

of the Operational Budget estimates has been attempted; what has been done is to indicate the desirable growth of total resources to meet the needs of the various programmes which are at present financed under the Operational Budget.

In this connection, it may be pointed out that during its June series of meetings, the Board of Gov-

ernors decided to recommend to the General Conference amendments to the Statute and Financial Regulations which would put the Agency's entire budget on an assessment basis. Under the provisions hitherto in force, the Regular Budget is financed by assessed contributions by all Member States and the Operational Budget by voluntary contributions.

CIVIL LIABILITY FOR NUCLEAR DAMAGE

An international Convention on Civil Liability for Nuclear Damage was adopted in Vienna on 19 May 1963 by a sixty-nation conference convened by the International Atomic Energy Agency. The Convention, which is subject to ratification by the States signing it, will come into force three months after the deposit of the fifth instrument of ratification.

More than four years of preparatory work by the Agency preceded the adoption of the Convention. The considerations that led to this undertaking had been widely recognized since the earliest days of the peaceful applications of atomic energy and their importance has grown with the steady development of these applications in all parts of the world.

It has been clear from the beginning that civil law rules on conventional third party risks are not adequate for the special hazards of atomic operations and the need has been felt for special civil legislation to guarantee the maximum financial protection of the public without, however, imposing on the atomic industry an unreasonable or indefinite burden of liability. While such special legislation has already been enacted in several countries, it can easily be seen that national, or even regional, solutions are not sufficient to cope with all aspects of the problem. Radiation damage resulting from a nuclear incident may occur far away from the source of radiation; the mal-functioning of a nuclear installation may involve manufacturing industries in several countries, and the hazards inherent in the transportation of nuclear materials may well have international implications.

A single nuclear incident could thus generate suits in several States and the courts might apply different laws to different claims arising out of the same incident. This would not only expose the atomic industry to unforeseeable risks of liability but also make it difficult to provide adequate and equitable financial protection to the public. Only an international convention can serve as a basis for effective and largely uniform civil liability rules for nuclear damage.

Preparatory Work and Vienna Convention

In December 1958, the IAEA Director General convened a panel of experts to advise him on problems of civil liability and State responsibility for nuclear hazards. After several meetings in 1959 this panel, composed of experts from Argentina, the Czechoslovak Socialist Republic, India, Italy, Japan, the USSR, the United Arab Republic, the United Kingdom and the United States and presided over by Dr. Paul Ruegger of Switzerland, prepared a draft convention which was then circulated to the Agency's Member States. The draft was later considered by an intergovernmental committee, composed of representatives of Argentina, Brazil, Canada, the Czechoslovak SR, Finland, France, the Federal Republic of Germany, India, Japan, Poland, the USSR, the United Arab Republic, the United Kingdom and the USA. This committee, which met under the chairmanship of Mr. T. Suontausta of Finland, held two series of meetings in 1961 and 1962 and prepared a revised draft convention on Minimum International Standards Regarding Civil Liability for Nuclear Damage. The revised draft, too, was circulated to Member States for observations.

The revised draft, and the observations made and amendments suggested by Member States, were before the international conference when it met in Vienna on 29 April 1963. The conference, which was attended by delegates from 58 Member States and observers from two others, elected Mr. B. N. Lokur of India as its President and Mr. K. Petrzela (Czechoslovak SR) and Mr. E. K. Dadzie (Ghana) as Vice-Presidents. It set up a number of committees and sub-committees, the most important of which, the Committee of the Whole, was presided over by Mr. A. D. McKnight of Australia.

Three weeks of detailed discussions on draft articles and other related matters resulted in agreement on the final text of the convention and an optional protocol concerning the compulsory settlement of disputes. Both documents were opened for signature



Dr. Kurt Waldheim of Austria addressing the opening session of the Vienna conference on behalf of Foreign Minister Bruno Kreisky. On the podium, left to right, are Dr. Finn Seyersted, Director of IAEA's Legal Division, and Dr. John A. Hall, the Agency's Deputy Director General, Department of Administration

two days later at the Agency's headquarters, and also for accession by States which did not attend the conference.

The Vienna Convention on Civil Liability for Nuclear Damage, as it is now called, incorporates the main principles enunciated in the first draft prepared by the panel of experts. Among the main features of the Convention are the principle of absolute liability, designation of the person* solely liable, limitation of liability in amount and time, financial security and jurisdictional competence.

It should be pointed out that the Convention deals only with hazards connected with land-based nuclear installations and the transportation of nuclear materials. Problems of liability for nuclear-powered ships have been treated by the Agency separately, and a Convention on the Liability of Operators of Nuclear Ships was adopted in Brussels last year at a conference co-sponsored by the Agency.

Absolute Liability of Operator

The Vienna Convention provides that the liability for nuclear damage will be absolute, and the person liable will be the operator of the nuclear installation involved. (The operator is the person designated or recognized as such by the Installation State, i. e. the State in which the nuclear installation concerned is situated or by which or under whose authority it is operated.) The operator will be liable for nuclear damage upon proof that it has been caused by an incident in his installation, or involving nuclear material coming from or sent to his installation.

* The term person is used in the widest sense, including natural as well as legal persons such as private or public bodies, States, political sub-divisions or international organizations.

One of the important principles involved in these provisions is that liability will arise without proof of fault or negligence; in other words, a person suffering nuclear damage will not be required to undertake the difficult task of proving the fault of the operator, as is required under the normal rules for conventional risks. Any requirement to prove fault would impose a heavy burden on the claimants without giving the defendant any corresponding practical advantage. It is, however, provided that it will be necessary to prove causation of damage by a given source, and also that if the operator proves that the damage resulted from the gross negligence of the person injured, the competent court may relieve the operator of his obligation to pay compensation.

The provision that the liability will rest with the operator and with none else is designed to facilitate financial coverage as well as the filing and litigation of claims. Where the damage involves the liability of more than one operator, the operators concerned will be jointly and severally liable; each person will be liable for the full amount of the damage, up to the limit of liability applicable with respect to him. This provision is a direct consequence of the absolute nature of third party liability for nuclear damage and has been devised in the interest of the public which should not be compelled to proceed separately against each person liable. At the same time, any operator who has been held liable for more than the ratio of the damage attributable to him may seek financial contribution from the operator of any other installation which contributed to the damage.

Limitation in Amount and Time

The Convention provides that, while each State may limit the liability of its operators, it may not be limited to less than US \$5 million for any one nuclear incident and that this amount must be covered by insurance or some other financial guarantee. The State on whose territory the nuclear installation concerned is situated will have to provide indemnity to the extent that the yield of such guarantee is insufficient.

The limitation of the amount of liability is governed by two principal considerations: on the one hand, such limitation would protect the atomic industry against a risk of liability that would exceed its financial capabilities, and on the other, it is an essential prerequisite for the requirement that financial security be maintained for the full amount of the liability. The amount of \$5 million is, of course, the lowest permissible limit under the Convention; States are free to establish higher limits, and in fact a number of States have already done so.

Another aspect of the limitation of liability is the fixation of a time limit within which claims may be made. The Convention provides that all rights to compensation will generally be extinguished ten years

after the incident has occurred. It is known that nuclear injuries sometimes produce delayed effects and not all such latent damage may manifest itself within ten years, but this period is regarded as a reasonable compromise covering the most latent injuries regarding which causation can be established with some degree of certainty. This time limit may be extended if financial security is available; also a shorter period of three years counted from the date of knowledge of the damage and of the operator liable may be established by the State whose courts have jurisdiction.

Jurisdictional Competence and Other Matters

One of the main tasks of the Convention is to decide the question of jurisdictional competence. On this question the Convention states that jurisdiction over actions for nuclear damage will lie only with the courts of the State where the incident occurred. Where a nuclear incident occurs outside the territory of any contracting party or where the place of the incident cannot be determined with certainty, jurisdiction will lie with the courts of the Installation State of the operator liable.

The concentration of jurisdictional competence with the courts of a single State is designed to eliminate many onerous and intricate procedural difficulties for the claimants as well as for the operator. Judging by procedural and practical advantage, the choice falls on the State in which the incident occurs, even if damage is sustained elsewhere.

The operator liable under the Convention may have to furnish compensation for damage caused by nuclear incidents which may have been due wholly or partly to the fault of others. In such instances the operator would generally have a recourse claim against the other person. Unlimited retention of such recourse actions does not appear desirable; it could generate onerous litigation, which in turn would hinder the



The Convention on Civil Liability for Nuclear Damage being signed by Mr. Tomas G. de Castro of the Philippines

development of nuclear industry without extending any additional protection to the public. The Convention permits recourse actions by operators only in two specific situations, namely where recourse liability is expressly assumed by contract and where damage is caused intentionally by the individual sued.

The Convention, it will be seen, is designed only to establish minimum rules regarding civil liability for nuclear damage; it may thus well be described as a framework convention, the main provisions of which represent the essential common denominator acceptable to as many States as possible. It leaves wide scope for national legislation and regional arrangements with a view to implementing these provisions. The Convention does not purport to create a uniform civil law in this field, but it contains the minima essential for protection of the public and forms the legal basis for uniform world-wide liability rules.