

**Promoting Transboundary
Water Security in the
Aral Sea Basin through
International Law**

Dinara Ziganshina

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By

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Promoting Transboundary Water Security in the Aral Sea Basin
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Foreword

Addressing the world's imminent water crisis requires new thinking, new approaches, and innovation across the board. We are fortunate to have this new scholarship which explores how international law contributes to trans-boundary water cooperation. As one of the most pressing issues of contemporary society, how we manage our diminishing quantities and quality of freshwater resources will determine the health and wealth of communities all around the world.

Dr. Dinara Ziganshina in this monograph, *Promoting Transboundary Water Security in the Aral Sea Basin through International Law*, tackles a number of critical challenges with thoughtful insights and ambitious aims. How to 'make international water law work' in the context of the Aral Sea, taking into account the extra-legal aspects of international law – well, this is a mammoth and courageous undertaking! If only to appreciate how such a complex set of problems can be identified, analysed and presented in a coherent manner, readers are strongly encouraged to deeply consider Dr. Ziganshina's study.

The Aral Sea basin, shared by Afghanistan and five post-Soviet republics of Central Asia – Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan, presents one of the most challenging case studies for exploring water security. Its geo-political situation, combined with water quality and quantity issues, and the upstream-downstream challenges in this region present a complex matrix of problems. Dr. Ziganshina grapples with these, introducing an innovative legal analytical framework for rigorously considering the issues arising in the Aral Sea – offering 'a more dynamic and systemic picture of international water law in the Aral Sea basin'. Her work, however, has broader application, offering a multi-dimensional legal lens through which we can assess transboundary water-related problems around the world and it is this contribution that is the most significant.

One of the persistent criticisms of international law, generally, is its (alleged) lack of effectiveness. Dr. Ziganshina tackles this challenge through locating the analysis beyond the 'compliance' dimension of international law. Instead, she locates the analysis of the effectiveness of international water law within a nested framework that evaluates norms and processes, which she considers together determine how international law works in practice.

It is Dr. Ziganshina's interface of legal and socio-legal research that marks this work as a unique contribution in this field. Introducing two strands of analysis through legal norms (determinacy and stringency) and through legal

processes (inclusiveness, transparency, discursiveness, and coherence), this study presents a framework for analysis that forces us to look beyond the static structures of treaties. Focussing on this combination of norms and processes crystallises the essence of international law; applying such an approach to the complex case study of the Aral Sea provides a unique opportunity to test her analytic approach. It is a difficult test, but this makes it all the more fascinating. Analysing legally relevant behaviour and legal consciousness provides a substantive context for considering how *legal relationships* are developed – a core theme of this study. Without functional international relationships, the global community is left bereft of effective avenues for meaningful engagement. Dr. Ziganshina posits that the true purpose of international law is to build these relationships and it is in this context that legally relevant behaviour and legal consciousness – the *process* elements – are so important. Indeed, the role of law in water diplomacy efforts must consider more than the collective body of treaty and customary norms – how States and key actors act and engage are a necessary part of the picture and may determine the quality of the final outcomes.

This comprehensive study closes with recommendations for policy-makers and practitioners in an attempt to provide guidance on 'how to make international water law work'. This pragmatic orientation aligns with the key purpose of the study and draws together the key findings of the scholarship. Importantly, these observations are then considered in a more generic sense in a convincing way. Clearly this study has broader application and it would be interesting to see how this applies in other parts of the world where transboundary water cooperation remains elusive.

On another note, I would like to raise a specific issue, which has been highlighted for me recently through a novel workshop convened by the Asian Development Bank (Manila, February 2014), that focused on a topic that fails to receive the attention it merits – the role of women in the water sector. Dr. Ziganshina, as a young woman has demonstrated the perseverance, commitment and diligence required for high scholastic achievement. This is a significant accomplishment in *many* respects that requires full recognition and high commendation. I have completed this foreword around the time of International Women's Day (8 March) and would like to formally congratulate Dr. Dinara Ziganshina on her considerable and most important contribution to the field of water – she is making the world a better place for us all. Women in water – something we need to applaud, support and encourage.

It has been my sincere pleasure and honour to be provide this foreword – Dr. Dinara Ziganshina provides us all with inspiration for the future. I already look forward to her next major work in this field.

Dr. Patricia Wouters

Xiamen Law School – China International Water Law Programme

University of Dundee Centre of Water Law, Policy and Science, under the
auspices of UNESCO

Preface

I have been engaged in transboundary water interactions in Central Asia since 2003. As a lawyer I was in the minority and most of the time had to explain to people with technical background the basics of international law and its relevance to addressing transboundary water issues in the region. The most frequently asked questions had to deal with practical relevance and effectiveness of international water law. Intention to answer these hard practical questions in a systematic and comprehensive way brought me to the best possible place – to the IHP-HELP Centre for Water Law, Policy and Science under the auspice of UNESCO, University of Dundee (UK) – where, thanks to a grant from the Scottish Government, I pursued my PhD research. I examined international water law in the Aral Sea basin shared by Afghanistan and five post-Soviet countries of Central Asia (Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan) by posing the question, ‘How does international law work in addressing transboundary water challenges in the Aral Sea basin?’ This book presents the results of this study.

I would like to thank all those who gave me the opportunity to pursue PhD research in Dundee and those who accompanied me on this journey. I warmly thank all staff, past and present, at the IHP-HELP Centre for Water Law, Policy and Science, and especially my supervisors Professor Patricia Wouters and Dr. Alistair Rieu-Clarke for being supportive and encouraging throughout the process, and also Dr Sarah Hendry for her irreplaceable heartiness and understanding. My special thanks go to fellow PhDs – Bjørn-Oliver Magsig, Hugo Tremblay, Musa Abseno, Mohamad Al Afghani, Ana Maria Daza Vargas, Tran Tran, Jing Lee and Yumiko Yasuda – whose company I enjoyed for three years and whose friendship will cherish even though we are separated by distance now.

I owe a very particular debt of gratitude to members of my thesis examination committee composed of Professor Stephen McCaffrey, Dr. Sergei Vinogradov and Dr. Melaku Geboye Desta. It was a great honor and an enormous pleasure to be examined by such a panel.

Most especially, I thank my family for being with me, for being mine, for being so special and supportive. Still, my deepest thanks go to Professor Victor A. Dukhovny – my mentor and critic – for giving me, among many other things, confidence in myself.

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List of Abbreviations

ADB	Asian Development Bank
ASBP	Aral Sea Basin Programme
BWO	Basin Water Organisation
CA	Central Asia
CAREC	Central Asia Regional Economic Cooperation
CARs	Central Asian Republics
CAREWIB	Central Asia Regional Water Information Base
CIS	Commonwealth of Independent States (or Commonwealth)
COP	Conference of the Parties
EC IFAS	Executive Committee of the International Fund for Saving the Aral Sea
ECO	Economic Cooperation Organisation
EIA	Environmental Impact Assessment
ESIA	Environmental and Social Impact Assessment
EU	European Union
EurAsEC	Eurasian Economic Community
GIZ	German Technical Cooperation
HPP	Hydroelectric Power Plant
IFAS	International Fund for Saving the Aral Sea
ICJ	International Court of Justice
ICWC	Interstate Commission for Water Coordination in Central Asia
ICSD	Interstate Commission for Sustainable Development
IFIs	International financial institutions
ILA	International Law Association
ILC	International Law Commission of the United Nations
ILM	International Law Materials
IWRM	Integrated Water Resources Management
GW	Gigawatt
GWh	Gigawatt-hour
KWh	Kilowatt-hour
MEA	Multilateral Environmental Agreement
MDG	Millennium Development Goals
MOP	Meeting of the Parties
MW	Megawatt
NGO	Non-governmental Organisation
OECD	Organisation for Economic Cooperation and Development
OM	Operations Manual

PCIJ	Permanent Court of International Justice
RETA	Regional Technical Assistance
SCO	Shanghai Cooperation Organisation
SEA	Strategic Environmental Assessment
SIC	Scientific Information Centre
TEAS	Techno-Economic Assessment Study
UN	United Nations
UNDP	United Nations Development Programme
UNECE	United Nations Economic Commission for Europe
UNEP	United Nations Environmental Programme
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UNTS	United Nations Treaty Series
USSR	Union of Soviet Socialist Republics
WHO	World Health Organisation

Table of International Treaties and Other Instruments

1909

Treaty between Great Britain and the United States Relating to Boundary Waters, and Questions Arising between the United States and Canada, Washington (adopted 11 January 1909, entered into force 5 May 1910) 36 Stat 2448.

1931

Treaty between the Union of Soviet Socialist Republics and Afghanistan of Neutrality and Non-Aggression (signed 24 June 1931) 157 UNTS 371.

1944

Treaty between the United States of America and Mexico Relating to the Utilization of the Waters of the Colorado and Tijuana Rivers, and of the Rio Grande (Rio Bravo) from Fort Quitman, Texas, to the Gulf of Mexico, Washington (adopted 3 February 1944, entered into Force 8 November 1945) 3 Unts 314.

1946

Statute of the International Court of Justice (18 April 1946) annexed to the Charter of the United Nations.

Frontier Agreement between Afghanistan and the Union of Soviet Socialist Republics (Including Exchange of Notes), Moscow (signed 13 June 1946, entered into force 17 January 1947) 31 UNTS 158.

1958

Treaty between the Government of the Union of Soviet Socialist Republics and the Royal Government of Afghanistan Concerning the Regime of the

Soviet-Afghan State Frontier (with Annexes and Protocols), Moscow (signed 18 January 1958) 321 UNTS 166 (1959).

Protocol between the Union of Soviet Socialist Republics and Afghanistan on the Joint Execution of Works for the Integrated Utilization of the Water Resources in the Frontier Section of the Amudarya, Kabul (signed 25 June 1958).

1960

Treaty between India and Pakistan Regarding the Use of the Waters of the Indus (adopted 19 September 1960, entered into force 1 April 1960) 419 UNTS 125 (1960).

1964

Convention and Statutes relating to the Development of the Chad Basin (signed 22 May 1964, entered into force 15 September 1964).

Agreement concerning the River Niger Commission and the navigation and transport on the River Niger (signed 25 November 1964, entered into force 12 April 1966) 587 UNTS 19.

1966

Agreement (with final protocol) regulating the withdrawal of water from Lake Constance (signed 30 April 1966, entered into force 25 November 1967) 620 UNTS 191.

1968

Agreement between the Union of Soviet Socialist Republics and Afghanistan on Economic and Technical Co-Operation During the Period 1967–1972 (with Annexes) (signed 6 February 1968) 31 UNTS 124 (1970).

1969

Convention on the Law of Treaties, Vienna (adopted 23 May 1969, entered into force 27 January 1980) 8 ILM 679.

1971

Agreement between Finland and Sweden Concerning Frontier Waters (signed 15 December 1971, entered into force 1 January 1972).

Convention on Wetlands of International Importance Especially as Waterfowl Habitat, Ramsar (adopted 2 February 1971, entered into force 21 December 1975) 996 UNTS 245.

1976

Agreement for the Protection of the Rhine Against Chemical Pollution (signed 3 December 1976) 1979 UNTS 406.

1978

Convention on Succession of States in Respect of Treaties Vienna (adopted 23 August 1978, entered into force 6 November 1996) 1946 UNTS 3 (1978).

Agreement between Bangladesh and India on Sharing of the Ganges Waters at Farakka (signed 5 November 1977) 17 ILM 103 (1978).

Treaty of Friendship, Good-Neighbourliness and Co-Operation, Moscow (signed 5 December 1978) 1145 UNTS 133 (1979).

1980

Convention Creating the Niger Basin Authority, Faranah (signed 21 November 1980).

1982

UN Convention on the Law of the Sea (adopted 18 December 1982, entered into force 16 November 1994) 21 ILM 1261(1982).

1991

UNECE Convention on Environmental Impact Assessment in a Transboundary Context, Espoo (adopted 25 February 1991, entered into force 10 September 1997) 30 ILM 800 (1991).

1990

Agreement between Niger and Nigeria concerning the Equitable Sharing in the Development, Conservation, and Use of their Common Water Resources (signed 18 July 1990) <<http://www.fao.org>>.

1992

Agreement on Interaction in the Field of Ecology and Environmental Protection, Moscow (signed 8 February 1992; all CARs are parties).

Agreement between the Republic of Kazakhstan, the Kyrgyz Republic, the Republic of Tajikistan, Turkmenistan, and the Republic of Uzbekistan on Cooperation in the Field of Joint Management of the Use and Conservation of Water Resources of Interstate Sources, Almaty (signed 18 February 1992).

UNECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes, Helsinki (adopted 17 March 1992, in force 6 October 1996) 31 ILM 1312.

UNECE Convention on the Transboundary Effects of Industrial Accidents, Helsinki (adopted 17 March 1992, entered into force 19 April 2000) 31 ILM 1330 (1992).

UN Framework Convention on Climate Change, New York (adopted 9 May 1992, entered into force 21 March 1994) 31 ILM 849.

UN Convention on Biological Diversity, Rio de Janeiro (adopted 5 June 1992, in force 29 December 1993) 31 ILM 818.

Declaration of the UN Conference on Environment and Development (Rio De Janeiro, 13 June 1992) *in Report of the United Nations Conference on Environment and Development*, Annex I, UN Doc a/Conf.151/26 (Vol. I) Reprinted in 31 ILM 876 (1992).

Agenda 21: A Programme for Action for Sustainable Development (Rio De Janeiro 13 June 1992) *in Report of the United Nations Conference on Environment and Development* Annex Ii UN Doc a/Conf.151/26 (Vol Ii) (1992), Rio de Janeiro.

Convention for the Protection of the Marine Environment of the North-East Atlantic, 32 ILM 1069 (1992).

Statute of the Interstate Commission for Water Coordination in Central Asia (ICWC), Tashkent (approved 5 December 1992 by ICWC members).

1993

Agreement between the Republic of Kazakhstan, the Kyrgyz Republic, the Republic of Tajikistan, Turkmenistan, and the Republic of Uzbekistan on

Joint Actions for Addressing the Problems of the Aral Sea and Its Coastal Area, Improving the Environment, and Ensuring the Social and Economic Development of the Aral Sea Region, Kzyl-Orda (signed 26 March 1993).

Charter of the Commonwealth of Independent States, Moscow (adopted 22 June 1993) 34 ILM 1279 (1995).

North American Agreement on Environmental Cooperation (signed 14 September 1993, entered into force 1 January 1994) 32 ILM 1480 (1993).

1994

UN Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, Paris (adopted 14 October 1994, entered into force 26 December 1996) 33 ILM 1328.

1995

Issik-Kul Declaration on Regional Cooperation between the Central Asian States, Issik-Kul (adopted 1995).

Nukus Declaration of the Central Asian States and International Organisations on the Problems of Sustainable Development in the Aral Sea Basin, Nukus (adopted 5 September 1995).

Agreement on the Cooperation for the Sustainable Development of the Mekong River Basin (signed 5 April 1995) 34 ILM 864 (1995).

1996

Agreement between Turkmenistan and the Republic of Uzbekistan on Cooperation over Water Management Issues Chardjev (signed 16 January 1996).

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 Fuel and Water Resources, Construction and Operation of Gas Pipelines in Central Asian Region, Tashkent (signed 5 April 1996).

Agreement between the Government of the Republic of Kazakhstan, the Government of the Kyrgyz Republic, the Government of the Republic of Tajikistan and the Government the Republic of Uzbekistan on Joint Activities on the Rehabilitation of the Tailings and Rock Dump That Have Transboundary Effect, Tashkent (signed 5 April 1996).