

Promoting regional water cooperation in Central Asia through international law

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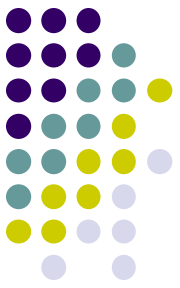
What is international law?



International law is clearly much more than a simple set of rules. It **is a culture in the broadest** sense in that it constitutes a method of communicating claims, counter-claims, expectations and anticipations as well as providing a framework for assessing and prioritising such demands - *Shaw, 2003*.

International law is more than a set of rules for States; it is a '**language of communication**' - *Boutros Boutros-Ghali, 1995*

Three facets of international law

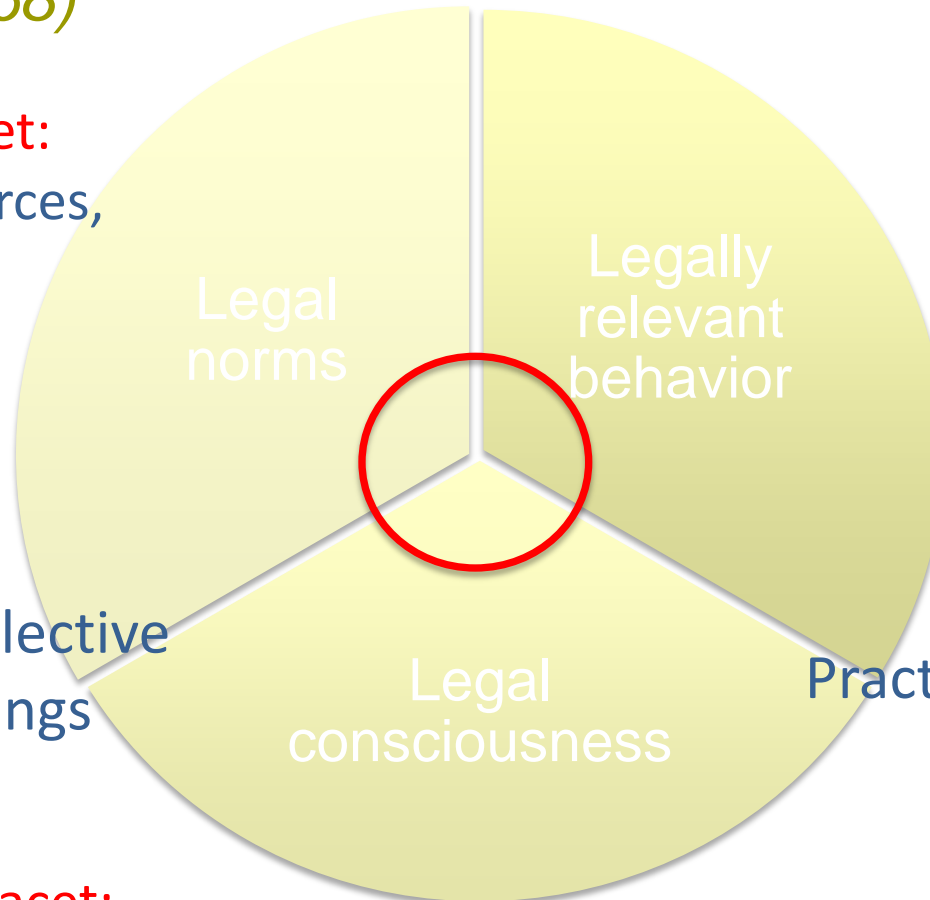


(Peczenik, 1968)

1. Normative facet:

Norms, their sources, quality, system

Norms – collective understandings



2. Sociological facet:

‘acts of norm creation’, ‘acts observance or violation’
actors and their behaviour

Practice - not action

3. Psychological facet:

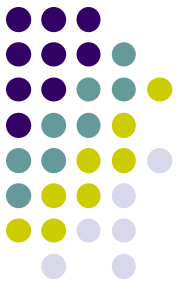
‘feelings’: belief, *opinio juris*, good faith, perceptions, expectations, ‘public conscience’ and ‘acts of understanding’

How does IL work?



- IL works and gains its authority and power through **the internal complexity and interconnection** of its normative, sociological and psychological facets
- IL is not objectively given; it's a product of **social practice** (behaviour and consciousness) = **intersubjectively** constructed
- IL operates through **a system of norms and processes** as its 'operational tools' that enhance (or diminish) **intersubjective expectations** & normatively shared meanings

Properties of norms & processes

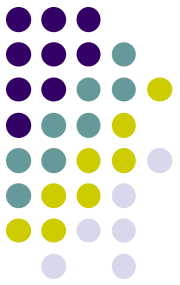


Norm properties:

1. Determinacy (specificity)
2. Stringency (normative force)

Process properties:

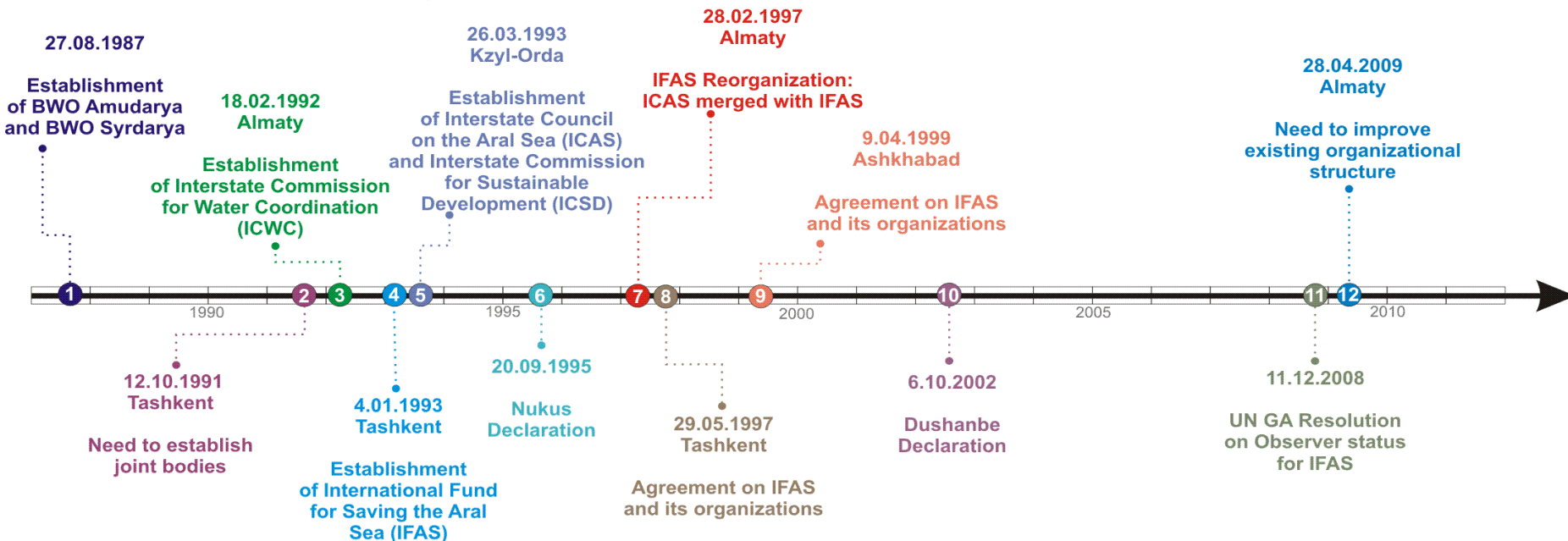
1. Inclusiveness (*take part & relate*)
2. Transparency (*see through*)
3. Discursiveness (exchange reasons)
4. Coherence (connections)



International water law in Central Asia



Aral Sea Basin: Timeline of Regional Bodies Establishment and Reorganization



1. Order of the USSR Ministry of Reclamation and Water Management on the establishment of basin administrations on inter-republican water allocation in Amudarya and Syrdarya (Water Management Administration «Amudarya» and «Syrdarya») (Moscow, August 1987)

2. Statement of the heads of water authorities of the Central Asian Republics and Kazakhstan (Tashkent, October 1991)

3. 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, 18 February 1992)

4. Decision by the Heads of Central Asian Republics on the establishment of International Fund for Saving the Aral Sea (Tashkent, January 1993)

5. 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, March 1993)

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

7. Decision by the Heads of Central Asian Republics on the reorganization of International Fund for Saving the Aral Sea (Almaty, February 1997)

8. Agreement between the Republic of Kazakhstan, the Kyrgyz Republic, the Republic of Tajikistan, Turkmenistan, and the Republic of Uzbekistan on the Status of International Fund for Saving the Aral Sea and Its Organizations (Tashkent, May 1997)

9. Agreement between the Republic of Kazakhstan, the Kyrgyz Republic, the Republic of Tajikistan, Turkmenistan, and the Republic of Uzbekistan on the Status of International Fund for Saving the Aral Sea and Its Organizations (Ashgabad, April 1999)

10. Dushanbe Declaration (Dushanbe, October 2002)

11. UN General Assembly Resolution on Observer status for the International Fund for Saving the Aral Sea in the General Assembly (December 2008)

12. Joint Statement Made by the Heads of States Founders of the International Fund for Saving the Aral Sea (Almaty, April 2009)

Treaty law in CA



Global treaties – 1997 UN Watercourses Convention, MEAs

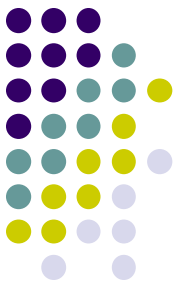
UNECE Conventions

Agreements under Commonwealth of independent states

Agreements between CARs

Agreements between USSR & Afghanistan

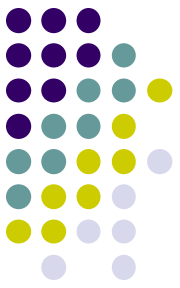
Bilateral agreements



Int'l law in Central Asia

- **Numerous instruments:** no links to each other, no contemporary principles of IWL and best water management practice, no sound procedural and institutional systems
- **Norm determinacy and stringency:** indeterminate and soft rules prevail but not adequately backed up with procedural and institutional mechanisms
- **Process properties:** potential of inclusive, transparent, discursive and integrative interactions has not been fully realised
- **Misunderstanding of int'l law:** IL is conceived only as comprised of legal norms, whereas legally relevant behaviour and legal consciousness are left aside.

IL in CA: Ways forward



1. Improve treaty system

- Role of regional and global treaties (UNECE, 1997 UN Watercourses Convention)
- New basin treaties but...

2. Enable the dual role of legal norms for stability and peaceful change

- Indeterminacy and softness do not make all things possible; they just do not fix or predetermine solutions (time and context)
- Norm operationalisation and contextualisation



IL in CA: Ways forward



3. Catalise actors

Norms are as 'good' or 'bad' as actors – predominantly nation-states - want them to be. Norms are what actors make of them

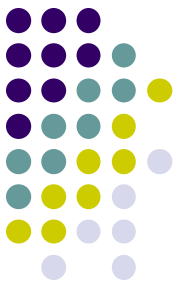


4. Enhance legal understanding



- Norms influence if part of individual **consciousness**
- Legal consciousness requires **affirmative actions**
- Legal understanding in CA can be increased through the **ongoing process of interaction**

IL in CA: Ways forward



5. Increase transparency



- Textual transparency through 'better' treaties
- Substantive transparency through information exchange, public participation, openness of decision making, reporting, compliance mechanism

6. Transform intergovernmental bargaining into deliberative problem solving

- From strategic to communicative action
- Establish effective forum for collective deliberation and decision making in the region
- Actively participate in deliberative forums at global and regional levels



Conclusions



All these together, can help to **form a normative community – as a collective legal consciousness –** which gives rise to **sustained legal relationships**, rather than only to adoption of new treaties

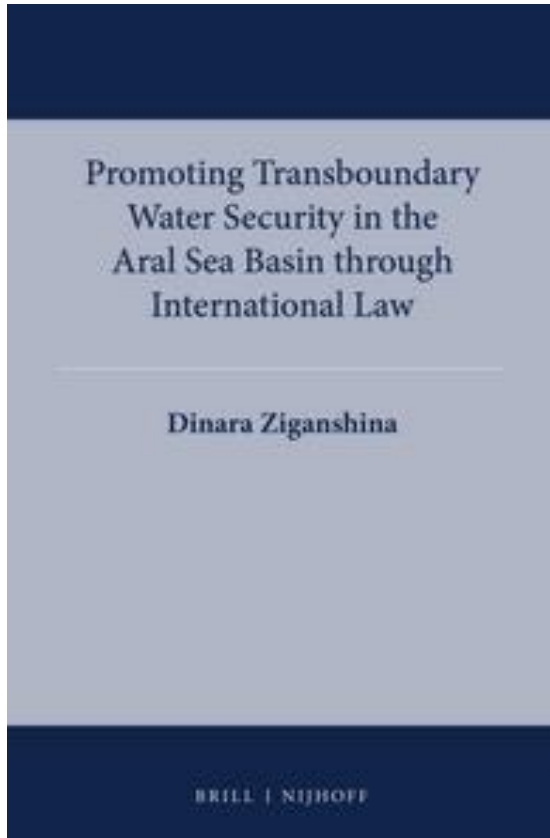
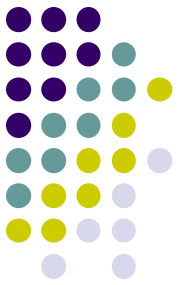
Regional water cooperation based on IL implies building legal relationships which emerge and mature through

- **developing legal norms**
- **fostering and taking part in legal processes**
- **enhancing legal consciousness**



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