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THE ACTIVITY OF INTERNATIONAL NON-GOVERNMENTAL ORGANIZATIONS AS A PREMISE FOR THE DEVELOPMENT OF LAKE BAIKAL LEGAL PROTECTION*

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The reported study aims to analyze the instruments adopted by international environmental non-governmental organizations in the sphere of protection and sustainable use of water resources. The structure of the World Water Council and its principal outcomes are reviewed. The practice of holding the World Water Forum is analyzed due to its rare coverage in Russian legal literature. Primary attention is paid to the outcomes of the Forum in the form of declarations. The activities of the International Water Resources Association are reviewed, particularly the outcomes of the 16th World Water Congress. The above mentioned international experience is extrapolated to the problems of Baikal's legal protection. The documents adopted by the mentioned forums are proposed to be used as an inspiration and model for the legislative improvements in Baikal's legal regime. For instance, the Ministerial Declaration "An urgent call for decisive action on water", adopted at the 8th World Water Forum stresses the public attention on the issues of climate change and encourages the states to take into account this global problem in national water strategies. However, due to various reasons, the climate change issues are completely out of the legal discourse of Baikal protection. The Sustainability Declaration of the Forum has a significant potential for legislative and political improvements. Its 8th recommendation calls for business to value and mainstream water into its strategies, materiality and decision making process and share good practices in water management. Baikal's business community's commitment to the goals of sustainable development (in the form of Declaration) would be a useful politico-legal instrument within the lake's legal regime. The outcomes of the 16th World Water Council in Cancun hosted by International Water Resources Association may also be a premise for the improvement of environmental policy and legislation in Baikal region. Among the most fruitful ideas of the forum is the acknowledgment of the pivotal role of scientific expertise in the environmental policy-making. The management system of Lake Baikal clearly needs an expert council, exercising advisory powers in respect to all the regulatory instruments concerning the ecosystem of the lake.

Keywords: soft law, World Water Forum, World Water Congress, International Environmental Law, International Water Resources Association, World Water Council.

0. The environmental problems of Lake Baikal have been in the focus of public interest since the Soviet times, when passionate scientists and environmental activists raised awareness about the risks of the Baikal Pulp and Paper Mill's operations. These problems gained international attention in the nineties. The inscription of the lake on the World Heritage List drew international attention to the environmental problems of Baikal ecosystem. The international legal regimes set by various treaties have already provided significant results in

mitigating serious threats to the lake and still have considerable unused potential [3]. At the same time the international normative system is not limited to the rules of "hard" international law, incorporated in international treaties. The soft law rules found in various areas of international cooperation are of great importance in the modern world.

A considerable part of such rules exists in the field of protection and sustainable use of water resources. The present article addresses the activities of the World Water Council (especially in part of hosting the World Water Forum) and the International Water Resources Association and the ways these outcomes may be used for the improvement

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of the environmental legislation, concerning Lake Baikal.

1. A variety of environmental international non-governmental organizations (hereinafter – INGO) devoted to water related problems operate in the world to date. The first renowned INGO to be studied is the World Water Council. The Council was incorporated as a legal entity in 1996 in Marseille (France) although the idea of an umbrella organization that would become an international discussion platform had existed long before that time. The principal goal of the Council, enshrined in its Charter, is to serve as a key platform at international level for raising the awareness about water issues and seeking means of improving water management¹. The Council is a membership based organization with five types of entities eligible being a member: (nternational organizations; governments and government promoted organizations; commercial organizations; civil society organizations; personal and academic organization². An up-to-date list of members includes more than 300 entities. The strategic vision of the Council highlights three principal areas of its activity: a) generating political influence and mobilizing political action; b) deepening knowledge and exchanges around critical thematic issues, carefully considering social, environmental and economic dimensions of sustainability; c) establishing the World Water Forum platform to catalyze ongoing collective action for work³. The World Water Forum is an event of global importance aimed at involving the public of different countries to solving the problems of protection and sustainable use of water resources. Therefore the outcomes of the Forum may become an object of the analysis with a view to extrapolating them on the legislation concerning Lake Baikal.

The World Water Forum has been held every three years since 1997. The first took place in Marrakesh, the last (at the time this article is being written) was held in Brasilia in 2018. According to the forum organizers, more than 10600 participants from 172 countries registered to participate in the forum. It was visited by 12 heads of state, 56 ministers and more than 100 delegations. The outcomes of the forum were reflected in various documents including the Ministerial Declaration “Urgent call for decisive action on water” (here-

inafter – the Ministerial Declaration). Documents of this nature are distinguished by a specific style and form of presentation, because states have to seek the compromise between the need to solve environmental problems, on the one hand, and to be cautious in undertaking commitments under international law – on the other. However this feature does not devalue the importance of the ideas expressed in this type of instruments. Each recognition of acute environmental problems adds a strand of tension to the contemporary socio-political discourse and contributes to the accumulation of public awareness for the protection of environment.

Among the most significant features of the analyzed declaration is, in our opinion, the idea expressed in the title itself and the recognition in its preamble the need for all countries to take urgent actions to tackle water and sanitation-related challenges. It is noteworthy that such a call is addressed to all countries because, despite the significant differences in the availability of freshwater and the quality of sanitation services (involving the proper organization of water use activities in the field of epidemiological well-being of the population), the need for water links all mankind and requires a common solution.

The sixteenth paragraph of the Ministerial Declaration encourages states to establish or strengthen national integrated water resources management policies and plans, including strategies for adaptation to climate change, with a view to achieving universal and equitable access to safe and affordable drinking water, to adequate and equitable sanitation and to reducing water pollution, and to protect and restore water related ecosystems, in line with sustainable development goal (SDG) 6. In the context of the protection of the Baikal ecosystem, this provision of the ministerial declaration, in our view, has a special role in relation to climate change. Unfortunately, climate change issues are not sufficiently represented in legal studies on the protection of Lake Baikal ecosystem, although natural studies and international environmental organizations constantly raise this problem [8; 1, p. 23-24; 4].

The provision of paragraph 20 of the Ministerial Declaration is equally important. It encourages the transboundary cooperation based on win-win solutions in accordance with applicable international law. These issues are of particular importance with respect to Russian-Mongolian relations regarding protection and sustainable use of Selenga’s water resources. The Selenga river is the main tributary

¹ URL: https://www.worldwatercouncil.org/sites/default/files/2019-01/Constitution_By-Laws_2019_2021_EN.pdf (date of access: 02.04.2021).

² URL: https://www.worldwatercouncil.org/sites/default/files/Membership_WWC_Membership_Guidelines_2020.pdf (date of access: 02.04.2021).

³ URL: https://www.worldwatercouncil.org/sites/default/files/Official_docs/WWC-Strategy_2019-21_WEB_0.pdf (date of access: 02.04.2021).

to Lake Baikal, therefore the level of the lake is substantially determined by the hydrological regime of the river. Since the beginning of the 21st century the Mongolian government has declared plans for building the hydroelectric plants and drainage systems on the Selenga River and its tributaries [6, p. 116-117]. The joint effort of Russian authorities, World Heritage Committee, scientists and environmental activists resulted in extended consultations on the draft terms of reference for regional environmental assessment of the described industrial projects. This acute problem reveals the importance of international cooperation in the spirit of mutual understanding and respect.

Similar issues are raised in another general document adopted at the Eighth World Water Forum – the Declaration on Sustainability. Despite all the deficiencies of the notion of sustainable development [6, p. 250-251], it is the only concept of civilization's development agreed upon by the majority of national governments. Therefore the issues of sustainable use of water resources are considered at any high level forum. The Declaration of Sustainability enshrines the recommendations for achieving the sustainable development goals (especially SDG-6 “Ensure access to water and sanitation for all”). The Declaration sets 12 recommendations as the conditions of achieving the sustainable development goals. Besides the above mentioned climate change issues (recommendation № 4) we find it necessary to point out two more provisions of the described document. Recommendation № 8 is addressed to the business community and encourages it to value and mainstream water into its strategies, materiality and decision making process and share good practices in water management¹. Today Baikal and its surrounding areas suffer the expansion of business project of various types. Federal and regional business structures are increasing their business presence in the immediate vicinity of the lake. Clear and scientifically based legislative provisions should play a central role in regulating these activities. At the same time the role of soft law instruments should not be underestimated. They do not impose legally binding obligations, but link their signatories with common ideas and approaches to environmental protection. Keeping in mind these considerations, we propose the adoption of the declaration of responsible entrepreneurship in Baikal region. This document may

¹ The outcomes of the conference include the «Brazilian Business Commitment to Water Security» URL: <http://www.worldwaterforum8.org/pt-br/file/3230/download?token=kKkOQLg> (date of access: 04.04.2021). We do not cover this document in the present article due to its purely national character.

reflect the commitment of the business community to the goals of sustainable development and the priority of preserving the lake for future generations. The Governor of Irkutsk Region has declared 2021 the year of Baikal, and the adoption of the proposed declaration this year could enhance the credibility of such an instrument and contribute to the commitment of the business community to its objectives.


Ninth recommendation draws attention to the non-economic values of water, emphasizing the cultural, medical, traditional and social heritage associated with the aquatic environment and the role of education system in transmitting this attitude to the young generation. Indeed, the issues of everyday water use often overshadow the enduring human value of water and its spiritual importance for humanity. Ninth recommendation is intrinsically linked to another soft law instrument adopted at the Eight World Water Forum: “Water and spirituality” declaration, drafted on the basis of the meeting of religious and spiritual leaders. This declaratory document acknowledges the symbolic importance of water with a view to deepen the environmental protection. Lake Baikal has always been seen as a sacred place for the local communities and indigenous people. “In fact, the whole population of the Trans-Baikal region worshiped the water of Lake Baikal. Even now, the Buryats practice special rituals to thank the spirits of mountains and lakes” [2, p. 254]. As some researches suggest there is a shared vision of the peoples of Baikal region on the issue of nature protection: Baikal environmental ethic [5]. Unfortunately this spiritual significance of the lake is often overshadowed by regular tourism activities. One of the ways of considering and preserving this value is the integration of the spiritual and immaterial value of Lake Baikal in the federal law “On the protection of Lake Baikal”. The article five of the law lists the principles of Baikal's protection, and they do have strong environmental effect, setting the priority of the nature-friendly economic activities. At the same time we should consider if all the types of tourism, business and human behavior are consistent with intangible value of the lake.

The outcomes of the Eight Water Forum are not limited to the documents discussed above, some of them, such as Brasilia declaration of judges on water justice definitely require a specific study given the crucial importance of law enforcement in the field of environmental protection.

The International Water Resources Association was founded in 1971 in the United States. The As-

sociation defines itself as an international network of multidisciplinary experts on water resources and has influenced the environmental protection policies around the world. The key forum hosted by IWRA is a World Water Congress held every three years. Sixteenth Congress took place at Cancun (Mexico) and was attended by more than 1100 participants from over than 68 countries. The central document adopted by the Congress is a Declaration “A Call for Action to Bridge Science and Water Policy-Making for Sustainable Development”. As the title of the Declaration suggests, it focuses on the issues of integrating scientific knowledge into decision making process. The principal idea of applying multidisciplinary knowledge to management policies is developed in several specific provisions. Of particular interest are the recommendations addressed to scientists not to stand aside of the needs of civil society and requests of policy makers to conduct applied research. On the other hand, policy makers are urged to “recognize science as a major contributor to evidence-based policies and the public debate”. All these ideas are of special importance for the development of environmental policies for Lake Baikal. Previous decades clearly indicated the lack of sound and non-biased scientific expertise on environmental issues. Among most recent examples is the problem of establishing the water protection zone for the lake. In 2018 the Russian Government issued and order, radically reducing the limits of the water-protection zone, thus weakening the protection regime for the relevant environment. Although the proponents of this reduction referred to the expert opinion, notorious Russian scientists and research institutes called for the revision of the borders based on scientifically based approaches¹. The described problem is only one illustration of the systemic problem: lack of institutional premises for the comprehensive scientific expertise to be taken into account in decision-making processes. Therefore, the integration of science and environmental management in Baikal region is an urgent need. And the borders of water protection zone is not the only issue to be considered by scientists. Adjustments to the list of prohibited economic activities, the extent of fisheries protection zone, limits of water fluctuations and many other issues require the opinion of the expert community. One of the possible solutions of the described problem could be the establishment of an advisory board, com-

prising leading scientists in various field of knowledge. This body could be granted the authority to review draft decisions and issue public report to be considered by the decision-making body. Today the central expert body is the Scientific Council of the Siberian Branch of Russian Academy of Sciences on the problems of Lake Baikal. But its expert opinions are not compulsory for consideration by decision-making bodies. The strengthening of the legal status of scientific expertise by enshrining it in the Federal Law “On the protection of Lake Baikal” will allow for an increase of quality of decision making on various issues of Baikal’s ecosystem protection,

The present study revealed the ways acts of soft environmental law may serve an inspiration model for the legislative and managerial improvements at Lake Baikal. International forums described in the current article gather a wide range of highly qualified experts in different fields of knowledge, as well as policy makers and spiritual leaders. The synergistic effect of such meetings helps indicating the best practices of dealing with typical problems every county encounters with respect to water protection and management issues. 

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¹ Irkutsk scientists demand to repeal new borders of the water protection zone of Lake Baikal. URL: <https://regnum.ru/news/2400996.html> (date of access: 02.04.2021). (in Russian)

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Деятельность неправительственных международных организаций как предпосылка совершенствования законодательства об охране озера Байкал

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В рамках построения концепции международно-правовой охраны оз. Байкал проводится анализ актов неправительственных международных организаций по вопросам охраны и устойчивого использования водных ресурсов. Рассматривается структура Всемирного водного совета и основные результаты его деятельности. Освещается редко исследуемая в юридической литературе практика проведения Всемирного водного форума, показываются его результаты в виде принятых деклараций. Уделяется внимание деятельности Международной ассоциации водных ресурсов и результатам 16 Всемирного водного конгресса, прошедшего в г. Канкун (Мексика). Анализируемый международный опыт экстраполируется на проблематику охраны экосистемы оз. Байкал.

Ключевые слова: нормы мягкого права, Всемирный водный форум, международные неправительственные организации, международное экологическое право.