



Study the Civil Liability for Nuclear Damage Law of the United Arab Emirates

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Abstract

The UAE's nuclear program along with the rapid development of the Barakah nuclear power plant is considered an important developing nuclear program in the region of MESA (Middle East and South Asia). Considering the rapid development of the nuclear industry in the UAE, a legal regime, which addresses the need for a legislating the issue of compensation in case of potential damages is a serious and important necessity for this country. The UAE is a party to the "Protocol to Amend the Vienna Convention on Civil Liability for Nuclear Damage – 1997" and "Convention on Supplementary Compensation for Nuclear Damage-2015" and passed the Civil Liability for Nuclear Damage Act in 2012. This research is aiming at the study of the legal system of civil liability for nuclear damages in the UAE with a focus on the aforementioned Act of 2012 and its basic features.

Keywords: Nuclear Damage, Nuclear Legislation, Nuclear Incident, Nuclear Civil Liability, United Arab Emirates.

Introduction

Following the advancement of human knowledge and the need to access new energy sources and the use of new applications and technologies, the use of nuclear science and its applications has developed significantly in all aspects of human life, including medicine, electricity generation, industry, agriculture, and so on.¹

At the same time, as in other modern sciences, some of the specific risks of the applications of nuclear technology have been identified, for the use of which there is a grave need to create specific rules and regulations. The issue of compensation for possible damages caused by nuclear and hazards is one of the most important part of such rules and regulations. In particular more attention has been drawn to the issue of legislation for nuclear accidents after the two events of Chernobyl (1986) and Fukushima (2011) by observing the extent and complexity of their damages. The Paris Convention (1960)², the Vienna Convention (1963)³ and its Amendment Protocol (1997)⁴ are of the most important international legal instruments in this regard.

The United Arab Emirates, as the first Arab country and the third country in the region of MESA to be equipped with a nuclear power industry, like many other countries, needs specific rules and regulations for civil liability regarding nuclear damages to make peaceful use of this new knowledge, which resulted in the enactment of the "Federal Law by Decree no. 4 of 2012

concerning Civil Liability for Nuclear Damage - Issued on 13/08/2012"⁵ drawing on the experience of other countries under the "1997 Vienna Convention"^{6,7,8}. This article is aiming at identifying and reviewing this legal instrument as well as expressing its most important aspects and features.

1- Nuclear technical and legal development.

In April 2008, the UAE announced a policy to develop a nuclear program, mentioning the fact that the country's electricity needs would increase from 15.5 GW in 2008 to 40 GW in 2020. In 2009, it agreed with KEPCO⁹ to build four nuclear power plants at a construction site in Barakah - Abu Dhabi. In 2020 and 2021, Units 1 and 2 have been commissioned.¹⁰

Considering the history of technological and legal development in the UAE and according to incompatibility and inadequacy of the UAE's general laws and regulations for Civil Liability to deal with and cover the issue of compensation for damages caused by Nuclear Accidents, an especific national law on civil liability for nuclear damage, was approved before the

⁵ Official Gazette Issue no. 540 (Addendum) P. 9 "
<https://elaws.moj.gov.ae/mojANGULAR/index.aspx>"

⁶ The consolidated text of the 1963 Vienna Convention as amended and attached to the Protocol to Amend the Vienna Convention on Civil Liability for Nuclear Damage dated 12 September 1997.

⁷ Article (1) of Federal Law by Decree No. 4 of 2012 Civil Liability concerning for Nuclear Damage

⁸ <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/92437/107663/F-976812755/Federal-Law-by-Decree-No-4-of-2012-Concerning-Ci.pdf>

⁹ Korea Electric Power Corporation

¹⁰ <https://www.world-nuclear.org/information-library/country-profiles/countries-t-z/united-arab-emirates.aspx>

¹ The History of Nuclear Technology
"<http://www.icjt.org/an/tech/zgod.htm>"

² The Paris Convention on Third Party Liability in the Field of Nuclear Energy (PC), 1960

³ The Vienna Convention on Civil Liability for Nuclear Damage (VC), 1963

⁴ The Protocol to Amend the 1963 Vienna Convention on Civil Liability for Nuclear Damage



commissioning of nuclear power plants as the largest and most risky nuclear activity of facility within the country.

Also, in connection with the legal system of civil liability for nuclear damage, the United Arab Emirates as a member of the International Atomic Energy Agency, has acceded in 2012 to the "Protocol to Amend the Vienna Convention on Civil Liability for Nuclear Damage – 1997" and signed and ratified in 2014 "the Convention on Supplementary Compensation for Nuclear Damage-2015"¹.

2- Study of Federal Law by Decree no. 4 of 2012 concerning Civil Liability for Nuclear Damage.

2-1- According to Article 1, this law was ratified on the basis of the "Vienna Convention 1997" and in the same article and in para.2 of Article 18 of the 1997 Amending Protocol, the meaning of this convention is the consolidated text of the 1963 Vienna Convention and its 1997 Amending Protocol. The third paragraph of Article 2 of the law also states : "the Decree-Law aims at applying the Vienna Convention of 1997 on Civil Liability for nuclear Damages wherever no provision is made in the Law by Decree .

2-2- Inferreing of Article 2, the main goals of this law are to protect the victims, to help the operators to develop the nuclear industry and to comply with the international civil liability regime against nuclear damage.

2-3- The definition of Nuclear Facility in Article 1 of the Law does not include nuclear reactors stationed in mobile marine vessels or aircrafts as a source of power, whether for propulsion thereof or for any other purpose. Also, the definition of the Operator in this article is a person who is licensed by UAE's Federal Authority for Nuclear Regulation to operate a nuclear installation pursuant to Federal Law No. 6 as approved on 10/9/2009 regarding the peaceful use of nuclear energy². This definition has cast doubts on the issue of inclusion or exclusion of the sites of disposal or storage of radioactive waste or nuclear spent fuel, and therefore some³ have suggested amending the law and the need for specific inclusion of such facilities as well as the moral damages⁴.

Additionally, the definition of Operator differs in the two abovementioned laws (4 and 6), and this difference

¹ <https://www.iaea.org/resources/legal/country-factsheets>

² Federal Decree Law No. 6 ON THE PEACEFUL USES OF nuclear ENERGY-Issued on 10/09/2009

³ المبادئ الرئيسية للمسئولية المدنية عن الاضرار النووية وفقا للقانون الاماراتي و اتفقيه فيينا 1997 بشأن المسئولية المدنية عن الاضرار النووية – د. محمد السيد الدسوقي – مجله معهد دبي القضائي – شماره 4 سال دوم يونيو 2014

⁴ Same reference

is due to the different purposes pursued by each of the them.

2-4- Exclusive liability of the operator is indirectly addressed in Article 4 of the Act through a reference to VC and furthermore, Article 5 sets a maximum liability of 450 million SDRs⁵, which is 50% higher than the 1997 Vienna Convention. Para.2 of Article 5 allows the Federal Authority for nuclear Regulation (FANR) to reduce this amount to at least 5 million SDRs for low-risk activities, in which the government will insure the respective damages up to 450 million SDRs.

2-5- Pursuant to Article 12 of the Law, a competent and specialized court for the claims regarding nuclear damages is established within the Federal Court of the Emirate of Abu Dhabi.

2-6- According to Article 10 of Law No. 4, the time limit for claims for compensation against the Operator is set as three years from the time of gaining knowledge about the damage by the victim, and in any case should not exceed 30 years for death and personal injuries and 10 years for other damages.

Conclusions

The action of the UAE legislators to adopt a special regulations for civil liability regarding nuclear damages along with the development of nuclear technology within the country, especially by the construction of the four units of BARAKAH nuclear power plant, is valuable and could be considered as a good model for some nuclear countries with no such specific regulations.

However, setting out and clarifying some principles of civil liability for nuclear damages, including the inclusion of nuclear waste storages or disposal facilities, as well as the inclusion of moral damages in this law, can complete this legal regime.

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⁵ Special Drawing Rights (SDRs):