

*Geneva, 15 December 2011*

## **“Legal and institutional framework for transboundary water cooperation in Central Asia”**

### **1. Background and Context**

As we all know, the Aral Sea Basin is a unique ecological system. It is formed by two great Asian rivers – the Syr- Darya and Amu-Darya – which rise in the Tien Shan and Pamir mountains and which link together six Central Asian countries, including Afghanistan. Geography and history have created unique conditions for the management and utilization of water courses in this region.

**Table 1 - Water and land resources of the region**

Country	Runoff, km <sup>3</sup> /year			Irrigated lands	Population
	Syr Darya	Amu Darya	Total	1000 ha	million ppl*
Kazakhstan	4.5	-	4.5	786	3.1
Kyrgyzstan	27.4	1.9	29.3	415	5.3
Tajikistan	1.1	62.9	64.0	744	7.6
Turkmenistan	-	2.78	2.78	1752	6.7
Uzbekistan	4.14	4.7	8.84	4259	29.0
Afghanistan	-	6.18	6.18	-	-
Total	37.14	78.46	115.6	7956	51.7

\*Proportion of population in the Aral Sea basin

Rapid expansion of irrigated lands in the region took place in 1960 when the centralized government of the country (USSR) made decisions, without regard of environmental requirements, to increase the production of crops in Amu Darya and Syr Darya basins.

**Table 2 - Key indicators of the use of water and land resources in the Aral Sea basin**

Indicators	Measurement unit	1960	2007-2010
Population	mln. ppl	14,1	51,7
Irrigated agricultural lands	th. hectares	4510	7956
Irrigated land per capita	hectares/person	0,32	0,154
Total off take	km <sup>3</sup> /year	60,61	105,0
Total runoff to Aral Sea	km <sup>3</sup> /year	54,99	10,6

These data (**Table 2**) clearly demonstrate what has, in fact, become the main cause of the Aral Sea drying out and of related environmental tragedy for a vast region. After 1961, there was a significant increase in water offtake for irrigation of up to 105.0 km<sup>3</sup>.

At present, the water area of the Aral Sea is 13.0 thousand km<sup>2</sup> or 17%, and the volume of water is less than 90 km<sup>3</sup> or 9% of the volume in 1961.

Decisions of the IFAS Summit held in April 2009 addressed the following challenges and threats facing the Central Asian countries:

**Climate change** poses a serious threat to the whole natural and economic system, including water and land resources.

Unfavorable predictions are given in context of the global and regional warming processes. Since 1960 till 2000 water reserves in glaciers decreased by more than 25% and keeps declining. The Central Asian mountains face growing **degradation processes, such as deforestation and erosion, pollution by wastes and pasture shrinkage.**

The rapid **population growth** is another serious challenge in the Central Asian countries. Population growth has caused intensive economic development leading to an increase of pressure on water resources and to the water stress, the reduction of water supply per capita.

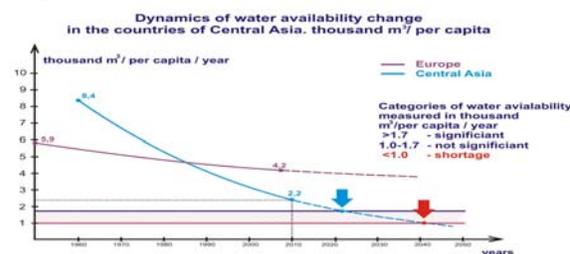
Given the permanent volume of water flow about 115 km<sup>3</sup>, population growth is leading to increased water shortage in the region. The mean unit water supply is decreasing rapidly in Central Asia. Over the last fifty years (1960 – 2010), this value decreased from 8.4 thousand m<sup>3</sup>/year/person to 2.2 thousand m<sup>3</sup>/year/person and tends to further decline. Given the current rates of Central Asia population growth, the mean water supply will come to a critical value of less than 1.7 thousand m<sup>3</sup>/year by 2030 (**Fig. 1**).

Intensive water withdrawals have caused level lowering of the Aral Sea and shrinkage of its volume by 90%. By the end of the 80's the sea has disappeared virtually, with the resulting negative consequences:

- critical degradation of water quality and people's health;
- large-scale desertification and salinization processes;
- loss of biodiversity and intensification of the negative climate impact.

The region's growing demand for water is enhanced by the development of industrial and agricultural production, population growth and global climate change. To resolve these challenges, the joint water resources management is seen as a priority for interstate cooperation in Central Asia.

**Fig. 1. Provision with water resources**



The UN Secretary-General Mr. Ban Ki-moon's visit to the countries of Central Asia in April 2010 showed that the UN attaches great importance to the development of the Central Asian region. He expressed support to IFAS and activities undertaken by the Executive Committee of IFAS.

## **2. 20 years of IFAS - a unique example of international cooperation**

Since its establishment the **International Fund for saving the Aral Sea (IFAS)** and its regional bodies became a platform for development and implementation of bilateral and multilateral agreements and also for exploring opportunities of international agreements application in the area of joint management, use and protection of transboundary water resources.

**On April 28, 2009, the Heads of the Central Asia states made a Joint Statement**, highlighting the important role of IFAS in coordinating and addressing the fundamental aspects of cooperation to overcome the Aral Sea Basin crisis.

Particular importance was given to cooperation with UN system institutions, to closer cooperation with European Union (EU) countries and donor community. Today, EC IFAS is acting as a strategic partner with UNECE, UNESCAP, UNRCCA and others in the implementation of activities on the promotion of integrated water resources management, environment protection, climate change, transboundary cooperation, dam safety and sustainable development.

In the Joint Statement, the Heads of States also expressed their "... **readiness to further improve the institutional structure and legal framework of IFAS** with the aim to increase the effectiveness of its activity and interaction with financial institutions and donors in implementation of the projects and programmes related to the solution of the Aral Sea problems ....".

In this respect, the EC IFAS created the Expert Group on the revision of the statutory documents of the IFAS. The main task of the Expert Group was to facilitate implementation of this Joint Statement by clarifying positions to reach consensus between the countries on improving the structure and legal framework of IFAS"

The ideas and principles of international conventions are fully reflected in the **Third Aral Sea basin Program (ASBP-3)** for the period of 2011-2015, mainly within the forth Direction of the Program: **"Improving the institutional and legal mechanisms"**

## **3. International conventions and regional agreements as a basis of mutual trust among the countries**

It would be reasonable to note that by present, a well-established though far from being perfect legal base of the international cooperation in transboundary water use and management has been formed in Central Asia. In legal terms, it includes both obligatory instruments and numerous accords and documents of advisory nature, the

so called "soft law" instruments.

In geographic terms, the established system of international legal regulation in transboundary water cooperation is a two-level one, where along with regional agreements of more general character a number of bilateral agreements on concrete watercourses or scope of cooperation is effective.

The main documents regulating water relations on a global scale include

- the UNECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Helsinki, 1992);
- the UN Convention on the Law of the Non-Navigational Uses of International Watercourses (New-York, 1997);
- the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo, 1991)

In the region, Kazakhstan and Uzbekistan have joined two of the above Conventions. Acceptance of these Conventions by the rest of the Central Asian states should be considered as one of the significant stages in developing the system of interstate relations to regulate joint water resources use. In the future, this could also lead to a unified approach to matters involving International Law and could be used as a guide during negotiations between the Central Asian republics

### 3.1 Regional instruments

1. The system of legal regulation of water cooperation in Central Asia is founded on regional and sub-regional (limited number of parties) agreements. The pentilateral *1992 Agreement about cooperation in the area of joint management, use, and protection of water resources in interstate sources* (all Central Asian states are the Parties) **is in the heart of such agreements.**

The regional instruments include the *1993 Agreement on joint actions aimed to address the Aral Sea and Prearalie problems, improve environment and ensure socio-economic development in the Aral region* and the inter-governmental *1998 Agreement about use of water and energy resources in the Syrdarya river basin* (four countries - Kazakhstan, Kyrgyz Republic, Tajikistan, and Uzbekistan - are the Parties).

Agreements related to water resources topics, such as the *1998 Environmental Cooperation Agreement* (Kazakhstan, Kyrgyzstan, Uzbekistan) and *the 1996 Agreement on the Use of Fuel and Energy Resources and Water Resources, Construction and Operation of Gas Pipelines in Central Asia* (Kazakhstan, Kyrgyzstan, Uzbekistan) can be included, to certain extent, in the group of regional (or, more precisely, **sub-regional**) instruments as well.

2. A special role among the regional instruments belongs to the **Acts of institutional nature**, which in combination create a legal framework and define the legal status, position, competence and authority of cooperation bodies of Central Asian States in the management and protection of water resources of the region. Those include both international treaties, first of all, the inter-governmental pentilateral *1999 Agreement on the status of International Fund for Saving the Aral Sea (IFAS) and its bodies* and other acts.

3. **The third group** of regional instruments, determining the general principles and directions of water cooperation in Central Asia, are the **Acts of recommendatory nature (documents of "soft law")- the Declarations and Statements of Heads of the**

**Central Asian States** and bilateral agreements adopted from time to time. These documents are very important in context of regional water policy. As a rule, such documents are signed by the Presidents of respective Central Asian countries, and thus they reflect the agreements achieved at the highest political level.

#### **4. Prospects for strengthening transboundary water cooperation**

In order to deal with the present challenges it is necessary to improve the institutional structure of regional and basin organizations. Particular attention should be paid to raising awareness and improving understanding among the key stakeholders of the international water law principles and tools as a basis of regional cooperation, as well as to strengthening and further exploration of a role of cooperation instruments.

On April 28, 2009, the Heads of the Central Asian states in their Joint Statement confirmed the countries interest in the development of mutually acceptable mechanisms for the use of water resources and protection of the environment in Central Asia.

During its chairmanship in Kazakhstan (2009-2011), the EC IFAS jointly with its regional bodies, UNECE and GIZ in consultations with national experts and donor community developed the ASBP-3. This is a long-term regional Program that aims to implement joint actions and perspective programs on overcoming the consequences of the Aral Sea crisis by applying principles of integrated use of water resources and protection of the environment in Central Asia.

The project preparation process involved extensive consultations among national and international experts from the EU and World Bank to develop Program priorities and project proposals.

It is important to note that the current international cooperation is based on the ASBP-3. On December 9, 2010 international organizations and the **donor community made a Statement about their full support** to the Program and their willingness to develop close partnership and cooperation with the Executive Committee of IFAS.

Today the World Bank, United Nations Economic Commission for Europe (UN ECE) United States Agency for International Development (USAID), Swiss Agency for Development and Cooperation (SDC), Eurasian Development Bank (EDB), French Global Environmental Fund (FGEF) and others are actively collaborating with IFAS.

It is supposed that an important place in the international legal regulation of activities related to water protection and use should be taken by the ***2006 Framework Convention on Environmental Protection for Sustainable Development in Central Asia***, main provisions and principles of which refer to water resources. By present, the Convention was signed by the three states as Kyrgyzstan, Tajikistan, and Turkmenistan and has not entered in force yet.

It is advisable to adopt by the countries the following legal documents issuing from the Plan of measures for implementation of provisions stipulated in the 2009 Statement of the Heads of IFAS State-Founders:

- 2006 Framework Convention on Environmental Protection for Sustainable Development in Central Asia should be ratified.

- Draft Agreement between the Governments of Republic of Kazakhstan, Kyrgyz Republic, Republic of Tajikistan, Turkmenistan, and Republic of Uzbekistan on Safety of Hydraulic Structures should be fine tuned.
- The Sub-regional Sustainable Development Strategy (SSDS) in CA should be agreed upon by the countries.
- Draft Agreement between the Governments of Republic of Kazakhstan, Kyrgyz Republic, Republic of Tajikistan, and Republic of Uzbekistan on the Use of Water and Energy Resources in the Syrdarya River Basin should be fine tuned and signed.

In continuing international cooperation aimed to improve the ecological and socio-economic situation in the Aral Sea basin, it is important also to establish a single unified Information base (meteorological, hydrological, ecological, etc.) acknowledged by all states in the region, raise awareness of population and interest in water and environmental issues, develop a network of educational and training centers for farmers-water users, etc.

It is also important to develop transboundary water cooperation with other sectors of economy; to develop and implement jointly IWRM plans in transboundary basins; to promote coordination between donors and international organizations on financial support for transboundary water management in the region; to achieve necessary conditions for ecosystems functioning for adapting to climate change and to define cross-national strategies and policies.

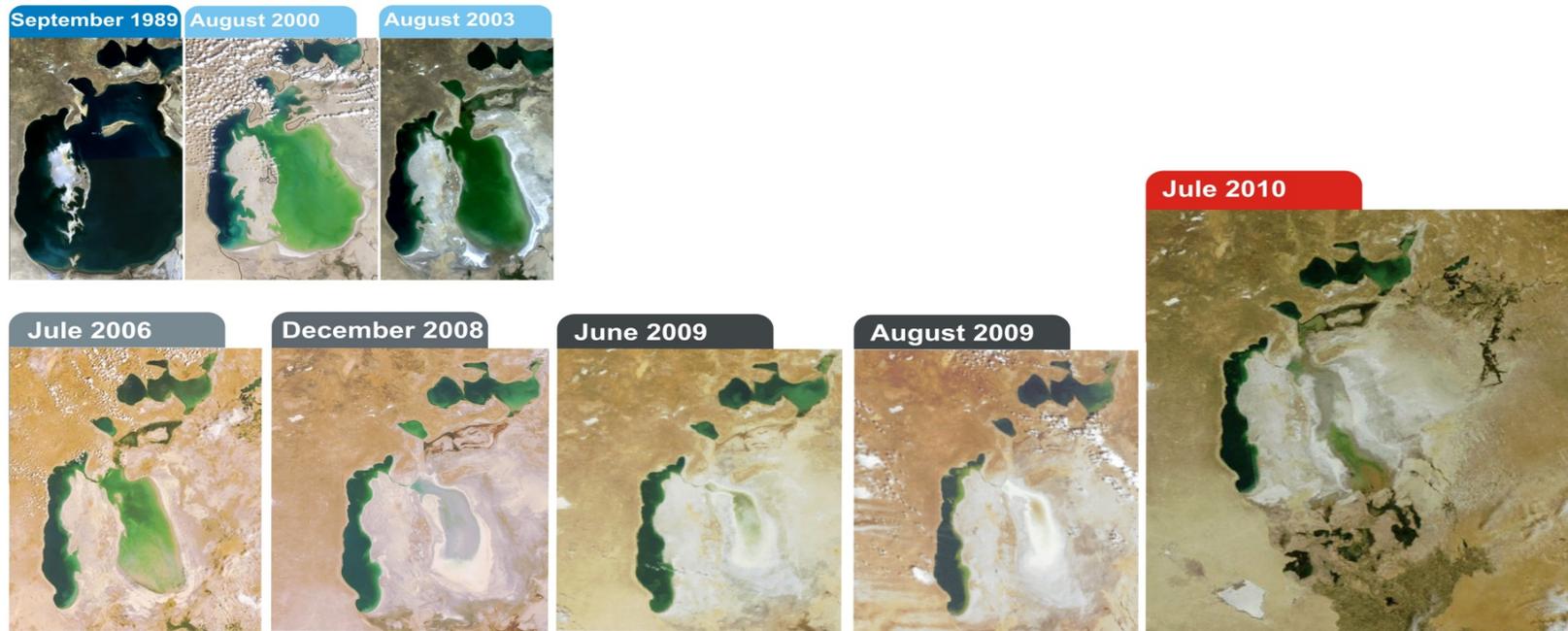
Largely, political commitment from the governments of Central Asian countries to the regional cooperation in the Aral Sea basin is a foundation and necessary condition of the successful implementation in the region of sustainable water resources management and environmental protection measures.

I wish successful and fruitful work to all participants of the meeting.

## “LEGAL AND INSTITUTIONAL FRAMEWORK FOR TRANSBOUNDARY WATER COOPERATION IN CENTRAL ASIA”

Dr. Saghit Ibatullin, Chairman of the Executive Committee IFAS  
15 December 2011, Geneva

### Satellite monitoring of the Aral Sea



## The region of the Aral Sea Basin



## Water and land resources of the Central Asian region

Country	Volume of runoff km <sup>3</sup> /year			Irrigated lands thousand ha	Population mln
	Syrdarya	Amudarya	Total		
Kazakhstan	4,5	-	4,5	786	3,1 *share of population in the Aral Sea Basin
Kyrgyzstan	27,4	1,9	29,3	415	5,3
Tajikistan	1,1	62,9	64,0	744	7,6
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Uzbekistan	4,14	4,7	8,84	4259	29,0
Afghanistan	-	6,18	6,18	-	-
<b>Total</b>	<b>37,14</b>	<b>78,46</b>	<b>115,6</b>	<b>7956</b>	<b>51,7</b>

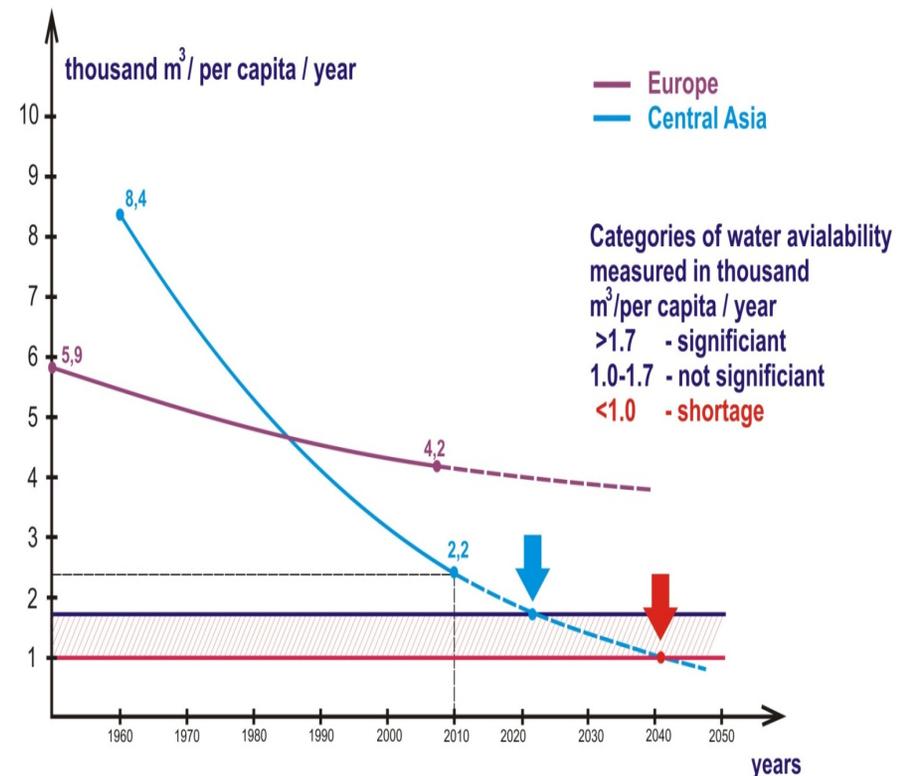
## Key indicators of water and land resources use in the Aral Sea Basin

Indicators	Measurement unit	1960	2007-2010
<b>Population</b>	<b>mln</b>	<b>14,1</b>	<b>51,7</b>
<b>Irrigated agricultural lands</b>	<b>thousand hectares</b>	<b>4510</b>	<b>7956</b>
<b>Irrigated land per capita</b>	<b>hectares/per capita</b>	<b>0,32</b>	<b>0,154</b>
<b>Total water withdrawal</b>	<b>km<sup>3</sup>/year</b>	<b>60,61</b>	<b>105,0</b>
<b>Total runoff to the Aral Sea</b>	<b>km<sup>3</sup>/year</b>	<b>54,99</b>	<b>10,6</b>

## Decisions of the IFAS Summit held in April 2009 addressed the following challenges and threats facing the Central Asian countries :

1. Climate change: loss of glacier reserves, expected reduce of water flow by 10-15%, increase of natural disasters.
2. Population growth in the Central Asian states: increasing deficiency of water resources, reduction of specific water availability in 3,5 times, there is a need for additional annual 700-800 mln m<sup>3</sup> of water.
3. Degradation of water and land resources, ecosystem destruction: desertification, reduce in water quality, loss of biodiversity.

Dynamics of water availability change in the countries of Central Asia. thousand m<sup>3</sup>/ per capita





## Cooperation with UN agencies



The UN Secretary-General Ban Ki-moon was the first amongst the United Nations leaders who visited the region of the Aral Sea basin. During the visit, the head of the UN urged all countries in the region to find ways to overcome controversies over shared water resources use.

**Special Representative of the UN Secretary General and Head of the UN Regional Centre for Preventive Diplomacy for Central Asia (UNRCCA)**

**Mr. Miroslav Jenca** in cooperation with IFAS organized three important regional workshops resulted in the Summit of the Heads of states-founders IFAS and a meeting on the outcome of the visit of UN Secretary General visit to the countries of Central Asia.



**UN Deputy Secretary General Mr. Jan Kubis**

visited the office of the IFAS twice – in 18.07.2009 and 16.07.2010.

He is an active supporter of interaction between the UNECE and IFAS, deepening cooperation among the Central Asian region giving great attention to the support of the negotiation process on the Aral Sea basin.



**EC IFAS closely cooperates with the following UN agencies:**

United Nations Economic and Social Commission for Asia and the Pacific (ESCAP);  
United Nations Development Programme (UNDP);  
United Nations Environment Programme (UNEP);  
Food and Agriculture Organization of the UN (FAO);  
World Meteorological Organization (WMO);  
International Bank for Reconstruction and Development (World Bank).

IFAS has been granted observer status by the United Nations General Assembly Resolution (2008); Memorandum of Understanding between the UNECE, UNESCAP and IFAS and Memorandum of Understanding with UNRCCA signed (2009-2010)



## Implementation of the decisions by Heads of IFAS states

- **Joint Statement of the Heads-founders of IFAS, 28 April 2009:** “The Parties express their readiness to further **improve the organizational structure and legal framework of IFAS** with the aim to increase effectiveness of its activity and interaction with financial institutions and donors in implementations of projects and programs related to the solution of the Aral Sea problems”.
- **ASBP-3:** forth direction of the Program: “**Improving the institutional and legal mechanisms**”.
- **Meetings of the Expert group on the revision of the statutory documents of the IFAS:**  
First meeting: October 22-23, 2010 in Almaty  
Second meeting: March 22-23, 2011 in Geneva  
Third meeting: December 12, 2011 in Almaty



## Legal instruments

### Global Conventions

#### **The main documents regulating water relations on a global scale:**

- The UNECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Helsinki, 1992);
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## Legal Instruments

### Regional Agreements

1992

- Agreement about cooperation in the area of joint management, use and protection of water resources in interstate sources (all CA states are Parties)

1993

- Agreement on joint actions to aimed to address the Aral Sea and Priaralie problems, improve environment and ensure socio-economic development of Aral Sea region (all CA states are Parties)

1998

- Agreement about use of water and energy resources in the Syrdarya river basin (*four countries – Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan- are the Parties*)

1999

- *Agreement on the status of International Fund for saving the Aral Sea (IFAS) and its organizations* (all CA states are Parties)

## Legal Instruments

### Subregional Agreements

1996

- Agreement on the Use of Fuel and Energy and Water Resources, Construction and Operation of Gas Pipelines in Central Asia
- *(Kazakhstan, Kyrgyzstan, Uzbekistan signed)*

1998

- Environmental Cooperation Agreement
- *(Kazakhstan, Kyrgyzstan, Uzbekistan signed)*

2006

- Framework Convention on Environmental Protection for Sustainable Development in Central Asia
- *(Kyrgyzstan, Tajikistan, Turkmenistan signed)*

## Legal instruments (soft law)

### Joint Statements and Declarations of IFAS Heads of States

1995	• Nukus Declaration of the Central Asian States and International Organizations on Sustainable Development of the Aral Sea Basin
1997	• Almaty Declaration
1999	• Ashgabat Declaration
2001	• Tashkent Statement
2002	• Dushanbe Declaration
2009	• Joint Statement of Heads of States-Founders of IFAS



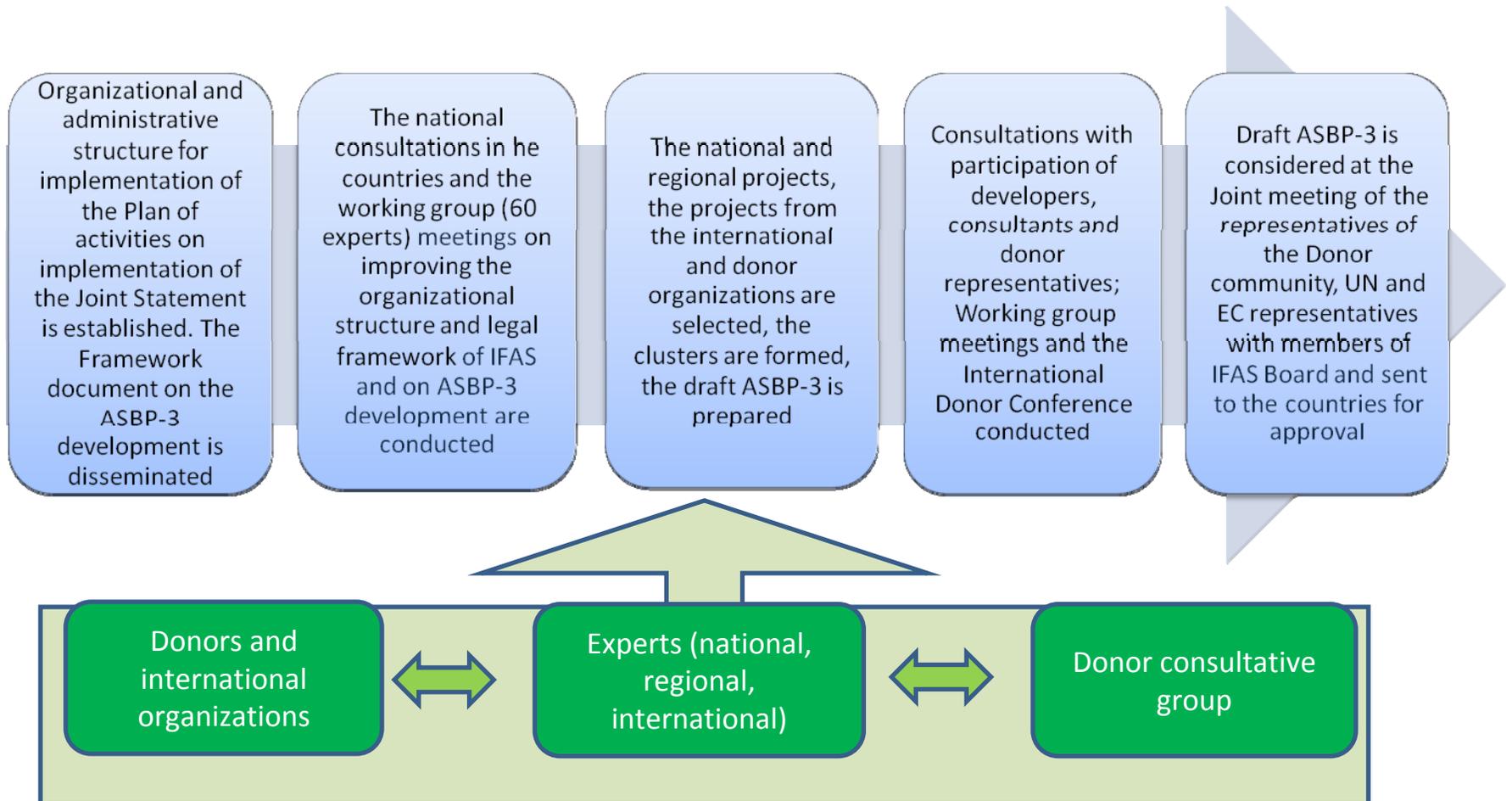
## **Prospects for strengthening transboundary water cooperation**

**Development of Action Programme on providing assistance to the countries of the Aral Sea Basin for the period of 2011-2015 (ASBP- 3) in consultations with national experts and donor community**

### **The main directions of the ASBP-3:**

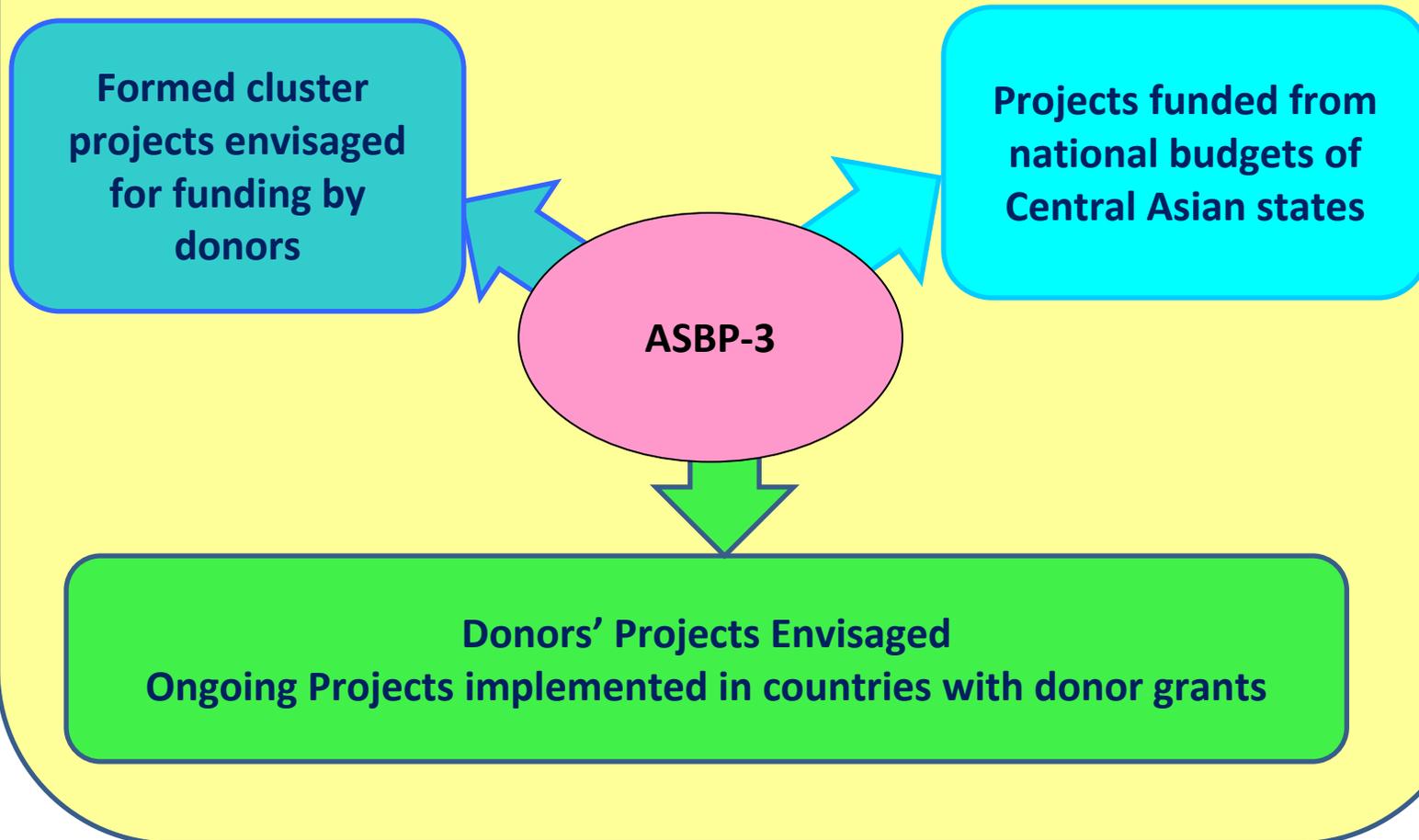
1. Integrated use of water resources.
2. Environmental Protection.
3. Socio-economic development.
4. Improving the institutional and legal mechanisms.

## Realization of the Plan of activities on implementation of the Joint Statement of the Heads of IFAS member-states of 28 April 2009



## ASBP-3 Projects

### Programme of Actions in the Aral Sea Basin for the period of 2011-2015





## Prospects for strengthening transboundary water cooperation

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