
ICWC TRAINING CENTRE SEMINAR
“INTERNATIONAL AND NATIONAL WATER LAW AND POLICY”
SEPTEMBER 24 – 29, 2001

**LEGAL ASPECTS OF WATER MANAGEMENT IN THE ARAL SEA BASIN:
A VIEW FROM OUTSIDE**

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INTRODUCTION

Too many cooks spoil the pot. This ancient idiom holds true also for international water resources management and the Aral Sea Basin is no exception. The many regional organizations and fora dealing with the management, allocation and use of the transboundary waters of the Basin could result in conflicting or non-implementable resolutions affecting the millions of inhabitants of Central Asia. Should the decisions relating to all aspects of transboundary water resources management not be taken by a single, regional, water organization ?

Two mighty rivers, the Syrdarya and the Amudarya flow through the plains of Central Asia and discharge into the remains of the Aral Sea. Until the collapse of the former Soviet Union they were internal waterways managed and controlled from Moscow. Once independence was declared the Syrdarya, the Amudarya, the Zerafshan, the Murghab and their tributaries became, overnight, international watercourse subject to the regime of international water law. The management of their waters as well as the care for the Aral Sea became the common responsibility of the new independent states of the Aral Sea Basin.

The Central Asian States swiftly responded to the challenge of self management and concluded in Almaty, on February 18, 1992 an agreement in which they constituted the Interstate Coordination Water Commission (ICWC) as the body responsible for the definition of water management policy and the annual agreement on water allocation and reservoir operation of the transboundary waters of the basin and agreed to maintain the established order of water allocation among them (the "1992 Agreement"). The 1992 Agreement did not specify exact quantities or allocation ratios among the states and these were, and continue to be, based on Soviet time allocation protocols. The ICWC, composed of deputy ministers responsible for water resources, became the organization responsible for transboundary water allocations in the region.

MULTITUDE OF ORGANIZATIONS

Over the following years the Central Asian Republics formed additional regional organizations some of which have responsibilities or deal in matters relating to water

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resources. These bodies include the Interstate Council of Kazakhstan, Kyrgyz tan, Uzbekistan and Turkmenistan (ICKKUT), the Commission on Sustainable Development (CSD), the Interstate Council for the Aral Sea Basin (ICAS) and its successor the Interstate Fund for the Aral Sea (IFAS). The sectoral composition of these organizations differs yet there is no single organization in which all sectors having an interest in the water resources are represented.

As a consequence some resolutions having effect on the transboundary water resources management are taken by fora in which only part of the relevant sectors are represented. At times such resolutions or agreements could not be implemented since the relevant sectors were not involved in the decision making process. Is the region best served by a multitude of organizations?

The cooperation in complex situations requires a solid regional structure which allows for a proper decision making process which considers the interests of all sectors involved. The mandate of the ICWC is a broad one and encompasses, according to Article 8 of the 1992 Agreement, it is the following:

...to elaborate and affirm water consumption limits annually for each republic of the region and the region as a whole, appropriate scheduling of water reservoirs operation, their correction according to updated forecasts depending on water supply and water-economic situation.

The reality is different. In fact the annual water consumption limits as well as the reservoir operations depend on annual agreements on the operation of the Toktogul reservoir among the Syrdarya riparians. The operation of the Toktogul is effected outside of the ICWC and according to a 1998 Agreement among the Syrdarya riparians, they are contemplating the formation of yet another organization for the regulation of the Syrdarya reservoirs. Moreover, ICWC and its BWOs have no control over the operation of the Toktogul reservoir which is effected by the Energy sector of the Kyrgyz Republic. The current situation is that members of the ICWC represent the interests of the water sector and are not empowered to consider the interests of the other sectors.

DRAFT INTERSTATE AGREEMENTS

As part of the Aral Sea Basin Program, the European Union TACIS project has been sponsoring, since 1996, the Water Resources Management and Agricultural Production in the Central Asian Republics Program ("WARMAP"). WARMAP which cooperates with IFAS and the ICWC. It has been asked to assist in the drafting of a series interstate agreements on various aspects of the joint management, use and planning of the transboundary water resources of the Aral Sea Basin. Regional and National Working Groups with assistance of the Legal Expert of WARMAP have prepared initial draft agreements on the organizational structure of the regional water resources organization, on the water use under the present conditions and on joint planning. In April 1997 three draft agreements were endorsed in principle by the ICWC and forwarded to the national governments for intersectoral review. An additional draft agreement on the exchange of information and the formation of a Regional Data Bank was prepared at a later stage.

In our opinion a solid water management regime is based on a strong regional organization, on clear rules relating to water allocations and water quality and on a series of

complementary steps such as exchange of information.

A SINGLE REGIONAL WATER ORGANIZATION

In order to progress in a cautious manner consideration was given to elaborate first and foremost the proposed restructuring of the regional organizations. We would argue that a single regional organization representing all of the water related, sectors and interests could resolve some of the problems mentioned above. The resolutions relating to the water resources ought to be taken by a single regional body which represents and takes into account the interests of all water users in the region and which has the power to adopt binding resolutions. A single organization will undoubtedly simplify the decision making process.

The single regional organization would serve as the regional water commission and could be the ICWC or termed the Aral Sea Basin Water Commission ("ASBWC" or the "Organization"). The ASBWC will be responsible for all aspects of water allocations of the transboundary water resources of the Aral Sea Basin among the riparians of the Syrdarya and the Amudarya. Initially its parties will be the five Central Asian Republics but its door will be open for the inclusion of Afghanistan as soon as the civil war in that country ends. The ASBWC will have to deal both with agricultural allocations as well as with water uses for energy generation. It will be responsible for improving the water quality of the river waters as well as for the rehabilitation of the biodiversity of the deltas of the rivers. The ASBWC will not infringe on the national sovereignty of its members but rather serve as a tool for the implementation of a regional water strategy and common strategic action plans. The Organization will deal only with water allocation at the regional level while leaving water allocations among national users to the discretion of their national governments. The ASBWC will also serve as the forum for the elaboration of additional agreements among its members relating to the management, use and planning of the transboundary water resources of the Aral Sea Basin.

The main advantage of the ASBWC will be that all aspects of water uses will be taken into consideration while agreeing on the annual allocation of the transboundary waters resources. Thus the ASBWC will not be limited to the consideration of agricultural water interests but will have to take into account as well hydropower energy needs, pollution control, public health issues, industry needs, tourism and other uses of the transboundary waters. The above is believed to be sanctioned by the original Article 8 of the 1992 Agreement. The ASBWC will also serve as the trustee for the two additional, non-voting, users of the transboundary waters, the Aral Sea and the Aral Sea deltas and will have to ensure that their interests are secured.

The ASBWC will operate through a number of organs, political and bureaucratic. Its supreme organ will be a council/commission of ministers responsible for the management of the water resources in their countries (the "Commission"). The Commission will meet at regular intervals and its members would be empowered to represent the interests of all sectors of the economy. In order to strengthen the Commission it has been proposed that the spring meeting of the Commission be chaired by the deputy prime-ministers of the Republics.

The implementation of the decisions of the Commission will be carried out by the BWOs of the Syrdarya and the Amudarya. The BWOs will be strengthened to become true regional bodies which are accountable only to the regional organs of the ASBWC and not to the

individual states. This requires regional financing of the BWOs and the maintenance of the transboundary river structures as well as the formal recognition of the international character of the BWOs by the member states. In order to emphasize the regional character of the BWOs it has been suggested to introduce a rotation system for the senior management of the BWOs and to appoint an overseeing council for each of the BWOs. Each overseeing council would be composed of one water official from each of the riparian state on the river with the fifth member of the ASBWC appointing one member as an observer for its proceedings. The appointment of the overseeing council would on the one hand enable the close monitoring of the activities of the BVO by representatives of each of the riparian states and allow the Director of the BVO to withstand national pressures by relying on his overseeing council as a forum where such pressures could be resolved amicably among the riparians. The overseeing councils will also signify the complex character of the water resources management with a Basin wide regional organization and river based implementing bodies.

The ASBWC would be have a permanent Secretariat with responsibility for the preparation of the meetings of the Commission and the follow up on the implementation of its decisions. In addition the ASBWC would have a Scientific Information Centre the Director of which will serve as the scientific advisor to the Commission. The SIC will manage a Regional Data Bank and conduct scientific research work as mandated by the Commission. The Secretariat and the SIC will also be accorded international status to enable their operation as a true regional organization.

ADDITIONAL STEPS

The formation of a single regional organization is but one step in the direction of transboundary water management. Other steps will include clear rules on allocation, pollution, water quality and biodiversity as well as the creation of an useful, reliable Regional Data Bank.