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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 THIRD MEETING

1. The third meeting of the Legal Board took place in Geneva on 13-14 June 2005.
2. The meeting was attended by representatives from the Governments of Belgium, Croatia, Finland, France, Germany, Greece, Hungary, Italy, Netherlands, Norway, Ukraine and United Kingdom.
3. Representatives from the European Commission, the World Meteorological Organization (WMO) and the secretariat of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) attended the meeting.
4. The following institution and organizations were also represented: Earthjustice, EcoForum, the University of Dundee and the University of Parma.

I. ORGANIZATIONAL AND PROCEDURAL MATTERS

5. The Legal Board adopted its agenda as contained in document MP.WAT/AC.4/2005/1.
6. Mr. Attila TANZI (Italy) and Ms. Elisabeth Katherine JENKINSON (United Kingdom) were re-elected Chairperson and Vice-Chairperson, respectively.

7. The Legal Board adopted the report of its second meeting (MP.WAT/AC.4/2004/6).

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

8. The Legal Board considered that the discussion on the draft compliance procedure (MP.WAT/WG.4/2004/7 - EUR/5047016/2004/7) during the fourth meeting of the Working Group on Water and Health (see report MP.WAT/WG.4/2004/5 - EUR/5047016/2004/5) was inadequate, given that only few legal experts were present at the meeting and the allocated time was insufficient for an in-depth discussion. It was of the opinion that the Working Group's recommendations had resulted in an unbalanced draft compliance regime and some inconsistencies. The Legal Board therefore decided to review the text and to propose some amendments to the Working Group on Water and Health. The amendments and additions made by the Legal Board to document MP.WAT/WG.4/2004/7 - EUR/5047016/2004/7 as well as the Legal Board's rationale are set out in paragraphs 10 to 21 below.

9. The representative of the European Commission reported on the related work developed within the European Union by the Working Party on International Environmental Issues and called for harmonization of practices.

A. Structure of the compliance committee

10. The Legal Board agreed that only Parties should be entitled to nominate candidates for the Compliance Committee, taking into consideration proposals made by non-governmental organizations (NGOs). It was also understood that Parties could nominate more than one candidate, including candidates who were not nationals of the Party proposing them.

11. The Legal Board decided to include provisions for the nomination procedure (see MP.WAT/WG.4/2005/3 - EUR/05/5047554/3, para. 6).

12. The Legal Board agreed to include a reference to expertise as a criterion for the selection of Committee members.

13. The Legal Board noted that the Committee was made up of independent experts; thus there was no need for granting observers status to two NGOs. However, the NGOs' and the public's experience was crucial in the Committee's work; therefore, the Legal Board decided to include a specific reference to them in para. 23 (see MP.WAT/WG.4/2005/3 - EUR/05/5047554/3).

14. The Legal Board decided to specify that consensus meant the absence of any formal objection by one of the members of the Committee.

B. Referrals by the joint secretariat

15. Given that the Committee should consider communications from the public (see para. 17 below), the Legal Board decided that referrals from the secretariat should be limited to reports submitted by the Parties.

C. Communications from the public

16. There was a lengthy discussion on whether communications from the public could be brought before the Committee. Some members of the Legal Board considered that it would overwhelm the Committee and have unbearable resources implications. The following options were discussed:

- The possibility that only NGOs could submit communications. The Legal Board considered that NGOS should not be the filter between individuals and international organizations and that individuals should be able to directly submit a communication;
- The possibility that the secretariat did a pre-screening of incoming communications and make recommendations to the Committee. The Legal Board considered that only the Committee should have the power to decide on the admissibility of a communication and that the secretariat should not be put in a situation that could jeopardize its impartiality;
- The possibility for permanent opt-out by Parties. The Legal Board considered that it was not acceptable to create uneven obligations among the Parties.

17. Based on provisions of the compliance regime under the Aarhus Convention, the Legal Board finally agreed on a compromise solution admitting communications from the public as a trigger for the Committee's work. Following this compromise, communications would only be admitted if submitted one year after the establishment of the Compliance Committee or one year after the date of the entry into force of the Protocol with respect to a Party, whichever is the later, and Parties would have the possibility to refuse that the Committee considered such communications for not more than four years, upon notification of the Depositary. Furthermore, the compliance procedure, in particular the provisions on communication from the public, would be reviewed by the Parties at their second meeting on the basis of the experience gained by the Compliance Committee (see draft decision in MP.WAT/WG.4/2005/3 - EUR/05/5047554/3 and para. 16).

D. Information gathering

18. The Legal Board agreed that the Committee was not under the obligation to consider any relevant information submitted to it but could chose which information it wanted to consider.

E. Confidentiality

19. In accordance with the principle of transparency, the Legal Board agreed to clearly state that the Committee's meeting should be held in public unless otherwise provided for in the compliance procedure (see para. 28 of MP.WAT/WG.4/2005/3 - EUR/05/5047554/3).

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

20. The Legal Board decided that in its reports the Committee should list the information that it had received; therefore the brackets around the second sentence of para. 33 were deleted.

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

21. The Legal Board agreed that the Meeting of the Parties could only facilitate the provision of financial assistance, but not provide it.

22. The Legal Board requested the secretariat to compile, with the assistance of the Chairperson and the Vice-Chairperson, a revised version of the draft compliance review mechanism for submission to the Working Group on Water and Health at its fifth meeting.¹

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

23. Also in this case, the Legal Board considered that the recommendations of the Working Group on Water and Health on participation of NGOs to the Bureau's meetings (see MP.WAT/WG.4/2004/5 - EUR/5047016/2004/5, para. 17) would impede the efficiency of the Bureau and would not allow flexibility to adapt to the Bureau's priorities. It therefore agreed to amend paragraph 3 of rule 20 to read as follows:

“3. When appropriate, the Bureau may invite representatives of organizations referred to in rule 5 paragraph 2 (e) to participate in its meetings without the right to vote.”

24. The Legal Board sought the advice of the WHO secretariat with regard to the WHO bodies with which the Bureau should maintain liaison. The WHO secretariat suggested that under paragraph 5 (b) of rule 20 references should be made to the European Environment and Health Committee and the Standing Committee of the Regional Committee for Europe.

25. Under paragraph 8 of rule 21, the Legal Board agreed to delete the references to rules 44 and 45, as paragraph 2 of the same rule already provided that the Meeting of the Parties should determine the working languages of the working groups and other bodies.

¹ The revised version of the compliance procedure is reproduced in document MP.WAT/WG.4/2005/3 - EUR/05/5047554/3.

26. The Legal Board agreed that rule 25 should read as follows:

“The Chairperson may declare a meeting of the Parties open and permit debate to proceed when representatives of the majority of the Parties are present and have any decisions taken when at least two thirds of the Parties are present.”

27. Under paragraph 1 of rule 34, the Legal Board agreed to specify that consensus meant the absence of any formal objection by a Party.

28. Furthermore, the Legal Board advised the secretariat on a number of practical issues related to the preparations for the first meeting of the Parties, in particular related to the notification and participation of NGOs. It suggested that NGOs, including civil society and business entities, which were already participating in activities under the Convention and/or the Protocol on Water and Health should be notified. For other NGOs that would request for observer status at the first meeting of the Parties, the chairperson and vice-chairperson of the Working Group on Water and Health and relevant NGO umbrella organizations should assist the secretariat to review the relevance of such NGOs. It disagreed with the secretariat's proposal to request NGOs, civil society and business sector entities to form themselves into constituencies if their number would exceed the number of Parties participating in the meeting.

29. On the basis of the comments received, the joint secretariat would submit to the fifth meeting of the Working Group on Water and Health a document on practical aspects related to the preparations for the first meeting of the Parties to the Protocol.

IV. GUIDANCE ON THE IMPLEMENTATION OF THE WATER CONVENTION AND ITS PROTOCOLS

30. The Legal Board took note of the request made by several countries from Eastern Europe, the Caucasus and Central Asia, at the workshop on the legal basis for transboundary cooperation (Kiev, 22-24 November 2004), for assistance in a legally-sound interpretation and practical implementation of the Convention and its protocols. It particularly noted that these countries had called for the development of a guide, which would provide a useful overview and explanation of the provisions of the Convention and protocols (such as the polluter-pays principle and transboundary water allocation) in clear and unambiguous terms. At the same time, the document should provide guidance on the measures or actions (legal, administrative, economic, financial, technical) that national and local authorities should undertake, or refrain from undertaking, in order to fulfil their countries' commitments. The guide would also be an advocacy tool for countries outside the UNECE region, in view of the opening of the Convention for accession to these countries and would raise awareness of the Convention and protocols among wider stakeholders groups.

31. The Legal Board concurred that the guide would be a useful tool and agreed to contribute to its development. At the same time, it felt the need to further specify the guide's scope, the aspects to be covered, the format of the guide and the ways and means of developing it. To this aim, the secretariat would send a brief explanatory note to the

Convention's and protocols' focal points and the Legal Board's members, in order to (a) assemble suggestions on the above items; (b) seek the assistance of possible authors; and (c) explore the readiness of Parties and non-Parties to take a lead in the guide's development and/or provide in-kind and financial contributions. The Legal Board particularly invited its members to explore the readiness of their Governments/organizations to provide financial or in-kind contribution to this activity.

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

32. The Legal Board examined draft model provisions on transboundary flood protection, prevention and mitigation, prepared by Ms. Daskalopoulou-Livada (Greece), Mr. Malek (Germany) and Mr. Kolliopoulos (Greece). It took note of the information by the secretariat that the drawing up of these model provisions was part of the work under programme element 2.1 of the programme of work under the Convention and a follow up to the 2004 Seminar of flood prevention, protection and mitigation. It also noted that the aim was to provide guidance to Governments and joint bodies in the endeavour to update existing bilateral or multilateral agreements, rather than to elaborate model provisions in the format of a protocol to the Convention.

33. The Legal Board considered a number of items that could also be taken up when further elaborating the draft model provisions, including sound operation of dams and reservoirs to avoid additional downstream impact during flood periods, legal provisions on land use planning and a wise use of flood prone areas, awareness raising and public participation, use of local knowledge and traditional management practices, risk management and mapping. In the further discussion, some members of the Legal Board expressed their preference to further elaborate only those items which were "flood-specific". The Legal Board also noted the relevance of Resolution 40 of the twelfth WMO Congress on policy and practice for the exchange of meteorological and related data and products including guidelines on relationships in commercial meteorological activities and of Resolution 25 of the thirteenth WMO Congress on the exchange of hydrological data and products.

34. The Legal Board agreed that a further in-depth examination of the draft model provisions was still needed, taking also into account the 2000 Guidelines on sustainable flood management, the outcome of the Seminar and other relevant documents. The Legal Board also considered that the involvement of the task force on flood protection, prevention and mitigation, led by Germany, was crucial for the further work on the model provisions. It therefore requested its members and invited the task force to propose - by 15 September 2005 - additions and amendments to the existing draft model provisions. To facilitate this undertaking, the secretariat offered to prepare a brief guide for the members of the Legal Board and the task force.

VI. PREPARATION FOR THE FOURTH MEETING OF THE PARTIES TO THE WATER CONVENTION

35. The Legal Board discussed its possible approach to assist in the preparation of a mid-term (until 2009) and long-term (beyond 2009) strategy under the Convention and its specific contribution related to legal issues, including a list of priorities to be included in the 2006-2009 work-plan. It agreed in principle that the strategy should include: (a) activities to be undertaken upon request of countries and other bodies under the Convention, as it was to be expected that the Convention's other working groups would come up with suggestions under their respective parts of the draft strategy; (b) activities developed according to the Legal Board's own vision and priorities; and (c) the participation of members of the Legal Board in meetings of the Working Groups in order to be better involved in the work of these bodies. To this aim, the secretariat would circulate a briefing note to collect the Legal Board members' suggestions and future commitments by the end of 2005.

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

36. Pending the progress achieved under the topics included in chapters IV-VI, the Legal Board would meet at the beginning of 2006, probably in March, in a venue to be decided.