

**International legal
responsibility of States for
the pollution of the oceans**

INTERNATIONAL LEGAL RESPONSIBILITY OF STATES FOR THE POLLUTION OF THE OCEANS

RESPONSABILIDAD LEGAL INTERNACIONAL DE LOS ESTADOS POR LA CONTAMINACIÓN DE LOS OCÉANOS.

ABSTRACT

The entry of the world community into the 21st century was characterized by the recognition of the exceptional importance and necessity of stabilizing international relations in all important areas. In this regard, the cooperation of states has become not only an obligatory principle of international law, but also an indispensable condition for global development. So, back in 1997 the UN General Assembly called on all states to carry out their activities in accordance with the norms of international law, and above all in accordance with the UN Charter, to promote respect for and implementation of international legal principles, to join multilateral agreements in order to promote the development of international law in general and all its branches. The most important principle of international law is the principle of conscientious fulfillment by states of their international obligations. The protection of the World Ocean is connected with the adoption of a number of preventive measures, the monitoring of compliance with which is entrusted to international bodies specified in international agreements. In the case, when there is a fact of pollution, or their violation, the process of adopting a number of measures aimed at combating the consequences, namely, the protection of the World Ocean from pollution, which, in some cases, involves bringing to international responsibility, begins. In the international legal doctrine, the problem of the international responsibility of states is one of the most controversial. There are different definitions of the responsibility of states, but all without exception recognize the fact that it plays a crucial role in maintaining law.

KEYWORDS: World Ocean, international legal responsibility, protection, cooperation, Ecocide, pollution, ecological safety.

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RESUMEN

La entrada de la comunidad mundial en el siglo XXI se caracterizó por el reconocimiento de la importancia excepcional y la necesidad de estabilizar las relaciones internacionales en todas las áreas importantes. En este sentido, la cooperación de los estados se ha convertido no solo en un principio obligatorio del derecho internacional, sino también en una condición indispensable para el desarrollo global. Entonces, en 1997, la Asamblea General de las Naciones Unidas hizo un llamado a todos los estados para que realicen sus actividades de acuerdo con las normas del derecho internacional y, sobre todo, de conformidad con la Carta de las Naciones Unidas, para promover el respeto y la implementación de los principios legales internacionales, para unirse a acuerdos multilaterales para promover el desarrollo del derecho internacional en general y de todas sus ramas. El principio más importante del derecho internacional es el principio de cumplimiento concienzudo por parte de los estados de sus obligaciones internacionales. La protección del Océano Mundial está relacionada con la adopción de una serie de medidas preventivas, cuyo control se confía a organismos internacionales especificados en acuerdos internacionales. En el caso, cuando hay un hecho de contaminación, o su violación, el proceso de adopción de una serie de medidas destinadas a combatir las consecuencias, a saber, la protección del Océano Mundial contra la contaminación, que en algunos casos implica poner de relieve la responsabilidad internacional, comienza. En la doctrina legal internacional, el problema de la responsabilidad internacional de los estados es uno de los más controvertidos. Existen diferentes definiciones de la responsabilidad de los estados, pero todas, sin excepción, reconocen el hecho de que desempeña un papel crucial en el mantenimiento de la ley.

PALABRAS CLAVE: Océano mundial, responsabilidad legal internacional, protección, cooperación, ecicidio, contaminación, seguridad ecológica.

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INTRODUCTION

The World Ocean is the main component of the earth's biosphere, the key element of the hydrosphere, containing 95% of all water of the planet, the most important link in the ecological system, the source of mineral, biological and strategic resources. The ocean is the main supplier of oxygen to the planet; it is rightly called "Earth's Lungs". Nevertheless, the rapid growth of the population, the development of new territories, the rapid development of the economy and the increasingly intensive use of the spaces and resources of the World Ocean in this connection have led to serious and sometimes irreversible consequences that negatively affect its condition. Mankind has faced a complex problem of contradictions between its growing needs and the inability of the biosphere to provide them. Every year, an incredible amount of pollutants enters the waters of the World Ocean. Some areas are so polluted that there is practically no organic life in them.

In this regard, it becomes very obvious that the lack of increased attention to the issue of taking urgent measures to ensure the protection and safeguarding of the World Ocean as an important component of the earth's hydrosphere from pollution, can lead to an ecological catastrophe in the shortest possible time.

The protection of the World Ocean is associated with the provision of a number of preventive measures, the monitoring of compliance with which is entrusted to international bodies specified in international agreements. In the same case, when there is a fact of pollution, i.e. the fact of violation of those agreements, a process of taking a number of

measures aimed at combating the consequences, namely, the protection of the oceans from pollution, which, in some cases, involves bringing to international responsibility, begins.

Some scholars define responsibility as a fundamental principle of international law, while others define it as the place of a legal institution (Kuris, 1973). Nevertheless, most experts note, first of all, the exceptional importance of the responsibility of states with regard to the international law, avoiding the issue of its definition, since everything depends on the significance of the concept "principle" or "institution" (Kolosov, 1975).

In the domestic and foreign legal literature there is no single concept of legal responsibility. Legal responsibility in environmental matters is the relationship between states in the form of specially authorized bodies in the field of environmental protection and a person (physical or legal) violating the environmental regulations, for the application of appropriate sanctions to it (Speranskaya, 1984).

METHODS

A system-structural analysis method is used as a methodological basis for the study that helps to reveal the importance of ensuring the protection and safeguarding of the oceans from pollution. Combination of historical and political science methods and international legal analysis methods is the most promising methodology for the purpose of modern interpretation of convention norms. Along with general scientific methods, private-scientific methods were used to solve research problems: formal-logical, comparative law, legal modeling, as well as logical methods, such as induction and deduction, generalization and comparison.

RESULTS AND DISCUSSIONS

As a result of the general recognition by modern international law of the principle on the protection and preservation of the marine environment, states undertake to take due legislative acts with a view to preventing their non-compliance. They recognize the need to reckon with the assurance of other states by virtue of sovereign equality, and faithfully fulfill obligations under international law, as evidenced by the international agreements and treaties to which they are parties. Of course, responsibility cannot occur if a state does not take these measures and does not

issue legislative acts in defense of the marine environment. Responsibility comes only if due to failure to take appropriate measures, the environment of a state is damaged. Nevertheless, it is very obvious that the timely adoption by states of relevant legislative acts would certainly prevent many incidents in the World Ocean, which can sometimes cause irreparable damage to it.

The question of when the responsibility of states for wrongful acts comes is treated differently, but the majority agrees that the responsibility of a state comes from the moment of violation by it of an international legal norm, after the obligatory registering of the specified offense, and most importantly, since the moment of imputation of the above action to that, and not to another, state. It should be emphasized that in international law there is no division into tortious and contractual responsibility, since the state's international legal responsibility follows from a violation of the state's obligation, regardless of whether this obligation is contractual or based on general principles and norms of international law. The rule of law for the conduct of states is, first of all, the provisions recorded in a number of universal and regional agreements (Brinchuk, 1998). Thus, the draft articles "The Responsibility of States for internationally wrongful acts" dd. 2001 noted that every international wrongful act of a state entails the international responsibility of this state. According to the above-mentioned Convention, such an act takes place when a particular conduct of a state, expressed both in action and in inaction, constitutes a breach of an international legal obligation assumed by it (Speranskaya, 1984).

There is no need to prove that scientific and technological progress has reached great heights today in almost all areas. However, states engaged deeply in success and achievements in the economy and other spheres, often forget that the emergence of new technical capabilities in the industry inevitably involves the creation of new regulatory levers. Otherwise, it is extremely likely that due to improper and uncontrolled exploitation of technical means, catastrophes, losses, human sacrifices and losses from the animal world and the entire natural environment will be unavoidable. Thus, at the first meeting of IMO in Church House (Westminster) in 1959, representatives of the states agreed that the new commercial

projects in the field of shipbuilding and navigation emerging as a result of rapid economic growth, allow more efficient use of water and resources of the World Ocean, should not be reflected either in the quality of navigation or in the state of the marine environment (UN General Assembly resolution, 2001).

Gradually, the society began to realize that there are violations, the severity of which does not allow them to be treated like many others, and therefore they must be qualified differently. Consideration of this issue took place in 1976 by the International Law Commission, which raised the issue of a different regime of liability for violation of generally binding international law or the principles "jus cogens", affecting the interests of not one state, but several or even capable of entailing a threat to all mankind. Further development of this issue was received in the Articles on Responsibility of States for Internationally Wrongful Acts (Art. 40), which dealt with serious violations by a state of an obligation arising from a peremptory norm of general international law.

Initially, the problem of responsibility for environmental pollution began to be addressed in the documents regulating the rules of warfare, but soon the environmental damage was perceived as a crime against international security and against the security of all mankind. Thus, since the 1960s, a number of international treaties on cooperation between states on environmental protection and the prevention of transboundary pollution have been concluded, such as the International Convention on the Liability of Operators of Nuclear Ships of 1962; The Vienna Convention on Civil Liability for Nuclear Damage of 21.05. 1963 (as amended by the Protocol of 12.09.1997 (Convention on the Liability of Operators of Nuclear Ships, 1962). International Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques, 1978 (Vienna Convention on Civil Liability for Nuclear Damage, 1963). Nevertheless, environmental crimes took place from time to time in different countries, and the responsibility for them has never been consolidated in international instruments.

CONCLUSIONS

Despite the fact that as a result of scientific and technological progress, new factors of impact on the natural environment may still appear in the foreseeable future, the use of which would threaten by onset of an ecological catastrophe, it is still necessary to legislatively consolidate and give the correct interpretation to the most detrimental and destructive of them. As already mentioned, in 1969 the International Law Commission on behalf of the UN General Assembly has developed the Draft articles on the responsibility of States for internationally wrongful acts, which was adopted in 2001. The General Assembly adopted a resolution, in the annex to which the text of the Articles on Responsibility of States for unlawful international acts is contained. Nevertheless, in our opinion, the adoption of these Articles in the form of a resolution does not make them legally binding on the parties. As practice shows, states and international organizations are very reluctant to admit their own guilt. In addition, it is necessary to mention one more circumstance that hampers the development of the law of international responsibility, which is the possibility of an alternative form of settling the dispute between the offender state and the victims in the process of unlawful activities by citizens, namely *ex gratia* payments. These are cash payments on a voluntary basis, paid by the aggressor state to the civilians in order to reduce their negative attitude. It was on this basis that the United States made the appropriate payments to Japan to compensate for the huge damage caused by the United States' test of hydrogen weapons in the Marshall Islands (Bikini and Enewetok Atolls) on 1st of March, 1954, with a total capacity of 108 megatons. This opportunity to "pay off" from their obligations and to pay compensation to the victims creating the appearance of an interest in providing assistance, represents in reality a very dangerous practice of states' activity outside the international legal field. *Ex gratia* payments give a state an opportunity to make payment of sums of money to affected citizens, at the same time not recognizing their guilt and freeing themselves from further actions on responsibility envisaged in the draft articles of 2001, namely, compensation, restitution and satisfaction (Gallery of US Nuclear Tests, 2001).

Today, environmental crimes are a serious international problem, the resolution of which

is conditioned by the need to ensure favorable living conditions on Earth. Nevertheless, despite the seriousness of the issue, it is still not at an adequate level. The absence in the international legislation of a unified interpretation of such concepts as an "ecological crime" and "ecocide" significantly complicates the implementation of a correct assessment of environmental crimes. Thus, despite numerous measures to improve the safety of the use of the marine environment, in the World ocean there are still operating vessels in an inadequate or even emergency condition, also carrying cargoes which are very harmful to the environment, what causes extensive damage to the environment in the result of accidents. Upon this, persons guilty of pollution often avoid responsibility. So, according to the United Nations Convention on the Law of the Sea of 1982, each state takes appropriate measures with respect to vessels wearing its flag colors to ensure safety at sea, in part with respect to the design, equipment and seaworthiness of ships. In taking appropriate measures, any state undertakes to adhere to generally accepted international rules and standards, procedures and practices and take all possible steps for their compliance and implementation. The relevant rules, requirements and standards are also contained in other international agreements, namely the International Convention for the Safety of Life at Sea of 1974 (COLAS-74 Convention), with numerous amendments introduced by the Protocol of 1978 and the Protocol of 1988. It is extremely important in this connection to note the International Maritime Dangerous Goods Code (IMDG Code) adopted in 1965 and being mandatory for application since 1 January, 2004; among others, it regulates transportation of radioactive materials, reflects the IAEA Regulations for the Safe Transportation of Radioactive Materials. In 1993, in order to ensure safe operation of ships, the IMO Assembly adopted the International Code for the Management of Safe Operation of Ships and Pollution Prevention. In order to make the Code mandatory, the Annex to COLAS - 74 Convention was added with the Chapter IX "Management for the Safe Operation of Ships" containing a reference to the relevant Code (Sazonova, 2015).

SUMMARY

The growth of the population on the Earth undoubtedly contributes to the increase in the human need for protein foods; new possibilities for using the marine environment as a raw material base and transport system still appear. Every year, the process of exploitation of the marine environment intensifies due to the development of minerals on the continental shelf. This process cannot be stopped, but it is possible to reduce such a high rate of exploitation of the World Ocean through liability for damage to the marine environment.

An analysis of the situation prevailing in the world and consideration of the above articles of the conventions allow us to conclude that when the World Ocean will be seriously damaged, it would be not so important to establish the fact whether this action was prohibited by international law or not. There is harm to the environment and non-compliance with the imperative principle of international law: the principle of protection and preservation of the marine environment. Of course, the liability regime will be different (for example, when spilling oil during its transportation and when storing waste on the high seas). However, causing significant damage in any case entails the responsibility of either the perpetrator or the person responsible for carrying out activities that are of a heightened danger. In our opinion, the whole matter is in the strictness of laws and the understanding of the inevitability of punishment. Penalties for pollution of the World Ocean are insignificant now in comparison with the damage caused to it, in addition, they are most often recovered in a timely manner. Large oil companies allow for significant violations, since they know that failure to comply with many requirements does not entail serious consequences for them, and the reason for withdrawal of licenses to carry out their activities is the failure to pay taxes or, for example, violation of the timing of development of deposits. So, it is not profitable for shipbuilding and oil companies to keep their vessels and pipelines in right order. It's much easier to pay a fine. For example, the net profit of the oil company Lukoil in the 9 months of 2017 increased by 34.5% compared to the previous year and amounted to 107.9 billion US dollars, and the penalties paid by the company for non-environmental activities are often negligible compared with income (Gureev et al, 2014). Accordingly, it is much

easier to pay off and pay this amount than to update pipelines every 10 years.


The events of recent years testify to the need to create a well-established system in the field of permanent channels for exchanging information on the status of sources of increased danger, a clear system of expert support, and, what is more important, to resolve the issue of organizing mobile rapid reaction forces in the event of accidents. It is necessary to minimize the number of possible cases in the field of pollution of the World Ocean falling under the notion of force majeure, as well as to strengthen the responsibility of states for activities that are of a heightened danger, and for the risk of negative consequences for the environment, in particular for the oceans. It is necessary to ensure consistent compliance with the provisions of MARPOL and to establish a more stringent regulatory regime for cargo ships in order to prevent accidents and other pollution. It is necessary to increase the level of control and toughen the responsibility of states for offenses and crimes against the environment, in particular the marine environment, clearly delineate the limits of permissible behavior, and actions that cause real damage must be qualified by an international court.

Despite the adoption by various states of more than 500 multilateral and bilateral agreements regarding the protection and preservation of the environment, including the marine environment, the process of rapid pollution of the World Ocean does not slow down, but gains momentum. In order to prevent an ecological catastrophe, it is considered advisable to establish a single monitoring body under UNEP (the United Nations Environment Program) providing it with the competence to monitor the implementation by states of the provisions of international conventions in the field of the protection and preservation of the World ocean, as well as its empowerment to make decisions mandatory for all participating states.

In addition, it is possible to prevent the degradation of the World Ocean, primarily through a preventive approach involving a set of preventive measures to prevent the possibility of any marine pollution. This approach requires an environmental impact assessment, development and modernization of on board treatment facilities, improvement of

water-purifying systems, and reduction of an impact on the marine environment in order of its preservation and maintaining its productive opportunities.

ACKNOWLEDGEMENTS

The work is carried out according to the Russian Government Program of Competitive Growth of Kazan Federal University. 



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