

ЗЕМЕЛЬНОЕ, АГРАРНОЕ, ЭКОЛОГИЧЕСКОЕ ПРАВО

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FOREST AS THE OBJECT OF LEGAL REGULATION IN INTERNATIONAL ENVIRONMENTAL LAW (UKRAINE AS EXAMPLE)

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SUMMARY

The article is devoted to investigation of international regulations concerning the use and protection of forests. In the research forests are analysed as the object of international environmental law depending on their functions, namely as the habitat for variety species of wild flora and fauna; the ecosystem; the sinks and reservoirs of greenhouse gases (carbon); the means of combating desertification, drought and land degradation; the sites of natural heritage; the kind of the landscape. The statutory role of local communities in conservation and sustainable development of forests in the treaties and principles of international environmental law is explored.

Key words: forests, international environmental law, international legal treaties, international legal principles, sustainable development.

АННОТАЦИЯ

Статья посвящена исследованию международно-правовых актов, касающихся использования и охраны лесов. В работе анализируются леса в качестве объекта регулирования международного права окружающей среды в зависимости от исполняемых ими функций, а именно: в качестве среды обитания для разновидностей дикой флоры и фауны; экосистемы; поглотителей и накопителей парниковых газов (углерода); средства для борьбы с опустыниванием, засухой и деградацией земель; объекта природного наследия; разновидности ландшафта. Исследуется нормативное закрепление роли местных общин в сохранении и устойчивом развитии лесов в договорах и правовых принципах международного права окружающей среды.

Ключевые слова: леса, международное право окружающей среды, международно-правовые договора, международно-правовые принципы, устойчивое развитие.

Introduction. Irreplaceable water protective, water regulative, anti-erosion control, sanitary and hygienic and other useful functions of forests are especially important for humanity. That's why deforestation, while the forests generally cover almost 30% of the earth's surface and provide many economic and social benefits has various negative effects on the environment, economy and society, particularly for the climate, biodiversity and the level of poverty [1]. The legal relations concerning forests as a special natural complex, which includes a lot of natural components, are not only governed by acts of the forest legislation, but also by regulatory legal acts of other branches in Ukraine.

However, forests, along with other natural resources, are also the subject of legal regulation of international environmental law. Thus, part 1 of Article 9 of the Constitution of Ukraine [2] establishes that the existing international treaties ratified by the Supreme Council of Ukraine are the part of national legislation of Ukraine. Moreover, according to the principle of priority of international law over domestic law currently effective in Ukraine, which is generally accepted in international law, the rules established in the international treaty which has entered into force, and a consent to be bound by which is given in the prescribed manner, take precedence over domestic law of the contracting state. The relevant rule of conflicts resolving is enshrined particularly in the article 110 of the Forest Code of Ukraine [3], which stipulates that if an international treaty ratified by the Supreme Council of Ukraine establishes rules other than those established by this Code and other laws of Ukraine, the rules of the international treaty will be applied. Therefore,

the research of the relevant provisions of international agreements (treaties) is essential.

Analysis of publications. The international legal regulation of relations concerning the forests was studied by the following foreign researchers: R. Blinnikov, L. Christy, C. Di Leva, Ye. Gordieieva, V. Hansen, A. Hoocker, J. Lindsay, D. Mainie, D. Saltsman, P. Takoukam and others. Some aspects of international regulation concerning forests are covered in the works of such Ukrainian scholars as: M. Medviedieva, Yu. Shemshuchenko, Ye. Yatsukhnenko, A. Zadorozhnyi and others. The scientist V. Nepyivoda was involved in the separate research of the legal regulation of social relations dealing with forests in the context of sustainable development. Despite the ongoing investigation, the domestic doctrine does not have the comprehensive studies of legal regulation of use and protection of forests in international environmental law, depending on their functions, which predetermines the relevance of our work.

The article is aimed at identification and consideration of contemporary international legal acts in the area of use and protection of forests and their classification depending on the scope and legal force, as well as analysis of the legal status of forests as an object of legal regulation in the international environmental law based on their role and their natural functions.

Presentation of the basic material. Today there is no a single universal binding document in the field of environmental protection in international law. According to V. Butkevych, the absence of such a unified codified act is one of the arguments in favour of the fact that international environmental law cannot be considered an independent branch of international law

[4, p. 504]. Despite the lack of a single codification act in the field of environmental protection, certain provisions of recommendation documents (the Declaration of the United Nations Conference on the Human Environment of 1972 and the Rio Declaration on Environment and Development of 1992) became the norms of international customary law, and for each area of international legal cooperation of the states in the protection and management of environmental, there is a universal convention or conventions (climate change, biodiversity, fauna and flora, dangerous chemicals, marine environment, natural and cultural heritage) [5, p. 12].

Despite the fact that forest conservation is one of the priorities of international policy over the past three decades, now there is no universal convention in the field of forest resources. The idea of accepting a binding multilateral agreement on the global level regarding the conservation and sustainable use of all types of forests at the UN Conference on Environment and Development of 1992 was not supported by developing countries which exported tropical timber, fearing a significant limitation of their sovereign rights regarding the use of the natural resource strategically important for their economy. These countries adhered to the position that the adoption of the treaty violates the principle of international environmental law, which provides for the exclusive sovereign right of the states to develop their own natural resources. So, instead of a binding multilateral agreement on forests subsequent to the results of the Conference in Rio de Janeiro of 1992 an act was made entitled "Non-legally binding authoritative statement of principles for a global consensus on the management, conservation and sustainable development of all types of forests" [6] or "Forest principles" (the name "Forestry principles", "Forest management principles" is also found in Ukraine).

According to the Rio Declaration on Environment and Development [7] (Principle 2), adopted subsequent to the results of the Conference in Rio of 1992, and the "Forest principles" (Principle 1.a), the states in accordance with the UN Charter and the principles of international law have the sovereign right to exploit their own resources pursuant to their own environmental and development policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or areas beyond the limits of national jurisdiction. A similar provision was also enshrined in Principle 21 of the Declaration of the United Nations Conference on the Human Environment of 1972 [8].

The Principle 2.a of the "Forest principles" develops the respective rule, according to which the states have the sovereign and inalienable right to utilize, manage and develop their forests in accordance with their development needs and level of socio-economic development and on the basis of national policies consistent with sustainable development and legislation, including the conversion of such areas for other uses within the overall socio-economic development plan and based on rational land-use policies.

The problem of combating deforestation is considered in Chapter 11 of "Agenda for the XXI century" (Agenda 21) [9]. It is the third among the acts of so-called "soft law", which were adopted on the results of the Rio Conference of 1992.

In 1995 the UN Commission on Sustainable Development established the Intergovernmental Panel on Forests with a mandate of two years with the aim of implementation of relevant agreements reached at Rio; in 1997 it was replaced by the Special Forum on Forests, which in 2000 was replaced by the UN Forum on Forests (UNFF) [5, p. 296]. The main task of the UNFF as a subsidiary body of the UN Economic and Social Council is to provide the management, conservation and sustainable development of all types of forests and strengthen long-term political cooperation. It aims to promote the creation of favourable conditions for concerted action by the interna-

tional community relating to forests at the national, regional and global levels [10]. The UNFF has met eleven times since its first meeting in February of 2001. The negotiations at each session results into an outcome document, which is then adopted by the UN Economic and Social Council [11].

Despite the fact that currently there is no separate international agreement on forests, a number of international instruments binding for their parties deal with certain legal aspects of the use and protection of forests. Among these agreements are the following:

Universal agreements. A number of international conventions on the environment and wildlife are related to the forests as a habitat of protected natural resources. The Convention on International Trade in Endangered Species of Wild Fauna and Flora of 1973. (CITES) [12] establishes a special procedure for trade in endangered species of wild fauna and flora. And although among those species listed in the annexes to the Convention there is only a small number of trees (mostly tropical), but many of these species are forest dwellers, whose protection effects the development of forestry. Therefore, the rules of the Convention have an impact on forest as a *habitat of some species of wild fauna and flora*, which are endangered, and which accordingly have to be protected from over-exploitation in international trade.

According to researchers L. Christy, C. Di Leva, J. Lindsay, P. Takoukam, the Convention on the Conservation of Migratory Species of Wild Animals (Bonn Convention) [13] and the Convention on Wetlands of International Importance especially as Waterfowl Habitat (Ramsar Convention) [14] also have implications for forests and forest law. In particular, the Bonn Convention requires parties to "endeavour" to restore the habitats of endangered species and compensate for the adverse effects of activities that "seriously impede or prevent the migration" of these species [15, p. 14]. In paragraph g) part 1 of Article 1 of the Bonn Convention, the definition of "habitat", means in the Convention any area in the range of a migratory species which contains suitable living conditions for that species. According to the Ramsar Convention, its parties must promote the "wise use" of wetlands, defined as "sustainable utilization for the benefit of humankind in a way compatible with the maintenance of the natural properties of the ecosystem" [15, p. 14]. Thus, according to both the Bonn Convention and the Ramsar Convention, a forest shall be protected as *habitat of migratory species of wild animals and waterfowl* accordingly.

The Convention on Biological Diversity of 1992 (CBD) [16], opened for signature at the UN Conference in Rio de Janeiro, marked the formalization in the international law of an ecosystem approach to the concept of biodiversity conservation, which involves not only the protection of individual objects, the regulation of various human activities, but the protection of whole ecosystems and the connections between them and within them. The Convention defines "ecosystem" as a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit. Thus, according to the CBD, a forest is protected as an integral *ecosystem*, which is subjected to sustainable use, that is, in such a manner and at a pace that does not result in long-term prospect to depletion of biological diversity, thereby maintaining the ability to meet the needs of present and future generations and to meet their expectations.

The United Nations Framework Convention on Climate Change of 1992 (UNFCCC) [17], the Kyoto Protocol to UNFCCC of 1997 [18] and the Paris Agreement of 2015 [19], which have to replace this Protocol after 2020 regulating forest relations considering forests as *sinks and reservoirs of greenhouse gases*. Thus, according to sub-item (II) item (a) part 1 of Article 2 of the Kyoto Protocol to UNFCCC, each Party to the Convention specified in Annex I, in achieving its commitments

on quantitative emission limitation and reduction according to Article 3, with the aim of promoting sustainable development along with other activities, implement and/or further develop in accordance with its national circumstances, such policies and measures as the promotion of sustainable forest management practices, afforestation and reforestation. The only acceptable activities related to the absorption of greenhouse gases under the Protocol, is afforestation, reforestation and deforestation and, according to the Marrakesh Agreements, forestry management, crop management in technical crops, pastures and re-vegetation. Greenhouse gases removed from the atmosphere through such activities, provide credits in the form of removal units (RMUs) [5, p. 265]. According to Article 5 of the Paris Agreement, the Parties should take action to conserve and enhance, as appropriate, sinks and reservoirs of greenhouse gases as referred to in Article 4, paragraph 1 (d), of the Convention, including forests. The Parties are encouraged to take action to implement and support, including through results-based payments, the existing framework as set out in related guidance and decisions already agreed under the Convention for: policy approaches and positive incentives for activities relating to reducing emissions from deforestation and forest degradation, and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries; and alternative policy approaches, such as joint mitigation and adaptation approaches for the integral and sustainable management of forests, while reaffirming the importance of incentivizing, as appropriate, non-carbon benefits associated with such approaches.

The United Nations Convention to combat desertification in those countries experiencing serious drought and/or desertification, particularly in Africa of 1994 (UNCCD) [20] defines “desertification” as land degradation in arid, semi-arid and dry sub-humid areas resulting from various factors, including climatic variations and human activities. At the same time, according to the Convention, “land” means the terrestrial bio-productive system, that comprises soil, vegetation, other biota, and ecological and hydrological processes that operate within the system, namely the concept of “land degradation” means reduction or loss of biological or economic productivity not only of arable land, irrigated arable land or pastures as well as forests and wooded sites as a result of land use or actions of one or more processes, including those related to human activity (wind and/or water erosion of soils; deterioration of the physical, chemical and biological or economic properties of soil; long-term loss of natural vegetation). According to Article 2 Annex V of the UNCCD, reducing forest cover due to climatic factors, from air pollution and frequent wildfires are a special condition in Central and Eastern Europe. Unsustainable development of forest resources can contribute to land degradation and desertification and sustainable forestry is one *means of combating desertification, drought and land degradation*.

The Convention for the Protection of the World Cultural and Natural Heritage of 1972 [21], by “natural heritage” means: 1) natural features consisting of physical and biological formations or groups of such formations, which are of outstanding universal value from the aesthetic or scientific point of views; 2) geological and physiographical formations and precisely delineated areas which constitute the habitat of threatened species of animals and plants of outstanding universal value from the point of view of science or conservation; 3) natural sites or precisely delineated natural areas of outstanding universal value from the point of view of science, conservation or natural beauty. The Objects of Cultural and Natural Heritage, included in the “World Heritage List”, being under the sovereignty of the Contracting State, at the same time are the common heritage, for the protection which the international community has an obligation to cooperate. One serial transboundary natural ob-

ject type is Primeval Beech Forests of the Carpathians and the Ancient Beech Forests of Germany (also common for Germany and Slovakia), which is available among the UNESCO heritage objects, located on the territory of Ukraine. These forests are both a *subject a natural heritage* under the special national and international security.

Regional agreements. Forests are protected under the Convention on the Conservation of European Wildlife and Natural Habitats of 1979 (Berne Convention) [22] at the regional level in Europe, firstly, as the habitat of wild flora and fauna, especially species of endangered and vulnerable species (including migratory species), and secondly, as natural habitats which are also endangered. Thus, according to Article 9 of the Convention, in the absence of any satisfactory solution, if certain species threaten the damage to forests, the Convention allows for possibility of derogation from the provisions of Articles 4–8 of the Convention (concerning the protection of the species listed in Annexes I–III of the Convention and prohibited means of destruction, fishing and other forms of wildlife use), if such a derogation does not inhibit the survival of the respective population).

We can also distinguish the European Landscape Convention of 2000 [23] among the regional and international agreements, which is applied to the entire territory of the Parties and covers natural, rural, urban and suburban areas, along with land, inland waters and marine waters. This applies to both *landscapes* that might be considered exceptional and to ordinary or degraded ones. The Convention itself contains a broad definition of “landscape” – namely, an area, as perceived by people, whose character is the result of the action and interaction of natural and/or human factors, while the Preamble indicates that the development of forestry in many cases accelerates the change of landscapes. Each Party undertakes to identify its own landscapes throughout its territory to analyse their characteristics and the dynamic force and pressures transforming them, to observe the changes of the landscape, and to classify the landscapes identified, taking into account the special importance attached to them by both the concerned parties and the population. Therefore, forests as the separate landscapes are subject to identification by the Parties of the Convention and continuous analysis of their development. A separate direction named “9. Forest ecosystems” of The Pan-European Biological and Landscape Diversity Strategy of 1995 [24], which was adopted at the Conference of Environmental Ministers in Sofia in the framework of cooperation in the Council of Europe, provides development of the Program of Evaluation and Determination of Measures for the Conservation of Landscape Diversity taking into account Market Mechanisms.

Local contracts. We can mention the Framework Convention on the Protection and Sustainable Development of the Carpathians of 2003 [25] among the international treaties of local level, which covers the use and protection of forests in relation to Ukraine. This document specifies the need for sustainable management of mountain forests in the Carpathians, taking into account the multiple functions of forests, ecological importance of the Carpathian mountain ecosystems, as well as less favourable conditions in mountain forests. As the name implies, the Protocol on Conservation and Sustainable Use of Biological and Landscape Diversity to the Framework Convention on the Protection and Sustainable Development of the Carpathians of 2008 [26] establishes requirements for the conservation and sustainable use of ecosystems and landscapes of the Carpathians. The sole international treaty directly related to sustainable forest management, which is binding for Ukraine, is the Protocol on Sustainable Forest Management to the Framework Convention on the Protection and Sustainable Development of the Carpathians of 2011 [27]. This Protocol defines “sustainable forest management” as stewardship and

use of forest and forest lands in a way, and at a rate, that maintains their biodiversity, productivity, vitality and regeneration capacity, and their potential to fulfil now and in the future, relevant ecological, economic and social functions at local, national and global levels, and that does not cause damage to other ecosystems. According to the Protocol, existing forest cover recognized as the main component of the Carpathian landscape. However, each Party shall take measures to expand forest cover taking into account other goals of the Carpathian Convention and its Protocol. The protocol separately states the need to ensure the productive functions of forests and their role in rural development, the need for special protection of virgin forests, restoration of forests close to natural ones, the improvement of protective functions of forests, strengthening social functions of forests and other purposes.

A number of international instruments, among the above-mentioned, provides guidance on the participation of local communities in the implementation of sustainable development and natural resource management. The international conventions concerning the role provisions of local community, including the Paris agreement (part 5, Article 7), the CBD (item (j) Article 8), the UNCCD, the Framework Convention on the Protection and Sustainable Development of the Carpathians (Article 2), the Protocol on Sustainable Forest Management to the Framework Convention on the Protection and Sustainable Development of the Carpathians (Article 4).

However, the relevant provisions of the role of local communities are enshrined in international instruments of "soft law" by the results of the Conference in Rio of 1992. Thus, according to principle 22 of the Rio Declaration on Environment and Development, local communities are intended to play a vital role in environment management and development because of their knowledge and traditional practices.

The "Forest Principles" also contain a number of provisions relating to the role of local communities in relation to sustainable development and forest policies of the Countries. So, the Principle 12.d applies the need to acknowledge and consideration during the implementation of programs, appropriate local capacity and local experience in the field of conservation and sustainable development of forests by providing organizational and financial support and cooperation with representatives of interested local communities. In this regard, the benefits derived through the use of local expertise should equitably be extended to the local population. The Principle 5.a requires the creation of conditions for the people living in forest areas so that they would have the economic incentives in the implementation of forest management, including through use of land use arrangements that promote the sustainable and rational use of forest resources. The Principle 2.d also provides the establishment of conditions for participation of local communities in the development, implementation and planning of national forest policies by the government.

At the same time, one of the requirements for governments in managing established in sub-item i) item 22 Chapter 11 of "Agenda 21" (Combating Deforestation) is to promote the development of the small forest enterprises for rural development and local entrepreneurship.

We should agree with M. Medvedieva, who said that these principles are often norm-goals, wishes only, but they are not the specific requirements concerning the rules of behaviour of concerned actors [28, p. 67]. Along with the fact that according to Article 18 of the Fundamental Law (Constitution), Ukraine recognizes generally accepted principles of international law, it can be argued with complete clarity that the above-mentioned international declaratory principles on the role of local communities in conservation and sustainable development of forests were not taken into account in national domestic legislation, particularly in determining the legal regime of the former col-

lective farm forests most of them as a result of land and agrarian reform found themselves in the use of state forestry enterprises.

Conclusions. So, despite the lack of a unified resource-based binding international treaty on the use and protection of forests, a number of universal, regional and local conventions and other treaties have an indirect impact on deforestation, afforestation and reforestation, and provide for special conditions of use and protection of forests.

Under the agreements, which were the result of international legal cooperation of the Countries in the sphere of protection and use of the environment, the forests as an object of legal regulation may appear there in the following forms: 1) the Habitat for: (a) wild flora and fauna, including, (b) migratory species of wild animals, and (c) waterfowl; 2) the Ecosystem that includes a complex of objects of biological diversity; 3) the Sinks and reservoirs of greenhouse gases (carbon); 4) the Means of combating desertification, drought and land degradation; 5) the Natural heritage objects; 6) the Variety of the landscape.

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