

NUCLEAR LIABILITY UNDER THE PARIS CONVENTION IN THE TRANSPORT OF RADIOACTIVE MATERIALS

M. Kübel

Nuclear Cargo + Service GmbH, P.O.B. 110069, D-63434 Hanau, Germany

SUMMARY

Radioactive materials are without any doubt dangerous materials, which may cause very important damages in case of an accident.

Although the safety level in the transport of nuclear materials is very high if the corresponding regulations are fulfilled, it is impossible to absolutely exclude personal or material damages in case of an accident. This is why the necessary provisions must be made, to make sure claims for indemnity may be fulfilled. In order to improve the situation of potential victims of damages the Paris Convention on Third Party Liability in the Field of Nuclear Energy has been established. This convention is based on two main characteristics: the principle of strict but limited liability and the channelling of liability to the so-called operator of the nuclear installation. Moreover a financial security is required to cover the third party nuclear liability.

One cannot, however, talk of a uniform liability situation, as the Paris Convention concedes many exceptions to the signatory countries.

This paper will present the situation from the German point of view, and the differences with other signatory countries will be shown.

TRANSPORTATION UNDER THE GERMAN NUCLEAR LAW

In Germany, except for a few cases, the transport of radioactive materials requires an authorisation according to the Nuclear Law or, in the case of non fissile materials, according to the Radiation Protection Ordinance.

Such transports may only be authorised if certain preliminary requirements are fulfilled.

One of these preliminary requirements is the proof that adequate provisions have been made to cover legal claims for indemnities. In this case, and if nuclear materials are being transported, the provisions of the Paris Convention must be fulfilled, as well as the complimentary regulations according to the Nuclear Law.

During the procedure for the granting of the licence, corresponding proofs must be submitted to the authorities so they can make sure that adequate financial coverage has been provided, usually in the form of a third party liability insurance contract.

Furthermore, it must clearly be defined who actually is liable in case of an accident during the transport and, if this is the case, it must be demonstrated that the liable person is an operator of a nuclear installation in the meaning of the Paris Convention.

In the case of an operator of a nuclear installation situated in Germany, this is mentioned in the licensing documents for the installation. A corresponding certification of the competent authority is also found in the Certificate of Financial Security according to Article 4 (c) of the Convention.

If the operator of the nuclear installation only is liable for part of the transport, the beginning and the end of his liability must also be indicated.

LIMITS IN AMOUNT OF LIABILITY

Diverging from the provisions of the Paris Convention, the liability of the operator of a German nuclear installation is unlimited if the damage occurs on the territory of the Federal Republic of Germany, or if it occurs on the territory of a foreign country and the legislation of that country also provides unlimited liability of the nuclear operator.

In all other cases, the liability of the operator of a German nuclear installation is limited; these limits of liability vary according to the following table:

Case of application	Limit of liability [SDR]*
Contracting party to the Paris Convention and Brussels Convention Supplementary amended by the Protocol of 1982	300 million
Contracting party to the Paris Convention and Brussels Convention Supplementary amended by the Protocol of 1964	120 million
other countries	15 million

*) SDR = Special drawing Rights

In all other signatory countries of the Paris Convention, the unlimited liability of the operator of a nuclear installation is not provided; liability is limited to a maximum of 300 million SDR.

FINANCIAL SECURITY AMOUNT

The amount of financial security which the operator of a German nuclear installation must have and maintain is not fixed, it depends on the kind and quantity of the nuclear material to be transported. It may however not exceed an amount of 50 million DM.

The actual amount of the financial security is assessed on the base of a special regulation and determined by the competent authority.

The following table gives a few examples.

Material	Quantity	Amount of Financial Security
Uranium-235 (U-enriched $\leq 20\%$)	1000 g	1.0 million DM
	100 kg	10.9 million DM
	1000 kg	37.9 million DM
Plutonium 239 + 241	10 g	1.0 million DM
	1000 g	10.0 million DM
	41 kg and more	50.0 million DM

In case of damages exceeding the amount of financial security, the operator of a nuclear installation situated in Germany will be indemnified by the State up to a maximum of 1 billion DM at present, taking into account the already discussed liability limits.

The following table gives a comparison of the liability coverage of other countries which have signed the Paris Convention.

Signatory country	Amount of Financial Security
Belgium	4 billion BEF
France	150 million FRF
Netherlands	53 million NLG
United Kingdom	140 million GBP

NUCLEAR THIRD PARTY LIABILITY INSURANCE

In most cases, financial security is assured by effecting a third party liability insurance. It must be taken into consideration, that according to German legislation, a third party liability insurance is accepted in the following cases only:

- the insurance company is authorised to do business in Germany, or
- in case of a foreign insurance company, if the corresponding duties of the third party liability insurance are assured by an insurance company authorised in Germany (fronting insurance).

In practice, the problem is often solved by effecting a separate insurance for the German territory with a German insurance company (double insurance).

LIABLE PERSONS

Liable persons are submitted to the provisions of the Paris Convention in Germany as well as in the other signatory countries.

According to this, the operator of the sending nuclear installation is usually liable, inasmuch as another operator of a nuclear installation has not taken over his liability.

In case of a transport from a country which is not a contracting party of the Paris Convention to a signatory country, the operator of the receiving nuclear installation is liable, however only if the nuclear material was shipped with his written consent. This written consent must be presented to the German competent authority as a proof of the receiver's liability.

The Paris Convention also allows that a carrier be liable in substitution for an nuclear operator. However, not all signatory countries have made use of this possibility (e. g. the United Kingdom). In Germany, the transfer of liability to the carrier is quite frequent. However, this is subject to the following conditions:

- the transfer of liability must be accomplished by means of a written contract;
- the operator of the nuclear installation must declare his agreement to the competent authority;
- the liability transfer contract must be approved by the competent authority;
- the carrier must have his head office in Germany.

By way of comparison: in the Netherlands even a foreign carrier may take over the liability from a nuclear operator which is situated in the Netherlands. This is actually frequently done.

TERRITORIAL LIMITATION OF LIABILITY

According to Article 2 of the Paris Convention, the Convention does not apply to nuclear incidents, nor to damages in non contracting states, unless a signatory country makes different provisions.

This territorial limitation of liability is not valid for Germany, provided that German law applies in case of damages. This is the case if, for example, the person liable is an operator of a nuclear installation situated in Germany.

Other signatory countries have not provided this extension of the scope of application of the Paris Convention.

PRACTICAL CONSEQUENCES OF THE DIFFERENT LIABILITY REGULATIONS FOR INTERNATIONAL TRANSPORTS

The differences concerning liability and coverage will now be shown, using the transport of 1000 kg of uranium enriched to 5 % with 50 kg of U-235, from the United Kingdom to Germany, as an example.

Normal situation: the liable person is the sending operator of the U.K. nuclear installation. The liability cannot be transferred to a carrier. A third party liability insurance over an amount of 140 million GBP (- 160 million SDR) must be effected, independently of the quantity of nuclear material to be transported.

Alternative: according to Article 4 (a) (i) of the Paris Convention, the liability is transferred by means of a written contract to the receiving operator of the German nuclear installation. After this, the liability is further transferred to a German carrier, according to Article 4 (d), in connection to § 25 Section 2 of the German Nuclear Law.

Advantage: under German Law a third party liability insurance over an amount of only 5.9 Million DM (~ 2.5 million SDR) is required, for which of course the insurance premium is much lower. Nevertheless in case of damage on U.K. territory, a sum amounting to the upper liability limit of 300 million SDR would be covered, due to the indemnification by the German state.

Furthermore, the carrier, as an operator of the nuclear installation would also be liable for damages occurring on the territory of a non contracting state.

As the insurance contract is signed with a German insurance company, this would also solve the above mentioned problem of non acceptance of a foreign insurance according to the German Nuclear Law, and the possibly resulting necessity for double insurance.

FINAL CONSIDERATIONS

It was shown that, even among the Contracting Parties of the Paris Convention, liability regulations are not uniform. On the one hand, this is regrettable, on the other, it can be economically advantageous if one makes judicious use of these differences. This is demonstrated by the preceding example, which allows to save several thousand DM of insurance premiums, without the situation of a possible victim getting worse.

SESSION 3.2

UF6

MISSION 32

UFG