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THE INTERNATIONAL FUND FOR SAVING THE ARAL SEA

**REPORT OF THE FIRST MEETING OF THE WORKING GROUP ON
STRENGTHENING INSTITUTIONAL AND LEGAL FRAMEWORKS OF
IFAS AND THE DEVELOPMENT OF ARAL SEA BASIN PROGRAMME – 3**

Almaty, Kazakhstan, 10-11 December 2009

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INTRODUCTION

1. The first meeting of the Working Group on Strengthening of Institutional and Legal Frameworks of the International Fund for Saving the Aral Sea (IFAS) and the Development of the Aral Sea Basin Programme – 3 (ASBP-3) was held in Almaty, Kazakhstan, on December 10-11, 2009. The meeting was organized by the Executive Committee of the International Fund for Saving the Aral Sea (EC IFAS) in cooperation with the United Nations Economic Commission for Europe (UNECE) in the framework of the Project “Regional Dialogue and Cooperation on Water Resources Management in Central Asia”. The project aims at assisting the countries of Central Asia to strengthen institutions and legal frameworks for water resources management. It is funded by the Government of Germany in the framework of “Transboundary Water Resources Management” Programme of the Deutsche Gesellschaft fuer Technische Zusammenarbeit (GTZ) GmbH. The Programme is one of the mechanisms of the Berlin Water Process.
2. The meeting was attended by delegations from Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan. Delegations included representatives of the Executive Committee of IFAS (EC IFAS), national experts and representatives from the founding countries of IFAS, as well as experts from regional organizations of IFAS, including the Scientific and Information Center of the Interstate Commission for Water Coordination (ICWC), Scientific and Information Center of the Interstate Commission for Sustainable Development (SIC ICSD), “Amudarya” and “Syrdarya” Basin Water Organizations (BWOs).
3. The meeting was also attended by UNECE Secretariat, GTZ staff, international experts and representatives of international and regional organizations. In total, the meeting was attended by 50 participants (see Annex 1).
4. The main objective of this meeting was to facilitate the implementation of decisions taken as follow-up to the Joint Statement of the Heads of State Founders of IFAS, adopted in Almaty on 28 April 2009, where the Heads of State have expressed "... the willingness to further strengthen the institutional and legal framework of IFAS in order to improve the efficiency of its operations and to achieve greater interaction with financial institutions and donors with respect to implementation of projects and programs related to the problems of the Aral Sea ... ". The Executive Committee has been mandated to develop, together with the Interstate Commission for Water Coordination and the Interstate Commission for Sustainable Development of IFAS, with involvement of national experts and donors, the Action Program to support to the Aral Sea Basin countries for the period of 2011-2015 (ASBP-3), for subsequent review and approval by the States-Founders of IFAS.

I. OPENING

5. Mr. Bo Libert, UNECE Regional Adviser on the Environment, chaired the first day of the meeting and opened the event. He introduced the objectives and role of the Project “Regional Dialogue and Cooperation on Water Resources Management in Central Asia”. Following the proposal of the Chairperson, participants adopted the Agenda, as attached in Annex 2.

6. Mr. Saghit Ibatullin, Chairman of EC IFAS, addressed the participants with a welcoming statement. He drew attention to the importance of implementation of decisions taken by the Summit of Heads of State on 28 April 2009. He also briefed the participants on progress made in the development of materials for the project. The materials were developed by national experts in September - November 2009. The work of national experts was conducted in three areas:

- Component 1 - Effectiveness of the regional institutions in the management of water resources;
- Component 2 - Legal framework for regional cooperation;
- Component 3 - Preparations to development of ASBP-3.

The outcomes of the accomplished work were compiled into a table and presented to the participants.

7. Mr. Saghit Ibatullin presented the Action Plan for implementation of the Joint Statement of the Heads of Founder States of IFAS on April 28, 2009, which was approved by the IFAS Board on December 3, 2009. He urged the participants to have an open and constructive dialogue on implementation of the decisions of the Summit of Heads of States. He stressed that the decision of the UN General Assembly to grant IFAS an observer status is a symbol of trust by the United Nations as well as of expectations of further strengthening the organizational and legal frameworks of IFAS in the light of UN General Assembly’s Resolution adopted on 11 December 2008. Mr. Saghit Ibatullin reminded that according to the Action Plan, EC IFAS shall submit draft proposals for amendments and additions to the statutory documents of IFAS by May 2010.

8. Mr. Volker Frobarth, Head of the GTZ “Transboundary Water Resources Management” Programme, addressed the participants with a welcoming statement. He spoke about the history of the Berlin Water Process and wished success to the meeting.

9. A welcoming statement was delivered by Mr. Marton Krasznai, UNECE Regional Adviser. He stressed the neutral role of UNECE in helping to strengthen the regional cooperation on water resources in Central Asia. He noted that the decisions of the Summit of the Founder States of IFAS offer a unique opportunity to start real actions towards solutions for the complex issues of water, energy and environment in Central Asia. He added that in order to succeed, this process should begin with the creation of strong, modern and effective regional organizations.

II. AGENDA

10. The first day of the meeting was devoted to discussions on strengthening the regional organizations and the legal framework of IFAS. Agenda of the second day of the meeting focused on the development of the Third Aral Sea Basin Program - ASBP-3 (see Annex 2).

III. STRENGTHENING INSTITUTIONAL AND LEGAL FRAMEWORKS OF IFAS

FIRST SESSION

Identifying the weaknesses of existing regional organizations and their national structures and gaps in the regional and national legal frameworks

11. International experts summarized contributions of national experts on the analysis of the current system of regional organizations and the existing legal framework of IFAS. Mr. Sergey Vinogradov, international legal expert, provided an overview of the legal framework of cooperation between the Central Asian States on transboundary water resources. He noted that in their submissions almost every national expert gave a critical assessment of the existing legal framework. Stressing that the national experts have focused their attention mainly on the analysis of 1992 Agreement and 1998 Agreement, he noted the need to consider the legal regime as a whole rather than individual agreements. He stressed that the existing legal regime is fragmented, includes overlaps and contradictions in some legal principles, as well as lacks coherence, consistency and clear hierarchy in the relationship of legal acts. Mr. Vinogradov mentioned that the proposals of national experts on the strengthening of the legal framework of cooperation were quite different, ranging from complete replacement of the legal framework to proposals to advance the existing legal framework, or to leave the existing system of agreements as it is. Noting the close relationship between laws and mechanisms for their implementation, he pointed out that the possible ways of improving the legal framework under this project would largely depend on the possible ways of strengthening the regional organizations.

12. The international expert on institutions, Mr. Yuri Steklov, thanked the national experts for the materials they have prepared with respect to improvement of the structure of regional organizations. He noted the weaknesses of the current system of regional organizations, namely: (i) the lack of a unified mechanism of cooperation (in fact, there are three structures for regional cooperation – EC IFAS, ICWC and ICSD, working separately, without proper coordination, and even competing for the leadership); (ii) the existing arrangements on cooperation do not cover the hydropower sector; (iii) declared areas of competence of regional organizations exceed the scope of the powers of national organizations which are represented in the regional organizations; (iv) there are excessive hopes in the Central Asian region placed on the international community, donors and UN agencies.

13. Chairperson stressed the role of national representatives of the Executive Committee of IFAS as leaders of national expert groups and asked them, as well as representatives of regional organizations, to summarize the national inputs relevant for the first session. The representative of Kazakhstan noted that the existing mechanism of cooperation has not exhausted its capacities, although while using this mechanism, the tasks declared in statutory documents and agreements have been barely achieved. He drew attention to the lack of coordination of projects and programs under the exclusive competence of ICWC, lack of reporting on completed projects to the Executive Committee of IFAS, as well as poor coordination of different ASBP projects between their implementing agencies. It was also stressed that the monitoring system, sharing of information and transparency of information between countries are inadequate. The representative of the Kyrgyz Republic mentioned the lack of clear division of powers between the bodies of IFAS, duplication of functions of ICWC and ICSD and overlapping in their work. She also noted the lack of transparency in the activities of EC IFAS, ICWC and ICSD, and their bodies before the public in the States-Founders of IFAS. It was stressed that the main problem in transboundary cooperation was poor compliance with obligations under international treaties. Representative of Tajikistan said that the current legal framework does not adequately handle the situation in the water sector and that there is actually no single organization, which would represent all sectors of the economy. He noted the readiness of the Republic of Tajikistan to consider the abolition of rotation of EC IFAS's location, provided that equal representation of bodies of regional cooperation in the countries is ensured. He also called for the establishment of river basin commissions as a mechanism of cooperation. The representative of Turkmenistan drew attention to the feasibility of establishing a new mechanism of cooperation, which would coordinate the issues of water and energy. He also spoke positively in regard to establishing a permanent location for EC IFAS, together with rotating presidency, and called upon countries to make their dialogue more constructive. The representative of Uzbekistan said that no changes to the existing structure of regional organizations are required because the existing structure of IFAS is basically adequate to cope with its tasks. He pointed out that every IFAS structure has its own functions and powers, which do not overlap. The existing mechanism of cooperation in the water sector allows countries of Central Asia to address major issues related to the management and allocation of transboundary water resources. He also stressed that the region had recently worked on the drafting of new agreements, and this work had not been brought to the end. He urged participants to focus their efforts on finalization of these agreements. According to the representative of the Republic of Uzbekistan, attempts to make fundamental changes in the existing legal framework could potentially start an endless negotiation process, and may divert efforts and resources of the parties from specific activities aimed at solution of the Aral Sea problem.

14. Representatives of regional organizations (SIC ICSD, "Amudarya" and "Syrdarya" BWOs) shared their vision on the strengthening of regional organizations and the legal framework for cooperation.

15. During the discussion, participants shared their views on the effectiveness of the current system of regional organizations and the legal framework. Representative of the Republic of Tajikistan raised the need to ensure the implementation of decisions in the efforts to improve the existing mechanisms. The representative of the Kyrgyz Republic called for an analysis of the legal framework of IFAS, the

activities of IFAS bodies and a complete inventory of existing legal instruments in order to remove contradictions and discrepancies. Also, he supported the idea of the creation of basin commissions, as well as proposed to create a Water and Energy Council under IFAS and an Environmental Council under IFAS. The representative of the Kyrgyz Republic also encouraged participants to be consistent in addressing the issue of rotation of bodies in regional organizations.

SECOND SESSION

General trends in the strengthening of institutional and legal framework

16. The international legal expert, Mr. Sergei Vinogradov, provided an overview and described the ways to strengthen the legal basis of cooperation. He noted that the foundation of the system of legal regulation of water cooperation in Central Asia is composed of the regional and sub-regional (less than five countries) agreements. Among them, the central place belongs to the five-party *1992 Agreement on cooperation in joint management, use and protection of water resources of interstate sources*. A special place among the regional cooperation instruments is occupied by institutional acts, which create the legal framework and define the legal status, position, competence and scope of the inter-state cooperation bodies. The third group of regional instruments, which define the general principles and areas of water cooperation, includes the acts of recommendatory nature, such as declarations and statements of the Heads of State of Central Asia. He also noted the role of bilateral documents in cooperation among the States. The international expert stressed that, despite the presence of a large number of international agreements relating to governance and protection of transboundary water resources in Central Asia, the existing legal framework needs serious improvement. This applies both to individual agreements, and to the entire system of international legal regulation of water cooperation in the region.

Possible options for improvement have been proposed: (i) adoption of a comprehensive new agreement instead of the 1992 Agreement (or its replacement by the 2006 Framework Convention and a series of additional protocols on specific issues on transboundary water use) or (ii) modification (by amending the existing legal framework and revision and adoption of draft agreements), or (iii) adoption of one "institutional" agreement, which would define the status and functioning of regional cooperation bodies.

17. The international expert on institutional matters, Mr. Yuri Steklov, presented his proposals for strengthening the system of regional organizations: (i) to preserve the existing system, or (ii) to revise the existing system in order to strengthen the linkages between existing regional organizations, or (iii) to create a new organization, based on existing system of regional organizations. It was noted that the last two options would require the adoption of a new institutional treaty. The international expert had also presented a scheme of a possible structure of new organization for cooperation in the Aral Sea basin.

18. In the discussion of proposals and options to improve IFAS, the representative of the Nukus branch of EC IFAS described the history of the Fund, explained the origins of the name of the organization, and stressed its structural uniqueness. The representative of the Republic of Kazakhstan called for the evolutionary development of the existing system towards the maximum use of accumulated experience and capacities. The representative of SIC ICWC had noted the need to refine and harmonize the existing drafts of legal documents. The representative of the Kyrgyz Republic noted the awkwardness of the possible structure of the new organization as presented by the international expert, and put forward the proposal to establish a regional cooperation organization, which would include the Council of Heads of State, Council of Heads of Government, the Board, Water and Energy Council and the Environmental Council, two commissions and the secretariat. The representative of the Republic of Kazakhstan called for consideration of ideas put forward by the international expert. The representative of the Republic of Uzbekistan did not support any proposals to make changes to the existing system of regional organizations.

19. Mr. Bo Libert, the Chairman of the meeting, summarized the discussion. He thanked all participants for their sincere desire to debate openly and constructively, for the significant contributions made in the form of written contributions and during the discussions, for their readiness for mutual cooperation in implementing the decisions of April Summit. He noted that during this discussion, the international experts were able to more clearly identify for themselves the viewpoints of States and regional organizations to the cooperation. Based on submissions and suggestions, the experts will prepare a report on possible ways of strengthening the regional organizations and the legal framework. Further work will be carried out through national consultations and subsequent meetings of the Working Group.

IV. DEVELOPMENT OF ASBP-3

Conditions of development of ASBP-3

Proposals with respect to the main directions of ASBP-3

20. The second day of the meeting was devoted to the development of the ASBP-3, and was chaired by Mr. Marton Krasznai, UNECE Regional Adviser.

21. Mr. Bo Libert, UNECE Regional Adviser, addressed the meeting with an introductory statement. In his speech he drew attention to the need of agreeing upon ASBP-3 framework, which would consist of a common vision, basic principles, structure and main directions or priorities. He stressed that the development of such framework should precede the development and selection of specific projects that would meet the agreed conditions. Mr. Bo Libert noted that the development of ASBP-3 should be done in close collaboration with donors and international organizations. He further noted the consultations and meetings with donors held by the Executive Committee of IFAS and the initiative to establish a Consultative Group consisting of donors and international organizations to provide advisory and expert support in the development of the ASBP-3, and, potentially, during its

implementation. He recommended defining clear mechanisms of funding, implementation and monitoring of projects under the ASBP-3. Mr. Yuri Steklov, the international expert on institutions, spoke about the experiences of development of program documents by the Mekong River Commission.

22. The representative of the Kyrgyz Republic described the experience of preparing ASBP-2 and advised to take into account this experience in the preparation of the ASBP-3. The representative of SIC ICSD drew attention to the need for an inventory of donor activities in the region and the need for a mechanism for sharing information on the relationship between regional organizations and donors. He also called for work on specific aspects of the ASBP-3 development process. Representatives of the Republic of Kazakhstan and the Republic of Tajikistan proposed to involve the experts from meteorological services and the Regional Centre of Hydrology in the process of developing ASBP-3. The representative of Turkmenistan supported the need for the establishment of a Coordination Council on development of the ASBP-3. Representative of the Republic of Uzbekistan shared the experience on the selection of projects to be used in the development of the ASBP-3. The Chairman of EC IFAS shared information regarding the meeting of IFAS Board on December 3, 2009, and the discussion of the main directions of the ASBP-3. He presented the Action Plan to implement the Joint Statement of 28 April 2009, approved by the IFAS Board. Information was also provided on an informal meeting with donors held on November 17, 2009. The representative of UNECE noted the positive reaction of donors and international organizations with respect to the draft ASBP-3 priority areas. The representative of the Kyrgyz Republic supported the idea of an electronic discussion concerning the development of the ASBP-3, and coordination of work with donors by the Executive Committee of IFAS.

V. SUMMARY OF OUTCOMES

23. Summarizing the discussion, Mr. Saghit Ibatullin, the Chairman of EC IFAS thanked the participants for their fruitful work and contributions. He noted that the first meeting of the Working Group has demonstrated the willingness of all countries to listen to each other and a clear intention to implement the tasks given by the Presidents during the April summit. He explained that international experts will prepare a report by the end of January, which will reflect possible ways of strengthening the regional organizations and the legal framework for cooperation. Further work will include national consultations and the second meeting of the Working Group (late February - March 2010). Countries are encouraged to make every effort to ensure participation of the representatives of all key ministries and agencies in the Working Group meeting. He also noted that the discussion highlighted the need to develop an instrument that would clearly define the processes, mechanisms and criteria for selecting projects for inclusion in the ASBP-3, taking into account the approval by the Board of the Action Plan to implement the Joint Statement of the 2009 April Summit. He drew attention to the need for the Executive Committee of IFAS to continue the work on strengthening coordination with donors and international organizations in the development of the ASBP-3.

Annex 1

LIST OF PARTICIPANTS FIRST MEETING OF THE WORKING GROUP ON STRENGTHENING INSTITUTIONAL AND LEGAL FRAMEWORKS OF IFAS AND THE DEVELOPMENT OF ARAL SEA BASIN PROGRAMME – 3

*Almaty,
10-11 December 2009*

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Annex 2

Agenda of the Working Group on Strengthening Institutional and Legal Frameworks of IFAS and the development of ASBP-3 Almaty, 10-11 December 2009

First day (10 December) - Strengthening Institutional and Legal Frameworks

Chair: Bo Libert, Regional Adviser, United Nations Economic Commission for Europe (UNECE)

09.30 -10.00 Registration of participants

10.00 – 10.30 Opening

Opening statement by Saghit Ibatullin, Chairman of the Executive Committee of the International Fund for Saving the Aral Sea (IFAS)

Opening statement by Volker Frobarth, German Technical Cooperation - GTZ

Opening statement by Marton Krasznai, UNECE Regional Adviser

10.30 – 14.00 First session: Identifying weaknesses of present regional institutions, associated national structures and regional and national legal frameworks

10.30 Review of inputs by local experts¹

- International experts' summary of inputs received from local experts (by Yuri Steklov and Sergei Vinogradov);
- Introduction of papers / inputs by local experts

12.00 Coffee break

12.30 Continuation of the discussion on papers / inputs by local experts

13.45 Summary of discussions by international experts and by the Chair

14.00 Lunch break

15.00 – 19.30 Second session: General directions of strengthening institutional and legal frameworks

15.00 Introductory statements by the international experts (Yuri Steklov, Sergei Vinogradov)

¹ Hereinafter “local experts” means national experts and experts from the regional organizations.

15.45 General directions of strengthening institutional and legal frameworks – Statements by local experts

17.00 Coffee break

17.30 Continuation of the discussion on the general directions of strengthening institutional and legal frameworks

18.45 Summary by the International Experts

18.15 Summary of discussion by the Chair

19.30 End of the session

20.00 Reception

Second day, 11 December – Development of Aral Sea Basin Programme-3

Chair: Marton Krasznai, UNECE Regional Adviser

09.30 – 11.00 First session: Modalities of elaboration of ASBP-3

09.30 Opening statement by Bo Libert, UNECE Regional Adviser

Participants are invited to discuss the process of elaboration of ASBP-3, including project development, approval, funding and monitoring of projects and cooperation with donors.

11.00 Coffee break

11.30 – 16.00 Second Session: Proposed main directions of development of the ASBP-3 – detailed discussion

11.30 Integrated use of water resources, taking into account the interests of all states in the region.

12.35 Environment

13.30 Lunch

14.30 Socio-economic problems

15.30 Improving the institutional and legislative mechanisms

16.30 Summary by the Chairman of the Executive Committee of the International Fund for Saving the Aral Sea