

Transboundary water cooperation in Central Asia: on the issue of contractual responsibility of ICWC

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Strengthening of the international legal framework (ILF) of transboundary water relations (TWR) in Central Asia (CA) is one of the priorities of the regional water cooperation (RWC). This is reflected, in particular, in regional declarations, resolutions, and other international law acts (ILA), including those adopted by the Heads of CA states. Recent years, works on the preparation of a number of draft agreements (related to the Syrdarya river basin, Amudarya river basin, organizational structure of ICWC of CA, etc.) have been carried out with the end to strengthen the ILF of TWR. At the same time, there are some problems in this area, among which such a hot issue as the contractual responsibility of an international organization (IO) is “worthy of attention”, in particular, with regard to the conclusion and enactment of ILA. General rules with respect to this subject are as follows:

1. International organization (interstate, intergovernmental, interdepartmental) has the contractual responsibility only within the scope of the «rules of the organization».
2. Contractual rules adopted by IO in defiance of the «rules of the organization» (Charter, regulations, etc.) tacitly become invalid («null and void»).
3. Such constituent documents of IO as Charter, Regulations, and similar documents become effective only after having been endorsed by a higher (with respect to a particular organization) structure or official.

At the 51st meeting of ICWC [1] Provisions on ICWC of CA [2] and on «Order of rotation...” [3] were approved; their texts say that they «*entered into force upon signature*» (September 18, 2008), which is a serious violation of the Procedure for the entry into force. Here, the ICWC members have somewhat exceeded their authorities. For example, by signing ILA, an ICWC member raises obligations for his/her country which bears responsibilities for their execution or improper execution of ILA. *A department representative must approve the ILA text with his Government, which was not done with respect to the above-mentioned Statutes. Therefore, the latter are invalid.* That took place, most probably, due to lack of legal due diligence of the drafts of ILAs. Thus, legal (and other) review of prepared draft regulatory legal acts (RLA) prior to their submission to a relevant authority is provided for by the Laws on RLA of each CA state (see, for example, [4]); it might be well to remember this when preparing draft ILA too, since in the both cases the process here is the same.

Sources:

[1] Minutes of the 51st meeting of ICWC of Central Asia (September 17-18, 2008, Almaty)

[2] Statute on ICWC of Central Asia (2008)

[3] Statute on Order of Rotation of the Executive Bodies and Their Heads (2008r.) // http://www.icwc-aral.uz/statute11_ru.htm

[4] Law of the Republic of Kazakhstan “On regulatory legal acts” (1998)