

USE OF NATURAL RESOURCES AND ECOLOGICAL SECURITY: CONCEPTUAL AND NORMATIVE GROUNDS

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Использование природных ресурсов и экологической безопасности: концептуальные и нормативные основания. В данной статье исследуется использование природных ресурсов и концептуальные и нормативные основания экологической безопасности. Использование природных ресурсов, не вредя окружающей среде очень важно в государственной стратегии использования природных ресурсов. В ходе использования природных ресурсов экологической безопасности должен быть определен, эффективное использование природных ресурсов должен принятый во внимание в целях гарантировать экологический баланс окружающей среды, ответить требованиям будущих поколений, удовлетворению экологических требований.

Ключевые слова: экологическая безопасность, природные ресурсы, нормативные основания.

Use of natural resources without affecting environment is of great importance for the state strategy of use of natural resources. Determination of regime of effective use of natural resources for the Republic of Azerbaijan which has rich natural resources and socio-economic and environment problems after gaining its independence is extremely essential.

At the same time, one should define the notion of use of natural resources and ecological security. Use of natural resources is effective and economical use of natural resources without affecting ecological balance of environment taking into account demands of future generations with a view of meeting socio-economic and ecological requirements of the society. Legislation of Azerbaijan the term "use of natural resources" is used (e.g. Law on Protection of Environment dated 8 June 1999, III Chapter) along with the notion "use of ecology". However, the legal literature separates these notions by their content. Legislation of Azerbaijan uses more "use of nature" giving priority to economic and farming interests and uses "use of ecology" giving priority to interests in protection of environment, protection of ecosystem and promotion of its integrity. Use of natural resources combines both economic and ecological aspects which differ from each other. Economic aspect reflects economic principal individual interests, ecological aspect reflects public interests directed to improvement of natural resources representing object of use, prevention from possible damage and protection of environment.

Use of natural resources is a form of use of nature. Notion of natural resources, as a rule, is explained from the point of view of their economic value and its negative result means that according to this approach, those natural resources are being used and protected only for their economic benefit for the society. In such case, object of legal regulation is only those resources.

During the use of natural resources obligation to respect ecological security standards is stipulated in domestic, e.g. in the legislation of the Republic of Azerbaijan (Article 4 of the Law on Ecological Security dated 8 June 1999) and in international law norms (e.g. Chapter IV of the Energy Charter).

Use of natural resources is composed of direction from the point of view of its production for the sake of life interests of the society and scientific-technical progress of the ecological security. According to the state ecological security natural resources may be used in order to take care of improvement of prosperity of all people and each citizen, their social protection and proper living conditions.

One of the notions used together with the notion of natural resources and approached differently in legal literature is the notion of natural object. One can accept this notion as similar notion of natural resources and natural wealth. However, approaching to

the use of natural resources from the ecological point of view use of notion of natural object is more appropriate. Approaching legally to the natural resources with economic aspect natural objects are getting status of natural resources.

Natural object is an integral element of the environment and has specific features. E.g. the land is both object of environment and natural resources.

Natural resources differ from each other as object of use by recoverable basis. Rules of use of recoverable natural resources seem to be different by its simplicity from use of nonrecoverable natural resources. Common use is a use of natural resources on free-of-charge basis by citizens and institutions with a view to meet necessary demands of life of population (Law on Protection of Environment dated 1999). Such use is a manifestation of constitutional right to live in healthy environment. Common use does not require any permission.

Right to a special use is being granted to users of natural resources in the order provided by the legislation. With a view to carry out special use permission, which is chargeable, should be required by the legislation.

The type of use of natural resources differs depending on the following features: land, interiors, air, water, forest etc. According to this division content of legal regulation differs. Thus, legal regime of use of natural resources differs depending on the type of natural resources and their recoverable or nonrecoverable features.

Right to use natural resources is closely related to right to property. Ecological aspect of the property right to use natural resources means that realization of the right to use natural resources taking into account scientific-technical development should be carried out on the basis of ecological features and legislative order. This way may secure prevention of ecological risks and elimination of harmful impact to environment.

Realization of property right to use natural resources should not impede the rights of persons to live in safety and live in healthy environment protected by the Constitution.

Bringing of gradual transition of the right to use nature into the right to protect human rights to the forefront is quite clear. 1972 Stockholm Declaration says that the man is both creature and moulder of his environment, which gives him physical sustenance and affords him the opportunity for intellectual, moral, social and spiritual growth. Therefore, both aspects of the environment – natural and human environment is very important for the favourable environment of the human and his rights, including his right to life.

In case if, on the one hand, use of natural resources turns into object of property right, on the other hand, creates an interest due to its relation to environment. Therefore, main feature of the use of natural resources is its regulation by constitutional, administrative, civil and other law norms. Property right over use of natural resources, first of all, is defined by constitutional norms. According to the Constitution of Azerbaijan, natural resources belong to the Republic of Azerbaijan without prejudice to rights and interests of any physical persons and legal entities.

Constitution of Azerbaijan defines state, municipal and private types of the property. Civil Code of Azerbaijan stipulates that land and other natural resources, which are not in a possession of physical persons and legal entities and municipalities, belong to state. According to Land Code and Water Code land and water objects may be in private property. The notion of property right over natural resources defined in Articles 13, 14, 29 of the Constitution combines objective rights and subjective powers regulated by civil, administrative, ecological and other legal spheres. Constitutional notion defines extent and conditions of regulation of property right by sectoral legislation. According to the principle of sovereignty over natural resources, the state also uses common-legal function in the course of protection of the environment. If necessary, the state may carry out economical activity or may entrust this function with legal entities acting within private law framework. The state grants the right to use natural resources to those persons who may be in a position to do so on the basis administrative act or agreement.

Apparently, specificity of the legal regulation of the use of natural resources is manifested in the parallel use of civil law and administrative law regulation methods. As it was mentioned economic aspect of the use of natural resources reflects economic principal individual interests, ecological aspect reflects public interests.

Protection of the environment is formed depending on the wish to realize property and economic interests. Therefore, one can meet notions of environment and ecological development in historical sources. Mention of the history of development can be met in works of antique philosophers. The term of ecology was firstly brought to a science by E.Henkel, German scientist. The term of ecology were used just as term of environment, but it is necessary to distinguish them. Ecology in Greek means "oikos" – place of residence, "logos" – science about the place of residence. Ecology is an aggregate of relations between humans and their residential environment. Ecology is an aggregate of public relations establishing mutual actions of human life with nature.

Covering of nature – society relations by ecology brought the notion of environment to the science. Ecology is directed to securing of measures to healthy life, protected environment and human interests in biosphere.

Taking into account that the objects of nature (air, world ocean, alive and vegetative world etc.) is a common boon for the mankind, they should be regulated for the sake of common interests. The main condition of tackling this issue is mutual understanding between states, disarmament throughout the world, formation of model protective legislation with regards to the nature in all states. Recovery of natural resources as well as pollution of the environment and damage caused to nature in transborder scale requires improvement of international protection mechanisms and their legal basis.

Taking into account that the nature has no borders and is not covered by any jurisdiction of any state it belongs to all mankind. Just in this sense in order to protect common ecological values it is necessary to conclude international agreements stipulating common positions of states and legal mechanisms of the cooperation.

International legal protection of the environment is one of the forms of international cooperation. Adoption of sufficient international legal acts forms new independent sphere – ecological legislation which composed of interbational legal instruments. Environmental law is not only an aggregate of principles and norms, but also independent sphere of international law. I.I.Lukashuk notes explains international ecological law (IEL) as an aggregate of international law norms and principles regulating relations of relevant subjects in the field of protection of the environment and rational use of its resources. In this sense, the term of international legal protection of the environment is wider than ecological law. Q.V.Ignatenko notes human factor in the environment and presents environment as an aggregate of international law norms and principles regulating cooperation of states in the field of protection of the environment and its purposeful use for the sake of favourable being of mankind in ecosystem. V.P.Panov also gives wide notion of the IEL. He describes it as an aggregate of norms and principles regulating state activity for prevention of damage which may be caused by various sources to environment systems out of national systems of separate states and scope of national jurisdictions.

According to M.M.Brinchuk, protection of Earth and global environment from negative impacts is supported by rules of rational use of natural resources for the sake of interests current and future generations. Law-making and certain functional designation should be implemented in order to prevent harmful impacts to nature in the course of use of natural resources. Along with that, international legal protection of the environment is also composed of mutual consultations, monitoring of the environment and application of responsibility measures for the breach of interbational law norms and principles in this field.

Effective protection of the environment, provision of ecological security is possible on the basis of new type of model of economic development. Secondary use of natural resources, use of regenerative energy sources should be taken into account in tackling

this issue. Sometimes, in protection of the environment, political views of the states create certain problems in adoption and realization of relevant norms. Difficulties in establishment of framework mechanisms in the field of protection of ecology are related to economic interests of the states. In such case, existing economic interests should be brought in conformity with ecological security. It is not accidental that initial ecology-related international agreements were elaborated and adopted in this direction.

Key stage of international legal regulation of the protection of environment and ecological security is the period after World War II. UN General Assembly Resolution "Economic development and protection of nature" dated 1962 stipulates obligation of compliance of protection of nature with economic development on the basis international and domestic law.

Elaboration of the draft International Covenant on Environment and Development within the framework of NGOs in 1995 should be considered as a crucial event towards formation of the IEL. That draft defines basic principles of the protection of the environment. One should suppose that this act may play irreplaceable role in codification of the IEL. The IEL, as an aggregate of international legal regulation of the environment, at the same time deals with issues of damage caused as well as issues related to damage caused by legal and illegal activity. The IEL covers not only legal grounds of protection of the environment, but also right of public to gain information, monitoring problems related to the environment, ecological security and issues of protection of human rights hereof. Particularly, international agreements and domestic legislation related to human rights give special importance to ecological right of the individual and its development. This issue is provided in constitutional norms of separate states on a par with principles in Rio Declaration and other international instruments.

Right to live in healthy environment is also stipulated in the Constitution of Azerbaijan. Article 39 of the Constitution reads that everyone has the right to live in healthy environment. As in legislation of a number of European, particularly EU member states, our legislation provides that everyone has the right to gain information about true ecological situation and to get compensation for damage done to his/her health and property because of violation of ecological requirements. At the same time, obligation to protect human rights related to the protection of the environment is foreseen.

All abovementioned points about complex nature and peculiarities of relations belonging to its regulation object. Other feature stipulating its specificity is formation of sufficient normative materials and exact principles in international protection of the environment. These principles confirm that it is a part of international law and, at the same time, has independent structure.

Securing of ecological security in prevention of negative impacts to the environment is of great importance and should be admitted as integral element of global security. As far as ecological security is a basic criteria of social development, most countries pay special attention to tackling this problem.

Before the determination of the notion of ecological security, one should express consideration to the security itself. The object of the activity to provide security is a danger. In this case, the subject of exact activity (military, political, economic, ecological etc.) is to prevent various dangers. Security reflects different values and features from the etymological point of view. The term of security is divided into categories such as national security, international security, global security, depending on object of danger.

Depending on type and content of the security following security spheres may be distinguished for international and national security: economic, military, political, resort, energy, social, ecological, information, scientific-technical, nuclear, innovative, legal, cultural etc. Security is being admitted as protection of social institution necessary for activity of people, personality and society as well as life interests from internal and external threats. One of typical and more important factors for modern national security concepts is human security. Public system and content of national security is provided on the basis of

following principles: democratism, transparency, priority right of human security, legality, humanism, justice, priority of moral fundamentals, kind treatment with those applying for protection, priority of pre-threat warning systems, corresponding of state security system to public security etc.

Legal feature of the notion of security is to form normative-legal conditions material and institutional mechanisms which may prevent any threats. Global development requires insertion of natural resources, ecological and demographic aspects into the notion of security. Legal direction of international security is manifested in aggregate of specific norms depending on universally accepted norms and principles of the international law and as well as scope and type of security. These norms are not an exclusion for ecological security. Typical feature for ecological security is stable protection from anthropogenic threat of ecosystem. Relevant protection provides normative legal interpretation in international law. International practice in provision of ecological security started its formation in previous century. States, in bilateral basis, express the necessity to protect water resources and special species of animals in international agreements.

Taking into account that ecological security is of social importance, it is stipulated in the legislation as a guarantee to uphold human rights. According to the Law of Azerbaijan on Ecological Security, ecological security is considered as securing of provision of life interests of human and society and environment from threats occurring as a result of anthropogenic and natural impacts. There are also illegal actions against negative impacts in the literature. Ecological security of individual and society may be ensured within the framework of their ecological rights and interests. Principle of ensuring ecological security coincides with principle of the right to live in healthy environment. Even if the right to live in healthy environment is being considered in the context of international legal regulation of human rights, living in healthy environment is not fully settled in contemporary international law.

Article 25 of the Universal Declaration of Human Rights says that everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services.

According to Principle 1 of the 1972 Stockholm Declaration man has the fundamental right to freedom, equality and adequate conditions of life in an environment. Similar provision is also reflected in Rio Declaration.

Among regional instruments African Charter on Human and Peoples' Rights reads that all peoples shall have the right to a general satisfactory environment favorable to their development. According to 1998 Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters elaborated by European Economic Commission, the right of public to free access to environmental situation should be realized. Article 6 of the Aarhus Convention says that the public concerned shall be informed, either by public notice or individually as appropriate, early in an environmental decision-making procedure, and in an adequate, timely and effective manner. In accordance with the rules adopted, the information should be submitted within a month upon request. Request may only be rejected on the grounds provided by law. Citizens and ecological organizations should be entitled to present written opinion and express the position on the issues concerned. They should also be informed of the decisions taken. In case if environment-related decisions breach human rights, those persons should be entitled to have access to a review procedure before a court.

Taking into account the right to live in healthy environment or ecological security in economic activity and investing is necessary issue. This issue is reflected in Intergovernmental BTC agreement and Intergovernmental agreement between Main Export Pipeline participants and transit state. According to Article 12.3 of the latter agreement main export pipeline participants should take necessary measures to recover initial order nor depending on any agreement and any fault with regard to any damage of environment, health and technical security.

Consequently, ecological security reflects, in international law context, right to live in healthy environment and normative legal direction of use of any economic activity, natural resources, including energy resources and protection of transportation from negative impacts.

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