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Borders of the Central Asian countries under the international law

Abstract

In the article the international legal status of the territory, and the territory of the state was ascertained, and the features of the legal status of a state border were identified. The main problem of the thesis is to show the causes of conflicts in determining the borders of the Central Asian states from the perspective of Russian scholars. The main issues of regulating international relations in the sphere of the delimitation of state borders under the international law in Central Asia are outlined.

Keywords: Central Asia, state border, international legal status, state territory, delimitation, demarcation

Аннотация

В статье рассмотрены международно-правовой статус территории, установление территории государства, и определены особенности правового статуса государственной границы. Основная проблема статьи – показать причины конфликтов в определении границ Центрально-азиатских государств с точки зрения российских ученых. Изложены основные вопросы регулирования международных отношений в сфере делимитации государственной границы в рамках международного права в Центральной Азии.

Ключевые слова: Центральная Азия, государственная граница, международно-правовой статус, государственная территория, делимитация, демаркация.

The objective of this research paper is to analyze the international legal status of the borders of Central Asian states and to identify the major problems related to their establishment. The range of problems of settling relations between the states of Central Asian region about their state borders and determination of their international legal status were covered in the works mostly of eastern scholars such as A.Kh. Abashidze, V.T. Batychko, K.A. Bekyashev, Yu.A. Gavrilova, P.L. Makkambaev, B.Sanginov, M.A. Sarsembaev to present the eastern point of view to the problem.

The topicality of the problem of settling relations between the states regarding the demarcation and delimitation of borders is of particular interests in the regions where the borders were established using imperative methods or using a compromise based on the principles of non-military conflict. Regarding the Central Asian region most important actor in the international law was former Soviet Union, where the territorial issues were settled under the strict control of Moscow, sometimes without regard to national, ethnic or other interests of the republics. If we expand the borders of the Central Asian region in accordance with UNESCO's terminology, then – first of all – attention is drawn to permanent tensions and disputes in relation to the establishment of the border between China and Kazakhstan, China and Tajikistan, etc.

The collapse of the Soviet Union led to rejection of Soviet ideas and institutions in the newly formed republics. In Central Asia, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan obtained their independence. Kazakhstan, Kyrgyzstan and Uzbekistan took immediate steps towards democratization with multiparty elections, however despite inclusivity efforts, elites were able to grasp power and use their political leverage to acquire more influence (Luong, 2002). With exception of Kyrgyzstan, the Central Asian regimes have become much more authoritarian using nationalism, networking, and family connections to control the economy, politics, and territory (Roy, 2007).

However, the relations between the states in the area of establishing borders should not be identified exclusively with conflicts and territorial claims. Very often, these problems arise in the process of direct establishment of borders within the area with complex relief conditions, where there is a need for a more detailed settlement of the disputes of arranging

the border and crossing points for the population of neighboring states. This problem is of particular relevance in the light of dense settlement of the ethnic groups that do not have their own statehood in the territory of several states.

Modern geopolitical and geo-economic situation in Central Asia is burdened with problems, which the states in the region inherited from the former Soviet Union. The matter is about territorial claims, disputes and existing controversies regarding the existing state borders and territories of sovereign states. From the point of view of the theory of international law the problem of borders settlement is of paramount importance because it affects not only the content of bilateral relations, but also the legal status and socio-economic situation of border areas. Clearly defined borders are necessary for security and defense, defining national identity, and coordinating trade agreements (Rumford, 2006).

As Ignatenko G.V. and Tiunov O.V. point out in the broadest sense, sub-territory in the international law means different spaces of the globe with its land and water surface, subsoil and airspace, as well as outer space and celestial bodies located in it. In this case, the legal status of such territory is important, which determines its basic legal characteristics, determination of its basic belonging in accordance with international legal classification of territories (Савицкий, 2010).

According to R.M. Skulakov and B.M. Ashavsky, it is inappropriate to apply the institution of property to the legal status of the state territory, used by national civil law in relation to things. Since the state territory is a sign of the entire state, its concept in the international public law and in international relations must be seen holistically, and the term “state sovereignty” should be applied to it (Скулаков, 2003; Ашавский, 2011). States’ practices, rules, norms, and approach to challenges defines state sovereignty and how the state controls its territory (Carlsnaes, Risse-Kappen, Risse, i Simmons, 2002). Sovereignty is conceptualized in state authority or the ability of the state to make political decisions within the defined territory (Thomson, 1995). Strong sovereign states guarantee citizen political rights within their borders (Habermas, 2008).

As M.A. Sarsembaev notes, the territory is the heritage of the indigenous population living within a given geographical environment from the earliest times. In the course of historical development of human society,

the concept ethnic territory appeared first, then the concept of national territory, which can be determined as part of the terrestrial space populated by a particular ethnic group, nation, people. This ethnic, national group of people on their national territory establishes states and the territory becomes the state territory (Donnan i Wilson, 1999); (Сапсембаев, 1996).

A distinctive feature of the state territory is that it is under the sovereignty of the state. As a rule, state territory has internationally recognized borders, that is achieved through the conclusion of agreements with neighboring states on the borders, peace treaties after the end of armed conflicts. There are the so-called historically established borders, which are not established by the treaties but recognized by the states in practice (Абашидзе, 2015).

Bekeyashev K.A., when approaching the question of determining the status of the territory of states, indicates that the territories falling within the national borders of each individual state covered by the full and exclusive authority of these states should mean by them (Бекашев, 2003).

It should be noted that the legal regime of the state territory is determined by national legislation (the legislation of the states). It includes: the land territory within the borders of the state (Berman, 2004) and its subsoil; waters of rivers, lakes, estuaries, reservoirs, marshes, harbors, bays (including bays historically belonging to the state), internal sea waters, territorial sea waters; airspace over the land and water territory of the state (Батычко, 2011) (Идрисов, 2000).

The question of establishing the borders of the state is important in the international legal regulation of the status of the state territory. Thus, the state border means the line and the vertical surface passing over it which determines the limits of the state territory (land, water, subsoil and airspace) (Копылов i Кузнецовым, 2010).

In turn, A.N. Vylegzhanin and N.N. Shapovalova notes that to determine the borders of certain territories the states conclude international treaties. The state borders on land are established along the lines of the relief or clearly visible landmarks. On the rivers state borders are determined in the middle of the main fairway or thalweg (by the line of the greatest depths), if the river is navigable, or in the middle of the riverbed if the river is unnavigable. On the lakes, the state border is a line connecting the access of the land border to the lake shores. The outer limit line of the territorial

sea boundary line shall be the state border in the sea (Шаповалова, 2004) (Кривчикова і Колосов, 2009).

Chekanov V.E. points out to the features of the status of the state border (Чеканов, 2014):

- first, the status of the state border is the main part (core) of the legal status of the state border determined by international and national law;
- secondly, the status of the state border determines the spatial limit of the state sovereignty and territorial jurisdiction of the public authorities;
- thirdly, the status of the state border determines the jurisdiction of the public authorities in the border sphere, including the security and defense of the state border.

Based on the ways of recognition of the border line between the neighboring countries, there are two kinds of state borders: historically and contractually established. The historically established borders are those state borders which exact position has not been determined and fixed in the treaties with the neighboring states, but which have for a long time been observed in practice and somehow recognized by the neighboring states. Those borders, which line is marked in the area and described in the relevant international instruments mutually recognized by the neighboring countries are considered to be contractually established borders (Маккамбаев, 1997; 1995).

When analyzing the status and problems of regulating relations of the states in the establishment of state borders, M.V. Buromensky draws attention to the following. He notes that because the main subjects of possessing the territory in the modern world are the states, the international law mainly relates to states' rights of possession, use or disposition. Thus, the basic principles of public international law embodied in the UN Charter include: the principle of territorial integrity (Article 2 paragraph 4); the principle of peaceful settlement of international disputes (Article 2 paragraph 3), including territorial; principle of banning use of force or threat of force (Article 2 paragraph 4). At the regional level, the states often broaden and deepen these principles (Буроменский, Кудас, Маевская, Семенов, і Стешенко, 2005).

As for the states of the region under analysis, it should be noted that the current cooperation of Central Asian countries is based on two important statutory international treaties: the Tashkent Statement of Heads of State of the Republic of Kazakhstan, the Republic of Tajikistan and the Republic of Uzbekistan dated December 28, 2001 and the Agreement between the Republic of Kazakhstan, the Kyrgyz Republic, the Republic of Tajikistan and the Republic of Uzbekistan on the establishment of the organization Central Asian Cooperation dated February 28, 2002 (Гаврилова, 2006; Здравомыслов, 1997).

However, B. Sanginov notes that border problems existing in the region, having not found mutually beneficial solutions, significantly enhance the conflict potential in Central Asia. The unresolved border settlement raises not only issues of delimitation and demarcation, determination and introduction of the regime of borders, but also requires a solution to the major ethnic problems, because large diasporas of people live in each state on different sides of the new Central Asian states as an enclave inclusions, that results in the delimitation of the borders to ethnic tensions. Transparent borders of new states of Central Asia have become the gateway of smuggling, drug trafficking, extended illegal migration undermining national security (Сангинов, 2016). Drugs, weapons and refugees are crossing the border between Tajikistan and Afghanistan. Kazakhstan and Kyrgyzstan are not stopping the flow of illegal Chinese goods. In frustration, some governments have taken unilateral action. Uzbekistan, attempted to reinforce its borders with Kyrgyzstan and Tajikistan by introducing much stricter controls, building fences, and laying deadly land mines. The results were deaths, loss of family ties, and disruption in trade (Weinthal i Luong, 2002). Particular attention is drawn to the process of settling border conflicts and relations in the field of the delimitation and demarcation of state borders of the Central Asian states and China.

In particular, it should be noted that in 1993 the Committee was formed to discuss and develop draft agreements on border issues. This Committee was set up within the Working Group established in accordance with the Agreement signed in September 1992 during the negotiations with China on the establishment of a joint delegation of the governments of Kazakhstan, Kyrgyzstan, Russia and Tajikistan to continue border negotiations with PRC (Джекшенкулов, 2009). Currently the legal status of disputed

areas of the border between China and Central Asian countries is actually determined. The relevant agreement between Kazakhstan and China was reached in November 1999. As a part of settling disputed areas, as a result of a decade of efforts Kyrgyzstan signed the protocol with China on demarcation of the state border on May 10, 2002. In turn, the agreement between Tajikistan and China was reached in early 2011; the complexity and duration of the process of its adoption are explained primarily by the size and length of the borders of the territories subject to disagreements on their belonging. In particular, China had claims to more than 300 km of the Tajik-Chinese border; the area of the disputed territories was 28 thousands of 34 thousand sq. km of the total area of disputed territories between PRC and Central Asian states (Бобокулов, 2011).

As for Kazakhstan, the formation of its state borders was greatly influenced by the history of the state. During the existence of the Kazakh statehood, since the 15th century, the borders gradually turned from “natural” into “artificial” (contractually established). Speaking of the Kazakh-Chinese relations on the formalization of borders, the importance of the three documents should be noted, which have consolidated the position of the state border between Kazakhstan and China. These include the Russian-Chinese treaties of the 19th century: (Старожилова, 2004)

- the Beijing Supplementary Treaty dated November 2, 1860 (determines the general direction of the border);
- the Chuguchak Protocol (Treaty of Tarbagata) dated October 25, 1864 (determines running of the border by geophysical landmarks);
- the St. Petersburg Treaty (Treaty of Ili) dated February 12, 1881 (specifies running of the border in the area of Lake Zaisan (Zhetysu) and returned the Ili region with its center in the city of Yining to China) (Каламқарян і Мигачев, 2004).

Meanwhile, there was a conflict between China and Kazakhstan, after gaining independence by the latter, in relation to the two disputed areas of the common border. The first disputed area – in Sarychildy River area (the Alakol district of the Almaty region with the total area of 315 sq. km of the mountainous terrain with altitudes ranging from 1,800 to 3,600 m). The second disputed area is located in the mountain passes of Chogan-Obo and Baymurza (the Zaisan district of the East Kazakhstan region) with a total area of 629 sq. km. The terrain in the area of mid-mountain

with the prevailing altitudes of 1,800 and 2,500 m is strongly dissected by tributaries of the Chogan-Obo and the Keregentas. As a result of negotiations, during which each side provided its arguments, it was decided that the area in the Alakol district to be assigned to China, including right bank of Sarychilydy River. A large part of the area in Zaisan district was assigned to Kazakhstan. Two Supplementary Agreements were concluded between the Republic of Kazakhstan and the People's Republic of China on the Kazakh-Chinese border on 04.07.1998 and on 24.09.1997.

As for the border conflicts and the process of delimitation and demarcation of borders between the Central Asian countries themselves, it should be noted that the basic contradictions were laid as far back as in the period of 20–30's of the 20th century. In particular, the matter is about the following features of the establishment of borders (Шарипов, 2004):

- predominance of imperative administrative methods of establishing the borders of the Union republics without regard to the national ethnic and cultural features;
- urging towards simplifying the border thereby creating the opportunity to seize additional territories from neighboring states;
- lack of the actual demarcation of borders in order to continue to use this as an excuse to laying down territorial claims to the neighboring states.

Currently, the experts estimate 60 to 120 disputed areas at the Uzbek-Kazakh, Kyrgyz-Tajik, Uzbek-Turkmen and other borders. As for Kyrgyzstan and Tajikistan, there are about 70 disputed areas at their border. They are located mainly in the Leilek district of the Osh region, the Batken region (Kyrgyzstan) and the Isfara district of the Sughd region and the Jirgital district (Tajikistan). The process of border delimitation between the two countries is at an early stage of its development. On the territory of Kyrgyzstan there is a relatively not large plot of land (130 sq. km) which belongs to the Isfara district of the Sughd region of Tajikistan – an enclave Vorukh with the population, according to various estimates, from 23 to 29 thousand people, 95% of them are Tajiks, 5% are Kyrgyz. The processes occurring in this area are poorly traceable that creates a fertile ground for the spread of radical sentiments (Азимов, 2004) (Абдулаев, 2000; Абдулаев, 2000).

The tensest situation has developed in establishing borders between Uzbekistan, Kyrgyzstan and Tajikistan, especially in the Fergana Valley. At the present stage the relevant commissions have been created for delimitation and demarcation, however the meetings of the members of these committees are held very rarely, besides it is very difficult to reach compromise (Табышалиева, 2010). There are a number of border disputes concerning the belonging of border areas, as well as the lines of border running. The situation is complicated by the interplay of various factors that worsen the relations between the states. One of the weightiest reasons of such complicated relations between the countries in the region is the varicolored ethnic and religious structure of the population. The reason lies in the national and territorial delimitation of 1924, as the mismatch of the ethnic and state borders has led to the fact that large communities of other titular ethnic groups in the region live in all the republics (Игнатъев, 2006).

There are plenty of local conflicts due to clash of ethnic populations at the borders. The first riots occurred in 1990 in the south of Kyrgyzstan. Concentrated in the city of Osh and the nearby town of Uzgen, the Kyrgyz and Uzbek population clashed, causing deaths of 200 people (Tishkov, 1999). Against the background of numerous problems along the perimeter of the borders – in the Batken region of Kyrgyzstan and the Soghd region of Tajikistan. The causes of these conflicts are, as a rule, the unsettled inter-state relations in the field of shared use of natural resources and incomplete process of the establishment of the state border line (Сангинов, 2016).

Delimitation of waters of the Aral Sea and the Caspian Sea¹ became problem in the relations of Kazakhstan and Turkmenistan with the neighboring countries. In particular, the problem of delimitation of the subsoil of the Caspian Sea shelf rich in oil and gas remains unsettled between Turkmenistan and Azerbaijan. The deposits of oil and natural gas in the Caspian Sea are valuable due to their concentration and abundance – 17–33 million barrels, comparable to all oil reserves in the North Sea (O’Lear, 2004). For a long time there were negotiations between the Caspian states on the status of the Caspian Sea – Azerbaijan, Kazakhstan and Turkmenistan insisted on the division of the Caspian Sea by the midline,

¹ Till today there is a discussion whether Caspian Sea is a “sea” (and should the United Nations Convention on the Law of the Sea apply) or just a lake.

Iran – on the division of the Caspian Sea into five equal parts between all the Caspian states (Гумбаров, 2009). At the present stage only three countries – Kazakhstan, Russia and Azerbaijan – agreed on point of intersection of the lines of delimitation of the Caspian seabed (on May 14, 2003), having established the limits within which the parties exercise their sovereign rights in the field of exploration and extraction of mineral resources. This situation is indicative of mismatch of the positions of Turkmenistan and Iran with these countries in the Caspian Sea delimitation (Стащук, 2011). Despite the lack of formal agreement between the five states, all have proceeded with exploration, drilling, and extraction of Caspian oil based on bilateral resource use agreements. These agreements, as an alternative to militaristic enforcement of state's view, have created a secure environment for investment (O'Lear, 2004).

Summing up, attention should be paid to a number of features of the establishment of state borders and their current status in the region of Central Asia.

First, attention is drawn to the succession of the republics formed after the collapse of the Soviet Union, not only the heritage of control over the state borders of the Soviet period, but also the tradition of international relations during the period of independent of the Central Asian states from Russian Empire. For example, Kazakhstan, trying to revive its statehood, in the settlement of a number of border disputes takes into account the agreements concluded by it with neighboring states before its inclusion in the Russian Empire.

Secondly, most of the border conflicts between the states of Central Asia after gaining their independence, arises due to the heritage of the imperative of establishing the borders of the Union republics as part of the USSR. So, when establishing borders often cultural, ethnic, historical, national interests were not taken into account. Moreover, reverse processes took place: the desire to level the national identity and the attempt to gain statehood, creating few centers of influence controlled by rival elites within a union republic.

Thirdly, the problem lies in a large number of ethnic enclaves in the territory of the neighboring states, which are home to a significant number of national minorities of the neighboring countries. This raises the risk of

a plebiscite and the use of other more aggressive instruments of territorial claims by the neighboring states.

All this creates the need to continue the political dialogue and seek the ways to solve the problem of state borders in the region in order to reduce the risk of military confrontation. However, it should be noted that to date that the problem of border demarcation has also become urgent.

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