ПРАВО ЗАРУБЕЖНЫХ СТРАН: ПРОБЛЕМЫ ТЕОРИИ И ПРАКТИКИ

LAW OF FOREIGN COUNTRIES: PROBLEMS OF THEORY AND PRACTICE

УДК 341
DOI 10.33184/pravgos-2020.4.32

ON THE ISSUE OF THE EFFECTIVENESS OF INTERNATIONAL ENVIRONMENTAL LAW

YUSUPOVA Zilya Anasovna
Candidate of Sciences (Philology), Associate Professor, Assistant Professor of the Chair of International Law and International Relations of the Institute of Law of the Bashkir State University, Ufa, Russia.
E-mail: zilya_iousupova@mail.ru

MUKHAMETGAREEVA Natalia Mikhailovna
Candidate of Sciences (Philology), Assistant Professor of the Chair of International Law and International Relations of the Institute of Law of the Bashkir State University, Ufa, Russia.
E-mail: nmch77@mail.ru

In the modern conditions of the continuing deterioration of the global environment, the issue of the effectiveness of international environmental law is especially relevant. **Purpose:** to study the negative factors that hinder the effective implementation of international environmental standards. **Methods:** the authors use empirical methods of comparison, description, interpretation; they analyze international documents in the field of environmental protection; they apply a special scientific method of interpreting legal norms. **Results:** the authors conclude that international environmental law in spite of all its advances has several fundamental problems. They are the diversity and congestion of international environmental standards; the slowness of diplomatic negotiations in concluding environmental treaties, due to the short-term interests of states, such negotiations rarely lead to binding agreements; the adoption of an environmental standard does not guarantee its implementation, since the mechan-

isms for monitoring its application are not binding. The authors make a point that a civil society should demand from its state to comply with its international obligations in the environmental sphere.
Keywords: global environmental problems; international environmental law; negotiations; agreement; effectiveness; international obligations.

At the present time, the gravity of climate and environmental changes is not in doubt or disputed. All studies, all reports, whether national, regional or global, based on public or private sources, come to the same undeniable conclusion: for several decades, we have witnessed a continuing deterioration in the general condition of our planet.

The sixth environmental report, published in March 2019 by the United Nations Environment Program (UNEP) «Global Environment Outlook» (GEO 6)[1], provides information on the loss of biodiversity, dramatic resource declines, ongoing soil, and air and water degradation, especially in the least developed countries.

In order to combat these phenomena that do not have territorial boundaries, states are developing international environmental law, since environmental problems began to be considered on a global scale, outside the framework of the nation state in the early 1970s, especially after the creation of UNEP in 1972.

However, despite the development of international environmental law, the growth in the number of international treaties on nature protection, our environment continues to deteriorate and new environmental challenges appear. In this regard, we can state that international environmental law, despite all its achievements, has several fundamental problems that have become an obstacle to the effective implementation and application of the law.

Many international conventions have been adopted addressing different environmental issues, for example waste products, climate change, biodiversity or nuclear power. There are so many of them that a variety of technical and sectoral norms has become one of the problems of international environmental law. There are more than five hundred agreements, directly related to the field of environment. Even lawyers may face difficulties in finding ways to solve a particular problem, because with such a huge number of agreements there is a possibility of repetition of the provisions of the agreements, duplication of goals and responsibilities [1].

[1] Global Environmental Outlook 6 [Electronic resource]. URL: https://www.unenvironment.org/ru/resources/globalnaya-ekologicheskaya-perspektiva-6 (accessed date: 12.08.2020).

Another problem is related to the slowness of diplomatic negotiations while concluding environmental agreements. A review of various international negotiations related to the environment shows that only the Montreal Protocol[1], which entered into force in 1989, provides an example of an appropriate and effective international response to the global environmental threat – ozone layer depletion. In 2009, it became the first protocol in the history of the United Nations that had been ratified by 196 states. This document sets strict conditions for each country to phase out the use of chlorofluorocarbon gases (CFCs) and hydrochlorofluorocarbons (HCFCs), they are substances that deplete the ozone layer and contribute to the greenhouse effect. The ratification was a success: a complete cessation of CFC production occurred in 2010, and the scientific community estimated that the ozone layer should return to its 1980 state between 2055 and 2065. This success remains rather exceptional. It is undoubtedly due to, among other things, a favorable economic context.

Most often, international environmental law is characterized by slowness or even a complete hitch in the negotiations. The difficulty in reaching maximum consensus largely explains the content weaknesses of most of the texts under discussion. Moreover, international environmental negotiations are not always successful. On some basic issues, when states enter into discussions that are not systematic, they rarely come to agreements that are both universal and binding at the same time. In order to have as many countries as possible in the capacity of parties to the convention, negotiators often restrict themselves to minimum rules. For example, when it is a case of biodiversity, the Convention on Biological Diversity, adopted in Rio de Janeiro in 1992[2], offers only a very general minimum framework. For instance, it has not been ratified by the United States. Subsequently, negotiations by the Conference of the Parties did not result in a sufficiently clear and binding agreement to end the regular extinction of species. The goals set by the states were not achieved: the Living Planet index, developed by the World Wildlife Fund (WWF), shows that the number of living species of land and sea has been declining since 1970, and

[1] The Montreal Protocol on Substances That Deplete the Ozone Layer [Electronic resource]. URL: https://www.un.org/ru/documents/decl_conv/conventions/montreal_prot.shtml (accessed date: 12.08.2020).

[2] Convention on Biological Diversity, adopted by the United Nations Conference on Environment and Development, Rio de Janeiro, June 5, 1992 [Electronic resource]. URL: https://www.un.org/ru/documents/ decl_conv/conventions/ biodiv.shtml (accessed date: 14.08.2020).

this trend is not slowing[1]. Negotiations are progressing too heavily, keeping in mind the speed and irreversibility of the extinction of biological species.

The same can be said about other sectors of international environmental law. For example, a number of negotiations on emissions of hydrofluorocarbons (HFCs) has not led to a satisfactory result. These synthesis gases are used, in particular, in refrigeration and air conditioning systems and have a warming effect a thousand times greater than carbon dioxide, according to the Institute for Governance and Sustainable Development[2]. Negotiations repeatedly encountered opposition from Kuwait and Saudi Arabia. These two countries, whose populations are in dire need of air conditioning, even refused the possibility of creating a working group on these toxic substances. Nevertheless, the agreement to reduce HFC emissions was signed on October 15, 2016 at the UN conference in Kigali (Rwanda) by the countries parties to the Montreal Protocol. The agreement reached in Kigali[3] is legally binding and has a certain time framework. This agreement was developed over seven years and represents a compromise between rich countries and poorer, hotter countries. Richer countries will freeze HFC production faster than poorer countries, although some countries, including some countries in Africa, have chosen to phase out HFCs faster than necessary, citing the serious threats they face from climate change.

In addition to the difficulties associated with the development of international norms, there is another one – non-compliance: even in the case of the final adoption of a treaty, it is not always respected in the absence of effective control and sanctions mechanisms. Initially, internationally imposed sanctions fell under «private justice» between states. For example, even today, relations between Russia and the European Union testify to this: being guided by the Talion Law, they involve the parties in an endless round of measures and countermeasures (diplomatic, economic, restrictive).

Few international environmental conventions provide for real sanctions mechanisms. Compliance control is often entrusted to simple committees that do not have the authority to make decisions; non-compliance with the treaty does not lead to a court decision, but it leads to help to the countries that do not

[1] Fond mondial pour la nature, Rapport Planète vivante, 2014. [Electronic resource]. URL: http://www.wwf.ca/fr/nouvelles/publications/rapport_planete_vivante_2014.cfm (accessed date: 11.08.2020).

[2] Institute for Governance & Sustainable Development, Primer on HFCs, Juillet 2015 [Electronic resource]. URL: http://www.igsd.org/documents/HFCPrimer7July2015.pdf (accessed date: 09.08.2020).

[3] Kigali amendment [Electronic resource]. URL: https://climalife.dehon.com/amendement-de-kigali (accessed date: 14.08.2020).

fulfill their obligations. By far the most successful procedure is the Kyoto Protocol procedure[1]: when a state does not comply with its obligations, there are three different coercive measures that are comparable to sanctions. This mechanism was introduced after the Kyoto Protocol by the Marrakesh Agreements adopted in 2001[2]. For each ton of emissions not reduced, the state had to pay compensation during the second period (from 2012 to 2020) with an increase of 30 %, to the figures already set for the same period. In addition, the group that monitors the implementation of the protocol suspends the participation of the state in the international emission rights market. Finally, the compliance team should develop an action plan to remedy the non-compliance situation.

In addition, if there is a risk of falling under sanctions, states can denounce an international agreement at any time. Thus, under the threat of sanctions, Canada, which has largely exceeded emissions (an increase in emissions by 28 % instead of a decrease by 6 %), unilaterally withdrew from the Kyoto Protocol in December 2011.

Assuredly, international law also leaves room for dispute settlement in real jurisdictions. Thus, various jurisdictions have been created, some of which have general jurisdiction, such as the International Court of Justice, others have specialized jurisdictions, such as the International Tribunal for the Law of the Sea or the Dispute Resolution Body (DSB) of the World Trade Organization. However, if at the national level justice is compulsory, in international law, at the national level litigation or arbitration requires the consent of the states involved in the dispute. While in matters of environmental protection, states are more reluctant than anywhere else to recognize the competence of third-party mechanisms to resolve their disputes [2, p. 23].

Thus, it can be said that states have a complete discretion to ensure that their short-term national interests prevail over their international obligations. Although treaties have been signed and ratified, states may deliberately choose not to implement appropriate environmental protection measures. In the worst case, a possible sanction would only apply to a distant successor to the current government. Consequently, political leaders are tempted to make economic interests or immediate electoral issues prevail over long-term international commitments, especially in times of economic crises.

[1] Kyoto Protocol to the United Nations Framework Convention, adopted on December 11, 1997 [Electronic resource]. URL: https://www.un.org/ru/documents/decl_conv/conventions/ kyoto.shtml (accessed date: 12.08.2020).

[2] Marrakesh Accords [Electronic resource]. URL: https://www.un.org/sustainabledevelopment/ru/climate-negotiations-timeline (accessed date: 14.08.2020).

In this regard, it seems that only civil society can become a counterbalance to the omnipotence of states in international environmental law, because in the field of the environment, citizens, to a greater extent than in any other, have the right to seek from their state compliance with their international obligations, while obligations of states comply with the right of its citizens, whilst the right to a healthy environment is enshrined in many national constitutions. In other words, international environmental law can become more effective, if it is accepted by civil society. Government compliance with treaties should be monitored by citizens. This, obviously, should be a direct implementation of the goal set in Principle 1 of the Stockholm Declaration (1972), which recognizes that «man is primarily responsible for the protection and improvement of the environment»[1], and compliance with Principle 10 of Rio de Janeiro Declaration on Environment and Development (1992) «environmental issues are best handled with the participation of all concerned citizens – at the appropriate level»[2].

References

1. Yusupova Z.A., Muhametgareeva N.M. On some problems of the development of international environmental law. *Pravovoe gosudarstvo: teoriya i praktika = The Rule-of-Law State: Theory and Practice,* 2017, vol. 2, no. 48, pp. 173–176. (In Russian).

2. Henry S. L'efficacité des mécanismes de règlement des différends en droit international de l'environnement, Thèse de doctorat, Université de Nantes, 2011, vol. II, pp. 3–84.

Received: 24.10.2020

[1] Declaration of the UN Conference on the Human Environment [Electronic resource]. URL: https://www.un.org/ru/documents/decl_conv/declarations/declarathenv.shtml (accessed date: 12.08.2020).

[2] Rio Declaration on Environment and Development [Electronic resource]. URL: https://www.un.org/ru/documents/decl_conv/declarations/riodecl.shtml (accessed date: 12.08.2020).

К ВОПРОСУ ЭФФЕКТИВНОСТИ МЕЖДУНАРОДНОГО ЭКОЛОГИЧЕСКОГО ПРАВА

ЮСУПОВА Зиля Анасовна
кандидат филологических наук, доцент, доцент кафедры международного права и международных отношений Института права Башкирского государственного университета, г. Уфа, Россия.
E-mail: zilya_iousupova@mail.ru

МУХАМЕТГАРЕЕВА Наталья Михайловна
кандидат филологических наук, доцент кафедры международного права и международных отношений Института права Башкирского государственного университета, г. Уфа, Россия.
E-mail: nmch77@mail.ru

В современных условиях продолжающегося ухудшения состояния глобальной окружающей среды особенно актуален вопрос о том, насколько эффективно международное экологическое право. **Цель:** исследовать негативные факторы, препятствующие эффективному внедрению международных природоохранных норм. **Методы:** при проведении исследования использовались эмпирические методы сравнения, описания, интерпретации; проводился анализ международных документов в сфере охраны окружающей среды; применялся частнонаучный метод толкования правовых норм. **Результаты:** делается вывод о том, что международное экологическое право, несмотря на все его успехи, имеет несколько фундаментальных проблем. К ним относятся: многообразие и перегруженность международных природоохранных норм, медлительность дипломатических переговоров при заключении природоохранных договоров, обусловленная краткосрочными интересами государств (такие переговоры редко приводят к обязательным соглашениям). И даже принятие экологического стандарта не гарантирует его исполнение, поскольку механизмы мониторинга его применения не имеют обязательной силы. Также делается вывод о роли гражданского общества, которое может добиваться от своего государства соблюдения международных обязательств в природоохранной сфере.

Ключевые слова: глобальные экологические проблемы; международное экологическое право; переговоры; соглашение; эффективность; международные обязательства.

Библиографический список

1. Юсупова З.А., Мухаметгареева Н.М. О некоторых проблемах развития международного экологического права // Правовое государство: теория и практика. 2017. Т. 2, № 48. С. 173–176.

2. Henry S. L'efficacité des mécanismes de règlement des différends en droit international de l'environnement, Thèse de doctorat, Université de Nantes. 2011. Vol. II. P. 3–84.

Дата поступления: 24.10.2020