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**MEETING OF THE PARTIES TO THE CONVENTION ON
THE PROTECTION AND USE OF TRANSBOUNDARY
WATERCOURSES AND INTERNATIONAL LAKES**

Legal Board

Seventh meeting
Geneva, 15 and 16 April 2010

REPORT OF THE LEGAL BOARD ON ITS SEVENTH MEETING

I. ATTENDANCE AND ORGANIZATIONAL MATTERS

1. The seventh meeting of the Legal Board was held on 15 and 16 April 2010 in Geneva.
2. It was attended by representatives of the following countries: Finland, France, Georgia, Germany, Greece, Italy, Kazakhstan, Kyrgyzstan, the Netherlands, the Republic of Moldova, the Russian Federation, Serbia, Switzerland, Tajikistan, Turkey, Ukraine, the United Kingdom of Great Britain and Northern Ireland and Uzbekistan.
3. The meeting was also attended by representatives of the Interstate Commission for Water Coordination of Central Asia (ICWC), the secretariat of the United Nations Convention to Combat Desertification (UNCCD) and the Compliance Committee of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention).
4. The meeting was also attended by representatives of the following non-governmental organizations: Earthjustice; European ECO-Forum; the Global Institute for Water, Environment and Health; and the Union for Defence of the Aral Sea and Amudarya.
5. The Legal Board adopted its agenda as contained in document ECE/MP.WAT/AC.4/2010/1.

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6. The Legal Board elected Mr. Attila Tanzi (Italy) as Chair and Mr. Alexandros Kolliopoulos (Greece) as Vice-Chair.

7. Representatives of Hungary and the Czech Republic could not attend the meeting but submitted their positions on topics discussed by the Legal Board to the secretariat. During the course of the meeting, the secretariat informed the Legal Board of such positions when the respective issues were under discussion.

II. MECHANISM TO FACILITATE AND SUPPORT IMPLEMENTATION AND COMPLIANCE

8. Ms. Sibylle Vermont (Switzerland), Chair of the Bureau of the Meeting of the Parties to the Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Water Convention), recalled the mandate of the Legal Board, as established by the fifth session of the Meeting of the Parties, including the scope and objectives of the mechanism to facilitate and support implementation and compliance.

9. The Chair of the Legal Board introduced the discussion paper, “Considerations on a Facilitative Implementation Mechanism under the Water Convention” (informal document LB/2010/1), and invited delegates to start deliberations by considering the general aspects of a possible facilitative implementation mechanism. The Chair reiterated that a body responsible for review of implementation of the Convention should be of an advisory, consultative and facilitative nature and as such would serve as a dispute prevention mechanism to which the Parties of the Convention might submit, individually or jointly, the problems they faced in implementation.

10. Many delegations expressed the view that such a facilitative implementation mechanism should be based on principles that reflected the nature of the Convention. Such a mechanism would need to focus on assisting with implementation and application of the Convention rather than penalizing countries for problems with implementation. The mechanism should be non-confrontational, facilitative and practical to use. Most delegations spoke in favour of establishing a permanent body as part of the mechanism.

11. Stressing that implementation and compliance were intrinsically linked, many delegates suggested that the future mechanism could focus on implementation issues. Assisting the Parties in implementing the Convention would result in enhanced compliance with their obligations under the Convention.

12. Other delegations, however, pointed out the transboundary context of the Convention and supported the view that the proposed mechanism should not focus solely on application and implementation but also on the compliance issues, since non-implementation or non-compliance by one riparian Party could directly affect other riparian Parties.

13. Some delegations proposed a stepwise approach to the evolution of the proposed mechanism.

14. With regard to the possibility of creating a reporting procedure under the Convention, the discussion focused, on the one hand, on the advantages of such a reporting mechanism and, on the other, on the potential burden that such exercise would impose on Parties.

15. Many delegations supported the need for some form of a reporting mechanism under the Convention in order to measure the degree of implementation and compliance with the Convention's provisions. By identifying gaps in implementation, reporting could help to mobilize and enhance implementation. According to participants from Central Asia, as problems related to management of water resources were highly relevant for that region, reporting could create a benchmark for implementation.

16. Some participants were in favour of a general reporting mechanism that would provide a summary of problems related to implementation common to a specific region or regions. Such a scheme would not necessitate comprehensive reporting on implementation by each Party, yet still could provide a sound overview of the existing issues related to implementation and compliance. The opportunity to use existing joint bodies as vehicles for reporting was also put forward in the discussion on reducing reporting burdens.

17. Other, mainly European Union delegations, underlined that many reporting mechanisms existed already and stressed that efforts should not be duplicated. The secretariat referred to the pilot reporting exercise, currently ongoing under the Protocol on Water and Health, which had been designed to improve future reporting to avoid excessive burdens.

18. In any case, most delegates suggested that the existence of a reporting mechanism and the general mandate of the proposed mechanism to monitor general issues of compliance/implementation were not directly linked. It was stressed that the existence of a reporting scheme was not a prerequisite for the operation of a mechanism to facilitate implementation and compliance.

19. As such, the proposed mechanism, which would be non-binding in nature, should assist Parties with the implementation issues and prevent possible disputes. Differentiated capacities of the Parties should be considered by the body in charge of the mechanism when deciding on the required measures and assistance, although there might be no need to mention "differentiated capacities" in the text of the mechanism.

20. Many participants stressed that the possible title of the body could be the "Implementation Committee" or "Implementation Body".

21. With regard to the composition of the permanent body in charge of the mechanism, most participants were of the view that the members should serve in their personal capacity. Few delegations noted the benefits of members serving as State representatives. However, the delegates agreed that measures should be taken to avoid possible conflicts of interest, in particular when civil servants were elected as members of the body to serve in personal capacity. The need to decrease the dependence of the members of the body on State budgets to facilitate their attendance at meetings was also emphasized.

22. Considering the options for nomination of candidates for membership in the body in charge of the mechanism, most participants stressed that the nominations should be put forward by the Parties; however, nominations from non-governmental organizations could also be duly taken into account.

23. A general agreement was expressed that the optimal number of members of the permanent body would be nine, and that they should have an opportunity to be re-elected once. The election cycle should ensure the continuity of the work of the body in charge of the mechanism and should coincide with the frequency of sessions of the Meeting of the Parties. When electing the members of the body, due consideration should be given to balanced geographic representation. The meetings of the body in charge of the mechanism should take place at least once a year.

24. Regarding the procedure for operationalizing the proposed mechanism, most participants expressed the view that both self-submissions by Parties and Party-to-Party submissions should be included in the mechanism. A general agreement was also expressed to allow for the opportunity of referrals by the Secretariat.

25. Participants shared the view that non-State actors, in particular the public, should have a role in bringing the issues regarding difficulties in implementation or application of the Convention to the attention of the body in charge of the mechanism. It was mentioned that the body in charge of the mechanism could have an opportunity to decide whether to take action in such a case.

26. Regarding information gathering by the body in charge of the mechanism, the participants agreed that the body should avail itself of as broad a spectrum of information sources as possible, as long as the sources were clear and transparent. As for the confidentiality of the proceedings of the proposed body, the sessions should be open to the public unless otherwise requested by the Parties concerned. In general, the confidentiality of information received in confidence should be protected.

27. With regard to the nature of outcomes/findings of the procedure under the proposed mechanism, the participants agreed that it should be consultative, advisory, and facilitative. Many emphasized that the set of possible measures that the mechanism could resort to should focus on providing assistance, recommendations and advice to the Parties and avoid punitive actions. At the same time, it was stressed that the process should be capable of rendering some conclusions, since the later would serve as an incentive to solving implementation problems.

28. Some delegates mentioned that the mechanism should be able to resort, through the Meeting of the Parties, to stronger measures, especially in cases of a lack of political will from the Parties, as evidenced by repetitive problems with implementation.

29. As for the role of the Meeting of the Parties in the functioning of the mechanism, the delegates expressed the opinion that the body in charge of the mechanism could be given some level of autonomy by the Meeting of the Parties. At the same time, the Meeting of the Parties should be given a role in case of repetitive non-implementation. Any measures or action to be taken with respect to Parties experiencing problems in implementation should be

endorsed/adopted by the Meeting of the Parties; that would also facilitate the provision of required assistance.

30. Participants supported the need to clarify the relationship between dispute settlement and the compliance procedure. With regard to the need for clarification of the relationship between the proposed mechanism and other procedures, in particular the one under the Protocol on Water and Health, some delegations supported, in principle, such a clarification. For others, the need for such clarification was not evident.

31. The Legal Board took note of the draft organization of work for developing a proposal on a mechanism to facilitate and support implementation and compliance (informal document LB/2010/4). The Legal Board established an open-ended drafting group and entrusted it with preparing a working document to reflect the options on a possible future facilitative implementation mechanism. Delegates from Finland, France, Germany, Greece, Italy, Kazakhstan, the Netherlands, Switzerland and the United Kingdom, as well as representatives of the ICWC and the European ECO-Forum expressed their interest in being part of the drafting group. Later, the Czech Republic also agreed to join the drafting group. It was decided that the first meeting of the drafting group would take place on 4 and 5 October 2010 in Geneva.

32. It was decided that the eighth meeting of the Legal Board, scheduled to take place on 24 and 25 February 2011 in Geneva, would consider the working document prepared by the drafting group.

III. APPLICATION OF THE PRINCIPLES OF THE CONVENTION TO TRANSBOUNDARY GROUNDWATER

33. The Chair of the Legal Board introduced some general considerations regarding legal and technical complexities related to the management and regulation of groundwater resources, especially in the transboundary context, and recalled the Legal Board's mandate to prepare a preliminary study, jointly with the Working Group on Integrated Water Resources Management, on the application of the principles of the Convention to transboundary groundwater.

34. The Chair introduced the Discussion Paper on Application of the UNECE Water Convention to Groundwater and Possible Developments (informal document LB/2010/2) and invited participants to reflect upon two issues which were of major relevance for the preparation of a preliminary study: (a) whether the distinction should be made between related and unrelated groundwater when considering that matter in the context of the Water Convention; and (b) whether efforts should be made to cover only transboundary groundwater or should also focus on domestic groundwater?

35. Participants strongly supported the need to further study the issue of the application of the principles of the Convention to transboundary groundwater. Many highlighted that some UNECE instruments already contain provisions in that respect, including the Protocol on Water and Health. Participants agreed that there was no use in making distinctions between related and unrelated groundwater since the Convention clearly covered both. Many delegations supported the view that both transboundary and domestic groundwater should be reflected in the future work of the Legal Board.

36. Pointing out the lack of capacity in the field of evaluating and managing groundwater resources by some Parties and non-Parties in the UNECE region, some delegates were in favour of further regulatory steps, as well as highlighting the need to raise awareness and build capacity on that issue.

37. The secretariat drew the attention of participants to the “Preliminary Overview on the Groundwater in Transboundary Water Cooperation Agreements in Eastern Europe, the Caucasus, and Central Asia” (informal document LB/2010/3). The document showed that groundwater had not been thoroughly regulated in transboundary water agreements in the subregion.

38. Participants discussed various options to provide guidance to the Parties on the issue of the application of the Convention to transboundary groundwater. Such options included elaborating a model agreement on transboundary groundwater; model provisions on transboundary groundwater; further guidance to supplement the Guide to Implementing the Convention; or a Protocol on transboundary groundwater. The need to bring together the existing UNECE regulatory language on groundwater was emphasized.

39. The Legal Board requested its Chair to consult the Working Group on Integrated Water Resources Management on the need to prepare, as a first step, an explicatory compilation of existing UNECE regulatory frameworks/language addressing groundwater, in order to be in a better position to evaluate further measures needed in that area.

40. The secretariat informed the Legal Board about the planned workshop on transboundary groundwater in the framework of the Capacity for Water Cooperation (CWC)¹ project under the Convention, and stressed possible synergies between the work on developing a preliminary study by the Legal Board and the CWC workshop.

IV. CAPACITY-BUILDING ACTIVITIES ON LEGAL AND INSTITUTIONAL ASPECTS OF IMPLEMENTATION OF THE CONVENTION

41. The secretariat also informed the Legal Board on the planned capacity-building activities in Central Asia in the framework of the project “Regional Dialogue and Cooperation on Water Resources Management”.²

42. The secretariat and the Chair invited the Legal Board to consider nominating experts from their delegations to participate in those and future capacity-building activities related to the implementation of the Water Convention, with a view of establishing a roster of experts.

¹ The Capacity for Water Cooperation (CWC) project aims to create a framework enabling cross-fertilization and exchange of experience between countries and river basins regarding regulatory, institutional, methodological and other aspects of integrated management of transboundary waters in countries in Eastern Europe, the Caucasus and Central Asia and at the same time bringing in valuable experience from other parts of the UNECE region. CWC also aims at establishing a network of experts from those countries involved in transboundary water management who are used to cooperating and sharing knowledge. See <http://www.unece.org/env/water/cwc.htm>.

² The project “Regional Dialogue and Cooperation on Water Resources Management” aims to empower the countries of Central Asia to develop and implement long-term solutions to improve cooperation on transboundary water resources. The project is implemented by UNECE and financed by the Government of Germany through the Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) in the framework of the Berlin Water Process. See <http://www.unece.org/env/water/cadialogue/cadwelcome.htm>.

V. OTHER BUSINESS

43. A delegate from Serbia informed the Legal Board about the steps that Serbia had made towards accession to the Water Convention, including amendments to articles 25 and 26.
