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ATOMIC ENERGY



Treaty Series No. 6 (1989)

Protocol

to amend the Convention on Third Party Liability
in the Field of Nuclear Energy of 29th July 1960,
as amended by the Additional Protocol of
28th January 1964

Paris, 16 November 1982

[The United Kingdom instrument of ratification was deposited on 19 August 1985 and the
Protocol entered into force on 7 October 1988]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
April 1989*

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PROTOCOL
TO AMEND THE CONVENTION ON THIRD PARTY LIABILITY IN THE FIELD
OF NUCLEAR ENERGY OF 29th JULY 1960, AS AMENDED BY THE
ADDITIONAL PROTOCOL OF 28th JANUARY 1964

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;

Considering that it is desirable to amend the Convention on Third Party Liability in the Field of Nuclear Energy, concluded at Paris on 29th July 1960¹ within the framework of the Organisation for European Economic Co-operation, now the Organisation for Economic Co-operation and Development, as amended by the Additional Protocol signed at Paris on 28th January 1964;

Have agreed as follows:

I

The Convention on Third Party Liability in the Field of Nuclear Energy of 29th July 1960, as amended by the Additional Protocol of 28th January 1964, shall be amended as follows:

A. The second paragraph of the Preamble shall be replaced by the following text:

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 harmonization of legislation relating to nuclear energy in participating countries, in particular with regard to third party liability and insurance against atomic risks;

B. The last paragraph of the Preamble shall be replaced by the following text:

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;

C. Paragraph (a) of Article 1 shall be replaced by the following text:

(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 other 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.

¹ Treaty Series No. 69 (1968), Cmnd. 3755.

- (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.

D. Paragraph (a) of Article 3 shall be replaced by the following text:

- (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 in Article 4.

E. Paragraph (c) of Article 3 shall be repealed.

F. Paragraph (c) of Article 4 shall be replaced by the following text:

- (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 10. 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.

G. Paragraph (c) of Article 5 shall be replaced by the following text:

- (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.

H. Paragraph (c) of Article 6 shall be replaced by the following text:

- (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 3 (a) (ii) (1) and (2) or Article 9, 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 4 (a) (iii) or (b) (iii).

- (ii) The operator shall incur no liability outside this Convention for damage caused by a nuclear incident.

I. Paragraph (b) of Article 7 shall be replaced by the following text:

- (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 10, 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.

J. Paragraph (c) of Article 7 shall be replaced by the following text:

- (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.

K. Paragraph (d) of Article 8 shall be replaced by the following text:

- (d) Where the provisions of Article 13 (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 17, 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 13 (c) (ii) and an action is brought subsequent to such determination within such time as may be fixed by the Tribunal.

L. Paragraph (b) of Article 15 shall be replaced by the following text:

- (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 7, any such measure in whatever form may be applied under conditions which may derogate from the provisions of this Convention.

II

- (a) The provisions of this Protocol shall, as between the Parties thereto, form an integral part of the Convention on Third Party Liability in the Field of Nuclear Energy of 29th July 1960, as amended by the Additional Protocol of 28th January 1964 (hereinafter referred to as the "Convention"), which shall be known as the "Convention on Third Party Liability in the Field of Nuclear Energy of 29th July 1960, as amended by the Additional Protocol of 28th January 1964 and by the Protocol of 16th November 1982".
- (b) This Protocol shall be ratified or confirmed. Instruments of ratification of this Protocol shall be deposited with the Secretary-General of the Organisation for Economic Co-operation and Development. Where there is a confirmation of this Protocol, it shall be notified to him.
- (c) The Signatories of this Protocol who have already ratified the Convention undertake to ratify or to confirm this Protocol as soon as possible. The other Signatories of this Protocol undertake to ratify it or to confirm it at the same time as they ratify the Convention.

- (d) This Protocol shall be open for accession in accordance with the provisions of Article 21 of the Convention. Accessions to the Convention will be accepted only if they are accompanied by accession to this Protocol.
- (e) This Protocol shall come into force in accordance with the provisions of Article 20 of the Convention¹.
- (f) The Secretary-General of the Organisation for Economic Co-operation and Development shall give notice to all Signatories and acceding Governments of the receipt of any instrument of ratification or accession and of the receipt of any confirmation.

In witness whereof, the undersigned Plenipotentiaries, duly empowered, have signed this Protocol.

Done at Paris, this 16th day of November 1982 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 Secretary-General of the Organisation for Economic Co-operation and Development by whom certified copies will be communicated to all Signatories and acceding Governments.

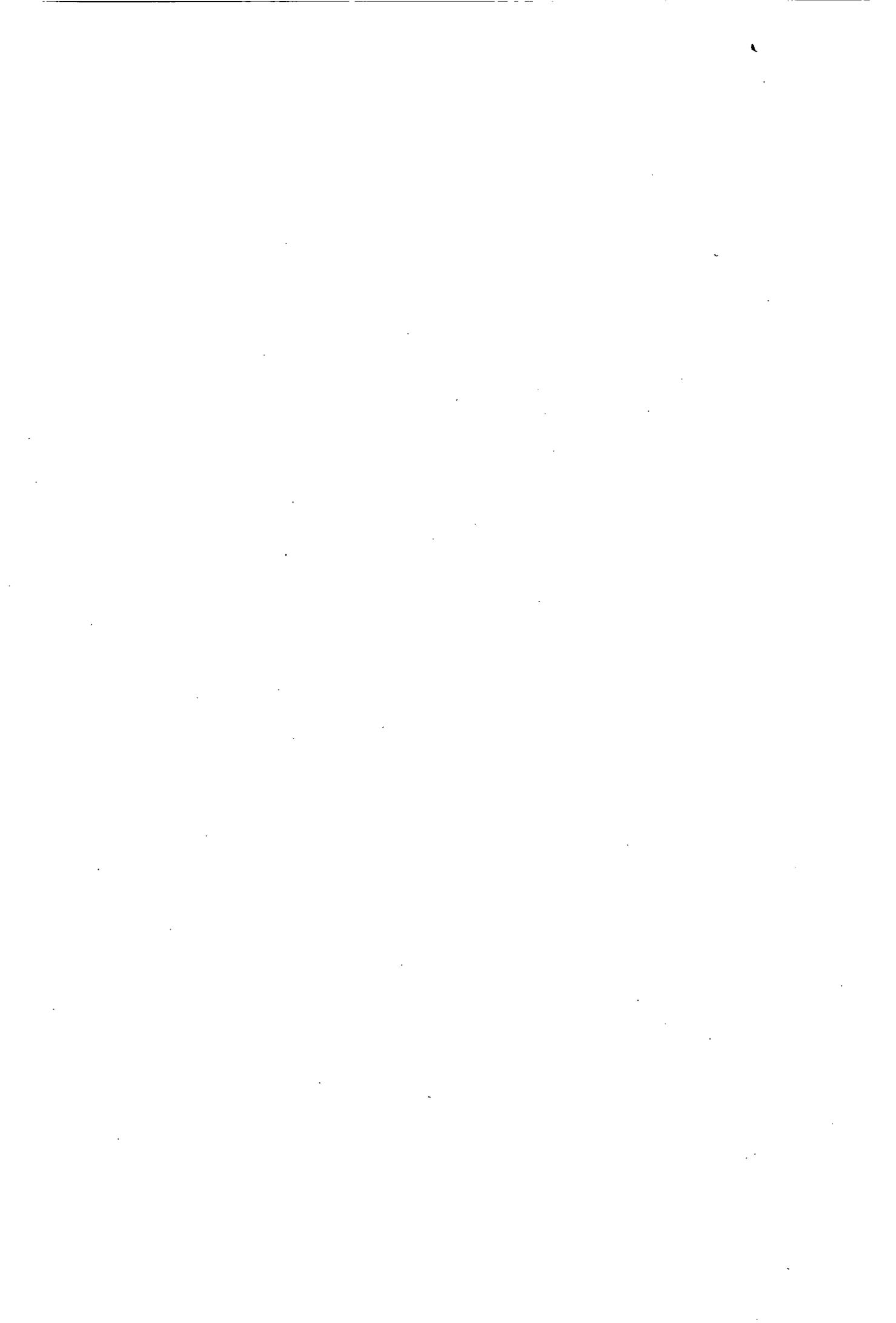
SIGNATURES AND RATIFICATIONS

<i>State</i>	<i>Date of Signature</i>	<i>Date of deposit of instrument of ratification</i>	
Austria	} 16 Nov 1982		
Belgium			
Denmark			19 Sept 1985
Finland			
France... ..			
Germany, Federal Republic of			25 Sept 1985*
Greece... ..			30 May 1988
Italy			28 June 1985
Luxembourg			
Norway			3 June 1986
Netherlands			
Portugal			28 May 1984
Spain			7 Oct 1988
Sweden			8 Mar 1983
Switzerland			
Turkey			21 Jan 1986
United Kingdom	19 Aug 1985†		

* Includes Berlin (West).

† The United Kingdom instrument of ratification included the British Virgin Islands, Cayman Islands, Gibraltar, Hong Kong, Montserrat, Saint Helena and Saint Helena Dependencies and was subsequently extended to include Jersey, the Bailiwick of Guernsey and the Isle of Man.

¹ The Protocol entered into force on 7 October 1988.





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