

International Legal Regulation of Landscape Use: The Genesis of the Conceptual-Categorical Apparatus

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ABSTRACT

International legal protection of natural heritage, which includes landscape, is one of the highest priorities of various international organizations. The article examines the set of rules of the international law in the field of the legal protection of the landscape (primarily the UNESCO World Heritage Convention 1972 and The European Landscape Convention of the Council of Europe 2000) and the origin of the concept of the landscape in international law. The analysis of the scientific vision of the landscape identified various approaches to the definition of this term. The research reveals the ambiguity of the definition of the landscape in modern international law and a demand for a universal term, which is necessary to implement the concept of the international legal protection of the landscape. The paper outlines the features of the legal regulation of landscape protection in the national legal systems of European countries in various historical periods. It analyzes the development of international legal regulation of landscape protection since the beginning of the 20th century and specifies various ways of legal protection depending on landscape type. The author concludes that there is a special international legal regime for the protection of the landscapes, which are recognized as the objects of the common heritage of humankind and are applicable for the concept of intergenerational justice. This study can be continued in terms of human rights aspects of international cooperation in the field of landscape protection at the universal and regional international level.

Keywords: *Landscape, landscape protection in international law, world heritage, environmental law*

1. INTRODUCTION

In the era of globalization, current and practical doctrinal aspects that affect the entire world community are of great interest. For example, issues related to ecology, nature conservation and the natural heritage of mankind.

First of all, an analysis of the legal protection of natural heritage sites at the international level leads to an interpretation of the concept of "natural heritage" itself. The concept of natural heritage received a major boost in the second half of the 20th century under the auspices of the UNESCO organization [1].

The Convention Concerning the Protection of the World Cultural and Natural Heritage of November 16, 1972 (hereinafter - the UNESCO Convention) adopted at the XVII session of the General Conference of UNESCO should be considered the main document governing the status of natural heritage.

Article 2 of the UNESCO Convention defines "natural heritage" as: "natural features consisting of physical and biological formations or groups of such formations, which are of outstanding universal value from the aesthetic or scientific point of view; geological and physiographical formations and precisely delineated areas which constitute the habitat of threatened species of animals and plants of outstanding universal value from the point of view of science or conservation; natural sites or precisely

delineated natural areas of outstanding universal value from the point of view of science, conservation or natural beauty".

The Convention also imposes restrictions on economic activities carried out on such natural sites. It should be noted the document provides for the possibility of including various objects of nature in the list of natural and cultural heritage of. This category may include, in particular, unique and aesthetically valuable cultural landscapes that demonstrate harmonious relationships between man and nature, memorial natural areas, etc. The Convention indicates that natural heritage is the common heritage of all mankind and therefore must be multiplied and protected by all.

The USSR had acceded to the Convention in 1988. Based on the definition of the UNESCO Convention, it was proposed to introduce its own version of the term into national legislation. So, according to Art. 7 of the Federal Law "On Environmental Protection" dated January 10, 2002 (as amended on December 27, 2019) "natural heritage sites are natural sites, natural monuments, geological and physiographic formations and strictly limited areas, natural attractions that meet the criteria of outstanding universal value and defined by the Convention for the Protection of the World Cultural and Natural Heritage". Further, in the act we can find the concept of "World Heritage Site", which are UNESCO World Heritage.

In view of the above, it should be noted that the natural heritage is not only picturesque landscapes. This phenomenon can be considered as an object of the material world, which primarily requires legal protection and regulation at the local, national and international levels.

Today there is a separate and autonomous group of relations between states in the field of environmental protection and rational nature management. This is primarily due to the fact that individual states and the entire world community intend to preserve the human environment and ensure the rational, scientifically grounded use of its components.

Landscapes are one of the most important phenomena of the environment, therefore, the regulation of relations between states regarding their protection and use is inextricably linked with the international legal regulation of environmental protection.

However, measures aimed at the legal protection of landscapes are mainly implemented at the regional level. In addition, at the universal level, the general definition of "landscape", as well as measures for its protection as a whole, is not enshrined.

We can observe the differentiation between natural, cultural and manmade landscapes. Moreover, there are documents of great importance for the preservation of such cultural landscapes and cultural spaces. These include The European Landscape Convention, 2000, The Convention for the Safeguarding of the Intangible Cultural Heritage, 2003, "Man and the Biosphere (MAB) Programme" by the UNESCO, and the other international acts and agreements [2].

2. RESULTS

2.1. Development of landscape research

Now the concept of landscape has been transformed and its meaning is far from the original, which was mentioned in the writings of the monks of the Fulda monastery in Germany in the 9th century. When they translated from Latin "The Evangelical Harmony" of the theologian Tatian, the word "regio" (meaning the district) was replaced by the word "lantschaft" (in translation "the only land ordered according to the general plan, the form that corresponds to the content") [3].

The earliest realistic depictions of the landscape date back to Renaissance painting and emphasize the visual character and symbolic meanings. The identification of the landscape with the word "landscape" was later associated with the development of Dutch painting of the 16th - early 17th centuries, when there was a tendency to write real landscapes close to their topography and color scheme. So, the landscape expressed a visual manifestation of territorial identity.

Later, the landscape began to be considered as an administrative-territorial and administrative concept [4].

When a German researcher and the founder of botanical geography, Alexander von Humboldt (1769-1857) traveled through the jungle and plains of Spanish (currently Latin) America, he saw many landscapes and was one of the first who described landscapes in scientific works. However, in his works in German language, Humboldt did not use the word "landschaft" to describe what he saw. As he said, "the landscape is an embodiment of the general nature of a particular region" [5].

Gradually, the landscape became a fundamental concept in geography and was considered as a unique synthesis of the region's natural and cultural features. He was not only a natural unit, but also included a people with its customs and laws. To study the landscape scientists collected information from various studies, maps, literature, sketches and photographs of the area.

Methods were developed for a detailed description of landscape elements and for the creation of its typology. Various national schools have developed focused on the natural or cultural landscape, its history and the region where it was located.

Russian geographer of the early twentieth century. L. S. Berg described the landscape as "a harmonious combination of natural components (relief, climate, soil, vegetation) defined by natural boundaries", and also considered it as a "geographical individual" and the main object of geographical research [6].

The landscape school of Moscow University originates in the late 1940s. Its founder, N.A. Solntsev addressed at the II All-Union Geographical Congress with a report on natural-geographical landscapes formulated the main principles of landscape science and the main tasks of its development. He considered the landscape not as a territory with a certain interconnection of the components of nature or as a type of relief, landscape, but as a genetically homogeneous territory where takes place the regular and typical repetition of the same interconnected and interdependent combinations of the geological structure, relief forms, surface and ground waters, microclimate, soil differences, phyto- and zoonoses [7].

Returning to the historical component of the landscape, we would like to note that at the beginning of the 20th century the activities of European countries in protecting the landscape were based on the restrictive legal concept of landscape, which concerns only its objective aspects. So, during this time, the authorities of most European countries actually wear of the opinion that only areas with outstanding cultural, natural or, more generally, aesthetic features can be considered as "landscape" and therefore have the right to special legal protection.

In accordance with this point of view, landscape areas used a legal protection system designed to preserve their exceptional quality while areas lacking high landscape value did not receive any legal protection at all. They were regarded as non-landscape areas. Since such areas did not have any landscape features, they were considered to be of no interest and therefore legal protection.

This concept can be described as elitist and it is fully reflected in the definitions of landscape adopted by the legislation of many European countries, some of them are

still valid today. For example, in paragraphs b, c, part 2, art. 66 of the Constitution of the Portuguese Republic of 1976, the need is noted *“to improve and promote the improvement of the territory, taking into account the national distribution of productive forces, balanced socio-economic development and conservation of landscapes; to create and ensure the development of nature reserves and natural parks, recreation parks, as well as classify and protect natural attractions in order to guarantee the preservation of nature and cultural values of historical and artistic interest”*.

At the end of the 20th century, scientists were focused on various approaches to landscape research. Environmentalists have focused on the relationship between land use and environmental processes. Geographers and archaeologists have focused on the genesis of the landscape and its significance as an object of cultural heritage. Each of these approaches used its own definition, concept, and methods, but complete interdisciplinary integration was still lacking [8].

Nowadays “landscape” has already become a term that is found in various fields of knowledge. For example, there are: geographical, manmade, natural, agricultural, cultural, agricultural, urban landscape, political, etc. Therefore, the word “landscape” has several meanings and depending on what the focus is on, different perspectives of research and action are possible. In addition, various linguistic interpretations and translations have led to great confusion. The study of the exact meaning of the term and its scientific definition dominated the early stage of the study [9].

2.2. Landscapes and international law

A special place in the doctrine of international law is occupied by conferences on terminological issues. According to Y.M. Kolosov, *“an international conference is a meeting of official representatives speaking on behalf of states, which is convened for a limited time to achieve certain goals and is an important means of multilateral diplomacy, as well as the codification and progressive development of international law”* [10].

The first international environmental conference, held on November 4-6, 1913 in Bern, highlighted problems that are relevant to our time, for example, protecting the environment and development, as well as preserving landscapes. It was the period when the beginning of cooperation between countries in the field of nature conservation was laid. This period lasted from 1913 until 1961. The main result of the Bern conference was the idea of the need for international cooperation to protect the environment at the interstate level. However, as noted by researchers, today this conference does not pay enough attention to the development of international environmental law [11].

Already in the second half of the 20th century, the protection of landscapes was enshrined in the National Normative Legal Acts of most Western Europe countries, which meant:

- 1) protection of national parks or reserves;
- 2) protection of historical monuments that emphasize the aesthetics or beauty of the landscape;
- 3) control over land use planning in both rural and urban settings.

Since the mid-90s of the XX century, different international organizations have shown significant activity in the field of landscape protection. For example, under the auspices of the Council of Europe, the United Nations Economic Commission for Europe (UN / ECE) and the United Nations Environment Program (UNEP) is gaining importance work covering the whole of Europe - Pan-Europe (Western Europe + Central and Eastern Europe + countries GIS - Geographic Information System). The structure of such cooperation is coordinated within the framework of the "Environment for Europe" program.

The Environment for Europe process is a unique partnership between Member States in the European Region, United Nations organizations represented in the region, as well as other intergovernmental organizations, regional and subregional environmental centers, non-governmental organizations and other major groups.

The “Environment for Europe” process began at the first Ministerial Conference in Dobris in June 1991. In 1993, Switzerland hosted the second pan-European conference “Environment for Europe”. The main outcome of the conference was the “Environmental Action Program for Central and Eastern Europe”. It was emphasized at the conference that the most urgent environmental problems can be solved only if the most effective ways of addressing them are identified from the outset.

The adoption of the program made it possible to hope that multilateral and bilateral assistance would be involved in solving the most pressing problems of environmental protection.

The “Environment for Europe” process continued at the third ministerial conference in 1995 in Bulgaria. There, for the first time, the legal designation of the term “landscape” was enshrined at the international level in the framework of the Pan-European Biological and Landscape Diversity Strategy. According to its provisions, “landscape diversity” is a *“formal expression of the numerous relationships existing between a particular object or society and topographic determinants of the territory, the appearance of which is the result of natural and human factors and a combination of both of them (draft recommendations of the Council of Europe on the integrated protection of cultural landscape areas within the framework of landscape policy)”*.

Landscapes are regarded as the fundamental ground of the environment, a key element of the well-being of man and society [12]. Therefore, the solution to the problem of preserving the landscape as a territorial element of a sustainable, environmentally balanced development of the biosphere has become one of the priority areas for international cooperation in Europe and is becoming increasingly relevant throughout the world. However, the multivalence of the concept of landscape complicates international cooperation and makes it difficult to

implement the concept of legal protection of the landscape at a universal level.

In October 2000, the Council of Europe adopted the Landscape Convention, which aims to preserve and plan the landscapes of Europe. Moreover, the states that ratified the European Landscape Convention, 2000 must consolidate the concept of landscape at the national level, formulate and implement a national landscape policy, establish mechanisms to ensure participation of the public, local and regional authorities and other structures in the formation and implementation of landscape policy principles [13]. The Convention came into force on March 1, 2004 and over 20 years it has been ratified by 40 states (7 member states of the Council of Europe have not ratified: Albania, Armenia, Germany, Liechtenstein, Malta, Monaco, Russian Federation).

The Landscape Convention in Article 1 defines "landscape" as *"a part of a territory, in the sense that it is perceived as such by a population whose distinctive features are the result of the action or interaction of natural and / or human factors"*.

Today, the European Landscape Convention is in fact the main international treaty on the sustainable development of landscapes and deals exclusively with the protection, management and improvement of the European landscape. Indeed, there are also several international legal documents directly or indirectly relating to the subject of landscape. However, none of them has a specific and complete relationship to landscapes, despite their invaluable contribution to the protection of the natural and cultural heritage and the many threats to which they are exposed.

The landscape convention aimed to fill this gap. Thus, it formally differs from the UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage.

These two conventions affect different aspects, as well as the organizations under whose auspices they were prepared. One document is regional, the other universal. Of course, the Council of Europe convention can be considered as complementary to the UNESCO convention (as indicated in particular in the preamble), but with regard to the subject matter, it covers all landscapes, even those that do not have outstanding universal value and do not belong to historical monuments, unlike UNESCO conventions.

Moreover, the purpose of European Landscape Convention is not to list landscapes of exceptional universal value, but to establish the rules of protection, management and planning for all landscapes.

Thus, each convention has its own distinctive features. The explanatory report mentions that in order to coordinate actions under the two conventions, the issue of scientific cooperation between the UNESCO World Heritage Committee and the expert committees mentioned in Art. 10 of the European Landscape Convention, in accordance with Article 13.7 of the UNESCO Convention and as proposed in Art. 7 of the same document.

The Landscape Convention is undoubtedly relevant and promising; the sphere of its geopolitical influence will

have to expand significantly in the near future. That is why at the present time the issue of signing the convention by Russia is especially urgent. However, this can lead to significant changes in the management of territorial development, since the landscape would be considered as an object of legal regulation, an object of implementation of managerial decisions, an object of coordination and consolidation of interests of various government departments, an object of national heritage.

The European Landscape Convention is based on the principles of conservation and reproduction in natural and cultural landscapes of landscape planning. It also aims at solving the following tasks: integration of the landscape approach into international policy, conservation, management and planning of landscapes; implementation of spatial planning within the framework of integrated territorial development.

In general, the significance of the Landscape Convention is rather controversial due to its declarative nature. But the fact of officially recognizing the necessity of landscape protection at the state and international level, as well as drawing attention to this problem, is important from a moral point of view.

Landscapes cannot be considered as a single space when they are located in the territory and under the sovereignty of one state. This opinion is based on the premise that traditionally the main subjects of international law are states that have sovereignty and that there is a complete relationship between territory and sovereignty [14].

The study will directly address the problem of the relationship between man and nature in the context of sustainable development and the implementation of The Sustainable Development Goals (SDGs) [15]. Protecting the landscape also contributes to the achievement of the SDGs, affecting climate change, biodiversity conservation, poverty reduction, etc.

SDG 15 aimed at improving the management of forests, combating desertification, reversing land degradation and preserving biodiversity illustrates how the SDGs intend to integrate environmental, economic and social issues.

Landscape restoration will be a key element in achieving SDG 15 with one-third of all land moderately or severely degraded. The World Resources Institute estimates there are 2 billion hectares of deforested and degraded lands with potential for landscape restoration: 20 per cent through forest restoration and 80 per cent through 'mosaic' restoration, which involves integrating forests with smallholder agriculture, agroforestry and other land uses.

To achieve the SDGs, relevant indicators must be developed, and this process is not easy. However, there is a fair amount of evidence on landscape monitoring and assessment. Policy makers, academics and practitioners should build on existing data and strive to coordinate efforts to develop additional indicators to protect the landscape and progress towards the SDGs.

Landscape protection - as an element of sustainable development - should be seen as a process, not a project. Ultimately, success will depend more on the process itself than on the initial goal [16].

3. CONCLUSION

First of all, some elements of the cultural and natural heritage are considered not as private or public property, but as the common heritage of mankind. This kind of landscapes are part of the cultural and natural heritage of humanity therefore placed limits on the state.

Secondly, the new landscape vision embodied in the European Landscape Convention connects the concept with human rights (Article 5a). Human rights, namely those related to culture, health and freedom, as well as procedural rights, such as the right to access information, participate in decision-making processes and access to justice, are also related to landscape protection. Human rights also play a role in protecting the landscape with regard to the rights of minorities and indigenous peoples, emphasizing the symbiotic relationship between them for many centuries.

Thirdly, there are transboundary landscapes requiring the establishment of interstate cooperation.

Fourthly and finally, the concept of justice between generations is also applicable to landscapes, since they not only contain traces of past civilizations, but they are also the living space of current generations and represent the state of the earth that will be passed on to future generations.

ACKNOWLEDGMENT

The publication has been prepared with the support of the “RUDN University Program 5-100”.

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