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

Legal Board

REPORT ON THE SECOND MEETING

1. The second meeting of the Legal Board took place in Geneva on 16-17 September 2004.
2. The meeting was attended by representatives from the Governments of Belgium, Croatia, Finland, Germany, Greece, Hungary, Italy, Netherlands, Norway, Serbia and Montenegro, Slovakia, Switzerland and United Kingdom.
3. Representatives from the World Health Organization (WHO), the World Meteorological Organization (WMO), the secretariats of the Ramsar Convention on Wetlands and of 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 institution and organizations were also represented: Earthjustice, the International Rainwater Harvesting Alliance and the University of Milan.

I. ADOPTION OF THE AGENDA

5. The Legal Board adopted the agenda for the meeting as set forth in document MP.WAT/AC.4/2004/5.

II. ELECTION OF OFFICERS

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

III. ADOPTION OF THE REPORT OF THE FIRST MEETING

7. The Legal Board adopted the report of its first meeting (MP.WAT/AC.4/2004/2), with an amendment to paragraph 35 reading as follows:

“35. A delegation referred to the need to restrict the referrals by the joint secretariat to issues relating to reporting requirements so as to respect its administrative functions.”

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 outcome of its first meeting (MP.WAT/AC.4/2004/7). The amendments and additions made by the Legal Board are set out in paragraphs 9 to 21 below.

Dates of meetings - Rule 4

9. On the basis of a precedent under a UNECE multilateral environmental agreement, the Legal Board decided to include the possibility of extraordinary meetings convened at the written request of the Bureau.

Notification - Rule 5

10. The Legal Board agreed that the rules on the electronic notification of Parties should also apply to observers.

Observers - Rule 6

11. A mistake in the reference to rule 5, paragraph 2, was pointed out and corrected.

Agenda - Rules 7 to 10

12. The wording was harmonized.

Representation and credentials - Rules 12 and 14

13. The Legal Board decided to make the distinction between Parties' representatives and alternate representatives and advisers. It also agreed on different rules for accreditation

of Parties' representatives (credentials requested) and alternate representatives and advisers (no credentials, but names to be submitted to the joint secretariat).

Officers - Rules 17 and 19

14. The Legal Board preferred option 2, entailing the election of officers at the beginning of the meetings. Therefore, it was no longer necessary to include a rule allowing a representative of the host country to chair the meetings. It agreed to include the possibility of re-election of officers.

15. Rule 19 was simplified since the permanent inability of the Chairperson to serve was covered by rule 17 and the reference to the person nominated by the host country no longer applied.

Bureau - Rule 20

16. The Legal Board considered the term "observer" misleading and preferred to specify that the Chairperson of the Meeting of the Parties to the Convention should be invited to participate in the Bureau of the Meeting of the Parties to the Protocol without the right to vote.

17. Regarding participation of representatives of non-governmental organizations (NGOs) in the Bureau's meetings without the right to vote, the same arguments put forward during the first meeting were repeated (see MP.WAT/AC.4/2004/2, para. 20). The Legal Board did not reach consensus on this issue and decided to leave this decision to other appropriate bodies.

18. To ease the work of the Meeting of the Parties to the Protocol, the Legal Board decided to include terms of reference for the Bureau based on those of the Bureau of the Meeting of the Parties to the Convention.

Bodies to implement the work plan - Rule 21

19. The Legal Board agreed that the rules of procedure should apply mutatis mutandis only to bodies established under rule 21 and not to the Bureau. It also agreed on the rules which should not apply. In particular, attendance by members of the public and participation without the right to vote by, inter alia, Parties and observers in meetings of bodies of limited membership should be decided by the Meeting of the Parties or by the body concerned and not be according to rules 6 and 24.

Conduct of business - Rule 24

20. The Legal Board agreed to include provisions regulating the participation of the public on the understanding that these were only intended to provide guidance on possible measures.

Voting - Rule 34

21. The Legal Board deemed it useful to define consensus.
22. A delegation suggested that it could be of use to insert rules on intersessional voting procedures but it was considered that the provisions for convening extraordinary meetings were sufficient.
23. The Legal Board requested the secretariat to prepare revised draft rules of procedure for submission to the Working Group on Water and Health at its fourth meeting (Geneva, 9-10 December 2004) (see MP.WAT/WG.4/2004/6 - EUR/5047016/2004/6).

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

24. The Legal Board had before it a document on a draft compliance review mechanism (MP.WAT/AC.4/2004/8) based on the outcome of its first meeting. The amendments and additions made by the Legal Board are set out in paragraphs 25 to 45 below.
25. The Legal Board decided to insert a reference in the draft decision to the rules of procedure for the Meeting of the Parties to the Protocol, which were relevant to the operation of the Compliance Committee.

A. Objective, nature and principles

26. In view of the decision on chapter XI on measures to promote compliance and address cases of non-compliance (see para. 44 below), the Legal Board decided to delete the text in brackets.

B. Structure

27. The representative of Germany kept its reservation on a committee composed of members serving in their personal capacity.
28. The Legal Board agreed that “legal and/or technical expertise” was comprehensive enough to describe the kind of expertise that members of the Committee should have.
29. All Legal Board members but two agreed that Signatories should not be entitled to propose candidates for the Committee.
30. The Legal Board agreed that at their first meeting the Parties should elect five members for a full term of office and four members for half a term.
31. A delegate questioned the excessive length of the term of office. Alternatives were considered, such as shorter, fixed terms not linked to the periodicity of the meetings of the Parties, or not allowing re-election of the members, but it was finally considered that the

option in document MP.WAT/AC.4/2004/8 was the best one and that, even if re-election was unlikely, it would express a clear wish of the Meeting of the Parties.

32. The Legal Board considered that the issues of NGOs either proposing candidates for the Compliance Committee or participating in its meetings were linked. It also held that both were linked to the eventual decision on three other questions, namely (i) on which basis the joint secretariat could make referrals, (ii) whether communications from the public would be accepted, and (iii) which information was to be considered by the Compliance Committee. The Legal Board did not reach an agreement on these points (see paras. 34, 37 and 39 below). Nevertheless, it did agree that in any case rule 6 on observers and rule 24 on the conduct of business should not apply to the Committee, to which rule 21, paragraph 9, applied.

33. The Legal Board decided that, if NGOs were offered the possibility of proposing candidates to the Compliance Committee, the number of candidates should be no more than three.

34. Some arguments that had been raised at the first meeting about the participation of two NGOs as observers came up again. Moreover, some delegations argued that this provision could be deleted if:

- (a) The Committee were made up of members serving in their personal capacity; and
- (b) It were decided that it should consider any relevant information submitted to it (see MP.WAT/WG.4/2004/7 – EUR/5047016/2004/7, para. 23); and
- (c) The Committee should list in its reports the information that it had received and provide the reasoning for its recommendations and decisions (see MP.WAT/WG.4/2004/7 – EUR/5047016/2004/7, para. 33).

This would not apply if it were decided that the Committee should be made up of Parties, in which case paragraph 7 should remain.

35. The Legal Board agreed that the provisions on decision-making within the Committee were better placed in this chapter than in chapter X, in order to prevent the interpretation that in the absence of consensus normal majority was enough, as stated in the rules of procedures. It also decided to define consensus.

C. Functions of the Committee

36. The Legal Board decided to delete “[and may act pursuant to paragraph 33]” in paragraph 10 and the brackets in paragraph 11. It was also made clear that paragraph 12 provided a broad legal basis for the Committee to take action with regard to any compliance issue.

D. Referrals by the joint secretariat

37. The Legal Board judged that the possibility of referrals from the secretariat not limited to reports submitted by the Parties was to be considered in the package of

provisions related to NGO participation, communications from the public, etc. (see para. 34 above).

E. Communications from the public

38. There was no consensus on the issue of communications from the public, but it was generally held that there was no need for a transitional period before they could be accepted.

39. Some delegates considered that the whole chapter should be deleted; others wanted to keep it as it was. Some tentative compromise solutions to screen the communications were proposed, but none could gain the consensus of the Legal Board:

- The Committee should consider any communication unless any of its members objects;
- The Committee should consider only communications supported by one or more Parties. This option was strongly opposed by some delegates as, in their view, it could become a matter of inter-State litigation, obliging citizens wanting to file a complaint against their own State to seek the support of another State;
- The Committee should consider only communications supported by the joint secretariat. The secretariat argued that it could not see criteria on which it could take a decision other than those that the Committee would apply.

F. Confidentiality

40. The Legal Board agreed to protect the identity of members of the public who submit communications and of third persons who could be penalized.

41. The Legal Board aligned the wording in paragraph 27 to the rules of procedure.

G. Entitlement to participate

42. The Legal Board harmonized paragraph 31 with paragraph 29.

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

43. The Legal Board moved the provisions on decision-making to chapter II (see para. 35 above) and dropped the provision that if there was no consensus, the report should reflect the views of all members.

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

44. The Legal Board simplified the wording of paragraphs 33 and 34. It agreed that the Meeting of the Parties might “recommend to Parties to provide financial and technical assistance, training and other capacity-building measures and facilitate technology transfer;” and “provide financial and technical assistance, training and other capacity-

building measures, subject to financial approval, including when appropriate seeking support from specialized agencies and other competent bodies". It also agreed that the Meeting of the Parties might suspend the special rights and privileges accorded to the Party concerned under the Protocol.

J. Enhancement of synergies

45. The Legal Board agreed that the Committee might transmit information to the secretariats of other international environmental agreements for consideration in accordance with their procedures on compliance and that it might invite members of other compliance committees dealing with issues related to those before it for consultation.

46. The Legal Board requested the secretariat to revise, with the assistance of the Chairperson and the Vice-Chairperson, the draft compliance review mechanism for submission to the Working Group on Water and Health, which was expected to advise the Legal Board on its further elaboration (see MP.WAT/WG.4/2004/7 - EUR/5047016/2004/7).

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

47. The Legal Board took note of the information by Mr. Malek (Germany), Chairperson of the task force on flood prevention, protection and mitigation, and Mr. Kolliopoulos (Greece), member of the task force, on the outcome of the Seminar on Flood Prevention, Protection and Mitigation (Berlin, 21-22 June 2004, MP.WAT/SEM.3/2004/3).

48. Given that the new paradigm on integrated flood management was adopted with the 2000 UNECE Guidelines on Sustainable Flood Prevention, there was a need for an in-depth analysis of the incorporation of the new principles and approaches in recent bilateral and multilateral environmental agreements (e.g. from the mid-1990s onwards) rather than for an analysis of all flood agreements. This analysis together with draft model provisions on floods would become part of a study conducted by Mr. Kolliopoulos on behalf of the task force. As suggested at the Seminar, States riparian to the same transboundary waters could use these model legal provisions on floods to establish or update such provisions in their bilateral or multilateral agreements. Such a model could also lead to a new UNECE legal instrument. The Working Group on Integrated Water Resources Management at its meeting on 15 December 2005 would be informed about progress.

49. The representatives of WMO informed the Legal Board about activities under its Associated Programme on Flood Management, which included legal aspects as well as institutional, economic, social and environmental issues of flood prevention, protection and mitigation. With regard to the legal aspects of integrated flood management (IFM), the Programme aimed at raising the awareness of policy makers about the need for an appropriate legal framework for IFM, thereby providing guidance to legal experts and executive officers in land and water management on how to incorporate IFM principles into legal practice. WMO was conducting work in cooperation with the International Water

Law Research Institute at the University of Dundee, which was also part of the network of legal institutions created under the Convention.

50. The Legal Board appreciated the offer of WMO to cooperate on the legal aspects of flood management. The Legal Board also offered its assistance to the task force on flood prevention, protection and mitigation, led by Germany, and requested the secretariat to make the necessary arrangements, for example, to convene a joint meeting of representatives of the Legal Board, the task force and WMO in early 2005, once the “gaps analysis” had been finalized and a provisional model agreement on flood management had been drafted.

VII. MAINSTREAMING OF THE DECISIONS OF THE MEETING OF THE PARTIES TO THE PROTOCOL INTO THE POLICY MAKING OF WHO

51. Contrary to the situation in the UNECE secretariat, where mechanisms had been established to: (a) coordinate work with water-and-health-related activities of the Committee on Environmental Policy and/or the meetings/conferences of the Parties to the environmental conventions, and (b) mainstream decisions into the policy-making of these bodies, there were no such mechanisms for the Protocol’s implementation among bodies for which the Regional Office for Europe of the World Health Organization (WHO/EURO) carried out secretariat functions (e.g. Regional Committee, European Environment and Health Committee).

52. Based on a discussion paper, to be finalized in early 2005 by the WHO/EURO secretariat and the Legal Office of WHO, the Legal Board would advise WHO/EURO in its area of competence.

VIII. CAPACITY FOR WATER COOPERATION (CWC)

53. The secretariat informed the Legal Board on the workshop that it was organizing on the legal basis for transboundary water cooperation (Kiev, 22-24 November), under the CWC project (<http://www.unece.org/env/water/cwc.htm>). It invited the Legal Board to provide comments on the workshop’s programme and to contribute to it.

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

55. The Legal Board decided to hold its third meeting in the beginning of March 2005. It would consider the revision of the draft rules of procedure and of the compliance procedure in the light of the outcome of the fourth meeting of the Working Group on Water and Health. The Legal Board would also take up the issue of mainstreaming the decisions of the Meeting of the Parties to the Protocol into the policy-making of WHO. Depending on the progress made on the flood issues, the Legal Board would also consider the analysis of bilateral and multilateral agreements on flood prevention, protection and mitigation, as well as the provisional model agreements on floods, taking into account the outcome and recommendations of the first meeting of the Working Group on Integrated

Water Resources Management (Geneva, 15 December 2004). In this case, it would meet in Berlin back-to-back with the task force on flood prevention, protection and mitigation. Otherwise, it would meet in Geneva.

X. CLOSING OF THE MEETING

56. The meeting was closed on 17 September 2004 at 5 p.m.