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Legal Board

Eighth meeting

Geneva, 24 and 25 February 2011

Item 2 (a)

**Mechanism to facilitate and support implementation
and compliance: possible drafting language for a
mechanism to facilitate and support
implementation and compliance**

Possible drafting language for a mechanism to facilitate and support implementation and compliance

Submitted by the Chair of the Legal Board

Background

1. At its seventh meeting (Geneva, 15–16 April 2010), the Legal Board established an open-ended drafting group and entrusted it with preparing a working document to reflect the options for a possible facilitative implementation mechanism.
2. The drafting group met in Geneva on 4 and 5 October 2010. It was attended by representatives of Finland, Germany, Italy, Kazakhstan, the Netherlands, the United Kingdom of Great Britain and Northern Ireland, the Interstate Commission for Water Coordination of Central Asia and the European ECO-Forum. In addition, three members of the drafting group — France, the Czech Republic and Switzerland — had submitted written comments which were duly taken into consideration during the discussion in the drafting group.
3. The drafting group discussed the informal document on possible drafting language for a mechanism to facilitate and support implementation of and compliance with the Convention on the Protection and Use of Transboundary Watercourses and International Lakes, developed by the Chair of the Legal Board, and worked on specific drafting

language, suggestions and recommendations, based on the outcomes of the seventh meeting of the Legal Board.

4. This document has been prepared by the Chair of the Legal Board based on the outcomes of discussions in the drafting group. The drafting language proposed in this document aims to facilitate the discussion at the eighth meeting of the Legal Board, without prejudice to its outcomes. The drafting language in this document also aims to reflect all options considered and opinions expressed so far in order to enable the Legal Board to make informed choices.

5. The Legal Board is expected to discuss the document and further elaborate the text by taking decisions and making suggestions on the proposed options and relevant drafting language.

I. Objective, nature and principles

Note: Some members of the drafting group noted that the references in this document to the “monitoring” function of the proposed mechanism are dependent on the introduction of a reporting system. Other members stressed that, although reporting would be an important element for monitoring, there could be monitoring without reporting.

Option 1 – Long (*rationale: enumeration of tasks before the mechanism demonstrates its usefulness*)

1. The objective of the mechanism is to facilitate the implementation and application of the Convention and promote compliance, by:

- (a) Providing advice to Parties on how to overcome difficulties encountered in their implementation and application of the Convention;
- (b) Promoting the understanding of the Convention;
- (c) Preventing disputes;
- (d) Monitoring implementation of the Convention.

Option 2 – Short (*rationale: functions of the proposed mechanism are mentioned in section IV below, so there is no need to mention them here*)

1. The objective of the mechanism is to facilitate, promote and safeguard the implementation and application of and compliance with the Convention.

For both options:

2. The mechanism shall be simple, non-confrontational, non-adversarial, transparent, supportive and cooperative in nature, building on the distinctive cooperative spirit of the Convention and oriented in the direction of helping Parties to implement the Convention.

II. Structure of the Implementation Committee

Note: At the seventh meeting of the Legal Board, a large number of participants stressed that the possible title of the body could be the “Implementation Committee” or “Implementation Body” (see report of the Legal Board ECE/MP.WAT/AC.4/2010/2). To facilitate the drafting process, the present document refers to the body in charge of the mechanism as the “Implementation Committee”, without prejudice to a decision on the name of such body at a later stage.

Option 1 – personal capacity (strongly preferred at the Legal Board meeting)

1. The Committee shall consist of nine members who shall serve in their personal capacity and objectively, in the best interest of the Convention.
2. The members shall be persons with recognized expertise in the fields related to the Convention, including legal and/or scientific and technical expertise.
3. The members shall be elected by the Meeting of the Parties from among candidates nominated by the Parties, taking into consideration any proposal for candidates made by Signatories or by non-governmental organizations (NGOs) qualified or having an interest in the fields to which the Convention relates.
4. In the election of the Committee, consideration should be given to the geographical distribution of membership and to diversity of experience and expertise.
5. At their ...th meeting, the Parties shall elect five members for a full term of office and four members for a half term of office. Subsequently, the Meeting of the Parties shall elect for a full term new members to replace those whose term has expired. If a member of the Committee can no longer perform his or her duties as a member of the Committee for any reason, the Bureau of the Meeting of the Parties shall appoint another member fulfilling the criteria in this section to serve for the remainder of the term. A full term of office commences at the end of an ordinary meeting of the Parties and runs until the second ordinary meeting of the Parties thereafter. Members shall not serve for more than two consecutive terms, unless the Meeting of the Parties decides otherwise.
6. Unless the Meeting of the Parties, in a particular instance, decides otherwise, the procedure for the nomination of candidates for the Committee shall be the following:
 - (a) Nominations shall be sent to the secretariat in at least one of the official languages of the Convention not later than 12 weeks before the opening of the meeting of the Parties during which the election is to take place;
 - (b) Each nomination shall be accompanied by a curriculum vitae (CV) of the candidate, which shall not exceed 600 words in length and may include supporting material;
 - (c) The secretariat shall distribute the nominations and the CVs, together with any supporting material.

Option 2 – State representatives

1. The Committee shall consist of nine Parties to the Convention. Each of the nine Parties shall appoint a member of the Committee. At their ...th meeting, the Parties shall elect five Parties to the Committee for one term and four Parties for half a term.

Subsequently, the Meeting of the Parties shall elect for a full term new Parties to the Committee to replace those whose term has expired. Outgoing Parties may be re-elected once, unless in a given case the Meeting of the Parties decides otherwise. For the purpose of this paragraph, a “term” commences at the end of an ordinary meeting of the Parties and runs until the second ordinary meeting of the Parties thereafter. Members shall not serve for more than two consecutive terms.

2. Member Parties shall ensure continuity and adequate qualification and skills in the workings of the Committee. Members of the Committee will serve objectively and in the best interest of the Convention. The members shall be persons with recognized expertise in the fields related to the Convention, including legal and/or scientific and technical expertise.

3. In the election of the Committee, consideration should be given to the geographical distribution of the membership.

For both options:

Note: The drafting group proposed that the rules of procedure of the Committee should be adopted by the Meeting of the Parties, rather than by the Committee itself. On that score, the view was also expressed that, in order to avoid delaying the Committee’s future activities, it would be appropriate that the Legal Board develops, together with a proposal on a mechanism to facilitate implementation and compliance, also its rules of procedure, for consideration by the Meeting of the Parties in 2012. The Legal Board is invited to express its opinion on this issue.

1 bis. The operation of the Committee will be governed by rules of procedure approved by the Meeting of the Parties.

2 bis. The Committee shall elect its own chair and vice-chair.

3 bis. The Committee shall, unless it decides otherwise, meet at least once between the sessions of the Meeting of the Parties. The secretariat shall arrange for and service the meetings of the Committee. The Committee may, in appropriate circumstances, undertake some of its activities through electronic communications.

4 bis. The Committee shall make every effort to adopt its decisions and recommendations by consensus. If all efforts at consensus have been exhausted and no agreement has been reached, decisions and recommendations shall be adopted by (*first option*) a two-thirds majority / (*second option*) a three-quarters majority of the members present and voting or by five members, whichever is the greater number.

III. Conflict of interest

1. Each member of the Committee should, with respect to any matter that is under consideration by the Committee, avoid direct or indirect conflict of interest. Where a member finds himself or herself faced with a direct or indirect conflict of interest, that member shall bring the conflict of interest to the attention of the Committee before consideration of that particular matter as soon as he or she becomes aware of it. The concerned member shall not participate in the discussion, elaboration and adoption of a finding or recommendation of the Committee in relation to that matter.

If members are State representatives (option 2, section II), the following second paragraph could be considered:

2. A member of the Committee that represents a Party in respect of which a request for advice, a submission or a communication is made, or the Committee's initiative is taken, or which makes a request for advice or a submission, should be entitled to participate in the consideration by the Committee of the request for advice or of the submission or of the communication or the Committee's initiative, but should not participate in, or be present during the elaboration, preparation and adoption of any part of a report, finding or recommendation of the Committee that relates to that request for advice, submission, communication, or to the Committee's initiative.

IV. Functions of the Committee

Note:

The drafting group draws the attention of the Legal Board to its concern that the Committee's activities in the current proposal may be initiated through too many triggers.

The drafting group noted that any reference to "reporting" in this and other sections remains subject to the final decision as to whether a reporting system would be established.

Since the idea of establishing a reporting system met different reactions during the seventh meeting of the Legal Board, the drafting group asked the secretariat to prepare an "Overview of existing reporting requirements of relevance for the Convention" by the eighth meeting of the Legal Board in order to enable the Legal Board to have a substantive discussion on that issue. As to reporting under European Union legislation, the drafting group recommended to refer to reporting under the Water Framework Directive only, without detailed consideration of reporting under its daughter directives. The drafting group specifically recommended addressing in this document the description of reporting under other United Nations Economic Commission for Europe (UNECE) conventions as possible models.

1. The Committee shall:
 - (a) Consider any request for advice relating to specific issues of difficulties in implementation made in accordance with section V below;
 - (b) Consider any submission, referral or communication relating to specific issues concerning difficulties in implementation and compliance made in accordance with sections VI, VII and VIII below;
 - (c) Consider undertaking a Committee initiative in accordance with section IX below;
 - (d) Prepare, at the request of the Meeting of the Parties, a report on implementation of and compliance with the Convention;
 - (e) Monitor, assess and facilitate the implementation of and compliance with the reporting requirements under ...;
 - (f) Take measures, including recommendations, as appropriate, pursuant to section XIV;
 - (g) Carry out any other functions that may be assigned to it by the Meeting of the Parties.

2. Where the activities of the Committee with respect to particular issues overlap with the responsibilities of another body of the Convention, the Committee may consult with that body.
3. As a general rule, the above functions will be carried out by the Committee taking into consideration the time and resources available to it.

V. Advisory procedure

Note:

The advisory procedure is proposed in response to the calls by the majority of delegations during the seventh meeting of the Legal Board for a facilitative and mediatory role of the Committee.

The advisory procedure is largely different from many of the existing compliance procedures. First, the prior consent of all parties involved with a proposed advisory procedure is required before the Committee may proceed with the advisory procedure. Secondly, the advisory procedure may be designed to ensure a greater degree of confidentiality, as shown in section XI “Confidentiality” under option 2. Thirdly, only a restricted set of “soft” measures can be applied by the Committee as the outcome of the advisory procedure. This means that the Committee cannot recommend to the Meeting of the Parties that it apply “hard” measures (such as issuing a statement of concern, a declaration of non-compliance, or a caution).

Since it is a Party who decides — prior to addressing the Committee — whether to ask for an advisory procedure, it is expected that the advisory procedure will provide an opportunity for Parties to address the Committee on delicate issues which they would prefer to avoid raising through a submission procedure.

In line with the above, the advisory procedure would encourage Parties to make use of the Committee in a larger number of instances than under many of the existing compliance procedures. The proposed advisory procedure would therefore be instrumental in enhancing implementation and compliance, preventing disputes from arising, as well as possibly settling existing differences.

In the proposed text, the advisory procedure may be triggered by one or more Parties, and can address their own efforts to implement the Convention, or their efforts to implement the Convention vis-à-vis other Parties, or their efforts to apply the Convention vis-à-vis non-Parties. In all cases, the advisory procedure is subject to consent by all parties involved.

1. The advisory procedure is aimed at facilitating implementation of the Convention through provision of advice by the Committee and shall not be regarded as alleging non-compliance. The procedure is subject to confidentiality in accordance with ... (*reference to section XI, option 2, paragraph 2*).
2. A Party may request advice from the Committee about its difficulties in implementing the Convention.
3. A Party or Parties may request advice from the Committee about its or their efforts to implement or apply the Convention vis-à-vis Parties and/or non-Parties, subject to the consent of all Parties and non-Parties concerned.
4. Any request for advice shall be addressed in writing to the secretariat and supported by corroborating information. The secretariat shall transmit the request for advice to the

Committee, which shall consider how to best respond to the request and how to involve the Parties and/or non-Parties concerned. Once the procedure has been accepted by the Parties and/or non-Parties concerned, the Committee shall consider the appropriate legal, administrative and/or technical advice with a view to assisting the parties involved in overcoming their difficulties in implementation or application of the Convention. The measures that the Committee may take in such a procedure are set out in section XIV, paragraph 1 (a), (b) and (c).

5. When the Committee receives a request for advice with respect to efforts to apply the Convention vis-à-vis one or more non-Parties in accordance with paragraph 3 of this section, it shall explain the proposed advisory procedure to the non-Parties concerned and suggest that the non-Parties use the proposed procedure.

VI. Submissions by Parties

Self-submission

1. A submission may be brought before the Committee by a Party that concludes that, despite its best endeavours, it is or will be unable to comply fully with the Convention. Such a submission shall be addressed in writing to the secretariat and shall explain, in particular, the specific circumstances that the Party considers to be the cause of its non-compliance. The secretariat shall transmit the submission to the Committee, which shall consider the matter as soon as practicable.

Party-to-Party submission

Note:

The drafting group considered that the advisory procedure should not be a necessary prerequisite for the Party-to-Party submission.

The drafting group discussed possible language to avoid the situation when a Party-to-Party submission is made by a Party against another Party with which it does not share waters.

The drafting group preferred option 2 in the language below.

Option 1 (broad)

1. A submission may be brought before the Committee by one or more Parties that have reservations about another Party's implementation of and/or compliance with the Convention. Any Party intending to make a submission under this paragraph should, before so doing, inform the Party whose implementation of and/or compliance is in question.

Option 2 (restricted)

1. A submission may be brought before the Committee by a Party(-ties) that is(are) affected or may be affected by another Party's difficulties in implementing and/or complying with the Convention. Any Party intending to make a submission under this

paragraph should, before so doing, inform the Party whose implementation of and/or compliance is in question.

For both options

2. Such a submission shall be addressed in writing to the secretariat and supported by corroborating information. The secretariat shall, within two weeks of receiving a submission, send a copy of it to the Party (*in option 1* whose implementation and/or compliance is at issue) / (*in option 2* who is considered to have difficulties in implementing and/or complying with the Convention).

3. Within three months, or such longer period as the circumstances of a particular case may require, but in no case later than six months, the latter Party shall submit any reply and supporting information to the secretariat (*and to the other Party(-ties) involved.*) / (*which shall transmit these materials within two weeks to the other Party(-ties) involved.*) The secretariat shall transmit the submission and the reply, as well as all corroborating and supporting information, to the Committee, which shall consider the matter as soon as practicable.

Note: The drafting group felt it might be useful to discuss what happens if no reply is received from a Party against which a submission is made; however the drafting group did not elaborate on this issue.

VII. Referrals by the secretariat

Note: The drafting group expressed the view that “referrals by the secretariat” would undermine the independence of the secretariat and recommended that this entire section be deleted.

Where the secretariat, upon considering the reports submitted in accordance with the reporting requirements set out in ..., becomes aware of a possible situation of non-compliance by a Party with the Convention, it may request the Party concerned to furnish necessary information about it. If there is no response or the matter is not resolved within three months, or such longer period as the circumstances of the matter may require, but in no case later than six months, the secretariat shall bring the matter to the attention of the Committee, which shall consider the matter as soon as practicable.

VIII. Communications from the public

Note: The Legal Board at its seventh meeting generally welcomed communications from the public. The drafting group, after having discussed this section, recommended to the Legal Board that it consider the possibility that public participation in the procedure be ensured through the Committee’s initiative, rather than by communications from the public.

1. Communications may be brought before the Committee by one or more members of the public concerning that Party’s implementation of and/or compliance with the Convention upon expiry of 12 months from either the date of adoption of this decision, or the date of the entry into force of the Convention with respect to a Party, whichever is the later. Communications may not be brought concerning implementation of and/or compliance with the Convention of a Party which has notified the Depositary in writing by the end of the applicable period that it is unable to accept, for a period of not more than four years, the consideration of such communications by the Committee. The Depositary shall

without delay notify all Parties of any such notification received. Such a notification may be renewed before the end of the period for another period of not more than four years. The Party may revoke its notification at any time.

2. The communications referred to in paragraph 1 shall be addressed to the Committee through the secretariat in writing and may be in electronic form. The communications shall be supported by corroborating information.

3. Subject to available time and resources of the Committee, it shall consider any such communication unless it determines that the communication is:

- (a) Anonymous;
- (b) An abuse of the right to make such communications;
- (c) Manifestly unreasonable;

(d) Incompatible with the provisions of this implementation and compliance procedure or with the Convention;

(e) Related to a matter already under consideration by the Committee under another procedure.

4. The Committee should, at all relevant stages, take into account any available domestic remedy unless the application of the remedy is unreasonably prolonged or obviously does not provide an effective and sufficient means of redress.

5. Subject to the provisions of paragraph 3, the Committee shall as soon as possible bring any communication submitted to it under paragraph 1 to the attention of the Party alleged to have difficulties in implementation and/or to be in non-compliance.

6. The Committee shall, as soon as practicable, further consider communications submitted to it pursuant to this section and take into account all relevant written information made available to it, and may hold hearings.

IX. The Committee's initiative

Note:

At the seventh meeting of the Legal Board, many delegates emphasized importance of the mechanism to be flexible and preventive in nature. The "Committee's initiative" is proposed as a way to promote a proactive role on the part of the Committee in strengthening implementation and providing support to implementation. The "Committee's initiative" can be traced back in the experience of the Convention on Environmental Impact Assessment in a Transboundary Context Implementation Committee (see Decision III/2, Appendix, paragraph 6, and also Operating Rules, rule 15).

The drafting group has discussed and stressed the importance of settling the relationship between the procedures under the mechanism in the rules of procedure of the Committee.

1. Where the Committee becomes aware of possible difficulties in the implementation by a Party or possible non-compliance by a Party with the Convention, it may request the Party concerned to provide the necessary information on the matter. Any reply and relevant information shall be provided to the Committee within three months or such longer period as the circumstances of a particular case may require. The Committee shall consider the matter as soon as possible in the light of any reply that the Party may provide.

2. In determining whether to take the initiative, the Committee should take into account, inter alia, that:

(a) The source of the information, by which the Committee has become aware of possible difficulties in the implementation by a Party of or possible non-compliance by a Party with the Convention, is known and not anonymous;

(b) The information is the basis for a highly reasonable assumption of possible difficulties in implementation or possible non-compliance;

(c) The information relates to the implementation of the Convention;

(d) An appropriate amount of time and resources are available to the Committee to consider the matter.

3. In consultation with the Party concerned, the Committee may take measures to facilitate and support implementation of and compliance with the Convention set out under section XIV paragraph 1 (a), (b) and (c).

X. Information gathering and consultation

1. In order to perform its functions, the Committee may:

(a) Request further information on matters under its consideration;

(b) Undertake, with the consent of any Party concerned, information gathering in the territory of that Party;

(c) Gather any information it deems appropriate;

(d) Invite the Parties and non-Parties concerned to attend its meetings;

(e) Seek the services of experts and advisers, as appropriate;

(f) Seek the advice of the Meeting of the Parties and consult with other bodies of the Convention, as appropriate.

2. The Committee shall take into account all relevant information made available to it and may consider any other information it deems appropriate.

XI. Confidentiality

Option 1 – Stronger confidentiality (elaborated and preferred by the drafting group)

1. Save as otherwise provided for in this section, no information held by the Committee shall be kept confidential.

2. The Committee and any person involved in its work shall ensure the confidentiality of any information that has been provided to it in confidence.

3. Taking into account the desirability of transparency, particularly as regards information related to transboundary waters, where the Committee has concerns about whether any information provided to it in confidence by a Party should be kept confidential, it shall consult the Party concerned with a view to achieving, as far as possible, a restrictive application of paragraph 2.

4. The meetings of the Committee shall be held in public unless the Committee decides otherwise.
5. The reports of the Committee shall not contain any information that the Committee must keep confidential under paragraphs 2 and 3 above.

Option 2 – Softer confidentiality (full confidentiality — only in case of advisory procedure)

1. Save as otherwise provided for in this section, no information held by the Committee shall be kept confidential.
2. In an advisory procedure under paragraphs ..., the Committee shall ensure the confidentiality of any information that has been provided to it in confidence.
3. The Committee and any person involved in its work shall ensure the confidentiality of information that has been provided to it in confidence by a Party when making a submission in respect of its own compliance in accordance with paragraph ... above.

Sub-option 2.1 (reference to article 8 of the Convention)

4. The Committee and any person involved in its work shall ensure, as appropriate, the confidentiality of any information that falls within the scope of the exceptions provided for in article 8 of the Convention and that has been provided in confidence.

Sub-option 2.2 (enumeration of categories of information from article 8 of the Convention)

4. The Committee and any person involved in its work shall ensure, as appropriate, the confidentiality of any information that has been provided in confidence on the grounds that its disclosure would adversely affect:
 - (a) Industrial or commercial secrecy, including intellectual property;
 - (b) National security.

For both sub-options

5. Taking into account the desirability of transparency, particularly as regards information related to transboundary waters, where the Committee has concerns about whether any information provided to it in confidence by a Party should be kept confidential, it shall consult the Party concerned with a view to achieving, as far as possible, a restrictive application of paragraph 4.
6. Information submitted to the Committee, including all information relating to the identity of the member of the public submitting the information or of a third person, shall be kept confidential if submitted by a person requesting confidentiality because of a concern that any member or members of the public may be penalized, persecuted or harassed.
7. The meetings of the Committee shall be held in public unless the Committee decides otherwise.
8. The reports of the Committee shall not contain any information that the Committee must keep confidential under paragraphs 2 to 6 above. Information that the Committee must keep confidential under paragraph 4 shall not be made available to any Party. All other information that the Committee receives in confidence and that is related to any recommendations by the Committee to the Meeting of the Parties shall be made available to

any Party upon its request; that Party shall ensure the confidentiality of the information that it has received in confidence.

XII. Entitlement to participate

Note: The inclusion of the words “communication” or “the member of the public making a communication” in this section depends on whether the section on Public Communications remains in the text.

1. A Party in respect of which a request for advice, submission, referral, communication or a Committee initiative is made or which makes a request for advice or submission, as well as the member of the public making a communication, shall be entitled to participate in the discussions of the Committee with respect to that request for advice, submission, referral, communication or Committee initiative.
2. Only the members of the Committee shall take part in the preparation and adoption of any findings and measures.
3. The Committee shall send a copy of its draft decision related to its findings and measures to:
 - (a) The Party in respect of which a request for advice, submission, referral, communication or Committee’s initiative is made;
 - (b) The Party which makes a request for advice or submission; and
 - (c) The member of the public who submitted the communication, if applicable.
4. The Committee shall take into account any comments made by the parties set out in paragraph 3 in the finalization of those findings and measures.

If members are State representatives (option 2, section II)

1. The paragraph currently placed under the section 3, “Conflict of interest”, as paragraph 2, could be placed here.
2. If, as a result of the operation of paragraph 1, the size of the Committee is reduced to five members or less, the Committee shall forthwith refer the matter in question to the Meeting of the Parties.

XIII. Committee reports to the Meeting of the Parties to the Convention

The Committee shall report on its activities at each ordinary meeting of the Parties and make such recommendations as it considers appropriate, including recommendations on the measures referred to in paragraph The Committee shall list the information that it has received and shall provide the reasoning for its decisions. Each report shall be finalized by the Committee not later than 12 weeks in advance of the meeting of the Parties at which it is to be considered. Committee reports shall be made available to the public.

XIV. Measures to facilitate and support implementation and compliance and to address cases of non-compliance

Note:

At the drafting group meeting, the Netherlands and the United Kingdom expressed their doubts about the appropriateness of the inclusion of the measures under paragraph 2 (b) and (c) of this section.

France and Germany believed that the measure under paragraph 2 (g) would not be appropriate for adoption by the Meeting of the Parties.

1. The Committee may decide upon one or more of the following measures:
 - (a) To provide advice and facilitate assistance to individual Parties and groups of Parties in order to facilitate their implementation of and/or compliance with the Convention, which may include:
 - (i) Assistance in seeking support from specialized agencies and other competent bodies, as appropriate;
 - (ii) Suggesting or recommending to set up and/or strengthen domestic regulatory regimes;
 - (iii) Assistance in establishing transboundary water cooperation agreements and arrangements;
 - (iv) Facilitating technical and financial assistance, including information and technology transfer, and capacity-building;
 - (b) To request and/or assist, as appropriate, the Party or Parties concerned to develop an action plan to facilitate implementation of and compliance with the Convention within a time frame to be agreed upon by the Committee and the Party or Parties concerned;
 - (c) To invite the Party concerned to submit progress reports to the Committee on the efforts that it is making to comply with its obligations under the Convention; and
 - (d) To recommend to the Meeting of the Parties that it take measures listed in paragraph 2 below.
2. Upon consideration of the report and of any recommendations by the Committee, the Meeting of the Parties to the Convention may, depending on the particular question before it and taking into account the cause, type, degree and frequency of the difficulties with implementation and/or of non-compliance, decide upon one or more of the following measures:
 - (a) To take the measures referred to in paragraph 1 (a)–(d);
 - (b) To recommend that Parties provide financial and technical assistance, training and other capacity-building measures and facilitate technology transfer;
 - (c) To facilitate financial assistance and provide technical assistance, technology transfer, training and other capacity-building measures, subject to financial approval, including, when appropriate, seeking support from specialized agencies and other competent bodies;
 - (d) To issue a statement of concern;
 - (e) To issue declarations of non-compliance;

- (f) To issue cautions;
 - (g) To give publicity to cases of non-compliance;
 - (h) To suspend, in accordance with the applicable rules of international law concerning the suspension of the operation of a treaty, the special rights and privileges accorded to the Party concerned under the Convention; or
 - (i) To take such other non-confrontational, non-judicial and consultative measures as may be appropriate.
3. The Committee should monitor the consequences of action taken pursuant to paragraphs 1 and 2 above.

XV. General implementation and compliance issues

Note: This section has been introduced in accordance with the written comments submitted by France to the drafting group.

The Committee may examine systemic issues of general implementation and compliance of interest to all Parties where the Meeting of the Parties so requests, and report to the Meeting of the Parties accordingly.

XVI. Relationship between settlement of disputes and the compliance procedure

This procedure to facilitate and support implementation and compliance shall be without prejudice to article 22 of the Convention on the settlement of disputes.

XVII. Enhancement of synergies

Option 1

This section does not exist.

Option 2 – Upon request of the Meeting of the Parties

1. In order to enhance synergies between this procedure and those procedures to facilitate and support implementation and compliance under other agreements, and in particular under the Protocol on Water and Health to the Convention, the Meeting of the Parties may request the Implementation Committee to communicate as appropriate with the relevant bodies of those agreements and report back to it, including with recommendations, as appropriate. The Implementation Committee may also submit a report to the Meeting of the Parties on relevant developments between the sessions of the Meeting of the Parties to the Convention.

Option 3 – Upon initiative of the Committee (*rationale: the establishment of the Committee was decided by the Meeting of the Parties, therefore the Committee should be able to decide the issue of communicating with other procedures on its own*)

1. In order to enhance synergies between this procedure and those procedures to facilitate and support implementation and compliance under other agreements, and in particular under the Protocol on Water and Health to the Convention, the Implementation Committee may decide to communicate as appropriate with the relevant bodies of those agreements and may report to the Meeting of the Parties on such communication, including with recommendations, as appropriate. The Implementation Committee may also submit a report to the Meeting of the Parties on relevant developments between the sessions of the Meeting of the Parties to the Convention.

For both options 2 and 3

2. The Committee may transmit information to the secretariats of other international environmental agreements for consideration in accordance with their applicable procedures to facilitate and support implementation and compliance. The Committee may invite members of other committees dealing with issues related to those before it for consultation.

XVIII. Review of the mechanism

The Meeting of the Parties shall regularly review the implementation of the procedures and mechanism set forth in the present decision.
