

---

**ICWC TRAINING CENTRE SEMINAR**  
**“INTERNATIONAL AND NATIONAL WATER LAW AND POLICY”**  
**SEPTEMBER 24 – 29, 2001**

---

**NATIONAL WATER LAW OF KYRGYZ REPUBLIC; ITS COORDINATION WITH  
INTERNATIONAL WATER LAW. PRIORITIES AND PROBLEMS.  
LINE OF ACTIVITIES FOR IMPROVEMENT.**

B. T. Koshmatov<sup>1</sup>

**INTRODUCTION**

Situation emerged after independence gaining influenced economy respectfully. Transition from centralized economy to market powered to work out new state policy and social policy as well and certain correction or working out new country legislation regulating public relations under new conditions.

Big job has been done on transformation of the Kyrgyz Republic legislation from socialistic system into the system based on human right and private property. It worth to note that legal reform is the most complex due to contradiction between different law meaning in Soviet era and nowadays. Instead of priority of public interest and leading role of Communist party new legal system provides citizens with specific juridical rights.

Specific feature of legal activity in the Kyrgyz Republic is its coincidence with public management system transformation. It means that legislation often strengthens already existing relations but does not precede them. Since 1991 legislative activity has very high rate and it gives hope that existing legislation will be replaced by new one in short period of time. Law in era of centralized system was a tool of control; in market conditions it determines “rules of game” providing citizens with rights and mechanism for their implementation. In legal state law is equal for all that is why its development and acceptance is difficult task even under favorable conditions. It is more difficult for countries with economy in transition like Kyrgyz tan where even political issues are subject for discussion, market mechanisms are not very well known and there is not experience in legislative activity for transient economy.

At the same time, acceptance of not fully developed laws can create obstacles to reforms. Laws accepted in the beginning of sovereignty were taken from other countries, mainly from Russia, with regard for local juridical traditions. Existing legislation of the Kyrgyz republic on water resources use in market conditions is unsatisfactory and needs improvement relevant to real conditions as well as development of new laws creating base for further movement forward.

Independence gaining required to revise existing and develop new provisions of state and social policy and acceptance of set of laws for regulation of internal political activity and interrelations between interstate organizations, councils and unions.

---

<sup>1</sup> Deputy Minister, General Director of the Department of Water Resources of the Ministry of Agriculture and Water Resources and Processing Industry, Bishkek, Kyrgyz Republic.

Legislative acts were developed at the highest level of power. In particular, strategic way of reforms in political, economic and social spheres main criteria of which are:

- Inside of state – broad democratization in all directions of state, public and production activity, decentralization and privatization, co-existence of all ownership, development of civilized market relations;
- Between the states – respectful attitude, mutually beneficial collaboration and equitability, observance of international agreements, treaties and conventions ratified by Kyrgyzstan;

Concept and strategy of state reforms development has not been specified for the separate branches and tactic actions were unproductive. As an example, irrigation systems technical assets rash privatization can be considered.

In spite of overall usefulness of privatization it has not been achieved its goals in the economic branches. In water sector law "About Water" was accepted on 14 January 1994. Its main specific feature is establishing water and water services charges as well as payment for water over-diversion and pollution. Water relations improvement importance is caused by new approach to water facilities use, operation and maintenance like all system of water-economic on in-state and inter-state level. Whereas internal water relations issues can be solved, at the interstate level their solution is postponed. Instead of former provisions on interstate water allocation new principles are not developed and accepted. Presidents underlined repeatedly importance of new approaches and principles development in water use from transboundary sources but their realization was not made.

Unsuccessful attempts to develop new mutually acceptable principles of interstate water relations powered Heads of state to prolong existing provisions though participants of negotiations consider them obsolete for different reasons. Authorized agencies from states in upper reaches consider old provisions working in regional interest not in national one. In new provisions (principles) starting conditions should be equal and compensation should be envisaged to cover operation and protection cost.

Agencies of the countries in middle and lower reaches propose to take water from upper reaches and give it to the Aral sea and create independent system of water resources management and hydro-structures. Above mentioned positions can be hardly combined and this is main reason for difficulties of new principles development.

In Kyrgyzstan difficulties mostly are linked with economic crisis and transition to market economy. Certain role was played by subjective factors including institutional and economic mistakes under reforms implementing. For most water consuming branches the following problems are typical:

- Financial deficit;
- Main assets extreme physical and moral deterioration;
- Imperfect water relations economic mechanism including disparity of water tariffs and O&M costs;
- Low efficiency of state control over water resources use and protection.

Approaches to these problems solution are mentioned in development programs for various branches and summarized in "Complex base of Kyrgyzstan development up to 2010". Terms and costs are determined in branches' plans and international programs funded by the World Bank, Asian Development Bank, etc.

## **1. EXISTING LEGAL BASE IN WATER RELATIONS**

### **1.1. At the national level.**

Today, legal base includes:

- Constitution of the Kyrgyz Republic;
- Legislative acts developed by Zhokorgu Kenesh;
- President Decrees in water relations;
- By-laws including provisions, approved by Prime Minister
- Sectoral and territorial acts including orders of ministers and local power as well as standards, regulations and rules.

Main principles of state water policy are placed in articles 4, 9, 12, 19, 35, 38 of the Constitution and in “Laws about water” (1994) and «About environment protection» (199). Separate aspects of water relations are regulated in special legislation including laws for

Rights and obligations of water relation subjects are standardizes in civil, administrative and criminal legislation and provisions on water bodies are approved by the government.

Legal base of water relations is being constantly complemented and amended. Despite there are lot of old acts and provisions accepted before 1992, which do not fit modern conditions. For example, for computerization of national database of national water fund forms of reporting should be unified.

Besides, there are some contradictions connected with existing legislation connected with duplication of functions of various executive bodies, etc. Similar contradictions cause conflict situations between different water management agencies and negatively influence procedure of water fund management. That is why legal base improvement is why topical issue for the nearest future.

Existing “Law about Water “ was developed on initial stage of existing managerial structure and market mechanism formation. It played certain positive role in water relations development but now significant changes are required:

- Law development in act of direct action limiting necessity of additional regulating documents development;
- Concretization of functions and authorities of water relation subjects;
- Amplification of procedure of the water systems privatization and water users participation in their management;
- Concretization of the mechanism of water-economic relations with amplification of principles of tariff, credit and tax policies;
- Concretization of the state control mechanism over water fund use;
- Water fund protection norm bringing in accordance with nature protection legislation;
- Water law observance responsibility bringing in accordance with international water right and agreements.

With respect to above mentioned obstacles it is expedient to combine some existing laws in a single “Water Code of the Kyrgyz Republic” which is underway now.

## **1.2. Legal base and issues of interstate water relations.**

Main principles of interstate water relations with participation of the Kyrgyz Republic are mentioned in the articles 67-71, section 9 of the “Law about Water” and the articles 57-58 of the “Law about Environment” and the President Decree of 6.10.1997 «About external policy in water relations concerning resources formed in Kyrgyz tan” and the Law “About interstate water use from sources located in the Kyrgyz Republic”.

In item 3 article 12 of the Constitution is mentioned, that “interstate agreements and international right are inseparable part of Kyrgyz legislation”.

Kyrgyz Republic implements its water policy with regard for international water right. But the Kyrgyz Republic still did not become participant of “Convention on transboundary watercourses and international lakes use and protection”(Helsinki, 17.03.1992), because of this document does not fit to water relations peculiarities of Central Asia. It worth to underline that this Convention mostly is adapted to European conditions that is why it is disapproved by other countries. Important fact in water relations was Treaty of 1997 between countries of Central Asia about creation of a single economic space as well as common statement of the Head of states of Kazakhstan, Kyrgyz tan and Uzbekistan of 6.05.1996 about acceleration of new strategy of water allocation development in the region. At the moment the following agreement have been signed:

- Agreement between the Kyrgyz Republic and the Republic of Uzbekistan on fuel-power resources, construction and operation of gas pipelines of 5.04.1996. use in the Syr Darya региона от
- Agreement between the Kyrgyz Republic, the Republic of Uzbekistan and the Republic of Kazakhstan on water-power resources use in the Syr Darya basin of 17.03.1998.
- Agreement between the Kyrgyz Republic, the Republic of Uzbekistan and the Republic of Kazakhstan about collaboration in environment protection and rational natural resources use of 17.03.1998.
- Agreement between the Kyrgyz Republic and the Republic of Kazakhstan about interstate water structures on Chu and Talas of 21.01.2000. This agreement has been ratified by the Kyrgyz Republic in June 2001.
  - Listed above agreements are frame legal acts i.e. establish main directions of collaboration without setting mechanisms and specific indicators of their realization. In this connection water relations between Central Asian countries can be considered as ineffective.
- Objective contradictions of the national interests availability is main factor preventing formation of common legal base for water relations. That is why no agreement was achieved on Helsinki Convention and other documents including:
- Common strategy of water allocation, water resources rational use and protection in the Aral sea basin (World Bank project);
- Agreement on principles of sharing costs for water structures O&M of interstate use (Kyrgyz tan project);
- Agreement between the Kyrgyz Republic, the Republic of Uzbekistan, the Republic of Kazakhstan and the Republic of Tajikistan on main principles of collaboration in water relations (Kyrgyz tan project);
- Other bilateral projects developed by Kyrgyz tan and Uzbekistan.

Laws accepted in Kyrgyz tan and interstate agreements on water and water-power resources use at interstate level are being realized insufficiently. Former provisions influence on interstate issues because in Soviet era they provided maximum benefit for republics.

President of the Kyrgyz Republic by his Decree of 6.10.1997 «About external policy in water relations concerning resources formed in Kyrgyz tan» pays special attention to issues of common water resources use, necessity of new water allocation strategy and economic mechanisms of water-power resources use and protection development.

These complex issue can be solved on base of equitable account of all states interests and international agreements on each river crossing Kyrgyz tan.

Existing international conventions and declarations on transboundary watercourses and nature protection are insufficient to solve water problems. They contain right general provisions without regard for specific features of interstate water allocation in water scarce regions and do not contain mechanisms of practical application of these provisions.

In particular, Helsinki Convention of 1992 organized by European Economic Commission reflects mainly European water issues: water excess and necessity of its regulation, water pollution prevention, maritime areas protection. But Convention does not contain any remind about interstate water use and allocation under water deficit which is typical for our region.

In Declaration on environment and development (Rio de Janeiro, 1992) principles of interstate water use are considered broader. They state as follow:

- Care about human being is a central link in sustainable development (principle 1)
- All countries and peoples collaborate in poverty elimination, which is necessary condition for sustainable development (principle 5).
- In accordance with UN Constitution and international right principles states have sovereign right on own resources use according to their environmental policy and bear responsibility for negative impact on environment of other states outside of national jurisdiction (principle 2).

This principle (2) is disputable because its first part (sovereign right) is contradictory to the second one (damage prevention) and first part satisfies interests of the states of upper reaches and the second one – states located in lower reaches. These contradictions lead to interstate disagreement.

Governments of the states of the region undertake attempts to resolve disagreements by means of negotiations and interstate agreements. But these agreements are not always satisfactory for all parties.

For example, in Agreement between governments of Kazakhstan, Kyrgyz tan and Uzbekistan on fuel-power and water resources use, construction and operation of gas pipelines (Tashkent, 1996) in Article 1 “prices for electricity, coal, gas and oil products are determined by direct contracts between parties” are clearly defined. In subsequent Agreement between the same states (Bishkek, 1998) this provision is explained as follow:

Article 2. In order to provide agreed regime of power structures and water reservoirs of Naryn-Syr Darya cascade and guaranteed water supply for irrigation in Kazakhstan and Uzbekistan, parties

consider necessary to coordinate annually decision on water release, and power resources compensation on equivalent basis.

Article 3. Parties shall not undertake any actions deteriorating agreed regime of water use and power resources supply.

Article 4. Additionally generated by the cascade electric energy linked with water release during growing season and Toktogul reservoir regulation, which is excessive for the Kyrgyz Republic, shall be passed to Kazakhstan and Uzbekistan in equal share.

Its compensation is provided by equivalent volume of coal, gas, fuel oil, electricity or other goods or money for creation of necessary annual and perennial water supply in reservoirs for irrigation needs. In result of multiyear and seasonal regulation of the Naryn river discharge to Toktogul reservoir according to irrigation schedule Kazakhstan and Uzbekistan receive water in necessary amount. At expense of that they have developed 400<sup>th</sup>.ha and supplied with water 900<sup>th</sup>.ha of lands. Damages from peak flow and flood were eliminated. This effect is mainly paid by Kyrgyz tan which protects nature in Naryn river basin, accounts and predicts river flow, operates reservoirs. Kyrgyz tan bears losses of land in Ketmen-Tube valley due to inundation and new lands development, pumping stations construction to provide water to new lands.

To eliminate interstate contradictions in water-power resources use on transboundary rivers national water strategies and based on them regional strategy should be developed. Tendencies of economy stabilization on background of population growth increase probability of separate countries reclamations to water allocation quota and procedure. It is caused by misbalance of economy development in different countries. In this connection Kyrgyz tan is powerd to develop irrigated farming and power engineering if alternative ways would not be found. It can affect water resources use regime in Syr Drya and Talas basin.

Practice of international water relations revealed issue linked with river flow seasonal regulation agreement. It became clear, that for such rivers as Naryn it is not enough to agree only quotas of water allocation because even monthly schedule of water release from reservoirs changes with regard for priority needs of irrigation or energy generation will touch economic interests of the countries. It worth to note that development of optimal solutions is beyond of water bodies of Kyrgyz tan and neighboring states and should be solved at the interstate level.

The least certain element of interstate water allocation implementation is assessment of ground and return water share connected with surface waters. It is necessary to underline probability of paradox situation when water saving technologies introduction in Kyrgyz tan will lead to return water volume decrease and water availability reduction for lower reaches countries.

## **2. DIRECTIONS OF WATER RELATIONS LEGAL REGULATION IMPROVEMENT**

### **2.1. Legal base and legislation improvement**

By 2001 legal base formation in the republic has been completed. But permanent amendments witness about necessity of its revision. Principle approaches to water legislation modernization should:

- Reflect balanced state policy for long-term period formulated within framework of the national water strategy;
- Facilitate elimination of all contradictions within the existing laws and acts;
- Eliminate duplication in legislation combining some provisions from several laws in single “Water Code of the Kyrgyz Republic”;
- Provide to “Water Code” status of direct action excluding necessity to develop additional by-laws;
- Make concrete functions, rights and obligations of water relations subjects in order to eliminate inter-branch contradiction;
- Make more concrete economic mechanism of water relations for long-term perspective;
- Make more concrete mechanism of water relations adaptation to market economy;
- Regulate procedure of interstate water relations with regard for international right and agreement achieved;
- Restore previous procedure (before 2000) of licensing;

Urgent measures on water legislation improvement should envisage:

- Amplification of legislative acts structure and sphere of action at governmental and branch level;
- Make inventory of acting by-laws eliminating obsolete ones.
- Revise content of existing and develop new by-laws within framework of agreed by government programs;
- Strengthen state control by Ministry of Justice over acting by-laws;

Similar measures should be undertaken for existing regulations, standards and norms revision. In this connection the most topical issue is revision of water consumption norm, water protection, water structures safety.

Water relations legal base in the Kyrgyz Republic will consist of:

- Legislative acts which are developed and controlled by Zhokorgu Kenesh;
- President decrees in water relation sphere;
- By-laws including Governmental Provisions and Orders approved by Prime Minister;
- International conventions, treaties and agreements on water issues concluded by authorized representatives and ratified in established order;
- Branch and territorial acts including orders and provisions of ministries, branches and local power leaders as well as regulations, standards, rules and norms regulating water relations;

Branch acts which are not registered by Ministry of Justice have no legal power. Interstate agreements and other documents concerning international water right which are not ratified by Zhokorgu Kenesh have no legal power.

When regulating water relations all water users right should be preserved independently of ownership, branch belonging and citizenship. Priority is given to drinking water supply for population, schools, hospitals, etc. Water supply restrictions are possible only under emergency and accidents as it is foreseen by local legislation. State is a guarantor of water right for all enterprises.

When analyzing experience of interrelations between water users and water organizations and state in the countries with traditionally market economy the next conclusion is possible: water resources formed within the state are property of this state.

Water use is paid. When setting charges and tariffs main objective is not profit to the state but full or partial compensation of expenses for water resources protection from pollution and exhaustion and environment from harmful water impact. Capital costs are covered by tax from all population. Annual operational costs are covered by water users.

Common practice of the most countries is construction of large water structures, irrigation and drainage network, water reservoir and flood protection structures at expense of state or provincial budget. For construction of very big structures state, especially developing one, takes loans of international banks and internal credits. Sometimes income re-distribution is foreseen between branches to support agricultural producers.

For example, in Iraq and Iran large irrigation systems construction is fulfilled at expense of oil companies income, in Latin America countries – at expense of fruit production and processing. Common tendency is state investment growth in research in area of irrigated agriculture, drainage and civil engineering. In various countries interrelations between water users, water organizations and state are different but there are some common tendencies:

- Strengthening of state influence in water resources use and protection, long-term planning, water systems development and improvement.
- Increasing state investments in water systems development and financial assistance to agricultural water users.
- Transition to paid water use;
- Compensation of state expenses on water systems development and their operation is covered partially by taxes and partially by water charges. Water tariffs are mostly differentiated over regions (water systems), periods of water use (period of water resources excess and deficit), profitability (water users income).

Partnership of the state and water users in water systems rehabilitation and development, water sector financing should be accepted in the Kyrgyz Republic as well.

From analysis of water relations in developed countries there is one more important conclusion: reduction of state investments in water sector are in contradiction with world practice. All developed countries annually increase these investments both for agricultural production increase and introduction of new advanced technologies and machinery bearing in mind that prices should be affordable for population.

## **2.2. Main provisions of interstate water relations**

Interstate water relations should be based on Constitution, “Water Law”, Law “About interstate water resources and structures use”, President Decree of 6.10.1997 “About external policy of the Kyrgyz Republic in water resources formed within the Republic and running to other states”.

The base of this document is right of state property on all water resources formed within the country and their payable use. All other documents contradicting with above mentioned ones have no legal

power. Any criticism of existing legislation is possible but it necessary to apply for existing laws change.

Constitution provisions and laws in interstate water relations realization face certain difficulties. Main reason for that is availability of old laws and provisions as well as new ones but based on old provisions not meeting modern conditions and requirements.

Documents based on old (Soviet) provisions on inter-republican water allocation and water structures use can not be accepted because of their main goal to receive maximum benefit for the Soviet Union as a whole from limited water resources of Central Asia. With this purpose transboundary rivers resources were given to the regions which can use them with maximum efficiency. These regions are located in river valleys. Common income then was distributed among all republics that was acceptable for all.

In these conditions old approaches (and, consequently, old documents) to interstate water allocation are not acceptable (especially for Kyrgyzstan and Tajikistan) located in upper river reaches. They are water resources “donors” but because of relief differentiation and steep slopes river flow is used here less effectively.

Thus old approaches and documents regulating interstate water allocation in new conditions of sovereignty and market should be replaced because they conflict with economic and political interests of the states located in upper reaches.

Under present conditions it is necessary to use other approaches to transboundary rivers water resources management optimization widely used in the world practice.

a) It is necessary to recognize the right of ownership of each state on water resources and structures formed within the state (like all other resources) and necessity to pay for water resources and services. Such provisions have been accepted in the constitutions of the most Central Asian countries including the Kyrgyz Republic. Then interstate contradictions in transboundary water resources use will be eliminated (there will not be necessity to require more water or increase water consumption norms). Control each other will also not be needed, incentives for water saving will appear. While water resources would be considered as common property, contradictions can not be eliminated and can transform themselves into conflicts.

b) It is enough to conclude mutually beneficial agreements separately on each water source or structure for certain period of time on resources or services delivery (volume and regime of water or energy supply, flow regulation, etc.) and about payment for resources and services between authorized state bodies. Issues of privilege in water supply to the Aral sea to prevent the regional disasters can be solved at the governmental level. To control agreements observance it is enough one representative from each country or means of automatic control.

Other important factor is traditional thinking that water, which is running for centuries, should not be paid. To eliminate this factor creating difficulties in interstate water relations it is necessary to inform society that due to new irrigated lands development Kyrgyzstan and Tajikistan were forced to build new structures, canals, water reservoirs, pumping stations, flood vast lands, resettle people, etc., which required financial means. This brings huge losses to Kyrgyzstan and Tajikistan which should be

compensated. At present time, water becomes a good like other natural resources which should be paid. This tendency is common both in our region and all over the world.

Explanatory work is needed :

- About international experience in transboundary rivers water resources use (useful example can be taken from relations between Turkey and Bulgaria, where Turkey buys water, and with Syria and Iraq where it sells water to.);
- About state ownership on water resources formed within its territory;
- About necessity to compensate damage to and expenses of Kyrgyzstan for water structure construction, operation and maintenance providing water diversion, regulation and delivery to states-users;
- About necessity of gradual transition in the future to real market water-economic relations spread all over the world.

### **3. DEVELOPMENT OF INTERSTATE WATER RELATIONS**

#### **3.1.Existing principles of interstate water relations**

All mentioned above interstate agreements signed by heads of state of Central Asia are frame agreement and state only general approaches to water issues of common interest solution. Significant practical effect in coordination strengthening was bounded with establishing such bodies as ICWC and EC IFAS.

At the same time, BWO “Syr Darya” and BWO “Amu Darya”, as basin management bodies, influence insignificantly on water activity of countries like Kyrgyzstan.

From legal point of view, previously achieved agreements were limited with complex combination of next 4 basic principles in water relations recognition:

- a) Keeping priority of “existing water use” i.e. observance of international water right mentioned in other international agreements and known as principle of “historic precedent”. Therefore, keeping quotas of interstate water allocation, approved by Minvodkhoz of USSR in 1984, was foreseen.
- b) Recognition of each state right on “equitable and reasonable” water resources share;
- c) Recognition of each state independence in national resources and own share of transboundary resources;
- d) Observance of international water right known as “do not harm” and “polluter pays”.

It is evident that absence of concrete mechanisms of above principles realization prevented further water resources development. That is why head of states in 1995 have decided to “prepare common strategy of water resources distribution, rational use and conservation as well as interstate legislative acts regulating issues of water common use and protection with regard for socio-economic development of the region”.

As it is known, this decision is not fulfilled until now. Latter circumstance witnesses about objective and subjective limiting factors main from which are the following:

- Natural consequences of socio-economic crisis encompassing the region during 90-ies;

- National interests contradictions between the countries of the region caused by differences of geographic and climatic conditions, natural resources, economic priorities, etc.
- Lack of attention to national water strategies formulation adapted to modern conditions and international right during past period;
- Differences in national legislations understanding linked with water relations' institutional and economic aspects, property right on water fund and water systems;
- Availability of internal subjective contradictions in water policy formation among governmental bodies, economic branches and political movements;
- Availability of mutual reclamations on disputable water issues for previous period among some countries of the region;
- Absence of satisfactory diplomatic experience for conflicts resolution through negotiation based on compromise;

It is evident that these limiting factors elimination is urgently needed:

- a) eliminate all internal contradictions in approaches to water policy formation based on the national water strategy. Concept of these strategies should be taken into account when correcting national water legislation;
- b) To make inventory of water problems where contradictions among the countries are possible;
- c) To make clear position of each country in respect of disputable water issues;
- d) To exchange data and concentrate efforts on development of mutual acceptable solutions within the framework of the regional water strategy.
- e)

### **3.2. Major principles of external water policy of the Kyrgyz Republic**

Kyrgyz Republic external water policy should be based on international water right and strict observance of multilateral and bilateral treaties and agreements on water issues. When long-term external water policy forming and realizing Kyrgyz Republic will follow the next basic principles:

- Recognition of historical community of Kyrgyz people and peoples of Central Asia;
- Principle of “voluntary limited sovereignty” keeping right of ownership of each state on water resources and structures within its territory with regard for rights and interests of other countries;
- Doctrine of “interests community” providing mutual benefit from water fund integrated use as well as right of each country for use of its share of water resources within the quotas agreed;
- Principle of territorial inviolability, meaning refuse from involvement in the sphere of water fund utilization by other states;
- Mutual responsibility for water resources and structures conservation as elements of the global ecosphere;
- Mutual responsibility for damage to other states, population or enterprises and its compensation;
- Principle of voluntary mutual recognition of status quo i.e. refuse from boundaries revision, mutual reclamations for water structures , water resources in order to receive one-sided benefit and privilege;
- Introduction of paid water use principle in international water relations;
- Right of each state for protection of its social, economic and other interests;
- Right of each state and its enterprise for compensation of costs bounded with work and services fulfilled in interest of other state, its population or enterprises;

- Development of free market economic relations with foreign partners or realization of joint water-economic agreement under state control within the Kyrgyz Republic legislation;
- Current legislation of the Kyrgyz Republic;
- Striving to disputes or conflict situations resolution only through negotiations. In case of impossibility to solve problem on bilateral base, international water right should be used, for example, attraction of international organizations experts, reclamations consideration by competent bodies;
- Striving to equal rights and long-term interests providing. Thesis “equality of rights” should not automatically foresee equality of water consumption quotas for each state;

Kyrgyz Republic will develop international water relations through:

- Concluding multilateral or bilateral treaties regulating legal, institutional, technical and economic water relations between states concerned;
- Active participation in interstate programs related to water issues;
- Support of direct international links between ministries, branches, frontier municipalities and juridical entities of the Kyrgyz Republic with foreign partners under state control over international water right and national legislation observance;
- Active participation of authorized representatives in ICWC activity, combined working groups foreseen by interstate agreements. From legal point of view, above structures activity results are recommendations and come in force after their ratification;
- Giving privilege regime for foreign investments, donor donations, grants and soft credits for specific programs and projects directed to water fund use productivity and protection improvement;

When interstate agreements and treaties working out balanced approach should be used directed to protection of national interests of the Kyrgyz Republic and, simultaneously, mutually acceptable decisions for all parties. Interstate water relations regulation is responsibility of the Zhokorgu Kenesh; Government coordinates state agencies activity in water relation sphere. Supervision over international treaties and agreements fulfillment is responsibility the government and correspondent agencies.

### **3.3. Prior directions of the Kyrgyz Republic collaboration with other states in water relation sphere**

The Kyrgyz Republic will support and develop on mutually beneficial base collaboration with other states in the following directions:

- Development, coordination, investing and realization of programs and projects on water resources and structures integrated use;
- Planning, investing and realization of measures on the water fund protection from pollution and exhaustion;
- Planning, investing and realization of measures on irrigated agriculture, power engineering, fish breeding, forestation, hunting, municipalities and other water consuming economic sectors development;
- River bed regulation, maintenance and mitigation of negative water impact including flood, erosion and deforestation;
- Mutual awareness and assistance in case of accidents, natural disasters, draught, etc.;
- Join development and organization of water saving and water protection technologies, equipment, machinery, etc.;

- Development, coordination, investing and realization of the projects on construction of new water structures and reconstruction of existing ones used for needs of the parties concerned;
- Joint scientific-research, design and technological investigations directed to the water fund use efficiency improvement;
- Information exchange in water fund use of mutual interest;
- Development and realization of the procedure of systematic observations in the points of interstate water allocation;
- Action coordination in the water fund monitoring and water structures safety;
- Coordination and mutual recognition of the standards, norms, rules and legal aspects in the water fund use and protection;
- Joint fulfillment of regional complex programs of mutual interest;
- Join development and organization of the procedures preventing and regulating frontier disputes, protection of population and enterprises water right of countries concerned;
- Coordination of actions on support of business, foreign investments, labor, machinery and equipment attraction for joint projects implementation;
- Undertaking joint measures directed to legal base of interstate water relations development, coordination of custom and tax policies and other aspects of legislation influencing water relations;

The Kyrgyz Republic will recognize and coordinate with other states sphere of mutual interests in water relations:

- Water systems and structures operation regime directly influencing social and economic conditions of other states; internal water consumption schedules affected agreed quotas for water resources use;
- Pollutants release into water bodies and systems and other negative phenomena influencing water fund and ecosystems of other states;
- Procedures of mutual control over interstate agreements observance;
- Regime of water systems and water consuming enterprises joint operation in frontier areas within interstate programs and projects;
- Conditions of any type of work conducting in frontier areas and lands of the water fund;
- Conditions of boundaries demarcation along the axis of transboundary rivers;
- Procedures of operational correction of interstate water allocation conditions under water scarcity;

The Kyrgyz Republic will not recognize authority of any foreign or interstate structures assuming possibility of water relations and water fund regulation as well as water systems management on its territory.

Water right of the Kyrgyz Republic allows to create joint ventures, join-stock companies with foreign capital and juridical entities participation in water sector. Water structures and systems are allowed to be given in concession or lease to foreign juridical entities having license obtained in common way and observing rights of other water users.

### **3.4. Kyrgyz Republic national position concerning non-regulated water problems**

International practice distinguishes 3 major approaches to definition of right of ownership on water resources:

- a) Doctrine of “absolute sovereignty” supposes state right to manage own water resources independently including transboundary formed within its territory;
- b) Doctrine of “limited sovereignty” supposes state right to use water resources on its territory taking into account interests of other states;
- c) Doctrine of ”common interests” or “commonly available water resources” assumes possibility transboundary water resources use “reasonable and equitable base” by all states relating to the basin (river, lake, sea);

In Kyrgyz Republic state property right on water structures and resources is fixed in Article 2 of the Constitution and Article 5 of “Water Law”. Adherence to doctrine of “voluntary limited sovereignty” is fixed in item 1 of the president Decree of 06.10.1997: “Water resources use agreements should be based on mutual benefit and be reasonable and equitable”. At the same time, item 2 of this Decree states: “Kyrgyz Republic understands that each state can use water resources to receive maximum benefit”. Taking above mentioned into account national position can be expressed as follow:

- State property on the water fund within its territory fixed in the Constitution and current legislation can not be revised;
- State recognizes necessity of keeping traditions of good neighborhood and mutual collaboration in water relations with other states and intends to take into consideration their interests;
- State is a guarantor of population civil rights and intends to keep national interests. In this connection there is possibility in the future to revise established quotas of interstate water allocation if this decision would be dictated by change of demographic or ecological situation, food security needs or other objective reasons;
- State intends further regulate river water resources use with maximum benefit for the country but with regard for equitable interests of other states. Any deviation from optimal regimes of water resources use (From Kyrgyz Republic point of view) should be compensated in agreed form;
- State takes responsibility do not undertake any one-sided actions directed to change of previously achieved agreements in water relations without. To keep relations of trust with its neighbors the state assumes some compromises in negotiation process except cases touching state sovereignty, national security and territorial integrity.

Article 12 of the “Water Law” relates “water fund use and protection organization and regulation” to authority of special state agencies competence. In Article 67 of this law possibility is assumed “establishing joint bodies for control over interstate agreements observance as well as development and coordination of measures on joint use of frontier water structures”.

Besides, President Decree of 06.10.1997 supposes possibility “establishing joint commissions on other bodies for water resources rational use, registration and protection”. In preamble of the Decree is mentioned: “importance of water structures of interstate meaning effective operation including establishing international consortiums”. It worth to note, that according to Article 9 of “Water Law” “water structures can be ownership of foreign juridical and physical entities having right to use them”.

Thus, existing legal base relates right of water resources management (regulation, use) to specially authorized state bodies, simultaneously, assuming possibility:

- Interstate bodies establishing to coordinate joint actions in sphere of water resources use and protection, water structures effective operation;

- Transfer to property and administration of water structures to foreign juridical and physical entities having license i.e. under control of the state;

But Agreement of 1992 supposed basin water resources management functions would placed on BWO “Syrdarya” and “Amu Darya”. This provision has been confirmed in “Agreement on water-power resources use in Syr Darya basin” (1998) where in Article 8 is stated: “BWO remains executive body regulated Syr Darya river flow until new decision will be made”. This contradicts with national legal base and causes different opinions about state sovereign right on its water resources.

When preparing regional water strategy and consequent interstate agreements the Kyrgyz Republic intends to keep the following position:

- Water resources management right within its borders is sovereign right of each state, fixed in its Constitution;
- to develop international collaboration on water issues and maximum account of other states interests the state intends to participate actively in interstate structures (ICWC, SDC, IFAS) as well as in newly created coordination, investment, information and scientific international organizations and associations;
- State intends to support and create favorable conditions for foreign investments, technical, scientific and resource potential for water infrastructure modernization and other projects related to the water fund use and protection;
- State intends to keep right of the foreign juridical entities on water structures based on sharing and lease but this right does not touches large strategic structures (dams, water intakes, main canals, etc.). Latter requires some amendments to the “Water Law”.
- State assumes possibility of mutual control over interstate water allocation observance. For this purpose inventory of structures subjected to control should be determined.

In accordance with the article 39 of the “Water Law” and Article 15 of the “Environment Protection Law” water use in the Kyrgyz Republic is paid for all categories of water users. Fee should be taken for:

- water resources and structures use;
- pollutants release into water bodies and structures;
- services on planned measures including water supply to water consumers of all categories;

Regime of paid water use is not foreseen in legislations of all Central-Asian countries , order of fees collection is also not unified.

As Kyrgyz tan permanently gives one-sided services on water supply and bears some expenses, necessity appears to compensate them.

This condition is mentioned in item 3 of the President Decree of 06.10.1997 as follow: “Kyrgyz Republic has right on reimbursement of expenses for construction, reconstruction and operation water reservoirs and other structures of interstate meaning”. Solution of this issue can be made more difficult due to privatization of many water structures in the country. Potential owners can irrespectively regulate water tariffs for water delivery, i.e., state regulation will be limited.

Kyrgyz Republic position relating this issue is as follow:

- Each state has a right for compensation of its expenses giving work and services to other state;

- Methodology of cost estimation in each case should be preliminary agreed between parties concerned;
- Forms and procedures of expenses reimbursement through share participation of state agencies of countries concerned resources delivery, etc. should be fixed in interstate agreements and treaties (contracts).
- Inclusion of cost for water delivery to other counties and water resources use should be subject of negotiations;
- Mutual recognition of paid water use principle in interstate relations leads to necessity of coordination of tariff, custom and tax policy and inclusion of specific decisions in interstate agreements;

Separate problem is transfer of water resources share by one state to another for certain compensation. Kyrgyz Republic intends to establish its attitude to this issue based on analysis of legal, economic and other aspects.

Principles of international collaboration in the sphere of environment protection are fixed in Article 57 of the “Water Law” and Article 67 of “Environment Protection Law” where compensation is supposed for damage of frontier water structures”

In the President Decree of 06.10.1997г. “mutual obligation of the parties to control, prevent and reduce river pollution...”

Intergovernmental agreement of 1998 about collaboration in the area of environment protection and rational natural resources use regulates in detail this collaboration but does not give mechanism and procedures of joint activity, i.e. is a frame agreement. It worth to be Kyrgyzstan and Tajikistan, whose territories coincide with watersheds of the largest rivers in the region, have high risk to make damage to other states and, consequently, bear higher expenses in order to increase safety of their structures and treatment plants

Kyrgyzstan is forced to introduce amendments in optimal regimes of large rivers flow regulation to provide sanitary and ecological releases beyond its territory.

Taking into account above mentioned circumstances, Kyrgyzstan position on this issue is as follow:

- State guarantees taken earlier obligations fulfillment in sphere of environment protection and rational water use;
- Taking into account peculiarities of water relations in the region principle of international water right “do not harm” and “polluter pays” can be applied only within the package agreements providing:
  - a) Obligation of each state to compensate damage to other country;
  - b) Necessity of concerned countries participation in measures on prevention and mitigation of natural disasters, accidents leading to Transboundary waters and environment state violation;
- State can count for support from other states of the region securing own water infrastructures (river bed regulation, embankment repair, etc.) if these measures will negatively impact other countries concerned;
- State considers as necessary to specify procedures and norms of international collaboration in the sphere of water protection developing previously achieved agreements;

- State does not intend to join “Convention on transboundary water courses and international lakes protection and use” (Helsinki, 1992) because it considers this Convention not relevant to water relations in CAR. At the same time, positive aspects of this Convention should be taken into account developing regional water strategy and multilateral package agreements in sphere of water use and protection;

To develop procedures of interstate water allocation excluding conflicts is necessary to assess water resources in the region. In this connection, position of Kyrgyzstan is as follows:

- State recognizes inclusion in calculation surface and ground waters as well as return waters formed due to agricultural and industrial production;
- Early established indicators of multiyear mean flow over main surface water sources can be used in the future for water allocation quotas (limits) establishing because they give satisfactory results for practical tasks solution;
- State confirms necessity of additional measures undertaking to specify groundwater supply as well as return waters impact including waste and drainage water;
- Under water scarcity conditions state supposes to keep previously agreed water allocation principle according to established quotas (if other conditions will not be foreseen by some agreements for separate water structures).

Most delicate aspect of interstate water relations is regulation of previous reclamations. Similar reclamation can have serious reasons because after former USSR collapse economic consequences for separate republics were different (some long-term programs cessation led to economic imbalance). In particular, in Kyrgyzstan power engineering was developing with outstrip leading to losses in irrigated agriculture and coal mining.

Similar facts are used as an argument by various political forces and governmental bodies of some countries of the region requiring property right revision, profit re-distribution and losses compensation.

Though “Treaty about eternal friendship between Kazakhstan, Kyrgyzstan and Uzbekistan” of 1997 supposes automatic regulation of territorial and other reclamations between these countries, this process is not logically completed.

Forming perspective external water policy state should optimize approach to this problem solution taking into account the following:

- a) Recognize existing reclamations and through negotiations to achieve positions rapprochement and mechanisms of solution;
- b) Declare voluntary refusal from any reclamations in water relations between the countries of the region. Simultaneously, questions of profit re-distribution should be completely closed, for example, from highly profitable power plants operation.

In any case, problem of status quo in territorial, property and financial aspects recognition is beyond of water relations and should be solved at the head states level.

If foreign countries will act in contradiction with interstate water right, interstate agreements and national interests of the Kyrgyz Republic and if these actions can not be stopped by negotiations or arbitrate process, Kyrgyz Republic reserves right on contrary measures on own right protection, population and enterprises interests.