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**International Law in Central Asia: Practices and Doctrines**

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# International Law in Central Asia: Practices and Doctrines

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## Abstract

Since their independence in 1991, the states of Central Asia (Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan) have become increasingly important as regional and international actors. They have joined the United Nations (UN) as well as regional organizations, such as the Commonwealth of Independent States (CIS), the Collective Security Treaty Organization (CSTO), the Shanghai Cooperation Organisation (SCO), and the Eurasian Economic Union (EAEU). International law has played an important role in the processes of state-building and integration these countries have undergone, yet it has not always been consistently accepted as a policy tool and academic discipline. In particular, building a stable nexus between the practice of international law and academic research on the subject remains a challenge. This article provides an overview of Central Asian practices and doctrines of international law with a focus on international peace and security, international organizations, international environmental law, human rights, international humanitarian and criminal law, and international investment arbitration. It concludes with recommendations for more successful promotion and implementation of international law in the region.

## Keywords

Central Asia – international law – international organizations – Kazakhstan – Kyrgyzstan – Tajikistan – Turkmenistan – Uzbekistan

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\* Sergey Sayapin's current research focuses on Central Asian and post-Soviet approaches to international law, international and comparative criminal law, human rights, and sociology of law.

## 1 Introduction\*\*

During the Soviet period, the Central Asian states (Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan) were only nominally sovereign.<sup>1</sup> In 1991, they became full-fledged members of the international community of states, and have been developing their respective schools of international law ever since.<sup>2</sup> In the past 30 years, international law has been instrumental in dealing with regional politico-legal challenges, such as border issues, regional security, drug trafficking, human trafficking, disputes over water, and international terrorism. Developing their approaches to international law has also been fundamental for the consolidation of the newly independent states' sovereignty amid the competing interests of China, Russia, the United States, and the European Union in the region.<sup>3</sup> Yet, local populations, and even some legal professionals and policymakers, are still largely unfamiliar with the norms and instruments of international law and their implications for domestic legal orders. Based on such troubled nexuses, this article argues for a paradigmatic shift toward a more consistent role for international law in the Central Asian states.

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\*\* This article builds on some of the material written by the author for the *Encyclopedia of Public International Law in Asia* (Brill, Leiden, 2021) and Afronomicslaw.Org.

- 1 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.
- 2 In Kazakhstan, notable international law schools include the M. Narikbayev KAZGUU University, KIMEP University, the Kazakh National University (KazNU) named after Al-Farabi, and the Eurasian National University (ENU) named after L. N. Gumilev. In Kyrgyzstan, some of the leading international law experts work at the Kyrgyz National University named after Zh. Balasagyn, the Kyrgyz-Russian Slavonic University (KRSU), the American University of Central Asia (AUCA), the Kyrgyz State Law Academy, the International Alatau University, and the Osh State University. In Tajikistan, the Tajik National University and the Russian-Tajik (Slavonic) University (RTSU) are leading establishments in teaching and researching international law. In Turkmenistan, international law is taught at the Institute of International Relations of the Ministry of Foreign Affairs. 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 Karakalpak State University named after Berdakh train international lawyers for the public and private sectors.
- 3 See Sergey Sayapin, "State Report Overview," in Seokwoo Lee, Hee Eun Lee, Muhammad Ekramul Haque, Sergey Sayapin, Rajesh Babu Ravindran, Jamal Seifi, and Wasantha Seneviratne (eds.), *Encyclopedia of Public International Law in Asia*, Volume III: Central & South Asia (Brill, Leiden, 2021), 169–173, at 169–170.

Today, it is fundamentally important to bridge the gaps, and reinforce the nexuses, between the theory and practice of international law in Central Asia, as well as to further raise the prestige of international law as part of the (domestic) legal profession. To achieve this, public and private international law could, for instance, be made a mandatory part of the qualification exams for all legal professions, and in-service training on international law could be offered to legal professionals in the public and private sectors. A crucial step would be for Central Asia's international law schools to overcome their current academic isolation – especially their confinement to the Russian-speaking space – and enter the international academic scene. The world's leading international law associations – such as the American, European, or Asian ones – would benefit from the expertise of Central Asian scholars. Equally, scholars in the region have a lot to learn from international law doctrines beyond the Russian-speaking world.

According to Rustam Atadjanov, the “longtime absence of discussion and review of international law-related issues in the constitutional justice discourse points towards a lack of interest and understanding of the significance of international law implementation at the country level”.<sup>4</sup> It is this systemic issue and the (need for stronger) synergies between the theory and practice of international law in Central Asia that is the key question and leitmotiv of the present article. In other words, although legal professionals in Central Asia have formally drawn on international law for 30 years already, the problems of its practical relevance and of the role of international lawyers in policymaking are still not fully resolved. The article argues that Central Asian states and societies alike would benefit from the inclusive worldview and cooperative approaches of scholars of international law, and the involvement of the latter in the formulation of relevant policies should become more systematic. All of these are feasible goals but attaining them requires significant effort.

This article was based on the laws and practices of the states of Central Asia, with due regard to the practice of relevant (domestic and international) institutions, selected publications written by Central Asian scholars of international law, and the author's own academic and practical observations. With a few exceptions, the focus has been on perspectives ‘internal’ to Central Asia,

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4 See Rustam Atadjanov, “Challenges for the implementation of international law in Central Asia: contributing factors and possible solutions,” 12(1) *Central Asia Business Journal* (2021), 25–34, at 31.

instead of ‘external’ views and opinions,<sup>5</sup> with the aim of better understanding the political and academic dynamics within the region. The thematic scope of the article is limited to the author’s research interests. The article starts by considering the position of international law in the legal systems of the Central Asian states, moving on to discuss its role in a few key areas – such as international peace and security, international organizations, international environmental law, human rights, international humanitarian and criminal law, and international investment arbitration – to exemplify the successes and challenges in Central Asia’s practices and doctrines of international law. It concludes with recommendations for more successful promotion and implementation of international law in the region.

## 2 Troubled Nexuses Between International Law and the (International) Legal Profession in Central Asia

At first glance, the international legal profession appears to have an important status all over the region, since formally, international law is recognized as a source of law in all Central Asian states.<sup>6</sup> 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 may be assumed that “other commitments” include, in particular, customary international law and the law of the various international organizations of which Kazakhstan is a member. Article 4(3) continues that “international agreements ratified by the Republic have primacy over its laws. The legislation of the Republic determines the procedure and conditions of operation of international agreements in the territory of the Republic of Kazakhstan to which Kazakhstan is a party”. Article 6(1) of Kazakhstan’s Law “On Legal Acts” of 6 April 2016 contains an analogous rule.

In addition to treaties, Article 6(3) of the Constitution of the Kyrgyz Republic refers to “generally recognized principles and norms of international

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5 For an interesting external perspective on political and normative developments in Central Asia, see Elvira Aidarkhanova, “Regionalism and Regional Order in Central Asia: An Interview with Filippo Costa Buranelli,” *Voices on Central Asia* (9 September 2021), available at <https://voicesoncentralasia.org/regionalism-and-regional-order-in-central-asia-an-interview-with-filippo-costa-buranelli/>.

6 Sayapin, *op.cit.* note 3, 170–171.

law”.<sup>7</sup> Presumably, such principles and norms include, at least, the principles expounded in the UN Friendly Relations Declaration of 1970, and general international law. A similar provision can be found in the second paragraph of Article 9 of the Constitution of Turkmenistan.<sup>8</sup> By contrast, the third paragraph of Article 10 of the Constitution of Tajikistan reflects a more positivist approach in that it refers only to “international legal acts recognized by Tajikistan” but not to any other sources of international law.<sup>9</sup> Notably, the same constitutional provision stipulates explicitly that international legal acts have primacy over the sources of domestic law.<sup>10</sup>

Finally, the Constitution of Uzbekistan contains two separate provisions related to international law. First, in the preamble of the Constitution, the “priority of generally recognized norms of international law” is stipulated. Further, Article 17 of the Constitution stipulates that “the 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 Article 17 deals with the role of international law in

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7 Cf. Article 6(3) of the Constitution of the Kyrgyz Republic: “Treaties that entered into force in the manner prescribed by law, to which the Kyrgyz Republic is a party, as well as generally recognized principles and norms of international law, are an integral part of the legal system of the Kyrgyz Republic.

The procedure and conditions for the application of treaties and universally recognized principles and norms of international law are determined by laws”.

8 See Article 9 of the Constitution of Turkmenistan, second paragraph: “Turkmenistan recognizes the priority of universally recognized norms of international law”. Notably, this provision refers only to “norms” but not “principles” of international law, which are universally recognized. Probably this is because such principles are already listed in the first paragraph of the same article: “Turkmenistan, as a full member of the world community, adheres to the principles of permanent neutrality in foreign policy, non-interference in the internal affairs of other countries, refusal to use force and participation in military blocs and alliances, and contributes to the development of peaceful, friendly, and mutually beneficial relations with the countries of the region and all countries of the world”.

9 Cf. Article 38 of the Statute of the International Court of Justice (ICJ).

10 See Article 10 of the Constitution of Tajikistan, third paragraph: “International legal acts recognized by Tajikistan are an integral part of the legal system of the republic. In case of inconsistency of the laws of the republic with recognized international legal acts, the norms of international legal acts shall apply”.

foreign policy, it appears to suggest that Uzbekistan approaches international law from a dualist perspective. All states of Central Asia have enacted laws on treaties,<sup>11</sup> which regulate the order of their conclusion, observance and application, domestic implementation, amendments and modifications, invalidity, suspension, or termination of their operation, etc., with due regard to the Vienna Convention on the Law of Treaties.

However, in practice, international law is confined to the foreign policies of the Central Asian states and does not seem to have a systemic impact on their domestic legal orders. For example, Kazakhstan's Legal Policy Concept for 2020–2030 relates to international law only in a brief section entitled “The Legal Provision of Foreign Policy and Foreign Economic Activity”,<sup>12</sup> and even there, the limited focus is on “further integration into the world economy through the use of tools of economic diplomacy, promotion and protection of state interests in international organizations and multilateral economic integration associations”. No mention is made of a direct application of treaties in accordance with Article 6(2) of the Law “On Legal Acts”.<sup>13</sup> Notably, the same section of the Legal Policy Concept reads that “in the course of planning and at the subsequent stages of concluding international treaties, it is important to proceed from the *national interests* of the Republic of Kazakhstan, carefully assess their sectoral feasibility, and predict possible socioeconomic and political consequences. A qualitative study of the conclusion of international treaties directly affects the level of protection of *State interests* in the international arena” (emphasis added). The cautious tone of these state-centered provisions seems to suggest that the state's intention is to restrict the application of international law for the purpose of protecting its own interests, in a similar manner to that which has recently been observed in the Russian Federation.<sup>14</sup> In line with this assumption, during a parliamentary debate on the draft Legal Policy Concept, it was stated that “following the example of

11 Kazakhstan adopted a law on treaties on 30 May 2005, Kyrgyzstan on 24 April 2014, Tajikistan on 23 July 2016 (new edition), Turkmenistan on 10 May 2010, and Uzbekistan on 6 February 2019 (new edition).

12 The text of the Legal Policy Concept is available at <https://adilet.zan.kz/rus/docs/U2100000674>.

13 Article 6(2) of Kazakhstan's Law “On Legal Acts” reads: “Treaties ratified by the Republic of Kazakhstan have priority over its laws and are applied directly, except for cases when it follows from a treaty that its application requires the publication of a law”.

14 See Yulia Ioffe, “The Amendments to the Russian Constitution: Putin's Attempt to Reinforce Russia's Isolationist Views on International Law?” *EJIL: Talk!* (20 January 2020), available at <https://www.ejiltalk.org/the-amendments-to-the-russian-constitution-putins-attempt-to-reinforce-russias-isolationist-views-on-international-law/>.

other neighboring countries, we probably need to establish (possibly in the Constitution) *some restrictions on the application of the norms of international agreements*. Significant losses in foreign arbitrations are driving such extraordinary decisions” (emphasis added).<sup>15</sup> Obviously, if the proposed restrictions were ever introduced, this would be the start of Kazakhstan’s alienation from international law, with far-reaching adverse consequences for the international legal profession. Moreover, given Kazakhstan’s influence in the region, the other Central Asian states might follow its example.

Since the early 1990s, the Central Asian doctrines of international law have been evolving along two main trajectories.<sup>16</sup> The first generation of Central Asia’s international lawyers were trained in the Soviet Union (mainly in Russia), and still maintain close working relations with Russian counterparts. Like a significant number of senior scholars of international law in the Russian Federation, many, if not most, senior Central Asian international lawyers lack knowledge of English and other foreign languages, and thus 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”.<sup>17</sup> This probably suggests the persistence of post-colonial trends in Central Asian doctrines of international law. The second and third generations of Central Asian international lawyers, in contrast, were trained in sovereign Central Asian states and their main representatives have quite different professional philosophies. Usually well versed in several foreign languages, as well as their mother tongues and Russian, and therefore exposed to a variety of scholarly doctrines, skilled junior international lawyers from Central Asia are increasingly gaining authority in the academic community, both within the region and internationally. Some hold academic and administrative posts at leading international law schools in Central Asia (see *supra* note 2), South Korea, Finland, Germany, and the United Kingdom, and others work for international intergovernmental and non-governmental organizations, consultancies, and private law practices.

With due regard to the region’s political priorities (see *supra* Introduction), Central Asian scholars are contributing to the doctrine in various areas of

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15 See “Tekst vystupleniya otnositelno proyekta Kontseptsii pravovoy politiki (KPP prezentovan MinYustom)” [Text of a statement regarding the draft Legal Policy Concept (LPC presented by the Ministry of Justice), available at <https://senate.parlam.kz/ru-RU/blog/934/news/details/23151>].

16 Sayapin, *op.cit.* note 3, 171–172.

17 See Lauri Mälksoo, *Russian Approaches to International Law* (Oxford University Press, Oxford, 2015), 87.



international law. In addition to several textbooks and manuals on international law,<sup>18</sup> Central Asian authors have produced studies dealing with the history of international law,<sup>19</sup> international legal personality and statehood,<sup>20</sup> state succession,<sup>21</sup> regional security,<sup>22</sup> human rights,<sup>23</sup> international humanitarian law,<sup>24</sup> and international criminal law.<sup>25</sup> Important monographs on

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- 18 See Hadjimurat T. Adilkariyev, *Mezhdunarodnoye pravo* [International law] (Tashkent State Law Institute, Tashkent, 2003); Sagyngali Zh. Aidarbayev, *Mezhdunarodnoye publichnoye pravo* [Public international law] (Zhety Zhargy, Almaty, 2019); Igor I. Lukashuk and Akmal H. Saidov, *Hozirgi zamon xalqaro huquqi nazariyasi asoslari* [The theoretical fundamentals of modern international law] (Adolat, Tashkent, 2006); Marat A. Sarsembayev and Kanat M. Sarsembayev, *Mezhdunarodnoye pravo* [International law] (Zhety Zhargy, Almaty, 2009).
- 19 See Marat Sarsembayev, *Mezhdunarodnoye pravo v istorii Kazakhstana i Sredney Azii* [International law in the history of Central Asia] (Foliant, Astana, 2011); Ravshan Hakimov, *Mezhdunarodnoye pravo (Bibliografiya 1895–2012 gg)* [International law (A Bibliography 1895–2012)] (Yangi asr avlodi, Tashkent, 2013).
- 20 See Umed A. Mansurov, *Mezhdunarodnaya pravosub'yektnost Respubliki Tadjikistan, Chast 1: Pravo na chlenstvo v mezhdunarodnyh organizatsiyah* [The international legal personality of the Republic of Tajikistan, Part 1: The right to membership in international organizations] (Dushanbe, 2019); Ravshan T. Hakimov, *Mezhdunarodnaya pravosub'yektnost: voprosy istorii, teorii i praktiki* [International legal personality: Issues of history, theory, and practice] (Fan, Tashkent, 2012).
- 21 See Ravshan Hakimov, *Problemy pravopreemstva gosudarstv v mezhdunarodnom prave* [Issues of state succession in international law] (Yangi asr avlodi, Tashkent, 2008).
- 22 See Azizjon S. Rahmonov, Olga V. Kravchenko, Dilshod S. Naskov, and Dilshod A. Rahmonzoda, *Pravoye osnovy obespecheniya natsionalnoy bezopasnosti, protivodeystviya ekstremizmu i terrorizmu Rossiyskoy Federatsii* [The legal foundations of reinforcing national security, countering terrorism and extremism of the Russian Federation] (Russian-Tajik (Slavonic) University, Dushanbe, 2018).
- 23 See Ravshan Hakimov, *Detstvo: problemy i perspektivy* [Childhood: problems and prospects] (O'zbekiston, Tashkent, 2006).
- 24 See Saidumar A. Rajabov, *Implementatsiya norm mezhdunarodnogo gumanitarnogo prava v Respublike Tadjikistan: problem teorii i praktiki* [The implementation of rules of international humanitarian law in the Republic of Tajikistan: Issues of theory and practice] (Institute of State and Law under the Academy of Sciences of the Republic of Tajikistan, Dushanbe, 2006); Ravshan Hakimov, *Mezhdunarodnoye gumanitarnoye pravo* [International humanitarian law] (O'zbekiston, Tashkent, 2007).
- 25 See Azizjon S. Rahmonov, Olga V. Kravchenko, Dilshod S. Naskov, Dilshod A. Rahmonzoda, and E. A. Holikov, *Osnovy protivodeystviya terrorizmu i ekstremizmu po zakonodatelstvu Rossiyskoy Federatsii i Respubliki Tadjikistan* [The foundations of countering terrorism and extremism in the legislation of the Russian Federation and the Republic of Tajikistan] (Russian-Tajik (Slavonic) University, Dushanbe, 2017); Nuriddin Sandibayev and Ravshan Hakimov, *Xalqaro jinoyat sudi* [International Criminal Court] (Yangi asr avlodi, Tashkent, 2013).

regional integration,<sup>26</sup> international economic law,<sup>27</sup> international criminal law,<sup>28</sup> and international conflict and security law<sup>29</sup> have been released by leading international law publishers. In 2022, an English-language *Central Asian Yearbook of International Law and International Relations* is set to be published.

Yet, these academic successes are not yet systematic or comprehensive. First of all, it is not clear whether Central Asian academics who work outside Central Asia still subjectively associate themselves with the region, or whether they already consider themselves ‘foreign’ scholars with Central Asian origins. Within Central Asia, in turn, international law scholarship suffers from a number of systemic issues. International law scholarship rests on the enthusiasm and academic ambitions of individual authors rather than on demand or support from the state itself, and it is also underfunded. Certain forms of regular public-private partnership between states and academic circles might help resolve these issues. Formally, international law associations exist in Kazakhstan and Uzbekistan, but not in the other Central Asian countries, and even these two associations do not seem to carry out regular activities. There are only a few Central Asian members of the Asian, European, and American Associations of International Law. Probably most significantly, the practice

26 See Zhenis Kembayev, *Legal Aspects of the Regional Integration Processes in the Post-Soviet Area* (Springer, Berlin, Heidelberg, 2009).

27 See Miras Daulenov, *Przepływ osob, uslug, towarow i kapitalu w umowach miedzynarodowych Unii Europejskiej* (Adam Marszalek, Toruń, 2016); Akbar Rasulov and John Haskell (eds.), *International Economic Law: New Voices, New Perspectives*. Series: *European Yearbook of International Economic Law* (Springer Nature Switzerland, Cham, 2020); Djankhongir Saidov, *Conformity of Goods and Documents: The Vienna Sales Convention* (Hart Publishing, Oxford, 2015); Djankhongir Saidov, *The Law of Damages in International Sales: The CISG and other International Instruments* (Hart Publishing, Oxford, 2008); Djankhongir Saidov, *The Law of Damages in International Sales: The CISG and other International Instruments*, 2nd edition (Hart Publishing, Oxford, 2021); Sherzod Shadikhodjaev, *Industrial Policy and the World Trade Organization: Between Legal Constraints and Flexibilities* (Cambridge University Press, Cambridge, 2018); Sherzod Shadikhodjaev, *Retaliation in the WTO Dispute Settlement System* (Kluwer Law International, London, 2009).

28 See Rustam Atadjanov, *Humanness as a Protected Legal Interest of Crimes against Humanity: Conceptual and Normative Aspects* (T. M. C. Asser Press, The Hague, 2019); Sergey Sayapin, *The Crime of Aggression in International Criminal Law: Historical Development, Comparative Analysis and Present State* (T. M. C. Asser Press, The Hague, 2014).

29 See Sergey Sayapin and Evhen Tsybulenko (eds.), *The Use of Force against Ukraine and International Law: Jus Ad Bellum, Jus in Bello, Jus Post Bellum* (T. M. C. Asser Press, The Hague, 2018); Sergey Sayapin, Rustam Atadjanov, Umesh Kadam, Gerhard Kemp, Nicolás Zambrana-Tevar, and Noëlle Quéniwet (eds.), *International Conflict and Security Law: A Research Handbook* (T. M. C. Asser Press, The Hague, 2022).

of international law is largely detached from its scholarship, and states could call on advice and support from international law scholars more regularly. To achieve this, the ministries of foreign affairs (responsible for the implementation of international law) and ministries of justice (responsible for the regulation of the legal profession) could work together more closely. As explained below, the Central Asian states have accomplished important work in various areas of international law but involving academics would help fill the existing gaps more successfully.

### 3 Central Asian Practices of International Law

The states of Central Asia have been active in various international formats, including universal and regional organizations, and have proposed several important international initiatives. This section highlights some key practices in select thematic fields, identifies related troubled nexuses in the implementation of international law, and serves as a basis for concluding observations and policy recommendations (section 4).

#### 3.1 *International Peace and Security*

The states of Central Asia have proposed several important international security initiatives. To name a few examples (in chronological order): on 12 December 1995, the General Assembly of the United Nations reaffirmed the permanent neutrality of Turkmenistan, which was subsequently reflected in Article 2 of the Constitution of Turkmenistan:

Turkmenistan has the status of permanent neutrality, recognized by the world community, and secured by law.

In the resolutions of the General Assembly on “permanent neutrality of Turkmenistan” of 12 December 1995 and 3 June 2015, the United Nations recognizes and supports the status of permanent neutrality proclaimed by Turkmenistan, calls on the Member States of the United Nations to respect and support this status of Turkmenistan, also respecting its independence, sovereignty, and territorial integrity.

The permanent neutrality of Turkmenistan is the basis of its domestic and foreign policy.

Notably, not only is Turkmenistan the only state in Central Asia with the status of permanent neutrality, but its constitution is also unique in Central Asia in that it makes direct reference to the UN. Further, in 1997, Tashkent hosted

an international conference entitled “Central Asia – a zone free of nuclear weapons”, after which the Central Asian Nuclear-Weapon-Free Zone (CAN-WFZ) treaty was signed on 8 September 2008 and, following ratification by all Central Asian states, entered into force on 21 March 2009.<sup>30</sup> In accordance with Article 3(1)(a) of the treaty, each party generally undertakes “not to conduct research on, develop, manufacture, stockpile or otherwise acquire, possess or have control over any nuclear weapon or other nuclear explosive device by any means anywhere”. The subsequent substantive provisions reinforce this general obligation through rules pertaining to the transit of foreign ships, aircraft, and ground transportation (Article 4), the testing of nuclear weapons (Article 5), environmental security (Article 6), the use of nuclear energy for peaceful purposes (Article 7), and the physical protection of nuclear material and equipment (Article 9). The procedural provisions pertain to cooperation with the International Atomic Energy Agency (IAEA), and consultative meetings (Articles 8 and 10, respectively). Central Asia has thus become one of the world’s five Nuclear-Weapon-Free Zones (NWFZs).<sup>31</sup>

In 2010, Kazakhstan was the first Central Asian and post-Soviet state to chair the Organization for Security and Co-operation in Europe (OSCE).<sup>32</sup> In his speech of 14 January 2010, the first president of Kazakhstan, Nursultan Nazarbayev, described his vision for Kazakhstan’s OSCE Chairmanship as follows:

The motto of Kazakhstan’s Chairmanship will be four Ts, namely, “Trust”, “Tradition”, “Transparency” and “Tolerance”. The first T refers to the trust that is necessary for all of us. The second one refers to our commitment to the fundamental principles and values of the OSCE. The third one conveys maximum openness and transparency in international relations, free from “double standards” and “dividing lines”, as well as a focus on constructive co-operation in order to address challenges and threats to security.

30 The original English text and ratification status of the Treaty is available at <https://treaties.unoda.org/t/canwzf>.

31 “Overview of Nuclear-Weapon-Free Zones,” *United Nations Platform for Nuclear-Free Zones*, available at <https://www.un.org/nwzf/content/overview-nuclear-weapon-free-zones>.

32 “Kazakhstan takes over OSCE Chair, seeks to strengthen Organization and advance dialogue on future European security architecture,” *Organization for Security and Co-operation in Europe* (1 January 2010), available at <https://www.osce.org/cio/51810>.

Finally, the fourth T reflects global trends towards a strengthening of intercultural and intercivilizational dialogue, which is gaining major importance in today's world.<sup>33</sup>

Kazakhstan's performance as OSCE Chair received mixed reviews. In early 2011, *Eurasianet* commented on the outcomes of the 2010 OSCE Summit in Astana as follows:

The summit descended into disarray amid disagreements over the final declaration, with conflicts in the South Caucasus the chief stumbling block. The agreement was eventually watered down and the accompanying action plan discarded altogether.

For Astana, though, the fact that it persuaded leaders to sign the declaration at all was a diplomatic victory – as was widespread praise at the summit for its smooth running of the chairmanship and its role in defusing last year's political crisis in Kyrgyzstan.

Neighboring Uzbekistan, however, used the summit to attack the OSCE's reaction to June's ethnic clashes in southern Kyrgyzstan as ineffective, and ongoing delays in deploying a planned OSCE police mission there have also drawn fire.<sup>34</sup>

On 10 September 2012, Law ZRU-330 On the Concept of the Foreign Political Activity of the Republic of Uzbekistan was promulgated by the first president of Uzbekistan. At the time of writing, it was not possible to retrieve the law from the national legislation database Lex.Uz. However, the main tenets of the concept, reported in 2012, are as follows:

- 1) Uzbekistan reserves the right to enter into alliances, join commonwealths and other interstate formations, as well as withdraw from them, guided by the highest interests of the state, the people, their welfare and security, priority areas for the modernization of the country, current national legislation, and accepted international obligations;

33 "Text of the video address by President Nursultan Nazarbayev on the occasion of Kazakhstan's assumption of the Chairmanship of the OSCE January 2010," *Organization for Security and Co-operation in Europe* (14 January 2010), available at <https://www.osce.org/files/f/documents/d/c/41121.pdf>.

34 Joanna Lillis, "Kazakhstan: Experts Give Astana Mixed Review on OSCE Chairmanship," *Eurasianet* (13 January 2011), available at <https://eurasianet.org/kazakhstan-experts-give-astana-mixed-review-on-osce-chairmanship>

- 2) Uzbekistan pursues a peaceful policy, does not take part in military-political blocs, and reserves the right to withdraw from any interstate entity in the event of its transformation into a military-political bloc;
- 3) Uzbekistan takes political, economic, and other measures to prevent its involvement in armed conflicts and hotbeds of tension in neighboring states, and also does not allow the deployment of foreign military bases and facilities on its territory;
- 4) In accordance with the Constitution, the Law “On Defense”, and the military doctrine, the armed forces of Uzbekistan are created solely to protect the state sovereignty and territorial integrity of the country, the peaceful life and security of its population, and the latter do not take part in peacekeeping operations abroad.<sup>35</sup>

In line with this policy, Uzbekistan suspended its membership in the CSTO in 2012. Notably, membership in the CSTO could not prevent armed clashes between Kyrgyzstan and Tajikistan from 28 April to 1 May 2021 and then again in January and September 2022.<sup>36</sup> This probably suggests that the CSTO peace-making machinery requires further fine tuning. As one of Afghanistan’s closest neighbors, Uzbekistan hosted two high-level conferences on regional security cooperation (in 2018), and on challenges and opportunities for Central and South Asia (in 2021), and another international conference on Afghanistan took place in Tashkent on 25–26 July 2022. As reported by the Ministry of Foreign Affairs of Uzbekistan, “the main goal of the event is to develop a set of measures and proposals for the world community to promote stability, security, and post-conflict reconstruction in Afghanistan, and the country’s integration into

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35 “V Kontseptsiiyu vneshnepoliticheskoy deyatelnosti planiruyetsya vnesti izmeneniya” [Plans for the amendment of the concept of foreign political activity], *Gazeta.Uz* (19 January 2021), available at <https://www.gazeta.uz/ru/2021/01/19/foreign-policy/>.

36 Natalya Pozdnyakova, “Konflikt Tadjikistana i Kyrgyzstana: voda, narkotiki, zemlya?” [Conflict between Tajikistan and Kyrgyzstan: Water, drugs, land?], *Deutsche Welle* (30 April 2021), available at <https://www.dw.com/ru/konflikt-tadjikistana-i-kyrgyzstana-voda-narkotiki-zemlja/a-57392981>; Ray Furlong, “Tanks, Firing, And Evacuations Amid Kyrgyz-Tajik Clashes,” *Radio Free Europe/Radio Liberty* (16 September 2022), available at <https://www.rferl.org/a/tajikistan-kyrgyzstan-clashes/32037529.html>; “Cease-Fire Halts Deadly Clashes Along Kyrgyz-Tajik Border,” *Radio Free Europe/Radio Liberty* (28 January 2022), available at <https://www.rferl.org/a/kyrgyz-tajik-border-shootout-batken/31674508.html>; “Kyrgyz Officials Say Death Toll In Border Violence With Tajikistan Rises To 36,” *Radio Free Europe/Radio Liberty* (18 September 2022), available at <https://www.rferl.org/a/kyrgyzstan-tajikistan-border-clashes-death-toll/32039417.html>.

regional cooperation processes in the interests of the multinational Afghan people and the whole world".<sup>37</sup>

Due to its strategic location, there was considerable potential for conflict in Central Asia long before the Great Game of the 19th century,<sup>38</sup> and this remains the case today. At present, the maintenance of peace and security in the region is dependent on the successful management of numerous security concerns, and on cooperation both among the Central Asian states and between them and powerful external actors, such as China, Russia, North America, and the European Union. International law plays a central role in these processes in that since 1991, regional security alliances have been formed (see *infra* 3.3), foreign military bases have been established (in Kyrgyzstan and Tajikistan) and dismantled (in Kyrgyzstan and Uzbekistan), armed conflicts (in Tajikistan) and situations of violence have taken place (in Kyrgyzstan, Kazakhstan, and Uzbekistan), raising serious human rights concerns, and significant efforts have been made to combat international terrorism and transnational organized crime (see *infra* 3.7). The problems of corruption, energy, international supply chains, and the secondary effects of international sanctions imposed on the Russian Federation for its continued aggression against Ukraine are now adding to the complex mosaic of regional security. Central Asian international lawyers ought to continue analyzing these developments, impartially and objectively, and make recommendations on relevant domestic and international policies. As sensitive as these topics are, constructive dialogue between policymakers and the academic community will ultimately be useful.

### 3.2 *Universal International Organizations*

The Central Asian states have been cooperating with universal international organizations since the early years of their independence. At the time, it was both a matter of prestige and a way of manifesting their newly acquired state sovereignty, and the ensuing cooperation between universal international organizations and their members in Central Asia has yielded valuable results. The Central Asian states were admitted to the United Nations on 2 March 1992 and are also members of the UN specialized agencies. Uzbekistan had five locations placed on UNESCO's World Heritage List, and no fewer than six of

37 See "O predstoyashchey Mezhdunarodnoy konferentsii po Afganistanu" [On the forthcoming international conference on Afghanistan], Ministry of Foreign Affairs of the Republic of Uzbekistan (30 June 2022), available at <https://mfa.uz/ru/press/news/2022/0-predstoyaschey-mezhdunarodnoy-konferencii-po-afganistanu---31740>.

38 Cf. Peter Hopkirk, *The Great Game: The Struggle for Empire in Central Asia* (Kodansha International, Tokyo, 1992).

the country's cultural traditions have been recognized as Intangible Cultural Heritage.<sup>39</sup> The early years of Tajikistan's independence were marked by a violent non-international armed conflict,<sup>40</sup> and the UN's peacebuilding efforts were important.<sup>41</sup> In 1995, Turkmenistan had its permanent neutrality recognized by the UN General Assembly,<sup>42</sup> and in 2007, the United Nations Regional Centre for Preventive Diplomacy for Central Asia (UNRCCA) was established.<sup>43</sup> In 2017–2018, Kazakhstan was a non-permanent member of the UN Security Council, and used this status to, among other things, promote its campaign against nuclear weapons, raise international awareness of the security situation in and around Afghanistan, and to consolidate its role in UN peacekeeping operations.<sup>44</sup> For this purpose, the Almaty-based Peacekeeping Training Centre (Partnership for Peace) under the Ministry of Defense of the Republic of Kazakhstan is instrumental.<sup>45</sup>

These and other examples of practices of the Central Asian states as members of the UN could help showcase the importance of general international law for Central Asia and reinforce its relevance both as a policy tool and an academic discipline. Such practices are relevant for general international law courses as well as to courses dealing specifically with international peace and security, international humanitarian law, diplomacy, and others. Students of international law would greatly benefit from regular guest lectures by UN experts, as their practical insights would be a valuable addition to students' theoretical training, would improve their linguistic skills, and help at least some of them choose their career paths. In some Central Asian contexts, academic contact with foreign experts might be limited by national security

39 See "Intangible Cultural Heritage," *Permanent Delegation of Uzbekistan to UNESCO*, available at <http://uzunesco.org/>.

40 See Rustam Atadjanov, "Non-International Armed Conflict in Tajikistan," in Seokwoo Lee, Hee Eun Lee, Muhammad Ekramul Haque, Sergey Sayapin, Rajesh Babu Ravindran, Jamal Seifi, and Wasantha Seneviratne (eds.), *Encyclopedia of Public International Law in Asia*, Volume 111: Central & South Asia (Brill, Leiden, 2021), 207–208.

41 See "Tajikistan – UN Cooperation," *Ministry of Foreign Affairs of the Republic of Tajikistan* (8 July 2019), available at <https://mfa.tj/en/main/view/195/tajikistan-and-united-nations-specialized-agencies-and-organizations>.

42 See Constitutional Law of Turkmenistan on Permanent Neutrality of Turkmenistan (27 December 1995), available at <https://www.refworld.org/pdffid/405ab3d14.pdf>.

43 See UNRCCA, available at <https://unrcca.unmissions.org/>.

44 See Wilder Alejandro Sanchez, "Analyzing Kazakhstan's First Tenure at the UN Security Council: As the first Central Asian state to sit on the UNSC, what did Kazakhstan achieve?," *The Diplomat* (22 March 2019), available at <https://thediplomat.com/2019/03/analyzing-kazakhstans-first-tenure-at-the-un-security-council/>.

45 See Partnership for Peace Centre, available at <https://kazcent.kz/en/>.



considerations. For the sake of providing quality education, it would thus be advisable to reconsider such policies, and facilitate regular and free opportunities for communication between students and scholars, on the one hand, and representatives of the UN and its specialized agencies, on the other.

### 3.3 *Regional Organizations*

Since 1991, several regional organizations have been established in which Central Asian members play key roles. The Commonwealth of Independent States (CIS),<sup>46</sup> the largest post-Soviet regional organization, was founded on 8 December 1991 by the Republic of Belarus, the Russian Federation (RSFSR), and Ukraine whereby they jointly declared that the USSR had “ceased to exist as a subject of international law and a geopolitical reality” (cf. the first preambular paragraph of the Agreement on the Establishment of the Commonwealth of Independent States). On 21 December 1991, the leaders of Azerbaijan, Armenia, Belarus, Kazakhstan, Kyrgyzstan, Moldova, the Russian Federation, Tajikistan, Turkmenistan, Uzbekistan, and Ukraine signed a protocol to that agreement which effectively established the CIS. The CIS Statute was adopted on 22 January 1993.

The CSTO<sup>47</sup> grew out of a Collective Security Treaty, which was signed in Tashkent (Uzbekistan) on 15 May 1992 on behalf of Armenia, Kazakhstan, Kyrgyzstan, the Russian Federation, Tajikistan, and Uzbekistan. In 1993, Azerbaijan, Belarus, and Georgia also joined. The treaty entered into force on 20 April 1994 and was effective until 1999 when Azerbaijan, Georgia, and Uzbekistan withdrew from the treaty, and the other states parties agreed to automatically prolong the treaty’s validity for subsequent five-year periods. On 14 May 2002, the treaty was transformed into an intergovernmental organization whose statute was approved on 7 October 2002 and registered at the UN Secretariat in 2003. In 2004, the CSTO was granted observer status at the UN General Assembly. Current members of the CSTO include Armenia, Belarus, Kazakhstan, Kyrgyzstan, Russia, and Tajikistan (Uzbekistan renewed its membership in 2006 and suspended it in 2012).

On 15 June 2001, Kazakhstan, China, Kyrgyzstan, Russia, Tajikistan, and Uzbekistan announced the establishment of the Shanghai Cooperation

46 Sayapin, *op.cit.* note 3, 183–184.

47 See Sergey Sayapin, “Collective Security Treaty Organization (CSTO),” in Seokwoo Lee, Hee Eun Lee, Muhammad Ekramul Haque, Sergey Sayapin, Rajesh Babu Ravindran, Jamal Seifi, and Wasantha Seneviratne (eds.), *Encyclopedia of Public International Law in Asia*, Volume III: Central & South Asia (Brill, Leiden, 2021), 184–185.

Organisation (SCO).<sup>48</sup> According to its website, the SCO's main goals include "strengthening mutual trust and neighbourliness among the member states; promoting their effective cooperation in politics, trade, the economy, research, technology and culture, as well as in education, energy, transport, tourism, environmental protection, and other areas; making joint efforts to maintain and ensure peace, security and stability in the region; and moving towards the establishment of a democratic, fair and rational new international political and economic order".<sup>49</sup> The SCO Charter was adopted in June 2002 and entered into force on 19 September 2003. As of 2021, the SCO has eight member states – the founding members plus India and Pakistan (admitted in 2017) – making it the world's largest regional intergovernmental organization in terms of territory and population. Afghanistan, Belarus, Iran, and Mongolia have observer status, whereas Azerbaijan, Armenia, Cambodia, Nepal, Turkey, and Sri Lanka are SCO dialogue partners. The SCO Regional Anti-Terrorist Structure (RATS) is located in Tashkent.<sup>50</sup>

For its part, the Eurasian Economic Union (EAEU) is a regional economic organization with elements of supranational competences.<sup>51</sup> The Treaty on the EAEU entered into force on 1 January 2015. The current EAEU membership comprises Armenia, Belarus, Kazakhstan, Kyrgyzstan, and Russia. On 11 December 2020, Uzbekistan and Cuba were granted observer status at the EAEU.

However, the number and intensity of the challenges currently facing Central Asia seem to require even closer regional integration. For many years,

48 See Sergey Sayapin, "Shanghai Cooperation Organisation (SCO)," in Seokwoo Lee, Hee Eun Lee, Muhammad Ekramul Haque, Sergey Sayapin, Rajesh Babu Ravindran, Jamal Seifi, and Wasantha Seneviratne (eds.), *Encyclopedia of Public International Law in Asia*, Volume III: Central & South Asia (Brill, Leiden, 2021), 188–189. See also Evhen Tsybulenko and Anastasiya Platonova, "Legal Instruments of the Shanghai Cooperation Organisation: A Case of Missed Opportunities?" in Sergey Sayapin and Rustam Burnashev (eds.), *Central Asian Yearbook of International Law and International Relations 2022* (Eleven, The Hague, 2022), 252–266.

49 See "About SCO," *Shanghai Cooperation Organisation*, available at [http://eng.sectsc.org/about\\_sco/](http://eng.sectsc.org/about_sco/).

50 The Regional Anti-Terrorist Structure of Shanghai Cooperation Organisation (RATS SCO), available at <https://ecrats.org/en/>.

51 See Miras Daulenov, "Eurasian Economic Union (EEU)," in Seokwoo Lee, Hee Eun Lee, Muhammad Ekramul Haque, Sergey Sayapin, Rajesh Babu Ravindran, Jamal Seifi, and Wasantha Seneviratne (eds.), *Encyclopedia of Public International Law in Asia*, Volume III: Central & South Asia (Brill, Leiden, 2021), 185–187. See also Ekaterina Antsygina and John Quigley, "The Eurasian Integration Process: Whether Political Will is Enough to Keep Alive the Eurasian Economic Union," in Sergey Sayapin and Rustam Burnashev (eds.), *Central Asian Yearbook of International Law and International Relations 2022* (Eleven, The Hague, 2022), 204–226.

Uzbekistan had a visa regime with most of its Central Asian neighbors, and Turkmenistan's visa policy is still very strict, including with respect to nationals of Central Asian states. In 2021 and 2022, unresolved border issues led to armed conflicts between Tajikistan and Kyrgyzstan.<sup>52</sup> Water scarcity is another problem, which, if unresolved, will aggravate the situation in the future.<sup>53</sup> The Aral Sea environmental disaster has been affecting the region for decades (see *infra* 4.3). These and other problems could be resolved more effectively if all Central Asian states were to make even more concerted efforts. In as early as 2007, the first president of Kazakhstan, Nursultan Nazarbayev, suggested establishing a Central Asian Union but so far this opportunity for integration has not been seized. In May 2021, the prospects of Central Asian integration were discussed at an expert roundtable in Almaty. According to Professor H. Saidov (Russian-Tajik Slavonic University), "each [Central Asian] state has colossal opportunities for development. Kazakhstan is the most advanced country in Central Asia, Uzbekistan is a giant with enormous opportunities, Turkmenistan has a positive international status, Kyrgyzstan is famous for its democratic transformation, and Tajikistan has powerful hydro resources. These efforts need to be combined".<sup>54</sup> The next major step in the regional integration process was on 21 July 2022 when the presidents of Kazakhstan, Kyrgyzstan, and Uzbekistan signed a Treaty of Friendship, Good Neighborliness and Cooperation for the Development of Central Asia in the 21st Century.<sup>55</sup> If the Central Asian Union project ever materializes, it will indeed contribute to the region's sustainable development, and to the welfare of all Central Asian societies.<sup>56</sup>

Given the distinct advantages of regional institutions – less bureaucracy, greater dynamism, and a better understanding of regional issues, for instance – their role is likely to grow in the future. Regional institutions help contextualize international law, thus making it more attractive and efficient.

52 See *supra* note 36.

53 See Bruce Panier, "Central Asian Heat Wave And Drought Creating Water Shortages, Crop Failures," *Radio Free Europe/Radio Liberty* (24 June 2021), available at <https://www.rferl.org/a/central-asian-drought-water-shortages/31324012.html>.

54 See "Tsentralnoazatskiy Soyuz – byt ili ne byt?" [A Central Asian Union – to be or not to be?], *Sputnik* (23 May 2019), available at <https://ru.sputnik.kz/politics/20190523/10232256/central-asia-soyuz.html>.

55 See "Dogovor o druzhbe na sammite stran Tsentralnoy Azii podpisali tri prezidenta iz pyati" [Three out of five presidents signed friendship treaty at the summit of Central Asian countries], *Fergana Agency* (21 July 2022), available at <https://fergana.agency/news/127082/>.

56 See S. Frederick Starr, "Is This Central Asia's ASEAN Moment? On November 29, Central Asia re-emerged as a world region," *The Diplomat* (5 December 2019), available at <https://thediplomat.com/2019/12/is-this-central-asias-asean-moment/>.

Based on my own experience of teaching international law in Central Asia, I have two further observations with respect to the contextualization of international law. First, students perceive the relevance of international law more readily if they are shown its role in the context of responding to the challenges their region faces. Second, teaching mixed groups of students majoring in international law and international relations is especially effective. Law students help students of international relations better grasp the role of law and other rules in domestic and international politics, and students of international relations encourage lawyers to consider the application of rules of law in practical contexts and take account of dynamic relationships between the rules of law and non-legal factors, such as economics, politics, power, religion, etc.

### 3.4 *International Environmental Law*

Central Asia's major environmental problem – indeed, one of global significance – is the man-made desertification of the Aral Sea.<sup>57</sup> Due to predatory policies on irrigation, in the 1960s, the Aral Sea level was declining by an average of 0.2 meters per year, in the 1970s by 0.6 meters, and in the 1980s by as much as 0.85 meters. In 1987, the water level reached 36.4 meters, which is 16.6 meters lower than the average long-term level before 1961. The resulting ecosystem collapse had devastating effects on the environment, public health, and the economy. In February 1992, the Agreement on Cooperation in Joint Management, Use and Protection of Interstate Water Resources was signed in Almaty, and the Interstate Commission for Water Coordination (ICWC) was established. In 1993, the International Foundation to Save the Aral Sea (IFAS) was founded. Since 1994, three Aral Sea Basin Programs (ASBP) have been implemented with financial support from various countries, the United Nations Development Programme (UNDP), the World Bank, the United States Agency for International Development (USAID), the Asian Development Bank (ADB), and other donors. Moreover, UNESCO supported several scientific projects to develop policy recommendations and capacity building. As a result of the construction of the Kokaral Dam, between 2003 and 2005, the water salinity in the North Aral Sea decreased and positive microclimate changes have been reported.<sup>58</sup> As the condition of the South Aral Sea continued deteriorating,

57 See Sergey Sayapin, "The Aral Sea," in Seokwoo Lee, Hee Eun Lee, Muhammad Ekramul Haque, Sergey Sayapin, Rajesh Babu Ravindran, Jamal Seifi, and Wasantha Seneviratne (eds.), *Encyclopedia of Public International Law in Asia*, Volume III: Central & South Asia (Brill, Leiden, 2021), 198–199.

58 See "The Aral Sea Crisis," available at <http://www.columbia.edu/~tmt2120/environmental%20impacts.htm>.

the IFAS suggested in 2018 that the South Aral Sea's environmental degradation might be lessened through the construction of an artificial delta of the Syr Darya River.<sup>59</sup>

As convincingly shown by Dinara Ziganshina,<sup>60</sup> the problem of Central Asia's transboundary water security reaches far beyond the region and is multidimensional in that it requires ecological, economic, technical, healthcare, and other solutions. At this stage, a credible possibility is the conclusion of a convention on the Aral Sea by the states of the region, with the option of other states and international organizations joining at a later stage. The convention would be based on relevant scientific data, place limits on the use of the Amu Darya and Syr Darya Rivers for irrigation and other purposes, regulate cooperation in the areas of healthcare, the economy, and environmental protection, and establish an international expert monitoring mechanism. As such, the convention would unite experts from various disciplines with international lawyers and politicians and serve a practical and measurable common goal, whereby lawyers would translate data from various fields of science into the language of legally binding rules. Although obviously not an easy undertaking, the project would result in tangible economic, environmental, and humanitarian results in Central Asia and beyond.

### 3.5 *International Human Rights Law*

The Central Asian states are parties to the key human rights treaties.<sup>61</sup> In 2008, the Office of the High Commissioner on Human Rights (OHCHR) for Central Asia was established in Bishkek (Kyrgyzstan). It covers all Central Asian countries, except Uzbekistan.<sup>62</sup> In accordance with the OHCHR mandate, the Regional Office cooperates with "governments, intergovernmental organizations, civil society, the private sector as well as relevant United Nations partners, to formulate and implement strategies, programs and measures for the promotion and protection of all human rights in the countries of Central Asia".<sup>63</sup> It also "works with countries in the region to strengthen the capacity of national governments, national human rights institutions, non-governmental

<sup>59</sup> *Ibid.*

<sup>60</sup> See *passim* Dinara Ziganshina, *Promoting Transboundary Water Security in the Aral Sea Basin Through International Law* (Brill, Nijhoff, Leiden, 2014).

<sup>61</sup> For an overview of Central Asian states' commitments under international human rights law, see "Europe and Central Asia Region," OHCHR, available at <https://www.ohchr.org/EN/Countries/EnacaRegion/Pages/EnacaRegionIndex.aspx>.

<sup>62</sup> See "OHCHR – Central Asia Regional Office," OHCHR, available at <https://www.ohchr.org/EN/Countries/EnacaRegion/Pages/CentralAsiaSummary.aspx>.

<sup>63</sup> *Ibid.*

organizations and civil society organizations to increase compliance with human rights standards and improve protection against human rights violations, in particular violations relating to torture and the right to a fair trial".<sup>64</sup> Other pressing human rights issues include the independence of trade unions,<sup>65</sup> freedom of religion, domestic violence, freedom of assembly, LGBTQ+ rights, the rights of refugees,<sup>66</sup> freedom of the press, and others.<sup>67</sup>

Windows of opportunity for improving the human rights situation in some of the Central Asian states opened up just a few years ago, and much work remains to be done. Most notably, Kazakhstan and Uzbekistan announced law enforcement reforms. With due regard to recent developments in Uzbekistan, *The Economist* opined in December 2019 that "no other country has advanced that far", and named Uzbekistan "country of the year".<sup>68</sup> In order to reinforce this trend and to improve the quality of human rights protection in the region, above all, the independence of the judiciary should be strengthened.<sup>69</sup> To achieve this, judges and law enforcement officials at the local and central levels ought to be trained on international human rights instruments, in cooperation with the UN and academics. Where this has not yet been done, Constitutional Courts should be established, and citizens should be given access to them. Regular dialogue between the states and human rights NGOs would also be

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64 *Ibid.*

65 See Muslim Khassenov, "Collective Bargaining Systems in Germany and Kazakhstan," in Sergey Sayapin and Rustam Burnashev (eds.), *Central Asian Yearbook of International Law and International Relations 2022* (Eleven, The Hague, 2022), 130–162.

66 On the rights of refugees in Central Asia, see Khalida Azhigulova, "Central Asian States' Compliance with International Refugee and Human Rights Law: The Case of Chinese Uyghur Asylum Seekers," in Sergey Sayapin and Rustam Burnashev (eds.), *Central Asian Yearbook of International Law and International Relations 2022* (Eleven, The Hague, 2022), 267–287.

67 For a country-by-country overview of the human rights situation in Central Asia, see "Europe / Central Asia," Human Rights Watch, available at <https://www.hrw.org/europe/central-asia>. See also Sergey Sayapin, "Human Rights in the Post-Soviet Central Asia," in Lucia Leontiev and Punsara Amarasinghe (eds.), *Thirty Years Looking Back: State-Building, Rule of Law, Good Governance and Human Rights in the Post-Soviet Space* (Routledge, Abington, 2021), 135–149.

68 See "Which nation improved the most in 2019?", *The Economist* (21 December 2019) available at <https://www.economist.com/leaders/2019/12/21/which-nation-improved-the-most-in-2019>.

69 See Sergey Sayapin, "'Critical Analysis, Strict Discipline and Personal Responsibility': Some Reflections on Strengthening the Independence of Judiciary in Central Asia," 84(3) *Law and State* (December 2019), 18–27; Sergey Sayapin, "Réflexions sur le renforcement de l'indépendance de la magistrature en Asie centrale" ["Reflections on strengthening the independence of the judiciary in Central Asia], 14(4) *Les Cahiers de la justice* (2019), 657–665.

worthwhile. In other words, the time seems to be right for Central Asian countries to realize that compliance with international human rights law is not “harmful” to the state, and will, in the language of Uzbekistan’s new Human Rights Strategy, contribute to “further strengthening the country’s authority in the international arena, in particular, [to] improving the position [of the State] in economic, political, and legal rankings and indices”.<sup>70</sup>

### 3.6 *International Humanitarian Law*

Established in 1992,<sup>71</sup> the Regional Delegation of the International Committee of the Red Cross (ICRC) for Central Asia has been supporting the states of the region in the implementation of international humanitarian law (IHL) ever since.<sup>72</sup> In particular, provisions related to the repression of war crimes were integrated in the criminal codes of Central Asian states, laws on the use and protection of the red cross and red crescent emblems were adopted,<sup>73</sup> and Tajikistan and Turkmenistan adopted laws on the legal status of their respective National Red Crescent Societies. Humanitarian principles and the basics of IHL were integrated into the curricula of selected secondary school subjects in Kyrgyzstan, Tajikistan, and Uzbekistan, and a few leading Central Asian universities started teaching IHL to students of jurisprudence, international law and relations, as well as journalism and pedagogy. In 2000–2010, competitions on IHL were held for students in the region, and a similar competition was organized in January 2016, with the support of the ICRC, for students at KIMEP University. In 2005–2007, the ICRC held a series of national IHL courses, IHL essay contests, and three Central Asian courses on IHL given by internationally renowned lecturers. A few Central Asian students and junior lecturers participated in the Warsaw courses on IHL organized by the Polish Red Cross. A number of alumni of the ICRC program for scholars went on to become prominent academics, lawyers, and civil servants. The program was gradually reduced and had virtually closed by the mid-2010s.

The ICRC has also been actively engaging with the Central Asian states’ ministries of defense for the purpose of training officers at various levels on the law

<sup>70</sup> See Decree No. UP-6012 On the Approval of the National Strategy of the Republic of Uzbekistan on Human Rights of 22 June 2020 (in Russian) available at <https://lex.uz/ru/docs/4872357>, 4th preambular paragraph.

<sup>71</sup> An overview of the ICRC action in Central Asia is available at <https://www.icrc.org/en/where-we-work/europe-central-asia/uzbekistan>.

<sup>72</sup> An overview of Central Asian states’ obligations under IHL is available at <https://ihl-databases.icrc.org/ihl>.

<sup>73</sup> Having ratified the Third Additional Protocol to the 1949 Geneva Conventions so far, Kazakhstan and Kyrgyzstan also regulate the use of the “red crystal” emblem.

of armed conflict (LOAC). In Kazakhstan, a manual on the law of peace support operations was developed for Kazakhstani peacekeepers.<sup>74</sup> In Uzbekistan and Kyrgyzstan, the ICRC has been liaising with the ministries of interior, with a view to training their personnel on international human rights law (IHRL). In terms of protection and assistance, the ICRC was involved in the delivery of humanitarian aid to victims of a non-international armed conflict in Tajikistan (1992–1997), and in the aftermath of situations of violence in Kyrgyzstan (in 2005 and 2010). In early 2020, Uzbekistan announced the completion of mine clearance along its border with Tajikistan. Given that since 2000, a total of 374 Tajik citizens had been killed by anti-personnel landmines, and another 485 people injured,<sup>75</sup> this development is hugely important from a humanitarian perspective.

With due regard to modern technological developments, it would now be beneficial for the Central Asian states to equip their military personnel with skills related to cyberwarfare, and to modernize domestic laws accordingly. While measures have already been taken to combat a few transnational cyber-crimes,<sup>76</sup> rules of international law pertaining to *jus ad bellum* and *jus in bello* must now urgently be implemented in domestic legislation<sup>77</sup> to better respond to novel security threats. Similarly, leading international law schools ought to consider introducing courses on cyberspace law or law and technology. Ideally, such courses should be interdisciplinary, and be co-taught by lawyers and IT experts.

### 3.7 *International and Transnational Criminal Law*

Although the states of Central Asia have been working on the implementation of international criminal law (ICL) since the early 1990s, this work reached a qualitatively new level in the 2010s. Conceivably, this was, to a great extent, due to the publication of a Russian translation of *Principles of International*

74 See Sergey Sayapin, *Legal Aspects of Peace Support Operations/Pravovyye aspekty operatsiy po podderzhaniyu mira* (Ministry of Defense of the Republic of Kazakhstan/ICRC Regional Delegation in Central Asia, 2016).

75 See “Uzbekistan completes mine clearance of its border with Tajikistan,” *The Tashkent Times*, available at <https://tashkenttimes.uz/national/4816-uzbekistan-completes-mine-clearance-of-its-border-with-tajikistan>.

76 See Chapter 7 in the Special Part of the Criminal Code of the Republic of Kazakhstan, Chapter 42 of the Criminal Code of the Kyrgyz Republic, Chapter 28 of the Criminal Code of the Republic of Tajikistan, Chapter 33 of the Criminal Code of Turkmenistan, and Chapter XX-1 of the Criminal Code of the Republic of Uzbekistan.

77 For a general account, see Michael N. Schmitt (ed.), *Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations*, 2nd edition (Cambridge University Press, Cambridge, 2017).



*Criminal Law* by Professor Gerhard Werle,<sup>78</sup> which became a leading reference text on ICL in the CIS. The influence of this treatise is especially visible in the new editions of the criminal codes of Kazakhstan (adopted in 2014 and enacted in 2015) and Uzbekistan (in development since 2018).<sup>79</sup> The criminal codes of the Central Asian states now penalize all “core” crimes under international law, except crimes against humanity,<sup>80</sup> as well as some transnational crimes. The general part of ICL has been quite satisfactorily implemented.<sup>81</sup> However, there is no case law involving crimes under international law in Central Asia,<sup>82</sup> and judges and law enforcement officials are likely to require substantial training on the subject. Among all the Central Asian states, Tajikistan is the only state party to the Rome Statute of the International Criminal Court (ICC).<sup>83</sup>

As far as transnational crime is concerned, the United Nations Office on Drugs and Crime (UNODC), which has been present in Central Asia since 1993, lists the following areas of priority in the region:

1. Strengthening member states’ capacities to confront threats from transnational organized crime.

78 See Gerhard Werle, *Principles of international criminal law* [Principles of international criminal law] (TransLit, Odesa, Phoenix, Moscow, 2011). A second Russian edition (based on the 4th English edition by G. Werle and F. Jessberger) is forthcoming.

79 See Sergey Sayapin, “The Impact of Professor Werle’s Doctrine of International Criminal Law in the Post-Soviet Central Asia,” in Florian Jessberger, Moritz Vormbaum, and Boris Burghardt (eds.), *Festschrift für Gerhard Werle* (Mohr Siebeck Verlag, Tübingen, 2022), 271–277.

80 See Sergey Sayapin, “Why a Crimes against Humanity Convention from a Perspective of Post-Soviet States?,” 6 *African Journal of International Criminal Justice* (2020), 125–135.

81 See Sergey Sayapin, “The General Principles of International Criminal Law in the Criminal Code of the Republic of Kazakhstan,” 9 *Asian Journal of International Law* (2019), 1–9.

82 In the post-Soviet space, some notable case law involving public international law issues has been produced in Ukraine since 2014. See, for example, Sergey Sayapin, “A Curious Aggression Trial in Ukraine: Some Reflections on the *Alexandrov and Yerofeyev Case*,” 16 *Journal of International Criminal Justice* (2018), 1093–1104; Sergey Sayapin, “The *Yanukovich* Trial in Ukraine: A Revival of the Crime of Aggression?,” 50 *Israel Yearbook on Human Rights* (2020), 63–79.

83 The current ratification status of the Rome Statute is available at [https://asp.icc-cpi.int/en\\_menus/asp/states%20parties/Pages/the%20states%20parties%20to%20the%20rome%20statute.aspx](https://asp.icc-cpi.int/en_menus/asp/states%20parties/Pages/the%20states%20parties%20to%20the%20rome%20statute.aspx). Russia, an influential actor in Central Asia, “unsigned” the Rome Statute in 2016, see Sergey Sayapin, “Russia’s Withdrawal of Signature from the Rome Statute Would Not Shield its Nationals from Potential Prosecution at the ICC,” *EJIL: Talk!* (21 November 2016), available at <http://www.ejiltalk.org/russias-withdrawal-of-signature-from-the-rome-statute-would-not-shield-its-nationals-from-potential-prosecution-at-the-icc/#more-14774>.

2. Supporting member states in implementing a balanced, comprehensive and evidence-based approach to the world drug problem that addresses both supply and demand.
3. Strengthening crime prevention and building effective criminal justice systems.
4. Tackling corruption and its catastrophic impact on societies.
5. Countering terrorism, including through implementation of the 19 international legal instruments against terrorism.<sup>84</sup>

With due regard to these priorities, UNODC provides national authorities with technical assistance:

Some of the current UNODC activities include efforts to counter cyber-crime and anti-money laundering; assistance to respective national drug control agencies on capacity development through training, infrastructure, and intelligence-led policing. Further support is being provided to improve prevention of evidence-based drug use, treatment, and rehabilitation programmes. Support is being provided for forensics, strengthening of criminal justice system, and crime prevention. Prevention of violent extremism and radicalization [as well as] legislative reforms related to terrorism prevention are an integral part of UNODC's work in the region. All these efforts are carried out in close cooperation with the local governments, international partners and donors.<sup>85</sup>

As the Taliban – conceivably the most significant security threat for the whole of Central Asia – has regained authority in Afghanistan,<sup>86</sup> the states of the region should take urgent measures to reinforce their security, including the implementation of the relevant rules of ICL. According to Atadjanov, such measures should specifically involve the “introduction of separate *corpus delicti* (dispositions) of crimes against humanity as well as more inclusive formulations of war crimes and revised definitions of the crime of aggression into Central Asian criminal codes”.<sup>87</sup> The best international practices – such as the German *Völkerstrafgesetzbuch* – could be helpful resources for conducting such legislative reforms.

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84 See “About UNODC in Central Asia,” UNODC, available at <https://www.unodc.org/centralasia/en/unodc-in-central-asia.html>.

85 *Ibid.*

86 See “Afghanistan conflict: Kabul falls to Taliban as president flees,” *BBC News* (16 August 2021), available at <https://www.bbc.com/news/world-asia-58223231>.

87 See Atadjanov, *supra* note 4, at 31.

### 3.8 *International Investment Arbitration*

There have been some notable developments pertaining to international investment arbitration in Central Asia. All states of the region, except Turkmenistan, are parties to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.<sup>88</sup> The 1966 International Centre for Settlement of Investment Disputes (ICSID) Convention has been ratified by Kazakhstan, Turkmenistan, and Uzbekistan. Kyrgyzstan signed the ICSID Convention in 1995, and Tajikistan is not a signatory state.<sup>89</sup> Domestic legislation on international arbitration is in place in all Central Asian states.<sup>90</sup> On 7 December 2015, Kazakhstan adopted a Constitutional Law On the Astana International Financial Centre (usually abbreviated as the AIFC), Article 9(1) (1) of which established an International Arbitration Centre (IAC).<sup>91</sup> Article 14 of the Constitutional Law stipulates with respect to the IAC:

1. The International Arbitration Centre shall hear disputes in case of the existence of an arbitration agreement between the parties.
2. The International Arbitration Centre shall be established and act in accordance with the resolution of the Council [for the management of the Centre] “on the International Arbitration Centre”.
3. Awards of the International Arbitration Centre shall be recognized and enforced in the Republic of Kazakhstan in the same way, and on the same terms, as arbitration awards issued by arbitration institutions in the Republic of Kazakhstan. The translation of the awards of the International Arbitration Centre into the Kazakh or Russian language shall thereby be ensured in accordance with the procedure determined by the acts of the Centre.
4. Arbitral awards shall be recognized and enforced in the territory of the Centre in accordance with legislation of the Republic of Kazakhstan.

<sup>88</sup> The list of Contracting States of the 1958 New York Convention is available at <https://www.newyorkconvention.org/countries>.

<sup>89</sup> The Database of ICSID Member States is available at <https://icsid.worldbank.org/about/member-states/database-of-member-states>.

<sup>90</sup> The Law “On Arbitration Courts in the Kyrgyz Republic” was adopted on 30 July 2002. Turkmenistan’s Law “On International Commercial Arbitration” was adopted on 16 August 2014. Tajikistan adopted a Law “On International Commercial Arbitration” on 18 March 2015. Kazakhstan’s current Law “On Arbitration” was adopted on 8 April 2016. Uzbekistan’s Law “On International Commercial Arbitration” was adopted in 2020 and signed by the president on 16 February 2021.

<sup>91</sup> An English translation of the Constitutional Law is available at <https://aifc.kz/files/legals/7/file/constitutional-statute-with-amendments-as-of-30-december-2019.pdf>.

According to the AIFC website, “the AIFC Court and International Arbitration Centre (IAC) have completed more than 900 cases consisting of Court judgments, arbitration awards, and mediation settlements, since their commencement of operations on 1 January 2018. These results are unprecedented for dispute resolution institutions at an international financial centre which has only been operating for four years”.<sup>92</sup> Despite this progress, some Kazakhstani lawyers have criticized the alleged incompatibility of the AIFC legal basis with the Constitution of Kazakhstan.<sup>93</sup> A comprehensive scholarly commentary on the AIFC Constitutional Law would probably help overcome such criticisms.

For his part, on 5 November 2018, the President of Uzbekistan signed a Decree establishing the Tashkent International Arbitration Centre (TIAC). According to the TIAC website, “the TIAC Court of Arbitration is a fully autonomous organ within the TIAC (“Centre”) and is the only body within the Centre’s structure that administers disputes according to the TIAC Rules of Arbitration in complete independence from the Centre, its founders, the Director or any other entities [...]”.<sup>94</sup> Over time, the TIAC could become a viable alternative to the AIFC, depending on the development of the business climate in both countries.

The Central Asian states have been involved in some noteworthy international investment arbitration proceedings. For example, on 19 December 2013, an arbitral tribunal administered by the Stockholm Chamber of Commerce rendered an award in *Stati and others v. Kazakhstan* (SCC Case No. 116/2010).<sup>95</sup> The arbitral tribunal found breaches of the fair and equitable treatment/minimum standard of treatment, including denial of justice claims, and awarded the investor 497 million USD. The arbitral award was subject to judicial review by the Svea Court of Appeal and was upheld. Kazakhstan has been a respondent in no fewer than 19 investor-state dispute settlement (ISDS) arbitral

92 See “AIFC Court and IAC present their 2021 results and future plans,” *AIFC* (29 December 2021), available at <https://aifc.kz/press-relizy/aifc-court-and-iac-present-their-2021-results-and-future-plans/>.

93 See Arman Shaikenov and Valikhan Shaikenov, “Konstitutsionen li MFCA i pomogut li popravki v Konstitutsiyu?” [Do the AIFC constitutional, and will amendments to the constitution help?], available at [https://forbes.kz//process/expertise/konstitutsionen\\_li\\_mftsa\\_i\\_pomogut\\_li\\_popravki\\_v\\_konstitutsiyu/](https://forbes.kz//process/expertise/konstitutsionen_li_mftsa_i_pomogut_li_popravki_v_konstitutsiyu/)

94 See “About TIAC,” *Tashkent International Arbitration Centre*, available at <https://www.tiac.uz/about-tiac-court-of-arbitration>.

95 On the *Stati* case, see “Investment Policy Hub,” *UNCTAD*, available at <https://investmentpolicy.unctad.org/investment-dispute-settlement/cases/379/stati-and-others-v-kazakhstan>.

proceedings.<sup>96</sup> Kyrgyzstan has been a respondent in no fewer than 17 of such proceedings,<sup>97</sup> Turkmenistan in 14,<sup>98</sup> Tajikistan in two,<sup>99</sup> and Uzbekistan in eight.<sup>100</sup> Given Central Asia's considerable investment potential,<sup>101</sup> it can be assumed that the states of the region will be involved in further international investment arbitrations in the future, and should therefore train qualified domestic lawyers on methods of alternative dispute resolution (ADR). To achieve this, leading law schools could introduce ADR courses, both at the undergraduate and postgraduate levels, in cooperation with leading domestic and international law firms and arbitral institutions.

#### 4 Conclusion

As the foregoing analysis shows, the relationship between the doctrines and practices of international law in Central Asia remains quite complex. Although international law is formally a source of law in all states of the region, its regulatory potential is obviously underexploited, and could be restricted further. Likewise, Central Asia has considerable intellectual capacity in terms of international law but so far, this capacity has not been used consistently. To bring about constructive change, a few measures could be taken.

First of all, it is commendable that all Central Asian states have already enacted foreign policy concepts where the specific role of international law in foreign policy is discussed.<sup>102</sup> Among other things, these policy documents

96 See "Kazakhstan," *UNCTAD*, available at <https://investmentpolicy.unctad.org/investment-dispute-settlement/country/107/kazakhstan>.

97 See "Kyrgyzstan," *UNCTAD*, available at <https://investmentpolicy.unctad.org/investment-dispute-settlement/country/113/kyrgyzstan>.

98 See "Turkmenistan," *UNCTAD*, available at <https://investmentpolicy.unctad.org/investment-dispute-settlement/country/215/turkmenistan>.

99 See "Tajikistan," *UNCTAD*, available at <https://investmentpolicy.unctad.org/country-navigator/213/tajikistan>.

100 See "Uzbekistan," *UNCTAD*, available at <https://investmentpolicy.unctad.org/investment-dispute-settlement/country/226/uzbekistan>.

101 See Alberto Pecoraro, "MFN in BITS: The Deconstruction of State Consent to Dispute Settlement," in Sergey Sayapin and Rustam Burnashev (eds.), *Central Asian Yearbook of International Law and International Relations 2022* (Eleven, The Hague, 2022), 114–129.

102 The President of Kazakhstan approved a Foreign Policy Concept for 2020–2030 by his Decree No. 280 of 6 March 2020. The Foreign Policy Concept of the Kyrgyz Republic was enacted by the President's Decree UP No. 37 of 11 March 2019. The Foreign Policy Concept of the Republic of Tajikistan was approved by the President's Decree No. 332 of 27 January 2015. On 27 December 1997, the Halq Maslahaty (parliament) of

provide for an ongoing political dialogue on threats to peace and security in Central Asia, propose workable solutions based on international law, and will hopefully contribute to closer regional integration, which might ultimately culminate in the establishment of a Central Asian Union.

Second, a regular expert dialogue between the community of international law scholars and the Central Asian states is required. The ministries of foreign affairs ought to more systematically involve international law scholars in drafting and providing expert opinions on treaties, other texts of international law, and relevant acts of domestic law. The ministries would thus benefit from academic expertise, and academics could enrich their teaching with empirical data. Strategically, the Central Asian states might consider nominating competent national academics for membership in the International Law Commission.

Crucially, regular in-service training on international law could be provided to experts working in the legal departments of various ministries, parliaments, and national human rights institutions. This would expose them to the applicable international standards and help implement such standards in the relevant domestic legal acts and practices. Judges and law enforcement agents should also receive in-service training on international law, as this would help improve the quality of law enforcement and ultimately, reduce the number of complaints submitted against the respective states to international human rights monitoring bodies.

The teaching of international law at Central Asia's universities should relate to those challenges in the region which international law could help address. International law would thus be contextualized, which would cultivate a sense of social responsibility among the current students of international law in the region. More local textbooks on international law (in national languages, English, and Russian) ought to be produced. Such textbooks would raise and discuss regional issues, propose suitable solutions, and help develop the international law terminology in Central Asian languages. In addition to their respective state languages, junior international lawyers in Central Asia should also seek to master English, Russian, and other European and Asian languages. Such language skills would also be useful for participating in moot court competitions on international law (e.g. Jessup, Vis, Nuremberg, and others). Universities could usefully establish academic partnerships with international organizations and invite their representatives to give guest lectures

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Turkmenistan adopted the Foreign Policy Concept of Turkmenistan as a Neutral State. Uzbekistan's Law "On the Concept of the Foreign Political Activity of the Republic of Uzbekistan" was promulgated on 10 September 2012, and proposals to amend the Concept were introduced in 2021.

in international law classes. This would motivate students to learn foreign languages, help them understand how international law applies in practical political contexts, and enable them to make informed decisions regarding their future professional paths. Students should also be encouraged to apply for internships in international organizations' country offices and abroad.

Finally, international law scholars in Central Asia ought to develop and maintain academic dialogue with colleagues in various parts of the world and consider joining international scholarly associations. National associations of international lawyers ought to be established or, where they exist, strengthened. Crucially, Central Asian international law scholars should submit articles to reputed international law journals and participate in international research projects to make their respective doctrines better known abroad, and thus gradually integrate the Central Asian schools of international law into the international academic community.

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