite act

1. The breach of an international obligation by a State through a series of actions or omissions defined in aggregate as wrongful, occurs when the action or omission occurs which, taken with the other actions or omissions, is sufficient to constitute the wrongful act.
2. In such a case, the breach extends over the entire period starting with the first of the actions or omissions of the series and lasts for as long as these actions or omissions are repeated and remain not in conformity with the international obligation.

CHAPTER 4

RESPONSIBILITY OF A STATE IN CONNECTION WITH THE ACT OF ANOTHER STATE

Article XVI

Aid or assistance in the commission of an internationally wrongful act

A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if:

(a) That State does so with knowledge of the circumstances of the internationally wrongful act; and
(b) The act would be internationally wrongful if committed by that State.

Article XVII

Direction and control exercised over the commission of an internationally wrongful act

A State which directs and controls another State in the commission of an internationally wrongful act by the latter is internationally responsible for that act if:

(a) That State does so with knowledge of the circumstances of the internationally wrongful act; and
(b) The act would be internationally wrongful if committed by that State.

Article XVIII

Coercion of another State

A State which coerces another State to commit an act is internationally responsible for that act if:

(a) The act would, but for the coercion, be an internationally wrongful act of the coerced State; and
(b) The coercing State does so with knowledge of the circumstances of the act.

Article XIX

Effect of this chapter

This chapter is without prejudice to the international responsibility, under other provisions of these articles, of the State which commits the act in question, or of any other State.

CHAPTER 5

CIRCUMSTANCES PRECLUDING WRONGFULNESS

Article XX

Consent

Valid consent by a State to the commission of a given act by another State precludes the wrongfulness of that act in relation to the former State to the extent that the act remains within the limits of that consent.

Article XXI

Self-defence

The wrongfulness of an act of a State is precluded if the act constitutes a lawful measure of self-defence taken in conformity with the Charter of the United Nations.

Article XXII

Countermeasures in respect of an internationally wrongful act

The wrongfulness of an act of a State not in conformity with an international obligation towards another State is precluded if and to the extent that the act constitutes a countermeasure taken against the latter State in accordance with Chapter 2 of Part Three.

Article XXIII

Force majeure

1. The wrongfulness of an act of a State not in conformity with an international obligation of that State is precluded if the act is due to *force majeure*, that is the occurrence of an irresistible force or of an unforeseen event, beyond the control of the State, making it materially impossible in the circumstances to perform the obligation.

2. Paragraph 1 does not apply if:

   (a) The situation of *force majeure* is due, either alone or in combination with other factors, to the conduct of the State invoking it; or
   (b) The State has assumed the risk of that situation occurring.

Article XXIV

Distress

1. The wrongfulness of an act of a State not in conformity with an international obligation of that State is precluded if the author of the act in question has no other reasonable way, in a situation of distress, of saving the author's life or the lives of other persons entrusted to the author's care.
2. Paragraph 1 does not apply if:

   (a) The situation of distress is due, either alone or in combination with other factors, to the conduct of the State invoking it; or
   (b) The act in question is likely to create a comparable or greater peril.

Article XXV

Necessity

1. Necessity may not be invoked by a State as a ground for precluding the wrongfulness of an act not in conformity with an international obligation of that State unless the act:

   (a) Is the only way for the State to safeguard an essential interest against a grave and imminent peril; and
   (b) Does not seriously impair an essential interest of the State or States towards which the obligation exists, or of the international community as a whole.

2. In any case, necessity may not be invoked by a State as a ground for precluding wrongfulness if:

   (a) The international obligation in question excludes the possibility of invoking necessity; or
   (b) The State has contributed to the situation of necessity.

Article XXVI

Compliance with peremptory norms

Nothing in this chapter precludes the wrongfulness of any act of a State which is not in conformity with an obligation arising under a peremptory norm of general international law.

Article XXVII

Consequences of invoking a circumstance precluding wrongfulness

The invocation of a circumstance precluding wrongfulness in accordance with this chapter is without prejudice to:

(a) Compliance with the obligation in question, if and to the extent that the circumstance precluding wrongfulness no longer exists;
(b) The question of compensation for any material loss caused by the act in question.

PART TWO

CONTENT OF THE INTERNATIONAL RESPONSIBILITY OF A STATE

CHAPTER 1

GENERAL PRINCIPLES

Article XXVIII

Legal consequences of an internationally wrongful act

The international responsibility of a State which is entailed by an internationally wrongful act in accordance with the provisions of Part One involves legal consequences as set out in this Part.

Article XXIX

Continued duty of performance

The legal consequences of an internationally wrongful act under this Part do not affect the continued duty of the responsible State to perform the obligation breached.

Article XXX

Cessation and non-repetition

The State responsible for the internationally wrongful act is under an obligation:

(a) To cease that act, if it is continuing;
(b) To offer appropriate assurances and guarantees of non-repetition, if circumstances so require.

Article XXXI

Reparation

1. The responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act.
2. Injury includes any damage, whether material or moral, caused by the internationally wrongful act of a State.

Article XXXII

Irrelevance of internal law

The responsible State may not rely on the provisions of its internal law as justification for failure to comply with its obligations under this Part.

Article XXXIII

Scope of international obligations set out in this Part

1. The obligations of the responsible State set out in this Part may be owed to another State, to several States, or to the international community as a whole, depending in particular on the character and content of the international obligation and on the circumstances of the breach.
2. This Part is without prejudice to any right, arising from the international responsibility of a State, which may accrue directly to any person or entity other than a State.

CHAPTER 2

REPARATION FOR INJURY

Article XXXIV

Forms of reparation

Full reparation for the injury caused by the internationally wrongful act shall take the form of restitution, compensation and satisfaction, either singly or in combination, in accordance with the provisions of this chapter.

Article XXXV

Restitution

A State responsible for an internationally wrongful act is under an obligation to make restitution, that is, to re-establish the situation which existed before the wrongful act was committed, provided and to the extent that restitution:

(a) Is not materially impossible;
(b) Does not involve a burden out of all proportion to the benefit deriving from restitution instead of compensation.

Article XXXVI

Compensation

1. The State responsible for an internationally wrongful act is under an obligation to compensate for the damage caused thereby, insofar as such damage is not made good by restitution.
2. The compensation shall cover any financially assessable damage including loss of profits insofar as it is established.

Article XXXVII

Satisfaction

1. The State responsible for an internationally wrongful act is under an obligation to give satisfaction for the injury caused by that act insofar as it cannot be made good by restitution or compensation.
2. Satisfaction may consist in an acknowledgement of the breach, an expression of regret, a formal apology or another appropriate modality.
3. Satisfaction shall not be out of proportion to the injury and may not take a form humiliating to the responsible State.

Article XXXVIII

Interest

1. Interest on any principal sum due under this chapter shall be payable when necessary in order to ensure full reparation. The interest rate and mode of calculation shall be set so as to achieve that result.
2. Interest runs from the date when the principal sum should have been paid until the date the obligation to pay is fulfilled.

Article XXXIX

Contribution to the injury

In the determination of reparation, account shall be taken of the contribution to the injury by wilful or negligent action or omission of the injured State or any person or entity in relation to whom reparation is sought.

CHAPTER 3

SERIOUS BREACHES OF OBLIGATIONS UNDER PEREMPTORY NORMS OF GENERAL INTERNATIONAL LAW

Article XL

Application of this chapter

1. This chapter applies to the international responsibility which is entailed by a serious breach by a State of an obligation arising under a peremptory norm of general international law.
2. A breach of such an obligation is serious if it involves a gross or systematic failure by the responsible State to fulfil the obligation.

Article XLI

Particular consequences of a serious breach of an obligation under this chapter

1. States shall cooperate to bring to an end through lawful means any serious breach within the meaning of Article XL.
2. No State shall recognize as lawful a situation created by a serious breach within the meaning of Article XL, nor render aid or assistance in maintaining that situation.
3. This article is without prejudice to the other consequences referred to in this Part and to such further consequences that a breach to which this chapter applies may entail under international law.

PART THREE

THE IMPLEMENTATION OF THE INTERNATIONAL RESPONSIBILITY OF A STATE

CHAPTER 1

INVOCATION OF THE RESPONSIBILITY OF A STATE

Article XLII

Invocation of responsibility by an injured State

A State is entitled as an injured State to invoke the responsibility of another State if the obligation breached is owed to:

(a) That State individually; or
(b) A group of States including that State, or the international community as a whole, and the breach of the obligation:
    (i) Specially affects that State; or
    (ii) Is of such a character as radically to change the position of all the other States to which the obligation is owed with respect to the further performance of the obligation.

Article XLIII

Notice of claim by an injured State

1. An injured State which invokes the responsibility of another State shall give notice of its claim to that State.
2. The injured State may specify in particular:
    (a) The conduct that the responsible State should take in order to cease the wrongful act, if it is continuing;
    (b) What form reparation should take in accordance with the provisions of Part Two.

Article XLIV

Admissibility of claims

The responsibility of a State may not be invoked if:

(a) The claim is not brought in accordance with any applicable rule relating to the nationality of claims;
(b) The claim is one to which the rule of exhaustion of local remedies applies and any available and effective local remedy has not been exhausted.

Article XLV

Loss of the right to invoke responsibility

The responsibility of a State may not be invoked if:

(a) The injured State has validly waived the claim;
(b) The injured State is to be considered as having, by reason of its conduct, validly acquiesced in the lapse of the claim.

Article XLVI

Plurality of injured States

Where several States are injured by the same internationally wrongful act, each injured State may separately invoke the responsibility of the State which has committed the internationally wrongful act.

Article XLVII

Plurality of responsible States

1. Where several States are responsible for the same internationally wrongful act, the responsibility of each State may be invoked in relation to that act.
2. Paragraph 1:
   (a) Does not permit any injured State to recover, by way of compensation, more than the damage it has suffered;
   (b) Is without prejudice to any right of recourse against the other responsible States.

Article XLVIII

Invocation of responsibility by a State other than an injured State

1. Any State other than an injured State is entitled to invoke the responsibility of another State in accordance with paragraph 2 if:
   (a) The obligation breached is owed to a group of States including that State, and is established for the protection of a collective interest of the group; or
   (b) The obligation breached is owed to the international community as a whole.
2. Any State entitled to invoke responsibility under paragraph 1 may claim from the responsible State:
   (a) Cessation of the internationally wrongful act, and assurances and guarantees of non-repetition in accordance with Article XXX; and
   (b) Performance of the obligation of reparation in accordance with the preceding articles, in the interest of the injured State or of the beneficiaries of the obligation breached.
3. The requirements for the invocation ofresponsibility by an injured State under Articles XLIII, XLIV and XLV apply to an invocation of responsibility by a State entitled to do so under paragraph 1.

CHAPTER 2

COUNTERMEASURES

Article XLIX

Object and limits of countermeasures

1. An injured State may only take countermeasures against a State which is responsible for an internationally wrongful act in order to induce that State to comply with its obligations under Part Two.
2. Countermeasures are limited to the non-performance for the time being of international obligations of the State taking the measures towards the responsible State.
3. Countermeasures shall, as far as possible, be taken in such a way as to permit the resumption of performance of the obligations in question.

Article L

Obligations not affected by countermeasures

1. Countermeasures shall not affect:
   (a) The obligation to refrain from the threat or use of force as embodied in the Charter of the United Nations;
   (b) Obligations for the protection of fundamental human rights;
   (c) Obligations of a humanitarian character prohibiting reprisals;
   (d) Other obligations under peremptory norms of general international law.
2. A State taking countermeasures is not relieved from fulfilling its obligations:
   (a) Under any dispute settlement procedure applicable between it and the responsible State;
   (b) To respect the inviolability of diplomatic or consular agents, premises, archives and documents.

Article LI

Proportionality

Countermeasures must be commensurate with the injury suffered, taking into account the gravity of the internationally wrongful act and the rights in question.

Article LII

Conditions relating to resort to countermeasures

1. Before taking countermeasures, an injured State shall:
   (a) Call on the responsible State, in accordance with Article XLIII, to fulfil its obligations under Part Two;

(b) Notify the responsible State of any decision to take countermeasures and offer to negotiate with that State.

2. Notwithstanding paragraph 1 (b), the injured State may take such urgent countermeasures as are necessary to preserve its rights.
3. Countermeasures may not be taken, and if already taken must be suspended without undue delay if:

(a) The internationally wrongful act has ceased; and
(b) The dispute is pending before a court or tribunal which has the authority to make decisions binding on the parties.

4. Paragraph 3 does not apply if the responsible State fails to implement the dispute settlement procedures in good faith.

Article LIII

Termination of countermeasures

Countermeasures shall be terminated as soon as the responsible State has complied with its obligations under Part Two in relation to the internationally wrongful act.

Article LIV

Measures taken by States other than an injured State

This chapter does not prejudice the right of any State, entitled under Article XLVIII, paragraph 1 to invoke the responsibility of another State, to take lawful measures against that State to ensure cessation of the breach and reparation in the interest of the injured State or of the beneficiaries of the obligation breached.

PART FOUR

GENERAL PROVISIONS

Article LV

Lex specialis

These articles do not apply where and to the extent that the conditions for the existence of an internationally wrongful act or the content or implementation of the international responsibility of a State are governed by special rules of international law.

Article LVI

Questions of State responsibility not regulated by these articles

The applicable rules of international law continue to govern questions concerning the responsibility of a State for an internationally wrongful act to the extent that they are not regulated by these articles.

Article LVII

Responsibility of an international organization

These articles are without prejudice to any question of the responsibility under international law of an international organization, or of any State for the conduct of an international organization.

Article LVIII

Individual responsibility

These articles are without prejudice to any question of the individual responsibility under international law of any person acting on behalf of a State.

Article LIX

Charter of the United Nations

These articles are without prejudice to the Charter of the United Nations.

23
Prevention of Transboundary Harm from Hazardous Activities

23.1 General Information

Draft Articles on Prevention of Transboundary Harm from Hazardous Activities

Organisation	International Law Commission (ILC)
Reference	http://www.un.org/law/ilc/ Report of the International Law Commission on the work of its Fifty-third session, Official Records of the General Assembly, Fifty-Sixth Session, Supplement No. 10 (A/56/10, chp. V.E.2), 370–377.
Status	Consideration by the Commission from 1997 to 2001. Submitted to the United Nation General Assembly.
Adoption	2001
Entry into force	No instruments concluded by the General Assembly on the basis of the reports prepared by the Commission.
Literature	Arévalo, L, 'The Work of the International Law Commission in the Field of International Environmental Law', Boston college environmental affairs law review, 2005, pp. 493–507. Barboza, J, 'International liability for the injurious consequences of acts not prohibited by international law and protection of the environment', Recueil des cours, vol. 247, pp. 291–405. Barboza, J, 'The ILC and Environmental Damage' in P Wetterstein (ed), Harm to the Environment: the Right to Compensation and the Assessment of Damages, Oxford, 1997, pp. 73–81. De la Fayette, L, 'The ILC and international liability: a commentary', RECIEL, 1997, pp. 322–333. Lefeber, R, Transboundary Environmental Interference and the Origin of State Liability, Kluwer Law International, The Hague – London – Boston, 1996, 365 p. Rao, P, 'International liability for transboundary harm', Environmental Policy and Law, 2004, pp. 224–231.

23.2 Draft Articles on Prevention of Transboundary Harm from Hazardous Activities

The States Parties,

Having in mind Article XIII, paragraph 1 (a) of the Charter of the United Nations, which provides that the General Assembly shall initiate studies and make recommendations for the purpose of encouraging the progressive development of international law and its codification,

Bearing in mind the principle of permanent sovereignty of States over the natural resources within their territory or otherwise under their jurisdiction or control,

Bearing also in mind that the freedom of States to carry on or permit activities in their territory or otherwise under their jurisdiction or control is not unlimited,

Recalling the Rio Declaration on Environment and Development of 13 June 1992,

Recognizing the importance of promoting international cooperation, Have agreed as follows:

Article I

Scope

The present articles apply to activities not prohibited by international law which involve a risk of causing significant transboundary harm through their physical consequences.

Article II

Use of terms

For the purposes of the present articles:

(*a*) Risk of causing significant transboundary harm. includes risks taking the form of a high probability of causing significant transboundary harm and a low probability of causing disastrous transboundary harm;
(*b*) Harm means harm caused to persons, property or the environment;
(*c*) Transboundary harm. means harm caused in the territory of or in other places under the jurisdiction or control of a State other than the State of origin, whether or not the States concerned share a common border;
(*d*) State of origin. means the State in the territory or otherwise under the jurisdiction or control of which the activities referred to in Article I are planned or are carried out;
(*e*) State likely to be affected. means the State or States in the territory of which there is the risk of significant transboundary harm or which have jurisdiction or control over any other place where there is such a risk;
(*f*) States concerned means the State of origin and the State likely to be affected.

Article III

Prevention

The State of origin shall take all appropriate measures to prevent significant transboundary harm or at any event to minimize the risk thereof.

Article IV

Cooperation

States concerned shall cooperate in good faith and, as necessary, seek the assistance of one or more competent international organizations in preventing significant transboundary harm or at any event in minimizing the risk thereof.

Article V

Implementation

States concerned shall take the necessary legislative, administrative or other action including the establishment of suitable monitoring mechanisms to implement the provisions of the present articles.

Article VI

Authorization

1. The State of origin shall require its prior authorization for:
   (a) Any activity within the scope of the present articles carried out in its territory or otherwise under its jurisdiction or control;
   (b) Any major change in an activity referred to in subparagraph (a);
   (c) Any plan to change an activity which may transform it into one falling within the scope of the present articles.
2. The requirement of authorization established by a State shall be made applicable in respect

of all pre-existing activities within the scope of the present articles.

Authorizations already issued by the State for pre-existing activities shall be reviewed in order to comply with the present articles.

3. In case of a failure to conform to the terms of the authorization, the State of origin shall take such actions as appropriate, including where necessary terminating the authorization.

Article VII

Assessment of risk

Any decision in respect of the authorization of an activity within the scope of the present articles shall, in particular, be based on an assessment of the possible transboundary harm caused by that activity, including any environmental impact assessment.

Article VIII

Notification and information

1. If the assessment referred to in Article VII indicates a risk of causing significant transboundary harm, the State of origin shall provide the State likely to be affected with timely notification of the risk and the assessment and shall transmit to it the available technical and all other relevant information on which the assessment is based.
2. The State of origin shall not take any decision on authorization of the activity pending the receipt, within a period not exceeding six months, of the response from the State likely to be affected.

Article IX

Consultations on preventive measures

1. The States concerned shall enter into consultations, at the request of any of them, with a view to achieving acceptable solutions regarding measures to be adopted in order to prevent significant transboundary harm or at any event to minimize the risk thereof. The States concerned shall agree, at the commencement of such consultations, on a reasonable time-frame for the consultations.
2. The States concerned shall seek solutions based on an equitable balance of interests in the light of Article X.
3. If the consultations referred to in paragraph 1 fail to produce an agreed solution, the State of origin shall nevertheless take into account the interests of the State likely to be affected in case it decides to authorize the activity to be pursued, without prejudice to the rights of any State likely to be affected.

Article X

Factors involved in an equitable balance of interests

In order to achieve an equitable balance of interests as referred to in paragraph 2 of Article IX, the States concerned shall take into account all relevant factors and circumstances, including:

(a) The degree of risk of significant transboundary harm and of the availability of means of preventing such harm, or minimizing the risk thereof or repairing the harm;
(b) The importance of the activity, taking into account its overall advantages of a social, economic and technical character for the State of origin in relation to the potential harm for the State likely to be affected;
(c) The risk of significant harm to the environment and the availability of means of preventing such harm, or minimizing the risk thereof or restoring the environment;
(d) The degree to which the State of origin and, as appropriate, the State likely to be affected are prepared to contribute to the costs of prevention;
(e) The economic viability of the activity in relation to the costs of prevention and to the possibility of carrying out the activity elsewhere or by other means or replacing it with an alternative activity;
(f) The standards of prevention which the State likely to be affected applies to the same or comparable activities and the standards applied in comparable regional or international practice.

Article XI

Procedures in the absence of notification

1. If a State has reasonable grounds to believe that an activity planned or carried out in the State of origin may involve a risk of causing significant transboundary harm to it, it may request the State of origin to apply the provision of Article VIII.

The request shall be accompanied by a documented explanation setting forth its grounds.

2. In the event that the State of origin nevertheless finds that it is not under an obligation to provide a notification under Article VIII, it shall so inform the requesting State within a reasonable time, providing a documented explanation setting forth the reasons for such finding. If this finding does not satisfy that State, at its request, the two States shall promptly enter into consultations in the manner indicated in Article IX.
3. During the course of the consultations, the State of origin shall, if so requested by the other State, arrange to introduce appropriate and feasible measures to minimize the risk and, where appropriate, to suspend the activity in question for a reasonable period.

Article XII

Exchange of information

While the activity is being carried out, the States concerned shall exchange in a timely manner all available information concerning that activity relevant to preventing significant transboundary harm or at any event minimizing the risk thereof. Such an exchange of information shall continue until such time as the States concerned consider it appropriate even after the activity is terminated.

Article XIII

Information to the public

States concerned shall, by such means as are appropriate, provide the public likely to be affected by an activity within the scope of the present articles with relevant information relating to that activity, the risk involved and the harm which might result and ascertain their views.

Article XIV

National security and industrial secrets

Data and information vital to the national security of the State of origin or to the protection of industrial secrets or concerning intellectual property may be withheld, but the State of origin shall cooperate in good faith with the State likely to be affected in providing as much information as possible under the circumstances.

Article XV

Non-discrimination

Unless the States concerned have agreed otherwise for the protection of the interests of persons, natural or juridical, who may be or are exposed to the risk of significant transboundary harm as a result of an activity within the scope of the present articles, a State shall not discriminate on the basis of nationality or residence or place where the injury might occur, in granting to such persons, in accordance with its legal system, access to judicial or other procedures to seek protection or other appropriate redress.

Article XVI

Emergency preparedness

The State of origin shall develop contingency plans for responding to emergencies, in cooperation, where appropriate, with the State likely to be affected and competent international organizations.

Article XVII

Notification of an emergency

The State of origin shall, without delay and by the most expeditious means, at its disposal, notify the State likely to be affected of an emergency concerning an activity within the scope of the present articles and provide it with all relevant and available information.

Article XVIII

Relationship to other rules of international law

The present articles are without prejudice to any obligation incurred by States under relevant treaties or rules of customary international law.

Article XIX

Settlement of disputes

1. Any dispute concerning the interpretation or application of the present articles shall be settled expeditiously through peaceful means of settlement chosen by mutual agreement of the parties to the dispute, including negotiations, mediation, conciliation, arbitration or judicial settlement.
2. Failing an agreement on the means for the peaceful settlement of the dispute within a

period of six months, the parties to the dispute shall, at the request of any of them, have recourse to the establishment of an impartial fact-finding commission.

3. The Fact-finding Commission shall be composed of one member nominated by each party to the dispute and in addition a member not having the nationality of any of the parties to the dispute chosen by the nominated members who shall serve as Chairperson.
4. If more than one State is involved on one side of the dispute and those States do not agree on a common member of the Commission and each of them nominates a member, the other party to the dispute has the right to nominate an equal number of members of the Commission.
5. If the members nominated by the parties to the dispute are unable to agree on a Chairperson within three months of the request for the establishment of the Commission, any party to the dispute may request the Secretary-General of the United Nations to appoint the Chairperson who shall not have the nationality of any of the parties to the dispute. If one of the parties to the dispute fails to nominate a member within three months of the initial request pursuant to paragraph 2, any other party to the dispute may request the Secretary-General of the United Nations to appoint a person who shall not have the nationality of any of the parties to the dispute. The person so appointed shall constitute a single-member Commission.
6. The Commission shall adopt its report by a majority vote, unless it is a single-member Commission, and shall submit that report to the parties to the dispute setting forth its findings and recommendations, which the parties to the dispute shall consider in good faith.

24
Allocation of Loss in the Case of Transboundary Harm Arising Out of Hazardous Activities

24.1 General Information

Draft Principles on the Allocation of Loss in the Case of Transboundary Harm arising out of Hazardous Activities

Organisation	International Law Commission (ILC)
Reference	http://www.un.org/law/ilc/ Report of the International Law Commission on the work of its 58th session, Official Records of the General Assembly, Supplement 10 (A/61/10, chp. V).
Status	Consideration by the Commission from 2002 to 2006. Text adopted by the International Law Commission at its 58th session, in 2006, and submitted to the General Assembly as a part of the Commission's report covering the work of that session (A/61/10).
Adoption	2006
Entry into force	Each State should adopt the necessary legislative, regulatory and administrative measures to implement the present draft principles. (Principle 8)

24.2 Draft Principles on the Allocation of Loss in the Case of Transboundary Harm Arising Out of Hazardous Activities

The General Assembly,

Reaffirming Principles 13 and 16 of the Rio Declaration on Environment and Development,

Recalling the Draft articles on the Prevention of Transboundary Harm from Hazardous Activities,

Aware that incidents involving hazardous activities may occur despite compliance by the relevant State with its obligations concerning prevention of transboundary harm from hazardous activities,

Noting that as a result of such incidents other States and/or their nationals may suffer harm and serious loss,

Emphasizing that appropriate and effective measures should be in place to ensure that those natural and legal persons, including States, that incur harm and loss as a result of such incidents are able to obtain prompt and adequate compensation,

Concerned that prompt and effective response measures should be taken to minimize the harm and loss which may result from such incidents,

Noting that States are responsible for infringements of their obligations of prevention under international law,

Recalling the significance of existing international agreements covering specific categories of hazardous activities and stressing the importance of the conclusion of further such agreements,

Desiring to contribute to the development of international law in this field,

…

Principle 1 Scope of application

The present draft principles apply to transboundary damage caused by hazardous activities not prohibited by international law.

Principle 2 Use of terms

For the purposes of the present draft principles:

(a) 'damage' means significant damage caused to persons, property or the environment; and includes:

  (i) loss of life or personal injury;
  (ii) loss of, or damage to, property, including property which forms part of the cultural heritage;
  (iii) loss or damage by impairment of the environment;
  (iv) the costs of reasonable measures of reinstatement of the property, or environment, including natural resources;
  (v) the costs of reasonable response measures;

(b) 'environment' includes natural resources, both abiotic and biotic, such as air, water, soil, fauna and flora and the interaction between the same factors, and the characteristic aspects of the landscape;
(c) 'hazardous activity' means an activity which involves a risk of causing significant harm;
(d) 'State of origin' means the State in the territory or otherwise under the jurisdiction or control of which the hazardous activity is carried out;
(e) 'transboundary damage' means damage caused to persons, property or the environment in the territory or in other places under the jurisdiction or control of a State other than the State of origin;
(f) 'victim' means any natural or legal person or State that suffers damage;
(g) 'operator' means any person in command or control of the activity at the time the incident causing transboundary damage occurs.

Principle 3 Purposes

The purposes of the present draft principles are:

(a) to ensure prompt and adequate compensation to victims of transboundary damage; and
(b) to preserve and protect the environment in the event of transboundary damage, especially with respect to mitigation of damage to the environment and its restoration or reinstatement.

Principle 4 Prompt and adequate compensation

1. Each State should take all necessary measures to ensure that prompt and adequate compensation is available for victims of transboundary damage caused by hazardous activities located within its territory or otherwise under its jurisdiction or control.
2. These measures should include the imposition of liability on the operator or, where appropriate, other person or entity. Such liability should not require proof of fault. Any conditions, limitations or exceptions to such liability shall be consistent with draft principle 3.
3. These measures should also include the requirement on the operator or, where appropriate, other person or entity, to establish and maintain financial security such as insurance, bonds or other financial guarantees to cover claims of compensation.
4. In appropriate cases, these measures should include the requirement for the establishment of industry-wide funds at the national level.
5. In the event that the measures under the preceding paragraphs are insufficient to provide adequate compensation, the State of origin should also ensure that additional financial resources are made available.

Principle 5 Response measures

Upon the occurrence of an incident involving a hazardous activity which results or is likely to result in transboundary damage:

(a) the State of origin shall promptly notify all States affected or likely to be affected of the incident and the possible effects of the transboundary damage;

(b) the State of origin, with the appropriate involvement of the operator, shall ensure that appropriate response measures are taken and should, for this purpose, rely upon the best available scientific data and technology;
(c) the State of origin, as appropriate, should also consult with and seek the cooperation of all States affected or likely to be affected to mitigate the effects of transboundary damage and if possible eliminate them;
(d) the States affected or likely to be affected by the transboundary damage shall take all feasible measures to mitigate and if possible to eliminate the effects of such damage;
(e) the States concerned should, where appropriate, seek the assistance of competent international organizations and other States on mutually acceptable terms and conditions.

Principle 6 International and domestic remedies

1. States shall provide their domestic judicial and administrative bodies with the necessary jurisdiction and competence and ensure that these bodies have prompt, adequate and effective remedies available in the event of transboundary damage caused by hazardous activities located within their territory or otherwise under their jurisdiction or control.
2. Victims of transboundary damage should have access to remedies in the State of origin that are no less prompt, adequate and effective than those available to victims that suffer damage, from the same incident, within the territory of that State.
3. Paragraphs 1 and 2 are without prejudice to the right of the victims to seek remedies other than those available in the State of origin.
4. States may provide for recourse to international claims settlement procedures that are expeditious and involve minimal expenses.
5. States should guarantee appropriate access to information relevant for the pursuance of remedies, including claims for compensation.

Principle 7 Development of specific international regimes

1. Where, in respect of particular categories of hazardous activities, specific global, regional or bilateral agreements would provide effective arrangements concerning compensation, response measures and international and domestic remedies, all efforts should be made to conclude such specific agreements.
2. Such agreements should, as appropriate, include arrangements for industry and/or State funds to provide supplementary compensation in the event that the financial resources of the operator, including financial security measures, are insufficient to cover the damage suffered as a result of an incident. Any such funds may be designed to supplement or replace national industry-based funds.

Principle 8 Implementation

1. Each State should adopt the necessary legislative, regulatory and administrative measures to implement the present draft principles.
2. The present draft principles and the measures adopted to implement them shall be applied without any discrimination such as that based on nationality, domicile or residence.
3. States should cooperate with each other to implement the present draft principles.

Part XI
Space

25
Space Liability Convention

25.1 General Information

Convention on International Liability for Damage Caused by Space Objects

Most common abbreviation(s)	**Space Liability Convention, Liability convention**
Organisation	United Nations Office for Outer Space Affairs (UNOOSA)
Reference	961 UNTS 187, Treaty Series No. 16 (1974), Cmnd 5551 http://www.oosa.unvienna.org/SpaceLaw/liability.htm
Status	
Adoption	29 November 1971
Entry into force	1 September 1972
Signatories (without ratification)	Burundi, Cambodia, Central African Republic, Colombia, Costa Rica, Democratic Republic of Congo, Egypt, El Salvador, Gambia, Ghana, Guatemala, Haiti, Honduras, Iceland, Jordan, Lebanon, Nepal, Nicaragua, Oman, Philippines, Rwanda, Sierra Leone, South Africa, United Republic of Tanzania
Ratifications	Algeria, Antigua and Barbuda, Argentina, Australia,Austria, Belarus, Belgium, Benin, Bosnia and Herzegovina, Botswana, Brazil, Bulgaria, Canada, Chile, China, Cuba, Cyprus, Czech Republic, Denmark, Dominican Republic, Ecuador, Fiji, Finland, France, Gabon, Germany, Greece, Hungary, India, Indonesia, Iran, Iraq, Ireland, Israel, Italy, Japan, Kazakhstan, Kenya, Kuwait, Lao People's Democratic Republic, Liechtenstein, Luxembourg, Mali, Malta, Mexico, Mongolia, Morocco, Netherlands, New Zealand, Niger, Nigeria, Norway, Pakistan, Panama, Papua New Guinea, Peru, Poland, Qatar, Republic of Korea, Romania, Russian Federation, Saint Vincent and the Grenadines, Saudi Arabia, Senegal, Serbia, Seychelles, Singapore, Slovakia, Slovenia, Spain, Sri Lanka, Sweden, Switzerland, Syrian Arab Republic, Togo, Trinidad and Tobago, Tunisia, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuale, Zambia
Declaration of acceptance of rights and obligations	European Space Agency, European Telecommunication Satellite Organization

Literature

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Poulantzas, D, 'Some remarks on the Convention on International Liability for Damage Caused by Space Objects', Revue hellénique de droit international, 1972, pp. 306–310.
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25.2 Convention of 29 March 1972 on International Liability for Damage Caused by Space Objects

The States Parties to this Convention,

Recognizing the common interest of all mankind in furthering the exploration and use of outer space for peaceful purposes,

Recalling the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies,

Taking into consideration that, notwithstanding the precautionary measures to be taken by States and international intergovernmental organizations involved in the launching of space objects, damage may on occasion be caused by such objects,

Recognizing the need to elaborate effective international rules and procedures concerning liability for damage caused by space objects and to ensure, in particular, the prompt payment under the terms of this Convention of a full and equitable measure of compensation to victims of such damage,

Believing that the establishment of such rules and procedures will contribute to the strengthening of international co-operation in the field of the exploration and use of outer space for peaceful purposes,

Have agreed on the following:

Article I

For the purposes of this Convention:

(a) The term 'damage' means loss of life, personal injury or other impairment of health; or loss of or damage to property of States or of persons, natural or juridical, or property of international intergovernmental organizations;
(b) The term 'launching' includes attempted launching;
(c) The term 'launching State' means:

(i) A State which launches or procures the launching of a space object;
(ii) A State from whose territory or facility a space object is launched;

(d) The term 'space object' includes component parts of a space object as well as its launch vehicle and parts thereof.

Article II

A launching State shall be absolutely liable to pay compensation for damage caused by its space object on the surface of the earth or to aircraft flight.

Article III

In the event of damage being caused elsewhere than on the surface of the earth to a space object of one launching State or to persons or property on board such a space object by a space object of another launching State, the latter shall be liable only if the damage is due to its fault or the fault of persons for whom it is responsible.

Article IV

1. In the event of damage being caused elsewhere than on the surface of the earth to a space object of one launching State or to persons or property on board such a space object by a space object of another launching State, and of damage thereby being caused to a third State or to its natural or juridical persons, the first two States shall be jointly and severally liable to the third State, to the extent indicated by the following:
   (a) If the damage has been caused to the third State on the surface of the earth or to aircraft in flight, their liability to the third State shall be absolute;
   (b) If the damage has been caused to a space object of the third State or to persons or property on board that space object elsewhere than on the surface of the earth, their liability to the third State shall be based on the fault of either of the first two States or on the fault of persons for whom either is responsible.
2. In all cases of joint and several liability referred to in paragraph 1 of this article, the burden of compensation for the damage shall be apportioned between the first two States in accordance with the extent to which they were at fault; if the extent of the fault of each of these States cannot be established, the burden of compensation shall be apportioned equally between them. Such apportionment shall be without prejudice to the right of the third State to seek the entire compensation due under this Convention from any or all of the launching States which are jointly and severally liable.

Article V

1. Whenever two or more States jointly launch a space object, they shall be jointly and severally liable for any damage caused.
2. A launching State which has paid compensation for damage shall have the right to present a claim for indemnification to other participants in the joint launching. The participants in a joint launching may conclude agreements regarding the apportioning among themselves of the financial obligation in respect of which they are jointly and severally liable. Such agreements shall be without prejudice to the right of a State sustaining damage to seek the entire compensation due under this Convention from any or all of the launching States which are jointly and severally liable.
3. A State from whose territory or facility a space object is launched shall be regarded as a participant in a joint launching.

Article VI

1. Subject to the provisions of paragraph 2 of this Article, exoneration from absolute liability shall be granted to the extent that a launching State establishes that the damage has resulted either wholly or partially from gross negligence or from an act or omission done with intent to cause damage on the part of a claimant State or of natural or juridical persons it represents.
2. No exoneration whatever shall be granted in cases where the damage has resulted from activities conducted by a launching State which are not in conformity with international law including, in particular, the Charter of the United Nations and the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies.

Article VII

The provisions of this Convention shall not apply to damage caused by a space object of a launching State to:

(a) nationals of that launching State;
(b) foreign nationals during such time as they are participating in the operation of that space object from the time of its launching or at any stage thereafter until its descent, or during such time as they are in the immediate vicinity of a planned launching or recovery area as the result of an invitation by that launching State.

Article VIII

1. A State which suffers damage, or whose natural or juridical persons suffer damage, may present to a launching State a claim for compensation for such damage.
2. If the State of nationality has not presented a claim, another State may, in respect of damage sustained in its territory by any natural or juridical person, present a claim to a launching State.
3. If neither the State of nationality nor the State in whose territory the damage was sustained has presented a claim or notified its intention of presenting a claim, another State may, in respect of damage sustained by its permanent residents, present a claim to a launching State.

Article IX

A claim for compensation for damage shall be presented to a launching State through diplomatic channels. If a State does not maintain diplomatic relations with the launching State concerned, it may request another State to present its claim to that launching State or otherwise represent its interests under this Convention. It may also present its claim through the Secretary-General of the United Nations, provided the claimant State and the launching State are both Members of the United Nations.

Article X

1. A claim for compensation for damage may be presented to a launching State not later than one year following the date of the occurrence of the damage or the identification of the launching State which is liable.
2. If, however, a State does not know of the occurrence of the damage or has not been able to identify the launching State which is liable, it may present a claim within one year following the date on which it learned of the aforementioned facts; however, this period shall in no event exceed one year following the date on which the State could reasonably be expected to have learned of the facts through the exercise of due diligence.
3. The time-limits specified in paragraphs 1 and 2 of this Article shall apply even if the full extent of the damage may not be known. In this event, however, the claimant State shall be entitled to revise the claim and submit additional documentation after the expiration of such time-limits until one year after the full extent of the damage is known.

Article XI

1. Presentation of a claim to a launching State for compensation for damage under this Convention shall not require the prior exhaustion of any local remedies which may be available to a claimant State or to natural or juridical persons it represents.
2. Nothing in this Convention shall prevent a State, or natural or juridical persons it might represent, from pursuing a claim in the courts or administrative tribunals or agencies of a launching State. A State shall not, however, be entitled to present a claim under this Convention in respect of the same damage for which a claim is being pursued in the courts or administrative tribunals or agencies of a launching State or under another international agreement which is binding on the States concerned.

Article XII

The compensation which the launching State shall be liable to pay for damage under this Convention shall be determined in accordance with international law and the principles of justice and equity, in order to provide such reparation in respect of the damage as will restore the person, natural or juridical, State or international organization on whose behalf the claim is presented to the condition which would have existed if the damage had not occurred.

Article XIII

Unless the claimant State and the State from which compensation is due under this Convention agree on another form of compensation, the compensation shall be paid in the currency of the claimant State or, if that State so requests, in the currency of the State from which compensation is due.

Article XIV

If no settlement of a claim is arrived at through diplomatic negotiations as provided for in Article IX, within one year from the date on which the claimant State notifies the launching State that it has submitted the documentation of its claim, the parties concerned shall establish a Claims Commission at the request of either party.

Article XV

1. The Claims Commission shall be composed of three members: one appointed by the claimant State, one appointed by the launching State and the third member, the Chairman, to be chosen by both parties jointly. Each party shall make its appointment within two months of the request for the establishment of the Claims Commission.
2. If no agreement is reached on the choice of the Chairman within four months of the request for the establishment of the Commission, either party may request the Secretary-General of the United Nations to appoint the Chairman within a further period of two months.

Article XVI

1. If one of the parties does not make its appointment within the stipulated period, the Chairman shall, at the request of the other party, constitute a single-member Claims Commission.
2. Any vacancy which may arise in the Commission for whatever reason shall be filled by the same procedure adopted for the original appointment.
3. The Commission shall determine its own procedure.
4. The Commission shall determine the place or places where it shall sit and all other administrative mattters.
5. Except in the case of decisions and awards by a single-member Commission, all decisions and awards of the Commission shall be by majority vote.

Article XVII

No increase in the membership of the Claims Commission shall take place by reason of two or more claimant States or launching States being joined in any one proceeding before the Commission. The claimant States so joined shall collectively appoint one member of the Commission in the same manner and subject to the same conditions as would be the case for a single claimant State. When two or more launching States are so joined, they shall collectively appoint one member of the Commission in the same way. If the claimant States or the launching States do not make the appointment within the stipulated period, the Chairman shall constitute a single-member Commission.

Article XVIII

The Claims Commission shall decide the merits of the claim for compensation and determine the amount of compensation payable, if any.

Article XIX

1. The Claims Commission shall act in accordance with the provisions of Article XII.
2. The decision of the Commission shall be final and binding if the parties have so agreed; otherwise the Commission shall render a final and recommendatory award, which the parties shall consider in good faith. The Commission shall state the reasons for its decision or award.
3. The Commission shall give its decision or award as promptly as possible and no later than one year from the date of its establishment, unless an extension of this period is found necessary by the Commission.
4. The Commission shall make its decision or award public. It shall deliver a certified copy of its decision or award to each of the parties and to the Secretary-General of the United Nations.

Article XX

The expenses in regard to the Claims Commission shall be borne equally by the parties, unless otherwise decided by the Commission.

Article XXI

If the damage caused by a space object presents a large-scale danger to human life or seriously interferes with the living conditions of the population or the functioning of vital centres, the States Parties, and in particular the launching State, shall examine the possibility of rendering appropriate and rapid assistance to the State which has suffered the damage, when it so requests. However, nothing in this article shall affect the rights or obligations of the States Parties under this Convention.

Article XXII

1. In this Convention, with the exception of Articles XXIV–XXVII, references to States shall be deemed to apply to any international intergovernmental organization which conducts space activities if the organization declares its acceptance of the rights and obligations provided for in this Convention and if a majority of the States members of the organization are States Parties to this Convention and to the Treaty on Principles Governing the Activities of States In the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies.
2. States members of any such organization which are States Parties to this Convention shall take all appropriate steps to ensure that the organization makes a declaration in accordance with the preceding paragraph.
3. If an international intergovernmental organization is liable for damage by virtue of the provisions of this Convention, that organization and those of its members which are States Parties to this Convention shall be jointly and severally liable; provided, however, that:
   (a) any claim for compensation in respect of such damage shall be first presented to the organization;
   (b) only where the organization has not paid, within a period of six months, any sum agreed or determined to be due as compensation for such damage, may the claimant State invoke the liability of the members which are States Parties to this Convention for the payment of that sum.
4. Any claim, pursuant to the provisions of this Convention, for compensation in respect of damage caused to an organization which has made a declaration in accordance with paragraph 1 of this Article shall be presented by a State member of the organization which is a State Party to this Convention.

Article XXIII

1. The provisions of this Convention shall not affect other international agreements in force in so far as relations between the States Parties to such agreements are concerned.
2. No provision of this Convention shall prevent States from concluding international agreements reaffirming, supplementing or extending its provisions.

Article XXIV

1. This Convention shall be open to all States for signature. Any State which does not sign this Convention before its entry into force in accordance with paragraph 3 of this article may accede to it at any time.
2. This Convention shall be subject to ratification by signatory States. Instruments of ratification and instruments of accession shall be deposited with the Governments of the United Kingdom of Great Britain and Northern Ireland, the Union of Soviet Socialist Republics and the United States of America, which are hereby designated the Depositary Governments.
3. This Convention shall enter into force on the deposit of the fifth instrument of ratification.
4. For States whose instruments of ratification or accession are deposited subsequent to the entry into force of this Convention, it shall enter into force on the date of the deposit of their instruments of ratification or accession.
5. The Depositary Governments shall promptly inform all signatory and acceding States of the date of each signature, the date of deposit of each instrument of ratification of and accession to this Convention, the date of its entry into force and other notices.
6. This Convention shall be registered by the Depositary Governments pursuant to Article 102 of the Charter of the United Nations.

Article XXV

Any State Party to this Convention may propose amendments to this Convention. Amendments

shall enter into force for each State Party to the Convention accepting the amendments upon their acceptance by a majority of the States Parties to the Convention and thereafter for each remaining State Party to the Convention on the date of acceptance by it.

Article XXVI

Ten years after the entry into force of this Convention, the question of the review of this Convention shall be included in the provisional agenda of the United Nations General Assembly in order to consider, in the light of past application of the Convention, whether it requires revision. However, at any time after the Convention has been in force for five years, and at the request of one third of the States Parties to the Convention, and with the concurrence of the majority of the States Parties, a conference of the States Parties shall be convened to review this Convention.

Article XXVII

Any State Party to this Convention may give notice of its withdrawal from the Convention one year after its entry into force by written notification to the Depositary Governments. Such withdrawal shall take effect one year from the date of receipt of this notification.

Article XXVIII

This Convention, of which the English, Russian, French, Spanish and Chinese texts are equally authentic, shall be deposited in the archives of the Depositary Governments. Duly certified copies of this Convention shall be transmitted by the Depositary Governments to the Governments of the signatory and acceding States.

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

DONE in triplicate, at the cities of London, Moscow and Washington, this twenty-ninth day of March, one thousand nine hundred and seventy-two.

Part XII
Armed Conflict

26
UN Compensation Commission

26.1 General Information

Extract from the Report and Recommendations made by the Panel of Commissioners concerning the Fifth Instalment of 'F4' Claims

Most common abbreviation(s)	**UN Compensation Commission** **UNCC**
Organisation	United Nations Compensation Commission Governing Council
Reference	Doc. S/AC.26/2005/10, Report and Recommendations made by the Panel of Commissioners Concerning the Fifth Instalment of 'F4' Claims. ('F4' Claims are claims for damage to the environment.)
Status	The work of the UNCC will now focus on payments of awards to claimants.
Adoption	30 June 2005
Literature	McManus, K, Civil Liability for Wartime Environmental Damage: adapting the United Nations Compensation Commission for the Iraq War, Boston college environmental affaris law review 2006(2), pp. 417–448. Sand, P, Compensation for Environmental Damage from the 1991 Gulf War, Environmental policy and law, 2005(6), pp. 244–249. Kazazi, M, Environmental Damage in the Practice of the UN Compensation Commission, in Environmental damage in international and comparative law: problems of definition valuation, Oxford, Oxford University Press, 2002, pp. 111–131. Austin, J & Bruch, C, The environmental consequences of war: legal, economic, and scientific perspectives, Cambridge, Cambridge University Press, 2000, 691 p.

26.2 Extract from the Report and Recommendations Made by the Panel of Commissioners Concerning the Fifth Instalment of 'F4' Claims

…

3. Duty of Claimants to prevent and mitigate environmental damage

39. Iraq contends that some of the damage for which Claimants seek compensation in the fifth 'F4' instalment has been caused or contributed to by the Claimants themselves, either because they failed to take steps to mitigate damage resulting from the invasion and occupation of Kuwait or because the damage was aggravated by the acts or omissions of the Claimants after the invasion and occupation. Iraq reiterates its view that failure by a claimant to take reasonable and timely measures to mitigate damage from the invasion and occupation amounts to contributory negligence and justifies rejection of the claim for compensation, or a corresponding reduction in the compensation to be awarded.
40. In previous instalments, the Panel has stressed that Claimants have a duty to mitigate damage to the extent possible and reasonable in the circumstances. Indeed, in the case of environmental claims, the duty to prevent and mitigate damage is a necessary consequence of the common concern for the protection and conservation of the environment, and entails obligations toward the international community and future generations. This duty encompasses both a positive obligation to take appropriate measures to respond to a situation that poses a clear threat of environmental damage, as well as the duty to ensure that any measures taken do not aggravate the damage already caused or increase the risk of future damage. However, the Panel has clarified that whether an act or omission of a claimant constitutes failure to mitigate damage depends on the circumstances of each claim and the evidence available. The test is whether the claimant acted reasonably, having regard to all the circumstances with which it was confronted, including the information available to it at the time regarding the nature and extent of damage and the measures appropriate to respond to the damage in each case.
41. In the review of the claims in the fifth 'F4' instalment, the Panel has considered whether appropriate measures of mitigation would have reduced the damage in any particular claim. Where the evidence demonstrates that the claimant has failed to take timely action to mitigate damage, account has been taken of the failure in determining the compensation recommended. Where appropriate, adjustments have been made to account for the loss that is attributable to the failure to mitigate.

4. Remediation objectives

42. In the third 'F4' report, the Panel stated that the appropriate objective of remediation is to restore the damaged environment or resource to the condition in which it would have been if Iraq's invasion and occupation of Kuwait had not occurred. However, the Panel stressed that regard must be had to a number of considerations in applying this objective to a particular claim, including, inter alia, the location of the damaged environment or resource and its actual or potential uses; the nature and extent of the damage; the possibility of future harm; the feasibility of the proposed remediation measures; and the need to avoid collateral damage during and after the implementation of the proposed measures.
43. In the fourth 'F4' instalment, the Panel reaffirmed that, in determining what remediation measures are necessary, 'primary emphasis must be placed on restoring the environment to preinvasion conditions, in terms of its overall ecological functioning rather than on the removal of specific contaminants or restoration of the environment to a particular physical condition'. In particular, the Panel noted that, in some circumstances, measures to recreate preexisting physical conditions might not produce environmental benefits and could indeed pose unacceptable risks of ecological harm. The Panel went on to affirm that, in its view, where proposed measures for the complete removal of contaminants are likely to result in more negative than positive environmental effects, such measures should not qualify as reasonable

measures to clean and restore the environment, within the meaning of Article 35(b) of Governing Council decision 7.

5. Damage to natural resources without commercial value

44. Some of the claims in the fifth 'F4' instalment are for compensation for losses in relation to natural resources alleged to have been damaged as a result of Iraq's invasion and occupation of Kuwait. The compensation sought includes compensation for loss of use of the resources during the period between the occurrence of the damage and the full restoration of the resources, either through natural recovery or as a result of remediation or restoration measures undertaken by a claimant.
45. Iraq contends that there is no legal justification for compensating claimants for 'interim loss' of natural resources that have no commercial value; i.e., resources that 'are not traded in the market'. It argues that compensation for damage to non-commercial resources is limited to the costs of reasonable measures of remediation or restoration. According to Iraq, claims for interim loss of non-commercial resources have no basis in Security Council resolution 687 (1991) or Governing Council decision 7. Specifically, Iraq argues that there is no evidence that the Security Council intended that Iraq is to be held liable for temporary damage to a natural resource that has been or will be restored at its expense.
46. Iraq maintains that interpretation and application of Security Council resolution 687 (1991) must be carried out by applying the relevant rules of international law. It asserts that claims for interim loss of natural resources without commercial value have no precedent in general international law. According to Iraq, compensation in international law can only be paid for damage that is 'financially assessable', and it argues that, under current international law, interim loss of noncommercial environmental resources is not financially assessable.
47. Iraq, therefore, argues that all claims for compensation for interim loss of non-commercial environmental resources should be rejected. In the view of Iraq, awarding compensation for any such claim, even if only for a small amount, would constitute a revolutionary change in international law.
48. For their part, the Claimants contend that temporary loss of the use of natural resources, such as the loss of biomass in the marine environment or the presence for long periods of oil contamination on beaches, clearly represents 'environmental damage' within the language and meaning of Security Council resolution 687 (1991) and Governing Council decision 7. According to the Claimants, the absence of a specific reference to interim loss in Security Council resolution 687 (1991) or Governing Council decision 7 does not in any way suggest a limitation. They point out that the criteria enumerated in Governing Council decision 7 were not intended to resolve every issue that might arise with respect to claims presented pursuant to Security Council resolution 687 (1991), and they refer to the conclusion of the Panel, in the third 'F4' report, that the term 'environmental damage' in paragraph 16 of Security Council resolution 687 (1991) is not limited to losses or expenses resulting from the activities and events listed in paragraph 35 of Governing Council decision.
49. The Claimants further argue that, under general international law, it would be an absurd and unreasonable result to deny compensation for temporary loss of resources resulting from a deliberate internationally wrongful act of aggression. They assert that entitlement to compensation for such damage under international law is mandated by the fundamental principle articulated by the Permanent Court of International Justice in the Factory at Chorzów case that 'reparation must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed'. They point out that this principle, which predates 1991 and Security Council resolution 687 (1991), has been accepted by the International Law Commission of the United Nations and many other international authorities.
50. According to the Claimants, all losses that were a direct result of Iraq's illegal acts must be compensated in order to wipe out all the consequences of those illegal acts. In their

view, compensation for temporary losses pending remediation or restoration is an appropriate form of compensation because it 'mirrors' the restitution in kind that is favoured as a matter of principle by international law authorities such as the judgement in the Factory at Chorzów case.

51. The Claimants, therefore, maintain that they are entitled to recover compensation for 'ongoing losses' of natural resources resulting from Iraq's invasion and occupation of Kuwait, and that such compensation should be measured from the time that the resources were damaged up to the time when recovery to pre-invasion conditions has been or will be completed. They assert that the Security Council intended that such loss should be compensated, and that there are international precedents for doing so.
52. Although both the Claimants and Iraq have framed their arguments in terms of whether claims for interim loss are compensable in principle, the Panel considers that the fundamental issue to be resolved is whether, pursuant to Security Council resolution 687 (1991), claimants who suffer damage to natural resources that have no commercial value are entitled to compensation beyond reimbursement of expenses incurred or to be incurred to remediate or restore the damaged resources. In other words, the question is whether the term 'environmental damage', as used in Security Council resolution 687 (1991), includes what is referred to as 'pure environmental damage'; i.e., damage to environmental resources that have no commercial value. In this regard, the Panel notes that Iraq does not deny that claimants are entitled to claim compensation for the temporary loss of resources which have an economic value ('which are traded in the market'), such as fisheries and crops. The Panel, therefore, concludes that Iraq's objection to the claims for the temporary losses in the fifth 'F4' instalment is based on the fact that the resources involved are 'non-commercial' in nature, rather than on the fact that the losses are of a temporary duration.
53. The Panel recalls that, in the third 'F4' instalment, Iraq argued that the Panel should have regard to the applicable rules of international law in determining what environmental damage or loss resulting from Iraq's invasion and occupation of Kuwait qualifies for compensation under Security Council resolution 687 (1991). In that context, Iraq argued that damage resulting from the invasion and occupation of Kuwait was not compensable unless it reached the 'threshold' that is generally required in international law for compensation in cases of state responsibility for transboundary environmental damage. In the present instalment, Iraq's contention is that the compensability of the temporary loss of natural resources that have no commercial value must be determined by reference to principles of general international law.
54. In the third 'F4' report, the Panel noted that the primary sources of the law to be applied by the Panel in the review of claims for compensation are listed in Article XXXI of the Rules. These are 'Security Council resolution 687 (1991) and other relevant Security Council resolutions, the criteria established by the Governing Council for particular categories of claims, and any pertinent decisions of the Governing Council'. The Panel observed that 'other relevant rules of international law' were to be applied 'where necessary'. In the view of the Panel, this meant that recourse to other relevant rules of international law was only necessary where Security Council resolutions and the decisions of the Governing Council did not provide sufficient guidance for the review of a particular claim. For the review of the claims in the third 'F4' instalment, the Panel found that Security Council resolution 687 (1991) and the relevant decisions of the Governing Council provided sufficient guidance.
55. For the claims in the fifth 'F4' instalment, the Panel equally finds that Security Council resolution 687 (1991) and the relevant decisions of the Governing Council provide sufficient guidance for the review of the claims for compensation for loss of or damage to natural resources. Security Council resolution 687 (1991) states that Iraq is 'liable under international law for any direct loss, damage, including environmental damage and the depletion of natural resources … as a result of Iraq's unlawful invasion and occupation of Kuwait'. Paragraph 35(e) of Governing Council decision 7 provides further guidance

by stating that Iraq is liable for 'losses or expenses' resulting from 'depletion of or damage to natural resources.' As the Panel stated in the fourth 'F4' report, part one, Security Council resolution 687 (1991) and Governing Council decision 7 establish the general principle that Iraq is liable for all damage and losses that result directly from its invasion and occupation of Kuwait. In the opinion of the Panel this means that any loss of or damage to natural resources that can be demonstrated to have resulted directly from Iraq's invasion and occupation of Kuwait must be deemed to be encompassed in the concept of 'environmental damage and the depletion of natural resources' within the meaning of Security Council resolution 687 (1991). The Panel does not consider that there is anything in the language or context of Security Council resolution 687 (1991) or Governing Council decision 7 that mandates or suggests an interpretation that would restrict the term 'environmental damage' to damage to natural resources which have commercial value.

56. Furthermore, the Panel does not consider that the fact that the effects of the loss of or damage to natural resources might be for a temporary duration should have any relevance to the issue of the compensability of the damage or loss, although it might affect the nature and quantum of compensation that may be appropriate. In the view of the Panel, it is not reasonable to suggest that a loss that is documented to have occurred, and is shown to have resulted from the invasion and occupation of Kuwait, should nevertheless be denied compensation solely on the grounds that the effects of the loss were not permanent. As the Panel sees it, the critical issue to be determined in each claim is whether the evidence provided is sufficient to show that there has been a loss of or damage to natural resources as alleged and, if so, whether such loss or damage resulted directly from Iraq's invasion and occupation of Kuwait.
57. The Panel, therefore, finds that a loss due to depletion of or damage to natural resources, including resources that may not have a commercial value is, in principle, compensable in accordance with Security Council resolution 687 (1991) and Governing Council decision 7 if such loss was a direct result of Iraq's invasion and occupation of Kuwait. It follows, therefore, that temporary loss of the use of such resources is compensable if it is proved that the loss resulted directly from Iraq's invasion and occupation of Kuwait.
58. The Panel does not consider that this finding is inconsistent with any principle or rule of general international law. In the view of the Panel, there is no justification for the contention that general international law precludes compensation for pure environmental damage. In particular, the Panel does not consider that the exclusion of compensation for pure environmental damage in some international conventions on civil liability and compensation is a valid basis for asserting that international law, in general, prohibits compensation for such damage in all cases, even where the damage results from an internationally wrongful act.

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Index