

LEGAL PROTECTION AGAINST NUCLEAR DAMAGE

One of the basic objectives of the International Atomic Energy Agency has been to ensure that its activities in promoting the peaceful uses of atomic energy do not defeat their own purpose by posing a danger to public health or by harming the interests of the public in any other way. The Agency seeks, on the one hand, to take positive action in developing the uses of atomic energy in peaceful pursuits and, on the other, to institute systems for guarding against any undesirable consequences that might flow from such action.

The latter concerns any possible hazards involved in the peaceful utilization of nuclear energy. Broadly, the hazards may arise from an accident in a nuclear installation or from excessive exposure to nuclear radiation in the course of normal operations. An elimination of all such hazards is theoretically impossible, although much has already been done to minimize them. To the extent, therefore, that accidents causing damage to people cannot be prevented, there must be provision for compensating the victims.

The importance and magnitude of this problem will be clear when one considers the rapid expansion of enterprises involving the use of nuclear energy, the wide scale on which the effects of an accident may be felt, and the complex arrangements between different parties that are sometimes necessary for the establishment and operation of a single enterprise. Basically, the public would expect that in the event of nuclear damage, there must be liability on the part of the enterprise which caused the damage. But the situation could often be complicated by a variety of factors. For example, several parties might be involved in the establishment and operation of the enterprise. Besides, the damage might exceed the liability or the financial resources of the enterprise. And again, the extent of the damage might exceed national boundaries and it is possible that the parties involved in an enterprise would belong to different countries.

Nature of the Problem

The absence of adequate domestic law covering third party liability and its financial protection has already led to difficulties in bilateral agreements on the supply of fissionable materials and reactor equipment. Any multilateral approach is more seriously affected by such legal uncertainty and this is bound to retard international participation in the type of scientific and technical assistance which IAEA has been seeking to initiate and organize. The difficulties would increase further if different national legislations on the subject were to incorporate different principles and procedures.

From the beginning, IAEA has been faced with the need for international legal harmonization in this field.

After considering the nature of the problem, the IAEA Director General appointed an international Panel of Experts to go into the question of Civil Liability and State Responsibility for Nuclear Hazards. Dr. Paul Ruegger (Switzerland) was appointed chairman of the Panel. A former President of the International Committee of the Red Cross, Dr. Ruegger is a well-known expert on international law and is a member of the Permanent Court of Arbitration and of the Board of the Academy of International Law in The Hague. Other members of the Panel are Giuseppe Belli (Italy), C. H. Carruthers (United Kingdom), Edward Diamond (United States of America), B. N. Lokur (India), Seizo Nagasaki (Japan), Anatole Nikolaiev (USSR), Fuad Abdel Moneim Riad (United Arab Republic), Pavel Winkler (Czechoslovakia), and Enrique Zaldivar (Argentina).

The Panel held its first series of meetings in Vienna in February 1959.

Basic Postulates

The Panel had before it certain basic postulates formulated after a preliminary and tentative consideration of the subject. From the viewpoint of the public, the first postulate is, of course, that the use of nuclear energy be regulated by adequate licensing and control mechanisms so as to prevent any accidents. To the extent, however, that nuclear damage cannot be prevented, there must be liability on the part of the enterprise which caused the damage and, where damage exceeds its liability or its financial resources there should be some assurance of compensation by the State. This should be so not only within the borders of one State, but especially also on an international basis. Security should be required for the possible liability of the enterprises connected with a nuclear incident. Litigation with respect to liability should be concentrated in the most convenient tribunal and be governed by a single clearly defined law. The methods of distribution should meet general standards of equity and be as expeditious as possible. Emergency measures, especially evacuation, first aid and decontamination, should be organized and financed without delay. At the same time, the liability of an enterprise should not exceed its reasonable financial capabilities. This means that a ceiling should be imposed upon the amount of third party liability to which an enterprise could be held. And the liability should generally be such as can be covered by adequate financial security.

Uniformity in the treatment of victims of nuclear incidents in all these fields is a desirable goal. Yet, if a rule adopted on an international level or suggested by uniform legislation were to be viable, it should adapt itself to the social, economic and legal order

already existing in individual States. This may mean that in certain fields it would be advisable to establish only skeleton rules capable of incorporating whatever has already been accomplished or is about to be accomplished in the form of national or regional legislation.

Specific Questions

Although the basic postulates appear simple, the specific questions have many complex aspects. For example, the responsibility of States raises the question both of international responsibility and of their general responsibility with respect to damage not privately compensated. In the field of civil liability, the existing laws and procedures often seem insufficient for protecting the public and at the same time reducing the industry's burden of liability to reasonable proportions. Should the task of revising these basic rules be left to individual States? Again, the question arises whether any rules limiting civil liability and governing State responsibility do not presuppose the existence and enforcement of adequate standards of safety in the construction and operation of nuclear installations. The question of liability cannot be isolated from efforts to prevent accidents through regulatory provisions. Another question to be decided is whether emergency measures after a nuclear accident should be removed from the area of civil liability and left to the State.

These are but a few of the questions to be decided by the Panel in the initial stages of its work. Even from a preliminary investigation, other issues would emerge. For example, it is difficult to conceive of any solution in connexion with civil liability and responsibility of States which would not also include transportation of radioactive materials capable of causing damage. Yet transportation poses a number of legal problems, such as selection of the person and State to be held responsible for nuclear damage, etc. Again, the disposal of radioactive waste may call for special treatment in connexion with civil liability and responsibility of States.

In considering these and many other complex issues, the experts constituting the IAEA Panel have the advantage of their knowledge and experience of the different legal systems to which they belong. At the same time, they are guided by a common awareness of the fundamental need for international harmonization. The outcome of the Panel's work will be of basic importance to the expansion of activities in the field of atomic energy.



The panel of experts at work at Agency headquarters. At the head of the table, IAEA Director General, Mr. Sterling Cole; on his right, Dr. Paul Ruegger (Switzerland), Chairman; on the Director General's left, Mr. Peider Koenz, Consultant IAEA, Secretary of the Panel

In its first series of meetings, the Panel had the benefit of several reports prepared by the technical and scientific staff of the Agency; its deliberations were in the form of a first informal exchange of views, in the course of which certain principles were agreed upon which would guide the Panel Secretary in preparing a concrete draft convention to be discussed in detail at the next series of Panel meetings in May. The experts were unanimous in declaring that first priority should be given to a convention regulating civil liability of the industry and -- subsidiarily -- of States for damage caused by nuclear installations. Such a convention would establish some basic minimum rules acceptable, if possible, on a universal basis.

Other problems, including transportation, nuclear propulsion, emergency measures and perhaps the direct responsibility of States in certain fields remain to be discussed in more detail. The Panel expressly authorized its Secretary to consult with any specialists and experts deemed necessary in that connexion.