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EXPERIENCE OF EUROPEAN AND ASIAN STATES IN THE REGULATION OF TRANSBOUNDARY RIVERS

Abstract. This article discusses the issues of legal regulation of the rational use of transboundary rivers and reservoirs, as well as the problems of improving the water legislation of the Republic of Kazakhstan in the context of globalization and integration. The issues of water supply and pollution of water resources go beyond purely national problems and need to be addressed at the international level. Kazakhstan has many common watercourses with several countries, the management of which involves the search for compromises. Complex cross-border problems have accumulated and need to be resolved taking into account not only the interests of both States, but also the preservation of natural ecosystems capable of performing their ecological functions in the region and ensuring environmental security. The problem of small rivers, which are of great value for the preservation of river ecosystems, is raised.

The author comes to the conclusion that many years of experience in solving the problems of transboundary rivers shows that only based on the unity of legal principles, mutual respect and respect for economic and political interests, it is possible to ensure regional stability, and to solve the problems of sharing and protection from pollution of water resources of transboundary rivers. The creation of a legal basis for water resources management will allow to resolve the existing contradictions in the use of water resources in the future.

Key word: transboundary rivers, water bodies, regulation, water law, water resources, water use, water bodies.

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Траншекаралық өзендерді реттеудегі Еуропа және Азия мемлекеттерінің тәжірибесі

Аңдатпа. Бұл мақалада трансшекаралық өзендер мен су айдындарын ұтымды пайдалануды құқықтық реттеу мәселелері, сондай-ақ жаһандану және интеграция жағдайында Қазақстан Республикасының су заңнамасын жетілдіру мәселелері қарастырылады. Сумен қамтамасыз ету және су ресурстарын ластау мәселелері ұлттық проблемалардың шеңберінен шығып, оларды халықаралық деңгейде шешу қажет. Қазақстан бірнеше елдермен ортақ ағындарға ие, оларды басқару ымыраға келуді болжайды. Тек екі мемлекеттің мүдделерін ескере отырып шешуді талап ететін күрделі трансшекаралық проблемалар ғана емес, сондай-ақ өңірде өзінің экологиялық функцияларын орындауға және экологиялық қауіпсіздікті қамтамасыз етуге қабілетті табиғи экожүйелерді сақтауды да жинақталды. Өзен экожүйелерін сақтау үшін үлкен құндылықты білдіретін шағын өзендердің проблемасы көтерілуде.

Авторлар бұл мақалада трансшекаралық өзендердің проблемаларын шешудегі көпжылдық тәжірибе тек Нормативтік-құқықтық принциптердің бірлігіне, экономикалық және саяси мүдделерді өзара сақтау мен құрметтеуге негізделген өңірлік тұрақтылықты қамтамасыз етуге және трансшекаралық өзендердің су ресурстарын ластанудан бірлесіп пайдалану мен қорғау мәселелерін шешуге болатынын көрсетеді. Су ресурстарын басқарудың заңды негізін құру Су ресурстарын пайдаланудағы қайшылықтарды одан әрі шешуге мүмкіндік береді.

Түйін сөздер: трансшекаралық өзендер, су объектілері, реттеу, су құқығы, су ресурстары, су пайдалану, су объектілері.

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Опыт европейских и азиатских государств в регулировании трансграничных рек

Аннотация. В данной статье рассматриваются вопросы правового регулирования рационального использования трансграничных рек и водоемов, а также проблемы совершенствования водного законодательства Республики Казахстан в условиях глобализации и интеграции. Вопросы водообеспечения и загрязнения водных ресурсов выходят за рамки сугубо национальных проблем и решать их необходимо на международном уровне. Казахстан имеет много общих водотоков с несколькими странами, управление которыми предполагает поиск компромиссов. Накопились сложные трансграничные проблемы, требующие разрешения с учетом интересов не только обоих государств, но и сохранения природных экосистем, способных выполнять свои экологические функции в регионе и обеспечивать экологическую безопасность. Поднимается проблема малых рек, представляющих огромную ценность для сохранения речных экосистем.

Автор приходит к выводу о том, что многолетний опыт в решении проблем трансграничных рек показывает, что, только базируясь на единстве нормативно-правовых принципов, взаимном соблюдении и уважении экономических и политических интересов, можно обеспечить региональную стабильность, и решить проблемы совместного использования и охраны от загрязнений водных ресурсов трансграничных рек. Создание юридической основы управления водными ресурсами позволит в дальнейшем разрешать имеющиеся противоречия в использовании водных ресурсов.

Ключевые слова: трансграничные реки, водные объекты, регулирование, водное право, водные ресурсы, водопользование, водные объекты

Introduction

Water resources of any state at all times have had and are having a significant impact on their economic activities, political orientation and social protection, especially if the reserves of this strategic natural resource are limited. This is even more important when it comes to the transboundary nature of water resources.

The main element of transboundary water resources is the transboundary waters of such rivers, which cross the territories of two or more States or pass through their borders. It should be noted that the transboundary natural resource, in our opinion, is of international importance. In this case, the geographical location of water resources should be associated with the crossing of the border: interstate; between the territories of different international spaces; between the territory of the state and the territory of international space.

All transboundary water basins provide hydrological, social and economic linkages between societies. They are vital for economic development, reduce poverty and contribute to the achievement

of the Millennium development goals. While transboundary water basins have the potential to cause disputes and conflicts, they provide an opportunity for cooperation and strengthen regional peace and security, as well as contribute to economic growth. Recognizing these potential opportunities, UN — water participants, through various initiatives, are making efforts to outweigh the potential for conflict in favour of cooperation, supporting countries in their efforts to improve the management of transboundary water resources (UN General Assembly on Water, peace and security: cooperation in transboundary waters).

Water is seen as a potential source of conflict in this century. “Fierce competition for fresh water may well be a source of conflict and war in the future.” However, “Water problems in our world may not necessarily be the only cause of tension, they can also be a catalyst for cooperation.... If we work together, we can achieve a safe and sustainable water supply in the future.” However, it must be understood that cooperation is a process that requires the active participation of all stakeholders (Kofi Annan, February 2002, cited in Carrius et al., 2007).

Approximately 40 per cent of the world's population lives in river and lake basins covering two or more countries, and — perhaps even more impressive — more than 90 per cent live in countries with shared basins. The existing 263 transboundary lake or river basins cover almost half of the world's land surface and are estimated to account for 60 per cent of the world's freshwater resources. The territory of 145 States is partially, and the territory of 30 countries is completely within the boundaries of international basins. In addition, approximately 2 billion people in the world depend on groundwater covered by 300 transboundary aquifer systems (http://www.unwater.org/downloads/UNW_TRANSBOUNDARY.pdf).

Main part

Kazakhstan, as a state with 46% of its available water resources coming from neighboring countries – Russia, China, the countries of the Central Asian region, is also dependent on these objective circumstances.

The guaranteed provision of water of normative quality largely determines the quality of life and future development. In this regard, the need for a modern joint water resources management system is caused by life itself and requires the creation and development of a mechanism of inter-state cooperation based on an integrated approach. Any changes in the water use of one of the countries, which are United by common water ecosystems, or the impact on the state of water bodies, inevitably affect the interests of others.

The main rivers of the country – Irtysh, Ili, Ishim, Tobol, Ural, Syr Darya, Shu, Talas are transboundary. As noted above, about half of the volume of water resources comes from the territory of neighboring countries – China, Kyrgyzstan, Russia and Uzbekistan, which significantly affects the water supply conditions of the country. The existing water supply is one of the main constraints to the development of rich mineral, fuel, energy and land resources of Kazakhstan. The intensity of use of large areas of arable land and rangelands is determined by the degree of water availability.

The special role of water resources in the economy of the country, their extreme limitation dictate the need for their rational use, preservation of the quality of water sources, development of water-saving technologies. The improvement of interstate water relations should be considered as one of the important conditions for ensuring the national security of the country.

Considering the relations with neighboring countries in the field of joint management of transboundary water resources in the basins of the main rivers, it is necessary to note the following main points.

On cooperation with the Central Asian States in the field of water relations in the Syr Darya river basin, Amu Darya. On cooperation with the people's Republic of China on the use and protection of transboundary rivers. On cooperation with the Russian Federation on the use and protection of transboundary rivers.

For many years, Kazakhstan has been actively cooperating with all neighboring countries within the framework of multilateral cooperation mechanisms, as well as bilateral commissions and working groups. Kazakh delegations regularly participate in major international conferences, seminars and forums. Astana is also a party to a number of international environmental conventions and agreements affecting transboundary water issues.

In particular, Kazakhstan has acceded to the Convention on environmental impact assessment in a transboundary context, the Convention on the protection and use of transboundary watercourses and international lakes, the Convention on wetlands of international importance, mainly as waterfowl habitats.

Close working cooperation on transboundary water resources issues has been established with such international organizations as the UN economic Commission for Europe, the UN Regional centre for preventive diplomacy for Central Asia, OSCE, the world Bank, the Eurasian development Bank, ESCAP. Despite the absence of common borders, Kazakhstan carries out active water cooperation with the EU, the USA and other States.

The German society for international cooperation (GIZ), Swiss Agency for development and cooperation (SDC), the International office for water (IOW), United States Agency for international development (USAID) and other government and non-governmental organizations of foreign countries provide Advisory and donor assistance in the implementation of joint projects on the territory of Central Asia.

Transboundary natural resources appear to be a variety of international natural resources. They are not subject to the jurisdiction of only one state (without the consent of the other States concerned) (Kosareva 2007). The legal regime for such resources should be established primarily by international law, in particular by treaties of the States concerned. The rights and duties of individual States are exer-

cised by them to the extent determined by international law.

Issues of legal regulation of protection and use of transboundary watercourses have a pronounced belonging to the international water law and at the same time are fixed in the national water legislation of the Republic of Kazakhstan.

Thus, the water code of the Republic of Kazakhstan contains article 123. "International agreements in the field of water relations regulation".

It stipulates that If an international Treaty ratified by the Republic of Kazakhstan establishes other rules for the use and protection of water than those contained in this Code, the rules of the international Treaty shall apply.

As we can see the content of the article does not contain any specification, and represent a blanket rule. Therefore, international agreements and conventions should be used to regulate specific water relations on transboundary watercourses.

Thus, in accordance with these articles, the legal regime of transboundary waters is governed, as a rule, by international conventions and treaties, the effect of which applies to the States that have signed them (or to the States that have acceded to them). The main documents of this kind are two international conventions – the Convention on environmental impact assessment in a transboundary context (1991) and the Convention on the protection and use of transboundary watercourses and international lakes (Helsinki, 17 March 1992). This is the first document aimed at creating a legal framework for cooperation on the protection and rational use of transboundary waters from a regional perspective. This document is an existing agreement that contributed to the emergence of two Protocols – on water and health and on civil liability, and became the basis for most agreements on transboundary waters. The parties to the Convention (1992) are the Republic of Kazakhstan, the Russian Federation, Great Britain, Germany, the Republic of Uzbekistan and other countries, while the Republic of Tajikistan, Turkmenistan, the Kyrgyz Republic have not signed the Convention (Sidorova 2008).

And also, the existing agreements of international and transboundary scale include the Helsinki rules for the use of waters of international importance (1966), the UN Convention on the non-navigational use of international watercourses (1997), the Berlin rules on water resources (2004).

It is difficult to overestimate the international political significance of the above-mentioned documents, but they are rather General (Advisory) in nature, affecting mainly environmental problems.

To a lesser extent, they relate to the problems of river water resources management. There are practically no mechanisms for resolving international disputes, the legislative and regulatory framework is rather poorly developed (Goncharenko 2002).

After the collapse of the Soviet Union in 1992, the leaders of Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan signed an interstate Agreement "On the use of water resources of the Amu Darya and Syr Darya river basins" in order to restore the broken ties. On the basis of this agreement, the parties established an Interstate water coordination Commission, which is designed to coordinate the management, rational use and protection of water resources of transboundary rivers in the region. In addition, the parties concluded a number of bilateral agreements, including the Agreement between the Government of the Republic of Kazakhstan and the Government of the Kyrgyz Republic "On cooperation in the field of environmental protection" (Almaty, April 8, 1997); the Agreement between the Government of the Republic of Kazakhstan and the Government of the Republic of Uzbekistan "On cooperation in the field of environmental protection and environmental management" (Almaty, June 2, 1997.); 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 of the Naryn-Syrdarya cascade of reservoirs in 2002 and 1 quarter 2003" (Bishkek, March 14, 2002) (Salimgerey2006).

The Syr Darya flows from Kyrgyzstan through Tajikistan to Uzbekistan and Kazakhstan, the Amu Darya from Tajikistan to Turkmenistan and Uzbekistan. At present, the transboundary rivers Syr-Darya and Amu-Darya unite and divide the interests of the five sovereign States of Central Asia: the Republic of Kazakhstan, the Kyrgyz Republic, the Republic of Tajikistan, the Republic of Turkmenistan and the Republic of Uzbekistan. Thus, the location of a transboundary resource covers territories with different legal regimes, international or national.

The water dependence of the States located in the basins of the Syr Darya and Amu Darya rivers is so strong that it simply condemns these States to the need for joint management of all the waters that are forming here, which are truly common to all the peoples living in the region. In addition, it should be taken into account that in addition to the difficulties in regulating water distribution in the territories of individual water management and irrigation systems, there are also difficulties in regulating water supply over time, as different water users

and water consumers have their own specific time requirements for water, and this also predetermines the need for mutually agreed actions.

The next group of regional instruments defining the General principles and directions of water cooperation in Central Asia consists of the acts of recommendatory nature adopted from time to time – declarations and statements of the Central Asian States. This category of documents of the so-called “soft law” includes the Nukus Declaration of the Central Asian States and international organizations on the problem of sustainable development of the Aral sea basin in 1995, the Ashgabat Declaration in 1999, the Tashkent Declaration in 2001, the Dushanbe Declaration in 2002, the Joint statement of the heads of state-founders of the International Fund for saving the Aral sea (IFAS) in 2009. Their importance in the context of regional water policy is very high. As a rule, they are signed by the presidents of the Central Asian countries, and thus they reflect the agreements reached at the highest political level. These declarations and statements often contain provisions of a political and legal nature or indicate the principles by which the countries of Central Asia should be guided in their relations in the field of water and energy (see, for example, paragraph 3 of the Tashkent Declaration of 28 December 2001). on the importance of coordinated and coordinated actions in the field of rational and mutually beneficial use of water bodies, water and energy resources and water facilities in Central Asia on the basis of universally recognized principles and norms of international law) (Ibatullin 2011).

The leaders of the Central Asian republics declared their commitment to the ideas of equality and interstate interaction on water issues; in the adopted Declaration they confirmed their “obligations for full cooperation at the regional level on the basis of mutual respect, good-neighborliness and determination” on the hydropower problem of Central Asia.

Probably, today the situation would not have taken such negative forms if the water user States had a highly efficient economy, created competitive products and, therefore, could allocate sufficient funds to maintain water bodies and hydroelectric facilities located in their territories in proper condition. In view of this, the task of convergence in the use of water reserves cannot be considered in isolation from the efforts to develop effective models for the development of the economy of each country. In fact, it is a question of ensuring sustainable progress in the region, in which “water” policy is an important part of it.

At the same time, the problems of coordinated exploitation of water reserves of Central Asia are not only technical, but also of international legal nature in the first place. However, the process of rapprochement of the States of the region in solving the problems of joint use of water resources of the Syr Darya and Amu Darya basin is slow, characterized by low economic efficiency of decisions, since most of the concluded treaties and agreements are of a framework nature (Sidorova 2008).

However, it should be noted that most treaties and agreements contain only the environmental aspect of the problem of transboundary rivers. The mechanism of regulation and management of watercourses is rather poorly developed, but at the same time the principle of international law “Who causes damage, he pays”.

That is why it is necessary to emphasize the importance of concluding bilateral and multilateral treaties between coastal States in the regional aspect, which should take into account all the parties to the problem and features of the river basin. There are a number of positive examples of transboundary water cooperation in history. These include the United States Joint Commission Canada, which has 100 years of experience in the equitable use of transboundary water resources; The Rhine Commission, which determined the order and has made the restoration of water quality and ecological health in the river Rhine; in some part of the experience of the use of Indus waters by India and Pakistan; South African agreement for use of the waters of the rivers Incomati and Mobutu between Mozambique, South Africa and Swaziland.

However, along with international conventions, it is worth emphasizing the activities of international organizations that contribute to the regulation of the regime of transboundary rivers. First of all, they include the international water Association. Its main goal is to improve the state of freshwater basins. The international water Association also deals with the issues of water supply, wastewater, as well as General issues of water quality management, including drinking water. An important role on a global scale is played by the international water Research Association, which pays attention to the management of water resources, as well as all aspects of this management from biological and chemical to institutional and socio-economic. The European water Association is responsible for the management and improvement of the water environment and the use of water resources. It involves representatives of almost all Central and Eastern European States, including the EU,

Norway and Switzerland, as well as most countries of the former USSR.

The purpose of the Association is to provide information on the latest technical and management developments related to water management issues through the organization of conferences, meetings and working groups. The international Institute for water resources management is a research organization concerned with the use of water resources in agriculture and water management in developing countries. Other organizations, including such well-known and influential as UNESCO, the world Bank, who, various institutions, funds, etc., are also engaged in the issues of transboundary water resources of rivers.

Conclusion

Today, there are political decisions aimed at reducing water losses, improving water management and reducing the need for them. Many countries have already adopted laws on the conservation and efficient use of water, but these reforms have not yet yielded tangible results. And even despite the high development of technologies of the XXI century, the problem of lack of fresh water still remains, though not the only one, but one of the most acute problems for the world market and for all mankind.

Over the past 70 years, more than 290 international agreements on water resources have been signed. There is a need to continue to develop the opportunities for strengthening peace and security

that cooperation in the field of transboundary waters can provide. Countries have a shared responsibility to present and future generations for the management of the world's transboundary waters.

In our view, in order to address the causes that affect the fulfilment of obligations under future agreements, each state in the region should have a clear understanding of the benefits and losses in the fulfilment of its obligations, both economically and, importantly, socially. So far, no state in the basin has carried out such technical and economic calculations, as well as social studies. Naturally, the implementation of such calculations is very difficult. They should cover not only the water and energy sectors of the economies of States, but also other areas that may be indirectly affected by a particular decision. Meanwhile, a clear understanding of the benefits and losses is one of the possible ways of convergence and cooperation between States on joint management of water and energy resources of the basins.

Many years of experience in solving the problems of transboundary rivers shows that only based on the unity of legal and regulatory principles, mutual respect and respect for economic and political interests, it is possible to ensure regional stability, and to solve the problems of joint use and protection from pollution of water resources of transboundary rivers. The creation of a legal basis for water resources management will allow to resolve the existing contradictions in the use of water resources in the future.

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