



Convention on Protection and Use of Transboundary Watercourses and International Lakes

**ECE/UNEP Network of Expert on Public
Participation and Compliance**

Water management: Guidance on public participation and compliance with agreements

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NOTES

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The views expressed in this document are those of the invited experts and do not necessarily reflect those of their organizations and institutions.

FOREWORD

Water management: Guidance on public participation and compliance with agreements has been prepared by the secretariat of the United Nations Economic Commission for Europe and the Regional Office for Europe of the United Nations Environment Programme in an effort to promote the full and effective implementation of the Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Helsinki, 1992) – more commonly known as the Water Convention.

The publication is the direct outcome of the “Strategy and Framework for Compliance with Agreements on Transboundary Waters and Guidance on Public Participation in Water Management” project, which was co-financed and supported by the Ministry for Housing, Spatial Planning and the Environment of the Netherlands. It has been drawn up by a network of 22 experts from government authorities, international organizations, universities and NGOs.

Both UN/ECE and UNEP have a long history of cooperation on freshwater, particularly transboundary waters, and on the marine environment. With our studies, recommendations, guidelines, codes of practices and conventions, we have helped to develop a new paradigm of cooperation in the region to prevent conflict and to ensure that transboundary waters are used in a reasonable and equitable way.

There is an undeniable need to prevent man-induced deterioration of natural water flows, such as waterlogging, drying-up of estuaries and wetlands. In recent years we have acquired a better understanding and appreciation of regional water systems as a result of several water-related disasters. At the same time, the increasing number of water-related disputes has pushed the issue to the top of the international political agenda. Clearly, the use of water within one country can no longer be isolated from its effects on neighbouring countries. International legal instruments can help prevent water-related conflicts and ensure the sustainable use of freshwater.

It is also necessary to work out arrangements with respect to both the Water Convention and its Protocol on Water and Health (London, 1999) to facilitate compliance more effectively, as well as to introduce non-confrontational, non-judicial and consultative procedures to review compliance and resolve disputes. The strategy for compliance with the Water Convention not only provides for a more effective implementation of that Convention, but might also prove to be of value to water management outside Europe and on a global level.

Equally, broad public participation in decision-making and access to information are preconditions for successful water management. An increasing number of countries, both developed and developing, are taking that into consideration, as evidenced in Europe by the adoption of the UN/ECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus, 1998). As for the issue of compliance, some provisions of the Water Convention already promote public participation.

Both the strategy and the guidelines therefore represent an important asset not only within the context of the Water Convention, but also for public participation in river-basin management and other environmental fields, in other regions and even worldwide. We hope that this publication will further transparency in river basin management in many parts of the world.

Executive Secretary
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THE RATIONALE OF THE JOINT UN/ECE-UNEP PROJECT

Introduction

The economic and environmental importance of transboundary watercourses and international lakes in the UN/ECE region is reflected by the fact that there are more than 150 large transboundary rivers and over 20 large international lakes. Some 100 transboundary aquifers have been identified in Western and Central Europe. Transboundary surface waters and groundwaters are common features also in the other regions in the world. Thus, over 245 river basins are shared by two or more states. About forty per cent of the world population and fifty percent of its land are either dependent on or stand to benefit from the waters available cost coverage: depending on decisions by the Meeting of the Parties to the Water Convention in March in these basins. 1/

For decades, these transboundary waters played an important economic role without particular thought being given to the notion of preventing, controlling and reducing adverse transboundary impact. The situation changed in the recent decades, when the needs and benefits of cooperating on the protection and sustainable use of transboundary waters have gained wide recognition among countries.

In the UN/ECE region, cooperation with respect to transboundary waters was initially based on various underlying principles. Particularly in the last decade, UN/ECE, UNEP and other organizations have advocated a coordinated regional approach to resolving the water problems, and have contributed to the development and implementation of a new paradigm of cooperation both at the European and global levels: the prevention of conflicts over water in accordance with the principles of reasonable and equitable use of transboundary waters. Principles and approaches, such as the polluter-

pays principle, the precautionary principle and the ecosystem approach in water management, became the cornerstones to ensuring sustainable use of transboundary waters, and to protect human health and safety.

Following the above mentioned ecosystems approach in water management, the whole catchment area is being considered as the natural unit for integrated water management. As a consequent step in achieving management of whole catchments, protection should also be given to coastal zones and the marine environment. In this context, the recommendations of this paper might also be useful for those who are dealing with coastal zone management and the seas.

In the UN/ECE region, a number of agreements on transboundary waters concluded between Riparian States as well as recommendations, guidelines and codes of practice adopted by UN/ECE member States were at the root of a legally-binding convention: the Convention on the Protection and Use of Transboundary Watercourses and International Lakes (hereinafter referred to as the UN/ECE Water Convention) which was adopted at Helsinki on 17 March 1992 and entered into force on 6 October 1996. On 17 June 1999, a supplementary protocol to the Convention - the Protocol on Water and Health - was adopted in London on the occasion of the Third Ministerial Conference on Environment and Health.

The lessons learned in the European context might prove to be valuable for other regions in the world, taking into account that freshwater use for human purposes (e.g. drinking-water use, irrigation, industrial water use) at the global scale rose sixfold between 1900 and 1995 - at more than twice the rate of population growth - and that the pollution of rivers, lakes and groundwaters became also a concern of many developing countries. About one-third of the world's population already lives in countries with moderate to high water stress - that is in countries where water use is more than 10 per cent of the renewable freshwater supply. The problems are most acute in Africa and Western Asia, but lack of water is already a major constraint to industrial and socio-economic growth in many other areas. A number of affected countries share their waters with the other riparian countries bordering the same transboundary waters. Resolving conflicts over waters requires, among others, negotiations with neighbouring countries and the involvement of the concerned

people in decision making on water projects having local, national or transboundary implications.

COMPLIANCE WITH INTERNATIONAL AGREEMENTS ON WATER

At present, some 150 agreements on transboundary waters in the ECE region are in force or have recently been signed. Most of them provide an effective framework for preventing, controlling and reducing transboundary impact on the environment. ^{2/}. In addition to the UN/ECE Water Convention, most noticeable are the 1994 Convention on Cooperation for the Protection and Sustainable Use of the River Danube and the recently drawn up Convention on the Protection of the Rhine (Rotterdam, 22 January 1998) which apply to river basins that are shared by five or more countries. Other existing agreements - concluded among two or three countries - are being revised to meet the objective of the UN/ECE Water Convention.

The success of the UN/ECE Water Convention, as with all bilateral and multilateral agreements on transboundary waters, depends on effective implementation, compliance and enforcement by the Parties. It should be noted, however, that the failure to comply with the provisions of such instruments is rarely the result of deliberate policies of Parties, but rather the consequence of deficiencies in administrative, economic or technical infrastructure. In addition and in light of these deficiencies, there is a general reluctance by States to submit to third party decision-making. Subsequently, and in view of the specific characteristics of environmental disputes, there is an emerging trend in environmental agreements to create *Apositive measures@* or mechanisms for enhancing compliance rather than relying on traditional compliance control and enforcement regimes.

The UN/ECE Water Convention like most of the other international agreements, however, does not contain any explicit provision regarding compliance. Nonetheless, within the context of this Convention, a number of provisions are intended to promote compliance with the overall objectives of the Convention. For example, the *AProvisions Relating to Riparian Parties@*, contained in part II of the Convention, cover a range of

issues including Consultations (article 10), Joint Monitoring and Assessment (article 11), Common Research and Development (article 12), Exchange of Information (article 13), Mutual Assistance (article 15), and Public Information (article 16).

However, there is a perceived need for arrangements with respect to both the UN/ECE Water Convention and its Protocol on Water and Health which more effectively facilitate compliance (e.g. technology transfer, financial mechanisms, capacity building) as well as non-confrontational, non-judicial and consultative procedures for reviewing compliance. The non-compliance regime of the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer, and the establishment in 1997 of the Implementation Committee for review of compliance under the 1979 UN/ECE Convention on Long-Range Transboundary Air Pollution are examples of such arrangements.

The basis for such arrangements can be found within the UN/ECE Water Convention itself, through the development of bilateral/multilateral agreements drawn up under article 9(1) thereof, which provides that:

The Riparian Parties shall on the basis of equality and reciprocity enter into bilateral or multilateral agreements or other arrangements, where these do not yet exist, or adapt existing ones, where necessary to eliminate the contradictions with the basic principles of this Convention, in order to define their mutual relations and conduct regarding the prevention, control and reduction of transboundary impact. The Riparian Parties shall specify the catchment area, or part(s) thereof, subject to cooperation. These agreements or arrangements shall embrace relevant issues covered by this convention, as well as any other issues on which the Riparian Parties may deem it necessary to cooperate. (underlining added).

The Protocol on Water and Health goes beyond the above provisions to ensure compliance with its objectives, targets and target dates. In addition to provisions in article 7 on AReview and Assessment of Progress@ and article 8 on AResponse Systems@, the Protocol sets specific goals for compliance in article 15 regarding AReview of Compliance@. This article calls, inter alia, for establishing multilateral arrangements of a

non-confrontational, non-judicial and consultative nature for reviewing compliance of the Parties. These arrangements to be made by the Parties at their first meeting, shall also allow for appropriate public involvement.

Hence, as a first step, a strategy and framework for compliance with the UN/ECE Water Convention and its Protocol on Water and Health is necessary on which, as a second step, the above Amultilateral arrangements@ can be based. Accordingly, ways and means of appropriate public involvement could be considered 3/ as an integral part of activities on compliance. The drawing up of a strategy and framework on public participation in water management is consequently an important step towards achieving compliance. The results of both activities will provide for a more effective implementation of the Convention and its Protocol. It will also contribute to facilitating water management in other regions in the World, an objective stated by the Parties to the UN/ECE Water Convention in their Helsinki Declaration.4/

PUBLIC PARTICIPATION

There is a growing acceptance by Governments that environmental regimes must be inclusive, that all relevant stakeholders are involved in the decision-making process. Principle 10 of the Rio Declaration states that:

AEEnvironmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.@

Indeed, broad public participation in decision-making and access to environmental information are important elements throughout Agenda 21, because, combined with greater accountability, they are basic to the concept of sustainable development. From a global perspective, many countries, both developed and developing, have taken the concepts of public participation and access to information to heart, while others have hardly addressed the issue.

From a regional perspective, the UN/ECE has quickly moved to address these issues through the development of the UN/ECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, adopted in Aarhus in 1998 (hereinafter referred to as the Aarhus Convention). It is worthwhile mentioning that the Aarhus Convention both builds on Principle 10 of the Rio Declaration and refers to it in recitals.

As with the issue of compliance, a number of provisions in the UN/ECE Water Convention can already be seen to promote public participation. For example, article 16 requires, inter alia, that AThe Riparian Parties shall ensure that information on the conditions of transboundary waters, measures taken or planned to be taken to prevent, control and reduce transboundary impact, and the effectiveness of those measures, is made available to the public@.

The Protocol on Water and Health takes the matter further by requiring that Parties, in order to achieve the objectives of the Protocol and in pursuing the aims to achieve those objectives, will ensure public participation in decision-making (article 6, paragraph 2). Under article 16, paragraph 3 (g), the Parties shall at their meetings A...consider the need for further provisions on access to information, public participation in decision-making and public access to judicial and administrative review of decisions within the scope of this Protocol, in the light of experience gained on these matters in other international forums@. It is worthwhile mentioning that the reference to Aother international forums@ is broader than the reference to the Aarhus Convention that was made in an earlier draft of the Protocol.

Another unique feature of the Protocol is the necessary provision for the involvement of NGOs, whereby article 16, paragraph 3 (f) requires that the Parties shall A... establish the modalities for the participation of other competent international governmental and non-governmental bodies in all meetings and other activities pertinent to the achievement of the purposes of this Protocol@. Indeed, international NGOs with competence on transboundary water management participate in the activities under the Convention. Some of them have even been invited to take a lead in the further development of elements of the programme of work as it was the case with this current project on compliance and public participation and other undertakings. The same holds true of work under the Protocol: international NGOs experienced in the field of water and health participated both in the task force to draft the Protocol, and in the meetings to negotiate the text of the Protocol.

The Aarhus Convention, in addition to the requirement for AAccess to Environmental Information@ (article 4), also requires Parties to make appropriate practical and/or other provisions for the public to participate during the preparation of plans and programmes relating to the environment, within a transparent and fair framework (article 7).

As with compliance, arrangements can be made for public involvement in decision-making in line with the Aarhus Convention, through the development of bilateral/multilateral agreements drawn up under article 9, paragraph 1, of the UN/ECE Water Convention. In this regard, there is a need to develop guidelines to ensure that such bilateral or multilateral agreements are effective.

Moreover, the need for such guidelines becomes obvious when examining the various legal systems, legal procedures for public participation, and traditions of involving the public in UN/ECE countries as well as the various successful examples of public involvement shown in the chapter on public participation.

In addition, the development of guidelines is both important within the context of the UN/ECE Water Convention and in a more broader context: public participation in the development of water management plans covering entire river basins and their links to

protect coastal zones and the marine environment in other regions of the World. This is consistent with the objectives of the Aarhus Convention which lends itself to ratification beyond the UN/ECE region (article 19, paragraph 3) and with the request of UNEP Governing Council Decision 20/4 of 4 February 1999 requesting the Executive Director, in consultation with Governments and relevant international organizations, to seek appropriate ways of building capacity in and enhancing access to environmental information, public participation in decision-making and access to justice in environmental matters, and in this regard study various models of national legislation, policies and guidelines. Thus, the guidelines will also provide a useful input, *inter alia*, to the Second World Water Forum and Ministerial Conference on Water in The Hague (Netherlands, 17-22 March 2000), as well as to UNEP's global strategy for freshwater.

CHAPTER 1: PUBLIC PARTICIPATION IN WATER MANAGEMENT

Introduction

Policy- and decision-making in water management on the basis of catchment areas ^{5/} are a matter of concern to both public authorities and the public ^{6/} at large. Public participation involves the rights of persons to take part in decision-making that affects them, and gives concrete benefits to decision-making. It does so through the guarantee of rights on access to information, public participation in decision-making and access to justice in environmental matters. This improves decision-making through greater information and enhances respect for decisions, and assists in the development of democracy, civil society, and the rule of law. Public participation contributes to the endeavours of public authorities to protect the environment, to learn about the concerns of the public, including the various users of the water resources, and to take due account of such concerns. Public participation in the field of water management should lead to an improvement in the quality and implementation of, and commitment to, decisions, as well as increased accountability, transparency and public awareness of water management issues. This in turn will help to achieve water management goals and improve the environment.

Principle 10 of the Rio Declaration on Environment and Development (United Nations Conference on Environment and Development, Rio de Janeiro, 1992) emphasizes that A[e]nvironmental issues are best handled with the participation of all concerned citizens, at the relevant level [Y]@.

Other widely recognized international policy documents emphasize the need for an adequate role of the public, including non-governmental organizations (NGOs), in environmental and water management. Examples are the Dublin Statement on Water and Sustainable Development (International Conference on Water and the Environment, Dublin, 1992), Agenda 21 (United Nations Conference on Environment and Development,

Rio de Janeiro, 1992), the Noordwijk Political Statement and Action Plan (Ministerial Conference on Drinking-Water and Environmental Sanitation, Noordwijk, 1994) and the Guidelines on Access to Environmental Information and Public Participation in Environmental Decision-Making (Environment for Europe Conference, Sofia, 1995).

In the pan-European region, there are a number of international legal documents ^{7/} which are important for public participation in water management. The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus, 25 June 1998; Aarhus Convention) guarantees the rights of access to information, public participation in decision-making, and access to justice in environmental matters. The Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Helsinki, 17 March 1992; UN/ECE Water Convention) and the Protocol on Water and Health to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes (London, 17 June 1999; Protocol on Water and Health) form a legal framework for the pan-European region in the field of water management and the protection of human health and safety. The UN/ECE Water Convention covers, among other things, public information, while the Protocol stipulates broader rights on public information and public participation. In addition, the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo, 25 February 1991; Espoo Convention) and the Convention on the Transboundary Effects of Industrial Accidents (Helsinki, 17 March 1992) are relevant for the management of transboundary watercourses and international lakes in the pan-European region as both Conventions include provisions on public information and public participation.

As concerns transboundary waters, article 3, paragraph 7 of the Aarhus Convention is relevant which provides that A[e]ach Party shall promote the application of the principles of this Convention in international environmental decision-making processes and within the framework of international organizations in matters relating to the environment[@]. In addition, article 6, paragraph 5(b), of the Protocol on Water and Health is relevant. It stipulates that in the development of water management plans - including plans to be drawn up in a transboundary context - the Parties to the Protocol A shall make appropriate practical and/or other provisions for public participation, within a transparent

and fair framework, and shall ensure that due account is taken of the outcome of the public participation@.

Furthermore, the Espoo Convention provides that A[t]he Party of origin shall provide [Y] an opportunity to the public in the areas likely to be affected to participate in relevant environmental impact assessment procedures regarding proposed activities and shall ensure that the opportunity provided to the public of the affected Party is equivalent to that provided to the public of the Party of origin@ (article 2, paragraph 6). It also provides that A[t]he concerned Parties shall ensure that the public of the affected Party in the areas likely to be affected be informed of, and be provided with possibilities for making comments or objections on, the proposed activity, and for the transmittal of these comments or objections to the competent authority of the Party of origin, either directly to this authority or, where appropriate, through the Party of origin@ (article 3, paragraph 1 (8)).

It follows from the above, that these draft guidelines are intended to assist Governments and joint bodies 8/ throughout the world in developing and implementing procedures to enhance public participation in water management. They are particularly intended to assist Governments and joint bodies in the UN/ECE region. The draft guidelines draw on the experience of experts from Governments, joint bodies and NGOs from the pan-European region.

GENERAL RECOMMENDATIONS

Public participation in the field of water management should take place in a manner that takes full account of the rights and responsibilities of the public and the public authorities.

At the national level, States are encouraged to guarantee legal rights for the public on access to information, public participation in decision-making and access to justice in environmental matters, so that the public may enjoy these rights during decision-making

processes relating to water management. For that purpose, States should adapt their national legal systems, as necessary.

Public participation in water management in England and Wales

The Environment Agency is producing 131 Local Environment Agency Plans (LEAPs) covering all river catchments in England and Wales. LEAPs are five year plans of action for improvements to local environments by the Agency and other organizations working in partnership.

LEAPs take an integrated approach to local environmental issues, managing on a whole catchment basis. Public participation and the building of local consensus for action is seen as a prime advantage of the LEAPs process. The Agency aims to produce a Consultation Draft LEAP in partnership with key stakeholders such as local authorities, industry, and environmental NGOs. These stakeholders may be directly involved in the process of drafting the plan, or may have an oversight role through their membership of Area Environment Groups which are local advisory bodies established by the Agency.

The Consultation Draft Plan is then published for public consultation. It is sent to all local organisations with significant environmental interests and is available to the general public on request. Ample time is given for representations, and at the end of the consultation period the Agency publishes a report on consultation, indicating the views received, and the Agency's response. The Agency then publishes the adopted LEAP for the river catchment. The LEAP is reviewed each year by the Agency in consultation with the local Area Environment Group, and an Annual Review Report is published. Initiatives aimed at promoting public participation in LEAPs include use of the Internet and CDs for publishing, use of focus groups to prioritise local issues, and consultation on local authority boundary basis.

At the international level, States should further cooperate, as appropriate, with a view to adapting international instruments accordingly.

It is important that the public has access, at an early stage, to all relevant information, and that the public becomes involved in decision-making on water management as early as possible, while all options are still open, in order to provide for effective public participation.

Access to information is a prerequisite for public participation. States and joint bodies are encouraged to ensure that access to information on transboundary water management and other environmental information is provided to all members of the public, within and beyond international borders, without having to state an interest.

To provide for effective access to information, it is important that States guarantee the right to information through adequate legislation. States are encouraged to provide that public authorities should make information available to the public.

Public participation is important for the protection and sustainable use of catchment areas. It may contribute to resolving problems of water pollution and problems of water sharing and distribution among riparian States and interested sectors of water use.

When taking decisions regarding water management, States should ensure that the outcomes of public participation are properly taken into account by public authorities and joint bodies.

Aral Sea Basin

The water sector plays a vital role in the region, and the professional level of the managers and decision makers within the sector was very high. After the collapse of the Soviet Union, lack of qualified staff was among the reasons for environmental deterioration. To increase human resources, especially at the level of policy making in the water sector, public awareness campaigns and NGO involvement have a crucial role.

The principal institutions which are in charge of water resources management and development in the Aral Sea basin are the Ministries of Agriculture and Water Resources in all five countries (Kazakhstan, Kyrgyzstan, Tadjikistan, Turkmenistan, Uzbekistan). Real-time water management is predominantly concerned with managing supplies to meet allocation objectives at different levels of water management. Common to such activities are issues related to water conservation, allocation of water under scarcity conditions and other techniques to ensure that water demands are managed to correspond to water availability. Implementing agencies never were accountable to the public for their activities. In most cases, the public was hardly involved. The growing importance of public opinion and NGO activities have only been recognized in the past 5-7 years.

In 1998, the International Fund for Saving the Aral Sea initiated the project *A Water Resources and Environmental Management in the Aral Sea Basin* supported by GEF and World Bank. The central element of this project is the public awareness component. Its objective is to educate the public to conserve water. There will be two steps. First, education of decision-makers who are still ignoring public opinion about water resources management and development. At the second stage, governmental institutions and implementing agencies should provide public access to information about policies and strategies.

THE PAN-EUROPEAN REGION

The secretariat of the UN/ECE Water Convention should play an important role in the dissemination of information and relevant agreements about rivers and lakes in the pan-European region. For that purpose, use should be made of electronic means of information dissemination.

THE CONTEXT OF TRANSBOUNDARY WATERS

If not specifically stated, the following recommendations are addressed to riparian States bordering the same transboundary waters.

Access to information

Where the public interest is served by the disclosure of information contained in working documents (documents in the course of completion) and comments thereon, riparian States and joint bodies should consider granting the public access to these documents.

Riparian States and joint bodies are encouraged to publish specific information or documents on transboundary waters. The following information should be actively disseminated:

- (a) Treaties, protocols, and rules of procedure;
- (b) Plans and programmes.

NGOs as observers in the Meuse Commission

In the Walloon region in Belgium, the river Meuse was long time considered as a shipping route and as a channel for municipal and industrial waste waters. Being an industrial area in decline, the Walloon region considered investments in waste-water treatment a waste of money, as the profits of such investments would largely end up downstream in the Netherlands, which for 25 years tried unsuccessfully to establish cooperation to clean the river Meuse.

After the adoption of the UN/ECE Water Convention, the Walloon delegation agreed to create an International Commission for the Protection of the Meuse (ICPM), but expressed its disagreement with the proposals to lay down precise waste-water treatment targets within the Agreement on the Protection of the Meuse Convention, signed on 26 April 1994 by France, the Netherlands, the Brussels Capital Region, and the Walloon Region. The development of, and agreement on, such targets was seen by the Walloon delegation a task of the ICPM. NGOs in the Netherlands threatened Walloon=s industry with liability suits and took samples close to industrial sewage outlets in the Walloon region. On these grounds, the Walloon delegation nearly withdrew from the negotiation table. Even after the adoption of the Meuse Convention, the Walloon region=s disagreement on the involvement of NGOs in plenary meetings of the ICPM remained - still considering the taking of water samples an illegal action of NGOs.

In the meantime, the Walloon region has developed a large-scale waste-water treatment programme. Moreover, another Commission - the International Commission on the Protection of the Rhine - agreed on the observer status of NGOs. Thus, Walloon agreed to request one ICPM member to make a comparative assessment of different options for involving NGOs in ICPM=s work. This assessment contained five options: NGO participation at preparatory meetings of delegations, consultation of NGOs by ICPM prior to its meetings, NGOs participation at ICPM meetings as members of a delegation, NGOs participation at ICPM meetings as observers, NGOs participation at ICPM meetings as full members.

NGOs as observers in the Meuse Commission (continued)

In the meantime, the Walloon region had developed a large-scale waste-water treatment programme. Moreover, another Commission - the International Commission on the Protection of the Rhine - agreed on the observer status of NGOs. Thus, Walloon agreed to request one ICPM member to make a comparative assessment of different options for involving NGOs in ICPM's work. This assessment contained five options: NGO participation at preparatory meetings of delegations, consultation of NGOs by ICPM prior to its meetings, NGOs participation at ICPM meetings as members of a delegation, NGOs participation at ICPM meetings as observers, NGOs participation at ICPM meetings as full members.

These options were assessed as to their transparency, advantages and disadvantages. The result was that the fourth option - observer status for NGOs - was considered to be preferable; it was also stressed that such NGOs should have an international character.

It still took a number of meetings of the ICPM, but finally a Ministerial meeting agreed that NGOs can participate as observers in meetings of the ICPM.

Riparian States and joint bodies should grant access to the following information covering a wide spectrum:

- (a) Conditions of the transboundary waters and results of monitoring thereof, including floods and ice drifts, as well as transboundary impact;
- (b) Measures taken to prevent, control or reduce transboundary impact, including water saving measures, and assessment of the effectiveness of these measures;
- (c) Ecological restoration projects;
- (d) Measures taken in the field of water-quantity management, including flood management, and the effectiveness of those measures;
- (e) Water-quality objectives, and results of checking compliance with the water-quality objectives;
- (f) Permits issued and the conditions to be met;
- (g) Results of water effluent sampling;
- (h) Results of checking compliance with permit conditions;
- (i) Drafts of plans and programmes, including comments by NGOs;
- (j) Lay-persons= guides to these documents.

Lake Peipsi

The border in the Lake Peipsi area between Estonia and the Russian Federation was established in 1991. It became necessary to formulate an international legal framework for joint management of transboundary waters.

Created in 1993, NGO Lake Peipsi Project (LPP) promoted communication and information exchange across the border. At that time, the legal basis for cooperation was still under negotiation. LPP organized meetings that gave an opportunity to Estonian and Russian environmental experts to meet informally and to discuss their future cooperation.

As a part of an environmental monitoring project supported by the Swedish Environmental Protection Agency, LPP has set up an Internet server, developed the Lake Peipsi regional web site, and established an e-mail network that joined officials and NGOs involved in water protection of Lake Peipsi.

LPP submitted its proposals for the text of an Estonian-Russian draft agreement on management of transboundary waters shared between both countries aimed at promoting public participation as well as participation of NGOs and local authorities in the protection of Estonian-Russian transboundary waters. Most of these proposals were incorporated into the text of the agreement signed by the Estonian and Russian Governments in 1997. The agreement established a Joint Commission on Transboundary Waters. Both Estonian and Russian State officials stressed the importance of developing cooperation between the two countries on intergovernmental as well as local levels. The Commission established a working group on cooperation with NGOs, local governments and international organizations, that incorporated also representatives of NGOs and local governments.

In 1998, the Centre for Transboundary Cooperation was established as an NGO umbrella organization. In accordance with the work plan of the Estonian-Russian Transboundary Water Commission, the Centre implements the transboundary water agreement in the Lake Peipsi catchment area and involves public and local stakeholders.

Riparian States and joint bodies should consider granting access to meeting documents, including:

- (a) Agendas of meetings of the joint body and its subsidiary organs, if any;
- (b) Minutes of such meetings;
- (c) Drafts of treaties, protocols, rules of procedure - including comments from NGOs - relevant for the area of application of the UN/ECE Water Convention or for specific transboundary waters;
- (d) Other documents to be discussed.

Wherever practicable, the information should be available and effectively accessible for inspection free of charge. This could be done among others through the establishment of documentation centres, libraries, databases and Web-sites of, for example, the secretariat of the joint body.

As one of the means to inform the public, electronic forms of communication should be used. This is a valuable tool, especially in an international context, to make information accessible.

Baltic Sea

The Baltic Marine Environment Protection Commission (Helsinki Commission) has 31 governmental, intergovernmental and non-governmental observers. At present, the observer status has been granted to 17 non-governmental organizations which have full rights to participate in all meetings and which are provided with all meeting documents.

In 1992, the Diplomatic Conference approved a 20 year programme of action, the Joint Comprehensive Baltic Sea Environmental Action Programme (JCP). It consists of six components: policies, laws and regulations, institutional strengthening and human resources development, investment activities, management programmes for coastal lagoons and wetlands, applied research, and public awareness and environmental education. The Programme Implementation Task Force (PITF) was also established to initiate, facilitate and monitor coordination of the implementation of the JCP. Seven non-governmental organizations participate in the PITF, in addition to the 14 countries of the Baltic Sea catchment area, the European Community, regional intergovernmental organizations and international financial institutions. One of those NGOs, the World Wide Fund of Nature (WWF) coordinates the implementation of the programme element "Management Programmes for Coastal Lagoons and Wetlands". Five Integrated Coastal Zone Management Plans on the Baltic Sea coast have been finalized covering environmentally sensitive and economically valuable areas in Estonia, Germany, Latvia, Lithuania, Poland and the Russian Federation. The implementation phase now started. WWF has shown that NGOs can effectively be entrusted with the tasks of a Lead Party.

Public participation

States and joint bodies should promote public participation in decision making on environmental matters at all levels of decision making, including the level of transboundary catchment areas. Therefore, riparian States should develop - through joint bodies - ways and means to enhance public participation at the transboundary level. This should include public participation in environmental impact assessment procedures in a transboundary context following the principles and approaches of the Espoo Convention.

Riparian States and joint bodies should provide for the participation of NGOs as non-voting participants in meetings of joint bodies. They should also consider NGO participation in meetings of subsidiary organs of joint bodies. They should encourage NGOs to organize themselves for effective participation in such meetings.

Conditions for inviting NGOs to participate as observers in meetings of a joint body and its subsidiary organs must be based on transparent and reasonable criteria, which should be clear to the public.

Riparian States and joint bodies should establish procedures so that the public can have an oversight role in the conduct of transboundary cooperation to protect and use transboundary waters and their catchment areas including the fulfilment of obligations arising from bilateral and multilateral agreements.

The development of international documents, plans and programmes for specific catchment areas should be open to public participation, including programmes for monitoring the conditions of transboundary waters.

Riparian States are encouraged to provide for public participation, including NGOs, in the preparation and development of international water agreements. NGOs could be invited to participate in intergovernmental negotiation meetings. They could be requested to comment on draft texts. Due account could be taken of such comments.

Public participation in the process of implementing the 1992 Bucharest Convention on the Protection of the Black Sea against Pollution

The following steps were taken to implement the Convention's provision:

(a) Black Sea NGOs Forum established in the framework of the Black Sea Environmental Programme (BSEP);

(b) Analysis and involvement of active NGOs in Forum events like the International Black Sea Day, Info-bus campaigns, seminars, environmental lessons, public debates on the environment, beach clean-ups and tree-planting in all the Black Sea countries;

(c) Introduction of legislative measures to guarantee public participation in the decision-making process for the Black Sea region;

(d) Establishment of Black Sea Environment Information, Education and Resource Centres in Bulgaria and Romania;

(e) GEF/NGO Small Grants Programme for better environmental management;

(f) Organization of Black Sea countries national NGO-Forums;

(g) Establishment of the Black Sea NGOs Network;

(h) Training in public participation and organizational management for Black Sea NGOs;

(i) Public information in the Black Sea region through newsletters, leaflets, seminars, exhibitions and libraries.

Joint bodies should open up their work for the public, including NGOs, so that the public and the joint bodies can work as partners in decision making and implementation.

Therefore, the joint bodies should have the opportunity to receive and consider information from the public. To this end, the secretariat of a joint body should play a crucial role in receiving and handling information and transmitting it to the plenary or an appropriate subsidiary organ of the joint body. In addition, the public should be given the opportunity to submit inquiries in writing to the joint body, in order to oversee the work of the joint body and to establish an open dialogue.

Joint bodies - or riparian States jointly - should develop a public communication strategy and establish a focal point for liaison with non-governmental entities regarding specific transboundary catchment areas. Such a communication strategy should include the access to information systems, allow to compare data from different riparian countries, and pay attention to multimedia use.

Riparian States should jointly provide for public participation in the preparation and implementation of decisions on the protection and use of their transboundary waters particularly on such issues as:

- (a) Development of harmonized policies, programmes and strategies covering the relevant catchment areas;
- (b) Measures to prevent, control and reduce transboundary impact, including water saving measures;
- (c) Ecological rehabilitation projects;
- (d) Water-quantity management;
- (e) Flood protection;
- (f) Policies to reduce inputs of nutrients and hazardous substances from industrial and municipal sources;
- (g) Policies to reduce inputs of nutrients and hazardous substances from non-point sources, including those in agriculture;

- (h) Emission standards for discharges from point sources into surface waters;
- (i) Developing water-quality objectives;
- (j) Environmental impact assessment and other means of assessment;
- (k) Specific measures to prevent the pollution of groundwaters;
- (l) Licensing of waste-water discharges, and monitoring and control of authorized discharges;
- (m) Contingency planning.

Riparian States and joint bodies should consider the role which the public should have in the process of monitoring compliance with obligations under international water agreements.

THE NATIONAL CONTEXT

In as far as Governments have not yet ratified, accepted, approved or acceded to the Aarhus Convention, the following is recommended:

Access to information

To provide for effective access to information, it is important that States guarantee the right to information through adequate legislation. States should ensure that public authorities make information available to the public. Thus, all information relevant to the protection and sustainable use of waters, and other environmental information, should be made available to the public, unless it falls within a finite list of exempt categories.

As far as national legislation contains restrictions on access to environmental information, such exemptions should be clearly defined and construed narrowly, taking into account the public interest served by the disclosure and taking into account whether the information relates to emissions into the environment.

It is important that States guarantee the right of any natural or legal person to request information on water management issues without having to show an interest, and on a non-discriminatory basis. A request for information on water management issues should not be refused.

The public should be actively informed on specific occasions, such as (threat of) flooding, water pollution due to accidents, water scarcity, groundwater depletion, if there is a danger to human health and safety.

Environmental impact assessment is an important tool to be considered in the management of catchment areas. Adequate procedures for public information and public participation should be drawn up.

***Public participation in water management:
a challenge for Armenia***

There are no special laws or regulations on public participation in water management in the system of the Armenian legislation. However, in existing laws there are some provisions regarding public participation. These provisions include article 11 of the Fundamentals of Armenian Legislation on Nature Protection (1991) and articles 6, 8 and 10 of the Armenian law On Environmental Impact Expertise (1995). These articles acknowledge the right of the public to participate in decision making, but they do not contain implementation mechanisms.

Regretfully, there is not much public participation in hearings on activities to be carried out, though the law On Environmental Impact Expertise calls for it. A procedure, adopted by the Government, on how to conduct public hearings is still missing. This means that environmental decision-making is still performed without public participation.

Public participation is more important as catchment areas - especially the catchment area of Lake Sevan which is of national importance and attracts public attention - are in bad conditions.

When informing the public, use can be made of the media, including electronic forms of communication.

Public participation in decision-making

States should provide for effective public participation rights in their national legal systems.

Public participation in the preparation of plans, programmes and policies relating to water management at different levels of Government should be ensured through the national legal system.

The public should be informed about, and involved in, standard setting (e.g. minimum quality standards for waste water, emission standards).

The procedures for the granting of permits (e.g. groundwater withdrawal, discharge of waste water) should provide for significant public information and public participation.

States should provide for public participation procedures concerning decisions on specific activities (e.g. the construction of a dam) on a non-discriminatory basis.

States should consult the public when preparing their national positions to negotiate international agreements of relevance to transboundary waters.

It is vital to inform the public about the procedures for public participation. Education and training programmes for officials involved in managing public participation procedures should be organized to promote public awareness, and to teach the members of the public how to use public participation procedures.

States should carry out capacity building measures to improve public participation for water management.

Sweden

In Sweden, several forms of cooperation between stakeholders in catchment areas have been tested. The most common form of formalized cooperation is the @water protection association@. At present, almost 60 associations exist. The main task of a water protection association is environmental monitoring, complementing the monitoring conducted by the authorities. Some associations have shown an interest in a more profound involvement in the management of the catchment area, but the lack of formalized procedures to involve these associations seems to hinder this development.

Today, major attention is given to the proposal for a EC Directive establishing a framework for Community action in the field of water policy. Its forthcoming adoption and entry into force will drastically affect the management of catchment areas and also the involvement of stakeholders. Several projects have been initiated to study the administrative implications of this directive.

In Sweden, much attention is now given to curbing pollution from diffuse sources, such as agriculture and forestry. The traditional way of tackling pollution through the authorities that regulate work in these sectors has not always proven to be the most efficient one - as regards both the costs as well as the ways and means of combatting pollution deriving from diffuse sources. Today there is an ever increasing interest in combining regulations from the authorities and promoting specific locally adapted measures. This opens up for, and encourages, new forms of cooperation between stakeholders and the participation of the public.

Sweden (continued)

One recently initiated project is project Örsbaken, involving stakeholders in 13 local communities, in the area of Nyköping, south of Stockholm. Project Örsbaken aims to mobilize both the public and the authorities in the environmental work. This broad cooperation is expected to give additional positive effects apart from a cleaner environment. The approach is to actively inform all stakeholders, not least the public. The idea behind the project is that all stakeholders are willing and interested in sharing the responsibility for their local environment. To succeed with this, there has to be an openness and willingness to share ideas and discuss different options. Free and open access to information as well as a broad participation in decision making processes are prerequisites.

The difficulties encountered so far may be summarized as follows: The administrative system is too complex and not adapted to the management of catchment areas; the present legislation is somehow contradictory; there are many stakeholders with conflicting interests; among the persons involved, there is a fear of change.

The project group furthermore concluded that society should seek new forms of cooperation in catchment areas. Promoting local initiatives is highly recommended to achieve quicker and more efficient results in the environment.

Access to justice

States should guarantee the right of the public, including NGOs, to seek judicial or administrative review, to challenge the acts and omissions of public authorities and private persons in water management and the protection of waters, and to invoke the right to compensation for damage caused by an unlawful act. Such legislation should include rules on liability in appropriate cases.

It is important to make the public aware of the possibilities to invoke their rights in court.

To minimize barriers to access to justice, the adoption of mechanisms on legal and financial assistance for citizens can be considered.

The capacity should be built to make the right of access to justice effective, including the training of judges and attorneys.

Effective public access to justice in the field covered by these draft guidelines will contribute to improved compliance with the relevant legislation. States should ensure effective access to justice in the field covered by these draft guidelines to improve compliance with the relevant legislation.

CHAPTER 2:

GENEVA STRATEGY AND FRAMEWORK FOR MONITORING COMPLIANCE WITH AGREEMENTS ON TRANSBOUNDARY WATERS: ELEMENTS OF A PROPOSED COMPLIANCE REVIEW PROCEDURE

Introduction

With a view to assisting riparian States bordering the same transboundary waters to make a significant contribution to compliance with the regimes that govern their transboundary waters, this document proposes a strategy and framework for compliance review. The elements set out below can be applied at the international, regional, transboundary and catchment area levels, in the context of bilateral or multilateral instruments. It will also help joint bodies to comply with their obligations under agreements on transboundary waters.

The terms used in this document are terms used in the UN/ECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Helsinki, March 1992) and its Protocol on Water and Health (London, June 1999) rather than in other agreements and arrangements covering transboundary watercourses and international lakes.

I. GENERAL CONSIDERATIONS AND APPROACHES

Compliance with international obligations

Implementation and compliance encompass those State activities aimed at achieving the goals and objectives of the treaty regime ^{9/}. Compliance is an integral component of implementation and refers to a State=s behaviour in terms of its conformity with treaty commitments. A compliance system is the set of treaty rules and procedures aimed at assessing, regulating, and ensuring compliance. It is normally used to identify the acts of

non-compliance, i.e. where a State does not meet its commitments, including its inability to give effect to substantive norms and standards; to fulfil procedural requirements; or to fulfill institutional obligations. This may be accomplished through the creation of a compliance review procedure.

Reasons for non-compliance

Compliance depends on a State's willingness and ability to meet specific treaty obligations. ^{10/} Thus a compliance system must anticipate the likely sources or motivations for Parties' non-compliance, and design responses that are likely to overcome resistant behaviour. ^{11/} Reasons for non-compliance may include ambiguity and indeterminacy in treaty language; limitations on the capacity of Parties to carry out their undertakings; and the temporal dimension of the social, economic, and political changes contemplated by regulatory treaties. ^{12/}

Monitoring compliance with international watercourse agreements is essential

Compliance with agreements on transboundary waters is essential to the sustained integrity of the agreed regime and to the peaceful management of transboundary waters in question. With more than 500 international agreements concluded between riparian States, monitoring compliance could ensure the successful future of these arrangements. An operational compliance review procedure would facilitate this process.

Need for compliance review procedures

Agreements on transboundary waters do not provide for compliance review procedures. Distinct from the practice of some recent global environmental agreements, ^{13/} most agreements on transboundary waters do not provide for the monitoring of compliance. The only recent global convention on transboundary waters, the 1997 UN Convention on the Law of the Non-Navigational Uses of International Watercourses (not yet entered into force), apart from compulsory fact-finding, ^{14/} does not require the monitoring of compliance. States are encouraged to develop compliance review procedures under regional framework agreements, ^{15/} such as the UN/ECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Helsinki, 1992). ^{16/} They shall develop such procedures under its supplemental 1999 Protocol on Water and Health. Recent regional agreements, directly, ^{17/} and indirectly, ^{18/} concerning transboundary waters also provide for the elaboration of compliance review procedures.

Non-legally binding mechanisms and the activities of joint bodies may enhance compliance review

Non-legally binding mechanisms may also contribute to ensuring compliance. Soft-law instruments, such as guidelines, voluntary measures, targets and action plans, may provide the basis and mechanisms for compliance review. ^{19/} Joint bodies play an important role in the compliance review process, i.e. through monitoring of action plans, and of the efforts of States to meet objectives, standards and targets.

II. COMPLIANCE STRATEGY

Basic principles

The proposed strategy and framework for compliance review are based on the following premises:

(a) The Parties agree to monitor compliance with their agreement(s) on transboundary waters through the establishment of a compliance review process. This commitment of States may be found in the agreement on transboundary waters, or in subsequent instruments or mechanisms, including, for example, a decision of the Meeting of the Parties or activities of joint bodies; ^{20/}

(b) The compliance review process should be based on mechanisms designed to enhance, improve and ensure compliance, rather than on compliance control and enforcement tools and traditional judicial mechanisms. To this end, the regime created should focus on positive measures and incentives aimed at facilitating compliance;

(c) The instrument embodying the compliance review procedure should be, ideally, legally binding. The obligations subject to compliance however, may arise out of non-legally binding instruments, for example, guidelines, voluntary measures, targets and objectives, and may relate to assessment of efforts undertaken, and not only of results achieved; ^{21/}

(d) The compliance review procedure is greatly enhanced by:

- The elaboration of clear primary rules, objectives or targets;
- The elaboration of compliance information systems;

- The involvement of an institutional mechanism;
- A response to problems with compliance that, in the first instance, is positive, forward-looking, non-confrontational and non-judicial and, is supplementary to, independent from, any settlement regime. 22/

Foundation for the strategy

Most agreements on transboundary waters, including the recently adopted 1997 UN Watercourses Convention, do not provide for compliance review. However, certain instruments, such as the 1999 Protocol on Water and Health to the 1992 UN/ECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes envisage the elaboration of a compliance review procedure. 23/ Clearly, a strategy for compliance review must be founded on a commitment to such a procedure agreed to by States.

First element of the strategy: Establishing a baseline and system for review

Effective development of the compliance strategy requires a baseline for review, i.e. clear obligations capable of being verified. 24/ An agreed baseline and method for verification, established in a transparent and participatory manner, should preferably be in place before the compliance review procedure is implemented. The compliance information system (i.e. monitoring, reporting, review, evaluation) should also be agreed to by the Parties. 25/

Second element of the strategy: Establishing the compliance review procedure

The compliance review procedure should be set forth in a comprehensive compliance review framework and may be implemented through formal or informal mechanisms. Some of its elements may be contained in the treaty regime, i.e. exchange of information, monitoring of standards or objectives, international support for national action, international cooperation, joint and coordinated international action, and so forth. However, these components alone are not sufficient to ensure an efficient compliance review mechanism.

Third element of the strategy: Institutional mechanism

The establishment of formal procedures for monitoring compliance should be regarded as a core element of any compliance review procedure. An institutional mechanism, possibly in the form of the compliance review committee, should be created to provide a forum for dealing with compliance review without the necessity to invoke the dispute settlement mechanisms. The review procedure could serve also to open avenues for positive support measures aimed at enabling compliance, such as technical advice and assistance, the elaboration of financial incentive schemes, and could provide a clearing-house for reporting and review of the Parties' performance under the treaty regime.

Where there is an existing agreement, it might be most effective for the Parties to have the Meeting of the Parties of that instrument establish an institutional mechanism to define the compliance review procedure applicable to the treaty regime. In particular the Meeting of the Parties should consider to: 26/

(a) Establish a Compliance Review Committee for the review of compliance by the Parties with their obligations under the relevant convention; 27/

(b) Establish a Technical Committee responsible for facilitating the compliance review procedure (i.e. through setting scientific standards; elaborating options for the best available technology (BAT), and so forth);

(c) Determine the structure and functions of the Compliance Review Committee, the Technical Committee, and the procedures for review of compliance;

(d) Urge the Parties to the Convention, to decide that the structure, functions and procedures set out in this compliance review procedure should apply for the review of compliance under related or other relevant instruments;

(e) Resolve that the Compliance Review Committee as well as the structure, functions and procedures set out in the within instrument, should be available for the review of compliance with future related agreements, in accordance with the terms of those instruments and of any decisions of the Parties thereto.

Enhancing the compliance review procedure

In addition to the above basic requirements, to enhance compliance, the Meeting of the Parties should consider:

(a) Meeting regularly, at least once annually, or, alternatively, delegating relevant powers to the Compliance Review Committee;

(b) Preparing an indicative list of possible situations that may be subject to the compliance review procedure; 28/

(c) Elaborating positive incentive programmes to enhance and enable the possibility of compliance, such as transfer of technology, capacity-building, and financial incentives;

(d) Facilitating the meaningful and relevant participation of the public (including NGOs) in the compliance review process;

(e) Utilizing developments in telecommunications and information technology to make a significant contribution to effective compliance review;

(f) Encouraging the Parties to seek, and facilitate compliance with, creative responses to achieving the goals of the treaty regimes, such as financial arrangements across international borders and jurisdictions to effectively assist with the reduction of pollution; 29/

(g) Developing compliance review responses which are non-confrontational and non-judicial, i.e. consultations, fact-finding, commissions of inquiry, mediation, conciliation procedures and so forth;

(h) Encouraging the Parties to consider innovative national, sub-regional and basin-wide measures that facilitate compliance, such as voluntary agreements, joint compliance review stewardships, innovative transnational arrangements (i.e State-industry agreements) and so forth. 30/

From strategy to framework

With a view to implementing the compliance review strategy set forth above, following is a proposed framework for compliance review that might be adopted by Parties to an agreement on transboundary waters. This framework could be adapted to any treaty regime on transboundary waters.

III. OPERATIONALIZING THE COMPLIANCE STRATEGY - A PROPOSED FRAMEWORK FOR A COMPLIANCE REVIEW PROCEDURE

Motivation for establishing the compliance review procedure

Depending on the strategy adopted, the instrument of origin establishing the compliance review procedure may take a variety of forms (i.e. Protocol, decision of the Meeting of the Parties, and so forth. The latter mechanism may have distinct advantages over the former, such as being easier to negotiate, requiring less time to conclude and make effective). In any event, in setting forth the motivation for that document the Parties should:

- (a) Refer to the goal of ensuring compliance with the relevant agreement on transboundary waters;
- (b) Emphasise the importance of maintaining the integrity of the regimes thereby created;
- (c) Emphasise the benefits of an established compliance review process in contributing to compliance with and maintaining the integrity of international regimes agreed to;
- (d) Recognise the process of compliance as a collective obligation of the Parties and note the importance of consensus-building, confidence-building and enhancing a climate of trust in the enhancement of this process;
- (e) Endorse the principle of public participation in the compliance review process;

(f) Refer to the relevant provisions of the relevant agreement on transboundary waters; 31/

(g) Refer to the relevance of the instrument establishing the committee to the compliance review of other agreements on transboundary waters.

Compliance review procedure: objectives

The objectives of the compliance review procedure should be to facilitate, encourage and ensure effective compliance with the agreement on transboundary waters in a manner that avoids complexity, confrontation, is transparent, 32/ and that leaves with the Meeting of the Parties the right to take decisions relating to the compliance verification and control.

Compliance information systems (reporting, review, evaluation)

The Parties should consider requiring reporting 33/ by the Parties to the Compliance Review Committee at regular intervals on the following range of issues:

(a) The legal, regulatory, or other measures taken by them to ensure compliance with the obligations under the treaty regime and of decisions and recommendations adopted thereunder, including in particular, measures taken to prevent and punish conduct in contravention of those provisions;

(b) The effectiveness of the measures referred to above;

(c) Problems encountered in complying with the relevant obligations.

Composition of the Compliance Review Committee

The Compliance Review Committee should:

(a) Consist of a limited number of Parties to the treaty regime. Only those Committee members Parties in good standing to the Convention in respect of which compliance procedures are undertaken may participate in those procedures. If as a result of the operation of this paragraph the size of the Committee is reduced to a number of

members below that considered acceptable, the Committee should refer the matter in question to the Meeting of the Parties;

(b) Be elected in staggered terms in order to provide continuity and regular change of personnel;

(c) Elect its own Chairman and Vice-Chairman;

(d) Unless otherwise decided, meet regularly. The secretariat should arrange for and service the Committee=s meetings.

Functions of the Compliance Review Committee

The Compliance Review Committee should:

(a) Review periodically compliance by the Parties with their reporting requirements;

(b) Consider any submission or referral made in accordance with this instrument with a view to securing a constructive solution;

(c) Be satisfied, before considering such a submission or referral, that the quality of data reported by a Party has been evaluated by a relevant technical body under the Meeting of the Parties or, where appropriate, by an expert nominated by the Meeting of the Parties; 34/

(d) Prepare, at the request of the Meeting of the Parties, and based on any relevant experience acquired in the performance of its functions regular reports on compliance with the specified obligations in the treaty regime. 35/

Parameters for compliance review

The Meeting of the Parties should consider establishing a list of situations subject for compliance review. 36/

Initiation of, access to, and transparency of the compliance review proceedings

A submission may be brought before the Compliance Review Committee by:

(a) One or more Parties to the Convention who may have reservations about another Party's compliance with its obligations under that instrument: Such a submission should be addressed in writing to the secretariat and supported by corroborating information. The secretariat should, within two weeks of receiving a submission, send a copy of it to the Party whose compliance is at issue. Any reply and information in support thereof should be submitted to the secretariat and to the Parties involved within three months or such longer period as the circumstances of a particular case may require. The secretariat should transmit the submission and the reply, as well as all corroborating and supporting information, to the Committee, which should consider the matter as soon as practicable;

(b) A Party that concludes that, despite its best endeavours, it is or will be unable to comply fully with its obligation under the Convention: Such a submission should be addressed in writing to the secretariat and explain, in particular, the specific circumstances that the Party considers to be the cause of its non-compliance. The secretariat should transmit the submission to the Committee, which should consider it as soon as practicable. 37/

(c) The secretariat, when it becomes aware of possible non-compliance by a Party with its obligations: In such event, it may request the Party concerned to furnish necessary information about the matter. If there is no response or the matter is not resolved within three months or such longer period as the circumstances of the matter may require, the secretariat should bring the matter to the attention of the Committee.

Communications by the public

In involving the public in the compliance review procedure, 38/ Parties should focus on:

(a) Whether it is appropriate for the Compliance Review Committee to consider communications from the public;

(b) The extent to which the public should participate in the Compliance

Review Committee;

(c) The extent to which the public should be involved in decision-making under the compliance review procedure;

(d) How the Apublic@ is to be identified for the purposes of (a) to (c) above, taking into account that according to the UN/ECE Water Convention and its Protocol on Water and Health, Athe public@ means any one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organisations and groups. 39/

Information gathering

To assist the performance of its functions, the Committee may:

(a) Request further information on matters under its consideration, through the secretariat;

(b) Undertake, at the invitation of the Party concerned, information gathering in the territory of the Party;

(c) Consider any information forwarded by the secretariat concerning compliance with the Convention.

Entitlement to participate

A Party in respect of which a submission or referral is made should be entitled to participate in the consideration by the Committee of that submission or referral, but should not take part in the preparation and adoption of any report or recommendations of the Committee.

Confidentiality

The Committee should ensure the confidentiality of any information that has been provided to it in confidence.

Committee report to the Meeting of the Parties

The Committee should report at least once a year on its activities to the Meeting of the Parties and make such recommendations as it considers appropriate, taking into account the circumstances of the matter, regarding compliance with the Convention.

Measure for compliance review

The Parties to the agreement meeting within the Meeting of the Parties, may, upon consideration of a report and any recommendations of the Committee, decide upon measures of a non-discriminatory nature to bring about full compliance with the instrument in question, including measures to assist a Party=s compliance. Any such decision should be taken by consensus.

Dispute settlement and compliance review procedure

Application of the compliance review procedure should be without prejudice to operation of the dispute settlement provisions contained in the relevant instruments. The Compliance Review Committee must be notified of any dispute settlement proceeding.

Notes:

1/ International Watercourses: Enhancing cooperation and managing conflicts. Proceedings of a 1998 World Bank Seminar. Edited by Salman M. A. Salman and Laurence Boisson de Chazournes. World Bank Technical Paper No. 414. The 1999 special edition of the UN/ECE Water Series (ECE/MP.WAT/3) contains the Russian translation of these proceedings.

2/ It is worthwhile mentioning that the terms environment and transboundary impact used in UN/ECE conventions have a broad meaning. According to the UN/ECE Water Convention and its Protocol on Water and Health, “transboundary impact” means any significant adverse effect on the environment resulting from a change in the conditions of transboundary waters caused by a human activity, the physical origin of which is situated wholly or in part within an area under the jurisdiction of a Party, within an area under the jurisdiction of another Party. Such effects on the environment include effects on human health and safety, flora, fauna, soil, air, water, climate, landscape and historical monuments or other physical structures or the interaction among these factors; they also include effects on the cultural heritage or socio-economic conditions resulting from alterations to those factors.

3/ It is important to note that one should not conclude that any compliance mechanism that did not expressly provide for public involvement was necessarily a failure, not should one conclude that public involvement is a sine qua non.

4/ The Helsinki Declaration as adopted by the Meeting of the Parties to the Convention on the Protection and Use of Transboundary Watercourses and International Lakes at Helsinki (Finland) on 4 July 1997. Report of the first meeting of the Parties. ECE/MP.WAT/2, annex I. United Nations. New York and Geneva. 1997.

5/ In this chapter, the terminology of the Protocol on Water and Health is used. Article 5 on principles and approaches states: “Water resources should, as far as possible, be managed in an integrated manner on the basis of catchment areas, with the aims of linking social and economic development to the protection of natural ecosystems, and of relating water resource management to regulatory measures relating to other environmental mediums. Such an integrated approach should apply across the whole of a catchment area, whether transboundary or not, including its associated coastal waters, the whole of a groundwater aquifer or the relevant parts of such a catchment area or groundwater aquifer.

6/ “The public” means one or more natural or legal persons, and, in accordance with national legislation or practice, their associations, organizations or groups (Aarhus Convention, art. 2 par. 4).

7/ Access to information and public participation is, for example, a topic of directives already drawn up and/or adopted by the European Union.

8/ “Joint body” means any bilateral or multilateral commission or other appropriate institutional arrangement for cooperation between the Riparian Parties (UN/ECE Water Convention, article 1, paragraph 5).

9/ Agenda 21 refers to “effective, full and prompt implementation” (Chapter 39, para. 8).

10/ [C]ompliance is a complex process involving both the intent and the capacity of States” ... “[and] the choice of strategies must be targeted to individual countries intent and capacity”. E. Brown Weiss: Strengthening National Compliance with International Environmental Agreements, *Environmental Policy and Law*, 27(1997), 297.

11/ J. Werksman, Designing Compliance System for the UN Framework Convention on Climate Change, in J. CAMERON ET AL, *IMPROVING COMPLIANCE WITH INTERNATIONAL ENVIRONMENTAL LAW* 92 (1996).

12/ A. Chayes and A.H. Chayes, *THE NEW SOVEREIGNTY: COMPLIANCE WITH INTERNATIONAL AGREEMENTS* 10 (1995). Werksman, supra note 4, suggests that a State may: 1) resist compliance with convention generally; 2) resist strengthening of conventions compliance response procedures; 3) resist taking advantage of such systems should they be put in place.

13/ See, generally, Study on Dispute Avoidance and Dispute Settlement in International Environmental Law and the Conclusions, UNEP/GC.20/INF/16[UNEP Study]; also, R. Wolfrum, Means of Ensuring Compliance with and Enforcement of International Environmental Law, Hague Academy Course (1998), J. Cameron, et al, *IMPROVING COMPLIANCE WITH INTERNATIONAL ENVIRONMENTAL LAW* (1996); D.G. Vitor et. al, *THE IMPLEMENTATION AND EFFECTIVENESS OF INTERNATIONAL ENVIRONMENTAL COMMITMENTS* (1998); Implementation, Compliance and Effectiveness, Plenary Session, ASIL Proceedings (1997) 50; L. Boisson de Charzournes, La mise en oeuvre du droit international dans le domaine de la protection de l’environnement: enjeux et defi, *Revue*

générale de droit international public (1995) 37.

14/ Convention on the Law of the Non-Navigational Uses of International Watercourses. United Nations. New York, May 1988. Article 33.

15/ Declaration by the Ministers of Environment of the region of the United Nations Economic Commission for Europe. Sofia, Bulgaria, 25 October 1995.

16/ Convention on the Protection and Use of Transboundary Watercourses and International Lakes. E/ECE/1267. United Nations Economic Commission for Europe. New York and Geneva. 1992. See Monitoring (Article 4), Research and Development (Article 5), Exchange of Information (Article 6), Bilateral and Multilateral Cooperation (Article 9), Consultations (Article 10), Joint Monitoring and Assessment (Article 11), Common Research and Development (Article 12), Exchange of Information (Article 13), Warning and Alarms Systems (Article 14), Mutual Assistance (Article 15), and Public Information (Article 16).

17/ Convention on the Protection of the Rhine (Rotterdam, 22 January 1998). The International Commission on the Protection of the Rhine (ICPR) is empowered to prepare international monitoring programmes, analyse the Rhine ecosystems, evaluate results, and cooperate with scientific institutions; See Articles 8, 10, 11, 14, 1998 Rhine Convention.

18/ Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters. ECE/CEP/43, 1998. United Nations Economic Commission for Europe. New York and Geneva. 1998.

19/ E. Rehbinder, Environmental Agreements - a New Instrument of Environmental Policy, 27 Environmental Policy and Law (1997) 258; P. Széll, Compliance Regimes for Multilateral Environmental Agreements - a Progress Report 27 Environmental Policy and Law (1997) 304.

20/ Relevant practice in the field of international environmental law includes the compliance review procedures adopted under the Montreal Protocol on Substances that Deplete the Ozone Layer, 26 ILM (1987), 1523; Kyoto Protocol to the Convention on Climate Change, 31 ILM (1998) 22; Basel Convention on the control of Transboundary Movements of Hazardous Wastes, 28 ILM (1989) 657; Convention on International Trade in Endangered Species (1973) 993 UNTS 243.

21/ The distinction here can be understood, for example, in the monitoring of a joint body with the efforts of States to meet water-quality targets.

22/ “Compliance procedures combine elements of three distinct processes: processes designed to clarify norms and standards employed by a treaty, processes designed to further the evolution of these norms and standards, and processes designed to resolve problems among Parties”, from UNEP Study, *supra* note 2, p. 29 [citing P.H. Sand].

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24/ The obligations contained in a framework agreement are rarely precise enough to provide a baseline for verification of compliance. Thus, elaboration of more clearly defined commitments may have to be undertaken by the Parties.

25/ Articles 4, 6, 9 and 17 of the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes and Articles 7 (5), 7 (6), 16 of the 1999 Protocol on Water and Health provide the basis for the elaboration of reporting and review provisions aimed at establishing a compliance review procedure.

26/ This follows the format adopted under the Convention on Long- Range Transboundary Air Pollution, concluded under the auspices of the UN/ECE. See Decision 1997/2 Concerning the Implementation Committee, its Structure and Functions and Procedures for Review of Compliance, Annex III to the Report of the Fifteenth Session of the Executive Body.

27/ This is the approach adopted in the 1998 Rhine Commission; see Articles 5-8.

28/ See *infra*, paragraph 3.5 and note the approach taken under the Montreal Protocol.

29/ See Article 1, Accord entre la République Française et la Confédération Suisse sur la déphosphatation des eaux du lac Léman (Berne 20 novembre 1980).

30/ Rehinder, *supra* note 12, refers to a range of innovative options, including “self-commitments” and other forms of self-regulation.

31/ For example, Articles 3, 4, 11, 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes; Articles 7 and 15, 1999 Protocol on Water and Health.

32/ The Sub-Group of the Basel Convention stated that their compliance regime “should be preventive and forward looking, timely, simple, flexible, consultative (i.e. non-confrontational, non-judicial, non-binding and cooperative), cost-effective and transparent. Its main functions should be: (1) facilitating and assessing Parties’ compliance with their obligations, (2) facilitating and assessing implementation of the Basel Convention, and (3) facilitating and assessing reporting under Article 13 of the Basel Convention”, UNEP Study, pp. 34-35.

33/ Reporting systems may pursue a variety of goals, from assessment of the implementation of and compliance with international commitments to highlighting whether already existing regulations are adequate to fulfill the objectives set forth by the agreement in question, “Two types of reporting systems can be distinguished: (1) systems that merely require States to communicate the information requested and (2) systems where the information provided is used as the basis for further discussion within the international body on the efficiency of the measures undertaken by the States to implement a certain legal instrument”. Ibid., p. 21 [footnote references omitted].

34/ “Under the Climate Change Convention an in-depth review process has been established to ensure that the Conference of the Parties receives accurate, consistent and relevant information from the Parties. The review process, which is subject to the consent of the Party concerned, is conducted by multilateral teams. It often results in greater clarity and transparency and in filling information gaps.” Ibid., p. 23 [footnote references omitted].

35/ The competence of the Implementation Committee under the Montreal Protocol regime includes the consideration of submissions, information and observation on possible breaches that are drawn to its attention with the aim to achieve an amicable solution.

36/ “[F]lexibility is not and should not be the hallmark of the assessment and evaluation phase in the non-compliance process ... G. Handl, “Compliance Control Mechanisms and International Environmental Obligations”, 5 *Tulane Journal of International and Comparative Law* 1997, 29 at 44-45.

37/ The Committee may recommend a range of options, such as consultations; certain measures to facilitate compliance; a data for achieving compliance, and so forth.

38/ The involvement of the public in the compliance process must be defined. In the case of the Montreal Protocol, “the absence of observers has promoted greater openness in both the submissions and the Committee’s deliberations”. UNEP Study, p. 32 [footnote references omitted].

39/ In the Convention on Access to Information, Public Participation in Decision-

making and Access to Justice in Environmental Matters, Art. 2 (4), “The Public” means “one or more natural or legal persons, and, in accordance with national legislation or practice, their associations, organizations or groups.” Article 2 (5) also provides a definition for “The Public concerned”.

Annex

LIST OF EXPERTS INVOLVED IN PROJECT PREPARATION AND DEVELOPMENT

Project leader

Mr. Willem KAKEBEEKE (Assistant Director General for International Environmental Cooperation, Ministry of Housing, Spatial Planning and Environment, The Hague, Netherlands)

Consultants

Ms. Nicolette BOUMAN (Centre for Research on River Basin Administration, Analysis and Management, Delft University of Technology, Delft, Netherlands, consultant on public participation in water management)

Mrs. Patricia WOUTERS (Director, Water Law and Policy Programme, University of Dundee, Dundee, Scotland, United Kingdom, consultant on compliance review procedures)

Invited experts

Mrs. Laurence BOISSON DE CHAZOURNES (Professor, Faculté de droit, Université de Genève, Geneva, Switzerland)

Mr. Konstantin R. GALABOV (Assistant Professor, Sofia, Bulgaria)

Mr. Nikolai GRISHINE (International Agency for Non-governmental Environmental Assessments AEcoterra®, Moscow, Russian Federation)

Mrs. Aida ISKOYAN (President, Environmental Public Advocacy Centre,
Yerevan, Armenia)

Mr. Jerzy JENDROSKA (former staff member of UN/ECE, now Professor of Law,
Institute of Law, Wroclaw, Poland)

Mr. Tapani KOHONEN (former Executive Secretary, Baltic Marine Environment Protection Commission (HELCOM), Helsinki, Finland)

Mrs. Irina KRASNOVA (Academy of State Administration, Moscow, Russian Federation)

Mr. Alistair McGlone (Legal Adviser, Department of the Environment, Transport and the Regions, London, United Kingdom)

Mrs. Nina MUNTHE (Project Manager, Central and Eastern Europe Cooperation Programme, Swedish Environmental Protection Agency, Stockholm, Sweden)

Mrs. Gulnara ROLL (Managing Director, Center for Transboundary Cooperation (NGO), Tartu, Estonia)

Mr. Vadim SOKOLOV (Deputy Director, Scientific-Information Centre of the Interstate Commission for Water Coordination in the Aral Sea Basin, Tashkent, Uzbekistan)

Mr. Stephen STEC (Regional Environmental Centre for Central and Eastern Europe (REC), Szentendre, Hungary)

Mr. Carel de VILLENEUVE (Ministry of Transport, Public Works and Water Management, The Hague, Netherlands)

Observer

Mr. Bastien AFFELTRANGER (Consultant for UNESCO, Division of Hydrology, Paris, France)

Staff of UN/ECE and UNEP/ROE secretariats

Mr. Mark BERMAN (Legal Officer, Former staff member of UNEP/ROE, Geneva, Switzerland)

Mr. Rainer ENDERLEIN (Secretary of the Meeting of the Parties, Convention on the Protection and Use of Transboundary Watercourses and International Lakes, UN/ECE, Geneva, Switzerland)

Ms. Sabine HOEFNAGEL (UNEP/ROE, Geneva, Switzerland)

Ms. Fairouz NICHANOVA (Regional expert for countries in transition, UN/ECE, Geneva, Switzerland)

Mr. Jeremy WATES (Secretary of the Meeting of Signatories, Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters; former coordinator of NGOs campaign on Public Participation, UN/ECE, Geneva, Switzerland)
