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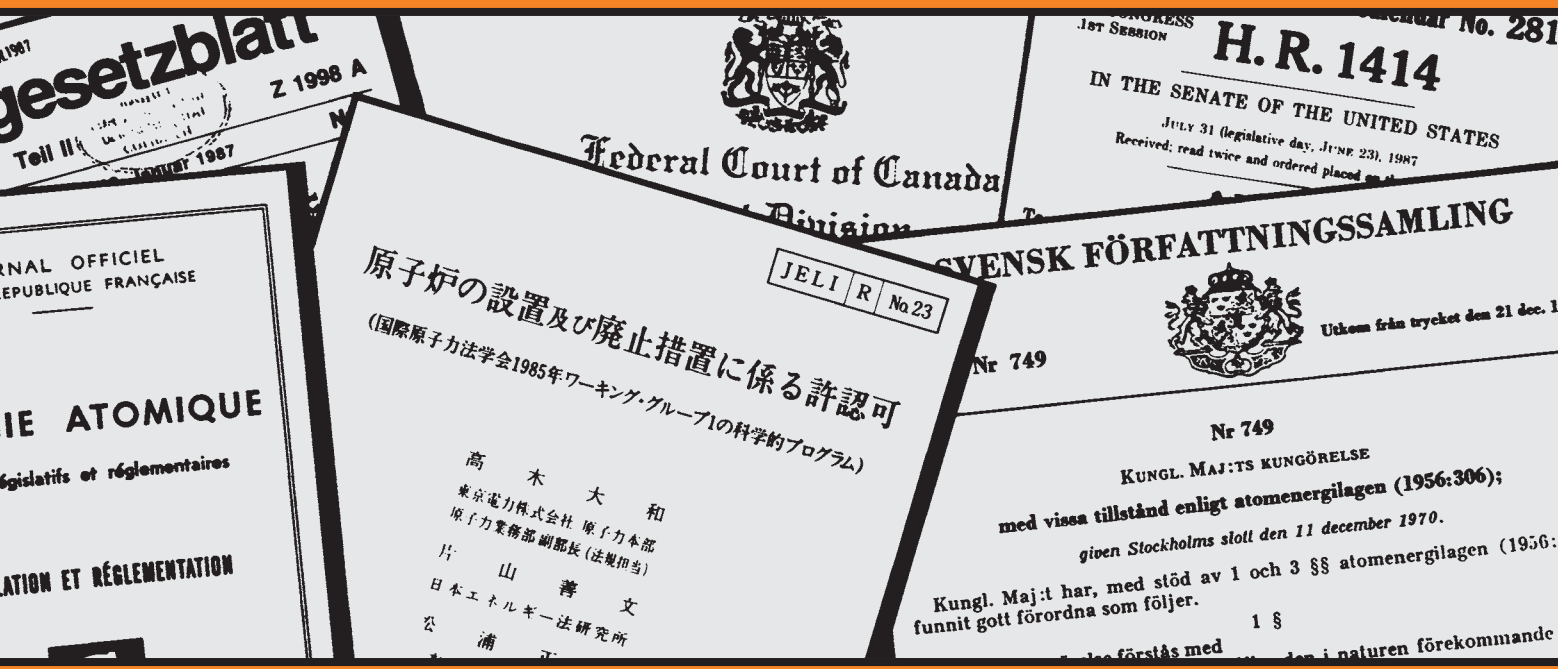

BULLETIN 71

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NUCLEAR ENERGY AGENCY

OECD

NUCLEAR LAW
BULLETIN No. 71

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June 2003
Nuclear Energy Agency
Organisation for Economic Co-operation and Development

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

Pursuant to Article 1 of the Convention signed in Paris on 14th December 1960, and which came into force on 30th September 1961, the Organisation for Economic Co-operation and Development (OECD) shall promote policies designed:

- to achieve the highest sustainable economic growth and employment and a rising standard of living in Member countries, while maintaining financial stability, and thus to contribute to the development of the world economy;
- to contribute to sound economic expansion in Member as well as non-member countries in the process of economic development; and
- to contribute to the expansion of world trade on a multilateral, non-discriminatory basis in accordance with international obligations.

The original Member countries of the OECD are Austria, Belgium, Canada, Denmark, France, Germany, Greece, Iceland, Ireland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States. The following countries became Members subsequently through accession at the dates indicated hereafter: Japan (28th April 1964), Finland (28th January 1969), Australia (7th June 1971), New Zealand (29th May 1973), Mexico (18th May 1994), the Czech Republic (21st December 1995), Hungary (7th May 1996), Poland (22nd November 1996), Korea (12th December 1996) and the Slovak Republic (14 December 2000). The Commission of the European Communities takes part in the work of the OECD (Article 13 of the OECD Convention).

NUCLEAR ENERGY AGENCY

The OECD Nuclear Energy Agency (NEA) was established on 1st February 1958 under the name of the OEEC European Nuclear Energy Agency. It received its present designation on 20th April 1972, when Japan became its first non-European full Member. NEA membership today consists of 27 OECD Member countries: Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Luxembourg, Mexico, the Netherlands, Norway, Portugal, Republic of Korea, Slovak Republic, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States. The Commission of the European Communities also takes part in the work of the Agency.

The mission of the NEA is:

- to assist its Member countries in maintaining and further developing, through international co-operation, the scientific, technological and legal bases required for a safe, environmentally friendly and economical use of nuclear energy for peaceful purposes, as well as
- to provide authoritative assessments and to forge common understandings on key issues, as input to government decisions on nuclear energy policy and to broader OECD policy analyses in areas such as energy and sustainable development.

Specific areas of competence of the NEA include safety and regulation of nuclear activities, radioactive waste management, radiological protection, nuclear science, economic and technical analyses of the nuclear fuel cycle, nuclear law and liability, and public information. The NEA Data Bank provides nuclear data and computer program services for participating countries.

In these and related tasks, the NEA works in close collaboration with the International Atomic Energy Agency in Vienna, with which it has a Co-operation Agreement, as well as with other international organisations in the nuclear field.

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ARTICLES

The Public Right of Access to Information on Nuclear Energy under the Spanish Legal System

by Mariano Baena del Alcázar*

1. Introduction

(A) The nature of my approach

I would like to begin by making clear from the outset the sense and focus of this paper which is written, primarily, in my capacity as Supreme Court Judge. This is because as a university professor I have devoted myself, especially in recent years, to the so-called Science of Administration, which I have been trying to introduce into Spain. Moreover, during my many years as professor of administrative law, the law on nuclear energy was never my speciality.

I propose to offer you my views on the subjective right of access to information on nuclear energy enjoyed by citizens of both Spain and the European Union. It should prove to be of some interest since it has given rise to conflicting judgements, though none of these judgements was delivered by the Supreme Court. Accordingly, now may be a good time to take a closer look at this issue since within the next two years, the Supreme Court is expected to make a final ruling.

(B) The triple interpretation of texts and systems

However, before commenting on these judgements, I propose to review the various regulations. I will begin with two observations. Firstly, to the best of my knowledge, there are no regulations that deal specifically with the right of access to information on nuclear energy. It is always a question of the right of access to information on the environment. Of course, this includes or could include information on nuclear energy, but its particular features are not the subject of any specific provisions.

Reviewing the legislation involves examining three types of texts belonging to different legal systems. On the one hand, there is the relevant Directive of the Council of the European Union.

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Obviously, this is an element of Community law. On the other hand, there are two Spanish laws: a general Law adopted in 1992 regulating the right of access to administrative information of all kinds and a 1995 Law which specifically regulates the right of access to information on the environment, although not specifically on nuclear energy.

2. The right of access to information under the Community Directive

Where Community law is concerned, I refer to the Council Directive 90/313/EEC of 7 June 1990 on freedom of access to information on the environment. I propose to examine several points of interest, bearing always in mind that this Directive applies directly in Spain. The circumstances of its implementation into Spanish law must be taken into account, but if it is not well implemented, the judges are required to apply directly the Directive upon which it is based.

(A) The configuration of this right

The Directive recognises, in very broad terms, this right of access to information. According to Article 3.1, "Member States shall ensure that public authorities are required to make available information relating to the environment to any natural or legal person...". We should not allow ourselves to be misled by the tortured language employed, since in any event there is a direct recipient of the mandate, namely the Member States. A subjective right is being recognised in due legal form. If the States have an obligation, the counterpart of that obligation is a right, and therefore the public must enjoy that right. Moreover, it should be noted that this right is granted in the very broadest terms, to any natural or legal person at his request and without his having to prove an interest.

At the same time, it may be possible, as I understand it, to identify a principle of non-restrictive interpretation of the right, a good example of which is the fact that a specific interest is not required, so that neither the authorities nor the courts can raise problems of standing. I should add that if it is not possible to provide complete information, for reasons to which I shall shortly return, there is an obligation to provide partial information, that is to say, the information available.

Although the right is clearly very extensive, it is also important to consider its limitations. With respect to the extent of the right, the principle of transparency presupposes that information must be submitted to the competent bodies. For example, in Spain the Parliament.

However, let us consider its limitations. The scope of the right is made subject to a double proviso. On the one hand, where information on nuclear energy or other environmental matters is requested, there are certain circumstances in which Member States and their public administrations may refuse the request. We shall consider these later. On the other hand, a request for information may also be refused not because it concerns specific subjects, proceedings or matters but because the information itself has certain characteristics or because the request is formulated in a particular way.

The limitations laid down in the Directive fall into the following groups. Those relating to the confidentiality of the proceedings of public authorities, which I believe pose fewer problems, and those relating to the confidentiality of personal data and to material supplied by a third-party without that party being under a legal obligation to do so. Insofar as the request for information raises problems of this kind, that is to say, infringes these rights or relates to these matters, it may be refused. It may also be refused for reasons of public security.

As regards the other provisions, it is not only a question of matters relating to the confidentiality of proceedings, for example, those of the Council of Ministers. The Directive also mentions "matters

which are, or have been, *sub judice* or under enquiry" and "material, the disclosure of which would make it more likely that the environment to which such material related would be damaged". In all these cases information may be refused but, in my opinion, as the right has to be interpreted broadly, the limitations must be interpreted narrowly. For example, as we shall see, whether wittingly or not, the Spanish authorities have confused the confidentiality of the proceedings of corporate bodies, the national government, the government of the autonomous regions and the municipal councils, with the actions of the State, the autonomous regions and the local authorities in general. Moreover, if I am not mistaken, matters which are *sub judice* are those in which a judicial, not an administrative decision is pending. Admittedly, the Directive also indicates that, where disciplinary proceedings are concerned, a request for information may be refused when enquiries or preliminary investigations affecting administrative actions are in progress. However, this only applies where a civil servant is being investigated for misconduct, a situation very different from that in which proceedings are instituted against some member of the public.

Moreover, the provision allowing for information to be refused if its disclosure would make it more likely that the environment would be damaged can be interpreted in two ways. On the one hand, it is clearly the public authorities who decide what would damage the environment and in this respect they have considerable discretion. However, the provision is concerned with what would damage the environment, not with what might alarm the public, as usually understood. That is to say, it is one thing to disclose information likely to damage the environment to be protected and another for certain persons, for example, concerned ecologists, to raise the alarm. That might have an effect on society but not on the environment.

Information may also be refused because of the nature of the information itself or the request, for example, where unfinished documents or data, not files, are concerned – this being precisely the issue raised in the case law – or where internal communications between public administrations are involved.

Finally, information may be refused where the request is manifestly unreasonable or formulated in too general a manner.

(B) The freedom of action of the Member States

Despite the requirements of the Directive, something is still left to the discretion of the Member States, although we should not lose sight of the fact that the Directive has full legal force in Spain, bestows rights on Spaniards and other citizens of the European Union, is directly applicable and takes precedence over Spanish law.

This said, it remains to refute the common preconception that the Directive does not have to be enforced until it has been implemented into Spanish law. It is, in fact, a question of Community, not international law. The Directive has been correctly implemented. However, even if it had not been implemented, it would still be binding. If a directive allows a grace period for completing the implementation, it will not be binding on the Member State in question until that period has expired. However, if the period expires without the directive having been implemented, it will apply. And if the directive does not mention any grace period, it will be applicable from the outset. And the Directive in question does not mention any grace period.

There is no doubt, however, that the Directive allows the Member States a certain discretion. Thus, for example, it provides for the Member States to define the practical arrangements under which information is effectively made available.

However, I believe that this should be interpreted as follows. The Member States may adopt legislative provisions of various kinds and the regulatory powers will be vested in some authority or other, since it is the laws of the Member States themselves that determine which authority is competent to lay down the rules. At the same time, these provisions will establish certain procedural principles, although this does not mean to say that they can go beyond the provisions of the Directive itself.

At any rate, there is a margin of discretion with respect to our subject matter. This margin of discretion does not relate to such questions as, for example, what is meant by public authorities or what is meant by disciplinary enquiry. In principle, these concepts should be understood in accordance with Spanish law, although they should sometimes be interpreted in accordance with Community law. However, this does not constitute a margin of discretion.

I refer to other matters, and especially to those specific points which grant the administrative authorities some degree of protection.

In particular, I have in mind those cases in which disclosure would make it more likely that the environment would be damaged, those cases in which the request is manifestly unreasonable and those in which the request is formulated in too general a manner. It is obvious that in all these cases, in exercising the statutory authority to agree to make specific documents or specific information available, there is a margin of discretion for the Member States, which can decide whether or not the above-mentioned circumstances exist.

3. This right of access to information under the Spanish legal system prior to publication of the specific law

Turning now to the Spanish legal system, it may be useful to consider the general regulations on the right of access to information available to the government. I refer to information in general and not just to specific information on the environment or nuclear energy. This will make it possible to show the significance of the third text, i.e., the 1995 Law, which we shall need to examine in relation to the Directive and the previous Spanish Law.

(A) The contrast between the Constitution and Law 30/1992

In Spain, the right to information about official data in general is governed by Law 30/92 of 26 November 1992 on the Legal Regime for Public Administrations and Common Administrative Procedures, which is well known to jurists. Allow me to voice a long-standing concern to the effect that this Law restricts the right of access to official information established in broader terms by the Constitution. It is my view that in this respect the Law is unconstitutional. This is a purely subjective opinion but one which I believe is not without foundation.

Article 105(b) of the Constitution provides for the Law to regulate public access to administrative records and archives, with three exceptions: matters involving national security and defence, criminal investigations and personal privacy. The Constitution says nothing further, whereas Article 37(5) of Law 30/92, which recognises the right of access to information, in addition to incorporating these three constitutional provisions, stipulates that the right may also not be exercised where the proceedings of the national and regional governments or material protected by commercial confidentiality and administrative proceedings deriving from monetary policy are concerned. All this without prejudice to the matters regulated by special laws, such as the legislation on classified material, that is to say on official secrets. This excess of zeal displayed by Law 30/92 in curtailing

rights granted to all Spaniards by the Constitution has failed to elicit the slightest explanation on the part of the public authorities. As we shall see, this question has implications, albeit indirect, for our present topic. However, above all, it illustrates the attitude of the Spanish authorities to providing access to information.

(B) Regulation under Law 30/92

Law 30/92 begins with the general recognition of the right to information and access to administrative records and archives. Only a careful and detailed analysis reveals nuances that tend to deny the right in some cases and curtail it in others. Thus, for example, and you will notice the difference with respect to the Directive we have just been considering, a general limit is placed on the right since it can only be exercised in respect of already completed administrative proceedings and not in respect of proceedings which are still in progress.

However, the Law also establishes a rule which seems to imply the existence of a principle of restriction of the right, deals with cases in which the right exists but its exercise can be refused, and refers to others in which the right does not really exist since it cannot be exercised. We will consider these various cases.

The "restrictive principle" consists in that if a document is nominative, that is, if it mentions individuals by name, even though it may contain nothing about their private lives, a legitimate and direct interest is required to obtain access. Thus, not only does the Law say the opposite of the Directive, but it uses a formula more restrictive than that used for access to the courts of justice. Moreover, according to this general law, the right exists but may be denied for reasons of public interest or in favour of third-party interests deemed more worthy of protection, if so laid down by law. Clearly, in these first two instances the authorities are allowed broad discretion. Finally, the right cannot be exercised in the above-mentioned list of cases which restrict the provisions of the Constitution.

4. Regulation under Law 30/1995

These were the general rules on access to information held by the authorities until the enactment of Law 38/1995 of 12 December 1995. This Law regulates access to information on the environment, as the general Law of 1992 did not deal either with the environment in general or with nuclear energy in particular. Thus, the preamble to the 1995 Law openly acknowledges that the Spanish legislation is more restrictive than the European Directive as regards information on the environment and tries to correct this by laying down various more generous rules which assume the implementation of the Directive. Let us see how faithful this implementation is, a question which is all the more important in that the Directive is directly applicable and there are no specific regulations for nuclear energy.

(A) Two preliminary points

I would like to make two preliminary points. The first is that the second Additional Provision of the Law declares that it is basic. That is to say, it lays down generic principles which the State approves and the autonomous regions can later develop. However, the Law is basic only with respect to its first and second articles and it is the third that gives a list of cases in which the right of access to information may be denied. This introduces a very dubious element with respect to the interpretation of the Law as compared with the Directive because of the possibility that in adopting additional rules the autonomous regions might introduce new restrictions.

The second point is that according to the first Final Provision of the Law the general Law described above will apply residually, that is to say, where the more specific law is silent or ambiguous. This seems to me to jeopardise the recognition of the right where citizens of Spain are concerned since it means that in unforeseen or doubtful circumstances a law which the text itself admits is more restrictive will be applied.

(B) The implementation of Community law

The question of greatest interest, however, is how the implementation of the Community Directive was carried out. It should be borne in mind that certain rules were modified by a law that accompanied the budget, Law 55/1999 of 29 December 1999 on administrative, fiscal and social measures, which amended certain specific articles of Law 95.

As regards faithfulness to the Directive, it is worth noting that among legal writers and in some government circles it is considered that the Directive was not faithfully implemented. My own conclusion is somewhat different. After studying the question, I believe that, in general, the Spanish Law follows the Directive, but the implementation has been strained by adhering as closely as possible to the Spanish legislation which, as we have seen, is more restrictive.

This follows from the presence of certain ambiguities. For example, the possibility, mentioned above, of the autonomous regions imposing restrictions on the right to information or introducing new grounds for denial. Another issue relates to the amendment of Article 4(3) of the earlier Law of 1995 by the 1999 Law accompanying the budget. Under the earlier Law, once an authority had taken a decision to refuse a request for information, it was possible to resort directly to the courts. Following its amendment it is now necessary to lodge the appropriate appeals and complaints with the administration before taking one's case to the courts. What is the purpose of this? To provide further opportunities for review? Or to ensure that the decision takes as long as possible to reach the courts? I shall leave this question unanswered. Another point is the possible residual application of the general law, to which I have already drawn attention.

Moreover, there is the question of why the Law deals in two provisions with issues which in the Directive are dealt with in one. The Directive refers in the same breath to the investigation of offences and to enquiries and preliminary investigation proceedings in connection with breaches of discipline. In the Law these issues are divided up between two different provisions. I shall return to this point, which could be a source of conflict. Finally, there is another question of considerable theoretical interest and an old war-horse for those of us concerned with these issues. This is the question of the possible denial of information about the actions of the national government and the autonomous regions taken in the exercise of powers not subject to administrative law. But, it might be asked, are there powers not subject to administrative law? The answer can be found in the Law regulating administrative jurisdiction of 13 July 1998. This Law states that where it is a question of the protection of fundamental rights, elements of acts of authority regulated by law, and damages, then, whatever the nature of the act, even if it has maximum political content, the case may always be reviewed by the courts and administrative law is therefore applicable. The drafters of the 1999 Law accompanying the budget, so anxious to introduce an administrative remedy before recourse may be had to the courts, failed to take into account the fact that since the previous year there had been no government acts that were not, at least in part, subject to administrative law.

Above all, however, I believe that there are clearly several points of conflict. First of all, the Spanish Law states that access to information may be denied where actions of the national government and the autonomous regions are involved. The Directive refers to the confidentiality of the proceedings of public authorities, which is not the same as their actions in general. The second point

of conflict concerns a question which I earlier left unanswered. Why are cases in which matters are *sub judice* separated from those involving the imposition of a sanction? Since the Spanish legislator, instead of referring to disciplinary enquiries which relate only to officials, introduces as a reason for denying information the existence of any sort of sanction-imposing proceeding instituted against a citizen, which obviously goes beyond the requirements of the Directive.

5. The case law

I now propose to turn to the legal precedents, although I shall only refer specifically to those concerning information on nuclear energy.

(A) Limited nature

The precedents are limited and, as I have already pointed out, include not a single Supreme Court judgement. What most catches the eye is the existence of two contradictory judgements, both delivered by the Higher Court of Madrid, on 2 March and 9 June 1999, respectively. One of these, that of 2 March, concerns an appeal by the Association for the Protection of Nature (*Asociación de Defensa de la Naturaleza* – (AEDENAT) and orders certain reports on the inspection of a nuclear power station to be made available. The other, that of 9 June 1999, dismisses an appeal, also lodged by AEDENAT, and declares the refusal to hand over reports to be lawful.

It is difficult to resolve the issue on the basis of these judgements alone. Both were delivered by the Higher Court of Madrid. Both were appealed before the Supreme Court under what is technically known as the remedy of judicial review. However, the Supreme Court refused to admit either appeal because of procedural defects. Consequently, the two contradictory judgements, one of which says one thing and one the other, still stand.

Nevertheless, a possible solution is in the offing because a judgement of the *Audiencia Nacional*, a special division of the Supreme Court, of 29 February 2000 dealt with the same issue and allowed the appeal, also lodged by AEDENAT. An application has been made for a judicial review of this judgement and the application has been accepted. Accordingly, relatively soon the Supreme Court will have to decide whether there is a right of access to these reports or whether the authorities can refuse to make them available. We shall have to wait until this judgement is delivered, although when it has been delivered it will be the only one and at least two consistent judgements of the Supreme Court are required before the case law becomes firm and binding.

(B) The contradictory nature of the judgements and possible reasons for it

Let us see where the contradictions in these judgements actually lie. Here is the first discrepancy. Why were two of the judgements delivered by the Higher Court of Madrid and the last one by the *Audiencia Nacional*? Doubtless as a result of the application of the tortured rules on the competence of the courts contained in Article 8(ff) of the Law on jurisdiction for suits under administrative law. On the other hand, the preamble to the judgement of the Audiencia Nacional leaves me perplexed since it refers to the Ministry – Nuclear Safety Council and as far as I know the Nuclear Safety Council is not a Ministry and no ministry is called the Nuclear Safety Council.

As regards the reasons for the discrepancies between the various judgements, the fact that in one of the two cases decided by the Madrid Court, the 1995 Law was already in force whereas in the other it was not is of absolutely no consequence. In fact, both rulings relate to the same specific question,

namely, whether the inspection reports are or are not unfinished documents. Why are they contradictory? Community law is being applied by the Spanish courts but with a certain degree of discomfort. The judges are accustomed to ruling in accordance with Spanish law. Moreover, although these are judgements of the same court and the same chamber, they were delivered by different divisions which often apply different standards.

(C) The nature of the inspection reports

Judgements often contain a long exposition of the general theory and only at the end rule on the specific problem. In our case, the general theory expounded in the judgements is of no use at all. The question of whether the reports are unfinished documents, that is to say, whether the authorities have the right to make them available or, on the contrary, to refuse to do so, is addressed only in the final paragraphs.

According to the first of these judgements, the report is only the initial act of a file or proceeding (*expediente*) and is not an unfinished document, and Article 3.3 of the Directive refers to a document, not to a file. In its second judgement the Higher Court of Madrid ruled that the reports were documents that contained unfinished data, since they reflected partial data which had to be supplemented with other information, and therefore refused the request for access to the reports. The *Audiencia Nacional* found that the reports were not unfinished data because they contained all the data to which they related.

In my personal opinion, it is necessary to distinguish between data and documents and the reports are documents and not unfinished documents.

6. Final considerations

To conclude, I will tell you what I would do if I had to rule on this issue, that is, on whether the inspection reports should be made available or not. First, I would ask myself whether the reports could be an element of a sanction-imposing proceeding, since that would confront us with one of the situations in which, according to the Directive, the right to obtain them would exist. After that, I would ask myself what relationship there was between the Nuclear Safety Council and the power station. Was it a relationship which made it possible to conclude that a disciplinary enquiry was being conducted? Or was it simply a relationship that might perhaps permit the imposition of a sanction, as on any citizen with whom there was no special relationship? Afterwards I would have to reflect on how the contradiction between the Spanish Law and the Directive could be resolved.

I will end with a suggestion. Where information is to be refused, the refusal should not be based on commercial or industrial confidentiality, a case in connection with which the legislation mentions spills and waste. I would suggest that decisions should not be based on ambiguities and that any refusal should be justified on general grounds, by the unreasonableness of the request, by the generic formulation of the request, or by the damage to the environment itself, which should not be confused with the public alarm created.

The Nuclear Weapon Non-Proliferation Treaty and Terrorism: The Consequences of 11 September 2001 on the Treaty Review Process

by Gilles Arbellot du Repaire*

Introduction

11 September 2001: by striking at the heart of the United States, the attacks by Al Qaeda announced the beginning of a new era, marked by what some are already calling "superterrorism".

The haste with which the General Assembly[1] of the United Nations and the Security Council "unequivocally condemn[ed] in the strongest terms [these] horrifying terrorist attacks",[2] as well as the immediate creation of a Committee against Terrorism,[3] confirm, if confirmation were needed, the urgent need to contain this new "threat to international peace and security".

Terrorists of the new generation, to whatever group they belong, share certain characteristics and differ from their predecessors as regards both the channels and means they use and the reasons that motivate them. They are not motivated by exclusively political or religious reasons: the two spheres are interlinked and merge in a vision of society in which no separation is made between temporal and spiritual powers. By taking as sole reference point the worldwide community of the faithful – such as the Muslim *Umma*, for fundamental Islamists – these factions operate at an international rather than infra-State level. For the most part composed of individuals ready to sacrifice themselves, some of these small groups are actively trying to gain access to weapons of mass destruction for the avowed purpose of maximising the number of victims. Faced with a Bin Laden who elevates the acquisition of nuclear weapons to a "religious duty", and who would in certain circumstances not hesitate to use them,[4] what had previously been simply an "unthinkable nightmare"[5] has become a plausible scenario.

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1. A/RES/56/1, of 12 September 2001.

2. S/RES/1368 (2001), of 12 September 2001.

3. S/RES/1373 (2001), of 28 September 2001, paragraph 6. For its part, the General Assembly had, in 1996, created an ad hoc committee on terrorism, see A/RES/51/210, of 17 December 1996.

4. The proliferation of newspaper articles on nuclear terrorism is symptomatic of the scale of this concern. Thus, in August 2001, this topic was addressed 57 times. The following month, it was the subject of 1 106 articles. *Cf.* CURTIS (C. B.), "Reducing the Nuclear Threat in the 21st Century", IAEA

It is against this sombre background that the first session of the Preparatory Committee (PrepCom) for the Review Conference of the States Parties to the Treaty on the Non-Proliferation of Nuclear Weapons[6] (NPT), scheduled to take place in 2005,[7] was held between 8 and 19 April 2002.

This Treaty, which applies in almost all countries,[8] and which was extended indefinitely[9] following the 1995 Review and Extension Conference, [10] could well have problems trying to deal with the issue of nuclear terrorism.[11]

For the record, the main objectives of the Treaty are to prevent the horizontal proliferation of nuclear weapons (Articles I and II) and facilitate the exchange of information, materials and technology for the peaceful uses of nuclear energy (Article IV), in exchange, for non-nuclear-weapon States (NNWSs), of the undertaking not to acquire nuclear weapons (Article II) and to apply International Atomic Energy Agency (IAEA) safeguards (Article III). As for nuclear-weapon States (NWSs), these undertake[12] to work towards nuclear disarmament, under strict and effective international control (Article VI).

Symposium on International Safeguards: Verification and Nuclear Material Security, Vienna, 29 October 2001, p. 4.

5. *Cf.* in particular, ALBRIGHT (D.), O'NEILL (K.), HINDERSTEIN (C.), "Nuclear Terrorism: The Unthinkable Nightmare", 13 September 2001, ISIS Issue Brief, Institute for Science and International Security; abundant documentation on the subject of nuclear terrorism is available on the Nuclear Control Institute website: http://www.nci.org/nci-nt.htm.

6. The NPT, opened for signature on 1 July 1968, entered into force on 5 March 1970. *Cf.* Multilateral Treaties, United Nations, Vol. 729, No. 10485, or IAEA, INFCIRC/140.

7. NPT, Article VIII, § 3: "(…) At intervals of five years (…), a majority of the Parties to the Treaty may obtain, by submitting a proposal to this effect to the Depositary Governments, the convening of further conferences with the same objective of reviewing the operation of the Treaty." Following the 1995 NPT Review and Extension Conference, and in the context of Decision 1, strengthening the Treaty's review process, it was decided that prior to the Review Conference meeting, the Preparatory Committee should organise a session in each of the three preceding years; *Cf.* NPT/CONF.1995/DEC.1.

8. Following the 2000 Review Conference, there were 187 States Parties to the NPT. Today, three countries – India, Pakistan and Israel – are still not signatories. Cuba was admitted to the first session of the Preparatory Committee as an observer, and finally acceded to the NPT on 4 November 2002. Note that North Korea's withdrawal from the Treaty became effective on 11 April 2003.

9. Article X.2 of the NPT provides that: "Twenty-five years after the entry into force of the Treaty a conference shall be convened to decide whether the Treaty shall continue in force indefinitely, or shall be extended for an additional fixed period or periods. This decision shall be taken by a majority of the Parties to the Treaty."

10. *Cf.* NPT/CONF.1995/DEC.3. See also, ROCKWOOD (L.), "The Nuclear Non-Proliferation Treaty: A Permanent Commitment to Disarmament and Non-Proliferation", *Nuclear Law Bulletin*, No. 56, December 1995; LABBE (M.-H.) (dir.), Prolifération et non-prolifération nucléaire. Les enjeux de la conférence de 1995 sur l'extension du TNP, Paris, éditions Fondation pour les études de la défense, 1995, 336 p.

11. The term nuclear terrorism is used in the sense of the definitions given in Articles 1 and 2 of the Draft International Convention for the suppression of acts of nuclear terrorism, annexed to the report on the Sixth Session of the General Assembly of the United Nations: A/C.6/53/L.4. For the text of these articles, see *infra*, Part 2 of this study, Note 90.

12. Since the signature of the NPT, certain NNWSs have always considered the commitments undertaken by the NWSs by virtue of Article VI as the counterpart of their own undertakings not to attempt to acquire nuclear weapons.

However, the potential accession to nuclear weapons by small groups constitutes a new risk not dealt with by the Treaty which addresses proliferation at the State level only. Can the NPT be used effectively to prevent the acquisition of nuclear weapons not just by certain States but also by infra-national groups?

For their part, States, which are only just emerging from a "bloc mentality", must now face this new threat. Governments will therefore have to review their security arrangements so as to prevent nuclear weapons or materials falling into the hands of terrorists. But the adverse effect of such a repositioning is to destabilise international security, and more particularly the systems for controlling weapons and non-proliferation: whereas the existing legal structures are supposed to strengthen security worldwide by keeping nuclear materials and weapons out of harm's way, the paradox is that they risk being dangerously weakened by these numerous readjustments. As the cornerstone of this process, the Treaty on the Non-Proliferation of Nuclear Weapons would be the principal victim.

Indeed, discussions about the terrorist threat at the first session of the Preparatory Committee clearly revealed differing points of view among the States Parties, with the risk of the progress and credibility of the Treaty being compromised (Part One).

However, these differences also brought to light certain avenues to explore in the fight against nuclear terrorism, both within the NPT and outside its legal framework (Part Two).

I. Discussion of the terrorist threat at the first meeting of the Preparatory Committee

A. How the terrorist threat should be addressed at multilateral level: opposing views

The first session of the Preparatory Committee ended on 19 April 2002, in New York, with the adoption of procedural decisions[13] laying down the arrangements for organising the following two sessions and the next Review Conference.

1. The Preparatory Committee meeting

139 of the 187 States Parties took part in the session, as did representatives from specialised agencies and international organisations such as the Agency for the Prohibition of Nuclear Weapons in Latin America (OPANAL), the European Commission, the International Committee of the Red Cross, the League of Arab States, the Organization of African Unity, the Pacific Forum and the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization, not forgetting the International Atomic Energy Agency. 62 non-governmental organisations also sent observers.

Annexed to the report containing the procedural decisions is a factual summary by the Chairman[14] of the Preparatory Committee, Henrik Salander from Sweden, representing the group of

13. *Cf.* NPT/CONF.2005/PC.I/21: Report of the Preparatory Committee on its first session. Among the procedural decisions taken at this meeting of the Preparatory Committee, the dates of the next sessions were decided as follows: from 28 April to 9 May 2003, Geneva; and from 26 April to 7 May 2004, New York. Moreover, a provisional decision was taken to hold the Review Conference in New York from 2 to 27 May 2005. See also, DC/2826, UN Press Release, of 3 April 2002, and DC/2830, of 19 April 2002. Due to editing and publication deadlines, this analysis has not taken into account the results of the second session of the Prepatory Committee (28 April - 9 May).

Western countries. This short document, for which the Chairman assumed sole responsibility and which, consequently, was the subject of neither negotiations nor amendments, highlights the main topics addressed during the Committee's session. Most delegations agreed, however, that it presented a balanced picture of the various opinions expressed.[15]

2. *The context of the negotiations*

However, although giving every appearance of a diplomatic success, thanks to the skill of Chairman Salander, the commentators agree that the general atmosphere of the first session was characterised by "frustration",[16] "nostalgia and fear", influencing most delegations not to explore new avenues, but "to stick close to routines and rituals".[17]

Frustration, first of all, because the outcome of the first session seemed to dash the hopes born of the 2000 Review Conference. Whereas, on that occasion, the Parties had in the Final Document adopted a *thirteen-step* plan[18] for the practical and systematic implementation of Article VI,[19] five years later, the Western nuclear-weapon States showed a tendency to retract.[20] Thus, for example, the United States openly contested some of the steps, notably the one concerning the preparation of progress reports on the implementation of the disarmament commitments undertaken in pursuance of Article VI (step XII), the binding nature of which gave rise to serious arguments throughout the discussions in the Preparatory Committee. This aspect of the negotiations, widely discussed elsewhere, will not be addressed in the present study.[21]

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14. Chairman's Factual Summary, NPT/CONF.2005/PC.I/21, Annex II. This Summary was an innovation agreed at the 2000 Review Conference: *Cf.* NPT/CONF.2000/28 (Parts I and II), p. 20, item 7.

15. *Cf.* JOHNSON (R.), "Low Key NPT Meeting masks deep disagreements over Treaty implementation", April 19 2002, Non-Proliferation Treaty, The Acronym Institute, www.acronym.org.uk/npt/2002rej2.htm.

16. *Cf.* ROCHE (Sen. D.), "The NPT: Crisis and Challenge (Part I), Report and Assessment of the Nuclear Non-Proliferation Treaty Preparatory Committee Meeting", News Archives, The Global Security Institute. www.gsinstitute.org/archives/000095.shtml.

17. JOHNSON (R.), "The 2002 PrepCom: Papering over the Cracks?", NPT Report, Disarmament Diplomacy, No. 64, May – June 2002, The Acronym Institute, p. 1 et seq.: www.acronym.org.uk/dd/dd64/64npt.htm.

18. The 13 steps are as follows: i) Signature of the Comprehensive Nuclear-Test-Ban Treaty (CTBT); ii) a moratorium on tests; iii) negotiations on banning the production of fissile material; iv) establishing a subsidiary body of the Conference on Disarmament, to deal with nuclear disarmament; v) irreversibility of disarmament measures; vi) an unequivocal undertaking by the NWSs to eliminate totally their nuclear arsenals; vii) entry into force of the START Treaties; viii) implementation of the trilateral initiative (USA/Russian Federation/IAEA); ix) various steps leading to nuclear disarmament; x) banning of plutonium production; xi) general and complete disarmament; xii) regular reports on implementation of Article VI in the context of the NPT; xiii) development of verification capabilities.

19. NPT, Article VI: "Each of the Parties to the Treaty undertakes to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control."

20. *Cf.* KUCIA (C.), "PrepCom 2002: Avoiding More Missed Steps", BASIC Notes, March 7, 2002, British American Security Information Council, p. 2-4.

21. On this topic, see ROCHE, op. cit.; see also JOHNSON (R.), "Papering over the Cracks", op. cit.

There was also fear in the air: while some delegations welcomed the absence of conflict during the negotiations, "the corridor complaints and discussions told a different story, brimming with post-9/11 anger, unease and anxiety".[22] In fact, alongside the general and repeated condemnation of the World Trade Center attacks, there were also signs of deep concern because of the attitude of the current US Administration with regard to certain multilateral commitments and the implications of the new US Nuclear Posture Review (NPR).[23]

3. Factors of divergence

A few days previously, Mr. Jayantha Dhanapala, Under-Secretary-General of the United Nations for Disarmament Affairs, had opened the meeting by emphasising the urgent need for effective measures to eliminate the risk of weapons of mass destruction falling into the hands of terrorists, quoting the Secretary-General, Mr. Kofi Annan:

> "(…) We must now strengthen the global norm against the use or proliferation of weapons of mass destruction. This means, among other actions, redoubling the efforts to ensure universality, verification and full implementation of key treaties related to weapons of mass destruction…"[24]

However, the United States Delegation, led by Ambassador Norman Wulf, referring to a declaration by Ambassador Eric M. Javits and in accordance with the NPR, noted certain aspects of the consensual undertakings, in particular the thirteen-step plan, with which the United States was no longer in agreement. From now on, the United States "no longer supports some of the Article VI conclusions in the Final Document from the 2000 NPT Review Conference"[25], such as those concerning the 1972 Ballistic Missiles Treaty (ABM)[26] or the 1996 Comprehensive Nuclear-Test-Ban Treaty (CTBT).[27]

It should be remembered that while the NWSs consider the transfers to NNWSs of nuclear information, materials, and technology as their compensation for undertaking not to acquire nuclear

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22. *Cf.* JOHNSON, op. cit. This still applies. Thus, at the presentation of the report by the First Committee of the General Assembly of the United Nations (30/09-29/10/2002), Fiona Simpson notes that more than a year after the events of 11 September, terrorism was listed among the considerations of nearly all of the 91 declarations; *Cf.* SIMPSON (F.), "First Committee Report", Disarmament Diplomacy, Issue No. 68, December 02-January 03, The Acronym Institute.

23. US Nuclear Posture Review, 8 January 2002. Although this is a classified document, extracts are accessible on the following site: www.globalsecurity.org/wmd/library/policy/dod/npr.htm.

24. *Cf.* ROCHE, op. cit., p. 2.

25. Statement by Ambassador Eric M. Javits, Permanent Representative of the United States of America at the Disarmament Conference, Geneva, communicated to the NPT Preparatory Committee, Article VI, dated 11 April 2002.

26. This point was included at the request of certain NWSs, themselves: item 7: "The Conference agrees (…) The early entry into force and full implementation of START II and the conclusion of START III as soon as possible while preserving and strengthening the Treaty on the Limitation of the Anti-Ballistic Missile Systems as a cornerstone of strategic stability and as a basis for further reductions of strategic offensive weapons, in accordance with its provisions."

27. Item 1 of the thirteen-step plan: "The Conference agrees (…) the importance and urgency of signatures and ratifications, without delay and without conditions and in accordance with constitutional processes, to achieve the early entry into force of the Comprehensive Nuclear-Test-Ban Treaty."

weapons, the NNWSs, on the other hand, feel that the real benefit to them of this undertaking is the commitment by the nuclear powers, under Article VI, to work towards nuclear disarmament.

As a result, in retrospect, numerous NNWSs consider the attitude of certain nuclear powers, at best to be a delaying tactic to put off implementation of the plan and of Article VI, and at worst, a repudiation of the undertakings entered into in the 1995 and 2000 Final Documents. In any event, they fear a weakening of the effectiveness and credibility of the NPT,[28] and question the good faith of the NWSs as to their intention to pursue implementation of Article VI[29].

But in the end, the same concerns are at the origin of these diametrically opposed attitudes. Thus, two topics have been discussed on both sides in official declarations: terrorism, and the quest for a comprehensive application of the IAEA safeguards agreements. However, opinions differ as to the way in which these are linked to the NPT undertakings in respect of non-proliferation and disarmament.

On the one hand, emphasis is put on the need to keep nuclear weapons and materials out of reach of terrorists, while insisting on the need to apply the safeguards agreements in full, in the case for example of Iraq and North Korea.[30]

In contrast to this, other representatives,[31] while expressing their concerns about the increase in terrorism, insisted on the primordial role of the multilateral treaties and of disarmament in the fight against terrorism. They consider that the full application of the NPT and other relevant international legal instruments, including the commitments undertaken pursuant to Article VI, the Declaration of Principles and Objectives of the 1995 Review and Extension Conference[32] and the 2000 Final Document,[33] remain essential.

These divergent viewpoints reflect, each in its own way, the same desire to put an end to the risk of civil populations being taken hostage by means of nuclear blackmail, whether by a "Rogue State" or by a terrorist group.

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28. *Cf.* NPT/CONF.2005/PC.1/21, Annex II, Chairman's Factual Summary, §7: "The view was expressed that the Treaty should be taken in its larger context of coherent commitments and credible progress towards nuclear disarmament. Without the fulfilment of Article VI over time, the Treaty, in which non-proliferation and disarmament were mutually interdependent and reinforcing, would lose its true value."

29. This is combined with the undertaking by virtue of §4-c of the 1995 Declaration on the Principles and Objectives for Nuclear Non-Proliferation and Disarmament (NPT/CONF.1995/DEC.2): "(…) – the determined pursuit by the nuclear-weapon States of systematic and progressive efforts to reduce nuclear weapons globally, with the ultimate goal of eliminating those weapons (…)".

30. *Cf.* JOHNSON, (R.), Papering over the Cracks, op. cit., p. 6.

31. Foremost among whom, the New Agenda Coalition (NAC), represented by Egypt, the Non-Aligned Movement, represented by Indonesia, and the European Union, represented by Spain.

32. Declaration on the Principles and Objectives for Nuclear Non-Proliferation and Disarmament (NPT/CONF.1995/DEC.2): With a view to optimising implementation of the NPT, the principles and objectives adopted cover, respectively, the universality of the Treaty, non-proliferation and nuclear disarmament, nuclear-weapon-free zones, security assurances, safeguards and peaceful uses of nuclear energy: http://disarmament.un.org/wmd/npt/1995dec2.htm

33. *Cf.* JOHNSON, (R.), Papering over the Cracks, op. cit.

It is, however, reasonable to wonder if it is possible to reconcile such approaches. And there is always the possibility, lurking in the background, of a crisis at the Review Conference planned for 2005, which could, if not resolved, shake the whole non-proliferation regime to its foundations.

4. The Preparatory Committee – a forum for repeated confrontations

The problem facing the first session of the Preparatory Committee seems to echo the recent arguments in the United Nations Security Council concerning the return to Iraq of the inspectors of the new Disarmament Commission (UNMOVIC)[34] and of the IAEA action group – since renamed the Iraq Nuclear Verification Office, and the international crisis which followed.

Transferred to the Preparatory Committee, although these disagreements took place in a different context, they were basically identical in nature. In both cases, the unilateral approach is confronted with multilateral co-operation, and freedom of individual action contrasts with the legitimacy of collective measures.

The factual summary of Chairman Salander clearly underlines both the fundamental and general agreement of all delegations as to the importance of combating nuclear terrorism, and the disagreements as to the form such action should take and, consequently, the role of multilateral agreements in this field.

Thus, in paragraph 5 of the summary, he says: "It was *generally* felt that the terrorist attacks of 11 September 2001 had given an even greater sense of urgency to the common efforts of all States in the field of disarmament and non-proliferation. The view was held that further strengthening and reinforcing the non-proliferation regime was imperative to prevent the use of nuclear materials and technologies for criminal/terrorist purposes. The enhancement of the non-proliferation regimes covering all weapons of mass destruction, including efforts by the International Atomic Energy Agency, was considered to be the most important integral part of combating terrorism."[35]

However, divorce was pronounced when he continued, in paragraph 6: "There was emphasis on multilateralism as a core principle in the area of disarmament and non-proliferation with a view to maintaining and strengthening universal norms and enlarging their scope. Strong support was expressed for the enforcement of existing multilateral treaties. The need to seek treaties and other international agreements that meet today's threats to peace and stability was underlined."[36]

This remark, together with paragraph 7,[37] is a call of the clearest kind for a readjustment of the position of all the nuclear powers. Chairman Salander is here supporting the arguments put forward by Secretary-General Kofi Annan, when he invited States to "redouble efforts to ensure the universality, verification and full implementation of key treaties relating to weapons of mass destruction (…)".

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34. United Nations Monitoring, Verification and Inspection Commission (UNMOVIC), replacing UNSCOM, and constituted in the framework of Resolution 1284 (1999) of the Security Council, of 17 December 1999.

35. NPT/CONF.2005/PC.1/21, Annex II, Chairman's Factual Summary, paragraph 5, p. 12.

36. Ibid, paragraph 6, p. 12.

37. See *supra*, note 28.

B. Differences regarding how the NPT should address terrorism: a step backwards in the non-proliferation process?

Of the 66 declarations made during the general discussion, the most virulent was certainly that formulated by the representative of the New Agenda Coalition[38] (NAC), the Egyptian Ambassador Mahmoud Moubarak. Expressing his disappointment at the absence of any significant progress in implementing the thirteen steps, he drew attention to the behaviour of the nuclear powers in recent years.

1. Questions raised by the New Agenda Coalition

First of all, Ambassador Moubarak said that the NWSs had given no firm commitment in the process leading to the total elimination of nuclear weapons, noting on the contrary that "there are worrying signs of the development of new generations of nuclear weapons".[39]

After briefly emphasising the importance of establishing reports on the achievement of disarmament undertakings in pursuance of Article VI, he reaffirmed that "any presumption of the indefinite possession of nuclear weapons by the NWSs is incompatible with the integrity and sustainability of the nuclear non-proliferation regime and with the broader goal of the maintenance of international peace and security".[40]

He also expressed his deep concern about emerging approaches to the future role of nuclear weapons as a part of new security strategies[41], with a prospect of the possible development of new weapons, clearly referring to the Nuclear Posture Review.

Lastly, submitting to the Preparatory Committee a document entitled "The Way Ahead",[42] Ambassador Moubarak highlighted certain aspects of the thirteen-step plan (in paragraph 9) which the NAC States consider essential, namely:

- pursuance of the full and effective implementation of the substantial agreements reached at the 2000 Review Conference;
- the need for NWSs to give NNWSs negative and positive security assurances in the form of multilaterally negotiated legally binding instruments in accordance with the commitments undertaken in 1995;[43]
- the desire to see the nuclear powers increase transparency in the management of their nuclear weapons arsenals and their implementation of disarmament measures, suggesting

38. Also called the New Agenda Coalition. The NAC comprises the following States: Brazil, Egypt, Ireland, Mexico, New Zealand, South Africa and Sweden.

39. *Cf.* NPT/CONF.2005/PC.I/9, 5 April 2002, New Agenda Coalition paper submitted by Egypt on behalf of the New Agenda Countries.

40. Ibid., paragraph 5.

41. *Cf.* ROCHE, op. cit.

42. Original title: The Way Ahead; *Cf.* NPT/CONF.2005/PC.I/9.

43. *Cf.* NPT/CONF.1995/DEC.2, "Principles and Objectives (…)", paragraph 8; see also the Resolution of the Security Council 984 (1995), dated 11 April 1995; and *supra*, note 10.

further reductions as a result of unilateral initiatives, as well as the destruction, as opposed to the storage, of dismantled nuclear warheads in the context of strategic weapons reduction agreements. The Head of the Egyptian Delegation took this opportunity to point out the crucial importance of the principle of irreversibility as regards implementation of the commitments undertaken in the context of the NPT;

- the priority to be given to reducing non-strategic nuclear weapons. (The Coalition States intend, for a future agenda, to submit a draft Resolution to this end, to the General Assembly of the United Nations).[44]

Although most of these points apply to all the nuclear powers, in fact this principally brought current US policy into question, reflecting the hope that it would return to a greater commitment to the multilateral process. Those in favour of such a multilateral approach, echoing the conclusions of the report of the Policy Working Group on the United Nations and Terrorism,[45] argue that the fight against terrorism, and more especially nuclear terrorism, cannot succeed unless all States work closer together in a climate of enhanced international co-operation.

In response to these multiple objections and interrogations, the US delegation, through the repeated interventions of Ambassadors Wulf and Javits, defended its positions on two fronts. First, it explained its viewpoint concerning the measures taken by its government in compliance with Article VI, and more generally with the commitments accepted when signing the TNP. Secondly, it sought to justify the rethinking of US strategic vision in the face of new threats, a vision which the 11 September attacks had confirmed, if not changed.

2. Measures adopted pursuant to Article VI of the TNP

First of all, the United States Delegation wished to reassure the members of the Preparatory Committee, referring to an information document relating to Article VI.[46] Dealing first with the reduction in nuclear weapons agreed by Washington, the document then addressed the additional measures taken by way of a contribution to non-proliferation.

As part of the process of reducing its nuclear arsenal, following the end of the Cold War and since 1988, more than 13 000 weapons were dismantled. As a result, the target fixed by the START Treaty of 1991, i.e. fewer than 6 000 warheads deployed on each of the territories of the two Signatories, had been reached in December 2001.

Announcing the Strategic Offensive Weapons Reduction Treaty with the Russian Federation,[47] signed on 24 May 2002 shortly after the end of the first session of the Preparatory Committee, the information document, referring to President Bush's intention to reach agreement with his Russian counterpart to reduce, within a decade, the total of strategic nuclear warheads deployed to a level of between 1 700 and 2 200, confirmed this trend towards reduction.

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44. As can be seen from document A/57/425 of 25 September 2002, in fine.

45. *Cf.* Report of the Policy Working Group annexed to the joint United Nations General Assembly and Security Council document A/57/273-S/2002/875, in particular p. 3 of the Summary, Chapter IV, p. 10 et seq., as well as Recommendations 25 to 29.

46. Information Paper submitted by the United States, concerning Article VI of the NPT, 11 April 2002, of which a non-official version is available on www.basicint.org/nuclear/NPT/2002prepcom/C1-USA-ArtVI.htm.

47. SORT.

In response to the concerns expressed by the Coalition States, the United States representatives pointed out that over the past decade, non-strategic nuclear weapons had been reduced by 85%, that all such weapons destined for use by land and sea forces had been withdrawn and that stocks of gravity bombs[48] had been cut in half.

Concerning the additional measures, Ambassador Wulf mentioned the process of co-operation engaged with the Russian Federation and the States of the former Soviet Union with a view to guarding against the dangers related to weapons of mass destruction. Thanks to these programmes, which had been funded to the tune of USD 6.5 billion[49] since 1992,[50] Ukraine, Belarus and Kazakhstan had got rid of their nuclear warheads and also their strategic delivery systems, and the security and safety of nuclear weapons and materials had been enhanced.[51] He further stated that the United States was refraining from developing new weapons, and had not manufactured nuclear warheads for some ten years. Although it does not plan to ratify the Comprehensive Nuclear-Test-Ban Treaty, his country was nonetheless complying with the moratorium on experimental explosions.[52] It was, moreover, continuing to participate in the setting up of the International Monitoring System (IMS) provided for under the September 1996 Treaty.

The most welcome aspect of United States policy is no doubt the assistance programmes undertaken in co-operation with the former States of the Soviet Union. The international community is of course aware of the worrying state of the military and civil nuclear installations of the Russian Federation and the former Soviet Republics, as regards both security and safety. The nuclear materials they contain might well attract the attention of criminals, terrorists or dealers working for a State hoping to gain access to nuclear weapons.[53]

That is why the United States Government has proposed its assistance, notably in the fields of material protection, control and accounting (MPC&A).[54] The purpose of these programmes is to bring the sites for storing nuclear materials destined for weapons into line with acceptable security standards. With sites secured in this way, the materials held in them will be less likely to be the subject of unlawful trafficking and will therefore have less chance of ending up between the hands of terrorists or a State intent on pursuing a clandestine nuclear programme.

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48. Low nominal-power nuclear weapons (equal to or less than 300 kT), with reinforced casing and head. Designed to penetrate the earth and explode at the depth of underground bunkers, weapons of the B 61-B type seem in fact to be relatively ineffective.

49. *Cf.* ROCHE, op. cit., p. 4, § 4.1.

50. One billion USD will be allocated to this programme for the tax year 2003 (FY 03).

51. Since all the strategic weapons of Ukraine, Belarus and Kazakhstan were eliminated or returned to the territory of the Russian Federation, under the 1992 Lisbon Protocol.

52. *Cf.* ROCHE, op. cit., and Information Paper concerning Article VI.

53. On this aspect of the management problem, see in particular BUKHARIN (O.), BUNN (M.) and LUONGO (K., N.). Renewing the Partnership: Recommendations for Accelerated Action to Secure Nuclear Material in the Former Soviet Union (Washington, DC: Russian-American Nuclear Security Advisory Council, August 2000), available on: http://ksgnotes1.harvard.edu/BCSIA/Library.nsf/pubs/ransacreport.

54. Under the aegis of the Department of Energy, the MPC&A Programme (Material Protection, Control and Accounting) is administered by the National Nuclear Security Administration (NNSA) and is the responsibility of the Bureau of Non-Proliferation and National Security (NN-50). See MPC&A Program – Strategic Plan, July 2001, DoE/NNSA: www.nn.doe.gov/mpca/index.html.

Furthermore, the processing of such materials is dealt with in several bilateral Russian-American agreements,[55] aimed at putting an end to the production of military-quality plutonium or converting it into fuel for use in civil reactors. Highly enriched uranium is blended, making it unusable for proliferation purposes, although it could still be used for criminal purposes.

The conclusions of the information document, emphasising that "The facts set forth above demonstrate unequivocally that the United States is honouring its obligations under Article VI of the NPT",[56] only partly responded to the concerns of the Coalition States. Indeed, for a number of participants, the main obstacle to strengthening the NPT remained the United States' attitude at strategic level, and the repositioning contained in its Nuclear Posture Review. The rejection of the two "steps" relating to supporting the ABM Treaty and the Comprehensive Nuclear-Test-Ban Treaty,[57] was a perfect example of this.

3. Strategic changes to combat terrorism and new threats

The tone was set by the United States representative who, although confirming Washington's agreement in principle with the "conclusions" of the 2000 Review Conference, nevertheless insisted that "engaging in technical or legal interpretation of the *steps* individually or collectively would not, in our judgement, be a useful exercise." As to the question whether the priority, for a NWS, was to pursue the overall goals [of non-proliferation and disarmament] rather than implementing a one-off and particular measure, "For the United States, the answer is an emphatic *yes.*"[58]

This declaration, along with that relating to the ABM Treaty and the Nuclear-Test-Ban Treaty[59], is only the visible part of the wider repositioning contained in the Nuclear Posture Review[60] of January 2002. The comments by Ambassador Javits showed the thrust of the NPR, reaffirming the preponderance of nuclear weapons: "The new US approach will consist of nuclear and non-nuclear offensive systems, active and passive defences, and their revitalised defence infrastructure. These elements are interrelated, but have one thread in common – a reduced reliance on nuclear weapons."[61]

Increasing the deterrent effect could justify the threatened or actual use of such weapons systems against enemy targets of primary strategic importance (clandestine military-industrial facilities for the manufacture of weapons of mass destruction, underground command bunkers, etc.) or as a response to the unexpected discovery of manufacturing capacity in relation to nuclear, biological or chemical weapons. On the basis of the extracts of the NPR[62] and the discussions relating to the future role of such weapons, a number of delegations concluded that there was a risk that the US

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55. *Cf.*, *inter alia*, 1993 Agreement; 1997 US-Russian Plutonium Production Reactor Agreement; 2000 Russian Plutonium Management and Disposition Agreement.

56. Information Paper (…), in fine.

57. Points i) and vii) of the thirteen-step action plan.

58. *Cf.* ROCHE, op. cit., p. 5, paragraph 4.2.

59. *Cf.* supra, and Information Paper, op. cit., "(…) We continue to maintain a moratorium on nuclear testing. And last month, several senior Administration officials made clear that the US is committed to this moratorium. (…) The United States has no plan for a resumption of nuclear testing."

60. The NPR does not have the status of an official plan until adopted by a Presidential Decision Directive (PDD), and incorporated into the Strategic Integrated Operational Plan (SIOP).

61. *Cf.* ROCHE, op. cit., p. 5, paragraph 4.5.

62. *Cf.* NPR, p.9-13; See *supra*. note 23.

administration, in spite of the denials of its representatives, might ultimately abandon the negative security assurances.[63]

As for the other aspects of the New Nuclear Posture, and without going into detail,[64] an overview gives an understanding of the United States' conception of the fight against terrorism and makes it possible to predict the consequences for the NPT.

The NPR gives a role to conventional weapons in the new Triad (nuclear and non-nuclear offensive systems, active and passive defences, and a revitalised defence infrastructure). The result is indeed a reduced reliance on nuclear weapons. However, such weapons are no longer considered solely as a deterrent, in contradiction with the conclusions and operative provisions of the advisory opinion of the International Court of Justice of 8 July 1996.[65] The possible combination of conventional and nuclear offensive weapons necessarily involves the risk that a nuclear holocaust could be triggered more easily. Conventional weapons would imperceptibly give way to nuclear weapons in the context of a gradual escalation in military firepower used in a conflict.

In this context, the NNSA[66] has been asked to identify areas for more intense study on such weapons, including an assessment of the need to proceed with nuclear tests in order to develop such new-generation weapons[67]. Consequently, the prospects of seeing the Nuclear-Test-Ban Treaty ever entering into effect are becoming slimmer by the day.

Lastly, Iran, Iraq, Libya, Syria and North Korea – officially[68] non-nuclear-weapon States – have all been designated as potential targets for US nuclear weapons.[69] This being so, it is difficult to know what to think of the attempt by the United States to reassure the members of the Preparatory Committee as to its compliance with negative security assurances.

In fact, some explanations can be found in the January 2002 review itself. The paragraph designating these States reads: "All (these States) have longstanding hostility towards the United

63. *Cf.* S/RES/984 (1995), of 11 April 1995. Negative assurances consist of an undertaking by the NWSs not to use nuclear weapons against NNWSs, signatories of the NPT, except in the case of an attack made in collaboration with a nuclear State.

64. For a comprehensive review of the NPR of January 2002, see YOUNG (S.) and GRONLUND (L.), "A Review of the 2002 US Nuclear Posture Review", 14 May 2002, UCS Working Paper, Union of Concerned Scientists, www.uscusa.org/index.html, under the heading Global Security.

65. I.C.J., Advisory Opinion, 8 July 1996, on the licitness of the threat or use of nuclear weapons, annexed to General Assembly document A/51/218, of 19 July 1996.

66. National Nuclear Security Administration, Department of Energy.

67. NPR, p. 35.

68. While North Korea in theory remains a non-nuclear-weapon State within the meaning of the NPT, it is known to have very recently become a member of the group of de facto nuclear-weapon States, together with India and Pakistan. *Cf.* "Shock from North Korea – Nation admits to secret nuclear bomb project", International Herald Tribune, 18 October 2002, p. 1 and 5.

69. *Cf.* NPR, p. 16: "In setting requirements for nuclear strikes capabilities, distinctions can be made among the contingencies for which the United States must be prepared (…) categorised as immediate, potential or unexpected (…) North Korea, Iraq, Iran, Syria and Libya are among the countries that could be involved in immediate, potential, or unexpected contingencies."

States and its security partners; North Korea and Iraq in particular have been chronic military concerns. All sponsor or harbour terrorists, and all have active WMD and missile programmes."[70]

The standstill on the Nuclear-Test-Ban Treaty, the withdrawal from the ABM Treaty, the uncertain position as to negative security assurances, with the risk of the arms race starting up again which would mean the definitive failure of the non-proliferation process: these are manifestly not attributable to the 11 September attacks alone.

They are rather the delayed effects of the collapse of the Soviet Bloc, with the consequent emergence of threats "round every corner", and of the lessons learned from the 1991 Gulf War. On this occasion, States were obliged to adapt their capacity to respond to new strategic configurations. Trying essentially to deter all types of aggression, and first of all from Rogue States, they are adopting the offensive approach of broadening their range of weapons systems in order to ensure a flexible and planned response in external theatres of operation, the defensive counterpart being the quest to make their national territory safe even if this means developing an anti-missile defence system such as the planned National Missile Defence.[71]

Nonetheless, the events of 11 September no doubt acted as an accelerator and catalyst in many defence sectors, and the resulting effervescence is perceptible, not only in the Pentagon but also in the allies and partners of Washington. The consequences of the attacks are less visible in changes to military programme orientations than in their confirmation through the increase in the budgets allocated and the shortening of the timeframes for development and deployment[72]. The National Missile Defence is a good example of this. As the vulnerability of US territory was manifestly demonstrated, and in order to guarantee its safety in the future, the NMD option was strengthened. The political foundation is therefore sufficiently strong that its development may be considered to be inevitable. In part because of the terrorist threat, Western States with nuclear weapons seem less disposed than ever to reduce their arsenals. Although it may be argued that nuclear weapons are not at all suited to the fight against terrorism, since the small groups in question are composed of only a few handfuls of individuals who are difficult to locate, in reaction to the events of 2001, attention was focused on States considered to be "hostile" to the NPR. In this way, the Nuclear Posture Review is part of the US Government's response to the attacks of 11 September.

4. A step backward for the non-proliferation regime?

Following these developments, we are obliged to conclude that the discussions about the application of the non-proliferation regime are far from resulting in a fully satisfactory solution for the States Parties to the NPT as a whole.

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70. Ibid.

71. Although the NMD is a favourite topic for heated discussion in defence and weapons control circles, this anti-missile defence project is not the only one of its kind. Thus, Israel is developing the less ambitious, but similar Arrows programme. For its part, France seems to be thinking along the same lines, as suggested by the Senate report on the military programming Act for the period 2003-2008. As for the other nuclear powers, they have for the moment kept their options open, and their final decision will no doubt depend on the attitude of Washington.

72. In this respect, see the draft Law on the defence budget 2003-2008 (France) and the parliamentary reports devoted to it: for the draft Law, see the Web site of the Defence Ministry (www.defense.gouv.fr/actualités/dossier/d140); for the parliamentary reports, see the Web site of the National Assembly (www.assemblee-nat.fr/12/dossiers/programmation-militaire.asp).

As for solving the problem of nuclear disarmament, already a thorny issue before 11 September, this seems to have been postponed. The context of insecurity, together with an awareness of the new risks of nuclear terrorism, means that NWSs, and in particular the United States, are not in the mood to pursue this process, as is shown clearly by the basic orientation of the NPR.

That is why Under-Secretary-General Dhanapala declared in this respect: "[The NPR] flies in the face of the Nuclear Non-Proliferation Treaty undertakings. Under Article VI, one is expected to reduce nuclear weapons and ultimately eliminate them. So this is to me a very serious contradiction of [these undertakings], and will be a very major stumbling block as we begin the process of preparing for the 2005 NPT Review Conference…"[73]

When all is said and done, and as the US Senator Douglas Roche summarised in brilliant fashion: "The terrorist attacks of September 11, 2001 did bring more change than was realised at the time. The resulting 'war against terrorism' has catalysed military machinery everywhere. Political momentum is escalating preparation for, and involvement in, wars."

Just after 11 September, Secretary-General Kofi Annan said that we should "now strengthen the global norm against the use or proliferation of weapons of mass destruction"[74], and that this means "redoubling the efforts to ensure universality, verification and full implementation of key treaties related to weapons of mass destruction".[75] But in the case of the NPT, "it is not multiplication of effort we are witnessing, but subtraction.[76]

In spite of everything, the different viewpoints also made it possible to identify certain approaches which could be used to fight against nuclear terrorism, both within the NPT as well as outside its legal framework.

II. Evaluation of the terrorist threat and measures against nuclear terrorism recommended at the first meeting of the Preparatory Committee

A. Evaluation of the terrorist threat in the Preparatory Committee

Throughout the meeting of the Preparatory Committee, the importance of maintaining and strengthening the non-proliferation and nuclear disarmament regime was emphasised. Several of the delegations which took the floor at this first meeting made similar declarations of principle.

1. The importance of maintaining and strengthening the non-proliferation regime

The Delegation of the Russian Federation, although agreeing with the United States that terrorism and proliferation were serious risks, declared: "That is why enhancement of the regime of non-proliferation of nuclear and other weapons of mass destruction is the most important integral part

73. *Cf.* "US Plans Concern Top UN Official", UN Wire, March 13, 2002. See also BROMLEY (M.), "Is the United States Living Up to Its Disarmament Commitments?", BASIC Notes, April 2, 2002, BASIC, http://www.basicint.org/pubs/Notes/2002USCommittments.htm.

74. See supra, note 22.

75. Ibid.

76. *Cf.* ROCHE, op. cit., (Part IV), p. 9.

of combating terrorism."[77] Taking the Russian position further, the representative of the French Delegation, Ambassador Hubert de la Fortelle, emphasised the need to prevent weapons of mass destruction from falling into terrorist hands, but noted that "more international co-operation is imperative", and that "multilateral non-proliferation and disarmament regimes are indispensable", providing "confidence and predictability".[78] These statements show that the position of these two nuclear powers is very different from that of the United States. Russia and Japan went even further by stating that "new measures to counteract new challenges and threats should not compete with traditional disarmament and non-proliferation aspects of security",[79] but that on the contrary "these efforts are complementary (…). Maintaining and strengthening the NPT regime should be consistent with these global efforts [to combat terrorism]".[80]

This last remark clearly shows that the fight against nuclear terrorism and management of the nuclear non-proliferation and disarmament regime are not one and the same thing. In order to assess their shared characteristics, as well as their differences, it is now necessary to identify the nature of the threat. The first question in this respect concerns the usefulness of weapons of mass destruction to terrorist operations. To answer this objectively, we need to consider a series of parameters.

2. *Putting the terrorist risk into perspective*

First of all, the means of action of terrorists have evolved. A new generation of terrorists is emerging on the international stage, one which is better prepared and financed by powerful networks. Action on a grand scale is favoured, as shown by the 11 September attacks or the taking of hostages by the Chechen fundamentalists in the *Nord-Ost* theatre in Moscow in October 2002. This trend stems from their membership of ideologies based on political-religious convictions (Al Qaeda, Jamaah Islamiya or Aum Shinrikyo), without failing to mention right-wing extremists and apocalyptic sects).[81] The particular feature of Islamic fundamentalists, the group to which the authors of the 11 September attacks belong, lies notably in their concept of law.[82] We recall that, since the 1950s, the foundations and legitimacy of positive international law have constantly been called into question on the grounds that it imposes on all countries principles and customs most of which originate in Western culture. This theme is still a current one for these groups which contest the "secularity", the values, and more generally the legitimacy of the international law in force. It is therefore difficult to find a common ground for discussion.

It should also be remembered that terrorists choose whatever technology is best suited to exploit a given society's weak points. Modern societies, in which the urban lifestyle predominates, are particularly vulnerable to weapons capable of causing a large number of casualties at one time. Moreover, "as governments implement more sophisticated security measures against terrorist attacks,

77. *Cf.* JOHNSON (R.), "Papering over the Cracks", op. cit., p. 7.

78. Ibid., p. 8.

79. Russian Federation, Ibid., p. 7.

80. NPT/CONF.2005/PC.I/WP.7, 12 April 2002, Working Paper submitted by Japan.

81. *Cf.* BREMER-MAERLI (M.), "The threat of Nuclear Terrorism: Nuclear Weapons or Other Nuclear Explosives Devices", a paper delivered at the IAEA Symposium on International Safeguards: Verification and Nuclear Material Security, Vienna, Austria, 29 October-2 November 2001, IAEA, p. 3.

82. To avoid any unfortunate confusion, it is necessary to specify that the following remarks do not of course apply to all Muslims, but only to Islamic fanatics.

terrorists may find weapons of mass destruction appealing, as a way to overcome such counter measures."[83]

It has also often been said that "with the break-up of the Soviet Union, black markets may now offer unprecedented access to weapons, components and know-how."[84] These allegations are debatable, given the absence of tangible proof of the trafficking of nuclear materials in sufficient quantities and of sufficient quality to make a weapon.[85] Nevertheless, they combine with the tendency of small terrorist groups to take advantage of previous ideas and attempts. Succeeding in manufacturing a rudimentary weapon or, short of this, in stealing a significant volume of highly radioactive materials, represents a challenge in their eyes, given that no-one has succeeded in doing this before.[86]

Lastly, it should be said that technological progress and the publication of sensitive information in the public domain have facilitated the manufacture of weapons of mass destruction by ill-intentioned groups. And although manufacturing nuclear weapons still remains out of the reach of most candidates for proliferation, theft is a plausible hypothesis. But this would be to confuse the motivation of States and that of terrorists, who are not looking for prestige in acquiring a nuclear weapon and for whom deterrence has no meaning. The only thing that counts is the devastating effect of such weapons. Thus, a nuclear warhead has only a "symbolic" importance since it can be replaced with advantage by a conventional explosive device loaded with radioactive materials or waste, i.e. a radiological weapon.[87]

Using a nuclear or radiological weapon or a nuclear explosive device could force governments to take their perpetrators seriously in the knowledge that the trauma caused would be extreme. A recent study has shown that irrespective of the power of a nuclear explosion or the area contaminated by a radiological bomb, the psychological impact would affect a geographical area and attain a level far exceeding that of injury and death.[88] This study confirms that, faced with phenomena of such a scale, the public is even more terrified given that the impact is catastrophic and remains poorly understood. In short, the threat of nuclear terrorism can take three basic forms:

- the credible threat of the use of a stolen nuclear weapon;
- the theft of nuclear and/or radioactive materials, resulting in:
  - (a) the threat of one or more radiological weapons (radioactive materials), or
  - (b) the threat of a home-made nuclear explosive device (nuclear materials);

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83. BREMER-MAERLI (M.), op. cit., p. 4.

84. Ibid.

85. Of all the cases recorded, only a very few related to the trafficking of enriched uranium or plutonium 239, and even these concerned small quantities. Fraud, on the other hand, is very common in the illicit trafficking of radioactive materials.

86. For example, since the 1995 attack in the Tokyo underground involving Sarin gas (GB) by the Aum sect, there has been a constant increase in incidents involving chemical and biological weapons (*Cf.* BREMER-MAERLI, op. cit.).

87. Also called a "dirty bomb" on the other side of the Atlantic.

88. *Cf.* STERN (J.), The Ultimate Terrorist, Cambridge, 1999, Harvard University Press, quoted in BREMER-MAERLI, op. cit., p. 7.

- an attack on, or sabotage of, nuclear installations or transport operations involving nuclear or radioactive materials.[89]

Having regard to these various factors, the members of the Ad Hoc Committee of the General Assembly of the United Nations on Terrorism, responsible for preparing a draft international Convention to suppress acts of nuclear terrorism, provisionally decided to define nuclear terrorism in the terms set out in Article 2 of the Draft.[90]

4. The shortfalls of the non-proliferation regime faced with nuclear terrorism

The non-proliferation regime as a whole[91] can therefore only, as it stands, cover some of these risks, more specifically those relating to the illicit obtaining of a nuclear weapon, misappropriation of civil nuclear materials for military use, and transfers of technology and equipment relating thereto. But its relative effectiveness would be considerably enhanced if States reached an agreement on proceeding with certain processes which are currently blocked, such as the entry into force of the Comprehensive Nuclear-Test-Ban Treaty, or the completion of a treaty on the prohibition of manufacturing fissile materials for military use (FMCT). It is, obviously, more difficult to steal materials which, because they are no longer being manufactured, are becoming increasingly rare and should in time disappear.

Similarly, the introduction of new nuclear-weapon-free zones (NWFZ), essentially in the Middle East, together with a system of effective controls, would help to pacify regions which, all too often, have been breeding-grounds for terrorism because of the living conditions and the political, social and religious climate which prevail there. But for the moment, this is unlikely to happen since in

89. *Cf.* SCHNEIDER (M.), "The threat of Nuclear Terrorism: from analysis to precautionary measures", contribution to Democracies Faced with Mass Terrorism Meeting, Paris, Assemblée Nationale, 10 December 2001, WISE (World Information Service on Energy), p. 2.

90. Draft Convention prepared by the Ad Hoc Committee of the General Assembly of the United Nations on terrorism, and annexed to the report of the sixth session of the General Assembly: A/C.6/53/L.4. Article 2 provides: "1. Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally: (a) Possesses radioactive material or makes or possesses a device: (i) With the intent to cause death or serious bodily injury; or (ii) With the intent to cause substantial damage to property or the environment; (b) Uses in any way radioactive material or a device, or uses or damages a nuclear facility in a manner which releases or risks the release of radioactive material: (i) With the intent to cause death or serious bodily injury; or (ii) With the intent to cause substantial damage to property or the environment; or (iii) With the intent to compel a natural or legal person, an international organization or a State to do or refrain from doing an act. 2. Any person also commits an offence if that person: (a) Threatens, under circumstances which indicate the credibility of the threat, to commit an offence as set forth in subparagraph 1 (b) of the present article; or (b) Demands unlawfully and intentionally radioactive material, a device or a nuclear facility by threat, under circumstances which indicate the credibility of the threat, or by use of force. 3. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1 of the present article. 4. Any person also commits an offence if that person: (a) Participates as an accomplice in an offence as set forth in paragraph 1, 2 or 3 of the present article; or (b) Organises or direct others to commit an offence as set forth in paragraph 1, 2 or 3 of the present article; or (c) In any way contributes to the commission of one or more offences as set forth in paragraph 1, 2 or 3 of the present article by a group of persons acting with a common purpose; such contribution shall be intentional and either be made with the aim of furthering the general criminal activity or purpose of the group or be made in the knowledge of the intention of the group to commit the offence or offences concerned."

91. i.e. essentially, in addition to the NPT, the IAEA safeguards, nuclear-weapon-free zones and the export control mechanism implemented by the Zangger Committee and the Nuclear Suppliers Group (NSG).

denuclearised zones to which treaties currently apply,[92] it has invariably been the case that a peaceful climate is a necessary precondition for concluding and effectively applying an agreement introducing such a legal structure, and not the reverse.

Taking this approach further, strict and internationally verifiable universal nuclear disarmament, accompanied by the destruction, as opposed to the storage, of all military-quality fissile materials would make it virtually impossible for there ever to be any blackmail and/or terrorist operation based on the use of nuclear weapons or highly-enriched materials.

This being so, the positions defended by most of the States represented on the Preparatory Committee are understandable. However, this implies taking two factors into account at all times:

- "[Weapons] that have been invented cannot be disinvented." This frequently used expression implies that the destruction of procedures, devices and systems of nuclear weapons and materials is only a stopgap measure as long as sensitive information which could be used to recreate them remains available.

- Fissile materials for military use only represent a fraction of nuclear or radioactive materials in general. Even without them, primary supply sources remain, such as civil nuclear installations and radioactive material transport operations. Subject to lower-level security, these are easier to access, and more vulnerable to theft and sabotage. As for unlawful trafficking, nearly 600 incidents have been recorded since 1993, of which some 400 were notified by the authorities of States who made arrests on their territory. 75% of cases were of a criminal nature.[93] Regarding the sabotage of nuclear installations, the United States Nuclear Regulatory Commission (US NRC) has funded a study on the risks of sabotage run by nuclear power plants[94] and similar research is being carried out in other nuclear countries.

In short, irrespective of the type and number of measures taken in this respect, the non-proliferation and nuclear disarmament regime cannot, on its own, guarantee that there will never be any terrorist action based on blackmail or the threat or use of nuclear or radioactive devices. That is why, alongside the declarations of principle made in the Preparatory Committee, some delegations, anxious to cover the whole range of possible terrorist threats, considered it necessary to propose plans of action going beyond the strict confines of the NPT.

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92. Treaty of Tlatelolco, opened for signature on 14 February 1967; Treaty of Rarotonga, entered into force on 11 December 1986; Treaty of Bangkok, entered into force on 27 March 1997; Treaty of Pelindaba, opened for signature on 11 April 1986. An Agreement was concluded on 30 September 2002; establishing a nuclear-weapon-free zone in Central Asia.

93. *Cf.* NILSSON (A.)., "The Threat of Nuclear Terrorism: Assessment and Preventive Action", Symposium on Terrorism and Disarmament, 25 October 2001, New York, Department of Disarmament Affairs, United Nations, p. 3.

94. *Cf.* Supplement to Draft Environmental Statement Related to the Operation of San Onofre Nuclear Generating Station, Units 2 & 3, NUREG-0490, January 1981, NRC, and in particular figure 7.1.4-4, "Probability Distribution of Acute Fatalities", which estimates the number of deaths at 130 000; referred to in BUNN (M.), BUNN (G.), "Reducing the Threat of Nuclear Theft and Sabotage", IAEA-SM-367/4/08, October 30, 2001, IAEA 29 October – 2 November 2001 Symposium on International Safeguards: Verification and Nuclear Material Security, p. 4.

4. Delegations' proposals: a call for multilateralism in combating terrorism

Proposed by the representatives of Japan[95] and Germany,[96] and by the Spanish Delegation in the name of the European Union,[97] these plans, in spite of their differences in approach, are all based on the same fundamental concepts, including the need for States to co-operate at all levels. Thus, the Head of the Spanish Delegation stated that: "The attacks of 11 September 2001 have proved to the world, if need be, that international security is indivisible. No State on its own can keep its territory or people safe from the scourge of terrorists, terrorist groups or the menace of their access to weapons of mass destruction."[98]

As noted by Matthew Bunn:[99] "If the United States is not prepared to re-engage on multilateral arms control, including measures that impose some constraints and inconveniences on its own forces and facilities, it is unlikely to be possible to build the needed support for an effective international regime to protect nuclear material and facilities from terrorists. In short, if we are to achieve the security we need, September 11 must bring an end to the period of US unilateralism."[100] As George Bush Sr. remarked on 13 September, the terrorist attacks should "erase the concept that America can somehow go it alone in the fight against terrorism, or in anything else for that matter".

This call for enhanced co-operation was echoed in paragraph 22 of the working document submitted by Japan,[101] and in the reference it makes to Resolution 56/24 T of the General Assembly,[102] entitled "Multilateral Co-operation in the Area of Disarmament and Non-Proliferation and Global Efforts against Terrorism".

B. The plans of action to combat terrorism proposed at the 2002 session of the Preparatory Committee

Built on the cornerstone of international co-operation, the plans proposed by Japan, Germany and the European Union propose the adoption of a series of concrete, essentially similar measures, all three covering all the aspects of the fight against nuclear terrorism within the regime of non-

95. NPT/CONF.2005/PC.I/WP.7., Working paper submitted by Japan.

96. NPT/CONF.2005/PC.I/WP.12., Protection against nuclear terrorism and security of nuclear materials and nuclear installations.

97. NPT/CONF.2005/PC.I/17, Statement made by Spain on 15 April 2002 on behalf of the European Union.

98. Ibid., paragraph 2.

99. Mr. Bunn, currently Deputy Director for Programme at the Belfer Center for Science and International Affairs of the University of Harvard, held the post of Adviser to the White House Office of Science and Technology Policy under the Clinton Presidency, in particular for questions in relation to nuclear security and management of nuclear materials of military standards.

100. BUNN (M.), BUNN (G.), op. cit., p. 2.

101. NPT/CONF.2005/PC.I/WP.7: "(…) In order to anticipate and prevent nuclear terrorism, national, regional and international co-operation must be strengthened"; to be compared in particular with A/RES/57/83, 9 January 2003, Measures to prevent terrorists from acquiring weapons of mass destruction, § 3.

102. A/RES/56/24 – T. 29 November 2001: "1. Reaffirms multilateralism as a core principle in negotiations in the area of disarmament and non-proliferation with a view to maintaining and strengthening universal norms and enlarging their scope, (…) 3. Calls upon all Member States to renew and fulfil their individual and collective commitments to multilateral co-operation as an important mean of pursuing and achieving their common objectives in the area of disarmament and non-proliferation".

proliferation and nuclear disarmament as well as outside its scope of application, with a view to integration.

1. Plans of action: general points and similarities

The European Union annexed to its declaration a list of concrete measures contained in the conclusions of the Council and adopted as part of its non-proliferation, disarmament and arms control policy. Without going into the detail of this policy adopted at regional level, it should be emphasised that it concerns the fight against terrorism as a whole, not just the nuclear variety. Thus, the conclusions of the Extraordinary European Council meeting in Brussels on 21 September 2001 deal essentially with police and judicial co-operation, combating the funding of terrorism, and co-ordinating the European Union's global action, while reasserting its policy of co-operation and multilateral negotiation "with a view to building (…) a world of peace, the rule of law and tolerance".[103]

However, in a Council Common Position on combating terrorism, adopted on 27 December 2001,[104] the following issues are addressed: border controls (Article 10), "the exchange of operational information, especially regarding (…) traffic in (…) sensitive materials, (…) and the threat posed by the possession of weapons of mass destruction by terrorist groups" (Article 11), enhanced co-operation, including with third States (Article 13), and accession to and full implementation of "international conventions and protocols relating to terrorism and United Nations Security Council Resolutions 1269 (1999)[105] and 1368 (2001)"[106] (Articles 14 and 15). The 1980 Convention on the Physical Protection of Nuclear Materials (which is currently being revised; see *infra*) is one of these texts. This Common Position broadly reflects the spirit and the proposals contained in the documents submitted to the Preparatory Committee by the Japanese, German and Spanish Delegations, which also refer to the exchange of information and enhancement of the regime to control exports as an extension of the fundamental principle of co-operation.

Thus, the paper submitted by the Head of the Japanese Delegation states: "Needless to say, the international exchange of information and surveillance is important", specifying: "But it is also essential to establish strict border control systems to prevent the illegal trafficking of nuclear materials and impose accurate register controls."[107] In other words, the international exchange of information cannot be fully effective without appropriate means to collect the information, and in particular, updated control registers made credible by the strengthening of border controls so as to ensure a more realistic evaluation of the flows of products and materials at State level.

However, the documents of the three delegations recommend two series of recurring measures: the implementation and strengthening of the IAEA safeguards system[108], and an appeal for universal

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103. Conclusions and Plan of Action of the Extraordinary European Council Meeting on 21 September 2001, Brussels. EU, Council, No. 140/01.

104. 2001/930/PESC, dated 28 December 2001, reproduced in the Official Journal of the European Communities (OJEC), L. 344/90.

105. S/RES/1269 (1999), of 19 October 1999, International terrorism.

106. S/RES/1368 (2001), of 12 September 2001, Terrorist attacks of 11 September 2001.

107. NPT/CONF.2005/PC.I/WP.7, p. 5.

108. *Cf.* Germany: NPT/CONF.2005/PC.I/WP.12, § 9; Japan: NPT/CONF.2005/PC.1/WP.7, §§ 17 to 21, 23, European Union: NPT/CONF.2005/PC.I/17, § 5.

accession to the Convention for the Physical Protection of Nuclear Material and for the strengthening of its regime.[109]

2. *Plans of action: the strengthening of the IAEA safeguards regime*

From the entry into force of the NPT on 5 March 1970, NNWSs undertook to submit their nuclear materials to IAEA control by virtue of safeguards agreements based on the model INFCIRC/153(Corr.). But in the early 1990s, the IAEA was severely criticised for not having been able to detect Iraq's clandestine programme for manufacturing weapons of mass destruction, which was discovered only after the Gulf War. This failure led the Agency to strengthen its safeguards system by means of the "93+2 Programme", the second part of which, approved in 1997, introduced a Model Protocol additional[110] to the safeguards agreements entered into by virtue of the NPT.[111]

To its credit, the Additional Protocol gives the IAEA important new capabilities, including improved access to information relating to the activities of States in the field of nuclear materials and greater access to nuclear sites for inspectors, with shorter time periods between notification of the inspection and the inspection procedure itself. It also makes it possible to use more sophisticated surveillance techniques and to take samples at and around sites.

The negative side relates to the slow rate at which States are ratifying and acceding to the Additional Protocol. This is usually attributed to inertia, to hesitations linked to the possible challenge to national sovereignty, and to the intrusive nature of the procedures laid down in the Protocol, with the result that at 24 April 2003, 32 States out of the 72 Signatories had ratified it.[112] "Only two[113] of these are States with significant nuclear activity."[114]

The hopes expressed by the representatives of Japan, Germany and the European Union are legitimate, in encouraging all the States Parties to the NPT to ratify or accede to the Additional Protocol as soon as possible with the idea that setting up integrated safeguards worldwide will make it easier to keep track of nuclear activities and prevent materials being diverted for proliferation or terrorist purposes.

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109. *Cf.* Germany: NPT/CONF.2005/PC.I/WP.12, § 8; Japan: NPT/CONF.2005/PC.1/WP.7, § 22,.European Union: NPT/CONF.2005/PC.I/17, § 5.

110. INFCIRC/540 (Corr.).

111. For detailed studies, see the IAEA Internet site: www.iaea.org/worldatom/Programmes/Safeguards/; for a short summary of the Additional Protocol, see WAGNER, (A.), "The IAEA 1997 Additional Safeguards Protocol", September 1999, ACA Fact Sheets, Arms Control Association, available on their site: www.armscontrol.org/factsheets/93 2fact.asp.

112. Source, IAEA Internet site. www.iaea.org/worldatom/Programmes/Safeguards/sg_protocol.shtml.

113. The People's Republic of China and Japan. The 15 Members of the European Union have signed one of the three Additional Protocols with Euratom and the IAEA: one for the United Kingdom, one for France, and one for the NNWSs Members of the Union. These protocols will enter into force as soon as the Vienna Agency has received the written notification of the Member States and of Euratom, stipulating that the necessary procedures have been accomplished. In France, the Bill authorising ratification of the Additional Safeguards Protocol has been under discussion since September 2002. *Cf.* Senate Report No. 398: www.senat.fr/dossierleg/pi101-199.html; adopted by the Senate, it was registered with the National Assembly President's Office on 10 October 2002 (Bill adopted by the Senate, No. 272).

114. SCHEINMANN (L.), "Transcending Sovereignty in the Management and Control of Nuclear Material", Address to the International Symposium on Safeguards: Verification and Nuclear Material Security, 29 October-2 November 2001, IAEA, p. 2.

To this end, exports of nuclear materials and equipment must also be made secure. The Zangger Committee and the Nuclear Suppliers Group (NSG) have adopted measures to accomplish this. Whatever the differences between the two bodies,[115] measures were taken[116] during the 1990s to make the export of equipment and materials conditional upon the prior conclusion of safeguards agreements (general in the case of the NSG) by the would-be importer with the Vienna Agency. For the moment, there are particularities within each of the two institutions, and their approaches still have to be harmonised. Nevertheless, at its annual meeting, held in Prague on 16 and 17 May 2002, the NSG, in plenary session, recognised the challenge posed by nuclear terrorism and called for firm support for anti-terrorist measures, inviting all States "to conclude comprehensive safeguards agreements and Additional Protocols with the IAEA" and stressed the "need to follow the NSG Guidelines".[117] However, although achieving worldwide cover of nuclear activities through the widespread implementation of comprehensive safeguards agreements is a necessary condition, it is not sufficient.

First of all, account must be taken of the continuing refusal of India, Israel and Pakistan, all three *de facto* nuclear States, to sign the Non-Proliferation Treaty, and thus to submit all of their nuclear activities to the Vienna Agency. The nature of their activities, the quantities of materials concerned and the safety and security of installations can only be guessed at. In other words, the NPT remains dependent on the accession of these three countries: the fact that the Treaty is only quasi-universal, instead of genuinely and absolutely universal, deprives it of its full effect. It should also be remembered that even if universality is achieved, assiduous efforts must be made to keep it so. The attitude adopted by North Korea[118] since the autumn of 2002 shows clearly the structural fragility of the agreements to control weapons and non-proliferation due to the existence of treaty withdrawal clauses.[119]

Another outstanding question relates to the financing of the activities undertaken in the context of safeguard agreements. "Since the mid-1980s, the IAEA regular budget, which is the primary source of safeguards financing, has operated on the basis of zero-real-growth. (…)At the same time the number of States under safeguards has more than doubled, (…) the amount of nuclear material to be safeguarded has been increased (…) The fall in resources available under the regular budget has largely been compensated for by voluntary contributions…".[120] But financial support based on continuous voluntary contributions has three major drawbacks: first, and as its name implies, these are only *voluntary* contributions, not binding in any way. The lack of any commitment for the future leads to uncertainty which makes it difficult to establish a budgetary strategy; then, the fact that the Agency is dependent on a limited number of sponsors raises the question of the independence needed to carry out its mission in terms of the objectivity of its judgement and action; lastly, by preventing misappropriation, safeguards are in the common interest of all States, whether they have nuclear

115. The main differences between the two bodies are as follows: unlike the NSG, all the members of the Zangger Committee are Parties to the NPT; the Committee's memoranda only apply to transfers to NNWS non-Parties to the NPT, whereas the NSG guidelines apply to all NNWSs; they both have trigger lists (basic lists), those of the Committee only concerning items falling under Article III.2 of the NPT; unlike the Committee, the NSG requires the importer to subscribe to a comprehensive safeguards agreement as a precondition to exportation; lastly, the fundamental special characteristic of the NSG is that it also deals with the export of dual-purpose equipment and technology.

116. INFCIRC/209/Rev.2, 9 March 2000 (Zangger Committee), and INFCIRC/405, May 1992 (NSG).

117. Statement by the Czech Republic, Nuclear Suppliers Group Plenary Meeting, 17 May 2002.

118. "North Korea announces withdrawal from NPT, January 10: Statement and Reaction", Disarmament Documentation, The Acronym Institute: www.acronym.org.uk/docs/0301/doc02.htm.

119. In the case of the NPT, the withdrawal clause is contained in Article X.1.

120. SCHEINMANN (L.), op. cit., p. 5.

weapons or not. Logically, therefore, all countries should share equitably the financial burden of carrying out this mission properly.[121] However, the budget issue is in the course of being settled in the preparatory bodies of the Board of Governors. The draft budget for 2004-2006 contains proposals for the Director-General, Mr. Mohamed El Baradei, to increase significantly the resources made available for the implementation of safeguard agreements.

3. Plans of action: the strengthening of the physical protection regime governing nuclear materials

Furthermore, the IAEA safeguards system does not deal with the physical protection of nuclear or other radioactive materials, which are also coveted by terrorists. That is why, in parallel with the safeguards system and outside the scope of the Non-Proliferation Treaty, the Japanese, German and Spanish Delegations called for a strengthening of the Convention on the Physical Protection of Nuclear Material[122] (CPPNM) and for all States to adhere to it,[123] bearing in mind that it only covers international movement of nuclear materials. So far, this legal instrument says nothing about the transport, storage or use of such material within national borders, leaving it to the State concerned to determine the level of security required.[124]

So as to guarantee a minimum level of security within countries, the representative of Japan said that physical protection at national level should be taken into account as soon as possible.[125]

Should the CPPNM contain certain minimum standards for protecting nuclear installations and materials, in the knowledge that this is outside the scope of application of safeguards agreements concluded under the NPT? It should not be forgotten that the NPT does not deal at all with physical protection or, therefore, the threat of theft or sabotage. IAEA safeguards only address the risk of fissile materials being misappropriated for non-peaceful purposes. They are designed to detect thefts. "But a danger of detection is not likely to deter outside criminals or terrorists, who expect to be detected and to escape capture if they are stealing material or to die in the explosion if they are truck bombers."[126]

Nevertheless, the shortcomings in the physical protection regime could be rectified shortly. In May 2001, the Final Report of the Expert Meeting on the revision of the Convention concluded that there is "a clear need to strengthen the international physical protection regime", and that a spectrum of measures should be employed.[127] The report specifies the topics which should be included in the revised version of the Convention, provides for the addition of definitions, and emphasises the importance of national responsibility in this sphere, while at the same time confirming the need to protect confidential information.

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121. For a more detailed discussion of this problem, see SCHEINMANN (L.), op. cit.

122. INFCIRC/274/Rev.1, open for signature on 3 March 1980.

123. In particular, see NPT/CONF.2005/PC.I/WP.12, (Germany), paragraph 8.

124. *Cf.* CURTIS (C., B.), "Reducing the Nuclear Threat in the 21st Century", op. cit. (*supra*, note 4), p. 5.

125. NPT.CONF.2005/PC.I/WP.7, (Japan), paragraph 22.

126. BUNN (G.), ZAITSEVA (L.), "Guarding Nuclear Reactors from Terrorists and Thieves", November 2, 2001, IAEA 29 October – 2 November 2001 Symposium on International Safeguards: Verification and Nuclear Material Security, p. 8 et seq.

127. IAEA, GOV/2001/41, 15 August 2001, "Nuclear verification and security of material – Physical protection objectives and fundamental principles", paragraph 4 et seq.

The principal change is to extend the Convention's scope of application to cover not only the international transport of nuclear materials but also materials which are being used, stored or transported at national level. This widening of the scope should also include the protection of nuclear materials and installations against sabotage. The report, however, contains no guidelines as to what standards should be used as a basis for an amendment providing for such an extension.[128] Any direct reference to the recommendations set out in the numerous revisions of circular INFCIR/225[129] was excluded. Whatever the positions of the experts before 11 September, the feeling since is that the amended Physical Protection Convention must absolutely include an obligation to ensure high levels of security, such as those which are the subject of IAEA recommendations,[130] with States being obliged to provide regular reports on the procedures, legislation and standards adopted in order to account for their nuclear materials and make them secure.[131]

The conclusions of the Final Report are opposed to any international supervision of physical protection at national level, reject the idea of adding a peer review mechanism, and reaffirm that nuclear materials and installations for military use should remain outside the scope of the Convention.

However, the document defines some twelve "Objectives and Fundamental Principles",[132] which the IAEA General Conference adopted unanimously following the attacks of 11 September,[133] and which will serve as a reference for future steps to strengthen the physical protection regime.

Finally, the work on the revision of the Convention, which has been somewhat delayed, could in fact shortly lead to the adoption of a draft for submission to a Convention Review Conference. Although less than perfect, and apart from the problems relating to ratification, the revised version of the Convention on the Physical Protection of Nuclear Material would have the advantage of bringing legal solutions to the gaps in this instrument. Extending its application to the national level, together with the diligent application of its provisions by States, will help prevent terrorists or criminals from acquiring materials or sabotaging nuclear installations thus protected.

Complementing each other, the reinforced regimes of non-proliferation and of physical protection, given practical application by the increased use of the safeguards agreements system and by the extension of the operational scope of the CPPNM, are, as pointed out by the three delegations, essential weapons against the threat of nuclear terrorism.

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128. BUNN (G.), ZAITSEVA (L.), op. cit., p. 1.

129. INFCIRC/225/Rev. 3 and 4 (Corr.): "The Physical Protection of Nuclear Material and Nuclear Facilities."

130. See INFCIRC/225/Rev.4.

131. CURTIS (C., B.), op. cit., p. 6 ; for a more detailed discussion, *Cf.* in particular BUNN (G.), ZAITSEVA (L.), op. cit.; BUNN (M.), BUNN (G.), op. cit., as well as the very detailed documentation page of the Nuclear Control Institute: www.nci.org/nci-nt.htm.

132. These fundamental principles include: on-site inspections by an independent regulatory body; the assumption of responsibility for physical protection by licence holders; licence holders, in collaboration with the regulatory body, should develop a "security culture" to ensure the continued implementation of security obligations; protection should be based on a realistic and up-to-date evaluation of the threat; security requirements should be defined in relation to the potential threat, the relative attractiveness of the materials or installations for potential attackers, the nature of the materials in question and the potential consequences in the event of theft or sabotage; the obligations of a State should reflect several layers and methods of protection, and the administration should establish a quality assurance programme as regards physical protection, verified as required by the national inspectors of the regulatory body.

133. BUNN (M.), BUNN (G.), op. cit., p. 6.

4. The IAEA Action Plan and additional measures

Alongside the plans mentioned above, the Vienna Agency also said, in a statement to the Preparatory Committee, that an Action Plan [134] had been adopted to combat nuclear terrorism.

Chairman Salander said in this respect in his factual summary, that: "Many States Parties noted both the importance of combating nuclear terrorism and the many instruments available for doing this, including the physical protection of nuclear material and export controls. The IAEA Action Plan on the prevention of nuclear terrorism was widely noted and supported. The Agency's work in support of States' efforts to prevent the illicit trafficking of nuclear and other radioactive material was also commended."[135]

The IAEA gave an eight-point description of its Action Plan to improve protection against terrorist acts involving nuclear materials or other radioactive materials. These eight points are as follows:

> 1) Physical protection of nuclear material and nuclear facilities; 2) detection of malicious activities (such as illicit trafficking) involving nuclear and other radioactive materials; 3) strengthening of State systems for nuclear material accountancy and control (SSAC); 4) security of radioactive sources; 5) assessment of safety and security related vulnerabilities at nuclear facilities; 6) response to malicious acts or threats thereof; 7) adherence to international agreements and guidelines; and 8) enhancement of programme co-ordination and information management for nuclear security related matters.[136]

The various elements contained in the Agency's Action Plan seem to show wide support for the measures proposed by Japan, Germany and the European Union. For its part, the IAEA is now working on implementing this plan and on arrangements to back it up and extend it. Thus, in January 2002, its Director-General set up the Advisory Group on Nuclear Security,[137] to advise him "on the Agency's activities related to preventing, detecting and responding to terrorist or other malicious acts involving nuclear and other radioactive materials and nuclear facilities".[138] From the budget standpoint, a Nuclear Security Fund (NSF) was set up to receive contributions to finance the measures provided for in the action plan, and more generally, as its name implies, activities relating to nuclear security.[139]

Prospective work already involves the possible prolongation of the action of the Agency. The strengthening of its programmes to combat terrorism should be based on the following elements: "review all programmes thoroughly with a view to strengthening the activities to prevent nuclear terrorism; review the implications of the enhanced threat; promote a comprehensive approach to

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134. IAEA action plan against nuclear terrorism, adopted at the meeting of the Board of Governors, 18-22 March 2002.

135. NPT/CONF.2005/PC.I/21, Annex II, Chairman's Factual Summary, paragraph 32.

136. *Cf.* IAEA, GOV/INF/2002/11-GC(46)/14, 12 August 2002, Attachment 1, "Progress on Agency Measures to Protect against Nuclear Terrorism"; see Combating Nuclear Terrorism, IAEA website; see also Nuclear terrorism action plan enters implementation phase, American Nuclear Society/Nuclear News, May 2002, available on the IAEA Internet site: www.iaea.org/worldatom/Press/Focus/RadSources/Nuclear_TerActPlan.html.

137. AdSec.

138. *Cf.* in particular, IAEA, GOV/INF/2002/11-GC(46)/14, of 12 August 2002, "Nuclear Security – Progress on Measures to Protect against Nuclear Terrorism", paragraph 4.

139. Ibid, paragraph 6, et seq.

security; strengthen the legal instruments for physical protection and extend the scope of States' undertakings; promote high security culture in States; promote security in all nuclear applications; enhance direct assistance to States for improved security".[140]

Conclusion

It is still too soon to evaluate the impact of the declarations by the three delegations on the process of reviewing the Non-Proliferation Treaty at the Conference planned for 2005. Will there be a follow-up or will these documents remain a dead letter along with the measures they propose?

It is likely that this will depend essentially on two things. First, developments in Western, European and US policy on defence and security. Whether the US administration maintains its current policies or, on the contrary, re-engages in multilateral negotiations, the outcome will be extremely important not only for the follow-up given to these proposed measures, but also for the entire non-proliferation regime. Indeed, the international community is fully aware of the risks engendered by the Iraqi crisis for the whole UN structure.

The other aspect to be taken into consideration is how terrorism evolves. Depending on the frequency of acts of "super-terrorism" in coming years, and on their degree of violence and the resulting pressure from public opinion, governments may well be obliged to co-operate at an unprecedented level, and to put all their efforts into combating this scourge.

Future developments with regard to these two aspects will be discussed at forthcoming meetings of the Preparatory Committee, and will no doubt lead to further fluctuations in the positions taken by delegations until the situation has crystallised at the 2005 Review Conference.

More than ever, the future is uncertain. In such a context, the objective of universality of the NPT and the construction of a comprehensive regime for protecting nuclear materials, technologies, sites, weapon and information may be postponed indefinitely or, on the contrary, become achievable. Should the latter be the case, this would be an unprecedented contribution to consolidating the international security system. Events could overtake political procrastination. But the price to pay risks being a high one.

140. NILSSON (A.), op. cit. p. 5; see *supra*, note 93.

CASE LAW AND ADMINISTRATIVE DECISIONS

CASE LAW

Bulgaria

Ruling of the Supreme Administrative Court on the Decision to shut units 3 and 4 of Kozloduy NPP (2003)

On 28 March 2003, Bulgaria's Supreme Administrative Court annulled the government's Decision of 1 October 2002 to close units 3 and 4 of Kozloduy nuclear power plant by the end of 2006. Closure of the two units before the ends of their original design lifetimes, in 2010 and 2012 respectively, is a condition of entry into the European Union as expressed in the energy chapter of the Bulgarian European Union accession package, adopted at an intergovernmental conference of European Union member states.

The Court upheld the ruling of a three-judge panel of 9 January 2003 which decided that the government did not provide sufficient evidence that it had fully assessed the social, economic and safety aspects of the premature closure of the two units. The government appealed that ruling on behalf of the Ministers of Energy, European Affairs and Foreign Affairs. The Supreme Administrative Court's decision is final and not subject to appeal.

The government's Decision of 31 December 2002 to close units 1 and 2 of Kozloduy nuclear power plant was also challenged but the Court rejected that argument in January 2003.

France

Judgement of the County Court of Cherbourg concerning the import of spent fuel to La Hague (2003)

On 3 February 2003, the Country Court (*Tribunal de grande instance*) of Cherbourg rejected the applications of two associations (*Manche Nature* and *Greenpeace France*) to prevent the General Company for Nuclear Materials (*Compagnie générale des matières nucléaires* – Cogema) from unloading and storing spent nuclear fuel from Australia and Germany at its factory in La Hague. This judgement follows a procedure initiated in 2001 which resulted in the Court of Appeal of Caen reversing the judgement of the same County Court and thereby authorising the unloading of the spent fuel (see *Nuclear Law Bulletin* No. 68). In May 2001, Greenpeace served another writ against Cogema before the Cherbourg County Court on new procedural grounds.

The associations claimed that Cogema had not yet obtained reprocessing licences and therefore these operations were in breach of Article 3 of the 1991 Act on Radioactive Waste Management (see *Nuclear Law Bulletin* Nos. 49 and 50; the text of this Act is reproduced in *NLB* No. 49) which prohibits the storage in France of imported radioactive waste longer than is technically necessary for reprocessing activities.

The Court rejected the applications on the following grounds:

- Irradiated fuel, which has been the object of contractual arrangements for reprocessing, must be considered as recyclable source materials, and in any event as material destined for further transformation rather than material to be disposed of;

- Mixed oxide (MOX) fuel or research reactor (MTR) fuel imported for reprocessing purposes has already been the subject of a general reprocessing authorisation by the Directorate for the Safety of Nuclear Installations (*Direction de la sûreté des installations nucléaires*). Although the actual operating licence has not been issued, such fuel could not be considered as radioactive waste pursuant to the 1991 Act. As Article 3 of that Act refers specifically to waste resulting from reprocessing activities, Cogema cannot be accused of having imported and stored spent fuel with a view to its reprocessing.

The two associations have appealed this decision.

Japan

Judgement of the Nagoya High Court on the invalidity of the licence to establish the Monju reactor (2003)

On 27 January 2003, the Kanazawa Branch of the Nagoya High Court pronounced its judgement on appeal in relation to a case filed by local residents calling for the permanent closure, on safety grounds, of Japan's prototype fast-breeder nuclear reactor, Monju, located in Tsuruga, Fukui Prefecture. Monju supplied its first electricity to the grid in 1995, but a sodium leakage incident in December of that year led to the 280 MW unit being shut down. The Fukui District Court had rejected this lawsuit in March 2000 (see *Nuclear Law Bulletin* No. 65).

The Nagoya High Court reversed the ruling of the Fukui District Court. The High Court specifically faulted safety assurances related to the design of the steel liner to prevent leaking sodium from contacting concrete reactor structures and the design of the steam generators. It further stated that it had not been demonstrated that a core damage accident could be successfully mitigated.

The appellate court did, however, sustain the ruling of the District Court on one point, where it had ruled that the safety analysis of the reactor's potential seismic risk was adequate.

The Japanese government initiated appeal procedures on 31 January 2003.

Judgement of the Mito District Court issuing penalties in respect of the Tokai-mura accident (2003)

On 3 March 2003, the Mito District Court issued suspended jail sentences and imposed financial penalties in relation to the 1999 criticality accident at the fuel processing facility operated by JCO at Tokai-mura (see *Nuclear Law Bulletin* No. 66). This incident, during which workers at the plant were allowed to load uranium into buckets and – dispensing with crucial safety measures – to pour several times the authorised amount of the material into a processing tank, led to a criticality accident which caused the death of two workers and caused radioactive releases.

The former head of the plant was sentenced to three years in prison, suspended for five years, and a fine of JPY 500 000.[1] A further five individuals were also found guilty of professional negligence and received prison terms ranging from two to three years, suspended for three or four years. JCO was itself fined JPY 1 million.[2]

The court rejected the defence's argument that the Japanese government and the former Power Reactor and Nuclear Fuel Development Corporation (now the Japan Nuclear Cycle Development Institute – JNC) were partly at fault.

United Kingdom

The Principle of Justification: the Application of the Principle to the Manufacture of MOX Fuel in the UK*

Introduction

1. On 3 October 2001, the Secretary of State for the Environment, Food and Rural Affairs and the Secretary of State for Heath ("the Secretaries of State") issued a decision that the practice of manufacturing mixed oxide fuel (MOX) in the United Kingdom (UK) was "justified" in accordance with EU legislation, namely, Council Directive 96/29/Euratom of 13 May 1996 laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionising radiation ("the 1996 Directive"; see *Nuclear Law Bulletin* No. 58). This brought to a conclusion a decision-making process that had commenced almost five years earlier. The following section of this paper very briefly reviews

1. This corresponded at the end of April 2003 to approximately EUR 3 766.

2. This corresponded at the end of April 2003 to approximately EUR 7 533.

* This note on case law has been kindly prepared by Dr. W.J. Leigh, Senior Legal Adviser with British Nuclear Fuels plc. (BNFL). Responsibility for the facts contained and the ideas expressed therein remains solely with the author.

the way this decision-making process was conducted by the relevant UK regulatory authorities. Following that, an account is given of the legal issues and the challenge, by way of a judicial review, that was made to overturn the decision of the Secretaries of State in the UK courts.

Summary of the Factual Background to the Decision-making Process Regarding the Justification of MOX Fuel in the UK

2. In 1994, British Nuclear Fuels plc (BNFL), the operator of the Sellafield nuclear site, commenced the construction of a MOX plant at Sellafield. The plant is known as "SMP". In late 1996, BNFL applied to the UK Environment Agency ("the EA"), submitting information in support of its application that SMP was justified within the meaning of the then relevant Directive – Council Directive 80/836/Euratom of 15 July 1980, amending the Directives laying down the basic safety standards for the health protection of the general public and workers against the dangers of ionising radiation, as amended ("the 1980 Directive"; see Nuclear Law Bulletin No. 26).[1] The EA conducted a first round of public consultation in early 1997 but decided that a further economic appraisal was required. BNFL produced its own economic report on SMP. The EA then appointed independent consultants – PA Consulting Ltd – to review the BNFL report and produce its own economic report on SMP ("the PA Report"), which concluded that the economic case for SMP was strongly positive. A second round of public consultation was commenced in early 1998 as part of which a public domain version of the PA Report was published, with commercially confidential information redacted ("blacklined"). It is relevant to note (in the light of the subsequent legal challenge) that in assessing the economic case for SMP, the PA Report ignored "sunk costs" – that is the capital costs of the plant that had already been spent. These costs amounted, at the time, to around 300 million pounds sterling (GBP)..

3. In November 1998, the EA published its proposed decision which was that the operation of SMP was justified. The radiological impact of SMP in terms of discharges and resultant radiation doses was confirmed to be insignificant and the economic benefit was strongly positive, but nonetheless the EA referred the matter to the Secretaries of State and noted that it had not taken into account the wider issues of plutonium management. In June 1999, the Secretaries of Sate indicated a provisional conclusion in favour of SMP but concluded that further blacklined information in the PA Report should be released into the public domain.[2] At the same time they decided that the uranium commissioning of SMP could proceed. A third round of public consultation was commenced in 1999 on the PA Report containing the newly released information. Following this, the MOX data-falsification incident at the Sellafield MOX Demonstration Facility ("MDF") occurred and the profound effects of this raised concerns about the validity of the conclusions in the PA Report regarding customer confidence and the existence of markets for MOX from SMP. In early 2001, BNFL – having made strenuous efforts to re-build customer confidence – submitted an updated economic case on SMP, to the government and a public domain version of this report was the subject of a fourth round of public consultation.[3] In the spring of 2001, the Secretaries of State appointed independent consultants – A.D. Little ("ADL") to review BNFL's economic case on SMP and carry out their own economic appraisal. ADL produced a report in July 2001 ("the ADL Report") and a public

1. Directive 80/836/Euratom was amended by Council Directive 84/467/Euratom of 3 September 1984 (see Nuclear Law Bulletin No. 34).

2. A MOX market review prepared by BNFL was also put into the public consultation.

3. A second, updated, MOX market review prepared by BNFL was also put into this consultation.

domain version (redacted to exclude commercially confidential information) formed the basis of a fifth round of public consultation. The ADL Report concluded that the economic case for SMP remained strong: the plant would provide significant economic benefits having a net present value ("NPV") of GBP 216 million. Again, however, ADL (as was the case with PA Consulting) ignored sunk costs, which by this time had reached GBP 470 million. The October 2001 decision of the Secretaries of State followed shortly after the conclusion of this fifth and final round of public consultation.

Legal Issues and the Legal Challenge in the UK Courts

4. The decision of the Secretaries of State on justification was taken under a UK statute – the Radioactive Substances Act 1993 ("RSA 93"; see *Nuclear Law Bulletin* No. 54). Interestingly, however, the provisions of RSA 93 do not expressly require a "justification" exercise. It was accepted by all concerned, however, that RSA 93 should, under the *Marleasing* principle,[4] be construed consistently with the relevant obligations imposed on the UK under the relevant EU Directive.

5. As stated, when the EA made its proposed decision in November 1998 the relevant Directive was the 1980 Directive. Article 6(a) of the 1980 Directive (as amended) dealt with the principle of justification and provided as follows:

> "The limitation of individual and collective doses resulting from controllable exposures shall be based on the following general principles: (a) the various types of activity resulting in an exposure to ionising radiation shall have been justified in advance by the advantages they produce."

6. It is relevant, in the context of the legal challenge to the justification of MOX manufacture, to note that the argument that justification, as expressed in the 1980 Directive, had not been properly considered was put forward in earlier UK cases relating the commissioning and operation of the BNFL Thermal Reprocessing Plant at Sellafield ("THORP"). Note that legal challenges such as those under consideration are carried out in the UK by means of a judicial review – a party with legal standing (and an environmental organisation such as Greenpeace has sufficient standing) applies to the court to have the relevant decision set aside on particular grounds – for example, that the decision-maker has acted unlawfully.

7. In *R v HMIP and MAFF, ex parte Greenpeace*[5] (see *Nuclear Law Bulletin* No. 54) it was argued by Greenpeace that the permission given for the testing of THORP was unlawful because the plant had not been "justified" in accordance with the 1980 Directive. Otton J. found that the need for testing was established in terms of its overall benefit. The learned judge went on to say that it was also relevant to bear in mind that the need for THORP was considered at the planning stage by virtue of a 100-day Public Enquiry presided over by Mr. Justice Parker and during the Parliamentary process before planning approval was given. Thus, Otton J. concluded that in a broad sense THORP had already been "justified in advance". However, a markedly different conclusion was drawn by Potts J. in *R v Secretary of State for the Environment and*

4. See Marleasing SA v La Commercial Internacional de Alimentacion SA [1990] ECR 1 – an EU Member State is obliged if possible to apply its legislation in conformity with a relevant Directive. This may mean reading words into legislation or applying it through conforming with Administrative actions.

5. [1994] Env. L. R. 76.

others ex parte Greenpeace and others[6] when considering whether there was a legal requirement to consider justification when granting new Sellafield discharge authorisations which would allow THORP to become fully operational. Even though, as stated, RSA 93 does not refer specifically to justification in any of its provisions, Potts J. held that RSA 93 was to be construed consistently with the requirements of the 1980 Directive. It followed that there was a legal obligation to carry out a justification exercise before the grant of authorisations – neither the Parker Report nor the Parliamentary debates had, according to Potts J., performed this exercise. Significantly, this led Potts J. to conclude that a combination of the 1980 Directive and ICRP recommendations (see further below) meant that the 1980 Directive was concerned with particular types of activity – in this case the particular type of activity was thermal oxide reprocessing carried out at THORP at Sellafield. It was the operation of this particular plant that needed to be specifically justified. Note that the final outcome of the THORP judicial review on this issue, however, was that although the relevant Ministers were wrong in law in concluding that they were not legally obliged to consider the justification issue, given that they had considered it anyway in a manner which could not be faulted, the claimants failed to establish that the respondents had acted unlawfully.

8. The fact that Potts J. in the THORP judicial review had ruled that the justification was concerned with particular activities in a particular plant had an important consequence for the MOX justification exercise. It meant that the evidence submitted to and considered by the decision-makers was largely concerned with the operation of the relevant MOX plant, i.e. the economics and operation of SMP itself rather than MOX manufacture generally were the main focus of attention. It was this aspect and the different wording in, and interpretation given to, the 1996 Directive to the question of justification which ultimately was to give the claimants (Greenpeace and Friends of the Earth) their strongest arguments in their challenge to the October 2001 MOX decision.

9. The 1996 Directive came into force in May 2000. Earlier Directives, including the 1980 Directive were repealed. Article 6(1) of the 1996 Directive provides:

> "Member States shall ensure that all new classes or types of practice resulting in exposure to ionising radiation are justified in advance of being first adopted or first approved by their economic, social or other benefits in relation to the health detriment they may cause."

10. The 1996 Directive, like its predecessors, is based on the recommendations of the International Commission on Radiological protection (ICRP): see recital 6 of the 1996 Directive (referring to ICRP 60) and *Re Ionising Radiation Protection* [1992] ECR.[7] The system of radiological protection recommended by the ICRP has three general principles. The first is justification of practices – which is the principle relevant to the legal challenge to the MOX decision. The other two, for completeness, are optimisation of protection (keeping exposure as low as reasonably achievable – ALARA) and the specification of dose limits.

11. A key legal point is that the October 2001 decision of the Secretaries of State was based on a view (not disputed by any of the parties to the subsequent legal challenge) that the 1996

6. [1994] Env. L.R. 401.

7. In Re Ionising Radiation Protection, the European Court of Justice (ECJ) expressly recognised that the standards laid down in Directive 80/836/Euratom were based on the published recommendations of the ICRP, though in that case the ECJ, when considering the principle of dose limitation, decided that the Directive imposed a minimum level of protection – thereby allowing member states to adopt more stringent dose limits than those required by the Directive if they so wished.

Directive introduced a different legal test to the application of the justification principle than that contained in the 1980 Directive, as interpreted by Potts J. in *R v Secretary of State for the Environment and others ex parte Greenpeace and others*. Article 6 of the 1996 Directive was interpreted as being concerned with a generic approach to a type of activity and not with a site-specific justification. The way in which the October 2001 decision document was worded and structured reflected this. The focus was on the justification of the manufacture of MOX fuel, rather than the justification of SMP (the particular plant). However, the economics of SMP were not irrelevant. The general conclusions of the Secretaries of State regarding MOX manufacture were "in part informed by, and …tested against, their consideration of the specific prospects of the SMP."

12. It is instructive to consider particular extracts from the October 2001 decision of the Secretaries of State:

> "71. In applying the generic test for justification explained above, the Secretaries of State consider that an important factor to be taken into account is the economic benefits to be derived from the particular class or type of practice in question: here the manufacture of MOX fuel…
>
> 73. The Secretaries of State consider that, as a result, the manufacture of MOX fuel carries economic benefits which are capable of justifying it as a class or type of practice. Overall the Secretaries of State consider that, given the ability to carry on that type of practice with very minor radiological detriments, the economic benefits are sufficient to justify it.
>
> 74. This general conclusion of the Secretaries of State has in part been informed by, and has been tested against, their consideration of the specific prospects of the SMP. They have consulted on BNFL's business case for SMP and are satisfied that the operation of the SMP will provide significant economic benefits. This supports their conclusion that the class or type of practice comprising the manufacture of MOX fuel is justified on application of the generic test by the economic benefits it makes it possible to achieve…
>
> 86. In assessing the economic issues and the NPV of operating SMP, the Secretaries of State consider that it is appropriate and consistent with the justification test in the 1996 Directive to focus on the present circumstances, both on the costs of operating the SMP in future and on the present assessment of the commercial opportunities. *The Secretaries of State do not consider it appropriate to deduct BNFL's sunk costs from the consultants' calculation of the NPV of the SMP*..." (emphasis supplied).

13. The fact that the Secretaries of State ignored the sunk costs of SMP when assessing whether MOX manufacture was justified provided Greenpeace and Friends of the Earth (the claimants) with the strongest basis of their legal challenge, as the arguments developed.

The Legal Challenge in the High Court

14. As stated, the legal challenge being brought was by way of a judicial review – in general terms this involves the court reviewing the decision and considering whether it ought to be set aside

on grounds of unlawfulness.[8] The respondents to the action were, therefore, the Secretaries of State as the decision-makers. BNFL was involved (and represented) as an "interested party": the case is *R v Secretary of State for the Environment, Food and Rural Affairs and the Secretary of State for Health ex parte Greenpeace and Friends of the Earth and others.*[9] In the High Court, the claimants initially raised three arguments as to why the decision should be quashed: (i) sunk costs should not be ignored when applying the justification test in the 1996 Directive; (ii) there was an absence of adequate evidence or intent on the part of Japanese customers to enter into contracts with BNFL ; and (iii) the government had failed to disclose an internal departmental analysis of the reasons for decision. In the end, (ii) and (iii) were abandoned without being argued, so the only issue remaining in the High Court and subsequently in the Court of Appeal was that of sunk costs.

15. The judge in the High Court (Collins J.) described the claimants' basic submission as "beguilingly simple", and described the submission as follows:

> "It is common ground that the manufacture of MOX fuel is a new type of practice and so covered by Article 6.1 [of the 1996 Directive]. In deciding what are the economic benefits of the new type of practice, it is necessary to include the costs of enabling it to come into being. It cannot be carried out in the abstract. It cannot be right that the timing of the application for authorisation will determine that cost, it being apparently accepted that any cost to be incurred after the application is made is to be included. This would mean that the applicant could improve his chances of establishing economic benefit by waiting until enough has been expended, which will be 'sunk'. So that little remains to affect the likely economic benefits resulting from the type of practice…Furthermore, the Directive presupposes a uniform implementation in Member States …and that is only achieved if there is a uniform approach adopted to assessing economic benefit. It is not in the circumstances of radiological protection a case of choosing next steps on what may be described as a corporate finance basis but of acting as an environmental regulator applying an objective test of justification to all its costs."[10]

16. Although Collins J. was "initially impressed and even beguiled" by the claimants' argument, he rejected it. He gave two reasons why the claimants' application failed. The first reason was based on the judge's own reasoning, rather than submissions from the respondent and interested party. He held that "the costs included in setting up a particular plant to enable the type of practice to be put into effect is not to be set against economic benefits". In reaching this conclusion, the judge was clearly seeking to avoid the situation where the time at which the decision as to justification was made would influence the economic assessment: "…assessment of economic benefit should not be influenced by the time at which the application or assessment is made."[11] Excluding the capital costs of constructing a particular plant would mean, of course,

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8. There are important limits to the availability of judicial review. Note in particular that in relation to a challenge concerning the application of the justification principle to decisions of the EA regarding disposals of radioactive waste from military installations, the Court of Appeal has recently held that the law of England does not allow courts to look into the merits of any honest decision of government upon matters of national defence policy. Further, the EA acted correctly in treating criticisms of the UK's independent nuclear deterrent as outside its remit and regarding the relevant nuclear weapons system as a benefit for the purposes of the justification principle – see Emanuela Marchiori v the Environment Agency and the Secretary of State for Defence, Court of Appeal, judgement 25 January 2002.

9. unreported – Case No. 4012/2001. The case was heard on 8 and 9 November 2001. The approved Judgement of Mr. Justice Collins was handed down on 15 November 2001 (transcript available).

10. Ibid. at paragraph 14.

11. Ibid. at paragraph 19.

that the question of whether sunk costs are included or excluded is by-passed – all capital costs involved in constructing a particular plant would be excluded. Collins J. found the justification for this approach by concluding that "what is needed is a justification of a type of a practice". Given that capital costs involved in enabling the activity to go ahead will vary from site to site, it followed (according to Collins J.) that neither site specific capital costs nor any costs "peculiar to the site" were costs which could truly be said to be included in the practice itself. It can be appreciated that this reasoning – excluding all capital costs (not just sunk capital costs) – might be regarded as quite radical.

17. Perhaps recognising that the first of his reasons might be arguable, Collins J. gave a second reason for rejecting the claim (indeed the judge said that he was doing this in case his first reason for rejecting the claim was wrong). Both the respondent and the interested party had each made a submission to the effect that ignoring sunk costs was consistent with 'classic' economic theory and the Secretaries of State could not be faulted for applying that approach. The learned judge set out the submission as follows:

> "That it cannot be wrong for the Secretaries of State to adopt a proper, indeed a classic, economic approach to sunk costs. There is nothing in Article 6.1 which in terms supports [the claimants'] construction and nothing is said in Article 6.1 itself or in any domestic legislation about when an application should be made, other than that it must obviously be in advance of the adoption or approval of the type of practice in question… Since bad faith is not suggested, the time at which the application is made cannot be held against BNFL and so the usual principle [of ignoring sunk costs] ought to be applied. Accordingly no error of law has been established in the approach taken by the Secretaries of State."[12]

18. Collins J. simply said, following his summary of the submission quoted above, that "That submission is in my view correct."[13] Accordingly the claimant's claim failed. However, they quickly lodged an appeal.

The Legal Challenge in the Court of Appeal

19. In the Court of Appeal (see *Nuclear Law Bulletin* No. 69) the appellants' argument focused on two main points. The first was essentially a re-run of the argument in the High Court, namely that the decision whether or not to approve a new practice ought not to depend upon when, in relation to the expenditure of capital costs, the decision is taken. The second argument, however was new and potentially more incisive. This argument was that on a generic approach to justification, it is impermissible to ignore the sunk costs of a particular plant since the decision will apply generally and permit the practice to be carried on at other plants whose capital costs would not be sunk.

20. The Court of Appeal rejected the first ground of Collins J.'s decision. The Court of Appeal said that that ground was not easily supportable – it could not reasonably be suggested that the whole of the capital costs – expended and unexpended – of the project should simply be ignored when considering the justification of a practice. In this situation, Counsel for BNFL put forward two arguments to counter those put by the appellants: (i) that sunk costs should always be ignored in line with classic economic theory (this was the submission that formed the second ground of the

12. Ibid. at paragraph 21.

13. Ibid.

decision of Collins J.); and (ii) that since in reality SMP is the only plant contemplated for MOX manufacture in the UK – a fact supported by the October 2001 decision document[14] – the generic nature of the justification test with regard to sunk costs is immaterial in the present context. The approval would not result in other MOX plants being constructed whose capital costs had not been taken into account. In the words of BNFL's Counsel, "MOX manufacture at SMP is in reality the only game in town and to refuse it on the basis that approval would apply to the practice generally would be absurd."

21. With regard to the first part of the submission on behalf of BNFL (that sunk costs must be ignored), Lord Justice Simon-Brown said that this was "straightforward and to my mind entirely convincing."[15] The judge went on to say that, "There is nothing in Article 6 which requires the Secretaries of State in reaching their decision to disapply standard economic principles including that of ignoring sunk costs. Nor would it make any sense for them to do so."[16]

22. With regard to the second part of the submission made on behalf of BNFL (that the generic approach to justification should not affect the standard economic approach of ignoring sunk costs in a situation where no other plant but the one under consideration is contemplated), Lord Justice Simon-Brown found this to be "Once again entirely convincing." Lord Justice Simon Brown in a key passage dealing with this point said:

> "It cannot in my judgement be said that the Secretaries of State were bound to take into account costs which had been incurred in constructing SMP, which plainly cannot be recovered, and which were plainly not going to be incurred anywhere else. Secretaries of State are entitled to decide these cases in the real world. To bring into account sunk costs on a fictional basis that the equivalent costs would be incurred were the approval to be invoked to operate the practice elsewhere in the future would be absurd. It would be to sacrifice reason on the altar of blind theory. I cannot accept that Article 6 on its true construction requires such an economically nonsensical approach".[17]

23. This brought to a conclusion the challenge in the English courts to the bringing of SMP into operation. In December 2001, the UK Nuclear Installations Inspectorate issued a formal consent under the Nuclear Installations Act 1965 for plutonium to be introduced into the plant, and that decision was not challenged. Accordingly MOX manufacture in the UK is now justified under EU law, and SMP is operational.[18] Perhaps the most remarkable thing about the challenge in the UK courts is that despite the fact that the October 2001 decision document, and the decision-making process which took several years, covered many complex subjects and issues –

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14. Paragraph 25 of the decision document stated that "Although the provisions of the 1996 Directive require a generic assessment to be carried out, it should be borne in mind that BNFL is the only manufacturer of MOX fuel in the UK and that this is likely to continue to be the case for the foreseeable future. In addition, BNFL intends to produce MOX fuel only at the SMP."

15. See *R v Secretary of State for the Environment, Food and Rural Affairs ex parte Greenpeace and another*. The Court of Appeal heard the appeal on 27 and 28 November 2001 and delivered its judgement on 7 December 2001.

16. Approved transcript of Court of Appeal judgement, at paragraph 37.

17. Ibid. at paragraph 47.

18. Note, however, that there were certain restrictions built into the October 2001 decision regarding the "sources" of plutonium which can be utilised in SMP. Subject to specific exceptions, the plutonium used in SMP to manufacture MOX fuel must belong to foreign customers and have been recovered in THORP. The utilisation of Magnox plutonium, for example, will require notification and clearance from the relevant Secretaries of State.

environmental discharges, environmental impact, radiological effects, including possible health effects, operational safety, economics, international markets for MOX, transportation, security and so on – in the end the challenge focused on just a single economic issue, the question of sunk costs. With regard to that challenge it would be wrong to conclude that the judgement of the Court of Appeal holds that sunk costs may be ignored when conducting a justification exercise – the decision that sunk costs could properly be disregarded in the economic assessment of MOX manufacture in the UK was clearly restricted to a situation where the generic practice in question would be confined to the operation of a single plant.

24. Neither should it be assumed that the SMP judicial review has brought to an end questions or issues or challenges which might be raised concerning the principle of justification. Indeed, there are many difficult questions remaining. For example, what amounts to a new generic practice? Would a new type of reactor system be a new practice? If (unlike the case with MOX manufacture in the UK) a certain number of particular installations are planned or foreseeable and some costs have been expended prior to a decision on justification having been taken, how should the sunk costs be taken into account in relation to the generic practice? If existing practices have not been justified (and many existing practices will not have been subjected to a formal justification exercise), is there a legal requirement for them to be justified as new practices? Question such as these may well give rise to further legal challenges in the future. This risk might be reduced, and greater certainty achieved, by the provision of governmental (or Community) guidance on practical questions relating to the application of the justification principle to new and existing generic practices.

United States

Ruling of the US Court of International Trade in relation to the sale of uranium enrichment services in the United States (2003)

The US Court of International Trade (CIT)[19] ruled on 25 March 2003 in favour of European uranium enrichment companies in a long-standing legal argument relating to the sale of enrichment services in the United States.

The US Department of Commerce (DOC) made a preliminary determination in 2001 that countervailing and antidumping duties should be imposed on exports of low enriched uranium (LEU) carried out by the European enrichment companies Urenco and Eurodif (see *Nuclear Law Bulletin* No. 68). The US International Trade Commission confirmed the conclusions of the DOC on 21 January 2002 (see *Nuclear Law Bulletin* No. 69), authorising the DOC to impose such duties.

Urenco and Eurodif asserted in this appeal before the CIT that the antidumping and countervailing duty laws do not apply to certain uranium enrichment transactions because the contractual arrangements involve purchases of enrichment services, rather than purchases of LEU as merchandise, and services fall outside the scope of the antidumping and countervailing duty laws. The CIT has remanded the case to the DOC requesting that, within 75 days, the department reconsider its decision to impose such duties, on grounds that the decision was "unsupported by substantial evidence" and "not in accordance with law". The court stated that US trade laws did not cover the sale

19. The US Customs Courts Act of 1980 clarified and expanded the status, jurisdiction, and powers of the former United States Customs Court and changed the name of the court to the United States Court of International Trade. The CIT is responsible for judicial review of civil actions arising out of import transactions and federal statutes affecting international trade.

of enrichment services, but only the sale of enriched uranium products. The CIT's decision does not reverse the DOC's final determination nor any of the countervailing or antidumping duties, which remain in effect.

This ruling is available on the Web at the following URL:
www.cit.uscourts.gov/slip_op/Slip_op03/SlipOp03-34(Public).pdf

European Union

Commission v Council – Accession of the Community to the Convention on Nuclear Safety (2002)*

On 11 December 2002, the Court of Justice of the European Communities handed down an important judgement[1] concerning the competence of the European Atomic Energy Community (hereinafter referred to as the "EAEC" or "Euratom Community") to accede to the Convention on Nuclear Safety[2] (hereinafter referred to as "the Convention"). In this judgement, the Court, in line with the conclusions of the Advocate General,[3] granted to a large extent the Commission's request and confirmed the shared competences of the Euratom Community in the field of nuclear safety.

Together with its decision[4] approving the accession of the Euratom Community to the Convention, the Council had adopted a declaration, annexed to that decision, in which it declared, in application of the Convention,[5] that the Euratom Community possesses competence in the fields covered by Articles 15 and 16(2) of the Convention and that thus such competence does not extend to Articles 1 to 5, 7, 14, 16(1) and (3) and 17 to 19 of the Convention. The Council was of the opinion that the Member states alone possessed competence in respect of these provisions. Without contesting the actual accession to the Convention, the Commission brought an action before the Court for partial annulment of this annexed declaration, on the grounds that this declaration of competences appeared too restrictive.

Having dealt with the question of the admissibility of the action, the Court examined the question whether the Council is obliged to provide the International Atomic Energy Agency with a complete declaration of competences. The Court considered this issue both in relation to the other Parties to this Convention and in respect of co-operation between Community institutions, and

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* This note on case law has been kindly prepared by Mr. André Bouquet, Member of the Legal Service of the European Commission. Responsibility for the ideas expressed therein remains solely with the author and they do not commit the European Commission or its Legal Service.

1. Judgement of 11 December 2002, Case C-29/99, Commission v Council, not yet published in the ECR (available on the Web at http://curia.eu.int/en/content/juris/index.htm).

2. Convention on Nuclear Safety adopted on 17 June 1994, IAEA Document INFCIRC/449 (available on the Web at www.iaea.org/worldatom/Documents/Infcircs/2000/infcirc449a3.pdf

3. Conclusions of Advocate General Jacobs of 13 December 2001, Case C-29/99, Commission v Council, not yet published in the ECR (available on the Web at http://curia.eu.int/en/content/juris/index.htm).

4. Decision of 7 December 1998, unpublished. The declaration is cited at paragraph 34 of the judgement and was published by the IAEA in INFCIRC/449/Add. 3 (available on the Web at: www.iaea.org/worldatom/Documents/Infcircs/2000/infcirc449a3.pdf).

5. Article 30(4)(iii) of the Convention provides that when becoming party to the Convention, an organisation to which this option is available (such as the Euratom Community) shall communicate to the Depositary a declaration indicating which States are members thereof, which articles of this Convention apply to it, and the extent of its competence in the field covered by those articles.

concluded in the affirmative: " When it approves accession to an international convention without any reservation, the Council must respect the conditions for accession laid down by that convention, since an accession decision which did not comply with those conditions would be in breach of the Community's obligations from the moment it entered into force. In addition, it follows from the duty of sincere co-operation between the institutions (see, *inter alia*, Case C-65/93 Parliament v Council [1995] ECR I-643, paragraph 23] that the Council decision approving accession to an international convention must enable the Commission to comply with international law. In the present case, Article 30(4)(iii) of the Convention must, in the interest of the other contracting parties, be interpreted to mean that the declaration of competences under that provision must be complete. It follows from the foregoing that the Council was, under Community law, required to attach a complete declaration of competences to its decision approving accession to the Convention".[6]

In its examination of the competences of the Euratom Community in respect of "nuclear safety", the Court ruled that as the Euratom Treaty does not contain a specific title relating to nuclear safety, the question therefore falls to be examined under Chapter 3 on Health and Safety.[7] The Court explained that this Chapter is based on two objectives: 1) to establish uniform safety standards to protect the health of workers and of the general public; and 2) to ensure that they are applied.[8] Such protection "cannot be achieved without controlling the sources of harmful radiation".[9] In its interpretation of this Chapter, the Court refused to "draw an artificial distinction between the protection of the health of the general public and the safety of sources of ionising radiation".[10]

Within the competences examined by the Convention, the fact that competences are shared in respect of Articles 15 (radiation protection) and 16(2) (radiological emergency)[11] was not contested.

With regard to Articles 1 to 3 of the Convention (objectives, definitions and scope of application), the Court ruled that these provisions create neither rights nor obligations, and therefore the question of competence does not arise in their regard.[12] Articles 4 and 5 of the Convention (implementing measures and reporting) are of an excessively general scope and therefore it is only on specific subjects (to which implementing measures and reporting apply) for which they are competent that organisations are required to make a declaration of competences in application of Article 30(4)(iii) of the Convention. Consequently, the Court accepted that the Council omitted these provisions from the declaration of competences[13] and rejected the application in this respect.

In relation to Article 7 of the Convention (legislation and regulatory framework governing safety), the Court stated "Even though the Euratom Treaty does not grant the Community competence to authorise the construction or operation of nuclear installations, under Articles 30 to 32 of the Euratom Treaty the Community possesses legislative competence to establish, for the purposes of health protection, an authorisation system which must be applied by the Member States. Such a legislative act constitutes a measure supplementing the basic standards referred to in that article."[14]

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6. Paragraphs 68 to 71 of the judgement.
7. Paragraph 74 of the judgement.
8. Paragraph 76 of the judgement.
9. Paragraph 76 of the judgement.
10. Paragraph 82 of the judgement.
11. Paragraph 72 of the judgement.
12. Paragraphs 84 and 85 of the judgement.
13. Paragraphs 86 and 87 of the judgement.
14. Paragraph 89 of the judgement.

The Court refused to make an exception for Article 7(2)(i) (national requirements and regulations) in respect of which the Council claimed that the exclusive competence of the Member States was even more evident, pointing out that "under Article 30(4)(11) of the Convention, regional organisations must, in matters within their competence, fulfil the responsibilities which the Convention attributes to the Member States".[15] Basing itself respectively on the competences set out in the second paragraph of Article 3 (recommendations to ensure compliance with the basic standards) and Article 35 (facilities to carry out continuous monitoring of the level of radioactivity) of the Euratom Treaty, the Court ruled that there is a certain Community competence in the field covered by Article 14(i) (safety assessment) and (ii) (safety verification) of the Convention.[16] The Court therefore confirmed that the Community competence does not necessarily have to be of a binding nature:

> "Article 4 of the Convention provides that the obligations which it imposes on the contracting parties may be implemented not only by means of legislative and regulatory measures, but also by administrative measures and other steps. The application of the Convention may therefore call for measures which are not mandatory for those to whom they are addressed, such as recommendations. In those circumstances, the competence transferred to the Commission to make recommendations to the Member States in the field covered by Article 14(i) of the Convention should have been taken into account and that provisions should have been referred to in the declaration indicating the Community's competences".[17]

As far as Article 16(1) of the Convention (emergency preparedness for nuclear installations) is concerned, the Court concluded that competence arises due to the fact that the basic standards (Articles 30 and 32 of the Euratom Treaty) can include standards for emergency measures, thereby implying that Member States may be required to draw up plans laying down such measures in respect of nuclear installations.[18] The Court rejected the Council's claim that Article 16(3) of the Convention (emergency plans for Parties without nuclear installations) could not concern the Euratom Community, given that there are reactors on its territory, by emphasising that the Community includes Member States which do not have any nuclear reactors.[19] As regards Article 17 (siting), the Court bases its finding on the premise that "the siting of a nuclear installation… necessarily includes taking into account factors relating to radiation protection, such as the demographic characteristics of the site",[20] in order to link this provision of the Convention with Commission competence to provide an opinion under Article 37 of the Euratom Treaty "relating to any plan for the disposal of radioactive waste in whatever form".[21] For Articles 18 (design and construction) and 19 (operation) of the Convention, the Court used the same reasoning as for Article 14, resulting in the Community competence to make recommendations under the second paragraph of Article 33 of the Euratom Treaty.[22]

Consequently, as well as those provisions already cited [Articles 15 and 16(2)], these provisions [Articles 7, 14, 16(1) and (3) and 17 to 19] of the Convention should have been included in the

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15. Paragraph 90 of the judgement

16. Paragraphs 92 to 96 of the judgement.

17. Paragraph 95 of the judgement.

18. Paragraph 97 of the judgement.

19. Paragraphs 98 to 100 of the judgement.

20. Paragraph 102 of the judgement.

21. Note by the translator: it should be noted that in French, the provision refers to any emission of radioactivity "tout projet de rejet d'effluents radioactifs" and not merely to waste disposal.

22. Paragraph 105 of the judgement.

Community competences (shared with the Member states) in the Council's declaration of competences. The Court therefore granted the Commission's request on these points and partially annulled the declaration.[23]

This judgement is consistent with previous decisions of the Court of a clearly "community" nature in the Euratom field, such as the rulings concerning the applicability of Chapter 6,[24] supply policy,[25] or the imposition of sanctions in relation to safeguards (Chapter 7)[26] or the Ruling on the Convention on the Physical Protection of Nuclear Materials.[27]

At the end of 2002 and in early 2003, the Commission adopted a package of legislative proposals in the field of nuclear safety[28] which will be discussed in the Council. In these proposals, the Commission underlines the importance of the judgement of 11 December 2002 in a wider respect than simply in relation to the operation of the Convention on Nuclear Safety, as the basis of a "Community approach to safety". At the present time, it is somewhat premature to offer substantive comment on these proposals; however it will be very interesting to return to this subject at a future date, to examine the results of these important discussions.

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23. At the time of writing (May 2003), the declaration available on the IAEA Web site is still the partially annulled original declaration (www.iaea.org/worldatom/Documents/Infcircs/2000/infcirc449a3.pdf).

24. Judgement of the Court of 14 December 1971, Case 7-71 Commission v France [1971] ECR 1003, with the conclusions of Advocate General Roemer presented on 18 November 1971.

25. Judgement of the Court of 22 April 1999, Case C-161/97 Kernkraftwerke Lippe-Ems GmbH v Commission [1999] ECR I-2057, with the conclusions de Advocate General Léger presented on 19 November 1998. See also the judgement of the Court of du 11 March 1997, Case C-357/95 P Empresa Nacional de Urânio SA (ENU) v Commission [1997] ECR I-1329, with the conclusions of Advocate General Fennelly presented on 5 December 1996. These two judgements rejected the appeals lodged against the judgement of the Court of First Instance of 25 February 1997, Joint Cases T-149/94 and T-181/94 Kernkraftwerke Lippe-Ems GmbH v Commission [1997] ECR II-161, and against the judgement of the Court of First Instance of 15 September 1995, Joint Cases T-458/93 and T-523/93 Empresa Nacional de Urânio SA (ENU) v Commission [1995] ECR II-2459. These judgements were described in *Nuclear Law Bulletin* Nos. 55, 56, 58, 59 and 65.

26. Judgement of the Court of 21 January 1993, Case C-308/90 Advanced Nuclear Fuels GmbH v Commission [1993] ECR I-309, with the conclusions of Advocate General Jacobs presented on 19 November 1992.

27. Ruling of the Court of 14 November 1978, Draft IAEA Convention on the protection of nuclear material, installations and transport, Ruling 1/78 [1978] ECR 2151.

28. Commission Documents COM(2003)32 final of 30 January 2003 (legislative proposals for a Directive setting out basic obligations and general principles on the safety of nuclear installations and a Direction on the management of spent nuclear fuel and radioactive waste) and COM(2002)605 final of 6 November 2002 (Communication to the Council and the Parliament on nuclear safety within the European Union). The complete file, with the press release, an explanatory note, a Communication from the Vice President of the Commission Mrs. de Palacio, the Communication from the Commission to the Council and the Parliament and the legislative proposals themselves are available on the Web site of the Directorate-General for Energy and Transport of the Commission (where all Commission activities in the safety field are set out in detail): http://europa.eu.int/comm/energy/nuclear/nuclearsafety.htm.

ADMINISTRATIVE DECISIONS

Netherlands

Governmental decision not to appeal court ruling on the continued operation of the Borssele NPP (2002)

In November 2002, the Dutch government confirmed that it will not challenge the court ruling in favour of the continued operation of the Borssele NPP (see *Nuclear Law Bulletin* Nos. 65, 66 and 68). The former Dutch government had sought to shut down the plant at the end of 2003. A request by the Dutch Green Party for a further appeal was rejected by the Ministry of Housing, Spatial Planning and the Environment. The reactor can now continue operating until at least 2013.

NATIONAL LEGISLATIVE AND REGULATORY ACTIVITIES

Belgium

General Legislation

Act on the Phase-out of Nuclear Energy for the Purposes of the Industrial Production of Electricity (2003)

This Act, adopted on 31 January 2003 and published in the Official Journal (*Moniteur belge*) of 28 February 2003, entered into force on 10 March 2003 (see *Nuclear Law Bulletin* No. 70 for a description of this legislation). The text of the Act is reproduced in the Chapter "Texts" of this edition of the *Bulletin.*

Organisation and Structure

Royal Decree Setting out the Composition and Powers of the Scientific Board for Ionising Radiation Established Alongside the Federal Agency for Nuclear Control (2002)

This Royal Decree of 18 December 2002 provides that the Scientific Board for Ionising Radiation, established by Section 37 of the 1994 Act on Protection of the Public and the Environment against Radiation and Relating to the Federal Agency for Nuclear Control (see *Nuclear Law Bulletin* Nos. 53, 54, 59, 61, 65 and 69), is responsible for providing an opinion on any question, whether of a general or specific nature, submitted to it by the Director-General of the Agency, the Chairperson of the Governing Board of the Agency or the competent Minister, in relation to licences, control or policy in this respect.

The Board is made up of scientific members nominated by the competent Minister for a period of six years.

Transport of Radioactive Materials

Royal Order on the Certificate of Training for Drivers of Vehicles Transporting Radioactive Materials by Road (2003)

This Royal Order of 6 February 2003 completes the implementation of Council Directive 94/55/EC of 21 November 1994 on the approximation of the laws of the Member States with regard to

the transport of dangerous goods by road and repeals the Royal Order of 15 December 1994 on the Certificate of Training for Drivers of Transport Units Transporting Radioactive Materials by Road.

The Order imposes an obligation on drivers transporting such materials by road to obtain a certificate of training. It further describes the content of the training course and the manner in which examinations are to be organised.

Brazil

Radioactive Waste Management

Resolution of the CNEN on Radioactive Waste Repositories (2002)

Resolution No. 12 of the National Nuclear Energy Commission (CNEN) was published in the Official Journal of 23 September 2003. It aims to establish the final denomination of radioactive waste repositories, classified as initial, intermediary and final, in order to ensure the protection of workers, the public and the environment against the dangers resulting from ionising radiation (see *Nuclear Law Bulletin* No. 69 on the 2001 Law on Radioactive Waste Repositories).

Pursuant to this Resolution, radioactive waste repositories are defined as follows:

- initial storage – storage of radioactive waste on the site of the installation where it was produced;
- intermediary repository – installation authorised by the competent authorities and designed to hold and, eventually, to treat or condition radioactive waste before its transfer to the final repository;
- provisional repository – installation designed to store radioactive waste from zones where a radiological or nuclear accident has taken place before its transfer to other repositories, in line with the safety conditions established by the CNEN;
- final repository – installation authorised by the competent authorities and designed for the disposal of radioactive waste, in line with the criteria established by the CNEN concerning radioactive waste coming from initial storage or intermediary or provisional repositories.

Bulgaria

General Legislation

Act on the Safe Use of Nuclear Energy (2002)

This Act was adopted on 28 June 2002 and entered into force on 1 January 2003 (see *Nuclear Law Bulletin* No. 70). The text of this Act is reproduced in the Supplement to this *Bulletin*.

Canada

General Legislation

Amendment to the Nuclear Safety and Control Act (2003)

An amendment to the Nuclear Safety and Control Act (NSCA – see *Nuclear Law Bulletin* Nos. 60, 65 and 66; the text of this Act is reproduced in the Supplement to *NLB* No. 60) came into effect on 13 February 2003 varying the classes of persons that the Canadian Nuclear Safety Commission (CNSC) may order to clean up contaminated places.

Under the heading "Exceptional Powers", Section 46 of the NSCA provides the CNSC with the authority to hold a public hearing to determine whether contamination has occurred in any place and if so, to order certain persons to take measures to reduce the level of contamination [Subsection 46(3)]. Prior to the amendment, the classes of persons that could be so ordered were: the owner, occupant, or any other person with a right to or interest in, the affected land or place. A "person with a right to or interest in" land could have included a lender who had a mortgage interest in a nuclear site but who was not involved in the management of the facility. Lenders perceived the provision as creating potentially unlimited liability (a situation which does not exist in Canada's environmental laws pertaining to other industries) resulting in a barrier to private sector investment in Canada's nuclear industry.

The amendment to subsection 46(3) of the NSCA removed the words "with a right to or interest in" and inserted "who has the management and control of" so that the provision now reads as follows:

> "Where, after conducting a hearing, the Commission is satisfied that there is contamination referred to in subsection (1), the Commission may, in addition to filing a notice under subsection (2), order that the owner or occupant of, or any other person who has the management and control of, the affected land or place take the prescribed measures to reduce the level of contamination."

As a result of the amendment, lenders would not face potential liability unless they become the owners or occupants of the land or place or exercise management and control over it.

The text of this amendment is available in English at the following URL:
www.parl.gc.ca/37/2/parlbus/chambus/house/bills/government/C-4/C-4_4/C-4_cover-E.html

Chinese Taipei

Radiation Protection

Ionising Radiation Protection Act (2002)

This Act was promulgated on 20 January 2002 by Presidential Decree and entered into force on 1 February 2003. Nineteen detailed rules and regulations, including safety standards, for the implementation of this Act, were also promulgated before its entry into force.

The purpose of this Act is to regulate the proper management of radioactive material, equipment capable of emitting ionising radiation and radiation practices, in order to prevent the detrimental effects of ionising radiation.

The Act is divided into five chapters, governing respectively General Provisions, Radiation Safety and Protection, Management of Radioactive Material, Equipment or Practices, Penal Provisions and Supplementary Provisions.

The competent authority under this Act, the Atomic Energy Council (AEC) shall refer to the most recent standards of the International Commission on Radiological Protection (ICRP) in order to establish the Safety Standards on Protection against Ionising Radiation, to develop relevant guides and to define operational criteria governing radiation protection, including dose limits etc. (Section 5). The personal dose limits of the new Safety Standards are based on ICRP-60 recommendations.

The operator shall establish a radiation protection plan and submit it to the AEC for approval (Section 7). Personnel who handle radioactive material or who operate radiation-emitting equipment shall be trained according to standards established by the AEC and shall obtain a radiation safety certificate or licence.

The operator shall, in accordance with the provisions established by the AEC, designate controlled or supervised areas within the radiation workplace, based on the type of facility, the characteristics of the practices and the level of the radiation exposure (Section 10). The AEC is entitled to inspect the workplace at any time (Section 11). Sections 12 and 13 set out the requirements for the operator in the event of a nuclear accident. Sections 14 to 18 describe the medical surveillance and dose limits etc. applicable to radiation workers.

In order to guarantee the health and safety of the public, the AEC shall:

- select appropriate locations to install radiation monitoring detectors to conduct environmental radiation monitoring;
- dispatch officers with a warrant to examine ionising radiation conditions in public or private places where radiation exposure is suspected;
- forbid the addition of radioactive material to all commodities without its approval;
- conduct radiation tests or inspections where a commodity is suspected of exposing the public to ionising radiation;
- Inspect and monitor raw materials used for construction to ensure there is no radioactive contamination (Sections 19-25).

Use of radioactive material, operation of equipment capable of producing ionising radiation and radiation practices are all subject to delivery of a permit by the AEC (Section 29). Such permit may be delivered for a maximum period of five years, subject to renewal.

Chapter IV sets out penalties for the first time in relation to unauthorised radiation practices. It provides for imprisonment for periods up to three years, and/or an administrative fine of up to 3 M New Taiwan Dollars (TWD).

The AEC is entitled to delegate tasks relating to accreditation, training, inspection, training or monitoring to relevant qualified organisations, schools or institutions.

Regime of Nuclear Installations

Nuclear Reactor Facilities Regulation Act (2003)

The Act regulating Nuclear Reactor Facilities was promulgated by Presidential Decree on 15 January 2003. The purpose of this Act is stated to be the regulation of nuclear installations in order to secure public safety. This legislative text has evolved from certain sections of the Atomic Energy Law of 1968, as amended, and also from various regulatory guides which required reclassification to legislative status.

The five chapters of this Act govern respectively General Provisions, Construction and Operation Regulations, Shutdown and Decommissioning Regulations, Penal Provisions and Supplementary Provisions. Some of the most important features are described below.

Chapter II provides that an operating licence may be issued by the Atomic Energy Council (AEC) for a maximum period of 40 years, subject to renewal (Section 6). The operator is required to conduct a comprehensive safety assessment and submit the report to the AEC for review at least once every ten years (Section 9).

The operator must also establish an emergency planning system, governing in particular activities carried out in the "restriction zone" and the "low population zone" in the vicinity of the installation, and submit it to the competent authorities (Section 4). Sections 11 and 12 set out requirements in relation to the qualifications, training, licensing and medical surveillance of personnel, and provide that rules on issue, renewal, suspension and revocation of personnel licences shall be established by Regulations.

The operator of a nuclear reactor facility is required to retain an independent body to oversee the design, construction, inspection and testing of the facility to ensure compliance with the nuclear safety requirements (Section 15).

Chapter III provides that the operator shall submit a decommissioning plan and an environmental impact assessment to the competent authorities three years prior to the permanent termination of operations (Section 23). The operator is also required to submit a plan to the AEC for approval in relation to "off-commissioning", defined as the planned shut-down of a facility for a period of over one year.

Detailed provisions are set out in Sections 29 to 40 on the administrative fines (ranging between 100 000 New Taiwan Dollars (TWD) and TWD 15 M and possible imprisonment (of up to three years) in respect of various offences under this legislation.

Radioactive Waste Management

Nuclear Materials and Radioactive Waste Management Act (2002)

This Act was promulgated by Presidential Decree and entered into force on 25 December 2002. It aims to regulate the proper management of radioactive material and radioactive waste in order to prevent radioactive hazards and ensure public safety.

The Act is divided into five chapters, governing respectively General Principles, Administration of Nuclear Source Material and Nuclear Fuel, Administration of Radioactive Waste and Supplementary Provisions.

Chapter II establishes requirements in relation to licences delivered by the Atomic Energy Council (AEC) to construct production and/or storage facilities for nuclear source material and/or nuclear fuel. In particular, the operator is required to submit an application demonstrating his capacity to manage, store and finally dispose of the radioactive waste generated by such facilities. The AEC shall publish and display such applications, establishing a period of time within which individuals, government agencies or organisations may submit opinions (Section 8).

Before an operating licence for such a facility is issued, the AEC shall verify that an approval from a domestic or foreign facility for the final disposal of radioactive waste has been approved in respect of the waste generated by that facility (Section 9). Licences are granted for a maximum period of 40 years, subject to renewal.

The operator of such facilities are required to submit to the AEC on a regular basis reports on operation, radiation protection, environmental radiation monitoring, irregularities or emergencies; production, inventory and sales records in respect of nuclear source material and nuclear fuel; and records on generation, treatment, storage and/or final disposal of radioactive waste (Section 10). The AEC in turn is entitled to carry out inspections or to request documents or materials at any time (Section 13).

Chapter III describes the procedure applicable for the construction of treatment, storage, or final disposal facilities for radioactive waste. Similar requirements exist in relation to publication of applications by the AEC and the possible submission of opinions (Section 17). Operators of such facilities are also subject to the general requirements concerning provision of reports and records to the AEC.

Section 25 provides that radioactive waste shall not be imported, exported, transited, held, discarded or transferred without approval by the competent authorities. Section 28 provides that the producer of radioactive waste shall bear the necessary expenses for its treatment, carriage, storage and final disposal. Section 30 further states that the final disposal facilities shall hold the radioactive waste generated by the whole country, and the necessary expenses for such disposal shall be supported by the budget drawn up by the government.

Chapter IV sets out penalties in relation to offences under this Act. It provides for imprisonment for periods up to five years, and/or an administrative fine of up to 100 M New Taiwan Dollars (TWD).

Chapter V provides (Section 46) that operators of nuclear-power-generating facilities shall set aside at least 2% of funds generated from the back end of the nuclear cycle to assign to research and development activities concerning the operating technology of radioactive materials and/or final disposal.

An English translation of this Act is available from the Web site of the Fuel Cycle and Materials Administration of the Atomic Energy Council at www.fcma.aec.gov.tw/english/engfrm.htm#03

Czech Republic

Organisation and Structure

Decree on Performance and Management of the National Radiation Monitoring Network (2002)

Decree No. 319/2002, which entered into force on 18 July 2002, aims to implement certain provisions of Council Directive 89/618/Euratom on Informing the General Public about Health Protection Measures to be Applied and Steps to be Taken in the Event of a Radiological Emergency (see *Nuclear Law Bulletin* No. 45) and also provides for the application of Council Decision 87/600/Euratom on Community Arrangements for the Early Exchange of Information in the Event of a Radiological Emergency (see *Nuclear Law Bulletin* Nos. 39 and 41) and relevant provisions of the Euratom Treaty (Chapter 3, Articles 35 and 36).

The Decree establishes the details of the functioning and the organisation of the National Radiation Monitoring Network established under the supervision of the State Office for Nuclear Safety.

Radiation Protection

Decree on Radiation Protection (2002)

This Decree No. 307/2002 entered into force on 12 July 2002. It aims to implement Council Directive 96/29/Euratom of 13 May 1996 laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionising radiation (see *Nuclear Law Bulletin* No. 58) and Council Directive 97/43/Euratom of 30 June 1997 on Health Protection of Individuals against the Dangers of Ionising Radiation in Relation to Medical Exposure (see *Nuclear Law Bulletin* No. 60).

Decree on the Professional Qualifications and Training of Personnel in Relation to Nuclear Safety and Radiation Protection (2002)

This Decree No. 315/2002 entered into force on 16 July 2002. It amends Decree No. 146/1997 (see *Nuclear Law Bulletin* No. 60) in relation to requirements on qualifications and professional training of personnel in the nuclear field, on methods to be used for the verification of their special professional qualifications and on the issue of authorisations to selected members of personnel.

This Decree aims to harmonise definitions with European legislation and in particular to implement Council Directive 96/29/Euratom of 13 May 1996 laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionising radiation (see *Nuclear Law Bulletin* No. 58) and Council Directive 97/43/Euratom of 30 June 1997 on Health Protection of Individuals against the Dangers of Ionising Radiation in Relation to Medical Exposure (see *Nuclear Law Bulletin* No. 60).

Decree on Personal Radiation Passports (2002)

Decree No. 419/2002 establishes details on the issue, registration, verification and use of personal radiation passports. This radiological monitoring document is to be used until a uniform Community system is established governing the operational protection of transboundary outside workers performing activities in controlled areas. The Decree aims to implement Council Directive 90/641/Euratom on the Operational Protection of Outside Workers Exposed to the Risk of Ionising Radiation during their Activities in Controlled Areas (see *Nuclear Law Bulletin* No. 47).

Decree on Emergency Preparedness of Nuclear Facilities and Workplaces with Ionising Radiation Sources (2002)

This Decree No. 318/2002 entered into force on 18 July 2002. It aims to implement certain provisions of Council Directive 89/618/Euratom on Informing the General Public about Health Protection Measures to be Applied and Steps to be Taken in the Event of a Radiological Emergency (see *Nuclear Law Bulletin* No. 45) and also provides for the application of Council Decision 87/600/Euratom on Community Arrangements for the Early Exchange of Information in the Event of a Radiological Emergency (see *Nuclear Law Bulletin* Nos. 39 and 41).

The Decree specifies the scope and requirements of compulsory documentation relating to emergency preparedness in nuclear facilities and workplaces where ionising radiation sources are used, including on-site emergency plans and emergency rules.

Regime of Nuclear Installations

Decree Concerning Financial Reserves for the Decommissioning of Nuclear Installations or Category III or IV Workplaces (2002)

This Decree No. 360/2002 of the Ministry of Industry and Trade was adopted on 19 July 2002. It defines the manner in which licensees of nuclear installations and category III or IV workplaces may constitute reserves for the decommissioning of their installations, through deposits on a blocked special account in a bank in the Czech Republic. The resources will be available for preparation and performance of decommissioning activities at the required time and in the required amount in line with the programme of decommissioning approved by the State Office for Nuclear Safety. Interest from capital deposited shall accrue the financial reserve. These resources may be used solely for the preparation and implementation of decommissioning and the Radioactive Waste Repositories Authority (see *Nuclear Law Bulletin* Nos. 59 and 61) shall approve any spending.

Radioactive Waste Management

Order on Payments to the Nuclear Account by Generators of Radioactive Waste (2002)

This Governmental Order No. 416/2002, adopted on 28 August 2002, establishes the amounts and methods of payment to the Nuclear Account by generators of radioactive waste and provides for the administration of these resources. The Nuclear Account is a special fund provided by the State to finance all activities regarding radioactive waste disposal including those of the Radioactive Waste Repositories Authority established by the 1997 Act on the Peaceful Uses of Nuclear Energy and

Ionising Radiation (see *Nuclear Law Bulletin* Nos. 59 and 61). This Order also provides for an annual contribution to be made to municipalities having a radioactive waste repository on their cadastral area.

Transport of Radioactive Materials

Decree on Packaging and Transport of Nuclear Materials, Radioactive Substances and Ionising Radiation Sources (2002)

This Decree No. 317/2002 on Type Approval of Packaging Assemblies for Transport, Storage and Disposal of Nuclear Materials and Radioactive Substances, on Type Approval of Ionising Radiation Sources and on Transport of Nuclear Materials and Specified Radioactive Substances entered into force on 18 July 2002. It aims to implement certain provisions of Council Directive 92/3/Euratom of 3 February 1992 on the Supervision and Control of Shipments of Radioactive Waste between Member States and Into and Out of the Community (see *Nuclear Law Bulletin* No. 49). It further provides for application of Regulation (Euratom) No. 1493/93 of 8 June 1993 on Shipments of Radioactive Substances between Member States (see *Nuclear Law Bulletin* Nos. 52 and 53).

The Decree establishes a list of nuclear materials and radioactive substances which must be transported, stored or disposed in type-approved packaging assemblies only, sets out prerequisites for such type approvals and lays down details on the transport of nuclear materials and specified radioactive substances.

Regulations on Nuclear Trade (including Non-Proliferation)

Decree on Accounting and Control of Nuclear Materials (2002)

Decree No. 316/2002 entered into force on 16 July 2002 and amends Decree No. 145/1997 on Accounting and Control of Nuclear Materials (see *Nuclear Law Bulletin* No. 60). This Decree establishes further requirements relating to Euratom safeguards.

Decree Laying Down a List of Selected Items and Dual-Use Items in the Nuclear Sector (2002)

Decree No. 179/2002, which entered into force on 1 June 2002 establishes a list of selected items and dual-use items based on the relevant international legislation (IAEA Recommendations and Regulation (EC) No. 1334/2000 of 22 June 2000 setting up a Community Regime for the Control of Exports of Dual-use Items and Technologies (see *Nuclear Law Bulletin* No. 70).

France

Radiation Protection

Decree on the Protection of Workers Against the Dangers Arising from Ionising Radiation (2003)

This Decree No. 2003-296, adopted on 31 March 2003, aims to complete the implementation of Council Directive 96/29/Euratom of 13 May 1996 laying down the basis safety standards for the protection of the health of workers and the general public against the dangers arising from ionising radiation (see *Nuclear Law Bulletin* Nos. 58 and 61). The new provisions have been inserted into the Labour Code (Book II, Title III, Chapter I, Section VIII).

The Decree provides that the head of an establishment is required to take the necessary general, administrative and technical measures (in particular in relation to the organisation of work and working conditions) to prevent work-related accidents and occupational illnesses that can be caused by exposure to ionising radiation.

It confirms the principle whereby individual and collective professional exposure to ionising radiation must be maintained at the lowest level reasonably achievable, and it reduces the annual effective dose for exposed workers from 50 mSv to 20 mSv. During a period of two years from the entry into force of the Decree, the maximum sum of the effective doses received from external and internal exposure is set at 35 mSv per year, with a further maximum of 100 mSv over a period of five consecutive years, again from entry into force of the Decree.

The Decree also contains a collection of technical rules in relation to the manner in which work premises should be laid out (marking of zones and signalling of monitored zones and controlled zones, technical control of sources and equipment emitting ionising radiation, protection and alarm systems, measuring instruments used etc.).

Workers exposed to ionising radiation are divided into two categories according to the dose which they are liable to receive (annual effective dose higher or lower than 6 mSv). Radiation protection training is provided. They are also subject to dosimetric control through individual measurement of their external and internal exposure. Furthermore, workers who carry out activities in controlled zones (who may receive an annual dose which is higher than 6 mSv) are subject to occupational dosimetric control. The personal results of occupation dosimetric readings are transferred to the head of the establishment.

Furthermore, the Decree sets out in detail medical surveillance procedures for exposed workers, rules concerning abnormal working situations, practical organisation of radiation protection (designation and responsibilities of a person responsible for radiation protection, role of the different bodies such as the in-house doctor and the Institute for Radiation Protection and Nuclear Safety) as well as the rules which apply in relation to occupational exposure linked to natural radioactivity.

Decree on the Protection of Persons Exposed to Ionising Radiation for Medical and Forensic Purposes (2003)

This Decree No. 2003-270, adopted on 24 March 2003, aims to implement Council Directive 97/43/Euratom of 30 June 1997 on health protection of individuals against the dangers of ionising

radiation in relation to medical exposure (see *Nuclear Law Bulletin* No. 60) and inserts new provisions into the Public Health Code (Book I, Title I, Chapter V-I, Section 6).

The health protection of persons against the dangers of ionising radiation during exposure for medical purposes is strengthened by this Decree which establishes general principles such as the principle of justification of exposure to ionising radiation and the principle of optimisation during exposure. These provisions apply to persons exposed to ionising radiation for medical purposes, whether for diagnostic or therapeutic benefit, or within a system of occupational medical surveillance or a programme of detection of a particular illness. Persons who voluntarily participate in biomedical research programmes or persons exposed during forensic procedures are also concerned.

The Decree provides for the establishment of accompanying measures of a practical nature (standards of reference, quality assurance). Guides relating to the prescription and the carrying out of acts and examinations involving exposure to ionising radiation, containing specific information for acts concerning children, pregnant women or nursing mothers, shall be established by the Minister responsible for Health.

Persons who are authorised to use ionising radiation shall receive radiation protection training from authorised bodies.

Decree on Intervention in the Event of Emergency Radiological Situations and in the Case of Long-term Exposure (2003)

Decree No. 2003-295, adopted on 31 March 2003, aims to set out conditions pursuant to which personnel and authorised persons can intervene in the event of an emergency linked to the failure of a nuclear installation. It aims to implement Council Directive 96/29/Euratom of 13 May 1996 laying down the basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionising radiation (see *Nuclear Law Bulletin* Nos. 58 and 61) and inserts new provisions into the Public Health Code (Book I, Title I, Chapter V-I, Section 7).

Radiological emergency situations are defined as incidents or accidents giving rise to a risk of release of radioactive materials or a level of radioactivity liable to damage public health. The Decree provides that in the event of a radiological emergency situation, the person responsible for the nuclear activity shall take the necessary nuclear and radiological safety measures, implement the on-site emergency plan where necessary and inform the competent authorities. The Prefect (*Préfet*) manages the emergency operations and informs the public.

The Decree classifies those who intervene into two groups, the first of which is composed of personnel making up the special technical, medical or health intervention teams which are set up in advance to act in the event of a radiological emergency. This group is subject to radiological control and a medical aptitude test, and the effective dose which these persons may receive is 100 mSv. The dose is increased to 300 mSv where intervention activities are designed to protect persons. The second group is made up of persons who are not within special teams but who intervene on the basis of tasks and responsibilities incumbent on them. The effective dose which persons within this group may receive is set at 10 mSv.

Circular on the Organisation of Medical Care in the Event of a Nuclear or Radiological Accident (2002)

This Circular of 2 May 2002 aims to revise the measures to be taken in the event of a nuclear or radiological event liable to cause victims, and to specify how urgent medical care should be organised and implemented. The former provisions which dated from September 1987 are now complemented by a national guide-book in the form of instruction sheets to the attention of those responsible.

Order Establishing the National Reference Guide on Radiological Risks (2002)

This Order of 20 December 2002 sets out the national reference guide in implementation of Section 52 of the Decree of 26 December 1997 on the organisation of fire and emergency services. It sets out rules of procedure and training in relation to radiological risks. It may be consulted at departmental offices of fire and emergency services.

Indonesia

Radioactive Waste Management

Ordinance on the Management of Radioactive Waste (2002)

Ordinance No. 27 of 2002 on the Management of Radioactive Waste was adopted on 13 May 2002 in implementation of the 1997 Atomic Energy Act (see *Nuclear Law Bulletin* No. 59) and published in the State Gazette No. 52/2002.

Article 3 of this Ordinance states that the management of radioactive waste shall be based on the radiation protection principles of justification, optimisation and limitation of dose. Article 4 outlines the objective of this Ordinance – to protect the safety and the health of workers, members of the public and the environment from contamination by ionising radiation emitted from radioactive waste. Radioactive waste is classified into low-, intermediate- and high-level waste, as shall be further regulated by Decree of the Chairperson of the Nuclear Energy Control Board (BAPETEN) to specify quantities and characteristics of such waste, including activity, half-life, type of radiation, chemical and physical form, toxicity and origin.

Article 7 provides that any person or entity wishing to utilise nuclear energy shall declare to BAPETEN that radioactive waste shall be returned to the country of origin or shall be submitted to the National Nuclear Energy Agency (BATAN). Article 18 prohibits storage of radioactive materials or waste of foreign origin on Indonesian territory.

Transport of Radioactive Materials

Ordinance on the Transport of Radioactive Materials (2002)

Ordinance No. 26 of 2002 on the Transport of Radioactive Materials was adopted on 13 May 2002 in implementation of the 1997 Atomic Energy Act (see *Nuclear Law Bulletin* No. 59) and

published in the State Gazette No. 52/2002. This Ordinance repeals and replaces a 1975 Ordinance on the same subject (see *Nuclear Law Bulletin* No. 21).

Ordinance No. 26 sets out provisions governing the safe transport of radioactive materials in general and furthermore stipulates requirements in relation to the testing of packaging by a body to be appointed and accredited by the Nuclear Energy Control Board (BAPETEN). Workers who are directly involved in the transport of radioactive materials on a routine basis are required to pursue training in this field, to be provided by the transporter.

Ireland

Radiation Protection

Radiological Protection (Amendment) Act (2002)

An Amendment to the Radiological Protection Act of 1991 (see *Nuclear Law Bulletin* Nos. 45 and 48) was adopted on 20 March 2002 as Act No. 3 of 2002. This amendment strengthens and clarifies certain important aspects of the Radiological Protection Institute of Ireland's licensing powers. In particular, the Minister for Energy is entrusted with the power of making regulations, with the consent of the Minister for Finance, in relation to the procedure for granting a licence including renewal or amendment of a licence. Such regulations may cover provisions concerning requirements for applications to be made in writing, the period within which an application for renewal or amendment should be made, the period of validity of licences, the fixing of fees, the period of time within which such fees are to be paid and the circumstances in which the Institute may retain such fees or a proportion of them. Furthermore, the Institute may recover any sum of money due as a simple contract debt in any court of competent jurisdiction.

This Amendment further provides for an additional offence under Section 40 of the 1991 Act: that of making a false or misleading statement when making an application for a licence.

This Amending Act also provides the legislative basis for a scheme of grants to assist householders with the cost of remedying high radon levels in their homes. The Institute shall administer this grant scheme, establishing a system for the inspection of any house and remediation works that are the subject of an application under this Act. Payments shall be made in respect of any house with a radon gas measurement that is greater than 200 becquerels per cubic metre. The amount of a grant to be paid to an applicant shall be one half of the costs incurred by the applicant for the remediation works, subject to a maximum grant of EUR 1 000.

The text of this legislation is available in English at the following URL:
www.irlgov.ie/oireachtas/frame.htm

Italy

Regime of Nuclear Installations
Regime of Radioactive Materials (including Physical Protection)

Ordinance on Urgent Measures for the Disposal of Radioactive Materials and in Relation to the Decommissioning of Nuclear Facilities (2003)

On 7 March 2003, the Prime Minister issued Ordinance No. 3267 on urgent and extraordinary measures for the disposal of radioactive materials and to speed up the decommissioning procedures for nuclear facilities. These measures aim to increase the safety and security of nuclear materials and installations, to respond in particular to the heightened international security risk following the events of 11 September 2001.

Pursuant to the Ordinance, the President of the Nuclear Installation Management Company (*Società per la Gestione degli Impianti Nucleari* – SOGIN), the company established in 1999 to pursue the decommissioning of nuclear power stations in Italy (see *Nuclear Law Bulletin* No. 66) is given all the necessary powers (as a "delegated Commissioner") to ensure the security of irradiated nuclear fuel and highly radioactive waste, to plan the decommissioning not only of nuclear power stations but also of research installations, and to guarantee the security of the repositories operated by the National Agency for New Technologies, Energy and the Environment (ENEA). A technical-scientific Commission established by the Ordinance will assist the President in his tasks. To the extent necessary for the purpose of the Ordinance, licences and staff belonging to ENEA will be transferred to SOGIN.

Japan

General Legislation

Amendment of the Electric Utilities Industry Law and the Regulation Law (2002)

On 11 December 2002, in the wake of a series of cases of falsification related to self-imposed inspections[1] at nuclear power plants operated by the Tokyo Electric Power Company (TEPCO), the Electric Utilities Industry Law and the 1957 Law for the Regulation of Nuclear Source Material, Nuclear Fuel Material and Nuclear Reactors (hereinafter referred to as "the Regulation Law" – see *Nuclear Law Bulletin* Nos. 11, 22, 24, 25, 38, 43, 56, 64 and 65) were amended to prevent recurrence of such falsifications.

The nature of the licensee's self-imposed inspections (see *supra*) has been made mandatory and they are now legally defined as "periodical licensee's inspections". The new Japan Nuclear Energy

1. Licensees are primarily responsible for ensuring safety at their NPPs and are required to confirm the integrity of equipment. Licensees conduct self-imposed inspections in order to examine conformity. The regulatory body, NISA, then conducts periodical inspections as it deems appropriate.

Safety Organisation (JNES – see *infra*) examines the licensee's implementation of the periodical licensee's inspection and then the Nuclear and Industrial Safety Agency (NISA) reviews the results found by the JNES. The licensee is then informed of the review results. Furthermore, more stringent inspections are to be carried out. In addition to the current inspections (pre-service, periodical and safety inspections) carried out by the NISA, the JNES is now responsible for additional reviews. In addition, the quality assurance system of licensees now comes within the scope of inspections. These amendments will enter into force on 1 October 2003.

Licensees are required to carry out an "integrity evaluation" of their facilities in order to identify defects such as cracks or fissures, and they must record, maintain and report the results of this evaluation. Evaluation methods are to be prepared by the government. This amendment shall also enter into force on 1 October 2003.

More stringent penalties have been established for violation of the regulations contained in both the Electric Utilities Industry Law and the Regulation Law. Stricter sanctions have been introduced in respect of serious violations including refusal to comply with standards, evading governmental inspection and ignoring requirements to submit reports.

The table below provides examples of these revised penalties which entered into force on 17 March 2003:

Offence	***Before Amendment***	***After Amendment***
Violation of orders to comply with technical standards	Max. fine of JPY 3 million	Max. corporate fine of JPY 300 million Additional max. of 3 years imprisonment
Violation of orders to cease operations	Max. fine of JPY 3 million Max. of 3 years imprisonment	Max. corporate fine of JPY 300 million
Evasion or obstruction of periodical inspections	Max. fine of JPY 0.3 million	Max. fine of JPY 1 million Max. of 1 year imprisonment Additional max. corporate fine of JPY 100 million
Evasion or obstruction of safety inspections	Max. fine of JPY 0.3 million	Max. fine of JPY 1 million Max. of 1 year imprisonment Additional max. corporate fine of JPY 100 million

An "allegation committee" has also been established within the NISA to facilitate the reporting of and investigation into allegations of misconduct. This committee is composed of external independent experts. Furthermore, the Nuclear Safety Commission (NSC) is entrusted with the authority to investigate allegations and to advise the management of the administrative agencies involved on the measures to be taken. The scope of the NSC's "double check" system has also been enlarged to include matters other than the safety review of new nuclear power plants. The Minister of

Economy, Trade and Industry (METI) and other competent ministries are required to submit quarterly reports to the NSC on the progress of the construction permit, pre-service inspections, periodic inspections, safety inspections etc. of nuclear power plants and other nuclear facilities. They are then required to take the NSC's opinion into account in taking the necessary measures for safety assurance. These amendments entered into force on 1 April 2003.

Organisation and Structure

Establishment of the Japan Nuclear Energy Safety Organisation (2002)

On 11 December 2002, a Law establishing the Japan Nuclear Energy Safety Organisation (JNES) was adopted by the Japanese parliament. The decision to establish an independent administrative organisation was made by the cabinet council in March 2002 to ensure more efficient and proper nuclear safety regulatory activities.

The JNES will be responsible for strengthening in general the manner in which nuclear power safety regulations are applied. Its tasks will be as follows:

- pre-service and periodical inspection of NPPs pursuant to the Electric Utilities Industry Law and the 1957 Law for the Regulation of Nuclear Source Material, Nuclear Fuel Material and Nuclear Reactors as amended (see *Nuclear Law Bulletin* Nos. 11, 22, 24, 25, 38, 43, 56, 64 and 65);
- periodical inspection of safety management pursuant to the above-mentioned Laws;
- analysis and evaluation of design safety;
- investigation into, testing of and research pertaining to the safe use of nuclear power; and
- prevention and mitigation of nuclear emergencies.

Former Yugoslav Republic of Macedonia

General Legislation

Law on Protection against Ionising Radiation and Radiation Safety (2002)

The Law on Protection against Ionising Radiation and Radiation Safety was published in the Official Gazette on 4 July 2002 and entered into force on 12 July 2002. It repeals the Law on Protection against Ionising Radiation of 1991. The main objectives of the Law are to create a legal framework to govern state control and regulation of the use of ionising radiation sources and to protect the public and the environment from the harmful effects of ionising radiation.

The Law first of all establishes the responsibilities of the competent authorities in the field of radiation safety. A Department for Radiation Safety is established to carry out managerial and expert activities in the field of radiation protection. It will be responsible for, *inter alia*:

1. issuing licences for the import, export, distribution, transfer, transport, storage, disposal and maintenance of ionising radiation sources;

2. establishing intervention levels and other conditions governing radiation protection;

3. establishing exemption levels for ionising radiation sources with low activity;

4. carrying out inspections;

5. keeping a National Register of ionising radiation sources and of persons occupationally exposed to ionising radiation;

6. organising training of radiation workers and their supervisors;

7. carrying out research in the radiation protection field;

8. informing the public of radiation protection issues, intervening in the event of an emergency;

9. putting forward the National Action Plan on protection of the public against ionising radiation.

The Department for Radiation Safety shall be managed by a Director who shall be directly responsible to the government. The Department shall also establish a Commission for Radiation Safety, which will act as an advisory body for specific issues in the area of ionising radiation protection. This Commission will be composed of representatives of the different ministries as well as representatives of scientific and expert institutions and organisations in the radiation field.

The Institute for Health Protection is responsible for, *inter alia*, assessment of occupational exposure to ionising radiation; medical control of occupationally exposed workers; monitoring the levels of radioactive contamination in the environment and participating in the implementation of training on safe operation and management of ionising radiation sources.

A licence issued by the Department for Radiation Safety is necessary for all activities involving ionising radiation. The Law establishes requirements which must be met by legal entities performing activities involving the use of ionising radiation in relation to qualifications and training of personnel, equipment used, quality assurance, the security of their installations and emergency planning.

The Law is based on the principles of justification, optimisation and dose limitation and sets out the main principles for the protection of workers exposed to radiation (dosimetric control and health control of the personnel). Dose limits for the exposure of workers and the population to ionising radiation will be established by the Department for Radiation Safety. The Law also sets out the conditions governing the application of medical radiological procedures, including justification and optimisation of practices and the duties and training of medical personnel.

The Law establishes a system of registration, accounting and control of ionising radiation sources. The licence-holder is responsible for:

1. providing protection and training for workers exposed to ionising radiation, for the population and the persons exposed during a medical examination;

2. registering the ionising radiation sources including technical characteristics and specifications on safety and safe operation;

3. establishing an emergency plan in case of accident, for the protection of the population and exposed workers; and

4. accounting and control of the ionising radiation sources.

They are furthermore responsible for collection, storage, conditioning, transport and disposal of the radioactive waste they produce. Until the location for the storage facility for disposal of radioactive waste has been designated, radioactive waste shall be stored on the premises of the licence-holder.

Finally the Law contains rules concerning inspections, quality assurance and penalties. A National Action Plan for the protection of the population against the harmful effects of ionising radiation in case of radiation accident will be established.

Romania

General Legislation

Ordinance on the Use of Nuclear Energy Exclusively for Peaceful Purposes (2003)

Ordinance No. 7 on the Use of Nuclear Energy Exclusively for Peaceful Purposes was adopted on 30 January 2003, published in the Official Gazette (*Monitorul Oficial*, Part I, No. 59) on 1 February 2003 and entered into force on the same date. Its objective is stated in Article 2 to be the promotion and organisation of activities in the nuclear field.

An exhaustive list of activities pertaining to the nuclear field, and to which the Ordinance applies, are listed in Article 3, including the prospection and mining of uranium ore; the construction, operation and decommissioning etc. of nuclear installations; research and development activities in the nuclear energy field; production, use, transport, import/export etc. of radioactive materials or radiation sources; treatment, processing, storage and disposal of radioactive waste; nuclear safety, quality assurance and radiation protection activities; nuclear emergency management; and training and education of workers and information of the public. Such activities are deemed to be "activities of national interest" and therefore may only be carried out by economic entities licensed in accordance with the applicable legislation.

Chapter III of the Ordinance provides that nuclear activities shall be carried out in accordance with the National Nuclear Plan (NNP), to be drawn up by the National Atomic Energy Agency (NAEA), a specialised department within the Ministry of Education and Research, following consultations with other ministries, central and local government bodies, economic entities operating in the nuclear field and professional associations in the sector. The NAEA is furthermore (Chapter IV) responsible for the promotion of nuclear activities in Romania, based on the NNP, and for international co-operation activities in the nuclear field.

Chapter V provides that the National Commission for the Control of Nuclear Activities (CNCAN), the national authority responsible for the regulation, licensing and control of nuclear activities carried out in Romania, is once again placed under the authority of the Ministry of Waters and Environmental Protection.

The Ordinance further provides (Chapter VI) for the establishment of a National Nuclear Energy Council (NNEC) to harmonise nuclear policies and to monitor the implementation of the NNP. The Council shall be directly responsible to the Prime Minister and shall be composed of representatives of the various ministries having responsibilities in the nuclear field. The NNEC shall be responsible, *inter alia*, for the organisational, technical and financial management of the NNP, supporting research and development activities; monitoring the integration of nuclear applications into the economic and social bases of society; endorsing strategies for training of personnel; examining CNCAN reports on nuclear security, physical protection, liability and insurance; examining and suggesting amendments to legislation and monitoring compliance with international obligations. The NAEA and the CNCAN shall provide the Secretariat for the NNEC.

Finally, Chapter VII provides that nuclear activities in Romania are to be financed from budgetary funds, funds generated by the production and service sectors in the nuclear field, assets provided by economic entities, whether state-owned, private or mixed, funds generated by participation in international projects and any other funds as provided by law.

This Ordinance repeals those provisions of Law No. 61/1974 with regard to nuclear activities carried out in Romania and Law No. 6/1982 with regard to quality assurance for nuclear facilities and installations which were not already repealed by the 1996 Law on the Safe Conduct of Nuclear Activities (see *Nuclear Law Bulletin* Nos. 59, 61 and 68; the text of this Law was reproduced in the Supplement to *NLB* No. 59).

Radiation Protection

Orders Implementing European Legislation in the Field of Radiation Protection (2002)

A number of orders have been adopted to further implement European legislation in the field of radiation protection (see *Nuclear Law Bulletin* No. 69). The implementation of Council Directive 96/29/Euratom of 13 May 1996 laying down the basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionising radiation (see *Nuclear Law Bulletin* No. 58) was completed through the adoption by the Minister of Health and of the Family of Order No. 1032/2002 of 20 December 2002 on Completion of the Norms on Medical Surveillance of Occupationally Exposed Workers and the adoption by the President of the National Commission for the Control of Nuclear Activities (CNCAN) of Order No. 180/2002 on Norms on Individual Dosimetry on 5 September 2002 and Order No. 202/2002 on 15 October 2002 on the Issue of Permits to Exercise Nuclear Activities and on Designation of Radiation Protection Qualified Experts.

Council Directive 97/43/Euratom of 30 June 1997 on Health Protection of Individuals against the Dangers of Ionising Radiation in Relation to Medical Exposure (see *Nuclear Law Bulletin* No. 60) was implemented in Romania by Joint Order No. 79/2002 of the President of the CNCAN of 14 March 2002 and Order No. 285/2002 of 19 April 2002 of the Minister of Health and of the Family on Norms on Radiation Protection of Individuals in Case of Medical Exposure to Ionising Radiation.

Norms on Radiological Safety (2002)

Order No. 228/2002 on the Procedures for the Acceptance of External Undertakings was adopted by the President of the CNCAN with a view to implementing Council Directive 90/641/Euratom of 4 December 1990 on the Operational Protection of Outside Workers Exposed to

the Risk of Ionising Radiation during their Activities in Controlled Areas (see *Nuclear Law Bulletin* No. 47).

Radioactive Waste Management

Ordinance on the Management of Spent Nuclear Fuel and Radioactive Waste, including Final Disposal (2003)

Ordinance No. 11 on the Management of Spent Nuclear Fuel and Radioactive Waste, including Final Disposal, was adopted on 30 January 2003, published in the Official Gazette (*Monitorul Oficial*, Part I, No. 61) on 1 February 2003 and entered into force on the same date. It aims to regulate the management of spent fuel and radioactive waste in such a manner as to guarantee the safety of the public, environment and property and to respect the rights of future generations. It further aims to set out provisions governing the financing of such activities over the life cycle of nuclear installations. The Ordinance applies to waste and spent fuel resulting from both power and research reactors and from industrial, agricultural and medical activities, with the exception of naturally radioactive waste. It subscribes to the polluter pays principle, confirms the exclusive liability of the generator of radioactive waste and provides that management methods must not put peoples' health or the environment at risk. The most effective methods available that do not involve excessive costs should be employed.

Chapter II provides that licensees are responsible for the management and final disposal of spent nuclear fuel and radioactive waste for the entire life cycle of their nuclear installation, including decommissioning. Nation-wide co-ordination of such activities shall be ensured by compliance with the national strategies on decommissioning and spent fuel and radioactive waste management. A National Agency for Radioactive Waste, under the authority of the Ministry of Industry and Resources, is established to supervise the nation-wide co-ordination of such activities. The responsibilities of this Agency are set out in detail in Article 15 of the Ordinance. Its activities shall be financed by annual direct contributions of licensees as set out by Government Decision, donations or financial support provided by natural or legal persons, national or international organisations and any other sources of income approved by the Government.

Licensees are required to report annually to the Agency on the quantities and types of waste and fuel generated at their installations.

Finally, the Ordinance refers to the 1997 Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management (see *Nuclear Law Bulletin* Nos. 60, 67 and 69) to which Romania is a Party and reiterates the prohibition of import of spent nuclear fuel or radioactive waste for the purpose of final disposal.

Transport of Radioactive Materials

Norms on International Shipments of Radioactive Waste Involving Romanian Territory (2002)

Order No. 183/2002 of 6 September 2002 of the President of the CNCAN aims to implement Council Directive 92/3/Euratom of 3 February 1992 on Control of Radioactive Waste Shipments (see *Nuclear Law Bulletin* No. 49) and Commission Decision 93/552/Euratom of 1 October 1993 establishing the standard document for the supervision and control of shipments of radioactive waste

referred to in Council Directive 92/3/Euratom. It establishes the responsibilities of the holder, consignee and competent authorities involved in international shipments.

Norms on Transport of Radioactive Materials (2002)

Order No. 222/2002 of the President of the CNCAN on Authorisations and Procedures establishes the regulatory requirements for the transport of radioactive waste involving the Romanian territory.

Food Irradiation

Norms on Foodstuffs and Feeding Stuffs Contaminated by Radioactivity Following a Nuclear Accident or Radiological Emergency (2002)

Order No. 91 of 14 March 2002 of the President of the CNCAN, Order No. 856 of 23 November 2001 of the Minister of Health and of the Family and Order No. 112 of 12 March 2002 of the Minister of Agriculture, Food and Forests aim to implement European legislation on the radioactive contamination of foodstuffs and feedingstuffs following a nuclear incident. The monitoring of the imported agricultural products is performed by the sanitary veterinary laboratories network. Dairy products and certain other products which do not comply with the maximum acceptance levels may not be imported. Data regarding the samples analysed and the values of the radioactive contamination detected in agricultural products are reported to the Institute of Hygiene and Veterinary Public Health.

Norms on Foodstuffs and Food Ingredients Treated by Ionising Radiation (2002)

Order No. 90 adopted on 14 March 2002 by the President of the CNCAN, Order No. 855 adopted on 23 November 2001 by the Ministry of Health and of the Family and Order No. 98 adopted on 4 March 2002 by the Ministry of Agriculture, Food and Forests aim to implement Directive 1999/2/EC of 22 February 1999 of the European Parliament and of the Council on the approximation of the laws of the Member States concerning foods and food ingredients treated with ionising radiation and Directive 1999/3/EC of 22 February 1999 of the European Parliament and of the Council on the establishment of a Community list of foods and food ingredients treated with ionising radiation (see *Nuclear Law Bulletin* No. 67).

Russian Federation

General Legislation

Federal Law on Technical Regulation (2002)

This Law was adopted by the Duma on 15 December 2002 and promulgated by the President on 27 December 2002. It was published in January 2003 and shall enter into force six months thereafter.

The adoption of this Law which is part of a complete re-modelling of the regime of economic activities in the Russian Federation, aims to reorganise and unify procedures by which "technical regulations" are drafted, adopted and applied (Article 3). The general objective of these regulations is to protect public health and private and public property, to preserve the environment and to prevent acts which may cause damage to consumers (Article 6). The activities covered are those which pose a risk for the above-mentioned interests and they include the safe use of nuclear energy and ionising radiation and the safety of irradiation activities (Article 7). These regulations should not however interfere with the freedom necessary to pursue economic activities any more than is strictly necessary.

The Act distinguishes between general technical regulations and those which have a special character. Nuclear and ionising radiation safety are included amongst the former.

The Act regulates in detail the conditions pursuant to which these regulations are drafted, adopted and controlled, those which determine how products are made available on the market, controls by State bodies, imports, product liability, the objective of standardisation, the information of users etc. These provisions do not treat the nuclear sector any differently.

It is generally accepted that this new legislation will substantially affect this powers exercised in the field of regulation and control of nuclear activities by the Federal Agency for Nuclear and Radiation Safety (*Gosatomnadzor*). It will therefore require that *Gosatomnadzor* draft new technical regulations in this field, to conform to the provisions of the Act. A period of seven years is established by the Act for the preparation of these new technical regulations. In the meantime, technical control in the field of nuclear safety and radiation will continue to be exercised on the basis of the 1995 Act on the Use of Atomic Energy (see *Nuclear Law Bulletin* No. 58; the text of this Law is reproduced in the Supplement to *NLB* No. 57) as amended (see *Nuclear Law Bulletin* No. 68) and the 1997 Act on the Radiation Safety of the Public (Article 46) (see *Nuclear Law Bulletin* No. 59).

Slovenia

General Legislation

Amendment to the Act on Protection Against Ionising Radiation and Nuclear Safety (2003)

An Act amending the 2002 Act on Protection against Ionising Radiation and Nuclear Safety (see *Nuclear Law Bulletin* No. 70; the text of this Act is available on the Web site of the NEA at www.nea.fr/html/law/nlb/index.html) was adopted on 25 February 2003.

The objective of this amendment is to implement Article 5(2) of the draft proposal for an EU Council Directive on the management of spent nuclear fuel and radioactive waste. It provides that the Slovenian government shall prepare an amendment of the national programme for the protection of the environment as regards radioactive waste and spent fuel management by the end of 2004 and submit it to the Parliament for adoption. The site for the establishment of a low- and intermediate-level waste repository must be approved by 2008 and it is to be licensed for operation by 2013.

Sweden

Radiation Protection

Regulations on the Planning of Radiation Protection Issues Before and During the Decommissioning of NPPs (2002)

New Regulations (referenced SSI FS 2002:4) on the planning of radiation protection issues before and during the decommissioning of nuclear power plants were issued by the Swedish Radiation Protection Institute (*Statens strålskyddsinstitut* – SSI) on 29 October 2002. These Regulations, which establish requirements that apply both during operation and after final shutdown, aim to ensure that radiation doses received by workers and releases of radioactivity into the environment during decommissioning are in accordance with the ALARA principle and are within specified limits.

These Regulations are applicable to all nuclear facilities, except the permanent installations which will remain in radioactive waste repositories after closure. "Decommissioning" is defined to mean all actions taken by the licensee after final shutdown in order to reduce the amount of radioactive substances in the land and building structures to levels that permit release of the site and any remaining buildings. "Release of site" is defined in turn to mean a decision by the SSI that, from a radiation protection point of view, there are no further restrictions on the use of land and any remaining buildings. "Final shutdown" is used to describe a facility in which the main operations have ceased and there is no intention of resuming them.

Radiation protection issues related to future decommissioning are to be considered during construction of a new nuclear facility or during reconstruction or modification of an existing facility. For nuclear facilities in operation, the main requirement of the Regulations is that the licence-holder shall have a preliminary plan for future decommissioning of the facility. The plan shall be kept up-to-date and reviewed in connection with any changes in the facility. The Regulations do not prescribe how or when decommissioning shall be performed, but rather they require that the licensee investigate different possible options in order to make an informed choice.

When a facility has been finally shut down, the Regulations require that the licence-holder present an overall description of the decommissioning plan covering methods, time-scales and project goals. The description shall be submitted to the SSI within one year of final shutdown, together with an overall description of the radiological consequences of the chosen decommissioning option. The description is to cover probable radiation doses to personnel and releases of radioactive substances to the environment, activities that can lead to unplanned events, and the expected amounts and flow of radioactive material.

With regard to dismantling and demolition after final shutdown, the Regulations require that the licence-holder shall submit an overall description of the work to the SSI at least four months before dismantling is initiated. The description shall essentially be a detailed plan of the foreseen activities, covering the same issues as the pre-planning. The SSI will review the plan and, if required, impose additional radiation protection conditions.

After decommissioning, the licensee is required to prove that the site is fit be released from regulatory control. Therefore the Regulations require that the licence-holder document all the relevant information during decommissioning, including results from measurements and calculations and information concerning any decisions and actions taken that have an influence on the distribution and amount of radioactive substances remaining.

The text of these Regulations is available in English at the following URL. They will enter into force on 1 January 2004. www.ssi.se/forfattning/pdf_eng/2002_4e.pdf

Switzerland

General Legislation

*Federal Act on Nuclear Energy (2003)**

On 21 March 2003, the Federal Assembly (Swiss Parliament) adopted the new Federal Act on Nuclear Energy. When it enters into force, the new Act shall replace the existing 1959 Atomic Act as amended (see *Nuclear Law Bulletin* Nos. 16, 28, 29, 31, 37, 38, 52, 53, 54 and 55). It was necessary to revise the Swiss atomic energy legislation in order to regroup numerous elements which were scattered across various ordinances of the Federal Council (decommissioning of nuclear installations, disposal of radioactive waste and the financing of such disposal) and also to incorporate new provisions (obligations of the operators of nuclear installations, adaptation of licensing procedures and reprocessing of spent nuclear fuel). The revision exercise already commenced in the 1970s. It was suspended on numerous occasions due to the politically sensitive nature of the use of nuclear energy in this country.

The most important characteristics of the new Act are as follows:

- The nuclear energy option is retained: the construction of new nuclear power plants remains possible as long as the most recent technologies are used. Licences to operate plants shall no longer be limited in duration and the operation of existing plants shall continue as long as the safety rules are observed.

- A general authorisation (decision in principle) shall be required for new nuclear installations (plants and underground radioactive waste repositories). It shall be issued by Parliament and may be subject to referendum (optional).

- The cantons where nuclear sites are situated, those in the vicinity and neighbouring States shall be consulted during the preparatory phase for a general authorisation. The requirement to obtain the approval of the canton itself has not been retained by the Parliament.

- A ten-year moratorium on the reprocessing of spent nuclear fuel is established as from 1 July 2006. Until then, operators may continue to honour their contracts with French and English reprocessing firms. The ten-year moratorium may be extended for a further period of ten years by the Parliament. The government proposal to simply ban reprocessing generally was rejected by the Parliament.

- The disposal of radioactive waste is to be based on a new concept established by a group of experts. Following a long period of observation of waste stored in an underground

* This note was kindly provided by Messrs. Renato Tami and Sandro Daïna of the Legal Section of the Federal Energy Office in Switzerland.

repository, such waste is to be sealed and responsibility for it will be assumed by the Confederation (the State). Until it is sealed, the associated costs will be incurred by the operators of plants. They are required to present a waste disposal plan to the Government setting out a timetable, technical details in relation to the various stages and a method of financing.

- Financial cover for the decommissioning of installations and the disposal of radioactive waste. The Decommissioning Fund should ensure that after 40 years of operation of a nuclear installation sufficient funds should be available to finance decommissioning operations (estimated at 1.5 billion Swiss francs (CHF) for all of these operations). The Fund for the Disposal of Spent Nuclear Fuel is required to cover 2/3 of the costs i.e. CHF 13 billion.

- Co-ordination of licensing procedures: the new Act introduces the principle of co-ordination and simplification of licensing procedures. Henceforth there shall only be one formal licence issued to the operator. There will be no more communal or cantonal licences. The legislation of the cantons and the communes are to be taken into account during the issue of the federal decision.

- Possibility to appeal federal licences before the Appeal Commission of the Department of the Environment, Transport, Energy and Communication (first instance) and then before the Federal Court (second and last instance).

The entry into force of the Act has not yet been established. It will depend on the result of the referendum on 18 May 2003 on the two constitutional initiatives "Moratorium plus" ("*Moratoire plus*") and "Phase-out Nuclear" ("*Sortir du nucléaire*"). The "Moratorium plus" initiative concerns the extension of the moratorium on the construction of nuclear power plants and the limitation of the nuclear risk and the "Phase-out nuclear" initiative represents a major turning-point in the energy field by proposing the gradual decommissioning of all nuclear power plants. Further information on these two movements are available in French on the site of the Federal Energy Office at the following URL: www.suisse-energie.ch/bfe/fr/energiemaerkte/kernenergie/unterseite10/index.html.

If these proposals are rejected, the Act shall be put forward for an optional referendum and published in its current form if a vote of the people is not called for. If one or both of these initiatives are accepted, the Act shall be returned to Parliament to be adapted to correspond to the objectives of the initiatives.

The text of the Act is available on the Web in French at the following URL: www.admin.ch/ch/f/ff/2001/2692.pdf

Third Party Liability

*Amendment of the Ordinance on Nuclear Third Party Liability (2002)**

By decision of 29 November 2002, the Swiss Federal Council (government) amended the 1983 Ordinance on Nuclear Third Party Liability as amended (RS 732.441 – see *Nuclear Law Bulletin* Nos. 33, 37, 59 and 67). The amendment entered into force on 1 January 2003.

The 1983 Act on Nuclear Third Party Liability (RS 732.44 – see *Nuclear Law Bulletin* Nos. 23, 25, 29, 31, 33 and 49; the text of this Act is reproduced in the Supplement to *NLB* 32) provides in Section 11(3) that the Federal Council shall identify those risks which the private insurer may decide not to cover for the injured party. These risks are set out in Section 4(1) of the 1983 Ordinance on Nuclear Third Party Liability. They include, *inter alia*, extraordinary natural phenomena and acts of war. Terrorism is not specifically mentioned. Until now, terrorism was also considered as a classical risk which could not be excluded by the private insurer. It is therefore completely covered today up to 1 billion Swiss francs (CHF)[1] (plus CHF 100 million for interest and procedural costs).

The general situation on the insurance market changed dramatically after the events of 11 September 2001. The nuclear insurance branch was no exception to this rule. In September 2002, the Swiss Nuclear Insurance Pool informed the Federal Energy Office of these developments. The Pool decided to modify, by 1 January 2003, private policies covering nuclear installations on Swiss territory. From now on, cover for damage due to terrorist acts shall be limited to CHF 500 million (plus CHF 50 million for interest and procedural costs). This modification to private policies led to an amendment of Sections 4 and 5 of the Ordinance on Nuclear Third Party Liability.

Private insurers may exclude acts of war from the cover they propose. This is currently the case. This risk is assumed by the Confederation within the limits of the law. A terrorist act is not assimilated to an act of war, contrary to the claims of operators. Currently, it is entirely covered by private insurers. Following a new appraisal of the terrorist risk, insurers arrived at the conclusion that they could only offer cover up to CHF 500 million. According to the terms of the Act on Nuclear Third Party Liability, the Confederation is responsible for assuming the risk beyond the CHF 500 million covered by the insurers up to CHF 1 billion. In order to cover such a risk, the Confederation charges a premium to all operators of nuclear installations. This situation results in an increase of the premiums (federal and private) paid by operators.

In order to adapt the Ordinance on Nuclear Third Party Liability, it was first necessary to amend Section 4 by adding an extra sentence to the first subparagraph. This sentence adds a new risk, that of terrorism, which is only partially covered by private insurance. Therefore, the first CHF 500 million of nuclear damage caused by a terrorist act is covered by the private insurer of the operator. To this sum can be added CHF 50 million for interest and procedural costs. However, the damage between CHF 500 million and CHF 1 billion now falls to be paid by the Confederation in accordance with Sections 11 and 12 of the Act on Nuclear Third Party Liability.

Section 14 of the Act on Nuclear Third Party Liability allows the Confederation to charge the operators of nuclear installations insurance premiums. These premiums are lodged to the Fund for

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* This note was kindly provided by Messrs. Renato Tami and Sandro Daïna of the Legal Section of the Federal Energy Office in Switzerland.

1. This corresponded at the end of April 2003 to approximately 663.9 million EUR.

Nuclear Damage (*Nuklearschadenfonds*) whose assets amounted to CHF 290 million at 31 December 2001. These federal premiums are established in Section 5(1) of the Ordinance on Nuclear Third Party Liability.

Given that the Confederation is responsible, since 1 January 2003, for the coverage of part of the terrorist risk (between CHF 500 million and CHF 1 billion), it is natural that the federal premiums be increased. This increase is based on the raise in premiums for private insurance, and balanced by the fact that, in insurance, that proportion of the premium which is charged for higher coverage (second tier) is lower that the premium paid for basic cover (first tier).

The text of this Ordinance is available in French on the Web at the following URL: www.admin.ch/ch/f/as/2002/4210.pdf

United Kingdom

Regime of Radioactive Materials (including Physical Protection)

Nuclear Industries Security Regulations (2003)

The Nuclear Industries Security Regulations were laid before Parliament on 28 February 2003 in order to consolidate and upgrade security regulations of the civil nuclear industry. They include provisions on the security of nuclear premises, the security of transport of nuclear materials and the security of sensitive nuclear information.

Nuclear premises are defined in Part 1 to mean a nuclear site on which nuclear or other radioactive material is used or stored, premises on a nuclear site and used by someone other than the site licence-holder to use or store nuclear or other radioactive materials, and any other premises where nuclear material is used or stored, with the exception of temporary storage of such material during the course of or incidental to its transport. Part 2 of the Regulations provides that there must be an approved security plan for each nuclear premises, describing *inter alia* the standards, procedures and arrangements relating to the investigation and assessment of the suitability of the relevant personnel, the receipt and despatch of nuclear material, the manner in which the nuclear premises are to be policed and guarded and the steps to be taken by the responsible person in the event of unauthorised entry, incidents involving explosives or firearms, theft or attempted theft or threat to carry out any of the aforementioned.

Requirements relating to the transport of nuclear materials by approved carriers are set out in Part 3 of these Regulations. The Secretary of State is responsible for issuing or revoking such approvals of carriers. A carrier applying for approval must submit a transport security statement with which he is then obliged to comply during transport operations.

Part 4 describes the obligations which must be respected by persons coming into contact with sensitive nuclear information in relation to the maintenance of security standards, procedures and arrangements to minimise the risk of loss, theft or unauthorised disclosure of such information.

The Regulations entered into force on 22 March 2003 with the exception of the transport provisions which shall enter into force on 22 September 2003.

AGREEMENTS

BILATERAL AGREEMENTS

Bulgaria – Ukraine

Agreement on Co-operation in the Field of State Regulation and Control of Safety During the Use of Nuclear Energy (2003)

On 31 January 2003, the Nuclear Regulatory Agency of Bulgaria and the State Nuclear Regulatory Committee of Ukraine signed the above Agreement. It provides for co-operation between the regulatory authorities of both countries in the nuclear safety field, sets out requirements concerning the exchange of information on proposed improvements to the legislative and regulatory framework and on the implementation of joint projects on licensing and regulatory activities.

Czech Republic – Slovak Republic

Agreement on Early Notification of a Nuclear Accident (2002)

On 28 June 2002, the Nuclear Regulatory Authority of the Slovak Republic and the State Office for Nuclear Safety of the Czech Republic signed an Agreement on Early Notification of a Nuclear Accident. This Agreement is concluded for an unlimited period of time. It provides for measures to protect the public in the event of a nuclear accident and also contains provisions on the exchange of information on the evolution of a radiological situation and on illicit trafficking of nuclear materials.

Romania – Slovak Republic

Agreement on Early Notification of Nuclear Accidents and Information Exchange on Nuclear Facilities (2002)

The above Agreement was signed by the Nuclear Regulatory Authority of the Slovak Republic and the National Commission for the Control of Nuclear Activities of Romania on 19 February 2002.

The Agreement is based upon the Convention on Early Notification of a Nuclear Accident adopted on 26 September 1986 (the text of this Convention is reproduced in the Supplement to *Nuclear Law Bulletin* No. 38), to which these countries are Parties.

The Agreement provides that each Contracting Party must notify to the other Party a list of facilities and activities related to the peaceful uses of nuclear energy on its territory. It also provides details on the information that should be communicated to the other Party in the event of a nuclear accident which may result in transboundary releases of radioactive materials. The Parties agree to exchange information on a regular basis on nuclear facilities in operation, planned or under construction, commissioning or decommissioning and on other nuclear activities.

The Agreement shall enter into force on the date of receipt of the last diplomatic note of approval and shall remain in force for an unlimited duration.

MULTILATERAL AGREEMENTS

Negotiations to revise the 1979 Convention on the Physical Protection of Nuclear Materials (2003)[1]

The group of legal and technical experts established to revise the 1979 Convention on the Physical Protection of Nuclear Materials (see the author's previous update on these negotiations in *Nuclear Law Bulletin* No. 70) held a further two-week round of negotiations from 3 to 14 March 2003 in Vienna. This session was intended to be the last meeting of the group, resulting in a finalised amended text. It is recalled that the group of legal and technical experts met five times since December 2001, with the work carried out becoming increasingly relevant in connection with the developing international situation, which clearly called for a strengthening of the international physical protection regime for nuclear facilities and materials.

In general, with the exception of certain issues which need to be resolved at a political level, the outcome of the session should be regarded as a positive one. More specifically, the amended text of the Convention includes the following basic principles, upon which a consensus was reached or a large majority achieved:

- a broader scope of the Convention, covering nuclear materials not only during international transport but also during domestic use, storage and transport, as well as protection of nuclear materials and facilities against sabotage;

- confirmation that physical protection is the primary responsibility of individual States;

- introduction of obligations on Contracting Parties to meet physical protection requirements governing materials and facilities (including in the case of lost or stolen materials), to mitigate the radiological consequences of sabotage, to set up a legal and regulatory regime and to establish a licensing and inspection authority;

- introduction of the fundamental physical protection objectives and principles (O & P) as endorsed by the IAEA Board of Governors as "Security Fundamentals" and referred to in the Resolution adopted by the IAEA General Conference in 2001 (see *Nuclear Law Bulletin* Nos. 68 & 70);

- introduction of new tools for international co-operation;

- broadening of the list of punishable offences (including sabotage and smuggling of nuclear materials) under the Convention.

The remaining outstanding points concern the inclusion of damage to the environment among the punishable offences, the exclusion of sabotage during armed conflicts from such offences, the organisation of revision conferences on the Convention after a certain number of years, and the wording to reflect the degree of commitment by States to the O & P mentioned above. On these issues, positions still diverge to a varying extent and therefore will have to be reconsidered at the diplomatic conference convened to adopt the revised Convention.

1. This Note was kindly provided by Mr. Fabrizio Nocera, Legal Adviser to the ENEA in Italy, who participated in these negotiations.

The outcome of the March meeting has been reflected in a report by the Chairman of the Group and has been forwarded to the Director General of the IAEA together with the proposed amended text of the Convention.

Multilateral Nuclear Environmental Programme in the Russian Federation – MNEPR (2003)

The Framework Agreement on the MNEPR initiative was signed by several OECD Member countries[2] and the Russian Federation on 21 May 2003 in Stockholm, Sweden. This Agreement is the culmination of negotiations which resulted in 1999 in a Declaration of Principles regarding the MNEPR (the text and a description of this Declaration were published in *Nuclear Law Bulletin* No. 63). The MNEPR constitutes a framework for assistance activities and other forms of co-operation in support of the development and effective implementation of projects in the field of safety of spent nuclear fuel and radioactive waste management primarily in north-west Russia.

A Protocol on Claims, Legal Proceedings and Indemnification was adopted in addition to the MNEPR Framework Agreement. It contains in particular a model indemnity confirmation letter to be provided by the Ministry for Atomic Energy of the Russian Federation to each Contractor providing assistance.

The NEA Secretariat provided legal support throughout the negotiations on this instrument and the Secretary-General of the OECD has been designated as co-depository of these instruments, together with the Ministry of Foreign Affairs of the Russian Federation.

The text of the Framework Agreement and the Protocol is reproduced in the Chapter "Texts" of this *Bulletin*.

Status of Conventions in the Field of Nuclear Energy

1979 Convention on the Physical Protection of Nuclear Materials

Since the last update in *Nuclear Law Bulletin* No. 70, five States namely Colombia, the Marshal Islands, Mozambique, Swaziland and Tonga have become Contracting Parties to this Convention. Therefore, as of 10 May 2003, there are 86 Parties to this Convention, as set out in the table below.

2. The Framework Agreement was signed by Belgium, Denmark, Finland, France, Germany, the Netherlands, Norway, Russia, Sweden, the United Kingdom, the United States of America, the European Community and the European Atomic Energy Community.

Status of signatures, ratifications, acceptances, approvals, accessions or successions

State	Date of Signature	Date of Deposit of Instrument
Albania		5 March 2002 (accession)
Antigua and Barbuda		4 August 1993 (accession)
Argentina	28 February 1986	6 April 1989 (ratification)
Armenia		24 August 1993 (accession)
Australia	22 February 1984	22 September 1987 (ratification)
Austria	3 March 1980	22 December 1988 (ratification)
Belarus		9 September 1993 (succession)
Belgium	13 June 1980	6 September 1991 (ratification)
Bolivia		24 January 2002 (accession)
Bosnia and Herzegovina		30 June 1998 (succession)
Botswana		19 September 2000 (accession)
Brazil	15 May 1981	17 October 1985 (ratification)
Bulgaria	23 June 1981	10 April 1984 (ratification)
Canada	23 September 1980	21 March 1986 (ratification)
Chile		27 April 1994 (accession)
China, People's Republic of		10 January 1989 (accession)
Colombia		28 March 2003 (accession)
Croatia		29 September 1992 (succession)
Cuba		26 September 1997 (accession)
Cyprus		23 July 1998 (accession)
Czech Republic		24 March 1993 (succession)
Denmark	13 June 1980	6 September 1991 (ratification)
Dominican Republic	3 March 1980	
Ecuador	26 June 1986	17 January 1996 (ratification)
Estonia		9 May 1994 (accession)
Euratom	13 June 1980	6 September 1991 (confirmation)
Finland	25 June 1981	22 September 1989 (acceptance)
France	13 June 1980	6 September 1991 (approval)
Germany	13 June 1980	6 September 1991 (ratification)
Ghana		16 October 2002 (accession)
Greece	3 March 1980	6 September 1991 (ratification)
Grenada		9 January 2002 (accession)
Guatemala	12 March 1980	23 April 1985 (ratification)
Haiti	9 April 1980	

Hungary	17 June 1980	4 May 1984 (ratification)
Iceland		18 June 2002 (accession)
India		12 March 2002 (accession)
Indonesia	3 July 1986	5 November 1986 (ratification)
Ireland	13 June 1980	6 September 1991 (ratification)
Israel	17 June 1983	22 January 2002 (ratification)
Italy	13 June 1980	6 September 1991 (ratification)
Japan		28 October 1988 (accession)
Kenya		11 February 2002 (accession)
Korea, Republic of	29 December 1981	7 April 1982 (ratification)
Latvia		6 November 2002 (accession)
Lebanon		16 December 1997 (accession)
Libyan Arab Jamahiriya		18 October 2000 (accession)
Liechtenstein	13 January 1986	25 November 1986 (ratification)
Lithuania		7 December 1993 (accession)
Luxembourg	13 June 1980	6 September 1991 (ratification)
Macedonia, The Former Yugoslav Republic of		20 September 1996 (succession)
Mali		7 May 2002 (accession)
Marshall Islands		7 February 2003 (accession)
Mexico		4 April 1988 (accession)
Moldova, Republic of		7 May 1998 (accession)
Monaco		9 August 1996 (accession)
Mongolia	23 January 1986	28 May 1986 (ratification)
Morocco	25 July 1980	23 August 2002 (ratification)
Mozambique		3 March 2003 (accession)
Namibia		2 October 2002 (accession)
Netherlands	13 June 1980	6 September 1991 (acceptance)
Niger	7 January 1985	
Norway	26 January 1983	15 August 1985 (ratification)
Pakistan		12 September 2000 (accession)
Panama	18 March 1980	1 April 1999 (ratification)
Paraguay	21 May 1980	6 February 1985 (ratification)
Peru		11 January 1995 (accession)
Philippines	19 May 1980	22 September 1981 (ratification)
Poland	6 August 1980	5 October 1983 (ratification)
Portugal	19 September 1984	6 September 1991 (ratification)
Romania	15 January 1981	23 November 1993 (ratification)

Russian Federation	22 May 1980	25 May 1983 (ratification)
Serbia and Montenegro	15 July 1980	5 February 2002 (succession)
Slovak Republic		10 February 1993 (succession)
Slovenia		7 July 1992 (succession)
South Africa	18 May 1981	
Spain	7 April 1986	6 September 1991 (ratification)
Sudan		18 May 2000 (accession)
Swaziland		17 April 2003 (accession)
Sweden	2 July 1980	1 August 1980 (ratification)
Switzerland	9 January 1987	9 January 1987 (ratification)
Tajikistan		11 July 1996 (accession)
Tonga		24 January 2003 (accession)
Trinidad and Tobago		25 April 2001 (accession)
Tunisia		8 April 1993 (accession)
Turkey	23 August 1983	27 February 1985 (ratification)
Ukraine		6 July 1993 (accession)
United Kingdom	13 June 1980	6 September 1991 (ratification)
United States	3 March 1980	13 December 1982 (ratification)
Uzbekistan		9 February 1998 (accession)

1996 Comprehensive Nuclear Test Ban Treaty

Since the last update in *Nuclear Law Bulletin* No. 68, 17 countries namely Albania, Botswana, Burkina Faso, Côte d'Ivoire, Ecuador, Georgia, Jamaica, Kazakhstan, Kuwait, Latvia, Mauritania, Nauru, Niger, Samoa, San Marino, Singapore and Venezuela have become Contracting Parties to this Treaty. Therefore, as of 10 May 2002, there are 100 Parties to this Treaty as set out in the table below, including 31 States whose signature and ratification are required for the Treaty to enter into force.

* Indicates one of the 44 States whose ratification is required for the Treaty to enter into force.

Status of signatures, ratifications, acceptances, approvals or accessions

State	Date of Signature	Date of Deposit of Instrument
Albania	27 September 1996	23 April 2003
Algeria*	15 October 1996	
Andorra	24 September 1996	
Angola	27 September 1996	
Antigua and Barbuda	16 April 1997	
Argentina*	24 September 1996	4 December 1998
Armenia	1 October 1996	

State	Date of Signature	Date of Deposit of Instrument
Australia*	24 September 1996	9 July 1998
Austria*	24 September 1996	13 March 1998
Azerbaijan	28 July 1997	2 February 1999
Bahrain	24 September 1996	
Bangladesh*	24 October 1996	8 March 2000
Belarus	24 September 1996	13 September 2000
Belgium*	24 September 1996	29 June 1999
Belize	14 November 2001	
Benin	27 September 1996	6 March 2001
Bolivia	24 September 1996	4 October 1999
Bosnia and Herzegovina	24 September 1996	
Botswana	16 September 2002	28 October 2002
Brazil*	24 September 1996	24 July 1998
Brunei Darussalam	22 January 1997	
Bulgaria*	24 September 1996	29 September 1999
Burkina Faso	27 September 1996	17 April 2002
Burundi	24 September 1996	
Cambodia	26 September 1996	10 November 2000
Cameroon	16 November 2001	
Canada*	24 September 1996	18 December 1998
Cape Verde	1October 1996	
Central African Republic	19 December 2001	
Chad	8 October 1996	
Chile*	24 September 1996	12 July 2000
China*	24 September1996	
Colombia*	24 September 1996	
Comoros	12 December 1996	
Congo	11 February 1997	
Congo, Democratic Republic of*	4 October 1996	
Cook Islands	5 December 1997	
Costa Rica	24 September 1996	25 September 2001
Côte d'Ivoire	25 September 1996	11 March 2003
Croatia	24 September 1996	2 March 2001
Cyprus	24 September 1996	
Czech Republic	12 November1996	11 September 1997

State	Date of Signature	Date of Deposit of Instrument
Denmark	24 September 1996	21 December 1998
Djibouti	21 October 1996	
Dominican Republic	3 October 1996	
Ecuador	24 September 1996	12 November 2001
Egypt*	14 October 1996	
El Salvador	24 September 1996	11 September 1998
Equatorial Guinea	9 October 1996	
Estonia	20 November 1996	13 August 1999
Ethiopia	25 September 1996	
Fiji	24 September 1996	10 October 1996
Finland*	24 September 1996	15 January 1999
France*	24 September 1996	6 April 1998
Gabon	7 October 1996	20 September 2000
Gambia	9 April 2003	
Georgia	24 September 1996	27 September 2002
Germany*	24 September 1996	20 August 1998
Ghana	3 October 1996	
Greece	24 September 1996	21 April 1999
Grenada	10 October 1996	19 August 1998
Guinea	3 October 1996	
Guinea-Bissau	11 April 1997	
Guyana	7 September 2000	7 March 2001
Haiti	24 September 1996	
Holy See	24 September 1996	18 July 2001
Honduras	25 September 1996	
Hungary*	25 September 1996	13 July 1999
Iceland	24 September 1996	26 June 2000
Indonesia*	24 September 1996	
Iran, Islamic Republic of*	24 September 1996	
Ireland	24 September 1996	15 July 1999
Israel*	25 September 1996	
Italy*	24 September 1996	1 February 1999
Jamaica	11 November 1996	13 November 2001
Japan*	24 September 1996	8 July 1997
Jordan	26 September 1996	25 August 1998
Kazakhstan	30 September 1996	14 May 2002

State	Date of Signature	Date of Deposit of Instrument
Kenya	14 November 1996	30 November 2000
Kiribati, Republic of	7 September 2000	7 September 2000
Korea, Republic of *	24 September 1996	24 September 1999
Kuwait	24 September 1996	6 May 2003
Kyrgyzstan	8 October 1996	
Lao People's Democratic Republic	30 July 1997	5 October 2000
Latvia	24 September 1996	20 November 2001
Lesotho	30 September 1996	14 September 1999
Liberia	1 October 1996	
Libyan Arab Jamahiriya	13 November 2001	
Liechtenstein	27 September 1996	
Lithuania	7 October 1996	7 February 2000
Luxembourg	24 September 1996	26 May 1999
Macedonia, The Former Yugoslav Republic of	29 October 1998	14 March 2000
Madagascar	9 October 1996	
Malawi	9 October 1996	
Malaysia	23 July 1998	
Maldives	1 October 1997	7 September 2000
Mali	18 February 1997	4 August 1999
Malta	24 September 1996	23 July 2001
Marshall Islands	24 September 1996	
Mauritania	24 September 1996	30 April 2003
Mexico*	24 September 1996	5 October 1999
Micronesia, Federal States of	24 September 1996	25 July 1997
Moldova, Republic of	24 September 1997	
Monaco	1 October 1996	18 December 1998
Mongolia	1 October 1996	8 August 1997
Morocco	24 September 1996	27 April 2000
Mozambique	26 September 1996	
Myanmar	25 November 1996	
Namibia	24 September 1996	29 June 2001
Nauru	8 September 2000	12 November 2001
Nepal	8 October 1996	
Netherlands*	24 September 1996	23 March 1999
New Zealand	27 September 1996	19 March 1999

State	Date of Signature	Date of Deposit of Instrument
Nicaragua	24 September 1996	5 December 2000
Niger	3 October 1996	9 September 2002
Nigeria	8 September 2000	27 September 2001
Norway*	24 September 1996	15 July 1999
Oman	23 September 1999	
Panama	24 September 1996	23 March 1999
Papua New Guinea	25 September 1996	
Paraguay	25 September 1996	4 October 2001
Peru*	25 September 1996	12 November 1997
Philippines	24 September 1996	23 February 2001
Poland*	24 September 1996	25 May 1999
Portugal	24 September 1996	26 June 2000
Qatar	24 September 1996	3 March 1997
Romania*	24 September 1996	5 October 1999
Russian Federation*	24 September 1996	30 June 2000
Saint Lucia	4 October 1996	5 April 2001
Samoa	9 October 1996	27 September 2002
San Marino	7 October 1996	12 March 2002
Sao Tome and Principe	26 September 1996	
Senegal	26 September 1996	9 June 1999
Serbia and Montenegro	8 June 2001	
Seychelles	24 September 1996	
Sierra Leone	8 September 2000	17 September 2001
Singapore	14 January 1999	10 November 2001
Slovak Republic*	30 September 1996	3 March 1998
Slovenia	24 September 1996	31 August 1999
Solomon Islands	3 October 1996	
South Africa*	24 September 1996	30 March 1999
Spain*	24 September 1996	31 July 1998
Sri Lanka	24 October 1996	
Suriname	14 January 1997	
Swaziland	24 September 1996	
Sweden*	24 September 1996	2 December 1998
Switzerland*	24 September 1996	1 October 1999
Tajikistan	7 October 1996	10 June 1998
Thailand	12 November 1996	

State	Date of Signature	Date of Deposit of Instrument
Togo	2 October 1996	
Tunisia	16 October 1996	
Turkey*	24 September 1996	16 February 2000
Turkmenistan	24 September 1996	20 February 1998
Uganda	7 November 1996	14 March 2001
Ukraine*	27 September 1996	23 February 2001
United Arab Emirates	25 September 1996	18 September 2000
United Kingdom*	24 September 1996	6 April 1998
United States of America*	24 September 1996	
Uruguay	24 September 1996	21 September 2001
Uzbekistan	3 October 1996	29 May 1997
Vanuatu	24 September 1996	
Venezuela	3 October 1996	13 May 2002
Vietnam*	24 September 1996	
Yemen	30 September 1996	
Zambia	3 December 1996	
Zimbabwe	13 October 1999	

1963 Vienna Convention on Civil Liability for Nuclear Damage

Since the last update in *Nuclear Law Bulletin* No. 69, the Vienna Convention ceased to apply to Slovenia as of 12 November 2002, following its notification of termination on 9 November 2001. Therefore, as of 10 May 2003, there are 32 Contracting Parties to this Convention.

1963 Brussels Supplementary Convention

Since the last update in *Nuclear Law Bulletin* No. 45, the Republic of Slovenia has become a Contracting Party to the Brussels Supplementary Convention. Therefore, as of 10 May 2003, there are 12 Contracting Parties to this Convention.

1986 Convention on Early Notification of a Nuclear Accident

Since the last update in *Nuclear Law Bulletin* No. 69, Colombia has become a Contracting Party to this Convention (accession). Therefore, as of 10 May 2003, there are 88 Contracting Parties to this Convention.

1986 Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency

Since the last update in *Nuclear Law Bulletin* No. 70, Albania has become a Contracting Party to this Convention (accession). Therefore, as of 10 May 2003, there are 85 Contracting Parties to this Convention.

1997 Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management

Since the last update in *Nuclear Law Bulletin* No. 70, two States, namely Belarus and United States have become Contracting Parties to this Convention (ratification). Therefore, as of 10 May 2003, there are 31 Contracting Parties to this Convention.

BELGIUM

Act on the Phase-out of Nuclear Energy for the Purposes of the Industrial Production of Electricity

Adopted on 31 January 2003

Chapter I

General Provisions

Section 1

The present Act regulates a matter referred to in Article 78 of the Constitution.

Section 2

For the purposes of this Act:

1. "Date of commercial start-up" shall mean the date of the formal agreement between the electricity producer, the constructor and the engineering department according to which the project phase is finalised and the production phase commences, namely, for existing nuclear power plants:

   - Doel 1: 15 February 1975
   - Doel 2: 1 December 1975
   - Doel 3: 1 October 1982
   - Doel 4: 1 July 1985
   - Tihange 1: 1 October 1975
   - Tihange 2: 1 February 1983
   - Tihange 3: 1 September 1985

2. "The Act of 15 April 1994" shall mean the Act of 15 April 1994 on the Protection of the Population and the Environment against the Dangers of Ionising Radiation, and on the Federal Agency for Nuclear Control.

Chapter II

Principles Of The Phase-Out Of The Industrial Production Of Electricity From The Fission Of Nuclear Fuel And Of The Prohibition Of New Nuclear Power Plants

Section 3

No new nuclear power plant for the industrial production of electricity from the fission of nuclear fuel may be established and/or operated.

Section 4

1. Nuclear power plants for the industrial production of electricity from the fission of nuclear fuel shall be deactivated forty years after the date of their commercial start-up, and from that time may no longer produce electricity.

2. All individual operating licences and licences for the industrial production of electricity from the fission of nuclear fuel, issued for an unlimited period by the King:

   a. by virtue of the Act of 29 March 1958 on the Protection of the Population against the Dangers of Ionising Radiation and on the basis of Section 5 of the Royal Order of 28 February 1963 laying down the general regulations for the protection of the population and of workers against the dangers of ionising radiation and which remain applicable by virtue of Section 52 of the Act of 15 April 1994;

   b. on the basis of Section 16 of the Act of 15 April 1994, and by virtue of Sections 5 and 6 of the Royal Order of 20 July 2001 laying down the general regulations for the protection of the population, workers and the environment against the dangers of ionising radiation;

   shall end forty years after the date of the commercial start-up of the production facility concerned.

Chapter III

Amending and Final Provisions

Section 5

The following lines shall be inserted before the words "The King shall grant or refuse" at the beginning of the first sub-paragraph of Section 16(1) of the Act of 15 April 1994:

> "With the exception of facilities for the industrial production of electricity from the fission of nuclear fuel for which licences may no longer be issued in accordance with Sections 3 and 4 of the Act of 31 January 2003 on the phase-out of nuclear energy for the purposes of the industrial production of electricity …"

Section 6

The following amendments shall be made to Section 3 of the Act of 29 April 1999 on the Organisation of the Electricity Market:

1. A paragraph 1bis shall be inserted, as follows: "§ 1bis. As from 2015, the indicative plan shall be drawn up on an annual basis";

2. Paragraph 2 shall be completed as follows: "5. He shall evaluate the security of electricity supply and, where this might be at risk, shall formulate appropriate recommendations".

Section 7

In the first sub-paragraph of Section 4(1) of the same Act, the following lines shall be inserted at the beginning of the first paragraph before the words "the establishment of new facilities":

> "With the exception of facilities for the industrial production of electricity from the fission of nuclear fuel for which licences may no longer be issued in accordance with Sections 3 and 4 of the Act of 31 January 2003 on the phase-out of nuclear energy for purposes of the industrial production of electricity, …"

Section 8

The second sub-paragraph of Section 23(2) of the same Act, as amended by the Act of 16 July 2001, shall be completed as follows:

> "18. shall monitor the security of electricity supply, point out any problems and, where appropriate, formulate appropriate recommendations."

Section 9

Should the security of electricity supply be at risk, the King may, by Royal Order considered in the Council of Ministers, after receiving the opinion of the Commission for the Regulation of Electricity and Gas, take any measures necessary, without prejudice to Sections 3 to 7 of this Act, except in cases of *force majeure*. This opinion shall relate in particular to the impact of changes in the production price on the security of supply.

Section 10

When a nuclear power plant is to be closed, a plan for accompanying social measures must be prepared for the workers concerned, in consultation with the social partners.

Hereby promulgate this Act, and order that it be stamped with the State Seal and published in the Official Journal.

Done in Brussels, on 31 January 2003.

MNEPR

Framework Agreement on a Multilateral Nuclear Environmental Programme in the Russian Federation

The Government of the Kingdom of Belgium, the Government of the Kingdom of Denmark, the Government of the Republic of Finland, the Government of the French Republic, the Government of the Federal Republic of Germany, the Government of the Kingdom of the Netherlands, the Government of the Kingdom of Norway, the Government of the Russian Federation, the Government of the Kingdom of Sweden, the Government of the United Kingdom of Great Britain and Northern Ireland, the Government of the United States of America, the European Community, and the European Atomic Energy Community (hereinafter referred to as the Parties),

Noting the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management of 5 September 1997 (hereinafter referred to as the "Joint Convention");

Noting that the Joint Convention stipulates that spent fuel and radioactive waste within military or defence programmes should be managed in accordance with the objectives stated in that Convention even though they are excluded from it except as provided in Article 3 thereof;

Noting also the Convention on Nuclear Safety of 17 June 1994;

Recalling the importance the Joint Convention attaches to international co-operation in enhancing the safety of spent fuel and radioactive waste management through bilateral and multilateral mechanisms;

Reaffirming the importance the Parties attach to the principles embodied in relevant international conventions on nuclear liability for the provision of international assistance in this field;

Recognizing the work of the Contact Expert Group for International Radwaste Projects established under the auspices of the International Atomic Energy Agency to deal with issues regarding international co-operation in radioactive waste management and related issues in the Russian Federation, and its contribution to the development of a comprehensive International Action Plan;

Desiring to facilitate practical co-operation to enhance the safety of spent fuel and radioactive waste management in the Russian Federation, in particular through the implementation of projects in the Russian Federation that may be identified by the Contact Expert Group for International Radwaste Projects;

Recalling the Declaration of Principles by members and observers of the Barents Euro-Arctic Council representing Denmark, Finland, France, Germany, Iceland, Italy, the Netherlands, Norway, Poland, the Russian Federation, Sweden, the United Kingdom and the United States regarding the Multilateral Nuclear Environmental Programme in the Russian Federation signed at Bodø (Norway) on 5 March 1999 in which the participants declared their readiness to negotiate a multilateral framework agreement covering the necessary conditions for the provision of international assistance in this field;

Have agreed as follows:

Article 1

Multilateral Nuclear Environmental Programme in the Russian Federation (MNEPR)

1. The Parties hereby establish a framework to facilitate co-operation in the area of safety of spent nuclear fuel and radioactive waste management in the Russian Federation. This framework shall be referred to as the "Multilateral Nuclear Environmental Programme in the Russian Federation" (MNEPR). The MNEPR shall apply to projects undertaken between Contributors and Recipients or any other form of co-operation agreed by them. It may also apply to projects or any other form of co-operation in other areas of nuclear activities, including nuclear safety, if so agreed by the Parties concerned.

2. The Parties shall seek to avoid duplication of Assistance activities and to ensure that such activities are complementary to activities under other multilateral or bilateral funds, agreements, mechanisms or arrangements.

Article 2

Definitions

For the purposes of this Agreement the following terms shall have the following meanings:

Technical aid (assistance):	Any form of gratuitous aid and/or contribution provided under this Agreement or under any Implementing Agreement, or otherwise agreed to by the Russian Party and the Contributing Party or Parties (hereinafter referred to as "Assistance").
Contributor:	Any Party other than the Russian Party or any entity authorized by such Party to provide Assistance under the MNEPR.
Recipient:	The Russian Party or any other Russian entity authorized by the Russian Party to serve as beneficiary of Assistance and partner for the realization of a project under the MNEPR.
Implementing Agreement:	An agreement between one or more Recipients and one or more Contributors for the provision of Assistance for the realization of a project under the MNEPR.

Article 3

Modes of co-operation under the MNEPR

1. Assistance under the MNEPR may be provided through:

   (a) Implementing Agreements between one or more Recipients and any one of the Contributors (Bilateral mode);

   (b) Implementing Agreements between one or more Recipients and several Contributors whereby a common financing arrangement will not be established (Multilateral simple mode);

   (c) Implementing Agreements between one or more Recipients and several Contributors whereby a common financing arrangement will be established (Multilateral funding mode); or

   (d) any other mechanism agreed by the Recipient(s) and Contributor(s) concerned.

2. Except as otherwise provided in this Agreement, the terms and conditions of this Agreement shall apply to all Assistance provided under paragraph 1 of this Article. The provisions of this Agreement may also apply to activities undertaken before its entry into force if so agreed by the Parties involved in those activities.

3. The provision of Assistance by the Contributors under this Agreement shall be subject to the availability of appropriated funds.

Article 4

MNEPR Committee

1. To facilitate co-operation and to exchange information under the MNEPR, the Parties hereby establish the MNEPR Committee. The MNEPR Committee shall be composed of one authorized official/governmental representative of each of the Parties, who shall also serve as a contact point for all questions of relevance to the MNEPR.

2. The MNEPR Committee may:

   - discuss the development and implementation of projects and any other form of co-operation under this Agreement;

   - discuss relevant activities under other bilateral or multilateral agreements or arrangements;

   - co-ordinate funding for projects under Article 3.1 (c);

   - identify obstacles and problems encountered in the implementation of projects, and make recommendations regarding their resolution;

- establish working groups as required for the functioning of the MNEPR Committee;

- discuss and make recommendations on other matters relevant to the operation of MNEPR activities; and

- invite States, intergovernmental organisations or regional economic integration organisations being subject to public international law to accede in accordance with Article 16.

3. The MNEPR Committee shall adopt its Rules of Procedure.

4. The MNEPR Committee shall elect two co-chairpersons for twelve-month periods from among representatives of the Parties, one from among the Contributing Parties and one representing the Russian Party.

5. The MNEPR Committee may decide to admit as Observers any interested State, inter-governmental organisation or regional economic integration organisation being subject to public international law not party to this Agreement. Where a Co-ordinator has been designated according to Article 5, that Co-ordinator shall be admitted as an Observer to meetings of the MNEPR Committee, where relevant.

6. Decisions and recommendations of the MNEPR Committee shall be made by consensus.

Article 5

Co-ordinator of multilateral funding under the MNEPR

1. The Contributing Parties to a common financing arrangement, as referred to in Article 3.1(c), may designate a Co-ordinator for such an arrangement.

2. The rights and obligations of the Contributing Parties under this Agreement apply equally to the Co-ordinator where the Co-ordinator performs activities on behalf of the Contributors.

Article 6

Specific undertakings

1. The Parties shall promote activities necessary for the implementation of projects under the MNEPR.

2. The Russian Party shall ensure the prompt issuance of, inter alia, licences, permits, approvals and the prompt customs clearances necessary for the efficient implementation of projects. The Russian Party shall ensure the provision of data and information necessary for the implementation of specific projects within the framework of this Agreement. The Russian Party shall grant access to sites and facilities necessary for the implementation of specific projects within the framework of this Agreement. Should such access be restricted according to the provisions of the legislation of the Russian Federation, mutually acceptable procedures shall be

developed in the Implementing Agreements. The Implementing Agreements shall also define the procedures for, and the scope of, the information to be transferred.

3. The provision of Assistance shall be complemented by Russian resources. Such resources may be contributed in-kind or otherwise for the implementation of projects under the MNEPR.

Article 7

Claims, legal proceedings and indemnification

1. This Agreement is supplemented by a Protocol containing provisions on claims, legal proceedings and indemnification in respect of claims against Contributors and their personnel or contractors, subcontractors, consultants, suppliers or subsuppliers of equipment, goods and services at any tier and their personnel, for any loss or damage of whatsoever nature arising from activities undertaken pursuant to this Agreement.

2. The Protocol and its Annex shall not apply to any Party that does not become a party to the Protocol.

3. Any Party that does not become a party to the Protocol may conclude with the Russian Party a separate agreement covering claims, legal proceedings and indemnification in respect of claims for any loss or damage of whatsoever nature arising from activities undertaken pursuant to this Agreement.

Article 8

Use and retransfer of Assistance

1. Unless the written consent of the Contributor has first been obtained, the Recipient shall not transfer title to, or possession of, any Assistance provided pursuant to this Agreement to any entity, other than an officer, employee or agent of that Contributor or that Recipient and shall not permit the use of such Assistance for purposes other than those for which it has been furnished.

2. The Russian Party shall take all reasonable measures within its power to ensure the security of, ensure the appropriate use of, and prevent the unauthorised transfer of Assistance provided pursuant to this Agreement.

Article 9

Exemption from taxes or similar charges

1. The Russian Party shall exempt Assistance provided under this Agreement from customs duties, profits taxes, other taxes and similar charges. The Russian Party shall take all necessary steps to ensure that no local or regional taxes are levied on Assistance provided under this Agreement. These steps will include the provision of letters from competent local and/or regional authorities

confirming that no taxes will be levied on Assistance provided under this Agreement. Such letters of confirmation covering localities and regions where projects under this Agreement will be carried out shall be deposited with at least one of the Depositaries before the start of implementation of the projects.

2. The Russian Party shall exempt remuneration to foreign natural persons and to Russian citizens not ordinarily resident in the Russian Federation for work undertaken and services performed by such persons for the implementation of Assistance under this Agreement from income tax, social security tax contributions, and similar charges within the territory of the Russian Federation. With regard to remuneration exempted by this paragraph, the Russian Party shall not have any obligations in terms of any charges and payments to the persons indicated in this paragraph, at the expense of the social security system or any other government funds.

3. The Contributing Parties and their personnel, their contractors, subcontractors, suppliers and subsuppliers may import into, and export out of, the Russian Federation equipment, supplies, materials or services required to implement this Agreement. In addition to the provisions regarding Assistance, temporary importation and exportation shall not be subject to customs duties, license fees, undue restrictions, taxes or similar charges.

4. In addition to the preceding paragraphs, persons and entities participating in the implementation of the programmes in the framework of this Agreement within the territory of the Russian Federation are entitled to exemption from value added tax and other charges with regard to equipment and goods purchased within the territory of the Russian Federation for the implementation of the projects or the programmes in the framework of this Agreement, as well as works done and services rendered within the territory of the Russian Federation.

5. Imposition of taxation shall be regarded as a valid reason for suspension or termination of an Assistance project, or not to initiate an Assistance project.

6. The Russian Party shall be responsible for procedures ensuring the implementation of this Article. Necessary certificates shall be issued by the relevant competent authority.

Article 10

Accounts, audits and examinations

1. Each Recipient shall maintain proper accounts of all Assistance funding received from Contributors, and furnish such accounts, together with full supporting documentation, to the Contributor or Contributors concerned at regular intervals, as specified in the relevant Implementing Agreement or as otherwise agreed.

2. Upon request, representatives of a Contributor shall have the right, within sixty days of making the request, to examine the use of any Assistance provided by that Contributor in accordance with this Agreement, at sites of their location or use if possible, and shall have the right to audit and examine any and all related records or documentation for a period of seven years after the completion or early termination of the project in question, unless another period is specified in the Implementing Agreement. The practical details of such audits and examinations shall be set out in the Implementing Agreements.

Article 11

Intellectual property

The Parties shall provide in Implementing Agreements, as appropriate, effective protection and allocation of rights to intellectual property transmitted or created under this Agreement.

Article 12

Status of personnel and entry and exit of personnel

1. The Russian Party shall facilitate the entry and exit of employees of the Contributing Parties to this Agreement and their personnel and contractors, subcontractors, consultants, suppliers and subsuppliers and their personnel into and out of the territory of the Russian Federation for the purpose of carrying out activities in accordance with this Agreement.

2. The Russian Party shall accredit military and civilian personnel of the Contributing Parties, including employees of the Commission of the European Communities present in the territory of the Russian Federation in order to carry out activities related to the provision of Assistance under this Agreement, as administrative and technical personnel of the respective diplomatic missions, the mission of the Commission of the European Communities and the missions of intergovernmental organisations, in the Russian Federation. After entry into force of this Agreement, the Parties will consult on the number of such personnel covered by this paragraph. The accreditation of such personnel shall have no effect on the number of accredited personnel permitted at Russian diplomatic missions in the Contributing Parties.

3. The Russian Party guarantees that the contractors, subcontractors, consultants, suppliers, subsuppliers and their personnel as referred to in paragraph 1 of this Article may import and re-export out of the territory of the Russian Federation all of their personal household effects as well as foodstuffs for their personal use without being liable to any customs duties, taxes, or similar charges. Duty-free import into and re-export out of the Russian Federation of one motor vehicle per family is allowed, provided that the vehicle is used only within the period of the relevant contract and is re-exported at the end of this period.

Article 13

Settlement of disputes

Any disagreement between two or more Parties concerning the interpretation of this Agreement, or its implementation, shall be resolved through consultations. Consultations shall take place not later than three months after one of the Parties submits such a request in writing to the other Party or Parties.

Article 14

Awarding of contracts

In the event that a Party awards a contract for the acquisition of goods and services, including construction, to implement this Agreement, such contracts shall be awarded in accordance with the laws and regulations of that Party, or such other laws and regulations as that Party may choose. Russian companies can also be used as contractors or subcontractors.

Article 15

Modifications and amendments

1. Any modification or amendment to this Agreement, and any additional protocol to it, may be made by agreement among the Parties to this Agreement.

2. Any modification or amendment made pursuant to this Article shall be subject to ratification, acceptance or approval by all of the Parties. Modifications or amendments shall enter into force for all Parties thirty days following the date of receipt by at least one of the Depositaries of the last notification of ratification, acceptance or approval.

Article 16

Accession

1. This Agreement shall be open for accession by any State, inter-governmental organisation or regional economic integration organisation being subject to public international law upon invitation by the MNEPR Committee.

2. This Agreement shall enter into force for the acceding Party thirty days following the date of receipt by at least one of the Depositaries of the acceding Party's instrument of accession and the last of the notifications by the Parties expressing concurrence.

Article 17

Depositaries

The Minister of Foreign Affairs of the Russian Federation and the Secretary General of the Organisation for Economic Co-operation and Development are hereby designated as Depositaries. The Depositaries shall fulfil their duties in accordance with Article 77 of the Vienna Convention on the Law of Treaties of 23 May 1969 and shall consult each other in the fulfilment of their duties.

Article 18

Entry into force, duration, withdrawal and termination

1. This Agreement shall be subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with at least one of the Depositaries. It shall enter into force on the thirtieth day following the date of receipt of such instruments from the Russian Party and from one other Signatory, and shall remain in force for a period of five years from that date. For each Signatory depositing such an instrument thereafter, this Agreement shall enter into force for it thirty days following the receipt by at least one of the Depositaries of such instrument and shall remain in force until the expiration of its original five year period.

2. This Agreement shall be extended automatically for further periods of five years. Any Party may request at least one of the Depositaries at least ninety days before the expiration of the five year period to convene a meeting of the Parties to consider the termination, modification or amendment of this Agreement.

3. Any Party may withdraw from this Agreement upon giving ninety days written notification to at least one of the Depositaries. The MNEPR Committee shall immediately be seized of the matter and shall make recommendations to the Parties on the further continuation of the Agreement.

4. The obligations under Articles 8 to 11, Article 12 first and third paragraphs, and Article 13 of this Agreement shall remain in effect regardless of any subsequent transfer of ownership of the object of co-operation, and regardless of any termination of, or withdrawal from, this Agreement, or the expiration of its validity.

5. Notwithstanding any termination of this Agreement, it shall continue to apply to any Implementing Agreement which the parties to such Implementing Agreement agree to continue, for the duration of such Implementing Agreement.

6. Where a Party withdraws from this Agreement but continues to be a Party to an Implementing Agreement, this Agreement shall continue to apply to such Party with respect to its participation in such Implementing Agreement.

7. This Agreement shall be applied on a provisional basis from the date of its signature.

Done at Stockholm on 21 May 2003 in the English, French and Russian languages, all texts being equally authentic, in two originals of which one shall be deposited in the archives of the Ministry of Foreign Affairs of the Russian Federation and one in the archives of the Organisation for Economic Co-operation and Development. Duly certified copies of this Agreement shall be transmitted to the Signatories and acceding Parties. In the event of any dispute or divergence in relation to this Agreement the English text shall prevail for the purposes of interpretation.

Protocol on Claims, Legal Proceedings and Indemnification to the Framework Agreement on a Multilateral Nuclear Environmental Programme in the Russian Federation

The Government of the Kingdom of Belgium, the Government of the Kingdom of Denmark, the Government of the Republic of Finland, the Government of the French Republic, the Government of the Federal Republic of Germany, the Government of the Kingdom of the Netherlands, the Government of the Kingdom of Norway, the Government of the Russian Federation, the Government of the Kingdom of Sweden, the Government of the United Kingdom of Great Britain and Northern Ireland, the European Community, and the European Atomic Energy Community (hereinafter referred to as the Parties),

Reaffirming their commitment to achieving the purposes of the Framework Agreement on a Multilateral Nuclear Environmental Programme in the Russian Federation signed on 21 May 2003 (hereinafter referred to as "the Agreement");

Convinced of the need to establish provisions ensuring that claims against the Contributing Parties and their personnel or contractors, subcontractors, consultants, suppliers or subsuppliers of equipment, goods or services at any tier and their personnel, for any loss or damage of whatsoever nature arising from activities undertaken pursuant to the Agreement are not brought by the Russian Party and, if brought by a third party, are indemnified by the Russian Party;

Have agreed as follows:

Article 1

1. The definitions contained in Article 2 of the Agreement shall apply to this Protocol as fully and effectively as if they were set forth in full herein.

2. For the purposes of this Protocol, the following terms shall have the following meanings:

Nuclear Incident: Any occurrence or series of occurrences having the same origin which causes Nuclear Damage.

Nuclear Damage:

(i) loss of life, any personal injury or any loss of, or damage to, property which arises out of or results 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 in, or of nuclear material coming from, originating in, or sent to, a nuclear installation;

(ii) any other loss or damage so arising or resulting if and to the extent that the law of the competent court so provides; and

(iii) if the law of the State in which the nuclear installation of the liable operator is situated so provides, loss of life, any personal injury or any loss of, or damage to, property which arises out of or results from other ionising

radiation emitted by any other source of radiation inside a nuclear installation.

3. For the purposes of this Protocol, whenever both Nuclear Damage and damage other than Nuclear Damage have been caused by a Nuclear Incident, or jointly by a Nuclear Incident and one or more other occurrences, such other damage shall, to the extent that it is not reasonably separable from the Nuclear Damage, be deemed, for the purposes of this Protocol, to be Nuclear Damage caused by that Nuclear Incident.

Article 2

1. With the exception of claims for injury or damage against individuals arising from omissions or acts of such individuals done with intent to cause injury or damage, the Russian Party shall bring no claims or legal proceedings of any kind against the Contributors and their personnel or contractors, subcontractors, consultants, suppliers or subsuppliers of equipment, goods or services at any tier and their personnel, for any loss or damage of whatsoever nature, including but not limited to personal injury, loss of life, direct, indirect and consequential damage to property owned by the Russian Federation arising from activities undertaken pursuant to the Agreement. This paragraph shall not apply to the enforcement of the express provisions of a contract.

2. With the exception of claims for Nuclear Damage against individuals arising from omissions or acts of such individuals done with intent to cause damage, the Russian Party shall provide for the adequate legal defence of and indemnify, and shall bring no claims or legal proceedings against the Contributors and their personnel, or any contractors, subcontractors, consultants, suppliers, or subsuppliers of equipment, goods or services at any tier and their personnel in connection with third-party claims, in any court or forum, arising from activities undertaken pursuant to the Agreement, for Nuclear Damage occurring within or outside the territory of the Russian Federation, that results from a Nuclear Incident occurring within the territory of the Russian Federation.

3. Upon request by a Party, the Russian Party or its authorised representative shall issue an indemnity confirmation letter to any contractor, subcontractor, consultant, supplier or subsupplier confirming the provisions of this Protocol. A standard form of such Indemnity Confirmation Letter is enclosed as an integral part of this Protocol.

4. The Parties may consult as appropriate, on claims and proceedings under this Article.

5. Any payments related to the indemnification in paragraph 2 of this Article shall be made promptly and shall be freely transferable to the beneficiary in its national currency.

6. Contributors, contractors, subcontractors, consultants, suppliers or subsuppliers of equipment, goods or services at any tier and their personnel may refer any dispute concerning the implementation of obligations under this Article to arbitration in accordance with UNCITRAL Arbitration Rules, if such dispute has not been resolved amicably within ninety days of its submission to the Russian Party. Any arbitration award shall be final and binding on the parties to the dispute.

7. Nothing in this Article shall be construed as acknowledging the jurisdiction of any court or forum outside the Russian Federation over third-party claims to which paragraph 2 of this Article applies, except as provided for in paragraph 6 of this Article and in any other case where

the Russian Federation has pledged itself to acknowledge and execute a legal decision on the basis of provisions of international agreements.

8. Nothing in this Article shall be construed as waiving the immunity of the Parties with respect to potential third-party claims that may be brought against any of them.

Article 3

1. This Protocol is open for signature by any Signatory to the Agreement.

2. This Protocol is subject to ratification, acceptance or approval by Signatories that are Parties to the Agreement. Instruments of ratification, acceptance or approval shall be deposited with at least one of the Depositaries of the Agreement.

3. This Protocol shall be open to accession by any Party that has acceded to the Agreement.

4. Accession shall be effected by the deposit of an instrument of accession with at least one of the Depositaries of the Agreement.

5. The Depositaries of this Protocol shall be the Depositaries of the Agreement and shall fulfil their duties in accordance with Article 77 of the Vienna Convention on the Law of Treaties of 23 May 1969 and shall consult each other in the fulfilment of their duties.

Article 4

1. Subject to the entry into force of the Agreement, this Protocol shall enter into force on the thirtieth day following the date of receipt by at least one of the Depositaries of the instruments of ratification, acceptance or approval referred to in Article 3.2 from the Russian Federation and from any other Signatory to this Protocol and it shall remain in force for a period of five years from that date. For each Signatory ratifying, accepting or approving thereafter, this Protocol shall enter into force for it on the thirtieth day following the receipt by at least one of the Depositaries of the instruments of ratification, acceptance or approval referred to in Article 3.2 and it shall remain in force until the expiration of its original five year period.

2. For each Party acceding to this Protocol, it shall enter into force for it thirty days following the receipt by at least one of the Depositaries of the instrument of accession referred to in Article 3.4 and it shall remain in force until the expiration of the original five year period mentioned in paragraph 1 of this Article.

3. This Protocol shall be extended automatically for further periods of five years. Any Party may request at least one of the Depositaries, at least ninety days before the expiration of the five year period, to convene a meeting of the Parties to consider the continuation, modification or amendment of this Protocol.

4. Any Party may withdraw from this Protocol upon giving ninety days written notification to at least one of the Depositaries. The MNEPR Committee shall immediately be seized of the matter and shall make recommendations to the Parties on the further continuation of this Protocol and the Agreement.

5. The obligations under this Protocol shall remain in effect regardless of any subsequent transfer of ownership of the object of co-operation, and regardless of any termination of, or withdrawal from, this Protocol or the Agreement, or the expiration of their validity.

6. (a) Notwithstanding any termination of this Protocol, it shall continue to apply to any Implementing Agreement which the Parties to such Implementing Agreement agree to continue, for the duration of such Implementing Agreement.

(b) Where a Party withdraws from this Protocol but continues to be a Party to an Implementing Agreement, this Protocol shall continue to apply to such Party with respect to its participation in such Implementing Agreement.

7. Where,

(a) the Vienna Convention on Civil Liability for Nuclear Damage of 21 May 1963 (hereinafter referred to as "the Vienna Convention") and the Joint Protocol relating to the Application of the Vienna Convention and the Paris Convention of 21 September 1988 (hereinafter referred to as "the Joint Protocol") have both come into force for the Russian Federation, and

(b) the Vienna Convention or the Paris Convention on Third Party Liability in the Field of Nuclear Energy of 29 July 1960 and the Joint Protocol have both come into force for any other Party to this Protocol,

such other Party may, in its discretion and by notice in writing to the Russian Federation, terminate the application of Article 2.2 of this Protocol as between it and the Russian Federation with respect to any activity undertaken pursuant to the Agreement to which these instruments apply. The Russian Federation and such other Party shall each inform the other in writing of the dates upon which such instruments come into force in their respective territories.

8. This Protocol shall be applied on a provisional basis from the date of its signature.

Done at Stockholm on 21 May 2003 in the English, French and Russian languages, all texts being equally authentic, in two originals of which one shall be deposited in the archives of the Ministry of Foreign Affairs of the Russian Federation and one in the archives of the Organisation for Economic Co-operation and Development. Duly certified copies of this Protocol shall be transmitted to the Signatories and acceding Parties. In the event of any dispute or divergence in relation to this Protocol the English text shall prevail for the purposes of interpretation.

ANNEX

Model of an INDEMNITY CONFIRMATION LETTER

to be provided by

The Ministry of the Russian Federation for Atomic Energy
to [Contractor][1]

Dear Sirs,

The Government of the Russian Federation and [name of other Party] are Parties to the Framework Agreement on a Multilateral Nuclear Environmental Programme in the Russian Federation (hereinafter referred to as "the MNEPR Agreement") of 21 May 2003 to facilitate co-operation in the area of safety of spent nuclear fuel and radioactive waste in the Russian Federation. They are also Parties to the Protocol to the MNEPR Agreement on Claims, Legal Proceedings and Indemnification of 21 May 2003 (hereinafter referred to as "the Protocol").

The Ministry of the Russian Federation for Atomic Energy, acting on behalf of the Government of the Russian Federation, hereby acknowledges that [Contractor] has entered into an [Implementing Agreement/Agreement/Contract] with [Recipient] on [date] to provide Assistance for the implementation of the MNEPR Project known as [Project name]. The persons and entities identified in the attached list are the [Contractor's] personnel, subcontractors, suppliers, subsuppliers and consultants who will be providing equipment, goods or services pursuant to the [Implementing Agreement/Agreement/Contract]. [Contractor] may amend this list, from time to time, upon notification to the Ministry of the Russian Federation for Atomic Energy or its authorised representative for the implementation of the [Project name].

The Ministry of the Russian Federation for Atomic Energy, acting on behalf of the Government of the Russian Federation, confirms that in accordance with Articles 2.1 and 2.2 of the Protocol,

a) with the exception of claims for injury or damage against individuals arising from omissions or acts of such individuals done with intent to cause injury or damage, it will bring no claims or legal proceedings of any kind against [Contractor] and its personnel or subcontractors, consultants, suppliers or subsuppliers of equipment, goods or services at any tier and their personnel identified in the attached list as amended from time to time, for any loss or damage of whatsoever nature, including but not limited to personal injury, loss of life, direct, indirect and consequential damage to property owned by the Russian Federation arising from activities undertaken pursuant to the MNEPR Agreement, it being agreed that this paragraph shall not apply to the enforcement of the express provisions of a contract; and

b) with the exception of claims for Nuclear Damage against individuals arising from omissions or acts of such individuals done with intent to cause damage, it shall provide for the adequate legal defence of, and indemnify, and shall bring no claims or legal proceedings against [Contractor] and its personnel or any subcontractors, consultants, suppliers, or subsuppliers of equipment, goods or services at any tier and their personnel identified in the attached list as amended from

1. It may be useful to provide that a copy of the letter also be sent to the Government of the country in which the Contractor carries on business.

time to time, in connection with third-party claims, in any court or forum, arising from activities undertaken pursuant to the MNEPR Agreement, for Nuclear Damage occurring within or outside the territory of the Russian Federation, that results from a Nuclear Incident occurring within the territory of the Russian Federation.

The Ministry of the Russian Federation for Atomic Energy, acting on behalf of the Government of the Russian Federation, agrees that any dispute, controversy or claim arising out of or relating to this Indemnity Confirmation Letter, including its existence or validity, shall be referred to and finally resolved by arbitration in accordance with UNCITRAL Arbitration Rules if such dispute has not been resolved amicably within ninety days of its submission to the Government of the Russian Federation for resolution. The appointing authority for the purposes of the UNCITRAL Arbitration Rules shall be the Stockholm Chamber of Commerce. The place of arbitration shall be the Arbitration Institute of the Stockholm Chamber of Commerce, Stockholm, Sweden and Swedish law shall apply. Where the UNCITRAL Arbitration Rules do not provide for a particular situation the arbitration tribunal shall determine the course of action to be followed.

This Indemnity Confirmation Letter shall enter into force upon signature by the Ministry of the Russian Federation for Atomic Energy, acting on behalf of the Government of the Russian Federation, and it shall remain in effect in accordance with the MNEPR Agreement and the Protocol.

_____ _____

(Signature) (Title)

(Authorised representative of the Ministry of the Russian Federation for Atomic Energy)

_____

(Date)

LIST OF CORRESPONDENTS TO THE NUCLEAR LAW BULLETIN

ALBANIA	Mr. R. KUSHE, Director, Institute of Nuclear Physics
ARGENTINA	Mr. J. MARTINEZ FAVINI, Consultant, National Atomic Energy Commission
ARMENIA	Mr. A. MARTIROSYAN, Armenian Nuclear Regulatory Authority
AUSTRALIA	Ms M. HUXLIN, INIS Information Officer, Australian Nuclear Science and Technology Organisation
AUSTRIA	Mr. M. REITERER, Office of the Legal Adviser, Federal Ministry for Foreign Affairs
BELARUS	Ms O. PIOTUKH, Department of Nuclear and Radiation Safety Regulation, Promatomnadzor
BELGIUM	Mr. F. MOLITOR, Engineer-Director, Technical Safety of Nuclear Installations, Ministry of Employment and Labour
BRAZIL	Mr. E. DAMASCENO, National Commission for Nuclear Energy
	Mrs D. FISCHER, Brazilian Association of Nuclear Law
BULGARIA	Mr. Y. TCHAVEEV, Senior Legal Adviser, Committee on the Use of Atomic Energy for Peaceful Purposes
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	Mr. Xiao Qing WANG, Division of Law and Regulation, Department of Policy, Law and Regulation, China Atomic Energy Authority
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	Professor V. LAMM, Institute for Legal Studies, Academy of Sciences
INDONESIA	Mr. M. POERNOMO, Senior Officer, Nuclear Energy Control Board
	Mr. S. SULCHÃN, Head, Legal and Organisation Division, National Atomic Energy Commission
IRELAND	Ms M. KELLY, Information Officer, Radiological Protection Institute
ITALY	Mr. F. NOCERA, Legal Adviser, Radioactive Waste Processing and Conditioning Department, National Agency for New Technologies, Energy and the Environment
JAPAN	Mr. H. KATAOKA, First Secretary, Japanese Delegation to the OECD
	Mr. T. YAMAMURA, International Cooperation and Nuclear Material Control Division, Japan Nuclear Cycle Development Institute
KAZAKHSTAN	Mrs L. TRENOZHNIKOVA, Legal Advisor, Kazakhstan Atomic Energy Committee
REPUBLIC OF KOREA	Dr. K.-G. PARK, Associate Professor, Faculty of Law, Korea University
LATVIA	Mr. A. SALMINS, Director, Radiation Safety Centre
LITHUANIA	Mr. M. ABRAITIS, Chief Legal Adviser, VATESI
LUXEMBOURG	Dr. M. FEIDER, Radiation Protection Division, Health Directorate, Ministry of Health
MACEDONIA	Mr. D. NEDELKOVSKI, Legal Adviser, Radiation Protection Department, Republic Institute for Public Health
MEXICO	Mr. J. GONZALEZ ANDUIZA, Legal Affairs Department, Federal Commission on Electricity
	Mr. M. PINTO CUNILLE, Head of the Legal and International Affairs Department, National Commission on Nuclear Safety and Safeguards

MOLDOVA	Mr. I. APOSTOL, Head, Radiation and Chemical Protection Division, Department of Civil Protection and Emergency Situations
MOROCCO	Ms. L. ZIDI, Management Assistant, National Centre of Nuclear Energy, Science and Techniques
NETHERLANDS	Dr. N. HORBACH, Director, Centre for Transboundary Damage and Compensation
	Mr. R. VAN EMDEN, Counsellor, Insurance Division, Ministry of Finance
NORWAY	Mr. H. ANSTAD, Deputy Director General, Ministry of Health and Social Affairs
POLAND	Mr. R. MAJDA, Department for Administration and Legal Matters, National Atomic Energy Agency
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ROMANIA	Mr. L. BIRO, President, National Commission for the Control of Nuclear Activities
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SLOVAK REPUBLIC	Mr. J. BEDNAR, Deputy Legal Director, Nuclear Regulatory Authority
SLOVENIA	Mr. A. ŠKRABAN, Counsellor to the Government, Slovenian Nuclear Safety Administration
SOUTH AFRICA	Mr. R. ELK, Head of Legal Department, Council for Nuclear Safety
SPAIN	Ms L. CORRETJER, Sub-Directorate of Nuclear Energy, Directorate-General for Energy Policy and Mines, Ministry of Economy
	Mr. J. R. MARTIN HERNANDEZ, Legal Adviser, Nuclear Safety Council
SWEDEN	Mr. C. MARTENSSON, Chief Legal Adviser, Swedish Radiation Protection Institute
	Mr. I. PERSSON, Senior Legal Adviser, Swedish Nuclear Power Inspectorate
SWITZERLAND	Mr. R. TAMI, Head, Legal Service, Federal Office of Energy
THAILAND	Ms N. TANTASATHIEN, Senior State Attorney, Legal Council Office
TUNISIA	Mr. M. CHALBI, Ministry of Education and Science, National School of Engineering
TURKEY	Mrs. G. ERKUL, Energy Adviser, Delegation of Turkey to the OECD

UKRAINE	Ms S. PILGUN, Main Specialist, Department of Planning, Co-ordination and Development, State Nuclear Committee of Ukraine
	Mr. V. SHVYTAI, State Expert, National Security and Defense Council of Ukraine
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	Ms M. NORDLINGER, Senior Attorney, Office of the General Counsel, United States Nuclear Regulatory Commission
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	Mr. J. FERNANDEZ-GARCIA, Directorate-General Energy and Transport
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Act on the Safe Use of Nuclear Energy
(as last amended on 29 December 2002)

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NUCLEAR • ENERGY • AGENCY

Legal Affairs

NUCLEAR LAW
Bulletin

SUPPLEMENT TO No. 71

Bulgaria

Act on the Safe Use of Nuclear Energy (2002)

NUCLEAR ENERGY AGENCY
ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

Pursuant to Article 1 of the Convention signed in Paris on 14th December 1960, and which came into force on 30th September 1961, the Organisation for Economic Co-operation and Development (OECD) shall promote policies designed:

- to achieve the highest sustainable economic growth and employment and a rising standard of living in Member countries, while maintaining financial stability, and thus to contribute to the development of the world economy;
- to contribute to sound economic expansion in Member as well as non-member countries in the process of economic development; and
- to contribute to the expansion of world trade on a multilateral, non-discriminatory basis in accordance with international obligations.

The original Member countries of the OECD are Austria, Belgium, Canada, Denmark, France, Germany, Greece, Iceland, Ireland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States. The following countries became Members subsequently through accession at the dates indicated hereafter: Japan (28th April 1964), Finland (28th January 1969), Australia (7th June 1971), New Zealand (29th May 1973), Mexico (18th May 1994), the Czech Republic (21st December 1995), Hungary (7th May 1996), Poland (22nd November 1996), Korea (12th December 1996) and the Slovak Republic (14 December 2000). The Commission of the European Communities takes part in the work of the OECD (Article 13 of the OECD Convention).

NUCLEAR ENERGY AGENCY

The OECD Nuclear Energy Agency (NEA) was established on 1st February 1958 under the name of the OEEC European Nuclear Energy Agency. It received its present designation on 20th April 1972, when Japan became its first non-European full Member. NEA membership today consists of 27 OECD Member countries: Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Luxembourg, Mexico, the Netherlands, Norway, Portugal, Republic of Korea, Slovak Republic, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States. The Commission of the European Communities also takes part in the work of the Agency.

The mission of the NEA is:

- to assist its Member countries in maintaining and further developing, through international co-operation, the scientific, technological and legal bases required for a safe, environmentally friendly and economical use of nuclear energy for peaceful purposes, as well as
- to provide authoritative assessments and to forge common understandings on key issues, as input to government decisions on nuclear energy policy and to broader OECD policy analyses in areas such as energy and sustainable development.

Specific areas of competence of the NEA include safety and regulation of nuclear activities, radioactive waste management, radiological protection, nuclear science, economic and technical analyses of the nuclear fuel cycle, nuclear law and liability, and public information. The NEA Data Bank provides nuclear data and computer program services for participating countries.

In these and related tasks, the NEA works in close collaboration with the International Atomic Energy Agency in Vienna, with which it has a Co-operation Agreement, as well as with other international organisations in the nuclear field.

BULGARIA

Act on the Safe Use of Nuclear Energy*

Adopted on 28 June 2002

as last amended on 29 December 2002

Chapter 1

GENERAL PROVISIONS

Article 1

This Act covers the activities associated with the State regulation of the safe use of nuclear energy and ionising radiation and with the safety of radioactive waste management and spent fuel management. It specifies the rights and duties of licensees in conducting those activities, to ensure nuclear safety and radiation protection.

Article 2

Nuclear energy and nuclear material shall be used solely for peaceful purposes and in compliance with this Act and with international treaties constitutionally ratified, promulgated and entered into force for the Republic of Bulgaria.

Article 3

(1) Nuclear energy and ionising radiation shall be used in compliance with nuclear safety and radiation protection requirements and principles with the aim of ensuring the protection of human life, health and living conditions of both present and future generations, the environment and property against the harmful impact of ionising radiation.

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* Unofficial translation established by the OECD Secretariat.

(2) In the use of nuclear energy or ionising radiation, and in the management of radioactive waste and spent fuel:

1. nuclear safety and radiation protection shall have priority over all other aspects of the activity;

2. occupational and public exposure to ionising radiation shall always be kept as low as reasonably achievable.

Chapter 2

STATE REGULATION

Section I

Nuclear Regulatory Agency

Article 4

(1) State regulation of the safe use of nuclear energy and ionising radiation, the safety of radioactive waste management and the safety of spent fuel management is implemented by the Chairman of the Nuclear Regulatory Agency (NRA), hereinafter referred to as "the Agency", which is an independent specialised authority of the executive power and is vested with competencies as specified by this Act.

(2) The NRA Chairman shall be designated by a decision of the Council of Ministers and shall be appointed by the Prime Minister for a period of five years and may be appointed for one additional term of office.

(3) In the exercise of the powers entrusted to him, two Deputy-Chairmen shall assist the Chairman. The two deputies shall be designated by a decision of the Council of Ministers on a motion by the NRA Chairman, and shall be appointed by the Prime Minister.

Article 5

The NRA Chairman shall:

1. manage and represent the Agency;

2. issue, amend, modify, renew, suspend and revoke licences and permits for the safe conduct of the activities under this Act;

3. supervise the fulfilment of safety requirements and standards related to the safe use of nuclear energy and ionising radiation and the safety of radioactive waste management and spent fuel management, including the conditions of licences and permits issued;

4. issue and withdraw qualification certificates for employment at nuclear facilities or with sources of ionising radiation;

5. undertake enforcement measures and impose administrative penalties under the provisions of this Act;

6. assign external expertise, research and studies related to nuclear safety and radiation protection during the use of nuclear energy and ionising radiation and the management of radioactive waste and spent fuel;

7. carry out interactions with other competent authorities of the executive power vested with regulatory and control functions related to the use of nuclear energy and ionising radiation, and propose to the Council of Ministers measures for co-ordination of such activities;

8. carry out international co-operation on behalf of the Republic of Bulgaria in the fields of the safe use of nuclear energy and ionising radiation and the safety of radioactive waste management and spent fuel management;

9. provide individuals, legal entities and state bodies with objective information concerning the nuclear safety and radiation protection situation;

10. submit annually to the Council of Ministers a report on the status of nuclear safety and radiation protection, during the use of nuclear energy and ionising radiation and the management of radioactive waste and spent fuel, as well as on the activities of the Agency;

11. organise and co-ordinate the drafting and submission of reports to the Council of Ministers on the implementation of national obligations under the Convention on Nuclear Safety and the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management;

12. organise and co-ordinate implementation of the obligations of the Republic of Bulgaria arising from the Agreement Between the People's Republic of Bulgaria and the International Atomic Energy Agency for the Application of the Safeguards in Connection with the Treaty on the Non-proliferation of Nuclear Weapons, as well as from the Additional Protocol to the Agreement;

13. perform the functions of a competent authority and a contact point for notification of an accident and for provision of assistance according to the Convention on Early Notification of a Nuclear Accident and the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency;

14. develop and submit regulations for the application of this Act to the Council of Ministers for adoption;

15. exercise other powers as may be entrusted to him by the national legislation.

Article 6

(1) Eligibility for appointment to the office of NRA Chairman or Deputy-Chairman shall be limited to Bulgarian citizens who:

1. hold a Master's educational degree in natural or technical sciences, conferred upon graduation from a higher educational establishment;

2. have a permanent address within the territory of Bulgaria;

3. have working experience under a contract of employment and/or a civil-service relationship for not less than ten years in the field of nuclear energy, ionising radiation, radioactive waste or spent fuel management, or in the field of state regulation of those activities;

4. have not been sentenced to a term of imprisonment for an offence of a general nature;

(2) The following shall be ineligible for appointment as Chairman or Deputy-Chairman:

1. any individual who is a sole trader, shareholder, member, managing director, managerial agent, consultant or member of a management body or supervisory body of a company or an organisation performing activities under this Act;

2. any individual holding another employment contract, excluding lecturing or scientific activities.

(2) The remuneration for the Chairman and the Deputy-Chairmen shall be fixed as follows:

1. for the Chairman: at 95% of three average monthly wages of the persons hired under an employment and civil-service relationship in the public sector, in conformity with the data of the National Statistics Institute;

2. for a Deputy-Chairman: at 90% of three average monthly wages of the persons hired under an employment and civil-service relationship in the public sector, in conformity with the data of the National Statistics Institute.

Article 7

(1) The Chairman may only be removed prior to the expiration of his term of office on one of the following grounds:

1. resignation;

2. significant violation of this Act;

3. significant or repeated breaches of his official duties;

4. failure to meet any appointment requirements;

5. inability to perform his/her duties for a period exceeding six months.

(2) In the case of removal of the NRA Chairman under Paragraph (1), as well as upon death or legal disqualification, the Council of Ministers shall designate a new Chairman, following the conditions and the procedure under Article 4(2) and Article 6(1), for the remainder of the term of office.

Article 8

(1) In his work, the NRA Chairman shall be assisted by an Administration organised in the Nuclear Regulatory Agency.

(2) The Agency shall be a legal entity, financed by the national budget and with its headquarters in Sofia.

(3) The structure and activity of the Agency, as well as the organisation of its work and staff, shall be determined in the Organisational Statute to be adopted by the Council of Ministers on a motion by the NRA Chairman.

(4) The disqualifications covered under Article 6(2)1 shall apply to any employee in the administration who carries out activities related to the granting of licences or permits or who exercises control over their application.

Article 9

(1) The NRA Chairman shall establish:

1. an Advisory Council on Nuclear Safety;

2. an Advisory Council on Radiation Protection.

(2) The Advisory Councils under Paragraph (1) shall include prominent scientists and experts in the field of nuclear energy and ionising radiation, radioactive waste management and spent fuel management.

(3) The NRA Chairman shall approve the composition of the Advisory Councils by an order.

(4) The Advisory Councils shall assist the Chairman by giving expert advice on the scientific aspects of nuclear safety and radiation protection.

(5) The Advisory Councils shall adopt rules of procedure, and their meetings shall be presided over by the NRA Chairman or by an authorised person.

Section II

Agency Financing

Article 10

(1) The operation of the Agency shall be financed by the national budget and by proceeds from the fees collected under this Act.

(2) The Agency shall administer fees under this Act.

Article 11

(1) The revenues on the budget of the Agency shall be raised from:

1. the fees collected under this Act and any accrued interest;

2. donations.

(2) Order of priority for the expenditure of Agency financial resources shall be as follows:

1. financing of studies, analyses and expertise associated with the assessment of nuclear safety and radiation protection and the financing of regulatory activities under this Act;

2. capital expenditures on development of the Agency infrastructure;

3. training and qualification of Agency staff;

4. additional financial incentives to Agency personnel.

Section III

Competencies of other State Bodies

Article 12

State bodies, which by financing or in any other manner are involved with the promotion or use of nuclear energy or sources of ionising radiation, shall not exercise any state regulatory functions with respect to nuclear safety and radiation protection.

Article 13

The Ministers of Health, Environment and Water, the Interior, Defence, Agriculture and Forestry, Transport and Communications, and Education and Science shall exercise specialised control in accordance with their competencies specified in the legislation.

Chapter 3

AUTHORISATION PROCESS

Section I

General Provisions

Article 14

(1) Individuals or legal entities may only use nuclear energy or sources of ionising radiation after obtaining a permit and/or a licence for the safe implementation of the relevant activity specified in this Act.

(2) Legal entities may only perform radioactive waste management and spent fuel management after obtaining a permit and/or a licence for the safe implementation of the relevant activity specified in this Act.

Article 15

(1) Permits and licences shall be issued, amended, suspended, and revoked by the NRA Chairman under conditions of legal equality and transparency.

(2) The licences and permits under this Act shall be individual administrative acts.

(3) A licence may be issued for:

1. operation of a nuclear facility;

2. use of sources of ionising radiation for economic, medical, scientific or process control purposes;

3. manufacture of sources of ionising radiation or parts of such sources;

4. handling of sources of ionising radiation for the purpose of maintenance, assembly, dismantling, measurement, construction and repair work or other services to persons using or manufacturing sources of ionising radiation or parts of such sources;

5. transportation of radioactive substances;

6. import and export of sources of ionising radiation or parts of such sources;

7. specialised training.

(4) A permit may be issued for:

1. siting of a nuclear facility (site selection);

2. design of a nuclear facility;

3. construction of a nuclear facility;

4. commissioning of a nuclear facility;

5. activities leading to modification of:

   (a) nuclear facility structures, systems and equipment related to nuclear safety and radiation protection;

   (b) limits and conditions for the safe operation of a nuclear facility, that provide the basis for issuing of the operating licence;

   (c) internal rules for carrying out the activity and procedures, including instructions, programmes, technical specifications, and the instruments that are attached to the licence for operation of a nuclear facility;

6. decommissioning of a nuclear facility;

7. transportation of nuclear material;

8. location of a facility with a source of ionising radiation;

9. construction of a facility with a source of ionising radiation, assembly and initial testing, conducted on the basis of a detailed technical design and approved radiation protection measures;

10. decommissioning of a facility with radioactive substances;

11. temporary storage of radioactive substances resulting from practices with sources of ionising radiation or associated with such practices;

12. non-reoccurring transportation of radioactive substances;

13. import and export of sources of ionising radiation or parts thereof where they do not constitute potential "dual-use" goods within the meaning of the Act on the Control of Foreign Trade in Arms and in Potential "Dual-Use" Goods and Technologies;

14. commercial transactions involving nuclear facilities and nuclear material;

15. import and export of nuclear material;

16. transit of nuclear material, radioactive waste, spent fuel or other radioactive substances.

(5) Qualification certificates for employment shall be issued to persons who perform activities at nuclear facilities or with sources of ionising radiation.

Article 16

Licensees using nuclear energy or sources of ionising radiation or dealing with radioactive waste management and spent fuel management are required to:

1. comply with nuclear safety and radiation protection requirements, standards and rules while performing the relevant activity;

2. perform monitoring of the radiological characteristics of the site and the environment;

3. perform assessment of nuclear safety and radiation protection at the nuclear facilities and sites with sources of ionising radiation and undertake actions and implement measures for the improvement of nuclear safety and radiation protection, taking into account national and international operating experience and scientific achievements in this field;

4. employ only those individuals who meet established statutory requirements for educational qualifications and competence for employment at nuclear facilities or with sources of ionising radiation;

5. employ only those individuals who meet the specific health requirements established by a regulation adopted by the Council of Ministers on a motion by the Minister of Health;

6. provide the public, state bodies and public organisations with objective information regarding nuclear safety and radiation protection;

7. carry out all measures and activities associated with the safe storage of nuclear material, radioactive substances, spent nuclear fuel and radioactive waste generated from their activities until delivery for management to a facility having an operating licence for a radioactive waste management facility;

8. take actions for prevention of incidents and accidents and for mitigation of their consequences;

9. ensure sufficient financial resources for safe termination of the relevant activity;

10. create such conditions during the activity that the generation of radioactive waste be as low as reasonably achievable in terms of volume and radioactivity;

11. measure, record and monitor the parameters characterising nuclear material, radioactive substances and other sources of ionising radiation, and maintain systems for their accounting and control;

12. ensure the physical protection of nuclear facilities, nuclear material, radioactive substances and other facilities with a source of ionising radiation, in co-ordination with the competent authorities of the Ministry of the Interior, where this is provided for by legislation;

13. provide for personnel training, as well as for continuous improvement and control of their qualifications;

14. maintain a high level of quality in all activities carried out;

15. apply systems and equipment, technologies and procedures in line with the latest developments in science and technology and internationally acknowledged operating experience;

16. maintain a system to control the discharges of radioactive substances and the radiological parameters at the site, in the radiation protection area and in the monitoring area;

17. maintain insurance or other financial security against nuclear damage.

Article 17

The following activities are prohibited:

1. development, manufacture, transfer, trade (including internationally), storage, transport (including transit), acquisition, possession and detonation of nuclear weapons or other nuclear explosive devices, as well as circulating information on such installations and activities, where this is directed against national security, public order or public health;

2. the addition of radioactive substances to foodstuffs or other products with the aim of increasing their level of activity or the activation of such substances, except as provided for by a specialised law, as well importing and exporting such commodities and products;

3. unregulated exposure to sources of ionising radiation;

4. import of radioactive waste, except:

   (a) re-import of used sealed sources manufactured in the Republic of Bulgaria;

   (b) where the radioactive waste is generated as a result of the processing of materials performed as a service to the Republic of Bulgaria or a Bulgarian legal entity.

Article 18

(1) The NRA Chairman shall issue a licence:

1. under Item 1 of Article 15(3): within nine months;

2. under Item 7 of Article 15(3): within six months;

3. under Items 2 through 6 incl. of Article 15(3): within one month.

(2) The NRA Chairman shall issue a permit:

1. under Items 1 through 4 incl., 6 and 14 of Article 15(4): within nine months;

2. under Item 5 of Article 15(4): within six months;

3. under Items 7 through 13 incl. and 15 of Article 15(4): within one month;

4. under Item 16 of Article 15(4): within one month after adoption of a decision by the Council of Ministers in the cases referred to in Article 25(1).

(3) The time limits for the issuance of a licence or a permit shall begin to run from the time of the receipt of an application form accompanied by all requisite documents.

(4) A licence or a permit under this Act shall not be issued to any person who:

1. does not fulfil the conditions established by this Act;

2. has been adjudicated bankrupt or is subject to bankruptcy proceedings;

3. is in liquidation;

4. has been sentenced to a term of imprisonment for an offence of a general nature which, for legal entities, shall apply to the members of the management and supervisory bodies.

Article 19

(1) Each licence or permit shall specify:

1. the holder and the subject of the licence or permit;

2. the validity of the licence or permit;

3. the facility, including the technology and the nuclear material or sources of ionising radiation to be used;

4. conditions for carrying out the activity on nuclear safety and radiation protection, including conditions for decommissioning of the facility, in accordance with the obligations pursuant to Article 16;

5. type, quantities, conditions and time periods for storage of the nuclear material, spent fuel, radioactive substances and other sources of ionising radiation and radioactive waste resulting from this activity, and the relevant information about them;

6. requirements for individuals performing activities under licences and permits;

7. requirements in relation to the provision of sufficient financial resources to ensure safety during the validity of the licence;

8. requirements of the licensee in relation to the provision of information to the Agency, including the requirement to notify the Agency in the case of an event, incident or accident, under terms and according to a procedure provided for in a regulation adopted by the Council of Ministers on a motion by the NRA Chairman;

9. the requirements for acceptance of control and inspection at nuclear facilities, facilities with a source of ionising radiation or means of transport, and for verification of compliance with the conditions of the licence or permit;

10. the conditions associated with the accounting for nuclear material, radioactive substances and other sources of ionising radiation;

11. other requirements associated with national security and public order.

(2) Depending on the type of the licence or permit, all or part of the essential elements and conditions covered under Paragraph (1) shall be included in the licence or permit.

Article 20

(1) A licence shall be issued for a term of validity not exceeding ten years.

(2) Licence validity may be extended on the basis of a nuclear safety and radiation protection assessment and assessment of the status of the nuclear facility or the facility with a source of ionising radiation.

(3) Licence validity may be extended for a period not exceeding the period referred to in Paragraph 1 if the licensee fulfils all obligations and requirements under the licence and has submitted an extension request in writing prior to the expiration of the initial licence term or of any extension thereof. The time limits for submission of a licence extension request shall be established by the regulation referred to in Article 26(1).

Article 21

(1) Any licence or permit may be amended at a request of the licensee or permit-holder in respect of:

1. changes in the statutory requirements in nuclear safety and radiation protection;

2. occurrence of any new circumstances having a substantial effect on nuclear safety and radiation protection, which require review and amendment of the licence or permit conditions;

3. reasons of national security and public order.

(2) Within one month following the occurrence of any circumstance covered under Paragraph (1), requiring licence or permit amendment, the licensee or permit holder is obliged to notify the NRA Chairman of the change in circumstances and to request the licence or permit modification.

(3) Should the licensee or permit holder fail to request a licence or permit amendment within the time limit referred to in Paragraph (2), the NRA Chairman shall notify the licensee or permit holder in writing of the existence of the circumstances covered under Paragraph (1) requiring licence or permit amendment.

Article 22

(1) A licence shall be terminated:

1. by expiration of its term of validity;

2. at the request of the licensee, in particular when at least one of the conditions covered under Article 56(2) or (3) occurs in the course of conducting the activity;

3. by reason of revocation of the licence;

4. upon dissolution of the legal entity;

5. upon the death of the licensed person.

(2) A permit shall be terminated:

1. With the completion of the activity subject to the permit or when the term of the permit has expired;

2. at the request of the permit holder;

3. upon termination of the licence, where the permit has been granted to a licensee;

4. by reason of revocation of the permit.

(3) Upon termination of a licence, the licensee shall be obliged to ensure the nuclear safety, radiation protection and physical protection of the nuclear facility, nuclear material and other sources of ionising radiation until the issuance of a new licence to a new licensee or until the safe decommissioning of the relevant facility.

Article 23

(1) The NRA Chairman shall revoke a licence or permit following a written notification comprising a specified time period:

1. where the licensee or permit holder fails to comply with or violates:

   (a) the obligations covered under Article 16 and/or any conditions included in the licence or permit associated with nuclear safety or radiation protection;

   (b) any directives of responsible authorities, or any enforcement measure imposed under this Act; or

   (c) any condition or requirement contained in the licence under Article 15(3)7 ;

2. where the licensee or permit holder has submitted any incorrect information which has served as the basis for the issuance of the licence or permit and which is relevant to nuclear safety and radiation protection;

3. where the activity of the licensee is terminated through bankruptcy or liquidation proceedings;

4. for reasons of national security.

(2) Unless a licensee or permit holder requests a relevant amendment of the licence or permit within fourteen days after notification under Article 21(3), the NRA Chairman may revoke the licence or permit.

(3) In his decision on revocation of the licence, the NRA Chairman shall specify a time period during which the person shall be barred from applying for a new licence for the same activity. This period may not be longer than one year.

(4) Upon determining any violation covered by Items 1 and 2 of Paragraph (1), the administrative sanctions or penaltys provided for in this Act shall be imposed.

Article 24

The issuance of any licence or permit or of any amendment or denial (including an unrecorded denial) thereof by the NRA Chairman shall lead to delivery of the corresponding act, and the withdrawal of a licence or permit shall be subject to appeal before the Supreme Administrative Court. Any appeal against a decision by the NRA Chairman shall not suspend its implementation.

Article 25

(1) Transit of nuclear material, radioactive waste and spent fuel through the territory of the Republic of Bulgaria shall take place pursuant to a decision of the Council of Ministers and following the issuance of a permit by the NRA Chairman.

(2) Transit of radioactive substances through the territory of the Republic of Bulgaria shall take place following the issuance of a permit by the NRA Chairman.

(3) Such a permit may be issued to an applicant when:

1. the applicant has obtained consent or permission from the competent authorities of the state of origin and of the state of destination concerning the transportation, as well as consent for return of the shipment;

2. the means of transport and packaging conform to the requirements of relevant international treaties and conventions, and applicable Bulgarian legislation;

3. the applicant has ensured the physical protection of the shipment.

Article 26

(1) Licences and permits shall be issued, amended, renewed, suspended, revoked and regulated according to a procedure established under a regulation adopted by the Council of Ministers on a motion by the NRA Chairman.

(2) Nuclear safety and radiation protection requirements, standards and rules applicable to the use of nuclear energy and sources of ionising radiation, radioactive waste management and spent fuel management, including siting, design, construction, commissioning, operation and decommissioning of nuclear facilities and facilities with a source of ionising radiation, shall be established by regulations adopted by the Council of Ministers on a motion by the NRA Chairman.

(3) The basic standards for radiation protection shall be established by a regulation adopted by the Council of Ministers on a motion by the Minister of Health, the Minister of Environment and Water, and the NRA Chairman.

(4) The conditions and procedure for transportation of nuclear material, radioactive waste and radioactive substances shall be established by a regulation adopted by the Council of Ministers on a motion by the NRA Chairman and the Minister of Transport and Communications.

Article 27

(1) The Agency shall maintain public records in which the following acts issued by the NRA Chairman shall be recorded:

1. licences and permits, as well as their amendment, renewal, suspension or revocation;

2. qualification certificates for employment at nuclear facilities or with sources of ionising radiation.

(2) The information to be included in the records and the recording procedure shall be specified by the regulation referred to in Article 26(1).

Section II

Fees

Article 28

(1) Fees shall be collected for implementing regulatory activities under this Act in amounts established in a rate schedule approved by the Council of Ministers.

(2) The fees referred to in Paragraph (1) shall be paid by the applicant or by the licensee or permit holder for the following activities:

1. review of a licence or permit application;

2. issuing of a licence or permit;

3. taking an examination before a qualification examination commission under Article 66 and for issuance of a qualification certificate for employment;

4. amendment of a permit and/or a licence;

5. extension of the term of validity of a permit or a licence.

Article 29

Upon issuance of a permit under this Act, the permit holder shall pay a fee, covering the expenses of evaluating and conforming of data and circumstances as stated with applicable nuclear safety and radiation protection requirements, the preparation and control over compliance with conditions depending on the type of permit.

Article 30

(1) Licensees under this Act shall pay licensing fees for each licence issued.

(2) Licensing fees shall be of the following types:

1. initial fee: payable upon the issuance of the licence, fixed depending on the type of the licence and covering the expenses of evaluating and conforming of data and circumstances as stated with applicable nuclear safety and radiation protection requirements, and of preparing the licence itself;

2. annual fee: imposed for regulating implementation of licence conditions and for periodic review of the status of nuclear safety and radiation protection, depending on the type of licence.

(3) The annual fee shall be paid by the licensee each year during the term of validity, as well as for any period of extension.

(4) A fee amounting to 50% of the fee referred to in Item 1 of Paragraph (2) shall be paid for licence amendment upon request of the licensee and upon extension of the term of validity of the licence.

Article 31

(1) The procedure for payment of fees under this Act shall be established by a regulation adopted by the Council of Ministers on a motion by the NRA Chairman.

(2) Legal entities financed through the national budget shall be exempt from payment of fees under this Act.

Article 32

Fees for licences or permits shall be allowed as expenses deductible for taxation purposes and as economically justified costs for purposes of pricing according to the Energy and Energy Efficiency Act.

Section III

Nuclear Facilities

Article 33

(1) The NRA Chairman shall issue permits for:

1. siting of a nuclear facility (site selection);

2. design of a nuclear facility;

3. construction of a nuclear facility;

4. commissioning of a nuclear facility.

(2) The permits covered under Paragraph (1) shall be issued, prior to the issuance of an operating licence for a nuclear facility under this Act, to a legal entity registered in the Republic of Bulgaria that:

1. possesses a permit for the construction of a new capacity for generating electrical and/or thermal power according to the procedure established under the Energy and Energy Efficiency Act, if the nuclear facility is a nuclear power plant;

2. is an investor in the construction of another nuclear facility.

(3) The permit shall be issued if the applicant possesses the necessary financial, technical, material and human resources and a suitable organisational structure to meet all nuclear safety and radiation protection requirements, standards and rules established by the regulation referred to in Article 26(2).

(4) The site and selected technical design shall be approved by an order of the NRA Chairman when they meet all nuclear safety and radiation protection requirements, standards and rules established by the regulation referred to in Article 26(2).

Article 34

(1) A permit for commissioning of a nuclear facility shall be issued following the issuance of a utilisation permit under the Act on Territorial Structure.

(2) Any modification of the nuclear facility commissioning programme shall only be made after amendment of the permit issued.

(3) If the commissioning of the nuclear facility is a multistage process, the NRA Chairman may issue a separate permit for each stage.

Article 35

(1) A licence to operate a nuclear facility is issued only when all conditions of the commissioning permit are met.

(2) A licence to operate a nuclear facility is issued to a legal entity registered in the Republic of Bulgaria that:

1. is the owner of, or the holder of property rights to, the nuclear facility;

2. possesses the necessary financial, technical and material resources and a suitable organisational structure to maintain a high level of safety for the entire lifetime of the nuclear facility, in relation to radioactive waste management and spent fuel management, and for safe decommissioning of the facility;

3. has a sufficient number of qualified and competent personnel with the appropriate level of qualifications and training for all activities related to the safe operation of the nuclear facility;

4. has adopted a programme of measures, including internal rules, as necessary for ensuring and maintaining a high level of quality in all activities related to the operation of the nuclear facility;

5. has ensured conditions for maintaining a high level of safety culture;

6. has approved emergency plans for response in the event of an accident;

7. has provided for the necessary physical protection measures;

8. possesses the necessary technical means and has made the appropriate arrangements to keep doses of occupational and public exposure to a level as low as reasonably achievable;

9. has ensured conformity of the installation and the declared operating activity with the requirements, standards and rules of nuclear safety and radiation protection.

(3) A licence to operate a nuclear facility shall be granted for a term not exceeding ten years.

Article 36

(1) A licence to operate a nuclear facility shall include the right of the licensee to use a nuclear facility which from a technical and technological point of view, meets all nuclear safety and radiation protection standards, and to perform all activities, including decommissioning and temporary storage of spent nuclear fuel and radioactive waste, to attain the assigned purpose of the facility on condition that nuclear safety and radiation protection are guaranteed.

(2) A separate operating licence shall be issued for any unit or any other nuclear facility on the site of a nuclear power plant.

(3) The licences referred to in Paragraph (2) shall also specify the nuclear facility site boundaries and the special-statute areas.

Article 37

(1) A licence to operate a nuclear facility shall be suspended at the request of the licensee from the date of the issuance of a new licence for the same activity to a new applicant.

(2) Upon revocation of a licence, where the licensee does not possess sufficient financial resources to provide for the nuclear safety, radiation protection and physical protection, the resources needed for the termination of the activity shall be provided from the Nuclear Facilities Decommissioning Fund.

Article 38

(1) Permits shall be issued to a licensee for:

1. changes leading to a modification of:

   (a) nuclear safety and radiation protection related structures, systems and equipment;

   (b) limits and conditions for safe operation on the basis of which the operating licence was issued;

   (c) internal rules for conduct of licensee activities, including instructions, programmes, technical specifications and similar matters attached to the licence;

2. decommissioning of a nuclear facility;

3. import and export of nuclear material;

4. transport of nuclear material.

(2) Permits covered under Item 1 of Paragraph (1) shall be issued if the requested modifications comply with nuclear safety and radiation protection requirements, standards and rules established by the regulation referred to in Article 26(2).

(3) Where a permit issued under Item 1 of Paragraph (1) leads to amendment of licence conditions, the licence shall be amended, by the NRA Chairman, on his own volition within the authorisation process, without charging a fee for the amendment.

(4) A permit under Items 3 and 4 of Paragraph (1) shall be granted for each specific case of import, export or transport.

Article 39

(1) A nuclear facility may only be decommissioned after the issuance of a permit by the NRA Chairman under Item 2 of Article 38 (1).

(2) A permit may be granted if the licensee has submitted:

1. an assessment of nuclear safety and radiation protection during decommissioning;

2. a positive decision on environmental impact assessment;

3. a decommissioning programme that complies with all nuclear safety and radiation protection requirements.

(3) Where the decommissioning of the nuclear facility is a multistage process, the NRA Chairman may issue a separate permit for each stage.

Article 40

(1) An import or export permit referred to in Item 3 of Article 38(1) may be issued to a licensee when the import or export is associated with the licensed activity.

(2) A nuclear material import or export permit may be issued to a sole trader or a legal entity if:

1. arrangements have been made to transport the nuclear material from a licensee or permit-holder under this Act;

2. the consignee of the shipment holds the requisite licence or permit to use or store nuclear material.

Article 41

A permit for transport of nuclear material, under Item 4 of Article 38(1) is issued to a licensee if the licensee has ensured that transportation will occur with such packaging and means of transport as is specified in the regulation under Article 26(4), and has provided for physical protection of the nuclear material.

Article 42

(1) Commercial transactions involving nuclear facilities and nuclear material may be conducted after obtaining a permit from the NRA Chairman, subject to the condition that nuclear safety and radiation protection requirements, rules and standards are not violated.

(2) The NRA Chairman shall issue a permit for commercial transactions involving a nuclear facility only when the transferee under the transaction holds a licence for the relevant activity or fulfils the conditions for the issuance of such a licence.

Article 43

(1) Prospecting for, exploration for and extraction of ore containing uranium or thorium shall be regulated according to the procedure established under the Underground Mineral Resources Act.

(2) Issuance of permits and signing of concession contracts referred to in Paragraph (1), under the Underground Mineral Resources Act shall not override the requirement to obtain the relevant permit or licence under this Act.

Article 44

The issue of permits under Article 33 shall not revoke the requirement to obtain the necessary permits under the Act on Territorial Structure.

Section IV

Specific Rules applicable to the Construction and Operation of Nuclear Power Plants

Article 45

(1) A nuclear power plant shall be constructed pursuant to a decision of the Council of Ministers.

(2) A proposal to construct a nuclear power plant shall be submitted by the Minister of Energy and Energy Resources, accompanied by an assessment of:

1. nuclear safety and radiation protection, environmental impact and physical protection;

2. the social and economic significance of the construction of a nuclear power plant for the nation or for particular regions;

3. radioactive waste and spent nuclear fuel to be generated, as well as their management.

(3) Where the operation of the nuclear power plant may impact the public and the environment of another state, the Minister of Foreign Affairs shall notify the competent authorities of that state. The Minister shall provide, if so requested, all information those authorities may need for evaluation and analysis of the potential impact of the plant on their territory regarding public safety and environmental protection. Any official statement from such authority received shall be attached to the proposal referred to in Paragraph (2).

(4) The Minister of Energy and Energy Resources shall organise a public discussion of the proposal for construction of a nuclear power plant with the participation of state bodies and bodies of the local governments, representatives of public organisations, private persons and legal entities concerned. Notice of this discussion shall be given through the mass media or in another appropriate manner not later than one month before the discussion. An assessment of discussion results shall be attached to the proposal referred to in Paragraph (2).

Article 46

(1) The designation of the applicant that shall construct and operate a nuclear power plant as a facility for generation of electrical power and/or heating shall take place pursuant to the procedure established by Chapter Three of the Energy and Energy Efficiency Act.

(2) Obtaining of permits and licences under this Act shall be a prior condition for entry into force of the permits and licences under the Energy and Energy Efficiency Act.

(3) The licence to operate a nuclear power plant shall be issued to an applicant possessing a licence for generation of electrical power and/or heating under the Energy and Energy Efficiency Act.

Article 47

(1) A licence to operate a nuclear power plant shall be suspended by the termination of the licence for generation of electrical power and/or heating issued under the Energy and Energy Efficiency Act.

(2) The licensee shall submit to the NRA Chairman a decommissioning plan for the nuclear power plant, a separate unit or other nuclear facility at the site at least three years before the closure of the power plant for decommissioning.

Section V

Nuclear Facilities Decommissioning Fund

(Effective as from 1 January 2003)

Article 48

A Nuclear Facilities Decommissioning Fund, hereinafter referred to as "the Fund", shall be established under the auspices of the Minister of Energy and Energy Resources for the purpose of financing activities relating to the decommissioning of nuclear facilities.

Article 49

(1) The revenues of the Fund shall be raised, accounted for and centralised in the Single Budget Account System through a separate account, opened in the name of the Ministry of Energy and Energy Resources within the Bulgarian National Bank, from the following sources:

1. contributions from nuclear facility operators, in amounts specified by the Council of Ministers;

2. national budget resources, allocated annually pursuant to the National Budget Act for the relevant year;

3. interest accruing from management of financial resources in the Fund and on overdue payments of contributions referred to in Item 1;

4. donations;

5. other revenues accruing from management of financial resources in the Fund.

(2) Legal entities financed by the national budget shall be exempt from payment of contributions referred to in Item 1 of Paragraph (1).

(3) Contributions to the Fund referred to in Item 1 of Paragraph (1) shall be considered as operating expenses deductible for taxation purposes and as economically justified costs for the purposes of pricing according to the Energy and Energy Efficiency Act.

(4) Contributions to the Fund referred to in Item 1 of Paragraph (1) shall be public state revenue, which shall be assessed and collected by the tax administration according to the procedure established by the Taxation Procedure Code.

Article 50

(1) Financial resources of the Fund shall be expended solely for the purpose of financing nuclear facilities decommissioning activities, including:

1. the annual programme of the licensee operating the nuclear facility being decommissioned;

2. expenses for the storage and disposal of radioactive waste generated as a result of decommissioning activities;

3. management of the Fund;

4. other activities provided for in the law and associated with safe decommissioning.

(2) Expenditures under Paragraph (1) shall be reserved annually for inclusion in the budget of the Ministry of Energy and Energy Resources and shall be administered through assignment of a separate payment code in the System for Electronic Budget Payments.

(3) Any unutilised portion of the financial resources accruing under Article 49, including resources from previous years, shall be separately accounted for as off-balance sheet items. Any such resources shall constitute an integral part of the Single Account and shall be expended solely in accordance with the provisions of this Act.

(4) (as amended) The financial resources referred to in Item 3 are managed within the framework of the liquidity control and management of the Single Account system.

Article 51

(1) A Management Board consisting of nine members, including a Chairman, shall govern the Fund.

(2) The Minister of Energy and Energy Resources shall chair the Management Board.

(3) Any person who has been sentenced for an offence of a general nature or who is the spouse or a lineal or collateral relative up to the fourth degree of consanguinity of or a relative by marriage up to the third degree of affinity to, any other member of the executive bodies of the Fund, shall be ineligible for membership of the Management Board.

Article 52

(1) Members of the Fund Management Board shall include the Deputy Minister of Finance, the Deputy Minister of Health, the Deputy Minister of Economy, the Deputy Minister of Environment and Water, the Deputy Minister of Regional Development and Public Works, the NRA Chairman, a representative of the licensees operating nuclear power plants, and the Director of the Institute of Nuclear Research and Nuclear Energy within the Bulgarian Academy of Sciences.

(2) Ministers of the ministries listed under Paragraph (1) shall designate their respective representatives to the Fund Management Board.

(3) The Management Board Chairman shall issue an order designating all members by name.

Article 53

(1) The Management Board shall meet at least once every three months.

(2) For a meeting of the Management Board to be considered lawful, at least two-thirds of its members must be present.

(3) The Management Board shall take decisions by open ballot and by a simple majority of its total membership.

Article 54

(1) The Management Board shall:

1. adopt Rules of Organisation and Operation of the Fund;

2. adopt a draft budget, accompanied by a report and estimates specifying the particular revenues and expenditures of the Fund for each budget year;

3. distribute and allocate financial resources for implementation of decommissioning related activities and projects in accordance with the decommissioning programmes of licensees;

4. control the proper expenditure of the financial resources of the Fund;

5. conclude contracts for management of the financial resources of the Fund with the Bulgarian National Bank in co-ordination with the Minister of Finance;

6. submit an annual report of its activities to the Council of Ministers;

7. perform any other functions associated with management of the Fund, in compliance with the legislation in force.

(2) The draft budget of the Fund, as adopted by the Management Board, shall be incorporated into the draft budget of the Ministry of Energy and Energy Resources and shall be submitted to the Ministry of Finance according to the procedure established by the National Budget Procedures Act.

Article 55

The procedure for assessment, collection, spending and control of the financial resources, as well as the amount of contributions due, shall be established by a regulation adopted by the Council of Ministers on a motion by the Minister of Energy and Energy Resources and the Minister of Finance.

Section VI

Practices with Other Sources of Ionising Radiation

Article 56

(1) Practices with sources of ionising radiation shall be conducted only on the basis of licences or permits for safe implementation of these practices, issued by the NRA Chairman, except in cases covered under Paragraphs (2) and (3).

(2) Licences or permits for practices with radioactive substances shall not be required provided that at least one of the following conditions is present:

1. at any time, for all the radioactive sources, the sum of the ratios of the activities of these sources and the activities of the respective radionuclides indicated as exempted in the basic safety standards in force is not greater than one;

2. at any time, for all the radioactive substances, the sum of the ratios of the specific activities of these substances and the specific activities of the respective radionuclides indicated as exempt in the basic safety standards in force is not greater than one, and the practices are conducted with small quantities of radioactive substances containing a single artificial radionuclide or a mixture of artificial radionuclides.

(3) Licences or permits for practices with a generator of ionising radiation shall not be required provided that at least one of the following conditions is present:

1. under normal conditions, at a distance of 0.1 m from each of the accessible surfaces of the generator of ionising radiation, the equivalent dose rate does not exceed 1 micro sievert per hour;

2. the maximum energy of the generated source radiation does not exceed 5 kilo electron volts.

(4) Licences or permits for practices with sources of ionising radiation shall be issued provided that the following conditions are present:

1. upon justification of the practice – a practice that results or could result in exposure of persons should only be carried out if it yields sufficient benefit to the exposed individuals or to society that outweighs the radiation injury it causes or could cause;

2. individual doses, resulting from a combination of exposures from all relevant practices should not exceed the specified dose limits established in the basic safety standards in force; and individual doses must be kept as low as possible; this condition shall not apply to medical exposure;

3. under the current prevailing circumstances, the best available protection and safety measures shall be applied for sources of ionising radiation and the devices in which they are used so that the exposure dose, possibilities of exposure and the number of individuals exposed be as low as reasonably achievable, taking into account economic and social factors with the exception of cases of medical therapeutic exposure.

Article 57

The NRA Chairman shall issue a permit for:

1. siting of a facility with a source of ionising radiation;

2. construction of a facility with a source of ionising radiation, assembly and preliminary testing, conducted on the basis of design specification and provisions for radiation protection;

3. decommissioning of a facility with radioactive substances;

4. temporary storage of radioactive substances generated during practices using sources of ionising radiation or associated with such practices;

5. non-reoccurring transportation of radioactive substances;

6. import and export of sources of ionising radiation or parts thereof.

Article 58

(1) The NRA Chairman shall issue a licence for:

1. use of radioactive substances and other sources of ionising radiation for economic, medical or scientific purposes and for carrying out of process control functions;

2. manufacture of sources of ionising radiation or parts thereof;

3. handling of sources of ionising radiation for the purpose of maintenance, assembly, dismantling, measurement, construction and repair or other services to persons using or manufacturing sources of ionising radiation or parts thereof;

4. transport of radioactive substances;

5. import and export of sources of ionising radiation or parts thereof.

(2) A licence pursuant to Paragraph (1), Items 1 through 3 shall be issued after commissioning of the facility with a source of ionising radiation for operation if operation of such a facility is provided for in the procedure established by the regulation referred to in Article 26(1).

(3) A licence shall be issued for a term of validity not exceeding five years.

Article 59

(1) The NRA Chairman shall issue a permit for each import and export of sources of ionising radiation or parts thereof to a person holding a licence pursuant to Article 58, Paragraph (1), Item 5.

(2) Permits pursuant to Paragraph (1) may be issued to applicants who do not hold a licence for the relevant practice.

(3) Permits pursuant to Paragraphs (1) and (2) for import of sources of ionising radiation or parts thereof shall be issued if:

1. the consignee holds the required licence or permit to use and/or store the sources or parts thereof;

2. it is ensured that the transport of sources of ionising radiation will be carried out by a holder of a transport licence or permit issued pursuant to this Act.

Article 60

(1) A licence or permit shall be issued to a legally able person or to a legal entity registered in the Republic of Bulgaria, that:

1. possesses sufficient financial, technical, material and human resources and an organisational structure to ensure safety and radiation protection during implementation of the practice, including the safe discontinuance of the practice;

2. has ensured the measures as necessary for the quality assurance of the practice;

3. presents information justifying the necessity of conducting the practice;

4. presents an assessment of the nature and probability of any exposure to be caused by the practice, as well as the expected radiation doses;

5. undertakes all necessary measures to ensure protection of all categories of exposed individuals from radiation, both under normal conditions and in the case of incidents and accidents;

6. provides for the necessary personnel possessing the required qualifications and competence;

7. submits all necessary internal rules, procedures, technical specifications, regulations and job descriptions, including those for conducting appropriate monitoring and for making results available to exposed persons.

(2) A licence to use sources of ionising radiation for medical purposes shall be issued following official consent by the Minister of Health through the National Centre of Radiobiology and Radiation Protection and/or the national consultants on radiation therapy, nuclear medicine and radiology. The licence shall enter into force after the person or the legal entity receives the necessary permits for provision of medical or dental care pursuant to the relevant Laws.

Article 61

Types and essential characteristics of the sources of ionising radiation that may be used for medical purposes, the rules and procedures for prescription of medical exposure and the procedure for giving information to exposed persons, as well as the speciality and the other qualification requirements for persons entitled to assume medical responsibility, shall be established by a regulation adopted by the Council of Ministers on a motion by the Minister of Health.

Article 62

The licensee is obliged, within seven days after conclusion of a business transaction involving a source of ionising radiation, to notify the NRA Chairman of the type of transaction concluded and the specific source of ionising radiation, and to provide information concerning the person with whom this transaction was concluded.

Article 63

The issuance of a permit pursuant to Article 57 shall not dispense with the requirement to obtain the required permits pursuant to the Act on Territorial Structure.

Section VII

Competence and Specialised Training

Article 64

(1) Safety related activities at nuclear facilities and with sources of ionising radiation, may only be performed by professionally qualified staff.

(2) Qualification certificates shall be issued by:

1. the NRA Chairman to:

   (a) individuals implementing activities associated with the ensuring and/or control of nuclear safety and radiation protection conducted in the course of operation of a nuclear facility;

   (b) individuals entrusted to provide specialised training for work with sources of ionising radiation;

2. a licensee, licensed under the procedure established by this Act, to provide specialised training to individuals professionally engaged in practices with sources of ionising radiation.

(3) Qualification certificates shall be issued for a term of validity not exceeding five years.

Article 65

(1) A licence for specialised training shall be granted by the NRA Chairman to a sole trader or to a legal entity registered in the Republic of Bulgaria that:

1. possesses the necessary financial, technical, material and organisational resources for implementation of the activity;

2. has a sufficient number of qualified and competent personnel holding the relevant level of education, vocational training and competence for all activities associated with personnel training;

3. has drafted and adopted:

   (a) curricula conforming to the functional characteristics of the relevant positions for which training is delivered;

   (b) training courses corresponding to the curricula referred to in (a) above;

   (c) licensing procedures for issuing qualification certificate to personnel, as specified in licence conditions;

(d) a system to ensure that the technical means for training correspond to the workplace equipment.

(2) A licence for specialised training shall be issued for a term of validity not exceeding five years.

(3) The procedure for the issuance of a licence for specialised training and a qualification certificate shall be regulated by a regulation adopted by the Council of Ministers on a motion by the NRA Chairman.

Article 66

(1) Except in cases where it is issued pursuant to another special law, a qualification certificate shall be issued to a person who:

1. satisfies the medical, mental and physiological requirements for the relevant activity, as determined by the Minister of Health;

2. satisfies the educational and qualification requirements as specified in the job description for the relevant position;

3. has completed a course of specialised training for the relevant activity;

4. has successfully passed an examination before a qualification examination commission.

(2) The NRA Chairman, in consultation with the Minister of Health shall appoint the Agency qualification examination commission. The commission shall include representatives of the Agency, the nuclear facility operator, and the Ministry of Health, along with other persons designated by the NRA Chairman who meet the requirements under Paragraph (4).

(3) The management bodies of the licensee, licensed to deliver specialised training, shall appoint a qualification examination commission, which shall include representatives of the Agency and the Ministry of Health.

(4) Eligibility for appointment as members of the qualification examination commissions referred to in Paragraphs (2) and (3) shall be limited to Bulgarian citizens who:

1. hold a Master's educational degree in natural or technical sciences, conferred graduation from a higher educational establishment;

2. have not been sentenced to a term of imprisonment for an offence of a general nature;

3. have worked under a contract of employment and/or a civil-service relationship for not less than ten years in the field of nuclear energy or ionising radiation, radioactive waste or spent fuel management, or in the regulatory process concerning the safe implementation of these activities.

Article 67

A qualification certificate shall be personal and shall include all or part of the following terms:

1. the positions that may be occupied or the activities that may be carried out by the holder;

2. the time limit for completion of mandatory work experience by the holder prior to occupation of the position;

3. requirements for periodic training;

4. the term of validity of the certificate;

5. other conditions pursuant to the law.

Article 68

(1) A qualification certificate shall be terminated:

1. upon expiration of its term of validity;

2. in the case of inability of the holder to practice the activity for which the certificate was delivered for a period exceeding one year;

3. where the holder of the qualification certificate fails to occupy the relevant position for more than three months after receiving it;

4. upon withdrawal of the certificate.

(2) Certificates shall be renewed following the same procedure as for acquisition.

Article 69

(1) A qualification certificate shall be withdrawn in cases where the holder:

1. has submitted false information which has provided the basis for the issuance of the licence;

2. has committed a significant or recurrent violation or systematically violates the nuclear safety and radiation protection requirements or conditions attached to the qualification certificate;

3. ceases to satisfy the medical, mental and physiological requirements for occupation of the position.

(2) Upon identifying any circumstances covered under Items 1 through 3 of Paragraph (1), the NRA Chairman shall approach the person referred to in Item 2 of Article 64(2), who issued the qualification certificate, with a detailed request to withdraw said certificate.

Article 70

(1) A qualification certificate shall be withdrawn by an order of the NRA Chairman or of the management body of the licensee, licensed to deliver specialised training, as the case may be.

(2) Upon withdrawal of a qualification certificate under Item 2 of Article 69(1), the administrative penalties provided for under this Act may be imposed upon the holder.

(3) The order withdrawing the certificate shall specify a time period during which the holder shall be barred from applying for a new qualification certificate to occupy the same or higher position. This period may not be shorter than six months, nor longer than one year.

(4) An order of withdrawal may be appealed according to the procedure established by the Administrative Procedure Act. An appeal shall not suspend the execution of any such order.

Article 71

The terms and procedure to obtain vocational qualifications, the occupational positions for which a qualification certificate is required, and for the conduct of examinations shall be regulated by the regulation referred to in Article 65(3).

Section VIII

Accounting and Control of Nuclear Material, Radioactive Substances and Other Sources of Ionising Radiation

Article 72

(1) Any person or organisation that manufactures, processes, stores or uses nuclear material, radioactive substances and other sources of ionising radiation or that manages radioactive waste or spent fuel, shall be obliged to:

1. take a physical inventory and keep records of the nuclear material, radioactive substances and other sources of ionising radiation and of the radioactive waste and spent fuel;

2. provide periodic information on the records to the NRA Chairman;

3. appoint competent personnel to take charge of the internal control over the nuclear material, radioactive substances and other sources of ionising radiation, radioactive waste and spent fuel, as well as over the sources of ionising radiation and radioactive waste; data concerning such personnel shall be provided to the Agency;

4. report immediately any accidental loss or theft of nuclear material, radioactive substances and other sources of ionising radiation, radioactive waste and spent fuel to the Regional Directorate or the Police Department of the Ministry of the Interior, the NRA Chairman and the Minister of Health;

5. report to the NRA Chairman on any incident involving an actual or potential breach of the integrity of the nuclear material or of a source of ionising radiation;

6. assure access to the regulatory authorities under this Act and to provide them with the requisite assistance, including activities of inspectors of international organisations concerning nuclear material, radioactive substances and other sources of ionising radiation, radioactive waste and spent fuel.

(2) The terms and procedure for accounting of nuclear material, other sources of ionising radiation, radioactive waste and spent fuel, and for documentation management, information and notification shall be established by a regulation adopted by the Council of Ministers on a motion by the NRA Chairman.

Article 73

(1) Any nuclear material, radioactive substances and other sources of ionising radiation, radioactive waste and spent fuel, the owner of which is unknown, shall be state property. The NRA Chairman shall designate the licensee to which such sources shall be provided and the relevant conditions.

(2) Anyone who loses or finds any nuclear material, radioactive substance or other source of ionising radiation, radioactive waste or spent fuel shall be obliged to immediately notify the NRA Chairman, the specialised state body for civil protection, or the specialised authorities of the Ministry of the Interior.

(3) Any nuclear material acquired in violation of the provisions of the law shall be seized by an order of the NRA Chairman. The NRA Chairman shall designate the licensee to which nuclear material shall be provided and the relevant conditions.

Chapter 4

MANAGEMENT OF RADIOACTIVE WASTE AND SPENT FUEL

Section I

General Provisions

Article 74

(1) The Council of Ministers shall adopt a strategy for spent fuel management and for radioactive waste management on a motion by the Minister of Energy and Energy Resources.

(2) The Minister of Energy and Energy Resources shall organise a public discussion of the strategy draft with the participation of representatives from state bodies, local governments, public organisations, persons and legal entities concerned. Notice of the discussion shall be provided through the mass media or in another appropriate manner.

(3) The Council of Ministers shall take any decision on construction of a national repository for storage and/or disposal of radioactive waste.

Article 75

(1) Spent fuel management shall be conducted by a licensee holding a licence to operate a nuclear facility under Article 35.

(2) The Council of Ministers may declare spent fuel to be radioactive waste by a decision if:

1. conditions exist for safe storage and disposal of the spent fuel in an appropriate repository;

2. the operating organisation has paid a once-off contribution to the Radioactive Waste Fund in an amount specified by the regulation referred to in Article 94(1).

Article 76

(1) The radioactive waste outside the place of generation shall be managed by the Radioactive Waste State-owned Company.

(2) The NRA Chairman shall only issue a licence to operate a radioactive waste management facility and the permits covered under Article 33(1) to the Radioactive Waste State-owned Company if all licence and permit requirements under this Act are met.

(3) Permits covered under Article 33 (1) and a licence referred to in Article 35 for construction and operation of a radioactive waste management facility may be issued to a licensee, subject to the condition that the radioactive waste management facility is located or will be constructed on the licensed site.

Article 77

(1) Licensees generating radioactive waste shall be obliged to deliver this waste to the Radioactive Waste State-owned Company within the time limits established by the regulation referred to in Paragraph (3). Licensees shall be responsible for the safe management of radioactive waste from its generation until its delivery to the Company.

(2) Radioactive waste shall become state property from the time of its delivery to the Radioactive Waste State-owned Company.

(3) The terms and procedure for radioactive waste delivery to the Radioactive Waste State-owned Company and the time limits for such delivery, including the radioactive waste not subject to delivery, shall be specified by a regulation adopted by the Council of Ministers on a motion by the NRA Chairman.

(4) The Radioactive Waste State-owned Company shall be responsible for managing any radioactive waste imported into the Republic of Bulgaria that can not be retransferred.

Section II

Radioactive Waste State-owned Company

(Effective as from 1 January 2004)

Article 78

(1) A Radioactive Waste State-owned Company shall be formed, hereinafter referred to as "the Company", and shall have the status of a state-owned enterprise under Article 62(3) of the Commercial Law.

(2) The Company shall be a legal entity with a registered office in Sofia.

(3) The Company shall consist of:

1. a Head Office;

2. specialised divisions.

(4) The number, status and responsibilities of the specialised divisions shall be regulated by Company Rules of Organisation and Operation.

Article 79

(1) Company responsibilities shall include:

1. radioactive waste management, including all activities related to handling, pre-treatment, treatment, conditioning, storage or disposal of radioactive waste, including the decommissioning of a radioactive waste management facility;

2. construction, operation, rehabilitation and reconstruction of radioactive waste management facilities;

3. transportation of radioactive waste off-site, provided that the Company has been issued with a transportation permit or licence under this Act.

(2) The Company shall implement the activities referred to in Items 1 and 2 of Paragraph (1) only pursuant to a permit issued by the NRA Chairman for siting, design, construction and commissioning or licence to operate a radioactive waste management facility and in compliance with nuclear safety and radiation protection requirements.

Article 80

(1) The Company may only perform activities and conclude transactions in implementation of its responsibilities under Article 79(1).

(2) The Company may not participate in any commercial corporations or civil law companies.

(3) Without a decision of the Council of Ministers, the Company shall have no right to conclude contracts of credit with commercial banks or other financial institutions.

(4) Upon realisation of an annual profit, such profit shall be credited in revenue to the budget of the Ministry of Energy and Energy Resources in a transit account of the Radioactive Waste Fund within fifteen days after adoption of the annual financial report.

Article 81

(1) The Company shall manage the assets constituting public and private state property as allocated by the state.

(2) The assets referred to in Paragraph (1) shall incorporate the existing radioactive waste management facilities constituting state property together with the associated infrastructure and land.

(3) To implement Company responsibilities, the Council of Ministers, by a decision, may allocate property and real estate constituting public or private state property to the Company for administration and management.

Article 82

Company management bodies shall include:

1. the Minister of Energy and Energy Resources;

2. the Management Board;

3. the Executive Director.

Article 83

The Minister of Energy and Energy Resources shall implement state policy in the field of radioactive waste management and shall exercise the powers relating to operation of the Company which are vested in him by this Act.

Article 84

(1) The Management Board of the Company shall consist of three members, including the Executive Director.

(2) The Minister of Energy and Energy Resources shall designate the members of the Management Board and shall conclude a management contract with each of the members for a term of three years.

(3) Eligibility for designation as a member of the Management Board shall be limited to persons who:

1. have a higher education in natural or technical sciences and have worked under a contract of employment and/or a civil-service relationship for not less than five years in the field of use of nuclear energy or ionising radiation, nuclear waste management or spent fuel management, or in the relevant regulatory process;

2. have not been sentenced to a term of imprisonment for an offence of a general nature;

3. have not been a sole trader, member of a management or supervisory body of any commercial corporation adjudicated in bankruptcy, or partner in any limited partnership adjudicated in bankruptcy leaving unsatisfied creditors;

4. who are spouses or lineal or collateral relatives up to the fourth degree of consanguinity of, or relatives by marriage up to the third degree of affinity to, any other member of Company bodies.

Article 85

(1) The Management Board shall meet at least once a month.

(2) For a meeting of the Management Board to be considered lawful, at least two-thirds of its members must be present.

(3) The Management Board shall take decisions by open ballot and by a simple majority of its total membership.

Article 86

(1) The Management Board shall:

1. draft Rules of Organisation and Operation of the Company and submit these Rules to the Minister of Energy and Energy Resources for approval;

2. draft Rules of Procedure of the Management Board and submit these Rules to the Minister of Energy and Energy Resources for approval;

3. adopt the drafts of an annual, triennial and long-term programme for the operational budget of the Company on a motion by the Executive Director;

4. approve the structure and number of staff on a motion by the Executive Director;

5. designate a registered certified public accountant or a specialised accounting office for an independent financial audit of the Company, and adopt the annual financial report;

6. propose to the Minister of Energy and Energy Resources for authorisation, in each particular case, the participation of the Company in international organisations;

7. submit to the Minister of Energy and Energy Resources an annual report on Company operation not later than the 31 March of the following year;

8. take decisions on sale or on liquidation of tangible fixed assets, on creation of real rights and on leasing to tenants of property or real estate, take decisions under Article 49(2) of the State Property Act on sale or renting of living quarters;

9. perform any other functions associated with radioactive waste management in accordance with the provisions of the legislation in force.

(2) The drafts of the programmes and the budget of the Company referred to in Paragraph 1(3) shall be approved by the Management Board of the Radioactive Waste Fund on a motion by the Minister of Energy and Energy Resources.

(3) The approved drafts of the triennial plans for operation of the Company shall be adopted by the Council of Ministers.

(4) The programmes referred to in Paragraph 1(3) shall include a production programme, an investment programme, a repair programme, and a social programme.

(5) The Chairman of the Management Board shall organise and preside over the meetings of the Management Board and shall implement its decisions.

Article 87

(1) The management contract of a member of the Management Board may be terminated prior to the expiration of the term of validity of the contract by the Minister of Energy and Energy Resources on any of the following grounds:

1. violation of the provisions of the law and/or of the management contract;

2. sentencing to a term of imprisonment for an offence of a general nature;

3. objective inability of the member to perform the duties for a period exceeding six months;

4. resignation;

5. death or incapacity.

(2) In the cases covered under Paragraph 1, the Minister of Energy and Energy Resources shall conclude a management contract with a new member to serve for the remainder of the term of office of the removed person.

Article 88

The members of the Management Board shall be bound by the obligation to respect the trade and official secrets of the Company in performing activities under the management contract.

Article 89

(1) The Executive Director shall:

1. organise and direct the operation of the Company in accordance with the programmes and budgets as adopted by the Council of Ministers;

2. conclude and terminate contracts of employment with workers at the Company, and exercise the rights of an employer according to the Labour Code;

3. conclude contracts with third parties in connection with Company operations;

4. represent the Company before courts of law, state bodies and third parties in Bulgaria and abroad;

5. report to the Management Board and to the Minister of Energy and Energy Resources on his activities.

(2) The Executive Director may delegate some of his powers under Paragraph 1(2-4) to other officers of the Company in accordance with the Rules of Organisation and Operation of the Company.

(3) In the absence of the Executive Director, the Company shall be represented by one of the members of the Management Board designated by an order of the Executive Director.

Section III

Radioactive Waste Management Financing

(Effective as from 1 January 2003)

Article 90

Licensees generating radioactive waste shall meet all expenses incurred in connection with the management of radioactive waste from its generation to its disposal, including monitoring of repositories after closure and the necessary tests and improvements, by:

1. reserving funds that would be necessary for waste generation to the expenditures as shall be necessary for safe storage of the radioactive waste from the point of waste generation to the point of delivery to the Company, and

2. contributing to the Radioactive Waste Fund established by this Act.

Article 91

A Radioactive Waste Fund shall be established under the Minister of Energy and Energy Resources to finance activities associated with radioactive waste management as well as activities and maintenance expenses of the Company.

Article 92

(1) The revenues of the Radioactive Waste Fund shall be raised from the following sources:

1. contributions from legal entities and persons conducting activities resulting in the generation of radioactive waste subject to delivery;

2. national budget resources, allocated annually by the National Budget Act for the relevant year;

3. interest accruing on the management of the financial resources raised in the Fund and on overdue payments of contributions referred to in Article 92(1)1 above;

4. donations and other contributions;

5. other revenues accruing as a result of management of the financial resources of the Fund.

(2) The revenues of the Radioactive Waste Fund shall be raised, accounted for and centralised in the Single Account System through use of a separate account, opened in the name of the Ministry of Energy and Energy Resources in the Bulgarian National Bank.

(3) This item is repealed.

(4) Any unutilised portion of the financial resources accruing under Paragraph 1, including resources brought forward, shall be accounted for as off-balance sheet items. Any such resources shall constitute an integral part of the Single Account and shall be expended solely in accordance with the provisions of this Act.

(5) (as amended) The financial resources referred to in Item 4 are managed within the framework of the liquidity control and management of the Single Account system.

Article 93

(1) The financial resources of the Fund shall be expended only for the purpose of financing:

1. the operation and financial management of the Radioactive Waste Company;

2. other activities involving radioactive waste management outside the activities of the Company, including research and scientific developments;

3. decommissioning of radioactive waste management facilities;

4. management of the Fund.

(2) The expenditures covered under Paragraph 1 shall be included annually in the budget of the Ministry of Energy and Energy Resources and shall be assigned a separate payment code in the System for Electronic Budget Payments.

Article 94

(1) The procedure for assessing, collecting, spending and control of the financial resources, as well as the amount of contributions due, shall be established by a regulation adopted by the Council of Ministers on a motion by the Minister of Energy and Energy Resources and the Minister of Finance.

(2) Contributions to the Fund by legal entities and persons conducting activities resulting in generation of radioactive waste shall be considered to be operating expenses deductible for taxation purposes regarding the generation of such radioactive waste.

(3) The contributions under Article 92(1)1 shall be public state revenues, which shall be assessed and collected by the tax administration according to the procedure established by the Taxation Procedure Code.

(4) Legal entities financed by the national budget shall be exempt from payment of contributions under Article 92(1)1.

Article 95

(1) A Management Board consisting of nine members, including the Chairman, shall manage the Fund.

(2) The Minister of Energy and Energy Resources shall chair the Management Board.

(3) The members of the Management Board shall be representatives of the Ministry of Energy and Energy Resources, the Ministry of Regional Development and Public Works, the Ministry of Environment and Waters, the Ministry of Health, the Ministry of Finance, the Ministry of Economy, the Nuclear Regulatory Agency and the Bulgarian Academy of Sciences, designated by the competent ministers or governing bodies.

(4) Any person who has been sentenced for an offence of a general nature or who is a spouse or a lineal or collateral relative up to the fourth degree of consanguinity of, or a relative by marriage up to the third degree of affinity to, any other member of the executive bodies of the Fund and the Company, shall be ineligible for membership of the Management Board.

Article 96

(1) The Management Board shall meet at least once every two months.

(2) For a Management Board meeting to be considered lawful, more than two-thirds of its members must be present, either in person or by proxy. A member present in person shall act as proxy for not more than one absent member, and must be authorised in writing for each particular meeting.

(3) Decisions of the Management Board shall be made by open ballot and by a qualified majority of two-thirds of the board members.

Article 97

(1) The Management Board shall:

1. adopt Rules of Organisation and Operation of the Fund;

2. determine the allocation of financial resources for the operation of the Radioactive Waste State-owned Company, as well as for other activities included in radioactive waste management;

3. control the proper expenditure of the financial resources in the Fund;

4. adopt a draft budget, accompanied by a report and estimates specifying the particular revenues and expenditures of the Fund for each budget year;

5. adopt a budget of the Company for each year;

6. approve annual and triennial plans for operation of the Radioactive Waste State-owned Company;

7. conclude contracts for management of the financial resources of the Fund with the Bulgarian National Bank in co-ordination with the Minister of Finance;

8. adopt periodic and annual reports on the operation of the Radioactive Waste State-owned Company;

9. submit annually a report on the Fund's activities to the Council of Ministers;

10. perform any other functions associated with the management of the Fund and of the Radioactive Waste State-owned Company, in accordance with the applicable statutory framework.

(2) The draft budget of the Fund, as adopted by Management Board, shall be incorporated into the draft budget of the Ministry of Energy and Energy Resources and shall be submitted to the Ministry of Finance according to the procedure established by the National Budget Procedures Act.

Chapter 5

REGULATORY CONTROL OVER THE USE OF NUCLEAR ENERGY AND IONISING RADIATION AND APPLICABLE TO THE MANAGEMENT OF RADIOACTIVE WASTE AND SPENT FUEL

Article 98

(1) The NRA Chairman shall exercise regulatory control over nuclear safety and radiation protection involving the use of nuclear energy and ionising radiation and concerning radioactive waste management and spent fuel management.

(2) The NRA Chairman shall carry out:

1. preventive regulatory control, in the issuance of licences and permits for activities under this Act and for qualification certificates;

2. regular control over implementation of the conditions of licences and permits issued for activities under this Act and qualification certificates;

3. confirmatory regulatory control, to verify compliance with the recommendations or directives of responsible bodies.

Article 99

(1) In executing his authority, the NRA Chairman shall:

1. conduct regular and special inspections through the authorised officials;

2. notify the other control bodies specified under Article 13, with a view to undertaking actions within their competence;

3. notify the prosecuting authorities if there is reason to believe that a criminal offence has been committed;

4. amend or revoke licences or permits or qualification certificates;

5. impose administrative enforcement measures and administrative penalties as provided under this Act.

(2) The NRA Chairman shall have the right to require information or documentation from persons related to relevant activities and, if necessary, to request assistance from the specialised control bodies covered under Article 13.

Article 100

(1) The NRA Chairman shall authorise designated officials of the Agency to exercise regulatory control under this Act in accordance with his authorities.

(2) The officials referred to in Paragraph 1, hereinafter referred to as "the inspectors", shall have the right to:

1. free access at any time to the regulated licensees and sites for inspection of nuclear safety and radiation protection and technical conditions at the nuclear facilities and sources of ionising radiation;

2. require from the relevant officials any data, particulars, explanations, operating and other information, including measurements and tests, as shall be necessary to clarify the technical status and the operating conditions of the facility, including personnel qualifications, as well as disclosure of any other nuclear safety and radiation protection related information;

3. issue written statements on administrative infractions under this Act;

4. propose amendment, suspension, termination and revocation of permits or licences, including qualification certificates;

5. issue mandatory written directives to ensure nuclear safety and radiation protection.

(3) Inspectors' directives issued under their authority pursuant to this Act shall be mandatory.

Article 101

(1) The inspectors shall issue a protocol of findings on the results of their inspections, attaching the evidence collected and explanations, measurements and/or test results.

(2) The protocol of findings shall be made available to the inspected licensee, who shall have the right to provide explanations and submit objections within seven days after service of the protocol.

(3) On the basis of the results of the examination, the inspectors may:

1. issue mandatory directives to inspected licensees;

2. issue written statements on administrative infractions;

3. propose to the NRA Chairman the imposition of administrative enforcement measures.

(4) The licensees who have received mandatory directives shall report to the inspector on implementation of the directive within the prescribed time limit.

Article 102

(1) The Organisational Statute of the Agency shall specify the requirements for occupation of a position associated with the exercise of regulatory control under this Act.

(2) Inspectors shall be bound by the obligation to respect any manufacturing and trade secrets coming into their knowledge in the course of their activities.

(3) Inspectors shall perform their activities independently or, where necessary, jointly with other specialised control bodies.

Article 103

State and municipal bodies and their administrations, as well as persons covered by this Act, shall be obliged to render assistance to the inspectors in implementing their regulatory functions.

Chapter 6

SPECIAL STATUTORY AREAS

Article 104

(1) Special statutory areas shall be established around nuclear facilities and facilities with a source of ionising radiation, including the associated subsoil and airspace.

(2) Special statutory areas shall be radiation protection areas or controlled areas.

Article 105

(1) Controlled areas shall be established:

1. by an order of the Minister of Regional Development and Public Works, in co-ordination with the NRA Chairman;

2. by a bilateral or multilateral international treaty, in the cases where the areas extend to any territories beyond the borders of Bulgaria.

(2) The areas referred to in Paragraph 1 shall be special protection areas based on their territorial structure within the meaning of the Act on Territorial Structure. The scope and the regime of their structure are determined by structural patterns and plans.

(3) A controlled area shall be established by an order of the NRA Chairman.

(4) The Council of Ministers, acting on a motion by the NRA Chairman, in co-ordination with the Minister of Transport and Communications and the Minister of Defence, may designate a flight-ban area above specific nuclear facilities, in which the use of the airspace for air navigation shall be restricted.

Article 106

Special statutory areas shall be based on the design of the nuclear facility or of the facility with a source of ionising radiation.

Article 107

(1) A radiation protection area shall be established to limit public exposure in the event of design basis accidents at a nuclear facility.

(2) A controlled area shall be an area outside the boundaries of the radiation protection area in which the control necessary for radiation protection is exercised.

(3) With respect to specific facilities, depending on the nuclear safety and radiation protection factors, the radiation protection area and the controlled area may be confined to the boundaries of the site, the building or the location where sources of ionising radiation are placed or used. In such cases, the special statutory areas shall be established by the NRA Chairman under the licence referred to in Article 58(1)1-3.

Article 108

The person who operates a nuclear facility or a facility with a source of ionising radiation carries out constant control over the radiation parameters of the working premises and the environment in the radiation protection and controlled area.

Article 109

(1) Construction of residential and public buildings, kindergartens, hospitals, health centres, restaurants, sites of industrial, social or cultural nature and other sites not associated with the activities of the facility under consideration shall be prohibited in the radiation protection area.

(2) The Minister of Health, the Minister of Agriculture and Forestry, and the Minister of Environment and Water may impose restrictions on the use of land, forests and water within the radiation protection area.

(3) For the purpose of establishing a radiation protection area, upon construction of a nuclear facility or of a facility with a source of ionising radiation on land constituting state or municipal private property, the competent state or municipal bodies, acting on a motion by the Minister of Regional Development and Public Works, establish in favour of the owner of the facility, for a certain amount or free of charge, a right of use or of construction without auction or tender.

(4) If the bans pursuant to Paragraph 1 or the imposed restrictions under Paragraph 2 create a considerable obstacle for the use of real estate which is private property, for the purpose of establishing a radiation protection area during the construction of a nuclear facility, the owner of the land may transfer the right of ownership of the facility or establish a right of use, or of construction to the owner of the facility. In case an agreement cannot be reached, an appropriation is carried out, pursuant to the State Property Act or by the Municipal Property Act, resulting in the land becoming private state or municipal property and a right of use or of

construction on the appropriated property is established in favour of the owner of the site with a source of ionising radiation pursuant to Paragraph 3.

(5) The owner of the facility shall assume all costs under Paragraphs 3 and 4.

Article 110

Any damages inflicted by the imposition of restrictions upon private properties in the radiation protection areas shall be subject to compensation by the person whose activity has brought about the introduction of the restriction.

Article 111

The terms and procedure for determining the size, boundaries and regime of the special statutory areas, the prohibitions and restrictions covered under Article 109(2), as well as the methods for evaluation of the compensation for damage sustained under Article 110, shall be set forth in a regulation adopted by the Council of Ministers on a motion by the NRA Chairman, the Minister of Health, the Minister of Agriculture and Forestry, and the Minister of Environment and Water.

Chapter 7

PHYSICAL PROTECTION

Article 112

(1) The physical protection of nuclear material and nuclear facilities shall be ensured according to the requirements of the Convention on Physical Protection of Nuclear Material.

(2) The NRA Chairman shall perform the functions of a central authority and a contact point having the responsibility for physical protection of nuclear material, according to Article 5(1) of the Convention on Physical Protection of Nuclear Material.

Article 113

(1) The physical protection of nuclear facilities, nuclear material and radioactive substances pertaining to the design, construction, commissioning, operation and decommissioning of nuclear facilities and upon the manufacture, import, export, transportation and storage of nuclear material or radioactive substances shall be ensured by licensees under this Act.

(2) Licensees who operate nuclear facilities, manufacture, import, export, transport, use and store nuclear material or radioactive substances, shall prepare a physical protection plan, shall adopt internal rules and instructions on physical protection, and shall designate an officer in charge of physical protection.

(3) The plan and the instructions referred to in Paragraph 2 shall be submitted to the Agency together with the application for a licence or a permit under this Act.

(4) The terms and procedure for physical protection of nuclear facilities, nuclear material and radioactive substances pertaining to the use, storage and transportation of such facilities or materials shall be set forth in a regulation adopted by the Council of Ministers on a motion by the Minister of the Interior, the Minister of Defence and the NRA Chairman.

Article 114

(1) Specific nuclear facilities, as well as the facilities associated technologically or serviced by them, may be determined as vital to physical protection by a decision of the Council of Ministers on a motion by the Minister of the Interior and the NRA Chairman.

(2) Guarding of the facilities referred to in Paragraph 1 shall be provided by the Ministry of the Interior.

Article 115

(1) Controlled access areas may be established for the physical protection of nuclear facilities or other facilities in which nuclear material or radioactive substances are used or stored.

(2) The boundaries of the areas referred to in Paragraph 1 and the procedure for access to them shall be determined by the regulation referred to in Article 113(4).

Article 116

(1) Any person who, by permission, is present within the protected area of a nuclear facility or of another facility in which nuclear material or radioactive substances are used or stored, shall be obliged to comply with all physical protection requirements established by the licensee.

(2) To ensure the physical protection of a nuclear facility or other facility in which nuclear material or radioactive substances are used or stored, a special access and security check procedure may be introduced for the personnel or visitors, as well as for their personal possessions and vehicles. The procedure may include use of special technical devices. The persons who are granted access to the protected area shall be subject to verification of their reliability.

Chapter 8

EMERGENCY PLANNING AND PREPAREDNESS

Article 117

(1) The state bodies and licensees implementing activities related to design, construction, commissioning, operation and decommissioning of nuclear facilities and to manufacture, transportation and storage of nuclear material or to practices with sources of ionising radiation shall establish measures for emergency planning and emergency preparedness.

(2) Emergency planning measures shall be established by the emergency plans:

1. for protection of the population (off-site emergency plan), which regulate the emergency planning areas and determine the actions to be taken by the competent authorities to protect the population, property and environment in the case of an accident;

2. for the nuclear facility or for the facility with sources of ionising radiation (on-site emergency plan), which determine the actions to be taken by the licensee for accident mitigation and remediation of consequences in co-ordination with the off-site emergency plan.

Article 118

(1) The preparation, maintenance and co-ordination of the off-site emergency plan shall be organised by the specialised state bodies for civil protection and for protection of the public against disasters, accidents and catastrophes respectively, as established by a law or by an act of the Council of Ministers.

(2) The off-site emergency plan shall be adopted by a decision of the Council of Ministers on a motion by the bodies referred to in Paragraph 1.

Article 119

The preparation of the off-site emergency plan, the provision of material, technical and human resources for its implementation, the maintenance of emergency preparedness and the application of the measures shall be financed by the national budget.

Article 120

(1) Six months prior to the commissioning of a nuclear facility, licensees shall submit the on-site emergency plan to the NRA Chairman, to the Minister of Environment and Water and to the specialised state body for civil protection and protection of the public against disasters, accidents and calamities.

(2) The emergency plan shall be tested in practice prior to nuclear facility commissioning and in the course of operation, and the separate parts of the plan shall be periodically tested and evaluated.

(3) The NRA Chairman shall approve the off-site emergency plan prior to commissioning.

Article 121

Licensees and relevant permit holders shall be obliged to familiarise the personnel with the emergency plans and to conduct special training of the employees designated to perform functions in implementing the emergency plans.

Article 122

In case of an accident, licensees and relevant permit holders shall be obliged to:

1. immediately warn the population and the mayors of municipalities within the emergency planning areas and other competent authorities;

2. take actions for mitigation and remediation of accident consequences;

3. control and regulate the exposure of the persons engaged in accident mitigation and elimination;

4. ensure continuous monitoring of the radioactive releases into the environment;

5. participate in activities included in the National Monitoring System, upon occurrence of an accident;

6. perform any other obligations as may be established in the emergency plans and by this Act.

Article 123

The terms and procedure for preparation of the emergency plans, the persons responsible for their implementation and their duties, the measures for mitigation and remediation of the consequences, the arrangements for warning of the public, as well as measures for testing emergency preparedness shall be established by a regulation of the Council of Ministers on a motion by the specialised state body for civil protection and the NRA Chairman.

Chapter 9

APPLICATION OF SAFEGUARDS

Article 124

The NRA Chairman, in his capacity as organiser and co-ordinator of implementation of the obligations of the Republic of Bulgaria arising from the Treaty on the Non-Proliferation of Nuclear Weapons, the Agreement Between the People's Republic of Bulgaria and the International Atomic Energy Agency for the Application of the Safeguards in Connection with the Treaty on the Non-proliferation of Nuclear Weapons, hereinafter referred to as "the Agreement", and the Additional Protocol to this Agreement, shall:

1. verify the implementation of the obligations, assumed in accordance with the Treaty, to prevent diversion of nuclear material to the manufacture of nuclear weapons;

2. collect and provide to the International Atomic Energy Agency the information, including through conduct of inspections of the installations subject to the Agreement and to the Additional Protocol;

3. provide for inspections within the territory of the Republic of Bulgaria by the inspectors of the International Atomic Energy Agency, including provision of access;

4. co-ordinate with the competent authority under the Foreign Trade in Arms and in Potential "Dual-Use" Goods and Technologies Control Act in connection with the exchange of information regarding the Agreement and the Additional Protocol;

5. maintain a central register of nuclear material.

Article 125

(1) Any licensee performing activities subject to the Agreement and the Additional Protocol shall be obliged to:

1. submit to the NRA Chairman the information and data necessary for compliance with the undertakings of the Republic of Bulgaria arising under the Agreement and the Additional Protocol;

2. maintain a separate register of relevant activities and to preserve the manufacturing, commercial and transportation documents, as well as the information and data associated with these activities, including accounting and control of nuclear material relevant to the application of the safeguards, for a period of not less than ten years after termination of the activity;

3. inform in writing the NRA Chairman upon the occurrence of any circumstances actually or potentially leading to a violation of safeguards implementation;

4. provide access to the installation and to the necessary information, including the option of photographing and videotaping, taking samples, using devices to record radiation parameters, applying identification and anti-tampering seals, as well as rendering assistance to the inspectors of the International Atomic Energy Agency and to the authorities of the Agency accompanying the inspectors, for attainment of the objects of the inspection.

(2) The authority under the Foreign Trade in Arms and in Potential "Dual-Use" Goods and Technologies Control Act shall submit to the NRA Chairman information on any licensed transactions in nuclear material, equipment and materials subject to the Agreement and to the Additional Protocol.

(3) The ministries and other institutions shall submit to the agency plans for the forthcoming 10-year period associated with the development of the nuclear fuel cycle, as approved by the competent authorities.

Article 126

The Council of Ministers, acting on a motion by the NRA Chairman, shall issue a regulation establishing the terms and a procedure for collection and provision of information and for maintaining registers on the activities pertaining to the application of safeguards.

Chapter 10

CIVIL LIABILITY FOR NUCLEAR DAMAGE

Article 127

Civil liability for nuclear damage shall be determined according to the provisions of the Vienna Convention on Civil Liability for Nuclear Damage, to which the Republic of Bulgaria is a Contracting Party, and this Act.

Article 128

For the purposes of the Vienna Convention, several nuclear installations of one operator that are located at the same site shall be considered as a single nuclear installation.

Article 129

(1) The Council of Ministers shall designate the licensee that, within the meaning of the Vienna Convention, is an operator of the nuclear installation, and the type, terms and period of validity of the financial security covering the liability of the operator for nuclear damage.

(2) The operator of the nuclear installation shall be solely liable for damage resulting from a nuclear accident, except in so far as the Vienna Convention may otherwise provide.

Article 130

(1) The rights of compensation for nuclear damage shall be extinguished if an action is not brought within the time periods established in Article VI of the Vienna Convention.

(2) Actionability for nuclear damage shall be extinguished after a period of five years, determined from the date on which the person suffering nuclear damage had knowledge or ought reasonably to have had knowledge of the damage and of the operator liable for the damage, provided that the periods within which an action may be brought under Paragraph 1 shall not be exceeded.

Article 131

Any person suffering nuclear damage from a nuclear accident, which is due in whole or in part to intent on his/her part or his/her gross negligence, shall not be compensated, or the compensation shall be reduced accordingly.

Article 132

(1) The liability of the operator for damage caused by any one nuclear accident shall be limited to 96 million Bulgarian leva (BGL).

(2) The operator shall be required to maintain insurance or other financial security, according to Article 129(1), covering its liability for nuclear damage for the period of operation of the nuclear installation in the amount as specified in Paragraph 1.

(3) The rights under the contract of insurance against civil liability for nuclear damage shall be extinguished within the time limits referred to in Article 130.

(4) If the operator is a national budget entity, its liability for nuclear damage, as determined in Paragraph 1, shall be ensured through an annual appropriation of financial resources from the budget.

(5) When satisfying claims for compensation for nuclear damage, claims for loss of life or physical injury shall be compensated with priority.

(6) Ten per cent of the amount fixed in Paragraph 1 shall be set aside for payment of allowed claims lodged within one year following the date of the nuclear accident.

(7) In case the amount fixed in Paragraph 1 proves inadequate to satisfy admitted claims, the amount of the compensation due on each of the admitted claims shall be reduced proportionately.

Article 133

(1) The State shall pay admitted claims for compensation for nuclear damage by providing the necessary funds to such an extent to which the insurance or other financial security of the operator is inadequate to cover the payment of amounts under these claims, but not in excess of the limit of the liability established pursuant to Article 132(1).

(2) The State shall compensate the damage due to a nuclear accident directly caused by a severe natural disaster of an extraordinary character up to the limit of the liability established pursuant to Article 132(1).

(3) The State shall have a right of recourse against the operator for the amount of the financial resources paid by the State under Paragraph 1.

Article 134

Any nuclear damage caused within the territory of a State which is not a Contracting Party to the Vienna Convention shall be compensated solely pursuant to an international treaty which has been ratified, promulgated and has entered into force and to which the Republic of Bulgaria is a party, or on the principle of reciprocity.

Article 135

The terms and procedure for exclusion of small quantities of nuclear material from the application of the Vienna Convention pursuant to its terms shall be established by a regulation adopted by the Council of Ministers on a motion by the NRA Chairman.

Article 136

(1) For issues on which the Vienna Convention and this Act do not otherwise provide, the rules of the law of tort shall apply.

(2) The rules of the law of tort shall apply under the Bulgarian law to the liability for any damage caused by other sources of ionising radiation, irrespective of the location of the sources, including for medical uses, except as otherwise provided by another Act.

Article 137

(1) Actions for nuclear damage, except as otherwise provided by the Vienna Convention, shall be within the jurisdiction of Bulgarian courts. The Sofia City Court, as a court of first instance shall conduct any such actions.

(2) No court costs shall be charged to Bulgarian citizens for any proceedings under this Chapter, and in respect to foreigners the principle of reciprocity shall apply.

Chapter 11

ADMINISTRATIVE PENALTY PROVISIONS

Section I

Liability for Administrative Penalties

Article 138

(1) Anyone using nuclear energy at a nuclear facility without a permit or a licence, where such is required, shall be liable to a penalty of 20 000 Bulgarian leva (BGL) or more but not exceeding BGL 100 000.

(2) Anyone performing practices with sources of ionising radiation without a permit or a licence, where such is required, shall be liable to a fine of BGL 2 000 or more but not exceeding BGL 10 000.

(3) Where the violations referred to in Paragraph 2 are committed by a legal entity or a sole-trader, a penalty of BGL 5 000 or more but not exceeding BGL 20 000 shall be imposed.

(4) The fine or penalty for a repeated violation shall be equivalent to five times the amount of the penalty provided for in Paragraphs 1, 2 and 3.

Article 139

(1) Anyone violating the conditions of a permit or a licence under Section III of Chapter 3, shall be liable to a penalty of BGL 3 000 or more but not exceeding BGL 20 000.

(2) Anyone violating the conditions of a permit or a licence for practices with sources of ionising radiation, shall be liable to a fine of BGL 1 000 or more but not exceeding BGL 5 000 or to a penalty of BGL 3 000 or more but not exceeding BGL 10 000.

(3) The fine or penalty for a repeated violation under Paragraphs 1 and 2 shall be equivalent to three times the amount of the penalty or the fine provided for in Paragraphs 1 and 2.

Article 140

(1) Anyone who fails to provide information under this Act, or provides false, inaccurate or incomplete information, will be liable to a fine of BGL 500 or more but not exceeding BGL 2 000 or to a penalty of BGL 2 000 or more but not exceeding BGL 10 000.

(2) Any responsible officer of a licensee or a permit holder under this Act, who fails to provide any required information or who provides false, inaccurate or deficient information, shall be liable to a fine of BGL 1 000 or more but not exceeding BGL 3 000.

(3) The fine or the penalty for a repeated violation under Paragraphs 1 and 2 shall be equivalent to three times the amount of the penalty or the fine provided for in Paragraphs 1 and 2.

Article 141

(1) Anyone violating nuclear safety and radiation protection requirements and standards during operation of a nuclear facility will be liable to a penalty of BGL 3 000 or more but not exceeding BGL 20 000.

(2) Anyone violating radiation protection requirements and standards during performance of practices with sources of ionising radiation, shall be liable to a fine of BGL 1 000 or more but not exceeding BGL 5 000 or to a penalty of BGL 2 000 or more but not exceeding BGL 10 000.

(3) The fine or the penalty for a repeated violation under Paragraphs 1 and 2 shall be equivalent to three times the amount of the penalty or the fine provided for in Paragraphs 1 and 2.

Article 142

(1) Anyone who fails to ensure nuclear safety and radiation protection at a nuclear facility upon termination or suspension of the activity, shall be liable to a penalty of BGL 20 000 or more but not exceeding BGL 100 000.

(2) Anyone who fails to ensure radiation protection at a facility with a source of ionising radiation upon termination or suspension of the activity, shall be liable to a fine of BGL 2 000 or more but not exceeding BGL 10 000 or a penalty of BGL 5 000 or more but not exceeding BGL 20 000.

Article 143

(1) Anyone performing activities without a qualification certificate, shall be liable to a fine of BGL 500 or more but not exceeding BGL 2 000.

(2) Any responsible officer who has employed a person without an individual employment licence or any person who is not capable of performing radiation protection and safety related work, shall be liable to a fine of BGL 1 000 or more but not exceeding BGL 5 000.

(3) The fine for a repeated violation under Paragraphs 1 and 2 shall be equivalent to three times the amount of the fine provided for in Paragraphs 1 and 2.

Article 144

(1) Anyone who fails to fulfil the obligations covered under Article 125(1) shall be liable to a penalty of BGL 2 000 or more but not exceeding BGL 10 000.

(2) Any responsible officer who has admitted a failure to fulfil the obligations covered under Article 125(1) shall be liable to a fine of BGL 500 or more but not exceeding BGL 5 000.

(3) The fine or the penalty for a repeated violation under Paragraphs 1 and 2 shall be equivalent to three times the amount of the penalty or the fine provided for in Paragraphs 1 and 2.

Article 145

(1) Anyone violating the prohibitions under Article 17, item 1 or 4 shall be liable to a fine of BGL 30 000 or more but not exceeding BGL 150 000, unless the act constitutes a criminal offence.

(2) Anyone violating the prohibitions under Article 17, item 2 or 3 shall be liable to a fine of BGL 1 000 or more but not exceeding BGL 5 000 or a penalty of BGL 3 000 or more but not exceeding BGL 15 000.

(3) The fine or penalty for a repeated violation under Paragraphs 1 and 2 shall be equivalent to three times the amount of the penalty or the fine provided for in Paragraphs 1 and 2.

Article 146

(1) Anyone who interferes with the performance of the duties of an inspector of the Agency under this Act, shall be liable to a fine of BGL 1 000 or more but not exceeding BGL 3 000, unless the act constitutes a criminal offence.

(2) Anyone who fails to follow a directive issued by an inspector of the Agency, shall be liable to a fine of BGL 1 000 or more but not exceeding BGL 3 000 or a penalty of BGL 2 000 or more but not exceeding BGL 10 000, unless liable to a more severe punishment.

(3) In the event of a repeated violation under Paragraphs 1 and 2, the punishment shall be a fine or penalty equivalent to three times the amount of the penalty or the fine provided for in Paragraphs 1 and 2.

Article 147

(1) Upon failure to fulfil any other obligation under this Act unless liable to a more severe punishment, the offenders shall be liable to a fine of BGL 500 or more but not exceeding BGL 2 000 or a penalty of BGL 1 000 or more but not exceeding BGL 5 000.

(2) In the event of a repeated violation under Paragraph 1, the fine or penalty shall be imposed in twice the amount.

Article 148

(1) Any violations under this Act shall be determined by written statements issued by the inspectors of the Agency.

(2) The penalty decrees shall be issued by the NRA Chairman or by an authorised official.

(3) The determination of violations, relevant issues, appeals against and execution of penalty decrees shall follow the terms and the procedure established by the Administrative Infractions and Penalties Act.

Section II

Administrative Enforcement Measures

Article 149

(1) For the prevention and termination of administrative violations as well as prevention and termination of the consequences resulting therefrom, the NRA Chairman shall impose administrative enforcement measures.

(2) Administrative enforcement measures shall be imposed for violation of requirements for nuclear safety and radiation protection, physical protection and emergency preparedness, which create an imminent threat of an accident.

Article 150

The following administrative enforcement measures may be imposed in cases referred to in Article 149:

1. termination or limitation of the activity for which the permit or licence has been originally issued;

2. suspension of the qualification certificate;

3. to carry out the following activities:

   (a) expert evaluations, inspections, tests on an installation, facility, products, parts, systems or components;

   (b) alteration of established operating limits and conditions;

   (c) modifications of design and structures relevant to nuclear safety, radiation protection, physical protection and emergency preparedness;

   (d) supplementation or alteration of the curricula and training courses and delivery of additional training, including examination of knowledge and skills.

Article 151

(1) The administrative enforcement measures shall be imposed by an order of the NRA Chairman based on a protocol of findings issued by the inspectors of the Agency.

(2) The administrative enforcement measures pursuant to Article 150(1)1 shall be imposed until elimination of the causes that have led to their imposition.

(3) The order of application of enforcement measures shall establish an appropriate time limit for their execution.

(4) The order of application of an enforcement measure shall be served on the person concerned.

Article 152

Any order of application of administrative enforcement measures shall be appealable before the Supreme Administrative Court according to the procedure established by the Supreme Administrative Court Act. An appeal shall not suspend the execution, unless otherwise ruled by the court.

Supplementary Provisions

Paragraph 1

Within the meaning of this Act:

1. "Emergency preparedness" means the capability to take immediate actions that will effectively mitigate the impact of a possible accident on human health, the environment and property.

2. "Accidental exposure" means exposure received by individuals during an emergency. (This type of exposure does not include exposure to persons undertaking actions to prevent or mitigate an accident.)

3. "Accident" means an unintended event that leads or may lead to exceeding the limits or to violation of the conditions of the radiological impact on humans and the environment as established in the nuclear safety and radiation protection standards and rules.

4. "Activation" means the process of production of radionuclides by irradiation (induction of radioactivity in living and non-living matter).

5. "Nuclear power plant" means a power plant where energy is generated by one or more nuclear reactors and which may include the adjoining radioactive waste management facilities and spent nuclear fuel management facilities, as are on the same site, for which common physical security and emergency planning are provided.

6. "Vienna Convention" means the Vienna Convention on Civil Liability for Nuclear Damage.

7. "Commissioning" means the process during which systems and components of a nuclear facility or another source of ionising radiation, having been constructed, are made operational and verified to be in accordance with the design and to have met the required performance criteria.

8. "Generator of ionising radiation" means a device capable of generating ionising radiation if powered by an external energy source.

9. "Sealed source" means a source of ionising radiation that is capable of maintaining leaktightness under the condition of use and its structure is such as to prevent, under normal operating conditions any dispersion of contained radioactive substances into the environment. Spent nuclear fuel does not qualify as a sealed source.

10. "Closure" means the completion of all operations following the emplacement of spent fuel or radioactive waste in a disposal facility. This includes the final engineering or other work required to bring the facility to a condition that will be safe in the long term.

11. "Protected area" means an area designated for the purposes of physical protection and located within the site area of a nuclear facility or another facility where nuclear materials or radioactive substances are stored which is under constant surveillance by guards or

electronic devices, which is surrounded by a physical barrier with a limited number of points of entry, and access to which is restricted to persons issued with special access.

12. "Controlled access area" means an area designated for the purposes of physical protection, enclosing an area around the protected area of a nuclear facility or another facility where nuclear materials or radioactive substances are stored, to which access is controlled.

13. "Siting" means the process of selecting a suitable site for construction of a specific nuclear facility or facility with a source of ionising radiation, including appropriate assessment and definition of the related design bases.

14. "Decommissioning" means all administrative and technical actions taken to allow the release of a nuclear facility from regulatory control under this Act, including closure of a radioactive waste disposal facility or of a spent nuclear fuel storage facility. These actions include the processes of decontamination and dismantling.

15. "Source of ionising radiation" or "source" means any apparatus, radioactive substance, device, item, installation or facility capable of emitting ionising radiation or of releasing radioactive substances (with the exception of nuclear facilities).

16. "Source material" means: uranium containing the mixture of isotopes occurring in nature; depleted uranium; any of the foregoing in the form of metal, alloy, chemical compound, or concentrate; any other material containing one or more of the foregoing in a concentration and in quantities exceeding the values as a statutory instrument shall establish.

17. "Incident" means a technical event or anomaly which, although not directly or immediately affecting nuclear safety and/or radiation protection, is liable to lead to a subsequent re-evaluation of the provisions for nuclear safety and/or radiation protection.

18. "Ionising radiation" means the transfer of energy in the form of particles or electromagnetic waves of a wavelength of 100 nanometers or less or a frequency of 3×10^{15} Hertz or more capable of producing ions directly or indirectly.

19. "Medical responsibility" means a responsibility attributed to a medical doctor or a dentist regarding the various aspects of individual medical exposures: justification, optimisation, clinical evaluation of the outcome, co-operation with other medical specialists in obtaining and providing information, giving the persons exposed information on the need and the risks of each exposure.

20. "Small quantities of a radioactive substance containing a single artificial radionuclide" means the number of kilograms of the substance for which there is a relation of equality between the activity indicated as released for the respective radionuclide in the Basic Radiation Protection Standards in force, and the activity of one kilogram of the substance.

21. "Small quantities of a radioactive substance containing a mixture of technogenic radionuclides" means the lowest value arrived at upon determination of the small quantity of radioactive substance corresponding to each radionuclide separately.

22. “Medical exposure” means the exposure incurred: by patients as part of their diagnosis or treatment with sources of ionising radiation; by persons other than personnel who voluntarily help in the support and comfort of patients during their diagnosis or treatment; and by healthy individuals or patients who voluntarily participate in programmes of medical or biomedical research involving exposure.

23. “Monitoring” means the measurement of radiation or other parameters for reasons related to the assessment or control of exposure to radiation, as well as the interpretation of the results.

24. “Facility with a source of ionising radiation” means the place, together with the totality of protective devices, assigned for use of a source or for manufacture of a source, or for the execution of any work with a source for the purpose of maintenance, assembly, dismantling, measurements, repairs or other services provided to users of sources, including storage of sources.

25. “Exposure” means the impact of ionising radiation in the course of passing through an exposed medium.

26. “Public exposure” means the exposure incurred by members of the public as a result of lawful or unlawful practices with sources of ionising radiation, excluding any occupational exposure, medical exposure and the normal local natural background radiation typical of a specific working or living environment.

27. “Spent nuclear fuel” or “spent fuel” means nuclear fuel that has been irradiated in a reactor core and that has been permanently removed from the core.

28. “Safety assessment” means a review of all aspects of the design and operation of a nuclear facility or another source of ionising radiation which are relevant to its safety and to the protection of persons, including an analysis of the provisions for nuclear safety and radiation protection and of the risks associated with normal operation and with accidents.

29. “Disposal” means emplacement of spent fuel or radioactive waste in an appropriate facility or a given location without the intention of retrieval at any time in the future.

30. “Occupational exposure” shall be all exposure incurred by persons occupationally engaged in activities subject to regulatory control under this Act, and in the activities associated with regulatory control.

31. “Repeated violation” means any violation be committed within one year after the entry into force of a penalty decree for which the offender was penalised for a violation of the same type.

32. “Radiation protection” means a totality of organisational and technical measures intended to protect people from exposure to ionising radiation, including ensuring the safety of sources of ionising radiation and the activities with such sources, i.e. minimisation of the risk of unwarranted exposure, of the number of persons exposed, or of the exposure incurred by humans without exceeding the statutory dose limits, prevention of a radiation accident, and mitigation of its effects.

33. “Radioactive source” means a source whereof the properties to emit ionising radiation are attributable solely to the contained radionuclides.

34. “Radioactive waste” means a radioactive substance in a gaseous, liquid or solid form for which no further use is foreseen by the licensee or permit holder and which is controlled as radioactive waste by the Agency according to this Act, including a radioactive source for which the safe operating lifetime has ended according to the design documentation.

35. “Self-sustaining nuclear fission chain reaction” means a series of nuclear reactions of fission of atomic nuclei which is sustained by neutrons liberated in the process of fission.

36. “Special fissionable material” means plutonium-239, uranium-233; uranium enriched in the isotope U^{235} or U^{233}, and any other material containing one or more of these isotopes.

37. “Specialised training” means post-graduate education and training in theory and practice, including training of redundancy and safety briefing, of persons for the purpose of qualifying them to perform specific activities or tasks and to be admitted to an examination for certification of competence according to the procedure established by this Act.

38. “Event” means any deviation from the regulated mode of operation, including one or more equipment failures, operating error or errors and/or deficiency of instructions and procedures, which has led or could have led to release of radioactive substances into the working or surrounding environment or to unwarranted public or occupational exposure, or to breach of nuclear safety or radiation protection requirements, rules and standards.

39. “Spent fuel management facility” means any facility in which the primary purpose is spent fuel management.

40. “Radioactive waste management facility” means any facility in which the primary purpose is radioactive waste management, including a nuclear facility in the process of being decommissioned only if it is designated as a radioactive waste management facility according to a procedure established by this Act.

41. “Storage” the holding of nuclear material or radioactive substances, including spent fuel or radioactive waste, in a facility that provides for their containment, with the intention of retrieval.

42. “Grave natural disaster of an exceptional character” means a catastrophic, unforeseeable and unavoidable natural disaster.

43. “Artificial radionuclides” means radionuclides in which the presence or concentration in radioactive substances is attributable to human activity.

44. “Spent fuel management” means all activities that relate to the handling or storage of spent fuel, excluding off-site transportation. It may also involve discharges.

45. “Radioactive waste management” means all activities involved in the handling, pre-treatment, treatment, conditioning, storage and disposal of radioactive waste.

46. "Uranium enriched in the isotope ^{235}U or ^{233}U" means uranium containing the isotope ^{235}U or ^{233}U or both in an amount such that the abundance ratio of the sum of these isotopes to the isotope ^{238}U is greater than the ratio of the isotope ^{235}U to the isotope ^{238}U occurring in nature (isotopic ratio of 0.72%).

47. "Physical protection" means a set of all technical and organisational requirements, measures, means and methods intended to effectively prevent unauthorised tampering or interference with, or unauthorised removal of, nuclear material, nuclear facilities and radioactive substances (theft, unlawful intrusion into the site of a nuclear facility, unauthorised access to areas vital to the safety of the nuclear installation, sabotage, terrorist actions), their timely detection and suppression, and recovery of misappropriated nuclear material.

48. "Nuclear material" means source material, special fissionable material and other materials designated by an act of the Council of Ministers.

49. "Nuclear reactor" means any nuclear installation containing nuclear fuel in such an arrangement that a self-sustained nuclear fission chain reaction can occur in the installation without an additional source of neutrons.

50. "Nuclear accident" means an accident involving release of radioactive substances into the environment or potentially dangerous occupational or public exposure, caused by disruption of the control and management of a chain process of nuclear fission, a critical mass formation, disruption of the heat transfer from an irradiated nuclear material, or a nuclear material damage, including nuclear fuel.

51. "Nuclear safety" means the state and the capability of a nuclear facility and of its systems and personnel to prevent an uncontrollable process of nuclear fission or an inadmissible release of radioactive substances or ionising radiation into the working or surrounding environment, the prevention of incidents and accidents, and the mitigation of any effects.

52. "Nuclear installation," according to the Vienna Convention, means a nuclear reactor (including sub-critical and critical assemblies); a research reactor; a nuclear power plant; a spent fuel management facility; a nuclear material conversion or enrichment plant; or a nuclear fuel fabrication plant or reprocessing facility.

53. "Nuclear plant" means a nuclear facility for generation of electric and/or thermal energy.

54. "Nuclear fuel" means any special fissionable material capable of producing energy by a self-sustaining nuclear fission chain reaction.

55. "Nuclear facility" means a facility and its associated land, buildings and equipment in which nuclear material is produced, processed, used, handled, stored or disposed of on such a scale that consideration of nuclear safety and radiation protection is required. Any radioactive waste management facility shall likewise qualify as "nuclear facility".

Transitional and Final Provisions

Paragraph 2

The Act on the Use of Atomic Energy for Peaceful Purposes (promulgated in the *State Gazette* No. 79 of 1985; corrected in No. 80 of 1985, amended in No. 69 of 1995 and No. 71 of 1998) is hereby superseded.

Paragraph 3

Within one month after the entry into force of this Act, the Council of Ministers shall transform the Committee on the Use of Atomic Energy for Peaceful Purposes within the Council of Ministers into a Nuclear Regulatory Agency and shall adopt the Organisational Statute of the Agency.

Paragraph 4

Any procedures for the issuing of permits and qualification certificates, initiated under the Act on the Use of Atomic Energy for Peaceful Purposes as superseded, shall be completed according to the prior procedure.

Paragraph 5

(1) Any permit or qualification certificate, issued pursuant to the Act on the Use of Atomic Energy for Peaceful Purposes as superseded, shall remain in effect until expiration of its term of validity.

(2) Permit holders and persons holding qualification certificates issued pursuant to the Act on the Use of Atomic Energy for Peaceful Purposes as superseded, may request extension of the validity of the permit or qualification certificate if it expires within one year after the entry into force of this Act. The term of validity of any such permit or qualification certificate may not exceed one year.

(3) Persons or legal entities that at the time of entry of this Act into force are implementing any activity requiring a licence under Article 58(1)3, shall be obliged to apply for such a licence within one year after the entry of this Act into force. Should they fail to apply for a licence within this time limit, they shall be obliged to discontinue the relevant activity.

Paragraph 6

(1) Within two years after the entry into force of this Act, special statutory areas shall be established around existing nuclear facilities and facilities with sources of ionising radiation according to the procedure established by this Act according to the design for construction of the relevant facilities.

(2) The prohibition imposed under Article 109(1) shall not apply to buildings which at the time of entry into force of this Act are built or being built.

Paragraph 7

(1) Section V "Nuclear Facilities Decommissioning Fund" of Chapter Three and Section III "Radioactive Waste Management Financing" of Chapter Four shall enter into force as from the 1st of January 2003.

(2) The accumulated financial resources for radioactive waste safety and storage and for decommissioning of nuclear facilities, including such brought forward, raised under Article 6 of the Act on the Use of Atomic Energy for Peaceful Purposes as superseded and in reference to Section 11 of the 2002 National Budget of the Republic of Bulgaria Act, shall be transferred to the accounts opened on behalf of the Ministry of Energy and Energy Resources.

(3) The members of the management boards of the Nuclear Facilities Decommissioning Fund and the Radioactive Waste Fund shall be designated according to the procedure established by this Act within two months after the entry into force of the provisions of Paragraph 1.

Paragraph 8

(1) The provisions of Section II "Radioactive Waste State-owned Company" of Chapter Four shall enter into force as from the 1st day of January 2004.

(2) Within two months after the entry into force of the provisions of Paragraph 1, the Council of Ministers shall allocate property and real estate which are state property to the Radioactive Waste State-owned Company for attainment of its objectives.

(3) One month after the entry into force of the provisions of Paragraph 1, the Minister of Energy and Energy Resources shall designate the Executive Director of the Radioactive Waste State-owned Company and the other members of the Management Board of the Company.

Paragraph 9

(1) Until the entry into force of the provisions of Section 8(1), radioactive waste management shall follow the previous procedure, with the financing of the activities comprehended in radioactive waste management following the procedure by Section 11 of the Transitional and Final Provisions of the 2002 National Budget of the Republic of Bulgaria Act and, as from the 1st day of January 2003, through the Radioactive Waste Fund under this Act.

(2) After the entry into force of Section III of Chapter Four and until establishment of the Radioactive Waste State-owned Company, the financial resources of the Radioactive Waste Fund shall be expended solely for the purpose of financing the safety and storage of radioactive waste and the activities for construction and reconstruction of radioactive waste management facilities and on management of the Fund.

Paragraph 10

In Article 2 of the Act to Ratify the Vienna Convention on Civil Liability for Nuclear Damage and the Joint Protocol Relating to the Application of the Vienna Convention and the Paris Convention (*State*

Gazette No. 64 of 1994), the words “the equivalent of fifteen million Special Drawing Rights of the International Monetary Fund” shall be replaced by “ninety-six million leva”.

Paragraph 11

In Article 2 of the Act to Ratify the Additional Protocol to the Agreement Between the People's Republic of Bulgaria and the International Atomic Energy Agency for the Application of the Safeguards in Connection with the Treaty on the Non-proliferation of Nuclear Weapons (*State Gazette* No. 80 of 2000), the words “the Committee on the Use of Atomic Energy for Peaceful Purposes” shall be replaced by “the Chairman of the Nuclear Regulatory Agency”.

Paragraph 12

In Article 2 of the Act to Ratify the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management (*State Gazette* No. 42 of 2002), the words “the Committee on the Use of Atomic Energy for Peaceful Purposes” shall be replaced by “the Chairman of the Nuclear Regulatory Agency”.

Paragraph 13

In Article 21 of the National Health Act (promulgated in the *State Gazette* No. 88 of 1973; corrected in No. 92 of 1973; amended and supplemented in No. 63 of 1976, No. 28 of 1983, No. 66 of 1985, No. 27 of 1986, No. 89 of 1988, Nos. 87 and 99 of 1989, No. 15 of 1991; corrected in No. 24 of 1991; amended and supplemented in No. 64 of 1993, No. 31 of 1994, No. 36 of 1995; Nos. 12, 87 and 124 of 1997, Nos. 21, 70, 71 and 93 of 1998, Nos. 30, 62, 67, 90 and 113 of 1999, Nos. 10 and 36 of 2000), Item 7 shall be amended to read as follows:

“7. control the radiological characteristics of the working environment.”

Paragraph 14

In Section 2 of the Transitional Provisions of the State Revenue Act (promulgated in *Transactions of the Presidium of the National Assembly* No. 104 of 1951; amended and supplemented in No. 89 of 1959, No. 21 of 1960; *State Gazette* No. 53 of 1973, No. 87 of 1974, No. 21 of 1975, No. 21 of 1990, No. 55 of 1991, No. 100 of 1992, Nos. 69 and 87 of 1995, Nos. 37, 100 and 104 of 1996, Nos. 82 and 86 of 1997, No. 133 of 1998, No. 81 of 1999, and No. 97 of 2000), the words “the Act on the Use of Atomic Energy for Peaceful Purposes” shall be replaced by “the Safe Use of Nuclear Energy Act”.

Paragraph 15

The Energy and Energy Efficiency Act (promulgated in the *State Gazette* No. 64 of 1999; amended in No. 1 of 2000 and No. 108 of 2001) shall be amended and supplemented as follows:

1. In Paragraph (1) of Article 52, the following new item shall be added:

“6. a licence for operation of a nuclear facility, issued to the licensee under the Safe Use of Nuclear Energy Act, has been revoked by an administrative act in force.”

2. Chapter Nine "FUNDS" shall be repealed, effective as from the 1st of January 2003.

Paragraph 16

In Article 14(2) of the Measurements Act (promulgated in the *State Gazette* No. 45 of 1998; amended in No. 55 of 1999, No. 108 of 2001; superseded in No. 46 of 2002, effective 9 November 2002), the words "the Committee on the Use of Atomic Energy for Peaceful Purposes" shall be replaced by "the Chairman of the Nuclear Regulatory Agency".

Paragraph 17

The Concessions Act (promulgated in the *State Gazette* No. 92 of 1995; modified by Constitutional Court Judgement No. 2 of 1996, promulgated in No. 16 of 1996; amended in No. 44 of 1996, Nos. 61 and 123 of 1997, No. 93 of 1998, Nos. 23, 56, 64 and 67 of 1999, Nos. 12, 64 and 97 of 2000, and No. 28 of 2002) shall be amended as follows:

1. In Article 4, Item 11 shall be repealed.

2. In Item 6 of Article 5, the words "radioactive products" shall be deleted.

Paragraph 18

The Technical Requirements to Products Act (promulgated in the *State Gazette* No. 86 of 1999) shall be amended as follows:

1. In Paragraph 2 of Article 33, the words "atomic power plants" shall be replaced by "nuclear power plants".

2. Section 5 of the Supplementary Provisions shall be amended to read as follows:

   "Section 5. The Chairman of the Nuclear Regulatory Agency or its officials thereby empowered shall exercise control over the technical safety of high-risk facilities on the site of nuclear power plants."

Paragraph 19

(1) Within two years after the entry into force of this Act, the Council of Ministers shall adopt the acts of secondary legislation on its application.

(2) Until the issuing of the acts of secondary legislation provided for under this Act, the acts of secondary legislation issued for the application of the Act on the Use of Atomic Energy for Peaceful Purposes as superseded shall be applied, insofar as they do not conflict this Act.

Paragraph 20

The implementation of this Act shall be entrusted to the Council of Ministers.

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