

31 January 2010
DRAFT
ORIGINAL: Russian

**Strengthening the Institutional and Legal Frameworks of
the International Fund for Saving the Aral Sea: Review and Proposals**

Discussion paper

The views and opinions expressed herein do not reflect the official position or views of UNECE, GTZ, EC IFAS or representatives of the member States in EC IFAS.

Contents

Introduction	3
Executive summary	4
Part I. Review of the international legal framework for regional cooperation in the management and use of transboundary water resources	6
1. Current situation	6
1.1. Regional instruments	6
1.2. Bilateral instruments	7
1.3. Analysis of key regional agreements	8
1.4. Legal framework of institutional mechanisms for regional cooperation	11
2. Overall assessment of international legal basis for the regional cooperation	13
Part II. Review of the institutional mechanisms of cooperation and key challenges for their functioning	14
1. Current situation: regional level	14
2. Current situation: national level	19
3. Overall assessment	20
Part III. Proposals to strengthen the institutional mechanisms and international legal framework for regional cooperation	21
1. Review of proposals	21
2. Two proposed approaches	23
A. Strengthening the current mechanism	23
B. Creating a new organization	29
3. Improving national coordination and cooperation	35
4. Improving coordination among international and donor organizations	36
5. Improving financing for maintenance and operational activities	36
6. Developing cooperation with the United Nations	37
Conclusion	37
Figures	39

Introduction

On 28 April 2009, the Presidents of Central Asian countries expressed their readiness to strengthen the institutional and legal frameworks of the International Fund for Saving the Aral Sea (IFAS) so as to improve its efficiency and achieve greater interaction with financial institutions and donors.

From August to December 2009, the institutional system and international legal framework for cooperation were reviewed as part the project “Regional Dialogue and Cooperation on Water Resources Management”¹, implemented by the IFAS Executive Committee and the United Nations Economic Commission for Europe (UNECE), supported by Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) GmbH. National experts, experts from regional organizations and international experts participated in the review.

At its first meeting on 10 and 11 December 2009, in Almaty, the Working Group on Strengthening Institutional and Legal Frameworks and the Development of Aral Sea Basin Programme – 3 discussed the present frameworks for regional cooperation, and preliminary proposals to improve efficiency.

The current document was prepared by international consultants of the project, based on the Joint Statement of the Heads of State, materials provided by experts, and proposals voiced during that first meeting.

In view of the often conflicting views expressed at the first meeting, this text is offered as an informal working document for further discussion, with full respect to the positions of countries and on the understanding that further work on strengthening the various frameworks, as mandated by the Presidents, shall be handled by representatives of Central Asian States.

Comments on the content of this document are welcome from representatives of States and regional organizations. An open dialogue about the issues it raises could be the next step in the implementation of the presidential request.

Please note that the document, as well as the entire “Regional Dialogue and Cooperation on Water Resources Management” project, deals exclusively with issues of strengthening the institutional framework for cooperation. It does not address the issues of water allocation and water use.

¹ <http://www.unece.org/env/water/cadialogue/cadwelcome.htm>

Executive summary

The current legal framework for regional cooperation on water resources management in Central Asia created a system of existing regional organizations and played an important role in the early years after independence. However, by now it has largely become outdated. As it consists of insufficiently linked legal instruments, it needs to be improved, harmonized and updated.

Key principles of integrated water resources management such as the “basin approach”, are not reflected in existing agreements, and the legal framework does not adequately govern the hierarchy and mechanisms for coordination and collaboration between existing organizations; does not clearly delineate their competence; does not pay enough attention to reporting procedures, decision-making and enforcement.

The present institutional mechanism consists of three organizations operating quite independently of each other: the Executive Committee of the International Fund for Saving the Aral Sea (IFAS); the Inter-State Commission for Water Coordination (ICWC) and the Inter-State Commission for Sustainable Development (ICSD). Each has its own system of bodies.

The functions and powers of the three levels of management (a) the Council of Heads of Central Asian States and the President of the Fund, (b) the Board and (c) the Executive Committee of IFAS today could be organized differently. And the activity of the latter requires additional resources needed to carry out effectively the decisions of higher bodies. The practice of regular rotation of the seat of the Executive Committee (recently also accepted by ICWC for its institutions) causes serious inefficiency. The funding system is not working well: it imposes an undue burden on the host State; it does not provide the necessary resources to employ a professional and efficient secretariat; it makes the activities at the regional level almost totally dependent on support from the international community. And since the energy sector does not form part of any of the existing organizations, the system cannot adequately ensure the integrated management of water resources.

Even though the 1999 Agreement included ICWC and ICSD in the structure of IFAS, the mechanisms for regional cooperation under IFAS require clarification. Having no representatives either from the energy or from the environmental sector, ICWC cannot coordinate the management of water resources effectively; in particular, the runoff pattern in the Amudarya and Syrdarya basins. The jurisdiction of its executive bodies, Amudarya Basin Water Organization and Syrdarya Basin Water Organization, covers only the middle and lower part of Amudarya and the middle part of Syrdarya. Although ICSD, whose scope of activities partially overlaps with that of ICWC, is formally a part of the IFAS structure, its activities are insufficiently coordinated with the regional organizations involved in water resources management.

The two approaches are discussed in this document: strengthening the existing mechanism for regional cooperation; or establishing, on the basis of existing structures, a new regional organization.

Strengthening the existing mechanism, in particular, implies:

- Clarifying and delineating the responsibilities of the central bodies of IFAS and the regional commissions under IFAS;
- Strengthening the coordinating role of the central authorities of IFAS i.e. the Board and the Executive Committee, and establishing procedures for reporting and for interaction between them and the regional commissions;
- Implementing integrated water resources management by involving the energy and environment sectors in the regional cooperation;
- Introducing a fairer geographical distribution of seats of regional bodies and their structural units, as well as international rotation of the leadership among the five member States;
- Improving coordination of relations with the donor community.

For the second approach, in addition to the above-mentioned ways of institutional strengthening, establishing a new regional organization would require introducing a basin approach to regional cooperation through setting up international river-basin commissions for the Amudarya and Syrdarya river basins.

The discussion paper also highlights the possibility of combining the two approaches, e.g. by setting up international river-basin commissions for the Amudarya and Syrdarya river basins in the framework of existing regional cooperation mechanism.

Both approaches would require the conclusion of a new institutional treaty to replace the many scattered and poorly coordinated rules. This would also contribute to the creation of a coherent three-level legal framework for regional cooperation:

Regional level

Involving participation of all Aral Sea Basin States, which shall lay down (a) the basic principles of cooperation, (b) general commitments and (c) common institutional arrangements.

Basin level

Involving participation of States sharing the basin of a multinational transboundary watercourse, which shall enunciate the special rules, procedures and institutional mechanisms.

Bilateral level

When necessary, under which specific mechanisms of cooperation shall be established concerning some individual streams of interest for the two States.

Part I.

Review of the international legal framework for regional cooperation in the management and use of transboundary water resources

1. Current situation

To date, the Central Asian region has formed and is using a fairly well established, although not perfect, legal framework for inter-State cooperation in the management and use of transboundary water resources. From a legal point of view, it includes both binding instruments and numerous semi-formal arrangements and documents that are merely recommendations, which are commonly referred to as “soft law” instruments. In terms of geographic coverage, the international regulation of transboundary water cooperation operates as a two-level system, where, along with regional agreements of a general nature, there are also a number of bilateral agreements on practical issues relating to specific watercourses or areas of interaction.

1.1. Regional instruments

The legal regulation of water cooperation in Central Asia is based on regional and subregional agreements; the main one being the 1992 five-Party *Agreement on cooperation in joint management, use and protection of water resources of inter-State sources* (all Central Asian States are Parties to the Agreement). Regional instruments include the 1993 *Agreement on joint action to address the problem of the Aral Sea and surrounding areas, environmental improvement and ensuring socio-economic development of Aral Sea region* and the 1998 intergovernmental *Agreement on the use of water and energy resources in Syrdarya basin* (to which four countries are Parties: Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan).

Since a number of its principles and substantive provisions directly relate to water resources, it is assumed that the 2006 *Framework Convention for the protection of the environment for sustainable development in Central Asia* will play an important role in the international legal regulation of activities related to the protection and use of water resources. At present, the Convention is signed by three countries: Kyrgyzstan, Tajikistan and Turkmenistan, and is not yet in force.

To a certain extent the specified group of regional (or rather sub-regional) instruments covering the water resource issues could also include the 1998 *Agreement on cooperation with respect to environmental protection and rational use of natural resources* (Kazakhstan, Kyrgyzstan and Uzbekistan) and the 1996 *Agreement on the use of fuel and energy and water resources, construction and operation of pipelines in the Central Asian region* (Kazakhstan, Kyrgyzstan and Uzbekistan).

Among the regional instruments, a special role is played by acts of an institutional nature, which together form a legal framework and define the legal status, position, competence and responsibilities of cooperation bodies of Central Asian States in managing and protecting the region’s water resources. Such acts include both the international treaties – firstly, the five-Party intergovernmental 1999 *Agreement on the status of the International Fund for Saving the Aral Sea (IFAS) and its organizations*, as well as other instruments that are not formal international agreements, but, nevertheless, are regarded as binding.

In terms of international legal practices, a rather unusual but nonetheless important role in the system of regional acts is given to the decisions of Heads of State on establishing or modifying the institutional mechanisms and cooperation bodies: Decision on “Founding the International Fund for Saving the Aral Sea” of January 4, 1993; and Decision on “Restructuring the International Fund for Saving the Aral Sea” of February 28, 1997. While not being an international agreement either in form or content, this decision has actually changed some provisions of the previous agreements.

The “institutional” acts also include a variety of “Regulations”. However, considerable uncertainty exists regarding their legal nature and status. And despite their apparent “affinity”, one will note the lack both of consistency and of a clear hierarchy and uniformity with respect to content and form. The main ones are as follows: Regulations of IFAS; Regulations of the Executive Committee of IFAS; Regulations of ICWC; Regulations of ICSD; Regulations of the standing body (secretariat) of ICWC; Regulations of the Secretariat of ICSD; Regulations of the Scientific and Informational Center (SIC) on water issues under ICWC; and Regulations on SIC ICWC branches in States of the Aral Sea Basin.

The third group of regional instruments, defining the general principles and directions of water cooperation in Central Asia, are the acts of recommendatory character, adopted from time to time, such as declarations and statements of the Heads of State of Central Asia. This category of so-called “soft law” instruments includes the following: *Nukus Declaration of Central Asian States and International Organizations on Sustainable Development of the Aral Sea Basin (1995)*; *Ashgabat Declaration (1999)*; *Tashkent Statement (2001)*; *Dushanbe Declaration (2002)*; *Joint Statement of the Heads of State - Founders of IFAS (2009)*.

Even though in terms of their legal nature these documents are not binding for the countries that adopted them, their importance for regional water policy is significant. As a rule, the documents were signed by the presidents of Central Asian countries and thus reflect the agreements reached at the highest political level. These declarations and statements often include provisions of policy and law, or indicate the principles by which the Central Asian countries should be guided in their relationships regarding water and energy issues (see, for example, para. 3 of the Tashkent Declaration (2001), on the importance of coordinated and concerted action with respect to the rational and mutually beneficial use of water bodies, water and energy resources and water facilities in Central Asia, based on the universally recognized principles and norms of international law).

The recommendations also include instruments of a lower level, e.g. the 1991 *Declaration on Management of Water Bodies of Central Asian Republics*. Although from the standpoint of the legal hierarchy the status of this Declaration is considerably lower than that of the statements and declarations of the Heads of State, the Declaration is important in practical terms.

Decisions of Heads of State, which are binding but do not have a normative nature, form a separate group of regional instruments. A special role belongs to decisions on long-term planning of regional water cooperation (e.g. the Decision “*On main directions of the Action Programme to improve the environmental and socio-economic situation in the Aral Sea Basin in 2003-2010*”), or on the operation of institutional mechanisms for cooperation (e.g. Decision “*On maintaining the institutional operations of the Executive Committee of IFAS*”). Decisions of regional cooperation bodies, i.e. the Board of IFAS, ICWC, etc., also belong to this group.

1.2. Bilateral instruments

Interaction on a bilateral level through the conclusion of agreements on specific water issues between States supplements the regional cooperation of Central Asian countries. At present, these bilateral agreements are few. They include the 1996 *Agreement between Uzbekistan and Turkmenistan on water management cooperation* and the 2000 *Agreement between the Republic of Kazakhstan and the Kyrgyz Republic on the use of inter-State water facilities of Chu and Talas Rivers*. Also in relation to bilateral cooperation, there is the *Agreement on joint use of fuel, energy and water resources in 2000 and 2001* (between Kyrgyzstan and Uzbekistan). This Agreement addresses water and energy exchange between the two States by defining the Kyrgyzstan reservoir releases regime in the interests of Uzbekistan in return for scheduled energy deliveries.

1.3. Analysis of key regional agreements

Agreement on cooperation in joint management, use and protection of water resources of inter-State sources (1992)

The five-Party Agreement of 1992 occupies a central place among of the intergovernmental agreements. This is the first and still remains the only fundamental instrument of a general nature that defines the principles of cooperation in the region regarding the use of “water resources of inter-State sources”. The fact that the adoption of the Agreement followed immediately after the collapse of the Soviet Union explains both its strengths and weaknesses.

On the one hand, the Agreement allowed, to an extent, to organize the relationships between the independent States of Central Asia in relation to transboundary water resources. On the other hand, the understandable haste with which the agreement was developed could not but affect its content and form.

The main purpose of the Agreement was to create a legal framework for regional water cooperation through joint management of water distribution. The Agreement outlined the main principles, which, in general, corresponded to international practice. These included: equality of rights to use and responsibility for the State for transboundary water resources; obligation to respect the agreed procedure and rules for the use and protection of transboundary water resources; obligation to avoid actions that would affect the interests of other Parties and would be able to harm them, etc.).

The most important role this Agreement has played was to establish institutional mechanisms for water cooperation in the region (ICWC and its bodies).

However, in the light of current international legal regulation, the Agreement in many ways appears archaic and does not correspond to modern requirements. Most of its provisions are declaratory in nature, as well as being quite haphazard and often overlapping. The Agreement is seen to have the following shortcomings:

- No clear definition of the objectives and area of spatial coverage;
- No mention of the universally recognized legal principles and conceptual frameworks of water management such as reasonable and equitable use of transboundary waters, the principle of prevention, the “polluter pays” principle, the ecosystem approach, the basin principle of management;
- No developed procedures for notification and consultations on planned activities, which may have a transboundary impact;
- No provisions for access to information concerning the status of water resources and the role of the public in decision-making regarding their use;
- No developed institutional mechanism for cooperation and procedures for the settlement of possible differences;
- No addressing of issues such as monitoring, natural disasters and emergencies, protection of aquatic ecosystems, or biological resources.

Although intended as a “framework” instrument, the Agreement does not provide for the possibility of adopting additional protocols, which is a common tool for the development of a legal regime established by a framework agreement. Development of protocols on specific issues of cooperation in water management could help in solving many problems encountered later and could fix the obvious flaws and gaps in the legal and institutional mechanisms for regional cooperation.

Several provisions of the Agreement are either not complied with or are not being fully applied. These include the key articles of the Agreement: Article 2 “ensure strict compliance with the agreed procedure and the established rules of use and protection of water resources” and Article 3 “not to allow

committing, in their territory, of actions affecting the interests of other Parties and capable of harming them, leading to a change in agreed quantities of water discharges and contamination of water sources”.

Secondly, the requirement of Article 12 with respect to developing, within the year 1992, a mechanism for applying economic and other sanctions for violations of the established regime and limits of water use has not been implemented.

Thirdly, there are doubts as to what extent the requirements of Article 8 are implemented, since this Article confers on the Coordination Water Commission the obligation to define water policy in the region and to develop policy directions, taking into account the needs of all sectors of economy, integrated and sustainable management of water resources.

Finally, the goal of the Agreement is often interpreted as reinforcement of the structure and principles formed in the early 1990s, and maintaining the effect of regulations that existed at that time regarding the distribution of water resources of inter-State sources. This follows, in particular, from the Preamble that stipulates that the Parties will act “respecting the existing structure and principles of distribution, and based on current regulatory documents on distribution of water resources of inter-State sources”. If one is to accept the correctness of this interpretation, it is clear that the goal of the Agreement does not correspond to modern realities.

Agreement on joint action to address the problem of the Aral Sea and surrounding areas, environmental improvement and ensuring socio-economic development of the Aral Sea region (1993)

The goal of the 1993 Agreement is to define the objectives of regional water and environmental cooperation in Central Asia. Unlike the 1992 Agreement, it does not contain any regulations or requirements of a general nature. However, it calls for rational use of the scarce land and water resources of the Aral Sea Basin, maintenance of adequate water quality in rivers, reservoirs and underground sources, and guaranteed water inflow into the Aral Sea.

One of the objectives of this Agreement is to streamline the system and to improve the discipline of water use in the basin, as well as to develop relevant inter-State legal and regulatory acts. However, the most significant aspect is the institutional dimension. The Agreement contributed to the further development of a mechanism for regional cooperation by establishing the Inter-State Council for the Aral Sea basin and the Commission on Socio-Economic Development, Scientific, Technical, and Environmental Cooperation (the predecessor of ICSD), and by subordination of ICWC to the newly created organization.

Intergovernmental agreement on the use of water and energy resources in Syrdarya river basin (1998)

This Agreement covers a relatively narrow, but practically the most significant issue: water and energy exchange among the Syrdarya river basin States. Its Parties are the four States linked by the common water and energy relationship. Unlike the 1992 Agreement, this one is essentially technical in nature. It does not contain positive principles, such as cooperation and good neighbourliness, or, for instance, the obligation to comply with the agreed procedure for water use.

Of central importance is the scheme of water and energy exchange. The scheme is based on the principle of harmonizing the regime of water facilities and reservoirs of the Naryn-Syrdarya cascade so as to provide a sufficient quantity of water for irrigation. Thus, energy interests are subordinated to irrigation, which is balanced by compensatory obligations to supply energy.

At the same time, critics of the Agreement say that it: does not contain any provisions for joint financial or other joint participation in the technical maintenance of facilities, whereas it refers to facilities operated in the interests of several States; does not contain provisions on some side issues that could disrupt the stability; does not take into account the influence of such factors as possible reduction in natural runoff, the occurrence of unforeseen circumstances, changes in economic conditions in participating countries; and does not set up an efficient judicial dispute settlement procedure, whereas the States have committed to not violating the reciprocal supply regime.

Framework Convention for the Protection of the Environment for Sustainable Development in Central Asia (2006)

The Framework Convention for the Protection of the Environment seems to be the most developed regional instrument both in terms of the content of its principles and provisions, and in terms of the quality of legal writing, including the logical structure, consistency and the literacy of language. A framework instrument of a general nature, the Convention provides the legal basis for long-term cooperation between Central Asian States on a wide range of issues: from the protection of air quality and biodiversity to water conservation and sustainable use of water resources. At the same time, objectives of the Convention are to be achieved through a combination of national measures and relevant regional projects and other bilateral and multilateral schemes and mechanisms for cooperation.

The Parties undertook to work out additional protocols that would establish rules and procedures for developing general obligations in specific areas of environmental activities. The Convention stipulates that the protocols will be adopted, particularly, on aspects such as the following:

- Improving national frameworks for monitoring water quality and pollution sources;
- Establishing a regional system for monitoring the water quality in transboundary watercourses;
- Identifying and prioritizing water pollutants and agreeing upon the schedule to reduce their discharges;
- Undertaking joint action to ensure adequate supply of good quality drinking water;
- Adopting measures and action to prevent and reduce pollution to ensure that there will be no harm to the territories of Contracting Parties downstream;
- Cooperating jointly in the sustainable use and protection of water resources of transboundary watercourses.

The Convention provides for the establishment of an independent institutional mechanism, a periodical Conference of the Parties and a permanent Secretariat, headed by the Executive Secretary, as well as other subsidiary bodies. It also provides for the establishment of a separate financial body in charge of the financial mechanism of the Convention, including collection, management and disbursement of financial resources.

In general, the Convention represents a significant step forward in terms of the quality of preparation and language of international legal instruments. It is a comprehensive and well thought-out document, which contains a number of modern legal principles, provisions and procedural rules, the lack of which at the regional level was noted by many experts. If one considers the Convention as a stand-alone legal instrument, outside of the system of regional environmental and resource agreements, as a whole it meets the requirements for such acts. One can only note excessive detail in the provisions governing the additional protocols, and the apparent redundancy of the total number of protocols to be adopted.

However, in terms of the place and role of the Convention in regional water cooperation, its entry into force may raise serious questions about its interaction with similar regional agreements, including

those on water. Formally, the provisions of the Convention shall not affect rights and obligations of Parties deriving from other international agreements to which they are also parties, and shall not restrict the rights of Parties to enter into other treaties on the subject matter of the Convention if those treaties do not contradict the goals and principles of the Convention. However, in practical terms there is a real risk of overlap, duplication and even conflict of obligations under the Convention with other agreements, both current and future.

This fully applies to the institutional mechanism for implementing the Convention (Conference of the Parties, the Secretariat and the Financial Body), particularly given its legislative power – the development and adoption of additional protocols, including those on water resources. Would not this lead to the emergence of a parallel system of regional authorities for water (and environmental) cooperation? How to avoid the inevitable competition and fragmentation of scarce financial resources? Would not it be wiser to transfer responsibility for implementation of the Convention to already existing bodies of regional cooperation (being strengthened or reformed)? These and other questions will certainly arise and will require solutions if a new institutional mechanism is created under the Framework Convention.

1.4. Legal framework of institutional mechanisms for regional cooperation

A number of the above-mentioned agreements outline “institutional” rules determining the status, structure, competence areas and powers of various regional bodies of cooperation on water resources. The 1992 Agreement established the Inter-State Commission for Water Coordination and subordinated Basin Water Organizations “Syrdarya” and “Amudarya” to ICWC. The 1993 Agreement on joint action established the now defunct Inter-State Council on the Aral Sea Basin, whose functions have been transferred to IFAS, and the Commission on Socio-Economic Development, Scientific, Technological and Environmental Cooperation, which later became ICSD. The Agreement formally made ICWC subordinated to the newly created organization.

Foremost among the “institutional” instruments should, in principle, stands the 1999 *Agreement on the Status of the International Fund for Saving the Aral Sea (IFAS) and its Organizations*, which included in the Fund the ICWC (with its Secretariat, SIC and the BWOs) and ICSD (with its Secretariat and SIC). However, the Agreement, both in terms of its content and its form, is not working.

First, the idea of assigning the status of an international organization to the constituent units of IFAS, which itself, in turn, is an international organization, appears dubious. Secondly, it is not clear which specific organs are “organizations” under IFAS, and which are not, since Article 1 only enumerates institutional components of IFAS included in its structure, without any specific detail. Thirdly, despite a fairly clear indication in the title of the Agreement of the range of issues that it is intended to govern, the actual legal status of IFAS is set forth in chapter 2, which consists of only one Article 2. The provisions of Article 2 cover only one (and not the most important) aspect of the legal status of “organizations under IFAS”. The legal status of IFAS in the Agreement itself is not established at all.

The Agreement says nothing about the key issues of authority and hierarchy relationship between IFAS and its constituent components. This leads to uncertainty about the place, role and subordination of organizations and bodies within the IFAS system, and may lead to considerable practical problems in their interactions with each other.

Out of the 12 articles of the Agreement relating to IFAS and its “organizations”, 10 are devoted to the privileges and immunities of the organizations and their personnel. Several articles contain

inaccuracies (e.g. Article 1 calls BWOs organizations²), allow conflicting interpretations (e.g. provisions of Article 9 concerning the procedure of payments to staff and experts). Article 10 introduces the term “regional organization” without specifying which organizations the term refers to.

The procedure for adopting the Agreement was unusual. The Agreement was concluded and entered into force through “approval” by the Heads of the member States, without any signing and ratification i.e. the standard procedures in international practice. In terms of practical application of the Agreement, in the event of a conflict between its provisions and the national legislation of the member States, this could lead to priority being given to the latter. For example, the Constitution of Kazakhstan states that only ratified international agreements take precedence over national law. Thus, the possibility of non-compliance with the provisions of the Agreement is a distinct reality if these are inconsistent with the national rules.

Institutional rules for regional agreements are complemented by various, and poorly coordinated, Regulations on IFAS, IFAS Executive Committee, Commissions (ICWC and ICSD) and their structural units. Even a superficial analysis of these acts raises questions, especially relating to the legal nature, status and hierarchy of many regional bodies. Thus, it is clear that IFAS, as the main mechanism for regional cooperation, should be considered an international organization. Nevertheless, this is not explicitly stated either in the Agreement of 1999 or in the Statement on IFAS. However, the Executive Committee of IFAS (Regulations on IFAS, paragraph 1.3; Regulations on IFAS, Para. 2.1.) is also an international organization, which appears a highly questionable decision from the viewpoint of the practice of international organizations.

Based on the Regulations of ICWC (para.1.4.), ICWC is a regional body for the Central Asian States empowered to jointly address the issues of management, rational use and protection of water resources of inter-State sources in the Aral Sea Basin and to implement joint programmes. Both it and its executive bodies are included in IFAS (Regulations, para.1.2). The Regulations also state that the Commission and its executive bodies have the status of international organizations.

In accordance with paragraph 5.1. of the Regulations, the executive bodies of ICWC are: the Secretariat; “Amudarya” Basin Water Organization (“Amudarya” BWO), “Syrdarya” Basin Water Organization (“Syrdarya” BWO); Scientific and Information Center on water management issues (SIC) with national branches; Coordination Metrology Center (CMC) with national organizations; and Training Center (TC) with its branches. Therefore, all these bodies, in terms of their legal status, are international organizations, a fact that undoubtedly represents a unique case in world practice.

On the other hand, the Regulations of ICSD say nothing about the status of the Commission and its sub-units, nor do they mention that the Commission and its sub-units are part of IFAS. This only follows from some individual paragraphs of the document, related to the procedure of financing of ICSD activities and the approval by the Fund of the regional strategies prepared by ICSD.

There is no uniformity in approaches to a wide range of issues related to the definition of legal status, directions of activities and funding of the secretariats of ICWC and ICSD.

² Note from translator: the official term “BWO” in Russian uses “entity”/“obiedinenie”, a different word from “organization”/ “organizatsya”. However, “Basin Water Organisation” (BWO) has become a commonly used expression in English for these bodies.

2. Overall assessment of international legal basis for the regional cooperation

In general, the existing international legal framework for regional water cooperation in Central Asia made it possible, especially at the initial stage, to address those issues that urgently needed to be resolved during the formation of independent States and change of the status of rivers in the Aral Sea Basin. Arrangements have been made and agreements have been fulfilled, with varying degrees of success, on water allocation and water-energy exchange, and joint management through common inter-State structures. Countries have repeatedly stated their commitment to the principles of cooperation, equitable and reasonable use of water resources, and joint resolution of ecological problems, related to protection of the Aral Sea. There is an active exchange of information and regular consultations on various issues of water resource use. Three instruments, adopted by the Heads of State and two framework agreements on water resources management confirmed the political will to cooperate. This has further been reflected in relatively conflict-free allocation of water resources in the region for nearly two decades.

However, despite the large number of international agreements, the current legal framework is far from perfect and requires considerable improvement. This applies to both individual agreements and the entire system of international legal regulation of water cooperation in the region. The existing legal instruments are either of a formal and declarative nature, or simply outdated, or are not being implemented - in whole or in part - and do not contain fully effective mechanisms to ensure compliance.

This concerns, first and foremost, the 1992 *Agreement on cooperation in joint management, use and protection of water resources of inter-State sources*, the 1993 *Agreement on joint action to address the problem of the Aral Sea* and the 1998 *Agreement on Syrdarya*. The 2006 *Framework Convention on the Protection of the Environment for Sustainable Development in Central Asia*, should it enter into force, could, in principle, compensate for many shortcomings in the legal regime governing the use of water resources at the regional level. However, there is a real possibility of conflict between the provisions of the new Convention and the existing legal and institutional mechanisms.

A major disadvantage of the legal arrangements for water cooperation is the fragmented legal framework of the regional institutions. There is a number of acts, insufficiently linked to each other, which establish or define the legal status and positions of various bodies for regional cooperation. The best way to remedy this situation would be to adopt a single “institutional” treaty, which would replace, systematize and streamline the many rules and procedures currently in force.

A significant gap in the current legal regime for managing water resources is the almost complete lack of basin-level regulation (besides the existing regional and bilateral).³ The only agreement on the Syrdarya River basin is not a “basin” agreement as such, since it covers the very narrow topic of water and energy exchange. In an optimal choice, the system of legal regulation should be composed of three levels:

Regional level

Involving participation of all Aral Sea Basin States, to define (a) the basic principles of cooperation, (b) general commitments and (c) common institutional arrangements.

³ Lack of rules and procedures at basin level is reflected in the Programme for developing agreements and other regulations within the ASBP-2, approved by the Heads of States on October 6, 2002. It should be pointed out that despite the recognition, back in 1995, of the necessity to prepare and adopt new agreements, which would expand the provisions of framework agreements, the actual work, which was started under the WARMAP project, has never been completed. Development of draft agreements on water resources in the region was also planned under ASBP-2, but to date none of the documents mentioned in the ASBP-2 has been adopted, although several draft agreements, which also require substantial improvement to include the new requirements for regional cooperation, have been prepared.

Basin level

Involving participation of States sharing the basin of a multinational transboundary watercourse, to define the special rules, procedures and institutional mechanisms.

Bilateral level

When necessary, to define specific mechanisms of cooperation on individual watercourses of interest for two States.

Part II.**Review of the institutional mechanisms of cooperation and key challenges for their functioning****1. Current situation: regional level****International Fund for Saving the Aral Sea**

The main organization handling cooperation in the region is the International Fund for Saving the Aral Sea (IFAS). Its leading role is due to it being the only regional organization where all the five countries of post-Soviet Central Asia are collaborating. Its President is elected from among the Heads of State. The central structural units of the Fund are: the Board, members of which, as agreed by the meeting of the Heads of Central Asian States, held on April 28, 2009, should be appointed from among representatives of the countries at the level of the Deputy Prime Minister, - and the Executive Committee, a standing executive body of the Fund. The most important decisions concerning the strategic directions for activities of the IFAS shall be adopted by the Council of Heads of State of Central Asia. Its meetings are usually held every few years.

IFAS has a fairly broad mandate. In accordance with the Regulations of 9 April 1999, the main objective of the Fund is to finance and credit joint practical measures, programmes and projects for saving the Aral Sea, ecological rehabilitation of the Aral Sea surroundings and Aral Sea Basin as a whole, taking into account the interests of all States in the region. The stated objectives of IFAS include establishing and maintaining an inter-State environmental monitoring system, database and other information systems with the data on the environment of Aral basin, mobilizing financing for joint activities to protect air, water and land resources, flora and fauna, as well as funding joint scientific and technological projects and measures for the management of transboundary domestic waters.

The Agreement of 9 April 1999 had included into the IFAS system the Inter-State Commission for Water Coordination (ICWC) and the Inter-State Commission on Sustainable Development (ICSD) and their supporting units, and endowed them and their staff with a number of privileges and immunities previously granted only to the central structural units of IFAS and their staff.

However, Article 1 of the Agreement only lists the organizations under the auspices of IFAS, without specifying the hierarchy of their subordination and powers, and it does not regulate their relations and reporting. This uncertainty in terms of the place, role and subordination of each of these organizations within IFAS has led to different interpretations of the entire structure of cooperation under the Fund and difficulties in establishing clear lines for their interaction with each other and for developing a system of reporting.

In fact, IFAS has no single established mechanism for regional cooperation. Currently, it has three “structures for cooperation”, which work without adequate coordination: the Executive Committee,

ICWC and ICSD (KG 4).⁴ Establishing relationships between these organizations is largely hampered by the fact that their scope and competences are not clearly defined or delineated. There has been some duplication of functions and overlapping in their work, and sometimes even confrontation (KG 4). Regulatory documents of these structures are not mutually linked and contradict each other on a number of key points. While the Regulation on ICSD, after inclusion of this Commission into the IFAS system, was approved by the Board of the Fund in 2003, this was done without proper alignment with the mandates of the Executive Committee of IFAS and of ICWC. The Regulations of ICWC, including the latest version of September 18, 2008, have not even been submitted for consideration and approval by the central authorities of IFAS.

From an organizational point of view, the structure of the mechanism for cooperation is rather unusual. The institutional mechanism for cooperation in the Aral Sea Basin consists of a number of international organizations based on three levels of importance. At the top level, there is a parent international organization - IFAS with its central bodies: the Board and the Executive Committee. For the international community, the IFAS, as described in the United Nations General Assembly resolution of 11 December 2008, is a regional mechanism for cooperation in the Aral Sea basin as a whole. On the next level, there are two international organizations - ICWC and ICSD. Sub-units of these regional commissions, their research centres, and in case of ICWC – the Training Center, in turn also have the status of international organizations with the same rights to receive grants, subsidies and loans in foreign currency without paying taxes, and to contract local and foreign specialists. With so many poorly interconnected and almost completely administratively and economically independent international organizations, there are often difficulties in coordinating and managing their activities.

There is no interaction in the planning of activities and distribution of responsibilities between the regional organizations for implementing regional programmes and work plans, especially the Action Programme to assist countries in the Aral Sea Basin (i.e. Aral Sea Basin Programme - ASBP).

ASBP is the main long-term action programme in the region. Its mandate comes from the Heads of State of Central Asia. Formulation of the Programme and monitoring of implementation is the responsibility of EC IFAS. At the same time, each regional organization has its own programme of work, which is not properly linked either with the ASBP, nor with the programmes of other organizations. The regional commissions do not submit their plans and programmes of work to the central authorities of IFAS for review and approval, with the exception of the Regional Environmental Protection Action Plan, prepared by ICSD and approved by the Board of IFAS in 2003.

This situation occurs despite the fact that the relevant Regulations of regional organizations contain general provisions for certain interaction so as to achieve coordination. For example, the Regulations of ICSD prescribe this Commission to seek approval of its programmes and action plans from IFAS, although it does not specify, from which body of the Fund. The Regulations of ICWC of 2008 contain a provision on developing and implementing regional environmental programmes in cooperation with ICSD, but do not mention any coordinating activities with central authorities of IFAS.

None of the three organizations of IFAS issues annual reports on its activities and makes available to the public complete financial reports on the use of funds received from national budgets and from the international community. Each organization maintains contact and communication with international organizations and donors to seek support for its own activities, without sufficient coordination and consultation with other regional organizations. This may lead to some competition between them for the support of donors and may not contribute to the positive image of the IFAS system in general among donors. The situation also creates prerequisites for reducing the effectiveness of support provided for

⁴ Hereinafter references are made to the response of governmental experts, represented at the relevant page of the summary table of responses, prepared for the first meeting of the Working Group.

regional cooperation by the international community, and in some cases - for overlaps and duplication of programmes and projects supported by international donors.

President of IFAS and Board of the Fund

The IFAS Board is headed by the President of the Fund, who is elected from among the Heads of the State for a period established by the Council of Heads of State. However, the President does not participate in the meetings of the Board. In accordance with the IFAS Regulations of 9 April 1999, the President is vested with considerable powers. The duties include supervising the activities of the Fund, determining its foreign economic and international activities, and approving its work plan. The President also approves the Regulations of the Executive Committee, and in consultation with other Heads of State, appoints its Chairperson, who is the Chief Executive Officer of the organization. The procedure of payment and amount of salaries of the Executive Committee staff shall be agreed with the President.

Concentration of significant executive functions in the hands of the President of the Fund may diminish the role of the Board of IFAS, although recently the practice of appointing members of the Board from among the high-level officials, e.g. Vice Prime Ministers of member States, has been resumed. At the initial stage of cooperation in the Aral Sea Basin, the concentration of executive functions in the presidency of the Fund was justified because there was no other way to establish the mechanism of cooperation in the newly emerging nations, where many of the procedures for joint action had not yet been worked out. Now, however, there are voices suggesting the need to review the feasibility of this approach.

Executive Committee of IFAS

The Executive Committee of IFAS (EC IFAS) combines the functions of two bodies: the executive body, acting on a permanent basis, and a working body (secretariat), which maintains administrative and technical activities. EC IFAS reports to the President of the Fund and the Board of IFAS and is located in the country whose Head is elected President of the Fund. The Chair of EC IFAS, appointed by the President of the Fund, is a citizen of the same country. The remaining staff members of EC IFAS are also citizens of the country where the headquarters of this body is located. Thus, the employees in the secretariat of the executive body of the organization are the citizens of only one country, which contradicts the practice of international organizations. The same observation applies to the secretariats of the regional commissions. The host country of EC IFAS usually pays almost all costs associated with support of the EC IFAS members from other countries, except for their salaries.

The member States send their representatives to EC IFAS, and these representatives mainly serve as a bridge between their Governments and the central authorities of IFAS. Rights and duties of EC IFAS members are not spelled out in any of the international legal acts establishing IFAS and its bodies. Their ability to maintain a working relationship at various levels of their Governments varies and is to some extent dependent on their personal connections.

Sometimes not all countries have appointed their EC IFAS members and designated EC IFAS members have not always spent sufficient time at the site of their service i.e. at headquarters. Such an organization of the central executive body of the Fund make it difficult to balance the views and interests of participating countries.

In addition, relocating the EC IFAS to another country after every change of President leads to almost complete replacement of its staff and disrupts the continuity of its work (SIC ICWC 7).

EC IFAS does not have enough personnel to implement regional projects. At the same time, the professional qualifications of the majority of national representatives and other staff is sufficiently high, which would allow them to work on specific regional programmes and projects.

According to its Regulations, EC IFAS is charged with coordinating ICWC and ICSD, in particular “on matters relating to projects and programs in the Aral Sea Basin”. However, the Executive Committee of IFAS does not have any significant influence on the activities of regional commissions (KG 4, TJ 5).

To streamline cooperation in the Aral Sea Basin, one could consider revising the functions, structure and composition of the central executive body of the Fund with a view to strengthening it, so that it could handle not only the administrative work, but also be involved in implementing some regional programmes and projects.

Inter-State Commission for Water Coordination

ICWC was established in accordance with the 1992 *Agreement on cooperation in joint management, use and protection of water resources of inter-State sources*. As a collective body of cooperation, ICWC was to govern the inter-State allocation of water resources of the Amudarya and Syrdarya rivers. The Agreement preserved the principles and amounts of water allocation, inherited from the Soviet period, which were calculated to maintain irrigated agriculture downstream of these rivers. It is this Agreement that handed two basin water organizations (BWOs), created in the mid-1980s to control the inter-republic distribution of water in the basins of the Amudarya and Syrdarya rivers, to ICWC as its executive bodies.

ICWC had thus faced a difficult task to maintain the irrigation flow regime of the Amudarya and Syrdarya rivers under new political and economic conditions, while the upstream countries were changing their power plant reservoirs’ release regimes to meet their needs for electricity in winter time.

The current flow regime regulation of these rivers is causing serious complications in relations between Central Asian countries. So far, ICWC has been unable to find a long-term solution that would be acceptable to all countries.

However, the structure of cooperation in the water sector within the framework of IFAS allows Central Asian countries to maintain good working relations among their national water authorities for addressing short-term and operational issues (BWO AMU 8). ICWC, through its network of training centres, assists in training the staff of water management organizations, as well as in collecting, processing and disseminating scientific and technical information on water resources and water management.

Although ICWC had played an important role in developing cooperation in the water sector in Central Asia after the centralized management of the water resources of Amudarya and Syrdarya rivers ceased with the collapse of the Soviet Union, it failed to become a sufficiently effective and full-fledged regional cooperation mechanism, as might have been expected.

ICWC is an inter-agency body composed of the heads of water management departments of Central Asian countries. It does not have sufficient authority and appropriate leverage to ensure that member-State ministries and departments - particularly those not of water system - would unquestionably implement its decisions concerning the regulation of Amudarya and Syrdarya river flow. It has no mechanisms for settling differences when States do not comply with their obligations. (BWO SYR 12, KG 32). It has no representatives of the key energy sector, environmental protection, meteorological services and local administrations. The competence of its executive bodies, Amudarya BWO and

Syrdarya BWO, fully covers only the middle and lower parts of the Amudarya river and the middle part of the Syrdarya river. It is therefore difficult for ICWC to take serious action to move to cooperation on integrated management and protection of water resources of transboundary river basins of the region.

It was also unable to involve, to an equal degree, the representatives of all member States in the management of its structural units and executive bodies. To remedy this situation, in September 2008 ICWC adopted a decision on rotation of location and leadership of its units among its member States.

Inter-State Commission on Sustainable Development

The Inter-State Commission on Sustainable Development (ICSD) was established in 1994 by a Decision of the Inter-State Council for the Aral Sea. It was originally called “the Inter-State Commission on Socio-economic Development, Scientific, Technical, and Environmental Cooperation”, but changed its name in 1995. According to the Regulations of ICSD of 18 October 2000, the main purpose of the Commission is to coordinate and manage regional cooperation on environment and sustainable development in countries of Central Asia. Its tasks include developing a regional strategy for sustainable development, and programmes and plans for sustainable development, as well as coordinating activities to implement the obligations of Central Asian States under environmental conventions of a transboundary dimension.

ICSD consists of 15 members - 3 representatives from each country, including the head of the environmental agency, the deputy minister of economy and a representative of the scientific community. The Chair of the Commission is elected on a rotating basis from the ministers of environment – commission-members - for the term of two years. In recent years, participation of the ministries of economy has not been regular.

Its executive bodies are the Scientific and Information Center (SIC ICSD) and the Secretariat. SIC ICSD has branches in all countries of Central Asia, represented by units of the national environmental agencies. In addition, ICSD has initiated within its structure the establishment of the Regional Mountain Center and the Regional Center for Renewable Energy. There is a Public Board operating under the ICSD.

Activities of ICSD were supported for many years by the regional office of the United Nations Environment Programme (UNEP) for Asia and the Pacific, based in Bangkok. UNEP is assisting in drawing up the ICSD work programme and in the detailed design of its individual elements. It also provides significant financial support to projects and activities carried out under its auspices. ICSD is a key partner of UNEP in Central Asia.

The geographical scope of ICSD covers the entire Central Asian region, according to its Regulations of 18 October 2000. However, the Regulations of SIC ICSD of 12 April 2001 limit its scope of activity to the Aral Sea Basin.

The ICSD mandate for facilitating harmonization of the legislative and methodological basis for the protection of the environment, as well as establishing a regional data bank on protection of the environment and sustainable development, matches, to some extent, the mandate of ICWC, although the mandate of ICSD goes far beyond just the water area.

The first integrated “state of environment” assessment for Central Asia, the Regional Environmental Protection Action Plan, and the Framework Convention for the Protection of the Environment for Sustainable Development in Central Asia, signed by three countries in the region, were developed under the auspices of the ICSD with support of UNEP. However, as noted earlier on in this paper, in case the Framework Convention enters into force, a new body for regional cooperation will have

to be created. As it will not be associated with the current regional structures, this may complicate achieving effective coordination and cooperation in the Aral Sea Basin.

Activities of ICSD would be more productive if the commission worked in close collaboration with other regional organizations. However, ICSD is not integrated into the framework of IFAS. It has its own work programme, which is not linked to the ASBP. For example, the development of the Framework Convention, the only international legal instrument of such a level agreed by Central Asian States over the past decade, has not been reflected in the ASBP-2, although the programme intended to prepare more than 10 drafts of international agreements on various aspects of use and protection of water resources.

Item 4.2 of the Regulations of ICSD, which requires IFAS to approve its regional strategies, programmes and action plans, as well as annual estimates for financing the working bodies of ICSD and its regional activities, in general, is not being complied with. The Commission is not accountable to the central authorities of IFAS for implementation of the Regional Environmental Protection Action Plan, approved by the Board of IFAS in 2003, as well as for the implementation of its other programs and work plans.

Regional cooperation to achieve the declared goals of sustainable development through ICSD, in particular those related to the protection of water resources and aquatic ecosystems, would have more chances of success if the Commission would act in close cooperation with other regional organizations within the IFAS system, participate in the development and implementation of relevant sections of ASBP, and if its activities would in practice reflect the interests of the real sectors of the economy.

Financing the activities of IFAS

In accordance with the decision made at the meeting of Presidents of Central Asian States on 27 February 1997 in Almaty, each member State of IFAS has committed to contribute, since 1998, an annual membership fee in U.S. dollars at the rate of the national currency. The contribution was determined from the budget revenues for Kazakhstan, Turkmenistan and Uzbekistan in the amount of 0.3%, and for Kyrgyzstan and Tajikistan in the amount of 0.1%.

This decision, however, has never been fully implemented. First of all, each country allocates less than its expected contribution to IFAS. Secondly, a part of the funds from the IFAS membership fee is usually sent by each country to its national branch of IFAS in the national currency, and is used for projects within the country.

Countries do not make regular contributions in hard currency to the common budget of IFAS, intended to support EC IFAS and to implement regional projects. EC IFAS is practically supported by the host country (KZ 24), and it lacks funds to implement regional projects. Therefore, almost all regional projects carried out within the framework of IFAS are funded by international organizations and donors, which leads to heavy dependence on external support for IFAS work plans and its individual activities (KG 24, TJ 25). This dependence makes the implementation of ASBP hard to predict.

2. Current situation: national level

Relationships between national structural divisions of IFAS

Dissociation of regional organizations leads to the lack of synergies between their national branches and offices. In each country, there are branches of the Executive Committee of IFAS, sometimes even with provincial offices, offices of representatives of ICWC and ICSD, offices of SIC ICWC and SIC

ICSD, service stations of BWOs and branches of ICWC Training Center. National branches and divisions of each of the three regional organizations do not maintain, in most cases, any business connection between themselves and their activities are, as a rule, not coordinated. There is no coordination of programme activities between the national structural units of IFAS. Each of them is vertically integrated in the structure of its regional organization, while the horizontal links with the national offices of other regional organizations in the same country are missing. National branches of EC IFAS do not play the kind of leading role in coordinating national activities that they should play. This leads to inefficient use of scarce human and material resources and reduces the overall effectiveness of country participation in the activities of regional organizations within IFAS.

Expenditures for maintenance and operation of national units are usually covered from the budget of the country of their location, often through the budgets of those sectoral ministries and agencies which they are linked to.

Relationships between the national agencies taking part in IFAS operations

Disunity of action at the regional level inevitably leads to a lack of synergy at the national level among ministries and agencies engaged in the membership in regional organizations or participating in their activities. There are no coordinating units in the national governments, which could work out a single coherent national policy concerning participation of the country in IFAS. National strategies and action plans to participate in activities of IFAS are most commonly not available. As a result, the lack of coordination in the actions of individual ministries and departments and the differences in their stances towards regional cooperation may lead to difficulties in formulating a coherent national policy with regard to the country's participation in IFAS. This adversely affects both the implementation of decisions of central bodies of the Fund and of the regional commissions at the national level.

3. Overall assessment

Imperfect legal framework, in many respects, has led to flawed institutional mechanisms for cooperation. The mechanism for cooperation in Central Asia under the banner of IFAS, which was historically formed out of several regional organizations during the first years after the collapse of the Soviet Union, has undoubtedly facilitated the necessary consolidation of efforts of member-States in their intention to jointly address the socio-economic, water and environmental problems in the Aral Sea Basin. However, the existing mechanism of cooperation under the auspices of IFAS, which actually consists of three not sufficiently cooperating intergovernmental organizations, is far from being perfect. This untuned mechanism of cooperation hinders the development of optimal policy to address the problems of Aral Sea Basin, and prevents coordinated and effective implementation of this policy.

The political will to improve the organizational structure and the legal framework of IFAS was expressed in the Joint Statement of the Heads of State on 28 April 2009. The ideas presented in the next part of this discussion paper, on the strengthening of the mechanism for cooperation in the Aral Sea Basin, represent an attempt to look for approaches to a serious and progressive strengthening of the system of existing regional institutions.

Part III.

Proposals to strengthen the institutional mechanisms and international legal framework for regional cooperation

1. Review of proposals

The comments of national experts and representatives of regional organizations contain a wide range of views on the extent and depth of possible changes in the institutional structure of cooperation. On the one hand, some proposals are limited to recommendations to establish information exchange and streamline coordination between existing regional organizations. There are also interim proposals to improve the forms of interaction between the three regional cooperation structures (IFAS – EC IFAS, ICWC and ICSD) by introducing certain changes to their functions and powers. Other proposals are in favour of completely revising the current mechanism of cooperation and establishing a new, consolidated organization.

Proponents of retaining the existing structures argue that the current mechanism has not yet exhausted its capacities (KZ 1, KG 10) and that the institutional framework under IFAS meets its tasks, therefore requiring no changes (UZ 6). In their opinion, all that is required to improve the performance of regional cooperation bodies is to ensure strict implementation of their obligations regarding coordination and collaboration with other regional bodies, already set out in intergovernmental agreements and statutory documents (KZ 1).

It appears, however, that such an approach may not lead to a significant improvement in cooperation, because neither existing agreements nor the statutory instruments of regional organizations contain any clear provisions on how and in what form the activities could be coordinated, and fail to provide a clear outline of hierarchical interaction.

Several commentaries contain proposals to establish new forms of collaboration between existing regional structures to comply with the hierarchy of governance in their activities (KG 10, 14). They propose raising the status of the EC IFAS in relation to the regional commissions (TJ 10), in particular to empower EC IFAS to methodologically guide and coordinate the activities of ICWC and ICSD, including the collection of their annual activity reports and the preparation of abstracts for the Board of IFAS on the basis of these. The regional commissions would have the obligation to provide such reports (KG 4,9 and 14, and UZ 15). To this end, there are proposals to develop and get the Board of IFAS to approve a regulation on the reporting and management hierarchy, which would govern the relationships between the regional organizations (KG 15) or to prepare regulations to coordinate their work (SIC ICWC 7).

There are also proposals to expand the representation of ministries and departments involved in the management and protection of water resources in the regional cooperation bodies (SIC ICWC 7). Improvement of the current cooperation mechanism is also seen to require the revision and clear separation of the functions of regional organizations. Some reorganization of management structures is also proposed, including the creation of secretariats and the abolition of some divisions under the regional bodies of cooperation (KG 10). At the same time, it is assumed that all three regional organizations will retain their administrative and financial autonomy.

The proposed measures do not, however, eliminate the problem of overlapping competence of the regional organizations (KG 14), since coordination of their activities must begin with delineating their responsibilities and mandates, clear defining their statuses within the regional cooperation mechanism, as well as harmonizing and aligning their work plans and programmes.

To remove duplication and overlapping in their work and ensure transparency of their activities (KG 4), a single centralized system may need to be created for distributing the funds allocated for their

activities out of the national budgets of the member States. This may also require changes in provision and allocation of donor assistance. The mandate given by the Heads of State to EC IFAS to lead the preparation of ASBP-3 and to work in this direction, together with the regional commissions and the donor community, could, apparently, be used as a turning point for sorting out the relationships with cooperating international and donor organizations.

Proposals for a major restructuring of the current mechanism are justified for the following reasons: there is no regional organization in the Aral Sea Basin which would (a) have equal representation of the water management, energy and environmental sectors, and (b) work on balancing their interests in the integrated management of water resources (TJ 5, AMU BWO 13). The proposals underline the usefulness of establishing a new mechanism for achieving a coordinated and mutually acceptable use of water and energy resources from inter-State water sources (TK 10). The renewed regional organization should address and resolve in detail the issues of water management, hydropower, as well as the environmental and economic issues in the Aral Sea Basin and should possess all the necessary structural units (TJ 5). The mandate of central bodies of IFAS shall include the implementation of the principles of sustainable development, which provide for reduced water consumption, energy saving and resources saving (KZ 8).

According to some opinions, river basin commissions should form part of the renewed framework of cooperation. The majority of participants in the regional dialogue, in principle are in favour of the establishment of international river basin commissions for the Amudarya and Syrdarya rivers, particularly with equal representation of the water and energy sectors (KZ 12, KG 12, TJ 12, TK 13 and 36). They believe that such commissions or international administrations could contribute to fully implementing the principles of integrated water resources management that all countries in the region have committed to (KG 12, KZ 35).

Equal participation of representatives of water organizations and the energy sector in the commissions is expected to lead to the development and application of new approaches to cooperation on shared water resources of Amudarya and Syrdarya rivers and their hydropower potential. Participation of representatives of environmental agencies in these basin commissions will provide an opportunity to pay due attention to water quality, protection of waters from pollution, and depletion of water resources. Besides that, the establishment of separate basin authorities for cooperation for Amudarya and Syrdarya rivers shall provide for a differentiated approach to the management of resource development for these rivers (TJ 12).

A good example is the successful cooperation within the framework of the Commission on the Chu and Talas rivers established by Kazakhstan and Kyrgyzstan. In this Commission, the Parties are moving from cooperation on joint operation and maintenance of water management facilities of inter-State use to the design and implementation of joint measures for integrated use and protection of water resources (KG 12). However, most countries do not consider it appropriate at present to include this commission for the Chu and Talas rivers into the structure of the regional cooperation mechanism (KZ 22, TJ 22, UZ 22).

There are also objections raised with regard to the establishment of international river basin commissions for Amudarya and Syrdarya rivers. There is an opinion that it would be sufficient to intensify the work of ICWC and BWOs for Amudarya and Syrdarya rivers, in order to attract international attention to the specifics of the Aral Sea Basin, to develop targeted programs and bring in the international investments. With this approach, it is meant to assist the implementation of integrated water resource management by inclusion of energy and hydrometeorology sectors, environmentalists and politicians into the councils of water users – special bodies to issue recommendations - that will be created for each BWO (UZ 13 and 36, SIC ICWC 13 and 36).

2. Two proposed approaches

It is proposed to consider two possible approaches to strengthening the regional cooperation mechanism within the framework of IFAS:

- A) Strengthen the existing structure of regional cooperation mechanism;
- B) Create a new regional organization, on the basis of existing structures of cooperation.

Although these two approaches are discussed separately, they could complement each other. Some elements of the proposed new structure of cooperation could be considered for introduction into the existing mechanism; on the other hand, some proposals to improve the existing mechanism of cooperation could be applied to the new regional cooperation mechanism.

Furthermore, subsequent chapters include proposals how to:

- Improve coordination and collaboration between participating ministries and departments in each of the participating countries at the national level (chap. 3);
- Improve coordination among donor organisations (chap. 4);
- Improve financing for support and operations of the regional cooperation mechanism (chap. 5).

These proposals could be used both for the strengthening of the existing institutional framework for regional cooperation (approach A), as well as for development of a renewed mechanism for cooperation in the Aral Sea Basin (approach B).

A. Strengthening the current mechanism

The approach to strengthen the institutional structure for cooperation, which exists under the auspices of IFAS, proposed in this section, suggests to leave the existing mechanism, with its organizations and their structural divisions, without any fundamental changes, and at the same time, to focus on the following aspects:

- (a) Clarification and delineation of responsibilities of the central bodies of IFAS and of the regional commissions - ICWC and ICSD;
- (b) Clarification of mandates and competencies for each regional body and the regional commissions;
- (c) Strengthening the coordinating role of the central authorities of IFAS – the Board and the Executive Committee - and establishing procedures for reporting and interaction between them and the regional commissions;
- (d) Development of cooperation between ICWC and ICSD;
- (e) Improved distribution of locations of regional bodies and their structural units among member-countries;
- (f) Introduction of the international rotation of Heads of regional bodies and their structural units;
- (g) Internationalization of staff (professional employees) in the secretariats of regional bodies, research and training centers, and other regional and basin agencies;
- (h) Streamlining coordination and collaboration among ministries and agencies involved in cooperation in the framework of IFAS in each member State;
- (i) Streamlining the funding for maintenance and operational activities of the entire system of IFAS from national sources;
- (j) Improving coordination with the international organizations and donors;
- (k) Improving transparency in the allocation and use of the assistance from the international community.

Some ideas and suggestions on organizational aspects of improving the existing mechanism of cooperation in the Aral Sea Basin are set out below (and are reflected in Figure 1).

Council of Heads of State

Council of Heads of State of the region could continue to act as the guiding body of the organization. The body could meet, when necessary, e.g. once a year or two years, in order to assess the overall outcomes of IFAS's activities over the past period and to determine the general directions for the organization for the next period. It would be highly desirable, however, to establish a clear periodicity of meetings of the Council and, if possible, to link these meetings with major events and developments in the Fund, for example, with approval of long-term Aral Sea Basin Programme (ASBP).

During the period in between the meetings of the Council, the general policy direction of the Fund would be carried out by the President of IFAS, who would be elected, on a rotating basis, at every regular meeting of Heads of State.

It is suggested to release the President of the Fund of certain administrative functions, which were allocated to the President when the Fund was established in early 1990's, when member-countries have not yet worked out procedures for participation in regional cooperation. Now, however, when all countries of the region have developed their legal frameworks for participation in international cooperation, and have worked out respective procedures, it would be reasonable and timely to hand more authority to the Board of the Fund with respect to the governance of organization. It is proposed that the President of IFAS should not perform such functions as e.g. approval of annual work plans for the organization, coordination of the budget of the central bodies, or appointment of the Chairperson of EC IFAS, which could be transferred to the Fund's Board.

Central Bodies of IFAS

Mandate

The field of competence of central bodies of the Fund – the Board and the Executive Committee - could incorporate the issues of integrated management of water resources, including water supply for population, industry and irrigation, hydropower, environmental problems and sustainable development. This would provide them with the authority to coordinate the activities and regulate the interaction of ICWC and ICSD in their areas of interest.

Board

The Board of IFAS would be the highest authority for decision-making also with respect to the activities of the regional commissions – the ICWC and ICSD. The reports of these commissions, as well as their work programs, and those parts of their budgets, which are funded by national contributions to the IFAS, will be annually reviewed and approved by the Board. It is expected that all member-countries will appoint their representatives at the rank of deputy prime minister to be the members of the Board, which should also be fixed in a new institutional treaty.

Significance of the Board of IFAS in the management of cooperation in the Aral Sea basin would also increase because some of the functions of the President of IFAS would be handed over to the Board, as described in the previous section. In particular, it is expected that the Board, as a collective body, would appoint the Chairperson of the Executive Committee – the chief executive officer of the Fund.

At the same time, there is an issue with regard to the Chair of the Board, who shall direct the organization between meetings of the Board. Two options may be considered in this respect. First option

would be to continue the current practice and leave the post of the Chair of the Board with the President of IFAS. The second option would be to alternately choose one of the members of the Board for this post for a term, for example, of one year. The second option seems preferable, since in this case, the President will participate in the meetings of the Board and will have more opportunities to fulfil directing functions. However, with the rotation of Chairmanship, difficulties may arise in case the hierarchical level of a member of the Board is lower than deputy prime minister, which may affect the effectiveness of his/her activities as the head of the Fund. To avoid such situation, the strengthened mechanism should clearly state that only representatives of the countries in the rank of deputy prime minister shall be appointed as Board members.

Executive Committee

The Executive Committee of IFAS, i.e. the executive body of the organization and its secretariat, is currently being moved after the election of the new President of the Fund to the country of the President and the staff of this body gets completely changed. For some time there have been proposals to have EC IFAS permanently based in one member-country, irrespective of what country's President is elected as President of the Fund. This idea deserves careful study and consideration, since almost every international organization has its headquarters with a secretariat, which provides administrative and technical support on an ongoing basis in the territory of one of its member-countries.⁵

EC IFAS will implement the decisions of the Board concerning both the central organs of the organization and the regional commissions. It will review draft reports, work programs and budgets of ICWC and ICSD, with a view of granting them initial approval for further submission of these documents to the Board of IFAS. EC IFAS may also be tasked to prepare for publication the annual synthesis report on the work done by all organizations under the auspices of IFAS, which will include detailed information about funding they received during the reporting period both from member-countries and from international organizations and donors. These reports will be prepared primarily on the basis of the annual reports of regional commissions, and their publication would be welcomed by the public in the region and by the international community, as an important step in improving dissemination of information about activities of IFAS and increasing transparency of the use of funds received.⁶

In order to accomplish these tasks, EC IFAS, as a permanent executive body of the organization, shall have greater powers than it has now. In addition, the staff of EC IFAS shall be increased and shall be of due quality, to enable this executive body to interact effectively with both national organizations and agencies in member-countries, dealing with IFAS, as well as with regional commissions.

In this respect, there is a need to define the status, powers and duties of EC members, appointed by the countries. So far, their position in EC IFAS is not defined in any document, which sometimes leads to complications in the work of EC IFAS. On one hand, the members of EC IFAS are treated as permanent representatives of their countries to IFAS, i.e. have the same status as permanent representatives of countries to the United Nations or other international organizations. In this case, their role should be limited to that of a liaison between the IFAS and their governments, and to supervision

⁵ An interesting experience in this area has been accumulated by the Mekong River Commission. A well-established secretariat of the predecessor of this international river organization - the Committee for the Coordination of Investigations of the Lower Mekong Basin - stayed in the same place for nearly 40 years. Then, as part of the reform of the mechanism for cooperation in Mekong river basin, the Secretariat has moved twice from one country to another. This had almost disastrous effects for the organization since abilities of the Secretariat to conduct administrative and technical work in order to implement the projects under the Commission's programme were weakened, which caused a significant decrease in donor assistance. Having pragmatically assessed these effects, participating countries decided to stop rotating the location of the Secretariat and placed it permanently in one of the member-countries.

⁶ It may be noted here that the Chu-Talas Commission has already issued the first report of its activities, including - in accordance with common international practice - detailed information on the funds received from participating countries and from donors.

over safeguarding the interests of their countries in the activities of IFAS, and they should be financially supported by their governments, like embassy staff. On the other hand, EC IFAS members participate in the daily activities of EC apparatus under the leadership of its Chairperson. This situation sometimes leads to conflicts of interests, which, in turn, may reduce the effectiveness of this body.

The key figure in EC IFAS is its Chairperson, the chief executive officer of the organization, who is currently appointed by the President of the Fund and is a citizen of the country, whose president is elected as President of the Fund. This situation could change if it would be decided to permanently locate the headquarters of the EC IFAS in one of the member-countries while maintaining the rotation of the post of President of the Fund. Most probably, it will be advisable to choose the Chairperson of EC IFAS on a competitive basis, out of candidates proposed by member-countries. Appointment to this office of a specialist who is not a national of any country of Central Asia may also be considered.

To enable the secretariat of the EC IFAS to successfully fulfil the responsibilities under the expanded mandate, it must be strengthened and transformed into an effective working body able to provide administrative and technical support to the central authorities of the Fund. It is desirable that the staff of the secretariat is recruited on a competitive basis, not only among the citizens of the country, where the headquarters of the Fund are located. Professionals from other countries of Central Asia should have the opportunity to be recruited for some positions in secretariat.

EC IFAS can promote and improve interaction between the structural units of IFAS system at the national level. National IFAS branches in member-countries, if provided with sufficient powers, could establish close working relationship with respective national offices of ICWC and ICSD, and with branches of their research and training centers, in order to coordinate the activities and develop coordinated approaches at the national level. Development of horizontal links between institutions of IFAS in each member country would, in turn, facilitate and improve the interaction within the IFAS system at the regional level.

A strengthened EC IFAS is expected to coordinate contacts of all organizations under IFAS with the international community and donor organizations. This recommendation has repeatedly been expressed by many international and donor organizations. International organizations and donors could create a “Consultative Group” in order to streamline and achieve transparency in provision and allocation of donor support to the organizations in the IFAS system. Such group could become an effective tool, provided that all the major donors of IFAS and the regional commissions are willing to participate. Further details regarding the proposals for better coordination of contacts with donors are described in Chapter 4 below.

Inter-State Commission for Water Coordination

Proposals to strengthen the activities of ICWC and its units and to improve their interaction with other regional bodies should be considered in terms of promoting the advancement of basin approach to the integrated water resources’ management for Amudarya and Syrdarya rivers. The result of this process, based on the principles of integrated water resources’ management, should be the establishment of international river basin commissions for these river basins. Introduction of the basin approach to water management for Syrdarya and Amudarya rivers began during the Soviet period, but still has not been completed (KG 35). In general, there are many prerequisites for accelerating the transition to cooperation at the level of basin commissions for Amudarya and Syrdarya rivers.

The first proposed step would be to expand the scope of responsibilities of ICWC to include, in addition to water issues, hydropower aspects of resources’ development for Amudarya and Syrdarya rivers. To this end, membership in ICWC may be expanded to include the heads or senior officials from energy ministries of member-countries, who could, together with their colleagues from the water

authorities, decide on a whole range of issues related to the multi-purpose use of water resources of these rivers. As a consequence, they would be responsible for implementation of ICWC's decisions by energy agencies in their countries, which would allow ICWC to have a real impact on operations of waterworks facilities upstream of Amudarya and Syrdarya rivers.

Inclusion of representatives of the hydropower sector into ICWC could be accompanied by expansion of the geographic boundaries of areas under control of the executive bodies of ICWC - the "Amudarya" BWO and the "Syrdarya" - BWO by extending their mandates to the upper reaches of Amudarya and Syrdarya, where multi-purpose waterworks facilities, which regulate the flow regime of these rivers, are located. The authority and functions of BWOs are assumed to be properly expanded so that over time, international basin commissions for Amudarya and Syrdarya rivers could be developed, based on the BWOs, as sub-commissions of the reorganized ICWC (KG 36).

The decision on rotation of the leadership and of locations of executive bodies and divisions of ICWC among member countries, adopted in 2008, aims at achieving equal participation of all countries in the management of cooperation in the water sector in the region. Rotation of heads of structural divisions among member countries undoubtedly deserves support as an absolutely necessary element in the management of an international organization. However, frequent rotation of the seats of secretariats of ICWC, "Amudarya" BWO and "Syrdarya" BWO, as well as of research and training units with their existing teams of qualified staff can lead to a significant decrease in their ability to perform their tasks.

One possible solution to this problem is a one-time transfer of all secretariats and other units of ICWC to a permanent location in the interested member-countries. If possible, they should adhere to the principle of equitable geographical distribution of these units and implement the international rotation of their leadership. Another practice that should be introduced is to hire specialists from other countries of the region to some key staff positions.

Introduction of a rotational post of Chair of ICWC, whereby the Chair would direct the Commission in between its meetings, can also be seen as one element in the strengthening of the institutional structure of cooperation in water sector.

To introduce the elements of integrated water resources' management at basin level, national environmental agencies have to be involved in the work of ICWC on a regular basis. In future, if international river basin commissions are established, they should include representatives of agencies that handle the environmental issues.

At present, since these agencies already work together within the framework of ICSD, joint sessions of two commissions could be conducted, e.g. once a year, to establish working relations between the two regional commissions. At these sessions, parts of their work programs that are relevant to the development of water resources, protection from pollution and prevention of depletion of water resources could be linked together. ICWC and ICSD could perform joint projects that are of mutual interest to them or take part in implementation of each other's projects.

Creating under each BWO of a consultative body - in form of an international basin council or basin water users council, which would be mandated to develop recommendations to the governing body, - will also facilitate the introduction of integrated water resources' management at basin level. (SIC ICWC 36) For the transition period, one could consider the establishment of a public board under ICWC, similar to the one already established under ICSD. Engaging the civil society in formulating the decisions of ICWC and facilitating their implementation will improve the public understanding of the purpose of cooperation in water sector and will ultimately ensure public support to the principles of integrated water resources' management (KG 40).

In general, the proposed measures to improve the mechanism for cooperation in water sector will help strengthen the credibility of ICWC, improve its real impact to address the issues of integrated water resources' management and enhance its performance.

Inter-State Commission on Sustainable Development

When considering the opportunities to improve the interaction of ICSD with the central authorities of IFAS and with ICWC, one should take into account that the geographical scope of ICSD's mandate goes beyond the boundaries of the Aral Sea basin and covers the whole of Central Asia. This is confirmed by the fact that almost all programs and projects of the Commission cover the entire Central Asian region, which creates certain difficulties for integrating the ICSD into IFAS, whose scope of activities covers only part of the region. Apparently, this partially explains why ICSD operates with a certain degree of autonomy, although the Aral Sea basin remains central for its activities. On the other hand, there is a positive side to the fact that the Commission's activities cover the whole of Central Asia, as this allows general regional cooperation processes to be linked to the specific problems of the Aral Sea Basin.

It would be desirable to have ICSD agree, in one form or another, its long-term plans and programmes with the central authorities of IFAS, in order to avoid any future overlap in the work. In particular, it would probably be useful to assess the institutional implications of the expected entry into force of the Framework Convention for the Protection of the Environment for Sustainable Development in Central Asia in relation to the existing mechanisms for cooperation in the region. It would also be helpful to learn in advance how exactly the newly created Regional Renewable Energy Center of ICSD, which by definition covers the energy of water flows, will interact with existing regional institutions.

In clarifying the mandates of ICSD and its subsidiary bodies, it would be desirable to introduce changes that would allow ICSD not only to avoid the overlaps in the fields of interest with ICWC, but also to establish cooperation with ICWC. For example, it could be suggested that ICSD and ICWC would collaborate, on a permanent basis, in collection, processing, analysis and dissemination of data and information on the status of water resources and their use in the Aral Sea basin, and possibly also on other groups of data. Both Commissions have their database, which could mutually complement each other, while the use of information from a combined database would improve the quality and enhance reliability of analytical studies carried out by each organization.

To improve the interaction of ICSD with other regional structures within the IFAS, it would be desirable to actively involve the Commission in selecting and developing environmental projects to be included into ASBP-3, and at a later stage, to involve ICSD in the implementation of these ASBP projects, possibly, in cooperation with EC IFAS and ICWC.

The organizational structure of ICSD, although simpler than the structure of ICWC, also needs to be improved. First of all, this applies to the Secretariat and to SIC ICSD. In addition to the practice of annual rotation of the President of the ICSD, elected from among the leaders of the environmental agencies of member countries, the introduction of international rotation for the heads of Secretariat and SIC ICSD should also be considered. If these bodies were to be placed in more than one country, the structural units of ICSD could be distributed more evenly in the region.

The staff of the Secretariat and SIC ICSD, as expected, could mostly be the citizens of those countries where these bodies will be located. However in order to create truly international institutions of the Secretariat and SIC ICSD, it would be advisable to recruit professionals from other member countries for some positions.

B. Creating a new organization

The activities of organizations in the IFAS system have long gone beyond the tasks and functions of the Fund, which were set out at its creation. IFAS is gradually turning into an organization facilitating cooperation of the Aral Sea Basin States on a wide range of issues related to social and economic development, environmental protection and rational use of natural resources, which could all be combined under the heading of “sustainable development”.

At the same time, it continues to focus on cooperation for the joint integrated development of water and other resources in the Aral Sea basin. This orientation of the organization makes it more and more attractive for Afghanistan, the sixth country in the Aral Sea basin, whose involvement in international cooperation in the region is welcomed by almost all countries of Central Asia (KZ 37, KG 37, TJ 38, TK 38).

It is therefore proposed to also consider the option of more radical strengthening of IFAS by transforming it into a consolidated regional organization dealing with sustainable development, environmental protection and integrated management of water resources. Along these lines, the proposal is to use, to the maximum extent possible, the structural elements of existing mechanisms of cooperation, both at regional and national levels. The following suggestions concern the basic structural elements of a renewed framework of cooperation.⁷

Vision for a new regional organization

It is essential to begin the study of approaches to a revitalized organization for cooperation in the Aral Sea Basin with consideration of the desirability and possibility of changing its title. The new title of the organization, in conjunction with restructuring of the mechanism for cooperation could facilitate the transition to a new phase of cooperation, without a burden of shortcomings from the previous phase.⁸

The following vision and mission could be suggested for the new organization:

Vision for the Aral Sea Basin: An economically prosperous, socially just and environmentally sound region.

Vision for the regional organization: An international organization, which complies with the international standards, is financially secure and serves the countries of the region in achieving the vision for the Aral Sea Basin.

⁷ Supporting structural units, such as research and development, analytical and training centers, are not discussed at this point. The role, mandate and place in the hierarchical structure of regional cooperation for each of these units can be determined later when the preferred version of the mechanism for cooperation will be worked out in more detail.

⁸ The current title “International Fund for Saving the Aral Sea” does not reflect the essence of activities the organization is engaged in. The word “Fund” in the title creates a wrong impression that IFAS is a financial institution, in possession of the means to be used to achieve its stated goals. The words “Saving the Aral Sea” in its title, which define the purpose of the organization, may have been politically attractive when it was created in the first half of the 1990s, in order to raise the awareness in the region and of the international community about socio-economic and environmental problems caused by decline of the water level in the Aral Sea. The general public usually concludes from these words that the main mission of the Fund is to restore the level of Aral Sea, which is not the reality. Therefore, it is desirable to remove the word “saving” from the title. However, the new organization would be received more easily as the successor of IFAS if the words “Aral Sea” are kept in its title. With that in mind, a proposed title of the regional organization could be the Organization for Cooperation in the Aral Sea Basin (abbreviated OCASB).

Mission of the regional organization: To promote cooperation and coordinate national efforts on sustainable management and development of water and other natural resources for the mutual benefit of countries and improvement of lives of people in the Aral Sea Basin.

Structure of the new organization: three options

Option 1

The organizational structure of the new organization in proposed Option 1 could vertically consist of the following main components:

- Council of the Heads of State of the Aral Sea Basin (retained from the existing structure of IFAS, with slightly modified functions);
- A political body (similar to the Board of IFAS, but with an expanded mandate that includes the area of responsibility of ICWC and ICSD);
- An executive body (established to implement the decisions taken by the political body. It will receive some of the functions of EC IFAS);
- Secretariat (a permanent administrative and working body, established on the basis of EC IFAS);
- Water and Energy Council and an Environmental Council;
- River basin commissions for major transboundary rivers in the Aral Sea basin (including existing, but strengthened and empowered BWOs, and other elements from the structure of ICWC).

It is proposed that the new organization would include, in each participating country:

- National committees to participate in the activities of the new organization (bodies for streamlining and coordinating participation of national ministries and departments in activities of the Organization) or offices of national coordinators;
- National branches of the Organization (based on existing branches of IFAS), which would also serve as secretariats for the national committees.

In addition, international and donor organizations, collaborating with the new organization, are suggested to create a “consultative group” to coordinate support of cooperating organizations and donors to the activities of Organization.

The organizational structure of such a possible regional organization (Version 1) is shown in Figure 2.

Council of Heads of State of the Aral Sea Basin

The Council of Heads of State of the Aral Sea basin, being the highest policy-making authority of the new organization, could be created in the format proposed for the enhanced cooperation mechanism within the framework of IFAS. It would hold its meetings with specified frequency, e.g. every two years. At these meetings, the Council would assess the performance of the Organization and provide guidance on the general directions of activities for the next period. One of the Heads of State could be elected as the Chairperson of the Council, on a rotational basis, for the period between scheduled meetings of the Council. Change of the Chairperson would not be accompanied by relocation of the secretariat of the Organization to the country of the new Chairperson of the Council. This would not be necessary, if the Chairperson of the Council would have no functions of operational management, which could be allocated to the political body.

Political body

In the new organization, the supreme decision-making power could be vested with a collective body, consisting of plenipotentiary representatives of the Governments of participating countries, hereinafter referred to as the political body. Governments of participating countries could be represented in the Council, most probably, at the level of deputy prime ministers. This collegial body would be largely equivalent to the current Board of IFAS. It could meet once a year to review and approve the reports of the Water and Energy Council and the Environmental Council and bodies acting under their auspices, and could approve their work programs and budgets. Its mandate could include approval and amendment of the Statutes of subordinated bodies of the Organization, and appointment of the Executive Secretary or Director of the Secretariat of the Organization. For the intersessional period, one of the members of the Political Body could be elected as its Chairperson.

Executive body

Implementation of decisions taken by the political body would be vested with the Executive Body, which could meet once in 6 months, or more frequently, if necessary. Its mandate could also include preliminary approval of the draft work programs and budgets of all regional bodies and structural units of the Organization, and preliminary examination of reports on their activities. Then, these documents could be forwarded to the Political Body for approval. Representatives of member-countries in the Executive Body would need to be of a level, which would allow them to have enough power domestically in order to effectively influence the process of implementing the decisions of the Political Body in their countries. Since the Organization would deal with a wide range of issues on sustainable development, it would be desirable to consider that countries would be represented in the Executive Body at the level of ministers, specifically designated to lead country's participation in its activities. Chairperson of the Executive Body, elected on a rotating basis from its members, could serve for a period of one year, just like the Chairperson of the Political Body. It would be desirable to lay down the rule that Chairpersons of these bodies should never be representatives of the same country.

The meetings of the Executive Body could, along with general issues of organization's activities, more thoroughly address the issues of regional cooperation in specific areas. The meetings with specific issues on the agenda, e.g. water management or protection of the environment, could be attended by heads or senior officials of governmental agencies, which deal with respective matters.

Secretariat

The Secretariat would function as an administrative and technical unit of the Organization. Headed by the Executive Secretary (or Director), the Secretariat would report to the Executive Body. The Secretariat would work on selection of professional staff for the Secretariat, as well as for other entities of the Organization. Its tasks would include development of draft budgets for the Organization, based on contributions from member-countries to support maintenance and operation of its bodies, as well as development of funding proposals to attract donor support to programs and projects. An important aspect of its work would be to liaise with the international community, since the Secretariat would represent the interests of all regional and basin units of the new Organization. In addition to administrative work, the Secretariat could be engaged in technical work, by directly participating in implementation of some regional programs and projects under the ASBP.

The Head of the Secretariat (Executive Secretary or Director) would be appointed by the political or the executive body. It is desirable that he/she would not be a citizen of any of the Aral Sea Basin countries, for the following reasons. First, member countries would have greater confidence in the person, as he/she would be expected to treat impartially the interests of all countries. Secondly, this could increase donor support, since they would be confident that, under the supervision of a person with experience in

international organizations, the programmes and projects financed by the donors would be carried out in accordance with international requirements for transparency, financial accountability and safeguarding of the interests of all the member countries.⁹

The structure of the Secretariat could include five departments, according to the number of countries participating in the Organization, which would allow each country to be represented at the level of department director. Should Afghanistan join the Organization, a sixth department could be created to be headed by the representative of that country. One of the possible organizational schemes of the Secretariat is shown in Figure 3.

The various departments of the Secretariat could have a sectoral focus. For example, one could deal with issues of ecology and sustainable development, in order to provide support and promote further development of existing cooperation in this field. Thus, continuity with the work of ICSD would be ensured, which would allow the new Organization to absorb its regional institutions and to continue collaboration with national entities of ICSD. Another department of the Secretariat would handle the issues of cooperation in the field of integrated water and hydropower resources development in transboundary rivers of the Aral Sea basin. This department would inherit the regional institutions of ICWC with their national branches, and would take over some functions of the regional institutions for cooperation in the energy sector. Secretariats of the river basin commissions would become an integral part of the Organization's single secretariat.

Another Department of the Secretariat could promote and strengthen cooperation in the field of security of large hydraulic structures and serve as the secretariat for the Regional Commission for the safety of hydraulic structures, the creation of which is now considered by the countries of the region.

Professional staff of the Secretariat should be recruited from all member-states on a contractual basis, based on their qualifications and conscientiousness. It is important to ensure fair representation of each participating country in the Secretariat, both in terms of the number of staff from a country, and the level of their positions. Some positions in the Secretariat could be made open for the citizens of other countries (KG 19).

Since impartiality of staff is a key precondition for the effective functioning of the Secretariat to enable the staff to follow the interests of the international regional organization they work for, the founding documents of the new organization should stipulate that all employees of the organization are international officials for the period of their service.

The majority of the Secretariat staff could work in the headquarters of the Organization; however, some units of the Secretariat could be based in other countries.

Financing for all units of the Secretariat of the Organization, regardless of their location, should come, in accordance with the common practice of international organizations, from a single source, i.e., from the Organization's budget. (KZ 17) This would allow to achieve independent status of employees and their loyalty to the Organization.

⁹ A good example is the long lasting practice of the Mekong River Commission, where they invite experts from donor countries to the position of the Head of Secretariat. It may be appropriate to note that the post of the Head of Secretariat in the Committee for the Coordination of Investigations of the Lower Mekong Basin, the predecessor of the Mekong River Commission, had been financed, for more than 30 years, from UNDP project on institutional support to cooperation in the Mekong River Basin, and was occupied by the staff of this organization.

Water and Energy Council and the Environmental Council

Two additional regional bodies are proposed to be introduced in the structure of the new organization - the Water and Energy Council (KZ 14, KG Dec 2009) and the Environmental Council (KG Dec 2009). These councils would be accountable to the central authorities of the organisation.

Establishment of these councils would allow preserving existing lines of cooperation in the region: water management, which will be expanded to include energy issues, and, secondly, environmental protection and the progress towards sustainable development. Unlike in the current period, when cooperation on these issues is developed as parallel processes, the managing role of the central bodies of the Organization would allow to streamline and complement joint activities in these two directions in the region.

The Regional Water and Energy Council could absorb many structural elements of ICWC, as well as existing regional cooperation bodies on energy issues, such as the Joint Dispatch Center “Energia” and the Electric Power Council of Central Asia. International river basin commissions would work under its authority.

The Environmental Council would become the successor to ICSD. It would continue to develop those areas of cooperation, which would be supported by participating countries. The mandate of the Environmental Council could include issues of water quality and water resources’ protection, to be followed in close cooperation with the Water and Energy Council. (TK 40)

River basin commissions

Integrated use and protection of water and other natural resources is suggested to be implemented at the level of river basins.¹⁰ In order to manage the integrated use and protection of water and other natural resources at the basin level, it is proposed to establish international river basin commissions for Amudarya and Syrdarya rivers (KZ 12, KG 12, TJ 12, TK 13, AMU BWO 13). The basin commission for Chu and Talas rivers could be established on the basis of the existing Commission of the Republic of Kazakhstan and the Kyrgyz Republic for the use of inter-State water facilities on these rivers (KG 35).

The composition of the basin commissions would include the heads or senior officials from national ministries, agencies and organizations involved in water management, energy, environment, economic development, hydrometeorology, emergency response, etc. (KG 12). It is also proposed to establish international basin councils as consultative and advisory bodies under the international river basin commissions. They could include representatives of national basin councils, local authorities and the public. The proposed organizational structure of a basin commission, e.g. for Syrdarya river basin, is shown in Figure 4.

Basin Operation Units (BOUs), created on the basis of existing BWOs, would become the executive bodies of international river basin commissions for Amudarya and Syrdarya rivers. It is expected that the number of water facilities of inter-State use under the responsibility of the BOUs will increase, and their scope of activities will also include those portions of the main channels of Amudarya and Syrdarya rivers, which are currently outside their jurisdiction. Suggestions have been made about the establishment of a joint BOU under the Chu-Talas Water Commission. Functions and powers of the BOU,

¹⁰ It is commonly recognized that a river basin is the most suitable hydrographic unit for achieving sustainable development based on the principles of integrated water resources’ management. This approach is used in many countries, it is supported by the United Nations and other organizations. For EU countries, transition to the management at river basin level is mandatory in accordance with the Water Framework Directive (Directive establishing a framework for Community action in the field of water policy), October 23, 2000.

as compared to the existing BWO, could be expanded to transform them into truly international executive bodies.

Secretariats of international river basin commissions would be their working bodies, which would prepare documents for their consideration and approval, and handle administrative work. Secretariats could be formed, if possible, on the basis of existing regional and national offices of ICWC with the involvement of specialists from relevant agencies represented in river basin commissions.

Cooperation at the level of river basin commissions would be a big step forward compared to the cooperation in the framework of the ICWC. First of all, the heads of water agencies in Central Asia would be able to work together with representatives of other ministries and departments, in order to make collective decisions on the management of water resources. Secondly, it would become possible to manage the water resources' use in the area covering the entire geographic boundaries of river basins (AMU BWO 11).

In general, this approach, taking into account the interests of all countries in each basin and of all major water users, would strengthen cooperation in water sector in Central Asia and transfer the discussion and settlement of many issues, including water quality, to the level of river basins. It is quite possible that the progress in cooperation in specific river basins will vary, which will provide the opportunity to work out individual management approaches within a river basin, and then transfer the lessons learned to other river basins.

Option 2

Option 2 of the new Organization's structure (Figure 5) differs from the previous option, as it proposes, instead of establishing a collective executive body of the new organization, to provide for a post of a Chief Executive Officer, who would be responsible for organizing the implementation of decisions taken by the Political Body. The Chief Executive Officer would be assisted by the subordinated Secretariat of the organization. In this case, the Chief Executive Officer should have citizenship of a member country. Posts of a Chief Executive Officer (Secretary General) exist in the structure of the United Nations, the Eurasian Economic Community and other organizations.

However, although this approach is justified for organizations operating primarily in the political or economic sphere, it might be preferable to have a collective executive body for an organization of technical cooperation in the Aral Sea Basin, and to have its Secretariat, headed by a representative from a country outside the Central Asian region.

Since the Secretariat of the organization, in the absence of an Executive Body, would take over some functions to implement the decisions of the Political Body, it might be useful to consider establishing an institution of Permanent Representatives to the organization, or to return to the practice of seconding country representatives to work in the Secretariat. However, it would then be needed to clearly define their status and position at the Secretariat in the Charter of the organization.

Option 3

The proposed organizational structure of the new regional organization under Option 3 is shown in Figure 6. It differs from Option 1 in that it does not have the Water and Energy Council and the Environmental Council.

Due to the absence of the intermediate body in the structure - the Water and Energy Council - the international river basin commission would be directly subordinated to the central bodies of the organization. In addition, they would be vested with the duty to manage cooperation in the environmental

sector, in the absence of the Environment Council in the structure. Therefore, to develop a coherent policy for cooperation in sectors such as water and the environment, regional high-level meetings on specific areas of cooperation could be conducted periodically or on a permanent basis if necessary. Holding these meetings under the auspices of the Organization, for example, at ministerial level would help in the development of approaches to cooperation, and would also facilitate the implementation of decisions at national level.

Since the proposed structure assumes a collective executive body, the secretariat of the Organization could be headed by an executive person who would not be a citizen of any member-country.

3. Improving national coordination and cooperation

In the process of strengthening the current IFAS mechanism or when creating a new organization, each participating country would be invited to set up a national committee to improve coordination and collaboration between all ministries, departments and other organizations participating in the activities of the organization. The national committee could include representatives of ministries of foreign affairs, justice, social and economic development, water and environmental agencies, ministries of energy and emergency response, and other organizations and NGOs.

The Chair of the national committee could be, in the case of strengthening the existing mechanisms, the Deputy Prime Minister, who represents the country in the Board of IFAS, or, if a new organization is established, the representative of the country in the Political Body or the minister in charge of relations with the organization, who represents the country in the Executive Body.

Such a combination of offices would allow the national high-level representative to thoroughly know what are the interests of the country, relevant for participation in the regional organization, and to defend those interests in the organization's central bodies. On the other hand, the national committee, headed by a high-level official, would have more opportunities for effective coordination, at national level, of policy on participation in the Regional Organization's activities at the national level.

The main tasks of the national committee could be to:

- Develop a coherent national position on participation in activities of the regional organization;
- Coordinate the participation of national ministries and departments in activities of the regional organization;
- Organize the work aimed at implementing the decisions of the governing bodies of the regional organization at the national level;
- Maintain regular contact and communication with the secretariat of the regional organization.

The national committee could meet once every 6 months. The existing national branches of the Executive Committee of IFAS could serve as secretariats of national committees. In case the new organization is established, the same branch could be transformed into a national office of the organization.

Activities at the national level could be coordinated directly by the representative of the country in the Board of IFAS, or, in case of the new organization, by the representative of the country in the Political Body. In this case, this representative could be appointed as national coordinator for participation in the activities of the regional organization, and there could be an appropriate office created for him/her.

4. Improving coordination among international and donor organizations

In order to enhance the efficiency of international support for cooperation in Central Asia, it is proposed that international and donor organizations could create a “consultative group”, in order to facilitate coordination of donor activities among themselves and to improve their dialogue with IFAS or the new organization, if established. The objectives of this group could be:

- Promote mutual understanding and agreement among donors through dialogue and exchange of information;
- Assist in attracting donor support for development and implementation of projects and programs of IFAS or of the new organization and ensure efficient activities of the organization, its secretariat and departments;
- Achieve better coordination among donors for more efficient use of resources and elimination of duplication.

All international organizations collaborating with IFAS, current and prospective bilateral and multilateral donors and other partners for cooperation could be invited to become members of the group. Thus, the Consultative Group of donors will become the main channel for the entire system of regional cooperation in receiving and distribution of assistance from the international community (KZ 26, KG 26, TJ 26, TK 27, UZ 27, SYR BWO 27). This would enable the development of agreed priorities for programmes and projects proposed by each intergovernmental regional organization, thereby eliminating competition between them for donor support, and would allow to focus assistance of the international community on supporting the implementation of ASBP-3, as well as to increase the overall effectiveness of donor assistance and to improve transparency in its distribution and use (TJ 25).

EC IFAS or the Secretariat of the new organization could play a major role in the relationship with the group. It would consolidate requests for donor support from all structural units of the organization, conduct briefings and consultations with donors, prepare documents for consideration at meetings of the Group. These meetings could take place back-to-back with the meetings of the IFAS Board, or the Political Body in case of the new organization. Meetings of the Group could be, if possible, tied to meetings of EC IFAS, or the Executive Body of the new organization.

5. Improving financing for maintenance and operational activities

To improve the financing of the regional cooperation mechanism, proposals have included both mandatory contributions of member countries, and attraction of funding from the international community (KZ 24, KG 24, TJ 25, TK 26). Member countries are expected to contribute fixed annual contributions in hard currency to the central budget of IFAS, or to that of the new organization. These funds will be earmarked to cover current costs for the maintenance and operation of the Secretariat of the regional cooperation organization, the secretariats of its structural units and personnel of BWOs, or BOUs should the new organization be created.

Creation of a single budget in hard currency may help in the internationalization of the staff in the secretariats and other bodies of the regional organization, because it will provide an opportunity to recruit staff from all participating countries to any of the units.

Participating countries would be required to provide funds for the financing of the national projects included in the work programme of regional organization. These funds in national currency could be made available to national branches of IFAS, or national offices of the new organization, bypassing the central budget of IFAS.

Donor support would be sought to carry out technical projects, mainly those of regional interest, and pay for the participation of representatives of member countries and experts in those projects.¹¹

The Secretariat of the regional organization and the Donors Consultative Group could develop a mechanism and procedures for transmitting and distributing donor funds, and reporting on their use. The effectiveness and impact of donor assistance would also have to be evaluated. Particular attention should be given to ensuring transparency.

The proposed scheme of funding of the regional organization is shown in Figure 7.

6. Developing cooperation with the United Nations

The General Assembly of the United Nations, by its resolution A/RES/63/133 of 11 December 2008, invited IFAS to participate, as an observer, in its sessions and in its work. The United Nations thereby recognizes IFAS as a cooperative partner who shares its goals and aspirations. In practical terms, this means that an IFAS representative is entitled to speak once a year at a meeting of a committee of the General Assembly.

Adoption of this resolution also provides an opportunity to IFAS, or the new organization should it be established, to strengthen its relations with the United Nations system. To achieve this, Central Asian countries could submit to the General Assembly a draft resolution entitled “Cooperation between the United Nations and IFAS”. The adoption of such a resolution would raise the status of IFAS in the United Nations system, since it would highlight the importance of strengthening the dialogue, cooperation and coordination between the United Nations system and IFAS. The resolution would also invite the Secretary-General of the United Nations to hold regular consultations with the highest official of the organization.

The resolution would also invite organizations, programmes and funds of the United Nations system and international financial institutions to cooperate and develop direct contacts with IFAS for joint implementation of programmes. The Secretary-General of the United Nations would be requested to prepare reports on implementation of the resolution and submit them to the next and future sessions of the General Assembly.

Such a resolution would place additional responsibility on IFAS, which would have to make contributions annually to the reports of Secretary-General, participate in the presentation of the reports and their discussion at one of the committees of the United Nations General Assembly.

Conclusion

Ways to strengthen the existing mechanism for cooperation under IFAS will be identified during discussions on possible approaches to its improvement and revitalization by searching for mutually acceptable solutions and forms of implementation.

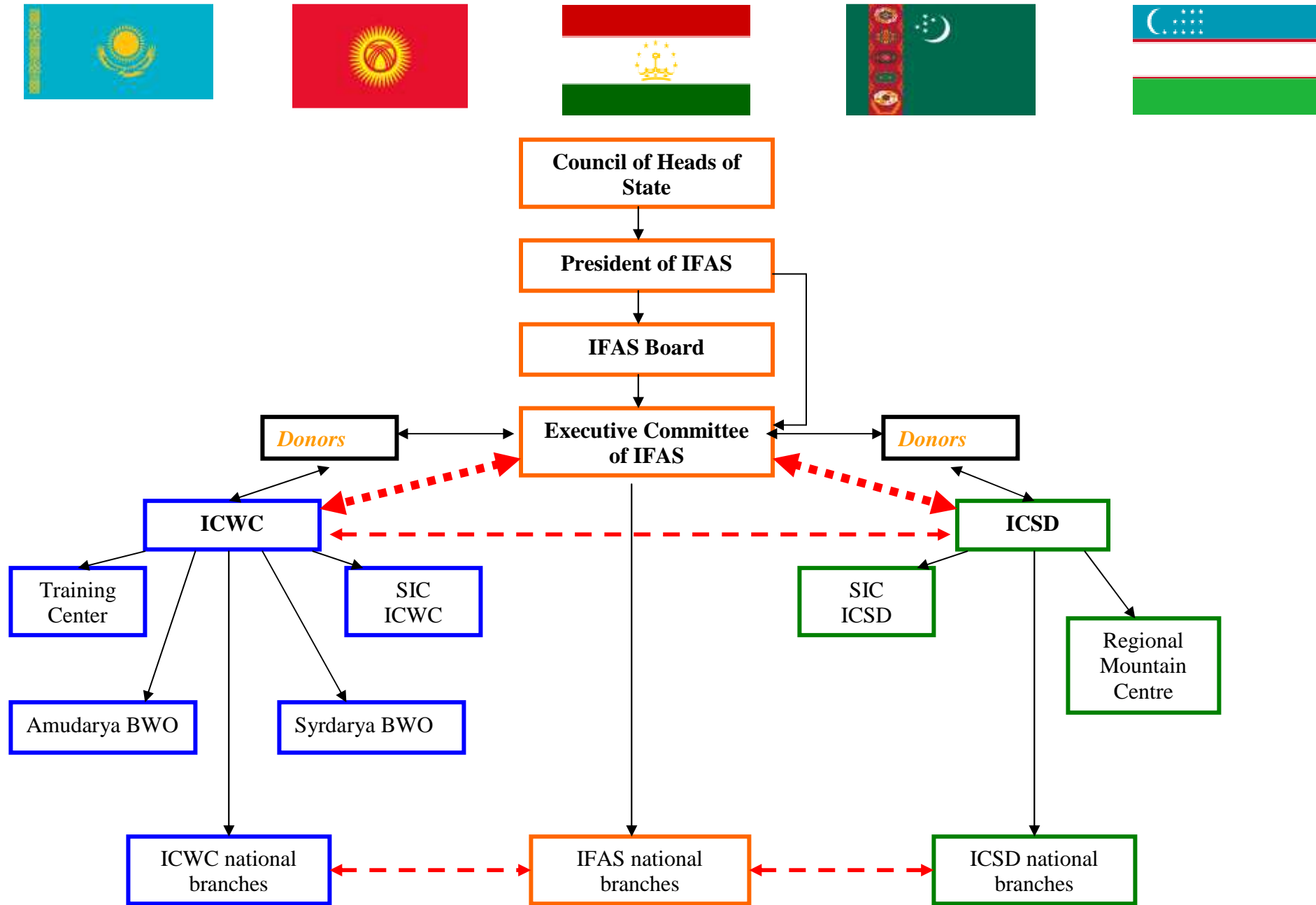
It is not only desirable but necessary to adopt a single “institutional” agreement (to replace the Agreement of 1999). This would determine the status and functioning of the regional cooperation bodies, whether it be the existing bodies subject to improvement (approach A) or bodies of the new organization

¹¹ Typically, donors do not pay the costs of maintaining the apparatus of cooperation bodies. However, the budgets of projects and programs funded by donors may include the overhead costs of providing administrative support to the secretariat of the organization to implement those projects and programs.

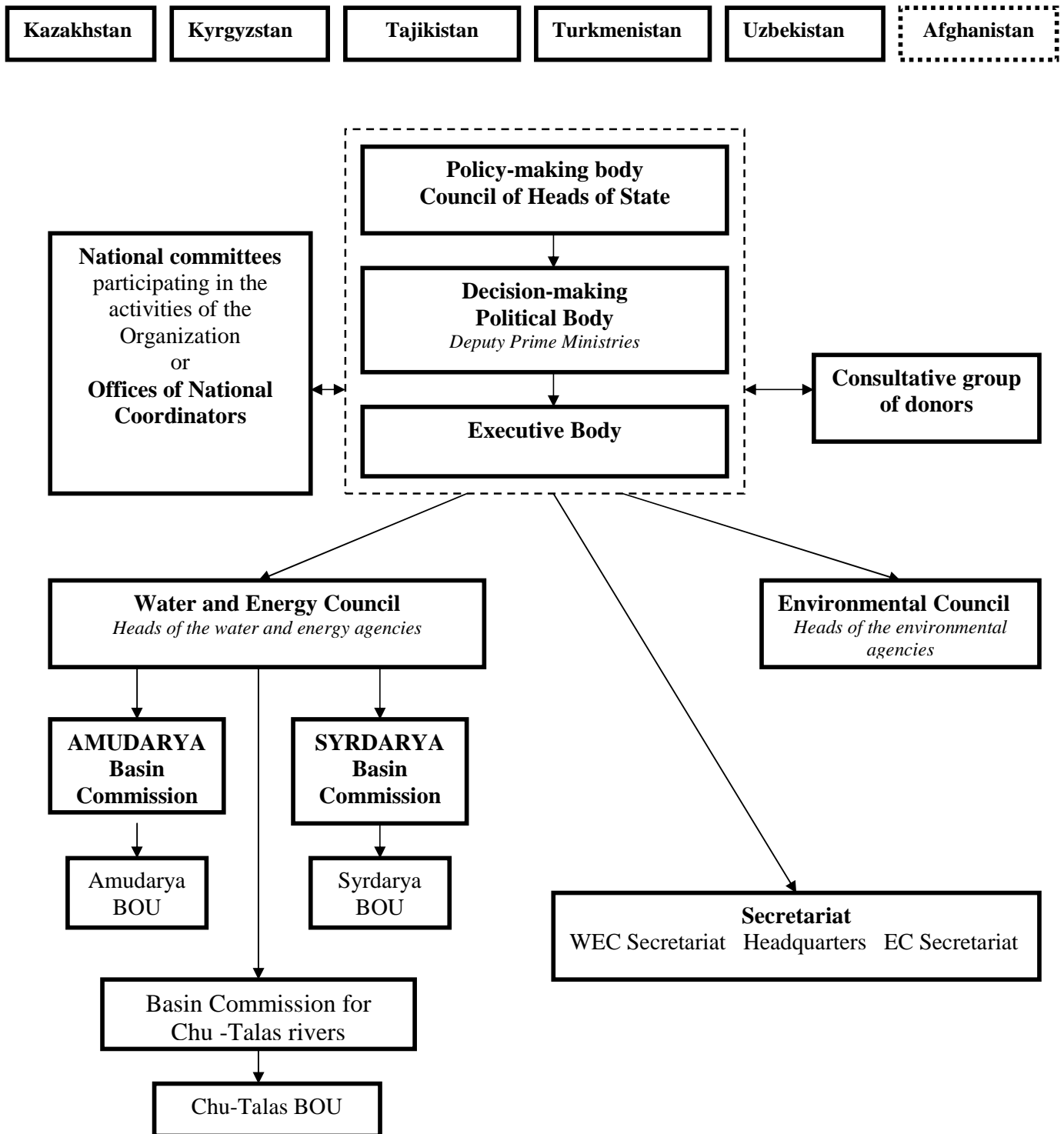
(approach B). However, the choice of options for developing a legal framework depends, primarily, on the decision as to how the restructured institutional mechanism for cooperation of States in the Aral Sea basin should look like.

The rebuilt institutional mechanism should contribute to creating a coherent and effective three-level system of legal regulation, which would organically combine the regional, basin and bilateral level of cooperation among States.

Figure 1: Possible coordination in the IFAS structure



**Figure 2: Organizational chart of the Organization for Cooperation in the Aral Sea Basin
Option 1**



**Figure 3: Structure of the Secretariat of
Organization for Cooperation in the Aral Sea Basin**

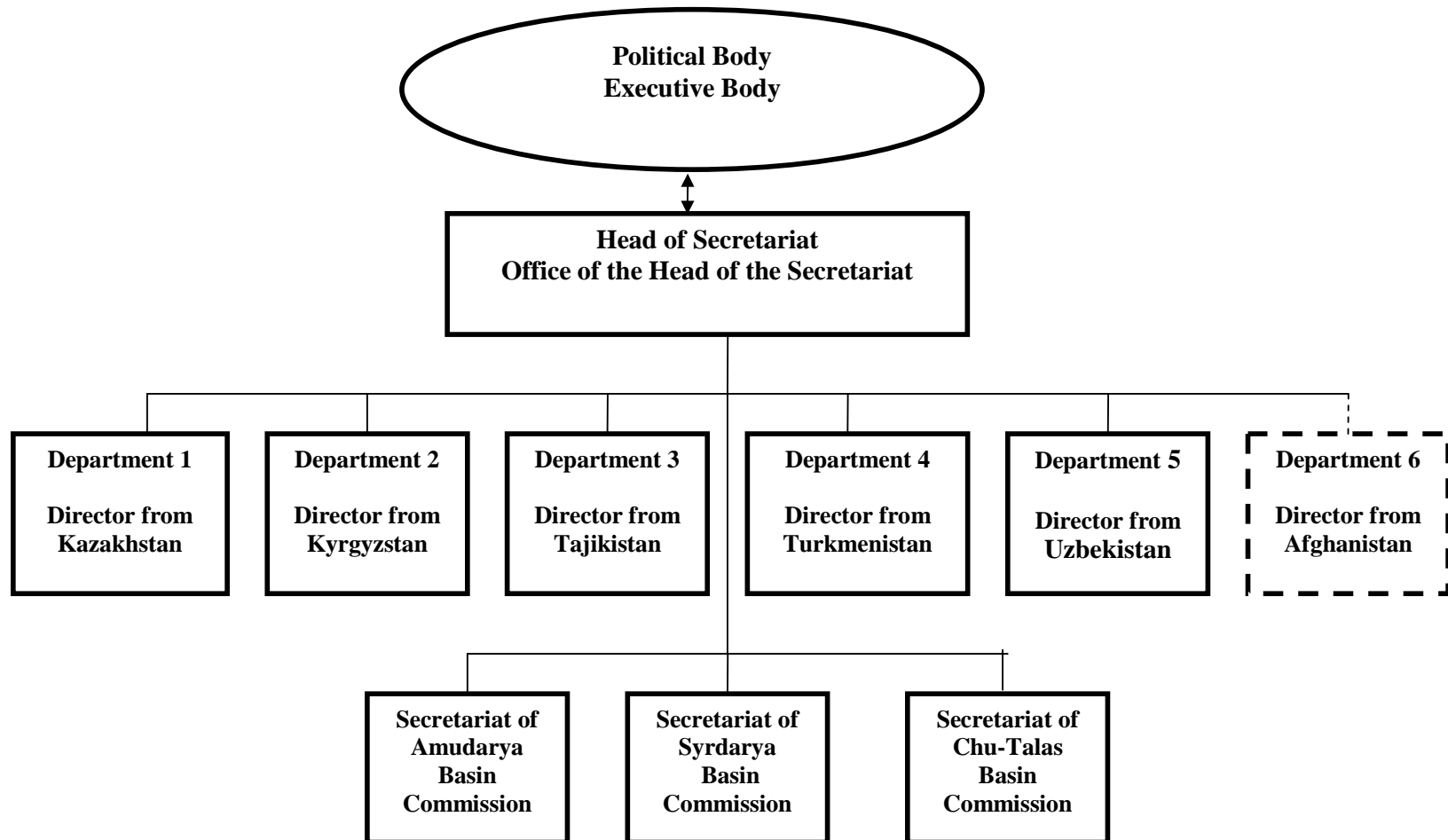
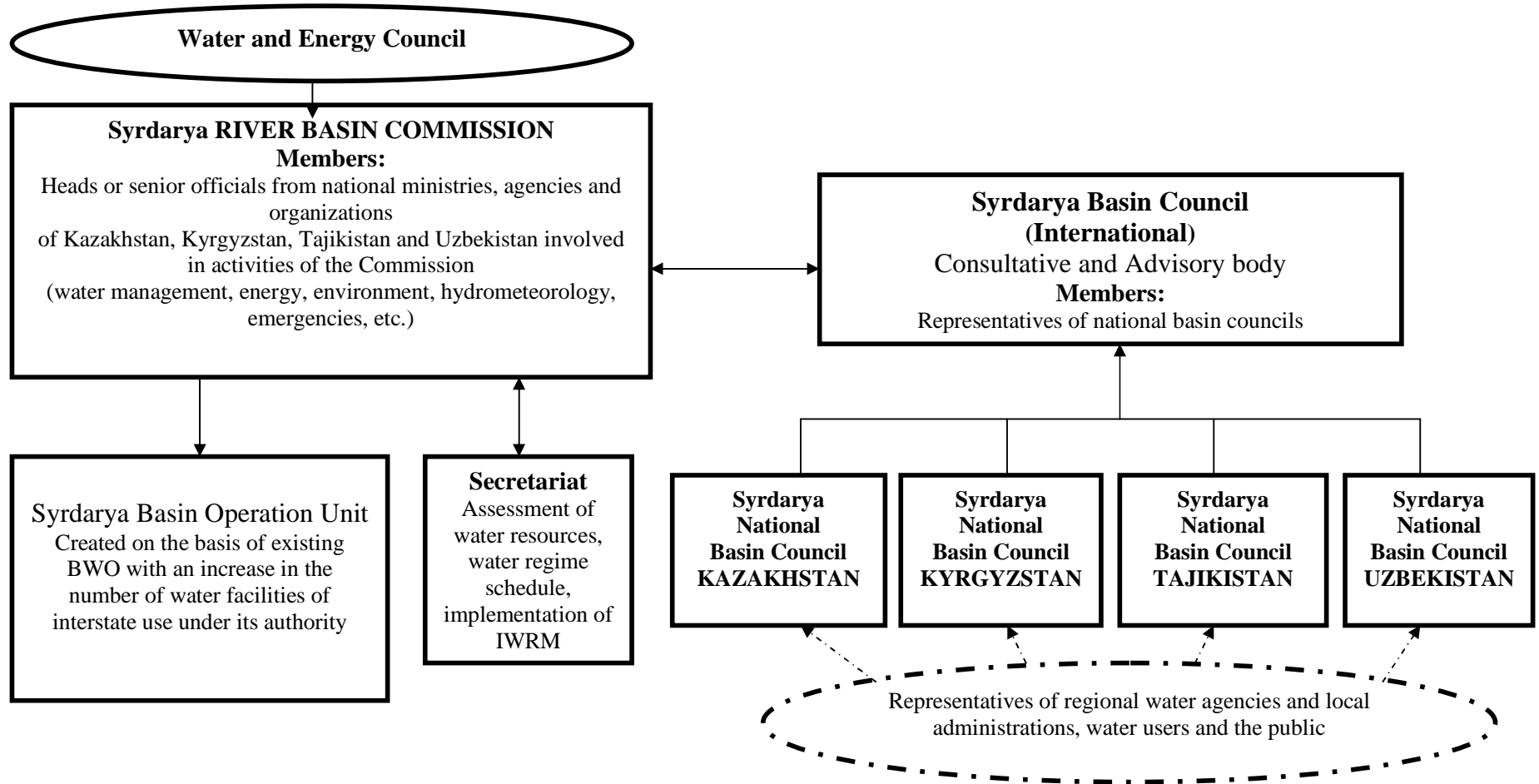
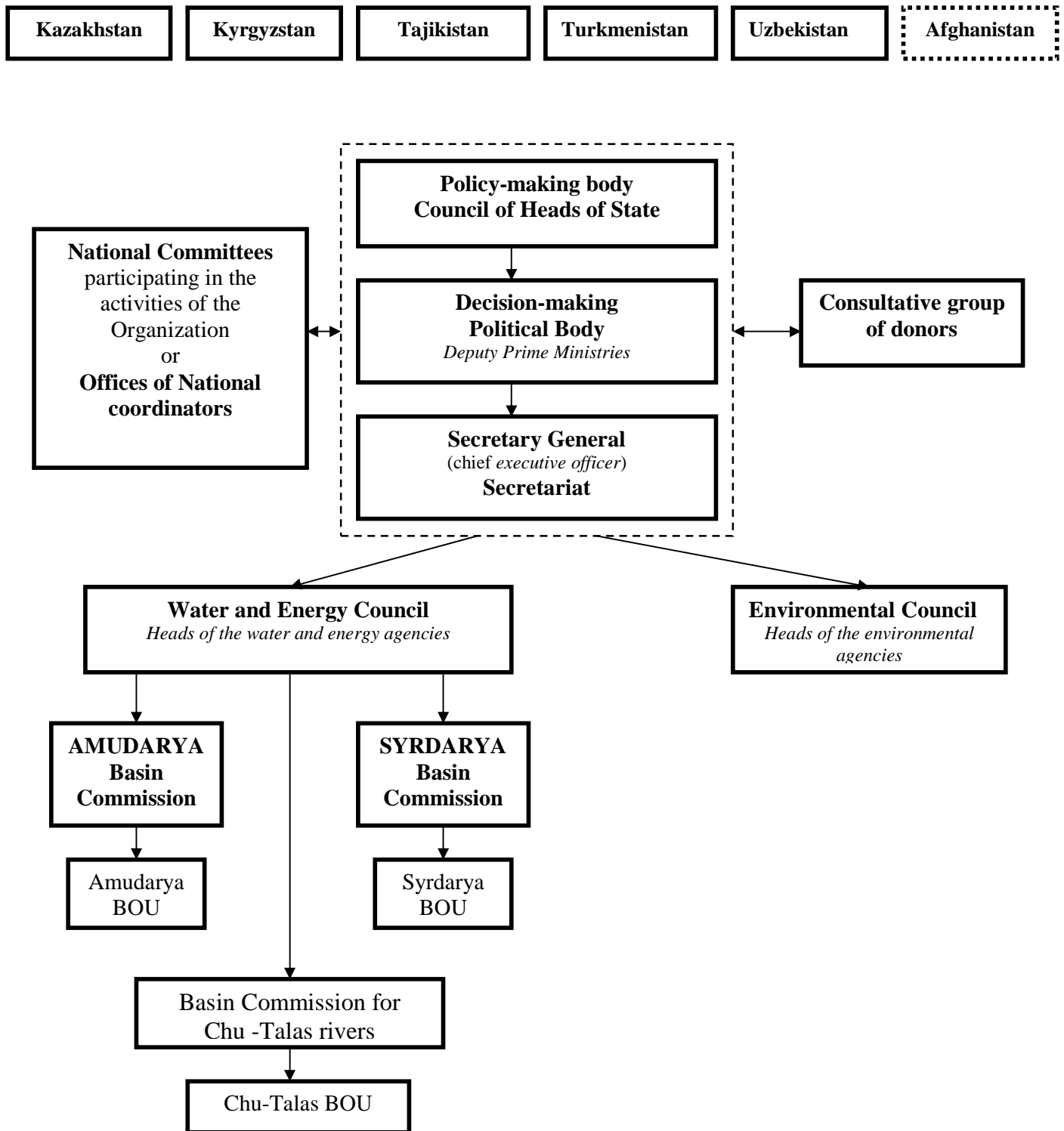


Figure 4: River Basin Commission (example of the Syrdarya river basin)



**Figure 5: Organizational chart of the Organization for Cooperation in the Aral Sea Basin
Option 2**



**Figure 6: Organizational chart of the Organization for Cooperation in the Aral Sea Basin
Option 3**

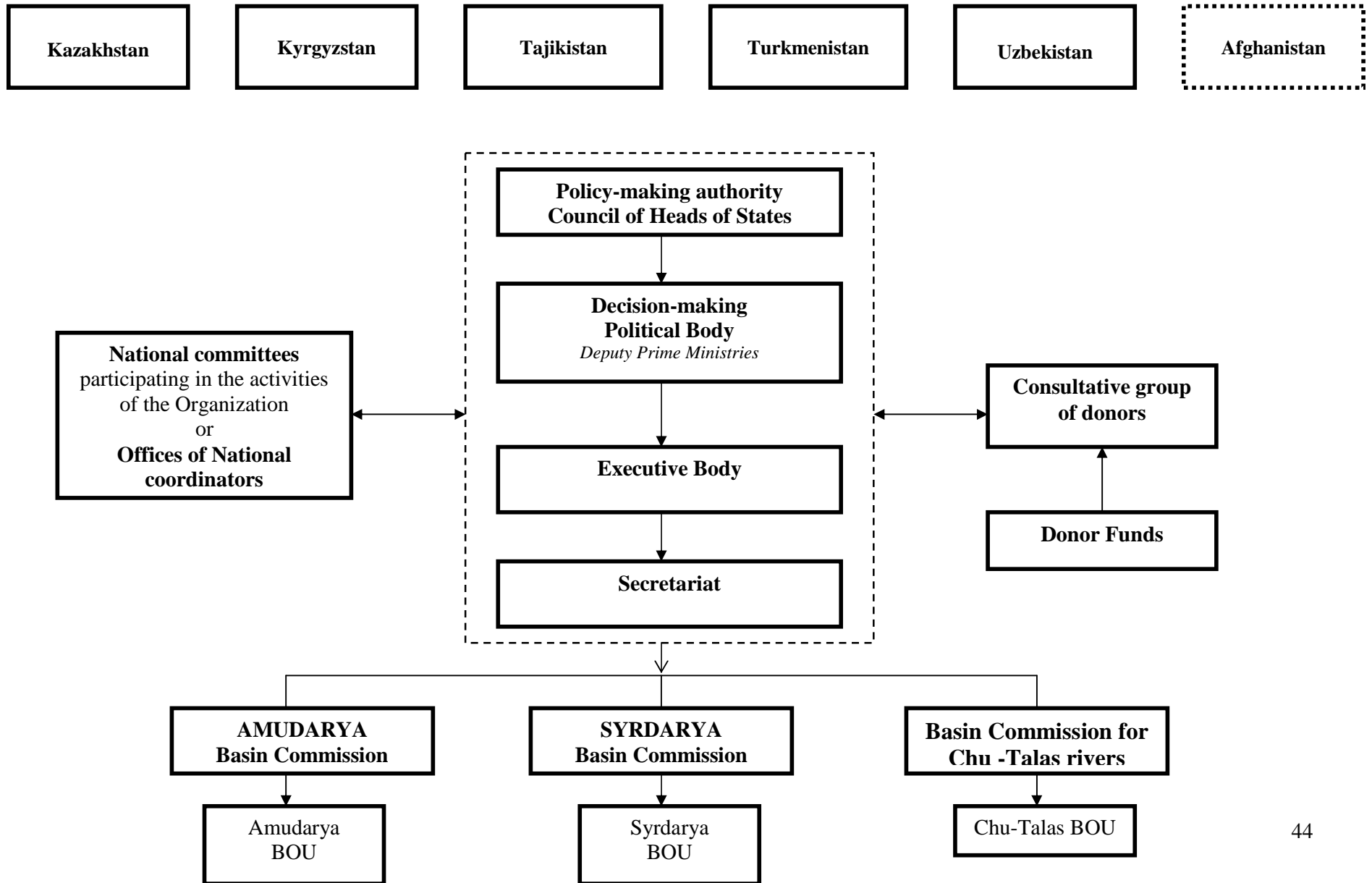


Figure 7: Financing the Organization for Cooperation in the Aral Sea Basin

