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ECONOMIC COMMISSION FOR EUROPE

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

Second meeting,
The Hague, Netherlands, 23-25 March 2000
Item 5 (c) of the provisional agenda

**THE NEED FOR A STRATEGY AND FRAMEWORK FOR COMPLIANCE WITH AGREEMENTS ON
TRANSBOUNDARY WATERS AND GUIDELINES ON PUBLIC PARTICIPATION
IN WATER MANAGEMENT**

1. Based on a proposal by the delegation of the Netherlands, the Bureau agreed at its second meeting in January 1999 to include into the work plan under the Convention a joint UN/ECE-UNEP project on a strategy and framework for compliance and on draft guidelines on public participation in water management, with the Netherlands as lead country.
2. The Bureau also agreed that the outcome of the project would be submitted to the Parties to the Convention at their second meeting, the World Water Forum and the Governing Council of the United Nations Environment Programme (UNEP) for consideration and follow-up.

3. Work on the project has been carried out by a group of invited experts, who all acted in their personal capacity (see documents MP.WAT/2000/5 and 6). Mr. W. Kakebeeke (Netherlands) was project leader. Mrs. P. Wouters (consultant, Dundee University, United Kingdom) drafted the document on the strategy and framework for compliance (MP.WAT/2000/5 and Add.1). The draft guidelines on public participation in water management (MP.WAT/2000/6 and Add.1) were drawn up by Ms. N. Bouman (consultant, Delft University of Technology, Netherlands). Representatives of the UN/ECE and UNEP Regional Office for Europe (ROE) secretariats assisted in the drafting of both documents and rendered secretariat services.

4. The group of invited experts held two two-day meetings in Geneva, one on 10-11 May and the other on 6-7 September 1999. Additional meetings of the two secretariats, the project leader and the consultants also took place in Geneva.

5. At its second meeting on 15 September 1999, the Working Group on Water Management welcomed the initiative and the progress made in the joint UN/ECE-UNEP activity. It recommended that work on both issues should be continued, and requested the drafting group on priorities for 2000-2003, with the Netherlands as lead country, to insert draft programme elements on these issues in the new draft work plan for consideration by the Parties at their second meeting (MP.WAT/WG.1/1999/2, para. 21).

Draft decisions

6. In the light of this recommendation, the Meeting of the Parties may wish to:

(a) Welcome the general strategy and framework for compliance review procedures (MP.WAT/2000/5 and Add.1) and the draft guidelines for public participation in water management (MP.WAT/2000/6 and Add.1);

(b) Invite Governments in the European region participating in international river basin or lake agreements to consider applying the general strategy and framework for compliance review and the draft guidelines for public participation in water management to their respective agreements;

(c) Recommend the UNEP Governing Council when addressing the issues of compliance review and public participation in environmental decision-making to give consideration to the general strategy and framework for compliance review and the draft guidelines on public participation in water management and the need for further elaboration and global application, taking into account the needs and specificity of each region;

(d) Decide to include in the 2000-2003 work plan under the Convention two programme elements aimed at (i) preparing a draft compliance review procedure and (ii) finalizing the guidelines for public participation in water management (for further details, see draft decisions in documents MP.WAT/2000/5, 6 and 11);

(e) Request the Working Group on Legal and Administrative Aspects to finalize work on compliance review jointly with the Working Group on Water and Health and the Meeting of the Signatories to the Protocol on Water and Health;

(f) Request the Working Group on Water Management to finalize work on the guidelines on public participation;

(g) Invite UNEP, the World Health Organization Regional Office for Europe, the United Nations Educational, Scientific and Cultural Organization, the Bureau of the Meeting of the Signatories to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, the Bureau of the Meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context, and other relevant international governmental and non-governmental organizations to participate in the preparation of these guidelines;

(h) Commend the consultants and the other experts for their excellent work;

(i) Express its gratitude to the Government of the Netherlands for its financial assistance to support the joint UN/ECE-UNEP project.

Annex

**STRATEGY AND FRAMEWORK FOR COMPLIANCE WITH AGREEMENTS ON TRANSBOUNDARY WATERS
AND DRAFT GUIDELINES ON PUBLIC PARTICIPATION
IN WATER MANAGEMENT**

The rationale of the joint UN/ECE-UNEP project 1/

Introduction

1. 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. 2/ 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 40 per cent of the world population and 50 per cent of its land are either dependent on or stand to benefit from the waters available in these basins. 3/

2. 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 recent decades, when the needs and benefits of cooperating on the protection and sustainable use of transboundary waters have gained wide recognition among countries.

3. 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 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 ensure sustainable use of transboundary waters and to protect human health and safety.

4. 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.

5. 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.

6. 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 also became a concern of many developing countries. About one-third of the world's population already lives in countries with moderate to high water stress. The problems are the 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 other things, negotiations with neighbouring countries and the involvement of the people concerned in decision-making on water projects with local, national or transboundary implications.

I. COMPLIANCE WITH INTERNATIONAL AGREEMENTS ON WATER

7. At present, some 150 agreements on transboundary waters in the UN/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. 4/ In addition to the UN/ECE Water Convention, the 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 countries or more. Other existing agreements - concluded among two or three countries - are being revised to meet the objective of the UN/ECE Water Convention.

8. 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 failure to comply with the provisions of such instruments is rarely the result of deliberate policies, but rather the consequence of deficiencies in administrative, economic or technical infrastructure. In the light of these deficiencies, there is, moreover, 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 "positive measures" or mechanisms for strengthening compliance rather than relying on traditional compliance control-and-enforcement regimes.

9. 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 its overall objectives. For example, the "Provisions 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).

10. However, there is a perceived need for arrangements with respect to both the UN/ECE Water Convention and its Protocol on Water and Health that facilitate compliance more effectively (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.

11. 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 its article 9, paragraph 1, 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)

12. 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 "Review and assessment of progress" and article 8 on "Response systems", the Protocol sets specific goals for compliance in article 15 regarding "Review of compliance". This article calls, inter alia, on the Parties to establish multilateral arrangements of a non-confrontational, non-judicial and consultative nature for reviewing compliance. These arrangements, to be made by the Parties at their first meeting, shall also allow for appropriate public involvement.

13. Hence, as a first step, a strategy and framework is necessary for compliance with the UN/ECE Water Convention and its Protocol on Water and Health, on which, as a second step, the above "multilateral arrangements" can be based. Accordingly, ways and means of appropriately involving the public

could be considered 5/ 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. They 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 (ECE/MP.WAT/2, annex I).

II. PUBLIC PARTICIPATION

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

"Environmental 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."

15. 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.

16. 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 at 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 its preamble.

17. 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 "The 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".

18. To achieve its objectives and in pursuing the aims to achieve them, the Protocol on Water and Health takes the matter further by requiring Parties, to ensure public participation in decision-making (art. 6, para. 2). Under article 16, paragraph 3 (g), the Parties shall at their meetings "...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 "other international forums" is broader than the reference to the Aarhus Convention that was made in an earlier draft of the Protocol.

19. Another unique feature of the Protocol is the necessary provision for the involvement of NGOs. Article 16, paragraph 3 (f), requires the Parties to "... 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 the lead in the further development of elements of the programme of work, as was the case with this current project on compliance and public participation and other undertakings. The same holds true for work under the Protocol: international NGOs experienced in the field of water and health participated both in the task force that drafted the Protocol and in its negotiations.

20. The Aarhus Convention, in addition to the requirement for "Access to environmental information" (art. 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 (art. 7).

21. 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.

22. 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 as described in the annex to the draft guidelines (MP.WAT/2000/6/Add.1).

23. In addition, the development of guidelines is both important within the context of the UN/ECE Water Convention and in a 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 (art. 19, para. 3) and with 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 World Water Forum and Ministerial Conference on Water in the Netherlands in 2000, as well as to the global strategy for freshwater of UNEP.

Notes

1/ Prepared by the UN/ECE and UNEP/ROE secretariats pursuant to the decision by the Bureau of the Meeting of the Parties at its meeting in January 1999, and at the request of the group of invited experts at its meeting in September 1999.

2/ Recent communications by the task force on monitoring and assessment led by the Netherlands. See also document MP.WAT/2000/9 with the guidelines on monitoring and assessment of transboundary groundwaters.

3/ 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.

4/ 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."

5/ 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, nor should one conclude that public involvement is a sine qua non.