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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

REPORT ON THE FIRST MEETING

1. The Legal Board was established by the Parties to the Convention at their third meeting (Madrid, 26-28 November 2003) to deal with legal questions related to the work under the Convention at the request of the Convention's bodies (see ECE/MP.WAT/15/Add.1, decision III/3). Its first meeting took place in Verona (Italy) on 28-29 June 2004, at the invitation of the Italian Ministry for the Environment and Territory.
2. The meeting was attended by representatives from the Governments of Belgium, Bulgaria, Finland, Germany, Greece, Hungary, Italy, Netherlands, Norway, Serbia and Montenegro, Slovakia, Switzerland, Ukraine and United Kingdom.
3. A representative from the United Nations Environment Programme and the Chairman of the Compliance Committee established under the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters attended the meeting.
4. The following organizations were also represented: Earthjustice, European ECO Forum, International Council of Environmental Law, Regional Environmental Center for Central Asia (CAREC) and the University of Milan.

I. OPENING OF THE MEETING

5. Mr. Massimo COZZONE, member of the Bureau of the Meeting of the Parties to the Convention, opened the meeting and welcomed the participants. He recalled that the current task of the Legal Board, deriving from the third meeting of the Working Group on Water and Health (Budapest, 11-12 March 2004), was the preparation of legal documents for the first meeting of the Parties to the Protocol on Water and Health, i.e. the rules of procedure for their meetings and the compliance review mechanism, to be submitted to the Working Group on Water and Health at its fourth meeting (9-10 December 2004).

II. ADOPTION OF THE AGENDA

6. The Legal Board adopted the agenda for the meeting as set forth in document MP.WAT/AC.4/2004/1.

III. ELECTION OF OFFICERS

7. Mr. Attila TANZI (Italy) and Ms. Elisabeth Katherine JENKINSON (United Kingdom) were elected Chairperson and Vice-Chairperson, respectively.

IV. DRAFT RULES OF PROCEDURE FOR THE MEETINGS OF THE PARTIES TO THE PROTOCOL ON WATER AND HEALTH

8. The Legal Board had before it draft rules of procedure for the meetings of the Parties to the Protocol on Water and Health, based on the rules of procedure for the meetings of the Parties to the Convention (MP.WAT/AC.4/2004/3). The document was also based on the decisions taken at the third meeting of the Parties to the Convention, the outcome of the second meeting of the Signatories to the Protocol on Water and Health (Geneva, 2-4 July 2003) and the decisions taken at the third meeting of the Working Group on Water and Health. The amendments and additions made by the Legal Board are set out in paragraphs 9 to 22 below.

Definitions - Rule 2

9. The Legal Board agreed to incorporate the definition of "Bureau".

Dates of meetings - Rule 4

10. The Legal Board decided to include a provision stating that an extraordinary meeting shall be convened not later than 90 days after the date at which the request for holding it was supported by at least one third of the Parties.

Notification - Rule 5

11. The Legal Board agreed that the secretariat should notify intergovernmental organizations and non-governmental organizations qualified or having an interest in the fields to which the Protocol relates that had requested to be so notified of the date and venue of a meeting of the Parties. Furthermore, any State not member of the Economic Commission for Europe but member of the United Nations that had requested to be notified should also be notified.

12. The Legal Board also decided that notifications by electronic mail, with an acknowledgement of receipt by the recipient, should be accepted unless otherwise required.

Observers - Rule 6

13. The Legal Board took note of the discussion at the second meeting of the Signatories to the Protocol and the third meeting of the Working Group on Water and Health regarding the participation of representatives of the private sector in the meetings of the Parties and in other activities under the Protocol. It felt, however, that there was no specific need to include a specific reference to the "private sector" as its representatives were included in "non-governmental organizations".

Agenda - Rule 7

14. The Legal Board agreed that the provisional agenda should be prepared in consultation with the Bureau, and not only with the Chairperson.

Officers - Rule 17

15. The Legal Board agreed that a representative of the host country of a meeting of the Parties could chair this meeting whether or not he/she had been previously elected as a member of the Bureau. Consequently, the specific rule for the officers for the first meeting of the Parties was deleted.

16. The Legal Board also discussed the advantages and disadvantages of various options for the election of officers (election at the beginning or at the end of a meeting, chairperson at the beginning and others at the end, etc.). It entrusted the representatives of Greece, the Netherlands and Norway to assist the secretariat in investigating these options and selecting alternatives to be submitted at the next meeting.

Bureau - Rule 20

17. The Legal Board deemed it useful to specify that the Bureau would be composed of at least six persons to guarantee a good representation of the different interests within the UNECE region.

18. The Legal Board felt that the present text of paragraph 1 of rule 20 made it clear that, if the Meeting of the Parties elected the chairpersons of the working groups, these

officers would serve as Bureau members only until the working groups elected their own officers.

19. The Legal Board decided that the Chairperson of the Meeting of the Parties to the Convention should be invited as an observer to the Bureau of the Meeting of the Parties to the Protocol, but that the equivalent provision for the Bureau of the Meeting of the Parties to the Convention should appear only in the rules of procedure for the meetings of the Parties to the Convention.

20. There was no agreement on the participation of representatives of non-governmental organizations as observers in the Bureau's meetings. It was argued that this could affect the efficiency of the Bureau, which should be small and tightly focussed. It could also put non-governmental organizations in a more favourable position than Signatories. On the other hand, it was argued that it would be in line with the provisions of the Protocol, in particular article 16 paragraph 3 (f), and that it would be extremely beneficial for the work of the Bureau, representing a precious source of information. Some representatives wanted to leave it to the Bureau to decide on this issue case by case, while others considered that this option would affect its efficiency and limit the possibility of inviting other experts, not representing non-governmental organizations. A final decision on this issue was postponed until next meeting. In the discussion, it was also underlined that the mechanism through which non-governmental organizations would identify their representatives attending the Bureau's meetings was entirely the responsibility of those organizations.

Bodies to implement the work plan - Rule 21

21. The Legal Board agreed that applying the rules of procedure of the Meeting of the Parties to the other bodies established, including a compliance committee, would ease their work. It also agreed that there should be some exceptions to this general principle and entrusted the representatives of Germany and Greece to assist the secretariat in drafting a proposal to be submitted at the next meeting.

Conduct of business - Rule 24

22. The Legal Board agreed that meetings of the Parties should ordinarily be held in public, unless otherwise decided by the Meeting of the Parties. One delegation suggested that this rule should be complemented with provisions regulating the participation of the public, as in rule 7 of the rules of procedure for the meetings of the Parties to the Aarhus Convention.

23. The Legal Board requested the secretariat to prepare, with the assistance of the other designated officers, a revised text of the draft rules of procedure for consideration at its second meeting.¹

¹ The revised draft rules of procedure are published in document MP.WAT/AC.4/2004/7.

V. DRAFT COMPLIANCE REVIEW MECHANISM UNDER THE PROTOCOL ON WATER AND HEALTH

24. The Legal Board had before it a document on the draft compliance review mechanism (MP.WAT/AC.4/2004/4) based on a document drawn up under a consultancy agreement with the Regional Office for Europe of the World Health Organization by Mr. Attila TANZI and discussed at the second meeting of the Signatories to the Protocol on Water and Health. The amendments and additions made by the Legal Board are set out in paragraphs 25 to 48 below.

25. For the sake of completeness, it was suggested to include in the next version of the document a draft decision on the establishment of a compliance committee.

A. Objective, nature and principles

26. The Legal Board felt that referring to “implementation” as an objective of the compliance review mechanism would be misleading, because the main goal was compliance, which anyhow entailed implementation.

27. It was held that an agreement on chapter XI on Measures to promote compliance and address cases of non-compliance was needed to establish whether the mechanism should provide assistance or only facilitate it.

B. Structure

28. With the exception of the representative of Germany, the Legal Board was in favour of a committee composed of members serving in their personal capacity. The representative of Germany expressed a reservation on this point and retained the right to come back on this issue at the next meeting.

29. The Legal Board agreed that the committee should consist of nine members who should be impartial and objective in their deliberations. However, civil servants should not be excluded. A simplified proposal to describe the expertise needed by the members was made and left for final decision at the next meeting.

30. The Legal Board agreed that, if the members served in their personal capacity, their nationalities were irrelevant.

31. The Legal Board could not yet agree on who would be entitled to propose candidates for the committee. Some representatives felt that opening this option to Signatories would be a disincentive to ratify and that NGOs should not be entitled either, otherwise they would be put in a more favourable position as compared to Signatories. Others felt that it would be extremely useful and would enrich the whole process to open the submission of candidatures as much as possible as, in any case, only the Parties would take the final decision.

32. There was no consensus yet concerning the participation of two non-governmental organizations as observers in the committee’s meetings. Some representatives felt that this

option was not needed in the case of a committee of members serving in their personal capacity, while others thought that this option was still applicable and could contribute to finding a compromise on the issue of candidatures (see para. 31 above).

C. Functions of the Committee

33. The Legal Board decided to align the wording of the last part of paragraph 8 to that of paragraph 32.

34. The Legal Board decided to insert in brackets the possibility for the Committee to take measures, pending a decision on paragraph 32.

D. Referrals by the joint secretariat

35. A delegation referred to the need to restrict the source of information for the referrals by the joint secretariat to the reports submitted by the Parties, so as not to undermine the non-confrontational nature of the mechanism.

E. Communications from the public

36. There was no consensus yet on the issue of communications from the public. For some delegations, these should not be allowed and the whole chapter should be deleted, while for others they were fundamental for the whole mechanism. It was generally held that there was no need for opt-in or opt-out options.

37. There was also no agreement yet on a transitional period before acceptance of communications from the public.

F. Information gathering

38. The Legal Board deemed it not necessary to specify the sources of information that could be used by the committee to perform its functions.

G. Confidentiality

39. The Legal Board took note of the experience from a case examined by the Aarhus Convention's Compliance Committee in which it had been necessary to ensure confidentiality about persons other than the ones submitting the information. Nevertheless, some delegations expressed concern about the possible misuse of confidentiality and how this could reduce a Party's capacity to defend its case. Some delegations felt that the committee should take the ultimate decision on confidentiality, while others believed that it would never be able to assess the conditions of security in the different countries and the real threats. The Legal Board retained a compromise formulation for paragraph 25 to be considered at its next meeting.

H. Entitlement to participate

40. The Legal Board aligned the wording of paragraphs 28 and 29 to the decision to establish a committee made up of members acting in their personal capacity, on the understanding that these paragraphs should be reviewed if a different text was adopted.

I. Committee reports to the Meeting of the Parties to the Protocol

41. The Legal Board agreed to state clearly in the text that committee reports should include recommendations on the measures to be taken by the Meeting of the Parties and therefore to delete paragraph 32 (b) of alternative one. It also agreed that reports should be made available to the public.

J. Measures to promote compliance and address cases of non-compliance

42. The Legal Board agreed on investing the committee with certain powers to avoid deferring all measures to the meetings of the Parties, i.e. up to three years, and therefore preferred alternative one.

43. Consistently with what was decided on paragraph 1 (see para. 26 above), the Legal Board deleted the reference to implementation.

44. The Legal Board held that issuing cautions should be within the committee's remit as their timeliness was important and they should not depend on the calendar of meetings of the Parties.

45. The Legal Board also agreed that the Meeting of the Parties could take all the measures that could be taken by the committee and alongside them issue declarations of non-compliance and give special publicity to cases of non-compliance.

46. With regard to financial and technical assistance, the Legal Board could not yet agree on the role of the Meeting of the Parties. Could it recommend Parties to provide financial and technical assistance, technology transfer, training and other capacity-building measures? Would it provide, facilitate or just provide advice on the procurement of such assistance?

47. The Legal Board took note of the clarification that paragraph 33 (e) did not aim at suspending a Party's rights according to the Vienna Convention, but only the specific rights accorded to the Party under the Protocol, such as participation in the Bureau. The Legal Board did not take a final decision on this point.

K. Enhancement of synergies

48. The Legal Board took note with appreciation of the novel proposal in paragraph 36 and suggested that the committee should communicate information on possible compliance issues under another international environmental agreement to the secretariat of that agreement. No final decision on this point was taken.

49. The Legal Board requested the secretariat to prepare, with the assistance of the Chairperson and the Vice-Chairperson, a revised text of the draft compliance review mechanism for consideration at its second meeting.²

VI. SURVEY AND ANALYSIS OF BILATERAL AND MULTILATERAL AGREEMENTS ON FLOOD PREVENTION, PROTECTION AND MITIGATION

50. Mr. Alexandros KOLLIPOULOS (Greece) informed the participants on the outcome of the Seminar on flood prevention, protection and mitigation (Berlin, 21-22 June 2004; MP.WAT/SEM.3/2004/3), which was part of the activities under programme element 2.1 of the 2004-2006 work-plan. This programme element also states that a survey of provisions concerning transboundary river-basin cooperation in flood prevention, protection and mitigation in national legislations as well as in bilateral and multilateral agreements would be made, and options, including the possibility of drawing up a legal instrument under the Convention, to further develop and strengthen a common framework for flood prevention, protection and mitigation strategies would be explored (ECE/MP.WAT/15/Add.2).

51. Following the outcome of the Seminar, the task force on flood prevention, protection and mitigation, with Germany as lead country, requested assistance from the Legal Board to undertake this survey and analyse possible gaps in bilateral and multilateral flood agreements. The 2000 Guidelines on Sustainable Flood Prevention, newly adopted/amended national legislation and recently concluded agreements with specific provisions on flood prevention could serve as basis for such an analysis. Based on this analysis and requests for assistance from countries in Eastern Europe, the Caucasus and Central Asia, the “legal component” of the common framework could offer model provisions on floods for States riparian to the same transboundary waters, so as to establish or update relevant provisions of bilateral of multilateral agreements.

52. On behalf of the task force on flood protection, prevention and mitigation, Mr. KOLLIPOULOS invited the Legal Board to contribute to this activity and cooperate with the task force in order to submit preliminary results to the Working Group on Integrated Water Resources Management at its first meeting (Geneva, 15 December 2004). The Legal Board agreed to examine this request at its second meeting.

VII. ROUND-TABLE CONSULTATION ON WATER AND HEALTH

53. The representative of Norway informed the Legal Board that Norway would host a Round-table Consultation on Water and Health (Oslo, Soria Moria Conference Centre, 28-29 September 2004). The Consultation would focus on non-infrastructure financing in the areas of: (a) reduction in infant mortality particularly from diarrhoeal diseases; (b) resource management, with special emphasis on the protection and sustainable management of the resource; (c) provision of affordable access to safe drinking water by vulnerable groups, including through community work; (d) sanitation including eco-sanitation; and (e) gender

² The revised draft compliance review mechanism is published in document MP.WAT/AC.4/2004/8.

issues in water supply. The purpose would be to present different financing options to address non-infrastructure priorities identified through a country-driven process.

54. The Consultation was also expected to review a draft proposal for the creation of a standing consultative body to improve coordination of donor efforts in the fight against water-related diseases, which could become a body under the Meeting of the Parties to the Protocol.

VIII. DATE AND VENUE OF FUTURE MEETINGS OF THE LEGAL BOARD

55. The Legal Board decided to hold its second meeting on 16-17 September 2004 in Geneva.

IX. CLOSING OF THE MEETING

56. On behalf of the participants, the delegate of Greece thanked the Government of Italy for the excellent arrangements that had been made and for the cordial hospitality extended to them during the meeting. The meeting was closed on 29 June 2004 at 4 p.m.