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

Legal Board

Fifth meeting
Geneva, 2–3 October 2008

REPORT OF THE LEGAL BOARD ON ITS FIFTH MEETING

Introduction

1. Following expression of their intention to ratify the Convention at the fourth meeting of the Parties (Bonn, Germany, 20–22 November, 2006), Georgia and the former Yugoslav Republic of Macedonia approached the secretariat with requests for support to facilitate such ratification. The two countries' requests underlined the need to concretely address the legal, practical and economic implications of ratification. The Convention's Bureau agreed that this activity should be a multilateral exercise with the close involvement of the Legal Board and the Working Group on Integrated Water Resources Management, as the activity entailed on the one hand legal explanations of the Convention's provisions (which should be the role of the Legal Board), and on the other, practical advice for their implementation (which should be provided by Working Group).
2. To address the above-mentioned issues and other matters, the fifth meeting of the Legal Board was held on 2 and 3 October 2008 in Geneva.
3. It was attended by representatives of the following countries: Bosnia and Herzegovina, Croatia, Finland, Georgia, Greece, Italy, Kyrgyzstan, Switzerland, the former Yugoslav Republic of Macedonia, Turkey, Ukraine and Uzbekistan.

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4. The meeting was also attended by representatives of the following non-governmental organizations: Caucasus Green Area, Earthjustice, European ECO-Forum, International Office for Water, Regional Environmental Centre for Central Asia and the University of Dundee (United Kingdom).

I. ORGANIZATIONAL AND PROCEDURAL MATTERS

5. The Legal Board adopted its agenda as contained in the document ECE/MP.WAT/AC.4/2008/1.

6. The Legal Board elected Mr. Attila Tanzi (Italy) as its Chairperson.

II. GUIDE TO RATIFYING AND IMPLEMENTING THE CONVENTION

7. Ms. Sibylle Vermont (Switzerland), Vice-Chairperson of the Bureau of the Meeting of the Parties, together with the secretariat, recalled the background to this activity introduced the general objectives of a draft guide and outlined possible implications, from the legal and practical points of view, for work under the Convention.

8. The Chairperson of the Legal Board introduced a possible concept and outline for the draft guide (see informal document LB/2008/1).

9. Georgia and the former Yugoslav Republic of Macedonia informed the Legal Board about progress towards the Convention's ratification in their respective countries and voiced their expectations from the development of the guide. They also expressed their appreciation for the constructive approach decided upon by the Bureau in response to their request.

10. Georgia stressed that it was essential to have a clear understanding of what steps and measures should be taken prior to and after ratification of the Convention. At the same time, Georgia noted that it had already carried a number of bilateral projects on transboundary waters that contribute to the implementation of the Convention in practice. In this respect, Georgia highlighted a project aiming at the elaboration of the agreement on transboundary waters between it and Azerbaijan, which also foresees the establishment of a joint body. This project is being carried out within the framework of Environment and Security Initiative.

11. The former Yugoslav Republic of Macedonia informed the participants about steps it was taking towards implementation of some of the Convention's provisions. In particular, it underlined cooperation with the respective riparian countries on the Vardar River, Lake Ohrid and Lake Prespa, whose ultimate aim was the development of bilateral agreements and integrated water management plans for the basins. It also briefed the participants on its Government's plans to train more staff in water issues, thereby strengthening the country's capacity to better implement the Convention's provisions. The former Yugoslav Republic of Macedonia also voiced its expectation that the guide would address links between the Convention and the European Union (EU) Water Framework Directive.

A. The concept of the guide

12. Participants exchanged their views on national approaches to implement the Convention and on the key issues that should be addressed by the guide.

13. Based on the outcome of the discussion, the Legal Board agreed that:

(a) While in the long term the possible outcome of this exercise might be a full-fledged guidance on the implementation of all articles of the Convention, the proposed final product of the present work, to be ready for the fifth meeting of the Parties (10–12 November 2009), should be a relatively short guide focusing on those provisions of the Convention that might involve special difficulties for acceding countries;

(b) The guide should have dual nature, combining explanations of legal aspects and practical suggestions for effective implementation of the Convention;

(c) The guide should address the following basic aspects:

(i) Selected provisions of the Convention that might involve special difficulties for acceding countries;

(ii) Background explanation and legal, technical and practical analysis, as well as clarification of these provisions;

(iii) Identification, where possible, of the minimum practical requirements, including legal, institutional, administrative, policy and management, economic and capacity-building measures that need to be put in place for implementation, in relation to these provisions;

(iv) Procedural considerations with regard to the process of ratification/accession at the national level, which could include practical suggestions on how to effectively carry out such processes;

(v) Examples of practical implementation and good practices in the UNECE¹ region.

14. Furthermore, the Legal Board stressed that special attention should be given to the clarification of “relativity” and “due diligence” as regards several provisions of the Convention (e.g. the requirement to take appropriate measures for the prevention or reduction of pollution having a transboundary impact). In this respect, the Legal Board considered that the issue of compliance should be treated taking into account efforts taken by Parties to implement the measures. Such relativity would be proportionate to the capacity of the Party concerned, as well as to the nature and degree of the risk of occurrence of transboundary impact.

¹ United Nations Economic Commission for Europe.

15. The Legal Board agreed that the guide should be developed taking into consideration other relevant international law instruments (e.g. the EU Water Framework Directive, the 1969 Vienna Convention on the Law of Treaties, the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) and the UNECE Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention)). The issue of applying modern terminology instead of the terminology used in the original text of the Convention was also raised by participants (e.g. the currently used term of integrated water resources management as opposed to the formerly used term of rationale water management).

16. The Legal Board also agreed that the guide should present the advantages of becoming a Party to the Convention for all co-riparians, in particular those aspects that do not depend on whether a given country is downstream or upstream and that go beyond water management (e.g. increasing the political profile of transboundary issues in the country as well as international political recognition, stimulating better water management at the national level, and facilitating access to international funds).

17. The Legal Board also felt that it might not be feasible to suggest a general time frame for the Convention's implementation, but at the same time it agreed that the recommendation should be made that national plans for the Convention's implementation include the estimated time frames for implementation, tailored to the specifics of the countries concerned.

18. The Legal Board agreed that the explanations should also include the scope (e.g. geographic scope) of the Convention and its article 2, paragraph 1. It agreed that article 2, paragraph 5 (c), did not need a specific explanation; however, the concept of sustainable water management should be referred to in the explanations on "reasonable and equitable use" as a complementary concept. In response to a request from the former Yugoslav Republic of Macedonia, it was also agreed to include explanations on article 3, paragraph 1 (d).

19. The Legal Board selected the list of the Convention's provisions that should be addressed by the guide (see annex).

B. Examples of an explanatory text

20. The Legal Board also discussed two examples of draft explanatory text for the following articles.

21. **Article 2, paragraph 5 (b), on the polluter-pays principle.** The Legal Board stressed that the polluter-pays principle should not be confused with "the obligation to pay compensation for damage caused", but that it was rather a tool aiming at the internalization of environmental costs at the domestic level. Article 2, paragraph 5 (b), was therefore not a provision for inter-State responsibility or for civil liability in the transboundary context.

22. **Article 3, paragraph 3, on water-quality criteria and objectives.** The Legal Board also examined the economic aspects related to the setting of quality criteria and objectives.

C. Future work arrangements

23. The Legal Board agreed that the Chairperson, in cooperation with the secretariat, would prepare: (a) a revised concept of the guide, reflecting the outcomes of the discussion by the Legal Board; and (b) the proposed timeline for the guide's preparation. The document would be submitted to the third meeting of the Working Group on Integrated Water Recourse Management (Rome, 22–24 October 2008) for comments.

24. The Legal Board agreed to establish a drafting group comprising both legal and water management expertise to ensure a comprehensive approach to the guide's development. Countries and relevant organizations were invited to propose candidates to this group. It was provisionally agreed to hold the first meeting of the drafting group in late November or early December of 2008.

III. OTHER POSSIBLE FUTURE ACTIVITIES OF THE LEGAL BOARD

25. The Legal Board discussed other possible activities foreseen in its current workplan. In this respect, the Legal Board agreed that its present work should focus on the development of the draft guide.

26. At the same time, the Legal Board stressed that more efforts should be made by Parties to promote ratification of the amendment to articles 25 and 26 of the Convention, which open the Convention for accession to countries outside the UNECE region. To this aim, it agreed to contribute to the preparation of a message to those Parties to the Convention that had not yet ratified the amendment to urge for such ratification. The Chairperson of the Legal Board was entrusted to assist the Chairperson of the Working Group on Integrated Water Resources Management with preparing such a message.

Annex

LIST OF PROPOSED SELECTED PROVISIONS

I. PROVISIONS RELATING TO ALL PARTIES

1. Scope, including physical scope, of the Convention, considering the relevance of drainage basins and aquifers' recharge zones, as well as of the ecosystem approach (art. 1, para. 1, as well as other relevant provisions, with special regard to art. 2, para. 6).
2. The "due diligence" nature of the basic obligation of **prevention, control and reduction of transboundary impact** (especially, art. 2, paras 1 and 2).
3. **The equitable and reasonable utilization principle** and the factors for its concrete assessment in specific cases, including the sustainability of a given use and water management practice (art. 2, para. 2 (c), and art. 2, para. 5 (c)).
4. **Conservation, and where necessary, restoration of ecosystems** (art. 2, para. 2 (d))
5. **Polluter-pays principle** (art. 2, para. 5 (b)).
6. The principle that cooperation is to be carried out on the basis of **equality and reciprocity** (art. 2, para. 6).
7. The application of the Convention shall not lead to the **deterioration of environmental conditions** or lead to **increased transboundary impact** (art. 2, para. 7).
8. **Limits for wastewater discharges stated in permits are based on the best available technology** for discharges of hazardous substances (art. 3, para. 1 (c)) (to be addressed by water experts).
9. **Stricter requirements**, even leading to prohibition in individual cases, are imposed when the quality of the receiving water or ecosystem, as required (art. 3, para. 1 (d)).
10. At least **biological treatment** or equivalent processes are applied to municipal wastewater, where necessary in a step-by-step approach (art. 3, para. 1 (e)) (to be addressed by water experts).
11. Appropriate measures and best environmental practices are developed and implemented for the **reduction of input of nutrients and hazardous substances from diffuse sources** (art. 3, para. 1 (g)) (to be addressed by water experts).
12. **Environmental impact assessment** and other means of assessment are applied (art. 3, para. 1 (h))(in particular in relation to strategic environmental assessment.

13. **Contingency planning** is developed (art. 3, para. 1 (j)) (with a special need for good practices examples) (to be addressed by water experts).
14. Each Party shall set **emission limits for discharges from point sources** into surface waters based on the best available technology (art. 3, para. 2) (to be addressed by water experts).
15. Each Party shall define, where appropriate, **water-quality objectives** and **adopt water-quality criteria** (art. 3, para. 3) (to be addressed by water experts).

II. PROVISIONS RELATING TO RIPARIAN PARTIES

16. **Bilateral and multilateral agreements and joint bodies** (art. 9, paras. 1 and 2) (in the light of the above principles of equality and reciprocity, and reasonable and equitable use).
17. **Consultations** shall be held between the riparian Parties (art. 10).
18. Riparian Parties shall establish and implement **joint programmes for monitoring** the conditions of transboundary waters ... and shall, at regular intervals, **carry out joint or coordinated assessments** of the conditions of transboundary water (art. 11) (reference to the guidelines developed by the Working Group on Monitoring and Assessment).
19. Riparian Parties shall **exchange reasonably available data** (art. 13).
20. Riparian Parties shall, without delay, **inform each other** about any critical situation that may have transboundary impact (art. 14).
21. Riparian Parties shall **provide mutual assistance** upon request (art. 15).
22. Riparian Parties shall ensure that **information** about the conditions of transboundary waters; the measures taken or planned to be taken to prevent, control and reduce transboundary impact; and the effectiveness of those measures, **is made available to the public** (art. 16) (with reference to the Aarhus Convention and the Water Convention² document, “Water management: guidance on public participation and compliance with agreements”).
23. **Settlements of disputes** (art. 22) (with examples, if available).

² Convention on the Protection and Use of Transboundary Watercourses and International Lakes.