Позитивные аспекты изучения международного опыт в разрешении водно–энергетических проблем в контексте Центральноазиатского региона

Хасанов Улугбек Атабаевич

Заведующий кафедрой Международных отношений Университета мировой экономики и дипломатии

Positive Learning from Global Lessons in Addressing Water and Energy Problems in the context of Central Asian Region

Khasanov U.A.

"Extremely adverse ecological environment, the continuing drying of the Aral Sea and the happening humanitarian disaster around it, a shortcoming and decline in quality of drinking water, growth of dangerous diseases is only a short list of consequences of the Aral tragedy. Uzbekistan firmly adheres to a principled stance concerning management of hydroelectric resources in Central Asia. These issues have to be resolved according to the universally recognized norms of international law guaranteeing rational and equitable distribution of water resources and providing accounting of interests of all states of the region". (From the Performance of the Minister of Foreign Affairs of the Republic of Uzbekistan A. Kamilov at the general debate of the 71st session of the United Nations General Assembly on 24.09.2016)

It is worth remembering the leading countries of the world in the solution of similar complex problems as we have in Central Asia. The Great Lakes (the USA, Canada) the Great Lakes / Great Lakes/ (the USA, Canada) include group of 5 lakes in east part of North America, in a river basin of Saint Lavrenti.

The Great Lakes have the total length of the coastline about 18 000 km, the area of a water mirror – 245 200 sq.km. The area of the basin of the Great Lakes is estimated at 768 000 sq.km (including the area of lakes). The volume of water is about 22 725 km3. Several hundreds of the small rivers flow into the Great Lakes, the drain comes from lakes down the river St Lawrence following from Lake Ontario) and flowing into the Atlantic Ocean. An average consumption of water in a source – about 6640 m3/sec. Waters of the Great Lakes have a small mineralization (from 0.06 to 0.13 g/l). 170 species of fish are found in lakes Bol (karpovy, okunevy, salmon, sigovy, trout, etc.). From the South and the southeast the Great Lakes are adjoined by densely populated industrial areas, from the North and the West – the raw–material producing regions of the USA and Canada. The basin of the Great Lakes – one of the largest water–collecting systems on the planet; contains 18% of world reserves of fresh waters.

The main legal base for cooperation on water questions between Canada and the USA is the frame Contract between the USA and Canada on cross–border waters of 1909, and the basic structure provided by this contract – the American–Canadian International Joint Commission (IJC) on boundary waters. The IOC consists of representatives of Canada and the USA, has powers to estimate a quantitative and qualitative condition of reservoirs along the international border. So, in other Contract (of 1944) it is recorded that "boundary waters – the invaluable resource belonging to the people of Canada and the USA" and that the governments of both countries "bear responsibility for management of these resources and ensuring safe and plentiful supply with clear water".

The commission has large powers. The contract on boundary waters between the USA and Canada successfully works 1909 till today and, depending on a situation, the umbrella Contract is supplemented with new provisions.

The article VII of the Contract of 1909 provides creation and maintenance of activity of the constant Canadian–American International Joint Commission (IJC) consisting of 6 members on a parity basis – on 3 from each Party.

The commission isn't body of the government, and members of the commission don't represent the governments which appointed them, don't receive from them the instruction and aren't accountable to them, i.e. are independent in decision–making.

The article XII of the Contract obliges members of the commission to carry out the duties impartially. Independence of members of the commission is confirmed also by the diplomatic immunity of the Commission against trials in both countries. Actually members of the commission can be deprived of the powers only by the Agreement between two countries.

The commission functions as collegial body for the benefit of both countries. The commission is allocated a number of advantages, first of all – it isn't body for negotiations between the governments of the Parties, and it allows to avoid shortcomings of this process. The commission is obliged to be impartial in studying the questions and to find the solutions, which are competitive over national interests.

The parity of membership guarantees equality of parties concerned, and continuous functioning of the Commission exempts her from instructions of the governments of the Parties on decision–making that would be required in case of judicial proceedings, and from political pressure. The bilateral mandate of the Commission helps her to avoid the procedure of settlement of controversial issues with involvement of the third party.

The main objective of the Commission consists in prevention and settlement of disputes between Canada and the USA. For implementation of the tasks, the Commission performs the following 3rd main functions: – The first function – pseudo–judicial.

The commission has the right to operate applications for any new use, an obstacle or an intake of water in one country because of which change of natural water level or volume of a drain in other country is supposed. For decision–making, the Commission usually creates previously council for consultation on problems, which arise on a case in point; – The second – advisory.

The commission has powers on management of applications for construction of any constructions, dams or other obstacles on the rivers if these projects raise natural water level on other side of the border in the country above on a current.

For decision–making on advisory functions, the Commission also creates council for consultation on the considered problems.

Decisions of the Commission on the first two of his functions (pseudo–judicial and advisory) are final and obligatory for execution;

– The third function – arbitration.

The commission considers any controversial issue referred to it by the governments of the Parties. Council and the consent of the Senate of the USA are required before the U.S.

Government is able to begin the given legally obligatory arbitration process.

In 100 years of the Commission was any resolved issue and any lawsuit on the matter hasn't been submitted.

The applicable international law for water resources of the border area between the

USA and Canada is established also according to provisions of the Contract of 1909.

All decisions are made based on consensus, and many experts consider this fact undoubted achievement. Equality of membership theoretically could lead to division of opinions equally and to creation of an impasse. However, for 100 years, opinions of members of the commission were shared on the national line only in two cases from 117, but also in these cases, consent was reached.

Other feature of procedures of the Commission consists in joint investigation.

As it is stated above, on pseudo–judicial and advisory affairs the Commission creates the Advisory Councils for consultation consisting of the equal number of the members from each country representing federal, provincial or from states of the organization or the private sector. The unspoken rule works that the member of council acts on the basis of professional and personal qualities, but not as the representative of the government or organization. As well as the Commission, Councils seek to work at a consensus basis. This method of joint consideration of controversial issues of the interstate relations is more reliable and effective, than any other, used at settlement of controversial issues by the third party or at negotiations.

For the solution of problems with pollution of waters, in the first half of 1990 the USA and Canada have developed Strategy of protection of the Great Lakes against pollution by toxic substances, which has begun to be implemented since 1997. Strategy includes the actions connected with replacement of highly toxic chemicals in industrial cycles on low toxic with full refusal of the substances representing risk for human health and the environment. According to experts, Strategy makes the significant contribution to decrease and elimination of content of toxic chemicals in an ecosystem of the Great Lakes or at negotiations.

Unfortunately, the solution of many problems of politics, including international ones, is of a specifically situational nature, if necessary, that is, it depends on the specific circumstances. That is why there is a considerable part of the truth in the words of Reynold Niebuhr that the most significant feature of the state is hypocrisy (Reinhold Niebuhr On Politics, P. 88).

In international relations, there is no supreme body that would render its unconditional sentences about the legitimacy of certain actions of states. The UN and its decisions have recommendations, not mandatory, for member states. The judge of their actions and demands remains, in fact, the states themselves, and in relations between them there is no basis for a publicly legal situation similar to the domestic one.

"A state that has the ability not to obey any external laws," wrote Kant, "will not put into dependence on the court of other states the way in which it defends its rights with respect to them ..." (Kant I. To the Eternal World. 175). That is why, he continues, all variants of the theory of law are spreading, as a rule, into insufferable, unrealizable ideals.

Of course, since Kant the situation has changed, and today the states are anyway forced to conform the actions on the world scene with court of other states, with the Charter of the UN, but nevertheless not to such an extent since the MT system continues to keep in many respects facultative character as opposed to opinion that the priority over the internal law has international law. Unfortunately, practice of MO doesn't give the grounds to consider the existing international law as the reliable guarantor of safety and peaceful coexistence of the states. Moreover, it not only cannot serve as such guarantor, but also itself often needs guarantees. The international law is based upon the contracts containing already in the act of their conclusion a pretext for the violation. The idea of international law assumes and proceeds from existence and confrontation of many of the states not dependent from each other. The same situation if is not a state of war, then, at least, his constant prerequisite.

Really, the central international legal principle designed to ensure, apparently, the peace and safety is the refusal of use of force in the international relations which is legally recorded in 1928 in Bryan–Kellogg's pact and then repeatedly confirmed in various international legal documents, including the Charter of the UN. This principle, however, was not observed and not observed in practice everywhere not because of formal disagreement of the states with him (on the contrary, in words all act as his advocates), and due to the lack of real prerequisites for his implementation. We will add to them also absence of a certain world executive power with strictly binding powers, similar to that which within the state guarantees to the citizens the world and safety.

Thereof the international legal order depends actually on good will of the states.