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Item 4 (c) of the provisional agenda

**Review of past activities and discussion of future activities
in the different areas of work: Implementation Committee**

Report of the Implementation Committee to the Meeting of the Parties

Summary

At its sixth session (Rome, 28–30 November 2012), the Meeting of the Parties to the Convention on the Protection and Use of Transboundary Watercourses and International Lakes established the Implementation Committee. The Committee is required to report on its activities at each ordinary session of the Meeting of the Parties and to make such recommendations as it considers appropriate (ECE/MP.WAT/37/Add.2, decision VI/1, annex I, para. 44).

The present report provides an overview of the activities of the Implementation Committee since the sixth session of the Meeting of the Parties. Annexed to the report is a draft decision on general issues of implementation prepared by the Committee for possible adoption by the Meeting of the Parties at its seventh session.

The Meeting of the Parties may wish to take note of the report of the Committee, discuss its conclusions and adopt the draft decision on general issues of implementation.



I. Introduction

1. At its sixth session (Rome, 28–30 November 2012), the Meeting of the Parties to the Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Water Convention) established the Implementation Committee with the aim to facilitate, promote and safeguard the implementation and application of and compliance with the Convention (ECE/MP.WAT/37/Add.2, decision VI/1, para. 1).

2. As required by the Meeting of the Parties (*ibid.*, annex I, para. 44), this report presents the Committee's activities and makes such recommendations as the Committee considers appropriate. The report lists the information that the Committee has received and provides the reasoning for its decisions. Annexed to the report is a draft decision on general issues of implementation prepared by the Committee for consideration and possible adoption by the Meeting of the Parties at its seventh session.

A. Membership of the Committee

3. The Committee consists of nine members, who serve in their personal capacity and objectively, in the best interests of the Convention. A full term of office of a Committee member commences at the end of an ordinary session of the Meeting of the Parties and runs until its second ordinary session thereafter.

4. At its sixth session, the Meeting of the Parties elected by consensus the following members of the Implementation Committee for a full term: Ms. Vanya Grigorova (Bulgaria); Mr. Kari Kinnunen (Finland); Mr. Stephen McCaffrey (United States of America); Mr. Aliaksandr Stankevich (Belarus); and Mr. Ivan Zavadsky (Slovakia). The following members were elected for half a term: Mr. Saghit Ibatullin (Kazakhstan); Mr. Johan Gerrit Lammers (Netherlands); Ms. Anne Schulte-Wülwer-Leidig (Germany); and Mr. Attila Tanzi (Italy).

5. At their first meeting, the members of the Committee unanimously elected Mr. Tanzi as Chair and Mr. Ibatullin as Vice-Chair. The nine Committee members served throughout the intersessional period.

6. Certain meetings were also attended by observers:

(a) From Lithuania, the European ECO Forum and the University of Luxembourg (second meeting);

(b) From the University of Bologna, the University of California at Berkeley and the University of Luxembourg (third meeting);

(c) From the public (fifth meeting).

B. Meetings of the Committee

7. The Committee met on five occasions in the intersessional period:

(a) The first meeting was held on 5 June 2013 in Geneva (see ECE/MP.WAT/IC/2013/2);

(b) The second meeting was held on 12 December 2013 in Geneva (see ECE/MP.WAT/IC/2013/4);

(c) The third meeting was held on 15 May 2014 in Bologna, Italy (see ECE/MP.WAT/IC/2014/2);

(d) The fourth meeting was held on 4 December 2014 in London (see ECE/MP.WAT/IC/2014/4);

(e) The fifth meeting was held on 5 and 6 May 2015 in Vienna (see ECE/MP.WAT/IC/2015/2).

8. At the end of each meeting, the Committee entrusted the secretariat to prepare and circulate the draft meeting report. The Committee agreed to discuss and approve each meeting report through electronic communication means.

C. Work of the Committee

9. According to decision VI/1, the Implementation Committee is entrusted with the following functions:

(a) Consider any request for advice relating to specific issues concerning difficulties in implementation or application (advisory procedure);

(b) Consider any submission relating to specific issues concerning difficulties in implementation and compliance (submissions by Parties);

(c) Consider undertaking a Committee initiative;

(d) Examine, at the request of the Meeting of the Parties, specific issues of implementation of and compliance with the Convention;

(e) Take measures, including recommendations, as appropriate;

(f) Carry out any other functions that may be assigned to it by the Meeting of the Parties, including examination of general issues of implementation and compliance that may be of interest to all Parties, and report to the Meeting of the Parties accordingly.

10. During the intersessional period, no Parties requested advice or made any submissions, and the Committee did not receive information sufficient to determine whether a Committee initiative would be appropriate. There were also no requests from the Meeting of the Parties for the Committee to examine specific issues of implementation or compliance or other requests. The Committee was, however, requested to consult with the Working Group on Integrated Water Resources Management with regard to an analysis of the needs for reporting under the Convention.

11. The work of the Committee in the intersessional period was therefore limited to the following topics:

(a) Exchanges of views on the Committee's role and functions and core rules of procedure;

(b) Information gathering and consultation (decision VI/1, annex I, paras. 30-31);

(c) Consideration of the need for reporting under the Convention;

(d) Promotion of the mechanism to support implementation and compliance.

II. Committee's role and functions and core rules of procedure

12. At its intersessional meetings, the Committee agreed that a Committee initiative (decision VI/1, annex I, paras. 28–29), should not be invoked by the Committee arbitrarily. The mission of the Committee was to assist Parties in implementing the Convention and facilitating the prevention of water-related disputes and differences. It was considered important to preserve the credibility and authority of the Committee in fulfilling that

mission. The Committee therefore agreed to develop a working document detailing general criteria or factors to guide the determination of when a Committee initiative might be started, but only at a later stage as more experience was needed before embarking on such an activity.

13. The Implementation Committee is governed by the core rules of procedure set out in annex II to decision VI/1, until such time as the Meeting of the Parties adopts new rules of procedure, upon a proposal by the Committee. At its second meeting, the Committee decided to review the possibility of developing such a proposal at a later stage, taking into account the experience in the application of the core rules of procedure.

14. At its first meeting, the Committee also discussed the basic rules for electronic communication regarding its work. The secretariat stressed the need for all Committee members to reply to electronic messages. It was decided that the replies should normally be provided within one week, with a longer time limit to be set for replies involving comments on substantive issues or the review of documents.

15. At its second meeting, the Committee took note of the correspondence between the Chair of the Implementation Committee of the Convention on Environmental Impact Assessment in a Transboundary Context and the Legal Service of the European Commission with regard to Party-to-Party submissions by European Union member States under the above-mentioned mechanism. In that context, the members of the Committee stressed that the scope of the Water Convention mechanism lay outside dispute settlement, and that the purpose of the mechanism was to assist Parties to avoid disputes.

III. Information gathering and consultation

16. Prior to its second meeting, the Committee received information provided by Mr. Bakytzhan Bazarbek, who indicated that he represented an environmental non-governmental organization (NGO) named ECOSOS based in Astana. Mr. Bazarbek expressed concerns regarding difficulties in transboundary water cooperation in the Irtysh River Basin, shared by the China, Kazakhstan, Mongolia and the Russian Federation, and also referred to the situation in the Ili River Basin, shared by China and Kazakhstan.

17. At its second, third, fourth and fifth meetings, the Committee, without prejudice to any future decision and within the framework of its information-gathering function, and within its competence under paras. 30-31 of annex I to decision VI/1, decided to write to the Parties concerned, Kazakhstan and the Russian Federation, seeking their views and requesting information. Accordingly, several communications were sent to this effect. The requests for information became more specific and detailed on each occasion.

18. The Russian Federation replied to the first four letters from the Committee Chair. The Committee acknowledged and was grateful for the general information provided on the cooperation between the Russian Federation, Kazakhstan and China.

19. At its fifth meeting, given the general content of the replies from the Russian Federation, and not having received a reply from Kazakhstan, the Committee decided to continue to gather information also from other sources. The Committee was of the opinion that Parties were under a good faith obligation to cooperate with its information-gathering procedures. It also observed that cooperation was a key principle of the Convention, as it supported the achievement of the Convention's object and purpose. However, cooperation per se was not the only objective: the principles of reasonable and equitable use, and of prevention, control and reduction of transboundary impact were no less important.

IV. Consideration of the need for reporting under the Convention

20. At its sixth session, the Meeting of the Parties mandated the Working Group on Integrated Water Resources Management, in consultation with the Implementation Committee, to carry out an analysis of the need for reporting under the Convention (ECE/MP.WAT/37/Add.1, programme area 1.4). At its first meeting, the Committee expressed its eagerness to consult on the issue, as a reporting mechanism would be essential for providing the Committee with the information it needs to carry out its functions.

21. When discussing the draft analysis (ECE/MP.WAT/WG.1/2014/3), prior to its submission to the ninth meeting of the Working Group (Geneva, 25–26 June 2014), the Committee observed that the focus of the reporting should be on the implementation of Parties' obligations, including challenges encountered and lessons learned.

22. The Committee was of the view that reporting should be thematic (issue-based) and clearly anchored in the provisions of the Convention, as thematic reporting would more effectively support implementation by Parties and the work of the Committee.

23. The reporting cycle should take into account other international or regional reporting obligations with a view to avoiding duplication of effort and minimizing administrative burdens. The Committee agreed that a three-year reporting cycle would be appropriate for the timely and effective consideration of implementation and compliance issues.

24. Subsequently, Mr. Lammers represented the Committee at the ninth and tenth (Geneva, 24–25 June 2015) meeting of the Working Group on Integrated Water Resources Management, and presented the Committee's observations on the reporting issue. Committee members Ms. Grigorova and Mr. Lammers also participated in the first meeting of the Core Group on Reporting under the Convention (Geneva, 15–16 December 2014) in their expert capacity; and Mr. Lammers participated similarly in the second meeting (Geneva, 30–31 March 2015).

25. At its fifth meeting, the Committee welcomed in general the proposal for a reporting mechanism prepared by the Core Group on Reporting (ECE/MP.WAT/WG.1/2015/5), and supported a pilot reporting exercise. Committee members found the reporting template included in the proposal to be well designed and, as far as member States of the European Union were concerned, largely in line with relevant European Union directives.

V. Promotion of the mechanism to support implementation and compliance

26. In discussing ways to publicize the mechanism to support implementation and compliance and facilitate its use by the Parties and other actors, the Committee stressed the importance of participation by the members of the Committee in the meetings under the Convention in order to communicate to the Parties the availability of the Committee and its commitment to carrying out its mandate. It underlined the importance of promoting the mechanism also during meetings outside the Convention's programme of work.

27. At the Committee's request, the secretariat prepared an introductory PowerPoint presentation on the mechanism to facilitate and support implementation and compliance, which the Committee members agreed to use in their promotion efforts. The Committee agreed that more material on the Committee might be produced at a later stage, such as leaflets, video interviews with the Committee members, contributions to the United Nations Audiovisual Library of International Law, etc. Subsequently, the secretariat carried out a series of interviews with Committee members that were recorded on video to promote the

Committee in different media. The main aspects of the Committee's work, its mandate and main functional duties, as well as principles of international water law and provisions of the Convention, were covered in the interviews.¹

28. The Committee also encouraged Parties and other stakeholders to seek the Committee's assistance, support and facilitation to address difficulties in implementing the Convention and in order to prevent water-related disputes. On many occasions, the Committee highlighted the unique opportunity provided by the advisory procedure, which was in line with the distinctive collaborative spirit of the Convention. Ideally, Parties would jointly request advice from the Committee about their efforts to implement the Convention vis-à-vis each other, while the advisory procedure also provided for a unilateral request for advice.

29. The Committee considered the possibility of organizing a series of seminars on international water law in order to promote the mechanism to facilitate and support implementation and compliance. A workshop focusing on the contribution of scientific and legal expertise in handling transboundary water issues was subsequently held in London on 5 December 2014, back to back with the fourth meeting of the Committee. All Committee members were invited as speakers to share their experience and promote the Implementation Committee at the workshop.

30. At its fifth meeting, the Committee agreed on the importance of organizing similar events, including for the benefit of Central Asian countries, possibly held back to back with a meeting of the Committee in May 2016, if it was held in Kazakhstan as planned. It was noted that a proposal to hold such a workshop should be reflected in the draft programme of work for 2016–2018.

31. The Committee also considered that there was a need to further promote its usefulness among NGOs, and asked the secretariat to prepare and distribute some short promotional materials for that purpose. It also suggested that selected NGOs be invited to attend a Committee meeting as observers, along with an offer of financial support for such participation.

32. As part of the efforts to publicize the mechanism to support implementation and compliance and facilitate its use, the Chair of the Committee and Mr. McCaffrey participated in World Water Congress XV (Edinburgh, United Kingdom of Great Britain and Northern Ireland, 25–29 May 2015). The Chair also participated in a workshop organized by the University of Geneva on implementation issues in international water law on 10 July 2015.

VI. Conclusions

33. Based on its work and experience since the sixth session of the Meeting of the Parties, the Committee is of the opinion that:

(a) Parties are under a good faith obligation to cooperate with the Committee's information-gathering procedures;

(b) Transboundary cooperation is a key principle of the Convention, as it supports the achievement of the Convention's object and purpose, but cooperation per se is not the only objective of the Convention and the principles of reasonable and equitable use and of prevention, control and reduction of transboundary impact are no less important;

¹ The PowerPoint presentation and the videos of Committee members are both available on the Committee's web page (http://www.unece.org/env/water/implementation_committee.html).

(c) A reporting mechanism, such as that proposed by the Core Group on Reporting and subsequently by the Working Group on Integrated Water Resources Management, is essential for providing the Committee with the information it needs to carry out its functions.

34. The Committee continues to encourage Parties and other stakeholders to seek the Committee's assistance, support and facilitation to address difficulties in implementing and complying with the Convention and in order to prevent water-related disputes.

Annex

Draft decision on general issues of implementation

The Meeting of the Parties,

Having regard to its decision VI/1 on support to implementation and compliance (see ECE/MP.WAT/37/Add.2),

Taking note of the report of the Implementation Committee to the Meeting of the Parties at its seventh session (ECE/MP.WAT/2015/5), and endorsing its findings,

Welcoming the way in which the Committee has been working and the progress made in establishing working procedures and in promoting the mechanism to support implementation and compliance,

1. *Stresses* that Parties are under a good faith obligation to cooperate with the Committee's information-gathering procedures;
 2. *Recalls* that transboundary cooperation is a key principle of the Convention, as it supports the achievement of the Convention's object and purpose;
 3. *Recognizes*, however, that cooperation per se is not the only objective of the Convention and that the principles of reasonable and equitable use and of prevention, control and reduction of transboundary impact are no less important;
 4. *Notes* that a reporting mechanism (decision VII/xx) will be key for providing the Committee with the information it needs to carry out its functions;
 5. *Encourages* Parties and other stakeholders to seek the Committee's assistance, support and facilitation to address difficulties in implementing and complying with the Convention, so as to ensure that the object and purpose of the Convention are advanced and to prevent water-related disputes.
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