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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

##### Ninth meeting

Geneva, 1 and 2 September 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. This document has been prepared by the Chair of the Legal Board based on the outcomes of discussions at the eighth meeting of the Legal Board (24–25 February 2011). The drafting language proposed in this document reflects the agreement reached at the eighth meeting. In a few cases, drafting language is proposed by the Chair of the Legal Board with a view to facilitating the discussion at the ninth meeting of the Legal Board, without prejudice to its outcomes.
2. 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**

1. The objective of the mechanism is to facilitate, promote and safeguard the implementation and application of and compliance with the Convention on the Protection and Use of Transboundary Watercourses and International Lakes.

2. The mechanism shall be simple, non-confrontational, non-adversarial, transparent, supportive and cooperative in nature, building on the distinctive collaborative spirit of the Convention.

## II. Structure of the Implementation Committee

*Note: At the eighth meeting of the Legal Board, preference was given by the vast majority of delegations to Option 1 (personal capacity). Option 2 (State representatives) was favoured by the Russian Federation and by Spain in its written comments.*

### **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 to the Convention 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 shall be given to the geographical distribution of membership and to the 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 provided for in this section to serve for the remainder of the term. A full term of office commences at the end of an ordinary session of the Meeting of the Parties and runs until its next ordinary session. 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 session 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 session of the Meeting of the Parties and runs until the next ordinary session. 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.

**Additional paragraphs to be placed at the end for both options**

1. The operation of the Committee will be governed by rules of procedure approved by the Meeting of the Parties.
2. The Committee shall elect its own chair and vice-chair.
3. The Committee shall 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. The Committee shall make every effort to adopt its decisions and recommendations by consensus. If all efforts towards reaching consensus have been exhausted and no agreement has been reached, decisions and recommendations shall be adopted by a three-quarter 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 a 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 or 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 a Committee 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, submission, communication or Committee initiative, but should not participate in, or be present during the elaboration, preparation or adoption of any part of a report, finding or recommendation of the Committee that relates to that request for advice, submission, communication, or Committee initiative.

#### **IV. Functions of the Committee**

*Note: At its eighth meeting, the Legal Board engaged in an in-depth discussion on the possible introduction of a reporting system under the Convention and corresponding functions of the Committee. The Legal Board did not reach a conclusion on this point. All text referring to the monitoring function of the Committee and reporting therefore remains bracketed until a further decision is taken.*

1. The Committee shall:
  - (a) Consider any request for advice relating to specific issues concerning difficulties in implementation made in accordance with section V below;
  - (b) Consider any submission or referral relating to specific issues concerning difficulties in implementation and compliance made in accordance with sections VI and VII below;
  - (c) Consider undertaking a Committee initiative in accordance with section VIII 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 XIII;
  - (g) Carry out any other functions that may be assigned to it by the Meeting of the Parties, including examination of systemic issues of general implementation and compliance of interest to all Parties, and report to the Meeting of the Parties accordingly.
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 according to the time and resources available to it.

#### **V. Advisory procedure**

1. The advisory procedure is aimed at facilitating implementation of the Convention through the provision of advice by the Committee and shall not be regarded as alleging non-compliance.
2. A Party may request advice from the Committee about its difficulties in implementing the Convention.

3. A Party, or Parties jointly, may request advice from the Committee about its or their efforts to implement or apply the Convention vis-à-vis each other, other Parties and/or non-Parties. Participation in the advisory procedure by the Parties that are not the requesting Parties and by the non-Parties is subject to their consent. [Absent such consent, the non-consenting Parties or non-Parties will be kept informed of the advisory procedure which in no way will affect their rights and obligations.]

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 XIII, 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**

2. 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 and/or compliance is in question.

3. 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 which is considered to have difficulties in implementing and/or complying with the Convention.

4. 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 Party considered to have difficulties shall submit a reply with corroborating information to the secretariat which shall transmit these materials within two weeks to the submitting Party(-ties). The secretariat shall transmit the submission and any reply, as well as all corroborating information, to the Committee, which shall consider the matter as soon as practicable.

## VII. Referrals by the secretariat

*Note: Kazakhstan reserved its position on this section.*

Where the secretariat[, upon considering the reports submitted in accordance with the reporting requirements set out in ...] becomes aware of possible difficulties in implementing the Convention by a Party, it may request the Party concerned to furnish additional information about it in order to address the difficulties in question. If there is no response or the difficulties cannot be 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 for its consideration according to the provisions contained in section VIII.

## VIII. Committee initiative

1. Where the Committee becomes aware of possible difficulties in the implementation by a Party of or the possible non-compliance by a Party with the Convention, including from information received from the public, 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 but in no case later than six months. 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 XIII, paragraph 1 (a), (b) and (c).

## IX. 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, subject to the protection of information according to article 8 of the Convention;

- (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, including from the public, and may consider any other information it deems appropriate.

## **X. Confidentiality**

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 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.

## **XI. Entitlement to participate**

1. A Party in respect of which a request for advice, submission, referral, or a Committee initiative is made or which makes a request for advice or submission, as well as the member of the public submitting information to the Committee, shall be entitled to participate in the discussions of the Committee with respect to that request for advice, submission, referral, or Committee initiative. The same entitlement applies to a non-Party in respect of which a request for advice is made.
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, or Committee initiative is made;
  - (b) The Party which makes a request for advice or submission;
  - (c) The non-Party in respect of which a request for advice is made, if applicable;and
  - (d) The member of the public who submitted the information, if applicable.
4. The Committee shall take into account any comments made by the parties indicated 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.

**XII. Committee reports to the Meeting of the Parties to the Convention**

*Note: As the Netherlands did not participate in the discussion of the following sections, they reserved their position.*

The Committee shall report on its activities at each ordinary session of the 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 session of the Meeting of the Parties at which it is to be considered. Committee reports shall be made available to the public.

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

*Note: With regard to a request for clarification by the Russian Federation regarding the content of paragraph 2 (g) of this section, it is noted that this paragraph refers to all applicable rules of international law concerning the suspension of the operation of a treaty, including those codified by the Vienna Convention on the Law of Treaties. The special rights in this case would include, among others, the right to participate in decision-making in the bodies under the Convention, the right to be elected as an officer of bodies under the Convention, the right to propose decisions, etc. The special privileges in this case would include, among others, the possibility to receive financial support for participation in meetings under the Convention, the possibility to lead or organize activities under Convention.*

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 that domestic regulatory regimes be set up or strengthened;

- (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)–(c);
  - (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 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
  - (h) To take 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.

#### **XIV. Relationship between settlement of disputes and the implementation 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.

## **XV. Enhancement of synergies**

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 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 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.

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.

## **XVI. 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

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