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## PROBLEMS OF LEGAL REGULATION OF THE USE OF TRANSBOUNDARY WATER BODIES IN CENTRAL ASIA

Given article analyses the causes of increasing problems of shared water use by transboundary rivers in Central Asia. The existing complex problems of relations between the states of the region reduce the effectiveness of individual states, the work of industries, the level of life safety, the existence of water and terrestrial ecosystems. Water use in the region and the ability to control it is turning into a powerful mechanism of economic and political pressure from some states of the Central Asian region. According to the fact that on a number of issues the governments of Central Asia cannot come to a consensus, it is proposed to use the experience of Europe. It is noted that in spite of the development of contractual international water legislation, issues of joint water use are exacerbated in practice and develop into international conflicts. In order to avoid conflicts, the author believes that despite the active position of Kazakhstan in international politics and the quantity and quality of agreements concluded by him on the use of transboundary opening facilities, one should consider options for using own facilities and reduce the consumption of transboundary rivers. It is also proposed to continue the policy of hydro-diplomacy based on economical and environmentally friendly water use.

**Key words:** water law, water security, transboundary water bodies, shared water use, legal regulation.

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### Орта Азиядағы трансшекаралық су объектілерін пайдалануды құқықтық реттеу мәселелері

Мақалада Орталық Азиядағы трансшекаралық өзендердің суды бірлесіп пайдалану проблемаларының шиеленісу себептері талданады. Аймақ мемлекеттері арасындағы қатынастардың қазіргі күрделі мәселелері жекелеген мемлекеттердің тиімділігін, өндірістердің жұмысын, халқының тіршілік қауіпсіздігі деңгейін төмендетеді, су мен жер экожүйелерін төмендетеді. Аймақтағы суды пайдалану және оны басқару мүмкіндігі Орталық Азия аймағының кейбір мемлекеттерінің экономикалық және саяси қысымының күшті тетігіне айналуға. Халықаралық тәжірибе әр түрлі институционалдық тетіктерді белсенді қолдана отырып, көпжақты және екі жақты келісімдер, хаттамалар және басқа да құқықтық нысандар негізінде трансшекаралық суларды басқару және қорғау саласындағы ынтымақтастықты реттеу саласында үлкен тәжірибе жинақтады. Орталық Азия үкіметтері бірқатар мәселелер бойынша бірыңғай келісімге келе алмайтындығын ескере отырып, Еуропаның тәжірибесін пайдалану ұсынылады. Халықаралық су заңнамасының дамуына қарамастан, суды бірлесіп пайдалану мәселелері іс жүзінде шиеленісіп, халықаралық қақтығыстарға ұласуда. Қақтығыстардың алдын алу үшін автор Қазақстанның халықаралық саясаттағы белсенді ұстанымына және трансшекаралық ашылатын құрылыстарды пайдалану туралы жасасқан келісімдердің саны мен сапасына қарамастан, өз мүмкіндіктерін пайдалану және трансшекаралық өзендердің тұтынылуын азайту керек деп санайды. Сондай-ақ суды үнемді және экологиялық таза пайдалануға негізделген гидро-дипломатия саясатын жалғастыру ұсынылады.

**Түйін сөздер:** су құқығы, су қауіпсіздігі, трансшекаралық су объектілері, ортақ су пайдалану, құқықтық реттеу.

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### **Проблемы правового регулирования использования трансграничных водных объектов в Центральной Азии**

В статье проводится анализ причин обострения проблем совместного водопользования трансграничными реками в Средней Азии. Существующие сложные проблемы отношений между государствами региона снижают эффективность отдельных государств, работы отраслей хозяйства, уровень безопасности жизнедеятельности населения, существования водных и наземных экосистем. Водопользование в регионе и возможности его контролировать превращаются в мощнейший механизм экономического и политического давления со стороны некоторых государств Центрально-Азиатского региона. С учетом того, что по ряду вопросов правительства стран Средней Азии не могут прийти к единому консенсусу, предлагается использовать опыт Европы. Отмечается, что несмотря на развитие договорного международного водного законодательства, вопросы совместного водопользования обостряются на практике и перерастают в международные конфликты. Во избежание конфликтов автор считает, что несмотря на активную позицию Казахстана в международной политике и количество и качество заключенных им соглашений по использованию трансграничных водных объектов, следует рассматривать варианты использования собственных объектов и снизить потребление трансграничных рек. Предлагается также продолжать политику гидродипломатии, основанную на экономном и экологичном водопользовании.

**Ключевые слова:** водное право, водная безопасность, трансграничные водные объекты, совместное водопользование, правовое регулирование.

#### **Introduction**

The issue of availability and use of water resources has always been and is increasingly being addressed in Central Asia every year. The shortage and uneven distribution of water resources, their apparent shortage and climatic conditions, and rapid population growth ensure a constant acuteness of the issue.

Given that all countries in Central Asia are agrarian, the problem of water use is also increasing.

The problem is compounded by the existence of serious global and regional environmental problems, resulting in severe water resource cuts and water shortages.

Most of the rivers in the region are transboundary and belong to a number of countries, each of which claims to use water resources. In this regard, it is necessary to remain an apple of discord and a basis for political and sometimes armed conflicts. However, according to some researchers, the main problem of water use is «inefficient distribution of water resources, extensive use and the resulting imbalance in water consumption by various countries are the main causes of water scarcity in the Central Asian region» (Kozhakmatova 2009: 21).

Issues of joint water use and efficient distribution of water resources are trying to solve both in national and in joint documents. But it should be noted that the only country that has ratified the Helsinki

Convention on the Protection and Use of Transboundary Water bodies and International Lakes is Kazakhstan. Other countries have not signed this agreement, although Kyrgyzstan, Tajikistan and Uzbekistan are considering such a possibility. Analysis of the constitutional and resulting water legislation shows that each country considers water resources an important part of the country's natural resources, its historical heritage and national wealth.

Each country, recognizing the need for international cooperation in the field of shared water management, documents:

- Economic aspects of water use, necessity of compensation and necessity to compensate costs and losses, as well as share in used water resources;

- Environmental friendliness of water use, for example, water legislation of Tajikistan establishes that the protection of water resources on the basis of observance of the principles of international water law, mutually beneficial and friendly cooperation with foreign countries, universal environmental security, development of international cooperation in the field of water relations (<https://online.zakon.kz/>);

- Control over water use, namely state control over prevention, limitation and reduction of pollution discharge into boundary waters by application of low-waste and non-waste technologies, as well as setting of criteria and control over water quality, etc. (<https://online.zakon.kz/>).

## Main part

The legal framework for the cooperation of Central Asian countries in the rational use of water and energy resources of transboundary rivers have already been laid. In February 1992, a framework Agreement was adopted between the Republic of Kazakhstan, the Kyrgyz Republic, the Republic of Tajikistan, Turkmenistan and the Republic of Uzbekistan on the use of water resources of interstate sources. In 1998, in order to coordinate and mutually beneficial use of the Naryn – Syr Darya cascade of reservoirs between Kazakhstan, Kyrgyzstan, Uzbekistan and Tajikistan, an agreement was signed on the use of water and energy resources of the Syr Darya river basin. On January 21, 2000, the Governments of the Republic of Kazakhstan and the Kyrgyz Republic signed an Agreement on the use of interstate water facilities on the Chu and Talas rivers (<http://mfa.gov.kz/>).

At the time of the establishment of EurAsEC, member members initiated a proposal to prepare a concept of efficient use of water and energy resources, but this agreement has not yet been reached. At the same time, it should be noted that part of these agreements does not work, as countries, every year are increasingly interested in the independent use of water, which is considered as a strategic agrarian and industrial resource.

However, despite the existence of legislative grounds for international cooperation, the problem of interaction between the governments of the countries of the Central Asian region continues to remain acute. Conflicts of residents of border territories in the problems of water use are not isolated, which clearly reflects the picture of the problem. Political scientists note that «Problems of sharing water resources can become a catalyst for enhancing inter-ethnic and interstate contradictions in the states of Central Asia. The negative precedent for resolving controversial issues regarding the use of transboundary water resources can have serious consequences for all countries of Central Asia.

The existing complex problems of relations between the states of the region reduce the efficiency of individual states, the work of sectors of the economy, the level of life safety, the existence of aquatic and terrestrial ecosystems. Water use in the region and the ability to control it is turning into a powerful mechanism of economic and political pressure from some states of the Central Asian region. The solutions proposed by either party to key issues are not always acceptable to the other parties. In addition, initiatives in the field of the use of water resources

are often perceived as an attempt to exert pressure or consolidate an advantageous position on specific water resources» (Kozhakmatova 2009: 23).

We have to admit the fact that a civilized and effective dialogue on water use issues has not yet been achieved. But at the same time, «the countries of the region are to varying degrees open to dialogue on the use of transboundary rivers. There is a certain connection between the possession of river sources and the degree of readiness to cooperate on issues of their division» (Nechaeva 2016: 56-57).

Governments are fully aware that water management problems can be addressed only through honest dialogue. Well-known researchers in this field have repeatedly noted that «the solution of these issues depends not only on the domestic management of water resources, but also on inter-State cooperation with neighbouring countries in the field of shared use and protection of transboundary waters» (<https://isca.kz/ru/analytics-ru/2361>).

At the present stage of development of the states of the Central Asian region, when the situation has substantially improved, for example, in Uzbekistan and Kyrgyzstan, which are more pleased than ever to engage in international dialogue, it is necessary to renew the desire for agreements on transboundary water use. It is necessary to move to a higher level of international cooperation, using the principles of integrated water resources management, as a recognized practice in the world.

Many scientists and practitioners suggest using foreign experience to solve problematic issues of joint water use in our region. And this thought is quite viable.

The most useful in our opinion is the experience of Europe, which has a number of water bodies that flow through several countries. So, for example, only in the territory of Southeast Europe, transboundary rivers, lakes and groundwaters are under the jurisdiction of two or more of the following states: Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Greece, Hungary, Montenegro, Romania, Serbia, Slovenia, the former Yugoslav Republic of Macedonia and Turkey (<https://www.unece.org/>). In general, according to the analysis of the status of transboundary waters in Europe as a whole, it shows that «more than 150 large rivers and 50 large lakes in the UNECE region flow or cross the borders of two or more states. More than 100 transboundary groundwaters have been discovered in Western and Central Europe; they can exist in other parts of the region. Twenty European states are more than 10% dependent on the water resources of neighboring states, and five states receive 75% of their water resources

from upstream states» (Sasiev 2009: 21). Twenty European countries are more than 10% dependent on the water resources of neighboring countries, and five countries receive 75% of their water resources from upstream countries (<http://www.unece.org/>).

However, it is Europe's experience that continues to be the most representative of transboundary water management.

At the same time, it should be noted that the analysis of the Constitution or the regulations on water and water use of these countries establish exclusively State ownership of water resources, and also provide on an equal basis with State ownership of water bodies.

In our opinion, it should be especially noted that all contractual agreements and EU documents were drawn up on the basis of a deep and comprehensive scientific analysis of the socio-economic and climatic conditions for the entire water management complex. Then, as in none of the countries of Central Asia there is a single analytical document on the state of water bodies, which significantly complicates the possibility of effective state regulation and high-quality international cooperation in this area. The initiative for a general analysis of the state of the problems of transboundary water use and the state of transboundary objects was taken by international organizations, which were submitted for review as reports. The most valuable are the reports of the United Nations Economic Commission for Europe, a body that develops international legal instruments and sets international norms and standards.

The basic document for the EU on transboundary water use is the «Water Framework Directive» (<http://www.caresd.net/>) which is binding on all EU countries. The following principles are taken as the basis for transboundary water use of the EU;

- ensuring the protection, improvement and restoration of all surface water bodies in order to achieve their satisfactory environmental status;

- water resources management within the water basin with the creation of a special state governing body;

- the need to study the condition and use of water bodies of each water basin, assess the degree and sources of anthropogenic impact on water bodies, conduct an economic analysis of water use;

- the need to develop a long-term action program for each water basin, which should be reviewed and updated every 6 years, with their mandatory publication for wide discussion;

- Active involvement in the process of development, adjustment and implementation of basin pro-

grams of all interested parties, including water users, local governments and the public;

- application in practice of the principle of full coverage of expenses for the study, protection and reproduction of water resources, restoration of water bodies at the expense of payments for water use and pollution of water bodies (the principles of «water pays for water» and «pollutant pays»);

- licensing of water use on the basis of standards for permissible impacts on water bodies and target indicators of water quality;

- monitoring the status of water bodies and specially protected natural areas;

- coordination of actions on transboundary watercourses with neighboring countries and the desirability of creating an interstate governing body (<http://www.caresd.net/>).

The Water Framework Directive emphasizes the need to provide an institutional framework for European water management, including in order to achieve a satisfactory ecological status for European rivers, lakes and seas. Water, is seen by the European community as «Europe's legacy and a market-incompatible essential basic product. It is obliged to treat, preserve and protect it carefully against any encroachment » (<http://www.caresd.net/>) and «Water is not a commercial product as others, but rather a heritage requiring protection and appropriate treatment» ([http://www.cawater-info.net/bk/water\\_law/9\\_5.htm](http://www.cawater-info.net/bk/water_law/9_5.htm)).

In addition to water quality and the provision of water services, the EU faces the problem of monitoring the activities of transnational corporations (TNCs) in the European water market, which «occupy a leading position in the economy of the EU countries. Their economic power and strategic interests determine their political positions on issues of internal and foreign policy of governments» (Rakovsky 2001: 120). It is multinational companies that determine the cost of water resources and lobby for their use for industrial purposes. The containment of the interests of such corporations, their involvement in the implementation of the environmental policy of the region is an important direction of state regulation in the field of water use.

It should be noted that in all European countries, water is considered as a strategic resource, any use of which is regulated by regulatory legal acts. A number of international agreements have been adopted. The founding act was the UNECE Helsinki Water Convention, which was adopted on March 17, 1992 and is characterized as «the first document aimed at creating a legal framework for cooperation on the protection and rational use of transboundary

waters within the whole region» (McCaffrey 2001: 140). Currently, 34 states are participating in the Convention, its main objectives were:

- Protection of transboundary waters (including surface and groundwater) by preventing, limiting and reducing pollution;
- Environmentally sound and rational management of transboundary waters;
- Reasonable and equitable use of transboundary waters;
- Conservation and restoration of ecosystems.

This document was strengthened by the adoption of two more acts under the UNECE: the 1991 Convention on Environmental Impact Assessment in a Transboundary Context (Espoo) and the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice on Matters Concerning 1998 Environment. As a regional basic document, the Directive on the establishment of the Union's framework action in the field of water policy (EU Water Directive), adopted by the European Parliament and the Council in 2000, should be noted.

The main objective of the Directive is to establish a legal framework for the protection of waters, including surface, groundwater, as well as transitional and coastal waters, including by:

- Prevention of further deterioration, protection and improvement of the condition of aquatic ecosystems;
- Development of sustainable water use based on long-term protection of water resources;
- Adoption of special measures to progressively reduce emissions, discharges and losses of hazardous substances;
- Progressive reduction of groundwater pollution;
- Reducing the effects of floods and droughts ([http://www.cawater-info.net/bk/water\\_law/9\\_5.htm](http://www.cawater-info.net/bk/water_law/9_5.htm)).

At the same time, it was the Helsinki Water Convention that laid the foundation for the so-called hydro-diplomacy and was aimed at "promoting international cooperation in protecting people and the environment from industrial accidents by preventing such accidents as much as possible, reducing their number and severity, and also mitigating their impact" (<http://www.cawater-info.net/>).

Based on this document, more than 400 agreements were signed, which became possible only thanks to the joint interest of states in solving water problems and the mediation activities of the UNECE. Water governance in the transboundary context of water resources requires the significant

participation of a wide range of stakeholders based on operational and functional mechanisms (formal and informal). At the same time, the specialist noted that «no, not a single formula that works in all situations». Even with agreements and contracts, everything is determined by local executive discipline.

International practice has accumulated a wealth of experience in the field of regulation of cooperation on the management and protection of transboundary waters on the basis of multilateral and bilateral agreements, protocols and in other legal forms with the active use of various institutional mechanisms, the role of which is difficult to overestimate. This practice consists in the development of major international agreements, as well as basin-type agreements, the scope of which extends to the entire catchment area.

Based on the experience of the EU countries in 2008 today, the concept of integrated (or integrated) water resources management (IWRM) comes to the fore. The Global Water Partnership (GWP) and the International Network of Basin Organizations (INBOs) have developed the «Guidelines for Integrated Water Resources Management in Basins» (Istanbul, March 2009). This document has identified 6 key principles for an integrated approach:

1. management in the basin section;
2. integrated water and land management;
3. joint consideration of social, economic and environmental factors;
4. inclusion of surface and groundwater resources in planning;
5. public participation in the planning process;
6. transparency and accountability in the decision-making process (Rakovsky 2001: 122).

The UNECE in its recommendations notes the need to develop National Water Strategies and, as an additional guarantee, the adoption of the Regional Water Strategies. Thus, in the Report of the World Summit on Sustainable Development in Johannesburg, all interested states were recommended:

- develop and implement national and regional strategies, plans and programs for integrated management of river basins, catchments and groundwaters;
- improve the efficiency of water resources use and ensure their distribution among competing uses in such a way that priority is given to meeting basic human needs;
- achieving a balance between the requirement to preserve and restore ecosystems, especially vulnerable ones, and domestic, industrial and agricultural needs, including ensuring the quality of drinking water (Doklad 2002: 21)

As part of the report on the implementation of the UNECE Water Convention in the Central Asian region, it was noted that national governments have adopted legal regimes that largely follow the UN Watercourses Convention and other regional documents.

To disseminate the European experience on transboundary waters, in 2016 the VIES Program was launched its goal is «to improve the management of water resources, in particular transboundary rivers, in the countries.

The specific goal is to bring national policies and strategies closer to the EU Water Framework Directive (WFD), integrated water resources management (IWRM) and related multilateral environmental agreements (MEAs).

The project consists of the following three areas of achievement:

Result 1: regulatory frameworks improved in accordance with the WFD, IWRM and MEAs;

Result 2: river basin management plans developed and implemented in accordance with the principles of the WFD;

Result 3: lessons learned regularly collected, presented and communicated to interested parties» ([www.oecd.org/](http://www.oecd.org/)).

As a direct participant in this program, Kazakhstan put forward the Astana Water Initiative, the foundations of which are laid down in the State Water Management Program for 2014 -2020, designed to preserve and rationally use water resources and ensure effective management of Kazakhstan's river basins.

At the initiative of Kazakhstan, water use agreements were concluded with all neighbors: the Russian Federation, Uzbekistan, Kyrgyzstan, China. Of particular note is our policy to save the Aral Sea.

The modern experience of Kazakhstan on issues of solving water problems is interesting, since they are becoming more and more relevant for the domestic economy.

In October 2018, the 8th session of the Meeting of the Parties to the UNECE Helsinki Convention was held in Astana, which became the basis for the continuation of the Astana initiative on transboundary waters. In addition, the Convention's Work Program for 2019-2021 was adopted, which aims to support the monitoring, assessment and exchange of information in transboundary basins and to facilitate the financing of cooperation in the field of transboundary waters.

In January 2019, Government delegations from five Central Asian countries adopted the Final Provision «EU-Central Asia Platforms for Cooperation

in the Field of Environmental Protection and Water Resources». The document defines specific areas for further cooperation of the countries of the region with the assistance of the European Union in such areas as ensuring compliance with the Paris Agreement on climate change, improving the effectiveness of national environmental protection systems, and managing the region's water resources.

However, it should be noted the presence of a huge number of problems in this area. The problems of transboundary water use are becoming more acute. The experts identified the following areas of activity, which, in our opinion, are the same for the entire Central Asian region:

1. Improvement of the interstate regulatory framework for the joint use and protection of transboundary water resources based on the development of the existing system of interstate agreements on individual transboundary river basins that are of strategic importance in the economic development and preservation of the environmental safety of the Republic of Kazakhstan;

2. Improving economic and financial instruments for cooperation in transboundary river basins based on the experience of joint management, water allocation and use of water management facilities of interstate importance;

3. Strengthening the system of monitoring and assessment of transboundary water resources to a level that ensures timely and accurate information on the current state and forecasts of the development of the water management and environmental situation in transboundary river basins;

4. Strengthening capacities in the field of transboundary water management by increasing the general level of knowledge, awareness and understanding of the tasks and features of the negotiation process at the level of framework interstate agreements and at the level of agreements for individual transboundary river basins;

5. Strengthening the institutional framework of cooperation by increasing the effectiveness of national state authorized bodies at the basin level and interstate bodies (Sovmestnyj proekt: <http://www.cawater-info.net/bk/>).

In our opinion, one of the most important problems of transboundary water use is the neighborhood with China – a country that ignores any international agreements on this issue, which does not prevent it from developing interstate water cooperation within the framework of predominantly bilateral relations and in accordance with the principles of international water law» (Turmagambetov 2011: 56). A report by the Institute of Geographical Sci-

ences and Natural Resources Research of the Chinese Academy of Sciences noted that «Both countries face intense competition on the Ili River, but China has a much larger share of its water resources. 15.7 billion cubic meters per year flows within its borders, which is almost twice as much as the volume of water flowing through Kazakhstan (8.4 billion cubic meters). Therefore, it was difficult for both countries to determine how to properly distribute the amount of water between them. China believes that it has the right to appropriate use of river water that flows within its borders. He considers this to be fair, since Kazakhstan largely used the river in the late 1960s, for example, in connection with the Kapchagai reservoir» (<https://informburo.kz/>).

### Conclusion

Accordingly, we believe that in spite of the active position of Kazakhstan in international politics and the quantity and quality of agreements conclud-

ed by him on the use of transboundary introductory facilities, we should consider options for using our own facilities and reduce the consumption of transboundary rivers. This will avoid the political and economic influence of such large countries as China and the Russian Federation and will stimulate the process of searching for new technologies, more economical use of available resources, etc. Given the fact that China and Russia are pouring large financial resources into Kazakhstan's economy in the form of investments in the program «Silk Road Economic Belt» and the EAEU and the necessary «good neighborly policy», Kazakhstan does not have the proper tool to influence these countries. There remains the path of diplomatic dialogue with the conviction of the need for deliberate, effective and equitable water use.

But on the other hand, transboundary water use cannot be completely avoided and does not make sense. The policy of hydro-diplomacy should continue, continuing the main directions of economical and environmentally friendly water use.

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