The Post-Soviet Central Asia and International Law: Practice, Research and Teaching

By:

Sergey Sayapin

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Central Asia region and its individual States (Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, Uzbekistan) are increasingly gaining in significance as international players. During the Soviet period, they were only nominally sovereign States (cf. Article 3 of the 1924 Constitution of the USSR, Article 15 of the 1936 Constitution of the USSR, Article 76 of the 1977 Constitution of the USSR) but in 1991, they became full-fledged members of the international community, and have, ever since, been constructing their respective schools of international law. In Kazakhstan, the leading international law schools are the M. Narikbayev KAZGUU University, KIMEP University, the L. N. Gumilev Eurasian National University (ENU), and the Al-Farabi Kazakh National University (KazNU). In Kyrgyzstan, such schools include the American University of Central Asia (AUCA), the Kyrgyz-Russian Slavonic University (KRSU), the Kyrgyz State Law University, the Ala-Too International University, and the Zh. Balasagyn

Kyrgyz National University. In Tajikistan, the Russian-Tajik (Slavonic) University (RTSU) and the Tajik National University are leading in teaching international law. In Turkmenistan, international law is taught at the Institute of International Relations of the Ministry of Foreign Affairs, and the Turkmen State University. In Uzbekistan, the University of World Economy and Diplomacy (UWED), the Tashkent State University of Law (TSUL), the Westminster International University in Tashkent (WIUT), and the M. Ulugbek National University of Uzbekistan train international lawyers for the public and private sectors.

This post highlights some key trends in the practice, research and teaching of international law in Central Asia, and suggests ways forward. It reflects the views of the author´s alone.

International law as a source of law in central Asian states

All Central Asian States recognise international law as a source of law, to various extents. Thus, Article 4(1) of the Constitution of Kazakhstan stipulates that "international agreements and other commitments of the Republic" are a part of the functioning law in the Republic of Kazakhstan. It is assumed that "other commitments" include, in particular, customary international law and the law of various international organisations of which Kazakhstan is a member. Article 4(3) stipulates further that "[i]nternational agreements ratified by the Republic have primacy over its laws [...]" In turn, in addition to treaties of the Kyrgyz Republic, Article 6(3) of the Constitution of the Kyrgyz Republic also refers to "generally recognised principles and norms of international law". Presumably, such generally recognised principles and norms of international law include, at least, the principles expounded in the 1970 Friends Relations Declaration as well as general international law. A similar provision appears in the second paragraph of Article 9 of the Constitution of Turkmenistan. By contrast, the third paragraph of Article 10 of the Constitution of Tajikistan appears to reflect a more positivist approach in that it refers only to "international legal acts recognised by Tajikistan" but not to any other sources of international law. On the other hand, the same constitutional provision provides explicitly that international legal acts have primacy over the sources of domestic law. Finally, the Constitution of Uzbekistan makes two separate mentions of international law. First, in the preamble of the Constitution, the

“priority of generally recognised norms of international law” is stated. Further, Article 17 of the Constitution stipulates that “[t]he Republic of Uzbekistan is a full-fledged subject of international relations. Its foreign policy is based on the principles of the sovereign equality of states, non-use of force or threat of force, inviolability of borders, peaceful settlement of disputes, non-interference in the internal affairs of other states and other generally recognized principles and norms of international law [...] The Republic may enter into unions, enter into commonwealths and other interstate entities, as well as withdraw from them, proceeding from the highest interests of the state, people, its welfare and security.” Since this Article deals with the role of international law in *foreign* policy, it appears to suggest that Uzbekistan approaches international law from a *dualist* perspective. Despite these constitutional provisions, international law is largely unknown beyond a narrow circle of specialists, and is not yet a definitive part of general or even professional culture. Central Asian States should invest significantly more in training their judges and other officials on international law issues within their areas of competence, in order to improve the quality of justice and law enforcement, and increase awareness of international law and procedures among the general public. Such measures should result in improving the States’ human rights records, and facilitate dialogue between authorities and the people.

Central Asian doctrines of international law

Since 1991, the Central Asian doctrines of international law have been developing along two main tracks. The first generation of Central Asian international lawyers was trained in the Soviet Union (predominantly in Russia), and still maintain close working relations with Russian colleagues. Like many senior scholars of international law in the Russian Federation, many, if not most, senior Central Asian international lawyers lack the knowledge of English and other foreign languages, and therefore belong to a “separate epistemological community” of Russian-speaking scholars of international law, “tied together by a common language, history, and geographical space in the former USSR” (see Mälksoo, 2015, p. 87). Many senior colleagues hold high-ranking posts at various State organs. The second and third generations of Central Asian international lawyers have already been trained in sovereign Central Asian States, and their foremost representatives display quite different

professional philosophies. Usually well-versed in a few foreign languages, in addition to their mother tongues and Russian, and therefore exposed to a variety of scholarly doctrines, skilled junior international lawyers of Central Asia are gaining increasing scholarly authority, within the region and more internationally. Some of them are holding academic posts at leading international law schools in Central Asia, South Korea, Finland, Germany, and the United Kingdom, and others work for international intergovernmental and non-governmental organisations, in consultancies and private law practices.

In addition to a few local textbooks and manuals on international law (written mostly in Central Asian languages and Russian), Central Asian authors produced scholarship dealing with the history of international law, international legal personality and statehood, State succession, regional security, human rights, international humanitarian and criminal law. Notable monographs (in English and other languages) on regional integration (by Zh. Kembayev), international economic law (written and edited by M. Daulenov, J. D. Haskell and A. Rasulov, D. Saidov, and Sh. Shadikhodjaev), international criminal law (by S. Sayapin and R. Atadjanov), and the use of force against Ukraine (edited by S. Sayapin and E. Tsybulenko) appeared with renowned international law publishers. The launching of an English-language *Central Asian Yearbook of International and Comparative Law* is contemplated.

Probably the biggest challenge for the Central Asian schools of international law consists in getting out of their scholarly isolation, which is due to a multitude of factors. Higher education institutions in the region are still controlled by relevant Ministries of Education, and the quality of academic freedom varies quite significantly from one country to another, and even from institution to institution within a single country. Some higher education institutions suffer from a lack of resources, and faculty salaries at public universities are significantly lower than at private ones. Central Asian States should take systemic measures to deal with these and other related challenges (such as publications in the so-called “predatory journals”), if the Central Asian international law scholarship were to integrate in the worldwide academic network. The wider use of online communication technologies, brought about by the COVID-19 pandemic, could be useful in breaking some walls, and international institutions such as UNESCO, UNODC or the ICRC could be

supportive.

International law in academia

Regrettably enough, international law is sometimes perceived as an "illegitimate child" even within academia. In the post-Soviet space, including in Central Asia, some domestic lawyers (and teachers of domestic law) perceive international law as not being "worthy of the name of law", whereas some teachers of international relations see it as an annoying fiction in the context of power politics. As a result, international law programmes and courses are sometimes marginalised, and it takes some efforts to uphold their utility in the eyes of decision-makers at the Ministries of Education and universities. Given Russia's influence in the region, doubts about the utility of international law might grow in a near future, in the light of recent constitutional amendments relative to the status of international law as a source of law in the Russian Federation.

Luckily, it usually takes a semester of an international law course to win the hearts and minds of most sceptics among students (and some of such former sceptics even choose careers in international law). Local (such as the AIFC Court and IAC Moot in Kazakhstan) and international moot court competitions on international law, such as the Jessup, Willem C. Vis, and Pictet Competitions, help develop students' interest for international law. Some of the best Central Asian students enrol in the world's best postgraduate international law programmes in Europe, North America and Asia after earning undergraduate degrees in Central Asia, and this is probably the best reward for their teachers, and beacons of hope for their countries, because many LLM and PhD holders would return to practice and teach international law in Central Asia.

One factor that is obviously missing in the teaching of international law in Central Asia are textbooks written in English by Central Asian authors. COVID-19, border issues, regional migration, drug trafficking, human trafficking, disputes over water, and international terrorism are just a few challenges, which require Central Asian States' cooperation among themselves, and with other States. The competing interests of China, Russia, the United States, and the European Union in the region are adding to the complex mosaic of regional

dynamics. Such textbooks with regional content but written in English both for Central Asian students of international law and external audiences would help show the continued relevance of international law, and offer some useful responses to current challenges. This deficiency should hopefully be remedied, to an extent, with the publication of this author's *A Central Asian Perspective on International Law*, which is currently being written under contract with *Hart*.

Conclusion

The Central Asian States should learn to rely on international law, more proactively and consistently, as a tool for advancing their lawful interests, and for maintaining regional and international peace and security. Kazakhstan's recent membership in the UN Security Council (2017-2018) was an excellent occasion to promote respect for international law at the regional level. Other recent examples of such reliance include the adoption of a Convention on the Legal Status of the Caspian Sea in 2018, or an ongoing reform of criminal law and procedure in Uzbekistan. Unfortunately, international law is still largely unknown among the general public, and even among some law professionals, or is regarded as "institutionalised politics", and this paradigm must shift towards a more constructive, realistic and practical understanding of the phenomenology of international law. For this, a new generation of international lawyers—open-minded, passionate about international law and the future of their societies, and skilled linguistically—is brought up in Central Asia. These junior scholars and practitioners will build upon their senior colleagues' experience, and will, over time, integrate the Central Asian schools of international law in a broader Asian and international context.

**Sergey Sayapin, LLB, LLM, Dr. iur., PhD, is Associate Professor of International and Criminal Law and Associate Dean at KIMEP University´s School of Law (Almaty, Kazakhstan). This post builds upon some of the author´s material written for the Encyclopedia of Public International Law in Asia (EPILA).*

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