

Apocalypse When? Liability for Damages Arising from Nuclear Incidents

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Atty. Elpidio V. Peria

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Consumers in China were shown in CNN today to be emptying their grocery shelves of salt, driven by the belief that taking in salt would spare them from the ill-effects of radiation from the disabled Fukushima Nuclear Power Plant in Japan, damaged by the earthquake and tsunami which hit the Northeastern part of Japan last March 11, 2011. The CNN news anchor however said that one will have to take in 80 tablespoons of salt in order to get the beneficial effects of one tablet of iodine, the chemical supposed to shield the body from the ill-effects of wayward radiation from the Japanese nuclear plant.

Right now, it is far-fetched for Filipinos to worry about the ill-effects of radiation from a malfunctioning nuclear plant since we don't have any nuclear plant in the Philippines that is operating.

We do have, however, the mothballed Bataan Nuclear Power Plant, which figured prominently as one of the issues against former President Ferdinand Marcos during Martial Law which was about to be the subject of heated debate among environmentalists and proponents. However, the staunchest proponent of the revival of the operation of the mothballed Bataan Nuclear Power Plant, Congresswoman Kimi Cojuangco of Pangasinan, has shelved her House Bill 1291 calling for the reopening of the nuclear plant "indefinitely" right after the magnitude 9.0 earthquake hit Japan.

In spite of this, we have to be aware that, we, as a country, deals with nuclear materials, and has been actively doing nuclear-related researches, right in the heart of the National Capital Region, in Quezon City, where a government agency dealing with these issues is based.

How's that again?

Yes, the Philippines, through the Philippine Nuclear Research Institute, an attached agency of the Department of Science and Technology, is currently and has long been engaged in research involving nuclear materials or methodologies, as can be seen from the website (<http://www.pnri.dost.gov.ph>) of this agency whereby applications, for example, in food and agriculture are routinely done, from crop improvement through mutation breeding, soil quality improvement, pest control (through sterile insect technique), improvement of animal production through the use of radioimmunoassay (a nuclear technique of measuring reproductive hormone) in the breeding and nutritional management of dairy cattle.

There are also applications in human health and medicine, environmental protection and management, water management and protection and industry.

This just goes to show that we, as a country, is prepared, and have even passed laws dealing with the liability arising from damage due to nuclear incidents, which is not limited to what is currently happening in Japan.

Such law is Republic Act 5207, dating from 1969, and it defines nuclear incidents as “any occurrence or series of occurrence having the same origin which causes nuclear damage”.

Nuclear damage on the other hand is “loss of, life, any personal injury or any loss of, or damage to, or loss of use of property, which arises out of or results from the radioactive, toxic, explosive or other hazardous properties, or any combination thereof, of nuclear fuel or radioactive products or any waste in, or of nuclear materials coming from, originating in, or sent to, a nuclear installation or from the ionizing radiation emitted by any other source of radiation inside a nuclear installation.”

This definition seems broad enough to contemplate contamination of food products arising also from radiation generated by the nuclear incident.

We seem to have a good safety record, judging from the lack of any case law involving the use of this law, which was amended by President Marcos himself in 1978, through Presidential Decree 1484, in 1978.

As written, this law deals with liability by installation operators, those who operate nuclear facilities or handle or transport nuclear materials, like the ones currently used in research, and limits their liability in the amount of US\$ 5 million from any one nuclear incident, exclusive of an interest or costs which may be awarded by the Court in actions for compensation of such nuclear damage.

The Clean Air Act, Republic Act 8749, passed in 1999, has a provision dealing with radioactive emissions, which reads as follows:

Section 33. Radioactive Emissions. - All projects which will involve the use of atomic and/or nuclear energy, and will entail release and emission of radioactive substances into the environment, incident to the establishment or possession of nuclear energy facilities and radioactive materials, handling, transport, production, storage, and use of radioactive materials, shall be regulated in the interest of public health and welfare by the Philippine Nuclear Research Institute (PNRI), in coordination with Department and other appropriate government agencies.

Now, in case of damage arising from radiation that may traverse Philippine territory, through the movement of natural elements, wind, air, rainfall, etc. from the Fukushima Nuclear Power Plant, which is now in the category of the Three Mile Island Nuclear Accident in the US from the scale of severity of nuclear incidents of the International Atomic Energy Agency (IAEA), that is a rare apocalyptic scenario that, in all circumstances should not be expected but something that we all should prepare for.

This discussion however, will require a separate write-up for some future date, as it deals with transboundary liability for nuclear harm, which is underpinned by several principles of customary international law as there is currently no specific or definite international legal regime that deals with these issues specifically.

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(Author is a Partner at Cartojano Peria & Associates, a full service law firm in the Philippines)
Comments are welcome! Email me at : pingperia16@yahoo.com