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UNFCCC 30: evolution of international legal cooperation in the field of combating climate change

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***Abstract*:** Currently, the international community is facing one of the largest environmental threats as climate change. In this article, we will analyze international legal documents, decisions of the Secretariat of the United Nations Framework Convention on Climate Change (hereinafter referred to as the UNFCCC), reports of international organizations and scientific literature in the field of combating climate change. We will analyze which branches of international law, besides international environmental law, have been affected by the fight against climate change. In addition, issues such as Nationally Determined Contributions (NDCs), climate change mitigation technologies, «climate» justice, human rights and climate change, climate refugees, «climatization» of law will be touched upon, climate change in the context of sustainable development and achievement of SDG 13. Particular emphasis will be placed on the impact of renewable energy sources as one of the effective means of combating climate change. In conclusion, we came to the conclusion that despite the wide range of measures taken to adapt and mitigate the effects of climate change, until the transition to a green economy and carbon neutrality is completed, and states will not strive in good faith to fulfill their international legal obligations on climate change, we will not be able to talk about achieving the global climate goal until 2100.

Key words: 1992 UN Framework Convention on Climate Change, 2015 Paris Agreement on Climate Change, Nationally Determined Contributions, climate change mitigation technologies; «climate» justice; human rights and climate change; climate refugees; «climatization» of law; renewable energy.

БҰҰ КӨНК 30 жыл: климаттың өзгеруімен күрес саласындағы халықаралық-құқықтық ынтымақтастықтың эволюциясы

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Аңдатпа: Қазіргі уақытта халықаралық қоғамдастық климаттың өзгеруі сияқты негізгі экологиялық қатерлердің біріне тап болып отыр. Бұл мақалада

біз халықаралық құқықтық құжаттарды, Біріккен Ұлттар Ұйымының Климаттың өзгеруі жөніндегі негіздемелік конвенциясының (бұдан әрі – БҰҰ КӨНК) Хатшылығының шешімдерін, халықаралық ұйымдардың баяндамаларын және климаттың өзгеруімен күрес саласындағы ғылыми әдебиеттерді талдаймыз. Біз климаттың өзгеруіне қарсы күрес халықаралық экологиялық құқықтан басқа халықаралық құқықтың қандай салаларына әсер еткенін талдаймыз. Сонымен қатар, ұлттық деңгейде айқындалған жарналар (бұдан әрі - ҰДАЖ), климаттың өзгеруін азайту технологиялары, климаттық талаптар, адам құқықтары және климаттың өзгеруі, климаттық босқындар, құқықты «климаттандыру», тұрақты даму контекстіндегі климаттың өзгеруі және ТДМ-ға қол жеткізу 13. сияқты мәселелер қозғалады. Климаттың өзгеруімен күресудің тиімді құралдарының бірі ретінде жаңартылатын энергия көздерінің әсеріне ерекше назар аударылатын болады. Қорытындылай келе, климаттың өзгеруінің салдарын бейімдеу және жұмсарту бойынша қабылданған шаралардың кең ауқымына қарамастан, жасыл экономикаға және көміртегі бейтараптығына көшу аяқталмайынша, сонымен қатар мемлекеттер климаттың өзгеруіне қатысты өз халықаралық-құқықтық міндеттерін адал орындауға ұмтылмайынша біз 2100 жылға дейін жаһандық климаттық мақсатқа қол жеткізу туралы айта алмаймыз.

Түйін сөздер: 1992 жылғы Климаттың өзгеруі туралы БҰҰ негіздемелік конвенциясы; 2015 жылғы климаттың өзгеруі туралы Париж келісімі; ұлттық түрде анықталған жарналар; климаттың өзгеруін азайту технологиялары; климаттық әділеттілік; адам құқықтары және климаттың өзгеруі; климаттық босқындар; құқықты «климаттандыру»; жаңартылатын энергия.

РКИК ООН 30 лет: эволюция международно-правового сотрудничества в сфере борьбы с изменением климата

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Аннотация: В настоящее время международное сообщество столнулось с одной из масштабных экологических угроз как изменение климата. В данной статье мы проанализуем международно-правовые документы, решения Секретариата Рамочной конвенции ООН об изменении климата (далее – РКИК ООН), доклады международных организаций и научную литературу в области борьбы с изменением климата. Мы проанализируем, на какие отрасли международного права, помимо международного экологического права, оказало влияние борьба с изменением климата. Кроме того, будут затронуты такие вопросы, как определяемые на национальном уровне вклады (далее - ОНУВы), технологии по

смягчению последствий изменения климата, климатические иски, права человека и изменение климата, климатические беженцы, «климатизация» права, изменение климата в контексте устойчивого развития и достижение ЦУР 13. Особый акцент будет направлен на влияние возобновляемых источников энергии как одно из эффективных средств борьбы с изменением климата. В заключении мы пришли к выводу, что несмотря на широкий спектр предпринимаемых мер по адаптации и смягчения последствий изменения климата, пока не завершится переход на «зеленую» экономику и углеродную нейтральность, и государства не будут стремиться добросовестно выполнять свои международно-правовые обязательства по изменению климата, мы не сможем говорить о достижении глобальной климатической цели до 2100 года.

Ключевые слова: Рамочная конвенция ООН об изменении климата 1992 года; Парижское соглашение об изменении климата 2015 года; определяемые на национальном уровне вклады; технологии по смягчению последствий изменения климата; «климатическое» правосудие; права человека и изменение климата; «климатические» беженцы; «климатизация» права; возобновляемые источники энергии.

Introduction

To date, the most serious crisis and global threat is climate change, from the devastating consequences of which no state is immune. Numerous natural disasters, environmental degradation, extreme weather events entail environmental, economic, social problems: drought, forest fires, problems with food security, with access to drinking water, forced resettlement and others.

In this regard, the international community has joined forces to effectively combat climate change and its consequences. A complex universal convention mechanism was created to combat climate change, adapt, mitigate the consequences to it, in which 198 countries of the world take part.

To systematize these processes, we propose to single out the following stages of international cooperation on climate change:

- the first stage from 1979 to 1991, which begins its countdown with the holding of the first scientific International Conference on Climate from 12 to 23 February 1979 in Geneva, Switzerland;

- the second stage from 1992 to 2015 - the adoption of the UNFCCC and the 1997 Kyoto Protocol to it, the creation of the Conference of the Parties (COP);

- the third stage from 2015 to the present is marked by the adoption of the Paris Agreement on climate change and the inclusion of SDG 13 “Combating climate” in the 2030 Agenda for Sustainable Development.

We singled out the first stage as early or preparatory, since at this stage the international legal regulation of climate change was just emerging. It all started with the 1979 International Conference. Subsequently, climate change issues were raised in the 1987 Report of the International Commission on the Human Environment and Development, which stated that "climate change is one of the serious challenges on

the planet that requires immediate concerted international action." The preamble to the Montreal Protocol to the Vienna Convention for the Protection of the Ozone Layer of 1987 stipulates that "on the potential impact of emissions of these substances (ozone-depleting substances) on the climate".

The resolutions of the UN General Assembly "On the protection of the global climate for the benefit of present and future generations of mankind" adopted in 1988, 1989, 1990 and 1991 are also important.

The Intergovernmental Panel on Climate Change (IPCC) was created in 1988 to provide governments at all levels with scientific information that they can use to develop climate policies. IPCC reports plays significant role in international climate change negotiations and its agenda. Due to reports, the IPCC identifies the strength of scientific agreement in different areas and future fields of analysis.

The second stage was marked by the adoption of the UNFCCC which is recognized as the main international legal framework for combat to climate change. At the moment of UNFCCC adoption, the problem of climate change was not so cruel, however this step recognized its existence and obligated states to take measures to prevent its increasing.

Scientific literature highlights key commitments under the UNFCCC:

- «a leading role in the fight against climate change and the responsibility of developed states in the implementation of the principle of common but differentiated responsibility;
- financial support for developing countries through the activities of the Global Environment Fund;
- consent of industrialized countries to share technology with less developed countries;
- ensuring the priority of economic development, especially for poor countries;
- mitigation, adaptation to the effects of climate change is activated;
- institutional mechanism for monitoring compliance with the UNFCCC» (Sokolova, 2021);
- prevention of further change;
- adaptation to climate change to limit harmful effects;
- financial and other measures to counteract this process and adapt to its consequences,
- measures to facilitate and promote the implementation and compliance with relevant regulations at the national level (Solntsev, 2018) .

The COP is the highest decision-making body of the Convention. All UNFCCC States Parties are represented at the COP, where they review the implementation of the UNFCCC and any other legal instruments adopted by the COP and make the decisions for strengthening the effectiveness of the UNFCCC. For instant, the Green Climate Fund was established at the Sixteenth Session of the COP16 in December 2010 in Cancun as an operating entity of the Financial Mechanism of realization of UNFCCC article 11 (Decision, 2010). The Green Climate Fund is governed by a Board consisting of twenty-four members of developing and developed country

Parties, and is accountable to and functions under the COP, to support adaptation and mitigation projects, including renewable energy projects.

All Parties, bearing in mind their common but differentiated responsibilities and their specific national and regional priorities: (a) develop, periodically update, publish and make available to the COP national inventories of anthropogenic emissions;

(b) Formulate, implement and publish national and regional programs including climate change mitigation measures;

(f) Integrate climate change considerations into their respective social, economic and environmental policies (art. 4 of the UNFCCC).

Article 2 (1)(a)(iv) Kyoto Protocol to UNFCCC establishes that states "shall implement … research on, and promotion, development and increased use of, new and renewable forms of energy, of carbon dioxide sequestration technologies and of advanced and innovative environmentally sound technologies" (Kyoto Protocol, 1997). The major achievement of the Kyoto Protocol was the commitment of Annex I parties to quantified emission reduction targets, which covered six gases: carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons and sulphur hexafluoride (Sands, Peel, Fabra and MacKenzie, 2012).

The third phase starts in 2015 after the adoption of the 2030 Agenda for Sustainable Development and the Paris Agreement on climate change. If the first document fixed SDG 13 "Take urgent action to combat climate change and its impacts", then the second document changed the mechanism for combating climate change from obligations from the treaty itself, as was the case in the UNFCCC, to nationally determined contributions, where states they themselves determined obligations for themselves, how they would achieve the global climate goal, depending on their economic and other opportunities (Solntsev and Akshalova, 2021).

The Paris agreement depends for its acceptability and effectiveness on a few core conceptual pillars – the ambition of global efforts to lower GHG emissions, differentiation between developed and developing states, and the provision and mobilization of support for climate change efforts (Klein, Carazo, Doelle, Bulmer, and Higham, 2017).

Nationally Determined Contributions (NDCs) form the basis for countries to achieve the objectives of the Paris Agreement. They contain information on targets, and policies and measures for reducing national emissions and on adapting to climate change impacts. NDCs also contain information on either the needs for, or the provision of, finance, technologies and capacity building for these actions. Countries communicate new or updated NDCs every five years starting in 2020. Most Parties included adaptation-related information in their NDCs. Some of the adaptation components were designated as adaptation communications. Parties provided information in particular on adaptation-related research; vulnerabilities; adaptation measures, in particular NAPs and sectoral actions; contingency measures; synergies with mitigation and other global frameworks; and monitoring and evaluation of adaptation.

Materials and methods.

While writing the article, international documents in the field of combating climate change, scientific research of Kazakhstani, Russian and foreign scientists on the topic of research are used.

The methodological basis of the study involves a combination of general scientific (dialectical, historical, inductive, deductive, analytical, synthetic) and private scientific methods (formal legal, comparative legal, interpretative, statistical, procedural and dynamic).

Discussion

However, no matter how the fight against climate change develops in international environmental law, many questions are raised in related areas. For example, the impact of climate change on human rights.

The issue of climate change raises so many issues and threatens to massively violate human rights ts, especially the rights of children, refugees, indigenous peoples. Thus, UN Human Rights Council resolution 7/23 Human Rights and Climate Change emphasized that caring for people takes central to sustainable development efforts and that the right to development is required to equitably meet the developmental and environmental needs of present and future generations.

Climate change can lead to a violation of the human right to access to clean and fresh water, to housing, the right to an adequate standard of living.

The deterioration of the ecological situation is today one of the important reasons for the migration of the population. In recent years, the number of anthropogenic and natural disasters has increased significantly, which has led to an increase in the number of people forced to leave their place of habitual residence.

"Environmental migrants" can move both within and outside the borders of the state. This is especially true for small island states due to the rise in the water level of the World Ocean, a number of African states affected by drought and desertification; states located in the deltas of large rivers (Bangladesh, Egypt, Nigeria, Vietnam). In this regard, the doctrine of international law deals with the issues of succession, recognition, citizenship in relation to the territories of individual states that are endangered due to the rise in the level of the oceans. We already know about resolved cases of climate refugees in the UN Human Rights Committee (Teitiota v New Zealand 2020 and Daniel Billy and others v Australia (Torres Strait Islanders Petition) 2022). If the first case was denied to the plaintiff due to the absence of a potential threat to his life and his family, then the second case has already been considered in favor of the plaintiffs, representatives of indigenous peoples. The Islanders claimed their rights had been violated as Australia failed to adapt to climate change by, inter alia, upgrading seawalls on the islands and reducing greenhouse gas emissions.

At the moment, since 2019, the UN Committee on the Rights of the Child has been considering the case of Greta Thunberg and 15 other teenagers from several countries against the authorities for not doing enough to combat climate change.

Climate change is also widely recognized as a threat to international security. In 2009, the UNGA adopted Resolution 63/281 "Climate change and its possible security implications", during which the small island developing States of the Pacific region declared that rising water levels in the oceans posed a threat to their sovereignty, security and territorial integrity (Views, 2009). The draft resolution stated that the negative impact of climate change could become a catalyst forcing the population to relocate, that climate change poses a threat to the territorial integrity and sovereignty of individual states (McAdam J, 2012). However, the final version of the resolution only called for the bodies of the UN system to intensify efforts to address and address the problem of climate change, taking into account the possible implications for security (Report of the UN Secretary-General, 2009).

Moreover, climate change is a threat to international environmental, food and energy security. On December 13, 2021, the UN Security Council voted on a draft resolution on climate change and security, co-sponsored by Ireland and Niger, co-authors of the climate dossier. It states that the adverse effects of climate change can "result…in social unrest…by exacerbating, prolonging or heightening the risk of future conflict and instability and posing a key risk to global peace, security and stability." (Climate Change and Security). However, Russia vetoed the resolution.

Also, climate change has a huge impact on the energy revolution that is taking place in the world. First of all, this is the gradual abandonment of minerals in favor of environmentally friendly energy resources, among which we will consider renewable energy sources (RES). Since there is a mutual process, both the impact of climate on RES, and RES on climate change mitigation.

RES play significant role in reducing GHG emissions and thus mitigating the effects of climate change (Abashidze et al., 2020). The mitigation scenarios envisioned by the IPCC consider the development of the renewable energy sector to be key to climate change mitigation (IPCC, 2011). Moreover, lifecycle assessments for electricity generation indicate that GHG emissions from RE technologies are, in general, significantly lower than those associated with fossil fuel options (Farber, Peeters, 2016), and in a range of conditions, less than fossil fuels employing carbon capture and storage (IPCC, 2011).

Climate change will have impacts on the size and geographic distribution of the technical potential for RES (Abashidze et al., 2020). RE sources are, in many cases, dependent on the climate, global climate change will affect the RE resource base, though the precise nature and magnitude of these impacts is uncertain. Climate change is not anticipated to have significant impacts on the size or geographic distribution of geothermal or ocean energy resources; on solar energy, in spite of influence the distribution and variability of cloud cover; as well as on wind energy, but changes in the regional distribution of the wind energy resource may be expected. For hydropower the overall impacts on the global technical potential is expected to be slightly

positive. The future technical potential for bioenergy could be influenced by climate change through impacts on biomass production such as altered soil conditions, precipitation, crop productivity and other factors (IPCC, 2011).

According to Article 2(b) of the Statute of IRENA, the "Agency shall promote the widespread and increased adoption and the sustainable use of all forms of RE, taking into account the contribution of RE … to climate protection" (The Statute of IRENA, 2009).

IRENA has undertaken an analysis of current NDCs. Of the 152 NDCs that were formally submitted to date (end-November 2018), some 111, or nearly three quarters, cite specific renewable energy targets, while another 34 acknowledge renewables as an important way to reduce GHG emissions and adapt to climate change impacts (IRENA, 2018). IRENA's analysis suggests that 'while renewable energy targets and policies are indeed critical components of NDCs, there is substantial scope for countries to increase their RE ambitions. This is true not only for the purposes of mitigation, but also to build resilience in the face of growing climate change impacts' (IRENA, 2017).

It should be noted that in matters of combating climate change, scientific and technological progress, in particular technology, plays an important role.

In 2007, the Bali Action Plan was adopted, which decided to "enhance action on technology development and transfer to support action on mitigation and adaptation" (Report of the Conference of the Parties, 2007).

Climate change mitigation technologies include different groups of technologies divided by area of application. One of them is group of energy supply, that consist of "the most prominent being wind, geothermal, concentrated solar energy, biomass/biogas and hydrogen systems" (Background Paper, 2008). Technologies requiring significant additional Research & Development, government subsidies or other support, demonstration at scale include "second-generation biofuels, hydrogen fuel cells for cars, grid-connected solar photovoltaics, and carbon dioxide capture and storage" (Background Paper, 2008). According to World Intellectual Property Organization (WIPO) Global Challenges Report, key areas for climate change mitigation technology are biofuels, solar thermal energy, solar photovoltaic energy, wind energy (Helm et al., 2014).

Thereby, the facilitation of access to renewable energy technology, energy efficiency and cleaner fossil-fuel technology will lead not only to implementation of SDG 7 and SDG 13, as well as the international conventions on climate change (Akshalova and Abaeva, 2020). The 2030 Agenda launched a Technology Facilitation Mechanism (para 70), which "is composed of a UN inter-agency task team on science, technology and innovation for the SDGs, a collaborative multi-stakeholder forum on science, technology and innovation for the SDGs and an online platform" (the 2030 Agenda, 2015).

Results and conclusions

The whole process of combating climate change took on such a broad scope that almost all areas were involved. And here it is impossible without consideration of various environmental or already "climatic" disputes.

The number of climate claims is growing every year. If in 2019 there were 1,300 of them, now there are more than 2,000 of them. Such cases were considered in the USA, the Netherlands, Great Britain, Australia and other countries. And these cases are considered not only in national courts, but also in regional courts attached to international organizations and international bodies of the UN.

Now the fight against climate change is going on in many industries. In Western countries, such a thing as "climatization" has arisen. Initially, they talked about the "climatization" of human rights, then questions were raised about the "climatization" of the UN Security Council or international security. Then the number of climate lawsuits began to increase, because of which they began to talk about the "climatization" of justice. But as we discussed in our article, the "climatization" went further, moved to the protection of intellectual property rights and cooperation on energy issues.

We come to the conclusion that despite the adoption of unprecedented measures to combat climate change and adapt to its consequences, it is necessary to carry out further work to improve and increase the effectiveness of international legal regulation of combating climate change. This must be done not so much for us and our generation, but for the protection of the environment for future generations. The increase in climate lawsuits suggests that the threat of climate change has become so acute and tangible that people are turning to national and international judicial institutions to protect their interests. Moreover, there are still many issues that have not been resolved at the international level. This is the question of the existence of small island states, the territories of which are gradually flooded and there is a risk of their destruction, this is the status of "climate" refugees, whose rights are not protected by any international document, although their number is growing after natural disasters, this is also the question of responsibility for the inaction of the authorities developed countries that are major emitters of greenhouse gases.

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