

## Panel Session: Liability & Insurance

### – Discussion on Civil Liability for Nuclear Damage –

PATRAM 2010  
16th International Symposium on the Packaging and Transport of  
Radioactive Materials

**Panel Session: Liability & Insurance**

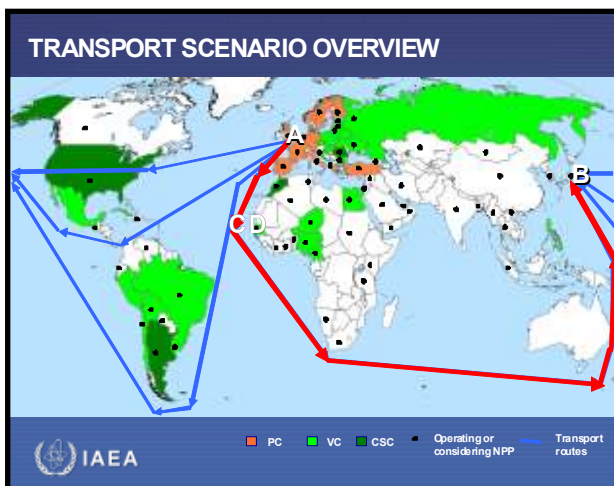
- Discussion on Civil Liability for Nuclear Damage -  
6<sup>th</sup> October 2010  
IMO Headquarters, London

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- The key nuclear liability instruments highlighted are:
  - 1997 Vienna Convention (97VC)
  - 1997 Convention on Supplementary Comp. (97CSC)
  - 2004 Paris Convention (04PC)
  - 1960 Paris Convention (60PC)
  - 1963 Vienna Convention (63VC)
  - 1988 Joint Protocol (88JP)



- A number of major shipping routes
- Various routes are possible - each may entail a different transport liability exposure
- In our .ppt we follow the highlighted route: Shipment from Country A to Country B
- Between Contracting Parties (CPs): nuclear liability transport regimes are relatively well-defined
- Between States not linked through a particular treaty: intricate and untested legal issues

**SPECIAL TRANSPORT RULES**

- Material sent between Contracting Parties (CPs): Sending Operator liable unless contract
- Material sent to Non-CP State: Sending Operator liable until unloading in non-CP
- Material sent from Non-CP: Receiving Operator liable but upon written consent

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- Shipment between CPs: Sending Operator is in principle liable, unless a contract determines otherwise
- Shipment sent to a non-CP: Sending Operator liable, regardless of contract, until material is unloaded from the means of transport in the receiving State
- Shipment received from a non-CP: Receiving Operator liable, regardless of contract, but upon his written consent, as of the loading of the materials on the means of transport in the sending State

### SPECIAL JURISDICTION RULES

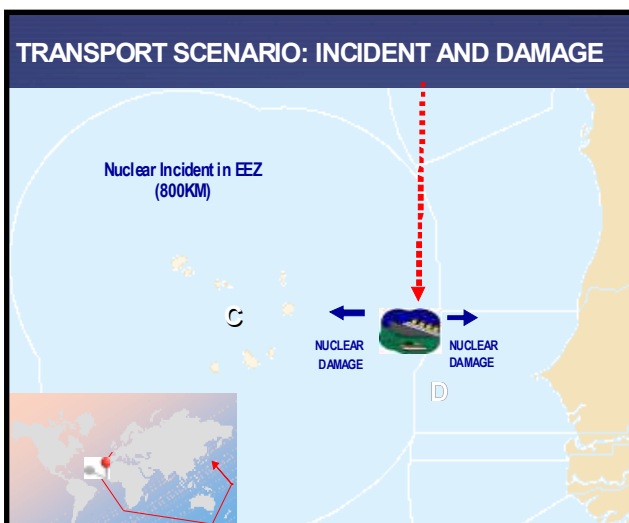
**BASIC RULE:** Court of the Accident State (if a CP)

- 60PC/ 63VC:
  - Accident outside CP's territory: Installation State
  - Accident in EEZ wherever: Installation State
- 04PC/ 97VC & 97CSC:
  - Accident in CP's EEZ: Accident State
  - Accident in non-CP's EEZ: Installation State

Reason: to reflect recent trends in law of sea; to accommodate coastal States' concerns over nuclear transit



- **Basic jurisdiction rule:** the court of the State where the accident took place (Accident State) has jurisdiction, channelling of jurisdiction
- **60PC and 63VC:** accidents outside the territory, including the territorial waters of any CP (high seas or EEZ) jurisdiction will lie with the State where the installation of the liable Operator is situated (Installation State)
- **04PC and 97VC and 97CSC:** accidents in the EEZ or maritime waters of a CP will give jurisdiction to the court of that coastal Accident State
- **Reason:** To reflect trends in law of the sea; and to accommodate coastal State's concerns over nuclear transits



- Shipment from Country A (Sending Operator) to Country B (Receiving Operator)
- Nuclear incident occurs on the boundary of the EEZ of Country C and Country D with nuclear damage occurring in both countries


### SCENARIO 1

**NUCLEAR LIABILITY STATUS**

- Sending Operator } 1960 Paris Convention
- Receiving Operator } Non-Contracting Party +
- Incident State } 1963 Vienna Convention
- Damage Suffered }

**SOME KEY ISSUES**

1. Operator liable
2. Applicable instrument
3. State with jurisdiction
4. Scope of damage covered
5. Scope of liability outside of the nuclear liability regime



#### KEY POINTS

- None of the States involved are in treaty relations. 88JP does not apply
  - Potentially broad scope of liability outside regime
1. 60PC Sending Operator liable, in principle. Regardless of contract, material sent to non-CP
  2. But only if Operator is liable under 60PC (depends on geographical scope of application)
  3. Jurisdiction would lie with the 60PC Installation State
  4. Personal injury and property damage; but coverage depends on geographical scope of application
  5. If 60PC State did not extend its geographical scope, no damage recoverable; victims in Countries C and D can outside the regime sue both operators, suppliers, carrier with no liability limit, no channelling of jurisdiction: significant legal uncertainty as to liability exposure and insurance coverage


### SCENARIO 2

**NUCLEAR LIABILITY STATUS**

- Sending Operator 2004 Paris Convention
- Receiving Operator 1997 Convention on Supplementary Comp.
- Incident State Non-Contracting Party + 1997 Convention on Supplementary Comp.
- Damage Suffered

**SOME KEY ISSUES**

1. Operator liable
2. Applicable instrument
3. State with jurisdiction
4. Scope of damage covered
5. Scope of liability outside of the nuclear liability regime



#### KEY POINTS

- No treaty link between Country A (Sending Operator) and Accident States. Treaty link under the 97CSC between Country B (Receiving Operator) and one of the Accident States (Country D)
1. Either Receiving or Sending Operators, regardless of contract, since both either receive material from or sent material to a non-CP
  2. (a) 97CSC applies for Receiving Operator; (b) 04PC applies for Sending Operator
  3. (a) 97CSC Accident State (Country D); (b) 04PC Installation State (Country A)
  4. (a) All damage covered up to 300m SDRs & joint funds; (b) If Countries C and D are non-nuclear States then covered if up to €700m BUT if nuclear power States, then coverage based on reciprocity
  5. (a) Limited liability exposure: only Country C victims may potentially claim; (b) Greater liability exposure: victims of both Countries C and D may claim outside the special regime

### SCENARIO 3


**NUCLEAR LIABILITY STATUS**

- Sending Operator
- Receiving Operator
- Incident State
- Damage Suffered

1997 Convention on Supplementary Comp.

**SOME KEY ISSUES**

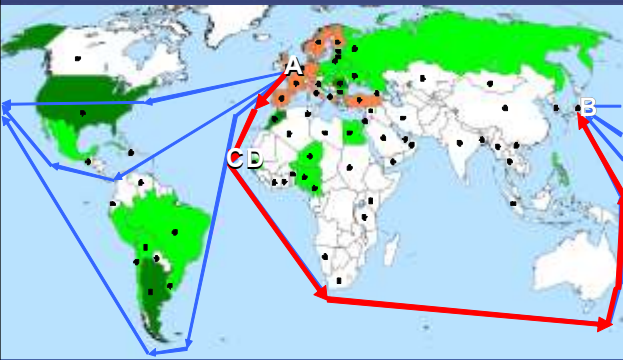
1. Operator liable
2. Applicable instrument
3. State with jurisdiction
4. Scope of damage covered
5. Scope of liability outside of the nuclear liability regime




#### KEY POINT

- Under the 97CSC there exists a treaty link between all countries involved
1. Either Sending or Receiving Operator liable, depending on contract. Liability can be determined by contract as material is sent to and received from CPs (97CSC)
  2. If Receiving Operator liable, 97CSC applies; if Sending Operator, 04PC and 97CSC applies
  3. Jurisdiction lies with either Accident States (Countries C or D), to be determined by agreement
  4. All damage covered up to 300m SDRs & joint funds (max of about 600m SDRs)
  5. No claims outside the regime: minimum liability exposure and full harmonization

### KEY POINTS AND CONCLUSIONS



Legend: PC (Paris Convention), VC (Vienna Convention), CSC (CSC), Operating or considering NPP, Transport routes



- Treaty relations between Sending and Receiving countries helps to provide greater legal certainty and predictability
- Further enhancements can be gained by countries close to transport routes also being in [treaty relation] with these countries
- In this context, as can be seen from the slide, a number of countries are considering the introduction of a nuclear power programme

Thank you for your attention



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