

**Haftung deutscher Betreiber für Auslandsschäden:
Das Gegenseitigkeitsprinzip des § 31 Abs. 2 AtG**

**Liability of German operators for transboundary
damage: The reciprocity principle of section 31 of
the German Atomic Energy Act**

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Liability of German operators

Section 25 para. 4 Atomic Energy Act:

- *‘The operator of a nuclear installation shall be liable irrespective of the location where the damage occurs. Article 2 of the Paris Convention shall not apply.’*

Section 31 para. 1

- *‘The liability of the operator of a nuclear installation under the Paris Convention ... shall be unlimited. (...)’*

Section 31 para. 2

- provides for the extent of liability for damage occurring in another State, based on the **principle of reciprocity** (with exceptions)

The principle of reciprocity

- Applies to extent of liability (specified amount or unlimited)
- General approach: German operator is liable for foreign damage to the extent that legislation in the respective country affords compensation to German victims
- *'do ut des'*
- In practical terms, this brings the need to analyse the foreign legislations involved

Section 31 Atomic Energy Act

(as relevant here)

para. 1 clause 1: unlimited liability

para. 2: Liability for damage occurring in other states

clause 1	state affording unlimited liability to German victims	reciprocity: unlimited liability	exception (today)
clause 2	state affording limited liability to German victims	reciprocity: limited liability	rule
clause 3	state without nuclear installations	no reciprocity: fixed amount: 300m SDR in future: unlimited liability	exception

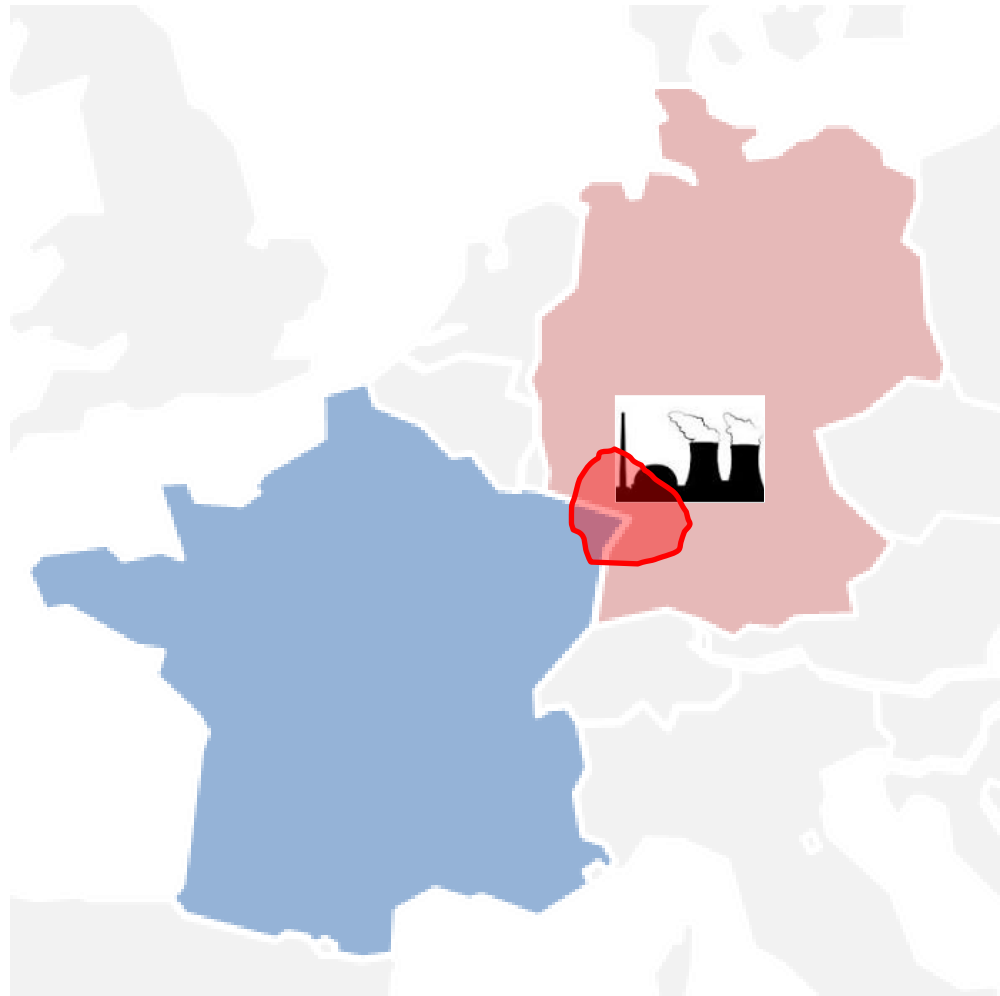
The two reciprocity clauses

- Clause 1: unlimited liability
 - Examples: Austria, Switzerland
 - *‘equivalent in terms of nature, extent and amount’?*
- Clause 2: limited liability
 - includes maximum amount of Brussels Supplementary Convention (BSC) if applicable
 - Today 300 mio. SDRs
 - 2004 Protocol: 1.5 billion Euros

Reciprocity and international conventions

- Application of reciprocity clauses is not conditioned on treaty relations (PC or VC/JP)
- However, membership in PC or VC/JP eases application of reciprocity clause by defining a minimum or standard level of compensation afforded to victims, including German citizens
- BSC included in calculation of amount (see above)

1. Accident in a German NPP



Damage: 5 billion Euros

- 4 billion Euros in Germany
- 1 billion Euros in France

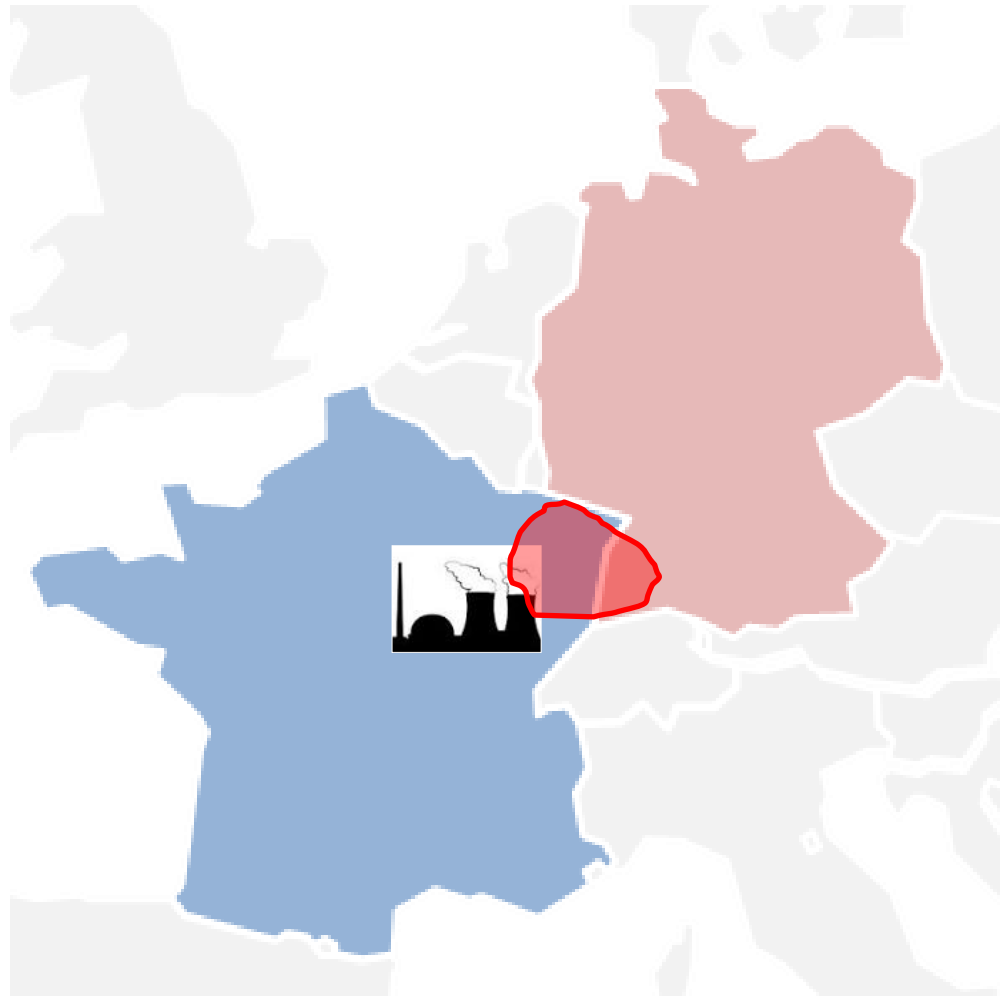
Liability of the German operator

- for damage in Germany: unlimited
- for damage in France: limited to 1.5 billion Euros (BSC)

In this case, the damage in France is fully covered by the operator's liability

(Third tier of BSC applies once the German mandatory cover of 2.5 billion Euros is exhausted)

2. Accident in a French NPP



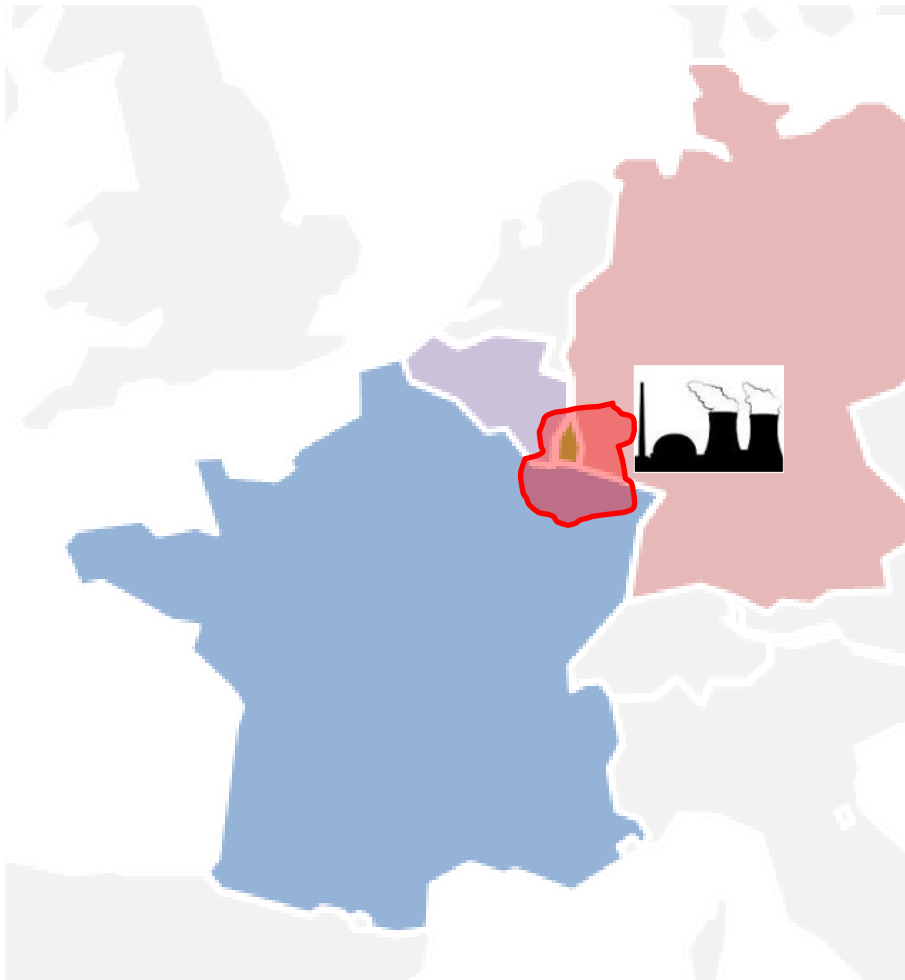
Damage: 5 billion Euros

- 4 billion Euros in France
- 1 billion Euros in Germany

Liability of the French operator:

- limited to 700 million Euros overall
- BSC raises this to 1.5 billion Euros
- French and German victims would receive a quota of 30%

3. Accident in a German NPP



Damage: 8 billion Euros

2 billion Euros each in

- Germany
- Belgium
- Luxemburg
- France

Liability of the German operator

- Germany: unlimited: 2 billion Euros
- Belgium: 1.5 billion Euros
- Luxemburg: unlimited: 2 billion Euros
- France: 1.5 billion Euros

In total: 7 billion Euros

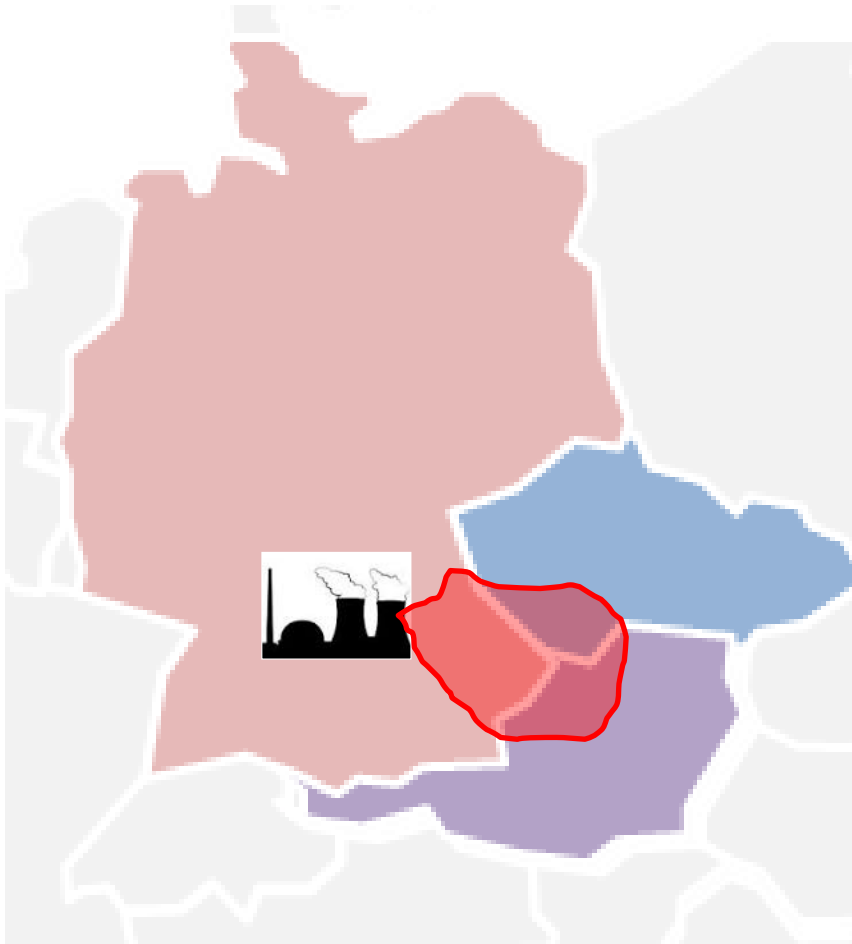
BSC 300 million as additional compensation

Effects of reciprocity

Reciprocity does not necessarily result in identical outcomes of vice-versa cases!

- Conflict if (German) unlimited liability meets (foreign) limited liability
- Liability of German operator is calculated on the maximum amount of foreign liability, as if this amount were fully available to German victims
- Accumulation if several countries are involved
- Additionally, 3rd tier of BSC has a double impact
- The provisions reflect the general approach of German legislation with focus on the victims
- Restrictive interpretation?

4. Accident in a German NPP



Damage: 4 billion Euros

- Germany: 2 billion Euros
- Austria: 1 billion Euros
- Czech Republic: 1 billion Euros

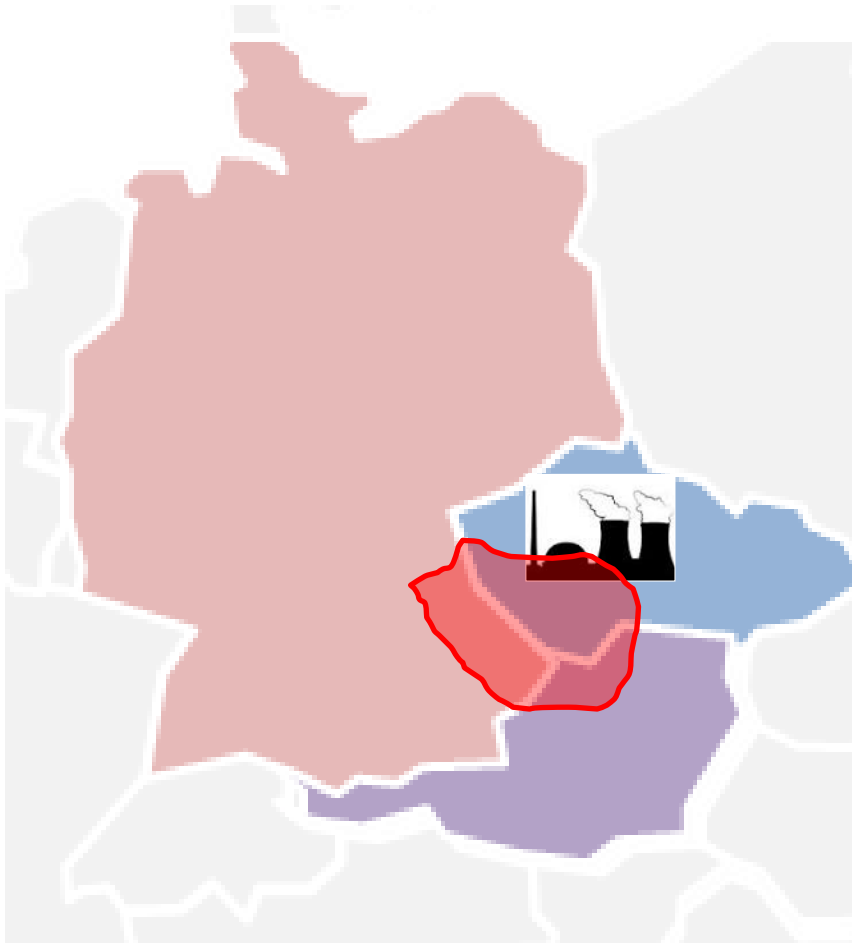
Liability of German operator

- Germany: unlimited
- Austria: unlimited
- Czech Republic: limited to 8 billion CZK (appr. 290 million Euros)

In total: 3.29 billion Euros

Minimum amount of PC (700 million Euros) not applicable

5. Accident in a Czech NPP



Damage: 4 billion Euros

- Czech Republic: 2 billion Euros
- Austria: 1 billion Euros
- Germany: 1 billion Euros

Liability of Czech operator

- limited to 8 billion CZK (appr. 290 million Euros) in total
- It would have to be analysed whether Czech law gives a claim to Austrian citizens

Austrian victims could (additionally) sue Czech operator in Austria since there is no treaty link between both states

Conclusions

- Reciprocity principle is a valid approach for liability vis-à-vis foreign victims
- No discrimination can be invoked by other states
- Any state can procure unlimited liability of German operator to its citizens by introducing unlimited liability in its own legislation
- Exception justified for countries without nuclear installation
- Approach of German legislation centered on compensation of victims
- Reciprocity will lose its importance to the extent that other countries introduce unlimited liability