



CONVENTION ON THE PROTECTION AND USE OF TRANSBOUNDARY WATERCOURSES AND INTERNATIONAL LAKES

Working Group on Water Management (WGWM)

REPORT ON THE WORKSHOP ON PUBLIC PARTICIPATION IN WATER MANAGEMENT

The Hague, Netherlands, 18 September 2001

1. In conjunction with the third meeting of the Working Group on Water Management, the workshop on public participation in water management was held at the invitation of the Government of the Netherlands at the Atlantic Hotel in The Hague on 18 September 2001.
2. The workshop was attended by representatives of the following countries: Austria, Belgium, Croatia, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Switzerland, the former Yugoslav Republic of Macedonia, Turkey and Ukraine. Representatives of the NGO MAMA-86 also participated.
3. Mr. Carel de Villeneuve (Netherlands), Chairman of the Bureau of the Meeting of the Parties, made an opening statement, and co-chaired the workshop with Mr. Willem Kakebeeke (Netherlands).
4. The workshop programme is contained in annex I. Annex II contains a summary of main points of discussion held in the three discussion groups. Annex III contains a summary of conclusions and recommendations, prepared by the secretariat for consideration by the Working Group on Water Management at its closing session on 19 September 2001.

Decisions by the Working Group on Water Management

5. Based on the outcome of the workshop on public participation in water management that took place on 18 September 2001 at the invitation of the Government of the Netherlands, the Working Group:
 - a) Expressed its appreciation to the host country for the organization of the workshop and its readiness to function as lead Party for the drawing-up of a manual on public participation in water management taking into account: (i) relevant provisions of the 1998 Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) and the 1991 Convention on Environmental Impact Assessment in a Transboundary Context (EIA Convention); and (ii) the

documents on public participation in water management submitted to the Parties and considered at their second meeting (MP.WAT/2000/4, 6 and Add.1);

- b) Invited delegations to nominate their experts for the drawing up of these guidelines, and to communicate to the secretariat their names and addresses by end of December 2001;¹
- c) Tentatively scheduled the expert group meeting for mid-2002 with the aim to submit a preliminary draft version of the manual to the fourth meeting of the Working Group for consideration.

¹ In addition to the Netherlands as lead Party, the following delegations informed the secretariat about their readiness to participate: Belgium, France, Germany, Greece, Slovakia, the Regional Environmental Centre for Central and Eastern Europe (REC) and the NGOs: Peipsi Centre for Transboundary Cooperation and MAMA-86.

Annex I

WORKSHOP PROGRAMME

- 9.00 - 9.10** **Opening of the workshop**
Mr. Carel de Villeneuve
Netherlands
- 9.10 - 9.20** **Developments concerning public participation over
the last 10 years (since the 1992 Rio conference) in relation to the
international environment**
Mr. Willem Kakebeeke
International Environmental Adviser
Netherlands
- 9.20 - 9.30** **Public participation: Benefits, potential complications and
management**
Mr. Mostert,
Managing Director
Centre for Research on River Basin Administration, Analysis and
Management
Delft University of Technology
Netherlands
- 9.30 - 9.45** **The Convention on Access to Information, Public Participation in
Decision-making and Access to Justice in Environmental Matters
and its links to water management**
Mr. Jeremy Wates
UNECE
- 9.45 - 10.00** ***Plenary discussion***
- 10.00 - 10.30* *Coffee break*
- 10.30 – 12.00** **First parallel sessions of three discussion groups**
Each group will address the issues raised in paragraphs 23, 29 and 36 of
document MP.WAT/2000/6 (see appendix I). Three chairmen and
rapporteurs will facilitate the discussion in the groups.
- 12.00 – 12.30** **First plenary report by the chairmen/rapporteurs of the three
discussion groups**
- 12.30 – 14.00* *Lunch break*

14.00 – 14.40 Presentation of two case studies

(20 minutes for each presentation including discussion)

Experience of the NGO MAMA-86 with public participation in the national and transboundary contexts

Ms. Anna Tsvetkova

MAMA-86

Ukraine

The river basin approach in water management, public participation and transboundary cooperation

Mr. Dejan Panovski

Managing Director

Lake Ohrid Conservation Project

The former Yugoslav Republic of Macedonia

14.40 – 15.00 Coffee break

15.00 – 16.15 Second parallel sessions of three discussion groups

Each group will address the issues raised in paragraphs 19, 20, 45 and 48 of document MP.WAT/2000/6 (see appendix II). Three chairmen and rapporteurs will facilitate the discussion in the groups.

16.15 – 16.45 Second plenary report by the chairmen/rapporteurs of the three discussion groups

16.45 – 17.00 Conclusions of the workshop

17.00 Closure

Appendix I

**EXCERPTS FROM DOCUMENT MP.WAT/200/1 WITH THE PARAGRAPHS TO BE
ADDRESSED DURING THE FIRST MEETING OF THE DISCUSSION GROUPS**

It is recommended that the groups take up these paragraphs in a specific sequence, such as:

Group 1: 23, 29 and 36

Group 2: 29, 36 and 23

Group 3: 36, 23 and 29

“23. 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.”

“29. 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.”

“36. 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.”

Appendix II

**EXCERPTS FROM DOCUMENT MP.WAT/200/1 WITH THE PARAGRAPHS TO BE
ADDRESSED IN THE SECOND MEETING OF THE DISCUSSION GROUPS**

It is recommended that the groups take up these paragraphs in a specific sequence, such as:

*Group 1: 19+20 (together), 45 and 48 Group 2: 45, 48 and 19+20 (together)
Group 3: 48, 19+20 (together) and 45*

“19. 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.

20. 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.”

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

“48. 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.”

Annex II

OUTCOME OF THE DISCUSSION IN THE THREE GROUPS ON SELECTED PARAGRAPHS OF THE GUIDELINES

(Summary by the secretariat of the presentations by the discussion groups' chairpersons and rapporteurs)

General observations

The issues raised in the general debate could be best taken up while redrafting the introduction to the guidelines

Main points of discussion

- Public participation depends on the various topics highlighted in the guidelines, and one should therefore always mention, when drafting/revising text on these topics, what “the public” means.
- It is important to give information to the public in order to raise trust and to educate. It is not just data, but interpreted data. Different target groups need different interpretations of information. The format is very important. Therefore, a new paragraph should be added to the general recommendations' part of the guidelines, in which the above comments are mentioned. There was also a need to better reflect the importance of information on safe drinking water, since it is of vital importance for human health.
- There is a need to better reflect to whom or to which problem the guidance document (or its various paragraphs) applies: to water management in general, to transboundary impact or to both. It should also be very clear which paragraphs and sections apply to (sub)national governments, and which to joint bodies.
- The guidelines do not yet indicate which items are already binding, provided a country is a Party to the Aarhus Convention and which are “operationally” possible/reasonable in the field of water management.

Paragraph 19

The participants proposed some amendments to the existing text, which are set out below.

Main points of discussion

- In the first sentence of paragraph 19, the phrase “riparian states and joint bodies” should be changed into “riparian states or joint bodies”, since some items may only be relevant for riparian states (e.g. providing access to information on individual discharges).
- Sub-paragraph 19 (c) should read “water-related ecological restoration projects.”

- Sub-paragraph 19 (g) should be changed into for instance “water effluent data.”

Paragraph 20

The wording of paragraph 20 (c), which is related to access to draft treaties, protocols and rules for procedure, was questioned by almost all participants. Some participants referred to the existing practice within ECE, which follows these suggestions.

Main points of discussion

- Participants proposed to delete 20 (c) or to delete the reference to “Riparian States”, because joint bodies and Riparian States cannot co-exist in the same paragraph.
- Other participants questioned whether there should be a paragraph 20 at all as paragraph 19 may be sufficient.
- There were some doubts about the exact meaning of 20 (c), as the reference to comments from NGOs suggests that at least these NGOs already have access to these documents.
- The opinion was also expressed that documents related to international negotiations should always remain confidential. Hence, paragraph 20 (c) should be deleted and sub-paragraphs 20 (a - b) could be moved to paragraph 19.
- Other participants explained that it may be necessary to keep documents confidential in some cases, e.g. in the case of bad relations across the border, but not in other cases. Hence, sub-paragraph (c) should be kept in paragraph 20.
- Reference was also made to the already existing practice within the UNECE to involve NGOs in international negotiations. Keeping these documents confidential would mean moving back the clock tens of years.

Paragraph 23

The discussions revealed two issues of concern: (a) some participants had difficulties with the phrase ‘at all levels’, whereas others were of the opinion that it should be kept, but supported with examples from existing practice; and (b) the way a reference was made to public participation in EIA procedures was too demanding, and the phrase “include” should be replaced by “take into account”.

Main points of discussion

- Alternative 1: Paragraph 23 should read: “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

take into account public participation in environmental impact assessment procedures in a transboundary context following the principles and approaches of the EIA Convention.”

- Alternative 2: The public should be able to participate in decision-making at all levels, including the level of transboundary catchment areas. The main issues were how to facilitate this and how can the public be reached at the large scale of entire basins? The public may be easier to reach at the (sub)-national level, but how to ensure that comments received in riparian state A are also taken into account in riparian state B? If NGOs were to be involved at the international level, how should they be selected?
- As to alternative 2, five options were mentioned for involving the public at the transboundary basin scale:
 - ✓ Involvement when the mandates for the national delegations are formulated. This can be done either through participation in meetings where the mandates are decided upon, or through public hearings preceding such meetings
 - ✓ Membership of national delegations (The French delegation to the Meuse, Rhine and Scheldt commissions sometimes includes representatives of water user groups.)
 - ✓ Public hearings organised by a joint body
 - ✓ Observer status for NGOs in the meetings of the joint body (NGOs have observer status, for instance, in the International Commission for the Protection of the Rhine and the International Commission for the Protection of the Danube.)
 - ✓ Full member status of the joint body, including voting rights. (This is for instance the case in the Lake Ohrid joint body.)
- There is also a need to consider obligations regarding public participation arising from other legal instruments, including the EC Water Framework Directive and other EC-directives

Paragraph 29

Participants suggested a revision of the existing text, as the phrase “partners” is misleading.

Main points of discussion

- A clear distinction is necessary between decision-making and implementation.

- NGOs and joint bodies have different roles in decision-making – it is the joint body that makes the final decisions, except in those exceptional cases where the NGO is a member of the joint body. Therefore, paragraph 29 should be more flexible, like:

“Joint bodies should open up their work for the public, including NGOs, so that the public can participate in and contribute to the preparation of decisions and support their implementation”.

Paragraph 36

Most participants agreed with the current wording of this article, whereas others considered that paragraph 36, taken on its own, was too general. Some participants suggested that those who are requesting information on water management issues have to show an interest regardless the relevant provision of the Aarhus Convention.

Main points of discussion

- To handle requests could pose a very high burden on the administration. Requests should be reasonable or at least not completely unreasonable.²
- Access to information is most useful for the public in early phases, when projects and plans have not yet been finalised. However, “subjective information”, e.g. positions on proposals, do not necessarily have to become public. If each and every step in policy development is scrutinised, progress could be seriously hampered. However, government may still ask specifically for public input in the early phases as part of an “open planning process”.
- Privatisation becomes on issues to be taken into account: Private bodies now execute more and more tasks that were formerly executed by government bodies. This raises two questions: (a) should information that these private entities collect also be accessible to the public; and (b) how could this be arranged?
- Some participants felt the need for a revision of the text in the first and the second sentences of paragraph 36, where the phrase “in principle” should be added (“[...] without, in principle, having to show an interest”; “[...] should not be refused in principle.”)

² Some participants stated that persons requesting information should have to show an interest. Other participants were less afraid of unreasonable requests: First, paragraph 36 allows the authorities to ask for cost recovery for providing information. In this case, only people who are really interested will request information that is costly to provide. Moreover, paragraph 36 does not require that complete databases have to be handed over. Only “information” has to be provided, i.e. data that have already been processed or interpreted. Furthermore, government can take a pro-active approach and for instance publish reports on the Internet. This can significantly reduce requests for information. Finally, it may be useful to phone persons who make an unreasonable request. It may be the case that he or she does not know exactly what kind of information he needs or he or she may simply feel ignored by government.

Paragraph 45

Participants noted that the wording of this paragraph was too vague, and that the phrase “should” needs to be replaced by “are encouraged”.

Main points of discussion

- Participants agreed on a new wording of paragraph 45 as follows:

“States are encouraged to consult the public when preparing their national positions to negotiate international agreements of relevance to transboundary waters”.

Paragraph 48

The wording of paragraph 48 should be checked against the whole Aarhus Convention.

Main points of discussion

- There was general agreement on the right of the public, including NGOs, to have access to justice.
- One point of discussion was the issue of State liability versus civil liability. If the State allows or does not forbid an activity by a private party that causes damage, should the State be held responsible, the private party, or both? Opinions on this widely differed, and there was the understanding that this issue deserves more attention.³

³ This issue is also part of the discussion on the legally binding instrument on civil liability for damage to transboundary waters caused by industrial accidents, and further guidance could be expected from the negotiation meetings.

Annex III

SOME REFLECTIONS OF THE SECRETARIAT ON THE OUTCOME OF THE WORKSHOP

(Presented to the Working Group on 19 September 2001)

I. DOCUMENTS ON PUBLIC PARTICIPATION

A. Implementation guide for the Aarhus Convention

- Intends to provide information on what is meant by the various provisions of the Convention
- Intends to provide advice on how these provisions should be implemented
- The focus is NOT on transboundary issues

B. Guidance document on public participation in water management

- Made at a time when the Aarhus Convention was far from entering into force
- Prepared by a group of “independent” experts
- Intends to provide ideas on how water-management processes could be brought in line with the principles and approaches of the Aarhus Convention
- Addresses Governments and joint bodies in the UNECE region
- Intends to provide an input into discussions in other forums (e.g. UNEP) and countries in other regions
- Addresses three levels: UNECE/MOP, national/local, transboundary
- Careful phrasing of texts: “should”, “should consider”, “should promote”
- Disadvantage: some text passages are poorly understood if the texts of the Water and Aarhus Conventions are not read in parallel.
- Still controversy exists on the wording of text passages.

II. DECISION BY THE PARTIES TO THE WATER CONVENTION (programme element 2.1)

“Draw up policy guidelines on public participation in water management taking into account relevant provisions of the Aarhus Convention and the EIA Convention for consideration by the Parties at their third meeting in 2003.”

A. Issues for consideration

- Who belongs to the target group that should be addressed by the policy guidelines (UNECE Governments in general, Parties to the Water Convention, joint bodies, non-Parties, NGOs, other major groups, etc)?
- Should we negotiate the existing text paragraph-by-paragraph and add additional text passages (e.g. those already identified during the workshop)?
- Should we attempt to draw up a different kind of **policy guidance** document, such as **a manual on public participation**?
- What would be the **message** of such a manual?

B. What are the issues we should deal with?

- **Legal issues**
(e.g. does the Aarhus Convention supersede provisions of the Water Convention, do we have to amend the Water Convention, links to provisions of the EC Water Framework Directive, . . .)⁴
- **Coordination issues**
(e.g. work under both Conventions are carried out by different national ministries or different departments of one ministry)
- **Administrative issues**
(e.g. what are the implications for joint bodies with or without permanent secretariats)
- **Technical issues**
(e.g. data and information, provide tailor-made responses, . . .)

⁴ Currently, the ECE Committee on Environmental Policy (CEP) is examining the links between the Aarhus Convention and the other ECE environmental conventions. A consultancy report will be prepared for consideration at the next regular meeting of the CEP in early November 2002.

- **Financial issues**
(e.g. who covers the costs of translation if the information is available in a languages which is not understood by those who request the information, . . .)
- **How can we best involve the main partners for programme implementation**
(Lead country: Netherlands
Main partners: WGLA, WGWH, MOP-Aarhus Convention, UNEP, WHO/EURO, NGOs)⁵
- **What do we want to achieve?**
(Enable Parties and joint bodies, respectively, to comply as soon as possible and required with new developments arising from European instruments linked to public participation and to propose a set of possible action to be taken (e.g. plan of action for public participation in water management)

⁵ The CEP has also commissioned a study on best practice of public participation in international forums, which will also be considered at the CEP meeting in early November 2002.