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

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Item 5 (b) of the provisional agenda

INTEGRATED MANAGEMENT OF WATER AND RELATED ECOSYSTEMS

REVIEWING AND PROMOTING IMPLEMENTATION AND COMPLIANCE

**FACILITATING AND SUPPORTING IMPLEMENTATION AND COMPLIANCE:
A NEEDED STEP IN THE CONVENTION'S EVOLUTION**

Note by the Chairperson of the Legal Board

Summary

This document makes a case for the need to establish a mechanism under the Convention to facilitate and support implementation and compliance. It also includes a proposal for decision by the Meeting of the Parties on future activities to pave the way to establish such mechanism. The proposal was discussed and endorsed by the Working Group on Integrated Water Resource Management at its fourth meeting (Geneva, 8–9 July 2009), which requested that it be submitted to the Meeting of the Parties (ECE/MP.WAT/WG.1/2009/2, paras. 19–23).

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 made vis-à-vis the Convention's implementation in the region.

2. Nevertheless, a growing number of countries have approached the Legal Board with requests for information and advice concerning means to (a) facilitate settlement of problems of implementation, and (b) prevent or manage existing or potential differences in interpretation and application of the Convention, including in cases of non-compliance. In the present state of affairs, while the draft Guide to implementing the Convention provides general support to these ends, the Convention does not have any specific mechanism to address the issues – which must be managed on a case-by-case basis – apart from the optional judicial or arbitral means of dispute settlement under the Convention's article 22. Parties therefore do not have a clear and permanent forum to resort to for advice and support in the case of a specific potential or ongoing problem of a procedural, legal and/or 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 situation.

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. The Convention's Meeting of the Parties and its existing 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, the 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 implementation and 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. All of the other four MEAs¹ of the United Nations Economic Commission for Europe (UNECE) are equipped with such procedures, as is the Convention's Protocol on Water and Health. The absence of an equivalent or similar procedure under the Convention appears unjustified. The persistence of the present abnormal situation in which the Convention singularly lacks such a mechanism could have a negative impact on the Convention's effectiveness as well as on its normative authority both within the region and outside of it.

8. At the present stage of the Convention's evolution, the establishment of a mechanism to support implementation and compliance based on the experience of similar mechanisms under other conventions and on the work carried out so far under the Convention, as well as the Guide to implementing the Convention (ECE/MP.WAT/2009/L.2), would seem to be a natural step forward.

9. This 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 such a mechanism would testify to the maturity and readiness of countries to address difficult issues.

II. PROPOSED DECISION BY THE MEETING OF THE PARTIES

12. The Meeting of the Parties may wish:

- (a) To restate its commitment to pursue implementation of and compliance with the Convention;
- (b) To entrust the Legal Board with the following tasks:
 - (i) To study possible options for assisting Parties in solving implementation problems and in preventing or settling differences on the interpretation and application of the Convention, taking into account countries' needs and the distinctive cooperative spirit of the Convention;
 - (ii) On the basis of such study, to prepare a proposal on the objectives, structure, tasks, functions, measures and procedures of an institutional and procedural mechanism to facilitate and support implementation and compliance, for possible adoption at the sixth session of the Meeting of the Parties in 2012.

¹ 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.