



## **Economic and Social Council**

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### **Economic Commission for Europe**

Meeting of the Parties to the Convention on  
the Protection and Use of Transboundary  
Watercourses and International Lakes

#### **Legal Board**

##### **Eighth meeting**

Geneva, 24 and 25 February 2011

### **Report of the Legal Board on its eighth meeting**

#### **I. Attendance and organizational matters**

1. The eighth meeting of the Legal Board was held on 24 and 25 February 2011 in Geneva.
2. It was attended by representatives of the following countries: Armenia, Azerbaijan, Czech Republic, Finland, France, Georgia, Germany, Greece, Italy, Kazakhstan, Netherlands, Republic of Moldova, Russian Federation, Serbia, Switzerland, Tajikistan, the Former Yugoslav Republic of Macedonia, United Kingdom of Great Britain and Northern Ireland and Uzbekistan.
3. The meeting was also attended by representatives of the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the Interstate Commission for Water Coordination of Central Asia (ICWC).
4. In addition, representatives of the non-governmental organizations Earthjustice and European ECO-Forum attended the meeting.
5. The Legal Board adopted its agenda as contained in document ECE/MP.WAT/AC.4/2011/1.
6. Spain could not participate in the meeting, but had sent written comments to document ECE/MP.WAT/AC.4/2011/3 which were distributed to participants.

#### **II. Mechanism to facilitate and support implementation and compliance**

7. The Meeting of the Parties to the Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Water Convention), at its fifth

session (Geneva, 10–12 November 2010), agreed on the need to establish a mechanism under the Convention through which problems related to implementation and possible differences on the Convention's interpretation could be addressed. It mandated the Legal Board to study possible options for assisting Parties with solving implementation problems and preventing differences regarding the interpretation and application of the Convention and to prepare a proposal on the objectives, structure, tasks, functions, measures and procedures of an institutional and procedural mechanism to support implementation and compliance, for possible adoption at the sixth session of the Meeting of the Parties in 2012.

8. The Legal Board, at its seventh meeting (Geneva, 15–16 April 2010), reviewed possible options for a mechanism to support implementation and compliance on the basis of a discussion paper<sup>1</sup> submitted by the Chair of the Legal Board. The Legal Board discussed the questions brought forward in the paper and established an open-ended drafting group to prepare a first draft reflecting the options expressed during its meeting (ECE/MP.WAT/AC.4/2010/2, para. 31). The drafting group met on 4 and 5 October 2010 in Geneva.

9. On the basis of the discussions at the drafting group, the Chair of the Legal Board prepared and submitted to the eighth meeting of the Legal Board the document, "Possible drafting language for a mechanism to facilitate and support implementation and compliance" (ECE/MP.WAT/AC.4/2011/3).

10. The Legal Board discussed the document and reached preliminary conclusions on a number of issues with regard to the structure and functions of the mechanism. Some other issues, in particular the issue of reporting, were deferred for further discussion at upcoming meetings.

11. With regard to the composition of the Implementation Committee, the majority of delegations supported the view that Committee members should be elected and serve in their personal capacity and not as State representatives. It was stressed that serving in a personal capacity did not exclude qualified civil servants from being elected as members of the Committee. The delegation of the Russian Federation, however, supported having State representatives serving in the Committee, as did Spain in its written comments.

12. On the issue of reporting, the Legal Board discussed the document "Overview of existing reporting requirements of relevance for the UNECE<sup>2</sup> Water Convention — challenges and advantages related to the introduction of reporting under the Convention" (LB/2011/INF.1) submitted by the secretariat. The view prevailed that a reporting mechanism under the Convention would be a useful tool for Parties to assess progress and to foster implementation, as well as a useful instrument for the Implementation Committee to carry out its functions. However, as some reporting mechanisms on water already existed, in particular within the European Union, it was considered important to avoid duplications and overburdening of national administrations. The issue of reporting was left open for further discussion.

13. The Legal Board discussed in detail different procedures through which the Committee's activities might be triggered. A distinctive feature of the mechanism to facilitate and support implementation and compliance — the advisory procedure — underlined the emphasis of the proposed mechanism on assisting Parties facing problems with the implementation of the Convention. Under the advisory procedure, a Party or

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<sup>1</sup> "Considerations on a Facilitative Implementation Mechanism under the Water Convention" (LB/2010/INF.1), available at:  
[http://www.unece.org/env/water/meetings/legal\\_board/2010/Facilitative\\_mechanism\\_inf1.pdf](http://www.unece.org/env/water/meetings/legal_board/2010/Facilitative_mechanism_inf1.pdf).

<sup>2</sup> United Nations Economic Commission for Europe.

Parties could request advice from the Committee about its or their efforts in implementing the Convention vis-à-vis each other, other Parties and/or non-Parties. The Committee would then consider the appropriate legal, administrative and/or technical advice to be provided to the Party or Parties involved in such a procedure.

14. The Legal Board agreed that submissions to the Committee could be made by a Party which concluded that it was or would be unable to comply fully with the Convention (self-submission), and by a Party or Parties that was or were affected by another Party's difficulties in implementing and/or complying with the Convention (Party-to-Party submission). Under certain conditions, Committee action might be triggered by the secretariat (referral).<sup>3</sup>

15. In addition, the Legal Board also agreed that the Committee might, on its own initiative, request a Party to provide necessary information, in case it became aware, including from information received from the public,<sup>4</sup> of possible difficulties in the implementation by a Party or possible non-compliance by a Party with the Convention (Committee's initiative). This formula would allow the Committee to take into account communications from the public, while, at the same time, the latter would not be an official trigger, thus leaving to the Committee a margin of appreciation as to what extent to take the initiative on the basis of the information provided.

16. The Legal Board was of the general agreement that, in principle, the information held by the Committee should not be kept confidential. The Committee, in order to perform its functions, might also request information on matters under its consideration. A Party in respect of which a request for advice, submission, referral, or a Committee initiative was made or which made a request for advice or submission, as well as the member of the public submitting information to the Committee, should be entitled to participate in the discussions before the Committee. The Legal Board agreed that the Committee should report on its activities to the Meeting of the Parties.<sup>5</sup>

17. The Legal Board discussed a set of measures for the Committee to decide upon, all of them being of a facilitative character. The measures ranged from the provision of assistance to Parties, to a request to the Party concerned that it develop an action plan or submit progress reports. The Legal Board agreed that it would only be the Meeting of the Parties that, after seriously considering the degree and frequency of difficulties with implementation, might adopt more serious measures. The latter would comprise the issuance of a statement of concern, declarations of non-compliance, cautions or the suspension of special rights and privileges under the Convention, but only in accordance with the applicable rules of international law concerning the suspension of the operation of a treaty.<sup>6</sup>

18. The Legal Board discussed the appropriate timing and procedure for the adoption of the rules of procedure of the Committee. Two major considerations were put forward. First, there was a strong preference for the Meeting of the Parties to approve the core rules of

<sup>3</sup> During the discussions on document ECE/MP.WAT/AC.4/2011/3, Kazakhstan reserved its position on the section on referrals by the secretariat.

<sup>4</sup> During the discussions on document ECE/MP.WAT/AC.4/2011/3, the United Kingdom reserved its position on the issue of provision of information to the Committee by the public with regard to the sections on the Committee's initiative and on entitlement to participate.

<sup>5</sup> During the discussions on document ECE/MP.WAT/AC.4/2011/3, the Netherlands reserved its position on all sections of document starting from the section on Committee reports to the Meeting of the Parties to the Convention.

<sup>6</sup> The Russian Federation requested clarification with regard to the suspension of rights and privileges as a measure to facilitate and support implementation and compliance.

procedure of the Committee giving, at the same time, the Committee a certain freedom to develop the details of the rules. Secondly, the Legal Board felt that the operation of the Committee should not be delayed. For those reasons, the Legal Board agreed that once there was agreement on the text of the mechanism, it would strive to prepare the core rules of procedure, to be adopted by the Meeting of the Parties in 2012 and to be applicable from that time. Thereafter, the Committee would be entrusted by the Meeting of the Parties to elaborate detailed rules of procedure, which could be submitted for adoption at the Meeting of the Parties in 2015. That arrangement, however, was subject to the availability of time for the Legal Board to work on such core rules before the Meeting of the Parties in 2012.

19. The Legal Board discussed future work arrangements to develop the proposal on a mechanism to support implementation and compliance. The Chair was entrusted with preparing a revised text for the ninth meeting of the Legal Board based on the discussions and decisions at the eighth meeting. In addition, the Chair would prepare a document to facilitate the discussion on possible modalities for reporting under the Convention. Such a proposal should be without prejudice to a decision on whether a reporting mechanism under the Convention should be introduced.

20. The secretariat informed participants that, after the ninth meeting of the Legal Board, which was scheduled to be held in Geneva on 1 and 2 September 2011, there would be the need for one and possibly two more meetings in 2012. The secretariat encouraged all Parties to send their representatives to the Legal Board meetings, since active participation of all Parties would assist in submitting a well-balanced proposal to the Meeting of the Parties in 2012.

### **III. Application of the principles of the Convention to transboundary groundwater**

21. The Meeting of the Parties to the Convention at its fifth session had mandated the Legal Board and the Working Group on Integrated Water Resources Management to prepare a preliminary study on the application of the principles of the Convention to transboundary groundwater, to be submitted to the sixth session of the Meeting of the Parties for consideration as to whether further action was needed.

22. The Legal Board at its seventh meeting had considered a discussion paper<sup>7</sup> submitted by the Chair, providing background information on the issue, as well as an overview of United Nations Economic Commission for Europe (UNECE) documents and other instruments addressing groundwater. Taking into account a need for more specific regulatory guidance on groundwater, the Legal Board asked the Chair to prepare an explicatory compilation of existing UNECE regulatory language addressing groundwater.

23. At its eighth meeting, the Legal Board discussed the document “Application of the UNECE Water Convention to groundwater: explicatory recognition of the existing UNECE regulatory language” (LB/2011/INF.2) submitted by the Chair. The document provided explanations and analyses of the provisions of the Convention, of documents developed under its framework and of other relevant references in relation to groundwater. It emphasized that the distinguishing features of groundwater, in particular the difficulty of identification and characterization and its particular vulnerability in case of pollution, called

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<sup>7</sup> “Application of the UNECE Water Convention to groundwater and possible developments” (LB/2010/INF.2), available at:  
[http://www.unece.org/env/water/meetings/legal\\_board/2010/Groundwater\\_discussion\\_paper\\_inf2.pdf](http://www.unece.org/env/water/meetings/legal_board/2010/Groundwater_discussion_paper_inf2.pdf)

for specific regulatory and practical measures suitable for groundwaters when applying the principles of the Convention.

24. On the basis of the document, the Legal Board discussed the possibility of additional action with respect to groundwater. It was suggested that a set of model provisions serving as guidance for drafting bilateral or multilateral agreements or protocols on transboundary groundwater would be most useful, especially for countries with economies in transition. As in the Convention's Model provisions on transboundary flood management (ECE/MP.WAT/2006/4), each model provision could be supplemented by a brief commentary.

25. While the draft preliminary study on the application of the principles of the Convention to transboundary groundwater was already available, and therefore the mandate given by the Meeting of the Parties was already accomplished, the Legal Board considered that there remained an opportunity to develop the model provisions on groundwater jointly with the Working Group on Integrated Water Resources Management for possible consideration and adoption at the next Meeting of the Parties in 2012. It recognized that to embark on such a task the agreement of the Working Group on Integrated Water Resources Management and of the Bureau of the Meeting of the Parties was needed, and it entrusted the secretariat and the Chair to consult with those bodies on a possible way forward.

26. The representative of UNESCO outlined opportunities for cooperation between UNESCO and Parties to the Water Convention in the area of management and protection of groundwater. The Legal Board welcomed such opportunities and stressed the need for a close cooperation with UNESCO on the possible development of the model provisions.

#### **IV. Capacity-building activities on legal and institutional aspects of the Convention's implementation**

27. The secretariat informed the Legal Board of the capacity-building activities organized within the framework of UNECE–*Deutsche Gesellschaft für Internationale Zusammenarbeit* (GIZ) programme, "Regional Dialogue and Cooperation on Water Resources Management in Central Asia", including the regional seminar "International Water Law and Negotiation of Mutually Beneficial Multilateral Water Agreements in Central Asia" (Kazakhstan, April 2009); the national seminar on the Convention on Environmental Impact Assessment in a Transboundary Context (Tajikistan, July 2010); and two national seminars on the Water Convention (Kazakhstan, October 2010 and Turkmenistan, December 2010). It was emphasized that capacity-building activities greatly benefited from participation of Legal Board members and representatives of the Parties to the Convention. It was also observed that the Guide to Implementing the Convention adopted by the fifth session of the Meeting of the Parties served as a solid foundation for capacity-building and awareness activities. Participants also heard about upcoming capacity-building events, in particular, two events to be held in March 2011: a national seminar on the Water Convention in Tajikistan and a regional training on strategic environmental assessment for water professionals in Kazakhstan.