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ANALYSIS OF REGULATORY AND LEGAL ASPECTS OF THE DELIMITATION OF THE KAZAKH- RUSSIAN BORDER

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Abstract. The world community of states is built on a territorial basis. In international law, the territory of a State is recognized as one of its main features. The peculiarity of the state territory is that it is under the sovereignty of the state, the manifestation of state sovereignty is the jurisdiction of the state. Borders are of great importance for determining the limits of the territory, ensuring the security of the state. On the basis of international treaties and domestic national legislation, the State establishes the legal regime of the Territory. The purpose of the article is to consider the key aspects of the legal registration of the Kazakh-Russian border. The article discusses the main milestones of legal support for the delimitation and demarcation of the borders of the Republic of Kazakhstan and the Russian Federation.

Keywords: *Border Delimitation, Border Demarcation, Territorial Delimitation of States, Legal Status, Legal Registration of the Border, Border Regime, Territorial Integrity.*

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ҚАЗАҚСТАН-РЕСЕЙ ШЕКАРАСЫН ДЕЛИМИТАЦИЯЛАУДЫҢ НОРМАТИВТІК-ҚҰҚЫҚТЫҚ АСПЕКТІЛЕРІН ТАЛДАУ

Айгүл Ибраева, Айжан Сатбаева

Аңдатпа. Мемлекеттердің әлемдік қауымдастығы аумақтық негізде құрылған. Халықаралық құқықта мемлекет аумағы оның басты белгілерінің бірі деп танылды. Мемлекеттік аумақтың ерекшелігі – ол мемлекеттің егемендігінде, мемлекеттік егемендіктің көрінісі-мемлекеттің юрисдикциясы. Шекаралар аумақтың шегін анықтау, мемлекеттің қауіпсіздігін қамтамасыз ету үшін үлкен маңызға ие. Халықаралық шарттар мен ішкі ұлттық заңнама негізінде мемлекет аумақтың құқықтық режимін белгілейді. Мақаланың мақсаты – Қазақстан-Ресей шекарасын заңды рәсімдеудің негізгі аспектілерін қарастыру. Мақалада Қазақстан Республикасы мен Ресей Федерациясының шекараларын делимитациялау мен демаркациялауды құқықтық қамтамасыз етудің негізгі кезеңдері қарастырылады.

Түйінді сөздер: шекараны делимитациялау, шекараны демаркациялау, мемлекеттердің аумақтық межеленуі, құқықтық мәртебесі, шекараны заңды рәсімдеу, шекара режимі, аумақтық тұтастығы.

АНАЛИЗ НОРМАТИВНО-ПРАВОВЫХ АСПЕКТОВ ДЕЛИМИТАЦИИ КАЗАХСТАНСКО-РОССИЙСКОЙ ГРАНИЦЫ

Айгуль Ибраева, Айжан Сатбаева

Аннотация. Мировое сообщество государств построено по территориальному признаку. В международном праве территория государства признана одним из главных его признаков. Особенностью государственной территории является то, что она находится под суверенитетом государства, проявлением государственного суверенитета является юрисдикция государства. Границы имеют большое значение для определения пределов территории, обеспечения безопасности государства. На основании международных договоров и внутреннего национального законодательства государство устанавливает правовой режим территории. Цель статьи – рассмотреть ключевые аспекты юридического оформления казахстанско-российской границы. В статье рассматриваются основные вехи правового обеспечения делимитации и демаркации границ Республики Казахстан и Российской Федерации.

Ключевые слова: делимитация границы, демаркация границы, территориальное разграничение государств, правовой статус, юридическое оформление границы, пограничный режим, территориальная целостность.

Introduction

The activity of States in the field of delimitation and demarcation of State borders is one of the topical issues of

modern world politics and law. The presence of the state territory and the state border still remains one of the main signs of the sovereignty of the state.

The topic of border issues is complex and includes many different aspects. Sometimes they may relate to disputes concerning territorial sovereignty, and may also relate to the delimitation of territorial seas, continental shelves and exclusive economic zones. Border regions are often located in remote areas, far from their capitals, and benefit from trade with the other side of the border. Managing cross-border flows of people, goods, services, capital and information; and how to economically and socially support these local regions or isolated islands near the borders can be considered within the framework of border issues.

Research methods

When studying the existing practice of Russian-Kazakh cross-border cooperation, an institutional approach, historical, comparative methods and a method of descriptive-inductive analysis of formal legal institutions were used.

The study of the current state of cross-border cooperation institutions and the development of specific recommendations for their improvement were carried out with an emphasis on an integrated approach.

Results

The issue of borders is of great importance for every State. The range of interests of States is concentrated on the borders, many of which are vital and form the basis of the national security of each of them. The establishment of fair and strong State borders and their proper registration are an important factor in ensuring international security and the

development of friendly relations between States. The clarity of the definition of the state border in the treaty of neighboring States and its establishment on the ground contributes to the implementation in practice of such fundamental principles of modern international law as the territorial integrity of States and the inviolability of State borders.

The preservation and consolidation of international peace and security, in turn, largely depends on the observance of these principles, since territorial disputes, claims of one State to the territory of another very often led to conflicts, armed clashes and wars between them.

If there are indeed grounds for territorial claims, then any change in the ownership of the state territory is possible only by peaceful means, on the basis of an agreement of the States concerned. On the basis of such an agreement, new State borders can be established and legally formalized.

The delimitation and demarcation of borders acquired special political significance during the period of the termination of the existence of the unified socialist camp and its main political actor - the Soviet Union. As for the borders of Kazakhstan with the Russian Federation, if we proceed from modern political realities, they should be recognized as external borders, although in Soviet times they were of an administrative and territorial nature.

Of all the Central Asian republics, only Kazakhstan had a common border with Russia with a length of more than 7.5 thousand km – the longest land border in the world; difficult work was to be done on its international legal registration. Taking into account the fact that the collapse of the USSR led the former Union republics

to the need to resolve the territorial issue, Kazakhstan actively joined the negotiation process on the registration of the border.

The development Strategy of Kazakhstan until 2030 set a political task – to ensure the national security of the Republic of Kazakhstan [1]. The realization of this task meant a guarantee of the State's sovereignty, territorial integrity and inviolability of borders.

The Alma-Ata Declaration of December 21, 1991 [2], the Declaration on Compliance with the Principles of Cooperation within the Framework of the Commonwealth of Independent States of February 14, 1992 [3], the Declaration on Respect for Sovereignty, Territorial Integrity and Inviolability of the Borders of the member States of the Commonwealth of Independent States of April 15, 1994 [4], various bilateral treaties, legislative acts of the Supreme Soviets of the Union and Republican level became general legal documents that consolidated the principles of recognition of the administrative-territorial delimitation of the former USSR. In accordance with these documents, the Parties recognized the administrative-territorial delimitation of the Union republics as the basis for border negotiations.

A common characteristic feature of the administrative borders between the former Soviet republics was that the actual established border line in some sections did not comply with the provisions of existing legal acts. In such cases, the parties made mutually acceptable decisions taking into account national and economic interests, making a parity division and exchange of areas.

The border line is described in detail

in the contract and mapped. This stage is called delimitation. After that, the border is determined on the ground, border signs are installed, appropriate documents are drawn up. This is the stage of border demarcation. The practice of States is also known as redemarkation, which means the restoration or renewal of a previously established border.

The Kazakh side carried out work on the delimitation of the state border in accordance with the Decree of the Government of the Republic of Kazakhstan dated September 1, 1999 No. 1283 "On the Government Commission of the Republic of Kazakhstan on the delimitation of the State Border of the Republic of Kazakhstan with the Kyrgyz Republic, the Russian Federation, Turkmenistan and the Republic of Uzbekistan" [5].

The Ministry of Foreign Affairs formed relevant Government delegations from the Commission, including representatives of interested ministries and departments, regional, district and aul akimats, experts from various institutions were involved as experts, working groups were formed from among surveyors, cartographers, land surveyors, hydrologists.

Negotiations on the delimitation of the Kazakh-Russian state border continued from September 1999 to January 2005.

On January 18, 2005 in Moscow during the official visit of the President of the Republic of Kazakhstan N.Nazarbayev to the Russian Federation, the heads of state signed an agreement between the Republic of Kazakhstan and the Russian Federation on the Kazakh-Russian state border [6].

By signing the Agreement on the Kazakh-Russian State Border, Kazakhstan has completed the legal registration of its

land border along the entire perimeter. The Agreement entered into force on January 12, 2006.

The Joint Commission on the demarcation, marking on the ground of the line of passage, the Kazakh-Russian state border began its work in July 2007.

In May 2009, the parties started installing border signs on the border between the Republic of Kazakhstan and the Russian Federation.

Treaties on border issues are particularly stable. Other agreements may terminate due to the expiration of the term for which they were concluded, the occurrence of a cancellation condition, the outbreak of war, the termination of the existence of the subject of the contract, denunciation, cancellation of the contract, its novation and cancellation. The effect of the border agreements cannot be terminated in this way. Border agreements do not contain provisions on denunciation and, therefore, cannot be denounced, they usually do not specify the validity period.

Even the outbreak of war between neighboring States does not terminate the agreement on the border between them. Border agreements cannot be cancelled unilaterally (annulled), any action to change the position of the border (novation of the border agreement) is possible only by mutual agreement of the parties. The clause "rebus sic stantibus" — on a fundamental change in circumstances (clause 2 of art. 62 of the Vienna Convention on the Law of Treaties of 1969), the boundaries established by the treaty and their regime are not affected by succession, and each successor State is obliged to comply with these treaties, etc.[7].

Such stability of border treaties

contributes to the implementation of the principles of inviolability of State borders and territorial integrity of States that have received universal recognition, enshrined in a number of fundamental international legal documents (for example, Article 2 of the UN Charter, the Declaration on Principles of International Law concerning Friendly Relations and Cooperation between States in accordance with the Charter of the United Nations of October 24, 1970, the Final Act of the Conference on Security and Cooperation in Europe of August 1, 1975) [8].

The position of the Republic of Kazakhstan regarding borders is disclosed in detail in the Law of the Republic of Kazakhstan dated January 16, 2013 No. 70-V On the State Border of the Republic of Kazakhstan [9].

The norms of the Law comply with international law, in particular, they confirm the principle of inviolability of borders. Border registration "is carried out on the basis of universal principles of international law." In accordance with international law, the issue of the border with the newly independent states formed on the territory of the USSR is being resolved. It "coincides with the former borders of the administrative-territorial division of the USSR" [10].

It should be noted that in order to determine the procedure for establishing and changing the passage of the state border and its designation, the procedure for establishing and maintaining the regime of the state border of the Republic of Kazakhstan, the border regime and the regime at checkpoints across the State border, regulating relations in the field of protection of the state border of

the Republic of Kazakhstan, on January 13, 1993, the Law of the Republic of Kazakhstan No. 1872-XII On the State Border of the Republic of Kazakhstan was adopted (expired by the Law of the Republic of Kazakhstan dated January 16, 2013 No. 70-V.). The law worked until the adoption of the current Law on the State Border of the Republic of Kazakhstan.

In order to ensure the border regime in the Republic of Kazakhstan, a border strip with a width of up to 5 km is established, in which the border troops have special rights. To resolve issues related to the maintenance of the border regime, for the timely settlement of border incidents, the Concept of the Border Policy of the Republic of Kazakhstan was developed [11].

The need to develop the Concept of the Border Policy of the Republic of Kazakhstan is due to the implementation of the international agreements reached in the field of the coordinated border policy of the member states of the Commonwealth of Independent States (CIS) and the implementation of the National Security Strategy of the Republic of Kazakhstan, which defines a system of fundamental views on the purpose, basic principles, tasks and directions of implementation of the border policy of the Republic of Kazakhstan, as well as the basis of interaction of the state exercising its powers through legislative bodies, executive and judicial branches of government (including central and local executive bodies), public organizations and citizens of the Republic of Kazakhstan in its implementation.

The document defines the basic principles of border policy. Thus, border policy is carried out on the basis of the

following principles: respect for the rights and freedoms of citizens; sovereign equality and territorial integrity of states, inviolability of state borders; peaceful resolution of border issues; compliance with international obligations of the Republic of Kazakhstan, legality in the implementation of border activities; priority of national interests of the Republic of Kazakhstan in building interstate border cooperation; unity of goals and objectives of border policy and sequence of actions for their implementation; adequacy of measures aimed at countering threats to national security in the border area; comprehensive cooperation in the protection and protection of the State Border.

The implementation of the set principles and approaches involves the following stages: 1st stage 2021 - 2025; 2nd stage 2026 - 2030. The Document notes that one of the directions of the border policy of the Republic of Kazakhstan is the implementation of the international legal registration of the State Border with neighboring states, the delimitation of the maritime space of the Caspian Sea and ensuring the functioning of sections of the State Border, in respect of which such registration has not been completed, in accordance with generally recognized principles and norms of international law.

With regard to the Caspian theme, this direction provides for the conclusion of international treaties on the delimitation of maritime space in the Caspian Sea. At the same time, the basis of activity on the delimitation of the Caspian Sea maritime space for the Kazakh leadership is: the priority of ensuring national interests; compliance with the principles

of sovereign equality and territorial integrity of neighboring states, as well as the prevention of any territorial claims; peaceful completion of the process of international legal registration of the State Border and delimitation of the Caspian Sea maritime space.

The international legal status of the Caspian Sea was determined by the treaties of 1921 and 1940 between the USSR and Iran, and maritime borders were established only between these states. Later, an agreement was signed between the Republic of Kazakhstan and the Russian Federation on the Delimitation of the Bottom of the northern part of the Caspian Sea in order to exercise sovereign rights to subsoil use (Moscow, July 6, 1998) and an Agreement between the Republic of Kazakhstan and the Republic of Azerbaijan on the Delimitation of the Bottom of the Caspian Sea (Moscow, November 29, 2001). These steps have created prerequisites for the adoption of a single act to determine the legal status of the Caspian Sea and the delimitation of the continental shelf of all Caspian littoral States.

After many years of negotiations (22 years), geopolitical battles and confrontations, finally, on August 12, 2018, the Caspian states managed to fully agree on all the provisions regarding the new legal status of the Caspian Sea. The key event was the signing by the heads of Azerbaijan, Iran, Kazakhstan, Russia and Turkmenistan of the Convention on the Legal Status of the Caspian Sea [12]. The Convention defines and regulates the rights and obligations of the Parties with respect to the use of the Caspian Sea, including its waters, bottom, subsoil, natural resources and airspace above the sea.

In this convention, the Caspian littoral States have developed a new charter for the Caspian Sea in 24 articles and agreed on a wide range of relationships regarding the situation on the Caspian Sea, in this case concerning the delimitation, the legal status of this water body, navigation, environmental protection, problems of ensuring the safety of the entire sea, the region [13].

The second article is devoted to the issue of establishing sovereignty in the Caspian Sea. The article states that "in accordance with this Convention, the Parties exercise sovereignty, sovereign and exclusive rights, as well as exercise jurisdiction in the Caspian Sea." In addition, paragraph 2 of this article "defines and regulates the rights and obligations of the Parties with respect to the use of the Caspian Sea, including its waters, bottom, subsoil, natural resources and airspace above the sea."

The external border of territorial waters is the State border. According to paragraph Z of article 7 of the Convention, the delimitation of internal and territorial waters between States with adjacent coasts is carried out by agreement between them, taking into account the principles and norms of international law.

The parties agreed under Article 8 that the delimitation of the seabed and subsoil of the Caspian Sea into sectors is carried out by agreement of neighboring and opposing states, taking into account generally recognized principles and norms of international law in order to exercise their sovereign rights to subsoil use and other legitimate economic activities related to the development of the resources of the seabed and subsoil (paragraph 1) [14].

Conclusion

At the present stage of globalization, borders still remain one of the foundations of the inviolability of the territory. Thus, Kazakhstan, whose independence was previously recognized by all world states, has completed the process of legal registration of its state border, presenting the legal argument of its territorial integrity to the world. The Kazakh-Russian section of the state border is fully decorated in international law. At the same time, it is one of the difficult areas that require reliable support and protection.

Summing up, it should be noted that the completion of the contractual process of securing the state border is evidence of the consistent and conflict-free completion

of the process of international legal registration of borders based on respect for the sovereignty and territorial integrity of States and the inviolability of existing borders. Treaties on border issues are particularly stable. From the point of view of the settlement of territorial and border issues between the Republic of Kazakhstan and the Russian Federation, we can talk about achieving stability across the entire spectrum of bilateral relations.

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