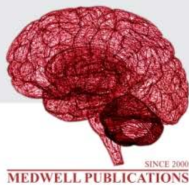

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Environmental Problems of International Legal Regulation of Transboundary Pollution

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Abstract: This study is a comprehensive study on problems of legal protection of the environment from transboundary environmental pollution in the Republic of Kazakhstan. The study of international and national legislation in the field of environmental protection from transboundary environmental pollution was carried out, ways to solve legal problems related to transboundary environmental pollution were studied and proposed, theoretical concepts and practical recommendations were developed to increase the effectiveness of current legislation and the activities of state bodies in the field of environmental protection environment from transboundary environmental pollution. The theoretical significance of the study is that it will contribute to the further scientific development of conceptual problems of environmental cooperation in the field of preventing and preventing the negative effects of transboundary environmental pollution. The research itself, as well as the results obtained will contribute to the further development of the domestic environmental law science.

INTRODUCTION

Scientific and technical progress and increased anthropogenic pressure on the environment inevitably lead to an exacerbation of the ecological situation: natural resources are depleted, the natural environment is polluted, the natural connection between man and nature is weakened, aesthetic values are lost, the economic and political health is deteriorated the struggle for commodity markets, living space. At this stage, environmental pollution has reached immense proportions, so, this problem is acute for almost every state. Their solution depends on the integration and mutual coordination of the activities of all states. One of the main causes of negative phenomena and an imbalance in the relationship between man and society and nature which have recently sharply deteriorated and can lead to global environmental disasters that complicate the problem of human survival, is ecological incompetence. As scientific and technological progress develops, as it was aforementioned, the scale of human impact on the environment is increasing and new ways and methods of such impact are emerging. In this regard, new areas of interstate relations are emerging that require an effective legal settlement, the purpose of which is to control and restrict the activities of states that adversely affect the condition of the environment. The concept on the transition of the Republic of Kazakhstan to a "green economy" noted that: "Transboundary environmental issues include water distribution, pollution of

transboundary water bodies, air and soil, movement of hazardous technologies, substances and wastes, development of border mineral deposits, preservation of unique natural complexes. Transboundary environmental problems pose a real external threat to the environmental safety of a country, the solution of which is provided by the joint actions of neighboring states in the framework of international treaties. National legislation also has a role to play in regulating transboundary pollution. However, as a rule, this role will be derived from the adoption and legal consolidation of the relevant international rules[1].

As noted by Bekezhanov *et al.*[2], it is necessary for Green Economy to improve the concept of solid waste and wastes to protect the environment. Annual population growth is a concept associated with an increase in the amount of municipal solid waste.

The regulation of transboundary pollution by international law, in our opinion, requires the formulation and solution of a number of tasks. First, the legal qualification of this phenomenon is necessary as lawful or illegal. The presence of the damage should be considered as a defining sign of the illegality of transboundary pollution. The theory and practice of international law qualifies as unlawful any substantial damage to one state by actions on the territory or under the control of another state. This is evidenced by the norms of international customary law, the modern understanding of state sovereignty, the exercise of which should not infringe upon the legitimate rights of other states. With regard to the environment, this was most clearly expressed in the Stockholm Declaration where in accordance with Principle 21, it is noted: "In accordance with the UN Charter and principles of international law, the state has the sovereign right to use its own resources in accordance with its own policy on the environment and the obligation to ensure that activities within its jurisdiction do not cause damage among other states or areas under its national jurisdiction." The decisions of the international tribunals also prove the unlawfulness of such activities.

Secondly, another essential issue is the determination of the source of transboundary pollution the cause of transboundary damage. The norms of international law fix the methodology and means of identifying one or more sources of pollution that caused damage. The violation of such a fundamental principle of international law as the principle of non-causing damage entails the international responsibility of the person causing the damage. However, the establishment of damage as a result of transboundary pollution and the identification of the source of pollution does not necessarily indicate the direct intent of the person causing the damage. It is known that damage to the environment can occur due to the legitimate actions of one or more states. In this case, we are able to talk about absolute liability, especially if transboundary damage was the result of legitimate use of so-called sources of increased danger. According to Vasilenko[3]. In international law, there is no universally accepted legal norm providing for the obligation to compensate for any innocent damage caused. This issue is resolved by concluding special agreements providing for the obligation to compensate for damage caused only by the types of sources of increased danger identified in them[3]. From this it follows that the best way to develop international law concerning liability and compensation in the field of transboundary pollution is the development of convention norms. Conventional regulation is typical for the international regulation of transboundary pollution. In November 1979, the Convention on Long-range Transboundary Air Pollution was adopted at the High-Level Pan-European Environment Conference in Geneva. It was the first in international practice agreement providing for the integrated regulation of interstate cooperation in the field of transboundary air pollution and uniting the majority of industrialized countries in Europe and North America.

The United Nations Conference on Environment and Development in Rio de Janeiro, in June 1992, adopted the Declaration on Environment and Development-A List of Principles for the Global Environment and Development. The RIO Declaration contains the basic principles of the ecologically correct behavior of the world community and states at the present stage. From the point of view of the UN and the participants of the conference, the national internal and external environmental policy of the state based on these principles should contribute to ensuring the national and international environmental law and order. The declaration defines the purposes for which these principles are proclaimed. The main ones are the establishment of new and equal cooperation throughout the world by establishing new levels of cooperation between states and peoples, determining prospects for the development of international environmental law, developing national environmental legislation and establishing measures that may be most useful for maintaining favorable state of the environment and its recovery. In accordance with Principle 2 of the Rio de Janeiro Declaration, it is emphasized that the state, in accordance with the UN Charter and the principles of international law has the sovereign right to exploit its natural resources, pursuing its own environmental and development policies and is responsible for that activities under their control do not damage the environment in other countries or areas beyond national jurisdiction. This Principle confirms Principle 21 of the Stockholm Declaration and expresses further development in relation to the environment. Anonymous[4] defined as the basis for cooperation on cross-border transport issues. The success of the Rio de Janeiro Declaration in the creation of international environmental law will be determined by how the principles contained in it will be implemented by

states and remain reflected in state practice. Thus, customary law obliges states to cooperate in the field of environmental protection and control of transboundary pollution[4].

In 2003, Kazakhstan acceded to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal which made it possible to establish new rules on the declaration of hazardous wastes to prevent their subsequent entry into the republic under the guise of recycled materials and products. The Basel Convention was adopted on March 22, 1989 by 116 states, entered into force on May 5, 1992, delivered from 29 articles and 6 annexes. The main objective of the Convention is to protect human health and the environment from the adverse effects that may be caused by the production, transboundary movement and management of hazardous and other wastes. Striving to achieve this goal, the convention establishes a regime that is based on the following principles: minimizing the generation of hazardous waste (the principle of minimizing hazardous waste); disposal of hazardous waste as close as possible to the source of waste generation (proximity principle of disposal); the export of hazardous waste is prohibited in Antarctica and in countries that have banned the import of hazardous waste by national legislation; hazardous wastes that are exported illegally or legally exported hazardous wastes that cannot be disposed of in a safe way in the destination country must be re-imported into the state of export. Analyzing the provisions of this convention, it should be noted that one of the biggest contradictions in the development of the Basel convention is related to the definition of the concept of “hazardous waste”. First, instead of adopting a single definition of hazardous waste, the convention accepts a wide range of them, so, the convention has 45 categories of waste that are considered to be dangerous. To qualify them as hazardous, these categories of waste must express one or more hazardous characteristics, such as flammability, oxidation, poisonousness, toxicity.

Second, if the waste is considered hazardous in accordance with the national legislation of the country of export, import or transit, the waste will be considered hazardous within the framework of this transboundary movement by all countries involved in the transport process[5]. In 2000, Kazakhstan acceded to the Helsinki Convention on the Protection and Use of Transboundary Watercourses and International Lakes[6] which makes it possible to form common legal approaches to solving problems of rational use and protection of transboundary rivers. This accession was caused by the fact that Kazakhstan is one of the water-deficient countries of the Eurasian continent. About half of the total volume of surface water resources is formed outside the republic, a third is transit through Kazakhstan to the territory of neighboring states. Currently, due to the increasing transboundary impact on international rivers, there is a tendency to reduce the natural resources of our country’s surface waters. The definition of the concept “international river” was first given in Article 5 of the Treaty of Paris of May 30, 1814, according to which an international river is a river flowing through the territory of two or more states. In the legal literature on the international law of rivers, this definition has an addition “and having access to the sea”.

International rivers are divided into open and border rivers. Open international rivers are those on which freedom of navigation is established for merchant ships of all countries of the world. The border rivers all over or in parts form the border of two states and as a rule are subordinated to the border regime. In the Barcelona Statute of 1921 in Article 1 the concept of “navigable waterway of international importance” is given these are all natural navigable sections of a waterway, the channel of which is divided and crossed by various states. Anonymou[6] introduced the concept of “transboundary waters” for the first time. In the future, the concept of “transboundary waters” was given in Article 15 of the Water Code of the Republic of Kazakhstan dated July 9, 2003. These are any surface or groundwater that denote or cross borders between two or more states or are located on such borders. Under the watercourse refers to a system not only surface but also groundwater, forming a coherent whole and usually flowing to the same outlet. Watercourses are international, parts of which are located in different states. The regime of such watercourses is determined by the agreement of the states from whose territories they are connected. Each such state has the right to participate in the agreement. States are obliged to use watercourses in such a way as to provide them with the necessary protection. They are required to participate in the protection of watercourses on an equitable basis, to cooperate to achieve this goal[7].

Transboundary water use is a complex legal relationship, connected not only with the conditions and procedure for use from interstate reservoirs but also with the emergence and termination of the right of transboundary water use, facilities and entities, the establishment of rights and obligations and more. The object of water use in the republic is a certain water body and water sources and the object of transboundary water use is the rivers, some of which are located in different states. Consequently, the water users of transboundary rivers are the states through whose territory the transit river flows. The rights and obligations of these water users in unity constitute the content of the right of water use of transboundary rivers. They are determined by the agreements of the states which, in turn, determine the scope and conditions for the emergence of the right to use the transboundary rivers. The main purpose of

transboundary water use is compliance with such a regime of use of water bodies which would ensure the rational integrated use of water, their economical consumption, protection, improvement of quality as well as prevention of harmful effects on water bodies, i.e., prevention, control and reduction of water pollution that has or may have a transboundary impact.

According to Art. 1 of the 1992 Convention on the Protection and Use of Transboundary Rivers and International Lakes, transboundary impact means any significant adverse effects resulting from changes in the state of transboundary waters caused by human activities, the physical source of which is located fully or partially in an area under the jurisdiction of this or that other party for the environment in an area under the jurisdiction of the other party. These environmental effects include those for human health and safety, flora, fauna, soil, air, water, climate, landscapes and historical monuments or other material objects or the interaction of these factors; they also include consequences for cultural heritage or socio-economic conditions resulting from changes in these factors[8].

Since, joining the Convention, the Government of the Republic of Kazakhstan has concluded a number of bilateral agreements with the Russian Federation, the Government of the Kyrgyz Republic, the Government of the Republic of Uzbekistan and the Government of the People's Republic of China. These agreements of Kazakhstan regarding transboundary waters leave no doubt that at the international level, Kazakhstan is ready to cooperate fully with its neighbors in order to ensure the rational use and protection of these waters. Kazakhstan is ready to bear responsibility for unilateral actions of its water management and other organizations, if such actions cause damage to the neighbor. Similar obligations are borne by the contractual partners of Kazakhstan. These agreements do not take into account the need to regulate international relations in the field of the national use of the discharge areas of transboundary rivers. It is known, for example, that if the upper reaches of the rivers are located in the mountains, the careless cutting down of forests and other vegetation there can lead to floods that affect the inhabitants of the lower reaches of the given river. Another situation is that the sides have mountainous areas, if they need water, they can try to accelerate the natural melting of glaciers and snowfields by applying their blackening (such experiments were carried out in the Tien Shan mountains on the Chinese side). But if these measures lead to stormy floods on border rivers, they cannot be considered as an internal matter of the side that caused the floods. Apparently, such cases should be discussed in advance in the bilateral agreements of the countries concerning the rational execution and protection of transboundary rivers. International law is aware of the problem of regulating water relations in the complex as the unity of the water resources that make up the entire transboundary river basin including the tributaries and not only them, but also the catchment areas. This is directly recorded in the so-called "Helsinki Rules", adopted by the International Law Association in 1994. The texts of the agreements contain an indication of the "activity" of one side, which leads to damage and loss of a neighbor[9].

In this case, however, missed options unjustified inaction which can lead to negative consequences. It must be assumed that such an omission is a gap in the relevant agreements. But the wrong activity (or inactivity) of organizations responsible for the operation of facilities is only one side of the matter. Harmful consequences can occur regardless of the operation of facilities, primarily as a result of the late transfer of important water management information. The agreements provide for the obligation of the parties to exchange such information but they do not say anything about the responsibility of the party because of the slowness (in providing information) which caused damage to the other party. We must assume that some sanctions would be appropriate in these cases. Moreover, if a party does not systematically provide the other party with the necessary information even if it does not lead to toll and losses such carelessness should entail certain sanctions with respect to the faulty party. If you support this point of view, then it is necessary to recognize the necessity of concluding special agreements (or drawing up special protocols) that would define the subject matter, scope, timing and procedure for the exchange of water management information between contractual partners. Facing the fact of the political and environmental interdependence of states and taking into account the nature of the modern international system, it should be recognized that there is a fundamental obligation of the state to protect and preserve the environment and in particular to use the best possible means at its disposal to prevent pollution or other types of harmful effects on natural resources, both general and limited access, according to Schneider[10].

One of the urgent and difficult problems facing modern society is the problem of transboundary environmental pollution. The complexity of the legal side in solving the problems of transboundary pollution of the environment lies in the fact that harmful substances from sources under the jurisdiction of one state can be transferred to the territory of another state and thus, of course, cause damage to the environmental and other interests of the state, physical and legal entities. In addition, transboundary environmental pollution also causes the ecological interdependence of states which necessitates the development of international cooperation on many environmental issues, taking into account the interests of all countries. Based on this, it can be stated that all aspects of transboundary environmental pollution are closely interrelated which eliminates or complicates

the cardinal solution of the problem. For example, the Chinese side of the Amur River pollution that occurred at the end of 2005 was caused by an explosion at a refinery in the Sevin province, causing >100 tons of toxic chemicals to enter the water, more precisely to the Sungari River which merges with the Amur River which flows through the Russian Federation.

The main objective of the research is to develop a concept of legal regulation of environmental protection from transboundary environmental pollution in national legislation. In accordance with the goal, the following tasks arose: based on the analysis of the content of existing national and international legislation in the field of environmental protection from transboundary environmental pollution, identify problems and shortcomings in the legal regulation of transboundary environmental relations; reveal the legal nature of transboundary environmental pollution and formulate its definition;- identify the mechanisms and features of legal environmental protection from transboundary environmental pollution; based on a study of the content of state regulation in the field of environmental protection from transboundary environmental pollution, in the context of modern globalization and integration, to make proposals for improving the activities of state bodies regulating environmental protection; identify the features of the application of legal liability for transboundary environmental pollution; to substantiate the conclusions and proposals, to develop scientific recommendations to improve the effectiveness of legal regulation of environmental protection from transboundary environmental pollution as well as to further improve the existing legislation in this area and measures of legal liability. The methodological basis of the research is represented by natural-science, socio-economic and legal views on the interaction of society and nature, modern teachings on state and law. In the course of the study such methods of cognition as the historical-logical, complex, system-structural, functional, comparative-legal, etc. were used. The theoretical basis of the study was the works of domestic and foreign leading legal scholars in the field of international and environmental law. Through the course of research there were taken account works of representatives divergent branches of knowledge who studied problems related to those analyzed in the research.

MATERIALS AND METHODS

The article deals with the main methods of comparative research of legal reality which together constitute the methodology of legal comparative studies. The main attention is paid to the comparative-historical method compared with normative legal acts in the field of transboundary pollution. The author’s attitude to the use of individual methods is recommended which increases their cognitive value.

The legal nature of transboundary environmental pollution: Central Asia occupies a unique place on a geographical map of the world. Located in the center of the Eurasian continent, it is in the literal and figurative sense at the intersection of the axes “North-South” and “West-East”. Such a geographical position imposes a special stamp on the cultural, political, economic, social and ecological life of the region. The sovereign states of Central Asia that gained independence in 1991 are: the Republic of Kazakhstan, the Kyrgyz Republic, the Republic of Tajikistan, Turkmenistan and the Republic of Uzbekistan. They border the Russian Federation, China, Afghanistan and Iran. The total area of the region is about 3882 thousand square kilometres with a total population of >53 million people. A new environmental policy in transition in the countries of the Central Asian Region (CAR) began to actively develop only after independence. It was aimed at strengthening the regulatory framework, the development of economic methods of environmental management, etc. The countries of this region have begun to take the first steps in international cooperation and participation in international and regional environmental programs. The realization that success in countries with a vulnerable environment from socio-economic transformations depends on environmental policies is reflected in constitutions, legislation, numerous government decisions, government strategies and national programs. The states of the region today have their own environmental strategies, programs and action plans for environmental protection.

It is necessary to note the special role of the UNECE Environment for Europe Program in involving the countries of the region in a broad international process of analyzing environmental problems, setting priorities and making decisions. Due to the peculiarities of the natural and socio-economic conditions of countries in the region, there are also differences in environmental priorities. The states located in the upper reaches of the rivers place emphasis on combating erosion, protecting watershed areas, preserving forests and biodiversity. For downstream countries, the priorities are desertification, salinization and soil degradation, transboundary water pollution and the conservation of biodiversity, in particular migratory species. As a result of joint work of representatives of countries, consultants, scientists, representatives of the public and experts with the support of the UNDP project “RPBAM” the following priority problems of Central Asia were identified: Degradation of the Aral Sea Ecosystems (BAM): Deficit of water resources; Transboundary pollution of water bodies; Land degradation; Catastrophic change in the hydrological regime of rivers; Loss of biodiversity at BAM; Degradation of mountain ecosystems; Transboundary air pollution; Danger from the destruction of dams and other hydraulic structures. The negative effects of global

climate change. Pollution from oil and gas complex. Transboundary movement of solid household waste. Destruction of the ozone layer of the atmosphere. To the above problems should be added: Transfer of persistent organic pollutants. Industrial accidents. However, it should be emphasized that most of the regional environmental problems are associated with resource-intensive and resource-oriented economy. The share of natural resources in the economy of Central Asian countries is about 50% with an active negative impact on the environment (Central Asia: A Review of Progress in Implementing the Agenda 2002). So, to begin with, we want to mention immediately the complex of legal problems that will be considered in our dissertation research, that is, problems of the nature of transboundary environmental pollution will be included in this category:

- Transboundary air pollution
- Pollution of atmospheric air with rocket fuel when launching carrier rocket from the Baikonur Cosmodrome
- Transboundary pollution of water bodies (rivers)
- Industrial disaster
- Transfer of persistent organic pollutants

Legal responsibility as a means of environmental protection environment from transboundary environmental pollution: "Recognizing the human right to a favorable environment for living and recognizing the responsibility for creating favorable conditions for living and well-being to their own people and the people of other countries as well as future generations, based on the right of each state establish the order of use of natural resources, based on the understanding of the integrity and indivisibility of the environment, the unity of interests of all states in its conservation and sustainable development, that the boundaries between states do not coincide with the natural-ecological and basin boundaries and knowing that economic and other activities the territory of one state should not damage the natural environment, the quality of life of the population and the economic activities of other states, guided by the need to accept bathrooms legal acts in the field of ecology and environmental protection, attaching special importance to the role of public consciousness in solving environmental problems", such words expressing the importance of concerted actions in the environmental sphere, begins the intergovernmental Agreement on interaction in the field of ecology and environmental protection signed on February 8, 1992 by the Commonwealth of Independent States. B.V. Erofeev believes that this document among a number of intergovernmental regulations on cooperation in this field is significant for a number of reasons: firstly, this Agreement was signed by the countries of the "near abroad" who despite their independence in resolving state issues, realized the need for cooperation in such a global areas like ecology; secondly, cases of environmental damage in one country will inevitably affect the nearest neighbor and here it is significant to understand the need to join efforts to prevent adverse impacts and help in their localization; thirdly, the above-mentioned preamble testifies to the qualitatively new approach of the contracting parties to responsibility before their peoples, the peoples of other states for an environment favorable for life and work.

To date, problems of responsibility are very closely studied by such social sciences as ethics, psychology, law, etc. But especially intensively are carried out in philosophy and jurisprudence. Representatives of these sciences have proposed many, sometimes significantly different from one another, definitions. Philosophers define responsibility as "a socially necessary attitude to social values that contribute to the progress of an individual and society"[11]. as an individual's volitional attitude towards the values prevailing in society and as a complex of requirements dictated by objective reality to the activities of subjects and as a regulatory norm that reflects in the complex of feelings, knowledge, assessments, attitudes and beliefs of the individual and as a way to objectively and subjectively assess and stimulate the behavior of an individual or a collective.

Legal doctrine differs significantly from philosophical: if philosophy dominates the notion of responsibility as a complex phenomenon including both negative and positive forms, then in legal science it is more peculiar to look at it as a negative protective institute. Within the framework of this approach, three basic concepts can be singled out, namely: the understanding of responsibility as the implementation of sanctions offenses as the ability of the offender to give an account of his illegal actions and to undergo measures of state-coercive influence as an obligation to undergo measures of state-coercive influence.

The literature provides a broad interpretation of responsibility as the obligation established in the law to perform actions that meet the objective requirements of this situation. In particular, Bratus[12] argues that legal responsibility is the same duty but enforced, if this duty is not performed voluntarily, it is mediated by an act of forcing the discharge of duty. So, summing up what has been said, it is possible to come to the following conclusion that in social science there are two approaches to understanding responsibility which are quite different from each other. The first is represented by philosophical doctrine and is expressed in its understanding as a complex phenomenon including both negative and positive forms. The second one is represented by legal concepts which are characterized by consideration of responsibility primarily as a negative law enforcement

means including the recognition of compulsory compensation for the harm done by the guilty party. In the doctrine of international law, according to Speranskaya[13], perhaps, is no problem more controversial in all its aspects than the problem of the international legal responsibility of states. The international responsibility of states is one of the most complicated problems that do not have an unequivocal solution either in practice or in the doctrine of interstate communication. This is the fundamental problem of ensuring international law and order.

Assigning a special role to international legal responsibility, almost all theorists agree that the international legal responsibility of states is of great importance in maintaining the international legal order. Also, many scientists are of the view that international environmental legal liability is one of the types of international legal responsibility. In this regard, the types and forms of international legal responsibility are also characteristic of international environmental legal liability. But in matters relating to the legal status of international legal responsibility, there is a scientific dispute. Some scholars believe that responsibility should be attributed to the generally accepted principles of international law, others in turn believe that the importance of a legal institution is intrinsic to international legal responsibility. In our opinion, international legal responsibility is more acceptable status of a legal institution, since, this concept is more extensive than the principle.

In turn, Kolosov[14] defines responsibility as an institution of international relations including the obligation to “eliminate the harm caused by the guilty party and the right of the latter to satisfy violated interests including applying sanctions to the violator”. Possessing certain features in view of the specifics of international legal relations themselves, international legal doctrine is a kind of synthesis of theoretical knowledge accumulated by jurisprudence.

A. Ross wrote: “When a state has violated international law, international responsibility arises. Usually this responsibility is imposed on a state that has violated international law”[15]. M. Shaw notes: “The essential characteristics of responsibility are based on some determining factors: first, there is an international legal obligation between two separate states and second, there was an action or inaction that violated the obligation and is imputed to the responsible state and finally, lost profits or damages result from illegal actions or inactions”[16]. Werner[17] confines himself to the opinion that the subject of international law is responsible only “for past action or for refraining from action”. Bekyashev[18] believes that international legal responsibility these are legal consequences for a subject of international law who has violated the existing norms of international law and its international obligations. At the same time, it is also one of the legal means of ensuring compliance with these norms and compensation for damage. It follows from this that the violation of international regulations provides for such an obligation as compensation for the damage caused. Summarizing all the above, we can come to the following conclusion that the international responsibility of states arises from the commission of international offenses and prescribes an obligation to repay harm. The issues of international legal responsibility of subjects of international law are reflected in the UN Charter, the Protocol on Civil Liability and Damage Caused by the Transboundary Effects of Industrial Accidents on Transboundary Waters to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes. This protocol was adopted on May 21, 2003[6].

Brinchuk[19], in turn, gives the following definition: “By international responsibility for environmental offenses, we mean an offensive for a subject of international environmental law that violated its requirements for adverse consequences”. In international practice, there are cases when persistent transboundary pollution is accompanied by periodic payment of compensation for the damage caused while pollution continues. The Special Rapporteur on State responsibility for acts not prohibited by international law, Quentik-Baxter called this phenomenon “the purchase of a servitude for smoke”. In the light of the principle of responsibility of states for the preservation of the environment, this practice is illegal and if the consent of a state whose territory is subject to transboundary pollution can eliminate the illegality of the polluting activity in relation to this state, it does not affect the illegal nature of such activity in relation to the international community.

In a number of international agreements, it is not by chance that there is an indication of the need for states to develop procedures for liability for environmental damage as soon as possible, since, the experience gained in this area suggests that further activities will be aimed at building up the relevant regulatory material. In international practice, there are many examples of how to quickly resolve the issue both at representative international conferences and within the framework of specialized UN environmental authorities, such as the United Nations Environment Program (UNEP). Thus, the Stockholm Conference on the Human Environment ended with the adoption of the Stockholm Declaration, some of which are directly related to the problem of the responsibility of states for environmental damage. Similar principles were later recorded in the Charter of Economic Rights and Duties of States adopted at the XXIX session of the UN General Assembly. Particular attention is being paid to the problem of responsibility in the development within UNEP of principles of state behavior in the

implementation of certain types of environmental management and environmental impact (protection and harmonious use of shared natural resources, impact on weather and climate, development of mineral resources on the continental shelf).

With the rapid growth of technical and scientific equipment of mankind, environmental issues are becoming more and more complicated and this is not in doubt but it is accompanied by anthropogenic impact on the environment. The difficulties arising from the development of effective measures of international liability for environmental damage lie in the fact that in some cases it is impossible to determine the degree of harm caused to the environment and adequately compensate for it and this leads to the fact that even an established responsibility institution must first of all, precautionary value as the threat of application of international sanctions in case of violation of the relevant legal rules in the field of the environment. Taking into account the specific features of environmental damage, it seems that unconditional priority in the system of measures of international legal protection of the environment should have mechanisms to prevent such damage[20] and of course, the conclusion of a bilateral or multilateral agreement between neighboring states would help to prevent this process.

So, it should be noted that international responsibility for the preservation of the environment contains not only the norm which can only be attributed to the field of environmental protection in general but also the norm providing for responsibility and obligation to compensate for harm (damage). Consequently, international responsibility implies and obliges a state, when using its territory and exercising its sovereign rights, to take into account and respect the similar rights of other states which may have suffered direct specific damage, that is, it follows that states do not have the right to destroy the environment for outside of its jurisdiction. It should also be emphasized that for applying transboundary environmental pollution comes not just legal liability but international legal responsibility. Since, this unlawful act is committed by another state in the process of its economic or other activities.

Therefore, they can be qualified as international environmental offenses, since, they are of the nature of adverse environmental consequences, that is, international environmental offenses are the basis for the occurrence of international legal responsibility for transboundary environmental pollution. The main distinguishing features of legal responsibility for environmental offenses from international legal responsibility for international environmental offenses is that legal liability arises as a result of environmental offenses, that is, in cases of violations of the law by natural or legal persons in the territory of their jurisdiction. Then, as international legal responsibility arises from the commission of international environmental offenses, that is, in case of violation of international obligations arising from international treaties and agreements. These include, for example, transboundary environmental pollution.

Every state, when causing damage to the environment of a neighboring state as a result of transboundary environmental pollution, should be aware of its share of international responsibility, that is, guilt. Since this is due to the fact that it is necessary not only to refrain from causing any harm to the neighboring state, but it is also necessary to develop cooperation to prevent and reduce the level of any type of pollution, including such as transboundary environmental pollution, since all states are in ecological economic and political interdependence, that is, there is a need to jointly develop and implement interstate programs and projects in the field of environmental protection environment from transboundary environmental pollution.

RESULTS AND DISCUSSION

Before proceeding to the consideration of these problems, it is necessary to find out what is meant by environmental pollution.

Tyuleubekova[21] notes that "environmental pollution" is one of the forms of causing harm to the environment. Certainly true, environmental pollution implies harming (damage) both ecological and economic, in which both the whole complex of natural resources and individual components of the environment suffer. According to Petrova[22], environmental pollution is considered a physico-chemical change in the composition of a natural substance (air, water, soil) which threatens the health and life of a person and his natural environment.

In the Environmental Code of the Republic of Kazakhstan, this definition has undergone some changes: this refers not only to potentially hazardous chemical and biological substances but also to pollution in general. Environmental pollution the release into the environment of pollutants, radioactive materials, industrial and consumer waste, as well as the impact on the environment of noise, vibration, magnetic fields and other harmful physical effects (Art. 1). A new term "emissions to the environment" has been introduced in the Environmental Code of the Republic of Kazakhstan. Under them, the legislator understands emissions, discharges of pollutants, disposal of production and consumption waste in the environment and harmful physical impacts. From the two formulations it is clear that the definition formulated in Environmental Code is the most acceptable and optimal because pollution implies the release into the environment not only of potentially hazardous substances but any pollutants that may have a negative impact on the quality of the environment.

The nature of pollution can be different: it is chemical, mechanical (clogging), biological (contamination), physical (radiation, acoustic or electromagnetic radiation, vibration, etc.). One of the innovations introduced into the Environmental Code of the Republic of Kazakhstan is trading in emissions allowances at the international level which was not provided for by the Law of the Republic of Kazakhstan "On Environmental Protection" which has lost its force. In the event that international treaties ratified by the Republic of Kazakhstan provide for the possibility of Kazakhstan's participation in emissions trading in the environment, the users of natural resources can enter into relevant contractual relations with foreign individuals and legal entities in the manner established by the Government of the Republic of Kazakhstan[23]. So, environmental pollution comes as a result of pollutants entering the environment which have a negative impact on all components of the environment.

One of the most effective tools for the prevention of pollution is environmental regulation, the purpose of which is to regulate the quality of the environment and determine the permissible impact on it, ensuring environmental safety, preservation of ecological systems and biological diversity.

According to Baideldinov and Bekisheva[24], the establishment of environmental quality standards is one of the important functions of public administration in the field of ecology. It can be said that the management process is based and begins with the establishment of environmental standards. The introduction of environmental standards allows to solve the following tasks.

Determine the degree of human impact on the environment. Environmental monitoring is based not only on the observation of nature. This observation should be substantive, it should use technical indicators to determine the degree of air, water, etc.

To carry out state control over the activities of users of natural resources. Ecological control is manifested in what is determined not by how the nature is polluted but what the level of pollution is, whether it exceeds the established standards.

Environmental standards are the basis for the application of measures of responsibility in case of their excess. Often, environmental regulations are the only criterion in bringing the guilty person to justice[24]. On the basis of an analysis of the norms of international and national legislation, it is possible to identify the characteristic features of transboundary environmental pollution and to develop a definition of this concept with the aim of uniform understanding and enforcement.

To do this, initially we need to decide on what is meant by transboundary environmental pollution? Today, many states consider transboundary environmental pollution a dangerous phenomenon, subject to the strictest possible restriction and prohibition but in some specific situations they consider the best way to solve the problem of gradually reducing the level of transboundary environmental pollution and limit their obligations accordingly. Special concern of the world community, according to Brinchuk[19], at the present stage represent global environmental problems. These problems are the result of human activity that is not consistent with the rules by which the nature develops. Their decision is connected with the development of international environmental policy and reliable organizational and legal means at the international level, both in terms of environmental management at the national level and in relation to global natural resources. In this case, in our opinion, the problem of transboundary environmental pollution can be ranked among such global problems. In particular, as scientists reasonably believe, the consequences caused by transboundary pollution "can serve as sources of conflict of interests of various states, provoking international conflicts or use as an excuse to justify the policy of intervention, dictate and domination"[25]. It should be emphasized that States are taking concerted action to protect their own environment. All this is done in order to improve the effectiveness of environmental activities at the national level. But at the same time, there may be adverse effects on the state of the environment of neighboring states in the process of economic and other activities on the territory of their country or in any other way affect their environmental interests.

Timoshenko[26] believes that the problem of transboundary pollution has now acquired global significance. There is no doubt that this problem is international legal, as it is connected with the relations of sovereign states. Joining this opinion, we would like to add that this problem, notwithstanding not enough attention was paid to it has recently acquired interstate significance.

Famous Kazakhstan scientist of international law Sarsembaev[27] points out that this pollution very soon ceased to be an internal problem of this or that state, it began to cross the borders of states which required joint efforts in the international arena. Thus, it indicates that the problem of transboundary environmental pollution has now ceased to be only an internal problem of one state and therefore it is inherent in the nature of both international legal and national, for the solution of which the efforts of the international community are needed which is the main condition for solving this problem.

According to A.A. Shishko, transboundary pollution is an international problem, therefore, the leading role in the organization of cooperation of states in control, termination and prevention of this dangerous phenomenon

belongs to international law. In our opinion, this problem will likely be more to have an international nature and it can be attributed not only to international law but also to environmental law, since, transboundary pollution is related to a variety of environmental problems.

Speaking about dangers of transboundary environmental pollution, O.S. Kolbasov warns: “The terrible danger of this disease is that it is hidden, that it is growing gradually and at some point it will become ineradicable”. Although, intense pollution causes damage, above all to the countries where it is “produced”, other states cannot be spared from its harmful influence. This happens due to the fact that the ecosphere of our planet is a single interconnected complex and the interaction with it in one place inevitably affects its state as a whole. The degree of this kind of ecological interconnection of states increases with increasing environmental pollution which makes it important and necessary to develop international cooperation to prevent pollution of all types[14].

What are the main causes of transboundary environmental pollution and how does it differ from other problems related to environmental pollution? The answer to this question which is in our opinion, true, gives A.A. Shishko, in the shortcomings of technological processes and in the expansion of production, the causes of transboundary pollution are rooted and from a naturally scientific point of view, this problem does not differ from other problems related to environmental pollution. Indeed, it does not matter whether the pollutants move within one country or are transferred across the border to the territory of the next this does not change the essence of the phenomenon in its physical aspect. With the emergence and aggravation of the ecological crisis, humankind faced an urgent need to stop transboundary pollution which also includes the general tasks of preserving the nature of the entire Earth. In this regard, it can be stated that this problem of environmental pollution is inherent in many countries and today as already mentioned is of an international nature and is a problem, the main result of which is the expansion of production potential.

In international law, it has been called “transboundary pollution” causing environmental damage on the territory of the state by pollutants coming from abroad. There is also the following definition the fact of direct movement of pollutants by water or air flows from the territory of one country to the territory of another, which are called transboundary pollution.

In the Foreign literature, when determining transboundary pollution, the authors point to the fact that pollutants have crossed the state border and caused environmental damage outside the jurisdiction of the country of origin.

From these definitions of transboundary pollution, we see that the fact that pollutants from a neighboring state or from abroad are mainly emphasized. Thus, it is necessary to consider transboundary pollution as pollution which is applied necessarily by the border state. In our opinion, this opinion is erroneous. As such pollution should be attributed to those that are applied from the leased areas. For instance, the Baikonur Cosmodrome leased by the Russian Federation. Despite the fact that it is located on the territory of the Republic of Kazakhstan, all the pollution caused by its operation can be attributed to transboundary environmental pollution.

Since, they arise in connection with the conduct of certain works that are both environmentally hazardous in nature and not at the time of the lease on this territory. From this it follows that transboundary environmental pollutions are understood as the release of pollutants into the environment as a result of economic and other activities of both foreign countries and foreign individuals and legal entities in leased territories. These pollutants are emissions into the atmosphere and (or) discharge of harmful substances into the water or dispersal of solid, liquid or gaseous pollutants on the earth’s surface, in the depths or the formation of odors, noise, vibration, radiation or electromagnetic, temperature, light or other physical, chemical, biological harmful effects exceeding the permissible level for a given time.

Distinctive features of transboundary environmental pollution are the following: this type of pollution occurs in a territory that is under the jurisdiction of one state and has or may have a grave impact on the environment of another state; come as a result of both lawful and illegal activities are international in nature; fall into the category of global environmental issues; entail an offensive or pose a real threat of damage to the environment and its individual components; governed by international and national law can become sources of conflict of interests of various states; provoke international and interstate differences.

Water contamination and air pollution leads to the death of vegetation and animals, causes damage to historical monuments and modern buildings but most importantly is the culprit of disease and death of people. It is not surprising, therefore, that in cases where these negative phenomena are caused mainly by contaminations of foreign origin, conflicts that arise between states sometimes differ in their magnitude. In some cases, the massive transfer of pollution to a neighboring state is not due to the general high level of environmental pollution in certain areas but to the fact that industrial enterprises are located or environmentally hazardous work is carried out in close proximity to the state border. The practice of the last decade has confirmed that transboundary pollution through the atmosphere has become a widespread phenomenon which certainly causes significant damage to human health and nature in many countries.

The main sources of air pollution are enterprises of power engineering, ferrous and nonferrous metallurgy, the

building materials industry, utilities and transport. A significant amount of polluted air flows to us from neighboring states. For example, from Russia-28%, Turkmenistan-10%, Kyrgyzstan and Tajikistan-2% each and Ukraine-8%. Ecological and legal science issues of transboundary environmental pollution are practically not investigated which led to the absence of legally fixed mechanisms to prevent them or eliminate their negative consequences. In Kazakhstan, natural complexes of such rivers as the Irtysh, Talas, Ili, Syrdarya, etc., suffer from transboundary environmental pollution. Based on the aforementioned there is an urgent need to carry out in-depth analysis coupled with fundamental and comprehensive scientific research devoted to the study of the legal problems of transboundary environmental pollution, taking into account the realities of today.

Transboundary environmental pollution is the release of polluting substances into the environment in the process of economic and other activities of natural and (or) legal entities of foreign countries with an excess of the permissible level of environmental standards in which the physical source is fully or partially within the territory under jurisdiction of one state and the negative impact of which is manifested in the territory under the jurisdiction of another state. The levels of permissible pollution may be specified directly in an international agreement or in the absence of such an agreement, they may be considered dangerous at the time of occurrence of these pollution. These pollutants are emissions into the atmosphere and (or) the discharge of harmful substances into water or the dispersion of solid, liquid or gaseous pollutants on a section of the earth's surface, in the depths or the formation of odors, noise, vibration, radiation or electromagnetic, temperature, light or other physical, chemical, biological harmful effects exceeding the permissible level for the given time.

Legal protection of the environment from transboundary environmental pollution is a complex of measures including a system of both national and international legal measures aimed at protecting environment and its individual components in order to prevent transboundary environmental pollution or eliminate its effects. Tools for legal protection of the environment from transboundary environmental pollution are: conducting joint environmental monitoring based on agreed requirements and standards; maintaining cadastre of transboundary environmental pollution sites; obtaining prior informed consent for the implementation of certain activities that are the subject of international regulation in the field of environmental protection; issuing special permits for certain types of activities that pose a potential threat to the environment and human health; joint rationing of environmental impacts and assessment of the effectiveness of their use; transboundary environmental impact assessment; communicating emergency situations with potential transboundary impact hazards; sharing environmental information; application of measures of responsibility for causing damage to the environment of other states or regions outside the Republic of Kazakhstan.

State regulation in the field of environmental protection from transboundary environmental pollution is the purposeful activity of state bodies to ensure compliance with international obligations to prevent transboundary environmental pollution, prevent and eliminate its consequences. In order to coordinate the activities of state bodies in the field of environmental protection from transboundary environmental pollution, it is proposed to establish under the Government of the Republic of Kazakhstan a Council on transboundary environmental issues.

Any activity causing transboundary environmental damage is harmful. Therefore, it is very important to establish the fact of the wrongfulness of the committed act. If pollution is carried out within the framework of established environmental requirements and standards, it is legitimate and responsibility arises according to pre-agreed forms and volumes, for example within the framework of environmental charges established by environmental quotas. The reason for bringing to international responsibility for transboundary environmental pollution is the failure or violation of international environmental obligations undertaken by the state which resulted in damage to the environment of another state.

They should be regarded as wrongful acts against not only the individual state but also the entire international community. This is determined by both the environmental factor and the political interdependence of all states.

To solve the problems of compensation for damage caused by transboundary environmental pollution, it is necessary to develop the following legal tools: A methodology for assessing damage caused by transboundary environmental pollution; Cadastre rules for transboundary environmental pollution sites; The procedure and conditions for the environmental insurance of certain types of economic activity that may entail transboundary environmental pollution.

CONCLUSION

This study is that it is a comprehensive study of the legal problems of environmental protection from transboundary environmental pollution in the context of market relations in the Republic of Kazakhstan. The conclusion to be drawn is: based on the analysis and synthesis of legislative and international acts regulating transboundary environmental pollution, the achievements and shortcomings of legal regulation in this area were revealed.

Definitions of transboundary environmental pollution, legal protection of the environment from transboundary environmental pollution are formulated. The content of state regulation in the field of environmental protection from transboundary environmental pollution in the context of globalization and integration is disclosed. Proposals were made to improve the activities of state bodies in the field of environmental protection from transboundary environmental pollution. The main directions for the improvement of international liability and compensation for harm (damage) which will contribute to a more effective solution of problems associated with transboundary environmental pollution.

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