

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



Newsletter No. 35

November 2005

EDITORIAL

Once again, we are pleased to provide our members with an update on events in the field of water law and administration through a new issue of *AquaForum*. While only a few years ago we were happy when we could produce two issues a year, it is now becoming increasingly difficult to keep track of all the international conferences in which the countries of the world express their concern for an impending water crisis. The result is that this issue of *AquaForum* is the third in 2005.

The question, however, arises as to whether all these conferences actually generate real answers as to the policies, legal instruments and institutional arrangements needed to administer and protect the world's water resources effectively. Conference debates tend to focus mainly on broad general concepts that, although appealing to politicians, are often far from reality and difficult – if not impossible – to actualize in the concrete case. Thus, little concrete benefits may be derived from them.

If measures are to be devised to address the water crisis, it is indispensable to take real issues and needs as the starting point. Further, it is important that lawyers, water managers, decision-makers and all those concerned with water issues contribute, in their own respective capacities, to the development of appropriate policies, strategies, legislation, international agreements and institutional arrangements. Unfortunately, in many instances little weight is given to the contribution of the lawyer, with the result that the solutions arrived at are often inadequate or impracticable.

A handwritten signature in black ink, appearing to read 'Bernard J. Wohlwend', with a long horizontal flourish at the end.

Bernard J. Wohlwend

Chairman of the Executive Council

1 MEETINGS AND CONFERENCES

- A **Regional Workshop** with the title '*Capacity-Building in Latin America: Legal and Regulatory Frameworks for Integrated Water Resources Management – IWRM*' was organized by the *Universidad Externado* of Colombia, in cooperation with *LA-WETnet* (Latin American Network for Capacity-Building for Integrated Water Management). The Workshop took place in Bogotá, Colombia, on 5-9 September 2005. The main objective of the Workshop was to support capacity-building in the legal and regulatory aspects of integrated water resources management in Colombia and Latin America, by strengthening local institutions and different stakeholder groups, with the emphasis on decision-makers. In addition, the Workshop aimed at promoting the updating of the existing legal frameworks by including provisions relating to IWRM and its implementation. For more information, visit: <http://www.uexternado.edu.co/>

- The **Eighth Riversymposium - Water and Food Security** was jointly organized by the Queensland Government and the City of Brisbane and was held in Brisbane, Australia, on 6-9 September 2006. The event is the scientific part of the *Riverfestival*, an acclaimed fortnight-long cultural event which has been held every year for the past eight years in Brisbane. Stefano Burchi (Italy), Treasurer of AIDA, participated and delivered a keynote address on 'Approaches to the Integrated Management of Groundwater – A Comparative Law Perspective'. More on this event may be found at www.riversymposium.com.

- The International Commission on Irrigation and Drainage (ICID) organized the **19th International Congress on Irrigation and Drainage** in Beijing, China, on 10-18 September 2005. The theme of the Congress was 'Use of Water and Land for Food and Environmental Sustainability', and 'legal and institutional challenges' featured amongst the topics for discussion. The purpose of the Congress was to study recent developments and provide a platform for reviewing a number of contentious issues that concern the future of irrigation water vis-à-vis increasing demands. For more information, visit: <http://www.icid2005.org/>

- A **Seminar on 'The Legal and Institutional Aspects of the Guaraní Aquifer'** was organized by the Committee for the Study of Latin-American Issues of the Council of International Relations of Argentina (*Consejo Argentino para las Relaciones Internacionales -CARI*) in Buenos Aires, Argentina, on 8 September 2005. The Seminar, which is the follow-up to the September 2004 seminar on the characteristics of this transboundary aquifer (Argentina, Brazil, Paraguay and Uruguay), was devoted to the international legal regime of transboundary groundwater, the legal aspects of groundwater management in Argentina, and the special features of thermal water resources and the management thereof. Participants in the Seminar included diplomats, lawyers specialized in international and national water law, geologists and hydrogeologists, as well as a representative of the GEF/OAS Guaraní Aquifer Project. The proceedings and papers of the Seminar will be published soon. More information (in Spanish) on future activities on the subject may be found in the website of the Council of International Relations of Argentina, at:

<http://www.cari1.org.ar/spanish/comites/latinoamericanos.html>

- The **5th Inter-American Dialogue on Water Management** was organized by the Ministry of Water and Housing of Jamaica jointly with the Jamaican Water Resources Authority, the United Nations Educational, Scientific and Cultural Organization (UNESCO), the Inter-American Water Resources Network (IWRN) and the Organization of American States (OAS) on 9-14 October 2005 at Montego Bay, Jamaica. The theme of the Dialogue was 'Strengthening Local Capacities to Achieve Global Challenges', and focus was placed on strengthening dialogue as a tool for

cooperation in water management and the identification of common factors facilitating the formulation of policies, plans and programmes of international and multi-lateral institutions, amongst other things. For more information visit: <http://www.iwrn.net/>

- The European Water Association (EWA), in cooperation with the Bavarian State Ministry for Environment, Health and Consumer Protection and the EU Commission, organized the first annual **Brussels Conference** in Brussels, Belgium, on 25 October 2005. The topic of the Conference was 'European River Basin Management Policy'. The Conference provided an overview of the progress of implementation of the EU Water Framework Directive (WFD), the work of international river commissions, prospects of specific European regions, the situation in new EU Member States. Daughter Directives to the WFD were discussed. For further information, visit: <http://www.ewaonline.de/pages/workshops.htm#EWAB>

2 DEVELOPMENTS AND PROGRAMMES CONCERNING WATER LAW

- **Belgium (Walloon Region)** - Book II of the Environment Code of the Walloon Region contains a Water Code, which was adopted by decree on 27 May 2004 in order to consolidate all legal provisions relating to water resources into one text and to ensure the transposition of the EU Water Framework Directive. Not all parts of the Water Code are in force yet. The provisions in force include (a) those on the improvement of surface and underground water quality through specific measures leading to a progressive reduction of emissions and discharges of priority substances into water, the soil and the subsoil and to a stop in the emission and discharge of dangerous substances; (b) those geared to the mitigation of the effects of floods and droughts; and (c) those vesting the Consultative Water Commission and the Water Control Committee with a broader mandate. The provisions relating to the management of watercourses, the 'river contracts' and the *wateringues* are not yet in force. The *arrêté* for the implementation of the Water Code was adopted by the Walloon Government on 3 March 2005 and was subsequently amended on 14 and 20 July 2005. For more information, visit: <http://www.droitbelge.be>

- **Chile** - After more than ten years of heated debates at Congress level, the Chilean Water Code of 1981 has been amended by Law N° 20.017 of 11 May 2005 (published in the Official Journal on 16 June 2005), with a view to putting an end to the far too liberal regime of concessions contemplated by the Code and meeting present environment protection requirements. The most important point of the reform concerns the payment of a tax for non-use (*patente por no uso*) by those who hold a water right but do not use the water. The tax rate increases depending on the length of time of non-use and on the place in which the water should have been used. In the case of non-payment, the water right is revoked. This aims at preventing powerful enterprises from hoarding water to reserve it for future use, or to speculate on it in times of shortage through market mechanisms. The pre-existing Code viewed a water right as something that, once a person applied for it, the General Water Directorate was obliged to issue against no payment, provided that water was available and that third parties did not suffer prejudice. The Directorate had no power to investigate as to the purpose of water use or as to whether the water was effectively being used. In substance, the water right became the property of its holder, who could use and dispose of it when and as wished, thereby obtaining a considerable economic benefit. The new Law also sets new requirements with regard to applications for water rights, i.e., the applicant must justify the quantity of water requested in relation to the type of use to which the water is put, amongst other things. In addition, the water right holder may now renounce the right. In parallel with this, the Directorate has greater authority to deny a water right. Finally, the new law introduces a statutory duty of government to maintain a minimum flow in all natural water bodies.

- **India (Maharashtra)** – On 7 April 2005 the Legislative Council of Maharashtra passed the Maharashtra Water Resources Regulatory Authority Act (No. 18 of 2005), which provides for the establishment of a Regulatory Authority to allocate the state's water resources to the various water use sectors and to fix the rates of water charges. The Act further provides for the establishment of a State Water Board which is responsible for preparing the integrated state water plan. The plan is to be based on basin and sub-basin plans that are to be developed by five river basin agencies which replace the former irrigation development corporations. The state plan is to be approved by a State Water Council, also established under the Act. On 15 April 2005 the state legislative Council has passed the Maharashtra Management of Irrigation Systems by Farmers Act (No. 23 of 2005) to provide for the transfer of irrigation management to water users' associations. For more information on the water sector reform in Maharashtra, visit: www.mahagovind.org

- **Ireland** - Ireland has launched a public consultation on regulations to prevent watercourses from becoming polluted with nitrates from agricultural runoff. The emphasis is on the management of livestock manure and other fertilisers, as these are the primary sources of pollution from nitrates. In particular, the regulations will support the implementation of Ireland's Nitrates Action Programme which was formally submitted to the European Court of Justice at the end of July. The European Court had found Ireland in breach of the Nitrates Directive in March 2004 for failing to establish such an action programme. For further information, visit: http://www.edie.net/news/news_story.asp?id=10633&channel=4

- **United Nations Economic Commission for Europe (UNECE)** - The United Nations Economic Commission for Europe (UNECE) Protocol on Water and Health to the 1992 Convention on Protection and Use of Transboundary Watercourses and International Lakes (London, 1999) entered into force on 4 August 2005, following ratification by the minimum 16 countries required, namely Albania, Azerbaijan, Belgium, the Czech Republic, Estonia, Finland, France, Hungary, Latvia, Lithuania, Luxemburg, Norway, Romania, the Russian Federation, Slovakia and Ukraine. The Protocol aims at facilitating the improvement of health by contributing to the prevention, control and reduction of water-related diseases. It covers both the provision of safe drinking water and adequate sanitation and the basin-wide protection of water resources. The Protocol calls on the ratifying countries to strengthen their health systems, to improve water resources planning and management, to improve the quality of water supply and sanitation services, to address future health risks and to ensure safe recreational water environments. The text of the Protocol is available at:

www.unece.org/env/water/text/text_protocol.htm

- **United States of America** – The **United States-Mexico Transboundary Aquifer Assessment Bill** was passed in the Senate on 26 July 2005 and was then referred to the Subcommittee on Water and Power of the House of Representatives on 1 August 2005. The purpose of the Act is to authorize the Secretary of the Interior to cooperate with the states on the border with Mexico and other appropriate entities in the conduct of a hydrogeological characterization, mapping, and modelling programme for priority transboundary aquifers, and for other purposes. For more information on the status of the Act and the process of adoption, visit: <http://www.govtrack.us/congress/bill.xpd?bill=h109-469>

3 TRAINING AND RESEARCH CONCERNING WATER LAW

- The **International Development Law Organization (IDLO)** will hold two two-week seminars on '**Legal Framework of Water Resource Management**' in Rome, Italy, on 19-30

June 2006 (for French-speaking participants) and 11-22 September 2006 (for English-speaking participants), respectively. Starting from specific problems in selected countries, the seminars will examine key principles of Integrated Water Resources Development and Management (IWRDM) and analyze how institutions, regulatory mechanisms and market-oriented incentives could contribute to the sustainable use of water resources. The seminars will address: (a) the unique legal status of water as a fundamental resource for human life, agriculture and social and economic sustainable development; (b) different methods of water resource management, with a particular focus on management by municipalities, public-private partnerships and the private sector; (c) the role and responsibilities of, and the relationship between public authorities, operators, consumers/users and the civil society; and (d) regional aspects of water law implementation. The seminars are designed for legal professionals and high-level policy advisors working for national and local governments, legislative drafters, representatives of regulatory authorities, legal practitioners advising private suppliers, NGO lawyers and user/consumer association representatives. For more information on how to apply, and on logistics and other practical arrangements, visit IDLO's website at:
www.idli.org/courses.htm.

- The General Conference of UNESCO at its 33rd session (3-21 October 2005) approved the establishment of three new water-related category II centers under the auspices of UNESCO, among which the **IHP-HELP Centre for Water Law, Policy and Science** at the University of Dundee, Scotland, United Kingdom. More about this event may be read at:

http://www.unesco.org/water/news/water_related_centres.shtml

4 PUBLICATIONS AND SOURCES OF INFORMATION OF INTEREST TO AIDA MEMBERS

- ***Guidelines for Drinking Water Quality*** (Third Edition) by the World Health Organization (WHO), © WHO 2004. This new edition of WHO's Guidelines for Drinking Water Quality provides a state-of-the art perspective on issues of water quality and health and on effective approaches to water safety management. The guidelines are used by countries worldwide as a scientific basis for standard-setting and regulation, as well as by professionals and local decision-makers. This fully revised third edition includes expanded coverage on systematic drinking water safety assessment and management. It describes a 'Water Safety Framework' encompassing complementary functions of national regulators, water suppliers and independent surveillance agencies. The 'Water Safety Plan' provides a comprehensive approach to assist suppliers in water safety management.

- ***An Effective System of Defining Water Property Titles – Research Report*** by the Australian Government, Department of Agriculture, Fisheries and Forestry, and Land & Water Australia, Canberra, March 2004. The 77-page report, prepared by ACIL Tasman, was commissioned and funded by Land & Water Australia and the Federal Department of Agriculture, Fisheries and Forestry, to develop a workable system of water property titles in Australia. The report is set against the backdrop of wide-ranging institutional and legal reforms of Australia's water resources sector underway since 1994 under the aegis of the Council of Australian Governments (COAG). COAG agreed, in particular, on the need to provide for market-based efficiencies in rural water industries and to improve the environmental health of rivers. A key aspect of the reforms was the development and implementation of clearly specified water entitlements and the separation of water title from land title. As it marks a substantial contribution to a very important aspect of the Australian water reform agenda, at the same time the report offers very valuable insights into the complexities of perhaps the single most controversial issue on the contemporary reform agenda of the water resources sector in any country. The report does so by first developing a conceptual framework for water property titles,

then reviewing current water property title systems across Australian jurisdictions, and finally identifying the proper role of a titling and registration system. This framework is then applied to develop the details of an effective titling system for water resources. The report can be obtained from Land & Water Australia, email: public@lwa.gov.au, website: www.lwa.gov.au

- ***Water Legislation in the Netherlands***, by Pieter Huisman, Delft University Press, Delft, The Netherlands, May 2004. This book provides a brief introduction to the development of Dutch institutions and water management legislation from the 12th century. Current water legislation is summarized in thematic chapters, beginning with the constitutional context. Subsequent chapters outline the structure and procedures of water management organizations, and describe the legal framework for the management of water and water-related infrastructure at all levels of administration. Particular attention is devoted to the regulations harmonizing physical planning and environment protection with prevailing water issues. Finally, two chapters are devoted to the way in which regulations at the provincial and local levels interact to attain the national goal of integrated water management.

- ***The Human Right to Water: Legal and Policy Dimensions***, by Salman M. A. Salman & Siobhan McInerney-Lankford, World Bank Publication, Washington D.C., September 2004. This book traces the issue of the right to water through a number of international legal instruments, particularly General Comment No. 15 issued by the UN Committee on Economic, Social and Cultural Rights in 2002, which recognizes such a right. It analyzes the international legal regime for human rights, and argues that the nexus between development, water and human rights is well established therein. Although the central theme of the Study is General Comment No. 15, which explicitly recognizes a human right to water, the Study argues that the Comment supports the idea that there is an incipient right to water emerging in international law today. This right is buttressed by a large number of soft law instruments, emerging customary international law, as well as an increasing number of domestic law instruments. For information as to how to obtain this publication, visit:

<http://publications.worldbank.org/ecommerce/catalog/>

- ***Buried Treasure: Groundwater Permitting and Pricing in Canada***, by Linda Nowlan for the Water and Duncan Gordon Foundation, March 2005. The 104-page report illustrates and compares existing federal and provincial policies, legislation and practice on groundwater allocation and on groundwater extraction pricing in Canada. As a result, the report is a wealth of valuable information on, in particular, groundwater allocation law in Canada, provincial groundwater permitting requirements, public participation opportunities in groundwater permitting, and on groundwater pricing requirements, including groundwater marketing. The report can be obtained from the Water and Duncan Gordon Foundation, email: info@gordonfn.org , website: www.gordonfn.org

- ***International Law and Sustainable Development, Lessons from the Law of International Watercourses***, by Alistair Rieu-Clarke, Water Law and Policy Series, International Water Association (IWA) publication, October 2005. This book shows that while a number of legal frameworks to help promote the goal of sustainable development have been proposed at the international level, they fail to fully capture the essence of sustainable development and to support its implementation. The book is divided into four sections. The first includes an overview of the topic area. The second explores the meaning of sustainable development and considers the relationship of the term with international law. A detailed analysis of how the law of international watercourses seeks to reconcile competing economic, social and environmental interests is carried out in Section Three. The book concludes with a section advocating the need for a fresh approach to international law and sustainable development and offering the foundations for this approach based on lessons learnt from the law of international watercourses.

- **Water Rights, An International and Comparative Study**, by Desheng Hu, Water Law and Policy Series, International Water Association (IWA) publication, October 2005. This book presents a survey of international law as well as a comparative analysis of the domestic legal regimes of selected jurisdictions, i.e., China, South Africa and South Australia, in order to identify the essential elements of a well-structured water rights system which ensures that the multiple functions of water resources are reasonably balanced and that the competing water needs are taken into consideration.

- **Hydrology and Water Law – Bridging the Gap**, by J Wallace, P Wouters, S Pazvakavambwa, Water Law and Policy Series, International Water Association (IWA) publication, December 2005. Based largely on the actual experience of HELP (Hydrology for the Environment, Life and Policy), the overall aim of the book is to reproduce a series of case studies from around the world (from the Aral Sea to Zimbabwe) that show how the 'gaps' between hydrology, water law and management are actually bridged in practice.

5 FUTURE EVENTS

- An international workshop on the theme '**Practical implications of international conventions on wetland management**' will be organized jointly by the Venice Province and the UNESCO Regional Bureau for Science in Europe, in cooperation with the Ramsar Convention Secretariat, in Venice, Italy, on 21-23 November 2005. The aim of the workshop is to facilitate the comparison of the situations of various important wetlands and the identification of possible implications of existing international instruments (conventions and other legal arrangements) on the management of the territory. For more information, visit: www.ramsar.org/wn/w.n.italy_servolo.htm

- As part of its ongoing 10th Anniversary Celebrations, The Mekong River Commission (MRC) will hold a two-day **International Forum on Integrated Water Resources Management in the Mekong River Basin** at Chiang Rai, Thailand, on 29-30 November 2005. The aim of the Forum will be to generate ideas as to how integrated water resources management (IWRM) principles can be applied at basin scale to best meet water demands and resource protection requirements. A session will be devoted to the institutional and regulatory framework for water resources management and will cover, in particular, the role of national river basin agencies, the role of the MRC, the institutional and legal arrangements needed to achieve successful IWRM and possible mechanisms for cross-sector cooperation in IWRM. For more information, contact Dr Kim Geheb, Mekong River Commission, tel 855 21 263263; email: kim.geheb@mrcmekong.org , or visit: <http://www.mrcmekong.org/waterforum.htm>

- The International Soil Conservation Organisation (ISCO) will organize its **14th Conference** at Marrakech, Morocco, on 14-19 May 2006. This conference will provide a discussion forum for experts in various disciplines relating to the management of soil and water, particularly in semi-arid environments. The institutional, legislative and socio-economic aspects of soil and water conservation feature among the topics to be considered. To know more, visit: http://www.unesco.org/water/water_events/Detailed/1052.shtml

- The European Water Association (EWA) and ADECAGUA (the Spanish national Water Association) are organizing an **International Symposium on 'New Water Policies – The Water Framework Directive'** in Barcelona, Spain, on 17-19 May 2006. The definition of a

programme and the selection of speakers will take place in November 2005. For more information, visit EWA's website at: www.EWAonline.de

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