

Correlation between international and national law rules in the Russian Federation concerning to environmental protection of the Caspian Sea

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ABSTRACT

The adoption of the 2018 Convention on the Legal Status of the Caspian Sea is of great importance for the protection of the Caspian environment, as it establishes a clear legal status of the Caspian Sea. At the same time, the provisions of the Convention of 2018 and the Framework Convention for the Protection of the Marine Environment of the Caspian Sea of 2003 (Tehran Convention) require further addition, primarily in the form of additional protocols to the Tehran Convention. In addition, the development of international legal norms should facilitate the harmonization of applicable national legislation in the Caspian States. To study the relationship between international legal norms on environmental protection of the Caspian Sea and Russian national legislation and the possibility of supplementing the international legal regime with domestic norms. Methods: methods of analysis and synthesis, empirical methods of comparison, description, interpretation; legal-dogmatic and method of interpretation of legal norms. Results: The author shows that while the provisions of the Tehran Convention, its protocols and the applicable legal acts of the Russian Federation generally comply, the national legislation establishes more detailed approaches to environmental protection of the Caspian region in certain aspects. In conclusion, the legislation of the Russian Federation may help to fill a number of gaps in regional international legal regulation of the Caspian environmental protection. In particular, it is relevant in terms of legal protection from oil spill damage, as well as in the area of river runoff regulation (within the context of the basin approach to the management of the Caspian Sea resources).

Keywords: International law, Caspian Sea, Environmental protection, National legislation, Legal system, Liability for damage, Oil spills, Basin management principle.

INTRODUCTION

National legislation plays a significant role in the issue of real application of international (regional) law to actual relations, and therefore the impact of national law on the legal protection of the Caspian Sea remains and will remain significant. According to paragraph 2 of Article 15 of the Convention on the legal status of the Caspian Sea, member states have the right to independently take all necessary measures to «preserve the biological diversity, protect, restore, sustainable and rational use of biological resources of the Caspian Sea», as well as to «prevent, reduce and control pollution of the sea from any source». It is important to understand that the complexity of solving environmental problems is influenced, firstly, by the uniqueness of the Caspian Sea as a body of water not connected to the World Ocean, and secondly, by the unity of the Caspian ecosystem, which is determined by the active horizontal and vertical exchange of water, migration of fish and seals occurring both in the water area and in the mouths of rivers. Pollution poses a particular threat to both the marine environment and biological resources and the population of the Caspian region. For example, in Kazakhstan cases of blood and tuberculosis are four times more common among residents of the Caspian region than in the rest of the country.

Contaminated water from the Caspian Sea is still sometimes used as drinking water, which causes a number of gastrointestinal diseases. At the same time, the percentage of cancer incidence in the residents of the Caspian Sea region is also high (Ascher & Mirovitskaya 2000). It should be clarified that there is a terminological problem in international law with the uncertainty of the relationship between the terms "protection" and "protection". If "protection of the environment" is aimed at prevention of threats and illegal acts of environmental and legal nature, a measure of response to the resulting violation of the protection regime, then "protection of the environment" includes preventive, preventive measures. In other words, protection is not a reaction to actions of subjects, but, on the contrary, prevention of suppression of environmental offences. Thus, "protection" does not coincide in terms of the meaning of "protection", but both terms are components of a single regime of environmental protection from negative impact, the difference lies only in the stage of taking measures aimed at ensuring environmental security. (Environmental security is a state of protection against negative impacts, and also includes possible subsequent prosecution of offenders). The author believes that it is necessary to distinguish between the terms "protection" and "environmental protection", and this article deals with the Caspian Sea environment.

To date, studies on legal regulation of environmental protection of the Caspian Sea at the international level (the latter include dissertation studies by such authors as: (Mohammadreza 2018; Convention on the Legal Status of the Caspian Sea 2018; Pietkiewicz & Michał 2018; Guliev & Zeynalova 2019; Aydin & Azhgaliyeva 2019).

The correlation between international legal norms on environmental protection of the Caspian Sea and the national legislation of Russia, the prospects of complementing the international legal regime with domestic norms is an actual object of research that makes it possible to establish gaps, the most successful approaches and specifics that should be taken into account when forming unified approaches to environmental protection of the Caspian Sea at the level of all five states of the region (Convention on the Legal Status of the Caspian Sea 2018).

MATERIALS AND METHODS

In this study Comparative legal analyses (analysis of international regional agreements and applicable national legislation) were performed using different literature review including Convention on the Legal Status of the Caspian Sea (2018) as well as Federal Law "On Environmental Protection", Constitution of the Russian Federation (1993), Federal Law «On Environmental Protection» (2002), «On Inland Sea Waters, the territorial sea and the contiguous zone of the Russian Federation» (1998), «On Environmental Expertise» (1995), «On Subsoil» (1992), «On Production Sharing Agreements» (1995), the Water Code of the Russian Federation (2006) and other regional agreements etc.

RESULTS

The analysis shows that while the provisions of the Tehran Convention, its protocols and the applicable legal acts of the Russian Federation generally comply, the national legislation establishes more detailed approaches to environmental protection of the Caspian region in certain aspects. The results of the analysis of such aspects as correlation between international law and Russian legislation within the context of the Caspian Sea environmental protection, correlation of the Federal Law "On environmental protection" and regional agreements, legal regulation of the Caspian Sea environmental protection from oil pollution and responsibility for pollution of river runoffs flowing into the Caspian Sea are scrutinized further in detail.

Correlation between international law and Russian legislation within the context of the Caspian Sea environmental protection

The correlation of international and domestic law is one of the key issues in the theory of international law. Despite the existence of various theoretical approaches to this problem (primarily dualistic and two monistic), it should be noted that even the founders of the dualistic theory recognized in their works the interconnection of international and national law, expressed in the form of reception, reference from one law to another, prohibition of a certain type of legal norms, application of international law at the national level, etc. (Vylegzhanin 2017). At the same time, modern theorists of international law recognize the high level of mutual influence of international and national law - expressed, in particular, in the form of regulation at the level of international law of interstate relations taking shape regarding the regulation of certain domestic relations or international relations of a non-state nature (Vylegzhanin 2017). As decreed in paragraph 4 of Article 15 of the Constitution of the Russian Federation (Constitution of the Russian Federation 1993), international treaties of the Russian Federation are an

integral part of its legal system, and therefore these acts play a significant role in the implementation of international legal agreements into national legislation, providing a logical relationship between the articles of certain internal regulatory legal acts and international law. In March 2020, the Council of Federation of the Federal Assembly of the Russian Federation approved, and the President of Russia V. Putin signed Federal Law of March 14, 2020 on Amendments to the Constitution of the Russian Federation "On Improving Regulation of Certain Issues of Organization and Functioning of Public Power". According to this Law, Article 79 of the Constitution of the Russian Federation is supplemented by the following provision: "Decisions of intergovernmental bodies adopted on the basis of provisions of international treaties of the Russian Federation contrary in their interpretation to the Constitution of the Russian Federation are not subject to execution in the Russian Federation".

Furthermore, article 58 of the Constitution states that "every citizen has the duty to protect nature and the environment, and to preserve natural wealth". This obligation also applies to companies. Other constitutional provisions that ensure the proper transformation of international legal norms in the environmental protection of the Caspian region include, in particular, the obligation of everyone to preserve nature and the environment, and take care of natural resources contained in Article 58 of the Constitution of the Russian Federation; the prohibition of harm to the environment in carrying out its activities contained in Article 36 of the Constitution of the Russian Federation; as well as the right of everyone to a favorable environment, reliable information about its condition and to compensation for damage caused to his health or property by an environmental violation, enshrined in Article 42 of the Constitution of the Russian Federation. Also Article 72 of the Constitution of the Russian Federation relates environmental protection, environmental safety and lawmaking in the field of environmental protection to the joint jurisdiction of the Federation and its entities, which the author will study in more detail below. The fact that the Constitution of almost any state constitutes the basis of its legal system is undoubted, and the Russian Federation is no exception (Maksimov 2015). Therefore, the role of constitutional provisions in any sphere of legal regulation is significant and cannot be omitted, including in the issue of protecting the environment of the Caspian region.

Over the past decades, some 30 federal laws have been adopted concerning various environmental issues. Given the special status of the Caspian Sea established by the Convention on the Legal Status of the Caspian Sea in 2018, it seems that the following acts of federal legislation contribute to the legal protection of the Caspian region: Federal Law «On Environmental Protection» of 2002, «On Inland Sea Waters, the territorial sea and the contiguous zone of the Russian Federation» of 1998, «On Environmental Expertise» of 1995, «On Subsoil» of 1992, «On Production Sharing Agreements» of 1995, the Water Code of the Russian Federation of 2006.

Correlation of the Federal Law «On environmental protection» and regional agreements

Earlier, the author listed the main areas of regulation that the Convention proposes to reflect in the relevant Protocols and acts of national law. It seems that the provisions of the Federal Law «On Environmental Protection» fulfill this function (Zhochkina 2015). So, in accordance with Section III of the Convention, dedicated to the prevention, reduction and control of pollution of the waters of the Caspian Sea, in Article 16 of the Law establishes the need to charge for negative environmental impacts, including the discharge of pollutants into water bodies (Federal Law 2002). The principle of using the best available technologies contained in the Convention is reflected in the same Article 28.1 of the Law. The need to use such technologies for the treatment of urban wastewater, as well as to reduce the flow of organic substances from municipal and industrial sources, is also contained in Article 7 of the Convention, is implemented in the list of areas of application of the best available technologies established by the Government of the Russian Federation. The rule on the necessity of licensing wastewater discharges from Section III of the Tehran Convention is also reflected in the Law. Thus, blanket rule Article 30 of the Law «On Environmental Protection», dedicated to the licensing of certain types of activities in the field of environmental protection, refers us to the provisions of the Federal Law «On Licensing of Individual Types of Activities» of 2011, Article 12 which contains relevant standards. The provisions of Section IV of the Convention on environmental impact assessment in a trans-boundary context of 1991 are implemented at the national level through Article 32 of the Law «On Environmental Protection», which, in turn, refers to a number of bylaws, the main of which is the Order of the State Committee for Ecology of the Russian Federation «On approval of the regulation on the assessment of the impact of planned economic and other activities on the environment in the Russian Federation». Chapter X of the Law on state environmental monitoring or state monitoring of environment complies with the provisions on the need for environmental monitoring from Section IV of the Framework

Convention. This way, the Law creates a Unified system of state environmental monitoring, one of the areas of activity of which are state monitoring of water bodies and state monitoring of water biological resources. They comply with the Decree of the Government of the Russian Federation «On Approval of the Regulation on the Implementation of State Monitoring of Water Bodies» in 2007 and the Decree of the Government of the Russian Federation «On Approval of the Regulation on the Implementation of State Monitoring of Aquatic Biological Resources and the Application of Its Data» in 2008.

The Law on Environmental Protection sets out the fundamental principles of Russian environmental law, and it is expected that state authorities will apply them in accordance with environmental legislation. The Law on Environmental Protection provides the basis for environmental regulation in the Russian Federation as a whole. It includes principles such as the principle of potential environmental hazard, full compensation for damage to the environment and the principle of environmental impact assessment. In a separate chapter, the Law on Environmental Protection establishes general requirements for various types of economic activities, including the selection of the location, construction and operation of various types of facilities, and also regulates issues related to the import of radioactive waste. It also defines the general features of the legal regime for specially protected areas. The examples above do not exhaust the wide sphere of intersection and conjunction of the provisions of the Federal Law «On Environmental Protection» and the Framework Convention. It seems that the key fact in this case is the conjunction of goals and principles of both normative acts – thus, the basic industry principles formulated in the Convention – the adoption of precautionary measures, «the polluter pays», and the availability of information on pollution – find their implementation in Article 3 of the Law, where, in addition to them, the principles are also noted: the principle of the need for international cooperation of the Russian Federation with other states and international legal entities in the field of environmental protection and several others (Environment and security: transforming risks into cooperation: the case of the eastern Caspian region 2008). It appears that the statement of Article 5 of the Convention does not exclude, but on the contrary, encourages the inclusion of all these principles in the subject of its regulation, which can only increase the degree of environmental protection in the Caspian region (Koslosky 2008).

Federal Law “On Inland Sea Waters, the Territorial Sea and the Contiguous Zone of the Russian Federation” in the context of the Convention on the Legal Regime of the Caspian Sea 2018

The determination of the legal status of the Caspian Sea raises the question of the possibility of applying the provisions of the Federal Law «On Inland Sea Waters, the Territorial Sea and the Contiguous Zone of the Russian Federation» to environmental protection issues of the Caspian Sea (Federal Law № 155-FZ 1998). Article 13 of the Convention on the legal status of the Caspian Sea contains a provision that «each Party in the exercise of its sovereignty has the exclusive right to regulate, authorize and conduct marine scientific research in its territorial waters». It seems that, without delving into the theory of the terminological difference between the wording «territorial waters» inherent in the Convention and the «territorial sea» inherent in the Law, the provisions on marine scientific research and research on marine resources contained in chapter IV of the Law can be distributed and to the Russian part of the water area (bottom) of the Caspian Sea, since Russian legislation does not contain other provisions in relation to relevant studies. Moreover, Article 20 of the Tehran Convention also provides for the need for «research and development of effective methods to prevent, reduce and control pollution of the marine environment of the Caspian Sea». The Law also contains a clearly regulated procedure for conducting relevant research, which also provides for the participation of legal entities and the publication of the results of the study, which can be provided to other entities other than subjects of domestic law of the Russian Federation. We suggest that this aspect should be clarified and consolidated in the Russian legislation. Similar questions arise regarding chapter V of the indicated Law, which is devoted to the protection and preservation of the marine environment and natural resources of inland sea waters and the territorial sea. The Convention on the Legal Status of the Caspian Sea, in its turn, uses the wording «inland waters» and «territorial waters». It seems that for the purpose of legal regulation of environmental protection issues in the Caspian region, the difference in these terms is not so significant, as it may seem. Firstly, because the Convention operates the formula applicable to a single water body and, secondly, concerning eco-legal matters, the parties are entitled to apply protective measures independently within their jurisdiction, as noted in the previously mentioned Article 14 of the Convention.

Turning to the content of this chapter, the author notes its full compliance with the norms of the Framework Convention. Thus, chapter V, in addition to industry principles of maintaining the biological diversity of marine

environment at a proper level, of ensuring environmental safety and preventing pollution of the marine environment, includes provisions on normalizing the quality of the marine environment. It also comprises provisions on state environmental expert evaluation, supervision, and monitoring conducting and on prevention and elimination of the consequences of marine accidents. The ecological expertise is a procedure for establishing the conformity of documentation justifying the intended economic and other activities with environmental requirements in order to prevent the negative impact of such activities on the environment according to the Article 2 of the relevant Law (Federal Law 1995). It should be noted that the provisions of law on environmental impact assessment are included in a significant number of regulatory legal acts of the Russian Federation and its subjects, which allows some researchers to dwell upon the existence of a system of legislation on environmental impact assessment. Thus, it also includes by-laws such as the Decree of the Government of the Russian Federation «The Approval of the Regulation on the Procedure for Conducting State Ecological Expertise» of 1996 and the Order of the Federal Fishery Agency on «The Approval of the Administrative Regulations of the Federal Fisheries Agency for the execution of the state function for the development and submission to the state environmental impact assessment» of 2010. Researchers note the particular importance of the Institute of Environmental Expertise in protecting the environment, since the process of its implementation provides the participation of the population and public organizations in addition to the actions of state authorities (Ascher & Mirovitskaya 2000), which makes it a comprehensive and effective legal tool.

Legal regulation of the Caspian Sea environmental protection from oil pollution

Hydrocarbon production and transportation is the main source of marine and air pollution in the Caspian region due to well flooding, spills and leaks. During the development of hydrocarbon fields about 1 million tons of oil enters the water annually. According to the 2012-2014 Caspian Sea Cross-Border Monitoring Data, the main source of oil spills are discharges of oil products from ships.

Additional factors contributing to the pollution of hydrocarbons are natural sources of hydrocarbons, which is typical for the Middle and especially Southern parts of the Caspian Sea. Pollution occurs when underground fluids (oil, water and gas mixtures) and oil and gas hydrocarbons reach the surface at the bottom of the sea in the process of mud volcano activity and sudden breakthroughs to the surface of the fluids due to disturbance of the hydrodynamic balance (The Caspian Sea of the Environment 2011). This pollution factor is a circumstance complicating the regional assessment of the degree of hydrocarbon pollution of the Caspian Sea marine environment. Article 29 of the Tehran Convention establishes that States parties should further develop rules and procedures on liability and compensation for damages. This issue has not yet been resolved, with oil spills being one of the main and most dangerous types of pollution possible in the Caspian Sea (Ascher & Mirovitskaya 2000). In that connection, it is necessary to consider what legal mechanisms existing at the national level in the Russian Federation could form the basis for further additions to regional international legal mechanisms to establish liability for Caspian Sea pollution from oil spills. The national norms of Russian legislation include the provisions of Federal Act No. 287 of 30 December 2012 on amendments to the Federal Act on the continental shelf of the Russian Federation and the Federal Act on inland waters, the territorial sea and the contiguous zone of the Russian Federation. In accordance with the provisions of the Act, if an operating organization carries out activities on the continental shelf of the Russian Federation, its responsibilities include measures to prevent spills of oil and petroleum products. When taking measures to prevent spills of oil and petroleum products, the operating organization is obliged to establish a system for monitoring the state of the marine environment in the area of its activities (including a system for the detection of spills of oil and petroleum products), a system of communication and notification of spills of oil and petroleum products that meet the requirements established by the Government of the Russian Federation, and to ensure the functioning of such systems; to have financial support for the implementation of measures provided for in the plan of the Russian Federation. International legal acts for the protection of the marine environment of the Caspian Sea do not provide for regular point-based measures to prevent and respond to oil spills. It seems important to establish this type of activity at the level of protocols to the 2003 Framework Convention for the Protection of the Marine Environment of the Caspian Sea. It is necessary to develop a plan for the prevention and response to oil and oil products spills. Oil and oil products spill prevention and response plans are being developed for oil and oil products spills that are classified as emergencies. In accordance with the Resolution of the Government of the Russian Federation dated August 21, 2000, N 613 (in the edition of the Resolution of the Government of the Russian Federation dated 15.04.2002, N 240), depending

on the volume and area of oil and oil products spillage on the territory, in internal fresh water bodies, emergency situations of five categories (local, municipal, territorial, regional, federal) are distinguished depending on the volume and area of spillage. Depending on the volume of oil and oil products spill at sea, there are emergencies of three categories (local, regional and federal) - depending on the volume of oil or oil products spill. According to the Decree of the Government of the Russian Federation of 10.04.2007 № 219 "On approval of the Regulations on the implementation of state monitoring of water bodies" of April 10, 2007 state monitoring is established for the purpose of timely identification and forecasting of negative impact of water, as well as the development of negative processes affecting water quality in water bodies and their condition, development and implementation of measures to prevent negative consequences of these processes. This type of observations includes monitoring of surface water bodies taking into account the data of monitoring carried out in the field of hydrometeorology and related fields; monitoring of the state of bottom and banks of water bodies, as well as the state of water protection zones; groundwater monitoring taking into account the data of state monitoring of subsurface conditions; observations of water management systems, including hydraulic structures, as well as the volume of water at water consumption and discharge, including waste water, into water bodies. In addition to the above, the key by-laws serving the cause of environmental protection in the Caspian region include the Plan for the Comprehensive Incentives for the Development of Hydrocarbon Fields on the Continental Shelf of the Russian Federation and in the Russian Part (Russian Sector) of the Caspian Sea bottom, Order of the Federal Security Service of Russia "On approval of Administrative Regulations of the Federal Security Service of the Russian Federation on performance of the state function on realization of the state control in sphere of protection of marine biological resources"(Order of federal security service of the Russian Federation 2020) and several other legislative acts. The law «On production sharing agreements» affects the Caspian Sea to the extent that in relations between Russia and Kazakhstan, the issue of joint development of the Khvalynskoye field by both countries. Also, the adoption of additional measures aimed at protecting the environment by the Government of the Russian Federation, in accordance with the provisions of Article 17 of the Law is one of the exceptions to the stabilization clause for the investors. The environmental protection of the region issues seem to be implemented in the agreement being developed on the basis of the provisions of the said Law, and therefore its scope cannot be excluded from the interstate and integrated environmental protection system of the Caspian Sea considered by the author. In addition to these legal acts, the implementation of the international legal acts provisions is also facilitated by acts of the tax legislation of the Russian Federation. Separately, the environmental function of tax payments should be noted. So, the Caspian Sea is assigned a special coefficient of environmental significance, which is taken into account when determining the amount of payment for negative impact. It seems that tax legislation can be a fairly effective tool for protecting the environment, including in the Caspian region, since high rates of relevant payments provide the undoubted economic interest of the subject of economic and other economic activities in the need to ensure the environmental situation in the region at the proper level. The Tax Code of the Russian Federation also performs another function - for example, in Article 147, as in a number of other articles, the following wording is contained: "the goods are located on the continental shelf of the Russian Federation and (or) in the exclusive economic zone of the Russian Federation or in the Russian part (Russian sector) of the bottom of the Caspian Sea". Thus, the legislator unambiguously emphasizes the special status of the Caspian water area, different from the legal relations developing on the continental shelf and in the exclusive economic zone of the Russian Federation. It seems that the difference in these similar phenomena in terms of determining the status of the Caspian Sea by the Convention of 2018 can again become the subject of lively scientific discussions, however, in this work, the relevant legal acts, such as the Federal Laws «On the Continental Shelf of the Russian Federation» and «On the Exclusive Economic Zone» are not included by the author in the scope of this study.

Responsibility for pollution of river runoffs flowing into the Caspian Sea

The Convention on the Legal Status of the Caspian Sea of 2018 established the legal status of the Caspian Sea as a lake. At the same time, for environmental protection purposes, the Caspian Sea should be considered as a basin. The principle of basin management of the Caspian Sea resources has already been consolidated in a number of previous agreements of the Caspian states (e.g. the 1996 Agreement between the Government of the Russian Federation and the Government of the Islamic Republic of Iran on Cooperation in the Field of Fisheries) and is reflected in the documents of the UN Development Program. The principle of basin-based resource management implies that environmental protection law should establish liability for damage from various sources of pollution

- even if they are physically associated with other natural objects (atmosphere over the Caspian Sea, runoff of inflowing rivers, groundwater, etc.) Among such sources of pollution, runoff from rivers, including industrial runoff, is the most dangerous, and the question of establishing liability for it is the most pressing (Tagieva 2012). Article 20 (e) of the Tehran Convention specifically points to the need for further development of safe methods of river runoff regulation, and paragraph 8 of the same article states that it is necessary to develop safe methods of river runoff regulation. Paragraph (f) of the same article provides that States should join efforts to develop common methods for assessing damage caused by pollution. Rivers, lakes, seas and other water bodies can often cross the borders of a state and be located in the territory of two or more adjacent states. The application of the described principle of basin management, as well as the involvement of other participants in its use, provides an opportunity to fully study the natural characteristics of water bodies and to effectively manage them, at the same time contributing to better coordination of actions between different states and their key agencies in this area. The national legislation of the Caspian states reflects this principle as one of the main ones. Thus, article 16 of the Water Code of 26 December 1996 indicates basin management as one of the key principles in the use and protection of water resources. The Water Code of 9 July 2003 includes a requirement to implement the described principle in the country. Article 34 of the Code calls the principle of basin management one of the key principles in the field of water resources management; moreover, article 43 of the Code establishes the establishment of so-called basin councils, which act as advisory bodies for the relevant basin. Further the author considers the legal norms of the national legislation of the Russian Federation with a view to implementing the principle of basin management of natural resources applicable to the Caspian Sea. Article 5 of the Water Code of the Russian Federation No. 74-FZ of 03.06.2006 includes "seas or their separate parts" as well as "water bodies (lakes, ponds, watered quarries, reservoirs)" as a part of surface water bodies, which allows to judge about applicability of the corresponding norms to the investigated sphere. Individual provisions of Chapter 6 of the Code are devoted to the protection of the environment of water bodies. Thus, in particular, according to Article 56, the following is prohibited: dumping into water bodies and burial in them of production and consumption wastes, including decommissioned ships and other floating facilities (their parts and mechanisms); burial of nuclear materials, radioactive substances in water bodies; dumping into water bodies of waste water with content of radioactive substances, pesticides, agrochemicals and other substances and compounds hazardous to human health exceeding the standards of admissible impact on water bodies, etc. In order to avoid repetition of the above provisions, we shall only note that the Code establishes special water protection zones and coastal protection strips in order to protect the natural environment of water bodies, as well as contains references to the above-mentioned acts, in particular, on issues related to prevention of environmental disasters. It seems that, although environmental protection issues are not the intended purpose of the Code, its provisions are indisputably necessary for the creation of the integrated system of environmental protection of the Caspian Sea region prescribed by the Framework Convention. The issue of applicability of the Federal Law "On Subsoil" to the legal relations considered by the author is similar to the issue of the Federal Law "On Inland Sea Waters, Territorial Sea and Contiguous Zone of the Russian Federation" considered earlier. It appears that, based on the assumptions made earlier, the wording on the inclusion of "inland waters, territorial sea and continental shelf of the Russian Federation" in the subsoil areas of federal significance, as set out in Article 2.1 of the Act, determines the inclusion of this act in the set of legislative acts ensuring environmental protection of the Caspian region. Thus, Article 23 provides for the need to prevent "the disposal of production and consumption wastes on the catchment areas of underground water bodies and in places where groundwater is located, which are used for drinking water supply or technological water supply of industrial or agricultural facilities or reservation of which is made as sources of drinking water supply". According to the Decree of the Government of the Russian Federation "On approval of the Regulations on state monitoring of aquatic biological resources and application of its data" dated December 24, 2008 N 994, the monitoring is a system of observations of distribution, quantity, quality and reproduction of aquatic bio-resources, which are objects of fishery, as well as their habitat; fishery and conservation of aquatic bio-resources, which are carried out using space facilities and information technologies in accordance with the following requirements. Legislation on criminal and administrative-legal violations also constitutes an important part of the system of legal protection of the environment, as it often brings a necessary element of fear of applying administrative and criminal measures to the violator (Suleymanova 2016). Thus, Chapter 8 of the Code of Administrative Offences of the Russian Federation (The Code of the Russian Federation on Administrative Offences 2001) is dedicated to administrative violations in the field of environmental protection and natural

resources management. The following should be singled out: violation of legislation on environmental expertise (Article 8.4 of the Code of Administrative Offences of the Russian Federation), concealment or distortion of environmental information (Article 8.5 of the Code of Administrative Offences of the Russian Federation), violation of requirements for protection of subsoil and hydro-mineral resources (Article 8.9 of the Code of Administrative Offences of the Russian Federation), violation of rules for protection of water objects (Article 8.13 of the Code of Administrative Offences of the Russian Federation), violation of water use rules (Article 8.14 of the Code of Administrative Offences of the Russian Federation), violation of rules for operation of water management or water protection facilities and devices (Article 8.15 of the Code of Administrative Offences of the Russian Federation), etc. It should be noted that the norms of the Russian legislation on administrative violations ensure implementation of most of the areas specified in sections III and IV of the Framework Convention, which makes it possible to consider them an important part of the complex system of environmental protection in the Caspian region. Thus, in the judicial practice of Russian courts there are cases of bringing to responsibility for unauthorized discharge of sewage (municipal) wastes without appropriate treatment on the terrain in the Caspian Sea water protection zone under Article 8.41 of the Code of Administrative Offences of the Russian Federation, for violation of subsurface legislation that may lead to contamination of groundwater and the Caspian Sea, prosecution under Article 8.19 of the Code of Administrative Offences of the Russian Federation for unauthorized (without appropriate permission) burial (dumping) of other materials (bottom sediments) in the Caspian Sea, etc. Ruling of the Fifteenth Arbitration Court of Appeal of 01.12.2009 № 15AP-8114/2009 in case № A53-12787/2009 to leave the decision of the court unchanged. Ruling of the Arbitration Court of the Rostov region on 29.07.2009 in case № A53-12787/2009 was left in force the decision of the Department of the Federal Service for Supervision of Natural Resources in the Southern Federal District in the case of an administrative offense of the Federal State Unitary Enterprise "Rosmorport". The enterprise arbitrarily, without a corresponding permit, buried (dumped) other materials (bottom sediments) from the "Bystraya" shaland and from the "Volga" dredger through refuellers into the Caspian Sea. The company was the water user of the water body where the dredging was carried out, and therefore, it is the company that should be held administratively liable for violation of the rules for dredging of the water body provided for its use. Chapter 26 of the Criminal Code of the Russian Federation is devoted to environmental crimes (Federal Law 2001). The composition of our interest includes the following: water pollution (article 250 of the Criminal Code), presumably pollution of the marine environment (article 252 of the Criminal Code), illegal extraction (catch) of aquatic biological resources (article 256 of the Criminal Code), violation of the rules of protection of aquatic biological resources (article 257 of the Criminal Code), illegal extraction and trafficking of especially valuable wild animals and aquatic biological resources belonging to species listed in the Red Book of the Russian Federation and (or) protected by international treaties of the Russian Federation (article 258.1 of the Criminal Code), and others. Among the measures of criminal liability for these offences are: fines, deprivation of the right to hold certain positions or engage in certain activities, compulsory work, correctional work, as well as deprivation of liberty. The Caspian Sea belongs by some researchers to the regions with a rather criminalized situation with respect to these environmental crimes (Maksimov 2015). The analysis of judicial practice, in turn, demonstrates the situation of absolute priority of bringing to justice in the relevant area within the framework of administrative and legal prosecution. Nevertheless, the norms of criminal law nature should be attributed to the significant guarantees of the Caspian Sea environment protection (Lang, 1999).

DISCUSSION

The analysis of the legal regulation of environmental protection in the Caspian region at the level of national legislation in the Russian Federation allows identifying a number of legal approaches and mechanisms that can be recommended for use in supplementing and developing regional international legal norms. Within the framework of the analysis, the author focuses on such primary unregulated sources of pollution as oil spills and pollution from river runoff.

In the sphere of legal regulation of the Caspian Sea environment protection from oil pollution, the author considers it necessary to develop an additional protocol to the Tehran Convention taking into account such legal approaches and mechanisms established by the Russian Federation legislation as:

1. Fixing the responsibilities of the operating organization, including the development of plans for the prevention and elimination of accidental oil spills (Federal Law of December 30, 2012 № 287-FZ "On Amendments to the

Federal Law" On the continental shelf of the Russian Federation and the Federal Law "On inland waters, territorial sea and contiguous zone of the Russian Federation", Art. 22);

2. Establishment of the classification of oil spills and emergency situations related to oil spills and the procedure for responding to them (Resolution No. 613 of the Government of the Russian Federation of 21 August 2000);

3. Establishment of the order of regular and unimpeded environmental control and monitoring (Decree of the Government of the Russian Federation of 10.04.2007 № 219 "On Approval of the Regulations on the implementation of state monitoring of water bodies" dated April 10, 2007 N 219, Order of the Federal Security Service of Russia "On Approval of the Administrative Regulations of the Federal Security Service of the Russian Federation on the implementation of the state function of state control in the field of protection of marine biological resources"). The executive function can be assigned to a specialized regional executive body, which can be established to implement the Tehran Convention provisions. The author considers it necessary to apply the principle of basin management in the further development of international legal regulation of environmental protection of the Caspian Sea. In particular, in order to prevent and eliminate pollution of river runoffs flowing into the Caspian Sea, it is necessary to bring the norms of responsibility from national legislation to the international level, as well as detail the provisions of the Convention for the Protection of the Marine Environment of the Caspian Sea in the framework of the "polluter pays" principle. These norms could be included in an additional protocol to the Tehran Convention.

1. Responsibility for the discharge of wastes, pollutants and other substances harmful to water bodies into rivers, the discharge of which flows into the Caspian Sea (provisions of the Federal Law "On Inland Sea Waters, Territorial Sea and the Contiguous Zone of the Russian Federation");

2. Regular monitoring of discharges into the rivers, the discharge of which flows into the Caspian Sea (provisions of the Decree of the Government of the Russian Federation of 10.04.2007 No 219 "On approval of the Regulations on the implementation of state monitoring of water bodies" of April 10, 2007, No 994 "On approval of the Regulations on the implementation of state monitoring of water biological resources and application of its data" of December 24, 2008).

Within the context of the prospects for harmonizing national and international legal norms of the Caspian Basin states, a further study of the problems of correlation between national legislation of other Caspian countries and regional international legal norms is needed. The author plans to analyze this issue in the course of further research. In particular, criminalization of such acts as pollution of surface waters and change of their natural properties, as well as acts causing harm to human health and mass death of animals (provisions of the Criminal Code of the Russian Federation, Art. 250 "Water Pollution") should be regarded as a direction for such harmonization.

CONCLUSION

The Caspian Sea is a unique water reservoir that needs special legal regulation for its environmental protection. At the level of national legislation in relation to the Caspian Sea, the regulators are Federal Laws, resolutions of the Government of the Russian Federation and regional regulatory acts. The Constitution of the Russian Federation establishes that principles and norms introduced within the treaties of the Russian Federation with other states are part of the national legal system. The 2003 Framework Convention for the Protection of the Marine Environment of the Caspian Sea, also called the Tehran Convention, is one of the key international legal acts in relation to the Caspian region. The provisions of the Tehran Convention generally describe the aspiration of the participating countries to prevent, reduce and control pollution of the Caspian Sea and are based on the "polluter pays" principle. Nevertheless, there are still gaps in these international legal norms that need to be filled. The domestic national legislation of the Caspian Sea states has a sufficient legislative base, the norms of which can be brought to the international level. One of the most important issues with regard to the legal regulation of the Caspian Sea protection is the issue of liability for oil spills, as well as liability for the pollution of river runoffs flowing into the Caspian Sea. The author considers it necessary to develop additional protocols to the Tehran Convention on these issues, which can be implemented on the basis of such legal mechanisms and approaches adopted at the level of the legislation of the Russian Federation, as the establishment of clear environmental responsibilities of the operating organization, the classification of emergency situations related to oil spills and the order of response to them, the definition of environmental control and monitoring, and the establishment of responsibility for river runoff pollution.

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همبستگی قواعد حقوق بین الملل و قواعد قانون ملی فدراسیون روسیه در خصوص حفاظت زیست محیطی از دریای خزر

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چکیده

تصویب کنوانسیون وضعیت حقوقی دریای خزر در سال ۲۰۱۸ از آنجا که وضعیت حقوقی شفاف را برای دریای خزر ایجاد می‌کند، از اهمیت زیادی برای حفاظت از محیط زیست برخوردار می‌باشد. در عین حال، مفاد کنوانسیون ۲۰۱۸ و کنوانسیون چارچوب حفاظت از محیط زیست دریای خزر ۲۰۰۳ (کنوانسیون تهران) مستلزم اضافه کردن برخی الحاقیه‌ها به ویژه در فرم پروتکل‌های اضافی به کنوانسیون تهران است. به علاوه، توسعه قواعد حقوقی بین المللی باید هماهنگی قوانین ملی قابل اجرا در کشورهای حاشیه دریای خزر را تسهیل کند. هدف این مطالعه بررسی رابطه بین قواعد و هنجارهای حقوقی بین المللی در مورد حفاظت از محیط زیست دریای خزر و قوانین ملی روسیه و امکان تکمیل و تقویت رژیم حقوقی بین المللی با قواعد داخلی بود. روش‌های تحلیل و ترکیب، روش‌های مقایسه تجربی، توصیف، تفسیر؛ حقوقی-جزمی و روش تفسیر قواعد حقوقی استفاده شد. این مطالعه نشان می‌دهد که در حالی که مفاد کنوانسیون تهران، پروتکل‌های آن و اقدامات قانونی فدراسیون روسیه به طور کلی با هم مطابقت دارد، قوانین ملی رویکردهای دقیق‌تری را برای حفاظت از محیط زیست منطقه خزر از برخی جنبه‌های خاص تعیین می‌کند. در نتیجه‌گیری کلی این مطالعه به این نتیجه رسید که قانون فدراسیون روسیه می‌تواند به پر کردن تعدادی از شکاف‌ها و خلاءها در مقررات قانونی بین المللی منطقه‌ای در مورد حفاظت از محیط زیست خزر کمک کند. به ویژه، این قانون، از نظر حفاظت حقوقی از خسارات ناشی از نشت نفت، و همچنین در زمینه کنترل و مدیریت رواناب رودخانه (در چارچوب رویکرد حوضه‌ای برای مدیریت منابع دریای خزر) از اهمیت زیادی برخوردار است.

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