

# ACADEMIC EVENTS ACADEMIC EVENTS: CENTRAL ASIAN INTERNATIONAL LEGAL FORUM



Overview

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## **First Central Asian International Legal Forum (Moscow, 22 January 2023): Problems of Central Asia as a Factor of Political, Economic and Scientific Integration**

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Central Asia is a very important region of Eurasia, cradle of ancient civilization and high culture, birthplace of the Turkish and Iranian people, transport artery connecting the east and west of the continent, intersection of the history of Russia, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan. The international relations of the states of Central Asia have been dynamically developing in recent years; along

with positive trends (new forms and fields of Eurasian integration, growth of mutual trade, intensification of cross-border cooperation), there are several pressing problems (conflicts over borders and water resources, etc.). International law, both general and regional, should be the main instrument for developing these trends and, more generally, for strengthening friendly relations between the states and peoples of the region. International legal doctrine in its turn should pay close attention to these issues. Guided by this agenda, Kutafin Moscow State Law University (MSAL) and the Moscow State Institute of International Relations (MGIMO University) decided to hold the First Central Asian International Legal Forum.

The Forum was held on 26–27 January 2023. It hosted over 300 experts in the field of international law, representing universities, government bodies, non-government organizations and companies from Russia, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, Azerbaijan, Iran, Mongolia and China. The Forum was also attended by high embassy delegations from Kazakhstan, Uzbekistan and Iran. The guests of the Forum were welcomed by Deputy Minister of Science and Higher Education of the Russia Konstantin Mogilevsky, Rector of the Kutafin University Viktor Blazheev, Vice-Rector for Research of MGIMO University Andrey Baikov, Chairman of the Court of the Eurasian Economic Union Erna Airiyan, President of the Russian Association of International Law Anatoly Kapustin, Deputy Director of the Legal Department of the Ministry of Foreign Affairs of Russia Inna Kotkova.

The participants of the discussion organized within *the first part of the plenary session* of the Forum were:

— Bekbosun I. Borubashov (Kyrgyzstan), Doctor of Law, Professor of the Department of International and Constitutional Law of the Kyrgyz-Russian Slavic University, Advisor to the President of the Kyrgyz Republic;

— Saitumbar A. Rajabov (Tajikistan), Doctor of Law, Professor, Head of the Department of International Law of the Institute of Philosophy, Political Science and Law of the National Academy of Sciences of Tajikistan;

— Akmal Kh. Saidov (Uzbekistan), First Deputy Speaker of the Legislative Chamber of the Oliy Majlis of the Republic of Uzbekistan, Vice-President of the Inter-Parliamentary Union (IPU), Academician, Doctor of Law, Professor;

— Marat A. Sarsembaev (Kazakhstan), Doctor of Law, Professor of the Department of International Law of the Eurasian National University, member of the Scientific Advisory Board under the Constitutional Council of the Republic of Kazakhstan.

In his speech, *Bekbosun Borubashov* spoke about the features of the international legal policy of Kyrgyzstan. The main principles of Kyrgyzstan's foreign policy are openness, consistency, multi-vector approach, pragmatism and equilibrium. In recent years, Kyrgyzstan has been paying great attention to the problem of delimitation of state borders and protection of priority state interests. The latter include international security, sustainable development and protection of human rights, including the rights of migrant workers. Kyrgyzstan maintains diplomatic relations with 170 states. It effectively cooperates with neighboring states, Eurasian states (including Russia) and other states and international organizations. Kyrgyzstan is a party to 2,700 bilateral treaties and a number of multilateral conventions. It is a member of 70 international organizations. The cooperation is not always effective — for example, in 2010, the Collective Security Treaty Organization did not respond to Kyrgyzstan's request for assistance. In conclusion, B. Borubashov suggested establishing the Eurasian Association of International Law, which would unite the specialists in the field of international law and could make a serious contribution to solving the problems of the region.

*Saitumbar Radjabov* highlighted the main directions of the international legal policy of Tajikistan. The Concept of Foreign Policy, Concept of Legal Policy and President's annual addresses, forms the normative base of this policy. Its important direction is to ensure state independence and national security. Tajikistan faced very serious challenges — the civil war of 1992–1997, acute socio-economic problems, etc. All these challenges have been gone through, including through cooperation with other states (the “open door” policy). The recent challenge is international terrorism (situations in Syria and Iraq). In order to respond to this challenge the government of Tajikistan has

updated anti-terrorism laws and acceded to anti-terrorism conventions. Another important direction is the protection of rights and interests of citizens abroad. Tajikistan has acceded to a number of conventions on the protection of human rights and rights of migrant workers; it currently sends regular reports to the bodies responsible for monitoring the application of these instruments. The third direction is the water-energy cooperation. Tajikistan authors a number of international initiatives: the Year of Fresh Water (2003), International Decade for Action “Water for Sustainable Development” (2018–2028) and so on. The fourth direction is the cooperation in the field of labor migration. Tajikistan has signed a number of agreements on the legal status of migrants and their social guarantees. The fifth direction is the preservation of the historical, national and cultural identity of the people of Tajikistan in cooperation with the UN agencies. Tajikistan has ratified the Convention for the Protection of Natural and Cultural Heritage and has implemented other numerous activities.

*Akmal Saidov* characterized the international legal policy of Uzbekistan. According to Art. 17 of the Constitution, Uzbekistan is a “full-fledged subject of international relations.” Its international legal policy is determined by normative legal acts and presidential addresses. These addresses, in fact, appeal to the people. Uzbekistan maintains diplomatic relations with 140 states, has opened 56 diplomatic missions, and is a member to more than 100 organizations. The capital of Uzbekistan (Tashkent) hosted 113 representative offices of foreign states and international organizations. Uzbekistan pays much attention to the development of a new and promising form of diplomacy, namely inter-parliamentary cooperation (“friendship groups”). It adopted the Law on international treaties and ratified the 1969 Vienna Convention and more than 200 other instruments (including 70 human rights conventions). It is actively involved in international rule making and, in particular, was the author or co-author of 6 resolutions of the UN General Assembly (both related to Central Asia and of a general nature). In the second part of his speech, A. Saidov highlighted the concept of international legal policy. He criticized some approaches based on the secondary nature of international law (M. McDougal). In fact, international law is a value in itself and should determine policy (and not be determined by it). International law is called upon to overcome

anarchy and chaos; in this context, the general principles of international law, which play a structuring role, are of great importance. The theory of international legal policy needs further development. In conclusion, A. Saidov formulated a number of proposals for the development of humanitarian cooperation in the region — the establishment of the Central Asian Association of International Law, writing the collective work “International Legal Policy in Central Asia,” and holding a regular Summer School on International Law.

*Marat Sarsembaev's* speech was devoted to the strategic tasks of the states of the region, in particular, the issues of innovative economy and auto industry. Currently, the auto industry is concentrated in two countries — Uzbekistan and Kazakhstan. The industry has great prospects, diversification of the product line is expected. International law can play an important role in the development of the industry. In this regard, the creation of a regional interstate automobile concern, uniting all five states of the region, looks very promising. Kazakhstan and Uzbekistan could assist Kyrgyzstan, Tajikistan and Turkmenistan in setting up their own industrial facilities. New treaty instruments could play a big role. These could include conventions on the implementation of infrastructure projects, transfer of digital technologies, cooperation in the training of highly qualified specialists and scientific cooperation.

Within *the second part* of the plenary session, *Venera Seitimova* (Kazakhstan, Court of the EAEU) described some institutional problems of the Eurasian Economic Union. The first problem is the procedure for selecting the President of the EAEU Court. Currently 10 judges are appointed for 9 years, and the President — for three years. Under the circumstances, representatives of some states do not have the opportunity to participate in the administration of the Court. The second problem is the formation of the EAEU budget in unequal shares — Russia contributes a share equal to 85.33 %, Kazakhstan — 7.11 %, Belarus — 4.55 %, Kyrgyzstan — 1.9 %, Armenia — 1.11 %. However, all Member States are equally interested in the administration of judicial system, — so it would be more appropriate to use a funding system that implies an *equal* contribution, especially since the Court's budget is only 2 % of the Union's budget. Another problem is the institution of dissenting opinion. To date, the judges have delivered 81 dissenting opinions,

some of which express their personal ambitions rather than make a constructive contribution to the development of jurisprudence. Another problem is the impossibility of appealing some acts of the Commission. The Court has rejected such appeals 25 times. This state of affairs looks like an atavism and deprives business entities of the right to judicial protection. All these problems should be analyzed and solved taking into account the interests of all states, otherwise the goals of integration will not be achieved.

*Aleksey S. Ispolinov* (Russia, Moscow State University) devoted his report to the peculiarities of international courts in Asia. This issue has not been studied well; relevant scientific publications began to appear only recently. International courts are the result of the concerted will of states: each international court is a unique institution. The absence of a developed system of international courts in Asia is not accidental: Asia is the largest and most populous continent. Three regional superpowers — China, India and Japan — have a number of unresolved territorial problems. There are no supranational organizations in the region. Sub-regional organizations such as ASEAN are based mostly on inter-state cooperation. In Asia, the practice of simultaneous participation in several integration projects (the practice of a “measured geometry”) is common, while in Europe the states use a completely different approach. As a result, in Asia, there is no need for judicial review of acts of international organizations. Similarly, there are no human rights courts in the region. Asian states rarely recognize the compulsory jurisdiction of the International Court of Justice, International Criminal Court and International Centre for Settlement of Investment Disputes. China’s sharply negative attitude towards international courts has begun to change only recently. However, China recognizes only the jurisdiction of arbitration courts and only for economic disputes. This approach is determined by cultural features: Asian states prefer negotiations and mediation, the use of these procedures allows them to “save face,” the very fact of going to court indicates an inability to negotiate (to solve the problem by compromise). These factors impose certain restrictions on the development of international courts within the framework of the organizations established by Russia — BRICS, EAEU, and so on.

*Vladislav Tolstykh* (Russia, MSAL) considered features of the international legal policy in Central Asia, factors influencing it (economic

specialization, influence of external actors, intensity of ethno-genesis, Islamic political theories, Soviet legacy) and some interstate problems. The first group of problems arise from the National-territorial demarcation of 1924. Theoretically, they are eliminated by the principle of *uti possidetis*, but in fact political elites and the population do not always consider legal issues. The second group is related to the politics of the Soviet government: its decisions on the development of virgin lands (*Tselina*, 1954–1965), use of the Semipalatinsk nuclear test site (1949–1991), conversion of the region's agriculture to monoculture (cotton), resettlement of peoples, and so on. Hypothetically, these problems may lead to claims against Russia as the successor of the USSR. These claims, however, cannot be satisfied under the regime of succession (Russia is not the only successor and is not responsible for internal relations within the USSR). They also cannot be satisfied under the regime of self-determination. Indeed, the Central Asian republics were not colonies, and the policy of the central authorities can hardly be defined as a policy aimed at depriving the peoples of their livelihoods — rather, in some cases there were serious economic miscalculations. However, as in the previous case, these problems can seriously complicate interstate relations. The third group of problems is due to the disappearance of a single state and the collapse of a single economic system; it includes the problem of distribution of water and energy resources, uncertainty of the regime of the Caspian Sea, problem of enclaves, a problem of minorities and so on. General international law is not always able to effectively solve these problems. Regional instruments, in their turn, are on an insufficient level of legal technique. In this regard, the best means of solving all these problems would be a broad political and economic integration. The conditions for this are the cooperation of elites, design of original solutions, and radical transformation of the political and legal systems. The strategic goal of the integration may be the creation of a federal state.

Within *the third part* of the plenary session, *Leonid Syukiyainen* (Russia, Higher School of Economics) considered the relationship between Sharia, fiqh and customs. In Islamic legal consciousness, Sharia and customs often do not differ. The Russian authorities often wrongly perceived Sharia as a part of customary law. In fact, Sharia and customs



are different and separate entities. Sharia allows any customs that do not contradict its norms. In practice, Muslims are guided by a complex system of intertwined norms, and it is often not Sharia that determines the place of custom, but rather custom that determines the place of Sharia. Some existing customs directly contradict Sharia (blood feud, “honor killing,” etc.). Customs tend to be more archaic than Sharia — in this regard, the policy of the Russian Federation may be to use Sharia to overcome these customs. This issue needs a further development.

*Sergey Belov* (Russia, St. Petersburg University) reviewed the constitutional reforms in the region. The vector of modernism and globalization is not organic for all regions and countries; in some cases it can have a destructive impact on national cultures. Global challenges such as Covid-19 demonstrate the undesirability of political unification, since the response to these challenges should not be monotonous. A number of factors determines the legal tradition of Central Asia, for example, religiosity, ethnic-clan system, agrarian nature of the economy. There are several important political trends. The first trend is the development of national statehood. This trend determines language policy, status of minorities and many other issues. The second trend is the striving for the modernization ideal. A striking example is the revival of the Constitutional Court in Kazakhstan. The third trend is directly opposite and manifests itself in political crises (civil war in Tajikistan, crises in Kyrgyzstan, etc.). These crises testify to the inability of constitutional mechanisms to ensure modernization and unwillingness of society to follow the path of modernization.

At the plenary session, Professor *Vladimir I. Przhilensky* (Russia, MSAL) presented the “Kutafin Law Review” (KuLawR) — one of the journals covering most topical legal issues.

The second day of the Forum provided the participant with an opportunity to discuss relevant topic in different sections.

The main subject of discussion within the first section (“*The international legal regime of the Caspian Sea and transboundary water resources, state borders in Central Asia*”) was the status of the Caspian Sea in the light of the 2018 Convention. *R. Mammadov* (Azerbaijan), *V. Batyr* (Russia) and *M. Abadikhan* (Iran) took active part in this discussion. On the one hand, the speakers noted the



rapprochement of the positions of the states and significant progress in determining the legal regime of the Caspian Sea. On the other hand, they identified a number of problems: ambiguity of the prospects for the entry into force of the 2018 Convention (the Convention has been ratified by all Caspian states, except for Iran), lack of consensus on the methodology for the shelf delimitation (the positions of Iran and other Caspian states do not coincide), inefficiency of cooperation in the field of environmental protection. The speakers also emphasized the desire of the Central Asian states to complete the process of territorial delimitation and analyzed the latest international treaties (2017 Treaty between Kazakhstan, Turkmenistan and Uzbekistan on the area of the junction point of state borders, 2022 Treaty between Kazakhstan and Uzbekistan on demarcation of the state border).

Within the second section (“*Central Asia in the system of regional and global security*”), the speakers tried to identify the main threats to security in the region and possible legal responses to them. Among these responses are the preservation of the nuclear-weapon-free zone (V. Gavrilova), positive role of Russia in ensuring regional security (N. Khlystova), neutrality of Turkmenistan (S. Kochumova) and implementation of the 1992 Collective Security Treaty (Yu. Revizskaya). Several reports were devoted to the problems of biosafety (E. Belyaev, S. Vasiliev) and information security (E. Vasyakina).

The third session (“*Constitutional and legal construction in Central Asia*”) was held with the support of St. Petersburg State University (S. Belov, Dean of the Faculty of Law). The main subject of discussion was the constitutional reforms in the region. The speakers discussed the status of the Republic of Karakalpakstan (Uzbekistan)<sup>1</sup> (Z. Zaitov, A. Ponomarenko, V. Tolstykh), features of the new Constitution of Kyrgyzstan, the status of the President and the status of the People’s

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<sup>1</sup> According to the 1992 Constitution of Uzbekistan, “The Sovereign Republic of Karakalpakstan is a part of the Republic of Uzbekistan” (Art. 70), “The Republic of Karakalpakstan shall have the right to secede from the Republic of Uzbekistan on the basis of a nation-wide referendum held by the people of Karakalpakstan” (Art. 74). In July 2022, mass protests took place in Karakalpakstan against the draft of a new version of the Constitution, according to which the Republic loses the right to secession and the attribute of sovereignty.

Kurultai<sup>2</sup> in particular (*B. Borubashov, N. Eshmuradova*), Opinions of the Venice Commission on the draft constitution of Kyrgyzstan and on the amendments to the Constitution of Kazakhstan. The speakers also discussed the advantages and disadvantages of the presidential form of government used in Russia and the countries of Central Asia and came to the conclusion that the functioning of this model is influenced not only by the wording of legal acts, but also by the national mentality, informal political traditions, etc.

The fourth section (*“Legal Aspects of Economic Cooperation in Central Asia”*) was devoted to the problems of economic integration. *M. Entin* characterized the main trends of modern integration processes, *A. Dementiev* highlighted the prospects for the expansion of the EAEU, *A. Nasibova* considered the problem of the simultaneous participation in two geopolitical projects — EAEU and Organization of Turkic States. Several reports were devoted to cooperation in the scientific and technical sphere (*M. Shugurov, Zh. Seydalina*), as well as cooperation in the field of energy policy (*S. Vasilkova*).

The speakers of the fifth section (*“Development of business law in the countries of Central Asia”*) discussed the problems of codification (*L. Khvan*), financial and legal regulation (*N. Kravchenko, K. Karpov, A. Musagaliev*), etc. Participants of the sixth section (*“Development of criminal law in the countries Central Asia”*) considered the issues of combating money laundering (*F. Fazilov*), drug traffic (*A. Shcherbakov*), etc. *E. Trikoz*’s report was devoted to the Asian model of codification of international criminal law. Finally, within the seventh section (*“Legal Issues of Migration in Central Asia”*), issues of protecting the rights of migrants were discussed, both in general and in relation to certain categories of migrants (students, IT-specialists, etc.).

The key event of the Forum was the Round Table *“University Cooperation in Central Asia,”* at which the Vice-Rector of the Kutafin University *Maria Mazhorina* spoke about the plans to create the Central Asian University Consortium. This consortium has to be established as an association of educational and scientific institutions

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<sup>2</sup> Art. 7 of the Constitution of 2021 states “National Kurultai — public representative assembly. The national Kurultai as consultative, observation meeting makes recommendations about the directions of social development.”

of the Central Asian region. It must operate based on the following principles: objectivity, publicity, freedom of expression, inclusiveness and non-discrimination. Its goals should include: a) encouragement and organization of humanitarian studies; b) design and implementation of educational programs; c) promotion and coordination of academic exchange programs. Membership in the Consortium will be open to any university, other educational or research institution registered in a country belonging to the region and / carrying out fundamental scientific research related to the problems of the region. The Consortium will give priority status to certain projects. One of these projects would be the regular Central Asian International Legal Forum. The priority status can also be given to scientific conferences and round tables, educational programs, textbooks, monographs and other publications, exchange programs, etc. The Consortium is planned to be established at a special session of the Forum, which will be held in autumn 2023.

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