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The International Legal Framework for Nuclear Liability

Anthony Wetherall
*IAEA, Vienna
Austria*

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The International Legal Framework for Nuclear Liability



Anthony Wetherall
Legal Officer
Nuclear and Treaty Law Section
Office of Legal Affairs

Scope

PART A: Int'l Legal Framework for Nuclear Liability

- I. Objective, Common Elements, Principles
- II. Int'l Nuclear Liability Instruments
- III. Nuclear Liability: National Incorporation
- IV. Transport Scenario
- V. Observations on the Int'l Legal Framework
for Nuclear Liability

Objective

To establish minimum standards of financial protection against damage resulting from the peaceful uses of nuclear energy, in particular, in a cross-border context

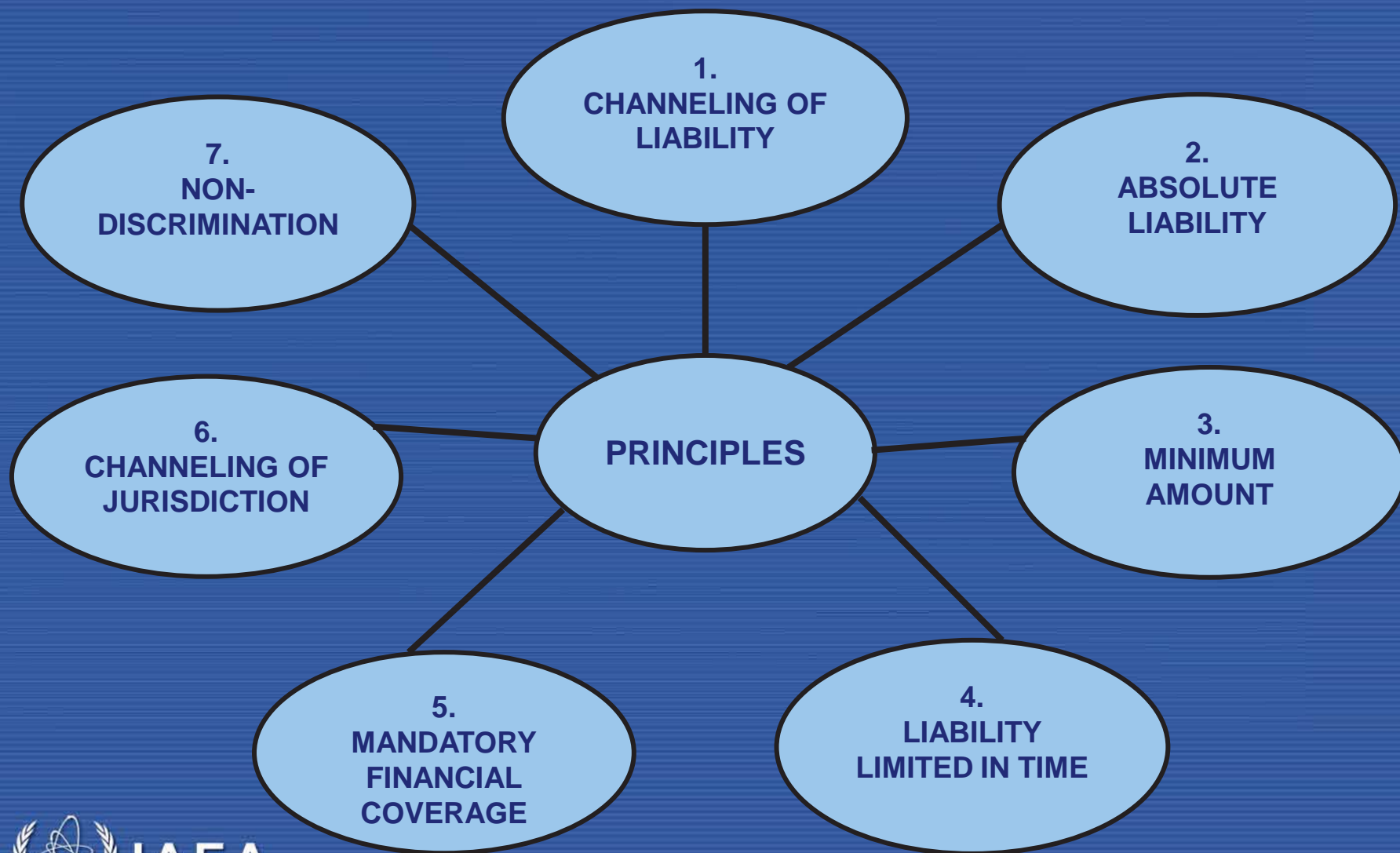
Common Elements

[consider for case study/
group project]



Generally speaking all the
int'l instruments apply to
liability of an *operator* of a
nuclear installation for
nuclear damage caused by a
nuclear incident in a *nuclear*
installation,
or in the course of *transport*
of *nuclear material* to or
from such an installation

Principles



1.
CHANNELING OF
LIABILITY

Channelling of liability to the operator, i.e.
no liability outside the regime and no
liability for anyone else but the operator

2. ABSOLUTE LIABILITY

“Absolute” or “strict” liability i.e.
operator is liable regardless of fault and
claimant must only prove a causal link
between the incident and the damage
for which compensation is sought

3. MINIMUM AMOUNT

Minimum amounts of liability of the operator – but Installation State is free to impose a higher amount or even unlimited liability

**4.
LIABILITY
LIMITED IN
TIME**

Limitation of liability in time (i.e. ten years
but thirty years for loss of life and personal
injury)

5.
MANDATORY
FINANCIAL
COVERAGE

Operator must maintain financial security
(insurance) for an amount corresponding
to its liability

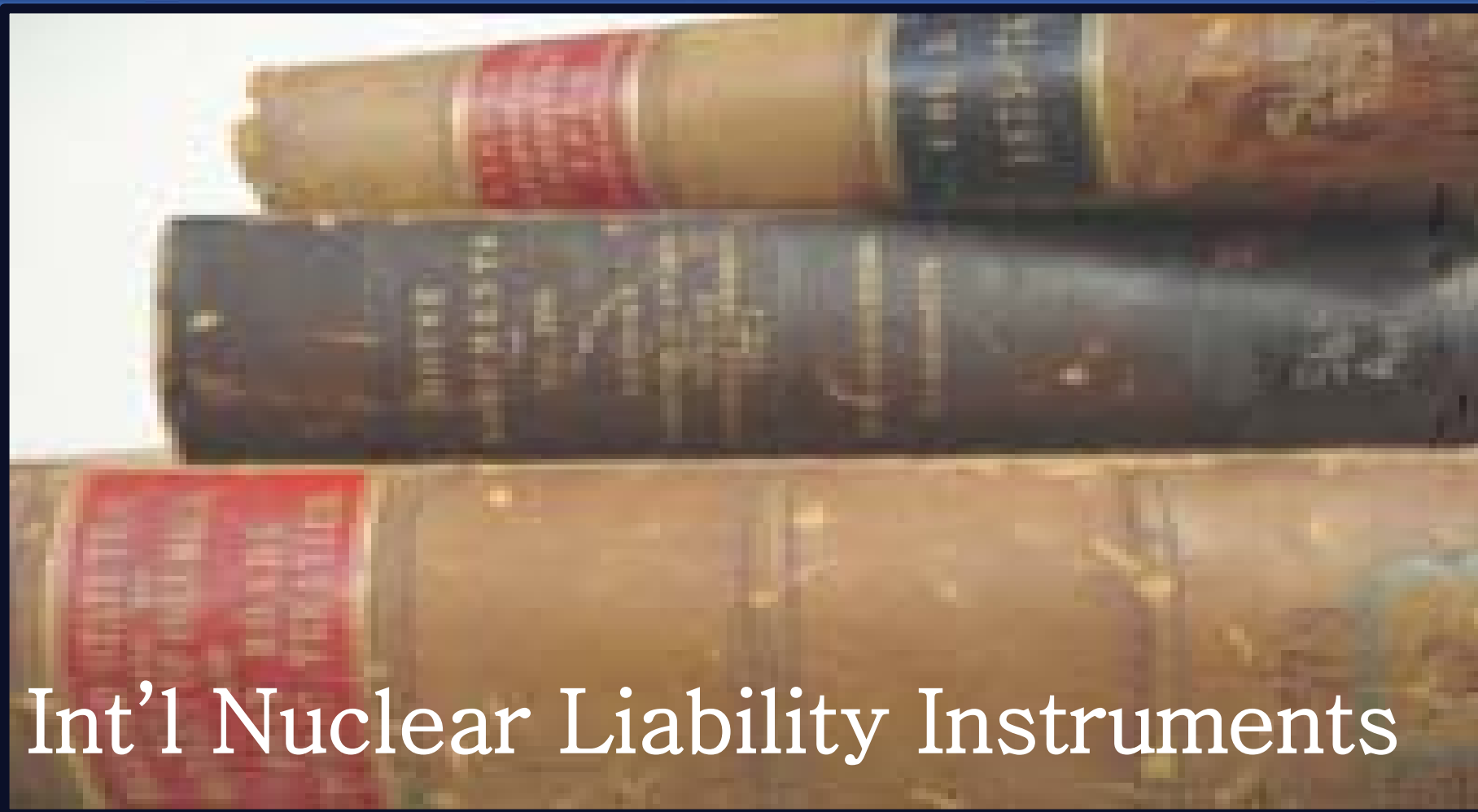
6.
CHANNELING
OF
JURISDICTION

Channelling of jurisdiction and recognition
of judgments i.e. jurisdiction over actions
lies exclusively with the courts of the
Contracting Party in whose territory the
nuclear incident occurred

7.
NON-
DISCRIMINATION

Equal treatment of victims i.e. non-
discrimination of victims on the grounds of
nationality, domicile or residence

PART II



Int'l Nuclear Liability Instruments

Consists of eight int'l instruments:

- ✓ Four adopted under the auspices of the OECD/NEA (Paris regime)
- ✓ Four adopted under the auspices of the IAEA (Vienna regime)

PRINCIPLES

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graph TD; A[PRINCIPLES] --> B[OECD/NEA REGIONAL]; A --> C[IAEA GLOBAL]; B --> D[1960 Paris Convention]; B --> E[1963 Brussels Supplementary Convention]; B --> F[2004 Protocols revising the Paris and Brussels Conventions]; C --> G[1963 Vienna Convention]; C --> H[1997 Protocol to amend the Vienna Convention]; C --> I[1997 Convention on Supplementary Compensation]; D --> J[1988 Joint Protocol]; E --> J; F --> J; G --> J; H --> J; I --> J;
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OECD/NEA REGIONAL

1960 Paris Convention

1963 Brussels
Supplementary Convention

2004 Protocols revising
the Paris and Brussels Conventions

IAEA GLOBAL

1963 Vienna Convention

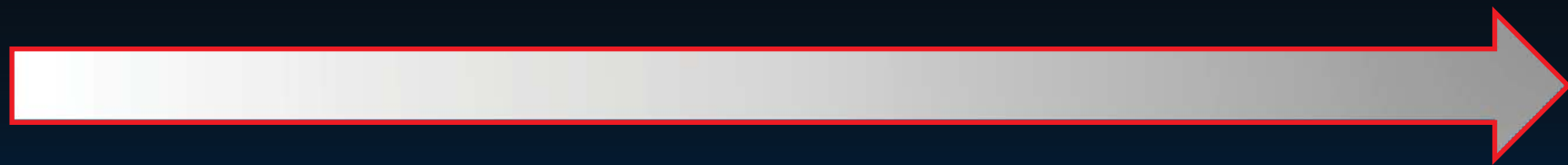
1997 Protocol to amend the
Vienna Convention

1997 Convention on
Supplementary Compensation

1988 Joint Protocol

“OLD” INSTs.

“MODERNIZED”
and “NEW” INSTs.



1960

(PC & BSC)

1963

(VC)



1988

(JP)



1997

(VC & CSC)

2004

(PC & BSC)

More victims compensated and broader scope of damage

OLD



GEOGRAPHICAL SCOPE
Territories of Contracting Parties

REVISED & NEW



GEOGRAPHICAL SCOPE
'Damage wherever suffered'
(04PC reciprocity)

More
compensation
available



Some Key Changes

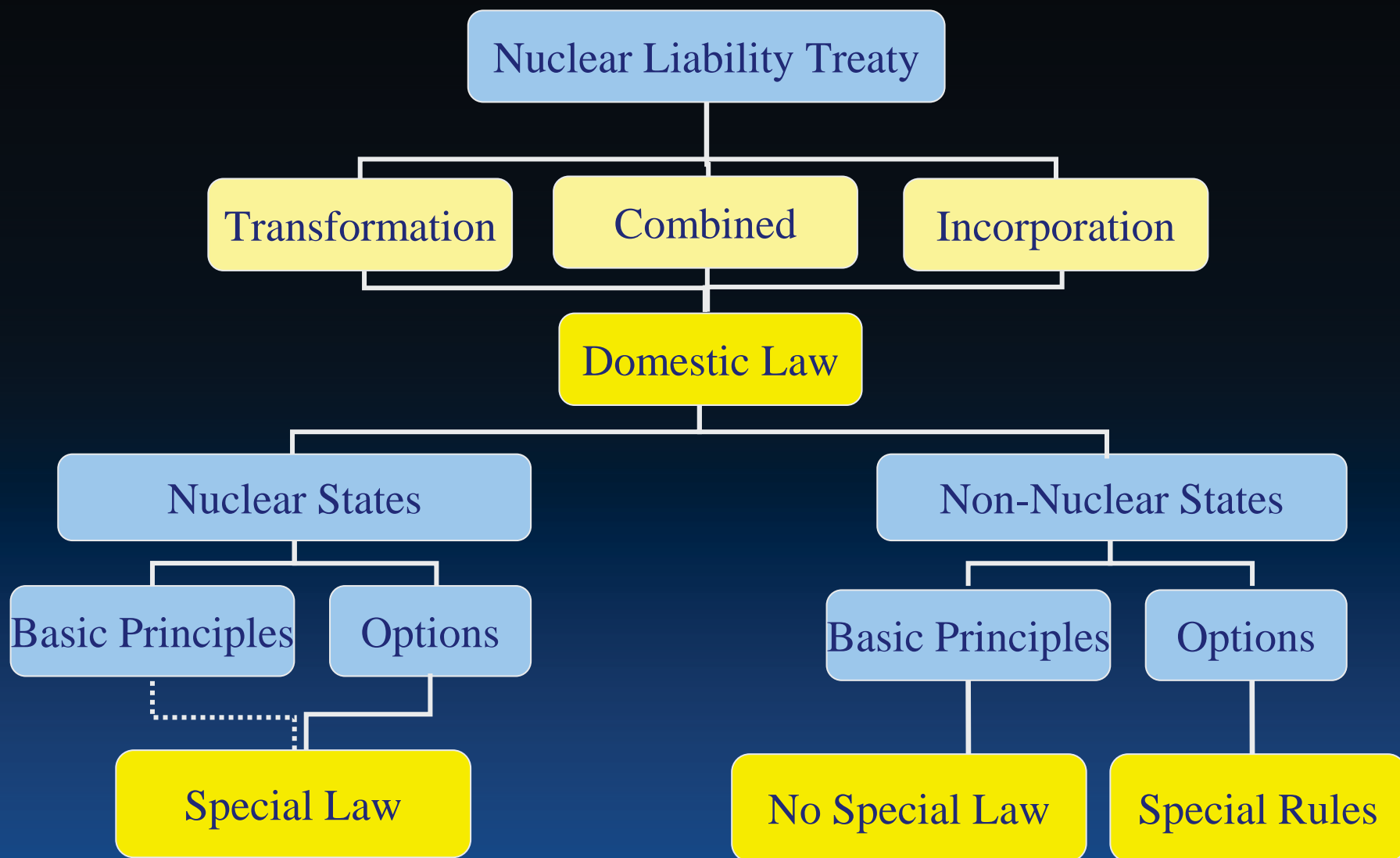
consider for case study/
group project]

	<i>Old instruments</i> <i>(60PC, 63BC & 63VC)</i>	<i>Revised & new instruments</i> <i>(97VC, 97CSC & 04PC/BC)</i>
Geographical: Scope	(Limited) Contracting Parties (CPs) territories	AND (Extended) non-CPs territories and EEZ
Nuclear damage:	(Limited) Personal injury, loss of life and property damage	AND (Extended) environmental & economic loss & costs of preventive & reinstatement measures
Nuclear Incident:	(Limited) Actual occurrence(s)	AND (Extended) grave & imminent threat
Nuclear installations:	(Limited) Transport or Nuclear Installation (reactors, processing, manufacture, storage)	AND (Extended (04PC)) waste disposal facilities & plants being decommissioned
Liability amounts:	(Limited) Low min. and max. amounts	AND (Extended) Increased min. amounts and Global supplementary funding

PART III

National Incorporation





The cases of Nuclear and non-Nuclear States: different approaches

[consider for case study/
group project]

PART IV



Transport Scenario

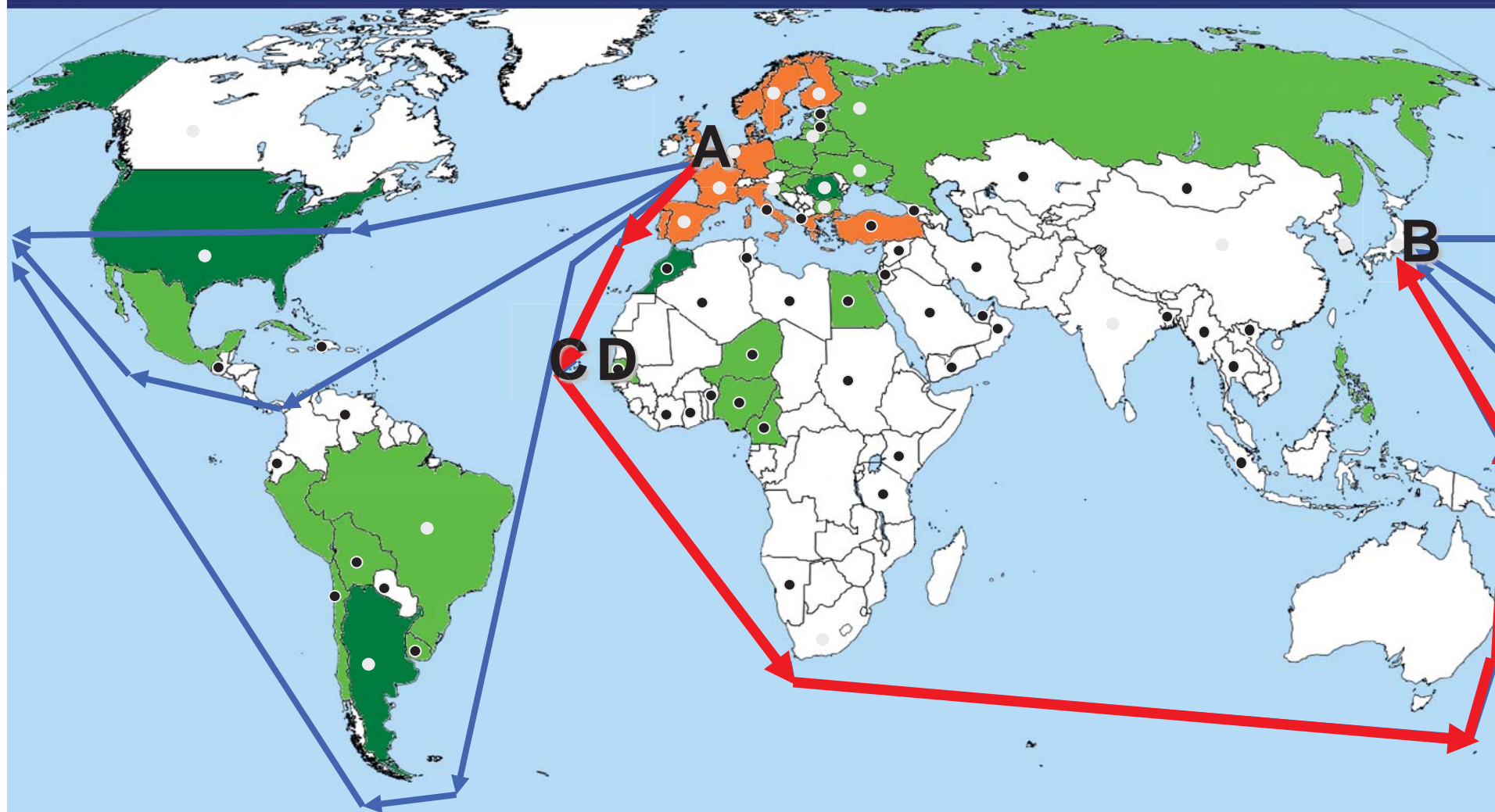
NUCLEAR INCIDENT DURING TRANSPORT

ex. of exposure for damage
suffered in a non-CP

Transport Scenario: Overview

- COUNTRY A – SENDING
- COUNTRY B – RECEIVING
- COUNTRY C – INCIDENT IN TERRITORY
(and/or EEZ)
- COUNTRY D – DAMAGE SUFFERED

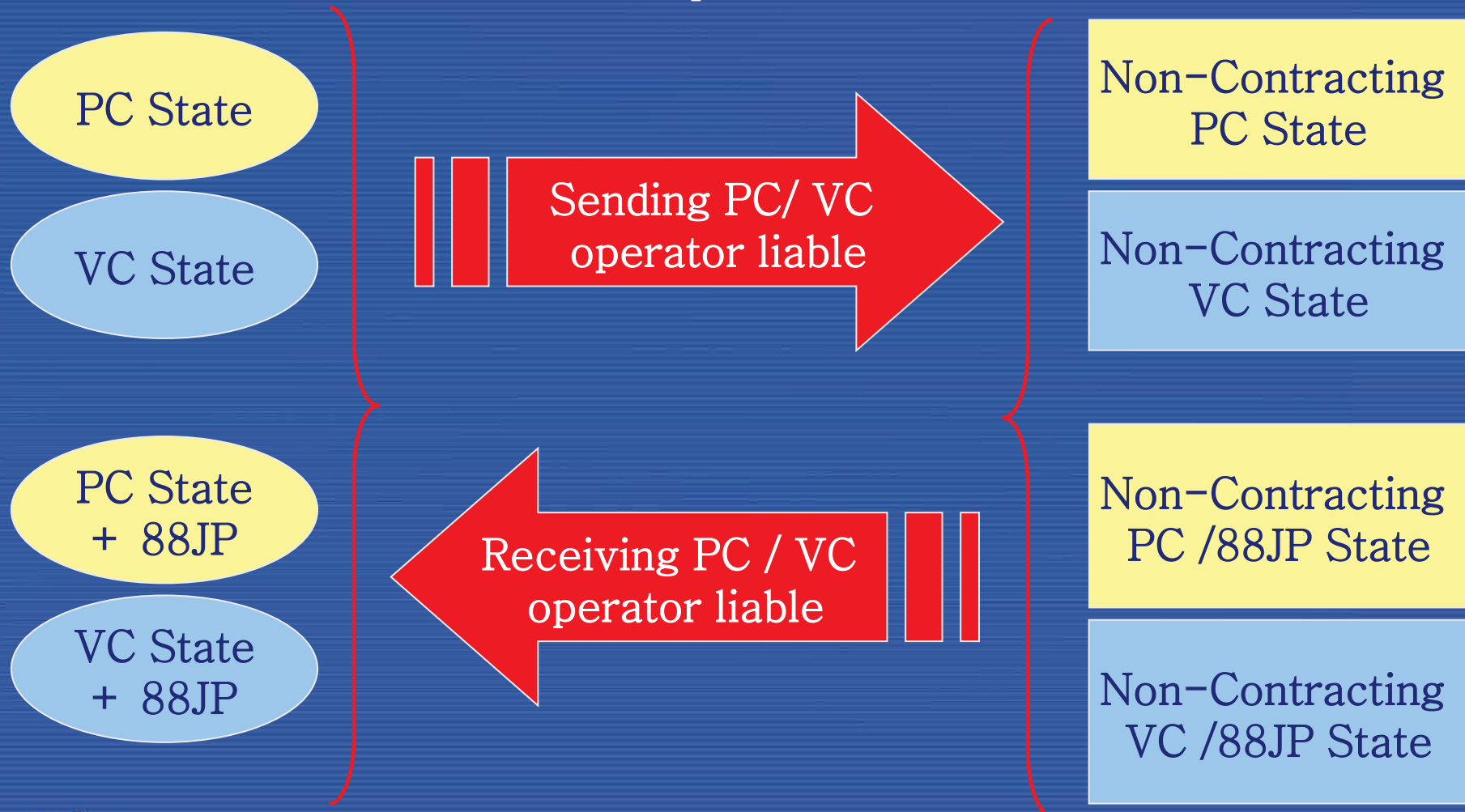
Transport Scenario: Overview



Transport Scenario: Special Transport Liability Rules

- **Material sent between Contracting Parties (CPs):**
 - **Sending Operator liable unless contract**
- **Material sent to Non-CP State:**
 - **Sending Operator liable until unloading in non-CP**
- **Material sent from Non-CP:**
 - **Receiving Operator liable but upon written consent**

Transport



Transport Scenario: Special Jurisdiction Rules

BASIC RULE: Court of the Accident State (if a CP)

- **60PC/ 63VC:**

- | | |
|------------------------------------|--------------------|
| • Accident outside CP's territory: | Installation State |
| • Accident in EEZ wherever: | Installation State |

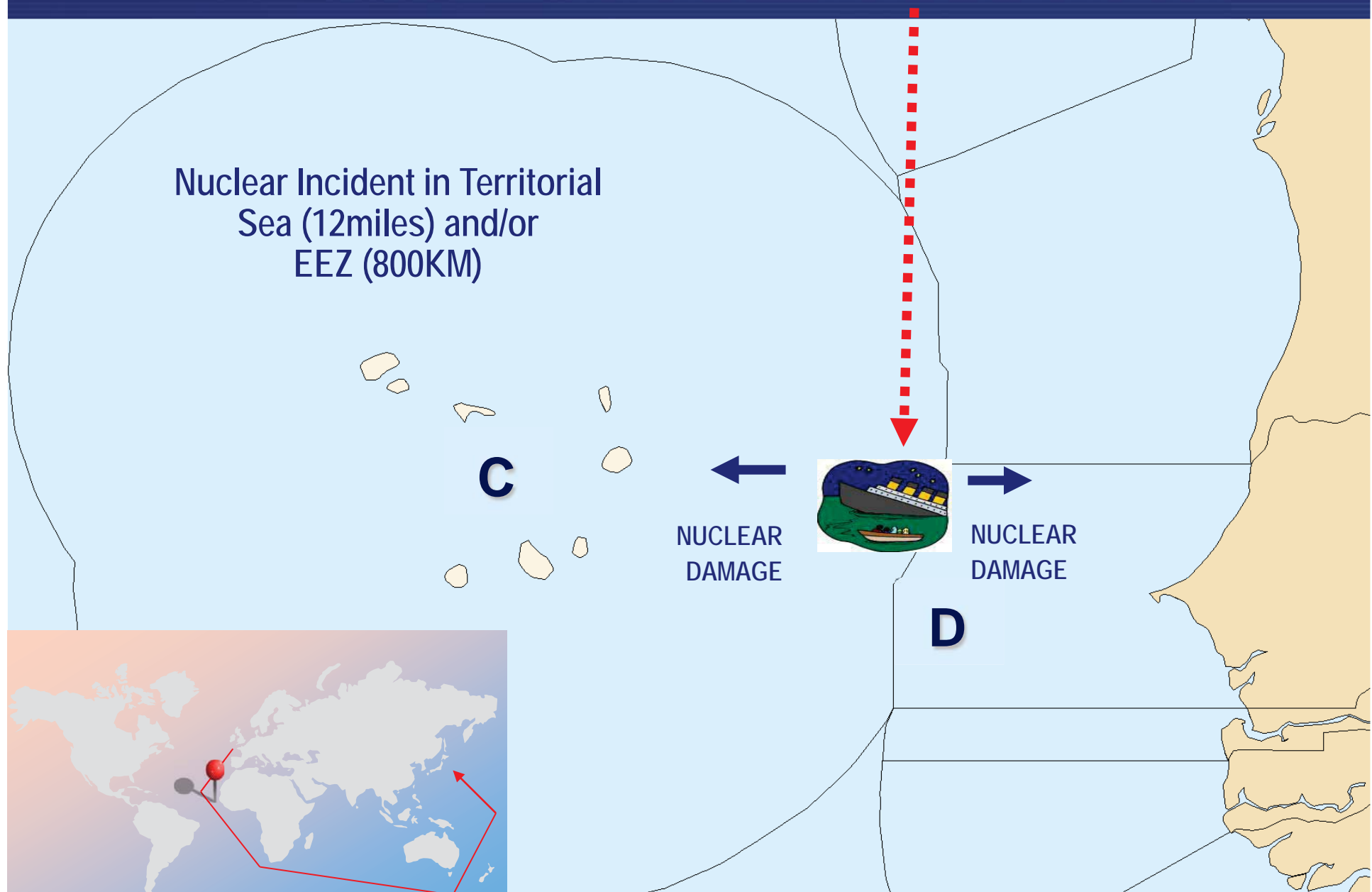
- **04PC/ 97VC & 97CSC:**

- | | |
|-----------------------------|--------------------|
| • Accident in CP's EEZ: | Accident State |
| • Accident in non-CP's EEZ: | Installation State |

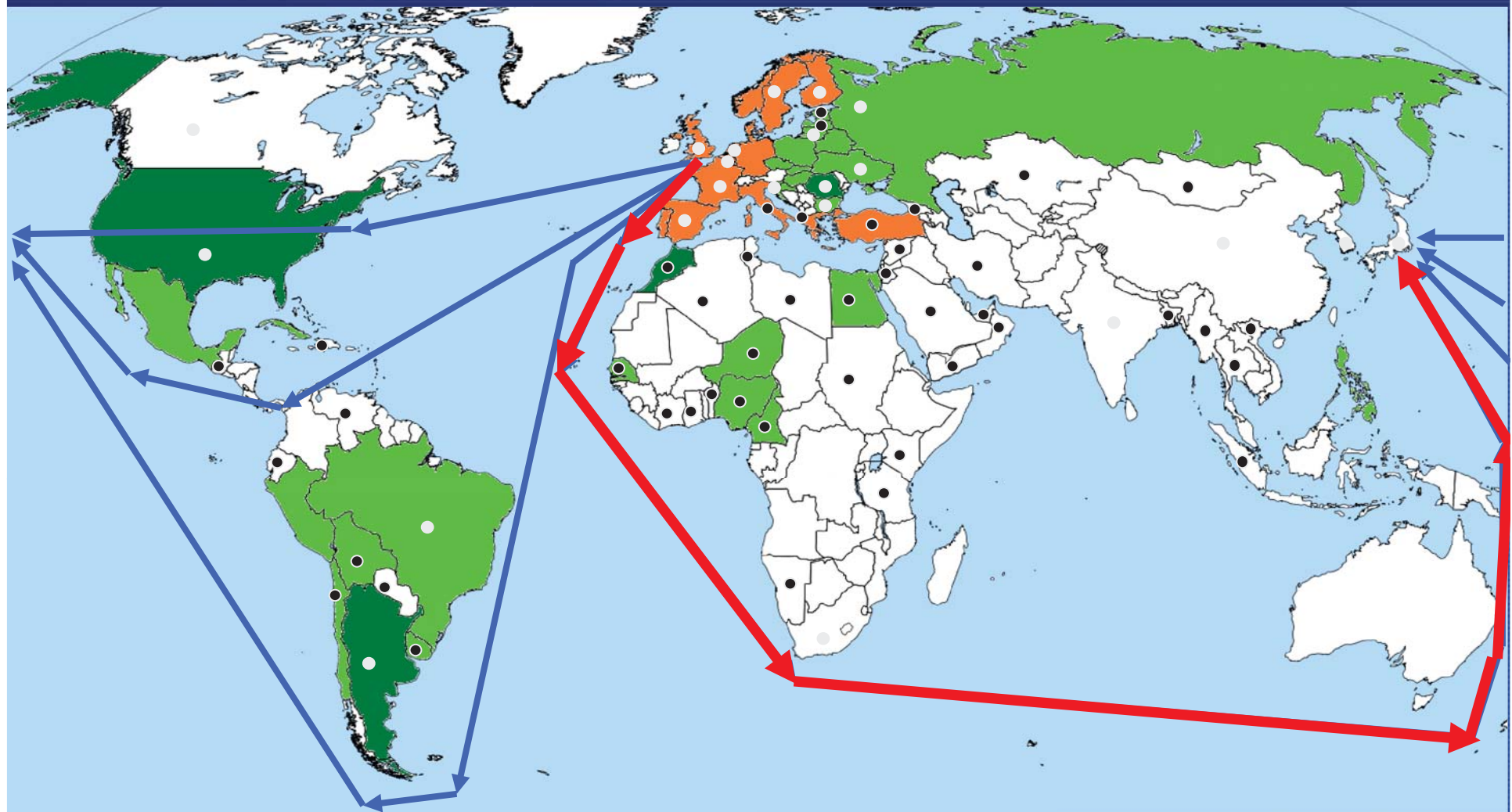
- Reason: to reflect recent trends in law of sea; to accommodate coastal States' concerns over nuclear transit



Transport Scenario: Incident and Damage



Transport Scenario: Observations



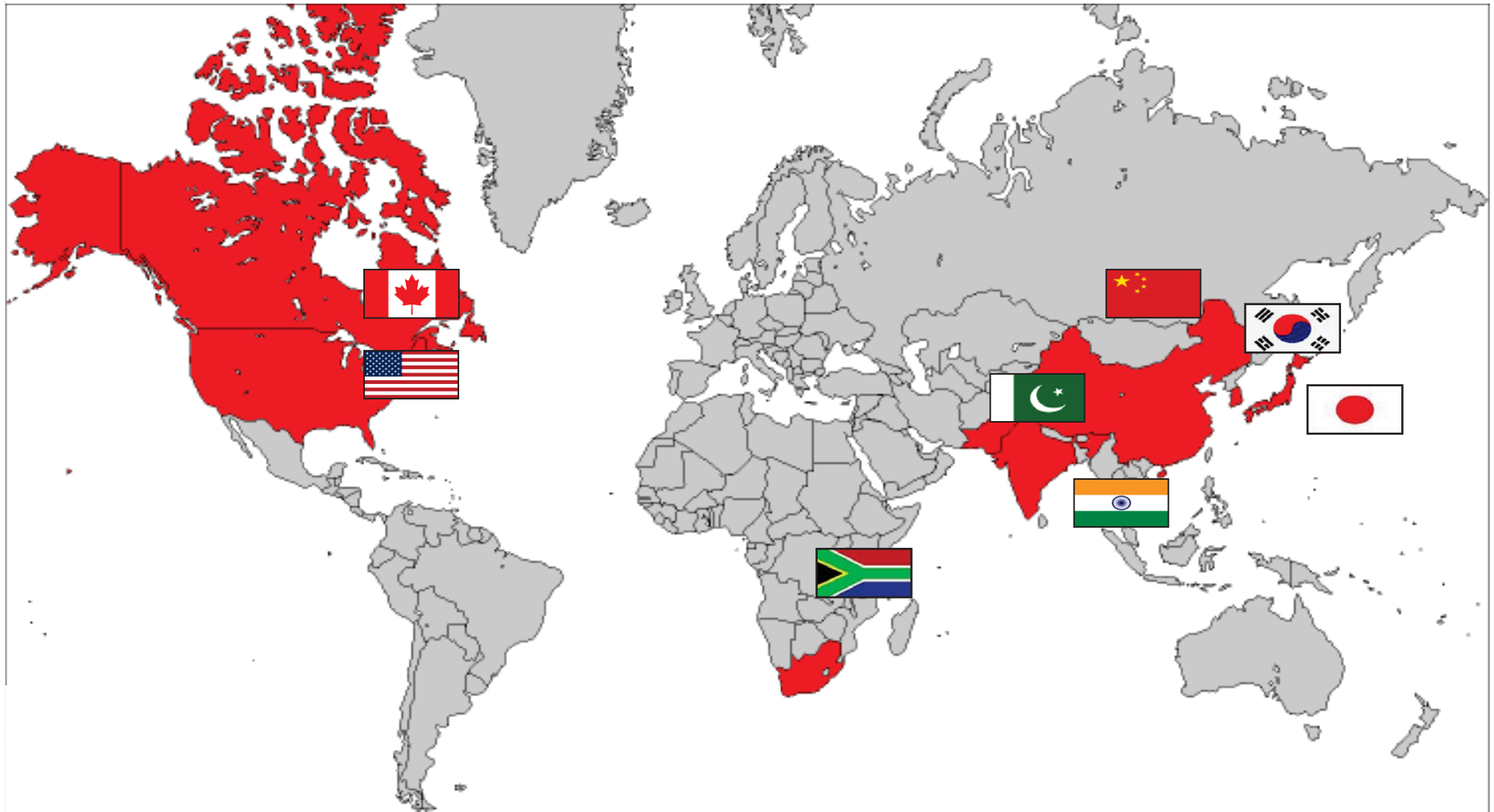
Observations on the Int'l Legal Framework for Nuclear Liability



Lack of treaty participation by
countries with a nuclear
programme and those without
such a programme

[consider for case study/
group project]

Approx. 227 NPPs not covered by the nuclear liability instruments
(USA (104); Japan (53); Republic of Korea (20); Canada (18); India (17); China (11); Pakistan (2); and South Africa (2))

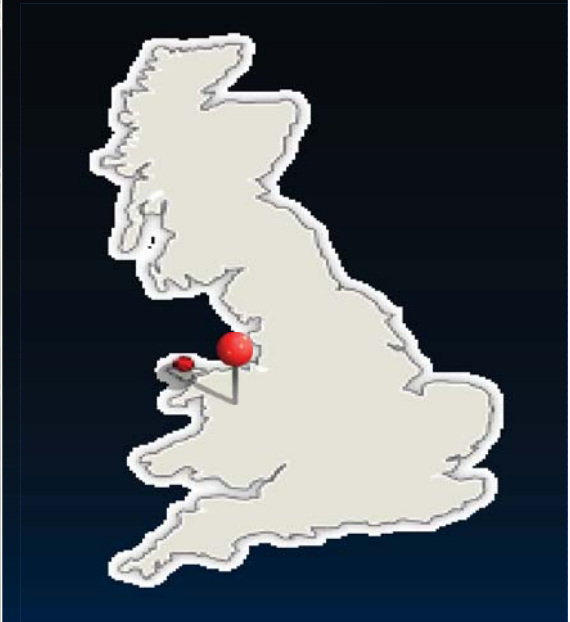
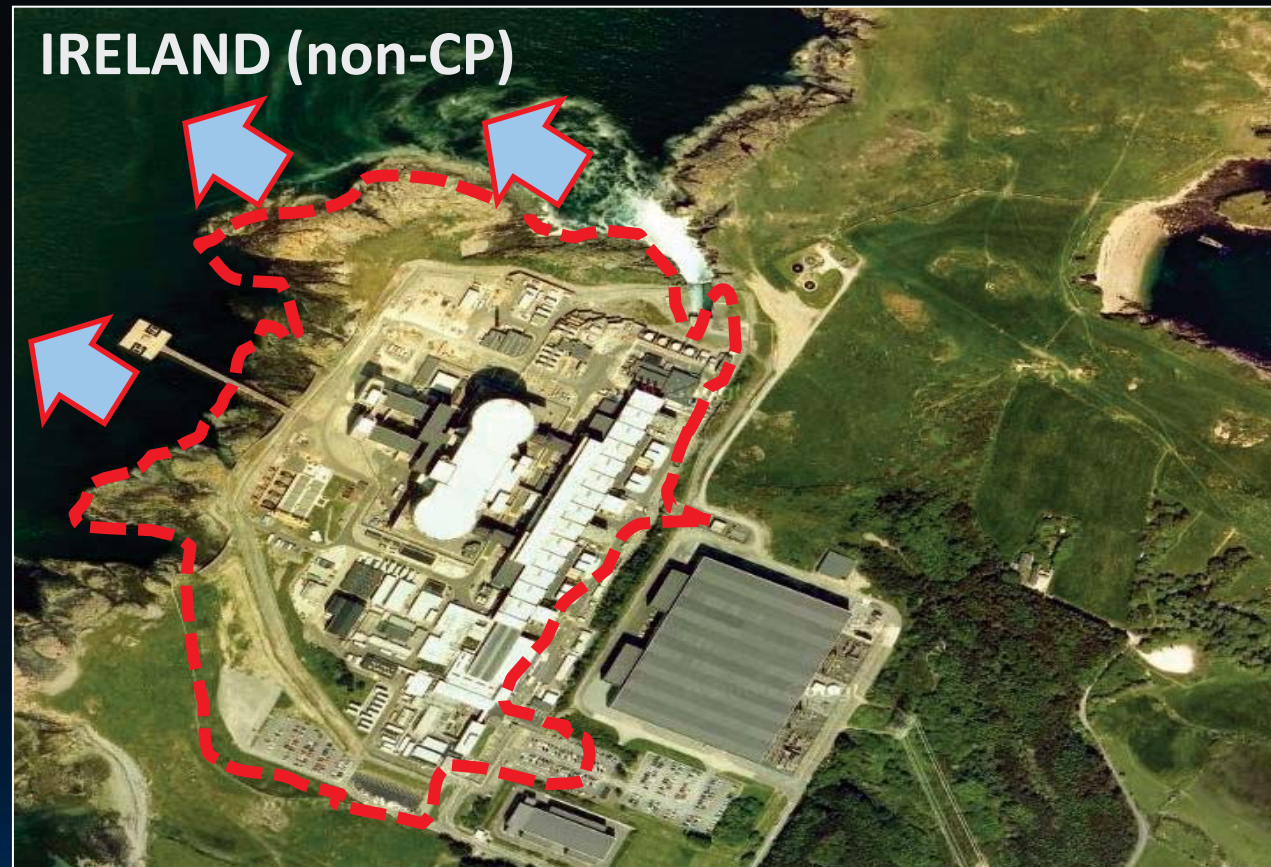


- But national legislation incorporating nuclear liability principles
- Yet treaty relations can be considered as being a vital part of legal certainty

Ex. of exposure for damage
suffered in a non-CP

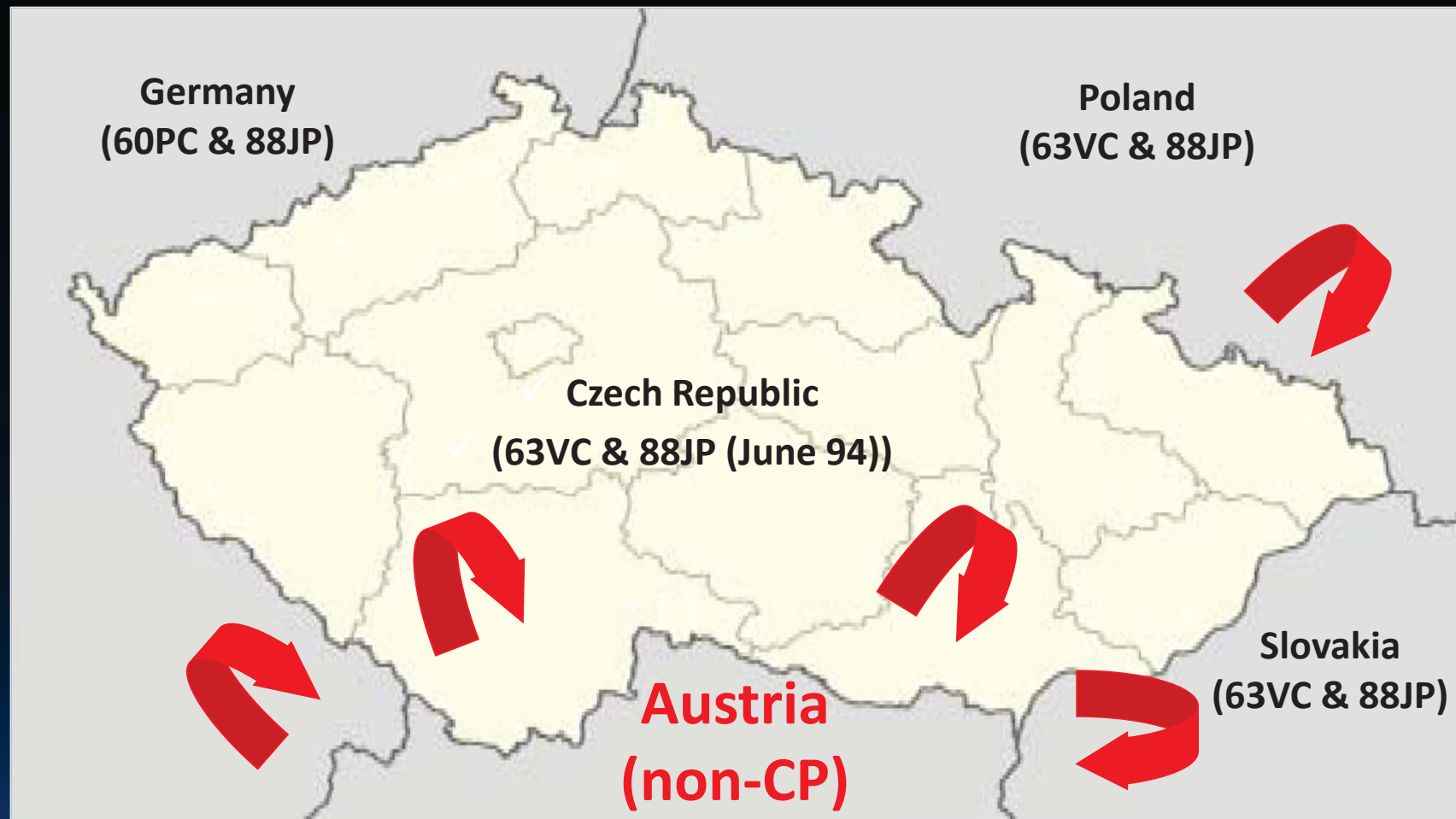
INCIDENT AT A NUCLEAR INSTALLATION

[consider for case study/
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OFF-SITE: Personal injury/death and property damage (UK – 60PC)

ON-SITE: Installation; and contractors equipment



- ✓ Czech Republic: With the exception of Austria, nuclear liability treaty relations with all neighbours incl. 60PC Germany via the 88JP
- ✓ Austria: Non-CP

Points to remember

The special nuclear liability regime can:

- provide a clear identification of liable person
- provide uniform rules and mechanisms for compensation
- minimize prolonged & expensive litigation
- avoid forum shopping by uniform rules on jurisdiction
- assure recognition and enforcement of judgements

Thank you for your attention



Anthony Wetherall
Legal Officer
Nuclear and Treaty Law Section
Office of Legal Affairs
Tel: 0043 (0)1 2600 21511
Email: a.wetherall@iaea.org