

# **The International Thermonuclear Experimental Reactor (ITER) International Organisation: Which Laws Apply to this International Nuclear Operator?**

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**I**TER is a research project the purpose of which is to demonstrate the scientific and technical feasibility of fusion as a new source of energy. After construction of large Tokamaks,<sup>1</sup> such as the JT60 in Japan, TFTR (Tokamak Fusion Test Reactor) in the United States, JET (Joint European Torus) in the United Kingdom and Tore Supra in France, this project is the last stage of research to be conducted before construction of an industrial prototype using fusion reactions to produce electricity, planned for the 2040-2050 timeframe.

ITER is being carried out by way of international collaboration between seven partners – the European Atomic Energy Community (Euratom), China, India, Japan, Russia, South Korea and the United States – which together represent more than half the world’s population. From a project organisation point of view, it is supported by both financial and in-kind contributions (components, equipment, materials and other goods as well as seconded staff),<sup>2</sup> provided by each of the partners.

Each member makes its contribution through a special legal entity called a “domestic agency”, to an international organisation which was set up by the Agreement on the Establishment of an International Fusion Energy Organization for the Joint Implementation of the ITER Project (hereinafter referred to as the “ITER Agreement”),<sup>3</sup> signed in Paris on 21 November 2006, and which

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1. Tokamak is the Russian acronym for Toroidalnaya Kamera s Magnitnymi Katushkami, which means toroidal magnetic chamber, invented in the early 1950s by Igor Tamm and Andreï Sakharov, involving the innovative idea of circulating a very strong current within the plasma.
2. Article 8 of the ITER Agreement.
3. O.J.E.U. L. 358/62 of 16 December 2006.

entered into force on 24 October 2007 after ratification by each of the partners.<sup>4</sup> This international agreement is to remain in effect for a period of 35 years and may be renewed for a period of 10 years without any change to its content. It is supplemented by an agreement of the same date on the privileges and immunities of the organisation and of its staff.

The function of the ITER Organisation is to construct, commission, operate, and permanently shutdown the ITER facilities, to encourage their exploitation by laboratories, other institutions and personnel participating in the fusion energy research and development programmes of its members and to promote public understanding and acceptance of fusion energy.<sup>5</sup>

The unique institutional structure for this project will be described briefly in the introduction before analysing the law applicable to this international organisation, a French nuclear operator, unique in France today.

## 1. Institutional structure of the ITER project

Organising this project required setting up a legal structure at several levels:

- At the international level, an international organisation was set up with the privileges and immunities attached thereto; the ITER Organisation is the nuclear operator of this future basic nuclear installation, as defined in French nuclear law (*installation nucléaire de base – INB*), and the employer of its personnel. Its headquarters is located at Cadarache, in the commune of Saint-Paul-les-Durance, Bouches du Rhône.
- At the level of each partner, a domestic agency was set up to take charge of the partner's contribution to the project.
- At the European level, a joint undertaking within the meaning of Article 45 of the Treaty establishing the European Atomic Energy Community (Euratom Treaty), *Fusion for Energy*, was set up by Council Decision No. 2007/198/Euratom of 27 March 2007,<sup>6</sup> Europe being the host partner (i.e. the one whose site was adopted and the major contributor).
- At the French national level, co-ordination of the ITER project has been conducted on behalf of the French Government since 2005 by a High Representative for completion of the ITER project in France (hereinafter referred to as “HRFI”), appointed by the Prime Minister.<sup>7</sup>

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4. Euratom ratified the Agreement on 5 February 2007, India on 29 March 2007, South Korea on 13 April 2007, Japan on 29 May 2007, the United States on 4 June 2007 and China on 24 September 2007. Article 22 of the ITER Agreement provides that its entry into force will be effective one month after the last ratification.

5. Article 3 of the ITER Agreement.

6. O.J.E.U., 30 March 2007, L 90/58.

7. Since 2007, the Representative in question has been Bernard Bigot, also the General Administrator of the CEA since January 2009.

## ***HRFI***

The main task of the HRFI is to co-ordinate both central and local French Government services, to implement the commitments undertaken by France in relation to the ITER project. The HRFI also co-ordinates the various structures set up by the host country: *Agence ITER-France*, the ITER Prefectoral mission, the ITER Industrial Committee, and the educational and research federations whose work supports thermonuclear fusion and the ITER project.

The HRFI prepares the positions adopted by France and helps represent France in the relevant international bodies and before other project members, the European Union and its member states.

### ***Agence ITER France***

A French entity, *Agence ITER-France* was set up by Decree No. 2006-752 of 29 June 2006 and is responsible for monitoring the development of the project, as far as France's share of responsibility for it is concerned.<sup>8</sup> It enjoys administrative and budgetary independence from the Atomic Energy Commission (CEA),<sup>9</sup> its tasks being to ensure technical and operational interface with international and European bodies; to conduct public participation procedures; to prepare and present safety and security reports for the ITER project and undertake any other tasks entrusted to it; to collect the French contributions (funds and contributions in-kind) from the state, regional authorities or the CEA; to carry out preparatory work at the site of the ITER project; to oversee operations for the dismantling of the installation on the basis of special contributions from the international partners; and to monitor, for the French Government, the assessment of dismantling costs and the setting up of corresponding provisions and assets by the international body.

### ***Supporting role: ITER Mission***

A supporting role under the Prefect of the Region was established, by letter of 29 June 2005, in order "to facilitate as far as possible the setting up of the ITER Project in the PACA region". This mission involves co-ordinating all the administrative procedures within operational deadlines, while ensuring that this international scientific project attracts economic and local development for the "Provence/Alpes Côte d'Azur" region.

Within this general organisation, we shall concentrate more particularly on the legal structure created at the international level, the ITER Organisation. It is governed by international law but nevertheless, in its capacity as a French nuclear operator it remains subject to national law in certain particularly important areas of safety pursuant to Article 14 of the ITER Agreement which reads as follows:

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8. Since 2006, the Director of *Agence ITER France* has been François Gauché (Order of 8 September 2006 appointing the Director of *Agence ITER France* within the Atomic Energy Commission, J.O.R.F. of 21 September 2006).
  9. For more information on the CEA, see: Grammatico-Vidal. L., "Changes in the Legal Status of the Commissariat à l'énergie atomique", *Nuclear Law Bulletin* No. 83 (2009/1), p. 77.

“The ITER Organization shall observe applicable national laws and regulations of the Host State in the fields of public safety and security, occupational health and safety, nuclear safety, radiation protection, licensing, nuclear substances, environmental protection and protection from malevolent acts”.

## **2. The ITER Organisation: A French nuclear operation with international status**

The legal structure chosen to conduct the ITER project, an international organisation enjoying privileges and immunities, is unique on French territory for the operation of a basic nuclear installation.<sup>10</sup>

The ITER Organisation is an international organisation under public law being the owner, nuclear operator and scientific and technical leader of the project, all at the same time. As such, it is no different from any other international organisation subject to international law. It has an international legal personality capable of having rights and obligations, whether in its relations with other international law entities or when performing its functions on national territory. Under the ITER Agreement, it enjoys the legal capacity necessary to conclude agreements with states and international organisations, to conclude contracts, to acquire, hold and dispose of immovable property, to obtain licences and to institute legal proceedings.<sup>11</sup>

The ITER Organisation has a traditional institutional and managerial structure; essentially it comprises a Council composed of representatives of the seven parties to the agreement and a Director-General.

- The ITER Council is the principal organ of the ITER Organisation, comprising (up to four) representatives from each member and appointing a Chair and Vice-Chair from amongst its members.
- The ITER Council is responsible for the promotion, overall direction and supervision of the activities of the ITER Organisation. It may make recommendations or take decisions on any matters concerning the ITER Agreement.
- The Director-General is the chief executive officer and the representative of the organisation in the exercise of its legal capacity. Responsible to the Council for the execution of his duties, the Director-General is appointed for a period of five years which may be renewed once, and is assisted by the organisation’s staff.
- The staff of ITER is made up of two categories: direct employees of the organisation and personnel seconded by the members.

The secondment agreement between the domestic agency and the ITER Organisation lays down the working conditions, disciplinary procedures, function and responsibilities of the organisation with regard to seconded staff. They enjoy privileges and immunities and are subject to certain expressly listed social provisions. Such personnel, seconded in a

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10. Basic nuclear installations are defined by Decree No. 2007-830 of 11 May 2007 on the nomenclature of basic nuclear installations, J.O.R.F. No. 110 of 12 May 2007, p. 8766, text No. 82.

11. For further information on the legal status of international organisations, see Instalment 112-3 of the *Jurisclasseur Droit international*, “Principes communs aux organisations internationales: statut juridique” as well as Instalment 112-20 on “Les éléments constitutifs des organisations internationales”.

permanent and continuous fashion, are nevertheless considered as staff of the ITER Organisation.

- Staff sent by domestic agencies outside this framework (for example, in the context of contractual services between an enterprise and a domestic agency) do not fall into the category of ITER Organisation staff. This has legal consequences since they do not benefit from the legal status of an international organisation nor from its privileges and immunities and are subject to ordinary law.

As for the privileges and immunities granted within France under the Headquarters Agreement between the Government of France and the ITER Organisation, they are based on usual practice in this respect for international organisations and adapted to the situation of the ITER project. These privileges are justified because it is necessary to guarantee the independence of the organisation *vis-à-vis* the host country in its territorial sovereignty.<sup>12</sup>

Their content and scope were laid down in an Agreement on the privileges and immunities of the ITER International Fusion Energy Organization for the Joint Implementation of the ITER Project (hereinafter referred to as “P&I Agreement”), also signed on 21 November 2006 in Paris and entered into force on 24 October 2007.<sup>13</sup>

Since France is not directly party to the ITER Agreement, the European partner being Euratom, application of the privileges and immunities required the conclusion of a Headquarters Agreement between the Government of the French Republic and the ITER International Organisation as provided for in Article 12(7) of the ITER Agreement.

It should be noted that, as of 17 November 2006, the host partner Euratom decided to apply provisionally the ITER Agreement and the P&I Agreement within the territory of the European Community pending the entry into force of the Agreement subject to the ratification procedures of the partners.<sup>14</sup> However, a question mark remained as to whether Euratom could, by its signature alone, commit one of the member states in an area such as this and whether such a commitment could be introduced into France’s internal legal system. This question was of fundamental practical importance because the French courts do not take account of immunities which have not been properly introduced into the domestic legal system. This being so, the Headquarters Agreement between France and the ITER Organisation was a response to this question providing a legal basis for the privileges and immunities of ITER, as recognised for international treaties by Article 55 of the French Constitution.

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12. The principle of the legal equality of members constitutes one of the grounds for the attribution by France of such privileges and immunities without which, indeed, the host country would enjoy a dominant position *vis-à-vis* the other members, see Memorandum of the legal service of the United Nations on fiscal immunity, UNJY, 1972, p. 165.

13. O.J.E.U. of 16 December 2006, L 358/82.

14. This decision was taken on the basis of an arrangement between the partners as to the provisional application of the Agreement on the establishment of the ITER International Fusion Energy Organization with a view to the joint implementation of the ITER project of 21 November 2006, published in the O.J.E.U. of 16 December 2006, L 358/81 and of Commission Decision of 17 November 2006 on the provisional application of the Agreement on the establishment of the ITER International Fusion Energy Organization for the Joint Implementation of the ITER Project and of the Agreement on the privileges and immunities of the ITER International Fusion Energy Organization for the Joint Implementation of the ITER Project, 2006/943/Euratom, O.J.E.U. of 16 December 2006, L 258/60.

This Headquarters Agreement, signed in Cadarache on 7 November 2007, entered into force on 9 April 2008 after parliamentary ratification by Act No. 2008-135 of 13 February.<sup>15</sup>

The consequence of this ratification was to introduce the privileges and immunities into the French internal legal system and to define the rules of domestic law to which this international organisation was subject, notably inspections and controls, conducted in accordance with French legislation, that the ITER Organisation carries out in the areas falling within the scope of application of Article 14 of the said ITER Agreement.<sup>16</sup>

The legal rules on privileges and immunities concern both the international organisation as a legal person and its staff, as well as experts and representatives of its members.

The Headquarters Agreement confers legal capacity on the ITER Organisation to enable it to manage the resources necessary for its functioning. It guarantees the inviolability of its buildings and premises, archives and correspondence. It confers jurisdictional immunity and immunity from execution for all acts performed in the course of its functions, except for the cases specifically laid down in the agreement. In the framework of its official activities and in respect of the goods or services required for its functioning, the ITER Organisation also benefits from tax exemptions.

In particular, its staff enjoy jurisdictional immunity and inviolability with regard to official papers and documents, and facilities with regard to exemptions from restrictive immigration measures and the registration of foreigners.

The Director-General and the Principal Deputy Director-General of the ITER Organisation enjoy the privileges and immunities accorded to heads of diplomatic missions.

Under Article 12 of the Headquarters Agreement, the representatives of the member countries and experts also enjoy privileges and immunities (jurisdictional immunity, immunity from arrest and inviolability of all official papers and documents, customs facilities with regard to their personal luggage). Under the agreement, they may enter the national territory and stay there without the need for registration formalities.

Lastly, it should be noted that the privileges and immunities are not in any way geographical; they do not create a special territory within which legislation different from that applicable in the host country applies. As a result, other employees working in France who do not fall within the categories of persons benefiting from the status of the ITER Organisation remain subject to ordinary law.

Thus, the ITER Organisation applies the rules adopted pursuant to its founding document, i.e. the ITER Agreement, and general international law, notably the Vienna Convention of 1969 on the Law of Treaties, and not the domestic law of the host country except where that has been expressly provided for in its founding treaty and except for contractual clauses applying domestic law and accepted by the organisation.

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15. The Headquarters Agreement was approved by Act No. 2008-135 of 13 February 2008 (J.O.R.F. of 15 February 2008, p. 2778) and entered into force on 9 April 2008. It was published in the Official Journal of the French Republic by Decree No. 2008-334 of 11 April 2008, J.O.R.F. of 13 April 2008, p. 6191.

16. Article 14: "The ITER Organization shall observe applicable national laws and regulations of the Host State in the fields of public and occupational health and safety, nuclear safety, radiation protection, licensing, nuclear substances, environmental protection and protection from acts of malevolence".



### 3. *The ITER Organisation: An international organisation subject, in part, to national law*

In view of the objectives pursued by the ITER Organisation and of the classification of the experimental installation as a basic nuclear installation, ITER undertook to comply with national laws and regulations in the fields of public and occupational health and safety, nuclear safety, radiation protection, licensing, nuclear substances, environmental protection and protection from acts of malevolence (Article 14 of the ITER Agreement). The areas concerned are essentially those which are important to safety, such as nuclear safety, in almost all its aspects,<sup>17</sup> and occupational safety.

In order to give effect to the host country's laws, it became apparent that a provision allowing for a waiver of immunity had to be included in the ITER Agreement inasmuch as the immunities of international organisations are absolute, failing express renunciation, and no rule of domestic law can provide to the contrary.

Given what is at stake (the operation of a nuclear installation), the ITER Organisation is in a very different situation from other international organisations, and the waiver of immunities and privileges was expressly provided for in Article 12(3) of the ITER Agreement, i.e. "in any case where the authority competent to waive the immunity considers that such immunity would impede the course of justice and that waiver would not prejudice the purposes for which it was accorded and where, in the case of the ITER Organization, the Director-General, and the Staff, the Council determines that such a waiver would not be contrary to the interests of the ITER Organization and its Members". Article 12(4) provides that these privileges and immunities must not diminish or affect the duty of the ITER Organisation, the Director-General or the staff to comply with the laws and regulations referred to in Article 14.

It was then necessary to define the arrangements for co-operation between the parties on the provisions of national law which the ITER Organisation would apply, inasmuch as it benefits from the inviolability of its premises, consisting of a ban on host country agents, whether administrative or judicial, entering the premises of the organisation or its annexes without the organisation's consent.

#### **a. The international organisation and nuclear safety**

Apart from Article 14 of the ITER Agreement, the Headquarters Agreement and its Annex have also provided for the application of French nuclear safety law and arrangements for co-operation between the ITER Organisation and the French authorities, notably with regard to nuclear safety and radiation protection inspections.

- The application of French nuclear safety law to the ITER research installation means that France's regulations relating to nuclear safety, radioactive substances and radiation protection are applicable to it. Its design, construction and operation, as well as its permanent shutdown and dismantling are subject to Act No. 2006-686 of 13 June 2006 on nuclear transparency and safety and to its implementing texts.<sup>18</sup>

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17. Section 1 of Act No. 2006-686 of 13 June 2006 on nuclear transparency and safety defines nuclear safety as: "nuclear safety includes nuclear security, radiation protection, the protection from, and fight against, acts of malevolence, and public safety measures in the event of an accident".

18. For a commentary on this act, see M. Léger and L. Grammatico, "Nuclear Transparency and Safety Act: What Changes for French Nuclear Law?", *Nuclear Law Bulletin* No. 77 (2006/1); for more extensive

A safety option report and a request for a construction licence from the competent French administrative authority were therefore prepared in respect of the installation.

This situation is all the more unique in legal terms in that research installations in the field of fusion are not always governed by national nuclear law, but rather by industrial environmental law (this is the case with JET in England, for example and with Tore Supra in France). There may be two reasons for this: first, differences in nomenclature between countries as to whether an installation qualifies as a basic nuclear installation and secondly, the activity level of the radionuclides which may not reach the threshold required for classification as a basic nuclear installation.

The ITER Organisation became a nuclear operator from the day on which its request for a construction licence was submitted, in accordance with Section 7 of Decree No. 2007-1557 of 2 November 2007 and, as such, must comply with all the regulations applicable to nuclear operators.

- As regards radiation protection, the ITER Organisation is also bound to comply with the national rules laid down in the Labour Code and the Public Health Code. The purpose of these rules being are to protect workers and the public from ionising radiation. They are based on the standards and recommendations issued by the International Atomic Energy Agency (IAEA) and, at the European Community level, on the Euratom Treaty and the Directives adopted thereunder. The same is true for French environmental provisions, which the organisation also applies.

This legal situation is very different from that applicable to other organisations of the same type. If one compares ITER to the European Organization for Nuclear Research (hereinafter referred to as “CERN”), which is also a governmental organisation (with only European Community partners and Switzerland), one sees that CERN is not a nuclear operator within the meaning of French law since the installation concerned has not been classified as a basic nuclear installation as defined by Decree No. 2007-830 of 11 May 2007.<sup>19</sup> However, given the objective of CERN (construction and operation of installations such as the large electron positron collider (LEP), the large hadron collider (LHC), and the super proton synchrotron (SPS), it was agreed with France in July 2000<sup>20</sup> that these objectives should be carried out with guarantees equivalent to those applying under French nuclear safety legislation for basic nuclear installations. Nevertheless, ITER’s articles provide for its being subject to French nuclear law which is not the case for CERN.

Another basic nuclear installation in France which is operated by a non-national operator is the reactor used by the Institut Max von Laue - Paul Langevin, a non-commercial partnership created by agreement between France and Germany in 1967, amended for the accession of the United Kingdom in 1974 and whose partners currently are the CEA, CNRS, Science and Technology Facilities Council and Forschungszentrum Jülich. However, this is a non commercial entity in partnership with ten other European members, and not an international organisation with the associated legal status.

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information on the French nuclear regime, see the Instalment of the Dictionnaire Permanent Environnement et Nuisances, *Installations et activités nucléaires*, May 2008 – Legislative Editions.

19. And previously by Decree No. 63-1228 of 11 December 1963 on Nuclear Installations.
20. Agreement between the Government of the French Republic and the European Organization for Nuclear Research (CERN) on the safety of installations relating to the large hadron collider (LHC) and the super proton synchrotron (SPS) of 11 July 2000, which entered into force on 11 September 2000 and was published by Decree No. 2000-1065 of 25 October 2000, J.O.R.F. of 1 November 2000, p. 17362.



At the European Community level, there are several partnerships under which nuclear installations are operated by non-national legal structures: the Joint Research Centre, for example, is one of the Directorates-General of the European Commission comprising seven research institutes located in five member states of the European Union (Belgium, Germany, Italy, Netherlands and Spain) which also operate nuclear installations in Europe with a view to assessing the nuclear safety and security of innovative or future systems. Set up in 1957 under the Euratom Treaty as a “Joint Nuclear Research Centre”, the JNRC dropped the adjective “nuclear” from its title in the early 1970s following restructuring measures which resulted in a diversification into other fields of scientific research. It is administered at Community level with the 27 member states of the Union but does not have any international partners outside Europe.

The rules relating to the protection and control of nuclear materials as well as those relating to protection against acts of malevolence are also applicable. The rules in question are codified in the Defence Code in Articles L. 1333-1 *et seq.* and L. 1332-1 *et seq.*, and in the corresponding regulatory Articles (Articles R. 1333-1 *et seq.* and R. 1332-1 *et seq.*).

While there is no doubt that French nuclear law is applicable to the ITER installation from its conception until its dismantling, the question remains whether the nuclear third party liability regime established by the Paris Convention on Nuclear Third Party Liability of 29 July 1960<sup>21</sup> applies to ITER. The first issue to be decided was whether fusion installations were subject to this regime. A comparative reading of the Paris Convention, and more precisely its Article 1 dealing with definitions<sup>22</sup> of its Exposé des Motifs and of the official interpretations which have been given by the contracting parties and the Nuclear Energy Agency (NEA) of the OECD, have led to this question being answered in the negative.<sup>23</sup>

The ITER installation is excluded from the scope of application of the convention because the definition of “nuclear fuel” technically limits the application of the convention to installations using

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21. The regime of the Paris Convention is based on the following principles: the channeling of liability to the operator who is alone liable for damage to persons and property, covered by this regime, caused by a nuclear accident. The corollary of this approach is that the possibilities for operators or their insurers for recourse, notably against suppliers, are strictly regulated and limited, as are cases of exoneration from liability; the strict liability of the operator, victims being dispensed from having to bring proof of fault at the origin of their prejudice; limitation of the liability in amount and in time; the obligation, for the operator, to maintain insurance or other financial guarantee covering his liability; a single court with jurisdiction, so as to concentrate actions for compensation in a single court; non-discrimination between victims on grounds of nationality, domicile or residence.
  22. Article 1(a)(i) of the Paris Convention defines “*nuclear installation*”, as follows: “*Nuclear installation*” means reactors other than those comprised in any means of transport; factories for the manufacture or processing of nuclear substances; factories for the separation of isotopes of nuclear fuel; factories for the reprocessing of irradiated nuclear fuel; facilities for the storage of nuclear substances other than storage incidental to the carriage of such substances; and such other installations in which there are nuclear fuel or radioactive products or waste as the Steering Committee for Nuclear Energy of the Organisation (hereinafter referred to as the “Steering Committee”) shall from time to time determine; any Contracting Party may determine that two or more nuclear installations of one operator which are located on the same site shall, together with any other premises on that site where radioactive material is held, be treated as a single nuclear installation”. Article 1(a)(iii) of the Paris Convention: “*Nuclear fuel*” means fissionable material in the form of uranium metal, alloy, or chemical compound (including natural uranium), plutonium metal, alloy, or chemical compound, and such other fissionable material as the Steering Committee shall from time to time determine”.
  23. Note by the Secretariat of the NEA, “Liability and Financial Security for Risks Posed by Nuclear Fusion Installations”, 2-3 November 2005, NEA/NLC/DOC(2005)4.

fission reactions; in addition, the Exposé des Motifs of the Convention specifies, in its revised version approved by the OECD Council on 16 November 1982, that with regard to fusion, "... given that the possible applications of nuclear fusion are not yet clear, it does not seem possible or necessary to take this form of nuclear activity into consideration in the Convention".

The realisation of the ITER project nevertheless makes it necessary to think about whether it would now be desirable to include nuclear fusion installations in the Paris Convention. The development of such a branch of energy production could indeed only be envisaged if the operators of such installations could have their nuclear third party liability covered within the framework of a known regime and if they could make use of nuclear liability insurance. In the absence of any such regime, operators would risk being held fully liable for unlimited nuclear damage for which insurance would be impossible since insurers refuse to cover such risks outside a nuclear third party liability regime such as that set up by the Paris Convention or the Vienna Convention on Civil Liability for Nuclear Damage.

Applying such a regime would be of great advantage to the organisation since it could then benefit from the regime's general principles, i.e. strict liability,<sup>24</sup> channelling of liability to the operator (exclusive liability), the limitation of liability both in amount and in time with the corollary of an obligation on the operator to arrange a financial guarantee – a guarantee which it could then find on the insurance market – and the jurisdiction of a single court.

There remain today several questions about the desirability of such an amendment and what procedural arrangements could be used to achieve it.

From a procedural point of view, including nuclear fusion installations within the scope of the application of the Paris Convention would require an amendment of the convention which, in turn, needs the agreement of the contracting parties by means of a relatively cumbersome procedure which could take several years but which, from the legal point of view, would not raise insurmountable difficulties.

As the texts stand, in the absence of the application of any such regime to the ITER Organisation, it is the organisation's non-contractual liability which applies, as a result of Article 15(2) of the ITER Agreement which provides: "in the case of non-contractual liability, the ITER Organisation shall compensate appropriately or provide other remedies for any damage caused by it, to such extent as the ITER Organisation is subject to a legal liability under the relevant law, with the details of compensation arrangements to be approved by the Council. This paragraph shall not be construed as a waiver of immunity by the ITER Organisation". Moreover, "in case the costs of compensation for damage referred to in paragraph 2 exceed funds available to the ITER Organisation in the annual budget for operations and/or through insurance, the Members shall consult, through the Council, so that the ITER Organisation can compensate, according to paragraph 2 by seeking to increase the overall budget by unanimous decision of the Council in accordance with Article 6(8)".

Article 15(5) also provides that "[m]embership in the ITER Organisation shall not result in liability for members for acts, omissions, or obligations of the ITER Organisation" while Article 15(6) specifies that "[n]othing in this Agreement shall impair, or shall be construed as a waiver of, immunity that members enjoy in the territory of other States or in their territory".

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24. This means that victims do not need to prove fault at the origin of their prejudice. On the main principles of nuclear third party liability, see Schwartz, J.A., "International Nuclear Third Party Liability Law: The Response to Chernobyl", *International Nuclear Law in the Post-Chernobyl Period*, A Joint Report by the NEA and the IAEA, 2006.

It should be noted that amending the Paris Convention in order to include fusion installations should lead, in parallel, to a waiver of the immunities on this subject so that the provisions of the convention can be applied.

#### **b. The ITER Organisation subject to national occupational health and safety regulations**

The ITER project brings together seven partners who will provide most of their contributions in kind. The project will therefore ultimately involve employees of over thirty different nationalities working together at the ITER site, a collaboration which will have to be rendered as safe as possible.

In this respect, Article 14 of the ITER Agreement provides that French occupational health and safety provisions are applicable. An Additional Protocol to the Headquarters Agreement was therefore prepared in order to define the arrangements for allowing occupational inspectors access to the site, having regard to the privileges granted to the ITER Organisation, notably the inviolability of the site. In principle this means that any person who is not a member, and this includes inspectors, requires authorisation for access.

This Protocol was signed in January 2009 by means of an exchange of letters between the Director-General of the ITER Organisation and the French Minister for Higher Education and Research, and is in the course of being ratified by Parliament.

This means that all those working at the ITER site are subject to the same provisions with regard to occupational health and safety, essentially those applicable under the French Labour Code.

It should also be noted that the ITER Organisation has drafted internal rules and a document concerning working conditions at the ITER site which are applicable to all those working at the site under the responsibility of the international organisation, irrespective of their employer. The legislative provisions take precedence, however, over those contained in these documents for workers who are not employed by the international organisation.

#### ***Conclusions***

The ITER International Organisation was created two years ago, and the project is in the course of being implemented; work will begin on the construction of buildings and offices, and the staff of the organisation works on the scientific aspects.

ITER is the most important research project to date carried out in the framework of international co-operation. It is also the first basic nuclear installation in France to be operated by an international organisation, which explains the special nature of the law applicable to it. Its status as an international organisation under public law might suggest that host country law would not be applied in this area. By accepting Article 14 of the ITER Agreement, however, and in light of the challenges involved, the project partners indicated their desire for the project to be governed by French nuclear safety regulations.

The legal problems relating to the setting up of an international organisation as a nuclear operator have now largely been resolved. Now others arise relating to how this status applies in practice and how the domestic agencies should provide their contributions in kind, within France, to an international organisation through the intermediary of foreign companies.

