

**REPORT
OF THE SECOND MEETING OF THE EXPERT GROUP ON
THE REVISION OF THE STATUTORY DOCUMENTS OF IFAS¹
Geneva, 22-23 March 2011**

Introduction

1. The second meeting of the Expert Group on the revision of the statutory documents of the International Fund for saving the Aral Sea (IFAS) took place on March 22-23, 2011, in Geneva at the Palais des Nations. The main task of the Expert Group was to facilitate implementation of the Joint Statement of the Heads of States-Founders of IFAS adopted in Almaty on 28 April, 2009. In the Joint Statement, the Heads of State 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".

2. The meeting was attended by delegations from the Republic of Kazakhstan, the Kyrgyz Republic, Tajikistan, Turkmenistan and Uzbekistan composed of their national representatives at the Executive Committee of IFAS and national experts from IFAS member States. The meeting was attended by representatives of the UNECE secretariat, international experts and representatives of the GIZ (Annex 2).

3. The documentation of the meeting included: the Joint Statement of the Heads of States-Founders of IFAS, adopted in Almaty on 28 April, 2009; the Action Plan on Implementation of the Provisions of the Joint Statement approved by the decision of the IFAS Board on December 3, 2009; the discussion paper "Strengthening the Institutional and Legal Frameworks of the International Fund for Saving the Aral Sea: Review and Proposals" (January 2010); Protocol of the First Meeting of the Expert Group on the revision of statutory documents of IFAS from October 22-23, 2010; and the replies to the questionnaire submitted by the Republic of Kazakhstan, the Kyrgyz Republic, Tajikistan and Turkmenistan in February 2011. The Republic of Uzbekistan has submitted its reply to the questionnaire during the opening of the meeting on March 22, 2011. "Conceptual elements for strengthening the institutional and legal framework of IFAS", prepared by the international expert, as well as "Explanatory Note" to accompany the "Conceptual elements" were distributed among participants at the meeting.

Opening Session

4. Participants of the meeting were welcomed by Mr. Ján Kubiš, the UNECE Executive Secretary. He noted the importance of IFAS as the most important organisation for regional cooperation. The Executive Secretary pointed out the observer status of IFAS in the UN General Assembly, stressing that IFAS currently is the only regional organisation able to represent the interests and coordinated position of the five Central Asian states in the highest decision-making body of the United Nations. Therefore, the Fund should play a key role in maintaining the international attention to the tragedy of the Aral Sea and the wider issues of cooperation in the region. To do so, IFAS should be able to effectively formulate and represent the common position of its member countries. This requires improvement of the legal framework and institutional structures of cooperation.

5. The Executive Secretary emphasised great importance of the mandate on the improvement of institutional structure and legal framework of IFAS, issued by the Heads of Central Asian countries, and noted that UNECE stands ready to continue supporting Central Asian countries in this work, on the basis of international experience, practices and legal frameworks. He noted the importance of the UNECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes, as the only existing multilateral international treaty in the field of water resources, which is in force, and stressed the importance of the amendments to Articles 25 and 26 of the Convention which open the Convention to all

¹ This report has been translated into English unofficially. It has not been edited by the Environment Division of the United Nations Economic Commission for Europe.

member-countries of the United Nations. The Executive Secretary called upon all countries of Central Asia to use the potential of this Convention in regional cooperation. Mr. Kubiš mentioned the feasibility of the phased approach to the process of strengthening IFAS institutional and legal framework with one of the possible steps being the development of a new institutional treaty.

6. Mr. Kurbangeldy Ballyev, Head of the Expert Group on to the revision of the statutory documents of IFAS, has addressed welcoming remarks to the participants on behalf of Mr. Saghit Ibatullin, the Chairman of the Executive Committee of the International Fund for Saving the Aral Sea. He noted that the main direction of the group is defined in the Joint Statement of the Heads of States which clearly demonstrates the intention of the countries to improve organisational structure and legal framework of the Fund. He emphasised the role of the Executive Committee of IFAS which manages to find consensus in all major areas of cooperation. Noting that each State may have its own vision of the issues of regional cooperation, Mr. Kurbangeldy Ballyev stressed that the purpose of the meeting was finding common approaches and reaching the consensus.

7. Mr. Marton Krasznai, UNECE Regional Adviser, made an introduction to the aims and objectives of the meeting. He noted that four participating countries of IFAS have provided, in February 2011, their replies to the questionnaire circulated in accordance with decision of the first meeting of the Expert Group. Despite the fact, that replies to the questionnaire offer a wide range of ideas, they coincide on a number of positions. The absence of unified and harmonized legal framework for IFAS is mentioning in the replies of four countries to the questionnaire. In some answers to the questionnaire, it was stated that strengthening of the legal framework of IFAS through revision of the large number of documents adopted by various bodies, will be an extremely difficult, if not an impossible task. To avoid this, a proposal on the development and adoption of a new comprehensive institutional treaty has sufficiently strong support.

Achievements of the Expert Group in the periods between the meetings

8. Mr. Kurbangeldy Ballyev, Head of the Expert Group on the revision of the statutory documents of IFAS, summarised the results of work of the Expert Group in the period following October 2010 and described the process of obtaining replies to the questionnaire prepared by the international expert.

9. Delegations presented their replies to the questionnaire. The representative of the Republic of Kazakhstan mentioned key aspects of the position of his country. He noted that a regulatory framework, which is an actual basis of cooperation for the States of Central Asia in the field of water resources, requires improvement. The stability of management of this system may be improved through clearly definition of mandates, tasks and responsibilities of each structural unit as well as their correspondence to the international standards. It is necessary to establish a clear hierarchy for all organisations within IFAS and to create a clear system of linkages between them, to specify their responsibilities and reporting obligations. It will require a clear delineation of scope for each organisation. Kazakhstan favors identification of a permanent place of residence for such bodies along with rotation for senior staff and guaranteed representation of all participating countries in the organisation on an equal basis. It is desirable for all countries in the Aral Sea basin to join the UNECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes, stressed Kazakhstan. A new institutional arrangement of a general nature is necessary for two reasons, said the representative of Kazakhstan: 1) due to obtaining the observer status for IFAS at the UN General Assembly, and 2) due to lack of a number of provisions, in particular, regarding the legal status of IFAS, in the 1999 Agreement.

10. The representative of the Kyrgyz Republic summarised the key points of their position mentioned in the completed questionnaire. He noted that none of the existing IFAS organisations has representation of the energy sector that is why the existing regional structure can not adequately provide the integrated water resources use nowadays. The location of permanent bodies of IFAS should remain unchanged, and a leadership of the IFAS bodies among the member states must be rotated, he said. The representative of the Kyrgyz Republic noted a necessity to separate the scopes of organisations within IFAS and to establish a clear hierarchy and reporting. A range of the issues that require cooperation between States is expanding that is why "cosmetic repair" of the IFAS system is not sufficient. The representative of the Kyrgyz Republic has also mentioned that the States show in their answers a comprehensive approach to cooperation in the field of water resources. To improve the effectiveness of the IFAS, it is necessary to adopt a new fundamental international treaty of a framework character.

11. The representative of Tajikistan said that the necessity to improve an institutional mechanism and a contractual legal framework had not emerged in the last years. The total existing regulatory framework was developed "by occasion." The existing organisational structure contributes to the separate functioning of various units of the IFAS. The agreement of 1992 has stimulated the prevention of potential water conflicts, but not all of its provisions were implemented. It will be impossible to use the existing system of agreements and agencies in the future due to increasing water scarcity. According to Tajikistan, a radical change of the IFAS institutions is needed, taking into account the interests of all parties; in case such a reform would be impossible within the existing bodies and agreements, their revision would be required. The representative of Tajikistan said that this process needed the good will of all participants.

12. The representative of Turkmenistan said there was a need to create a proper system of authorities within IFAS composed of the governing bodies, such as the Council of Heads of States and the Board, of the executive boards like the Executive Committee and Secretariat, as well as of the regional bodies. Particular attention should be paid to the delimitation of goals and functions of the central bodies of IFAS as well as to the regulation of relations between them. It would be very important to ensure wider involvement in the reform process of IFAS of the representatives of the ministries of water management, energy, environmental protection, foreign affairs, general public, as well as the international experts. It was offered to ensure active participation of all countries in the composition of staff during a process towards permanently resided bodies with a rotating presidency. The issues of coordination with other economic sectors should be mandated to the competence of basin organisations. Turkmenistan has called for the revision of existing regulations by amending them or the adoption of new instruments in this regard.

13. The representative of Uzbekistan apologized for the late submission of the answers to a questionnaire distributed at the panel session to delegations. He noted that the existing regional structure is functioning over 15 years and has shown its viability. This mechanism of cooperation in the water and environmental sectors allows the countries of Central Asia to resolve the major issues of management and allocation of the transboundary water resources as well as the issues of environmental protection. The representative of Uzbekistan has underlined that the Uzbek side considered a fundamental review of the IFAS activities unacceptable, because such initiatives could provoke an endless process of negotiations between States and take off the efforts and resources of the parties from carrying out the specific activities aimed at solving the problems of the Aral Sea. Moreover, initiation of the radical redevelopment of the regulatory framework of IFAS can be considered as recognition of inefficiency of the Fund. According to Uzbekistan, instead of initiating discussions about changing the legal and institutional framework of IFAS, it would be advisable to shift the focus of the work in this direction towards increasing of powers and strengthening of the basic structures of the Fund – in particular ICWC, BWO "Amudarya", BWO "Syrdarya" and SIC ICWC in accordance with their regulations. In the questionnaire submitted by Uzbekistan, measures are proposed to strengthen the powers of these organizations, in particular, the two BWOs, by transferring the relevant hydraulic facilities and gauging stations of the intergovernmental importance to fall under the regulation by these BWOs. The representative of Uzbekistan urged to focus on the implementation of specific practical measures aimed at preventing further deterioration of the Aral Sea crisis and to acceleration of the development of the ASBP-3 as well as its proper implementation.

14. The international expert, Mr. Sergei Vinogradov, reminded the audience about the mandate of the Expert Group – to carry out the task given by all five Heads of States and, namely, to prepare the proposals on the strengthening of the organisational structure and the legal framework of IFAS in order to improve its efficiency and ensure greater interaction with financial institutions and donors. He stressed that despite a wide range of the views observed in answers, it is important for the Expert Group to find "the golden mean".

15. The international expert has summarised the answers of the States to the questionnaire. He noted, regarding the improvement of the regulatory framework for its better compliance with the modern requirements, that a position of four States showed the recognition of a necessity to improve the regulatory framework, while the fifth State believed that the legal framework of IFAS met the requirements of regional cooperation in general. The international expert noted with regard to the steps and measures that can be taken to support the IFAS activities as a single entity, that the answers of four countries provide a clear "message" on the necessity of proper delineation of the functions and objectives of the IFAS organisations, while the fifth State believes that the IFAS authorities should perform their functions in accordance with the actual regulations. The international expert also mentioned that a general agreement with minor variations

existed among four countries regarding the idea of transition to the permanently located bodies and rotation of the chairmanship. According to the position of fifth State, some bodies (SICs, two BWOs) should not be rotated, but for the Executive Committee of IFAS the rotation mechanism should be kept. Regarding the issue, whether a problem of the overlapping competences existed for the regional organisations, and, if so, how it could be eliminated, the international expert noted, that, in general, a problem of the overlapping competences and lack of coordination between regional organisations was recognised in the answers of four countries. It is offered to strengthen the role of some organisations in the answer of the fifth State.

16. The international expert has summarised that, in general, the positions of four States are close enough. They recognise that the existing framework does not match a modern reality, while the present structure is imperfect and needs to be improved. They also note the advisability of a new institutional agreement, although the positions of countries differ in the details. There is an understanding, in general, that it is necessary to be more responsive to the interests outside of water management. The position of the fifth State is representing another side which denies the need for changes and supports the strengthening of ICWC and its bodies.

17. In response to the question of Turkmenistan on the timing of future work, the international expert drew attention to the Action Plan approved by the IFAS Board in December 3, 2009, and to the Plan of the Expert Group, approved by this group at its first meeting. The UNECE representative stressed that the Expert Group is not empowered to make decisions on the strengthening but should prepare the proposals for submitting them to the higher political level.

Presentation of the Conceptual Elements on Improving the Institutional and Legal Framework of IFAS

18. The international expert has presented the "Explanatory Note to the Conceptual Elements on the Strengthening of the Institutional and Legal Framework of IFAS". He noted, that while preparing the "Conceptual Elements" he was trying to take into consideration the answers of four States to the questionnaire presented in February 2011. The "Conceptual Elements" contain the lenient version of the strengthening, which is more lenient than the evolutionary version proposed in the "Discussion Paper" from January 2010. Thus, the "Conceptual Elements" respond the necessity to consolidate and harmonise the regulatory framework as well as to align and harmonise the institutional mechanism itself without its radical restructuring, and also to bring the regulatory and institutional tools and mechanisms in line with the requirements of international practice in terms of both the content and the form. The draft of "Conceptual Elements" could become a basis for a new institutional agreement. In this case, it is assumed that this institutional agreement would replace both the Agreement on the Status of IFAS from 1999 and the Regulations of IFAS as well as the Statute on the Executive Committee of IFAS and the Regulations of the Regional Commissions (ICWC and ICSD), absorbing and bringing their basic rules into the system. Among the relatively new aspects, it was proposed to formalise the establishment of the Council of Heads of the State-members of the Fund as the supreme organ of IFAS, to strengthen the role of the Board of the Fund and to stipulate the possibility on expanding the area of competency for ICWC.

19. Participants have discussed the "Explanatory Note". Answering a question on the revision of the 1992 Agreement, the international expert pointed out the prior need to determine the structure of the organisation. Participants discussed that the improvement of institutional structure and the improvement of regulatory framework are interrelated. The representative of the Kyrgyz Republic has announced a position that the Joint Statement was initiated as a broader issue, and, therefore, the process of improvement should not be limited by water management and water-energy issues only. The Kyrgyz delegation called for more radical change in the existing structure so that it could better cope with new challenges. The representative of Tajikistan expressed concerns that the shortcomings of the existing mechanism would be kept in case of general preservation of the existing bodies and in case water allocation issues were not addressed. The representative of Uzbekistan said that the position of Uzbekistan was not taken into consideration during preparation of the "Conceptual Elements" and the "Explanatory Note".

Discussion on the Conceptual Elements on the Strengthening of the Institutional and Legal Framework of IFAS

20. The international expert presented the "Conceptual Elements on the Strengthening of the Institutional and Legal Framework of IFAS". The purpose of the session was to enable participants to ask

questions for clarifying provisions and increasing understanding of this document, as well as to provide immediate comments.

21. Uzbekistan refrained from discussing and giving comments during the discussion. The participants from four other countries made the following conceptual observations as well as drafting suggestions during the discussion of "Conceptual Elements":

- The Kyrgyz Republic: to remove a word "equitable" and add "the interests of all States", "complex";
- Turkmenistan: to reflect in the "targets" the broader goals and objectives of the ICSD;
- The Kyrgyz Republic: to use successively the "Member States" rather than "Members";
- Tajikistan: to consider a possibility of a greater emphasis on IWRM and a river basin approach in the "Principles";
- Turkmenistan: to change "protection" to "preservation" in the "Principles";
- The Kyrgyz Republic: to remove from the principle of peaceful settlement of international disputes the word "threat"; the formulation as a result of the discussion: "in order to secure ...";
- As the results of discussion: to add within entire text, and, in particular, in "functions", the "sustainable development" and to remove the "Sub-Aral Area";
- The Kyrgyz Republic: to add in the "features" subsection (c) "logged in the system of IFAS";
- As the results of discussion: to add in the "features" subsection (b) "as well as solutions of the common social and environmental problems";
- Tajikistan: it is a mistake to concentrate just around the Aral Sea, a wider coverage is required;
- On the initiative of Turkmenistan, the participants have discussed the opportunities to participate in the IFAS for international and regional organisations;
- On the initiative of Kazakhstan: there is a need to clarify whether ICWC and ICSD have today the status of legal persons;
- On the initiative of the Kyrgyz Republic: it is necessary to clarify the terms of office for senior officials (President of the Fund, Chairman of the Board, Chairman of the Executive Committee) within bodies of organisation;
- Turkmenistan: the lack of a "Consultative Council" in the ICSD, the existence of a "Public Council" within ICSD, to consider a possibility of adopting the "Working Secretariat";
- Tajikistan: to reduce a multi-stage structure, to introduce real "sustainable development" into ICSD, as well as other moments.

22. The Expert Group agreed on the following order of work that corresponds to the Work Plan adopted in October 2010:

- 1) An updated version of the "Conceptual Elements" and "Explanatory Notes" will be sent together with the report of the second meeting to the countries in 10-14 days.
- 2) The deadline for submission of written comments from the countries to the documents is July 1, 2011.
- 3) Prior to the deadline for comments, the countries can invite the representatives of UNECE, the Chairman of the Executive Committee of IFAS as well as the international expert to participate in the national consultations. The national consultations will contribute to a better understanding of the document in the countries and a formulation of the national positions.
- 4) Following the submission of written comments from the countries, the international expert will revise the document for its submission to the final Expert Group meeting which will further transfer the proposal for consideration at the highest political level.

23. Mr. Andrey Vasilyev, UNECE Deputy Executive Secretary, made closing remarks at a meeting of the Expert Group. He thanked the participants for an open dialogue and a constructive discussion and called for further convergence of the positions to carry out the mandate given by the Heads of States in their Joint Statement from April 28, 2009.

24. The participants attended a side event in connection with the second Expert Group meeting: a briefing on the "UNECE Environmental Conventions: key aspects and opportunities for Central Asia". Secretaries of

the five UNECE Conventions² presented key aspects of environmental agreements serviced by UNECE. The participants of the meeting familiarized themselves with the activities of the Conventions' secretariats and asked questions.

List of annexes:

1. Programme
2. List of Participants
3. Questionnaire filled in by the Republic of Kazakhstan (submitted in February 2011)
4. Questionnaire filled in by the Kyrgyz Republic (submitted in February 2011)
5. Questionnaire filled in by Tajikistan (submitted in February 2011)
6. Questionnaire filled in by Turkmenistan (submitted in February 2011)
7. Questionnaire filled in by Uzbekistan (submitted on March 22, 2011)
8. Presentation of the Uzbek delegation on March 22 and 23, 2011
9. Explanatory Note prepared by the international expert (to the updated version from April 4, 2011)
10. Conceptual elements prepared by the international expert (updated version from April 4, 2011)

² Convention on Long-range Transboundary Air Pollution (1979, <http://www.unece.org/env/lrtap/>), Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention, 1991, <http://www.unece.org/env/eia/>), Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Water Convention, 1992, <http://www.unece.org/env/water/>), Convention on the Transboundary Effects of Industrial Accidents (Industrial Accidents Convention, 1992, <http://www.unece.org/env/teia/>), Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention, 1998, <http://www.unece.org/env/pp/>).