

Water Issues – The Current and Future Challenges for Cooperation in Central Asia

Juraeva Nigora Amanullahanovna

Senior science researcher at

Tashkent state university of Law, LL.M.

nigora.juraeva@inbox.ru

Tashkent State University of Law

Abstract. Water has long been a major cause of conflict in Central Asia. The root of the problem is the disintegration of the resource-sharing system the Soviet Union imposed on the region until its collapse in 1991. Kyrgyzstan and Tajikistan provided water to Kazakhstan, Turkmenistan and Uzbekistan in summer and received Kazakh, Turkmen and Uzbek coal, gas and electricity in winter. The system had broken down by the late-1990s, and a plethora of bilateral and regional agreements and resolutions concluded in that decade failed to fix it. The inability of Bishkek, Dushanbe and Tashkent to resolve cross-border water problems has created instability in their common area. Strained ethnic relations and competition over water and land could be a deadly mix. Conflict in this volatile part of Central Asia risks rapid, possibly irreversible regional destabilization. Irrigated agriculture is likely to continue to play a major role in Central Asia, particularly in the Ferghana Valley. It remains the source of people's livelihoods and the backbone of the economies of

Uzbekistan, Tajikistan, and of Kyrgyzstan, especially because of the water-energy nexus. Desertification of the Aral Sea basin remains a critical issue affecting all Central Asian countries. Although largely a result of poor Soviet management, like water diversion schemes, the Aral Sea basin remains a major environmental concern and an area of political contention. In the coming years, the possible restoration of infrastructure and the correction of existing flaws remain a daunting challenge due to the social and economic concerns. Deriving from the current political-water issues of Central Asia, this research will analyze the future consequences of current conflicts and tries to give some possible solutions from the perspective of international law.

The collapse of Soviet-era barter deals stymied Kyrgyzstan's ability to meet its domestic energy demands. In recent years its energy security, both in terms of electricity it can produce itself and gas it must import, has become ever more precarious and complicated by a combination of environmental factors,

infrastructure decay and poor relations with Uzbekistan, the main supplier of gas to its south. Neither the processes of domestic reform nor inter-state negotiations have been smooth or predictable as disputes over how to distribute shared water resources have arisen. The first major conflict regarding the seasonal distribution of water across the Ferghana Valley involves the operation of the Toktogul reservoir and hydroelectric plant. The disintegration of the Soviet Union placed great stress on the existing system of inter-republican compensation for water and energy. The newly independent downstream countries experienced difficulties consistently providing cheap gas for Kyrgyzstan and ultimately raised prices. Unable to purchase enough gas to generate its thermal power plants, Kyrgyzstan experienced chronic electrical outages during the winter, and in the early 1990s began to release more water from the Toktogul reservoir during that season to drive its hydroelectric generators. But by providing for its own heating and lighting needs in winter, Kyrgyzstan reduces the quantity of water available to downstream Uzbekistan for irrigating its sector of the Ferghana Valley in the spring and summer. And since a limited quantity of water can be retained in facilities such as the Kairakkum reservoir, Kyrgyzstan's release of water in the wintertime have repeatedly flooded these downstream areas. Uzbekistan often

complains about the damage caused by winter flooding, demanding that water should be released mainly in summer so as to prevent flooding and sustain irrigated crops. A second dispute concerns the economic value of water provided across national borders. Since its independence, Kyrgyzstan has been neither willing nor able to assume the total financial burden of operating and maintaining the Toktogul dam and hydroelectric station nor willing to take actions to regulate the flow of water into the Naryn River and, accordingly, the flow into the Syr Darya. Kyrgyzstan therefore seeks compensation from the downstream countries. The annual cost to Kyrgyzstan of maintaining the Toktogul reservoir and its related infrastructure amounts to an estimated \$15 to \$27 million. Until 2002, however, Uzbekistan and Kazakhstan did not contribute to the cost of maintaining and operating this facility.⁵⁵ Rising gas prices and the shift to a more market-oriented economy have prompted Kyrgyzstan's lawmakers to **re-evaluate the value of water as a resource**. They argue that the Syr Darya waters flowing from Kyrgyzstan bring considerable economic benefit to the downstream countries via irrigated agriculture. Therefore, they seek to place a specific value or price on water and to charge its users for what they receive from Kyrgyzstan. Uzbekistan has to date been critical of this idea, questioning whether any

country can actually own water and whether the water supply should be treated as an economic commodity. Moreover, it asserts that because Kyrgyzstan provides no “value added” to the water flowing from its territory, it is hardly justified in asking for financial compensation. A third point of contention concerns the apportionment of water from the Syr Darya River and the quantity to which the respective riparian countries are entitled. Kyrgyzstan contests the old Soviet inter-republican quotas, which designated the lion’s share of the Syr Darya’s water to Uzbekistan and Kazakhstan. With the 1992 Almaty Agreement on Water Resources, the new states confirmed that they would continue to observe the existing quotas for the time being, but did not detail the possibility of later changes. The Agreement assigned 51.7 percent of the river flow to Uzbekistan, 38.1 percent to Kazakhstan, 9.2 percent to Tajikistan and only 1 percent to Kyrgyzstan¹. The Kyrgyz claim is that this arrangement effectively barred them from developing irrigated agriculture during the Soviet period and denied them the economic benefit that would have come from development. Kyrgyzstan, therefore, now seeks to correct what it sees as a historical injustice by claiming enough water to develop self-sustaining and market-based irrigated agriculture. However, this runs in

direct conflict with plans by Uzbekistan, Kazakhstan and Tajikistan, all of which seek to expand and modernize their own irrigated agriculture. At present, the outlined disagreements have resulted in plans to build new dams and to deal with the accompanying or resulting controversies. Among many smaller dam building projects in Central Asia, Kyrgyzstan and Tajikistan are each attempting to resume the construction of large reservoirs designed in the 1960s and 1970s and partly constructed in the 1980s². In Kyrgyzstan, the two Kambar-Ata dam structures are planned upstream of the Toktogul reservoir on the Naryn River. These dams would allow electricity production during winter, while saving water in the Toktogul reservoir for downstream irrigation purposes in the summer. Moreover, since the necessary grid is already in place, the hydropower complex could generate surplus electricity for exportation. However, there are doubts about the financial viability and environmental impacts of the project, one being that climate change-induced glacial melt and projected reduced water flow could render the structure obsolete within a generation. Kambar-Ata I and II are estimated to cost around \$3 billion, a significant investment which Kyrgyzstan is unlikely to assume. So far, possible investors, including Russia, have been

¹ Service Reform Initiative, *supra* note 51, at 23.

² Antipova, et al., *supra* note 10, at 505-06.

hesitant to invest³. Questions of political stability aside, this may also be due to Uzbekistan's firm opposition to the project, objecting, among other issues, to the increased control Kyrgyzstan would acquire over the Syr Darya River flow. The Rogun dam in Tajikistan is a similar project with comparable goals to regulate water usage and release of the Amu Darya River. Its original purpose was to guarantee sufficient water supply during water-scarce years for users in the Amu Darya basin, an area that suffers from a greater lack of regulation than the Syr Darya River. The Soviets never completed the project due to the USSR's collapse that delayed construction in 1992 but if completed, the large hydropower plant and enormous water reservoir to be situated on the Vaksh River, a tributary of the Amu Darya River, will provide yearly water runoff regulation of the Amu Darya. This goal is aided by the fact that the Rogun river is not followed by a downstream reservoir, which would likely affect the flow of the Amu Darya directly. However, the Rogun Dam has significant hurdles to overcome before it can become a reality as the huge financial investment needed to resume and complete the construction has not yet been secured. Once operational, Rogun is expected to cover as much as eighty percent

of Tajikistan's average energy consumption and even offers opportunities for exporting electricity. However, Uzbekistan has raised opposition toward the dam, listing concerns about reduced downstream water availability and dam safety. Downstream countries are particularly worried about water availability during the one to two decades in which the reservoir would need to be filled. Moreover, downstream nations and communities stress the future risks of the dam, as Rogun is situated in a seismically active area near a geological fault line. **A potentially sudden outflow of such a large scale could have disastrous consequences for downstream riparian zones.**

Yearly barter agreements remain the central mechanism to determine water and energy transfers between upstream and downstream countries. Again, it is important to note that they do not only result from interstate relations characterized by an uncooperative mode, but also from the domestic politics in the respective states. Currently Kyrgyzstan is still cash-strapped and, thus, limited in acquiring energy carriers from abroad. Kyrgyzstan's inevitable need for heating during cold winters, and the government's inability to provide sufficient electricity, is likely to give rise to public discontent and political unrest. Operating the Toktogul reservoir to generate hydropower in wintertime, therefore, is an urgent political and

³ David Trilling, *Kyrgyzstan: Melting Glaciers Threaten Central Asia's Ecological and Energy Future*, Eurasianet.org (Oct. 18, 2010), <http://www.eurasianet.org/node/62177>.

economic concern of the government of Kyrgyzstan. A similar logic applies to Kyrgyzstan and Tajikistan interests in the construction of Kambar-Ata and Rogun dams as well as hydropower plants. Beyond solving perennial power shortages, both countries also hope to export electricity to Central Asia and neighbors and, thus, become regional energy suppliers. Conversely, political elites in Uzbekistan, and to some extent Tajikistan, rely on cotton production in the Ferghana Valley to generate income and to support the existing system of social, political, and economic control. This partly accounts for leaders' unwillingness to change to less water-intensive crops in the Ferghana Valley. Furthermore, any related economic change may not sustain the existing, cotton reliant systems, which are based on exploitation and rent-seeking. Thus, the annual ad hoc barter agreements on the use of Syr Darya's water may be less the result of inter-state cooperation and more the result of the conflicting political interests of domestic actors within each country.

Under the Russian Empire and Soviet Union, Uzbekistan was the administrative, political and educational centre of Central Asia Tajikistan and Kyrgyzstan say their large and costly projects are crucial to economic development and will enable them to both meet domestic energy needs and create a

surplus for export. Uzbek Foreign Minister Abdulaziz Kamilov argued to the UN General Assembly in 2013 that the Syr Darya and Amu Darya are common regional assets and requested a binding UN evaluation of Kambarata-I and Rogun. Karimov goes a step further, insisting upstream hydropower projects must not only be internationally assessed but also approved by Uzbekistan, which has a history of rejecting the former's findings. To be more precise, after entering to the force Convention on the Law of the Non-navigational Uses, the feedbacks of I.Karimov obtain much more serious-logic form. Since, the 5th article of this convention says "Watercourse States shall in their respective territories utilize an international watercourse in an equitable and reasonable manner. In particular, an international watercourse shall be used and developed by watercourse States with a view to attaining optimal and **sustainable utilization thereof and benefits therefrom, taking into account the interests of the watercourse States concerned, consistent with adequate protection of the watercourse**".

As we know from the Theory of State and Law any kind of legal-correlation and conflicts which derive from them are regulated with law. So, law plays a regulative role in solving the conflicts. If this conflict is between two subjects of

international law of course in this case should act international law. To be more precise in order to solve the problem, first of all the current international water law framework should be clarified attached to the current water issues in Central Asia. So, what says International Water Law or bilateral agreements between Central Asian states?

If it comes to legal framework it should be particularly emphasized that there is **an inadequate current legal framework**.

The Almaty Agreement serves as the main multilateral water agreement in the Aral Sea Basin. Turkmenistan, Uzbekistan, Tajikistan, and Kyrgyzstan are all parties. The Agreement identifies cooperation in “joint water resources management” as a key purpose. It provides for the “equal rights and responsibility” according to the standard of “rational and economic use of water resources.” It governs according to the standard of “common principles for the whole region” and “equitable regulation” and preserved the water allocation regime from the Soviet Era. The 1993 Kyzyl-Orda Agreement and 2006 Sustainable Development Convention echo the Almaty Agreement’s emphasis on “rational use” of water resources through conservation and responsible management, not harming other Amu Darya States’ ability to use the river’s resources, and desire to adhere to the principles of international water law. While

the Almaty Agreement helped the nascent Republics develop a coherent water resource management framework, it was drafted quickly and requires revision. For example, the Agreement fails to clearly define its scope and objectives, does not incorporate the “universally recognized legal principles and conceptual frameworks of water management such as reasonable and equitable use of transboundary waters . . . the ecosystem approach, [and] the basin principle of management.” It fails to protocols for “notification and consultations on planned activities, which may have a transboundary impact.” Further, the dispute resolution mechanisms of the Almaty Agreement do not define procedures.⁵³ Finally, the Almaty Agreement does not consider issues modern treaties consider essential such as the monitoring and protection of biological resources. The Heads of the Central Asian States have promulgated joint declarations that, while non-binding, help to establish water policy in the region. These declarations include Turkmenistan, Uzbekistan, Kyrgyzstan, and Tajikistan as parties and emphasize four main points with which the UNWC can assist: (1) strengthening regional water management institutions, especially the IFAS; (2) drafting a regional convention on transboundary watercourses; (3) increasing coordination between Amu Darya States and the international community; and (4)

adhering to sustainable development principles. The Nukus Declaration confirmed the desire of Amu Darya states to strengthen the regional water management bodies such as the IFAS. In the 2002 Dushanbe Declaration, the heads of state affirmed their support for “implementing the Action Plan on the Aral Sea” and agreed to request a UN commission to assist the EC-IFAS in improving the systems of monitoring and information exchange for the “rational use” of water. Central Asian leaders expressed their desire to create a regional convention for the “sustainable development of the Aral Sea basin,” in the 1995 Nukus Declaration, the 2001 Tashkent Statement and the 2009 Joint Statement. Since 2009, the impetus for drafting a regional convention on watercourses has grown. The IFAS even expressed its willingness to alter the “legal framework of IFAS.” The Nukus Declaration also emphasized the importance of coordinating with international partners. The 2004 Memorandum of Understanding between the IFAS and United Nations Economic Commission for Europe [UNECE] also stressed international cooperation. 2008 marked a watershed moment as the IFAS was granted observer status in the UN General Assembly and Germany launched the Berlin Process in April 2008. Germany and the Central Asian States have pledged support for the Berlin Process. The Nukus

Declaration declared the Central Asian States’ “adherence to principles of sustainable development,” as well as their “complete support” of the U.N. “declarations on sustainable development” including the Rio Declaration, “the international conventions on struggle against desertification, about global change of . . . climate, about preservation of . . . biological variety and about protection of transborder waters.” In the 1997 Almaty Declaration, the Central Asian States agreed to manage transboundary water resources using an ecosystem approach. The regional declarations highlight the cornerstones of the UNWC: cooperation, sustainable development, and increased engagement with the international community.

Principles of the U.N. Watercourses Convention The preamble to the UNWC categorizes the UNWC as a codification treaty designed to track the “progressive development” of the international law regarding the non-navigational uses of international watercourses. The preamble, also notes that the UNWC is a framework convention designed for the “promotion of the optimal and sustainable utilization” of international watercourses and emphasizes the importance of cooperation and “good-neighbourliness” in transboundary watercourse law. Finally, the preamble references the “principles and

recommendations adopted by the United Nations Conference on Environment and Development of 1992 in the Rio Declaration.”

As we know in 2014, after signing Vietnam the Convention on the Law of the Non-navigational Uses it entered to its legal force. It has to be particularly stressed that among the Central Asian countries only Uzbekistan joined to this convention while the others did not. So, what can be expected from the other countries of Central Asia on the way of solving water issues by referring to this convention? Since this convention states key holes for solving the current water issues in our region. For example, article 5 of this convention states: “Watercourse States shall in their respective territories utilize an international watercourse in an equitable and reasonable manner. In particular, an international watercourse shall be used and developed by watercourse States with a view to attaining optimal and sustainable utilization thereof and benefits therefrom, **taking into account the interests of the watercourse States concerned, consistent with adequate protection of the watercourse**”.

Furthermore, the article 6 of this Convention determines the factors which can lead to consider the utilization equitable and reasonable such as:

(a) Geographic, hydrographic, hydrological, climatic, ecological and other factors of a natural character;

(b) The social and economic needs of the watercourse States concerned;

(c) The population dependent on the watercourse in each watercourse State; (*more than 30 million in Uzbekistan)

(d) The effects of the use or uses of the watercourses in one watercourse State on other watercourse States;

However, it should be particularly emphasized that this convention acts attached to the states which joined to it. As it stressed above among Central Asian countries is the only Uzbekistan who joined to the Convention, which means it is hardly likely that this convention will work in solving Central Asian water problems though it determines the fundamental principles and factors of solving water-related issues. So, let’s see the possibilities of accession of the other countries of our region to the Convention:

Kazakhstan voted for the adoption of the Convention, is the most a likely candidate. It is logical and does not require large expenditures for country step because it has acceded to all environmental UNECE Conventions, which impose more stringent obligations. For example, The Espoo Convention includes detailed provisions for notification planned measures and the UNECE Water Convention provides strict

the requirements for the prevention and control of transboundary damage, protection Nature and the establishment of joint bodies.

Turkmenistan, the other downstream countries, is considering joining the UN Convention after it recently joined the Water Convention UNECE. The official representative of that country stated in the international Water Conference in Tashkent in 2011, which are preparatory work on accession to the Convention. At the same time, chances are that in the near future, the country's top two flow - Kyrgyzstan and Tajikistan - may accede to the Convention of the United Nations, It is not very large. In the early 2000s, the Ministry of Foreign Affairs Kyrgyz Republic considered it inappropriate for the country's accession to the Convention, despite the fact that Kyrgyzstan acceded to the Espoo Convention in 2001. Since, there is no data on changes to the Convention. The head of the Kyrgyz delegation at the International Water conference in Tashkent in 2011, most of it is backed up suggestion and added that his country, as a first step can consider accession to the Protocol on Water and Health UNECE Water Convention. At the same time, he added that Kyrgyzstan will more inclined to the signing of the UN Convention than the UNECE Water Convention UN because, in his view, it is

more suitable for solving problems It is facing the Central Asian region.

Similarly, Tajikistan is not to accede to the Convention, despite the fact that the President of Tajikistan underlines the key role international agreements in solving water problems in the region. For example, in his speech at the 1st Asia- Pacific Water Summit Emomali Rahmon said: "The development and adoption of the International Convention for the water can be an important step in the consolidation of the efforts that will determine universal principles of water policy, taking into account interests of all consumers." However, existing legal obligations Tajikistan set the tone for the accession to the Convention. For example, in Agreement on transboundary waters concluded within the Commonwealth independent states in 1998, Tajikistan has agreed to consider the provisions of the Helsinki Rules of 1966, which largely based United Nations Convention and the UNECE Water Convention. If Tajikistan has completed the process of ratification Espoo Convention, it will become a Party to another instrument, which It is largely consistent with the procedural rules of international water law.

Deriving from the facts and feedbacks which are outlined above it can be concluded that, the power of law and even International Water Law would unlikely

work. Since, there is no enforcement itself in International Law. So, in my opinion the only way to solve these problems is – negotiations. This way of solution do not attribute to one certain country, but it attributes to the whole more than 60 million population of Central Asian region and their country leaders.

To be more precise the following possible recommendations can be given:

Promote and mediate individual bilateral water and energy sharing agreements between Kyrgyzstan and Uzbekistan and Uzbekistan and Tajikistan, pending a comprehensive agreement on their management.

Kyrgyzstan, Tajikistan and Uzbekistan should develop a common development strategy for agriculture and energy and commit to demarcating their borders without using water or energy as a weapon. In the long run, they should work toward a legally binding Central Asian convention on water resources. In the shorter term though, it would be more feasible for them to negotiate bilateral agreements for sharing water from the Syr Darya and Amu Darya. The international community should facilitate both dialogue tracks as needed.

To relinquish from considering the water as an economic good and using as a political weapon for consolidating its position in the region at the expense of

possible environmental dangers to the people of other neighbor nation.

Relations between Bishkek, Dushanbe and Tashkent may prohibit a regional agreement at this time, but there is more hope that bilateral accords between Uzbekistan and the other two could pave the way for greater future cooperation by following the recommendations outlined above.