

**Newsletter of the International Association for Water Law
Boletín de la Asociación Internacional de Derecho de Aguas
Bulletin de l'Association Internationale du Droit des Eaux**

International Association for Water Law
Asociación Internacional de Derecho de Aguas
ASSOCIATION INTERNATIONALE DU DROIT DES EAUX



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EDITORIAL

2003 is the International Year of Freshwater, and it is expected that a number of water initiatives will be launched. As a corollary of these, it is hoped that the law as a tool in support of sound water resources management will gain due recognition, although emphasis still appears to be placed on resource development and service delivery, and on the investment required for constructing hydraulic infrastructure. Strong understanding must be built around the fact that development and service delivery alone are not a panacea for the solution of water scarcity problems, and that without adequate laws and institutions they may be unsustainable. Therefore, efforts should also be made to allocate substantial financial and human resources to the framing of water laws and institutions and to the enhancement of the capacity needed for water law implementation - hence to *water resources management*.

An important forum for the discussion of water sector issues will be provided in Kyoto at the Third World Water Forum in March, as a follow-up of a series of important past events, and many aspects will be tackled. It is to be seen, however, whether attention will be equally paid to water resources development and delivery services on the one hand, and to management needs on the other. It must be stressed that, although not visible on the ground, as they do not result in tangible infrastructure, water laws and institutions play a paramount role, providing a basis for water resources allocation, water conservation, pollution control and the construction of the relevant infrastructure. Therefore, it might be - and is - worth investing in the development and betterment of water laws and institutions.

It would also be good to focus on real water management problems instead of broader environmental issues. That of 'clean environment' is a nice goal to pursue, but when water resources are at stake practical issues should be dealt with first, through adequate laws and institutions.

It is worth reiterating - though we do not intend to be boring - that special attention should be devoted to groundwater resources and the law in support of their sound management, as these have been somehow neglected. A session is devoted in particular to groundwater resources at Kyoto, and this is a positive step towards the understanding of their specific characteristics, and the management needs involved.

Dante A. Caponera

Chairman of the Executive Council

1 NEWS OF AIDA AND OF AIDA MEMBERS

Guillermo Cano, Honorary President of AIDA, will celebrate his 90th birthday on February 14. Professor Cano was one of the first to understand the importance of law in the management of water. He was professor of law at the Universities of Mendoza and Buenos Aires and is the author of many books on water law. He undertook several legal advisory missions for the United Nations and its specialized agencies, including the Food and Agriculture Organization (FAO), particularly in South American countries, and worked at UN Headquarters in New York. He was Secretary of State for Water Affairs in Argentina, and later Argentina's Ambassador to Yugoslavia and Japan.

One of the founders of AIDA in 1967, Professor Cano was the first Chairman of AIDA's Executive Council, and then, when he retired, Honorary President. He has been an indefatigable promoter of water law throughout the years.

AIDA wishes Guillermo Cano a very Happy Birthday, and many happy returns.

2 MEETINGS AND CONFERENCES

Given the many meetings that have taken place in preparation of the Kyoto World Water Forum, there appears not to have been as many events specifically devoted to water law as those reported in the previous issues of AQUAFORUM. Indeed, each country and organization has had to pursue its own agenda in preparation of the Forum, and the legal aspects of water resources management, and the appreciation of their overall importance, have not been the subject of specific events.

- AIDA was represented by Dante Caponera, Chairman of the Executive Council, and Marcella Nanni, AQUAFORUM Editor, at the **Hundred and Twenty-Third Session of the FAO Council**, which was held in Rome, Italy, from 28 October to 2 November 2002.

- The **3rd Workshop on 'Harmonization of Diverging Interests in the Use of Shared Water Resources'** was organized by the Economic and Social Commission for Western Asia (ESCWA) in Beirut, Lebanon, on 17-20 December 2002. High level representatives of all 12 Member Countries attended, including a representative of the Palestine Liberation Organization (PLO). The workshop was highly informative, the participation was effective and a good deal of supporting documentation was made available. AIDA member Bernard Wohlwend (Switzerland) contributed a Case Study on the Franco-Genevese Aquifer, which provides a unique example of legal arrangement for the management of transboundary water resources. Work is to proceed on a Manual for the Prevention and Resolution of Conflicts in Shared Water Resources. A meeting on this subject will be called at some later date.

3 DEVELOPMENTS AND PROGRAMMES CONCERNING WATER LAW

- The **International Year of Freshwater, 2003, was officially launched at a ceremony at the United Nations in New York on 12 December 2002**. The aim of the Year is to raise awareness of the importance of protecting and managing freshwater. The UN General Assembly resolution proclaiming the Year was initiated by the Government of Tajikistan and was supported by 148 other countries. For more information, visit the official website at <http://www.wateryear2003.org>.

- **Argentina** - On 28 November 2002, the Congress of Argentina has enacted Law No. 25688, on the Environmental Management Regime for Water Resources. This Law considers the river or lake basin, or the aquifer, as the unit for water management. It further calls for the establishment of basin committees to advise the authority responsible for water resources on matters relevant to the management of water and the environment within inter-jurisdictional basins. The use of water resources is subject to administrative permit, but when water use may bring about significant environmental impacts across administrative boundaries, the approval of the relevant basin committee is required. Special protected areas may be declared whenever circumstances so warrant.

- **European Union** - As part of its efforts to ensure a high level of protection of the environment and human health, the European Commission has decided to take further legal action against Germany, Belgium, the Netherlands, France, United Kingdom, Sweden, Ireland and Portugal for non-compliance with EU laws on water quality. Read more at <http://www.europa.eu.int/rapid/start/cgi/>

- **Lebanon/Syria: Great Southern River Basin** - An 'Agreement for the Sharing of the Great Southern River Basin Waters and the Building of a Joint Dam on it' was entered into by the Governments of Lebanon and the Syrian Arab Republic on 20 April 2002. Based on the 1997 UN Convention on the Law of Non-Navigational Uses of International Watercourses - and on the Helsinki Rules adopted by the International Law Association (ILA) in 1966 - this Agreement sanctions the acceptance, by the two states, of the principle of reasonable and equitable utilization. As a result of discussions on the meaning of the principle, the two states have concluded that Syria is entitled to 60 percent of the annual flow of the Great Southern River Basin, while Lebanon's share will be 40 percent. In view of their respective water needs for different purposes, they have decided to build a common dam on the main stream of the river, at the Edlin-Nora Tahta location. The dam would have a total storage capacity of 70 million m³. The administration of the Agreement has been placed in the hands of a joint committee reporting to the ministries responsible for water resources of the two states - the Ministry of Irrigation in Syria and the Ministry of Energy and Water in Lebanon.

- **Mekong River Commission** - A new agreement on specific notification procedures relating to Mekong River projects with potential transboundary impacts was signed by Cambodia, the Lao PDR, Thailand and Vietnam on 12 November 2002 in Ho Chi Minh City, during the Ninth Annual Meeting of the Council, the ruling body of the Mekong River Commission. This agreement, known as the 'Preliminary Procedures for Notification, Prior Consultation and Agreement', requires a six-month time frame for consultation between the countries affected, before a proposed development can begin. The agreement also prescribes a detailed format for notification. The agreement marks the second step in the series of rules on water utilization that the countries have been committed to developing since 1999 under a Global Environment Facility (GEF) supported programme. According to the countries' schedule, procedures for monitoring existing water uses will be agreed by the end of 2003, rules for the maintenance of flows by the end of 2004, and rules for water quality by the end of 2005. The text of the agreement is available on the MRC website, at www.mrcmekong.org.

- **Sava Basin** – After the breakup of Yugoslavia, the Sava river became an international waterway. On 3 December 2002, the Ministers of Foreign Affairs of Slovenia, Bosnia and Herzegovina, Croatia and the Federal Republic of Yugoslavia signed a Framework Agreement on the Sava River Basin and a Protocol on the Navigation Regime to the Framework Agreement on the Sava River Basin. The Agreement is based on the European Union Framework Water Directive (2000) and the 1997 UN Convention on the Law of Non-Navigational Uses of International Watercourses. Consistent with the principle of reasonable and equitable utilization, it provides for regular exchange of water data and information among the countries concerned, criteria for sustainable water management and the development of a basin management plan. Based on the Agreement, an International Sava River Basin Commission - with a secretariat - shall be established, to decide, in particular, on conditions for safe navigation and the financing of construction and maintenance of navigable waterways, amongst other things. Decisions of the Commission are to be binding upon all the member states, unless one of the states withdraws its agreement to the vote within 30 days from it, or informs the Commission that the decision is subject to the approval of the relevant state authorities. The Agreement also provides for dispute settlement mechanisms, which consist of arbitration (detailed in Annex I) and fact-finding (through an expert committee). The Statute of the Commission is appended as Annex 1, while Annex II contains rules relating to the settlement of disputes by arbitration. Finally, the Protocol on Navigation relates in detail to the navigation regime on the Sava basin. For more information, contact AIDA member Slavko Bogdanovic (Yugoslavia), at Slavkob@EUnet.yu.

- **United Kingdom** - The Director-General of Water Services of the United Kingdom will be replaced with a regulatory board under a new bill to be introduced by the UK's Department for Environment, Food and Rural Affairs. For more details, visit www.watertechonline.com/news.

- **United Nations** - According to a press release of 29 November 2002, key elements of a protocol to the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the Aarhus Convention) are being finalized. The protocol will make it easier for the public to find information about pollution and its sources through a mandatory system of reporting by companies. Under the protocol, countries will have to set up national pollution inventories, known as pollutant release and transfer registers (PRTRs), and polluting companies will be required to provide information on their releases of certain polluting substances, such as greenhouse gases, dioxins and heavy metals, to a national register accessible and searchable through the Internet. Such registers are already in place in some countries. For further information, please contact Jeremy Wates, Secretary to the Aarhus Convention, UNECE Environment and Human Settlements Division, Palais des Nations, office 332, CH - 1211 Geneva 10, Switzerland. Tel: +41 (0) 22 917 23 84 or +41 (0) 79 217 30 35; Fax: +41 (0) 22 907 01 07; E-mail: jeremy.wates@unece.org; Internet: <http://www.unece.org/env/pp/>

- **GW-MATE web site** - The World Bank Groundwater Management Advisory Team (GW-MATE) has established a web site at www.worldbank.org/gwmate, to disseminate progressively its cumulative (and accumulating) experience of groundwater resources management and quality protection, primarily in the context of the developing economies. The web site contains an increasing amount of concise reference material on the many facets of groundwater management, legislation and institutions, and is arranged according to the following categories:

a Briefing Note Series – '*Groundwater Management: Key Concepts & Tools*';

a Case Profile Collection – distilling generic experience from specific on-going projects;

Books & Guides – a number of extensive reviews of the major groundwater issues in book or website format.

The GW-MATE was formed in response to the call at the 2nd World Water Forum (The Hague, March 2002) for a 'shift in emphasis on groundwater resources from exploitation to management'. It receives support from the World Bank-Netherlands Water Partnership Program (BNWPP) and the British Department for International Development (DfID). The GW-MATE is also a Global Water Partnership associate.

- **World Health Organization (WHO)** - WHO is presently preparing the third edition of its Guidelines for Drinking-Water Quality. To this end, a series of documents have been drafted, covering:

risk-based approaches to drinking-water safety management;

water safety plans;

guidelines for identifying priority chemicals in drinking-water;

different aspects of microbial quality of drinking-water;

good practice in drinking-water safety management.

About 20 draft documents are available for comments. To access and view them, visit www.who.int/water_sanitation_health/GDWQ/draftchemicals/chemicalslist.htm

4 TRAINING AND RESEARCH CONCERNING WATER LAW

- The **University of the Witwatersrand, School of Law, Mandela Institute**, Wits (Johannesburg), South Africa, offers LL.M and Certificate courses in Water Law. Certificate courses are designed to also accommodate non-lawyers. Scholarships are available and there is provision for support to students from developing countries. Distance learning is possible. For information on costs and programmes, contact Prof. R. Stein, School of Law, Private Bag 3, Wits (Johannesburg) 2050, Gauteng, South Africa. Tel: +27 11 881 9964; Fax: +27 11 883 4505; e-mail rstein@bowman.co.za - rstein@icon.co.za; Internet: www.law.wits.ac.za.

- Ideas on various topics relevant to water law may be exchanged on the '**Virtual Water Forum**' web site, at www.worldwaterforum.org/for/en. In particular, an **e-mail conference on the legal and institutional aspects of the management and development of shared aquifers** was conducted in two phases (June and October 2002, respectively) by UNESCO and FAO. The conference concluded that while current international law offers rules for the use, development and management of shared aquifers only insofar as these aquifers are connected to surface water, no rules deal in specific with confined aquifers, whether these be fossil or not. In particular, fossil aquifers may require special rules, as they are 'non-renewable'. However, general international water law principles, such as those of cooperation, prior notification and consultation, could apply to the development and management of these aquifers. In any case, international law should be so flexible as to adapt to the current state of the knowledge and to consider the uncertainty involved in aquifer management, as well as any future evolution. At the same time, international law should facilitate adequate aquifer protection against pollution and depletion. The harmonization of national legislation cannot be considered as a substitute for international agreements for the management of a shared aquifer, but is necessary for the consistent and effective implementation of such agreements.

5 PUBLICATIONS OF INTEREST TO AIDA MEMBERS

- [Atlas of International Freshwater Agreements](#) (UNEP/DEWA/DPDL/RS.02-04), was compiled under the direction of Aaron T. Wolf, a professor of geography at Oregon State University, in collaboration with the United Nations Environment Programme and the Food and Agriculture Organization of the United Nations, with a preface by AIDA member Stefano Burchi. The Atlas includes information on water treaties and arrangements all over the world. It serves to document developments in the management of international river basins over the past century, and presents both a graphic and textual analysis of the world's international basins and related agreements. It may be ordered from the United Nations Environment Programme, P. O., Box 330552, Nairobi, Kenya, Tel.: +254 2 621234; Fax: +254 2 623943/44. Web site: www.unep.org

- [Intensive Use of Groundwater - Challenges and Opportunities](#), R. Llamas and E. Custodio eds., (Balkema, 2003). Chapter 11 of this book, co-authored by AIDA members Stefano Burchi and Marcella Nanni, contains a review of legal issues relating to groundwater management, and responses to how to deal with groundwater depletion from the legal viewpoint, based on specific case studies. Indeed, private ownership of groundwater carries a built-in incentive to extract as much groundwater as is possible under the prevailing circumstances of the technology and the economics of drilling and extraction. A comparative analysis of groundwater legislation suggests that groundwater is losing the private property connotation it has traditionally held and that individual rights in it no longer accrue from ownership of overlying land, but from a grant of user-type rights by the government or by the courts. Vested private property rights in groundwater need to be accommodated by new legislation, with the available case law suggesting that compensation claims on takings grounds are most unlikely to succeed. Recent groundwater legislation seeks to enhance the quality and effectiveness of governmental permit determinations through groundwater planning mechanisms and users' participation in decision-making and policing. Implementation and enforcement are critical to the effectiveness of groundwater legislation, but the available record is sketchy. Inter-state shared groundwater issues in federal countries tend to be settled through inter-state agreement or litigation in the highest court. Further erosion of private ownership of groundwater, and regulation by government, are to be expected, especially in case of overdraft and pollution. However, in situations where government and/or the judiciary are weak or unavailable, local-scale control by concerned groundwater users, constituted as formal groups under statutory law, or as informal groups under customary law, is to be looked to as an alternative to regulation by government. Mention is also to be made of Chapter 3 of the book, which is entitled *Groundwater for Irrigation: Productivity Gains and the Management of Hydro-environmental Risk* and is authored by AIDA member Jacob Burke.

- [Adversaries into Partners: International Water Law and the Equitable Sharing of Downstream Benefits](#), by AIDA member Richard K. Paisley (Canada), in 3(2) *Melbourne Journal of International Law* 280 (2002). This article reviews the role of international law in the governance of international watercourses, including the role of the principle of equitable utilization. Discussion then turns to a suggested logical corollary to the principle of equitable utilization: the principle of equitable sharing of downstream benefits. The situation with regard to the equitable sharing of downstream benefits on the Columbia River is discussed together with other examples. Consideration follows of the possible application of the principle of equitable sharing of downstream benefits to help resolve conflict in other international watercourses, including the Karnali and the Mekong. The paper concludes that there is a role for an emerging principle of equitable sharing of downstream benefits in helping to turn historical adversaries into partners.

- [Europe Information Service](#) (EIS) is a useful reference source for European Union (EU) information. Based in Brussels, through its publications it provides a pertinent and concise

insight into all EU issues, including discussion of issues relevant to EU water law. Its publications are available both on-line and in hard copies. For more information, visit the EIS web page at www.eis.be.

6 FUTURE EVENTS

- **3rd World Water Forum**, Kyoto, Japan, 16-23 March 2003. The Forum is inviting participants to share their experiences with regard to water resources development and management, to seek solutions to water problems and to develop tools for action. The challenge will be to define commitments to a unanimously agreed plan of action. Themes for discussion will include 'Water and Climate', 'Water Supply, Sanitation, Hygiene and Water Pollution', 'Water and Energy', 'Water for Peace', 'Water, Food and Environment', 'Groundwater', 'Floods', 'Water and Governance', 'Water, Nature and Environment', 'Water and Cities', 'Water and Information', 'Integrated Water Resources Management and Basin Management', 'Water, Education and Capacity Building' and 'Dams and Sustainable Development'. It is possible that no specific session will be devoted to 'Water and the Law', although some of the presentations will cover limited legal aspects. A Ministerial Conference will be held during the Forum, where ministers will work towards framing and adopting a political declaration concerning global water problems. For more information contact: Forum Secretariat, Tel: +81-3-5212-1645; e-mail: office@water-forum3.com; Internet: <http://www.worldwaterforum.org>

- A workshop on '**Progress made over the world regarding integrated water resources management at the level of river basins**' will be convened by the International Network of Basin Organizations (INBO) on 20-21 March 2003, within the framework of the 3rd World Water Forum, Kyoto, Japan. The outcome of the workshop is intended to contribute to discussions of the broader topic 'integrated water resources management'. For more information, contact INBO, Permanent Technical Secretariat, 21, rue de Madrid, 75008 Paris, France. Tel: +33-1-44908860; Fax: +33-1-40080145; e-mail inbo@wanadoo.fr.

- The **International Workshop on Integrated Water Resources Management** will be held on 7-11 April 2003 in Denver, Colorado. This workshop aims to provide an overview of planning and management practices, evaluate inter-organizational cooperation and demonstrate actual procedures, facilities, and techniques used in integrated water resources management. For more information contact: US Bureau of Reclamation, Tel: +1-303-445-2127; Fax: +1-303-445-6322; e-mail: lprincipe@do.usbr.gov; Internet: <http://www.usbr.gov>

- A workshop on '**Progress and problems in the implementation of the EU Water Framework Directive**' is scheduled for 5-6 June 2003 in Constanza, Romania. Further information on this event is available on the web, at www.inbo.org.

- The **Third Latin American Congress on River Basin Management** will be held in Arequipa, Peru, on 9-13 June 2003, to facilitate the analysis and evaluation of, and the exchange of ideas on, various issues of relevance to river basin management. The Congress is organized jointly by the Peruvian National Institute for Natural Resources, the Latin American Network for Technical Cooperation in River Basin Management and the Regional Office of FAO for Latin America and the Caribbean. It will deal with five main themes, which are: (1) policies, legislation and institutions relevant to integrated river basin management; (2) economic and financial aspects; (3) social and cultural aspects; (4) capacity building and education; and (5) watershed management. Under the first theme, topics such as the legal framework required

for integrated basin management, water law implementation, the international legal framework and institutional requirements will be discussed, amongst other things. Information on this Congress may be obtained on the web, at www.congresocuenca.org.pe.

- The **2003 Stockholm Water Symposium and World Water Week**, 10-16 August 2003, Stockholm, Sweden. The Symposium theme is 'Drainage Basin Security: Balancing Production, Trade and Water Use'. Plenary sessions will include experts focusing on this theme from a variety of perspectives, and a high-level panel debate will address the role of agricultural subsidies that constrain the trade exchange of food products between the North and the South. The Symposium will also be a key forum for follow-up discussion to the Johannesburg Summit on Sustainable Development and the 3rd World Water Forum (Kyoto, March 2003). For more information contact: David Trouba; tel: +46-8-522-139-89; fax: +46-8-522-139-61; e-mail: dave.trouba@siwi.org; Internet: <http://www.siwi.org/waterweek2003>

- The **XI World Water Congress - Water Resources Management in the 21st Century**, will be held on 5-9 October 2003 in Madrid, Spain. This Congress will focus on making the fullest possible use of research in solving water resource problems. Major themes are: water planning under uncertainty (climatic variability and changes); valuing water, including issues relating to water ownership and the granting and administration of water rights; impact of new technologies in water management; relevance and sustainability of intensive groundwater developments, with special emphasis on legal systems for groundwater management and transboundary aquifers; the development of hydraulic infrastructure; influence of socio-economic, cultural and religious factors in water resources policies; and participation in water management, through decentralized administrations, basin agencies and water user associations. For more information, contact Manuel Martín Antón, e-mail: wwater2003@cedex.es; Internet: http://www.cedex.es/iwracongress2003/en/hoja2_en.htm

7 COMMUNICATION OF CHANGE OF ADDRESS AND E-MAIL

Please communicate any change of address and e-mail address to the Association and, possibly, provide us with information on what is happening in your part of the world in the field of water law and administration. AquaForum should continue to be a product of the Association as a whole. AIDA is reachable via e-mail at: dominique.alheritiere@gmail.com

7. PAYMENT OF ASSOCIATION DUES

The annual Association dues, amounting to Euro 30 or the equivalent in US\$, are payable either by personal cheque, net of commission charges, to:

Dr. Stefano Burchi, Treasurer of AIDA
Via E. Faà di Bruno 52
00195 Rome, Italy

Or by direct bank transfer, bank coordinates available at "[How to pay the dues](#)"

To ensure better record keeping for the Secretariat, please notify the Treasurer of AIDA (Stefano Burchi) via e-mail at : stefano.burchi@gmail.com