

# Colloquium on the Past, Present and Future of the Nuclear Law Committee

**6 February 2007**

The NEA Nuclear Law Committee (NLC) celebrated its 50th anniversary in February 2007. To mark the occasion, a colloquium was organised on 6 February 2007 in conjunction with the committee's regular meeting in Paris, France. Those attending included nearly all former NLC chairs and former heads of NEA Legal Affairs.

## Welcoming Address

Mr. Luis Echávarri, Director-General of the OECD Nuclear Energy Agency

## The Nuclear Law Committee - A Historical Perspective

Ms. Julia Schwartz, Head of Legal Affairs of the OECD Nuclear Energy Agency

## The NEA Nuclear Law Committee - From the Viewpoint of a Committee Member

Dr. Norbert Pelzer, Retired Academic, University of Göttingen, Germany

## Memorable Moments

Special guests

## The Prospects for Nuclear Law

Mr. Marc Léger, Director of Legal Affairs, Atomic Energy Commission, France

## Concluding Remarks

Mr. Roland Dussart-Desart, Chair of the Nuclear Law Committee



Speakers at the Colloquium.  
From left to right: Norbert Pelzer, Luis Echávarri, Julia Schwartz, Roland Dussart-Desart and Marc Léger



Past chairs of the NLC, together with former Heads of NEA Legal Affairs. From left to right: Måns Jacobsson, Otto Von Busekist, Héléne Conruyt-Angent, Pierre Strohl, Patrick Reyners, Maurice Lagorce, Håkan Rustand and Wouter Sturms.



Colloquium participants

## *50<sup>th</sup> Anniversary of the Nuclear Law Committee*

### *Colloquium of 6 February 2007*

#### *Opening Remarks by M. Luis Echávarri, Director-General of the OECD/NEA*

Mr. Chair, distinguished participants, dear colleagues,

It is an honour and great pleasure to speak to you in my capacity as Director-General of the OECD Nuclear Energy Agency on the occasion of the 50<sup>th</sup> Anniversary of your Committee. Over these five decades, we have witnessed remarkable evolution and development in the area of nuclear law. All of you have contributed to bringing the Nuclear Law Committee where it stands today. Your Committee deserves the highest level of congratulation for the contribution it has made to this successful evolution in the safe and responsible use of nuclear energy.

#### *1. History of the NLC*

As most of you know and as some of you will remember, the Nuclear Law Committee was founded on 24 January 1957, although for most of its existence it was known by a different name, the Group of Governmental Experts on Third Party Liability in the Field of Nuclear Energy. A smile will probably appear on your faces when I inform you that your Committee is even older than the NEA itself. Actually, the NEA was founded on 1 February 1958, several months after its first Committees had been created and had already held meetings. Unfortunately, the first Chair of your Committee is no longer with us to confirm this statement but I have it on good authority that this is the truth. Julia Schwartz will remind you of some key moments in the history of the Committee in a few minutes.

#### *2. Achievements of the NLC*

Nuclear energy has changed over the last 50 years. After the second World War, governments were eager to promote nuclear energy because they were convinced that it would bring benefits for their economies. When I first joined the OECD/NEA 10 years ago, the nuclear energy industry was considered by most, including many of our member countries, as being in trouble. Today, the situation is looking very different. Nuclear energy is now at a turning point in its evolution. It has demonstrated its economic competitiveness in many countries and the natural resources are there to support its broader development. Governments are taking a long hard look at energy policy, carefully weighing their options, and taking into account a changing economic and environmental context. As a result, some countries have confirmed their intention to include nuclear energy in their supply mix, and in some cases have even made commitments to build new plants. Many NEA Member countries are now facing common challenges for future nuclear energy development, including the development of a new generation of nuclear energy systems, the disposal of high-level radioactive waste, and the need to maintain expertise in the long term, to mention just a few.

One of the most remarkable features of the development of nuclear liability law is that it not only accompanied, but in fact preceded, the inception of a civilian nuclear industry. After the original research and development work by governments into applications of nuclear energy, many countries considered that nuclear power would promote rapid economic growth. However, potential investors were reluctant to act because of legal uncertainty and fears of crippling liability claims if an accident should occur. Lawyers hastened to assist. At the dawn of nuclear energy in the period 1950 – 1970, lawyers ensured that the nuclear energy sector could develop in the best possible circumstances. The main international nuclear liability conventions, the Paris Convention and the Vienna Convention, were concluded in the early 60's. The Paris Convention was supplemented by the Brussels Supplementary Convention. Delegates of your

Committee negotiated both the Paris and Brussels Conventions. By giving birth to these Conventions, your Committee has set the standard for what has become the global reference for an international nuclear liability regime.

The 1986 accident at Chernobyl demonstrated that damage resulting from a nuclear incident can have detrimental effects upon people, property and natural resources that are much more serious than initially envisaged under the nuclear liability conventions. Therefore, in response to that accident, a major international effort was undertaken to modernize the existing international nuclear liability regime. Two years after the accident and thanks to joint efforts from representatives of your Committee and the IAEA, the Joint Protocol was adopted to unite the Paris and Vienna Conventions, thereby increasing the protection of victims of nuclear damage. Delegates of your Committee also were actively engaged in the negotiation and adoption of the revised Vienna Convention and the Convention on Supplementary Compensation through their country's membership in the IAEA. The most recent initiative in this ongoing international effort is the revision of the Paris and Brussels Supplementary Convention by representatives of your Committee. These revised Conventions will ensure that more money is made available to more victims for more types of damage suffered as a result of a nuclear accident than was ever the case before.

Both the Group of Governmental Experts and the Nuclear Law Committee have played an important role in making the use of nuclear energy safer. Professor Pelzer will address the main achievements of your Committee in a few moments. I would like to take this opportunity to express my deepest gratitude to the Committee for its work over the last 50 years.

### **3. Future of the NLC**

After more than five decades, the NLC has moved beyond a focus on nuclear liability and is setting its sights on a broader variety of nuclear law issues. The increasing maturity of nuclear energy and nuclear energy law does not mean stagnation, nor does it mean a guarantee of stability. Notwithstanding decades of development of the nuclear energy sector, nuclear law is still a dynamic field. Change will happen, and new change-inducing factors will continue to emerge. I understand that Marc Léger will speak to you in more detail on concrete challenges for nuclear law in the future. However, you will agree with me that, as these changes occur, it becomes the responsibility of all concerned to maintain a clear sense of our primary health and safety goals. I am convinced that your Committee will continue to assist member countries in the development, strengthening and harmonisation of nuclear legislation that is based upon internationally accepted principles for the safe and peaceful use of nuclear energy. I also have no doubt that you will contribute to the further modernisation of the international nuclear liability regimes and encourage the strengthening of treaty relations between interested countries to address liability and compensation for nuclear damage. We will be well served by the global conscience that the NEA and your Committee personifies – broadening our perspectives on safety issues, consolidating our resources through cooperative efforts, and enhancing our insights through comparison of our commonalities and differences.

When confronted with new challenges in the nuclear law field, please remember that your Committee is unique. Nowhere in the entire world is there a similar entity which enables national delegates to meet regularly and which embodies top legal expertise on nuclear matters. Your Committee has all the necessary abilities to act as a centre of excellence for future nuclear law activities. I am therefore convinced that you will make a significant contribution in addressing these challenges and bringing substantial benefits to the international community, just as you have done over the past 50 years.

I would like to conclude by wishing you fruitful discussions and joining you in the celebration of the 50<sup>th</sup> Anniversary of your Committee.

Thank you.

## *50<sup>th</sup> Anniversary of the Nuclear Law Committee*

*Colloquium of 6 February 2007*

### *The Nuclear Law Committee – A Historical Perspective*

*By Julia Schwartz, Head of OECD/NEA Legal Affairs*

#### ***Introduction***

I would also like to warmly welcome everyone to this Special Session on the Past, Present and Future of the Nuclear Law Committee. Our Chairperson has already extended a special greeting to all of our special guests, and I would like to echo his words.

As you have already heard, the NLC traces its history back to 1957. On January 24<sup>th</sup> of that year, a Working Group on Harmonisation of Legislation on third party liability for damage caused by the peaceful use of nuclear energy was created by a Decision of the NEA Steering Committee. This Working Group, which later evolved into the “Group of Governmental Experts on Third Party Liability in the Field of Nuclear Energy”, eventually changed both its name and its mandate to become the Nuclear Law Committee (NLC), an NEA Standing Technical Committee that remains vibrant and active some 50 years following its initial creation.

The life of the Committee during these past 50 years has been largely influenced by major international events which have marked this period of history. Its composition has evolved and expanded and the course of its work has often been determined by important milestones in the peaceful utilisation of nuclear energy. The accomplishments of the Nuclear Law Committee have been varied and diverse; the drafting of international conventions in the field of civil liability for nuclear damage, followed by their revision on a regular basis, has been an important Committee success, although many other worthy activities have also been carried out during its existence.

#### ***The Working Group on the Harmonisation of Legislation (1957-1958)***

The establishment of the Working Group on the Harmonisation of Legislation actually preceded the creation of the European Nuclear Energy Agency (ENEA) by several months. The ENEA was only founded in February 1958 by a Decision of the Council of the European Organisation for Economic Co-operation (OECE)<sup>1</sup>. The OECE was itself a very young organisation, having just been created 10 years earlier, on April 16, 1948 and comprising at the time 18 member countries.<sup>2</sup> It was mandated, amongst other things, to ensure the promotion of co-operation between member countries and national production

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<sup>1</sup> In 1961 the OECD succeeded the OECE with the objective of strengthening the economies of its member countries, improving their efficiency, promoting the market economy, developing free trade and contributing to the growth of both industrialized and developing countries. The OECD was originally composed, therefore, of the original member countries of the OECD together with Canada and the United States.

<sup>2</sup> Austria, Belgium, Denmark, France, West Germany, Greece, Ireland, Iceland, Italy, Luxembourg, Netherlands, Norway, Portugal, Sweden, Switzerland, Turkey and the United Kingdom. West Germany was originally represented by the combined English and American occupied zones, the Bizone, and the French occupied zone. The Anglo-American zone of the Free Territory of Trieste also participated in the OECE until it passed once again under Italian sovereignty.

programmes to hasten the reconstruction of Europe, to supervise the distribution of funds allocated under the Marshall Plan as well as to intensify intra-European trade by lowering customs tariffs and other obstacles to the development of trade.

The OECE's structure included a Special Committee on Nuclear Energy. In 1956, this Committee was instructed, in co-operation with the Insurance sub-Committee of the OECE Committee on Intra-European Costs and Payments, to undertake work on the issues of legislation and insurance in the field of nuclear energy. The Insurance sub-Committee, in response, established a Working Group whose mandate was to undertake a study of the general framework within which necessary legislative provisions could be adopted which would allow insurers to fulfil their role in the nuclear energy field. The Study Centre of the Atomic Risks Permanent Commission of the European Insurance Committee<sup>3</sup> was closely associated with this study right from the very beginning. In its Report of June 23, 1956 the Working Group emphasised, amongst other things, the importance of examining the problem of civil nuclear liability and its possible limitations as well as suggesting the creation of an ad hoc Committee to actually carry out that examination.

Following this Report, the Special Committee on Nuclear Energy, which itself later became the Steering Committee for Nuclear Energy ("Steering Committee") took note of the fact that the problem of civil liability for damage resulting from the peaceful uses of nuclear energy, and the insurance difficulties linked to it, were likely to be key issues in the years to come. It decided, therefore, at its session held on January 24, 1957, to establish a Working Group on Harmonisation of Legislation [NE/M(57)1]. That Decision and the mandate of the Working Group are reproduced in *Annex 2*.

The Working Group was basically instructed to examine and to develop proposals on the issue of harmonising legislation regarding civil liability for damage caused by the peaceful uses of nuclear energy. In June 1957, it submitted to the Steering Committee a series of proposals for the establishment of a uniform civil liability regime covering nuclear damage and at the same time recommended to the Committee that it create a Group of Experts, comprised of members of the Working Group as well as lawyers, insurers and technical specialists, who would be responsible for drafting an international convention in the field of nuclear third party liability. This recommendation was adopted by the Steering Committee at its session held from July 2-3, 1957 [NE/M(57)4] and the newly created Group of Experts held its first meeting on January 22, 1958.

In parallel with these activities, the OECE Council was pursuing the idea of establishing within the Organisation, an Agency that would take charge of all nuclear energy issues. This idea was largely motivated by the fact that the Council recognised the rapid increase in its member countries' energy needs and the possibilities which nuclear energy presented in that regard. In fact, the United States was the first country to produce electricity using nuclear energy in 1951, and during the years that followed, the United Kingdom, Russia and France each accomplished the same feat. The Steering Committee set up a Drafting Group responsible for drafting the statutes of the future agency whose principal function would be to promote the development of nuclear energy production and use for peaceful purposes in its member countries by co-operation between them and in return for the necessary safeguards.

The European Agency for Nuclear Energy (ENEA) was created by a Decision of the OECE Council taken on December 20, 1957 and which came into force on February 1, 1958. The Steering Committee for Nuclear Energy, designated as the Management Board for this brand new Agency, was given the task of promoting the harmonisation and development of legislation in the nuclear energy field,

<sup>3</sup> The European Insurance Committee comprises the national associations established by private insurance companies of 18 countries: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, and the United Kingdom.

primarily in the areas of public health protection and the prevention of accidents in the nuclear industry and a regime of civil liability and insurance against nuclear risks. The Working Groups which had earlier been established by the Steering Committee found their proper place within the new structure.

### **The Group of Governmental Experts (1958-2000)**

The very first undertaking of the Group of Experts probably constitutes one of its most significant accomplishments - the drafting of the Paris Convention on Third Party Liability in the Field of Nuclear Energy (the “Paris Convention”) together with its explanatory memorandum, the Exposé des Motifs. First the Working Group and later the Group of Experts each prepared a draft of this Convention which was finalised during several meetings which took place in 1959 and in which the European Insurance Committee, UNIPEDE, the International Atomic Energy Agency and international transport organisations participated. The Paris Convention was adopted by the OECD Council on July 29, 1960.

During the course of its early years, the work of the Group of Experts was essentially dedicated to resolving problems arising from the co-existence of the Paris Convention and its sister convention, the Vienna Convention on Civil Liability for Nuclear Damage, adopted within the International Atomic Energy Agency on May 21, 1963. The Group was eventually responsible for the adoption of an Additional Protocol to amend the Paris Convention, in 1964, in order to better harmonise the two Conventions and resolve certain potential conflicts between the two instruments. At about the same time, in fact starting in 1961, the Group began drafting another convention aimed at supplementing the measures put in place by the Paris Convention. The Group’s work on this project reached its natural completion with the adoption, on January 31, 1963, of the Brussels Convention Supplementary to the Paris Convention on Nuclear Third Party Liability (the “Brussels Supplementary Convention”). On the basis of the modifications made to the Paris Convention by the Additional Protocol in 1964, a further Additional Protocol was drafted for the Brussels Supplementary Convention and it, too, was adopted in 1964.

Towards the end of the 1960’s, the Paris Convention and its Additional Protocol entered into force<sup>4</sup>. Thereafter, the Group of Experts devoted its time and energy to studying issues relating to the interpretation and implementation of the Conventions. A model Certificate of Financial Guarantee was drafted and became the subject of a Recommendation of the NEA Steering Committee in 1968, the Committee using that same occasion to address other questions of interpretation of the Convention. In fact, questions such as the definition of “nuclear installation”, damage to the means of transport, the territorial scope of application of the Conventions or the exclusion of small quantities of nuclear substances from the scope of the Paris Convention, to mention only a few examples, are typical of the issues included on the Agendas of meetings of the Group of Experts during this period. The work of the Experts during this decade concluded with the drafting of a Recommendation, which the NEA Steering Committee endorsed on October 9, 1969, dealing with damage to the means of transport of nuclear substances<sup>5</sup>.

At the beginning of the 1970’s, a variety of topics would become the focus of attention of the Group of Experts the frequency of whose meetings varied between one and two per year. In particular,

- ✚ The Group examined the issue of excluding small quantities of nuclear substances as well as certain nuclear substances of a particular composition from the application of the Paris Convention, in co-operation with the International Atomic Energy Agency. These issues remained on the Group’s meeting Agendas for more than 7 years and were finally resolved in 1977 with the

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<sup>4</sup> On April 1, 1968.

<sup>5</sup> All Decisions, Recommendations and Interpretations adopted by the NEA Steering Committee in relation to the Paris Convention are contained in *Paris Convention, Decisions, Recommendations, Interpretations*, OECD 1990 or may be found on the OECD/NEA website at: <http://www.nea.fr/html/law/paris-convention-dec-rec-int.pdf>.

adoption, by the NEA Steering Committee, of a Decision on the exclusion of certain categories or certain quantities of nuclear substances from the scope of the Paris Convention.

- ✚ The Group carried out considerable research on issues relating to the maritime transport of nuclear substances, this time in co-operation with the International Maritime Consultative Organisation. An international conference on the maritime transport of nuclear substances was organised in December 1971 during the course of which the international Convention relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material was adopted<sup>6</sup>.
- ✚ During the years 1972 and 1973 in particular, the Group of Experts was confronted with two key questions. The first issue revolved around the Paris Convention requirement that 5 years following the date of its entry into force, a revision of the Convention is to be carried out. The Group seriously deliberated the idea revising the Convention but concluded, in 1973, that it was not desirable at that time. Nevertheless, the issue has been regularly re-examined by the Group since then. The second issue focused upon the relationship between the Paris and Vienna Conventions and in particular, the possibility of a State Party to one Convention being able to ratify the other Convention. After having carefully studied the problem, the idea of the Joint Protocol was born...a legal instrument which could create a link between the two Conventions. A draft Protocol establishing such a link was prepared during 1974-1975 with the co-operation of the IAEA.

By the mid-1970's the international context was changing, with industrialised countries being hit hard by the first shock of oil price increases and the repercussions of this shock were clearly reflected in the work carried out by the NEA. In fact, a significant redirection of the NEA's priorities took place with increased emphasis being given to uranium resource management, nuclear waste management and nuclear safety. During this period, a Working Group was established within the Group of Experts to study the possibility of changing the unit of account under the Paris Convention from the European Monetary Agreement unit of account to the Special Drawing Right of the International Monetary Fund, as well as to consider a number of other issues designed to modernise the Convention. In 1977 the Group of Experts concluded that both the Paris and Brussels Supplementary Conventions should be revised and a restricted Working Group was subsequently created to propose appropriate amendments to the Conventions. The revision work continued until 1980 at which point amending Protocols for both Conventions were finalised. Two years later, on November 16, 1982 the Protocols were adopted.

The year 1979 was marked by the accident which took place in the United States at Three Mile Island. The Group of Experts immediately began to study the problems of insurance and the indemnification of claims relating to this accident. At the beginning of the 1980's, the revision of the Paris and Brussels Supplementary Conventions concluded by the Group of Experts led to a whole new cycle of activities which included:

- ✚ The revision of the Exposé des Motifs of the Paris Convention;
- ✚ The undertaking of a study, starting in 1977, of the application of a nuclear civil liability regime to the long term management of radioactive waste. This study was intended to examine in greater depth a project that had already been carried out by an ad hoc Group looking at the legal, administrative and financial aspects of the long term management of radioactive waste (Polvani Report). It would eventually lead the Group to study the means of applying the Paris Convention to installations for the management of nuclear waste and would terminate with the adoption, by the NEA Steering Committee on April 10 1984, of a Decision relative to the inclusion of installations intended for the disposal of nuclear substances within the scope of the Paris Convention.

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<sup>6</sup>

Adopted on 17 December 1971, this Convention entered into force on 15 July 1975.

- ✚ The drafting of a new recommendation on liability for damage to nuclear substances in the course of transport which would be adopted by the NEA Steering Committee at its session in April 1981.
- ✚ An examination of the question of excluding nuclear risks from insurance policies from 1980 to 1987. The work of the Group of Experts aimed at removing progressively this type of exclusion clause from certain insurance policies.

There were two other issues on which the Group of Experts spent considerable time during the mid-1980's. The issue of decommissioning nuclear installations was becoming, with the progressive aging of nuclear installations, an increasingly relevant and real problem. The Experts established a technical working Group instructed to determine if such installations were covered by the regime established by the Paris Convention. In 1987 the Steering committee endorsed the interpretation adopted by the Group of Experts according to which the Paris Convention does cover installations in the course of being decommissioned.

The second issue arose from the fact that during this same period, the Federal Republic of Germany introduced national legislation which established a regime of unlimited civil liability of operators for third party nuclear damage. The Group of Experts was faced with the rather delicate task, both legally and politically, of assessing whether such a regime was compatible with that instituted by Paris Convention.

On April 26, 1986, the tragic accident which took place at the Chernobyl Nuclear Power Plant in Ukraine bitterly brought to light the limitations and deficiencies of the legal regimes in place, both in terms of preventing nuclear accidents and in terms of compensating victims thereof in the event of their occurrence. The NEA Steering Committee met in September 1986 in order to examine the information to be derived from the accident. It decided to reinforce the NEA's work in the area of civil liability for nuclear damage. The Group of Experts was thus instructed to reorient its work to address the gaps in the nuclear liability regime made evident by the Chernobyl accident.

That direction would be transformed into, amongst other things, a reactivation of work in co-operation with the IAEA aimed at establishing a link between the Paris and Vienna Conventions through means of a Joint Protocol. Work on the development of this instrument concluded with the adoption of the Joint Protocol relating to the Application of the Vienna and Paris Convention on September 21, 1988. Following its adoption, a new problem was to occupy the Group of Experts and it continues to do so even today – what is the impact of the Joint Protocol on the Brussels Supplementary Convention? The Group's efforts in this area resulted in the adoption of a series of OECD Council Recommendations in relation to the actual operation of the latter Convention. Yet another study undertaken by the Group of Experts in the context of the Chernobyl accident addressed the issue of including the cost of preventive measures in the concept of nuclear damage and the question of whether the Paris Convention does, or should, apply to preventive measures.

In 1988, the Protocol to amend the Paris Convention entered into force. Within the Group of Experts, a technical working group on decommissioning began to study whether, at what stage, and in what manner the Paris Convention could logically cease to apply to nuclear installations that were in the process of being decommissioned. In parallel with this study, the Experts began to consider the need to increase the amount of the operator's liability together with the corresponding amount of required financial security and they continued to examine the expansion of the concept of nuclear damage with particular emphasis on the inclusion of preventive measures.

Within the IAEA, a revision of the Vienna convention was undertaken starting in the late 1980's/early 1990's. During this exercise, the negotiating States determined that any revision of the Convention would need to be accompanied by the imposition of a supplementary compensation system for



nuclear damage. The Group of Experts closely followed the Vienna Convention revision work that took place, including the drafting of a new Convention on Supplementary Compensation, both of which were adopted in Vienna in September 1997<sup>7</sup>.

***The Nuclear Law Committee (2000 to the present)***

The revision of the Vienna Convention and the adoption of a new Convention on Supplementary Compensation would lead the Group of Experts to examine the need to revise the Paris Convention and its accompanying Brussels Supplementary Convention. The revision work on those two latter instruments began in 1998 and was carried out by a small group comprising the Conventions' Contracting Parties themselves, together with invited observers from Slovenia and Switzerland who had indicated their intention to join the revised Conventions (the "CPPC Group"). Throughout the revision negotiations, the CPPC Group kept the Group of Experts regularly informed of its progress and invited comments thereon. The work of the CPPC Group finally came to an end with the adoption, on February 12, 2004 of Protocols to amend both the Paris and Brussels Supplementary Conventions.

In 1997 NEA Legal Affairs received a rather unusual request from the Chinese authorities. Following the handover of Hong Kong to the Peoples' Republic of China on July 1, 1997, the Chinese authorities requested that the Paris Convention continue to apply to the Hong Kong Special Administrative Region. The efforts of the Nuclear Law Committee eventually resulted in the adoption, in 2000, of an International Declaration providing that the Paris Convention continue to apply to Hong Kong, notwithstanding that China is not a party to that Convention.

The events which took place in the USA on 11 September 2001 represented a new challenge for the Committee with international circles focusing on questions related to terrorism. To address these new concerns, the NLC carried out a study devoted to the insurance cover of damage resulting from a nuclear accident caused by a terrorist act.

However, other new subjects also emerged, reflecting national concerns of member countries or developments in technology. Thus a study on liability and financial security issues applicable to nuclear fusion installations was carried out at the request of the French delegation, whose country is to host the future ITER reactor. The exclusion of small quantities of nuclear materials is a regular visitor on the agenda of the NLC. Following the revision of the Paris and Brussels Conventions, it became necessary to revise the Exposé des Motifs of the Paris Convention. Committee members also decided to establish an Exposé des Motifs for its sister Convention, the Brussels Supplementary Convention. More recently the Committee has been studying the Aarhus Convention and its influence on nuclear projects.

This panorama of activities would not be complete without mentioning the NLC's important role as a forum for the exchange of information between States, international organisations and non-governmental organisations, not just in the field of international third party nuclear liability but also in relation to nuclear law in general. The NLC regularly shares information on the drafting of new international nuclear law instruments or regulations which may have consequences on nuclear energy activities, (in particular European Community legislation and IAEA Conventions and Codes) The Committee also looks regularly at developments in national legislation and regulations in member and observer countries.

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Adoption of the Protocol to Amend the 1963 Vienna Convention on Civil Liability for Nuclear Damage and of the Convention on Supplementary Compensation for Nuclear Damage.

### **The Mandates of the Nuclear Law Committee**

The expansion of the fields of activity and research of the Nuclear Law Committee over the years was accompanied by a corresponding evolution in its successive mandates. The Working Group on Harmonisation of Legislation was tasked to study the harmonisation of legislation in the field of nuclear third party liability. The first years of work of the Group of Governmental Experts continued to focus on this primary activity, which culminated in the adoption of the Paris Convention. The mandate of the Group of Experts was enlarged somewhat when it was first revised in 1974 (the successive mandates of the Group of Experts and the NLC are reproduced in Annex 2) to incorporate an explicit reference to the Paris Convention and to work related to its interpretation and application.

The 1974 mandate proved remarkably long-lived as it was not revisited again for a further 25 years. In October 1999, it appeared appropriate to reflect upon the diversification of the activities of the Group and the changes in its membership which had come about. The mandate was revised and, indeed, enlarged. The objective of the new mandate was to widen the field of activity of the Group, thereby allowing it to focus on questions of a more general nature than nuclear third party liability. It retained, nevertheless, the reference to harmonisation of legislation on nuclear third party liability and the application of the Paris and Brussels Conventions, but the mandate now also refers to other international instruments on nuclear third party liability adopted under the auspices of the IAEA. The mandate further specifies that the Committee will serve as a forum for the exchange of information and experience between member countries, and for the first time, provides a structure for the establishment of working groups or expert groups entrusted with certain specific tasks by the Committee. The name of the Group was changed to the "Nuclear Law Committee" and the new name and mandate were adopted by the Steering Committee for Nuclear Energy at its session of 12 October 2000.

The last amendment to the NLC mandate took place in 2005. The members of the Committee chose to introduce a minor amendment to reflect the educational dimension of its work, particularly the NEA's co-organisation of the International School of Nuclear Law with the University of Montpellier 1. Furthermore, in keeping with the structure for all NEA Standing Technical Committees, the mandate was established for a fixed 5 year period, with the mandates of, working groups being set at 3 years and those for expert groups being set at 2 years.

### **The Membership of the Nuclear Law Committee**

At its inception, the Nuclear Law Committee was comprised of representatives from Belgium, Denmark, France, Germany, Italy, the Netherlands, Norway, Portugal, Sweden, Switzerland and the United Kingdom. Countries such as Turkey, Greece, Ireland and Luxembourg would only join in later years. However, since 1958 the Committee has welcomed observers from the European Insurance Committee as well as UNIPED<sup>8</sup>, their ongoing participation being the result of their having been so closely associated with the drafting of the Paris Convention. Representatives from EURATOM also contributed to the drafting of the Paris Convention and have continued ever since to take part in the work of the Committee.

At the beginning of the 1960's, Spain and Austria joined the Committee and the International Atomic Energy Agency was granted observer status in 1963. As for Canada and the United States, neither had signed the Statutes of the new Agency at the time of its creation and consequently neither was a member of it. Nevertheless, the Statutes themselves provide that these two countries would be associated

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The International Union of Producers and Distributors of Electrical Energy that is now known as EURELECTRIC.

with the work of the Steering Committee and of its working groups<sup>9</sup>. Thus, the United States began taking part in the work of the NLC as early as 1958.

At the beginning of the 1970's, the Nuclear Law Committee comprised 18 member states (founding states of the OECD Nuclear Energy Agency). Japan, which had already been associated with the work of the European Nuclear Energy Agency since 1965, joined the Committee at the beginning of the 1970's<sup>10</sup> as did Australia in 1972.

From 1992 onwards, the Group also welcomed observer countries which, following the fall of the Soviet Union, expressed interest in the work carried out by NEA, notably in the field of nuclear third party liability. The Steering Committee for Nuclear Energy gave its agreement in principle in October 1991 to the invitation of observers from European "economies in transition" to attend NLC meetings and since 1992, Hungary, Poland, Romania, the Czech Republic and the Slovak Republic have been invited to do so. This invitation was extended in 1993 to Bulgaria, the Russian Federation and Ukraine. The Czech Republic and Hungary became members of the NEA in 1996 and thus full members of the Nuclear Law Committee. The Slovak Republic became a member of the NEA in 2002. The Republic of Korea joined the NLC in 1994 when it became a member of the NEA. Between 1995 and 1999, the NLC also invited an observer from Kazakhstan to attend its meetings.. Mexico joined the NEA in 1994 and has just begun to participate in NLC meetings. Finally, Lithuania joined the Committee as an observer in 1996.

That same year, Slovenia expressed an interest in the work of the NEA and requested accession to the Paris Convention. The Committee, in response, decided to invite Slovenia to become an observer in 1998. It should also be pointed out that an observer from the Hong Kong Special Administrative Region (HKSAR) has been associated with the work of the Committee since 1998. The participation of Hong Kong originates with the adoption, on 13 October 2000, of an International Declaration of the Contracting Parties to the Paris Convention expressing their agreement to the application of the Convention to the HKSAR territory, subject to certain conditions. One of these conditions involves the amendment of Hong Kong legislation to reflect changes made to the Paris Convention regime. Committee members and the Chinese authorities recognised the utility of inviting observers from Hong Kong to discussions within the Committee relating to the application of the Paris Convention. Today the Nuclear Law Committee includes 6 ad hoc non-member country observers.<sup>11</sup>

### Conclusion

The Nuclear Law Committee now holds a half-century of experience to its credit. Its aim has been to respond in an efficient and timely manner to the great challenges which international events have posed in the past fifty years. Its membership, methods of work and mandate have all evolved in order to adapt to changing demands of member countries. A number of important tasks remain to be accomplished by the Committee, and its member countries will face new challenges in coming years. I look forward to working with the Committee on those outstanding tasks and to sharing the challenges that lie ahead.

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<sup>9</sup> The founding members of the European Nuclear Energy Agency are: Austria, Belgium, Denmark, France, Germany, Greece, Ireland, Iceland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Turkey and the United Kingdom. Canada became a member in 1975 and the United States in 1976.

<sup>10</sup> That same year, in order to reflect enlargement of its membership to other regions of the world, the European Nuclear Energy Agency was transformed into the OECD Nuclear Energy Agency.

<sup>11</sup> Bulgaria, Lithuania, Romania, the Russian Federation, Ukraine and the Hong Kong Special Administrative Region hold the status of ad hoc observers to the Committee while Slovenia is a regular observer.

**ANNEX 1***List of Chairpersons and Vice-Chairpersons of the Committee*

<b>Years</b>	<b>Chairperson</b>	<b>Vice-Chairperson(s)</b>
2004 - ....	Mr. Roland Dussart-Desart (Belgium)	Mr. Sahrakorpi, Mr. McRae, Prof Lamm
2002 - 2003	Mr. Håkan Rustand (Sweden)	Mr. Dussart-Desart, Prof Lamm, Mr. McRae
1998 - 2001	Mr. Håkan Rustand (Sweden)	Mme Conruyt-Angent, Prof Lamm, Mr. McRae
1992 - 1998	Mr. Håkan Rustand (Sweden)	Mme Conruyt-Angent, Dr. N. Pelzer
1985 - 1992	Mr. Wouter Sturms (Netherlands)	Mr. Rocamora
1983 - 1984	Mr. Mans Jacobson (Sweden)	Mrs. Corretjer
1973 – 1982	Mr. Maurice Lagorce (France)	Mr. Jacobsson
1971 - 1973	Mr. Maurice Lagorce (France)	Mr. Nordenson
1966 - 1970	Mr. J. P. H. Trevor (United Kingdom)	Mr Lagorce
1963 – 1965	Mr. Thompson (United Kingdom)	
1957 - 1962	Mr. A.D. Bellinfante (Netherlands)	Prof. O. K. Kaufmann

## ANNEX 2

### Successive mandates of the NLC

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#### Decision of the Steering Committee for Nuclear Energy of 24 January 1957

NEA/NE/M(57)1

##### 7 HARMONISATION OF LEGISLATION /NE(57)7

The Chairman stated that the Netherlands Delegation had submitted a Note proposing the establishment of a Working Party (the terms of reference of which were set out on page 2 of NE(57)7) out for NE(57)

The Delegate for Switzerland stressed the connection between the Netherlands proposal and the work done by the Insurance Sub-Committee

The Steering Committee decided to set up a Working Party on Harmonisation of Legislation to which the following tasks would be assigned

(a) the examination of and the formulation of proposals on the question of harmonisation of legislation concerning third-party liability in case of damage caused by the peaceful use of nuclear energy

(b) any further studies of a legislative nature that might be referred to it by the Steering Committee for Nuclear Energy

**Decision of the Steering Committee of 3 July 1957**

NEA/NE/M(57)4

**(c) Proposals concerning third party liability**

The Steering Committee discussed the Report of the Working Party on Third Party Liability NE(57)27 and in particular the proposal (in paragraph 13) to establish a group of experts consisting of lawyers, insurers and technicians to elaborate a draft international convention on third party liability in the field on nuclear energy. The Delegate for the Netherlands supported the proposal as did the Delegate for Germany who pointed out that, as had been said by their expert in the Working Party, they were in favour of including the problem of State liability in the convention itself (paragraph 11). The Delegate for the United Kingdom was in general agreement with the thinking behind the Report, but felt that six months was too short a period to submit even a preliminary draft of the Convention. He suggested that the group of experts proposed follows up the work with general terms of reference towards an International Convention. The Delegate for the Netherlands supported this view. The Delegate for Denmark also supported the proposal in the Report but pointed out that he was very hesitant about having a rule on the responsibility of the State in this field. The Delegate for Norway also supported the proposal but felt that the group should be clear that it was not trying to be too ambitious and that perhaps it was not entirely possible to make legislation completely uniform for all countries.

It was felt that the choice between a completely uniform legislation or a more general international convention could be more easily made when the group had continued its work a little further. It was AGREED that the group should be instructed to carry on the work and to submit a report within six months as to its progress.

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## Decision of the Steering Committee of 24 April 1974

NEA/SEN(74)2

### V. Review of the mandate of the Group of Experts

The Chairman informed the members of the Group that the Steering Committee had decided to review the mandates of the Agency's Committees and Working Groups on the occasion of the revision of the programme and priorities of NEA and that he had been asked to express his advice concerning the Group of Governmental Experts. The Experts proposed to add to the Group's mandate a new paragraph referring explicitly to the Paris Convention and to other nuclear conventions. The revised text of this mandate would, therefore, be as follows:

- (i) to examine and formulate proposals on the questions raised by the interpretation and application of the Paris Convention on Third Party Liability in the Field of Nuclear Energy as well as other nuclear third party liability conventions.
- (ii) to examine and formulate proposals on the question of harmonisation of legislation concerning third party liability in case of damage caused by the peaceful uses of nuclear energy;
- (iii) to undertake further studies of a legislative nature that might be referred to it by the Steering Committee.

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## Decision of the Steering Committee of October 2000

NEA/NE(2000)11

### GROUP OF GOVERNMENTAL EXPERTS ON THIRD PARTY LIABILITY IN THE FIELD OF NUCLEAR ENERGY

#### 1. Review process

At its October 1999 meeting, the Group of Experts considered the continued suitability of its mandate and methods of work in light of the Agency's new *Strategic Plan*, the newly expanded

Programme of Work for Legal Affairs, and changes in the composition of the Group's membership[1] In addition, the Group was conscious of the fact that, during the NEA Steering Committee's own meeting earlier that month, several members had spoken in favour of enlarging the mandate of the Group and all had agreed that it should remain a separate NEA standing technical committee.

## **2. Mandate of the Group**

As a result, the members of the Group of Experts proposed a new mandate for the Group with a view (i) to encouraging the development of national legislation governing the peaceful uses of nuclear energy based upon internationally accepted principles, and in particular to promote world-wide harmonisation of nuclear liability legislation and policies, (ii) to fostering a more global regime of civil liability and compensation for nuclear damage including examining issues related to the interpretation and application of the international nuclear liability instruments; and (iii) to addressing issues falling within the field of nuclear law generally as and when appropriate, and to undertake all other work involving legal matters entrusted to it by the NEA Steering Committee. The Group would also be renamed as the "Nuclear Law Committee".

### **Revised mandate**

*Date of creation: 24 January 1957*

*Duration: Unspecified*

*Last revision: 1974*

The Nuclear Law Committee will work to encourage provisions for equitable compensation of damage in the event of a nuclear incident. In particular, the Committee is mandated to deal with issues relating to civil liability for damage caused by a nuclear incident and to financial security mechanisms designed to ensure that funds will be available to compensate such damage. It addresses these issues in the context of Member countries' nuclear legislation and of international nuclear liability instruments, including 1) the 1960 Paris Convention on Third Party Liability in the Field of Nuclear Energy and the 1963 Brussels Convention Supplementary to the Paris Convention, 2) the 1963 Vienna Convention on Civil Liability for Nuclear Damage and the 1997 Protocol to Amend the Vienna Convention, 3) the 1988 Joint Protocol Relating to the Application of the Vienna Convention and the Paris Convention, and 4) the 1997 Convention on Supplementary Compensation for Nuclear Damage. The Nuclear Law Committee will also strive to eliminate or minimise any legal impediments to the safe use of nuclear energy.

More specifically, the Committee has a mandate to:

- i) examine issues relating to the interpretation and application of international nuclear liability instruments, especially with respect to their harmonious application under Member countries' national laws, and encourage broader adherence to those instruments with a view to fostering further progress towards a global regime of liability and compensation for nuclear damage;
- ii) encourage the development of national legislation governing the peaceful uses of nuclear energy based upon internationally accepted principles, particularly in the area of liability and compensation;
- iii) promote the harmonisation of national policies and legislation in the nuclear liability and compensation field amongst its Member Countries;



- iv) develop recommendations concerning the Paris Convention and the Brussels Supplementary Convention for submission, if appropriate, to the Steering Committee for Nuclear Energy.

The Nuclear Law Committee serves as a forum for the exchange of information and the sharing of experience between Member countries on these issues.

The Nuclear Law Committee is also mandated to undertake all other work involving legal issues that may be entrusted to it by the NEA Steering Committee.

The Nuclear Law Committee will co-operate with other NEA Standing Committees. It may set up subsidiary bodies to better facilitate the achievement of its goals, invite experts in other fields to attend its meetings, and sponsor meetings of specialists. It may also establish contacts with its counterparts in the European Community, the International Atomic Energy Agency, and other international organisations on matters of common interest.

### **3. Modification of working group structure and methods of work**

It is conceivable that in the future the Nuclear Law Committee may wish to establish one or more working parties or expert groups to carry out certain tasks that would be better addressed by a smaller subsidiary body than by the Committee as a whole. Such an initiative is likely to occur in connection with activities to be undertaken by the Committee pursuant to its expanded mandate, particularly in the field of general nuclear law matters. In that event, the Nuclear Law Committee will, of course, comply with NEA Steering Committee requirements concerning the terms of reference, specified objectives, expected products and schedule, and fixed duration of all such subsidiary bodies.

### **4. Handling of cross-cutting activities**

The Group will continue contributing to the activities of other committees, as required.

### ***Reference***

[1] Approximately one-half of the Members of the Group of Experts are neither Parties to the Paris Convention nor to the Brussels Supplementary Convention.

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## **Decision of the Steering Committee of April 2005**

### **Nuclear Law Committee (NLC)**

NEA/NE(2005)2

*Date of creation:* 24 January 1957

*Duration:* 31 December 2009

***Mandate:***

“The Nuclear Law Committee will work to encourage provisions for equitable compensation of damage in the event of a nuclear incident. In particular, the Committee is mandated to deal with issues relating to civil liability for damage caused by a nuclear incident and to financial security mechanisms designed to ensure that funds will be available to compensate such damage. It addresses these issues in the context of Member countries’ nuclear legislation and of international nuclear liability instruments, including 1) the 1960 Paris Convention on Third Party Liability in the Field of Nuclear Energy and the 1963 Brussels Convention Supplementary to the Paris Convention, as amended, 2) the 1963 Vienna Convention on Civil Liability for Nuclear Damage and the 1997 Protocol to Amend the Vienna Convention, 3) the 1988 Joint Protocol Relating to the Application of the Vienna Convention and the Paris Convention, and 4) the 1997 Convention on Supplementary Compensation for Nuclear Damage. The Nuclear Law Committee will also strive to eliminate or minimise any legal impediments to the safe use of nuclear energy.

More specifically, the Committee has a mandate to:

- i) examine issues relating to the interpretation and application of international nuclear liability instruments, especially with respect to their harmonious application under Member countries’ national laws, and encourage broader adherence to those instruments with a view to fostering further progress towards a global regime of liability and compensation for nuclear damage;
- ii) promote the harmonisation of national policies and legislation in the nuclear liability and compensation field amongst its Member countries;
- iii) encourage the development of national legislation governing the peaceful uses of nuclear energy based upon internationally accepted principles, particularly in the area of liability and compensation;
- iv) develop recommendations concerning the Paris Convention and the Brussels Supplementary Convention, as amended, for submission, if appropriate, to the Steering Committee for Nuclear Energy;
- v) promote the exchange of information and the sharing of experience between Member countries on these issues;
- vi) advise the Secretariat on collecting, analysing and disseminating information on major developments in the nuclear law field at both national and international levels.

The Nuclear Law Committee is also mandated to undertake all other work involving legal issues that may be entrusted to it by the NEA Steering Committee.

The Nuclear Law Committee will co-operate with other NEA standing technical committees. It may set up subsidiary bodies to better facilitate the achievement of its goals, invite experts in other fields to attend its meetings, and sponsor meetings of specialists. It may also establish contacts with its counterparts in the European Community, the International Atomic Energy Agency, and other international organisations on matters of common interest."

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**The NEA Nuclear Law Committee – from the viewpoint  
of a Committee Member**

**Presentation on the Occasion of the 50<sup>th</sup> Anniversary of the Nuclear Law  
Committee  
at the Colloquium on the Past, Present and Future of the Nuclear Law  
Committee, Paris, OECD Headquarters, Château de la Muette**

**6<sup>th</sup> February 2007**

*by*  
*Norbert Pelzer*

**I.**

When Julia Schwartz invited me to talk today about the history and the development of the Nuclear Law Committee I felt, of course, honoured and flattered. But immediately I became also aware that the invitation obviously was connected with the fact that I am sitting on this Committee for 30 or even more years and that I grew older together with the Committee. Is that a reason for feeling honoured and flattered? Certainly not. Actually, I cannot deny that I saw uncountable numbers of delegates joining and leaving the Committee. Today I am surrounded by young faces, which pleases me and which at the same time is a challenge, probably for both the younger people and me. My only comrade left over from the old times is my friend and colleague Yrjö Sahrakorpi from Finland. I wonder whether he has similar feelings about being a kind of dinosaur in a young environment.

Please allow me to continue dealing with personal impressions for another little while. When I around the second half of the 1970s first attended meetings of the Committee the head of my delegation advised me not to take the floor but to leave speaking to him. As a matter of fact, there was no risk that I would dare to make an intervention. I was gone all shy when I entered the conference room and, in particular, I did not at all have trust in my command of the English language, not to mention French. It turned out, however, that there was no need to worry about me possibly taking the floor: The chairman himself did almost all of the talking, and he did not leave much room for others to speak. I concluded that he did that because he felt being in harmony with the Group members and he anyway knew what they would say. His method created a pleasant atmosphere which I found most attracting.

The main subject matter of the Committee at the end of the 1970s and the beginning of the 1980s was the revision of the Paris and Brussels Conventions which resulted in the 1982 Protocols. Already in 1973, I had published an article in the Nuclear Law Bulletin on the modernisation of the Paris Convention and the views expressed in this article were shared by the German government. Consequently, the Germans planned to convince the other Contracting Parties of their ideas on the modernisation of the Paris Convention. We, together with some other delegations, especially wanted to achieve an increase of the liability amount. There were other delegations who were opposed to the revision in general and to any increase of the liability amount in particular. They argued there was no increase of the risk since the date of the original Paris Convention and it followed that an amendment was not warranted. They prevailed over our proposal. In the 1982 Protocol to the Paris Convention there is no higher liability amount, in a spirit of

compromise, however, higher public money tiers in the 1982 Protocol to the Brussels Convention were agreed upon. This result was not the outcome of a long controversial discussion but it was achieved by an extraordinary tactical manoeuvre of one delegation. The spokesman of that delegation started to filibuster. He did that most eloquently, most elegantly and in a highly educated way. All of us were deeply impressed, and at the end of the day, increasing the liability amount was not any longer an issue. For me, this was an unforgettable lesson, namely that successful negotiations require more than just an idea of what is desirable. You also have to know the techniques to accomplish your goals. I tell you, if this would happen today, I would know how to stop evasive filibustering and how to return to the subject.

## II.

That is more than enough about my early experiences in the Committee, which at that time was not yet named “Nuclear Law Committee”.<sup>23</sup> The establishment of the Committee goes back to a proposal made by the Netherlands delegation at a Steering Committee meeting in January 1957. The proposal was aimed at setting up “a Working Party on the Harmonisation of Legislation”.<sup>24</sup> The Steering Committee followed the Dutch proposal and on 24<sup>th</sup> January 1957 established a Group which provisionally was called as suggested by the Netherlands delegation.<sup>25</sup> It assigned the following tasks to the new Working Party:

- “(a) the examination of and the formulation of proposals on the question of harmonisation of legislation concerning third-party liability in case of damage caused by the peaceful use of nuclear energy;
- (b) any further studies of a legislative nature that might be referred to it by the Steering Committee for Nuclear Energy.”

The Working Party had not yet a proper name, and it is difficult to find an official date at which the formal naming took place. The Steering Committee in July 1957 referred to the Working Party as “Group of Experts consisting of lawyers, insurers and technicians”.<sup>26</sup> In its convocation for the first meeting of the Group scheduled for 22<sup>nd</sup> January 1958, the Steering Committee called the Group “Group of Experts on Third Party Liability”, expressly referring to the July 1957 meeting of the Steering Committee.<sup>27</sup> The final name of the Group was apparently not decided by the Steering Committee but probably was fixed by the Group itself. It read: “Group of Governmental Experts on Third Party Liability in the Field of Nuclear Energy”. This is a longish and somewhat bureaucratic name but it reflected exactly what the Group was going to deal with and, in fact, has been dealing with during its lifetime.

At its first meeting in January 1958, the Group was composed of 8 lawyers, 5 specialists in insurance problems, 2 technicians, 3 members of the OEEC Insurance Sub-Committee Bureau, and 1 representative of the European Insurance Committee. Nine OEEC Member States were represented.<sup>28</sup> Please take note of the high proportion of insurance related persons in the Group: they were 9 of 19 in

<sup>23</sup> The author expresses his gratitude to NEA Legal Affairs and in particular to Mrs. Christelle Drillat, a former member of Legal Affairs, who kindly scanned the OECD/NEA archives and provided relevant documents and other material.

<sup>24</sup> OEEC Doc. NE(57)7, 23rd January 1957.

<sup>25</sup> OEEC Doc. NE/M(57)1, January 1957.

<sup>26</sup> OEEC Doc. NE/M(57)4, 2-3 July 1957.

<sup>27</sup> OEEC Doc. SEN(58)6, 11 January 1958.

<sup>28</sup> OEEC Doc. SEN(58)6 Annex (Revised). The States represented were: Denmark, France, Germany, Italy, Netherlands, Sweden, Switzerland, United Kingdom, United States.

total, which corresponds to more than 43 percent of the entire Group. This composition clearly shows that at that time nuclear liability was interpreted as being mainly a question of making insurance available rather than of providing adequate compensation. Here we may see the origin of some concepts of the nuclear liability conventions which today are sometimes difficult to warrant and to explain to the public. This applies particularly to the equivocal principle of congruence between liability and coverage which quite reasonably stipulates that liability needs to be covered but, as a consequence, also perversely turns things upside down: where there is no coverage there cannot be legal liability.

The Group of Governmental Experts was renamed as “Nuclear Law Committee” by a Steering Committee Decision at its 101<sup>st</sup> Session on 12-13 October 2000.<sup>29</sup> The new name mirrors the revised mandate of the Group, which now encompasses not only nuclear liability questions but also issues falling within the field of nuclear law generally and all other legal matters entrusted to it by the Steering Committee as appropriate.<sup>30</sup> The NLC today has 29 member states entitled to send representatives<sup>31</sup> and in addition 7 state observers.<sup>32</sup> I note the enlargement of the Committee with satisfaction: New members mean fresh ideas. That provides assurance that quantity will not harm quality.

The Committee, in the 50 years of its existence, had 8 chairmen. The first one, serving from 1957 to 1962, was Mr. A. D. Belinfante who despite his Italian name was Dutch. The chairmen serving for the longest periods of time, namely each of them 11 years, were Mr. Maurice Lagorce from France (1971 – 1982) and Mr. Håkan Rustand from Sweden (1992 – 2003). It certainly had some attraction to deal in some detail with the characteristics and with the individual style of the chairs I experienced. But this would take too much time. However I would like to confirm that all of them were persons who were most competent to guide the Group, and all of them had a good sense of humour, to a graded extent and with differences, though. As a consequence, laughing has always been a constituent element of implementing the Committee’s serious mandate. Sometimes, funny cartoons were produced meant to clarify complex issues, and the respective Committee member who made them immediately qualified for being elected chairman. Roland Dussart Desart certainly will confirm this observation.

To finalize my little statistics: Over the years, member states were represented by 203 delegates who at least twice attended Committee meetings, and there were 52 observers from Governmental and Non-Governmental Organizations. As of 1992, there were also observers from states but I do not have respective figures. The Secretariat deployed 14 persons to attend meetings on a regular basis but I am aware that many more were busy for the Committee. I would, with greatest pleasure, like to use this opportunity to express my respect and my gratitude to the Secretariat. The Committee would never have accomplished what I shall at once describe in some more detail without the permanent support by the Secretariat and in particular its Legal Affairs. The meetings have always been well prepared and unexpected problems are quickly solved. If delegates are confused, which happens more often than it should, the Secretariat steps in and clarifies matters. Julia Schwartz is today representing the presence and the past of the Secretariat’s Legal Affairs, please allow me to thank her and her predecessors on behalf of all delegates. I would also like to address the Director General of NEA Mr. Luis Echávarri. He and, as far as I can see, all of his predecessors always showed great interest in the work of our Group which has been encouraging and has provided momentum. We are looking forward to further cooperating with the Director General. I would like to ask him to continue treating Legal Affairs people well. The NLC needs them and strongly relies on them. Since I am dealing with persons supporting the Committee’s work, I will not forget

<sup>29</sup> OECD Doc. NEA/SUM/DEC(2000)2, 30/31 October 2000 No. 5 (iv).

<sup>30</sup> OECD Doc. NEA/NE(2000)11/REV1 Review of the NEA Committee Structure pp. 11 – 12.

<sup>31</sup> List of member states see [www.nea.fr](http://www.nea.fr) under “About us”.

<sup>32</sup> Bulgaria, Hong Kong (Special Administrative Region of China), Lithuania, Romania, Russian Federation, Slovenia, Ukraine.

the basic importance of the various teams of interpreters who made possible that we understood each other. Nothing is more difficult to translate than poetry and legal language, and our interpreters always mastered this particular challenge.

### III.

I would like now to walk you through some of those issues of the Committee's working programmes which have major importance for both the development of nuclear law and the characteristics of the Committee.

When the Group of Governmental Experts convened its first meeting in January 1958 there did not exist much of a nuclear liability legislation in the world. The United States had issued the 1957 Price-Anderson-Amendment to its 1954 Atomic Energy Act.<sup>33</sup> In Germany, Switzerland and in the United Kingdom nuclear liability legislations were under preparation and were enacted in 1959.<sup>34</sup> In all of the other states respective legislations were only issued in the 1960s and 1970s or even later. It was the Group's mandate to examine and make proposals on the harmonization of nuclear liability legislation. However, there was nothing which could be harmonized, and the Group could not build on existing legislations. It follows that the 19 experts of the Group, which later were complemented by additional experts, had to break new ground and start developing a new draft international nuclear liability regime to be presented to the OEEC member states. The final outcome is well known: It is the 1960 Paris Convention.<sup>35</sup> This Convention is the "mother" of all nuclear liability conventions and, moreover, of most of the national nuclear liability legislations. Its basic concepts have been confirmed by states in the light of the Chernobyl nuclear accident and are valid still today.

If I had to appraise the overall results of the Committee's work I would without hesitation nominate the preparatory work of the Paris Convention as the most important achievement. The Convention's concepts were innovative. They enjoyed and enjoy broad international approval and acceptance and at the same time, at least some of them, triggered serious objections and controversial discussions. In any case, the Paris Convention is a thought provoking instrument. It was the example or even the blue print for the Vienna Convention,<sup>36</sup> and to a decisive extent, it is also mirrored in the 1997 Revision Protocol to the Vienna Convention,<sup>37</sup> the 1997 Convention on Supplementary Compensation<sup>38</sup> and in the 2004 Revision Protocol to the Paris Convention.<sup>39</sup> At the time of the drafting of the Paris Convention, I was a young assistant to Professor Georg Erler at Göttingen University. My Professor – who later became a judge at the European Nuclear Energy Tribunal – followed the work of the Group closely and stayed in touch with some of its members. They were invited to speak at our seminar, and I remember very well how impressed I was by their reports on the problems connected with establishing a

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<sup>33</sup> Public Law 85-256 dated 6 September 1957.

<sup>34</sup> Germany: Gesetz über die friedliche Verwendung der Kernenergie und den Schutz gegen ihre Gefahren (Atomgesetz) of 23 December 1959 (Bundesgesetzblatt 1959 I p.814); Switzerland: Bundesgesetz über die friedliche Verwendung der Atomenergie und den Strahlenschutz of 23 December 1959 (Amtliche Sammlung 1959 p. 519); United Kingdom: Nuclear Installations (Licensing and Insurance) Act, 1959 (7 & 8 Eliz.2 ch. 46).

<sup>35</sup> UNTS vol. 956 p. 251 (in the version of the 1964 Additional Protocol).

<sup>36</sup> IAEA Doc. INFCIRC/500.

<sup>37</sup> IAEA Doc. INFCIRC/566.

<sup>38</sup> IAEA Doc. INFCIRC/567.

<sup>39</sup> Text reproduced in: Supplement to Nuclear Law Bulletin No. 75 (2005/1) p. 3.

multilaterally harmonized nuclear third party liability regime. I did not yet know that I also would devote a great part of my professional life to the same objective, an objective which is still not achieved.

Which were the highlights of the Committee's agenda after the finalisation of the Paris Convention in 1960? You probably expect me to talk about the 1963 Brussels Supplementary Convention, which also broke new ground.<sup>40</sup> I shall, however, at this stage leave out this Convention because it is not an original child of the OEEC/OECD but was initiated within EURATOM. Of course, the Brussels Convention later very often was subject of discussions in the Committee, and I shall come back to it as appropriate. I shall neither speak about the 1964 Additional Protocol<sup>41</sup> which did not add new substance to the Convention but merely made the Paris and the Vienna Conventions matching.

Already at an early stage of the Committee's history, we find the agenda point "Exclusion of Small Quantities". We will find it later again, and the NLC is right now dealing also with this issue. This teaches us that small quantities may cause big work. There were discussions on the Exposé des Motifs to the Paris Convention which always were of substantial importance and promoted a better understanding of the provisions of the Convention. Soon again, the Committee will have to deal with this document to bring it in line with the 2004 Protocol to the Paris Convention. In addition, there is a draft Exposé des Motifs to the revised Brussels Convention which will need consideration.

Because of time constraints, it is impossible to run through all of the issues dealt with by the Committee within fifty years. The respective agenda points would perfectly cover the list of contents of a comprehensive handbook on civil nuclear liability law. The Committee discussed the Paris Convention and the Brussels Convention up and down, down and up, article by article. It identified and addressed a vast number of special fields of interest, such as, e. g., maritime carriage of nuclear material, damage to property on the site, definitions, simultaneous application of the Paris and Vienna Conventions, liability for nuclear damage caused by long-term management of radioactive waste, liability and decommissioning of nuclear installations, relationship to environmental liability instruments, insurance coverage for nuclear incidents caused by terrorist acts, and many other issues.

As a result of those in-depth studies of particular nuclear liability questions, the Committee prepared numerous recommendations and decisions of the OECD Council or the Steering Committee for Nuclear Energy which assisted Contracting Parties to the Paris and Brussels Conventions in implementing and interpreting these instruments properly.<sup>42</sup> These auxiliary means and instruments also helped keeping the Paris and the Brussels Conventions *à jour* without a formal treaty revision. As for examples, I would like to refer to the 1990 NEA Steering Committee Recommendation on raising the liability amount of the operator of a nuclear installation from 15 million to not less than 150 million Special Drawing Rights<sup>43</sup> and to the 1992 OECD Council Recommendation on the so-called deferment solution, which recommended a procedure to mobilize the third tier under the Brussels Convention in cases where national legislations provided higher amounts of the operator's liability and coverage than foreseen in Article 3 of the Convention.<sup>44</sup>

Irrespective of those interesting and important agenda points of the Committee meetings, sometimes the regular meetings of the Group, normally twice a year, seemed to develop to bureaucratic

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<sup>40</sup> Text in its 1963/1964/1982 version reproduced under: [www.nea.fr/html/law/nlbrussels.html](http://www.nea.fr/html/law/nlbrussels.html) .

<sup>41</sup> See footnote 13.

<sup>42</sup> See OECD/NEA (ed.), Paris Convention. Decisions, Recommendations, Interpretations, Paris 1990.

<sup>43</sup> OECD/NEA Doc. NE/M(90)1.

<sup>44</sup> OECD Doc. C(92)166/Final.



routine. But such view would be short-sighted. As a side effect, the substantial discussions at the meetings contributed to educating a staff of national experts in nuclear liability law which was to the benefit of member states at both national and international level. This, *inter alia*, paid off when the negotiations on the Joint Protocol<sup>45</sup> and on the revision of the Vienna Convention at the end of the 1980s commenced. Paris states were among the leading participants in these negotiations although they were not party to the Vienna Convention. If I may make a guess: When the Director General of the IAEA in 2003 established the INLEX Group on nuclear liability he probably had also in mind to make available to the IAEA an expert group comparable to the NLC.<sup>46</sup>

I would not like to end my brief overview of issues discussed at NLC meetings without presenting to you what I felt were the most exciting exercises in recent times and which role the NLC played in this context. Of course, this will once more be a most subjective selection.

Firstly, I have to mention the revision exercises. At the beginning of this talk, I already commented on the negotiations of the 1982 Protocol to the Paris and Brussels Conventions. There is no need to add further details. What I would like to highlight is the period from 1987 to 2005. During these 18 years, the Joint Protocol, the revision of the Vienna Convention, the Convention on Supplementary Compensation and the revision of the Paris and the Brussels Conventions were negotiated. In parallel, there were also negotiations on the 1994 Nuclear Safety Convention,<sup>47</sup> the 1997 Joint Convention<sup>48</sup> and the 2005 Amendment to the Physical Protection Convention.<sup>49</sup> That was indeed a rich and most exciting schedule, and I am happy that I had a chance to take part in the respective exercises. Of course, the negotiations took place outside the NLC, most of them were conducted under the aegis of the IAEA. But they nevertheless had an impact of the group's programme. Issues and open questions of the negotiations were re-discussed at the Committee, in a circle of more or less like-minded states. For the negotiators, it was like coming home and reporting to the family what had happened outside. The NLC was a rest area where one could develop second thoughts about the issues under discussion.

The years from 1984 to 1988 were the other most exciting period of time at the Group which I keep in my memory. In 1985, Germany, a Contracting Party to the Paris Convention, had introduced unlimited liability of the operator with limited coverage, and we had to justify this concept *vis-à-vis* the Group, because the text of the Paris Convention stipulated a limitation of liability in amount. Germany immediately was isolated among its partners. Discussions of high quality took place, and blunt statements were made. At the end of the day, our partners accepted our approach, not because we could convince them but they tolerated it as a *fait accompli* which anyway could not be changed. The Group with this politically wise decision weakened the up till then uncontested dogma of limited nuclear liability and, probably unknowingly, slightly opened the door for a new development. The door was finally opened nearly two decades later: Under the revised Paris Convention the German approach is now without any doubt legitimate, and I personally feel confirmed in my view that unlimited liability with limited coverage will be the only generally accepted nuclear liability concept of the future.

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<sup>45</sup> IAEA Doc. INFCIRC/402.

<sup>46</sup> IAEA Doc. GOV/INF/2004/9-GC(48)/INF/5; GC/47/RES/7.C.

<sup>47</sup> IAEA Doc. INFCIRC/449.

<sup>48</sup> IAEA Doc. INFCIRC/546.

<sup>49</sup> IAEA Doc. GOV/INF/2005/10 – GC(49)INF/6.

#### IV.

My birthday talk in honour of the NLC can be summarized by the sentence: If NEA's Nuclear Law Committee did not exist we should establish it right now. Since it fortunately has been in existence for 50 years we will have to use all our efforts to ensure that it will enjoy a future as successful as its past. This Committee has considerably contributed to the development of nuclear liability law both at international and national level. It does not only provide a forum for the exchange of views and experience among governmental experts but also for the preparation of ways and means to improve existing legal instruments.

The regular meetings helped building confidence among delegates of different states and promoted friendship among them. According to my view, the friendly atmosphere among the Committee members is perhaps the most important characteristics of the NLC. At international level, such atmosphere is not a natural thing. The OECD, as an international organisation of States sharing a commitment to democracy and market economy, certainly is supportive to creating a friendly environment without political tensions. But that is not enough. Actually, the way the Committee fulfils its mandate has built a kind of "*esprit de corps*" among members. This to a large extent is the merit of all of the eight chairmen and of the way in which the Secretariat has been looking after the Committee and its members. It is also a consequence of the fact that the meetings took place rather frequently and that a number of delegates stayed for longer periods on the Committee. We always have had frank and often controversial discussions on matters of substance but that has never harmed mutual trust among delegates, and there never has emerged a cold and hostile climate, which I sometimes experienced in other international fora. For me, an invitation to a NLC meeting has always been welcome and I looked forward to it. This makes the NLC a unique asset in the realm of international cooperation.

When I started considering what I should present today I came to the conclusion that it would be prudent to avoid emphasizing the importance of defined persons. Of course, I am aware that history is made by persons. This applies to the history of the NLC, too. There are many personalities who influenced and formed the NLC during 50 years, in particular the eight chairmen. Every selection of an individual person therefore necessarily would be arbitrary and most subjective and might discriminate against others of equal importance. At this stage, however, I feel entitled and obliged to break my own rule, and you probably will agree with me. It is my pleasure to explicitly stress the outstanding role which Patrick Reyners played in the history of the Group. He was NEA's Head of Legal Affairs from 1978 to 2004. During this good quarter of a century, he was not only the head and the heart of Legal Affairs but also, in support of the respective chairmen, the *rocher de bronze* of the Group. He was a reliable and knowledgeable legal adviser, an experienced diplomat, a loyal assistant to the Group's chair, who never tried to push to the front, and he was a good colleague and friend. The NLC and all of us owe him gratitude. This anniversary ceremony is the right place to pay tribute to Patrick Reyners' extraordinary merits.

Since the year 2000 the NLC has a broadened mandate. It is not any longer restricted to nuclear liability but now covers the entire field of nuclear law. There is not yet much experience how to deal with this enlargement of responsibility. It is a task for the future to develop work procedures to cover the new scope. Liability experts do not necessarily have expertise in other fields of nuclear law. This could possibly require a reorganisation of the Committee to avoid floating members. Moreover, membership of NEA today includes states from various regions of the world. This might change NEA to an agency which is much more governed by political considerations than in the past. A possible impact of this development on the Committee's subject matter oriented work can not be excluded. It will perhaps be more difficult to agree on unanimous decisions and compromises. As, however, Marc Léger will be dealing with the future of the Committee I shall refrain from further elaborating on this subject.

I ask for your indulgence for a final remark. In the past, Committee members often used to gather after the meetings for joint dining and wining. I made it a self imposed duty and enjoyed organizing such meetings. In recent times, this did not any longer happen. The reason is that I find it most difficult to organize such parties for the enlarged group at short notice. I regret the development, which deprives us from the possibility of getting more familiar among each other in an informal way. We should try and revitalize the old use, and I am looking at the Secretariat for support in organisation.

I shall present my concluding toast on the Committee in Latin to make it more solemn and longer lasting:

*Vivat, crescat, floreat consilium iuris ad usum nuclei fissionis virium pertinentis!  
Ad multos annos!*

## **50<sup>th</sup> Anniversary of the Nuclear Law Committee 50ème Anniversaire du Comité du Droit Nucléaire**

### *Memorable moments / anecdotes* **Special guests/Invités Spéciaux**

#### **M. Maurice LAGORCE (Chairman/Président 1971-1982)**

J'ai présidé le Groupe des experts gouvernementaux entre 1971 et 1982. Ce n'est pas sans une certaine émotion que je siége de nouveau au Château de la Muette pour le 50ème anniversaire de ce Groupe devenu le Comité du droit nucléaire, et je tiens à remercier chaleureusement Mme Julia Schwartz, Chef des affaires juridiques à l'OCDE/AEN pour son aimable invitation.

J'ai retrouvé dans mes archives le premier procès-verbal de la réunion du 27 mars 1957 qui était chargée de formuler des propositions pour l'établissement d'un régime de responsabilité civile nucléaire. Parmi les événements marquants de ces onze ans de présidence, je retiendrai en particulier mon « aventure » lorsque j'étais expert gouvernemental à l'Agence de Vienne : nous avons été, mon épouse et moi, réveillés au milieu de la nuit par le Secrétariat de l'AEN et plus spécialement M. Richard Stein qui venait de nous apprendre que M. Trevor, qui était alors Président de ce Comité et l'avait été pendant de nombreuses années, était décédé pendant le voyage qui l'amenait de Londres pour se rendre à Vienne. Il est inutile de vous dire que ceci nous a beaucoup bouleversés. Je l'ai été d'autant plus qu'étant sur la liste comme vice-président, Richard Stein m'avait annoncé que je devais présider la réunion du lendemain. La nuit a été très écourtée comme vous pouvez imaginer. Je voulais rendre cet hommage à M. Trevor qui était un président absolument exceptionnel.

En 1982, j'ai été amené à cesser de participer à ce groupe. A tous ceux qui ont travaillé sous ma présidence, je dois énormément de remerciements parce qu'ils leur arrivait brutalement d'avoir des discussions qui se déroulaient avec un président français, et ma méconnaissance de l'anglais ne m'a pas facilité les choses, d'autant que par ailleurs mon ministère de tutelle, le Ministère des affaires étrangères me faisait obligation de parler français. Cependant, tout le monde s'en est bien tiré et je n'ai eu que des remarques amicales dans ces réunions qui étaient quand même assez ardues. J'en reviens donc à la période où j'étais amené à abandonner ce secteur d'activité, parce que je partais à la retraite, et j'ai passé la main à M. Jacobsson ici présent. La dernière chose qui marque cette période est le Protocole portant modification de la Convention de Paris de 1982. Ce Protocole a fait l'objet d'un document particulièrement bien imprimé sur lequel mes amis de l'époque ont eu l'amabilité de me le dédicacer.

#### **M. Måns JACOBSSON (Chairman/Président 1982-1985)**

Permettez-moi de vous dire à quel point je suis sensible d'avoir été invité à participer à cette réunion pour célébrer le 50<sup>ème</sup> anniversaire de ce Comité et de son prédécesseur le Groupe d'experts. Permettez-moi également de me joindre aux « dinosaures » qui participent depuis longtemps à ces travaux.

La période pendant laquelle j'ai présidé ce Groupe fût une période très agréable pendant laquelle j'ai beaucoup appris. Comme l'a dit M. Lagorce, nous avons eu de nombreux jours de discussions aimables et à haut niveau. On a vu aussi alterner changements et continuité. Il y a quelques délégués, comme M. Pelzer et M. Sahrakorpi, qui ont marqué la continuité, et d'autres qui ont marqué l'innovation. Mais il ne faut pas oublier l'important rôle qu'a joué le Secrétariat pour garantir la continuité, guider les délégués et ne pas perdre de vue l'objectif des travaux.

Il me semble qu'en dépit des efforts qu'ont pu faire M. Lagorce ou moi-même, la langue majoritaire ici aujourd'hui semble être l'anglais et donc si vous permettez je vais continuer dans cette langue.

When I took a look over the weekend at these conventions and the work that has been carried out over the years, the interesting thing is how much foresight that the founding fathers of the nuclear law regime actually had. Firstly, they created a compensation regime before any compensation cases had arisen. They actually developed law before the event which is very unusual because normally, the way legislators react is after the event, and it is only when something has gone wrong that you can persuade your ministers to deal with something as a matter of priority. The second thing I thought of was the basic features that Dr. Pelzer referred to. These basic features have stood the test of time and not only that - they have also been copied elsewhere. The basic features of objective liability and compulsory insurance were not evident in the early 1960s - these were innovations in law.

I also looked at the subjects that were dealt with during my time on the Committee and I find that they are not very different from those covered in the last ten years, geographical scope of application, the question of whether disposal facilities should be covered, how to deal with nuclear substances in transport, the exclusion of small quantities from the scope of the conventions etc. Nothing is new under the sun or perhaps not very much.

The more fundamental issue to which Dr. Pelzer already referred is the amount of compensation available. There I totally share his view that, for many of us, it was a great disappointment that in the 1982 revision, the operator liability still remained at the ridiculously low amount of 15 million Special Drawing Rights (SDRs). We did manage to increase the Supplementary Convention's maximum compensation from 120 million to 300 million SDRs. However, although that may look impressive, in fact it wasn't - it was just to compensate for inflation. And then we can see how much more successful the achievements have been in recent years in arriving at an amount that at least looks somewhat better. Whether it will be sufficient in the case of a nuclear disaster, only the future can tell.

But I also found to my great satisfaction the new definitions of damage, dealing with preventive measures, measures of reinstatement of the impaired environment and pure economic loss, just to mention a few. In the light of my activity in the past 22 years as Director of the International Oil Pollution Compensation Funds, I have actually found that the definitions reflect the policy that the Funds have developed over that time. I think probably my successor Mr. Sturms deserves great credit for choosing these concepts for the nuclear conventions.

But of course nothing is perfect, law is not static. Law develops and must develop to take into account the developments in society and changes in political priorities, otherwise national laws and conventions will not survive. They must change to meet the aspirations of the society of today and not the way that society saw it in 1960. I think that this Committee and also governments have over the years shown that they are prepared to take this challenge and develop nuclear law in spite of the political difficulties. We know that the best thing for all of us would be if these conventions were never to be applied. Nuclear incidents have not only economic consequences but also consequences of a human nature which would be much more serious. We all hope that these conventions, despite all the work that has been put into them over the years, will remain a sleeping beauty.

**Mr. Wouter STURMS (Chairman/Président 1985-1991)**

I feel a need now to speak at this point of time as my term came after Måns Jacobsson. All the more so since I was a bit provoked by Norbert Pelzer telling the story about the huge herring pot which was successfully consumed by a considerable number of participants. I must confess that I was the one ordering and desperately sharing the herring pot. Now this does not say anything about my appetite but it does say something about solidarity. I am still grateful to those at the dining table who helped me out of that embarrassing experience. I am happy to be back here, be it only for this afternoon and I congratulate the Secretariat for organising this meeting. When I was a member of the European Nuclear Energy Tribunal, we had the privilege of meeting in this room to discuss the updating of its Rules of Procedure. This Committee now has a room which is in conformity with its present status. I was very glad to see M. Lagorce in this room. I did experience his expertise during my first diplomatic conference in 1971 in Brussels on the maritime carriage of nuclear materials. M. Lagorce at that time was chairman of the Committee of the Whole for this conference. M. Lagorce dominated the session and seemed to be the only one who really understood the subject. This Committee still holds much gratitude towards him for all his input at that time.

At the same time in 1971, another conference took place in Brussels on the creation of the International Oil Pollution Compensation Fund (IOPC). M. Jacobsson was also present at that conference and we attended many International Maritime Organisation conferences together and our views often coincided. It was in that good atmosphere that M. Jacobsson convinced me to take over the chair of this Committee by saying that the group only met once a year, it was a nice group, and enjoyed dining together.

That was indeed the case of my first session in 1985. However, I had the doubtful pleasure of holding the chair at the time when the Chernobyl accident occurred. As you know, that accident triggered discussion on the expansion of the international nuclear liability regime and other instruments such as the Nuclear Safety Convention etc. Indeed life was not the same anymore for this Committee. We met frequently and the year was easily filled with subgroups etc. The Committee did what it was asked to do and came up with a number of recommendations which were to my mind very significant. I must say that I am happy to see Hélène Conruyt who was my vice-chair who strongly supported our work and we benefited from her thorough experience in insurance matters. Hélène likes travelling and is always exploring other parts of the world, so we had some difficulty in scheduling meetings so as not to have them without her. Måns Jacobsson continued to consult me from time to time when I chaired the Executive Committee of the IOPC Fund. I remember he called me once in my hotel room in Paris concerning the salvage of a ship in Canadian waters. A decision was necessary because winter was coming up and the situation dictated that salvage must be immediate or not at all. These discussions took place in the night and I had to chair our Committee the next day. I used the experience of our discussion on the issue of damage and preventive measures in creating an input on these matters also for this Committee thus trying to achieve consistency.

After me, in 1992, Mr. Rustand took over the chair, I still remember the long evenings that were spent drafting at the balcony of our hotel where we tried to elaborate new texts and had to encourage each other again and again that it is difficult to accept slow progress but diplomacy does not move too fast. Roland Dussart-Desart, I did not experience you as a chairman but as a delegate next to Hélène. Like her, you are very much dedicated to finding solutions to difficult issues. It does not surprise me you now hold the chair. What intrigued me always was your mysterious smile. I always wondered whether you were smiling with me or at me. I of course decided for the first but I'm not sure.

When I left this Committee, it was to take the position of Legal Director at the IAEA. In getting this job it was very helpful to have worked together with Otto von Busekist. His role should not be underestimated. We called him the Father of the Joint Protocol. He was able to produce schemes on how

all of the legal instruments could live together. That type of presentation highly contributed to the successful negotiation in Vienna of the Joint Protocol.

Also we should acknowledge the special role of the Secretariat. It was a great pleasure to work with Mr. Reyners. He was so well known that when you were in his presence, you were always assured that his network would help us to get things done. Apart from skillfully assisting the work of the Committee, he was the one who gave an input to the education of countries that were not too familiar with nuclear law. My first contacts with Julia Schwartz were in Vienna. Our contacts were on substance but also sometimes on culture. Once, she gave me a book for a present. It was "A Man for All Seasons", a play by Sir Thomas More who was penalised when he kept silent. Now in a diplomatic sense that is also an important question. When to speak and when not to speak. Thomas More chose not to speak and his head was chopped off. Finally, I would like to mention the always supportive role of the Secretariat and today in particular Nicole Ventosa for having sought me out and bringing me to you today.

**Mr. Håkan RUSTAND (Chairman/Président 1992-2003)**

One drawback is to appear at a late stage on the speakers list. Much of what I intended to say has already been said in a much more elegant way than I would have been able to. However, I shall give you some personal impressions from the period that I chaired. I will not refer to any particular moment or memory but rather some general issues. My friend Norbert Pelzer pointed out that it has been a fantastically interesting period in the Committee's history. You can start with the elaboration of the Joint Protocol in 1988, shortly before I joined the work of this group in 1989. Thereafter followed the revision work in Vienna, where the Paris states took a very active part. Since the instruments were based on the same fundament, we would benefit from any improvement that could be agreed in Vienna when we embarked upon the work in our own revision procedure. The work there became a little bit more time-consuming than we expected and finally took until 1997. If I remember correctly, it was mainly the questions around supplementary compensation that took most of our time. You will recall the interesting discussions on an industry risk pooling system inspired by Germany which, for a long time, thought it would be a way forward to increase funds. When some key countries made it clear that they were not interested in this idea any longer we tried other supplementary funding recipes and at that stage the US entered with great interest and suggested the Umbrella convention where our friend Ben McRae played a very active role in attempting to set up supplementary compensation.

Shortly after that in 1998 we commenced our work on the Paris and Brussels revision where I was chairing Paris and Hélène Conruyt was chairing Brussels. The work was, from a substantial point of view, already concluded in 2002 but then we ran into the problem of jurisdiction with the EC which prevented us from adopting until 2004. Another important issue that has been touched upon by other speakers is the amendment of the mandate of the NLC which represented an important development also around that time. On a more personal basis, I think that it should be noted that we not only met in Paris but in other major cities and capitals all over Europe. I think this was due to the football world championships when we couldn't find hotel rooms in Paris. We were invited to Berlin during a very exciting period of that city's development, not so long after the fall of the wall, when the city was totally under reconstruction. Norbert and his colleagues gave us a tour on the river and an opportunity to share in all the history. Later we went to London where we met in the Ministry of Transport and later on, this hospitality took us to Istanbul where we had the opportunity to meet with our Turkish colleagues and had a remarkable tour on the Bosphorous. So it was not work all the time, we also met with good friends. One of those who took an active part in facilitating the wining and dining was of course Norbert Pelzer whom I think must have traveled before the meetings to identify the best places to eat! I remember many evenings in Vienna following him in his green coat and hat to find some new restaurant where the wining and dining would be

allegedly of an excellent nature. So many of those memorable moments were thanks to you Norbert and we shall not forget that.

At this point I would like to remember a very good friend who is no longer with us, Fabrizio Nocera, who always had a good story and a smile to share with us in the restaurants. Norbert touched very delicately and with great diplomacy on the questions of the sketches and drawings. He didn't mention any names I think but it is no secret that it is our present chairman who distinguished himself in this regard making sketches and drawings illustrating hard moments in our work. I found one in my files recently when looking through my papers. One of them had Ben McRae with a big umbrella offering the protection of additional compensation. Another represented our good friend from Luxembourg, Mr. Kayser from a non-nuclear country who was not very fond of the idea of reciprocal benefits. Roland reflected this by drawing a man who fell into a pit and couldn't be picked up until he offered reciprocal benefits.

Another little story that could illustrate the good and cordial atmosphere within the Committee was the gentleman from Greece who once joined the Committee. We started the 'tour de table' for introductions, and when it was the turn of our Greek colleague to speak, he was surprised and said "I am an agricultural expert and ended up in the wrong meeting. I thought you had such a nice meeting and the atmosphere is so nice I decided to stay". This story illustrates very well what Norbert also stated earlier. I would like to commend the Secretariat on its great work. I remember my close cooperation with the Secretariat started when Patrick Reyners invited me for dinner once in a restaurant situated under the Louvre. I have forgotten what his advice was but it was probably to try to keep up the good work and spirit of my predecessors. My first task was to commend Mr. Rocamora in the French delegation who left his post as Vice-Chair and to thank him for his duty to the Committee. The support of the Secretariat has at all times been excellent. I refer in particular to Patrick Reyners, Julia Schwartz, Susan Reye and Kathy Leigh who earlier served as legal advisers to the Committee. Without this we would not be where we are today.

We should take into account of what we have done, we have revised the Conventions in important ways as Måns Jacobsson said, by revising the definition of damage greatly inspired by the IOPC funds, we have made it possible for countries undisputedly to have unlimited liability and we have raised the liability amounts to at least a decent level. I realise that we are running out of time. The other things I might have liked to add have been said by other colleagues. These are just a few comments that come to mind with regard to the fifteen years work I carried out on this Committee. Perhaps this work did not make us rich in a pecuniary sense, but we were rich in the sense that we met very good friends and colleagues, and in this regard it has been very rewarding to have the privilege of sharing this work with you over such a long time. Thank you, Mr. Chairman.

### **Mme Hélène CONRUYT-ANGENENT (Vice-chairperson/Vice-présidente 1982-2002)**

Je suis entrée moi-même dans le Groupe en 1982, c'est-à-dire au moment où l'on adoptait les protocoles de révision, et j'en suis sortie au moment où les protocoles de révision étaient, pour la deuxième fois, terminés, au moins virtuellement, car j'ai quitté le Groupe en 2002, même si les instruments n'ont été signés qu'en 2004. J'avais dirigé moi-même le Groupe de Bruxelles et j'avais participé au Groupe de Paris. Je dois dire que participer à un groupe tel que le groupe nucléaire m'avait paru quelque peu bizarre au début car j'étais quelqu'un du milieu de l'assurance. Je m'apprêtais à entrer dans un groupe complètement juridique et de surcroît un groupe nucléaire, cela m'effrayait un peu. Mais mon collègue à la tête du service juridique du département qui était le prédécesseur de Roland Dussart-Desart m'avait tout de suite rassuré en me disant « Ne vous inquiétez pas - vous ne travaillerez pas beaucoup ». Alors je suis donc arrivée dans le groupe ; Wouter Sturms a eu l'air de souligner tout à l'heure que j'avais fait l'école buissonnière, ce dont je ne me souviens pas aussi bien que lui mais il a peut-être raison pour une ou deux séances.



Dans tous les cas, je me rappelle surtout d'avoir énormément travaillé, d'abord dans une enceinte où je ne soupçonnais pas que j'irai et qui était Vienne, parce que nous nous sommes rendu compte que la révision de la Convention de Vienne, du fait du Protocole commun, avait une importance énorme pour les pays de Paris et que par conséquent il convenait que nous soyons présents afin de ne pas avoir de hiatus entre les conventions au moment de l'application du Protocole commun. A Vienne on commençait le matin par une réunion informelle, suivie d'une réunion formelle. Après on avait une réunion informelle à l'heure du déjeuner, suivie par une réunion formelle, une autre réunion informelle et des discussions informelles à l'heure du dîner. J'ai trouvé que nous travaillions beaucoup à Vienne, même s'il nous arrivait tout de même d'aller manger ensemble, ce qui égayait un peu les travaux.

J'ai aussi appris que sur le plan juridique, j'avais un trou dans mes connaissances. J'ai pris connaissance à Vienne d'une clause au nom charmant qui est la clause de grand-père qui permet d'imposer à tous les autres de faire quelque chose sans le faire soi-même ! J'ai trouvé cela extraordinaire. Malheureusement je n'ai jamais réussi à l'appliquer ailleurs dans ma vie professionnelle, je l'ai regretté parce que j'aurais trouvé ça éminemment sympathique et éminemment pratique. J'étais extrêmement contente de participer aux travaux. Je tiens à remercier le Secrétariat comme tous ceux qui m'ont précédé. Je tiens aussi à les remercier de m'avoir invitée à participer à cette séance qui clôture admirablement ce travail et j'espère avoir l'occasion d'en revoir certains d'entre vous dans l'avenir même si je fais désormais partie des « dinosaures ».

**M. Patrick REYNERS (Chef des affaires juridiques de l'AEN/Head of NEA Legal Affairs 1978-2005)**

C'est un très grand plaisir d'être de retour dans cette salle du Conseil où j'ai assisté à tant de réunions et je remercie les organisateurs de cette rencontre commémorative pour leur invitation. Je me réjouis aussi de voir autour de la table tellement de visages familiers et amicaux, mais aussi nombre de têtes nouvelles. C'est un signe incontestable du renouvellement de ce Comité et un gage de son avenir. Bien sûr, certains nous manquent ; ils nous ont marqué par leur talent, leur expertise et leur personnalité. Je pense à eux en ce moment et plus particulièrement à Fabrizio Nocera et Luz Corretjer qui nous ont quitté récemment. Plutôt que de tenter de répondre « à chaud » aux propos qui viennent d'être tenus par Marc Léger, je vais me borner à évoquer quelques souvenirs personnels.

Encore simple stagiaire à l'Agence, ma première participation à ce Comité remonte à 1967 ; la réunion se tenait non pas dans cette auguste salle mais à Neuilly-sur-Seine dans les faubourgs de Paris, au siège de ce qui était à l'époque ELDO-ESRO, les deux organisations européennes de lancement des satellites qui ont d'ailleurs disparues entre-temps. C'est le signe que déjà à cette époque, le Secrétariat était confronté à cette difficulté lancinante de trouver une salle pour vos travaux. Je crois me souvenir que le sujet à l'ordre du jour de cette toute première réunion concernait le statut sur la base de la Convention de Paris des laboratoires de recherche nucléaire. Par la suite, j'ai été très vite impliqué dans le travail du Comité, sous la direction paternelle de Pierre Strohl.

Pour moi, toutefois, le véritable baptême du feu a été une question déjà abordée cet après-midi, à savoir les problèmes de responsabilité posés par le transport maritime des matières nucléaires qui a résulté en l'adoption de la Convention de Bruxelles de 1971, un instrument un peu oublié aujourd'hui. De ces premières armes, je garde le souvenir d'un sentiment de frustration, voire d'impatience, lorsque ayant travaillé intensément sur telle ou telle proposition d'action du Comité, celle-ci se voyait impitoyablement retoquée par l'une ou l'autre des délégations nationales. J'avais beaucoup de mal dans mon enthousiasme juvénile à comprendre pourquoi ces « excellentes » propositions du Secrétariat n'étaient pas automatiquement, spontanément applaudies par les délégués. J'ai curieusement constaté qu'en prenant du grade, j'ai peu à peu adopté une attitude plus relativiste sur le sort des propositions avancées par le

Secrétariat, ce qui prouve peut-être qu'en vieillissant on acquiert une certaine sagesse. J'en retiens cependant une particularité de la vie du Comité : son Secrétariat aura constamment exercé une influence dynamique dans l'animation et l'orientation de ses activités, avec votre accord naturellement, et pour ma part j'en suis assez fier.

Pendant toutes ces années, j'ai eu le privilège de servir six présidents, sans parler des vice-présidents. Six présidents, c'est relativement peu, et ils sont présents à l'exception de John Trevor, dont la mémoire a été rappelée à l'instant par Maurice Lagorce, ce qui m'incite à penser que cette fonction conserve - c'est un gage de longévité. L'autre remarque est que cette tradition de longs mandats – et celui de notre ami Roland Dussart-Desart n'est pas terminé - est un facteur de stabilité et d'efficacité, ce qui compense en partie, compte tenu de la complexité des questions que vous traitez, le problème posé par l'inévitable rotation dans la composition des délégations nationales.

Je voudrais dire un mot très bref sur le Secrétariat de l'AEN et notamment le Secrétariat juridique. D'abord pour observer que cette Agence qui est fondamentalement à vocation scientifique et technique aura été fortement marquée par des juristes. L'AEN a été en effet « inventée » par un Conseiller d'État français, Pierre Huet, qui a travaillé en tandem avec un brillant avocat britannique, Jerry Weinstein, et c'est eux qui ont véritablement mis l'Agence sur pied. Et puis d'autres juristes ont fortement influencé le développement de l'Agence. Je pense bien sûr à Pierre Strohl et à Howard Shapar qui a été son Directeur général. Je conserve un souvenir affectueux pour Ken Ritchie du Royaume-Uni, qui a été le responsable de la Section juridique pendant plusieurs années, avant l'arrivée de mon prédécesseur et ami, Otto von Busekist.

Une question qui n'a pas encore été évoquée et qui, à mon avis a fortement contribué à promouvoir ce que Norbert Pelzer a justement appelé l'esprit de corps, ce sont, au-delà des réunions ordinaires, les occasions de se retrouver dans des conférences organisées ou parrainées par votre Comité. Il s'agit notamment des conférences de Monaco, Stockholm, Munich, Helsinki, Budapest, Paris, Bratislava..... Je pense encore aux réunions du Comité tenues en dehors de Paris, notamment à Berlin, Istanbul et Bruxelles. Rappelons-nous aussi la saga des négociations à Vienne. Autant d'occasions de se rencontrer dans un contexte différent et de nouer des contacts personnels plus étroits. J'ai toujours pris beaucoup de plaisir à prendre part à ces « troisièmes mi-temps » du Comité, si je peux emprunter cette métaphore au monde du rugby.

Cela m'amène à noter une chose qui m'a beaucoup frappée en travaillant avec vous, c'est que indépendamment des instructions confiées aux délégations nationales et qui reflétaient inévitablement des intérêts et soucis divergents, j'ai toujours constaté votre volonté constante, à titre individuel, d'essayer de concilier et parfois même de dépasser ces instructions divergentes pour inventer des solutions pour parvenir à des accords permettant finalement au Comité d'aller de l'avant.

Je voudrais conclure sur une réflexion personnelle. Jeune administrateur, lors du Symposium de Stockholm en 1972, je me souviens que Pierre Strohl, non sans quelque perplexité, avait remarqué que j'avais l'air de travailler en m'amusant. C'est une réflexion qui m'avait beaucoup troublé sur le moment mais, finalement, avec le recul, j'en suis arrivé à penser qu'elle était non seulement exacte mais légitime. Je crois, si je peux hasarder cette recommandation dans une enceinte aussi auguste, qu'il devrait être interdit de s'ennuyer dans le travail, puisque c'est notre lot à tous. C'est ce que je vous souhaite en rappelant la célèbre formule du poète Horace : Carpe diem !

**M. Otto VON BUSEKIST (Head of NEA Legal Affairs/Chef des affaires juridiques de l'AEN 1974-1977)**

I am a little surprised to be invited to take the floor but I do it with pleasure. I would like to thank Julia Schwartz for inviting me to this commemorative meeting. There are a few things which I would like to recall. When I applied for the post of Head of Legal Affairs at the NEA in 1973, I didn't receive any message from the Agency. So I decided to move to another department in Vienna, in the absence of my poor wife who had gone to Germany on home leave. When she came back I had the offer from the NEA to become Head of Legal Affairs and she almost killed me as she had just moved to another place! I refer to Wouter Sturms' kind remarks concerning the Joint Protocol. When Julia invited me to this meeting and sent me the commemorative publication prepared on the occasion of the 20<sup>th</sup> anniversary of Chernobyl, I was surprised to find my article, such a long and complicated article, in this book. When Wouter referred to me as "Father of the Joint Protocol", I think it is only partly true as the one who came first to Paris and talked about the Joint Protocol was Richard Stein. We both worked on the first version of the Joint Protocol way back in 1972. It took a long time until its adoption in 1988.

During the negotiations on that Joint Protocol, there was a long discussion on the applicable convention in the case of transport. Should it be the Vienna Convention or the Paris Convention, and what would be the connecting factors to determine the applicable convention? Several drafts were presented on this particular point and finally an eminent scholar of the conflict of laws spoke up and said "You can't do that. You should never refer to legal terms in conflict of law cases but only to facts, such as domicile, nationality etc." This eminent lawyer is now among us - Dr. Norbert Pelzer. Finally I invented what came to my mind, that this reference to the various transport provisions is a reference to connecting factors like taking charge of nuclear material and so on. I managed to convince Dr. Pelzer on the subject and he concluded his remarks by saying that "Mr. von Busekist is very convincing". With these few memories I will conclude and thank you again for giving me the floor.

**M. Pierre STROHL (Chef des affaires juridiques de l'AEN/Head of NEA Legal Affairs 1966-1974)**

Cette réunion me rajeunit beaucoup. En effet, c'est en 1956 que j'ai rejoint l'équipe de Pierre Huet qui avait pour but de lancer les travaux sur l'énergie nucléaire au sein de l'OECE et finalement de créer ce qui allait devenir l'AEN. A cette époque, je ne faisais pas preuve de beaucoup de courage de m'engager dans cette voie car l'énergie nucléaire était quelque chose de beaucoup plus sympathique et suscitait beaucoup plus d'espoir et de confiance que maintenant. L'énergie nucléaire n'était pas à l'époque contestée en ce qui concerne ses capacités d'avenir et la possibilité de les maîtriser. Je me rappelle d'avoir assisté à l'une des premières réunions du Groupe d'experts en 1958. Lorsque je scrute les visages de cette assemblée, je ne vois qu'une personne qui était déjà là, notre ancien président, M. Lagorce. Même le Dr. Pelzer devait être à l'époque en train de brillamment réussir son Abitur, et M. Léger devait à peu près rejoindre l'école maternelle. Donc, nous sommes les deux seuls survivants des travaux de cette époque.

J'étais directement en charge du Groupe d'experts entre 1965 et 1971. A cette époque, qui n'était pas l'époque la plus grandiose du Groupe, je le reconnais, nous avons terminé les travaux sur ce problème assez rébarbatif de l'exclusion des petites quantités. De manière plus intéressante, nous avons travaillé, à mon initiative, à l'adoption de la Convention de Bruxelles sur le transport maritime des substances nucléaires. C'est une convention qui a pour objet des conflits potentiels entre le droit nucléaire et le droit maritime. Nous avons par la même occasion constaté des possibilités de conflit entre la Convention de Paris et la Convention de Vienne. Nous y avons travaillé - je me souviens notamment d'un éminent expert suédois M. Nordensson qui nous a beaucoup aidé à avancer à ce sujet. Nous n'étions pas encore au Protocole Commun mais je me rappelle que j'avais déjà parlé dans une réunion de travail d'un « pont » entre ces Conventions.

Ceci étant dit, je crois que ce Groupe a joué un rôle très important dans l'Agence. En effet, si nous regardons les premières années, nous voyons que cette Agence, par opposition à l'AIEA ou à l'Euratom s'est distinguée par deux ou trois caractéristiques qui lui appartenaient. D'une part, elle a établi des entreprises communes. La première était EUROCHEMIC qui a été créée dès 1957. L'autre domaine dans lequel l'AEN a bien réussi est celui des normes de radioprotection. Le troisième domaine où elle s'est distinguée par un leadership incontestable est celui du droit nucléaire et pour commencer, la responsabilité civile nucléaire. C'était à l'époque l'une des branches importantes d'activité de cette Agence. Ça l'est resté et ce Groupe a su évoluer et moderniser ces différents instruments au travers des débats et travaux toujours efficaces et parfois même brillants. J'aimerais féliciter Julia Schwartz pour la perspective historique qu'elle a tracée et qui est, à mon avis, à la fois exacte et supérieure à l'évocation de souvenirs qui trahissent souvent la réalité et ne font pas l'histoire.

D'autre part, je félicite également Marc Léger pour ses suggestions pour l'avenir. Un point particulier se rattache à une chose que Marc Léger a mentionnée. Il s'agit du stockage géologique des déchets radiologiques. C'est un des problèmes juridiques importants pour l'avenir. A cet égard, je me permets d'attirer votre attention sur l'intérêt qu'il y aurait, au moment de l'autorisation de créer ou d'exploiter un dépôt géologique, à créer un certificat de garantie pour cette installation nucléaire très particulière. Nous avons à faire face à une responsabilité très longue et, par conséquent, à une garantie sur une durée très longue elle aussi. Il me semble que si l'exploitant pouvait avoir une obligation de présenter cette garantie d'assurance, mentionnant la police d'assurance ou la garantie de l'Etat et sa durée, cela présenterait un intérêt réel. Bien entendu, un tel certificat devrait être confirmé dans sa validité, à chaque échéance, pour 10, 15 ou 20 ans.

Pour terminer, et pour sortir un peu de ces mots un peu trop officiels, j'aimerais raconter une anecdote. Il s'agit d'une histoire qui courait dans les couloirs du Groupe d'experts au cours des premières années. On disait qu'un expert nouveau qui arrivait dans le groupe et qui ne connaissait pas encore les autres aurait dit « Je vois ici la liste des membres et, si je comprends bien, M. Boulanger est l'expert français. » On lui a répondu « Mais non, Herr Dr. Boulanger c'est l'expert allemand ». « Ah bon, pardonnez-moi je pensais que c'était plutôt M. Strohl l'expert allemand ». « Non, M. Strohl est français et il appartient au Secrétariat ». Sur ce, le nouveau aurait rétorqué « Mais quand même, M. Arangio-Ruiz est bien l'expert espagnol ». « Pas du tout, c'est l'expert italien ! » Voilà une histoire qui nous a beaucoup amusés. Je conclus que les travaux de ce groupe ont été passionnants, et m'ont permis d'œuvrer pour le droit nucléaire avec beaucoup de plaisir.

## **50th ANNIVERSARY OF THE NUCLEAR LAW COMMITTEE COLLOQUIUM OF 6 FEBRUARY 2007**

### *THE PROSPECTS FOR NUCLEAR LAW*

*Marc LEGER*

#### **Introduction**

It is a great honour for me to have been asked to speak about such an important subject, but I am aware also of the difficulty involved since it is obviously less risky to predict the past than to foresee the future! I shall therefore be careful not to try to describe what nuclear law will be like in the ten or so years to come; I shall simply try to identify, in light of its past evolution, how it is likely to develop, having regard to the needs which the nuclear sector will have to meet. I hope that my paper will contribute towards the ensuing discussion on the future and possible orientations of the Nuclear Law Committee.

I should like to make clear first of all that the following reflects my views alone.

First of all, I think it is important to describe some fundamental characteristics which, in my opinion, should determine in part the future of nuclear law. I shall then endeavour to discuss possible developments, having regard to the way in which our societies are evolving and, more precisely, in the context of economic globalisation.

#### **1. Evolution of nuclear law: observation**

**First observation: the boundaries of nuclear law have constantly expanded and now encompass all aspects of the use of radioactivity.**

I am making this observation mainly with regard to French law, but I know that it applies also in many other countries. Nuclear law has constantly broadened its scope: today, it covers all the rules which apply to nuclear activities, i.e. those making use of the properties of radioactivity, whether civilian or defense-related, industrial, research or medical.

It is a cross-cutting law which does not fit into the traditional branches since it forms part of both public and private law, affects the environment, work, health, safety, defence and concerns very many stakeholders: public authorities, private operators, international organisations, hospitals, doctors, etc.

Today, it covers not only the safety of nuclear installations, radiation protection (of the public, workers and the environment), nuclear third party liability, the transport of radioactive materials, the protection and control of nuclear materials, the management of radioactive sources and radioactive waste management, but also the physical protection of installations against malicious acts, the management of emergencies and radiological crisis situations, and lastly of course non-proliferation and the ending of nuclear tests.

This observation about the constant increase in the content of nuclear law is closely linked to my second observation, that of the interdependence of norms (in the broad sense of the term) adopted at different levels and of the growing harmonisation of national rules.

**Second observation: the interdependence of norms and the harmonisation of national rules.**

Another characteristic of nuclear law is that it developed, although not necessarily at the same speed, on three different levels: international, regional (in particular European) and national, and that these different levels are closely interdependent. Apart from environmental law, there is no other branch in which this interdependence is as strong. It results without doubt from the transboundary nature of the risks linked to the use of radioactive materials.

This situation presents a considerable advantage in that it promotes the adoption of national nuclear legislation which tends to be relatively similar on certain issues (for example the safety of installations, which is based on internationally recognised standards, radiation protection, where the exposure limits have been agreed by scientists, the control of nuclear activities, which, it is agreed, must be independent of operators, and lastly the participation of the public and the role of information, where citizens' rights are better recognised).

It can thus be seen that there is a strong legal current feeding the different levels of rule-making and which, moreover, makes it possible for "soft law" provisions to be transformed into binding ones.

This development, linked to the broadening of the scope of nuclear law, has undoubtedly helped constitute a veritable autonomous branch of the law.

**Third observation: the long journey towards a veritable autonomous branch of the law.**

Nuclear law took a long time to emerge as such. At national level, it began by being simply a chapter of other branches of the law: that of hazardous installations which gradually became environmental law, that of labour and health with radiation protection, that of defence for sensitive installations or that of urban planning with regard to the construction of installations, and it borrowed something from each of these branches.

It is no doubt at international level that nuclear law had, from the outset, a specific identity, with treaties dealing specially with the activities of this sector (nuclear third party liability, radiological emergencies, the safety of nuclear power plants, the safety of waste and spent fuel management, etc.). As for the European level, nuclear law was immediately given a separate status with the Euratom treaty.

Over time, i.e. a period not far short of fifty years, new laws and regulations were added to existing ones, some favourable to nuclear power, and others not. This, it seems to me, is what makes it possible to speak today about a veritable nuclear law.

Admittedly, it is not the quantity of rules that creates an autonomous branch of law although the way in which regulations have piled up in French law is impressive and provides material for substantial course work at university (which is in fact seriously lacking).

I am also aware of the point of view of some lawyers that nuclear law necessarily forms part of the broader branch of "risk law" (industrial, occupational and health) or that it addresses the same protection issues as environmental law and is in fact simply a metamorphosis of it. None of these arguments seems totally convincing to me even if there is some truth in them. After all, many branches of law pursue the same objectives or interlock or influence each other.

I will use two arguments in support of my position: the first is that an autonomous branch of law is traditionally defined as "a coherent and autonomous set of rules adapted to a given sector of activity".

In this respect, it is clear that there is a body of rules applying specifically to the nuclear sector, even although general provisions also apply to it, and in addition that this body of rules exists not only at national level but also at regional (essentially European) and international levels.

The second argument, which seems to me important, is that nuclear law today includes general principles which are specific to it and that even though some of them are taken from environmental law, the way in which they are applied to nuclear activities is specific to this sector.

Thus for example, the institutional organisation of nuclear activities has given rise to important legal discussions by virtue of which a fairly broad consensus has been arrived at with regard to basic principles, such as for example the independence of the safety authority vis-à-vis the political power, or the independence of technical experts vis-à-vis both operators and the safety authority.

I am therefore convinced that a real coherent structure has gradually been put into place and that it has become autonomous vis-à-vis the other branches of law from which nuclear law was undoubtedly derived and with which it retains very close links.

Nevertheless, I do not think it desirable for nuclear law to become so specific that it alone contains particular and excessively binding rules which would not apply to other hazardous activities, notably industrial ones.

It should certainly have its own characteristics but it must not be such as to oblige those in charge of nuclear activities to suffer more constraints than others, or in any case constraints which are out of proportion not only to the objectives pursued but also and above all to competitor activities. It goes without saying in any case that such a situation would be fundamentally contrary to the principle of free competition.

## **II. Prospects**

Let us now turn to the prospects which I feel nuclear law must have. I see three of them: nuclear law must become a major component of a prevention and protection culture; it must ensure a balance between the interests involved and which it appears legitimate to protect; lastly, it must be one of the essential conditions of the acceptability of nuclear energy.

### **Nuclear law must become a major component of a “prevention and protection culture”**

Nuclear law is without doubt a technical law, profoundly marked by technology because of the technical nature of the field of activity to which it applies. Thus, science and technology play an important part in the process of drafting legal norms. It is for this reason that it is sometimes described as law for engineers.

This is not going to change any time soon (to judge in particular from the example of French law on nuclear installations). But I should like to point out a risk which has to be avoided, namely that nuclear law becomes what I call a “users’ guide”, i.e. a law which is essentially regulatory, in the strict sense of the term, in which it is sought to anticipate all the situations which might occur. There is a serious danger that this type of approach would lead either to long and cumbersome rules which are difficult to read and which, as is well known, cannot in any event regulate everything, or to a transformation of legal provisions into technical manuals which would require no further intervention by lawyers.

That is why I hope that nuclear law will in general evolve in line with the evolution of the role of law. The law must not simply lay down mandatory rules or absolute requirements, the enforcement of which is in some cases backed up by a panoply of penal provisions, but must define obligations of result

requiring the stakeholders (in this case those responsible for nuclear activities) to make available the resources needed to meet them and to demonstrate to the supervisory authorities that these resources are sufficient to obtain the result in question.

Thus, it seems to me that nuclear law should be thought of as an instrument for making all the stakeholders in the sector (research, industry, medicine, defence) more responsible for their actions, and not as a series of safety barriers to protect society from potential delinquents.

This approach to nuclear law leads me to hope that it will become a full component of a prevention and protection culture, in parallel with the general trend of all law evolving towards a preservation culture reflecting the growing influence of environmental interests, in particular with the appearance and application of environmental principles in other branches of the law.

I should like to illustrate this with an example: the system of basic standards laid down by the ICRP with regard to radiation protection are no longer based exclusively, as they were formerly, on maximum admissible doses used as the upper limits of acceptable risk. Indeed, the concept of limits, in their “legal” sense of prohibition, is no longer considered to provide an assurance of absolute radiation protection.

Instead of constituting a legal straightjacket, as is usually the case in matters of safety, the system of radiation protection is defined, in dynamic fashion, around rules setting out the framework for decisions by operators and not around requirements whose non-respect will be punished.

I should like this idea of the law considered as a component of a prevention and protection culture to take on an international dimension, not only with regard to objectives but also, more concretely, with regard to norms. In this respect, I think there is a genuine need for the internationalisation of technical norms. It seems to me that in a sector in which power plant constructors offer their services throughout the world, it should be possible for the safety standards with which these installations must comply in a given country to be accepted in the same way, or without too many difficulties, in another country. This assumes naturally that these standards correspond to widely recognised norms and therefore that they have been established in the framework of international institutions.

### **Nuclear law must ensure a balance between the legitimate interests to be protected**

Nuclear law has accompanied the development of nuclear energy (and, as such, can be described as development law), but is today moving increasingly towards becoming prevention and protection law, as we have just seen. Even if they sometimes are in conflict, these two characteristics are not, in my opinion, incompatible; a balance must be struck between the two.

Clearly, it is no longer possible today to think of nuclear law as intended solely to promote the development of the activities of the nuclear sector. But it is not conceivable either that protection and the prevention of risks should become its sole objective, the purpose of which, either directly or indirectly, would be to stifle development in this sector.

This need for balance is even more marked in light of technological developments within the nuclear sector, which represent important legal and societal stakes.

In this respect, we can refer to the examples of research carried out within the ITER project or the Generation IV Forum. Can nuclear law, whether national or international, be applied in its current state to this research and the objects (i.e. the installations) which may result from this research ? In more concrete terms, should the law applicable to fission installations be applied in its entirety to fusion installations



which, without a doubt, do not present the same risks ? This is a question which has arisen, as you know, in the field of nuclear third party liability.

Similar questions apply with regard to the different concepts of reactors envisaged within the Generation IV Forum. Should nuclear law adapt itself to these new subjects in order to facilitate their development or should it intervene with a view to establishing criteria designed to protect environment or social interests to which they may be considered detrimental. And in the case of such an evolution, which interests should be prioritised ? The quest for clean and economical energy ? The protection of the environment from danger ? Should energy independence be pursued, and for whom ?

Another example is that of nuclear waste, whose disposal must be managed within a timescale that goes considerably beyond the life of present generations. Technically, it is possible to envisage surveillance of a waste disposal site during hundreds of years. However, such control must have a legal basis. But, the legal rules which govern the current control of sites may not be those which our society will require in 100, 200 or 300 years. We only need to look back over a similar period to conclude that the legal techniques of the 18<sup>th</sup> century would no longer be acceptable today. The need to accompany nuclear activities with a legal framework also arises for disposal in a deep geological formation, where it will be necessary to determine whether such site is or not irreversible after several decades of surveillance.

Nuclear law must therefore reconcile the need to develop nuclear activities, in light of their utility, with that of protecting legitimate interests, including those of future generations, in light of the risks inherent to these activities. It must be a means of promoting sustainable development, the aim of which is precisely to reconcile the various economic, ecological and social interests involved.

That is why, even although law is necessarily the instrument of a policy, I think we must ensure that it does not itself become the victim of extremist points of view, which would result in its losing its ability to guarantee a certain balance not only between the interests at stake but also between generations.

### **Nuclear law must be one of the essential conditions of the acceptability of nuclear activities**

We all know that the existence, and *a fortiori* the development, of nuclear activities depend on their being accepted by the public.

It is no longer sufficient for the people's elected representatives, in their parliamentary assemblies, to take a majority decision to use nuclear power, even if intended simply as one of the elements of an energy diversification policy. It is essential that the public be associated with decisions concerning it at local level. Whether we like it or not, participative democracy, alongside representative democracy, has become a fundamental aspect of the development of our societies, and this applies even more particularly to nuclear activities given the risks they are deemed to represent and also their very long-term complications (such as radioactive waste management) and implications for future generations.

In this context, the law is called upon to play an important role since it must be the guarantor of the expression, and to a certain extent of the taking into account, of local interests. Thus, the principles of participation by the public in decisions concerning it and more generally of information have been adopted at international level.

French law is somewhat ahead of the field in this sphere since, in addition to the already existing public enquiry and public debate procedures, the recent Act on nuclear transparency and security introduced the right to access nuclear information, by virtue of which anyone is entitled directly to ask nuclear installation operators and those in charge of transporting radioactive materials for information about the risks of exposure to ionising radiation which could result from the activity and about the safety and radiation protection measures taken to prevent or reduce these risks or exposures.

The purpose of such instruments is to make it possible to continue to use nuclear energy since it can be hoped that the public, once it has been informed and got beyond the stage of irrational fear or emotional debate, will be more objective about nuclear power which is a source of energy which does not emit greenhouse gases and which fosters economic development and energy independence.

These developments without doubt mark the change from a culture of secrecy, which characterised the beginnings of nuclear energy, to one of transparency, something which today constitutes the fundamental criterion for the acceptance of nuclear activity in general.

### **Conclusion**

Nuclear law is a recent branch of the law which, like environmental law, has evolved enormously over a very short period (i.e. since 1945). In this respect, it is very different from civil law, for example, which remains characterised by principles and ideas which are at least 200 years old.

It is also of itself an evolving law since it adapts to changes in the things to which it applies, for example, the installations the operation of which it governs, but also clean-up and dismantling; similarly, radioactive sources or fuels until they become waste.

Different bodies – international, regional and national – have used nuclear law as an instrument for their policies, developing it through more or less normative provisions. We may wonder, in this regard, about the role of the courts which, although they have been involved in a few cases, have not yet created veritable case-law in this field. In France, for example, the first judgments handed down tended to support the development of nuclear activities by comparing their environmental impact with the economic and social interests involved, giving priority to the latter. A shift in this case-law towards greater protection for environmental interests seems likely, however, like nuclear law itself.

This change leads me to think that although nuclear law has sometimes been described as a “law of fear” – which has always seemed to me absurd since I do not think it possible to combat irrationality by legal provisions, which naturally follow a certain rationality – its vocation is to be or to become a “law of confidence”, which means that nuclear law must inspire confidence in the protection it offers to legitimate interests, and also ensure it in the discharge of their responsibilities by the players in the sector.

## **CONCLUDING REMARKS**

### **M. Roland DUSSART-DESART (Current Chairman of the Committee)**

I would like to thank you for your brevity. It is now my turn to provide some concise conclusions as we are running somewhat late. Let us simply recall that the Nuclear Law Committee is not a self-serving body; we need to respond to a certain number of needs – requests from civil society (I refer to the environment, to access to information); requirements that follow from developments in technology (and here I refer to nuclear fusion, to radiation protection); from geopolitical evolution (we see our membership expanding) and the positive or negative economic and financial realities – and here I turn to some hitherto unmentioned dinosaurs – the insurers. Having said this, we have managed to demonstrate a “mix” – which is a very fashionable word in the energy sector – in the work carried out by this Group and in its composition. I am confident that our Committee will continue to fulfill this role for several decades to come.

## **CONCLUSIONS**

### **M. Roland DUSSART-DESART (Actuel Président du Comité)**

Je vous remercie de votre concision. Je vais, à mon tour, résumer un maximum mes conclusions car nous avons dépassé l'heure. Rappelons simplement que le Comité du droit nucléaire n'est pas une fin en soi ; nous devons répondre à un certain nombre de demandes - des demandes de la société civile (nous parlons de l'environnement, du droit à l'information) ; des demandes qui viennent de l'évolution des techniques (nous parlons de fusion, de radioprotection) ; de l'évolution géopolitique (nous voyons la composition de nos membres s'étendre) ; et les tristes ou joyeuses réalités économiques et financières - et là je me tourne vers d'autres dinosaures non encore évoqués, les assureurs. Cela étant, le « mix » – c'est un mot très à la mode dans le domaine énergétique - nous réussissons à le faire dans les travaux de ce Groupe et dans sa composition. Je suis confiant que notre Comité continuera à remplir ce rôle encore pendant plusieurs décennies.