

Network for Cooperation in Integrated Water Resource Management for Sustainable Development in Latin America and the Caribbean

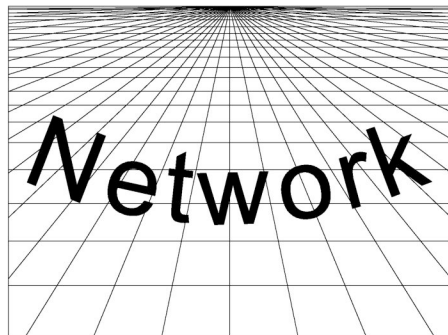


United Nations Economic Commission for Latin America and the Caribbean (ECLAC)

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Today, in Latin America and the Caribbean, the water issue is immersed in a series of plans relating to integrated environmental management goals, an aim which assumes that the capacity to manage multiple water use will be achieved as a by-product. For the sake of this idea, in more than one case the existing capacity for water management has been reduced in the process of adapting it to “integrated environmental management”.



Practice shows that the reverse path should be followed. First, the governing capacities have to be established for multiple water use, as a prerequisite to creating integrated environmental management capacities. Unfortunately, today this capacity is not yet strong enough to achieve its own aims and still it is being weakened.

There is currently a wide range of situations in the region with regard to legislation, standards, technical specifications, organisations, capacities, research, education and effective application of processes for multiple water use management, even within a single country. Despite these variations and situations, progress is still being made in the consolidation of some bodies for integrated water management, both at the national level and at the level of states, provinces and river basins, especially in Brazil and Mexico.

Unfortunately, however, it has to be recognised that, in more than one case of

integrated water management, there has been a significant step backwards as far as governing capacity is concerned, both at the national level in some cases, and at the level of river basins. The current reduced governing capacity for multiple water use management is obviously not exclusively due to its being diluted by incorporation into the broader environmental issue. There are deeper causes that have existed for decades: some originate with the public and private officials responsible for water management and use; and others are external, and stem from the socio-economic situation of the countries or the river basins where the water resources are managed.

In contrast, and paradoxically, it is interesting that although almost all countries of the region agree that water management bodies are needed for each river basin, little progress has been made in this area. It is certainly not a simple task, nor does the relevant legislation often exist. It is thus important to create or enhance the region's capacity to support these initiatives.

It is not easy at present to have access to reports that classify, summarise and compare the processes of creation and consolidation of water management bodies at the river basin level for the purpose of proposing appropriate mechanisms. The few studies that are available are mainly internal documents, and so access to them tends to be restricted. Overall, many cases exist, but they are scattered, and at different stages of development, and little published information is available.

The creation of a water management organisation at the river basin level does not guarantee its continued existence as it requires continuous support for its consolidation in the form of technical assistance and financial resources for at least a decade. Many of the laws establishing these bodies do not provide for clearly-defined

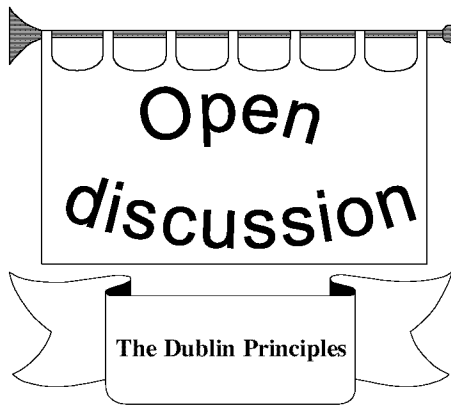
roles, or the assignment of legal status, stable sources of income, personnel training, and in general the methods, criteria, standards and operational procedures are not prepared beforehand in order to formulate plans and standards with due legality.

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It is therefore suggested, as part of the necessary task of improving multiple water use management, that funding be provided for an appropriate number of researchers to systematise and standardise the experiences available. This would be possible if a research or logistics centre was established for multiple water use management and integrated river basin management. This centre could be set up with the support of interested organisations and could be attached to a university or some existing regional or international organisation, in order to serve as an information centre both for regional water resources networks and for educational centres to support manager training for river basin organisations and multiple water use management.

Although sizeable networks do now exist for issues relating to integrated water management, there are still very few regional studies available in this area and there is even less access to criteria, standards, procedures and working methods at the river basin level. The above centre should help move on from the present situation of dispersed information, confused ideas, a lack of follow-up on the progress made and the generally unstable procedures for training, consolidation and functioning of water management bodies at the river basin-level, and organisations for multiple water use management in some countries of the region.



We present the document entitled "*The Dublin Principles for Water as Reflected in a Comparative Assessment of Institutional and Legal Arrangements for Integrated Water Resources Management*", written by Miguel Solanes, ECLAC Regional Advisor on Water Resources Legislation and Regulation of Public Utilities and Fernando Gonzalez-Villareal, Professor at the Institute of Engineering, National Autonomous University of Mexico, for the Global Water Partnership (GWP) (both authors are members of the Technical Advisory Committee of the GWP). The purpose of this report is to analyse the relationship between the Dublin Principles, adopted at the International Conference on Water and the Environment (Dublin, Ireland, 26-31 January 1992), and water law.

Freshwater is a finite and vulnerable resource, essential to sustain life, development and the environment.

General considerations:

- The principle has been interpreted as a requirement for integrated management, responsive to the characteristics of water resources. Integrated includes technically appropriate water management (surface and groundwater, quality and quantity, water and soil, etc.). Consideration of social needs, economic soundness and environmental requirements are implied. The ultimate goal is sustainable use and development of water resources.

- The review shows there are water policies and legislation concerned with integrated water management; water quality protection; flow and landscape considerations; ecological requirements; rational and guided water use; integration among soil, water and other natural resources; protection of water supplies; water planning; recognition of the river basin; groundwater protection; mandatory assessment of water policies, plans, programmes and projects; and mandatory assessment of water-related subsidies.
- There are also examples of legislation specifically concerned with the needs of all citizens, the common interest, benefits of individual users and the livelihood of the population. Concrete examples of social concerns in water legislation are the preference often found for drinking water supply and sanitation, as well as the requirement of public access to information and the protection of amenities, flora, fauna, historical places and other environmental interests.
- The link with development is also a tenet of water law. Legislative requirements for optimal use and full realisation of the economic benefits of water have been found. Some systems relate water planning to economic improvement and economic regions. Economic considerations are, in some countries, important normative criteria for decision making and programme and project evaluation.

Specific considerations:

- **Water policies:** Several countries state the purposes and objectives of their water policies in their water legislation. The statement of policies is relevant to the interpretation, application and enforcement of legislation. Several of the statements reflect awareness of the interrelationships resulting from the principle. Several laws include policy principles where the multiple roles of water are recognised.
- **Quality controls and environmental concerns:** The environmental dimension of water is rapidly becoming a major component of water legislation. As water becomes scarcer, relative to demand; as externalities increase, and as knowledge improves, the need to control the deterioration of water quality is translated into more detailed and demanding legislation. Permits, prohibitions, and charges are used to curb the deterioration of water and related natural resources and environmental assets. In some systems environmental concerns are the basis on

which existing water rights can be amended, restricted, subjected to prorata, or cancelled.

- **Protection and management of water supplies:** The protection of water sources has been a traditional concern of water law. Increasing demand and externalities have strengthened this concern. Groundwater is increasingly controlled and protected. A number of countries have enacted legislation requiring permits, creating administrative devices to control the use of groundwater in special management areas and restricting the expansion of high consumption activities like irrigation. Management measures include issuing certifications of assured water supplies, required for the approval of subdivision plots, registration and recording of wells, control of water storage and recovery, control of well drillers, protection of pre-existing uses, use of groundwater charges, measurement of withdrawals, estimations of supply and demand, stopping and reducing withdrawals in order to allow replenishment, granting emergency powers in case of drought, granting of permits at the discretion of water administrators (except in cases of clear abuse of discretion), deadlines for waterworks and activities, monitoring, possibility to amend and forfeit water rights (previous hearing), conjunctive use of surface and groundwater, control of discharges into groundwater, and allocation of groundwater to preferred uses such as drinking water supply.
- **Water planning and river basins:** The development of water resources is no longer amenable to isolated action. Water legislation is rapidly evolving towards integrated water planning to satisfy environmental objectives, economic requirements and social concerns.
- **Assessment of water projects and programmes:** Water-related programmes and policies are, in some countries, assessed according to their impact on the environment and other national concerns (regional development, social factors, etc.). Some countries have established areas within which projects or programmes are assumed to have significant environmental effects. It has been possible to identify at least one court case where an environmental impact assessment was requested for irrigation subsidies. It has been found that subsidising water for some activities and uses causes "an unnatural excess of demand", with impacts on water uses, the environment and water reserves. Some countries are considering, and

implementing, legislation to lower subsidies for irrigation water.

Water development and management should be based on a participatory approach, involving users, planners, and policy-makers at all levels.

General considerations:

- Legislation relating to this principle was analysed under the assumption that water-related activities are not confined to the interests of limited groups of users, geographical boundaries, sectoral institutions, or national jurisdictions.
- Generally, meaningful participation is associated with well-defined national policies for which water is either a main component or a relevant input. Policy implementation is usually associated with socially-acknowledged, relatively well-informed, government organisations with adequate capabilities and appropriate legal mandates. These institutions have evolved from being sector oriented to being resource oriented, with strong indications that the concept of the river basin is entering onto the institutional scene.
- The review of experiences strongly suggests that the institutional dimension of water management is a system, where relatively successful water management experiences (success in this context is contingent on what a system knew and sought at specific times) have included a balance of government institutions and policies and stakeholders participation.
- Such experiences indicate that meaningful stakeholder participation requires, at the least, a certain degree of government overseeing, and occasionally, support. Such support may consist of promotion and encouragement of involvement and dissemination of information. Otherwise there is an ever-present risk of participation being co-opted by well-informed, intent-specific special interest groups.
- Conciliation of interests, public consultations, and hearings are some of the ways in which interested parties and stakeholders, who do not necessarily have a conventional (in the typical sense) proprietary interest in water, are able to participate.
- Interestingly, some legislations acknowledge the global nature of water issues and acknowledge transnational interests through references to international treaties and obligations.

- Some laws recognise the intimate connection existing between participation and information at all levels.
- Some systems, where agricultural and other subsidies have traditionally coexisted with relatively strong participation, seem to indicate that a main, although not necessarily exclusive, prompt to participate is economic self-interest.
- Finally, it seems relevant to notice that technical needs, opportunities for economies of scale and scope, and other factors need to be taken into account when applying the concept of the lowest appropriate level. Also, the lowest appropriate level and the private sector are not synonymous.

Specific considerations:

- **Vesting responsibility for overall water management:** The functional organisation for policy making, water allocation, water management, and monitoring of users plays an important role in the implementation of a sustainable water development system. Where these functions are vested in institutions with functional responsibilities for specific water uses, or for discrete economic activities, water planning and management might not be objective. In these cases, each concerned party may tend to support projects or water allocations according to vested functional interests, without regard to the source of supply or the soundness of investments and projects. To avoid such problems, many jurisdictions allocate responsibility for policy making, water allocation, and programme and project evaluation to a non-user agency or ministry. Another important consideration is that, due to the complexities of water management, a number of countries tend to defer to administrative judgement on technical issues. Yet, other systems have chosen to limit administrative roles in water-related matters. As a result, many water conflicts have gone to higher courts, whose performances have been quite uneven.
- **Conciliation of interests and consultations:** Governments are resorting to conciliation mechanisms and preventive strategies in order to manage water-related differences and co-ordinate activities, with a view to achieving the diverse objectives and satisfy the many demands usually associated with water resources.
- **Concern for international issues:** Growing scarcity, competing demands, and transfer of externalities occur not only within national boundaries, but also at an

international level. In addition, in common market areas differing regulations might either curb imports or give a competitive advantage to exports. With the world-wide privatisation of water-related services there are likewise world-wide possibilities for advice and provision of services. Therefore countries are increasingly referring to extraterritorial factors or elements in their national water legislation.

- **Stakeholders participation:** The process of democratising water decision-making and water-related activities takes place through public hearings, stakeholder involvement in administrative bodies, organisation of user associations and, for general environmental concerns, a greater permissiveness in the rules governing standing to act in either administrative or judicial forums. Thus, stakeholders may participate in policy making, legislative discussion, general water administration, and field-level activities. Stakeholders and water users can participate in public hearings or consultations intended to discuss policies, programmes, projects or legislation. While the mechanism is fundamentally apt to open venues for participation, its sole inception does not necessarily mean that every stakeholder will necessarily participate. In fact, some argue that governments can encourage empowerment of interested parties by providing access to data, standing in meetings and, generally, providing opportunities for interested parties to express opinions and positions. The experiences of many countries coincide in that the most effective institutional methods of user involvement are the ones taking place through some sort of public organisation. They assure economies of scale and mandatory dispute resolution processes, essential where a large number of diverse water users are involved. In a number of places where public participation is relevant, it is associated with institutional environments where water is an important part of national policies and public water-related organisations have an established and acknowledged role.
- **Information:** To be effective, a system of participatory planning and management of water resources must be able to provide timely information on where and what kind and quality of water is available, and on who is using the water and for what purposes. Therefore, effective water management systems require adequate official surveys, inventories and cadastres of water sources and water supplies, as well as up-to-date registers and records of water uses and discharges into waters,

water rights, and beneficiaries of such rights, with their respective water allocations. The objective of information is to allow appropriate decisions by policy-makers, administrators, managers, users and the public. Therefore, legislation requiring the submission of information by managers to policy-makers, users and the public at large, and by users and the public to managers is becoming part of modern water law.

- **The lowest appropriate level:** It is generally recognised that the river basin is the most appropriate unit for the application of water resources strategies. However, arbitrary circles have usually been drawn around water projects, ignoring external impacts. Jurisdictional boundaries which do not correspond to the river or to other natural systems are one of the most serious causes of inefficiency in the design and operation of water systems. Adequate organisation at the river basin level would diminish or reduce transaction costs. Levels lower than provinces, regions or states may be the focus of particular water-related services, such as drinking water supply and sanitation systems. However, the experience of some countries suggests that vesting these responsibilities in municipal governments has drawn severe criticisms: it resulted in a fragmented water industry, unable to take advantage of economies of scale; local governments were afraid of political reactions to raising charges; and financing, management and other skills were in short supply.

Water has an economic value in all its competing uses and should be recognised as an economic good.

General considerations:

- In Western, Roman-based legislation, the economic aspects of water resources were relevant enough for them to be included within public or private ownership. Systems of water rights have existed since Roman times.
- At present, most legislations recognise and protect the property aspects of rights to use water, which is the manner in which law reacts to the economic concept of scarcity.
- However, water is not an ordinary commodity. The peculiar characteristics of water resources stem from their polyvalent environmental, economic and social roles. They include, *inter alia*, public good aspects; external effects; imperfect competition; risk, uncertainty, and imperfect information; potential for social

and environmental inefficiencies and inequity; and vulnerability to monopolisation.

- At the same time, water law systems acknowledge the social and environmental dimensions of water through norms intended to protect third parties, the environment, and the resource base.
- An important social dimension of water rights, closely associated with the economic dimension of the resource, is a definite intent in most legislations to prevent water hoarding, speculation, monopolies and waste. With world-wide privatisation of water-related services, monopolistic control of water rights configures a typical case of barrier to entry. Therefore, there is a requirement for effective and beneficial use of water rights as a universal principle of water law — at both national and international levels. In the single known case of non-existence of this provision, the system has resulted in speculation, hoarding, and impaired water management to the detriment of water sources.
- A corollary of the economic character of water is the existence of water markets. They are a useful tool to optimise the use of the resource. However, since the many roles of water and its peculiar features make it a very special commodity, mature systems of water marketing regulate market performance in the light of social, economic and environmental considerations.
- Finally, there are proposals to charge for water according to its opportunity cost. Examples of this approach are not abundant. However, there are examples of charges intended to recover costs, pay for treatment of wastes, cover administrative expenses and induce environmentally-sound behaviour. More analytical work seems to be required, however, in order to refine criteria for inception, procedures for application, and consideration of issues of opportunity and equity.

Specific considerations:

- **Water rights:** While in most countries water belongs to the public domain, water use rights granted to private individuals or corporations are protected under the property provisions of national and, in the case of federal countries, state or provincial constitutions. A system of stable water rights is an incentive to invest in the development and conservation of water resources. Stable water rights are useful collateral, assets, or appurtenances for credit purposes, and also important

elements when assessing properties for taxation. Additionally, the stability and certainty of water rights and appurtenant uses provide recognition to existing economies and prevent social unrest. The impossibility of granting stable water rights negatively affects development. A water right is usually a right to use, and ownership of a water right does normally mean a usufructuary power, and not ownership of the corpus of water itself. In some legislations the usufructuary power can be traded.

- **Effective and beneficial use:** The relevance of water rights as property assets is related to the availability of the resource. The scarcer resource is the most valuable. Therefore, most water laws have provisions that require the effective use of water entitlements, whether to create, generate, maintain or conserve them. The principle of effective and beneficial use is widespread. While the terminology is not uniform, there is a notion that water rights risk forfeiture if not used, or if not used according to the terms of a license or permit. A typical statement of the rule of beneficial use is that it is the basis, the measure, and the limit of all rights to the use of water consistent with the interest of the public in the best utilisation of water supplies. The tenets of the doctrine of effective and beneficial use are: (i) water is not to be obtained for speculation or let run to waste (reality of use); (ii) the end use must be generally recognised and socially acceptable; (iii) water is not to be misused (reasonable efficiency); and (iv) the use must be reasonable as compared against other uses. Assessments of the Chilean experience (where water rights are not conditioned to effective and beneficial use) suggest that the absence of a requirement of effective and beneficial use does have a negative effect on water transactions, on water markets, and on efficient water allocation.
- **Conditionalities on water uses:** In addition to the requirement of effective and beneficial use there is a general trend to condition the use of water. This conditioning includes formal (e.g., obtaining a permit) and substantive requirements (e.g., no harm to third parties, efficiency). A common feature of water law is to establish preferences among uses in order to allocate water at times of scarcity, or to grant water rights in case of competing applications.
- **Water markets:** Marketing of water rights is being paid increased attention as a useful and economically efficient alternative for the improvement of water allocation. As supplies diminish relative to

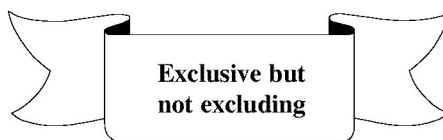
demand markets become not only an efficient alternative, but also a necessary solution to problems of water scarcity. However, as water transfers have an impact on third parties, on social stability and on the environment, countries with mature systems of water right transfers regulate them with a view to prevent damage to third parties, the environment, and social stability and harmony. Finally, it is worth noting that empirical studies on water markets indicate that the requirement of effective and beneficial use encourages water transfers; that the existence of subsidies to specific activities affects water transfers; and that the absence of the requirement of effective and beneficial use negatively affects water markets.

- **The United States experience:** Water markets are an important feature of the legal system of the states of the western region of the United States. For a reallocation to be legally valid some requirements must be fulfilled: (i) water must have been beneficially used, and must continue to be beneficially used after the reallocation; (ii) such reallocation must not affect other users and must be in the public interest; (iii) in many jurisdictions, inter-basin transfers or transfer outside the area of origin can only take place with due consideration of local interests; and (iv) in some jurisdictions appurtenance statutes prevent water reallocation. The regulations include: (i) transfers are to be approved by judicial, legislative or administrative authorities; (ii) public notice of the intent to transfer, with the possibility of filing protests; (iii) administrative recording of the transfer and filing with the water management authority; (iv) issuance of permits subject to existing or new conditionalities; (v) forfeiture of water right, if prior approval is not obtained; (vi) limitation of transferable entitlement to historic consumptive use; (vii) requirement that transfer does not injure other appropriators who, even if junior, have a right to the substantial maintenance of the stream conditions existing at the time of their appropriations; (viii) accommodation of uses through conditions intended to mitigate or prevent injury; and (ix) compensation and payment of expenses. There are also considerations of public interest which apply to the review of applications to transfer water rights (e.g., effects on fish and game resources and on public recreation, needs for water conservation, and factors of local relevance).

- **Charging for water:** Charging or pricing water is a vexing problem. For starters

there are technical complications about what is the price that would best reflect the value of water. Many systems charge for the cost of administering water resources. There are also charges for water-related services, and to protect and recover water when affected by environmental deterioration.

The complete original report "*The Dublin Principles for Water as Reflected in a Comparative Assessment of Institutional and Legal Arrangements for Integrated Water Resources Management*" published by the GWP is available at: www.gwpforum.org/Tac3.pdf.



The case of *Compañía de Aguas del Aconquija* and *Compagnie Générale des Eaux*, claimants, against the Argentine Republic, respondent, arises from a dispute associated with a 1995 Concession Contract that a French company, *Compagnie Générale des Eaux*, and its Argentine affiliate, *Compañía de Aguas del Aconquija*, (collectively referred to as "Claimants" or "CGE"), made with Tucumán, a province of Argentina, for the provision of drinking water supply and sewerage services. The Republic of Argentina was not a party to the Concession Contract or to the negotiations that led to its conclusion. After three years of conflict, the contract was rescinded and the Claimants had recourse to the International Centre for Settlement of Investment Disputes (ICSID). As this case is important for all countries that sign public service contracts with foreign companies, the decision on this case is described below, with a commentary by Miguel Solanes.

Case summary

The Concession Contract between CGE and Tucumán provided for the resolution of contract disputes, concerning both its interpretation and application, to be submitted to the exclusive jurisdiction of the contentious administrative courts of Tucumán. While this case presents many preliminary and other related questions, the core issue before the Tribunal concerns the legal significance that is to be attributed to this forum-selection provision of the Concession Contract.

The Tribunal holds that it has jurisdiction to hear the claims of CGE against the Argentine Republic for violation of the obligations of the Argentine Republic under a bilateral investment treaty of July 1991 with the Republic of France, the Agreement between the Argentine Republic and the Republic of France for the Promotion and

Reciprocal Protection of Investments (BIT). It concludes that neither the forum-selection provision of the Concession Contract nor the provisions of the Convention on the Settlement of Investment Disputes between States and Nationals of other States (ICSID Convention) and the BIT on which the Argentine Republic relies preclude CGE's recourse to this Tribunal.

With respect to the merits, CGE has not alleged that the Argentine Republic itself affirmatively interfered with its investment in Tucumán. Rather, CGE alleges that the Argentine Republic failed to prevent the Province of Tucumán from taking certain action with respect to the Concession Contract that, Claimants allege, consequently infringed their rights under the BIT. CGE also alleges that the Argentine Republic failed to cause the Province to take certain actions with respect to the Concession Contract, thereby also infringing Claimants' rights under the BIT. In addition, CGE maintains that international law attributes to the Argentine Republic actions of the Province and its officials and alleges that those actions constitute breaches of the Argentine Republic's obligations under the BIT.

While CGE challenged actions of Tucumán in administrative agencies of the Province, CGE concedes that it never sought, pursuant to the Concession Contract, to challenge any of Tucumán's actions in the contentious administrative courts of Tucumán as violations of the terms of the Concession Contract. CGE maintains that any such challenge would have constituted a waiver of its rights to recourse to ICSID under the BIT and the ICSID Convention.

The Tribunal does not accept CGE's position that claims by CGE in the contentious administrative courts of Tucumán for breach of the terms of the Concession Contract would have constituted a waiver of Claimants' rights under the BIT and the ICSID Convention. Further, the nature of the facts supporting most of the claims presented in this case makes it impossible for the Tribunal to distinguish or separate violations of the BIT from breaches of the Concession Contract without first interpreting and applying the detailed provisions of that agreement. According to the Concession Contract, the parties assigned that task expressly and exclusively to the contentious administrative courts of Tucumán. Accordingly, and because the claims in this case arise almost exclusively from alleged acts of the Province of Tucumán that relate directly to its performance under the Concession Contract, the Tribunal holds that the Claimants had a duty to pursue their rights with respect to such claims against

Tucumán in the contentious administrative courts of Tucumán as required by their Concession Contract.

CGE presented certain additional claims regarding allegedly sovereign actions of Tucumán that Claimants maintained were unrelated to the Concession Contract. CGE asserted that these actions of the Province gave rise to international responsibility attributable to the Argentine Republic under the BIT as interpreted by applicable international law. Furthermore, CGE alleged that the Argentine Republic was also liable for its failures to perform certain obligations under the BIT that Claimants submitted gave rise to international responsibility independent of the performance of Tucumán under the Concession Contract. The Tribunal finds that many of these other claims arose, in fact, from actions of the Province relating to the merits of disputes under the Concession Contract and, for that reason, were subject to initial resolution in the contentious administrative tribunals of Tucumán under the terms of the Concession Contract. To the extent such claims are the result of actions of the Argentine Republic or the Province that are arguably independent of the Concession Contract, the Tribunal holds that the evidence presented in these proceedings did not establish the grounds for finding violation by the Argentine Republic of its legal obligations under the BIT either through its own acts or omission or through attribution to it of acts of the Tucumán authorities.

The complete text of the case (in English and Spanish) can be found at: www.worldbank.org/icsid/cases/awards.htm.

Comments

- Countries which are interested in ensuring that questions arising from public service contracts with multinational corporations are dealt with in their local courts may, depending on the case, ensure such treatment, at least in principle and initially, and, under normal conditions, until the local authority is exhausted, in national or provincial courts, by stipulating local jurisdiction in the concession contract. Compliance with local jurisdiction, in the sense referred to above, is one of the fundamental points of the case.
- Despite the fact that the foreign contractor accepted the exclusive local jurisdiction stipulated in the contract, which is subsequent to the agreements on arbitral jurisdiction, the arbitral tribunal does not attribute an exclusive nature to this jurisdiction stipulated by the parties. This raises the question: how

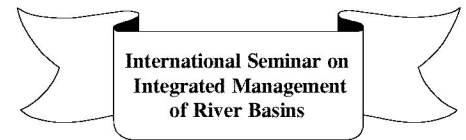
should a contract be drafted so that exclusive local jurisdiction would be recognised by the Tribunal? It is clear in the light of this case that for the Tribunal, or for the contractor which signed the contract, exclusive does not mean excluding, despite the ordinary and grammatical meaning of the word, the existence of a contract, the fact that the contract was subsequent to the agreements of an external forum, and the specific reference of the latter with regard to general agreements. In these circumstances, countries wishing to ensure exclusive local jurisdiction should include in the contracts a clause stating that exclusive means excluding any other jurisdiction, and that there is no recourse to external arbitral jurisdiction. Perhaps this would be clearer than merely using the word "exclusive".

- The issue of the arbitral tribunals goes beyond the case reviewed here. There are media (see for example the article "Nafta's powerful little secret" by Anthony DePalma in The New York Times of 11 March 2001) which mention that these tribunals have led to national laws being revoked, justice systems questioned and environmental regulations challenged. Within the context of NAFTA, some argue that their worst fears about anonymous government have become reality. Environmentalists, consumer groups and other organisations are seriously worried about how the tribunals influence the enforcement of laws. Joan Claybrook, president of Public Citizen, says "What we're talking about here is secret government". According to Andreas Lowenfeld, an international trade expert at the New York University School of Law: "There is no doubt that these measures represent an expansion of the rights of private enterprises vis-à-vis government ... The question is: Is that a good thing?" According to Martin Wagner, director of international programmes for the Earthjustice Legal Defense Fund: "The fact that the drafters of NAFTA chose this secretive process ... is further evidence that they weren't foreseeing matters of broad social concern coming before these panels". Critics of the system say that each appeal to these bodies is undermining public policy. The lack of a traditional appeal process, transparency and legally binding precedent have made many people, at least in the three nations of NAFTA, cautious and circumspect about this method of resolving disputes.

The complete text of the article "Nafta's powerful little secret" by Anthony DePalma is available at mindfully.org/WTO/NAFTA-Powerful-Secret.htm.

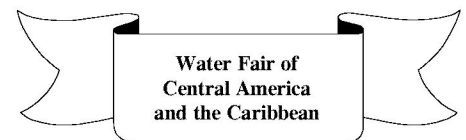
Future activities

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The *International Seminar on Integrated Management of River Basins* (*Seminario Internacional sobre Manejo Integral de Cuencas Hidrográficas*) will take place from 8 to 12 October 2001 in the Faculty of Exact Sciences, Engineering and Land Surveying of the National University of Rosario, Rosario, Argentina. There will be discussions in the following areas: integrated management of urban river basins, land-use planning, integrated management of rural river basins, master plans, management of groundwater basins, planning and management, processing and collection of data, and environmental impact evaluation models.

Additional information is available from:
 Telefax: 54 - 341 - 4808541
 E-mail: curiham@fceia.unr.edu.ar
 WWW: www.fceia.unr.edu.ar/curiham (noticias)



The *Water Fair of Central America and the Caribbean* will be a biannual regional event to promote a new water culture through educational and social awareness programmes, suited to the needs of sustainable human development in the Central American and the Caribbean Region. The organisation and carrying out of this event will be handled by the host countries of the area. The First Water Fair will be held from 25 to 28 October 2001 in Panama City, Panama.

Additional information is available from:
 E-mail: info@feriadelagua.org
 WWW: www.feriadelagua.org



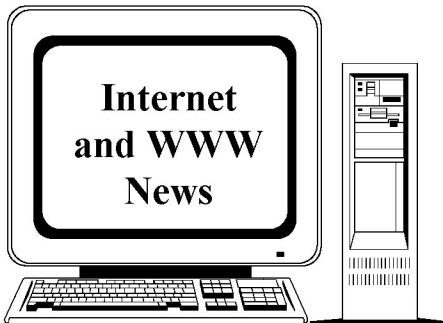
The Water Environment Federation (WEF) and the Florida Water Environment Association are sponsoring the international speciality conference *WATERSHED 2002*, to be held from 23 to 27 February 2002, in Fort

Lauderdale, Florida, the United States. The conference will bring together environmental professionals for a showcase on integrated resource management and environmental protection principles using watershed-based approaches. It will explore the challenges of managing the world's watersheds while highlighting Everglades restoration activities and providing a forum to discuss the recovery and long-term preservation of this International Biosphere Reserve and World Heritage Site.

Additional information is available from:

Water Environment Federation
601 Wythe Street
Alexandria, VA 22314-1994, U.S.A.

Tel.: 703 684 2442
Fax: 703 684 2413
E-mail: confinfo@wef.org
WWW: <http://www.wef.org/>



Some of the websites worth visiting for information on water resources management and use and related subjects include the following:

- The **Latin American Network of River Basin Organisations** (RELOC) is a group of river basin organisations in Latin America, which facilitates the exchange of experience, procedures and information, and promotes the discussion and analysis of policies, strategies, plans and projects related to the integrated management of water resources in their natural environment of the river basin. RELOC was founded in 1996 in the context of the First Assembly of the International Network of Basin Organisations (INBO), held in Morelia, Mexico, and is currently made up of river basin organisations and agencies, and natural persons from Argentina, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, the Dominican Republic, Ecuador, El Salvador, France, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay and Venezuela. On its website (bases.colnodo.org.co), specialised information may be found on subjects relating to the environment, ecology, water resources and river basin management, including various full-text on-line documents such as “*Notas para el*

diseño de organismos de cuenca a partir de la experiencia Argentina”, “*Manejo sostenible de la cuenca de Tempisque*”, “*Estrategia para el manejo de los recursos hídricos del Ecuador*”, “*Política institucional de la Autoridad para el Manejo Sostenible de la Cuenca y del Lago de Amatitlán*”, “*Gestión del agua en Venezuela*”, “*Gestión del agua y su legislación en España*” and “*La organización de la gestión del agua en Francia*”.

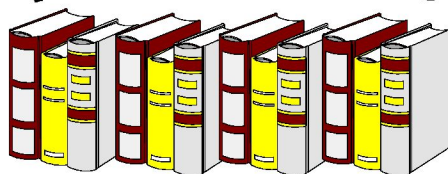
- Since 1990, the World Health Organisation (WHO) and the United Nations Children's Fund (UNICEF) have been collaborating in the Joint Monitoring Programme, which has as its main purposes the building of national capacity for the water and sanitation sector, monitoring and informing policy-makers globally on the status of the sector. This programme has recently published the **Global Water Supply and Sanitation Assessment 2000 Report**, which provides a snapshot of drinking water supply and sanitation world-wide at the turn of the millennium using information available from different source. In the countries of the region, for example, according to this report, total coverage with drinking water supply is approximately 85% of the population, while total sanitation coverage is slightly lower at 78%. Large disparities are apparent between urban and rural areas, with an estimated 87% of the urban population having sanitation coverage, but only 49% of the rural population having coverage. For water supply, 93% of the urban population enjoys coverage, while only 62% of the rural population is covered. A total of 78 million people are without access to improved water supply in the region. In comparison, 117 million people are reported to be without access to improved sanitation services. This excellent and detailed report is available at www.who.int/water_sanitation_health/Globassessment/GlobalTOC.htm.
- On the website of the Pan American Center for Sanitary Engineering and Environmental Sciences (CEPIS) (www.cepis.ops-oms.org) there are available the results of the **Assessment of Drinking Water and Sanitation 2000 in the Americas**, which include analytical reports, country by country, for all the countries of the Americas.
- The **National Irrigation Commission** (CNR) of Chile has the task of co-ordinating the formulation and implementation of national irrigation policy, for the optimal use of the country's water resources with an emphasis on irrigation and drainage. Its website (www.chileriego.cl) offers: (i) on-line consultation of a directory of irrigation and drainage companies and institutions in Chile; (ii) information on the mission, structure and activities of the CNR, as well as on forthcoming events and news in the sector; (iii) an introduction to the journal *Chileriego*; (iv) information on Law N° 18.450, on the promotion of private investment in irrigation and drainage works (minor irrigation and drainage works) which the CNR administers; and (v) consultation of the first virtual library on irrigation in Chile, with direct access to various publications such as “*Evaluación de fuentes de agua*”, “*Necesidad de agua de los cultivos*” and “*Diagnostico y consecuencias del mal drenaje en el sur de Chile*”.
- **HidroRed** is an effort to contribute to a better knowledge and use of water resources in the Spanish and Latin American area (tierra.rediris.es/hidrored). Its objectives are: (i) information, making available to the public didactic materials at all levels on water use; (ii) training, by developing a Master's degree in water resources, for professionals in this field; and (iii) research, promoting joint projects between researchers in the area of this network.
- **Sanitation Connection** (www.sanicon.net) provides access to accurate, reliable and up-to-date information on technologies, institutions and financing of sanitation systems around the world. The site is structured around the following themes: policies and strategies; finance and economics; technology; health and social; environment; urban; rural; and coastal settlements. You can also: search the list of resources; go to information by topic; send a request or feedback to the Help Desk; and visit the Global Programme of Action for the Protection of the Marine Environment from Land-based Activities (GPA)/Sanitation Connection links page for GPA relevant information and data, especially on municipal wastewater management.
- **RESTAURAGUA** is a new discussion list which has been recently set up with the aim of exchanging knowledge, experience and information on the restoration of inland aquatic ecosystems. More information is available from listserv.rediris.es/restauragua.html.
- The **Hydrology Forum** discussion list aims to provide a forum for discussion of scientific research in all aspects of hydrology including hydrologic design, surface water analysis and modelling, flood studies, drought studies, watershed

development, groundwater assessment and modelling, conjunctive use, drainage, mountain hydrology, environmental hydrology, lake hydrology, nuclear hydrology, urban hydrology, forest hydrology, hydrological investigations, remote sensing and Geographic Information Systems (GIS) applications, etc. Additional information is available at www.topica.com/lists/hydrology-forum.

- The **National Watershed Management and Soil Conservation Project (PRONAMACHCS)** of Peru is a decentralised technical agency of the Ministry of Agriculture, which has the mission of promoting actions for the management and productive use of renewable natural resources through soil conservation, reforestation, transfer of enhanced technology and rural infrastructure, with a view to achieving sustainable agriculture, as part of an integrated rural development strategy at the level of micro-basins in the highland areas. Its website (www.pronamachcs.gob.pe) offers detailed information on its activities.
- The excellent and extremely detailed reports (each one over a hundred pages) prepared by the **South American Technical Advisory Committee (SAMTAC)** of the GWP on the management of water resources and the provision of drinking water supply and sanitation services in Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Paraguay, Peru, Uruguay and Venezuela can be found at www.unesco.org/uy/phi/vision2025.
- The Food and Agriculture Organisation of the United Nations (FAO) website on desertification (www.fao.org/desertification) aims to assist national,

regional and international stakeholders and networks involved in sustainable development of drylands and in particular in the implementation of the United Nations Convention to Combat Desertification (UNCCD). The website contains technical and scientific data and information, available at FAO, as well as links to a number of highly informative websites on desertification. The information provided at this site represents a significant share of the FAO knowledge and expertise on sustainable development and drylands management.

Publications



Recent publications of the Natural Resources and Infrastructure Division on water resources management and use in Latin America and the Caribbean:

- “**Instrumentos económicos para el control de la contaminación del agua: condiciones y casos de aplicación (Versión preliminar)**” by Axel Dourojeanni and Andrei Jouravlev (LC/IN.137, 28 December 2000) (available in Spanish only). One of the biggest conflicts caused by the occupation of land, the mass exploitation of natural resources and industrialisation, in Latin America and the Caribbean in the last years of the twentieth century, has been the emergence of pollution as a significant and alarming problem of many watercourses and water bodies. Despite the extremely serious nature of the water pollution issue, little effective attention

has been given historically to water quality protection in the countries of the region. In contrast to this situation, almost all the governments of the countries in the region have stated their intention to implement sustainable development policies which include the protection of water quality and water ecosystems. The most significant progress, however, has been made in the area of statements and policy rather than in practice. Many of the most recent policies for water pollution control are concerned with economic instruments. Economic instruments are, in theory at least, very attractive, but unfortunately little progress has been made in evaluating their effectiveness in the prevailing conditions of the developing countries. This paper analyses the regional situation with regard to water pollution, emphasising the abyss which separates the statements made on the importance of protecting water quality and the little effort which has been made to achieve that goal. In particular it questions the effectiveness of applying economic instruments, which depends on compliance with a series of prior and necessary conditions relating to user organisation and water management, conditions which are far from existing in the countries of the region.

The publications of the Natural Resources and Infrastructure Division are available in two formats: (i) as printed documents, single copies of which are sent free of charge by airmail (while supplies last); and (ii) as electronic files (Microsoft Word or PDF formats) which are distributed over the Internet as attachments. Requests should be sent to ajouravlev@eclac.cl or the **Natural Resources and Infrastructure Division, CEPAL, Casilla 179-D, Santiago, Chile**. Some of them are also available at our new website at www.eclac.org/drni.

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Natural Resources and Infrastructure Division

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