

## INTERNATIONAL LEGAL REGULATION OF THE COOPERATION OF COUNTRIES IN THE SPHERE OF MINERAL RESOURCES MANAGEMENT

### МІЖНАРОДНО-ПРАВОВЕ РЕГУЛЮВАННЯ СПІВРОБІТНИЦТВА ДЕРЖАВ У СФЕРІ НАДРОКОРИСТУВАННЯ

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The article reveals problems of legal regulation of activity in the sphere the use of the subsoil of Ukraine, the study of international law governing the cooperation of States in the field of subsoil use, as well as an analysis of the regulation of relations between foreign states.

**Key words:** subsoil, mining, international cooperation, cooperation of countries, international legal cooperation.

У статті виявлено проблеми міжнародно-правового регулювання співпраці держав у сфері користування надрами, вироблено та обґрунтовано пропозиції щодо вдосконалення міжнародно-правового регулювання співпраці держав у зазначеній сфері.

**Ключові слова:** надра, надрокористування, міжнародне співробітництво, співробітництво держав, міжнародно-правове співробітництво.

В статье выявлены проблемы международно-правового регулирования сотрудничества государств в сфере пользования недрами, разработаны и обоснованы предложения по усовершенствованию международно-правового регулирования сотрудничества государств в указанной сфере.

**Ключевые слова:** недра, недропользование, международное сотрудничество, сотрудничество государств, международно-правовое сотрудничество.

**Rising of scientific problem.** International law that reflects international relations, constantly evolving under the influence of world globalization, which cause the need to improve the legal regulation of the modern intergovernmental relations [1; 2]. The current state of development of international law requires constant change, additions or substantial revision of the existing legal concepts that do not correspond to the objectives of further development of international law as the completely human right in the conditions of formation of the global world [3; 4].

The cooperation of countries creates not only the conditions for the solution of problems in the sphere of mining, but also provides uniformity, stability and coherence of the cooperation of countries and other international actors in this field [5; 6]. Thus, the criterion for measuring the success of international cooperation in this area is not only the existence of effective organizational-legal and regulatory mechanisms of cooperation of countries, the result of which is the development of certain international standards and implementation of the norms of international law in national law [7; 8].

**Analysis of researchers of this problem.** The issue of international cooperation of countries in the sphere of mineral resources management was studied by such scientists as L. Deshko, V. Kalyna, O. Leonova, I. Hohlova, O. Hrytsan, N. Medvedieva, Y. Bokovykova and others. The main problems, which the above scholars investigated, include the legal regulation of the termination rights of subsoil use in Ukraine, the legal framework for environmental control and protection of the subsoil, the legal regulation of the geological study of the subsurface legal principles of mining concessions, public administration using the mineral resources of Ukraine.

**The purpose of the article** is to consider the principles and norms of international law governing the relations of international cooperation between the subjects of environmental law in the sphere of mining, as well as identify problems of environmental legislation.

The objective is to explore the norms of national and international legislation in the sphere of mining and identify types

of subsoil use rights based on the performed research. The object of the study is the international relations of countries in the sphere of mining.

**Exposition of basic maintenance material.** The subsoil is the part of the Earth's crust that is located under the surface of the land and the bottom of reservoirs and extends to depths available for geological study and development [9]. Ukraine has a large stock of mineral resources (95 species) which include coal, manganese, graphite, kaolin, clay, potassium salt, facing stone, etc. So Ukraine has powerful mineral resources, it is a member of about 20 international conventions and international agreements and participates in the work of international organizations in the sphere of ecology (UNEP, ECE, UNDP, IAEA, FAO, etc.) [10].

The subsoil is an indispensable resource for the economic development of the country, the key to the power and influence of the country on the international level. Therefore, extraction and processing of minerals is not only an economy but also a political resource for the mining country [11]. Trade resources are strategically important for those who own or have access to them. In a situation of constant demand, the need for efficient use of resources increases.

We believe that each country has a sovereign right free disposal and the use of its natural wealth in accordance with the UN Charter [12]. Therefore, regions rich in raw materials may become a place for the development of illegal trade in minerals, speculation and corruption, so the authorities are trying to protect the environmental sphere and establish control in the area of subsoil use. According to a recent study by UNEP (United Nations Environment Program) in 2009, access to subsoil has caused at least 18 severe international conflicts since 1990, representing approximately 40% of the total number of conflicts that occurred since the end of the Second World War [13]. There is also a tendency to expand international environmental law under the pressure of public opinion and ecologists [11]. The implementation of the International Directives has had many shortcomings due to the lack

of efficiency of the transnational legislative and institutional instrument [13].

The most important issue is the strengthening of the legislative mechanism of international environmental law but voluntarism is a major obstacle to the application of common law. Countries remain free in their external standard commitments.

Consequently, the instruments (treaties, resolutions, etc.) that regulate the activities and relations of countries in the sphere of subsoil are divided into two types:

1. Main (the Resolution of the UN General Assembly No. 626 of 21.12.1952 on “The right of free exploitation of natural resources and resources”; the Resolution of the UN General Assembly No. 1803 of 14.12.1962 on “The permanent sovereignty over natural resources”);

2. Others which in turn are divided into:

A) universal – practically all countries of the world community participate in it;

B) regional – countries are involved of a certain geographic region and covered by the treaty [14].

International legal acts regulating the relations of countries in the sphere of subsoil use may be declarative or consultative and have no legally binding regulations or may be legally binding on the countries that are participating in this international legal act. For example, such contracts, which are obligatory to legal execution, we can include the Energy Charter Treaty (next – ECT).

ECT was signed between such countries as Austria, Bulgaria, Georgia, Estonia, Italy, Kyrgyzstan, Latvia, Belarus, Liechtenstein, Malta, Australia, Moldova, Belgium, Mongolia, the Netherlands, Bosnia and Herzegovina, Germany, Norway, Spain, Azerbaijan, Denmark, Portugal, Romania, Slovakia, Albania, Slovenia, Greece, Tajikistan, Ireland, Turkmenistan, Turkey, Iceland, Poland, Lithuania, United Kingdom, Luxembourg, Uzbekistan, Ukraine, France, Kazakhstan, Croatia, Armenia, Czech Republic, Finland, Switzerland, Sweden, Japan, Cyprus in Lisbon in 1994. The signing of this agreement was preceded by three years of negotiations, which were conducted on the basis of the European Energy Charter adopted in December 1991 (further EEC). The purpose of ECT is to promote the cooperation between the countries in the sphere of energy based on complementarity and mutual benefit in accordance with the purposes and principles of the charter through the establishment of the appropriate legal framework. The main steps of implementation are set out in 50 articles, and in general, the document contains eight sections, in which a number of tasks, goals and methods of execution of the ECT are prescribed.

For example, the main objectives of the ECT are:

– trying to join open, efficient and reliable energy markets;

– promoting climate change, interdependence in the energy sector and based on trust between countries [15].

Thus, ECT has become a model for the interaction of international structures, which was necessary for the growth and improvement of investment and trade in energy and other related industries at the international level.

The diversity of legislation, the large number of international agreements and the complexity of international relations relating to subsoil use can lead to conflicts of interest and lead to problems of consistency. There is a need to harmonize national laws and international standards and facilitate the exchange of information between countries.

In particular, we can say that Decentralization of power in the countries can lead to certain problems. For example, the Swiss government is decentralized, divided between the cantons and, therefore, the current Confederacy, and the cantons play a leading role through the execution of their cantonal regalia, in particular through the implementation of cantonal laws on subsoil use. In addition, various special laws regulate the use of subsoil, but some lords call for the regulation of environmental issues not only at the Cantonal, but also at the

Cathedral levels. That is why the national adviser, C. Riklin has sought the development of a federal subsoil law. Similarly, the Recommendations of the Confederal Geological Service in 2014 required centralization and strengthening of the Confederation’s powers. Such national regulation of the subsoil can require the transfer of powers regulated by the Constitution, as well as the global change of the existing regulatory framework.

In Ukrainian legislation, there is also a number of shortcomings related to over-use, for example: The Code of the Subsoil was adopted in 1994, so today it is rather outdated, as over the past 24 years the country has undergone significant changes in the field of ecology. In 2003 the President of Ukraine issued an enactment “About the decision of the Council of National Security and Defense of Ukraine on June 6, 2003 about urgent measures to increase the efficiency of subsoil use in Ukraine” which provided for the introduction of a number of amendments to legislative acts regulating activities in the sphere of ecology, especially:

– The Criminal Code of Ukraine regarding criminal liability for illegal extraction of minerals of national importance;

– The Code of Ukraine about administrative violations regarding the introduction of administrative responsibility for violation of the conditions of a special permit (license) for the use of subsoil, as well as for illegal extraction of minerals of local importance;

– The Law of Ukraine “On Licensing Certain Types of Economic Activities” regarding the harmonization of the list of types of economic activities in the sphere of subsoil use, which are the subject for licensing, due to the Code of Ukraine on Subsoil, etc. [16].

Public interest in the development of non-traditional energy sources can lead to environmental problems. In France, the Code of Mining was established in 1956 by the resumption of the Act of 1810. At present, the project on the reform of the mineral extraction code is being continued, aimed mostly at making it due to the Environmental Protection Charter. It is especially noted that during parliamentary consideration deputies, on the one hand, emphasized that minerals are a common heritage of the nation, and that their management is a common interest, and, on the other hand, the exploration and exploitation of non-traditional hydrocarbons, regardless of the technique used, should be forbidden as they can lead to manufactured disasters.

At this stage, countries are increasingly concluding international agreements among themselves, aimed at investigating, exploring and using energy resources themselves. It is important to mention that the inside legislation of some countries clearly distinguishes the concept of the use of subsoil on the land and the use of subsoil on the sea shelf. The first country that introduced special legislation on extraordinary rendition was the United States in 1953, followed by the United Kingdom (1964), Australia (1967), France (1968), and so on. In time, the international legal instruments have been adopted that regulate at the legal level the relations of countries in the sphere of subsoil use on the continental shelf. For example, the Geneva Convention on the Continental Shelf of 1958 clearly indicates the powers and rights of countries concerning not only the continental shelf, but also coastal areas of the sea the bottom of which lies outside a defined continental shelf [17].

In the early stages of the development of subsoil use, some countries banned other countries from taking any action on the territory they owned. For example, there was a decree of the Presidium of the USSR in 1968 stating that foreign legal entities or individuals were prohibited from conducting exploratory, research or other activities on the continental shelf of the USSR due to the legislation of the Soviet Union. The exception was if a bilateral agreement was concluded between the USSR and a foreign country, permitting these works [9]. Time passed, countries began to pursue a more open policy in the sphere of subsoil use, in order to maximize the attrac-

tion of foreign investments. Therefore, the legal constituent has undergone significant changes; first states consider long-term contracts and there are main rules that regulate the special public status of resources. The interaction of subsoil and country becomes a feature of the new special legislation in the sphere of subsoil use. It is important to mention that most countries that have reserves of hydrocarbons on the continental shelf have adopted special laws that differentiate the use of subsoil for geological exploration of their production.

Nowadays, there are two types of subsoil use rights:

1. Licensing.
2. Contractual.

When we have the licensing system, the use of the subsoil is carried out based on a permit issued by the country and is in the form of licenses, authorization, patent or another document. The country acts as the authoritarian object and provides the administrative procedure law to another entity to perform the search, valuation and mining on the defined territory, and also determines the terms and conditions of use.

When we have the contractual system, the right for the use of the given entity is given by the agreement between the Government and the investor.

Nowadays, the impact of the country on subsoil use is significantly reduced, instead of increasing the impact of foreign companies that operate in the sphere of mining. In the world, there are companies who invest for research and extraction of minerals, such as the following well-known companies as Shell and Petrobras (extraction of oil and gas, the headquarters), CVRD (mining of iron ore).

Multinational company Shell is involved in all energy sectors such as exploration of oil and natural gas, refining, petrochemicals in about 70 countries around the world. In 2009, Shell abandoned the production of renewable energy, especially solar and wind energy. Since then it has focused on biofuels and carbon sequestration. Since 1997, it annually publishes voluntarily report on their environmental and social activities. This publication is a part of an open and honest approach, and allows you to illustrate its contribution to sustainable development. Shell uses its experience, technology and innovation to provide more clean energy to meet the growing energy needs of the world and find ways to use energy more efficiently. It also collaborates with partners, communities,

and governments to achieve the goals in a social and environmental responsible way. It participates in several projects to extract and store CO<sub>2</sub>, as well as to mitigate the consequences of the use of hydrocarbons. The financial viability of these projects, necessary for their generalization, depends on the support of the state authorities. The replacement of coal-fired power plants on the installation of the shipping and storage of carbon dioxide can reduce CO<sub>2</sub> emissions by up to 90%. Local suppliers, projects promoting peripheral sectors, such as industry vessels and their equipment, provide the contracts. For example, in Brazil and Nigeria, they helped to teach the first generation of national oil and gas engineers, but in Malaysia, they support a training program with local authorities to ensure that the oil and gas industry will have qualified welders, which they are lack for.

Petrobras invests in research to develop products and processes that contribute the rationalization of consumption of natural resources aimed at diversifying the use of different sources of energy, including renewable energy sources. It also encourages the rational use of energy and the improvement of its processes for increasing energy efficiency, reducing greenhouse gas emissions. It also sponsors a number of ecological projects aimed at mitigating carbon emissions, protects the environment and species, which are threatened with extinction and conservation of biodiversity.

**Conclusions.** The development of legal regulation of relations in the sphere of mineral resources management has gone a considerable way from the beginning of the regulation of the use of the subsurface in the national legislation, to the emergence of the international relations and actions of other countries and international companies about the subsoil of the other country.

Therefore, the process of compliance with international environmental standards and implementation of rules of management of natural resources by countries generally reflects the political and socio-economic conditions of its own country.

In order to continue effectively exploit subsoil, it is important to develop more sustainable rules and responsibilities in the sphere of subsoil use, which will enable countries to regulate the quantity and quality of used subsoil and will be able to ensure that future generations can continue to use subsoil to meet their goals.

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