

Excerpts from

**Review and recommendations on the policy of Kazakhstan for
transboundary water cooperation**

Foreword

The Republic of Kazakhstan is implementing a Strategy aimed at creation of a legislative and administrative framework for transitioning the Republic of Kazakhstan to a "green economy" model. Currently, the main documents defining the governmental policy in this area are "Strategy Kazakhstan - 2050" and "Nurly Zhol - Path to the Future." These documents provide for building a sustainable and efficient model of the economy, based on the country's transition to a "green" way of development.

The overall objective of the Government's strategy - is the transition to a model of sustainable development and a significant reduction of environmental risks and environmental problems while maintaining economic growth and competitiveness, creation of high-paying jobs and improving the welfare of the population.

The European Union is actively supporting the Government of Kazakhstan in the implementation of the transition to a green economy model through funding a joint EU/UNDP/UNECE project "Supporting Kazakhstan's transition to a green economy model."

One of the project components is dealing with improving efficiency and effectiveness of transboundary water cooperation. The Review of policy and recommendations for the Republic of Kazakhstan on transboundary water resources management was prepared by international consultants of the UNECE. The Review is based on the analysis of existing national and international legal framework and cooperation practices in the field of transboundary water management in the Republic of Kazakhstan.

The content of the Review was thoroughly discussed with experts from the Ministry of Agriculture of the Republic of Kazakhstan, Committee on Water Resources and basin inspections, as well as Ministry for Foreign affairs of the Republic of Kazakhstan. All comments received were taken into account in this version.

The content of the Review is the sole responsibility of the authors and in no way reflects the position of UNDP, UNECE and the European Union.

Overall Analysis of Regulatory and Legal Framework in Transboundary Water Resources Management in the Republic of Kazakhstan

Current legal framework in transboundary water resources management in the Republic of Kazakhstan was formed with due consideration of national interests and development goals and with international experience and practice. Current regulatory and legal framework has broad capabilities in order to implement common tasks of regulation and protection of water resources, but certainly it requires further improvement both at national level and at the level of interstate and contractual legal relations.

1. Analysis of strengths of existing regulatory and legal framework in transboundary water resources management in the Republic of Kazakhstan

Recognition of “threat of water supply deficit” at high political and state levels is the most important component of the regulatory and legal framework, as reflected in the strategic documents of the Republic of Kazakhstan, such as the “Strategy – 2050”, “Concept of transition to a “Green Economy” and State Program for Water Resources Management in Kazakhstan for 2014 - 2040. It forms framework conditions and general state policy to achieve and maintain an environmentally safe and cost-optimal level of water use and protection of water resources, water supply and water disposal for preservation and improvement of the living conditions of population and environment.

Current regulatory and legal framework reflects the generally accepted international rules aimed at achieving fair and equal access of water users of relevant states to transboundary water resources, and principles of integrated water resources management. Competence of state administration bodies of water fund management is determined with due consideration of these principles; moreover, basin management principle is the basis for state management. It should be noted that the Republic of Kazakhstan divided functions of state control and management in use and protection of water resources and functions of economic use of water resources.

Moreover, overall ecologization of water law is implemented and priorities of environmental requirements were set in management of water resources. Mechanisms for participation of civil society and water users in water management were established. Principles of payment for special use of water and damages caused to the water fund were implemented.

International regulatory and legal framework of the Republic of Kazakhstan in transboundary water resources management includes various kinds of international legal instruments. First, it is international conventions in which Kazakhstan participates; they usually wear a “framework” nature and formulate general principles, obligations and standards of conduct for their members. Second, multilateral and bilateral cooperation with all neighboring countries (Russia, China and Central Asian countries) is developed through adoption and implementation of relevant international treaties and establishment of joint

institutions based on them. These treaties cover various aspects of environmentally sound and economically optimal use and protection of transboundary water resources. The priority in this regard is to ensure the rights of all countries of transboundary watercourse for its equitable and reasonable use with due regard to universally recognized principles and standards of international water law, national interests and international obligations taken by them.

In the context of development and implementation of international treaties, issues of water apportioning in transboundary rivers, pollution prevention, condition monitoring, and analysis and evaluation of water quality as well as rapid response to emergencies are of particular importance.

As for Central Asian countries, cooperation within the framework of the International Fund for Saving the Aral Sea and its structures is very important, including the Interstate Commission for Water Coordination. Particular attention is paid to implementation of programs to assist countries in the Aral Sea Basin Program (ASBP) and distribution of water resources within ICWC. Agreements on issues of water apportioning and water-energy metabolism, joint management of water resources on the basis of common institutional mechanisms have been made and are implemented with varying degrees of success. There is exchange of information, and regular consultations on a range of issues of water resources are conducted. Three acts adopted at the level of Heads of State, and two framework agreements on water resources management confirmed the political will to cooperate that is reflected in a relatively conflict-free implementation of water allocation in the region countries for nearly two decades ^[12].

Water apportioning for individual small transboundary rivers (Korgos, Sumbe and Kayshybulak), monitoring of both quantitative and qualitative indicators of water, exchange of information on condition of transboundary water facilities is conducted at the bilateral level together with the PRC. In relations with the Russian Federation focus is on issues such as conservation of ecosystems of transboundary rivers, monitoring of water resources, joint inspections of business of enterprises affecting condition of water resources, floods pass, filling reservoirs and water supply for population and industries.

Issues on development and implementation of joint measures for safe and reliable operation of interstate water structures in Chu and Talas rivers to provide water for agriculture and ecosystems of adjacent territories are considered together with the Kyrgyz Republic. Moreover, economic cooperation mechanisms to recover the costs of the State responsible for operation of water facilities, management, regulation and protection of transboundary waters used by another state on the basis of equity are applied.

2. Analysis of weaknesses of existing regulatory and legal framework in transboundary water resources management in the Republic of Kazakhstan

Analysis of existing international regulatory and legal framework of the Republic of Kazakhstan shows that the existing legal framework is not perfect despite the presence of a developed system of international treaties with neighboring countries on transboundary

water resources, both at regional and bilateral level. It needs to be improved both in formal and legal and substantial terms, and in terms of efficiency of its use and implementation.

Kazakhstan has ratified a number of international conventions of “framework” nature, requirements to fulfill the provisions which are very common and have no specificity by definition. However, responsibility for implementation of related conventions is imposed on various departments, and in practice agreed plans to implement obligations taken by them under the conventions are not developed. There is no clear understanding of what tools of various conventions should be used to achieve the interests of Kazakhstan in particular river basins, and what mechanisms can provide these interests. Experts indicate some fragmentation and lack of single formation line and implementation of policies in the field of water management since different ministries and departments study water issues. This leads to lack of integration of the system of quality management and quantity of both surface and underground water resources in transboundary river basins ^[10].

For example, in this respect fulfillment of one of the most important obligations under the UNECE Water Convention - co-operation obligations is not always effectively ensured. The latter is a mean to meet other key obligations to prevent, limit and reduce transboundary impact and principle of equitable and reasonable utilization. This obligation is crucial in the context of bilateral cooperation with other countries participating in the Water Convention, to which the latter is legally binding. For example, the Republic of Uzbekistan as a party to the Convention is obliged to comply with all requirements of the latter, which can contribute to successful cooperation on data exchange and joint monitoring. If necessary, it is also advisable to consider the possibility of more active use of its implementation mechanism - Implementation Committee within the framework of the Water Convention.

Indeed, use of tools of these conventions is limited and is not always possible given that the number of adjacent (coastal) countries, none of them participate (China), or participate not in all (in Espoo Kyrgyzstan participates, Russia Tajikistan and Uzbekistan do not participate, in the industrial accidents Convention Russia participates, Kyrgyzstan, Tajikistan and Uzbekistan do not participate, and in the Convention on public participation Kyrgyzstan and Tajikistan participate, Russia and Uzbekistan do not participate).

In this respect, main focus should be on further development and improvement of international regulatory and legal framework for cooperation at the bilateral, basin and regional level. Currently, establishment of such a regulatory system cannot be considered as complete. Existing framework does not provide an environmentally sustainable and economically optimal use of water in some transboundary basins.

Agreement on joint use and protection of transboundary water facilities between the Russian Federation and Kazakhstan and a number of related acts formed a regulatory framework and institutional mechanisms for sufficiently effective bilateral cooperation. However, adverse trends related to the strengthening of impact of anthropogenic factors and climate change on water quality and quantity in some transboundary basins are

obvious. New measures may be necessary in these circumstances, perhaps in the form of separate bilateral agreements on the most important transboundary river basins, such as Zhaiyk, Irtysh, Bolshoi and Malyi Uzen. In particular, the basin of Irtysh river is a serious concern, because the existing legal regime based on a number of bilateral agreements between Kazakhstan and China on the one hand, and between Kazakhstan and Russia, on the other hand, is too fragmented and does not allow applying basin approach and principles of integrated control of water resources.

Along with this, it may be noted the incompleteness of institutionalization process of cooperation in joint management of transboundary waters. Although the joint Commission and its working groups exist and in the whole act, work in practice is constructed from one committee meeting to another, which reduces its effectiveness. Establishment of a permanent mechanism in the form of the secretariat of the commission can significantly improve implementation of decisions and improve coordination of joint actions, including in the event of possible incidents of cross-border nature, as evidenced by the practice of other similar international commissions.

All above-mentioned also applies to Kazakhstan cooperation with China. Presence of framework agreements only does not allow adjusting practical issues of quantity and quality of water resources in transboundary basins of rivers Ili and Irtysh. Their further specification is needed through additional instruments, including key issue of water apportioning. In addition, there are problems in the institutional sphere. First, two existing intergovernmental commissions on transboundary water cooperation are subject to different departments and are responsible for various aspects: protection of water resources and their use, although they should be treated as a single complex problem. In this context, appropriate coordination of their activities, or even some form of association should be considered. Second, it should be possible to discuss the feasibility of establishing a permanent mechanism (secretariat), possibly common for two committees to coordinate and support their work between meetings

Regulatory and legal framework of bilateral cooperation between Kazakhstan and Kyrgyzstan on Chu and Talas rivers basins includes both mandatory instruments (intergovernmental agreement, Regulation on Commission), and many documents in the form of recommendations and regulations, which creates necessary conditions for mutually beneficial cooperation from a legal point of view. However, established regulatory and legal framework is far from being perfect, as it does not cover all issues on water management in the basins, and does not reflect basic principles of IWRM.

Significant disadvantage in establishment of effective legal transboundary water management regime is absence of legal regulation at the level of the river basin. In light of this, implementation of serious and concrete actions to move to the integrated use and protection of water resources in the basins of transboundary rivers would be difficult. The reason is lack of legal framework that determines interaction in planning of actions and allocation of responsibilities between national organizations to allocate, use and protect water resources, implement programs and activities of basin, etc. In view of the above, in

general, distribution and management of water resources shall change. It is necessary to involve representatives of governing the agriculture sector, environment protection and other water users in the work of the Commission ^[13].

Existing regulatory documents and recommendations and rules being developed should provide integrated regulatory system, be interconnected and complement each other. This will be the basis for creating long-term and stable cooperation system.

As for analysis of existing international regulatory and legal framework for cooperation in the Aral Sea basin, detailed analysis was carried out during the project UNECE\GIZ "Regional Dialogue and Cooperation on Water Resources Management". Nevertheless, we can highlight some of the most important aspects of this analysis. It notes in particular that "...existing legal framework is far from perfect and is in need of serious improvement. This applies both to the specific agreements, and the entire system of international legal regulation of water cooperation in the region Existing legal instruments have either formal declarative character, either are obsolete or not executed in whole or in part, and do not contain full effective mechanisms to ensure compliance with them. First, this applies to cooperation agreements in the field of joint management, use and protection of water resources, 1992, on joint action to address the problem of the Aral Sea in 1993, and the Agreement on Syrdarya, 1998. A serious drawback of legal framework of water cooperation in the Aral Sea basin is fragmentation of the legal framework of regional institutions. It should not go unnoticed the presence of a number of acts insufficiently linked to each other that create or define the legal status and position of various bodies of regional cooperation. Significant gap in the existing legal regime for water management is almost complete absence of legal regulation at the basin level (in addition to the existing regional and bilateral). The only agreement on the Syrdarya River Basin is not in fact "basin", moreover, at the moment it is not realized, because it relates to very narrow perspective of water and energy metabolism".^[12]

Indeed, it is necessary to further improve the international regulatory and legal framework in transboundary water management, both at the regional level and at the level of bilateral relations with neighboring countries. Formation of such a regulatory and legal framework may be long-term goal, but it is necessary to formulate a strategy to achieve this goal. This also applies to more active implementation of the basin approach and the principles of IWRM through adoption of comprehensive agreements on the two major basins of transboundary rivers - Syrdarya and Amudarya.

Institutional Mechanisms for Cooperation and Main Problems of Their Functioning

Kazakhstan has more than 40 different legal acts, international treaties and agreements in the field of transboundary water management. These include agreements and laws of the Republic of Kazakhstan on ratification of international conventions that have values for all transboundary river basins as well as regional and bilateral agreements with the Central Asian countries, Russia, and China. Entire regulatory and legal framework for transboundary basins is supported by appropriate institutional structures to ensure more effective cooperation of the countries concerned.

When creating institutional mechanisms certain principles for the organization of joint bodies should be observed, adoption of which increases their efficiency. They include the following:

- broad competence and mandate to address a wide range of issues related to management, use and protection of transboundary waters;
- powers of a joint body sufficient for its effective functioning;
- organizational structure to make decisions and ensure their implementation, and availability of funds for maintenance of the structure and powers of their search and use;
- responsibility and accountability mechanism;
- mechanism for public participation in the activities of the joint body;
- effective ways of cooperation with national authorities of the States.

The following forms or phases can be highlighted from an institutional point of view in the practice of transboundary water cooperation:

- Absence of any authorities on implementation of the adopted agreements.
- Appointment of authorized representatives of the government parties to the agreement. The Institute of authorities has a number of common features which are often (but not always) considered as the disadvantage: practice of appointing the same number of authorities responsible for several agreements; combination of authority position with any other office in the ministry; lack of independence; lack of financial resources; potential danger of giving priority to departmental interests over state interests.

The overall global trend is that the state will sooner or later come to the need to establish joint bodies.

- Creation of joint bodies (usually in the form of joint committees) which have proven to be effective cross-border mechanisms, including inter-branch cooperation. However, the joint bodies may differ significantly in terms of their organization, competence, authority and funding. In addition to commissions, which do not differ from the authorized institution by nothing but the name, there are full-fledged international organization with permanent bodies, a wide range of powers and budget ensuring functioning of both the authorities and the various co-operation programs under their auspices.

Institutional approach is more common for cooperation in the Aral Sea basin and transboundary rivers of Central Asia (IFAS, ICWC, ICDS, BWO “Syr Darya”, BWO “Amu Darya”, Chu-Talas, Kazakh-Chinese, Russian-Kazakh, etc.).

- Joint committees and subregional organization and their bodies have relative independence and rather wide reference to implement relevant agreements right up to application of basin approach and IWRM.
- Some common bodies can cover the entire basin of transboundary watercourse or a part of it. For example, BWO “Syr Darya” due to its mandate and reference covers middle and lower reach of Syr Darya notwithstanding that BWO apart from Uzbekistan and Kazakhstan includes countries of upper reaches – Tajikistan and Kyrgyzstan.
- Joint bodies can be established for coordination in individual issues (for example, protection of watercourses), types of transboundary watercourse application (for example, water-energy) or particular project or program.

For example, in execution of Agreement PRC – RK a few targeted committees on particular problems of Balkhash-Alakol basin was established co-chaired by countries. For efficient execution of Agreement between the Government of RF and the Government of RK on sharing and protecting transboundary water bodies (dd. 7 September 2010) the parties have established a joint Russian-Kazakhstan committee on parity basis that operates under the authority of 2 co-chairmen appointed by the parties and having equal rights. Decisions made by the Commission for water apportioning and water resources conservation are mandatory for water consumers of both countries. Within the frames of Joint Committee working groups responsible for individual transboundary watercourses operate.

In the process of profound cooperation within the frames of current agreement a tendency to extension of competence of joint bodies is often observed. An example is the establishment of Interstate Commission on Sustainable Development within the International Fund for Saving the Aral Sea the main task of which is to promote environmental programs and projects, i.a. within the General programs of action in the Aral Sea Basin.

However in most cases functions of joint bodies are coordinating and consulting, giving recommendations to persons making decisions.

The exceptions are joint regional international organizations that are headed by the highest-level leaders. An example of such organization is IFAS integrating the senior leadership of CA countries within the frames of informal Council of Heads of States decisions of which are mandatory in all countries.

1. Current state of cooperation mechanisms at regional level.

Under current circumstances and especially in the long term increase of water scarcity in the Central Asia is the biggest threat for Kazakhstan. Within the recent 50 years water availability for population in the Aral Sea basin reduced 4 times due to a number of reasons (demographic, climatic, etc.) and approached the critical limit of 1.7 thous.m³ of water per capita per year (according to UN criteria). If the republican average for this indicator amounts to 6.2 thous.m³ a year per capita, in Kazakhstan part of Syr Darya basin this indicator is approaching the critical threshold referred above.

Efficient cooperation in the area of transboundary basin water resources management is impossible without relevant regional and basin organizational mechanisms and structures. CA region and the Aral Sea basin are illustrative in terms of institutionally executed and structured interaction of basin states. IFAS is a unique interstate mechanism which plays an important role as the only political platform integrating all five countries of the Central Asia (unlike EAEU and CSTO).

In organizational terms IFAS structure is rather unusual since it consists of a number of international organizations located at three levels of importance. At the top level there is the parent international organization – IFAS with its central bodies: Board and Executive Committee. For international community IFAS, as it is registered in the resolution of the UN General Assembly dd. 11 December 2008, presents a regional mechanism of cooperation in the Aral Sea basin as a whole.

One level below there are two more international organizations – Interstate Commission for Water Coordination and Interstate Commission on Sustainable Development. In their turn, subdivisions of these regional commissions, their research and development centers and, in case of IFAS, the Training center also have the status of international organizations with the same right to receive grants, subsidies and loans in foreign currency free from taxes and to conclude contracts with local and international specialists.

A weak side of this structure consists in parallel existence and functioning of insufficiently interlinked international organizations that have almost total administrative and economic independence. It often results in difficulties to coordinate and manage their activities. Besides, it must be noted that in the recent few years cases of ignorance of meetings or deployment of persons unauthorized to make decisions to IFAS meetings by co-chairmen from the Central Asia countries have increased that tends to reduce the efficiency of IFAS activity.

There is no interaction in planning and division of responsibility between regional organizations for implementation of accepted regional programs and work plans, first of all Programs of action on providing assistance to the countries of the Aral Sea Basin. PASB is the main long-term program of action, the task on development of which is given by the heads of Central Asia states. IFAS Executive Committee is responsible for PASB formulation and control over its execution. At the same time each regional organization has its own work program that is not appropriately tied to PASB or work programs of other

organizations. Regional commissions fail to submit to IFAS central bodies for review and approval their plans and work programs. Such situation exists notwithstanding that relevant Provisions on regional organizations provides certain but not detailed interaction to achieve coordination. For example, Provision on ICSD provides approval of its programs and IFAS action plans although fails to specify by which Fund body. Provision on ICWC dd. 2008 contains a record on development and implementation of regional environmental programs together with ICSD but fails to mention its coordination with IFAS central bodies.

Each of them maintains contacts and liaises with international organizations and donors for support of their activity without sufficient coordination and consultations with other regional organizations which can lead to a certain competitiveness between them for support of donors and give the latter not quite favorable impression about IFAS system as a whole. Such situation provides a certain foundation for reduced efficiency of support for regional cooperation on the part of international community and in some cases for overlapping and repetition of programs and projects supported by international donors.

IFAS Board is headed by the President of the Fund elected from the leaders of the founding countries for a period established by the decision of the Council of Heads of Central Asia States however the President of the Fund in fact fails to participate in the meetings of the Board. In accordance with the Provision on IFAS dd. 9 April 1999 the President of the Fund has pretty strong power. He directs the activities of the Fund, determines its foreign economic and international activities and approves its work plan. The President of the Fund also approves the Provision on IFAS Executive Committee and in agreement with other leaders of states appoints its Chairman being the chief executive officer of the organization. National branches of IFAS Executive Committee fail to play the leading role in coordination at the national level they have to. It results in inefficient use of human and material resources and reduces the effectiveness of participation of states in the activities of regional organizations within IFAS framework.

Inadequacy of legal framework in many cases had caused establishment of imperfect institutional mechanisms of cooperation. Historically developed of several regional organizations, within the first few years after disintegration of the USSR the mechanism of cooperation in the Central Asia flying the flag of IFAS undoubtedly contributed to the required consolidating efforts of member states in their intention to settle social and economic, water and environmental problems in the Aral Sea Basin together. Nevertheless, the existing mechanism of cooperation under the auspices of IFAS in fact consisting of three insufficiently cooperating intergovernmental organizations is very imperfect. Such insufficiently adjusted mechanism constrains the development of optimal state policies addressing issues of the Aral Sea Basin and prevents of coordinated and efficient implementation of these policies.

2. Current state of cooperation mechanisms at the level of implementation of bilateral agreements.

For the purpose of development of bilateral relations with particular countries in the area of transboundary water management the Republic of Kazakhstan establishes developed system of international contractual legal framework and cooperative institutional mechanisms for implementation of provisions of particular agreements.

Within the frames of the **Agreement between the Government of the Republic of Kazakhstan and the Government of People's Republic of China on cooperation in the field of use and protection of transboundary rivers** dd. 12 September 2001, on 31 October 2003 a **Kazakh-Chinese Joint Commission on the use and protection of Transboundary Rivers** was established. The following work groups were established under the Joint Commission:

- 1) Work group of Joint Commission experts (2003);
- 2) Work group of experts from RK and PRC responsible bodies on implementation of Mainstream plan of technical works on water apportioning on transboundary rivers (2010);
- 3) Joint control committee for water apportioning of Khorgos River (2002)
- 4) Permanent water committee on use and apportioning of Sumbe and Kayshybulak Rivers (2008).

Activities of Joint Commission also include exchange of hydrological and hydrochemical data on the following watercourses:

- 1) Ertis River - gauging station Buran (RK) - Nányáng (PRC);
- 2) Ile River - gauging station Dobyń (RK) - Sangdaohezi (PRC);
- 3) Tekes River - gauging station Tekes (RK) - Qiefangdaqiao (PRC).

Besides, within the frames of the **Agreement between the Government of the Republic of Kazakhstan and the Government of People's Republic of China on environment protection (dd. 13 June 2011)** a **Kazakh-Chinese Commission on environmental cooperation** was established. To address the priority problems 5 intergovernmental collaborative programs were established:

1. Work program on studies of effects of climate change on water resources.
2. Research program on change of glacier resources and effects on water resources.
3. Work program on analysis of environmental status of Ile Delta and Balkhash Lake.
4. Work program on studies of effect of human activity on ecosystem of Ile and Ertis river basins.
5. Work program on studies of water-efficient process in irrigation.

These programs are implemented by joint work groups of specialists of two countries in accordance with approved plans and methods.

Despite considerable progress in work of joint commissions and particular work expert groups some issues are yet to be resolved. In this regard issues of avoidance of pollution and water apportioning by transboundary rivers are crucial. Besides, as noted by experts, in some cases Kazakhstan is late with implementation of reached agreements and decisions made by Joint Commission^[10]. It has to do with the need of intradepartmental and interagency coordination to implement the decisions made.

Experience of sharing and protection of transboundary water resources between the Republic of Kazakhstan and the Russian Federation accounts for more than 23 years. All this time starting from 1993 the Joint Russian-Kazakhstan committee on sharing and protection of transboundary water resources operates. Within the frames of the Committee the following work groups were established:

- 1) Work group on Ural River basin,
- 2) Work group on Irtysh River basin,
- 3) Work group on Ishim River basin,
- 4) Work group on Tobol river basin,
- 5) Work group on Bolshoi and Malyi Uzen Rivers basin,
- 6) Work group on Kigach chute (Volga River).

Within the frames of Commission condition and results of transboundary river watercourses, joint audits of economic activities of enterprises affecting the condition of water resources, flood discharge, reservoir storage and conditions of water delivery to population and economic sectors are being reviewed. Thanks to the Commission a considerable progress was reached in bilateral cooperation, in particular with the purpose of efficiency increase of activities against pollution in transboundary basins. The Commission includes representatives of environmental, sanitary, border, regulatory and other services. Upon that the work on joint projects “Monitoring and assessment of water quality in transboundary Tobol River”, “Transboundary management of Irtysh River water resources” was performed and a number of joint programs on monitoring in Transboundary Rivers basins is implemented.

Within the frames of bilateral cooperation between Kazakhstan and the Kyrgyz Republic a significant progress in establishment of institutional mechanisms was also achieved. With the purpose of execution of **Agreement on use of water management facilities of intergovernmental status on the rivers Chu and Talas** (signed in 2000) the Commission of the Republic of Kazakhstan and the Kyrgyz Republic on use of water management facilities of intergovernmental status on the rivers Chu and Talas operates since the year 2006 (CTWC). The Commission was established on a parity basis, consists of two parts on the basis of equal representation and operates under the leadership of two co-chairmen appointed by the State Governments. The Commission operates mainly in form of sessions which take place twice a year. Commission Executive Body is the permanent bilateral secretariat consisting of the national secretariat of the Republic of Kazakhstan and the national secretariat of the Kyrgyz Republic. The main task of the Commission is establishment of operational mode for water management facilities of intergovernmental status and assessment of required maintenance costs.

For the purpose of export support of CTWC five work groups supported by its Secretariat were established in the following areas:

- Legal and institutional issues;
- Issues of annual apportioning of water resources;

- Water engineering works and reconstruction of facilities;
- Economic issues;
- Issues of environmental protection, monitoring and data exchange.

Despite some organizational and financial problems and difficulties, cooperation within the frames of the Commission is progressing quite successfully and transforms from approved operation and maintenance of water management facilities of intergovernmental status to development and implementation of joint activities on integrated use and protection of water resources in these basins.

Weakness of Joint Commission is that it is in fact an interdepartmental body mainly consisting of heads of water supply departments. The Commission has no appropriate powers and levers of influence for other national ministries and departments of member states in order to execute its decisions. The Commission has no control mechanism for contradictions that can occur due to execution of national obligations for water resources management and water use. One more Commission weakness consists in its parochialism. For example, its activity not sufficiently represents the interests of power generating sector, financial, economic, environmental, law enforcement departments, hydrometeorological services and local administrations. Lack of proper coordination between particular ministries and departments makes it difficult to develop coherent national policy in respect of participation of the state in preparation and execution of joint actions and activities. ^[13]

Part V. Principles, goals and objectives in the area of transboundary water resources management in the Republic of Kazakhstan

The common **goal** of transboundary water resources management in the Republic of Kazakhstan is achievement of environmentally friendly and economically optimal water apportioning and water use, protection of water resources inventory to maintain and improve living conditions of population and environment in the relevant transboundary river basins^[5].

It is assumed that this goal can be achieved as a result of long-term and targeted national policy in the area of use and protection of water resources including transboundary watercourse basins. Based on international contracts to which Kazakhstan is a party and national water law, in particular on Art.142 of the Water Code, in its policy Kazakhstan is guided by the **principles of:**

- 1) provision of environmental and sanitary and epidemiological safety and development of international environmental cooperation;
- 2) provision of right of all transboundary watercourse states to fair, reasonable and mutually advantageous use of water resources considering generally accepted principles and norms of international water law;
- 3) water resources management considering satisfaction of needs of the present generation without prejudice to the needs of future generations;

- 4) maintaining the balance of environmental human rights and interests and needs of economic development of water management systems of transboundary river basins;
- 5) mutual support and peaceful settlement of disputes when addressing problems of transboundary waters use and protection;
- 6) precautions required to prevent possible transboundary impacts on transboundary water condition;
- 7) international responsibility and compensation of damage caused by transboundary impacts^[5].

To achieve the goal of national policy in the area of water resources referred above it is necessary to solve a number of certain **objectives**, aimed at elimination of existing gaps in the established regulatory and institutional practice of transboundary water resources management:

1. Improvement of interstate regulatory framework for sharing and protection of transboundary water resources on the basis of development of existing system of interstate agreements on particular transboundary river basins having strategic importance in economic development and preserving environmental safety in the Republic of Kazakhstan;
2. Improvement of economic and financial instruments of cooperation in transboundary river basins based on experience of co-management, water apportioning and use of water management facilities of intergovernmental status;
3. Strengthening of monitoring and assessment system for transboundary water resources to the level providing acquisition of timely and accurate information on current status and expected development of water management and environmental situation in transboundary river basins;
4. Capacity building in the area of transboundary water resources management by increasing general knowledge, awareness and understanding of tasks and peculiarities of negotiation process at the level of interstate agreements and agreements on particular transboundary river basins;
5. Strengthening of institutional cooperation basis by increasing efficiency of activity of national authorized public authorities at basin level and interstate bodies.

Proposals on improvement of legal framework and institutional mechanisms for cooperation in the area of transboundary water resources management in the Republic of Kazakhstan

The proposed approach to the improvement of legal framework and institutional mechanisms provides development of existing mechanisms within the context of main objectives described in the previous section. It is based on the need of activation of

negotiation process in bilateral and multilateral format considering up-to-date calls including change of climate, continuing construction of new water development facilities, incoherence among countries, etc.

1. Improvement of interstate legal framework for sharing and protection of transboundary water resources on the basis of development of existing system of interstate agreements by particular transboundary river basins having strategic importance in economic development and preserving environmental safety in the Republic of Kazakhstan:

1.1 Despite availability of framework agreements with all Riparian Parties a significant disadvantage in establishment of efficient legal regime for water resources management is lack of legal regulation at the river basin level. It gives no possibility to promptly review and address problematic situations in particular river basins. At the initial stage it is preferable to set priorities and negotiating position of the Republic of Kazakhstan in form of relevant documents for every strategic basin on the basis of already existing studies and developed integrated patterns of water resources use and protection. It is necessary to identify indicative levels of water apportioning, target values of water level and quality providing interests of economic development and environmental safety of this or that region or basin. It will require close intersectoral coordination and approval and will allow fixing Kazakhstan interests and priorities at the level of target values which will create the required basis for efficient negotiating process. Development of “negotiating” documents in its turn will allow advocating the referred interests irrespective of changing market conditions or composition of negotiating team. Based on performed analysis it can be proposed to develop such “negotiating” documents for the following transboundary river basins – Ertis, Ile (cooperation with the People’s Republic of China), Syr Darya – in the regional context and for the development of bilateral relations with the Republic of Uzbekistan.

1.2 At the next stage on the basis of prepared indicative figures it is necessary to define the strategy and tactics of negotiating process in general by each of proposed river basins involving sectoral representatives participating in operation of Interdepartmental Council concerning management of Kazakhstan water resources.

1.3 In the context of cooperation with the Kyrgyz Republic, considering narrow departmental focus of the current agreement (on management and joint support of water development facilities of intergovernmental status) at this stage it is proposed to pay attention to involving representatives of other stakeholders to the work of Joint Commission and forming legal framework with a focus on harmonization of water use and water resources protection rules within the scope of the agreement. Upon that it is necessary to consider the possibility and to propose options for widening the existing agreement or development of intergovernmental agreements on basins in wider context to develop

cooperation considering the principle of precautionary measures to prevent possible transboundary impacts on transboundary waters condition and increased use of bilateral agreement on environmental protection. Possible options for further cooperation are:

- Establishment of International (or transboundary) Basin Board for Chu and Talas Rivers as a consultative and advisory body of the Commission;
- Approval and development of online monitoring system for water discharge at crucial water intakes and exchange of latest water management information on Chu and Talas Rivers basins;
- Initiation of amendments and additions into the Statute of the Commission, expansion of functions and powers of the Commission related to coordination of efficient management of water resources on IWRM basis.

1.4 Further deepening of cooperation with the People's Republic of China considering progress achieved in the recent years is possible through adoption of bilateral agreements on particular transboundary watercourses. In order to make findings and implement agreements on Ile River basin and Balkhash Lake experience of implementation of agreement on Khorgos River for management and operation of joint consolidated water power development "Dostyk" can be used as well as experience of joint management of crucial water development facilities of intergovernmental status. When preparing new agreement it is necessary to settle the hydrological unity of the Balkhash-Alakol basin on the basis of integrated assessment of Balkhash Lake condition. Considering strategic importance of Balkhash Lake particular attention shall be devoted to the development and implementation of programs on water saving and improvement of consumptive water use efficiency in the basin. One of the program objectives shall be raising of irrigation and melioration system efficiency in order to enhance lateral inflow into Ile River and eventually into Balkhash Lake. The same work, taking into account strategic importance of the basin, shall be initiated in Ertis River basin, i.e. focus on conservation of Zaysan Lake basin. It is important to develop and expansion of programs on joint monitoring and exchange of hydrologic information by particular hydrological stations.

1.5 Cooperation with the Russian Federation is proposed to be enhanced through development of bilateral intergovernmental agreements by particular most significant transboundary river basins with a focus on conservation of existing structure of intergovernmental water apportioning. Considering the signed agreement **on conservation of Ural Transboundary River ecosystem** dd. 5 October 2016, it is necessary to continue negotiations for preparation of an agreement on Kigach chute and at the same time to develop a combined action program on implementation thereof. Similar work, taking into account strategic importance of the basin, shall be initiated on Ertis River basin. Based on the experience of implementation of programs on joint monitoring in Ertis River

basin and Kigach chute (Volga River basin) it is necessary to initiate implementation of similar programs for other transboundary basins as well.

1.6 In terms of provision of environmentally friendly and economically appropriate water use and water apportioning in South regions of the Republic of Kazakhstan the most significant is the improvement of regulatory legal framework and institutional structure of cooperation in the Aral Sea basin. For this purpose it is necessary to initiate resumption of negotiations on adaptation of the document “conceptual elements of IFAS institutional framework improvement” developed when Kazakhstan held the presidency of IFAS. Considering inevitable difficulties this proposal can face it could be possible to initiate simultaneously a number of proposals aimed at increasing practical interaction of various IFAS structures, enhancing operating efficiency of their executive bodies and improving accountability. At the first stage it is proposed to take the following actions:

- To resume the practice to invite representatives from ministries of energy and energy sector of interested countries to ICWC meetings.
- To initiate joint meetings for ICWC and ICSD (for example, once every two years), development of reciprocal agenda and coordinated plan of actions with a focus on protection of water resources inventory for conservation and improvement of living conditions of population and environment in transboundary river basins.
- To propose development and approval of unified reporting form and structure for ICWC executive bodies – BWO “Amu Darya” and BWO “Syr Darya” including quarterly reports and seasonal reports with limits execution assessment, etc. It is also necessary to facilitate access to information and increase transparency of BWO work through creation of BWO web sites with the commitment to submit data on basic facilities. List of facilities and type of submitted information shall also be approved by ICWC each ten days or in accordance with the schedule agreed by ICWC.
- To enhance immediate control of observance of water apportioning limits approved by ICWC on a constant basis through strengthening of Kazakhstan representation in the top management of BWO “Syr Darya” and introduction of additional full-time specialist into BWO water apportioning and water use department. One of the measures for improving confidence of the parties is reciprocal monitoring and examination of condition of water development facilities and monitoring stations at crucial areas of water apportioning. In this regard it is necessary to consider an option to establish monitoring legations consisting of two representatives from each interested country from May to the end of August every year. Their goal will be to visit existing water development facilities to check the status of water development facility data. To ensure transparency and increase confidence such monitoring

practice shall be proposed at the facilities of the Republic of Kazakhstan (for example – Shardara and Koksarai, KMK, etc.).

- 1.7 Considering positive experience of bilateral cooperation on other transboundary river basins it is proposed to intensify cooperation with the Republic of Uzbekistan. The Republic of Uzbekistan as a party of the Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Helsinki, 1992), shall be proposed to establish an interdepartmental group consisting of representatives from environmental authorities, hydrometeorological services and water ministries in order to negotiate execution of certain Convention provisions, in particular those related to joint monitoring including water quality.
 - 1.8 A crucial part of enhancement in the field of transboundary water resources management is the development of information resources aimed at highlighting the efforts of the Republic of Kazakhstan at international level, i.a. taking into account that Kazakhstan accepts the next conference of Helsinki Convention (1992) parties and The International Water Assessment Center (IWAC). It is necessary to continue and strengthen the practice of submission of official information within the frames of international conferences, i.a. using information resources, on the status of transboundary cooperation, possible threats and economic losses in transboundary river basin. It will serve as an important component of information field or a kind of “promotion” of efforts made by the republic of Kazakhstan and existing problems requiring international support in order to be addressed.
2. Improvement of economic and financial instruments of cooperation in transboundary river basins based on experience of co-management, water apportioning and use of water management facilities of intergovernmental status:
 - 2.1 To carry out analysis and assessment of soundness and effectiveness (costs and profits) of economic and financial instruments of cooperation based on working experience with PRC and Kyrgyz Republic including mechanism of procurement of electric power energy in Kyrgyzstan in order to provide water volume in Syr Darya River required for Kazakhstan.
 - 2.2 Based on relevant analysis to develop proposals on application of similar experience in other transboundary river basins or at particular facilities of intergovernmental status in accordance with interests of the Republic of Kazakhstan.
 - 2.3 To initiate negotiations regarding improvement of existing (but not operating) or development of a new agreement on use of hydropower resources of Syr Darya River basin.
 3. Strengthening of monitoring and assessment system for transboundary water resources to the level providing acquisition of timely and accurate information on current status and expected development of water management and environmental situation in transboundary river basins:

- 3.1 To develop proposals on strengthening of monitoring network on Transboundary Rivers of the Republic of Kazakhstan based on experience of implementation of joint programs on transboundary river basins monitoring with the Russian Federation and certain work with the People's Republic of China.
 - 3.2 To initiate implementation of joint monitoring program on Chu and Talas Rivers basins within the frames of Chu-Talas Joint Commission work.
 - 3.3 To initiate implementation of joint monitoring program on Syr Darya River basin within the frames of execution of provisions of the Agreement between the Government of the Republic of Kazakhstan and the Government of the Republic of Uzbekistan on cooperation in the field of environment protection and environmental management dd. 1997.
 - 3.4 To initiate consideration of option to establish joint automatic monitoring stations at transboundary water management facilities within the frames of operation of existing intergovernmental committees on cooperation in the field of use and protection of Transboundary Rivers.
4. Capacity building in the area of transboundary water resources management by increasing general knowledge, awareness and understanding of tasks and peculiarities of negotiation process at the level of interstate agreements and agreements on particular transboundary river basins.
 - 4.1 To arrange annual advanced training courses on the bases of one of field-specific training centers of the Republic of Kazakhstan for employees of basin inspectorates, participants of work groups and negotiations responsible for water resources use and management in transboundary river basins.
 - 4.2 To arrange a number of workshops concerning experience of application of international water law and law enforcement practice for authorized personnel of Foreign Ministry, Ministry of Agriculture and other authorized state agencies.
 - 4.3 To arrange workshops concerning experience of application of international water law and law enforcement practice for academicians who have water resources management program of study.
 - 4.4 To arrange orientations and master classes for students and master's students of water specialties concerning practice and experience of development of intergovernmental cooperation in the field of transboundary water resources management as agreed with specialized higher educational establishments.
5. Strengthening of institutional cooperation basis by increasing efficiency of activity of national authorized public authorities at basin level and interstate bodies.
 - 5.1 To develop proposals on modification of staffing table and building capacity of Basin inspectorates responsible for regulation and control of water resources in transboundary river basins.
 - 5.2 To intensify work of Basin Boards in transboundary river basins involving representatives of neighboring countries as observers in order to strengthen cooperation with particular states.
 - 5.3 To develop a proposal on strengthening stability effectiveness of secretariat

work of Chu-Talas committee and work groups within the frames of execution of their competences.

- 5.4 To develop proposals on establishment of secretariat of Joint Kazakhstan-Chinese commission on the Use and Protection of Transboundary Rivers in order to improve coordination in the field of water apportioning on transboundary rivers including Khorgos, Sumbe and Kaishybulak Rivers.
- 5.5 To consider an option to strengthen Basin Inspectorates participating in negotiations within the frames of execution of provisions of intergovernmental agreements and responsible for implementation of arranged settlements.
- 5.6 To develop proposals on observance of common indicators related to assessment, use, apportioning and monitoring of water resources of RK represented in "Master plan on multipurpose use and protection of water resources" (Decree of the Government of the Republic of Kazakhstan No.200 dd. 8 April 2006) by all public organizations of the Republic.

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