

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



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EDITORIAL

In addition to offering you the usual news on various events in the field of water law and administration, we are pleased to announce the convening of the **4th International Conference of AIDA (AIDA IV)** to be held in Belgrade, Serbia, from 28 August to 1 September 2005.

AIDA IV is being organized jointly by AIDA, the Yugoslav Association for Water Law (YuAWL) and the International Water Law Research Institute (IWLRI) of the University of Dundee, Scotland, to discuss legal topics of relevance to the management of international water resources, with particular focus on the Sava river basin. As many of our members will recall, a Framework Agreement for the Sava River Basin was recently concluded among the basin states.

All members of AIDA are cordially invited to participate and to submit papers on any of the subjects of interest to the Conference, which are listed in this issue of AquaForum.

The AIDA Secretariat remains at your disposal for any further information.

A handwritten signature in black ink, appearing to read 'Bernard J. Wohlwend', is positioned above the printed name and title.

Bernard J. Wohlwend
Chairman of the Executive Council

1 NEWS OF THE ASSOCIATION AND ITS MEMBERS

1.1 News of the Association

Preparations are underway for AIDA's **4th International Conference (AIDA IV)**, to be held in Belgrade, Serbia, from 28 August to 1 September 2005. The Conference, on '**The Framework Agreement on the Sava River Basin (FASRB): New Legal Frameworks for Regional Co-operation and Development**', is being organized by AIDA in cooperation with the Yugoslav Association for Water Law (YuAWL) and the International Water Law Research Institute of the University of Dundee (Scotland). The following will be discussed:

A. Topics related to the FASBR

- The law of international water resources - recent developments, future challenges
- Substantive rules and principles for ensuring cooperation between Sava River Basin states- equitable and reasonable use and the no-harm rule
- Sustainable water management of the Sava River Basin – what it means and how it can be implemented
- Developing institutional arrangements for the Sava River Basin – how to promote accountability, efficiency, transparency, predictability and participation
- Harmonization with EU legislation/EU water law – implications within the Sava River Basin states and prospects for the Sava River Basin
- The Sava River Basin and regional water law – the UN ECE legal regimes for the protection and use of transboundary watercourses and international lakes and the Convention on the Protection and Sustainable Use of the Danube River Basin
- The Legal Assessment Model – a methodology for operationalizing equitable and reasonable use in the Sava River Basin
- The national and international water law interface – transposing international rights and obligations into national legal systems

B. Topics related to the legal aspects of Public-Private Partnership (PPP) in the region of Western Balkans

- PPP legal theory and practice – lessons learned from around the world;
- An analysis of PPP models – current practice
- Possibilities, effectiveness and sustainability in implementing PPP in the Western Balkans
- Developing predictable and enforceable national legislation for PPP in the Western Balkans
- Regulatory frameworks for PPP in the Western Balkans – ensuring transparency, accountability and predictability
- Contractual issues and PPP
- PPP models in the European Union – issues of compliance with EU legislation

Papers may be presented on any of the above subjects. The Conference proceedings and papers will be published as ***Annales Juris Aquarum IV***.

Background information on the Conference and a call for submission of papers are to be found in the Conference Leaflet, which is reproduced in our website at www.aida-waterlaw.org, Flash News page.

Members are invited to solicit sponsors. Any contribution, however small, will be most welcome.

1.2 News of the Members of the Association

AIDA member Professor Dr. B.R. Chauhan (India) was appointed Member (Legal Expert) of the Task Force on Interlinking of Rivers, India, with effect from 24 March 2003. A multidisciplinary

group of experts, the Task Force was set up by Resolution of the Minister of Water Resources of 13th December 2002, to provide advice and guidance to the Government of India on the norms of appraisal of individual projects entailing inter-basin water transfers, modalities for project funding and related issues. For more information on the Task Force, visit www.riverlinks.nic.in.

Those among AIDA members who have not logged into the Association's website yet are reminded that they may do so by visiting www.aida-waterlaw.org and following the instructions. AquaForum is only accessible to those members who are in good standing with the payment of their Association dues, and access will be discontinued to those who have not paid these dues for two consecutive years.

2 MEETINGS AND CONFERENCES

- **L'eau et le droit, le droit à l'eau** - A meeting by the title *L'eau et le droit, le droit à l'eau (Water and the Law and the Right to Water)* was jointly organized by the associations Acqua Linda, ACME France and France Libertés at Calvi, France, on 30-31 October 2004. It was targeted for stakeholders and decision-makers within the water and sanitation sector, in order to provide them with information on available legal tools for the achievement of efficient and sustainable water resources management on a local, national and international scale. Particular attention was devoted to present and foreseeable water law developments and on their possible implications. For more information, visit <http://www.webzinemaker.com>.

- The African Network of Basin Organizations (ANBO) and the International Network of Basin Organizations (INBO), with the support of the Organization for the Development of the Senegal River (OMVS) and the French Development Cooperation, convened the **International Conference of the Network of International Commissions and Transboundary Basin Organizations** in Dakar, Senegal, on 3-6 November 2004. The Conference focused on the discussion of strategies for cooperation in international water resources management and on the study of existing institutional arrangements at the international river basin level. Four workshops were organized within the Conference's framework, focusing on the statutes and responsibilities of international basin organizations, the preparation of basin management plans and action programmes, financial aspects and information systems. Participants included representatives of international basin commissions, governments, academic institutions, international organizations and bilateral aid agencies. For more information, visit: www.riob.org/transfrontalier/dakar_a.htm

- An international workshop on the **Legal Basis for Transboundary Water Cooperation** was organized in the framework of the United Nations Economic Commission for Europe (UNECE) Project 'Capacity for Water Cooperation (CWC) in Eastern Europe, the Caucasus and Central Asia', and was held in Kiev, Ukraine, on 22-24 November 2004. It focused on the legal framework of transboundary water resources management and examined international conventions, bilateral and multilateral river basin agreements, river basin commissions, etc., and presented the results of recent international projects in this field. The workshop was funded by the Swedish Environmental Protection Agency and was arranged in cooperation with the Ministry for Environmental Protection, the State Water-Economy Committee of Ukraine and the UNDP/GEF Dnieper Basin Environment Programme. It was attended by transboundary waters managers, representatives of joint bodies and representatives of NGOs. Further information can be found on the UNECE Water Convention web site at www.unece.org/env/water/cwc.htm.

- A **Seminar on European, National and Comparative Law on the Implementation of Directive 2000/60/CE** was organized at the initiative of the Belgian Association for Environmental Law (*Belgische Vereniging voor Milieurecht*) and State Counsel Mr Jean-François Neuray on 8 December 2004 at Liège, Belgium, for selected participants from France, Belgium (Flanders and Walloon Region), the Netherlands and the international Commissions for the Scheldt and the Meuse. The aim of the Seminar was to facilitate an exchange of experiences and

views among the participants as to the implementation of the EU Water Framework Directive. It was pointed out that the main difficulties with its implementation relate to the definition of programmes of measures, to the concept of public participation in the preparation of river basin management plans and to the respect of the deadline for attaining a the good status objective. It was acknowledged that (a) it is important that lawyers participate in the Directive implementation exercise; (b) challenges differ depending on whether a state is unitary or federal; (c) there are a number of different technicalities; and (d) international basin commissions play a paramount role. AIDA member and Representative for French-speaking Europe, Jacques Sironneau (France), participated in the Seminar and contributed a paper on the French experience in the implementation of the EU Water Framework Directive (See www.aida-waterlaw.org, Flash News page).

3 DEVELOPMENTS AND PROGRAMMES CONCERNING WATER LAW

- **European Union** – The European Commission will take Germany to the European Court of Justice for failure to complete the process of enactment of the national legislation necessary to implement the Water Framework Directive. This legislation became due on 22 December 2003. The Directive, however, has been fully transposed into national law at the federal level and in only ten of the *Länder* (states). No clear information has been provided as to when this will be done in the remaining six *Länder* (Berlin, Hesse, Mecklenburg-Vorpommern, North Rhine-Westphalia, Rhineland-Palatinate and Saxony-Anhalt). The Commission has therefore decided to take the matter to the Court. For more information, read <http://europa.eu.int>.

- **France** - Law No. 2004-338 of 21 April 2004 on the transposition of Directive 2000/60/CE of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (J.O. No. 95 of 22 April 2004). The Law amends the Environment Code (*code de l'environnement*) by introducing provisions on water charges and pollution fees, the delimitation of river basins (or groups thereof), the study of the basins' characteristics, the basins' economic analysis, the registration of protected areas and of the sources of drinking water abstraction, environmental objectives and the development of programmes of measures for their achievement, the development of basin plans and the participation of the public in plan development. Further, it amends provisions of the Town Planning Code (*code de l'urbanisme*) and of the Code of the Territorial Communities (*code général des collectivités territoriales*) to adapt them to the Directive.

- **India** - On 2 November 2004 the Central Government set at rest all doubts about its going ahead with the 'Inter-Linking of Rivers' project by informing the Supreme Court that work on preparation of a feasibility report about two links involving five rivers in Uttar Pradesh (UP), Madhya Pradesh (MP) and Rajasthan was in its final stage. Submitting a progress report on the proposed 231-km link project for the Ken and Betwa rivers in UP and MP, and on the 243-km link for the Parbati, Kalisindh and Chambal rivers in MP and Rajasthan, Solicitor General G.E. Vahanvati told the Court that a Consensus Group (CG) of experts had been set up in the Ministry of Water Resources to resolve minor technical issues between these states. In addition, he said that aspects relating to environment protection and the displacement of people will form an integral part of the project. For more information, visit www.water-mgmt.com/en/news.

- **Indonesia** - Water Resources Law No. 7 of 2004 (*Republic of Indonesia State Gazette No. 32/2004*) was promulgated on 8 March 2004. The Law subjects beneficial water uses to licence requirements, and adopts a river basin approach to water resources management and planning. Water resources inventories and plans are to be developed by river basin or aquifer, taking into consideration the relationship between surface water and groundwater, and with the participation of stakeholders and water users. The Law provides for the establishment of water resources boards for water sector coordination at various territorial levels and for the participation of farmers in irrigation scheme development and management. Water use is, in principle, subject

to the payment of a water management service fee. Finally, the Law recognizes traditional communal rights to water as long as they are consistent with the legislation in force.

- **Kyrgyzstan** - On 9 December 2004, the *Jogorku Kenesh* (Parliament) of the Kyrgyz Republic adopted a new Water Code. The Code sets the basis for the establishment of a National Water Council and basin councils. The basin councils are responsible for elaborating river basin management plans (to be approved by the National Water Council) and for coordinating resource management at the basin level. The National Council and the basin councils are composed of representatives of the agencies involved in water resources management, including financial matters. Day-to-day water resources management (plan preparation, resource monitoring, water rights administration, etc.) is in the hands of the State Water Administration and of its territorial branches, i.e., the Basin Water Administrations. The Code introduces a system of water use permits to replace the system of licences which had been suppressed in 2001 further to recommendations by the World Bank/IMF. Water use permits are issued by the State Water Administration and are subject to registration. A chapter is devoted to groundwater and provides for abstraction permits and drillers' licences. The Code further provides for the classification of 'water objects' according to the purpose of use and for the establishment of quality standards according to this classification. In addition, it introduces the 'polluter pays' principle. Wastewater discharges are subject to a permit. Finally, the Code re-introduces the 'water inspectorate' as this, also, had been abolished based on recommendations by the World Bank/IMF.

- **Turkmenistan** - The new Law on Water of Turkmenistan was adopted by the Parliament on 25 October 2004. The Law is a revised version of the Water Code of the Turkmen Soviet Socialist Republic, 1973. It takes into account the fact that now individual entities (physical and juridical persons) also use water, in addition to state institutions and organizations of users. The Law subjects the use of water under a 'permit for special water use' to the payment of water charges, and contains more detailed provisions on the protection of water from pollution, including provisions on maximum allowable concentrations (of polluting substances), the classification of water into different quality categories and effluent standards. The Law also contains provisions on the settlement of water disputes and confirms the commitment of Turkmenistan to the implementation of the provisions of international water agreements concluded with its neighbours.

- **United States of America** - Senate Bill S. 1957, entitled 'United States-Mexico Transboundary Aquifer Assessment Act' was recently approved by the U.S. Senate. The Bill, proposed by Senator Jeff Bingaman of the State of New Mexico, addresses the lack of consensus between the USA and Mexico on the source and availability of future water supplies along the border. The Bill proposes to establish a bi-national scientific program to comprehensively assess the region's transboundary aquifers and to establish the scientific foundation for national, state and local officials to address pressing water resource challenges in the region. The Bill directs the Secretary of the U.S. Department of the Interior to implement this program in cooperation with the border states in the USA, other appropriate entities, including affected Indian tribes, and, to the 'maximum extent practicable', with appropriate Mexican entities and organizations at the federal and local levels. It also authorizes \$50 million to be appropriated for fiscal years 2005 through 2014. The Bill was passed by the U.S. Senate on 15 September 2004, and now goes for consideration to the U.S. House of Representatives.

4 PUBLICATIONS AND SOURCES OF INFORMATION OF INTEREST TO AIDA MEMBERS

- **Land and Water - The Rights Interface**, by AIDA member S. Hodgson, FAO Legislative Study No. 84, Rome, 2004. This publication summarizes and assesses current learning on the interface between land tenure and water rights with a view to providing a definition of salient issues and proposing approaches for further investigations. Particular attention is paid to key issues, such as those relating to irrigation, groundwater use, tradeable water rights and customary land and water rights.

- **Managing Water Resources, Past and Present**, *The Linacre Lectures 2002*, Ed. by J. Trotter and P. Slack, Oxford University Press, 2004, a series of essays on various aspects of water resources management. In particular, Chapter 6 carries a paper by AIDA member Stefano Burchi on "Water Laws for Water Security in the Twenty-First Century".

5 FUTURE EVENTS

- Within the framework of its commitment to support the work of the Special Rapporteur of the International Law Commission of the United Nations (ILC) on the issue of transboundary aquifers, the International Hydrological Program (IHP) of UNESCO is convening a **meeting on 'Transboundary Aquifers in the Americas'** on 7-9 March 2005 in Paris, France. The meeting, to be attended by groundwater experts, including hydrologists and lawyers, will aim at identifying regional priorities and state practice that should be taken into consideration while developing an international legal instrument on groundwater. For information on the meeting, visit the UNESCO website at

www.unesco.org

- The **2nd Alternative World Water Forum** will be organized jointly by the World Water Contract and the World Coalition Against the Privatization Center on 17-20 March 2005 in Geneva, Switzerland. The Forum's key objective is to further develop and promote institutions and public policies providing access to potable water for all human beings, as well as democratic and sustainable water resources management. For further information on the Forum, visit <http://www.fame2005.org>.

- The **2005 World Water Week** and the **Stockholm Water Symposium** will be organized by the Stockholm International Water Institute (SIWI) in Stockholm, Sweden, on 21-27 August 2005. The aim of the event is to serve as a link between practice, science, policy and decision-making in the search for sustainable solutions for water resources management. The approach is multidisciplinary, including policy, legal, social and management issues. Plenary sessions will feature experts focusing on various aspects of water resources management, while the Symposium, consisting of a series of scientific workshops, will be devoted to the specific theme, 'Drainage Basin Management - Hard and Soft Solutions in Regional Development'. For more information contact the SIWI Secretariat, Hantverkargatan 5, SE-112 21 Stockholm, Sweden. Tel: +46-8-522-139-60; fax: +46-8-522-139-61; e-mail: sympos@siwi.org; Internet: www.siwi.org; and www.worldwaterweek.org.

- The European Water Resources Association (EWRA) will convene its **6th International Conference**, by the title '**Sharing a Common Vision for our Water Resources**', in Menton, France, on 7-10 September 2005. The event will allow water professionals from Europe and elsewhere to exchange experiences with regard to water resources management and to identify and promote best practices. A specific thematic session will be devoted to the implementation of the EU Water Framework Directive, with particular focus on water quality management. For more information, contact Ecole Nationale Supérieure des Mines de Paris, EWRA2005 Secretariat, Rue Claude Daunesse, F-06904 Sophia Antipolis, France. Tel: +33 493957513; fax: +33 493654304; e-mail: ewra2005@ensmp.fr; Internet: www.cig.ensmp.fr

- The International Water Resources Association and the Central Board of Irrigation and Power of India will jointly organize the **XIIth Water Congress** in New Delhi, India, on 22-25 November 2005. The main theme of the Congress will be '**Water for Sustainable Development - Towards Innovative Solutions**'. Topics for discussion will include integrated water resources management, legal and institutional frameworks, mechanisms for conflict

prevention and resolution, emerging trends in international water law, water resources planning, stakeholder participation in resource management, and many others. For more information, contact Mr G.N. Mathur, Secretary, Central Board of Irrigation and Power, Malcha Marg, Chanakyapuri, New Delhi-110021, India. Tel: +91-11-26115984/26116567; Fax: +91-11-26116347; e-mail: cbip@vsnl.com or cbip@cbip.org; website: <http://www.cbip.org>

6. 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: stefano.burchi@gmail.com

7. PAYMENT OF ASSOCIATION DUES

THE ANNUAL ASSOCIATION DUES, AMOUNTING TO 30 EURO OR THE EQUIVALENT IN US\$, ARE PAYABLE

either by personal cheque, net of commission charges, written out to Stefano Burchi, and mailed to:
Stefano Burchi,
Via E. Faà di Bruno 52
00195 Rome, Italy

or by direct bank transfer: Bank coordinates available at <http://www.aida-waterlaw.org/payments.php>

To ensure better record keeping by the Secretariat, please inform the Chairman of the Executive Council of payments made, by e-mailing to stefano.burchi@gmail.com