

Improving Water Governance of River Basins in China: The Potential of Legislation and Institutional Reform

Jiebin Zhang, *Xinjiang Institute of Ecology and Geography, Chinese Academy of Sciences*

Abstract: *Given the great significance of the river basins to the national water resources management, the author first provides a general review of water administration system and development under the different legal and institutional frameworks. And then, the issue of unified water administration at river basin level is analyzed in context of the accountability and water laws. The participation issue is highlighted because it is a weak area in water resources administration of China. The possibility of establishing real commissions of the largest river basins is proposed in order to improve the accountability and the equitable participation of all stakeholders. Finally, the author compares the two proposals for legislation for basin-wide IWRM and considers a framework law on promotion of IWRM of river basins could be a good option in water governance of river basins in China.*

Keywords: *Water Governance, River Basin Agencies, Unified Water Administration, Participation, IWRM, Legislation and Institutional Reform*

Introduction

Water governance is something new in China not only it is a newly introduced concept but also it has some difficulty to find an exact explanation in Chinese. It is widely accepted that formation development and reformation of water administration regime may reflect some of diversified aspects of water governance in China. Water governance should have direct relationship with the reestablishment of legal system and performance of institutional reforms, which have been gradually enforced in water administration of overall China since early 1980s. Especially, the unified water administration (UWA) has been always highlighted in water administration either at administrative districts or at river basins, which could provide for a clue in the solution of water governance issues. In China, there are some 50,000 river basins over 100 square kilometers, of which seven largest river basins—the Changjiang (Yangtze River), Huanghe (Yellow River), Songhuajiang (Songari River), Liao He, Haihe, Huaihe, Zhujiang (Pearl River), has been the focus of Central Government, because they account for about 60% water resources and 90% population of total China (Ke, 1998). Particularly, these basins have trans-jurisdictional character and are shared by different provinces, autonomous regions and municipalities directly under the Central Government (TPRBs). Additionally, the six water conservancy agencies has been established or improved in order to enforce UWA of these basins since 1950 (TPRBAs in short, a joint agency for Songhuajiang and Liao He) (Ke, 1998; Ruan et al., 2001)). These TPRBs provide a good platform for analyzing the water governance issues and exploring the potential of legislation and institutional reform in the context of water governance at river basin level in China.

Water Administration System and Development

Under the National Constitution, water resources are subjected to the state-owned, which directly empowers the governmental administration of these valuable resources through the water-related departments (WRDs) at different administrative levels. Additionally, water resources are also administrated at river basin levels through establishment or improvement of the TPRBAs. As for the water resources administration at river basin level, there exists two types of river basins required to take considerations, e.g. those TPRBs and other river basins within each of the above administrative divisions. Understandably, the general water administration regime is formulated through a so called “a dual system” under which administration of river basins is combined with administration of administrative districts. The system could be characterized and marked off in three stages in terms of the tradeoff between WRDs and TPRBAs under the relevant water legal framework and institutional reforms.

In the first stage, multi-sectoral and fragmented administration dominated over China before adoption of first national Water Law in 1988 (1988 Water Law). During this period, the UWA was exerted neither at administrative districts nor at the river basins. Water resources were mainly administrated by the WRDs including water conservancy, agriculture, construction and mineral resources at various administrative levels. Flood and draught prevention and control through construction and management of water conservancy projects were the main mandate of the TPRBAs (Ke, 1998).

In the second stage, UWA was somewhat enforced at different administrative levels in compliance with the provisions of 1988 Water Law, which required the conformation of a competent department for water administration (CDWA) of each government and application of “a system” combining unified administration with administration at various levels and by various departments”. However, UWM of those TPRBs find even difficult because of no provisions referring to TPRBAs under 1988 Water Law. Lacking of legal status, TPRBAs were therefore disabled and unable to implement effective UWA.

The third stage began after the adoption of the Revised Water Law in 2002 (2002 Water Law). Aimed at enforcing and empowering the TPRBAs, the law was adopted by providing for “a system of management of river basins combined with management of administrative regions”. This conforms that the Chinese Government has resorted legislation to enforce TPRBAs in UWA (Wang, . However, the 2002 Revised Water Law does not explicate the procedural rules, in particular the rules governing the participatory and transparency process of those TPRBAs. How to apply this system is still a challenge for UWA at the river basin level in China.

Unified Water Administration

The emphasis of UWA in China mainly results from the vision to overcome the outstanding problems in fragmented water administration, such as difficulty in overall decision-makings and formulation of the overall plans, overlapping functions of

government departments, disparities between power and responsibility and low efficiency. The key point of UWA is basically to identify a CDWA and empower it as a governing body to exert overall water resources administration and supervision in each administrative district, while other water related departments are assigned to be responsible for the concrete undertakings (Zhang, 2004). Inferentially, the UWA of a TPRB could mean the TPRBA become a basin “CDWA” which perform the duties of basin-wide water resources administration and supervision, while CDWAs perform the duties of water resources administration and supervision at their respective districts. It also requires the CDWAs should be responsive, supportive and submissive to the relevant TPRBA within the basin.

As a typically centralized country, China should have advantages in implementing such UWM. However, the TPRBAs have been unable to perform as basin-wide “CDWAs” during most of the second half of 20 century. Lack of legal status of TPRBAs is considered to be a major cause, because it weakens their function to effectively coordinate the CDWAs. For example, the water resources of Yellow River Basin are separately managed by 9 provinces and autonomous regions which are at the same administrative level and only subject to the State Council. The CDWA under the State Council—the Ministry of Water Resources (MWR) should be responsible for the UWA of the Basin. It was the Yellow River Conservancy Commission (YRCC) that is so designated by the MWR in performing the UWA’s function over the Yellow River Basin. However, the YRCC found difficulty to exert its coordination and supervision functions because it has no legal status and empowers during this period and even after the adoption of the 1988 Water Law, so are the other five TPRBAs. In fact, all TPRBAs got into the dilemma and were unable to be responsive to the most serious water shortage or pollution issues of TPRBs since early 1990’s.

The UWA of TPRBs has been enforced since the adoption of the 2002 Water Law which is successfully legislated in terms of powers and functions of TPRBAs (Wouters et al., 2004). The frequently quoted proof is the recent achievements of YRCC in rational water allocation and distribution over the Yellow River Basin, in particular in the restoration of downstream flows. It is this law that reveals the limitation of existing TPRBAs in that they can only be responsive to the water quantity administration rather than water quality administration. The perfect UWA of TPRBs needs to specifically incorporate the water pollution prevention and control. It could be realized through the reformation of existing TPRBAs under a proper legal and institutional framework.

Reformation of TPRBAs and Participation

It has been long argued as for what is the proper institutional arrangement of TPRBAs. Some experts confirm that the present TPRBAs could be an only option because they are the organs representing the national CDWA and could exert effective UWA of TPRBs through the establishment of a good participatory mechanism. It is valuable to note that they recognize importance of participatory approach and the need to strengthen participation in order to improve UWA of China. Participation is encouraged in water administration of China, however, the

participators are normally subjected to the invited representatives of relevant governments and departments. The water laws acknowledge this participatory approach requiring all relevant governments and departments within a river basin or an administrative district to jointly make up various plans on development, utilization and protection of water resources. The issue is that the law does not provide for procedures for such participation and therefore it is not normative. For example, a TPRBA should invite leaders of related provinces and their departments to discuss some matters of decisive importance to the river basin management under the 2002 Water Law. However, the invitee may refuse to participate or passively participate, and the provinces sometime direct refer to the matters to the State Council for decision rather than the relevant TPRBA, once they could not come to concession. The reason is possibly that the existing agencies of six major river basins are named as commissions, but they are not “real” commissions rather than the delegate organs of the MWR.

Another view suggests that it is a good option to establish a “real” commission participating by major stakeholders of all relevant ministries and provinces within each TPRB and the existing TPRBAs remain with both administrative and technical functions (Ruan, 2001). The TPRBAs should be directly responsible for the commissions and may technically be guided by the MWR. In the same time, public participatory mechanism should be established in management and supervision of water resources at river basin level, because no provisions available in present water legal system. As the public should be able to identify major issues and facilitate design of local watershed with their knowledge and suggestions, such as water resources planning and water environment protection planning, their participation in decision-making is no doubt very beneficial to enforce effective water administration of the TPRBs.

Legislation for Basin-wide IWRM

The requirement of legislation for basin-wide IWRM in China arises broadly from the failure of present legal system which provides no explicit provisions to support the coordination among the affected administrative districts, the overall planning and UWA at river basin level. Concretely, the present legal system could not provide for legal basis to support the TPRBAs to deliver integrated management of water quantity, water quality and environmental flows throughout the basin. The issue is closely related to water legislation. The four basic laws relevant to water resources management have been adopted in China, of which the Law on Prevention and Control of Water Pollution (Water Pollution Law) has provided for different competent department for administration (CDAs). The CDAs under this law are the Environment Protection Agencies (EPAs) of various governments above country level other than those CDWAs. This results that management of the water utilization and protection is isolated by two different CDAs. This separation is generally considered as one of major reasons caused the serious water pollution and ecosystem degradation of TPRBs, such as three most seriously polluted rivers—Huaihe, Haihe and Liaohe and most ecologically degraded river—Huanghe (Yellow River). To bridge this legal gap and reduce the trans-jurisdictional impact, a water conservation

agency was jointly established within each TPRB by the MWR and the State EPA since early 1980s. This joint mechanism seems helpful in monitoring trans-jurisdictional flows and pollutant burdens, however, its role is far beyond expectation due to no legal status.

Up to now two proposals for such legislation have been provided. One proposal by existing TPRBAs tends to formulate a single river law, such as the Yellow River Law and the Changjiang Law (Water Administration Bureau of CWRC, 2005; Cao, 2005). Another proposal by the senior legal experts tends to formulate a framework Law on Promotion of IWRM of River Basins and a single Regulation for each TPRB. The two proposals all set forth their objectives in that the roles and relationships of CDAs and TPRBAs will be clarified and a more efficient integrated river basin management will be put into place. The author prefers to the second proposal in that too many laws will be produced if each basin has its own law. Moreover, these laws could affect the unification of present legal system and the effective implementation of present four basic laws and relevant regulations. Notwithstanding, it is essential to legislators to recognize the role of law in good water governance in the future revisions of the four basic laws or formulation of a new framework basin-wide IWRM law.

Conclusion

Being concerned directly with the water administration system, water governance of river basins has to do with UWM which has been pursued by Chinese Government through building the relevant legal and institutional framework. The UWM is imperative to the good water governance of TPRBs and also requires an answerable and responsive institution. The existing TPRBAs are indeed incompetent, because they are only the organs of the MWR. Good governance needs an effective participation and transparency mechanism, therefore the reformation of TPRBAs needs to be emphasized in this regard. As we have seen, an adequate legal framework to be in place is essential for the good water governance, in particular a framework law on promotion of IWRM of river basins is needed if the existing legal framework is inapplicable to the basin-wide IWRM.

References

- Cao, M.D. and Li, Z.H. 2005. "Discussion of Legislation of 'Yellow River Law'." *Legal Review* 129, No.1:143-149.
- Ke, L.D. 1998. *China Water Law and Water Management*. Beijing, China: China Water and Hydropower Press:113-182.
- Ruan, B.Q., Liang, R.J., Wang, H. and Yang, X.L. 2001. *Water Management of River Basins*. Beijing, China: China Science Press:31-44.
- Water Administration Bureau of Changjiang Water Resources Commission (CWRC), 2004. "The Proposal for Legislation and Considerations for "Changjiang Law"." *Yangtze River* 36, No.8:7-8,56.

Wouters, P. , Hu, D.S., Zhang, J.B., Tarlock, A. Dan and Andrews-Speed, P. 2004. "The New Development of Water law in China. " *University of Denver Water Law Review* 7, Issue 2: 243-308.

Zhang, J.B. 2004. "Water Law and Unified Water Administration in China." *The Journal of Water Law* 15, ISSUE 3/4: 127-130.