



Terrorism and the insurance of nuclear hazards

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INTRODUCTION

The terrorist attacks of September 11 on the World Trade Centre and the Pentagon seriously worried the world of insurance and specially nuclear insurers in case there were similar risk attacks on nuclear installations.

As a result of these terrorist risk attacks the majority of insurers took the decision to exclude terrorism risk starting in 2002, although due to the impossibility in many cases of terminating insurance policies or reinsurance contracts, this decision was delayed until January 1, 2003.

NUCLEAR LEGISLATION IN SOME COUNTRIES WITH NUCLEAR INSTALLATIONS

Japan

Japan does not form part of any international convention. Its nuclear legislation was drafted independently of international treaties. The Basic Atomic Energy Act of 1955 is made up of three legislative texts, of which the Compensation of Nuclear Damage Act is applicable to this subject; this act was modified in 1999. This defines the exoneration causes of the operator in a similar manner to international conventions with the exception that the concept of «serious social disturbances» is added, this referring to war situations, thereby not including terrorism.

The operator has unlimited liability but it is obliged to take out an

insurance policy or financial guarantee for a minimum sum of JPY 60 billion (EUR 505.92 million) if it is a nuclear power station, this being the required limit per site independently of the number of reactors. This limit is JPY 12 billion (EUR 101.18 million) if it is a nuclear installation other than a nuclear power station.

Each decade a compensation agreement between the operator and the government is set in order to complement the insurance guarantee. At the present time this agreement ends in 2009. This details the risks that are typically covered or excluded. This agreement does not mention terrorist acts as being excluded risks, therefore it can be understood that this risk is covered by the policy, although risks of war are excluded from this governmental compensation. In addition to this, cover is limited to the same amount as private insurance and may not exceed the sum approved by Parliament in each fiscal year. In the case of a nuclear accident caused by an exceptional and serious natural disaster the government will compensate any possible victims; it is however not clear that there would be the same government intervention in the case that the victims were a consequence of a terrorist act.

Ukraine

The regulations governing nuclear third-party liability assign absolute and exclusive liability to the operator, following the norms of the Vienna Convention.



Last October Ukrainian authorities confirmed that terrorist acts are covered by insurance policies.

The new law governing nuclear third-party liability was published at the end of 2001 and envisages a compensation limit of SDR* 150 million (EUR 232.5 million), with the government providing cover when insufficient insurance capacity is obtained.

USA

This country is not part of any international convention, being regulated by the Price-Anderson Act of 1954 which has the practical effect of imposing strict liability up to the sum of USD 9.4 billion (EUR 9.8 billion). Of this amount, at present only the first USD 200 million (EUR 208.93 million) are insured, the rest being covered by the operators themselves at the rate of USD 90 (EUR 94.02) each one.

The only exemptions for the operators are due to losses caused by war, accidents in the workplace and damage to the installation itself. These last two causes are covered by separate policies.

Switzerland

This country is not a member of any international convention. The operator's third-party liability is unlimited, as is the case in Germany (despite the fact that this country is part of the Paris Convention). Insurance guarantees, through an insurance policy, the amount of CHF 1.1 billion (EUR 748.1 million).

The most important aspect in Switzerland is the fact that the operator is not exempt from liability in the case of war, natural disasters or malicious acts of third parties. At the same time the government has exempt the insurance sector from those covers that are covered by the state.

The Swiss government recently indicated that terrorism is not considered as armed conflict. In the meanwhile Swiss reinsurers announced their intention to exclude terrorism from their policies from January 1, 2003.

Spain

As is the case with the majority of Western European countries, Spain is part of the Paris Convention. The stipulations of that convention have been included in the Nuclear Energy Act 25/1964, of April 29.

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Article 55 of the act states that:

«The liability of the operator will be objective and will be limited in its amount up to the cover limit set by this act»

At the time this act was drafted this limit was ESP 300 million (EUR 1.8 million), this figure is equivalent to the SDR 1.16 million set by the Paris Convention as being the minimum compulsory liability figure. After 1995 this figure increa-

sed to EUR 150 million, this figure is equivalent to the recommendation of the nuclear agency of the OECD as being the minimum operator's liability figure.

Article 55 of the act continues by stating that:

«The operator will not incur liability for nuclear damage caused by a nuclear accident which is directly due to an armed conflict, hostilities, civil war or insurrection or an exceptional natural catastrophe».

With respect to terrorist acts, there is no doubt –as in the aforementioned cases– that the operator of a nuclear installation is not exempt from liability.

TERRORISM INSURANCE IN NUCLEAR INSTALLATIONS

Background

Until the year 2001 the position of insurers worldwide was to offer third-party liability insurance without any more limitations than those for which the operators would be exempt, because the term «terrorism» had not been taken to be an exemption for the operator. Therefore, and given that the operator is responsible for losses caused by terrorist acts, insurance had hitherto guaranteed losses resulting from those acts.

However, with respect to the insurance of first-party losses, there have been cases, especially in those in policies with named risks, where the risk of terrorism may have been expressly covered or excluded. In Spain since 1981 article 4.2.2 of the general conditions guaranteed:

«Acts of malicious vandalism and terrorism committed individually or collectively by the policyholder's staff or third parties, violence or sabotage with political

* Special Drawing Rights.



or subversive aims, strikes and loc-kouts».

At the present time there is an all-risks coverage where the risk of terrorism is not excluded.

The acts of September 11 showed insurers the enormous impact that an accumulation of losses that were so unexpected and incalculable could have. These losses exceeded expectations based on statistical experience and could threaten the solvency and continuity of insurers. Apart from the direct or indirect losses caused by these accidents, the insurance sector greatly fears all those human attacks due to the use of chemical and biological substances. It is therefore obvious that the insurance sector will initiate a campaign in order to limit its exposure to the peril posed by terrorism.

The insurance sector is seeking help from governments in order to find solutions which simultaneously allow the possibility of covering certain levels of terrorism and at the same time do not threaten insurers' solvency and continuity; if these were to be threatened then the international economy would also be destabilised. There is therefore great interest on the part of governments and possibly on the part of international bodies such as the EU to eliminate this risk of insolvency.

The insurance sector's stance after the events of September 11 until December 31, 2002

The largest insurers, members of the most important associations of nuclear insurers, made their opposition plainly known to accepting any type of cover of terrorism in nuclear installations.

Towards the middle of November 2001 there was a clear disposition – arising from organisations of medium-sized European insu-

urers of providing continuity to terrorism cover in 2002.

«Acts of terrorism» vs «the nuclear insurance market»

The nuclear industry has always recognised that an accident could give rise to catastrophic losses. This is not only because of the value of the assets of the nuclear installation itself, which tend to exceed those of conventional plants, but also because of possible injuries and damage to third parties, based on international conventions and laws, which can affect a considerable number of victims.

The Paris Convention is being revised at the present time and one aim is to increase the operator's

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liability to SDR 450 million, approximately EUR 700 million.

Since the beginning of the construction of nuclear plants, around 1956, pools or national associations of insurers were set up with the aim of distributing the risk of a nuclear catastrophe among all insurers throughout the world, each one being liable to a small amount

as determined by its financial capacity, with certain basic criteria: self retention, minimal management expenses and maximum solvency of participating insurers.

Terrorism insurance in 2002

The main insurance markets have not behaved in a similar manner in different countries. The solutions to the problem of cover, generally speaking, have been provided by the impact of the World Trade Centre attacks on the profit and loss accounts of the principal insurers in 2001.

The associations of nuclear insurers of Germany, France and Sweden expressed their refusal to guarantee terrorism within first-party property and casualty policies to their local policyholders. Other smaller associations such as those in Mexico and South Africa followed the same example. These same insurers however indicated their desire to maintain third-party liability cover with the same conditions as in 2001.

The British insurers, members of BNI (British Nuclear Insurers), who have the risk of terrorism in property and casualty policies guaranteed by the nuclear reinsurance pool, informed their clients that they did not wish to renew third-party liability insurance when it expired on March 31 (postponed until May 31, 2002). The management of BNI together with the risk manager of British Energy are attempting to get the British authorities to cover this risk after that date, and the government is negotiating the possibility of state aid with the EU whereby they would act as reinsurers for British insurance without infringing community regulations.

In the meantime, the USA, with one-quarter of all the nuclear power stations in the world, has resor-



ted to an emergency formula. In property insurance, and administered by NEIL, a captive company of the electricity utility companies themselves, an annual aggregate limit of USD 2.3 billion (EUR 2.4 billion) for losses due to terrorism for all the insured nuclear power stations has been set.

In third-party liability, American Nuclear Insurers, the pool that manages the insurance of that country, where 45 percent is ceded in reinsurance to NEIL itself, the aggregate limit for all its policies is USD 200 million (EUR 208.93 million). This means that if this limit were to be used up in a single loss then the rest of the insureds would be left without cover for terrorism. Despite this limitation to cover, premiums have increased by 30 percent, of which 20 percent corresponds to terrorism cover.

In the rest of the countries where nuclear pools have been opted for, covers for property and casualty insurance and third party liability have been renewed on termination of the contracts.

The insurance solutions provided by EMANI, the European electricity producers' mutual, which underwrites a maximum of 50% of first-party property and casualty losses, has only been able to give terrorism capacity without a premium loading of EUR 100 million, which is equivalent to its shareholders' equity. This means that in the case of a loss on the part of one of its mutual members due to terrorism, the rest of its members would be left without cover even for conventional risks, since this loss would mean the mutual's bankruptcy.

In Spain, in 2001 first-party losses were covered by a first risk policy of up to EUR 1.55 billion, including in some cases partial cover

for loss of profits. In 2002 due to this reduction in capacity brought about by the refusal of some of the big European reinsurers, we have been destined to a drastic reduction in capacity since we have only been able to obtain EUR 800 million although the majority of policyholders have taken out a maximum of EUR 700 million. In principle, these conditions apply to 2002. As a whole, premiums have increased by 30%.

The solutions for third-party liability insurance have been found giving priority to optional cover for first-party losses and it has been able to be offered on the same terms as current legislation. However, following the trend in other countries, premiums have increased by 30%.

Insurance solutions for 2003, with special reference to Spain

Up until the time of writing, April 2002, research carried out in the world of insurance has concentrated on finding a solution similar to that of the United States which could be applicable throughout the world with some differentiating details which I will not go in to.

With respect to cover for nuclear third-party liability, article 45, paragraph 3 of the Nuclear Energy Act 25-1964, of April 29 states that:

«The operator will not incur liability for nuclear damage caused by a nuclear accident which is directly due to an armed conflict, hostilities, civil war or insurrection or an exceptional natural catastrophe».

This article is developed by the regulation on the cover of nuclear losses in its article 4, adding a few

other causes of exemption of the operator such as injuries to employees or subordinates of the operator and damage to the nuclear installation itself or assets located in it, whether they belong to the operator or not.

It would therefore seem clear that losses arising from terrorist acts are not cause of exemption, in the same way as occurs in other countries.

When drafting an insurance policy it is necessary to pay particular attention to the first paragraph of article 2 of this regulation, which states:

«Statutory liability for nuclear losses may not be affected by private agreements which modify or restrict the rights recognised by law, in this regulation or additional clauses, to the prejudice of third parties.

In any case any agreements tending to alter the nature or extent of the operator's liability or which contradict clauses on the insurability and other forms of guarantee of the liability contained in sections II and III of this regulation are null and void.

That stated in the above paragraph should be interpreted without prejudicing the contractual obligations with respect to third parties in the case of accident with regard to the liable operator».

It would seem therefore that to seek an insurance solution for the eight nuclear installations which differs from that stated in the Act and the Regulation could invalidate the insurance contract.

Since first-party loss insurance is optional this could be resolved through the system of pools that envisages offering an annual aggregate limit guaranteeing various losses in the insured risks. ■