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**MEETING OF THE PARTIES TO THE CONVENTION ON
THE PROTECTION AND USE OF TRANSBOUNDARY
WATERCOURSES AND INTERNATIONAL LAKES**

Working Group on Integrated Water Resources Management

Fourth meeting
Geneva, 8–9 July 2009
Item 4 of the provisional agenda

SUPPORT FOR RATIFICATION AND IMPLEMENTATION

**REVIEWING AND PROMOTING IMPLEMENTATION AND COMPLIANCE:
A NEEDED STEP IN THE CONVENTION'S EVOLUTION**

Note by the Chairperson of the Legal Board*

Summary

This document was prepared by the Chairperson of the Legal Board under the UNECE¹ Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Water Convention) in accordance with a decision made by the third meeting of the Working Group on Integrated Water Resource Management (Rome, 22–24 October 2008; ECE/MP.WAT/WG.1/2008/2). It is based on the outcomes of sixth meeting of the Legal Board (Geneva, 29–30 April 2009) and consultations with the members of the Convention's Bureau. It illustrates the need to establish a mechanism to review and support compliance and implementation of the Convention and provides background information about the similar mechanisms under other multilateral environmental agreements. Both the Legal Board and the Bureau supported the arguments expressed below and therefore the need to establish such a compliance and implementation mechanism.

* The present document was submitted late in order to reflect the outcomes of the sixth meeting of the Legal Board.

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I. INTRODUCTION AND BACKGROUND

1. In recent years, work under the Convention has focused increasingly on implementation. Many activities under the Convention's programme of work have sought to enhance capacity and to assist Parties and non-Parties with the different aspects of the Convention's implementation. These activities have proven useful, and there are many indicators of progress vis-à-vis the Convention's implementation in the region.

2. Nevertheless, a growing number of countries are approaching the Legal Board with requests for information and advice concerning means to prevent or manage existing or potential conflicts of interests as well as cases of non-compliance. Indeed, in the present state of affairs, while the draft guide to implementing the Convention provides general preventive support to this end, the Convention does not have any specific mechanism for addressing these issues – which must be managed on a case-by-case basis – apart from the optional means of dispute settlement under the Convention's article 22. Parties therefore do not have a clear and permanent place to look for advice and support in the case of a potential or on-going problems of a procedural, legal and technical nature. There is a similar lack of third-party assistance available for prompt assessment of difficulties encountered by Parties with respect to implementation, as well as for the promotion of the appropriate actions to address such difficulties.

3. While it can be argued that tools are available for European Union (EU) countries that could help them resolve such problems (e.g. EU Water Framework Directive's article 12), this is not the case for non-EU countries.

4. In fact, the Convention's Meeting of the Parties and its subsidiary bodies (e.g. its working groups and task forces) cannot effectively meet countries' needs in terms of averting and managing problems or resolving country-specific issues concerning implementation. The open-ended nature of the Legal Board, with its unpredictable and changing composition at each meeting, cannot meet these needs either.

5. In addition, traditional means of dispute settlement and treaty law enforcement – e.g. the termination or suspension of the treaty, withdrawal of some privileges under the treaty, or invocation of responsibility or liability – are of little use and may prove ineffective or even counterproductive. Experience has shown that countries refrain from using them.

6. For the above reasons, multilateral environmental agreements (MEAs) increasingly provide institutional and procedural arrangements for monitoring, reviewing, facilitating and promoting compliance on a multilateral and cooperative basis. A recent survey (on "Non-Compliance Procedures in Multilateral Environmental Agreements", prepared under the supervision of Tullio Treves, Attila Tanzi and Laura Pineschi) illustrates and describes the mechanisms developed under different MEAs.

7. It should also be noted that all of the other four UNECE environmental conventions² have compliance review procedures. Even the Water Convention's Protocol on Water and Health provides such a mechanism. Thus, the absence of an equivalent tool under the Water Convention is striking and difficult to justify. Perpetuating a situation in which the Convention singularly lacks such a mechanism could have broad negative effects on the Convention's effectiveness as well as on its political credibility both within the region and outside it.

8. Consequently, at this stage of the Convention's evolution, the establishment of a mechanism to review and support compliance and implementation – based on the experience of similar mechanisms and on the work carried out so far under the Convention, as well as the foreseen guide to implementing the Convention – would seem to be a natural step.

9. The mechanism should be simple, facilitative, non-adversarial and cooperative in nature, with its operation guided by the principles of transparency, fairness, expediency and predictability.

10. It could provide a platform for dialogue between Parties and other stakeholders, offering neutral advice and mediation.

11. The decision to establish an implementation and compliance review mechanism would testify to the maturity and readiness of countries to address difficult issues.

II. PROPOSED ACTION BY THE WORKING GROUP

12. In the light of the above, it seems advisable to include in the programme of work for 2010–2012 an activity aimed at defining the procedures and institutional mechanisms for review of implementation and compliance. To this end, the Working Group could put forward a proposal for consideration by the Parties, at their upcoming fifth session (Geneva, 10–12 November 2009), to entrust the Legal Board with the definition of the objectives, structure, tasks, functions, measures and procedures of this mechanism, for possible adoption at the sixth session of the Meeting of the Parties in 2012.

² The Convention on Long-range Transboundary Air Pollution, the Convention on Environmental Impact Assessment in a Transboundary Context, the Convention on the Transboundary Effects of Industrial Accidents and the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.