EC/BNLA CONFERENCE on TAKING NUCLEAR THIRD PARTY LIABILITY INTO THE FUTURE

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SESSION 3

Concluding Report by Patrick Reyners

Compared to the others, the recommendations from the Working Group 3 were qualified by Massimo Garribba as the least consensual and the interventions this morning proved this to be true. Therefore, rather than trying, after the synthesis proposed by my colleague Tom Vanden Borre, to summarize the excellent reports presented for the Session 3, I will rather attempt to formulate a few purely personal remarks.

Starting with the last report devoted to the Convention on Supplementary Compensation, much has already been said about the merits and demerits of this Convention. Yet, in today's perspective, the real question seems to be whether the quest for a global nuclear liability regime is truly as vital as it is generally suggested, considering particularly the EU context. Such globalization would no doubt be desirable from the angle of international nuclear trade since the establishment of treaty relations may help to protect suppliers against claims for nuclear damage originating in a recipient country (the Bhopal syndrome). On the other hand, what really matters is the territorial dimension, that within which the impact of a severe nuclear accident may be felt beyond national borders. This is the logic of « regional clusters », to use an expression of Dr Pelzer, which is clearly relevant for European countries and constitutes the main motivation to adhere to international instruments like the Paris or Vienna Conventions.

Another observation is the perhaps excessive polarization about the issue of limitation of liability. As noted already by Marc Léger, one needs no longer to pursue an essentially ideological debate on a matter which after the revision of the Paris and Vienna Conventions gives Contracting Parties the freedom of choice and as the case of Switzerland demonstrates, facilitates new countries to join the conventions. Of course, unlimited liability does not equate with limitless financial cover but, as evidenced by the recent experience of Fukushima, in the event of massive damage, governments have no other option but to ensure that victims are compensated by all suitable means. This political reality does not undermine the responsibility for the legislator to require that operators provide Securities As High As Reasonably Achievable, by analogy with the famous ALARA principle. In this respect, the current variation of amounts in the EU member States is clearly not sustainable.

By contrast, the notion of exclusive liability of the nuclear operator is not an academic point as it remains instrumental for an efficient functioning of the special regime. Departing from it would create undesirable legal uncertainties, would cause serious difficulties on the level of insurance and would not serve well the interests of the victims.

Their remains the problem resulting from the fragmentation of the nuclear liability system – the so-called "patchwork" - which in Europe, independently of an hypothetical application of the CSC, results from the combination of the PC, VC and the Joint Protocol. I continue to be persuaded that a generalized adherence to the Protocol by EU countries would do much to manage the interface between the two basic conventions, provided that common rules for the implementation of the JP be agreed by all the states concerned in this region. I am comforted

in that regard by the prospect of the few Paris laggards finally joining the JP when they ratify the 2004 Protocols.

Moving to the broader question of the implementing legislation, their harmonization was – and still is – a major « raison d'être » of the conventions. International cooperation carried out within the nuclear Agencies, in Paris and Vienna, always tended to give precedence to the various questions affecting the legal regime of the nuclear operator and have paid relatively less attention to the conditions of compensation of the exposed public. Likewise, by focusing on the same aspects, many domestic legislation by referring generally to local civil law still allow significant differences in the treatment of victims from one country to the other. Dr Pelzer has drawn our attention to possible conflicts of laws under the Paris Convention (his analysis would also be largely be valid for the Vienna Convention), but the problem is broader as reflected by the tentative conclusions of the Expert Groups. I believe a greater convergence of laws towards higher standards is a condition of the acceptation of the special nuclear liability regime. The EU framework can provide both the forum and – I suppose – the legal machinery to undertake this task.

On the way, there however remains as noted earlier by Roland Dussart-Desart, a serious obstacle: The attitude of the "five" EU members sitting outside the Paris/Vienna system. I am not sure island states like Cyprus or Malta feel strongly about nuclear liability but Ireland and Luxembourg do and we know Austria to be a determined challenger. Engaging them is a priority.

To finish on a more personal note, I must confess my initial doubts concerning the initiative of the European Commission. After all, I have been holding the flag of the NEA for most of my professional life and that made me a champion of the Paris Convention… Following the developments as an outsider, I have progressively arrived at the conclusion that the EC Study Groups constitutes the best platform upon which to progress in the direction of a concerted application of the Paris and Vienna in Europe, and possibly beyond. If the Session 3 can be summarized as promising yet not conclusive, it only means that work must continue.