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

Legal Board

Ninth meeting

Geneva, 1 and 2 September 2011

Report of the Legal Board on its ninth meeting

I. Attendance and organizational matters

1. The ninth meeting of the Legal Board was held on 1 and 2 September 2011 in Geneva.
2. The meeting was attended by representatives of the following countries: Azerbaijan, Czech Republic, Finland, France, Georgia, Germany, Greece, Italy, Kazakhstan, Netherlands, Romania, Russian Federation, Serbia, Slovakia, Switzerland, Tajikistan, Ukraine and Uzbekistan.
3. Also attending the meeting were representatives of the Scientific and Information Center of the Interstate Commission for Water Coordination of Central Asia and the Executive Committee of the International Fund for Saving the Aral Sea, both intergovernmental organizations, as well as representatives of the non-governmental organizations Earthjustice, European ECO Forum, International Council of Environmental Law and WaterLex.
4. The Legal Board adopted its agenda as contained in document ECE/MP.WAT/AC.4/2011/4.
5. Belgium, France and Hungary could not participate in the meeting, but had submitted written comments to the documents prior to the meeting that were made available by the secretariat.

II. Mechanism to facilitate and support implementation and compliance

6. 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 2009), had 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 had 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. The Legal Board had also been requested 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.

7. The Legal Board had addressed the development of the mechanism to support implementation and compliance at its seventh and eighth meetings (Geneva, 15–16 April 2010 and 24–25 February 2011, respectively). At its eighth meeting, it had discussed the document "Possible drafting language for a mechanism to facilitate and support implementation and compliance" (ECE/MP.WAT/AC.4/2011/3), and had reached preliminary conclusions on a number of issues with regard to the structure and functions of the mechanism. Some other issues, in particular the issues of reporting and composition of the Implementation Committee, had been deferred for further discussion at upcoming meetings.

8. At the ninth meeting of the Legal Board, delegates discussed the revised version of the document "Possible drafting language for a mechanism to facilitate and support implementation and compliance" (ECE/MP.WAT/AC.4/2011/6) submitted by the Chair and reached agreement on a number of issues.¹

9. On the composition of the Implementation Committee, it was concluded that the Committee members should serve in their personal capacity. The full term of office of a Committee member would be six years. Only Parties would be entitled to nominate candidates for membership in the Committee. The members would then be elected by the Meeting of the Parties. Non-governmental organizations could propose candidates for membership in the Committee that Parties might take into consideration when making nominations.

10. The Legal Board discussed in detail different procedures through which the Committee's activities might be triggered. Those included the advisory procedure, submissions by Parties and the Committee initiative. Another trigger — referrals by the secretariat — was considered unnecessary, as in practice such a trigger was rarely used in similar implementation and compliance mechanisms. The delegates also emphasized that the neutrality of the secretariat was not in question and that that was an important asset of the Convention to be preserved; the absence of such a trigger would serve to ensure both that that neutrality, as well as the perception of such neutrality, were maintained intact and unquestioned in the future.

11. Many delegations emphasized the need for setting clear procedural deadlines for the operation of the Committee. The Legal Board reviewed the procedures, having included

¹During the discussions on document ECE/MP.WAT/AC.4/2011/6, the Netherlands reserved its position on all sections of the document that had been substantively amended until the distribution of a revised version.

several deadlines in order to streamline the activities and increase the efficiency of the mechanism.

12. With regard to the rules of procedure of the Implementation Committee, the Legal Board maintained the view that the core rules of procedure should be submitted for possible adoption to the sixth session of the Meeting of the Parties in 2012, together with the proposal on the objectives, structure, tasks, functions, measures and procedures of an institutional and procedural mechanism to support implementation and compliance. The core rules of procedure would enable the Committee to become immediately operational. The Committee would then further develop its rules of procedure, to be submitted for approval by the Meeting of the Parties.

13. On the basis of a proposal by the Chair, the Legal Board reviewed a non-exhaustive list of areas to be reflected in the core rules of procedure. The Legal Board tasked the Chair to develop possible language for the core rules of procedure for consideration at its next meeting. It was suggested that the operational rules of other mechanisms to support implementation and compliance be used as points of reference, as appropriate.

14. On the issue of reporting, the delegates appreciated the document "Possible directions for reporting under the Water Convention" (LB/2011/INF.3) submitted by the Chair. While there was general agreement on the usefulness of introducing some form of a reporting mechanism under the Convention, many delegations, especially from European Union (EU) countries, expressed their concerns about the risk of duplication and the additional burden on countries that already had substantive reporting requirements under EU legislation. Many emphasized the need to separate the discussion on the possible introduction of a reporting mechanism under the Convention and the establishment of the mechanism to support implementation and compliance.

15. The view prevailed that a thorough analysis of the actual needs for a reporting mechanism was required before embarking in its establishment. The delegates recalled the written proposal by Hungary that an expert group or a task force be established to analyse the needs for reporting under the Convention and the respective capacities of the countries. Such analyses could serve as a basis for possible elaboration of the content of a reporting mechanism, as appropriate. Delegations also emphasized the need for a stepwise approach, with the establishment of a mechanism to support implementation and compliance as a first step, which may be followed by consideration of the needs for a reporting mechanism at a later stage.

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

16. 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.

17. The Legal Board had addressed the application of the principles of the Convention to transboundary groundwater at its seventh and eighth meetings. At its eighth meeting, the Legal Board had discussed the document "Application of the UNECE² Water Convention to groundwater: explicatory recognition of the existing UNECE regulatory language"

² Informal abbreviation of United Nations Economic Commission for Europe.

(LB/2011/INF.2) submitted by the Chair. The Legal Board further discussed the possibility of additional action with respect to groundwater and suggested that a set of model provisions on groundwater be developed by the Legal Board in cooperation with the Working Group on Integrated Water Resources Management for possible adoption at the sixth session of the Meeting of the Parties in 2012.

18. The Vice-Chair of the Legal Board briefed participants on the outcome of the consultation with the Bureau of the Meeting of the Parties (Geneva, 9 March 2011) and the Working Group on Integrated Water Resources Management at its sixth meeting (Geneva, 4–5 May 2011). The proposal to develop model provisions on groundwater had been endorsed by both the Bureau and the Working Group on Integrated Water Resources Management (ECE/MP.WAT/WG.1/2011/2). Furthermore, the Working Group on Integrated Water Resources Management had decided to create a core group on groundwater in order to develop those model provisions, and had requested nomination of national legal and technical experts for that activity in the coming months.

19. The secretariat provided details on the nominations received and encouraged all Parties to facilitate the nomination process.

20. The secretariat informed the Legal Board about the plans related to the workshop on transboundary groundwater in the framework of the Capacity for Water Cooperation (CWC)³ project under the Convention. The workshop was planned to be held in 2012.

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

21. The secretariat highlighted the many capacity-building activities organized within the framework of ECE–German Agency for International Cooperation (GIZ) programme “Regional Dialogue and Cooperation on Water Resources Management in Central Asia”.⁴ The capacity-building activities had been highly appreciated by the Central Asian countries and had greatly benefited from participation by Parties to the Convention from other subregions. Both national and regional activities had strengthened the understanding of the obligations under the Convention. The Guide to Implementing the Convention⁵ had proven to be a useful instrument for capacity-building. Capacity-building activities had also revealed the interest of Central Asian countries in the Convention's Protocol on Water and Health. Close synergies had been developed between the capacity-building activities and

³ The 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 the sharing of valuable experience from other parts of the ECE region (see <http://www.unece.org/env/water/cwc.htm>).

⁴ The capacity-building activities included: a regional seminar “International Water Law and Negotiation of Mutually Beneficial Multilateral Water Agreements in Central Asia” (Kazakhstan, April 2009); a national seminar on the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) (Tajikistan, July 2010); three national seminars on the Water Convention (Kazakhstan, October 2010; Turkmenistan, December 2010; Tajikistan, March 2011); a side event on ECE Conventions for the representatives of Central Asian countries (Geneva, March 2011); a regional training on the Espoo Convention and strategic environmental assessment for water professionals (Almaty, March–April 2011); and a national seminar on the Espoo Convention and the Convention on the Transboundary Effects of Industrial Accidents (Turkmenistan, June 2011).

⁵ The draft guide contained in the annex to document ECE/MP.WAT/2009/L.2 was adopted by the Meeting of the Parties to the Convention at its fifth session in November 2009.

the National Policy Dialogues on integrated water resources management in Central Asian countries to ensure an effective needs-based response.

22. The secretariat also informed delegates about the two upcoming capacity-building events, in particular the national seminar on transboundary water cooperation and adaptation to climate change (Kyrgyzstan, 26–27 September 2011) and the International High-level Conference on Water Convention (25 October 2011), to be followed by the Workshop on the Protocol on Water and Health (26–27 October 2011), to be organized for the five Central Asian countries in Almaty, Kazakhstan.

23. The publication, *Strengthening Water Management and Transboundary Water Cooperation in Central Asia: the Role of ECE Environmental Conventions*, would be published by the end of 2011, and the secretariat noted with appreciation the contribution of the Legal Board members to its development.

24. The secretariat announced that the tenth meeting of the Legal Board was scheduled to take place in Geneva from 31 January to 1 February 2012, back to back with the meeting of the core group on groundwater (30 January 2012). All Parties were encouraged to attend the meeting, since the active participation of all Parties would ensure the completion of the proposal on the mechanism to facilitate and support implementation and compliance, as well as of the core rules of procedure, in time for possible adoption at the sixth session of the Meeting of the Parties in 2012.
