SUMMARY OF THE MEETING HELD ON 5-6 NOVEMBER 2008
NUCLEAR LAW COMMITTEE

Summary of the meeting held on 5-6 November 2007

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NUCLEAR LAW COMMITTEE

Draft Summary Record of the Meeting held on 5-6 November 2008

I. II. III. Opening the Meeting/Adopting the Agenda/Approving the Summary Record


2. Mrs. Dunn Lee, NEA’s Deputy Director-General, addressed the NLC. She reported on the OECD Ministerial Council Meeting held in June at which the economic impact of climate change, rising food prices and a broad range of other trade, growth and development issues were discussed and which was followed by the multi-stakeholder summit, the 2008 OECD Forum on Climate Change, Growth and Stability. The NEA has continued its dialogue with Chinese nuclear institutions on enhanced cooperation and will now look for support from the Chinese Ministry of Foreign Affairs and the National Development and Reform Commission. The NEA Steering Committee believes it is timely to revisit relations with India considering recent developments in the Nuclear Suppliers Group and India’s bilateral agreement with an OECD member. The NEA and the Russian Federation support continued cooperation, with the latter stressing the importance of Russian nuclear technology being included in the Multinational Design Evaluation Program (MDEP). The NEA celebrated its 50th anniversary with a high-level event at the OECD Conference Centre in October 2008.

3. Mrs. Dunn Lee also gave a presentation on the Nuclear Energy Outlook (NEO), which was published on the occasion of NEA’s 50th anniversary and which provides projected growth scenarios and potential implications on the future use of nuclear energy up to 2050. The legal community may be particularly interested in chapter 9 dealing with non-proliferation and security, chapter 10 addressing national and international legal frameworks and chapter 12 which covers legal aspects of public involvement in nuclear decision-making. See www.nea.fr/neo/index.html.

IV-1 Matters of Special Interest under NEA Auspices

4. The NEA’s programme of work (POW) for the biennial period 2009-2010 was approved by the NEA Steering Committee at its October 2008 meeting for transmittal to the Secretary-General and for eventual submission to the OECD Council. The POW for NEA Legal Affairs, in particular, remains substantially the same as that for 2007-2008. Although the NEA’s Strategic Plan was to expire at the end of 2009, the Steering Committee decided that the NEA’s POW for 2009-2010 should nevertheless continue to correspond with the strategy set out in that Plan; for NEA Legal Affairs and the NLC, this means focusing primarily on the modernization and harmonization of nuclear legislation amongst its member countries [NEA/NE(2008)3/REV1]. The Steering Committee also approved extending the NEA’s Strategic Plan and the mandates of all standing technical committees for one year, until 31 December 2010 [NEA/SUM/DEC(2008)2].
Furthermore, it endorsed the renewal, or extension, as appropriate, of all non-member observers\(^1\) for the period January 1, 2009 – December 31, 2010. The matter will also be submitted to the OECD Council whose approval is expected before the end of the year [NEA/NE(2008)8].

6. The MNEPR is an international programme designed to facilitate cooperation and assistance to the Russian Federation to resolve problems caused by radioactive waste and spent nuclear fuel left over as a Cold War legacy, and a Framework Agreement and Protocol have been adopted to govern the implementation of the programme. The MNEPR Committee, consisting of representatives of the 14 participating countries and organisations, met in May 2008 at which time they reported on the progress of projects in the Russian Federation. They also adopted a model Diplomatic Note which would allow the Framework Agreement and Protocol to apply to co-operation in fields other than those explicitly mentioned in the Framework Agreement. Work is advancing on finalising a document containing standard clauses that could be used in project Implementing Agreements.

7. The IAEA Contact Expert Group for International Radwaste Projects in the Russian Federation (CEG) is the technical counterpart of the MNEPR Committee and the Secretariat attended its September meeting as an observer. Many cooperation projects that were launched at the end of the 1990’s will be completed by the end of the Global Partnership Programme in 2012, but most delegations underlined the need to continue co-operation with the Russian Federation after that date with several expressing interest in using the CEG model for co-operation in other countries, such as in Kazakhstan. Japan became a full member of the CEG in 2008.

8. 2008 marks the 40\(^{th}\) anniversary of the Nuclear Law Bulletin and NLB 81 contained topical articles on the licensing of new reactors in the US, EU non-proliferation instruments and policies, environmental law developments in nuclear energy and operator pooling for nuclear third party liability. All but the latest 2 issues of the NLB as well as an Index are available at www.nea.fr/html/law/nlb/index.html. NLC members are strongly encouraged to submit articles on nuclear law or nuclear law-related developments for eventual publication in the NLB.

9. Country chapters on the regulatory and institutional framework for nuclear activities in OECD members are also available at www.nea.fr/html/law/legislation/welcome.html. Some are currently being reviewed while others have recently been updated (Australia, Hungary, Japan, Turkey, USA). A new service, “Latest Legislative Developments” tracks recent nuclear legislative news even prior to its publication in the NLB; it can be found at www.nea.fr/html/law/legislation/updates.html.

10. The 8\(^{th}\) session of the International School of Nuclear Law was held in August/September in cooperation with the University of Montpellier. This intensive 2-week course provides comprehensive coverage of international nuclear law, including, for the first time this year, a

\(^1\) The Russian Federation and Slovenia are regular non-member observers in all of the NEA’s Standing Technical Committees, including the NLC. The ad hoc non-member observers in the NLC are: Bulgaria, Hong Kong Special Administrative Region, Lithuania, Romania and Ukraine.
session on the impact of environmental law on nuclear activities. The School’s new Director, Prof. Pascale Idoux will preside over the 2009 session scheduled from 24 August to 4 September. Candidates from the USA, Canada, Australia, Korea and Japan are encouraged to apply to ensure a strong international balance of participants. See www.nea.fr/html/law/isnl/index.html.

11. The World Nuclear University (WNU) provides enhanced international education in the nuclear domain and is supported by the WNA, the OECD/NEA, WANO and the IAEA. The WNU’s 4th Summer Institute, an intensive 6-week program aimed at building future leadership in nuclear science and technology, took place in Canada in July-August with NEA Legal Affairs and the IAEA’s Office of Legal Affairs coordinating the nuclear law component. The WNU also organizes intensive 1-week courses on key nuclear energy issues in various countries around the world, at many of which the Secretariat lectured on general principles of international nuclear law.

12. The Secretariat introduced three notes relating to nuclear third party liability which are intended to be made available on NEA’s website as unofficial documents once they have been approved by the NLC: the first, Room Document No. 1, is a table illustrating third party liability amounts and financial security limits under the national legislation of OECD members, OECD accession candidates (Chile, Estonia, Israel, Russia, Slovenia) and NLC observers (Bulgaria, Lithuania, Romania, Ukraine, Hong Kong SAR) to which, it was agreed, that the corresponding amounts under non-OECD Vienna Convention Contracting Parties should be added; the second, Room Document No. 4, is a table illustrating the application of the Paris Convention to non-metropolitan territories of the Contracting Parties; and the third is a note on priority rules for distributing compensation for nuclear damage in OECD members and NLC observers which will soon be distributed to the NLC for verification of accuracy and completeness. The Secretariat also informed NLC members that the October 18, 2007 Decision of the NEA Steering Committee on the Exclusion of Small Quantities of Nuclear Substances from the Application of the Paris Convention is now available as an official document [NEA/NE/M(2007)2].

Action: NLC members wishing to author articles on nuclear law or nuclear law-related developments for future editions of the Nuclear Law Bulletin to contact the Secretariat.

Action: NLC delegates from the USA, Canada, Australia, Korea and Japan are asked to encourage their colleagues to apply for the 2009 session of the ISNL.

Action: NLC members/observers to verify the accuracy and completeness of Room Document No. 1; the Secretariat to expand the table to include non-OECD Vienna Convention Parties.

Action: NLC members which are party to the Paris Convention to inform the Secretariat of any errors or omissions in Room Document No. 4.

Action: Secretariat to distribute the note on compensation priority rules to NLC members for verification of its accuracy and completeness.
IV-2 Matters of Special Interest under IAEA Auspices

13. The Observer from the IAEA reported on the status of various international conventions adopted under its auspices [See Annex 2]. He also noted that at its May 2008 meeting, INLEX discussed alternative financial security mechanisms for nuclear third party liability risks, concluding that no concrete alternatives have yet emerged and that this issue should ultimately be solved by the industry. The IAEA Secretariat reported on discussions with the EC relating to its study on third party liability regimes in the European Union, where 13 EU member states are party to the Paris Convention, 9 to the Vienna Convention, 1 to the Convention on Supplementary Compensation, 17 to the Joint Protocol and 5 are party to none. INLEX expressed concerns about certain alternatives proposed by the EC, especially the adoption of a Directive on liability which could impair relations between EU and non-EU states. The Group recommended making a web-based forum available with information on nuclear liability that is open to IAEA organized workshop participants, member states, INLEX experts and the IAEA Secretariat.

14. The third Regional Workshop on Liability for Nuclear Damage was held in South Africa, in February 2008 and a 2009 workshop will be organised in the United Arab Emirates. The second part of the Handbook on Nuclear Law is being finalized and an on-line calculator for the Convention on Supplementary Compensation is available on the IAEA website.

15. In response to a question from France on access to INLEX information, the Secretariat explained that INLEX is an advisory group, whose members are appointed by the IAEA Director-General, and that reports to the IAEA Board of Governors and General Conference. NLC members wishing information on the work of INLEX should contact their IAEA representatives or the IAEA Office of Legal Affairs.

V. Recent Environmental Law Developments impacting Nuclear Activities

16. The delegate from Finland made a comprehensive presentation on environmental impact assessment (EIA) procedures in the nuclear field in his country. Finland has extensive experience with EIA for nuclear power plants and radioactive waste management facilities and is bound by rigorous international, national and regional legal instruments, including the Espoo Convention on EIA in a transboundary context (1991). The two most important EIA issues in Finland are the impact of cooling water and the effects of a potential nuclear incident. EIA procedures have often resulted in adaptations of the cooling water plans for nuclear power projects and have even prevented one project in Finland from going ahead because of heavy opposition during the public consultation phase. Government statements approving an EIA report can be appealed but only after the construction license for the nuclear project has been granted.

17. The delegate from the Czech Republic also gave a presentation on EIA procedures affecting nuclear activities in his country, paying special attention to the completion of two units of the Temelin NPP for which construction licenses had been granted over 20 years earlier when no rigorous EIA procedures existed. Like the Finnish procedure, the government statement approving an EIA report can be appealed but only after the license for the project is granted. Both the Czech and Finnish delegates confirmed that EIA legislation is often worded in general terms, failing to provide specific guidance on the objectives of environmental protection. Some national
regulators do develop guidelines, such as those relating to maximum temperatures of cooling water, but this happens outside the EIA regulatory framework.

18. The delegate from Canada reported on a recent provincial court ruling on a request for access to a feasibility study for a new nuclear reactor. The court ruled that although the foundation of Canadian law is disclosure, and that the onus is on the public authority to justify why requested information should not be provided, in this case the government was not obliged to disclose the study because it qualified as confidential information under national law and contained opinions or recommendations for a Minister or Executive Council. Provincial court rulings do not bind federal or other provincial courts but they are given weight by such courts.

VI. European Community latest Developments

19. The representative from the European Commission reported on recent activities of the European Nuclear Energy Forum (ENEF) which was established in 2007 to promote discussions between stakeholders on the risks and opportunities of nuclear energy, as well as on the work of the High Level Group on Safety and Waste Management (now: European Nuclear Safety Regulators, ENSREG) that was created in 2007 to assist the Commission in developing common understanding and eventually additional European rules on the safety of nuclear installations and of radioactive waste and spent fuel management. He also noted that the Commission had sent out a questionnaire in December 2007 to assess the impact of nuclear liability regimes in Europe and that a study would be published before the end of 2008 on ways to create a uniform EU nuclear liability regime, ranging from no action at all to adopting an EU directive based on Article 98 Euratom Treaty. The EC will not act hastily given that this is a delicate issue.

20. The representative from Belgium who had attended the recent ENEF meeting indicated that there is growing support for an EU directive on nuclear safety containing provisions that go no further than the Convention on Nuclear Safety (1994) and are sufficiently general in nature to avoid regulating outside EU competence in this field. He also noted the creation of a sub-group to develop a legal roadmap to facilitate nuclear new build, focusing on such issues as third party liability, licensing, long-term supply contracts and competition law.

NLC Topical Session
Legal Perspectives on Multilateral Approaches to the Nuclear Fuel Cycle

21. For the first time during a regular NLC meeting, a special topical session was held addressing legal perspectives on multilateral approaches to the nuclear fuel cycle. The session was designed to inform members of the NLC of some of the most important issues in this field which are currently being considered at international level. After an overview of international cooperation on the nuclear fuel cycle and assurances of supply was given by Dr. Pellaud, an invited expert in the field, legal aspects of specific initiatives proposed by the United States, Germany, the United Kingdom and the Russian Federation were described and the role of the IAEA in international cooperation on the nuclear fuel cycle was addressed. Following these presentations a moderated discussion was held of the legal questions affecting multilateral approaches to the nuclear fuel cycle.
VII. Paris and Brussels Supplementary Conventions

22. The Secretariat reported that it would soon distribute a new draft (both English and French versions) of the revised Exposé des Motifs of the 2004 Protocol of the Paris Convention (dated 1 November 2008) which would incorporate numerous modifications, many of which were proposed by the French delegation. The Secretariat continues to work on the Exposé des Motifs of the revised Brussels Supplementary Convention and plans to distribute a revised draft (both English and French versions) shortly. When both documents are approved by all Protocol Signatories, they will be submitted to the NEA Steering Committee for it to take note, and subsequently to the OECD Council for it to both take note and approve their official publication.

23. The delegate from Italy explained that there may be an inconsistency between the description of a nuclear incident in paragraph 15(b) of the draft Exposé des Motifs of the revised Paris Convention and the October 2007 Decision of the NEA Steering Committee on the Exclusion of Small Quantities of Nuclear Substances from the Application of the Paris Convention. His government wishes to proceed with the ratification process since it is considering re-launching a nuclear program and would like to resolve this matter. The Chairperson did not see any such inconsistency, but noted that if the Paris Convention States are unable to agree on a particular provision in the revised Exposé des Motifs, it will be removed. In response to a question from the representative from the United States, he confirmed that the revised Exposé des Motifs requires the unanimous approval of Paris Convention States only, not of the entire NLC.

24. The Signatories to the 2004 Protocols reported on progress made in ratifying and implementing them into national legislation. Their reports are reproduced in Annex 3. The expert from the nuclear insurance industry noted that there is still no insurance coverage available for the 30 year prescription period for personal injury claims but that there is increasing willingness to cover environmental damage. One solution being proposed in some countries is to cover environmental damage up to a certain amount that is less than €700 million; insurers may also consider covering environmental damage using criteria which do not set precedents for non-nuclear sectors, such as environmental damage caused by nuclear incidents above a certain level on the International Nuclear Event Scale (INES) or resulting from incidents which cause emissions that are clearly above natural background levels. It is difficult to predict how the global financial crisis will impact the capacity of the nuclear insurance market but the difficulties of AIG, the leading insurer providing cover for environmental damage in non-nuclear sectors in Europe, may lead to a reduced willingness to cover such damage.

25. The Chairperson reported on the 4-5 June 2008 legal/technical meeting on a German proposal to update the 1990 NEA Steering Committee Decision on the Possibility of Excluding Nuclear Installations being Decommissioned from the Application of the Paris Convention. The proposal calls for replacing the IAEA Transport Regulations by the IAEA Basic Safety Standards as the technical exclusion criteria and adopts a wide definition of ‘decommissioning’ so as to

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2 Article 15(b) of the draft Exposé des Motifs of the revised Paris Convention stipulates that a nuclear incident also encompasses an emission of ionising radiation that causes nuclear damage, even where that emission occurs in the normal course of operation of a nuclear installation or in the normal course of transport of nuclear substances, and even where the level of that emission is within the limits prescribed by national law.
include the decontamination and dismantling processes of an installation. The delegate from Germany presented a proposal to the NLC which integrates some of the comments made at the June meeting. The representative from France explained that fixed activity may transform into non-fixed activity during the decommissioning of a nuclear installation and thus the Annex to the proposal should be amended so that due account is taken of the maximum possible transformation of fixed to non-fixed activity during all stages of the decommissioning of a nuclear installation. She also warned that the notion ‘adequate’ in the proposal may lead to legal uncertainty. The delegation from Germany agreed with both suggestions and distributed a new proposal to all NLC members.

26. The representative from the United States expressed sympathy for the German proposal but pointed to a few policy and legal concerns. For his country, the proposal raises fundamental questions concerning the scope of the special nuclear liability regime, since it may lead to a situation where the operator of an installation being decommissioned no longer has any financial security to cover its third party liability, simply because it is no longer obliged by the Paris Convention to have such coverage. It may also affect the willingness and ability of nuclear suppliers to provide goods and services to nuclear installations, both prior to and during decommissioning, since the nuclear operator might no longer be exclusively liable for third party damage once the installation is excluded from the Paris Convention. The proposal may also lead to a situation where nuclear material is excluded from the Paris Convention if located at an installation being decommissioned but is covered by that Convention if transported or stored and/or disposed at another site. Installations being decommissioned in the United States continue to be governed by the national third party liability regime ‘Price Anderson Act’) but their financial security amounts are decreased.

27. The Chairman reminded NLC members that exclusion is optional, and that any Paris Convention State applying the exclusion must ensure that financial security is available for the excluded installation. He saw no inconsistency between nuclear material being excluded from the Paris Convention when located at an installation being decommissioned and being covered by that Convention when transported or stored at another site. The representative from Germany added that social security and workers compensation mechanisms exist in all countries which would cover injuries to persons working at a decommissioned installation. The expert from the nuclear insurance industry confirmed that third party liability risks of nuclear installations being decommissioned will be insured regardless of whether they are governed by the Paris Convention and that claims arising from an incident occurring while a nuclear installation is covered by the Paris Convention but instituted after an exclusion has come into effect for that installation will be honored by nuclear insurers, as long as those claims are made within the prescription period.

28. The Secretariat explained that the new proposal should be sent to the NEA’s Committee for Radiation Protection and Public Health (CRPPH) and Radioactive Waste Management Committee (RWMC) for technical input before being submitted to the NEA Steering Committee. Traditionally, NLC agreement is sought prior to sending a proposal to the Steering Committee.

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3 The draft German proposal stipulates that Contracting Parties may cease to apply the Paris Convention to a nuclear installation in the process of decommissioning provided that the nuclear installation is governed by an ‘adequate’ civil liability and coverage regime under the national law of the Contracting Party which has jurisdiction over the installation.
but there is no legal obligation to do so under the NEA Statute or the OECD Convention or its Rules of Procedure; thus it may well be that this Decision may be taken at the sole initiative of those NLC members who are Contracting Parties to the Paris Convention.

29. A similar proposal was made by the German delegation with respect to the 1997 Vienna Convention on Civil Liability for Nuclear Damage and the 1997 Convention on Supplementary Compensation. The proposal was addressed by INLEX at its May 2008 meeting and will be presented at the 10-14 November 2008 joint meeting of the IAEA’s Radiation Safety Standards Committee (RASSC) and Waste Safety Standards Committee (WASSC) for technical comments. Both the NEA and IAEA Secretariats will work together to ensure consistency between the Paris and Vienna regimes as much as possible. The representative from Germany observed that the procedure for the Vienna/CSC regimes is not as urgent since their financial security requirements for low-risk installations are much lower than those under the revised Paris regime.

30. The delegation from Germany also presented a proposal to exclude certain small training and research reactors from the application of the Paris Convention. The representative from France referred to its objections as set out in a Note distributed to NLC members on 1 July 2008, mentioning, in particular, that small reactors still pose a nuclear risk the occurrence of which would be harmful to the reputation of all nuclear operators; that if excluded from the Paris Convention such reactors would be governed by tort law and victims would have to rely on less favorable liability rules; that suppliers of goods and services to small reactors would need to take out insurance for third party liability since the nuclear operator might no longer be exclusively liable; and that the level of financial security required for low risk installations was already debated and decided during the Paris Convention revision negotiations. The representative from Germany insisted, however, that the NEA Steering Committee may still exclude any nuclear installation from the Convention’s application if, in its view, the small extent of the risks involved so warrants. The Secretariat noted that if this proposal were agreed, it should be sent to the CRPPH for confirmation that its comments of 22 May 2008 have been taken into account, following which it could be submitted to the NEA Steering Committee with the unanimous approval of the Contracting Parties to the Paris Convention.

**Action:** NLC members to comment by 30 November on the English version of the revised German proposal to exclude installations being decommissioned from the application of the Paris Convention and by 9 December for the French version.

**Action:** German and French delegations to determine whether agreement can be reached on the German proposal to exclude certain small training and research reactors from the application of the Paris Convention.

**VIII. National Developments in Nuclear Law**

31. The representative from Japan gave a presentation on a proposed revision of Japan’s nuclear third party liability regime which will include, *inter alia*, doubling the liability and financial security amounts for nuclear installations and activities and establishing an official committee to promote out-of-court settlements for nuclear damage claims. The representative from Canada made a presentation on its draft revised Nuclear Liability and Compensation Act.
Key amendments include, *inter alia*, increasing the liability amounts and the financial security limits, broadening the definition of nuclear damage and amending claims limitation periods. The representative from **Turkey** described the new legislation in her country on the construction and operation of nuclear power plants and gave an overview of national regulations, both existing and draft, affecting nuclear activities. The representative from the **United States** reported on the recent inflation adjustment that was made to the amount of retrospective premium applicable to nuclear power plant operators under the Price Anderson Act and the observer from the **Russian Federation** outlined recent institutional reforms affecting both the Federal Agency on Nuclear Energy ROSATOM and ROSTECHNADZOR.

**IX. Radiation Protection and Emergency Management Issues**

32. The delegate from **France** described recent activities undertaken by its Steering Committee on the Management of Post Accident Situations (CODIRPA), whose aim is to prepare provisions addressing post accident situations in relation to health, compensation of damage and rehabilitation of living conditions in contaminated areas. He noted in particular the work of the Working Group on Financial Compensation that deals with such issues as causality (the link between a nuclear incident and specific illnesses), priorities in the distribution of compensation, model compensation agreements and a ‘one stop shop’ for compensation of nuclear damage.

33. The **Chairperson of the Joint Ad Hoc Scoping Group on Nuclear Emergency Matters** reported on the 30 September meeting. She explained that six preparatory notes had been prepared to facilitate understanding of legal and emergency management issues. It was agreed that early phase urgent emergency measures should not be dependent upon third party liability and compensation rules. The group also stressed the importance and the need for an exchange of information between the emergency and legal communities, including among communities from different countries, especially because economic and legal factors may play a role for long-term countermeasures. Questions that were discussed relate to stakeholder involvement in emergency management, the role of insurers, the notions of ‘nuclear incident’ and ‘nuclear damage’ and establishing claims for compensation of damage. It is proposed not to continue the Group’s existence and not to extend its mandate but to evaluate whether the NLC would like to get involved in CRPPH’s Workshop on Stakeholder Involvement and/or in the next International Nuclear Emergency Management (INEX) exercise, both scheduled for the 2010 timeframe. The Committee accepted this proposal and suggested the Secretariat to attend the planning meetings for both events.

34. The **Secretariat** gave a presentation of the planned INEX 4 exercise and Stakeholder Involvement workshop. INEX 4 is an emergency exercise that aims at exploring consequence management and the transition to recovery after a nuclear emergency and at developing recovery plans for participating countries. The NLC could participate in this exercise, for example, by examining guidance for judges on how to distribute the compensation for nuclear damage in the intermediate phase after a nuclear incident with transboundary effects. The objective of the Stakeholder Involvement workshop is to examine public dialogue and stakeholder involvement aspects of consequence and recovery management following a radiological emergency. The NLC could participate in this workshop, for example, by investigating the planning of third party liability and compensation issues, such as how will insurers and public authorities engage in
discussions with potentially affected stakeholders on what could be considered reasonable emergency measures and what type of compensation could be expected. The NLC could help identifying the main elements for out-of-court settlements, bearing in mind governmental resources that are not associated with third party liability. NLC members could also investigate whether current national arrangements for handling claims are sufficient to cope with a large emergency requiring international/trans-boundary processing of claims.

35. The Secretariat reported about the successful organisation of the Legal Session at the 12th International Congress of the International Radiation Protection Association (IRPA) in Argentina. Promoting consistency in the application of principles, criteria and standards of radiation protection and safety and to translate them into regulatory terms will be a particular challenge that was highlighted at the congress. The legal session focused on public participation in radiation protection, the complexities and legal effects of the ALARA principle, and the liability and compensation regimes that exist at national and international levels to ensure compensation of nuclear damage.

**Action:** Secretariat to attend planning meetings for CRPPH’s Workshop on Stakeholder Involvement and INEX 4 in early 2009 and to prepare a proposal for NLC involvement.

X. Other Business

36. The Secretariat announced that a new international agency, the International Renewable Energy Agency (IRENA) will be established by 51 countries, including 22 OECD members, in January 2009. The goal of IRENA is to provide policy advice for national governments and to facilitate technology transfer and capacity building for renewable energy sources. It aims to become a driving force in promoting widespread and sustainable use of renewable energy on a global scale.

37. The 2009 Congress of the International Nuclear Law Association (INLA) will be held in Toronto, Canada from 5-9 October. Authors are invited to submit abstracts of their proposed papers before 15 February 2009 by e-mail to Stanley Berger, sberger@opg.com as well as to the INLA Secretariat, brigitte@aidn-inla.be.

XI. Election of Bureau members

38. In accordance with the OECD Rules of Procedure, and as proposed by Canada and Turkey, the incumbent Officers of the Committee, M. Dussart-Desart, Chairperson, and Mr. Sahrakorpi, Mr. McRae, Prof. Vanda Lamm, Prof. K.G. Park and Mrs. F. Touïtou-Durand, Vice-Chairpersons, were re-elected.

XII. Date and Place of Next Meeting

39. The next NLC meetings will take place on 2-3 June 2009 and 17-18 November 2009 in Paris. The meeting was adjourned.
ANNEX 1

NUCLEAR LAW COMMITTEE MEETING
REUNION DU COMITE DU DROIT NUCLEAIRE

5-6 November 2008/5-6 novembre 2008

Final List of Participants/Liste finale des participants

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ANNEX 2

Report by the Observer of the IAEA on the Status of International Conventions adopted under IAEA auspices

## ANNEX 3

### 2004 PROTOCOLS TO AMEND THE PARIS AND BRUSSELS SUPPLEMENTARY CONVENTIONS

**STATUS OF RATIFICATION AND IMPLEMENTATION (6 NOVEMBER 2008)**

<table>
<thead>
<tr>
<th>Country</th>
<th>Ratification/Implementation Status</th>
<th>Details</th>
</tr>
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<tbody>
<tr>
<td><strong>BELGIUM</strong></td>
<td>Two Bills on the ratification and implementation of the 2004 Protocols are waiting to be addressed by the government and should be adopted in 2009.</td>
<td>Financial security to cover liability for environmental damage and for actions brought more than 10 years after a nuclear incident will probably be covered by a premium based state guarantee. The Belgian government already provides a guarantee for personal injury claims filed more than 10 years after a nuclear incident.</td>
</tr>
<tr>
<td><strong>DENMARK</strong></td>
<td>Ratification and implementation legislation for the 2004 Paris and Brussels Protocols was adopted in May 2008. The legislation introduces, <em>inter alia</em>, unlimited third party liability for nuclear operators. It is expected that the legislation can enter into force when all other EU member states are ready to deposit their ratification instruments for the Paris Protocol. Denmark is not bound by the 8 March 2004 Council Decision that requires a unanimous deposit of instruments of ratification for the Paris Protocol but needs EC approval before depositing its instrument of ratification of the Paris Protocol. Denmark has not yet obtained such approval.</td>
<td>There are no problems with financial security since there are only two state-owned research reactors that are self-insured by the state.</td>
</tr>
<tr>
<td><strong>FINLAND</strong></td>
<td>Ratification and implementation legislation for the 2004 Paris and Brussels Protocols was adopted by the Finnish Parliament in 2006. It will enter into force once the other EU Member States are ready to deposit their ratification instruments.</td>
<td>Insurers seem prepared to cover nuclear damage caused by acts of terrorism but Finland still faces difficulty in finding financial security for liability in respect of environmental damage and claims for personal injury filed more than 10 years after a nuclear incident. The Finnish government considers that it is upon nuclear operators to find a solution for this problem. It is not certain whether the Finnish government is willing to grant a state guarantee.</td>
</tr>
<tr>
<td>Country</td>
<td>Ratification/Implementation Status</td>
<td>Financial Security</td>
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<tr>
<td>FRANCE</td>
<td>Ratification and implementation legislation was adopted by the French Parliament in 2006. Entry into force will take place simultaneously with other EU Member States.</td>
<td>France has various solutions for the financial security problem, both private and public. France believes that any solution must respect the polluter pays principle and EU common market rules and take account of public opinion.</td>
</tr>
<tr>
<td>GERMANY</td>
<td>By Act of 29 August 2008 Parliament authorized ratification of the Paris and Brussels Protocols. Germany will deposit its instruments of ratification together with the other signatories to the Protocols that are EU Member States. On that same date Parliament passed an Act amending the Atomic Energy Act in order to implement the provisions of the 2004 Paris and Brussels Protocols. This Act also amends the Radiation Protection Ordinance, as well as the Act on Administrative Fees and the Ordinance concerning Costs under the Atomic Energy Act. With regard to the nuclear liability provisions, this Act will come into force on the date of the entry into force of the 2004 Paris Protocol.</td>
<td>The German nuclear operator pooling system will cover those risks which nuclear insurers are either unwilling or unable to cover. The German government shall ensure payment of claims to the extent that the necessary funds are not available from operators.</td>
</tr>
<tr>
<td>GREECE</td>
<td>The adoption of ratification and implementation legislation for the 2004 Paris Protocol by the Greek Parliament is expected before the end of January 2009.</td>
<td>The financial security issue is being examined.</td>
</tr>
<tr>
<td>ITALY</td>
<td>It is hoped that ratification and implementation legislation of the 2004 Paris and Brussels Protocols can be adopted before the end of 2009. An inter-ministerial committee has been set up to study the legal and economic impact of ratification of the Protocols. Italy also wishes to resolve its concerns relating to the Exposé des Motifs for the Paris Protocol regarding nuclear damage caused by radioactive emissions within prescribed limits that are emitted in the normal course of operation of a nuclear installation.</td>
<td></td>
</tr>
<tr>
<td>Country</td>
<td>Financial Security</td>
<td>Ratification/Implementation Status</td>
</tr>
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<td>------------------------</td>
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</tr>
<tr>
<td>NETHERLANDS</td>
<td>Solutions are being sought for the financial security problem.</td>
<td>The Dutch parliament adopted ratification and implementation legislation for the 2004 Paris and Brussels Protocols at the end of October 2008.</td>
</tr>
<tr>
<td>NORWAY</td>
<td>Ratification and implementation legislation for the 2004 Paris and Brussels Protocols have been adopted by the Norwegian Parliament in May 2007. Norway plans to make a reservation in accordance with article 18 of the Paris Protocol in relation to reciprocal benefits in respect of nuclear damage suffered in certain non-contracting states.</td>
<td>There are no problems with financial security since there are only two state-owned research reactors that are covered by state guarantee.</td>
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<td>The process of ratification and implementation of the 2004 Paris Protocol is on its way. It is hoped that the legislation can be adopted in the next 6 months.</td>
<td>No information available.</td>
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<td>Ratification and implementation legislation are being prepared but it is expected that they will only be adopted by the end of 2009.</td>
<td>It looks like a state guarantee will be the only solution to solve the financial security problem but the issue has not yet been discussed in detail within the government.</td>
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<td>Spain deposited its instrument of ratification of the 2004 Brussels Protocol with the Depositary (Belgian Government) on 12 January 2006. It is ready to deposit its instrument of ratification of the 2004 Paris Protocol to the depositary (OECD Secretary-General) on a date to be mutually agreed with other EU Member States. Implementing legislation for both Protocols was presented to the Spanish Parliament.</td>
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<td>Country</td>
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<td>Ratification/Implementation Status</td>
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<td>early in 2007 but adoption is only to be expected at the end of 2009.</td>
<td>A Bill is scheduled to be presented to the Swedish Parliament before summer 2009, which should make it possible to ratify the 2004 Paris and Brussels Protocols before the end of 2009.</td>
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<tr>
<td><strong>SWEDEN</strong></td>
<td>Two transitory amendments to existing legislation have been adopted in 2007, one increasing the liability amount for traditional heads of nuclear damage to € 700 million but allowing to establish a lower limit of no less than € 30 million for transport of nuclear substances and low risks activities, and the other introducing nuclear operator liability for environmental damage suffered in Spain for an additional amount of € 700 million - or no less than € 30 million for transport of nuclear substances or low risk activities. This environmental damage amendment is not yet fully implemented. A draft Royal Decree provides that the Spanish electricity tariff scheme will ensure coverage for environmental damage with premiums to be paid by nuclear operators to the Electricity System. This system has been introduced as an interim measure until full adaptation to the 2004 Paris Protocol regime.</td>
<td>Nuclear operators face difficulties in finding financial security for third party liability for environmental damage and for claims filed more than 10 years after a nuclear accident as well as for the € 700 million amount. A state guarantee will probably be the solution.</td>
</tr>
<tr>
<td>Country</td>
<td>Ratification/Implementation Status</td>
<td>Financial Security</td>
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<tr>
<td>SWITZERLAND</td>
<td>Ordinance will most probably come into force on Jan 1st, 2010 at the earliest but in any case not before the 2004 Paris and Brussels Protocols come into force.</td>
<td>The Swiss government plans to conclude premium based insurance agreements with nuclear operators for those risks which nuclear insurers are unwilling or unable to cover. The Swiss government already provides part of the financial security required for nuclear damage caused by terrorist acts, on an operator premium basis.</td>
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<tr>
<td>TURKEY</td>
<td>An inter-departmental consultation regarding ratification and implementation of the 2004 Paris Protocol is on its way.</td>
<td>No information available.</td>
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<tr>
<td>UNITED KINGDOM</td>
<td>The UK hopes to adopt ratification and implementation legislation for the 2004 Paris and Brussels Protocols by the end of 2009.</td>
<td>A study by an independent consultant hired by the UK government concluded that public funds are the only alternative to solve the financial security problem. A methodology has been developed to determine the premium which nuclear operators must pay to benefit from public funds.</td>
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