1. The purpose of this Note is to bring to the attention of Workshop Participants certain issues concerning the interpretation of the Joint Protocol which have been raised by Dr. Norbert Pelzer, representative of Germany on the Nuclear Law Committee.

2. Dr. Pelzer’s comments refer specifically to the second scenario being used for this Workshop, namely a transport accident taking place on board a ship along the Danube during transport from Germany to Romania. The accident occurs within Hungarian territorial jurisdiction but a German nuclear operator is liable for the damage that occurs. Further information on this scenario is available in the document entitled “Accident Scenarios, Methodology and Questionnaire” which was circulated on 25 February 2005 and may be downloaded from the NEA website at the following URL:

3. We reproduce here extracts of correspondence sent by Dr. Pelzer to the NEA Secretariat which outline the issues under consideration:

   “Thank you for sending the scenarios for the Bratislava Workshop. I took a first glance and think that everything is well prepared and organised. However, I have a little problem with your interpretation of the concept of "Non-Contracting State" under the Joint Protocol (JP) (last paragraph of p. 8 of the English version of the accident scenarios). You state that since both States are Parties to the JP, the VC State is no longer considered as a Non-Contracting State to the PC (Art. IV JP), and the two operators may make their own arrangements as to the transfer... I have doubts as to whether Art. IV actually makes a PC State a Contracting Party to the VC and vice versa. You may remember that during the negotiations of the JP, there was general consensus that the JP would not make a Contracting Party to one Convention a
Contracting Party also to the other one. The JP only aims at mutual extension of the benefits of each of the Conventions.

It is true that Art. IV of the JP stipulates that the operative parts of each Convention shall be applied as between Contracting Parties of the respective Convention. Nevertheless, it does not mean that a VC State becomes a Contracting Party to the PC and *vice versa*. This will be quite obvious if we take the following scenario:

There is a transportation from the Czech Republic via Germany to France. The sending Czech operator assumes liability. In the territory of Germany, there is a nuclear accident. Which court is competent? Since the Czech operator is liable, the VC is applicable to the case (Art. III para. 3 JP). According to Art. XI para. 1 of the VC, jurisdiction over actions shall lie with the courts of a Contracting Party within whose territory the nuclear incident occurred. That would mean that the German court would be competent - if we assume that the JP makes Germany a Contracting Party to the VC.

If this interpretation is correct, it would result in two courts competent for the case: the German court in relation to VC/JP States based on Art. XI para. 1 VC/Art. IV JP, and the Czech court vis-à-vis VC States that are not Parties to the JP based on Art. XI para. 2 VC. The fathers of the JP certainly never aimed at establishing two competent courts for the same nuclear incident. According to my view, this case can only be satisfactorily solved if we do not assume that the JP makes Germany a Contracting Party to the VC. In that case, Art. XI para. 2 VC would apply, which would lead to the exclusive competence of the Czech court. I think only this result is in line with the concept of the liability conventions. I admit that the language of Art. IV of the JP is a little misleading because it makes the entire operative part of the respective Convention applicable, and people could very well conclude that Art. XI para. 1 VC or the respective provision in the Paris Convention would also apply to transport cases in a JP State. I also think that the operators involved in the transportation are free to make their own arrangements on the transfer of liability irrespective of whether they are Parties to the same basic Convention. That can be concluded from Art. III para. 3 JP.”

4. The NEA Secretariat responded to these comments by confirming that in its view, adherence to the JP does not result in making a country a Contracting Party to the "other" Convention in the meaning of general treaty law. However, the Secretariat indicated that the JP clearly eliminates the distinction between Contracting Parties and non-Contracting Parties in respect of the "functional" relations among PC/VC countries which are also party to the JP as far as the operative provisions of both Conventions listed in JP Article IV are concerned (and this of course includes the provisions on jurisdictional competence). The Secretariat therefore drew the conclusion that in respect of an accident involving only PC/VC countries that are also
party to the JP, the rules giving competence to the courts of the accident State should apply. On the other hand, to the extent that non-JP States would be involved because of damage suffered in their respective territories, there may be a problem if they object to the designation of the competent court under the rules of the JP.

5. Dr. Pelzer responded again and we reproduce here the most relevant excerpts:

“According to your view, in the 2nd Bratislava scenario the Hungarian court would be competent. This follows from Art. IV JP which according to your interpretation does away with the distinction between Contracting Party and non-Contracting State. This interpretation entails the following legal situation:

- **Victims from PC/JP and from VC/JP States**: The PC applies (Art. III(3) JP). The Hungarian Court is competent (Art. IV JP, Art. 13(a) PC). The Hungarian Court applies the PC as implemented by German law. The BSC will not be applied (Art. 2 BSC).

- **Victims from VC States not Party to the JP** (e.g. Russia): The VC applies. The Hungarian Court is competent (Art. XI(1) VC). It applies the VC and implementing Hungarian law. However, I think there is no liability of the German operator under either the old or new Vienna Convention without the JP.

- **Victims from PC States not Party to the JP** (e.g. Belgium, France, UK): The PC applies. The German Court is competent (Art. 13(b) PC). It applies the PC and implementing German law. The BSC does not apply because the incident occurred entirely in the territory of a non-Contracting State to the BSC (Art.2 BSC).

If you follow my interpretation, we have the following situation:

- **Victims from PC/JP and from VC/JP States**: The PC applies (Art. III(3) JP). The German Court is competent (Art. 13(b) PC). It applies the PC as implemented by German law. The BSC will not be applied (Art. 2 BSC).

- **Victims from VC States not Party to the JP**: The German law does not apply Art. 2 old PC. Victims from Vienna States may bring their claim at the German Court. The PC as implemented by German law applies. The BSC does not apply (Art. 2 BSC).

- **Victims from PC States not Party to the JP**: The PC applies. The German Court is competent (Art. 13(b) PC). It applies the PC as implemented by German law. The BSC does not apply (Art. 2 BSC).
There are two disadvantages to your interpretation: It provides for two competent courts for the same incident. It obliges the Hungarian Court to apply German law. As far as I can see, the concept of non-Contracting State is only used in the provisions on the territorial scope, on transport and on jurisdiction (perhaps I overlooked another operative provision). In those provisions the concept makes sense. If one follows your interpretation, Articles 4(a)(iv) and (b)(iv) PC and II(1)(b)(iv) and (c)(iv) VC would be meaningless among JP States. I have my doubts as to whether that is correct. And finally, Art. 2 of the revised PC expressly refers to VC/JP States as "non-Contracting States", and I think that is exactly what they are. The same applies to the provisions on jurisdiction. Art. IV JP does not change the status of the JP States in relation to that liability convention to which they are not a Contracting Party.

The floor is open. Have fun!”