

S.K. Tussupbekova¹, B.A. Taitorina², G.T. Baisalova³

¹*Baltic International Academy, Latvia, Riga, Latvia;*

²*M.Kh. Dulaty Taraz State University, Kazakhstan;*

³*Eurasian Law Academy named after D.A. Kunaev, Almaty, Kazakhstan*

(E-mail: s.tussupbekova@kaznmu.kz)

On the question of the justification of the principles international legal protection of atmospheric air from pollution

The article analyzes modern scientific approaches to substantiating the system of principles of international legal protection of atmospheric air from pollution at the present stage of international cooperation of States. The object of the study is the social relations of the planetary scale on the development and implementation of the principles of international legal protection of atmospheric air. The implementation of scientific analysis and generalization is based on an array of normative and scientific material: international legal acts, acts of national law, acts of international organizations, research scientists of the world. The study based on the analysis of international legal acts revealed the specificity of the basic principles of international law. In the context of substantiation of the principles of international environmental law, the role of international intergovernmental conferences, which adopted declarations of principles at the international level, is defined. The results of the scientific debate on the problem of classification of the principles of international legal protection of the environment in General and international legal protection of atmospheric air from pollution in particular are summarized. Based on the analysis of a wide range of sources, it is proved that at the present stage there is no single comprehensive legal framework that determines the legal status of the principles of international environmental law. Many principles lack both clarity and legal consensus on their applicability and are not recognized in legally binding instruments. As a result of the study, conclusions were drawn about the need to adopt a global Covenant on the environment, in which the principles of international environmental law would be systematized.

Keywords: atmospheric air, principles, environment, pollution, Convention.

Introduction

In 1980, the WHO Expert Committee defined a challenge for the future in the protection of atmospheric air from pollution: achieving a level at which specific pollutants do not produce an adverse effect [1; 16]. The international community, represented by international organizations, came to this conclusion as a result of almost 30 years of practice of international cooperation to prevent air pollution.

The European Conference on Atmospheric Pollution (France, 1964) updated the problem of the need for effective legal regulation of control of emissions of harmful substances into the atmosphere. The 1st International Clean Air Congress was held in 1966, and in 1968 the EU Committee of Ministers adopted the Declaration of Principles for Air Pollution Control, which marked the beginning of the process of forming a set of international legal principles for the protection of atmospheric air from pollution. Subsequently, the system of principles evolved in accordance with the efforts undertaken by countries to preserve the atmosphere for future generations.

The purpose of this article is to justify the system of principles of international legal protection of atmospheric air from pollution at the present stage of international cooperation between countries.

The object of the study is the social relations of the planetary scale on the development and implementation of the principles of international legal protection of atmospheric air.

The novelty of the study of the problem of substantiation of the principles of international legal protection of atmospheric air is due to the lack of scientific developments of this topic in the modern world practice of cooperation of countries.

Materials and methods

The methodological basis of the study of the problem of substantiating the principles of international legal protection of atmospheric air was made up of general and special scientific methods: analysis and synthesis, formalization, logical, comparative analysis, historical and legal, scientific generalization, as well as the method of legal modeling.

The implementation of scientific analysis and generalization is based on an array of normative and scientific material: international legal acts, acts of national law, acts of international organizations, research by scientists from around the world. In view of the relevance of the protection problems, scientific studies were carried out by scientists who studied various aspects of the problems Allen M.R., Alverson K., Angell JK, Baideldinova DL, Bengston L., Blackmon M., Boville V., Bradley RS, Brinchuk M.M., Bryan F., Vinogradova S.V., Erkinbaeva L.K., Christianson GE, Christy JR, Crowley TJ, Lobl ES, Mitchell JF, Oldfield F., Gabitova R.Kh., Malysheva N.G., Minnekaeva D.R., Minniakhmetova R.G., Ryzhenkova A.Ya., Spencer RW, Stott R.A., Victor DG, Weyant J. and others.

Discussion

An important part of the conceptualization of international legal protection of air from pollution is the justification of its principles — the basic ideas, guidelines that determine the content and directions of legal regulation. On the one hand, they express the laws of law, and on the other, they represent the most general norms that apply in the entire sphere of legal regulation and apply to all entities. These standards are either explicitly stated in law. or derived from the general meaning of laws. The principles of law determine ways to improve legal standards, acting as guiding ideas for the legislator. They are the link between the basic laws of development and functioning of society and the legal system [2; 55]. In the literature, legal principles are defined as the basic starting points that enshrine the objective laws of public life, the specific legal expression of the objectively existing socio-economic and political laws of social development [3; 215]. A more detailed definition of the principles of law is given by B. Grefrat: «A) principles are norms, they are not only political and legal points of the program or theoretical and legal generalizations of norms; b) principles are universal norms. Not all generally accepted norms are principles, but not all principles can only be universal norms; c) fundamental principles differ from other generally accepted norms in that they reflect certain basic laws of historical development; d) principles — peremptory norms. This means that all other norms must be brought into line with them; e) principles are not only a criterion for the validity of other norms, they are at the same time guiding provisions for the further development of international law, its specific norms that serve to disclose and implement these principles» [4; 109–111].

Thanks to the principles, the legal system adapts to the most important interests and needs of a person and society, and becomes compatible with them. We believe that the key to achieving the goals and objectives of international legal protection of atmospheric air from pollution, construction of its integrated and effective system is to comply It lines Peninsula, ie basic rules covering legal regulation procedures.

Features of the basic principles of international law are that they are, firstly, the most important, fundamental; secondly, the most general norms; thirdly, generally accepted norms. At the XXV session of the United Nations General Assembly (October 24, 1970), a Declaration on the principles of international law regarding friendly relations and cooperation between states in accordance with the UN Charter was adopted. This Declaration on the Principles of International Law governs 7 basic principles: the principle of non-use of threats or use of force against the territorial integrity or political independence of any state, or in any other way incompatible with the goals of the UN; the principle of resolving international disputes by peaceful means; the principle of non-interference in the internal affairs of any state; principle of international cooperation; the principle of equal rights and self-determination of peoples; principle of sovereign equality of states; the principle of conscientious fulfillment by states of obligations undertaken by them in accordance with the UN Charter. As you know, on August 1, 1975, the Final Act of the Conference on Security and Cooperation in Europe was signed in Helsinki, in which the number of basic principles increased to 10: the principles of inviolability of borders, the territorial integrity of states and respect for human rights and fundamental freedoms. The principles of international law are endowed with the following features, that is, they are: a) the normative basis of the entire international legal system; b) general; c) generally recognized; d) universal in scope, e) complex, e) imperative. In modern international law, they have been developed as fundamental norms — the principles of international legal protection of air from pollution, which can be classified into general, i.e. characteristic for any sphere of international relations, and special (otral), inherent exclusively to the group of public relations under consideration. The generally recognized principles are enshrined in the UN Charter, the Declaration on the Principles of International Law Relating to Friendly Relations and Cooperation in accordance with the UN Charter adopted by the UN General Assembly in 1970. (Declaration of 1970), in the Final Act of the Conference on Security and Cooperation in Europe (CSCE) 1975, in a number of Resolutions of the UN General Assembly and other international legal acts.

In the context of substantiating the principles of international environmental law, the role of such international intergovernmental conferences as the United Nations Conference on the Protection of the Human Environment (Stockholm, 1972) and the United Nations Conference on the Environment and Development (Rio de Janeiro, 1992), on which were adopted respectively the Declaration of Principles, containing 26 principles, the Declaration on Environment and Development», consisting of 27 principles. The specificity of declarations lies in the fact that most of the principles proclaimed in them belong to the category of principles-ideas that are not normative, but generalized, abstract in nature and contain a worldview meaning.

A similar conclusion was made by scientists about the non-normative nature of the principles of another document of one of the oldest and most respected international non-governmental organizations. Commission on Environmental Law of the International Union for Conservation of Nature and Natural Resources in 1995, a draft International Covenant on Environment and Development (by definition, some authors called Hartly her on Environment and Development), as a variant of informal codification of international environmental law [5].

However, the Declaration of Rio de Janeiro (1992) contains a number of legal principles, the provisions of which are used in as specific measures and commitments in the form of certain international agreements: cooperation in countering the movement or transfer to other States of harmful for the environment and human activities and substances (Principle 14); taking precautions that mean that in the event of a serious or irreversible damage, lack of full scientific certainty should not be used as an excuse to delay the adoption of cost-effective measures to prevent environmental degradation (Principle 15); environmental impact assessment as a national instrument for proposed activities that may have an adverse environmental impact (Principle 17); sending notifications and relevant information to interested states or conducting consultations with them regarding activities that may have potentially adverse transboundary consequences (Principle 19); immediate notification of other states of any natural disasters or other emergency situations that could lead to unexpected harmful consequences for the environment in these states (Principle 18); assistance to States affected by the consequences of disasters and situations referred to in paragraph 5 (Principle 18) [6].

The main meaning of Principle 6 on the cessation of environmental emissions of toxic substances and other substances, as well as heat of the Stockholm Declaration (1972) is reflected in the contents of the 1979 Convention on Long-Range Transboundary Air Pollution, the 1985 Vienna Convention for the Protection of the Ozone Layer and the Convention (framework) on 1992 climate change.

The doctrine of international law contains sources containing various approaches to substantiating the substantive and quantitative assessment and classification of the principles of international legal environmental protection in general and international legal protection of atmospheric air from pollution in particular.

The industry (special) principles of international environmental law recognize the principle of ensuring compliance with constitutional environmental human rights; the principle of inadmissibility of causing transboundary damage; the principle of environmentally sound rational use of natural resources; the principle of inadmissibility of radioactive contamination of the surrounding country; the principle of protecting the ecological systems of the oceans; the principle of prohibition of military or any other hostile use of means of influence on the environment; the principle of environmental safety; the principle of international legal responsibility of states for damage to the environment; principle of precaution or precautionary approach [7; 236].

The most comprehensive list of industry principles of modern international environmental law is presented by N.A. Sokolova: the right of everyone to a healthy and fruitful life in harmony with nature; the priority of environmental rights and human interests in the process of continuous socio-economic development; the inherent sovereignty of the state over natural (natural) resources; sustainable, i.e. environmentally sound, social and economic development; equal environmental safety (the ecological well-being of one state cannot be ensured at the expense of or in isolation from another or other states); prohibition of environmental aggression; regular exchange of information on the environmental situation at the national and regional levels; cooperation in environmental emergencies; monitoring compliance with agreed environmental requirements; peaceful resolution of disputes related to transboundary environmental impact; international liability and compensation for environmental damage caused by actions on the territory of a state under its jurisdiction or control, which led to damage outside this territory [8; 112].

Experts in the field of international environmental law focus on the principle of x -norm s of international environmental law (§ The principle s 21, 22 and 24 of the Stockholm Declaration and n The principle s 11, 13, 26 and 27 of the Declaration of Rio — Janeiro) [9; 45].

An analysis of various sources shows that at the present stage there is no single comprehensive regulatory framework that defines what can be considered generally applicable norms and principles in international environmental law. Meanwhile, the definition and justification of these principles will become the basis for unification of the current sectoral approach to international environmental protection law and filling gaps and conflicts in the system of norms and provisions of international treaties. In fairness, it should be noted that certain principles of the branch of international environmental law (including its part — protection of the atmosphere) are widely recognized today due to their inclusion in multilateral environmental agreements on specific issues and are confirmed by a number of international courts and tribunals. However, with respect to many other principles, there is a lack of clarity and legal consensus regarding their applicability, and they are not recognized in legally binding documents. This circumstance affects the predictability and application of sectoral environmental protection regimes [10].

With regard to the study of the implementation of norms, provisions, principles of international law for the protection of atmospheric air from pollution in national law, it is interesting to illustrate the rationale for the principles of protection of atmospheric air and the mechanism of their implementation on the example of the Russian Federation. Depending on the role of principles in the structuring of law, Russian scientists distinguish subinstitutional, institutional, sub-sectoral, sectoral, intersectoral and General legal principles of law [11; 5]. Ryzhenkov A. justifiably refers the principles of the law of protection of atmospheric air from pollution to the number of institutional, defining the main principles and directions of development of only one institution of environmental law, providing protection of atmospheric air. The Russian Federal law «On protection of atmospheric air» includes three groups of principles: 1) set the General legal principles of mandatory compliance with the legislation of the Russian Federation in the field of protection of atmospheric air, liability for violation of this law and the priority of protecting the life and health of present and future generations; 2) the principles of overlapping sectoral and cross-sectoral principles set out in art. 3 of the Federal law «On protection of the environment — ensuring favorable ecological conditions for life, labour and recreation person (duplicates the principle of providing favorable conditions of human activity from article 3 of the Federal law «On protection of the environment) and the principle of transparency, completeness and reliability of information on the state of atmospheric air, its pollution» (duplicates the principle of respect for the right of everyone to obtain reliable information about the state of the environment» from article 3 of the RF Law «On environmental protection», did not substantially adding to it); 3) principles of public administration in the field of atmospheric air protection, which have no analogues in art. 3 of the Federal law «On environmental protection» and indicate the specific security that is of air as a natural object, prevent the irreversible consequences of air pollution for the environment, mandatory state regulation of emissions of harmful (polluting) substances in atmospheric air and harmful physical impacts on it, as well as the principle of scientific validity, systematic and complex approach to the protection of atmospheric air and environment in General. The last three principles, according to the researcher, are the most complete institutional principles in the field of atmospheric air protection in the Russian Federation [12; 135].

During the debate, scientists from different countries propose various models and sets of principles for application in the field of international legal protection of air from pollution. It should be noted that when the proposals are inconsistent, researchers unanimously express the need to adopt a global environmental pact, which summarizes and codifies the principles of international environmental law in a single document [13]. The report of the UNGA Secretary General at the 73rd session on November 30, 2018 announced 9 basic principles of the industry of international environmental law that apply to all its sub-sectors: prevention; precautions; «The one who pollutes pays»; environmental democracy; cooperation; rights to a clean and healthy environment; sustainable development; common but differentiated responsibilities and related capabilities; the inadmissibility of regression and moving forward. These principles as a novelty of international environmental law are designed to help unify the modern industry approach in international environmental law. A comprehensive and unifying international document explaining all the principles of environmental law will help to increase their effectiveness and strengthen their application [10].

The principle of prevention has been firmly established as a norm of customary international law, having found support in relevant practice under numerous environmental agreements and major codification initiatives [14]. The precautionary principle stipulates that States should take precaution when making decisions or regarding possible omissions that could be harmful to the environment.

The principle «pays those who pollute» means that states are obliged not only to take measures to combat environmental pollution, but also to cooperate on issues of liability regimes.

The principle of environmental democracy as a whole is a combination of three elements: access to information, participation in the decision-making process and access to environmental justice.

The principle of cooperation accumulates the obligation to cooperate in the spirit of goodwill and global partnership to achieve this goal and contributes to the progressive development and dynamic transformation of contract law [15].

The right to a clean and healthy environment as a principle of environmental law. Perceived by the constitutions of 155 states of the world [16; 19].

Sustainable development principle — Sustainable development issues are included in the wider global strategy as a result of the adoption of the 2030 Agenda for Sustainable Development and the Sustainable Development Goals.

The principle of common but differentiated responsibility and corresponding capabilities was developed in the process of applying the principle of justice in general international law. This principle applies to cases in which developed countries have contributed more to the emergence of a particular environmental problem and have greater ability to respond to environmental challenges. Depending on the terms of the agreement, they can: 1) operate with the categories of Parties that are developed and developing countries, and significantly more stringent obligations are imposed on developed countries, and much less burdensome obligations on developing countries and countries with economies in transition, and they are also entitled to receive financial and technical assistance or capacity-building support [17]; 2) use the principle of self-selection [18]; 3) the issue of differentiation should be decided on the basis of criteria such as the availability of financial and technical resources and the ability to take cost-effective measures to reduce environmental impact, regardless of whether a particular state is an exporter or importer, or whether this issue affects one or another state, or some other categories. The Paris Agreement states that in the context of climate change, differentiation is dynamic, not limited to specific parameters and should be considered taking into account differences in national conditions [19].

The principle of the inadmissibility of regression is a relatively new principle of environmental law. A consequence of the principle of the inadmissibility of regression is the principle of moving forward. The principle of the inadmissibility of regression is aimed at ensuring that environmental protection is not weakened, while the principle of moving forward is aimed at improving environmental legislation, including by increasing the level of protection, based on the most modern scientific knowledge.

Conclusion

Thus, despite the high level of elaboration of the problems of international legal protection of atmospheric air from pollution, as well as a sufficient number of international legal acts to regulate the protection of the Earth's atmosphere, the specifics of the principles of protection of atmospheric air from pollution in the system of principles of international law is insufficiently studied. The need for the adoption of a global Pact on the environment, which would generalize and codify the principles of international environmental law, justified by many scientists of the world, has been accepted by international organizations, primarily the UN. The report of the Secretary General of the UNGA at its 73rd session on 30 November 2018 was the first document to systematize the 9 basic principles of the branch of international environmental law applicable to all its sub-sectors: prevention; precautions; «pays the one who pollutes»; environmental democracy; cooperation; the right to a clean and healthy environment; sustainable development; common but differentiated responsibilities and opportunities; and the inadmissibility of regression and progress.

In the modern period, the scientific approach to the need to conclude a universal Convention on environmental protection is relevant in order to prevent and reduce global environmental problems [20; 517]. Such a Convention would provide a comprehensive international legal regulation of all types of the natural environment, which are related to the protection of the atmosphere, water, natural resources, flora and fauna, and humanity on the planet Earth. Comprehensive protection of The earth's atmosphere is possible only if all countries agree to comply with international legal norms to ensure the protection of the atmosphere.

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С.К. Тусупбекова, Б.А. Тайторина, Г.Т. Байсалова

Ауаны ластанудан құқықтық қорғау қағидаларын негіздеудің мәселесі

Мақалада атмосфералық ауаны халықаралық-құқықтық қорғау қағидаларын енгізу және планетарлық ауқым бойынша қоғамдық қатынастар зерттеу объектісі болып табылады. Ғылыми талдау мен қорытуды жүзеге асыру нормативтік және ғылыми материалдар: халықаралық-құқықтық актілер, ұлттық құқық актілері, халықаралық ұйымдар актілері, әлем ғалымдарының зерттеулеріне негізделді. Зерттеуде халықаралық-құқықтық актілерді талдау негізінде халықаралық құқықтың негізгі қағидаларының ерекшелігі анықталды. Халықаралық қоршаған орта құқығы қағидаларын негіздеу контекстінде халықаралық деңгейдегі қағидалардың декларациялары қабылданған халықаралық үкіметаралық конференциялардың рөлі анықталды. Жалпы алғанда, қоршаған ортаны халықаралық-құқықтық қорғау және атмосфералық ауаны ластанудан халықаралық-құқықтық қорғау қағидаларын жіктеу мәселесі бойынша ғылыми өріс қорытындылары шығарылды. Дереккөздердің кең спектрін талдау негізінде дәлелденді: қазіргі кезеңде халықаралық экологиялық құқық қағидаларының құқықтық мәртебесін анықтайтын біртұтас кешенді нормативтік-құқықтық база жоқ. Көптеген қағидалар үшін олардың қолданылуына қатысты айқындық немесе заңдық консенсус жоқ және олар заңды күші бар құжаттарда мойындалмайды. Зерттеу нәтижесінде халықаралық экологиялық құқық қағидалары жүйеленетін жаһандық экологиялық пактіні қабылдау қажеттілігі туралы қорытынды жасалды.

Кілт сөздер: атмосфералық ауа, қағидалар, қоршаған орта, ластану, конвенция.

С.К. Тусупбекова, Б.А. Тайторина, Г.Т. Байсалова

К вопросу об обосновании принципов правовой охраны атмосферного воздуха от загрязнения

В статье объектом изучения являются общественные отношения планетарного масштаба по разработке и внедрению принципов международно-правовой охраны атмосферного воздуха. Осуществление научного анализа и обобщение базируется на массиве нормативного и научного материала: международно-правовых актов, актов национального права, актов международных организаций, исследований ученых мира. В исследовании на основе анализа международно-правовых актов выявлена специфика основных принципов международного права. В контексте обоснования принципов международного права окружающей среды определена роль международных межправительственных конференций, на которых были приняты декларации принципов международного уровня. Подведены итоги научной полемики по проблеме классификации принципов международно-правовой охраны окружающей среды, в целом, и международно-правовой охраны атмосферного воздуха от загрязнения, в частности. На основе анализа обширного круга источников сделано заключение, что на современном этапе отсутствует единая всеобъемлющая нормативно-правовая база, определяющая правовой статус принципов международного права охраны окружающей среды. В отношении многих принципов отсутствует как четкость, так и юридический консенсус относительно их применимости, и они не признаны в имеющихся обязательную юридическую силу документах. В результате исследования сделаны выводы о необходимости принятия Глобального пакта по окружающей среде, в котором принципы международного экологического права были бы систематизированы.

Ключевые слова: атмосферный воздух, принципы, окружающая среда, загрязнение, конвенция.

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