



WG2 meeting – INLA

A SWOT (strengths, weaknesses, opportunities and threats) analysis for Paris Convention and Vienna Convention members to join the CSC

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International NTPL conventions

Pre-Chernobyl



1960 PC
1963 BSC



1963 VC

Post-Chernobyl



1988 JP

2004 RPC
2004 RBSC

1997 RVC

1997 CSC

Adherence to CSC - SWOT

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Strengths

- more legal certainty for jurisdictional rules
 - less forum shopping (time & resources for the Operator and the State)
 - enforceability of channelling principle (only the Operator is liable exc. wilful misconduct)
 - enforceability of judgments of courts of Operator's jurisdiction
 - State remains in RPC/RBC or in VC/RVC (treaty relations with neighbouring States) and Joint Protocol (bridging RPC/RSC States with VC/RVC States & vice-versa)
 - CSC quasi-identical definitions & identical principles as RPC/RVC
 - CSC supplementary layer on top of 1st tier, e.g. 700 million€/300 million SDR
 - CSC financial burden not *ex ante* but *ex post*. Operator State can shift it to the Operator (e.g. Japan) or to the nuclear suppliers (e.g. US)
- see **BOX on the next slide**
- CSC 1st tier: no need for additional insurance for the Operator (only minor changes) and CSC 2nd tier: if recouped by the State from other players, they will likely try to insure this additional risk.



Opportunities

- treaty relations with nuclear technology exporting/nuclear investor States (US, Canada, Japan, India) attracting investment in NPP (investors and lenders, designers, constructors, suppliers)
- more competition between nuclear technology suppliers, ensuring more competitive, less expensive prices
- anticipate contractual issues (certainty), avoid/mitigate delays/cost overruns
- expansion of NPP New Build in the Operator State
- importance of NPP investment in current EU new taxonomy and climate change policy
- higher predictability for the operators on their potential liability exposure and possibility to secure insurance or financial guarantees to cover it (predictability reflected in costs for insurance or other financial guarantees)
- international assistance for decommissioning and cleaning-up (after NPP operation life or incident)
- if a non-convention State adheres to an international convention, it is more likely to be to the CSC (e.g. Korea, treaty relations with Japan and India)
- supplementary CSC compensation aligns VC/RVC States with higher amounts of compensation of RPC/RBSC, increasing public acceptance
- a global regime will likely be based on the CSC

Adherence to CSC

Weaknesses



- financial burden on the Operator State by contributing to the CSC 2nd tier collective fund (**BUT**: US recoups from US suppliers, Japan recoups from Japanese Operators)
- additional financial burden on Operators or Operator State if they wish to avoid the CSC preferential rule for victims outside NPP State
- interaction with RBSC collective fund (e.g. UK)
- prescription period difference for personal injury for RPC/RVC states (10y CSC vs 30y RPC/RVC)
- preferential treatment CSC compensation: 50% for victims inside and outside accident state/50% only for victims outside accident state, **BUT**: avoided if min. 600 SDR in 1st tier, e.g. RPC States)

Threats



- EU MS: Council Decision with qualified majority at EU level is needed to authorise the Operator State, implying a Commission inter-service consultation and requiring adequate lobbying to avoid delays
- financial contribution to the CSC will go crescendo with the number of NPPs being built in Operator State
- does not eliminate the request for indemnity waivers by nuclear technology suppliers for Austria, Luxembourg, Ireland, Malta and Cyprus, and the need for corresponding insurance by the Operator

BOX - ADDITIONAL INFO ON STRENGTHS



- 1) **In Japan**, there are specific provisions, independently from the Japanese operator pooling system, whereby the Japanese government will also collect a special deposit from a nuclear operator equal to the amount required as a contribution to the CSC fund as per arts. 10 and 11 of the Japanese CSC Act on Assistance for the Nuclear Damage Compensation Fund pursuant to the Implementation of the CSC No. 133 of 2014 and art. 5 of the Japanese Cabinet Order Implementing the Act on Assistance, etc., for the Nuclear Damage Compensation Fund pursuant to the Implementation of the CSC No. 173 of 2015 (see <https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1022&context=alr>)
- 2) **In the US**, current US law (Section 934 of the Energy Independence and Security Act of 2007) foresees that the contribution to the CSC's collective fund is borne by US nuclear suppliers under an allocation formula to be determined by Department of Energy. However, this law has not yet been implemented. So, under the CSC, the US government would be obliged to provide the contribution: <https://www.energy.gov/gc/convention-supplementary-compensation-rulemaking>



CSC adherence/online calculator

Fictitious example: PT in CSC



Fictitious example where a nuclear incident would occur in Portugal and the impact on the US' contribution to the CSC collective fund (capped when it is not the Installation State)

Portugal		US (307055 MW)
no reactor 0 MW	145,753 SDR	49,868,676 SDR
1 NPP 3750 MW	1,271,839 SDR	50,239,926 SDR
2 NPP 6550 MW	2,112,649 SDR	50,517,126 SDR

Fictitious example where a nuclear incident would occur in the US (not capped because it is the Installation State) and the impact on Portugal's contribution to the CSC collective fund

Portugal		US (307055 MW)
no reactor 0 MW	145,753 SDR	101,278,147 SDR
1 NPP 3750 MW	1,271,839 SDR	101,346,351 SDR
2 NPP 6550 MW	2,112,649 SDR	101,397,277 SDR



Fictitious Case Study – nuclear accident in France



nuclear accident in France (RPC)
 -US technology designer & supplier
 -US constructor

FRANCE IS NOT IN CSC

-channelling not guaranteed : French victims (e.g. a class action by French residents and businesses) and non-French victims (e.g. US employees) can sue the French Operator, the US supplier, the US constructor and also the directors of the French Operator or lenders or investors for the French NPP with no connection to the US.

-jurisdiction: US courts can admit claims by French and non-French victims; French Courts can also admit claims by French and non-French victims

US Courts = attractive due to:

- broad discretion to accept or decline jurisdiction over nuclear incidents outside the US if no treaty relations, e.g. Amoco Cadiz case and Bhopal case.
- high nuclear liability limits
- more generous attitudes of US juries
- potential availability of punitive damages
- liberal discovery rules
- contingency fees
- possibility of large damage awards

=> • **forum shopping**

- **legal risks**, US district courts + US appeals court + US supreme court
- **time** e.g. Fukushima-related US claims 10y.
- **resources** e.g. US litigation is costly in lawyers and court fees, even if only on procedural issues such as jurisdiction

-jurisdiction: in case of wilful conduct (exception to channelling), the US supplier and US constructor have jurisdictional arguments to raise (i) against the French Operator suing them before French courts under French law and (ii) against the enforcement of judgments of French courts

-enforceability: judgments of French courts against US companies are not automatically enforceable in the US



Fictitious Case Study – nuclear accident in France



nuclear accident in France (RPC)
 -US technology designer & supplier
 -US constructor

FRANCE IS IN CSC

-**channelling guaranteed** : French victims (e.g. a class action by French residents and businesses) and non-French victims (e.g. US employees) can **only sue the French Operator**

-**jurisdiction**: **only French courts** can admit claims by French and non-French victims; US courts cannot admit claims and are obliged to defer to the jurisdiction of French courts:

- =>
- no forum shopping
 - less legal risks, only French courts
 - quicker litigation
 - less resources to litigate

-**jurisdiction**: in case of **wilful conduct** (exception to channelling), the US supplier and constructor have **no jurisdictional arguments** to raise (i) against the French Operator suing them before French courts under French law and (ii) against the enforcement of judgments of French courts

-**enforceability**: judgments of French courts against US companies are **automatically enforceable** in the US



Thanks

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