

**OPTIONS FOR FURTHER DEVELOPING PUBLIC
PARTICIPATION, INCLUDING OBSERVERSHIP AND
STAKEHOLDER PARTICIPATION, AT ICPDR**

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**New York University School of Law
Regional Environmental Center for Central and Eastern Europe
Resources for the Future**

Send comments to: Ernestine Meijer and Jane Stewart (New York University School of Law)



THE REGIONAL ENVIRONMENTAL CENTER
for Central and Eastern Europe



I. Introduction

In the context of the UNDP/GEF Danube Regional Project (Project Output 3.4)¹ the Consortium² has carried out a review of the ICPDR rules and procedures for public participation, including observership and stakeholder participation.³ The following activities were carried out: (1) examination of current arrangements at ICPDR for public participation, including observership and stakeholder participation; (2) interviews with ICPDR's current observers; (3) research and review of the rules and policies on public participation of other comparable international institutions; and (4) development of options for further developing public participation, including observership and stakeholder participation, at ICPDR. The following report presents the results of this undertaking.

The most prominent current public participation process within ICPDR is its long and well established observer process. Most of the eleven current observers to ICPDR have been observers for a period of about four years.⁴ ICPDR is exploring ways to enhance observership and create possibilities for other forms of public involvement in its decision making, planning and working processes. A major driver for this process of change is the EU Water Framework Directive (WFD), which imposes specific obligations for public participation, especially with regard to the development of a River Basin Management Plan (RBMP). ICPDR has not been assigned any direct legal obligations under this directive (the EU Member States have these responsibilities), but it has undertaken to pro-actively pursue public participation in order to support and enhance overall implementation of the WFD at the Danube River Basin level. In this regard, ICPDR has focused on enhancing its observership process generally, and more specifically, on establishing an appropriate stakeholder participation process that will enable it to achieve its WFD public participation goals.⁵

¹ "Enhancing Access to Information and Public Participation in Environmental Decision Making", (Project Output 3.4).

² The Consortium is comprised of the Regional Environmental Center for Central and Eastern Europe (REC), New York University (NYU), and Resources for the Future (RFF).

³ For purposes of this report, we have used the definition of 'public participation' adopted in ICPDR's Public Participation Strategy (p. 5): "Allowing the public to influence the outcome of plans and working processes. Used in this guidance as a container concept covering all forms of participation in decision-making". Thus, by 'public participation' we mean the participation of entities other than Member States in decision making, planning and working processes of an international organization. Depending on the rules and policies of the international institution in question, the entities involved can be individual members of the public, groups of such members of the public, non-governmental organizations (NGOs) and/or intergovernmental organizations (IGOs). Depending on the institution in question, participation of these entities can vary from active involvement in decision-making, consultation, the opportunity to provide information for decision making, the opportunity to attend meetings, to the right to be informed only. Some refer to this gradual increase in the intensity of participation as the "ladder" of participation. Activities where participation is allowed can be, for example, the formal decision making of an international institution, policy development, and/or meetings of the institution and/or its subsidiary bodies.

⁴ The 11 observers at ICPDR are: the Black Sea Protection Commission, Danube Commission for Inland Navigation, Danube Environmental Forum, Regional Environmental Center for Central and Eastern Europe, World Wide Fund for Nature, International Association for Danube Research, Ramsar Convention on Wetlands, International Working Association of Water Works in the Danube River Basin, Global Water Partnership, UNESCO International Hydrological Programme and Die Donau (the Danube Tourism Commission). See Annex I for a description of the ICPDR process for selecting observers and Annex VI sub A for the full relevant legal provisions.

⁵ See Stakeholder Analysis Workshop, p. 2; WFD Roof report 2004, pp. 179-182.

Accordingly, this report first addresses ICPDR's current observer process, and then examines stakeholder participation, more particularly in the context of the WFD. Finally, it presents for ICPDR's consideration, respectively, options for enhancing ICPDR's current observership process and for assuring effective stakeholder participation, more particularly in WFD implementation at the basin wide level.

The research undertaken for this paper includes an investigation of ICPDR's public participation provisions as well as those of three other international river basin commissions,⁶ three water related international institutions⁷ and four other relevant international institutions and regimes.⁸ These regimes cover a range of opportunities for public participation. Some have very stringently formulated participation opportunities (for example through observership) for a few precisely defined categories of entities (most often NGOs and sometimes other entities). At the other extreme are opportunities for a wide range of entities, often indicated with the broad term 'the public' (including but not limited to individuals, groups of individuals and NGOs).⁹ We have identified similarities and differences in approach among these regimes.¹⁰ In addition, questionnaires were sent to the 11 observers at ICPDR asking them about their experiences as ICPDR observers and about suggestions for modification of the observer process at ICPDR.¹¹ Nine of them have responded either by phone or by email. Based on their answers, the most important issues identified by the observers have been highlighted.¹²

II. Observership

In the ICPDR Ordinary Meeting of December 2004, the ICPDR Strategic Expert Group was charged with reviewing the ICPDR rules and regulations on observership and recommending changes that could 'further increase the involvement of the public.'¹³ This report should assist this procedure, and we have assessed the current ICPDR observership process and identified options for enhancing it, in light of this charge.

As detailed further below, we believe there is no need for major changes in ICPDR's official (i.e., written) rules for observers. On paper they compare favorably with those of other, comparable European international institutions, such as the Rhine, Meuse and OSPAR Commissions.¹⁴ However, we believe that the observer process could be

⁶ Commissions for the rivers Rhine, Meuse and Sava.

⁷ Great Lakes Commission, International Joint Commission, OSPAR Commission.

⁸ Border Environment Cooperation Commission, the North American Commission for Environmental Cooperation, the Aarhus Convention and the European Commission Proposal for a Regulation on the Application of the Provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to EC Institutions and Bodies.

⁹ See Annex II for a description of the public participation regimes of these institutions and Annex VI sub B to K for the full relevant legal provisions.

¹⁰ See Annex III for an analysis of the key features of public participation in the institutions investigated.

¹¹ See Annex V for questions posed in the Observer Questionnaire and answers of each of the nine observers who responded.

¹² See Annex IV for an overview of the key issues raised by observers.

¹³ Danube River Basin Stakeholder Conference (draft document 4 February 2005), p. 1.

¹⁴ See Annex III and Annex VI.

improved in a number of ways that would benefit both ICPDR and its observers. Many of the options for improvement that are suggested could be implemented without changing ICPDR's official rules for observers, because the current rules give ICPDR sufficient flexibility and scope to make the changes in practice that would be involved.¹⁵

From discussions with ICPDR Permanent Secretariat (PS) staff, review of relevant ICPDR documents, and communications with ICPDR's current observers, it appears that the main issues regarding observership are how to: (1) assure effective representation at the ICPDR level of the full range of stakeholder interests in Danube related issues and WFD implementation; and (2) more fully engage observers and make best use of their expertise and involvement. The first issue is discussed in Subsection A, below; the second issue is discussed in Subsection B, below. Options to address each of these issues (also presented in these subsections) are intended to be consistent with the staff and financial resource limitations of ICPDR, whose responsibilities include smooth and efficient running of ICPDR's Meetings and timely completion of other important work. However, implementation of certain of the options would require additional staff and/or financial commitments.

A. Improving the balance of stakeholder interests represented by observers

An area for potential improvement of the observer process, identified in ICPDR's Stakeholder analysis, is the opportunity to balance and expand representation of stakeholder interests at the basin wide level, through the observer process and/or other means of stakeholder involvement. ICPDR rules require that participation by way of observership should be well balanced, reflecting the various interests at play in the Danube River Basin.¹⁶

The WFD related Stakeholder Analysis initiated in 2003 identified 23 different categories of stakeholders at the roof level with an interest in Danube related issues.¹⁷ At ICPDR this analysis was considered 'surprising' because only half of those categories were represented through observers. The four major categories of stakeholders without ICPDR observer status have been identified as: agriculture, fisheries, energy production and transport.¹⁸ The Stakeholder Analysis preliminarily identified specific organizations for each of these 'missing' categories.¹⁹ The

¹⁵ It is important to note that the Consortium's review of the public participation rules and practices of other international institutions was based on written rules and other written materials available from those institutions, and did not include interviews with the personnel of those institutions. Thus, to the extent that actual practice in these institutions deviates from their written descriptions of and rules governing public participation, there may be more significant differences between ICPDR practice and that of other institutions than is reflected in our report.

¹⁶ See Annex VI, sub A.4.

¹⁷ 1: Agriculture, 2: Fisheries, 3: Forestry, 4: Recreation, 5: Flood Protection, 6: Transport, 7: Water Supply, 8: Waste Water, 9: Industry, 10: Energy, 11: Consumers, 12: Education and Research, 13: Professional Organizations, 14: European Level Governance, 15: Municipalities, 16: Communication + Media, 17: Religious Organizations, 18: NGO's, 19: International Agreements and Organizations, 20: Granting Institutions, 21: Lending Institutions, 22: Investors, 23: Political Parties. See Stakeholder Analysis Workshop, p. 6.

¹⁸ Danube River Basin Stakeholder Conference (draft document 4 February 2005), p. 1.

¹⁹ The specific organizations identified as potential representatives of the major unrepresented stakeholder interests are: Agriculture: ICID, Network of Organic Farming (International Federation of Organic Agriculture Movements); Fisheries: Sturgeon Association; Energy production: International

Stakeholder analysis notes that further work is needed to identify more stakeholder organizations. However, the nature of this further work is not specified and it is not clear at this moment to what extent the specific organizations identified in the Stakeholder analysis would be able to meet ICPDR's current criteria for observers and would be interested in becoming ICPDR observers.

- **Option 1:** Consider adding observers in key categories that are not currently represented by ICPDR observers

The Stakeholder Analysis results and the conclusion drawn from this in the draft for the Stakeholder Conference,²⁰ suggest that ICPDR should consider appointing one (or more) observer(s) in each of the 'missing' stakeholder categories, particularly in agriculture, fisheries, energy production and transport, in order to achieve the balanced representation aimed for under ICPDR's observer rules. However, the exact consequences of expanding the size of the ICPDR observer group would depend on how many observers were to be added and under what conditions.

Adding new observers could require ICPDR to add staff and financial resources to carry out its coordination role. In addition, having a larger observer body could make it more challenging to smoothly and efficiently run ICPDR meetings, particularly if ICPDR's current practice of, in principle, allowing all observers to participate in all meetings were to continue.

There are a number of ways of mitigating the potential financial and organizational impacts of expanding the size of the observer body. Options for mitigating these impacts could include:

- (1) initially adding relatively few (e.g., 1-4) new observers, with priority given to observers drawn from the four key missing categories identified in the Stakeholder analysis (i.e., agriculture, fisheries, energy, and transport);
- (2) establishing term limits for (some or all) observers (See Option 5);
- (3) admitting (some or all) observers to specified meetings, rather than to all ICPDR meetings (See Option 6);
- (4) creating 'specialized' or '*ad hoc*' categories of observers (See Option 7);
- (5) asking observer organizations that represent the same or similar interest(s) to (formally or informally) organize themselves in an alliance and to send one representative to some or all meetings; representation at ICPDR meetings could rotate among members of the alliance on an annual or biennial basis to ensure both fairness and continuity of representation;
- (6) continuing the current policy of not providing travel and capacity building funding for observers, or if necessary, establishing strict, 'need-based' criteria for such funding (See Option 12).

Alternatively, ICPDR could decide not to expand its observer body at this time, and instead to increase representation of currently unrepresented stakeholder interests

Dams Association, Balkan Interconnection; and Transport: Danube Convention, Association of Danube Port Authorities, TINA Office, Council of Europe Port Authorities. See Stakeholder Analysis Workshop, p. 7 and 8.

²⁰ "The outcome was surprising, since the 11 ICPDR observers are currently representing half of the listed categories. The main missing categories include: agriculture, fishery, energy production and transport", Danube River Basin Stakeholder Conference (draft document 4 February 2005), p. 1.

through the stakeholder participation mechanisms it is developing in parallel with the observer process (these are discussed below in section III). It is important to note, however, that observer status provides the opportunity for observers to potentially be directly involved in and influence ICPDR deliberations and working processes with regard to a wide range of issues. The stakeholder process currently under development by ICPDR would not enable stakeholders to participate in ICPDR meetings, would be limited to a smaller range of issues and would allow for a much less direct form of public involvement in ICPDR's deliberations and work. Thus, participation through the stakeholder mechanism is not a direct substitute for observer status. Consequently, if ICPDR were to choose to fill in the current gap in representation of stakeholder interests via a stakeholder mechanism rather than by adding to its observer body, we believe it would be advisable for ICPDR to significantly enhance the stakeholder participation mechanism. Options for doing this are provided in Section III, below.

- **Option 2:** Determine which of the stakeholder organizations identified in the Stakeholder Analysis meet the criteria for observership and are interested in becoming observers

A possible roadblock to adding observers to fill the 'missing' stakeholder categories is uncertainty whether there are organizations that can meet the observership criteria and would also be interested in serving as observers. In order to find out if the organizations identified by ICPDR in its Stakeholder Analysis could qualify as observers, ICPDR would have to examine whether they fulfill the criteria for observers, enumerated in Article 3 of the ICPDR rules on observers.²¹ If organizations

²¹ Detailed Guiding Criteria for granting Observer Status, Article 3:

“3.1 The general conditions under which candidates are admitted to get Observer Status to the ICPDR are the following:

- (a) the goals and basic principles of the DRPC acknowledged;
- (b) the existence of specialized technical or scientific competence or of other competences relating to the goals of the DRPC;
- (c) the existence of a structured permanent administration;
- (d) the mandate to speak as accredited representatives.

3.2 Supporting the effective implementation of the DRPC the observership to the ICPDR is intended to focus on particularly competent partners and to meet additional criteria in terms of efficiency:

- (a) partners within the Danube River Basin being strongly interested or even engaged in the Danube protection and water management; the latter, sharing the goals and even the implementation of the DRPC through their specific activities, are the most important partners to basin-wide coordination (as provided by the EU-Water Framework Directive);
- (b) partners outside the Danube River Basin being strongly interested and ready to stimulate and even support the development under the DRPC, in particular those being familiar with the tasks of large River Commissions;
- (c) preference for basin-oriented cooperation and coordination, which cannot be left to current activities other than observership; this applies to both, GOs and NGOs. Small River Commissions can be involved through the governmental delegations acting on both sides. Specific groups of potential partners can be represented by one relevant umbrella organization, to which observer status is granted;
- (d) an overall criterion serving the DRPC's implementation is to get well balanced participation both as to the provisions to be covered and to the interests represented;
- (e) these criteria, although having in mind the best effective support and input to the activities under the DRPC, do not mean any priority ranking or discrimination of

identified in the Stakeholder analysis cannot meet some or all of these criteria, ICPDR could:

- (1) proceed with ‘further research’²² to identify qualified stakeholder organizations, perhaps with help from members of ICPDR’s expert groups, current observers, or outside consultants;
- (2) determine whether and how ICPDR can assist one or more ‘partially qualified’ organization(s) to meet the criteria they are presently unable to meet, through capacity building assistance or other means;
- (3) determine whether to amend the current observer criteria to assure a broader and more balanced representation of stakeholder interests; and/or
- 4) find other ways of involving such stakeholders as observers, for example, by establishing different categories of observers (see Option7).

B. Enhancing Observer Participation

1. ICPDR’s and observers’ perspectives on observer involvement

ICPDR’s experience with the observer process to date suggests two potential areas for growth. The first is the level of observer participation in ICPDR meetings. Observers could play a more active role in raising, discussing, and contributing their expertise on key issues at ICPDR meetings. The second is the role observers could play in outreach to the larger public. It would be desirable for observers to play a more significant role in the outreach to, and representation of, the (national and regional) public with respect to key WFD issues at the ICPDR level. Increasing observers’ active participation in ICPDR meetings and their outreach to broader constituencies would benefit ICDPR by increasing the level of stakeholder input and expertise to ICPDR deliberations and decision making and giving ICPDR a means to inform and reach a larger segment of the interested public. More active involvement in meetings and a stronger public outreach role would also benefit observers by increasing their potential influence in ICPDR deliberations and decision making and giving them increased standing as representatives of not only their own organizations, but of broader interests and constituencies.

To elicit observers views of their experience as ICPDR observers and ways in which they believe it could be improved, NYU on behalf of the Consortium, developed an observer questionnaire which was provided to all current ICPDR observers.²³ Observers responded to the questionnaire either in writing or by telephone.²⁴

One of the concerns expressed by a number of the observers was that their participation in ICPDR meetings was significantly circumscribed. Most observers

potential partners. An **open-ended List of Candidates** for granting the Observer Status is given with the **Annex.**” (emphasis in original).

See Annex VI sub A.4.

²² See Stakeholder Analysis Workshop, p. 6.

²³ An overview of the most important issues highlighted by the observers is given in Annex IV. The questionnaire and the responses given to it are provided in detail in Annex V.

²⁴ To date, 9 of the 11 observers have responded to the observer questionnaire or participated in follow-up telephone interviews. The contact persons of the two observer organizations that have not responded have promised to fill in the questionnaire but have not done so yet.

indicated that they would like to participate more actively, especially in discussions during Ordinary Meetings, but that there seemed to be little room for this. Some even said they had the impression they were *expected* to play a passive role in meetings. One example given by several observers was that in Ordinary Meetings, observers are allotted a time slot to speak at the very end of the meeting, rather than being able to comment issue-by-issue in the course of the meeting. They felt that this practice undermined the timeliness and urgency of their interventions and generally diminished their ability to play a meaningful role in ICPDR deliberations. ICPDR and one observer noted that this practice has changed (at least with regard to Ordinary Meetings), and that at ICPDR Ordinary Meetings in 2003 and in 2004 observers *could* comment issue-by-issue.²⁵

However, observers' concerns about limitations on their participation appear to be more generalized, and to go beyond a single practice at ICPDR meetings. A number of observers made clear they would like their interaction with ICPDR to be more substantial, and expressed their willingness to fulfill a role more equal to the role of the Member States. Examples of participation opportunities desired by observers included the possibility of providing documents that might be useful for ICPDR meetings (without being explicitly asked by ICPDR to do so), participating in working groups for drafting ICPDR policy documents, and providing technical and other contributions based on their knowledge and experience.²⁶

Another theme that emerged from the observer questionnaire and interviews with observers was observers' uncertainty about a number of ICPDR's rules and procedures. For example, almost all the observers expressed that they are not clear about access to and confidentiality of ICPDR documents on the DANUBIS information system. As they explained it, one or two persons within each observer organization are given passwords to the system but ICPDR has not explained if these passwords can be used by others within an observer's organization or if the documents accessed by using the observer's password are confidential. The ICPDR observer rules do not address this issue. Observers are therefore uncertain whether only the person with the password is allowed to use the system and to access the documents available there. In a number of the observer organizations the password and/or the documents available with the password are in fact being shared by a limited number of other persons within the organization. Many observers indicated that they would like to be able to distribute documents they obtain from DANUBIS more widely within their organization.

In addition, most observers seemed unaware that ICPDR had changed its practice regarding observer comments during meetings (see above) or did not know to which ICPDR meetings the new practice would apply. There was also some confusion about whether observers were allowed to provide documents to ICPDR or its members on their own initiative, without first obtaining permission of the Secretariat.

²⁵ One observer expressed concern that despite this change, observers are still only allowed to provide their oral contributions at the end of the discussion of each agenda item. The observer believes that this practice diminishes the influence of observers by relegating their input to the point when decisions or action on an agenda item have already been taken.

²⁶ The ICPDR rules for observers do not explicitly preclude observers from engaging in these activities, but they do not explicitly allow for this either.

2. Implications of the differing perceptions and options for improving observer involvement

It is clear that while ICPDR desires more active participation by observers in its meetings, many observers feel their participation is constrained. Comparing ICPDR and observer perspectives, it appears that both share the same basic objective: to increase the level and quality of observers' participation so that it is more dynamic and more beneficial to both observers and ICPDR. However, there seems to be a communications gap regarding what is causing the present situation and thus, potentially, regarding what can or should be done to address it. Confusion among observers about the applicable rules and practices for observers further underscores the need to improve communication between observers and ICPDR.

The following section identifies a number of options for closing the communications gap and revitalizing the observer process, in response to the issues identified above. These options could be effective singly, or in combination. Most of these options can be implemented without changing ICPDR's current written rules and procedures for observers.²⁷ A number of them are used by other comparable international institutions. Most of the options presented could be implemented with only a modest commitment of new financial or staff resources; some do not require any appreciable commitment of new resources.

- **Option 3:** Promote dialogue to bridge the communications gap between ICPDR and observers and establish clear expectations

One option for addressing the communications gap between ICPDR and observers would be to organize one or more meetings of key ICPDR PS staff and observers to discuss how to improve the observer process. Since ICPDR and observers appear to share the same goal, the focus of the meeting could be to find out what each expects of the other in terms of specific actions to achieve this result. Such meetings could be scheduled immediately before or after an ICPDR Ordinary Meeting (or linked to the Stakeholder Conference scheduled for early summer 2005) to minimize travel costs to observers. Modest additional travel costs for observers might be required (e.g., overnight accommodation and per diem) if such a meeting were to involve an additional overnight stay. Meeting costs and staff time involved in preparing and conducting such a meeting should also be relatively modest; thus, we believe that this option should not involve commitment of significant new resources.

In combination with a face-to-face dialogue, ICPDR and its observers could put in writing what it is they expect from one another and commit to arriving at a common set of expectations. The Great Lakes Commission, for example, has drawn up such a list of expectations for its observers. These expectations include active participation in meetings of the Great Lakes Commission, ensuring that observers inform the larger public about issues at stake at the Commission (and vice versa), and requirements for how an observer organization is organized.²⁸ Having a clear set of expectations for observers would at the least put the too 'passive' observers on notice about the role

²⁷ To the extent that an option would require a change in the current rules or has not been tested at another comparable institution, ICDPR could consider trying it on a trial basis before deciding whether to formally adopt it.

²⁸ See Annex II sub B.1. and Annex VI sub E.3.

they are expected to play and should improve the participation of those observers who genuinely wish to play an active role but have been constrained by their misunderstanding of ICPDR's expectations. The list of expectations agreed by ICPDR and its observers could also be used as the basis for establishing a set of 'requirements' for observer participation, that could be incorporated formally into ICPDR's observer rules, used informally in practice under the existing rules, or used initially on a trial basis and later incorporated formally into ICPDR's rules. Meeting these requirements could be among the criteria for renewing an observer's term, if Option 5 (imposing a term limit on observership, described below) were also adopted.

- **Option 4:** Clarify areas of confusion about the observer rules and practices

Based on the answers to the observer questionnaire, it appears that there are several areas where clarification is needed regarding ICPDR's observer rules and practices: access to and confidentiality of documents on DANUBIS; rules of observer participation in ICPDR meetings; and rules regarding submission and distribution of observer-generated documents.

a. DANUBIS

As noted above, most observers do not understand what are the rules for using their password for the DANUBIS system including what (if any) the ICPDR confidentiality rules are with regard to documents obtained there. Passwords are provided to specific persons and not to the observer organization as a whole, even though it is the organization that is the observer, not this specific person. The implication of a password system is that documents accessed through that password are confidential. However, the documents in question are not marked as confidential and ICPDR has no provisions in its observer rules on confidentiality of documents.

It would be helpful if ICPDR could provide written clarification of its policy on password sharing, confidentiality of documents accessed on DANUBIS and sharing of such documents within observer organizations or with the wider public so that all current and future observers clearly understand the ground rules. Such clarification could take the form of an informal advisory, an official policy, or an amendment to ICPDR's observer rules.

ICPDR could also appropriately label DANUBIS documents on its website as 'confidential' or 'for restricted distribution only' to signal any confidentiality and dissemination restrictions to observers. The meaning of the designation should also be delineated along with the label so that users know specifically what they can and cannot do with such documents. The OSPAR regime, for example, marks documents 'RESTRICTED' to signify to observers that these are not for public dissemination. A footnote added to each restricted documents explains that: "The Commission has decided that documents marked as 'RESTRICTED' shall only be made available to Contracting Parties, observer states and, to the extent that they are involved, intergovernmental observers".²⁹ A different approach, and one in line with the Aarhus Convention, would be that ICPDR adopt the policy that all documents on DANUBIS

²⁹ OSPAR Commission Rules of Procedure, Article 58.

are non-confidential and for unrestricted distribution, unless expressly designated otherwise.³⁰

b. Observer interventions in meetings

A number of observers complained that they were generally expected to speak at a designated time at the end of the meeting, rather than allowed to intervene during the course of discussions on a given agenda item. It appears that ICPDR's change in practice to allow observer interventions *during* discussion of agenda items, which change took place about 1.5 years ago, went largely unnoticed by observers.³¹

It would be useful to clarify and critically assess ICPDR's policy and practice regarding interventions by observers in each category of ICPDR meetings (e.g, Ordinary Meeting, Standing Working Group Meetings and Expert Group Meetings), including the timing of interventions; whether permission to speak during discussion of an agenda item must be obtained (and from whom) in advance; and under what conditions there are time (or other) limits on such interventions. The current ICPDR observer rules do not provide details on these points, but simply state that observers are allowed:

“to participate in meetings organized in the framework of the Convention in which they are entitled to participate with the possibility to express their position and views and to have them reflected in the relevant documents”.³²

An assessment of the current policy and practice should determine whether the goal ‘to express their position and views and to have them reflected in the relevant documents’ is being met, and if not, what changes would more effectively further this goal.

There may be other issues on which observers need clarification of ICPDR's rules or practices, or indeed rules or practices that are creating obstacles to full and active observer participation. One objective of a meeting of ICPDR and observers (see Option 3 above), therefore, could be to determine whether there are other aspects of ICPDR's observer rules or practices that are unclear to, misunderstood by, or problematic for, observers. Following up on this, ICPDR could provide written or oral guidance to observers on the key practices or rules that are the subject of confusion and/or decide whether to reassess and/or revise some of its current rules or practices in response to observers' concerns. An advantage of written (versus oral) guidance is that it is less likely to be forgotten or misunderstood and can serve to inform both future and current observers, as well as all other participants in ICPDR meetings and activities (including, for example, Member State representatives). It would also be useful to involve observers in the process of establishing new or changing old observer practices; this would assure that any changes are clear, workable and are likely to ensure an actual increase in active participation by observers.

³⁰ See Annex VI sub J.3.

³¹ One observer contended that even with this change, observers were still expected to speak at the end of the discussion on a given agenda item, rather than at an earlier point in the discussion when observer input might make a difference to the decision or action taken with respect to that item.

³² Legal Status of the Signatory Parties, Participants with Consultative Status and Observers to the Danube River Protection Convention, Article 6.3. See Annex VI sub A.3.

- **Option 5:** Establish term limits for some or all observers

ICPDR could establish term limits for observership (with or without the explicit possibility for renewal of the observer's term at its end). At the expiration of such a term, ICPDR would have the possibility to renew or not to renew the term of an observer. Under the Meuse regime, for example, an organization acquires observer status for a period of four years. After these four years a decision is made whether to renew the observer status for another four years.³³ Expiry of the fixed term limit could also be the moment for ICPDR to discuss with the observer fulfillment of the expectations agreed by ICPDR and observers (see Option 3 above). If during the term of the observership the relationship has turned out to be unsatisfactory, ICPDR has the option to not renew the relationship with an observer. This would then open up a spot for another organization that is more able or willing to participate actively as an observer. A decision not to renew observer status after expiry of the term would preferably be based on an established and agreed set of criteria for observers and observer 'performance', to assure observers and other parties of the fairness and transparency of such a decision.

Another option is to build in some kind of review process to allow for corrections (during an observer's term, if a term limit is used). The Rhine, and OSPAR regimes provide that if an observer does not participate in meetings for two consecutive years, observer status may be withdrawn. The OSPAR regime also allows for another less stringent approach: if an observer is inactive for two years, the observership is not withdrawn entirely but becomes limited to only receiving documents.³⁴

A review process could also be used by ICPDR to evaluate whether observers fulfill the expectations agreed to with regard to their observership. A clear and established set of criteria would have to be used in order to assure fairness and transparency of the review. Moreover, the criteria would have to be relatively neutral and measurable, to avoid any charges that the criteria are applied to favor or disfavor particular organizations or otherwise in a less than neutral manner. The review process could be a mutual one, where not only ICPDR but also the observer, has a chance to evaluate the cooperation so far and to suggest changes and improvements for the future.

Imposing term limits on observers is allowed for under ICPDR's current observer rules and procedures, which provide:

“Having in view the interest of participation the Observer status may be granted by the International Commission for a limited or unlimited period of time (...).”³⁵

Thus, changing the term limits for observers would not require a change in the rules. However, it is important to note that ICPDR observers interviewed for this report all stated that they have been granted observer status for an unlimited period of time.

³³ See Annex III sub B.3. and Annex VI sub C.2. There are no specific criteria for renewal or non-renewal of this observer status.

³⁴ See Annex III sub B.3. and Annex VI sub B.2, and sub G.2. In the case of OSPAR, these rules only apply to NGO observers.

³⁵ Legal Status of the Signatory Parties, Participants with Consultative Status and Observers to the Danube River Protection Convention, Article 7.1. See Annex VI sub A.3.

Therefore they may feel that they have, in effect, acquired the ‘right’ to be observers for an unlimited period of time. Changing the length of the term of current observers could be a sensitive issue. However, if the change were to apply equally to all observers and would be well motivated and transparent, the sensitivity would likely be reduced.

Establishing term limits would require ICPDR PS staff periodically to review (for example, based on the list of expectations discussed under Option 3) the performance of observers and, to the extent that an observer’s term is up, to decide whether it should be renewed, or, if not, to allow other appropriate candidates take this place. This option should not involve commitment of significant out-of-pocket costs, but would involve some staff time.

- **Option 6:** Target observer participation to specific meetings or activities

Under the ICPDR rules, observership can come with the right to participate in *all* ICPDR meetings, or to participate in only a *limited* number of designated meetings:

“Having in view the interest of participation the Observer status may be granted by the International Commission (...) for all or only selected meetings and activities in the framework of the Convention.”³⁶

Most observers have answered in response to the questionnaire that they are allowed to participate in all meetings; however, a number of observers stated that, in practice, due to financial and capacity constraints, they have chosen to participate only in those meetings that are of direct interest to them. One observer believes that participation in Expert Groups is by invitation only and that this may be a *de facto* limiting factor to participation.³⁷

Nonetheless, ICPDR could play a more proactive role in assuring that observers contribute their expertise to those meetings that will most benefit from it. First ICPDR could evaluate whether each of its observers is currently paired with the meetings that make best use of their experience and expertise. This evaluation would ideally be conducted jointly with the observers. ICPDR could then determine where observer input would be most useful and work with observers to develop mutually agreed pairings that will best meet ICPDR’s and observers’ needs. Further, as discussed below, linking observership to participation in designated meetings could help ICPDR to expand the number of observers without ‘swamping’ meetings.

- **Option 7:** Create *ad hoc* or specialized observer categories

In combination with, or as an alternative to, establishing term limits on observership and/or targeting observer participation to specified meetings, ICPDR could establish new categories of observers, such as ‘*ad hoc*’ observers or ‘specialized’ observers, with limited terms, in addition to the current, *de facto* permanent observer category. The Sava Commission draft Rules of Procedure, for example, allow for granting ‘*ad*

³⁶ Legal Status of the Signatory Parties, Participants with Consultative Status and Observers to the Danube River Protection Convention, Article 7.1. See Annex VI sub A.3.

³⁷ See Annex V, REC’s answer to question 4.

hoc’ and ‘permanent’ observer status.³⁸ The OSPAR Commission can appoint general observers who attend all meetings, as well as appoint specialized observers, who can participate only with regard to specific subjects.³⁹

Similarly, ICPDR could, for example appoint *ad hoc* or specialized observers to serve on a particular Expert Group only, and/or for a limited term, consistent with their expertise and experience, and ICPDR’s evolving needs. This would give ICPDR the flexibility periodically to adjust the balance of interests represented by observers, and to add new observers and expand representation of currently unrepresented interests at ICPDR without making a long term commitment to a larger observer group at all of its meetings.

It seems that ICPDR’s observer rules, particularly Article 7.1 quoted above, are sufficiently flexible to allow for such a distinction and therefore might not need to be changed in order to implement this option.

- **Option 8:** Give observers opportunities for more meaningful participation in ICPDR meetings

A number of observers felt that they were not given meaningful opportunities to participate in ICPDR meetings and/or to play a real role in deliberations on issues and decision making. As indicated above, a key issue raised in this context was the ability to make timely oral interventions, but the deeper issue was observers’ desire to more meaningfully participate in ICPDR deliberations and decision making generally. It would help to communicate more clearly to observers the favorable change in practice on the timing of oral interventions, but ICPDR should also consider additional, broader options for observer involvement. These could include the following options:

- a. Make observer interventions during agenda items the standard practice at all ICPDR meetings unless there are compelling reasons to do otherwise in particular situations.

It is our understanding from the information provided to us that the ‘new’ policy of observers being allowed to provide oral contributions at each agenda item currently applies to observer interventions at ICPDR Ordinary Meetings, but we have not been informed of the fact that it also applies to other ICPDR meetings. In keeping with the goals of the Aarhus Convention, ICPDR could officially extend this practice with respect to all ICPDR meetings, including Ministerial Meetings. Under the Aarhus Convention, IGO and NGO observers are allowed to speak at meetings of subsidiary bodies, and also during a Meeting of the Parties, as long as they have obtained the Chairman’s permission.⁴⁰

Intervention by observers at each agenda item would benefit both ICPDR and observers, so long as observers’ interventions do not interfere with ICPDR’s ability to conduct an efficient meeting and conclude the business at hand. Observers would feel that their contributions are being heard and considered in time to have a meaningful impact on ICPDR deliberations and would therefore be more likely to participate

³⁸ See Annex VI sub D.3.

³⁹ See Annex VI sub G.2.

⁴⁰ See Annex VI sub J.3.

actively in meetings, while ICPDR would benefit of the focused use of the observer expertise.

In order to ensure that such interventions by observers do not interfere with the smooth running of meetings and with the need to get the main business of the meeting done in the time allotted, where necessary ICPDR could consider imposing time limits for observers' oral interventions (as it did in the last Ministerial Meeting in 2004), asking observers to flag agenda items of particular concern in advance of the relevant meeting; and/or requiring observers to obtain prior permission from the Chairman for interventions during discussion of an agenda item (as opposed to statements later on at the end of an agenda item or at the end of the meeting, which would not require permission).

b. Provide opportunities for observers to submit and distribute documents prepared at their own initiative

In their answers to the questionnaire, several observers noted what they believed to be the practice at ICPDR that documents to be discussed at ICPDR meetings should be sent in by observers only upon the request of ICPDR. This practice is probably based on the following provision:

“The Secretariat invites the admitted Observers (...) to perform any other exchange of experience and information in (...) written form via the Secretariat, in individual case.”⁴¹

The observers indicated that one way for them to have more substantial interaction with ICPDR and on a more equal level, would be to enable them to submit written materials that they consider relevant to matters before ICPDR, independent of whether they were asked by ICPDR to do so. ICPDR could allow such submissions, but make their distribution and/or discussion at meetings subject to the discretion of ICPDR and/or member state representatives participating in the meeting.

However, the ICPDR observer rules provide that observers can make ‘voluntary contributions.’⁴² The latter provision could be interpreted to include sending in reports without explicitly being asked to do so by ICPDR. The above cited provision (Article 4.5) does not appear to preclude such voluntary submissions by observers.

The Rhine and OSPAR Commissions' rules allow for voluntary submissions by observers, but use more explicit wording. However, they also explicitly do not guarantee unconditional distribution and discussion of documents submitted by observers. Article 14 of the Rhine Convention, for example, provides:

“Observers may submit to the Commission any information or reports relevant to the aims of the Convention.”⁴³,

and the Commission's Rules of Procedure and Financial Regulations add:

⁴¹ Detailed Guiding Criteria for Granting Observer Status, Article 4.5. See Annex VI sub A.4.

⁴² Legal Status of the Signatory Parties, Participants with Consultative Status and Observers to the Danube River Protection Convention, Article 6.4.. See Annex VI sub A.3.

⁴³ Convention on the Protection of the Rhine, Article 14, para 4. See Annex VI sub B.1.

“The NGOs may submit relevant documents and proposals to the Commission which are distributed at the Secretary General’s discretion and discussed at the discretion of the participants in the meeting.”⁴⁴

If ICPDR is hesitant to open up its processes to unrequested documents for fear of being flooded with large numbers of documents, adding a provision like the Rhine and OSPAR ones to its rules could enable ICPDR to manage this document flow.

- **Option 9:** Engage observers more fully and take greater advantage of their expertise by giving them opportunities to undertake specific tasks or responsibilities

ICPDR could stimulate and encourage more active participation of observers by assigning them specific tasks or responsibilities, geared towards or consistent with their special areas of expertise. These tasks could involve, for example: outreach to the larger communities that observers represent; research or canvassing of opinion on draft policies or topics of interest to ICPDR; participating in drafting of documents produced at the roof level (e.g. as part of a larger drafting group within an Expert Group); providing technical inputs; or other specific tasks that would be of value to the ICPDR Secretariat and/or the Expert Groups. This would give observers a greater level of investment in ICPDR’s mission and activities as well as greater input to ICPDR activities and decision making, while at the same time enable ICPDR to take better advantage of observers’ special areas of expertise and experience.

This approach has been adopted under other international regimes. In the context of the Aarhus Convention, for example, NGOs can be part of a drafting group for drafting legal and policy documents.⁴⁵ Under the OSPAR regime, an NGO observer can introduce its own proposal and have it considered and discussed at an OSPAR meeting, provided that the proposal is supported by at least one Contracting Party.⁴⁶

- **Option 10:** Provide opportunities for consultation of observers outside of regular ICPDR Meetings

ICPDR could consider adopting a rule similar to the Rhine and Meuse Commission’s provisions for consultations with NGO observers on issues in the field of interest of these organizations and for informing them of decisions taken in these fields. The Rhine Convention, for example, provides:

“The Commission shall in particular consult such organizations [NGO observers] before discussing decisions liable to have an important impact on them and shall inform them as soon as such decisions have been taken.”⁴⁷

These consultations and information provision are not directly related to Commission meetings and can also take place in between meetings.

⁴⁴ Rules of Procedure and Financial Regulations, Article 8.4. See Annex VI sub B.2.

⁴⁵ See Annex V, answer of REC to question 11.1.

⁴⁶ See Annex VI sub G.2.

⁴⁷ Convention on the Protection of the Rhine, Article 14 para 3. See Annex VI sub B.1. For the Meuse rules see Annex VI sub C.1.

This approach would enable ICPDR and observers to have a more continuous exchange of knowledge, experience and ideas on issues relevant to both ICPDR and observers and could promote more active involvement of observers. Such consultations could be held back-to-back with Ordinary Meetings thereby avoiding added travel expenses for such consultations. Holding observer consultations would involve some meeting costs and a modest increase of staff time both for meeting preparation and consultations themselves; however, this might well be a worthwhile investment that would be amply repaid by more effective observer involvement down the road.

Another form of consultation would be an electronic version of one used in the Aarhus Convention. Under that regime a representative of the environmental NGO observers can attend as an observer, meetings of the Aarhus Bureau at which preparations for Aarhus related meetings are being made.⁴⁸ The NGO observer provides input to the Bureau on how to involve observers in the meeting and/or plays a role in developing meeting materials and documentation. Similarly, ICPDR could, for example, provide an electronic opportunity for observers (or an observer representative) to comment by email on meeting agendas and/or play a role in developing materials for meetings. This would involve some additional staff time to review observer inputs, but would result in observers feeling a greater sense of investment in ICPDR's work and would energize their participation in ICPDR meetings.

- **Option 11:** Establish a clearly defined notice and comment procedure

According to observers, ICPDR sometimes sends out draft decisions or draft declarations to observers for comments; for example, the draft Declaration of the last Ordinary / Ministerial Meeting in December 2004 was sent to observers for their comments. One of the observers commented that those drafts that are sent around are often final drafts, which in practice means they are in a stage where no major changes can be suggested.⁴⁹ However, ICPDR does not have any official provisions on comments in its observer rules. The current practice is informal and *ad hoc*.

ICPDR could establish a more regularized policy and procedure allowing observers to provide comments on significant ICPDR documents, preferably early in the drafting process. This would give observers a more specific and active role in the ICPDR decision making process and provide an opportunity for ICPDR to really get the most out of the observers' knowledge. The BECC, CEC and Aarhus regimes all provide for notice and comment procedures.⁵⁰ The IJC public consultation letter is a good practical example of how public comments could be requested.⁵¹

The policy and procedure could be relatively simple and straightforward; it could identify the types of documents that would be subject to observer comment, establish a timeframe for the procedure, and indicate what ICPDR would do with the comments it receives.

⁴⁸ See Annex VI sub J.3.

⁴⁹ See Annex V, answer of REC to question 7.2.

⁵⁰ See Annex VI, sub H.1. and 3, sub I.4., and sub J.1. and 2.

⁵¹ See Annex VI sub F.6.

However, establishing a regularized notice and comment procedure would also require ICPDR to consider how it would receive, handle and review comments and whether it would respond to them, take them into account in decision making, and/or provide those observers that have sent in comments with an explanation of why their comments were not persuasive.

Depending on the level of formality, notice and comment procedures could involve significant additional staff time, especially if the notice and comment procedure applied to a large number of documents or proposed decisions. Staff resources could be minimized if a procedure for observer comments were only available for a relatively small number of major documents and/or decisions that are of substantial importance and are within the areas of major interest and expertise of observers. Additionally, in specific appropriate cases, ICPDR might request comments from certain observers only; for example, where a document is highly technical or only of sectoral interest, only observers in that sector or with relevant technical expertise might be asked to comment.

- **Option 12:** Provide financial and/or capacity building assistance to enable observers to more effectively participate

Although it appears most current observers are able to finance their travel to at least some ICPDR meetings, financial constraints are an issue for some of the current observers, and will likely be an issue for some subset of possible new observers from the ‘missing’ stakeholder categories, assuming ICPDR chooses to admit such new observers. Moreover, as discussed in Option 2, it may be necessary to provide capacity building assistance in order to enable organizations in the missing categories to meet ICPDR’s criteria for observership.

Of the other international institutions investigated, the Aarhus draft Guidelines for international forums and the CEC both provide ideas on how to shape such financial assistance. The Aarhus draft Guidelines suggest assistance for two types of activities:

- capacity building, emphasizing the importance of capacity building in developing countries, countries with economies in transition and for stakeholders who are new to international forums, and
- investment of resources to enable balanced participation of all members of the public concerned, including international secretariats and public interest organizations (especially those based in countries with economies in transition and developing countries).

The CEC regime provides that financial support, when offered to organizations, is limited to one participant per organization for the same meeting. The choice of particular participants should be driven by the aim of achieving broad equitable participation, selecting participants from different sectors and groups in each country, demonstrated expertise with the topics dealt with at a particular meeting and the ability of the participant to present specific, concrete and constructive proposals.⁵²

Providing such assistance will require new financial and staff resources. As reflected in the Standing Working Group Resolution of September 2004, which describes

⁵² See Annex III sub F, and Annex VI sub I.4 and sub J.2. It should be noted that the Aarhus draft guidelines for international forums are in a relatively early stage and may be subject to revisions.

options for more active involvement of stakeholders, ICPDR is aware of the need to provide such financial assistance and is making funds available to this end:

“3) Active participation of old and new observers in the ICPDR Meetings

A mechanism should be developed to enable also the active participation of financially weak organisations. An annual amount of 5000 € could be included in the ICPDR budget.”⁵³

III. Stakeholder participation

ICPDR, like most other European international water institutions at this moment, does not yet have an established practice for stakeholder participation. Thus, in the ICPDR Ordinary Meeting of December 2004, the River Basin Management Expert group was mandated to organize the Danube River Basin Stakeholder Conference as a first activity ‘to strengthen the input of all stakeholders in the discussions and decisions related to the work of ICPDR, and the implementation of the Water Framework Directive in particular.’⁵⁴ The Stakeholder Conference, which is designed as a process of consultation with (and ultimately active involvement of) stakeholder groups at the basin-wide level, is still in a relatively early stage. This section of the report first provides background on this Conference; it then considers options for expanding and enhancing stakeholder involvement at the roof level. A number of these options are drawn from experience in other international regimes.

A. The EU Water Framework Directive and ICPDR’s role

The WFD requires Member States to identify and assign individual river basin districts in their national territories and to set up administrative structures, a River Basin Management Plan (RBMP) and a Programme of Measures. For river basins such as the Danube River Basin, the Member States involved must ensure that an international river basin district is established,⁵⁵ assure that there is coordination of the requirements for achieving the WFD environmental objectives with respect to the whole river basin, and endeavor to produce one RBMP for the entire basin. In the case of the Danube River Basin District the ICPDR has been nominated as the coordination platform for all issues of basin-wide importance.⁵⁶

Article 14 of the WFD provides for public participation in WFD implementation, particularly with respect to development of the RBMPs, including the programme of measures. With regard to the involvement of the public in producing, reviewing and updating of RBMPs, article 14 of the WFD recognizes three different forms of public participation with an increasing level of involvement: information supply, consultation and active involvement; the first two are required and the last one

⁵³ Supporting document to Standing Working Group Resolutions of September 2004, “Active involvement of stakeholders in the work of the ICPDR”, 16 to 17 September 2004, Vienna – Austria, Annex III.

⁵⁴ Danube River Basin Stakeholder Conference (draft document 4 February 2005), p. 1.

⁵⁵ Article 3, para 3 WFD.

⁵⁶ Preamble paragraph 35, Article 13, para 3 WFD. The WFD allows Member States to use ‘existing structures stemming from international agreements’ to ensure international basin wide coordination.⁵⁶ ICPDR is such an existing structure. The reason given under the WFD for allowing Member States to use commissions such as ICPDR for implementation of certain aspects of the WFD is because these commissions have experience in coordinating and executing activities on a supranational, basin-wide level.

encouraged.⁵⁷ With respect to information supply, the WFD requires that the following documents are published: (1) a timetable and work programme for the production of the RBMP, including a statement of the consultation measures to be taken, (2) an interim overview of the significant water management issues identified in the river basin and (3) draft copies of the RBMP, and (4) that on request access is given to background documents and information used for the development of the draft RBMP.

With respect to consultation, Article 14 of the WFD provides for three phases of public comments in writing with respect to development of the RBMP. All three phases are to take place *before* the plan period of the RBMP actually begins:⁵⁸

“According to Article 14 consultation concerns the following requirements and timetable for consultation (with a repetitive cycle of 6 years for future river basin management plans):

December 2006 (at the latest)	Time table and work programme for the production of the plan, including a statement of the consultation measures to be taken;
July 2007	Comments in writing
December 2007 (at the latest)	Interim overview of the significant water management issues identified in the river basin;
July 2008	Comments in writing
December 2008 (at the latest)	Draft copies of the river basin management plan available;
July 2009	Comments in writing
December 2009	Start implementation of the plan.

Article 14 also states that active involvement of all interested parties in the implementation of the WFD is to be encouraged, in particular in the production, review and updating of the RBMP.

As indicated earlier in this report national governments rather than ICPDR are required to implement these provisions. However, with the agreement of the Contracting Parties, ICPDR has undertaken to provide for stakeholder involvement in this process at the basin wide ‘roof level’. ICPDR has also shepherded development and formal adoption of a Public Participation Strategy that is intended to guide stakeholder involvement in WFD implementation at the national, regional, sub-basin, and basin-wide (roof) levels.⁵⁹ In December 2003, a workshop was convened to begin

⁵⁷ According to the EC Horizontal Guidance document on implementation of the public participation provisions of the WFD (hereinafter, ‘WFD Guidance document’), the difference between consultation and active involvement is:

“Consultation aims at learning from comments, perceptions, experiences and ideas of stakeholders. Unlike active involvement, consultation is only possible after completion of draft plans and other documents, and during the preparation of these documents. Moreover, it is a less intensive form of public participation. Yet, whereas active involvement often is necessarily somewhat selective, consultation allows everybody who is interested to become involved in decision-making. It is a useful complement to active involvement and can function as a kind of check on active involvement, to see if all interests, points of views were represented.”

⁵⁸ WFD Guidance document, p. 36.

⁵⁹ In several documents, ICPDR has outlined its intended role in promoting stakeholder participation at the roof level and why this is needed:

- certain strategic issues regard the entire river basin and are therefore best handled by an organization like ICPDR, which covers the entire basin;

the process of stakeholder analysis at the roof level.⁶⁰ To implement the Public Participation Strategy at the roof level, ICPDR has devised an ICPDR Operational Plan. This Operational Plan is considered a ‘living document’ and is being adjusted and updated regularly to ensure successful implementation of WFD public participation requirements.⁶¹

In its meeting of September 2004, the ICPDR Standing Working Group recommended the implementation of the following activities for 2005: (1) the publication of the Roof Report 2004; (2) publication of a leaflet about the outcomes of the Roof Report 2004; (3) organization of Danube Day; and (4) further consultation, elaboration and development of activities in the Operational Plan for the years 2006-2009.⁶²

The Standing Working Group also called for further development by the River Basin Management Expert Group of a ‘suitable structure for public participation’ along the lines of a Stakeholder Conference (planned for 2005).⁶³

B. Development of a stakeholder participation mechanism at ICPDR

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- ICPDR can fulfill a coordinating role for the public participation activities in the entire river basin;
 - ICPDR can disseminate Danube related information to the national and sub-national levels of the Member States, while stakeholders involved at the ICPDR level can disseminate information to stakeholders on the national and sub-national levels;
 - ICPDR can fulfill a supporting role to the governments of the individual Member States with regard to public participation, providing guidance to national governments on how to comply with their WFD obligations (without duplicating on the national level what is being done at the international level).

These reasons are very similar to the reasons given in the WFD for why it is important to regulate water issues (and the public participation issues that come with them) on a river basin level; it assures an integrated instead of a fragmented approach.

⁶⁰ Stakeholder workshop, December 2003.

⁶¹ The Operational Plan referred to in this report is the Operational Plan that was approved by the Standing Working Group in September 2004, which, according to the ICPDR PS, is the most up to date version that has been formally adopted. This version of the Operational Plan is a working document and therefore continuously undergoing revisions; however, because these have not been approved, they are not reflected in our report. Other documents referred to in this report are those provided to the Consortium by the ICPDR PS, which indicated that these documents are the most current operative versions of these documents.

⁶² “The Standing Working Group:

- a. recommends the implementation of Stage II (activities in 2005) of the ICPDR Operational Plan as presented;”See Resolutions Standing Working Group, agenda item 10a sub a and its supporting document “ICPDR Operational Plan (2005)”.

See also ICPDR Operational Plan for Phase II (2005) as approved by the ICPDR Standing Working Group. Activities mentioned in earlier versions of the Operational Plan pertaining to the period 2006-2009, have not been officially endorsed by the Standing Working Group, and thus, according to ICPDR PS, are not planned for implementation at this time.

⁶³ “The Standing Working Group

(...)

- b. asks the RBM EG to further develop a suitable structure for public participation on the basis of the document “Active involvement of stakeholders in the work of the ICPDR” prepared by the Secretariat in particular focusing on Annex 3 of the paper.”

See Resolutions Standing Working Group, agenda item 10a sub b. Annex 3 of the supporting document, “Active involvement of stakeholders in the work of the ICPDR,” provides ideas for a public participation structure much like the Stakeholder Conference. The other option presented in this supporting document, for a Danube Water Forum, was rejected by the Standing Working Group.

As part of the WFD implementation process, ICPDR has been actively developing a stakeholder participation mechanism that will run parallel to the existing ICPDR observer process. At the most recent Ordinary Meeting (December 2004), the member countries decided to mandate the River Basin Management Expert Group to organize the 'Danube River Basin Stakeholder Conference', a mechanism that would allow for further involvement of stakeholder groups within ICPDR structures. It appears that the Stakeholder Conference is the main vehicle that ICPDR is currently contemplating for stakeholder consultation and/or active involvement at the roof level.

In the exercise referenced earlier under II, ICPDR convened a Stakeholder analysis workshop that identified 23 categories of stakeholders, and a selected number of specific organizations for each category,⁶⁴ that should be included in stakeholder involvement activities at the roof level. A number of the stakeholder categories identified in the stakeholder analysis are already represented as observers to ICPDR, however, as noted, a number of others, including agriculture, fisheries, energy production and transport, are not represented.⁶⁵

At this stage it is not clear, however, how ICPDR envisions the relationship between the observer body and the stakeholder participation mechanism and the extent to which inputs and outputs of each will be exchanged with the other, as well as be used by ICPDR and its members.

C. ICPDR's current ideas on the Stakeholder Conference

ICPDR envisions conducting a meeting of the Stakeholder Conference once every 2 to 3 years,⁶⁶ mainly to discuss RBMP-related issues. ICPDR is currently planning the first meeting, which will be held June-July 2005.⁶⁷ The basic plan for the first meeting has been sketched by the ICPDR PS as follows:

The target group of the first meeting of the Stakeholder Conference will be ICPDR's current observers, stakeholder groups and interested individuals, including representatives of 15 of the 23 stakeholder groups identified in the stakeholder analysis described above. In addition, ICPDR PS staff members, the entire Expert Group on River Basin Management and the chairpersons of the other Expert Groups will attend. A total of 100-120 people are estimated to participate.

The draft agenda includes the following goals:

- Provide an overview of the ICPDR (aims, structures, achievements) and current initiatives.
- Present and discuss the ICPDR Public Participation Concept, including the revised guidelines for observership
- Present and discuss the DRB Analysis Report according to Art. 5 of the WFD (Roof Report 2004) and the future steps of the ICPDR related to the realization of the development of the Programme of Measures under the WFD
- Present and ensure feedback and comment on the ICPDR Action Programme on Sustainable Flood Protection, discuss future steps.

⁶⁴ Summary of Stakeholder Analysis Workshop, p. 5.

⁶⁵ Danube River Basin Stakeholder Conference (draft document 4 February 2005), p. 1.

⁶⁶ Personal communication ICPDR PS staff member.

⁶⁷ Danube River Basin Stakeholder Conference (draft document 4 February 2005).

The Conference will consist of presentations, discussions between those present and work sessions where the participants discuss specific topics in smaller groups. All documents discussed during the Conference will be distributed beforehand and participants are invited to provide written comments.⁶⁸ It is unclear what will be done with the results of the conference, how these will influence or feed into ICPDR's work, and whether ICPDR will distribute to member countries and/or respond to the comments it receives from conference participants. However, since current observers will be participating in the stakeholder conference, presumably they could serve as one conduit for the conference results and comments to be transmitted back into ICPDR's meetings and deliberations.

D. Options for improving stakeholder involvement, including the ICPDR Stakeholder Conference

The following section presents options for improving stakeholder involvement in activities and issues at the ICPDR level, particularly in implementation of the WFD, through the Stakeholder Conference and other forms of consultation and/or active involvement, keeping in mind resource limitations.⁶⁹

- **Option 13:** Increase the frequency of Stakeholder Conference meetings

The ICPDR Stakeholder Conference, in the form it is envisioned now, is to take place every two to three years.⁷⁰ The WFD provision on public participation in the development of a RBMP contemplates more frequent consultation:

- Comments in writing on a timetable and work programme for the production of the RBMP and on a statement of the consultation measures to be taken (July 2007 for the first RBMP);
- Comments in writing on an interim overview of the significant water management issues identified in the river basin (July 2008 for the first RBMP);
- Comments in writing on the draft RBMP (July 2009 for the first RBMP).⁷¹

The frequency of these consultations is once a year. Although ICPDR is not formally bound to implement the WFD consultation requirements, allowing the Stakeholder Conference to meet more regularly would strengthen WFD implementation and enable ICPDR to build stronger relationships with basin-wide organizations that could play an important role in assuring the sustainability of this effort over the long-term. Moreover, this would be more consistent with the Public Participation Strategy adopted by ICPDR, which envisioned public "hearings" every one to two years.

The value of a continuous, ongoing dialogue with stakeholders is affirmed as a key lesson learned through a number of the public participation projects described in the

⁶⁸ Danube River Basin Stakeholder Conference (draft document 4 February 2005), p. 5.

⁶⁹ Information dissemination is addressed in another report to ICPDR by the Consortium and is not addressed in great detail in this report.

⁷⁰ Personal communication ICPDR PS.

⁷¹ See quotation above under III.A.

Annex to the EC Horizontal Guidance document.⁷² Sustained contacts are more likely than occasional meetings to build trust, increase the level and quality of stakeholder inputs to decision making, and result in long term involvement of key stakeholders in Danube protection and management at the basin-wide level. The Great Lakes Commission, the IJC, the BECC and the CEC all hold regular meetings where members of the public (individuals as well as organizations) can be informed and participate.⁷³

This option would require the commitment of new financial and staff resources, including meeting costs and staff time to prepare and conduct meetings. Some stakeholders might need financial assistance in order to travel to the meetings, and it might be necessary to provide capacity building assistance to groups that have never participated at the international level or otherwise lack relevant experience. Stakeholders involved in developing the Public Participation Strategy might team up with ICPDR to seek new resources to fund NGO participation in the Stakeholder Conference involvement. Since the Stakeholder Conference is in large part meant to implement public participation requirements of the EU WFD, a likely organization to approach with a request for funding would be the EU. Another organization could be UNDP (which is currently involved in Danube related activities through the Danube Regional Project).

As discussed above under Option 12, the Aarhus draft Guidelines for international forums and the CEC both provide ideas on how to shape financial assistance to stakeholders, suggesting types of activities where financial assistance is needed (Aarhus) and providing criteria to be used for deciding who qualifies for financial assistance (CEC).⁷⁴

- **Option 14:** Hold smaller meetings of stakeholders and/or meetings by conference call on important issues, between Stakeholder Conferences

An alternative to holding more frequent Stakeholder Conference meetings of the size anticipated for the first such meeting (i.e., up to 120 participants), might be to hold smaller in-person meetings of key stakeholders and/or to conduct some meetings on important issues by conference call in the period between Stakeholder Conference meetings, with all or a subset of stakeholders. In-person meetings could be quite small (20-30 persons at most), thus minimizing travel and meeting expenses; conference calls are quite cost-effective, and, if properly structured, can allow a significant number of people to participate.

Such in-between meetings (whether in-person or by phone) could focus on key topics on which ICPDR would like input from stakeholders in a particular sector or a small number of sectors, and that is not otherwise available through the observer process. For instance, if ICPDR were to decide not to appoint as observers organizations from important stakeholder groups that are not now represented among its observers, such as organizations in the field of agriculture, fisheries, energy production and transport,

⁷² See for example “7. The wise use of floodplains project in Somerset, England”, p. 122; “12. River basin management plans (...), France”, p. 137; “22. Participation, consultation and capacity building in WFD transposition processes; (...), Scotland”, p. 170.

⁷³ See Annex II, sub B.1, B.2, C.1 and C.2, and Annex VI sub E, F, H and I.

⁷⁴ See Annex III sub F, and Annex VI sub I.4 and sub J.2.

holding stakeholder meetings (whether in person or by conference call) with representatives of these ‘missing’ stakeholder categories on important WFD topics within their areas of expertise, or other topics having to do with ICPDR activities in general, could provide a cost effective supplement to ICPDR’s knowledge and at the same time balance the overall representation of interests participating in ICPDR discussions and decision making. This option would still involve new increments of staff time, but, especially if combined with the conference call option, would save on meeting costs, and could reduce the cost of providing travel assistance to groups that would otherwise be unable to afford to attend. Agendas and any relevant documents could be provided before calls, using fax and/or e-mail.

- **Option 15:** Include e-forums as another opportunity for stakeholders to provide written inputs

ICPDR envisions the Stakeholder Conference as a meeting for oral consultation of organizations that represent certain stakeholder groups. All documents discussed during the Conference are distributed on beforehand to those Stakeholders that have been invited and they can provide written comments to these documents. This combination of written comments with oral consultations is regarded positively under the WFD: the WFD considers written consultations to be a minimum and oral consultation a best practice.⁷⁵

As an alternative to more frequent meetings of the Stakeholder Conference, or as an adjunct to these and other forms of written stakeholder participation, ICPDR could initiate e-forums and provide other opportunities for stakeholder to provide their views electronically or by mail. Such written forms of consultation could be used to solicit stakeholders’ views on key issues during the development of the RBMPs and programme of measures in a more thorough and reflective way than oral consultations. The subjects of these written consultations could be targeted to a few central issues or aimed at sectoral stakeholder interests.

An example of such an e-forum (in an international institution that NYU has investigated in the context of another project) is the FAO Electronic Forum on Biotechnology in Food and Agriculture. This forum was established in March 2000 to provide information and create a platform for people to exchange views and experiences. Eleven e-mail conferences have been hosted by the forum so far. All those interested in participating can register for the forum and provide their ideas and comments on the subject of a specific conference. The conferences provide an opportunity of about a week to provide input. Before each conference a general overview is given of the subject and after the conference the input given as well as a synthesis of these inputs can be read on the forum website.⁷⁶

Another electronic option would be to have ‘in-time’ electronic consultations. These are similar to the e-forum described above, with the difference being that the participants confer with one another in a specific period of time, leading to an actual electronic dialogue.

⁷⁵ See WFD Guidance document, p. 37.

⁷⁶ See <http://www.fao.org/biotech/forum.asp>

This approach would require a commitment of staff resources. Staff would have to prepare an agenda and get documents out to people, would have to moderate and respond, much like in a ‘real’ meeting. However, there can be significant saving of travel costs and this may enable those organizations that have difficulties attending meetings due to financial constraints, to participate. The ‘paper trail’ that is created can be reviewed by other stakeholders who were not able to participate but have an interest in the subject matter, and/or the larger public.

- **Option 16:** Use electronic tools, particularly the internet, to provide key documents to stakeholders in support of the information provision requirements of the WFD and stakeholder participation in ICPDR deliberations generally

To promote stakeholder involvement in WFD implementation at the roof level, ICPDR could post on its website key documents involved in the RBMP process, including the draft RBMP and draft programme of measures, as well as key documents generated earlier in the process on which the RBMP and programme of measures are based; a calendar or timetable of participation opportunities in RBMP development activities could also be posted. ICPDR could also develop email group lists of stakeholders who are likely to be interested (e.g., including stakeholders who participated in Danube Day, the Stakeholder Conference(s) and other stakeholder participation activities), ‘piggybacking’ on the email networks of its observers and expert group members. It could email key WFD planning related documents to stakeholders on these lists to notify them of upcoming RBMP participation opportunities and encourage their participation. These measures would assure that a wide range of stakeholders has access to the information necessary to participate in development of the RBMP and programme of measures.

Moreover, on a more general level, to enable stakeholders who are not observers and/or the larger public to follow the issues that ICPDR and its Expert Groups are working on and to encourage involvement of stakeholders and/or the larger public in sustainable protection of the Danube, ICPDR could follow the procedure used by GEF and other international bodies: posting on a website of the documents that are scheduled to be discussed at ICPDR meetings (including Expert Group meetings), along with the meeting agendas. GEF’s website, for example, makes it easy to access the meeting documents by simply clicking on the relevant agenda item.

- **Option 17:** Extending stakeholder participation beyond identified stakeholder organizations.

Under the WFD, ‘consultation’ is meant to include consultation with anyone who is interested in taking part in decision making. Such participation is not limited only to identified stakeholder organizations nor to a select group of such identified stakeholders⁷⁷:

“**Consultation** Lowest level of public participation if we consider information supply as being the foundation. The government makes documents available for written comments, organizes

⁷⁷ For the first Stakeholder Conference, ICPDR plans on inviting representatives of 15 of the 23 identified stakeholder groups. See Danube River Basin Stakeholder Conference (draft document 4 February 2005), p. 2.

a public hearing or actively seeks the comments and opinions *of the public* through for instance surveys and interviews.”⁷⁸ (emphasis added)

This approach is also consistent with the requirements of the Aarhus Convention. The advantage of letting members of the public decide whether or not they consider themselves interested is that it may lead to the discovery of interests or interest groups that had not been identified before, therewith widening public involvement in, and building support for, WFD implementation and making it a better reflection of *all* the interests at stake. Involvement, and experience with involvement, of such a larger public may also prove useful in building support for ICPDR activities outside the WFD context.

For these reasons, ICPDR might consider including a larger public than identified stakeholder organizations in some or all of its stakeholder participation activities.

Such an approach has been proposed in the draft Sava Stakeholder Involvement Strategy.⁷⁹ This draft Strategy provides that stakeholder participation should not only involve already identified stakeholders but also those who consider themselves interested. By actively disseminating information to the broader public through the Stakeholder Conference mechanisms, more people can be informed and given the opportunity to consider whether they have an interest in participating.

Experience at the Great Lakes Commission shows that allowing everyone who considers himself interested to participate in meetings, does not necessarily lead to vast numbers of people participating.⁸⁰ Especially if cost for participation is to be borne by the participants (as is the case with the Great Lakes Commission), a high level of self-selection will take place, limiting the total number of interested participants. If ICPDR would nevertheless want to have some level of control over the number of people participating, it could use criteria such as the ones used by BECC, which makes participation in public meetings subject to availability of space, as well as security and safety requirements.

Adoption of this option could require significant new financial and staff resources. As suggested before under option 1, stakeholders involved in developing the Public Participation Strategy might team up with ICPDR to seek new resources to fund such wider participation. It could approach organizations such as the EU and UNDP and ask them to provide such funding.

- **Option 17:** To the extent necessary, identify organizations to represent stakeholder interests that are currently unrepresented or underrepresented.

As discussed in Section II, above, the ICPDR stakeholder analysis identified 23 different categories of stakeholders and a number of specific organizations in these categories. It however acknowledged that there would probably be more relevant organizations out there and that there was a need for more research to identify additional organizations for each category.⁸¹ If indeed the stakeholder analysis

⁷⁸ WFD Guidance document, p. 11.

⁷⁹ This document is being developed in the framework of a project executed by the Regional Environmental Center for Central and Eastern Europe. It is not an official Sava Commission document.

⁸⁰ See Annex II sub B.1.

⁸¹ See Summary Stakeholder Analysis workshop, p. 5.

requires substantially more work in order to identify relevant organizations and assure a balanced representation of stakeholder interests at the roof level, ICPDR could solicit the help of its current observers, members of its Expert Groups or engage outside consultants to help it complete this task. However, for further completing the list of specific stakeholder organizations that could be involved in the Stakeholder Conference, commitment of staff resources and (if a consultant were hired) financial resources would be entailed. The fact that such a list is potentially useful for a wide range of public participation activities may make the investment of resources worthwhile.

IV. Conclusion

This report has examined ICPDR's current observer process and its plans for establishing an instrument for stakeholder participation, more particularly in the context of the WFD. ICPDR could strengthen and invigorate its current observer process by improving the balance of interests represented and augmenting the role—and responsibilities—of its observers. Improving communication between ICPDR and observers is an important part of that process. ICPDR could also help assure implementation of the RBMP and Programme of Measures for the Danube and the long term sustainability of efforts conducted under the Danube Regional Program by involving the broader public in a robust stakeholder involvement process at the roof level. The stakeholder involvement process would be most effective if it were expanded to include a broad variety of public involvement tools, implemented on regular basis, including but not limited to the Stakeholder Conference that it currently being planned. A series of options to improve public participation through the observer and stakeholder participation mechanisms are presented for ICPDR's consideration in this report.