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Research Article

CONTEMPORARY ISSUES OF INTERNATIONAL LEGAL REGULATION OF TRANSBOUNDARY WATER MANAGEMENT

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ABSTRACT

The issues of rational use of water resources occupy the main place in the sphere of sustainable development of both the Central Asian region (CA) and Uzbekistan.

According to the UN Water and Sustainable Development Programme, water resources are a fundamental factor for social, economic and environmental components of sustainable development.

Despite the fact that Central Asia is one of the regions with abundant water resources, experts predict that water scarcity will only increase over the next decades, which makes it necessary to resolve the problem promptly.

KEYWORDS

Rights of citizens, improving, restoring and protecting.

INTRODUCTION

In view of the above, the new version of the Constitution of Uzbekistan has been supplemented with a number of provisions aimed at ensuring the environmental rights of citizens, improving, restoring and protecting the environment in the country and the Aral Sea region in particular.

Under articles 62 and 68 of the Constitution, the land, its minerals, waters, flora and fauna, other natural

resources shall constitute the national wealth and shall be rationally used and protected by the state. At the same time, Citizens shall be obliged to protect the environment.

In addition to constitutional provisions, a number of international treaties and legal (regulatory) instruments have also reflected the issues of rational water use in Uzbekistan.

As of November 2023, Uzbekistan is a party to about 50 intergovernmental (interstate) international treaties of universal, regional and bilateral character and many more interagency agreements on water issues regulation. These include: Convention on the Protection and Use of Transboundary Watercourses and International Lakes 1992; Convention on the Law of the Non-navigational Uses of International Watercourses 1997; Agreement on Cooperation in the Sphere of Joint Management of Use and Protection of Water Resources of Interstate Sources 1992; Agreement on the Use of Water and Energy Resources in the Syrdarya River Basin 1998, etc.

At the level of national legislation, the above-mentioned issues are regulated by at least 5 laws, 13 Presidential Decrees, 39 Presidential Resolutions and 67 Resolutions of the Cabinet of Ministers.

These include, in particular, the following: Law of the Republic of Uzbekistan "On Water and Water Use" (06.05.1993), Decree of the President of the Republic of Uzbekistan "On the Creation of a System of Control over the Use of Drinking Water" (18.04.2017), Resolution of the President of the Republic of Uzbekistan "On Urgent Measures to Improve the Efficiency of Water Resources Use" (01.04.2023), Resolution of the Cabinet of Ministers of the Republic of Uzbekistan "On Measures to Expand Public-private Partnership in the Rational Use of Water Resources and Agricultural Facilities" (10.04.2021) and others.

In recent years, programme documents have also been adopted, touching upon the issues of rational water use. These include: Concept of Environmental Protection of the Republic of Uzbekistan until 2030; Concept of Water Sector Development of the Republic of Uzbekistan for 2020-2030; Strategy of Water Resources Management and Irrigation Sector Development in the Republic of Uzbekistan for 2021-

2023; Strategy of New Uzbekistan Development for 2022-2026.

It is especially important that the implementation of these constitutional novelties in the sphere of ensuring rational water use is provided for, including by the Decree of the President of the Republic of Uzbekistan "On the Strategy "Uzbekistan-2030" of 11.09.2023, where a whole section III is devoted to water conservation and environmental protection.

Due to the specificity of the study subject, the present research will be limited to the Strategy's provision (para. 62) on the need to "continue active bilateral mutually beneficial cooperation with neighbouring states in the issues of integrated water resources management, mutual use of transboundary water resources and interstate water management facilities".

The above-mentioned goal statement, as well as the need to build a dialogue with the countries of the region in this area, is conditioned by Uzbekistan's high dependence on transboundary rivers of Central Asia, taking into account that about 80% of the water resources used by the country fall on their share (about 41 m³/year out of a possible 51-53 m³/year).

The zone of water resources formation in Central Asia is the high-mountain glaciers and snowfields on the territory of Kyrgyzstan and Tajikistan, which form the catchment basins of the Syrdarya and Amudarya rivers, which are further used by the "downstream countries", i.e. Uzbekistan, Kazakhstan and Turkmenistan.

However, it is necessary to emphasise the lack of proper coordination between the countries. Thus, the "upstream countries" (Kyrgyzstan and Tajikistan) have prevailing interests in using the energy potential of

water in winter, while the "downstream countries" (Uzbekistan, Turkmenistan, Kazakhstan) are interested in using water in summer for irrigated agriculture.

During the Soviet Union era, water and energy resources were managed at the regional level through a system of reservoirs and hydroelectric power plants established along both rivers. At the same time, the Soviet system prioritised irrigation, as electricity generation for the upstream countries was mainly provided by the use of hydrocarbons. With the collapse of the USSR, it became necessary to create new mechanisms of cooperation based on a decentralised approach and the national interests of the Central Asian countries.

The President of the Republic of Uzbekistan Shavkat Mirziyoyev pointed out: "It is impossible to avoid such an important issue as the shared use of the region's common water resources. We fully share the UN Secretary General's position that "water, peace and security are inextricably linked"".

In this connection, it is necessary to emphasise again the importance of a consolidated approach to solve all problems related to transboundary water use, taking into account the close political, economic, social and cultural ties of the Central Asian states.

Since independence, the Central Asian states have concluded more than 50 regional and bilateral international treaties on transboundary water use.

At present, 100% of the transboundary river and lake basins in Kazakhstan and Uzbekistan, 66% in Turkmenistan and 30% in the Kyrgyz Republic are covered by existing cooperation mechanisms.

At the same time, international legal norms in the field of transboundary water use are mainly of a general,

framework (recommendatory) nature, addressing mainly environmental issues and to a lesser extent issues of direct water resources management, which creates certain difficulties in finding consensus.

One example is the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes, the provisions of which are largely based on the 1966 Helsinki Rules adopted by the International Law Association (an act of soft law). All CA countries except Tajikistan and Kyrgyzstan ("upstream countries") are parties to the treaty.

Another important act in this area is the 1997 Convention on the Law of the Non-navigational Uses of International Watercourses. Although the Convention has not entered into force, only Uzbekistan is a signatory, out of all CA countries.

In essence, the two treaties under consideration, in their complementary relationship, provide an important contribution to the ongoing process of codification and progressive development of international water law.

However, the provisions of the 1992 ECE Convention focus heavily on environmental issues. The 1997 UN Convention, on the other hand, contains an excessive number of recommendatory and abstract principles.

Considering the agreements of regional character, a basic document should be singled out, namely, the 1992 Agreement on Cooperation in the Sphere of Joint Management of Use and Protection of Water Resources of Interstate Sources, which enshrines "commonality and unity of water resources of the region ... equal rights to use and responsibility for ensuring their rational use and protection", and also established ICWC.

It should be noted that ICWC over the decades of its existence has largely justified itself under conditions when it is necessary to coordinate interests of CA states in transboundary water use. However, its activity is largely limited to watershed issues and could be improved by expanding its powers in terms of developing common operation plans, technical regulations, continuous information exchange, consultations, providing interpretations of international legal acts, ensuring accountability of states, etc.

At the same time, the provisions of the 1992 Agreement, due to their brevity, cannot be considered as an act capable of comprehensively regulating transboundary water use issues in the Amudarya and Syrdarya rivers.

Thus, to this day there is no agreement between the Central Asian states that would regulate relations in the sphere of the Amudarya river use. At the same time, the Agreement between the Government of the Republic of Kazakhstan, the Government of the Kyrgyz Republic and the Government of the Republic of Uzbekistan on the Use of Water and Energy Resources in the Syrdarya River Basin of 1998 is applicable to the Syrdarya River.

Separately, issues related to the use of water resources of the Amudarya River, for example, are regulated by the 1996 Agreement between the Republic of Uzbekistan and Turkmenistan on cooperation on water management issues, but its norms bind only Uzbekistan and Turkmenistan, leaving Tajikistan and Afghanistan "out of the picture", which necessitates solving this problem.

In particular, the President of the Republic of Uzbekistan Sh.Mirziyoyev noted the following: "In fact, a new participant of the water use process has

appeared in our region, which is not bound to our countries by any obligations...we propose to consider the issue of involving representatives of Afghanistan in the regional dialogue on the joint use of water resources".

It should be noted that a common problem of both universal (regional) and bilateral international treaties in this area is their detachment from the requirements of practice, abstractness and lack of real implementation mechanisms. Such examples include the principles of equitable and reasonable use of transboundary water resources, avoidance of excessive damage, co-operation and information exchange, the content of which is unclear and situational.

In view of the above, we believe it would be advisable to fundamentally revise the approaches of CA countries to cooperation in transboundary water use, to promptly involve Afghanistan in relevant regional projects, and to conclude a new international treaty, the provisions of which could become a fundamental basis for conceptual reform of regional institutions and approaches of transboundary water use that would also ensure the compliance mechanisms in order to guarantee the full-scale implementation of its provisions.

REFERENCES

1. Water and Sustainable Development: from Vision to Action, 2015, p.6. URL: https://www.un.org/waterforlifedecade/pdf/WaterandSD_Vision_to_Action-2.pdf (accessed 27.11.2023).
2. bneGREEN: Central Asia's water crisis gaining rapid momentum, cities forced to introduce water rationing. URL: <https://shorturl.at/ae9s9> (accessed 27.11.2023).

3. Transition to “green economy” in Uzbekistan: Opportunities and challenges, 2023. URL: <https://cabar.asia/en/transition-to-green-economy-in-uzbekistan-opportunities-and-challenges> (accessed 27.11.2023).
4. This implies that there is a joint body, a mechanism for transboundary co-operation; regular (at least once a year) formal communication between riparian countries in the form of meetings (at political or technical level); agreed common objectives, strategy, co-ordinated management (action) plan; and regular (at least once a year) exchange of data and information at bilateral level, etc. See: 9th World Water Forum: Central Asia for Peace and Development, 2022, p. 16. / URL: <http://cawater-info.net/gwwf/pdf/position-paper-ru.pdf> (accessed 27.11.2023).
5. It is worth noting that Tajikistan is a party to the 1998 Agreement on Basic Principles of Cooperation in the Rational Use and Protection of Transboundary Water Bodies of the CIS Member States, the provisions of which largely repeat the 1992 Convention.
6. Along with the 1998 Agreement, the use of the Syrdarya River is largely regulated by the Agreement between the Government of the Republic of Kazakhstan, the Government of the Kyrgyz Republic and the Government of the Republic of Uzbekistan on the use of fuel, energy and water resources, construction and operation of gas pipelines in the Central Asian region. The Agreement between the Government of the Republic of Kazakhstan, the Government of the Kyrgyz Republic and the Government of the Republic of Uzbekistan on the use of fuel, energy and water resources, construction and operation of gas pipelines in the Central Asian region also regulates the use of the Syrdarya River to a large extent.