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

Sixth session

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Item 4 (a) of the provisional agenda

**Review of past activities and discussion of future activities in the
different areas of work: mechanism to support implementation
and compliance**

Draft decision on support to implementation and compliance

Prepared by the Chair of the Legal Board

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Introduction

1. The Meeting of the Parties to the Convention on the Protection and Use of Transboundary Watercourses and International Lakes agreed at its fifth session (Geneva, 10–12 November 2009) on the need to establish a mechanism under the Convention through which problems related to implementation and possible differences in the Convention's interpretation could be addressed. It mandated the Legal Board 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 by the Meeting of the Parties to the Convention at its sixth session (ECE/MP.WAT/29, para. 33 (b) (ii)).

2. The Legal Board addressed the development of the mechanism to support implementation and compliance at its seventh, eighth, ninth and tenth meetings. At its tenth meeting (Geneva, 31 January–1 February 2012), the Legal Board concluded that the document establishing the institutional and procedural mechanism to support implementation and compliance, as well as the core rules of procedure of the Implementation Committee, were ready for submission for possible adoption by the Meeting of the Parties. The Legal Board requested its Chair to finalize these documents in accordance with the decisions taken at its tenth meeting, and to prepare a draft decision for the Meeting of the Parties on support to implementation and compliance (ECE/MP.WAT/AC.4/2012/2, para. 11).

3. Accordingly, a draft decision on support to implementation and compliance, annexed to the present document and followed by the mechanism to support implementation and compliance (appendix I) and the core rules of procedure of the Implementation Committee (appendix II), is being submitted to the Meeting of the Parties for adoption.

Annex

Draft decision on support to implementation and compliance

The Meeting of the Parties,

Determined to facilitate implementation and application of and compliance with the Convention on the Protection and Use of Transboundary Watercourses and International Lakes,

Recognizing the need for a specific mechanism under the Convention to this end,

Recognizing also the Convention's distinctive cooperative spirit,

Recalling article 17, paragraph 2 (f), of the Convention,

1. *Establishes* the Implementation Committee with the aim to facilitate, promote and safeguard the implementation and application of and compliance with the Convention;
2. *Decides* that the structure, functions and procedures of the Implementation Committee shall be those set out in appendix I to this decision;
3. *Also decides* that the activities of the Implementation Committee shall be governed by the core rules of procedure set out in appendix II to this decision until the adoption by the Meeting of the Parties, at its next session or at a following session thereafter, of the rules of procedure of the Committee, upon a proposal by the Committee;
4. *Further decides* to regularly review the implementation of the procedures and mechanism set forth in appendix I to this decision;
5. *Encourages* Parties and non-Parties to make use of the established mechanism which is to be simple, non-confrontational, non-adversarial, transparent, supportive and cooperative in nature, thereby facilitating the implementation and application of and compliance with the Convention;
6. *Commends* the Legal Board for its excellent work.

Appendix I

Mechanism to support implementation and compliance

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 and procedure of the Implementation Committee

3. The Implementation Committee shall consist of nine members, who shall serve in their personal capacity and objectively, in the best interest of the Convention.
4. The members shall be persons with experience and recognized expertise in the fields related to the Convention, including legal and/or scientific and technical expertise.
5. The members shall be elected by the Meeting of the Parties to the Convention from among candidates nominated by the Parties. To that end, Parties may take 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.
6. In the election of the Committee members, consideration shall be given to the geographical distribution of membership and to the diversity of experience and expertise.
7. At its sixth session, the Meeting of the Parties shall elect five members of the Implementation Committee 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 second ordinary session thereafter. Members shall not serve for more than two consecutive terms, unless the Meeting of the Parties decides otherwise.
8. 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 by Parties 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 materials, as soon as they become available.

9. The operation of the Committee will be governed by rules of procedure approved by the Meeting of the Parties.
10. The Committee shall elect its own chair and vice-chair.
11. The Committee shall meet in person 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 communication systems.
12. The Committee shall make every effort to adopt its decisions by consensus. If all efforts towards reaching consensus have been exhausted and no agreement has been reached, decisions shall be adopted by a three-quarter majority of the members present and voting or by a majority of five members, whichever is the greater number.

III. Conflict of interest

13. 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 or as soon as he or she becomes aware of it. The concerned member shall not attend the parts of the meeting related to that particulate matter.
14. If, as a result of the operation of paragraph 13, 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.

IV. Functions of the Committee

15. The Committee shall:
 - (a) Consider any request for advice relating to specific issues concerning difficulties in implementation or application made in accordance with section V below;
 - (b) Consider any submission relating to specific issues concerning difficulties in implementation and compliance made in accordance with section VI below;
 - (c) Consider undertaking a Committee initiative in accordance with section VII below;
 - (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, pursuant to section XI;
 - (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.
16. 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.
17. 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

18. The advisory procedure is aimed at facilitating implementation and application of the Convention through the provision of advice by the Committee and shall not be regarded as alleging non-compliance.

19. A Party may request advice from the Committee about its difficulties in implementing the Convention.

20. 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. The Parties or non-Parties considered to be potentially concerned and which choose not to participate in the advisory procedure will be kept informed of its progress.

21. Any request for advice shall be addressed in writing to the secretariat and supported by corroborating information. The secretariat shall, within two weeks of receiving the request for advice, transmit it to the Committee, which shall consider as soon as practicable how to best respond to the request and how to involve the Parties and/or non-Parties that the Committee considers to be potentially concerned. Once the procedure has been accepted by the Parties and/or non-Parties concerned, the Committee shall as soon as practicable 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.

22. The Committee may suggest:

(a) To provide advice and facilitate assistance to individual Parties and groups of Parties in order to facilitate their implementation of the Convention, which may include:

(i) Suggesting or recommending that domestic regulatory regimes be set up or strengthened and relevant domestic resources be mobilized as appropriate;

(ii) Assistance in establishing transboundary water cooperation agreements and arrangements for strengthening cooperation and sustainable management of transboundary waters;

(iii) Facilitating technical and financial assistance, including information and technology transfer, and capacity-building;

(iv) Assistance in seeking support from specialized agencies and other competent bodies, as appropriate;

(b) To request and assist, as appropriate, the Party or Parties concerned to develop an action plan to facilitate implementation of 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 implement its obligations under the Convention.

23. 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 20, it shall explain the proposed advisory procedure to the non-Parties concerned and suggest that the non-Parties participate in the proposed procedure.

VI. Submissions by Parties

24. 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, within two weeks of receiving the submission, transmit it to the Committee, which shall consider the matter as soon as practicable.

25. 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.

26. 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.

27. 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 within two weeks 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. Committee initiative

28. 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.

29. 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 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.

VIII. Information gathering and consultation

30. 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.
31. 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.

IX. Confidentiality

32. Save as otherwise provided for in this section, no information held by the Committee shall be kept confidential.
33. The Committee and any person involved in its work shall ensure the confidentiality of any information that has been provided to it in confidence.
34. 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 33.
35. The meetings of the Committee shall be held in public unless the Committee decides otherwise.
36. The reports of the Committee shall not contain any information that the Committee must keep confidential under paragraphs 33 and 34 above.

X. Entitlement to participate

37. A Party in respect of which a request for advice, a submission, or a Committee initiative is made or which makes a request for advice or a 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, or Committee initiative. The same entitlement applies to the Parties and/or non-Parties that the Committee considers to be potentially concerned, if that Party or non-Party has expressed its consent to participate in the procedure.
38. Only the members of the Committee shall take part in the preparation and adoption of any findings and measures.
39. The Committee shall send a copy of its draft findings and measures, which shall contain the information considered and the reasoning by the Committee, to all parties

entitled to participate under paragraph 37 with an invitation to send comments within six weeks.

40. The Committee shall take into account any comments made by the parties indicated in paragraph 37 in the finalization of those findings and measures.

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

41. 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) Suggesting or recommending that domestic regulatory regimes be set up or strengthened and relevant domestic resources be mobilized as appropriate;

(ii) Assistance in establishing transboundary water cooperation agreements and arrangements for strengthening cooperation and sustainable management of transboundary waters;

(iii) Facilitating technical and financial assistance, including information and technology transfer, and capacity-building;

(iv) Assistance in seeking support from specialized agencies and other competent bodies, as appropriate;

(b) To request and 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;

(d) To recommend to the Meeting of the Parties that it take measures listed in paragraph 42 below.

42. 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 41 (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;

(h) To take other non-confrontational, non-judicial and consultative measures as may be appropriate.

43. The Committee shall monitor the consequences of action taken pursuant to paragraphs 41 and 42 above.

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

44. 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. 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 15 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. Relationship between settlement of disputes and the implementation procedure

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

XIV. Enhancement of synergies

46. 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.

47. 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 for consultation members of other committees dealing with issues related to those before the Implementation Committee.

Appendix II

Core rules of procedure of the Implementation Committee

I. Scope of the core rules

1. In accordance with decision ... of the Meeting of the Parties, the activities of the Implementation Committee will be governed by these core rules of procedure until the adoption by the Meeting of the Parties, at its next session or at a following session thereafter, of the rules of procedure, upon a proposal by the Committee. The Committee shall submit a proposal for adoption of its rules of procedure on the basis of decision ..., its appendix I, the rules of procedure of the Meeting of the Parties and these core rules of procedure, taking into account the experience in the application of the latter.
2. These core rules of procedure apply to any meeting and to any other business of the Committee and should be read together with and in furtherance of its structure, functions and procedures as set out in appendix I.
3. In the event of a conflict between any provision in these core rules and any provision in the Convention or in appendix I, the provisions of the Convention or of appendix I shall prevail.

II. Membership of the Committee

4. Each member of the Committee shall serve in his or her personal capacity and, with respect to any matter that is under consideration by the Committee, act in an independent and impartial manner and avoid any real or apparent conflict of interest.
5. A member of the Committee that is unable to attend one of its meetings is not entitled to designate a substitute.
6. When a member resigns or is otherwise unable to complete the assigned term or to fulfil his or her duties, the Committee may make proposals to the Bureau for the appointment of a new member for the remainder of the term.
7. The Committee shall elect its own chair and vice-chair for one term. They shall serve in those capacities until their successors are elected. The chair and the vice-chair are eligible for re-election. If an officer resigns during, or is unable to complete, his or her term of office, the Committee shall elect a successor until the end of the term. No officer shall serve for more than two consecutive terms, unless the Meeting of the Parties decides otherwise.

III. Conflict of interest

8. In accordance with paragraph 13 of appendix I, 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 or as soon as he or she becomes aware of it.

9. If the Committee becomes otherwise aware of a possible conflict of interest of one of its members, it will take the matter up for decision. Being a citizen of the State whose implementation is to be discussed is not in itself to be considered as a conflict of interest.

10. Where a member has been found by the Committee to have a conflict of interest, he or she shall not attend the parts of the meetings related to that particular matter.

11. Members of the Committee may not represent Governments or organizations in meetings of other bodies of the Convention, except for technical expert meetings, such as task forces.

12. The members of the Committee may accept invitations to present the implementation mechanism at appropriate events, such as conferences and workshops.

IV. Holding of a meeting and decision-making

13. The Chair may declare a meeting of the Committee open, permit debate to take place and decisions to be taken when at least five of the Committee members are present.

14. Given the size of the Committee, the aim should be for all members to be present at every meeting of the Committee.

15. In accordance with paragraph 12 of appendix I, the Committee shall make every effort to adopt its decisions by consensus. If all efforts at reaching consensus have been exhausted and no agreement has been reached, decisions shall be adopted by a three-quarter majority of the members present and voting or by a majority of five members, whichever is the greater number.

16. In accordance with paragraph 11 of appendix I, the Committee may, when appropriate, undertake some of its activities through electronic communication systems.

17. At the end of each meeting, the Committee will set tentative dates for its next two meetings, to be publicized on the Convention website and reflected in the report.

V. Presence of the public and participation of observers

18. In accordance with paragraph 35 of appendix I, the meetings of the Committee shall be held in public unless the Committee decides otherwise.

19. The parts of the meeting when findings and measures are prepared and adopted shall be limited to the attendance of the Committee members, subject to paragraph 10 of these rules.

20. A meeting, or a part of a meeting, will be held in private when the Committee finds it necessary to ensure the confidentiality of information in accordance with paragraphs 32–35 of appendix I.

21. The meetings of the Committee should be open to observers, unless the Committee decides otherwise. Observers should register with the secretariat in advance of the meeting, but no later than two weeks before the meeting.

VI. Publication of meetings and documentation

22. The provisional agenda and meeting report, together with related official documents of a meeting of the Committee, should be publicly available on the Convention website,

without prejudice to the rules on confidentiality set out in paragraphs 32–34 and 36 of appendix I.

23. Discussion papers prepared by the secretariat or by members of the Committee should not be publicly available unless the Committee decides otherwise.

24. Without prejudice to the rules on confidentiality set out in paragraphs 32–34 of appendix I, essential information concerning any request for advice, submission, or a Committee initiative will be made available to the public through the website.

25. Decisions and recommendations of the Committee and any decisions of the Meeting of the Parties relating thereto will be made available on the website.

VII. Information gathering

26. The acquisition of accurate and more detailed information, under paragraphs 30 and 31 of appendix I, as needed, shall be conducted through a pragmatic and cost-effective approach, taking into account time and budget constraints. Accordingly, the Committee shall resort to easily accessible and free-of-cost or low-cost means of information gathering before resorting to more complex and costly means.

27. The Committee may decide to delegate information-gathering activities to the secretariat, through easily accessible and no-cost or low-cost means. Such means may include the use of technical literature, the Internet, and information from international organizations with a field presence in the Party concerned.

28. The Committee may seek and request information:

- (a) Available in the public domain;
- (b) In the knowledge of Committee's members or the secretariat;
- (c) From the Party in respect of which a request for advice, a submission, or a Committee initiative is made or which makes a request for advice or a submission, as well as from a member of the public who submits information to the Committee under paragraph 28 of appendix I;
- (d) From another Party;
- (e) From experts and advisers, Governments, academia and intergovernmental and non-governmental organizations.

29. Unsolicited information from the same sources may be considered by the Committee as it deems appropriate. In conformity with paragraph 44 of appendix I, the Committee, with the assistance of the secretariat, shall keep a record of information submitted to it, with the exception of information that is manifestly irrelevant.

30. In using the information gathered, the Committee shall take into account the reliability of the source and the interests and motivations of its provider.