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LEGAL PROTECTION OF GERMANY'S NATIONAL INTERESTS IN THE FIELD OF ENVIRONMENTAL SECURITY: THE EVOLUTION OF APPROACHES

It is widely recognised that climate change is having malign effects on human life. Climate change is a global issue, but the political action necessary to address it is inevitably local and national as well as international. The security dilemma is one of the most important theoretical ideas in international relations. The content of security policy is evolving because "security" is a social structure, the content and structure of which is constantly changing depending on the transformation of existing and the emergence of new threats and challenges (climate change, destruction of the ozone layer, desertification, fresh water shortages, etc. – the list of current environmental problems in the XXI century is increasingly supplemented by new threats.

Scholars, policy-makers, and activists have proposed broadening use of the concept security beyond its traditional military focus to take into account environmental threats that seriously jeopardize human well-being. This paper explores how ecological and climate problems have fundamentally changed the way we think about security. The non-physical security, diversification of threats, and the salience of identity are key effects of globalization in the security realm. These security effects translate into certain behavioral tendencies in a Germany foreign policy that have thus far not been studied in the literature.

The claim that environmental factors should be integrated into the concept of security was first made in the early 1980s. In the late twentieth – early twenty-first century the concept of security has been expanded and applied to address many of the most important issues of international relations theory and security policy. Environmental issues are not only to be treated as non-military threats to the security of societies, but can also work to promote cooperation and peace-building. In modern conditions, the ability of the state system to respond to environmental hazards is criticized, and therefore fundamentally different management structures are proposed as a replacement for it. Therefore, targeted climate protection policies at the international and regional levels, as well as at the national and local levels, are needed to effectively address environmental and climate threats and challenges.

Germany positions itself as a regional and world leader in the field of environmental protection and climate. The idea of caring for the environment is gradually becoming an essential element of the value system, legal culture and national identity of German society and the state, which it not only promotes both in the European Communities / European Union and beyond, but also consistently protects.

Within the framework of the EU environmental policy, there is room for independent national action by the German government. This guarantees Germany a free choice of national strategies in promoting environmental policy.

Keywords: national interests; security; environmental security; environmental rights; climate rights; international environmental law; Germany.

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Правовий захист національних інтересів Німеччини у сфері екологічної безпеки: еволюція підходів

Зміна клімату – це глобальна проблема, але політичні дії, які необхідні для її розв’язання, носять як локальний і національний, так і міжнародний характер. Дилема безпеки – одна з найважливіших теоретичних ідей у міжнародних відносинах. Зміст політики безпеки еволюціонує, оскільки «безпека» – це соціальна конструкція, зміст і структура якої постійно змінюється залежно від трансформації існуючих і появи нових загроз та викликів (зміна клімату, руйнування озонного шару, засухи, нестача прісної води тощо – перелік поточних екологічних проблем в XXI ст. все частіше доповнюється новими загрозами). Науковці, політики та активісти пропонують розширити використання концепції безпеки за межі її традиційної військової спрямованості, щоб врахувати екологічні загрози, які серйозно загрожують добробуту людей. У статті досліджено, як екологічні і кліматичні проблеми принципово змінюють наш погляд на безпеку. Нефізична безпека, диверсифікація загроз та виокремлення особистості є ключовими ефектами глобалізації у сфері безпеки. Ці ефекти безпеки перетворюються на певні поведінкові тенденції у зовнішній політиці Німеччини, які досі не вивчалися у вітчизняній літературі.

Твердження про те, що чинники навколишнього середовища повинні бути інтегровані у концепцію безпеки, вперше озвучене на початку 1980-х років. Наприкінці XX – на початку XXI ст. концепція безпеки була розширена і застосовується для вирішення багатьох найважливіших питань теорії міжнародних відносин та політики безпеки. Екологічні проблеми слід не лише розглядати як невійськові загрози безпеці суспільств, але вони також можуть сприяти співпраці та побудові миру. У сучасних умовах піддається критиці здатність державної системи реагувати на екологічну небезпеку, а тому запропоновано принципово різні структури управління як заміну їй. Для ефективної протидії екологічним і кліматичним загрозам та викликам потрібна ціле-спрямована політика з питань захисту клімату як на міжнародному та регіональному, так і на національному та місцевому рівнях.

ФРН позиціонує себе як регіональний і світовий лідер у сфері захисту навколишнього середовища і клімату. Ідея турботи про навколишнє середовище поступово стає неодмінним елементом системи цінностей, правової культури і національної ідентичності німецького суспільства і держави, яку остання не лише просуває як в Європейських співтовариствах/ Європейському Союзі, так і за його межами, але й послідовно захищає. У рамках законодавчої бази екологічної політики ЄС зберігається місце для незалежних національних дій німецького уряду. Це гарантує ФРН вільний вибір національних стратегій при просуванні екологічної політики.

Ключові слова: національні інтереси; безпека; екологічна безпека; екологічні права; кліматичні права; міжнародне екологічне право; Німеччина.

Problem setting. In a changing world values convey a sense of orientation, security and stability. Values¹ are regarded as determinants of behavior and attitudes,

¹ Values shape the core of culture, are closely intertwined with ideas, ideologies and religions; have both an ethical-moral and a material-financial character; are shaped by everyday actions, education and experiences; implicitly or explicitly distinguish an individual, group or society; can be an important support in life situations [8].

thus defining orientation standards. The state and society are able to strategically use values to form their national identity, strengthening and promoting their unique preferences, which makes them more competitive in communication with other states and peoples. The value system is able to act as the core that consolidates the nation, helping it to meet the challenges and threats to its security.

There is a close interconnection between values and national interests. Independence and territorial integrity occupy the first place among the values of the state. Their protection is the main national interest, because without their provision the state disappears as a sovereign subject of international law, and therefore the protection of all other values loses its meaning. Other values include economic prosperity, ideological values, social peace and harmony, a healthy environment and more. As soon as these values face the threat of destruction from the outside, their protection immediately becomes a vital national interest. However, they are secondary in the hierarchy of interests. Thus, it is still the provision of national values, protection and promotion of national interests that justifies the activity of the state.

National interests, which are a key element of a state's security policy, must be clearly defined and understood by the nation and government. There are many definitions of national interests. The vast majority of them focus on: the common long-term and permanent goal of the state, nation and government; on vital interests, the realization of which depends on the survival of the state; survival, protection of physical, political and cultural identity from encroachments of other states [36; 41; 42].

If some national interests are permanent, others are variable (can vary considerably due to external factors, such as emerging or disappearing norms, institutions, or circumstances). Germany, embedded in the European Union and NATO is one of the safest countries in the world. Yet there are many new threats and risks to our security such as dependence on energy and raw materials, migration, pandemics and diseases; the impact of climate change may exacerbate these security risks even further.

A healthy environment, a favorable climate as an unconditional value are perceived by German society and the state relatively recently. The state of the environment, limited natural resources and unevenness of their distribution, transboundary pollution and waste disposal problems have become significant political, economic and military factors that affect the level of conflict in individual regions and the world as a whole. The transnational impact of an environmental issue can be as significant as its domestic impact. As a result, states are linked environmentally.

Formation at the end of the twentieth century of a new architecture of international, regional and national security necessitates the study of environmental factors as new determinants of humanity development. Throughout most of human history, the impact of the environment and climate on people has been much more pronounced (some human communities and even civilizations have declined due to

environmental and climatic stresses) than the impact of human on nature. However, beginning in the second half of the twentieth century, when the number of humanity, especially of certain ethnic groups (Chinese, Hindus, peoples of the Muslim world) began to grow exponentially, the impact of human activities on the environment and climate became global (local events are able to generate regional and even global effects). As a result, the protection of national interests in the environmental sphere has been on the security policy agenda.

Analysis of recent research and publications. Determining the ecological interests and priorities of the state is complicated by scientific uncertainty due to the fact that certain environmental and climatic problems may manifest themselves in the future. M. Troitsky notes that in the majority of leading countries, the government adopts official documents such as national security doctrines, concepts, or strategies. Unofficial, yet integral and influential, doctrinal texts are more difficult to find, but they exist in many countries [54, p. 164]. The availability of such documents, as well as doctrinal works in the field of environmental safety facilitates the study of the problem.

The issue of protection of national interests in the field of environmental protection and climate, in accordance with the peculiarities of the German legal culture, is considered or in the context of broader issues, in particular the definition of environmental protection as a constitutional goal of Germany [6; 9; 10; 12; 15; 27; 33; 43; 57], on the ratio of energy and environmental policy of Germany [1; 24; 29; 51; 53; 56;], on the evolution of the social legal state into an ecological, social legal state [2; 14; 26; 28; 48], or vice versa is differentiated into the study of narrower issues in the framework of environmental security policy. Ukrainian authors pay little attention to this problem [50], considering it, as a rule, in the context of the broader issue of the formation and development of environmental law in the European Union [40]. In general, given the role of Germany in European Union policy-making, domestic lawyers pay unjustifiably little attention to the study of Germany's experience in the legal regulation of environmental safety and climate protection, which makes our study relevant.

Statement of the article objective. The paper is aimed at studying the evolution of approaches to the legal protection of Germany's national interests in the field of environmental security.

Presentation of the main body of the article. Since 1949, all German federal governments have defined security as their primary goal. This was determined by the fact that "security" along with "freedom" and "justice" became the core of West Germany's socio-cultural value system in the 1950s. The desire for a "stable secure future" united citizens, various political parties, whose programs demonstrated confidence in social progress; it was reflected in government statements and policy measures by both the federal and state governments. The main vector of postwar development in Germany was the formula "stability without stagnation" (although the crisis from time to time forced the political leadership to hesitate while giving priority to the values of "stability" or "reforms"), which allowed the Germans to

“dare to bigger democracy.” One of the justifications for such conclusion is state intervention has been that the state is responsible for addressing the externalities of human actions. This conclusion is supported by the significant expansion of the welfare state, its development into a “social constitutional state” (“sozialen Rechtsstaat”), within which social and environmental policy programs were presented and legitimized as a contribution to improving the “internal security” of the state [12, p. 374; 38].

The content of security policy has evolved because “security” is a social construction, the content and structure of which is constantly changing depending on the transformation of existing and the emergence of new threats and challenges (climate change, destruction of the ozone layer, desertification, fresh water shortages, etc. – the list of current environmental problems in the XXI century is increasingly supplemented by new threats). In this case, the development of environmental law has been linked to the economic development of society: the increase in economic activities often results in greater natural resource consumption, environmental stress, and pollution [23, p. 200; 47, p. 631]. Understanding security is always a certain interpretation of reality (internal and external), in which society and the state function, as well as a reflection of future expectations (an attempt to overcome differences between the “space of experience” and “horizon of expectations” [12, p. 363]). The broadest meaning of this policy was contained in the “concept of enhanced security” promulgated by Chancellor G. Schröder’s government in a statement to the Bundestag on October 29, 2002, “Gerechtigkeit im Zeitalter der Globalisierung schaffen – für eine Partnerschaft in Verantwortung”. According to this concept, the security of German society and the state provided for the security of life and health from war and crime; material, social and cultural security as a condition for ensuring one’s own identity; security of the law, as well as protection against disease and other risks to life. It was emphasized that only a society that can provide such comprehensive security is able to live in a state of good neighborliness and peaceful cooperation with the outside world [12, p. 361–363].

Environmental problems and climate change are one of the most acute modern problems of mankind, which will obviously show an exacerbation tendency. Germany, located in the heart of a densely populated region, is particularly in need of international legal and political cooperation on environmental protection, which has a significant impact on the development of national environmental legislation. Effective response to environmental and climate threats and challenges requires targeted climate protection policies at the international and regional levels, as well as at the national and local levels. The search for an effective and efficient climate policy has led to a significant expansion in modern conditions of the practice of using market instruments, voluntary agreements and other neoliberal instruments of the new environmental policy at the national and international levels.

Security provision requires protection and guaranties based on specific legal principles. The formation of West Germany’s environmental policy began in

1969¹. In fact, at the same time, environmental security began to take shape as an important component of Germany's national security. The most important features of Germany's environmental security are the interdependence of environmental protection issues, climate protection, rational use of natural resources; solving environmental and climate problems through the development and implementation of energy saving programs, energy diversification, introduction of energy-saving technologies, modernization of industrial production, development of renewable energy and waste disposal programs.

In contrast to the United States, the initiator of environmental policy was the federal government, not the civil society sector. The Ministry of the Interior of the Federal Republic of Germany initiated the creation of a department for environmental protection in its structure in 1969. In 1970, the Bavarian government first established the Ministry of the Environment Protection, while the Environmental Advisory Council was established in 1971 at the federal level, the Federal Environmental Agency was created in 1974, and the relevant ministry, the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety – was established only in 1986. This is not surprising, since the legal regulation in the field of environmental protection and use of natural resources is concentrated mainly at the level of federal states and municipalities.

The perception by Western countries, in particular by Germany, of the idea of implementing environmental policy² in the 1970s was determined by the awareness of fact that environmental degradation naturally leads to the deterioration of human rights. Environmental risks are no longer limited by national borders. As a result, there was a process of denationalization and deterritorialization of environmental security, as indicated by the environmental and political discourse of the 1970s, which acquired an international, global character [31].

The changes in the scientific and social consciousness are evidenced by the perception of Karel Vasak's idea of the "third" generation of human rights³ (1972), which includes environmental human rights [55]. Following the work of the UN

¹ At the prehistory stage of the formation of environmental policy in Germany, an "interparliamentary working group on natural resources" (1952) and the German Council for Land Care (1962) were established. It should be noted that the problems of ecology in the GDR in the early 1970s were paid no less attention than in Germany. In terms of institutionalization of environmental policy, the GDR was even ahead of Germany, as evidenced by the creation in 1972 of the Ministry of Environment and Water Management. The Treaty on the Fundamentals of Relations, concluded by Germany and the GDR in 1972, contained provisions on the coordination of positions of the parties on the protection of biological diversity.

² Initially, environmental policy was understood as a set of political efforts to preserve the natural foundations of human life and nature.

³ The idea of a third generation of human rights, including environmental rights, was preceded by a political debate on the human right to the environment in the Universal Declaration of Human Rights: this proposal was discussed at the 1968 UNESCO Conference on Biosphere and the European Conservation Conference held in 1970. In 1973 at the Council of Europe's Ministerial Conference on the Environment the question of inclusion of this right in the European Convention was discussed. However, none of these proposals was implemented.

Conference on the Environment (1972), the Stockholm Declaration on the Human Environment¹ was adopted, which stated: “in an environment of a quality that permits a life of dignity and well-being, and [that they bear] a solemn responsibility to protect and improve the environment for present and future generations” [49]. The Declaration affirmed the concept of state responsibility, recognizing that every state has some level of responsibility in this global cooperative. The Declaration took the first steps towards a long rethinking of the specifics of environmental standards, which resulted in the signing of the Rio Declaration on Environment and Development² (1992), which stated: “environmental standards, management objectives and priorities should reflect the environmental and developmental context to which they apply” [45]. Due to the fact that human rights discourse must focus on a more ecological world view of rights based on traditional knowledge of the human rights movement [32, p. 121] the concept of the “third” generation of human rights at the international legal level had been already used as a generally accepted in 1977 [55].

It should be noted that since the 1970s, a debate has begun at the international, regional and national levels that continues to this day. It concerns in what conceptions (for example, to a salubrious (or humane, adequate, clean, habitable) environment, to the right to protect the public from unreasonable environmental degradation or simply to government bodies’ legal obligations to protect the environment or “natural life support systems”) the new law would be normatively enshrined, since careless drafting will reduce the effectiveness of the legal protection provided and the utility of the new human right. Unfortunately, owing to differences between national legal systems, comparisons are not always possible, and the classification of almost all provisions is a matter of legal debate [19].

Since the 1970s, Germany has positioned itself as a regional and later as world leader in environmental and climate protection policy. The idea of caring for the environment is gradually becoming an essential element of the value system, legal culture and national identity of German society and state³, which it not only

¹ The Stockholm Declaration is an attempt to develop common approaches to solving problems of preserving and improving the environment. The Declaration defined the broad goals and objectives of environmental policy, but did not contain legally binding wording and regulatory approaches to solving environmental problems. The Stockholm Declaration was of great informative value, as evidenced by the growing scale of international environmental regulation. The Stockholm Declaration is a “soft law” and therefore has little influence on national and international environmental policy. However, the Final Declaration of the Stockholm Conference, the World Charter for Nature (1982), the Rio Declaration (1992) do have a political and moral effect.

² As opposed to the Stockholm Declaration, however, there was an addition of «development policies» in the Rio Declaration.

³ At the time of the introduction of environmental policy, the Basic Law of Germany did not include the right to a favorable environment to fundamental human rights. The rather rapid perception of German society of the idea of environmental rights and the need to protect the environment (if in September 1970 only 41% of respondents knew the term “environmental protection”, in November 1971 were familiar with 92%) due to the activities of environmental NGOs. Since the late 1970s, there has been a tendency toward marked politicization of environmental movements, including the creation of the Green Party (1980). Gradually, the federal government’s consultations with one of the largest environmental organizations, the Bund für Umwelt und Naturschutz Deutschland, BUND

promotes both in the European Communities / European Union and beyond, but also consistently protects.

To ensure environmental safety, the formation of the field of environmental law¹ was important, as indicated by the adoption by the federal government of the Immediate Environmental Protection Program (initiated by the Ministry of Interior) (1970), the First Environmental Program (1971), and federal laws on environmental protection (1974), on the “*Naturschutz und Landschaftsplanung*” (from Germ. – Nature conservation and landscape planning) (1976), on taxes for the discharge of wastewater into reservoirs (1976); adoption of the first within the European Communities program for the utilization of industrial waste (1975). At the same time, in general, West Germany in the 1970s and 1980s lagged behind the United States, where the formation of the legislative basis for environmental policy began earlier.

Recognition of the “third” generation of human rights, as says I. Yakovyuk, gave relevance to the question: should the state’s activities on environmental protection be considered as a historical task that gives the state a historical type that would be different from existing ones? [63, p. 137–138]. L. Erhardt and A. Müller-Armak in the “*Manifesto-72 on the social market economy*”, answering this question, noted that the concept of social market economy, which consists of a market economy and social policy, perceived environmental policy as its own task [20]. Accordingly, it was considered that there was no need to extend the concept to “environmental and social market economy”. However, the exacerbation of environmental and climatic problems in the late XX century justifies the actions by the federal government to gradually promote the model of social, ecological market economy (*Ökologisch-soziale Marktwirtschaft*), which provides for the creation of framework conditions for market participants [48].

While the first oil crisis (1973–1974) to somewhat extent slowed down the development of environmental policy, (its opponents made the slogan “environmental protection takes away your jobs”) the second oil crisis (1979–1980) contributed to a deeper awareness by the state and society of the importance of environmental protection through the need for energy saving. From this point on, environmental

(Union for the Environment and Nature Conservation of Germany), which was established in 1975 and now numbers almost 500,000, became mandatory while solving various environmental problems. BUND has the right to file group lawsuit in accordance with the Environmental Protection Act. Since the 1990s, international law has pursued the goal of empowering NGOs to raise awareness of environmental concerns by providing them with access to justice. The Aarhus Convention of 1998, demands signatory parties enable environmental NGOs to participate in administrative procedures and request judicial review of resulting administrative decisions [37, p. 224].

¹ There were previously several sets of German legislation that actually regulated certain environmental issues (hunting, fishing, water, land use and forest management, etc.), although the public did not perceive it as environmental legislation because it focused more on economic aspects. Accordingly, there was no comprehensive codification of the German system of environmental law [43, p. 70]. The law “*On National Environmental Policy*” came into force in the United States in 1970. In accordance with its provisions, the Council for Environmental Quality was established, and later – the Agency for Environmental Protection [52]. It should also be noted that the United States has played historically a dominant role in the development of international environmental law.

policy is closely intertwined with the economic and energy policy of the state (usually economy, energetics and ecology invariably clash when a project has environmental implications, and the state has to weigh up various justified interests when deciding whether to approve it) in the context of the broader task of national security ensuring¹.

During the 1980s, environment legislation continued to evolve and improve²: in 1981, Germany was the first in Europe to introduce an environmental tax, federal laws on water balance (1986), on waste prevention and recycling (1986), and on nature protection (1987), etc. were adopted, as well as a number of regulations: on environmental accidents (1980), on the operation of large heating and power plants (1983), on hazardous substances (1986) and others. Since the early 1990s, Germany has been actively promoting the introduction of carbon dioxide taxes [5]. In general, the evolution of environmental law linked to the growing acceptance of the notion of collective responsibility, which entails the notion of sustainable development.

In 1992, the UN Conference on Environment and Development held in Rio de Janeiro was instrumental in formulating a regime to combat environmental problems. Environmental protection and economic development were no longer seen as mutually exclusive, but as goals that could be achieved and integrated together through the concept of “sustainable development” [58, p. 675, 679].

Changes in environment protection policy were determined by the fact that economically developed countries have entered the era of “risk society”. The use of high-risk technologies, especially in the field of nuclear energy and genetic engineering, as well as the expansion of risks associated with economic modernization, have contributed to the realization of the relativity of security as a social phenomenon. As a result, the primary actor of environmental policy has shifted from the state to the corporation. Environmental policy is becoming more systematic, incentives are being introduced for the development of energy-efficient and low-toxic products, which in the subsequent stages of development ensured the leadership of German industry in the world market, and thus contributed to strengthening Germany’s national security. In addition, the protection of the environment is beginning to be perceived at the level of public consciousness as a possible source of new jobs creation.

After the reunification (1990) of Germany, although it lost its position for some time, however in general, its environmental policy has become more systemic and today remains to be the most progressive in the world [39]. It has the following features: mutual conditionality of environmental policy of Germany and the European Union; powers sharing in the field of environmental policy within the federation; under pressure from the EU, the World Bank and the Organization for Economic Co-operation and

¹ Ultimately, the abandonment of nuclear energy, which was originally seen as the basis of energy security, was the result of the perception of a healthy environment as a more important need of society.

² Germany’s environmental policy has repeatedly changed: in the 1950s, the emphasis was on dispersing harmful emissions in the territory; in the 1960’s – on the creation of various types of treatment facilities; in the 1980s – on minimizing the release of harmful substances in the production process, ensuring the collection, storage and disposal with a high degree of utilization of harmful substances.

Development to pursue a more flexible environmental policy that includes a broad dialogue with civil society institutions; public concern for environmental and climate issues. The Germans believe that the lack of ambition to protect the climate leads to irreversible changes in ecosystems. At the same time, German politicians and scientists understand that no country, however wealthy, could stabilize the climate within its borders or unilaterally protect the stratospheric ozone layer over its territory. Therefore, Germany is making significant efforts at all political levels and in all spheres of society to counter these trends for the sake of future generations.

Powers to protect the environment are divided into supranational (international law¹) and three national levels of power: at the federal level it is the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety; followed by the relevant executive authorities of the lands; at the municipal level, administrative bodies perform tasks related to the implementation of environmental policy – they apply directives issued by higher authorities. At the same time, the content and directions of development of environmental law are significantly influenced by international environmental law (it reveals the object of protection, the object protected is the natural life support systems which constitute humankind's basic ecological requirements [19]) and contains international law standards in the field of environmental safety and thanks to it states are slowly shifting their sights from outworn national policies to an international approach to the environment) operates on three levels: the European Union law [43, p. 79–107].

1. Germany has signed most of the UN Multilateral Treaties (the Convention on Long Range Transboundary Air Pollution (1979) as well as its four follow-up protocols; the Vienna Convention for the Protection of the Ozone Layer (1985) and subsequent protocols and amendments; UN Framework Convention on Climate Change (1992); the Convention on Biological Diversity (1992); the Agreement on the Conservation of Small Cetaceans of the Baltic and North Seas (1992); the Basel Convention on the Control of the Transboundary Movements of Hazardous Wastes (1989); the Espoo Convention on Environmental Impact Assessment in a Transboundary Context (1991); the Helsinki Convention on the Protection and Use of Transboundary Watercourses and International Lakes (1992) and others). In general, experts acknowledge that international environmental law is characterized by an excess of treaties and a number of lacunae². Some important principles have, however, been affirmed: the concept of sustainability, the precautionary principle,

¹ Even while signing the Stockholm Declaration the international community recognized that global cooperation was going to be instrumental in the battle against environmental problems and that a global institution was required to coordinate the effort (princ. 24: «International matters concerning the protection and improvement of the environment should be handled in a cooperative spirit by all countries, big and small, on an equal footing. Cooperation through multilateral or bilateral arrangements or other appropriate means is essential to effectively control, prevent, reduce and eliminate adverse environmental effects resulting from activities conducted in all spheres, in such a way that due account is taken of the sovereignty and interests of all States»).

² There are an estimated 300 multilateral and 900 bilateral treaties on environmental protections. Their number is out of keeping with the extent to which they are enforced.

the principle of causal responsibility and the need to protect the environment for future generations [19]. It should be noted: “At the twenty-first century, the global community will be pressuring states that are outliers to conform to norms set by the international regime. To conform to these norms, states will have to ensure that the behavior of their corporations and individual residents are kept within environmentally acceptable limits” [23, p. 198].

It should be noted that the international community is gradually realizing the importance not only of monitoring and researching environmental risks, but also of reducing the real negative impact on the environment. As a result, states are moving from international agreements aimed primarily at research, information exchange and monitoring, to agreements that require reductions in pollutant emissions and changes in technology control [58, p. 680–682].

2. Multilateral and bilateral regional treaties and agreements concerning overlapping issues as well as specific nature conservation issues. Germany belongs to several international commissions on the protection of the transboundary rivers; to the International Commission on the Protection of Transboundary Water Bodies and other agreements.

3. In addition to international law, the European Union also tries to strengthen representative environmental action. Many of the environmental and conservation issues are regulated in the European Union Environmental Law. For a long time the field of EU environmental law was not very clear. The first “Program of Action” was adopted in 1973¹. The starting point in the formation of EU environmental legislation is considered to be the Single European Act (1986), which amended the Treaty on European Community – Title XVI “Environment”. Article 130 enshrined fundamental principles for the Community’s environmental law (protection of the environment and improvement of its quality; protection of human health; prudent and economic use of natural resources; support for international actions concerning regional or global environmental problems) [34, p. 79–84; 30]. Thanks to Title VII on “Environment” to the EEC Treaty, a formal legal basis for the future development of EC environmental law was established.

The Declaration of the European Council on the EC’s environmental policy (“Environmental Imperative”, adopted in Dublin, 1990) [16] was devoted to the problems of environmental policy of the European Communities. The Treaty on the European Union (1992) would elevate environmental protection to one of the fundamental objectives of the Community and includes as one of the EC’s fundamental activities. In addition, a rule was established: in the case of conflict between national and European law, the latter prevails.

The EU’s Charter of Fundamental Rights contained a rule in which the human right to the environment corresponded to the EU’s objective: “A high level of

¹ Environment Action Programmes provide a general policy framework for the EU environment policy. The Treaty of Maastricht created a contractual basis for the adoption of Environment Action Programmes. The contractual basis was set out in Article 192 (3) of the Treaty on the Functioning of the European Union. Their duration ranging from 3 to 10 years.

environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development” (Art. 37) [11].

At the present stage of European integration, the legal basis of the EU’s environmental policy includes the Treaty on the Functioning of the European Union (Art. 11, 191–193). These Articles provide the EU with competencies to act in all areas of environmental policy. Article 11 requires that environmental protection be integrated into the Union’s policies and activities. The integration of environmental concerns into other EU policy areas has become an important concept in European environment policy (environmental policy integration in the field of energy policy) [21]. The priorities¹ and priority objectives² of modern EU environmental policy are set out in the 7th EAP “Living well, within the limits of our planet” (2014–2020) [21].

At the turn of the XX–XXI centuries, the concept of the nation-state once again (after the 1970s) is faced with serious challenges. The current debate touches the fundamental question on who and how should address the key tasks of the state: security, safety, defense, and welfare. Through traditional and new threats and challenges (overpopulation, migration, environmental destruction, etc.), states demonstrate their own limited capacity to respond effectively to these challenges. This fact is still the reason for the internationalization of many tasks of the state, in particular the protection of the environment and climate. Interstate cooperation in the form of international governmental organization is reflected by the progressive formulation of an international public interest and by states acting “in the public interest” in accordance with the concepts of the Common Heritage of Humankind and the Global Commons (the mentioned conceptions are based on the idea that “change in the earth’s climate and its adverse effects are a common concern of humankind”, “biological diversity is a common concern of humankind”, plant genetic resources are “a heritage of mankind”). As a consequence, Sands Philippe notes, “the states will increasingly be required to take into account the needs of all members of the international community in developing and applying their policies and laws previously thought to be solely a matter of domestic jurisdiction” [18, p. 285–286; 46, p. 295].

Concerns on the fact that the growing influence of international organizations on the legal regulation of environmental relations³ by nation states may lead to a

¹ Such priorities are: to protect, conserve and enhance the Union’s natural capital; to turn the Union into a resource-efficient, green and competitive low-carbon economy; to safeguard the Union’s citizens from environment-related pressures and risks to health and well-being.

² Suc objectives are: to maximise the benefits of Union environment legislation by improving implementation; to improve the knowledge and evidence base for Union environment policy; to secure investment for environment and climate policy and address environmental externalities; to improve environmental integration and policy coherence.

³ The excitement of many states by the process of internationalization of new areas of legal regulation is due to the fact that they do not have a constructive understanding of the role of international organizations in international relations; they allow the identification of internationalization with globalization. “Internationalization” is to be distinguished from “globalization”. According to Delbroeck J., “internationalization” – a means to make up for the increasing inability of nation-states

limitation of state sovereignty will be less and less taken into account due to the exacerbation of environmental and climate problems¹. Such fears are still the reason why that progress from UN measures such as the Earth Summit is minimal. The self-centered, national interest-driven nation-states hampering the adoption of more effective measures for the protection of the global environment.

As a result of the application of the principles of international environmental law, the activities of nation-states are already facing certain restrictions, as it must not harm the environment of neighboring countries. The restriction of sovereignty is seen as acceptable because of the fact that the protection of the environment and climate is a need that is met by both the individuals and their groups, and by states and their integration associations. In today's world the international community has a collective responsibility on environment and climate protection.

Despite the fact that Germany is considered a leader in the field of environmental protection, modern environmental legislation is not considered perfect (see the decision of the Constitutional Court of Germany, 2021 [35]). First of all, it should be noted that attempts to expand the constitutional catalogue of fundamental rights by adding a basic right to a healthy or decent environment have so far failed². To some extent this can be explained by the fact that the European Convention on Human Rights (ECHR) does not contain a fundamental right to the environment and provide the individual with effective legal protection in that respect (although there is to the case-law of the European Court of Human Rights). Human Rights concerning states' positive obligations in the area of protection from environmental nuisances which are harmful or dangerous to health). The legal doctrine considers the possibilities for implementing an additional protocol to the ECHR and discards other proposals, such as an extension of the European Social Charter or the drafting of a European environmental charter. There is only the European Charter on Environment and Health (1989) [22] at European level.

It should also be noted that many European countries have added the principle of environmental protection to their Constitution, thus expressing their desire to give greater legal recognition to environmental rights. In 1994, the protection of the environment was declared a national objective³: "Mindful also of its responsibility

to pursue their national interest and welfare as independent, self-sustaining entities, while the level of globalization processes characterized by an increasing denationalization or transnationalization of economic, social, and ultimately political interactions and transactions that, by their very nature, transcend the once dominating paradigm of the international system, i.e., the sovereign nation-state [18, p. 279–280; 17, p. 9–11].

¹ There are already examples of shared global governance where states have ceded some power to intergovernmental organizations to govern specific environmental issues, and this is almost certain to expand in the future [59, p. 7].

² An individual right to environmental protection has been recognised in the constitutions of Belgium (Art. 23-4), Hungary¹², Norway (Art. 110, b), Poland (Art. 71), Portugal (Art. 66-2), Slovakia (Art. 44 & 45), Slovenia (Art. 72 & 73), Spain (Art. 45-1) and Turkey (Art. 56). Today, more than three quarters of the world's national constitutions (149 out of 193) include explicit references to environmental rights and/or environmental responsibilities [7].

³ Protection of the environment is included as a so-called "state objective" in the constitutions

towards future generations, the state shall protect the natural foundations of life and animals by legislation and, in accordance with law and justice, by executive and judicial action, all within the framework of the constitutional order” (Basic Law for the Federal Republic of Germany (Art. 20, a)) [3]. There is a broad agreement on the idea of protection of limited resources as a national objective [30, p. 49].

Thus, there is a problem of ensuring close connection and interdependence between the areas of climate protection policy (Climate Action Plan 2050) and resource policy (German energy efficiency program (ProgRess I & II)), which are mostly unrelated with each other; transformation of resource policy in accordance with the goals of sustainable development, as they are defined at the international level. Also in the development and implementation of environmental policy, the state and lands must take into account the requirements of the concept of “sustainable development”: compliance with the commitment to integrate environmental considerations into economic and other social development, and to take into account development needs in crafting, applying, and interpreting environmental obligations” [46, p. 302].

Solving environmental problems and climate protection has traditionally been an important component of German lands policy. Thus, in 2013, the Baden-Württemberg Land Parliament adopted the Law on Climate Protection [25], which defined the legal limits of the policy pursued by the land government in the field of climate protection and reliable energy supply. The law contained rules that applied to both land and municipalities and the economy. By passing the law, the legislator sought to contribute to climate protection within the framework of international, European and national climate protection goals.

Following the 2016 parliamentary elections results, a coalition agreement was signed, one of the key elements of which was the regulation on updating the Baden-Württemberg law on climate protection during 2016–2021. The Ministry of the Environment together with other ministries in May 2019 presented a draft amendment to the law, and on May 26, 2020 the land government submitted to public hearings a draft “Law on the further development of climate protection in the state of Baden-Württemberg.” The comments and suggestions were taken into account and on October 14, 2020 the law was adopted by the land parliament.

In 2020, the land parliament took the next steps to improve legal regulation in the field of climate protection – amendments to the land law were adopted, which provided for the definition of land policy on climate protection for 2020, 2030 and 2050. It was envisaged that the land government would perform regular monitoring of climate protection measures to assess the effectiveness of policies and, if they were found to be insufficient, to decide on additional measures.

In Hessen land, in January 2016, the guidelines for funding for the promotion of municipal projects on climate protection and adaptation, as well as municipal information initiatives (the updated version came into force in September 2019) came into force.

of Austria (Art. 10-12), Germany (Art. 20, a), Greece (Art. 24), Finland (Art. 20), Netherlands (Art. 21), Sweden (Art. 2-2) and Switzerland (Art. 24-7).

In March 2017, the Hessen land government approved the Hessen 2025 Integrated Climate Protection Plan to transform the land into a climate-neutral region no later than 2050. Representatives of business, environmental associations, as well as municipalities and research institutions were involved in the development of the Integrated Plan. It consisted of 140 measures aimed at achieving the climate goals of Hesse, its adaptation to the consequences of climate change. The activities cover all areas of activity: from agriculture to the economy, the energy sector and transport, the construction sector and health care. Measures were developed to protect the climate and adapt to climate change at the same time. The Integrated Climate Protection Plan complements the requirements of the federal climate policy of Germany and the European Union. The Hessen land government encourages investment in climate protection and municipal climate adaptation measures. In addition, financial support could be provided to public, educational and information initiatives in the field of climate.

Documents similar in their direction and goals have been developed in other lands and municipalities of Germany.

Conclusions. The development of environmental security is an important contribution in theorising the policy of global environmental change and shifting security contexts. Approaches to theorising environmental issues in terms of environmental security reproduce a dualistic understanding of human relations to «the environment» in which humans are either threatened by or pose a threat to «nature».

The term “environmental security” is often interpreted as environmental protection in the sense of preventing damage to ecosystems and hence to humans. However, its content is also related to environmentally induced conflicts and insecurity caused by social and political disruption related to resource shortages and degraded landscapes.

What the environment – development – security nexus militates towards is a new culture of world politics which transforms attitudes consonant with meaningful interdependence. The climate change is caused by human activity, and is unlikely to be solved by unilateral action or traditional security measures. Cooperative measures are essential to planning for how to deal with the new circumstances humans collectively face. The obligation on developed states to lead in mitigation challenges traditional conceptions of the modern state by calling forth a more outward looking state that is able to serve both the national and international communities in the service of global climate protection.

The one for the success of a national, regional and international policy on the environment is the existence of clear legal rules, and a coherent European approach is needed to influence behavior in this area, directly and indirectly.

Germany is a strong supporter of international climate policies. International environmental policy contributes to climate protection, lead to an economic level playing field so that (energy-intensive) losers have less reason to resist ecological modernization and environmental industries benefit. Energy security has long

been an important aspect of state security, but has rarely been thought of as an environmental issue.

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Правовая защита национальных интересов Германии в сфере экологической безопасности: эволюция подходов

Изменение климата – это глобальная проблема и политические действия, необходимые для ее разрешения, носят как локальный и национальный, так и международный характер. Дилемма безопасности – одна из важнейших теоретических идей в международных отношениях. Содержание политики безопасности эволюционирует, поскольку «безопасность» – это социальная конструкция, содержание и структура которой постоянно меняется в зависимости от трансформации существующих и появления новых угроз и вызовов (изменение климата, разрушение озонового слоя, опустынивание, нехватка пресной воды и др. – перечень актуальных экологических проблем в XXI в. все чаще дополняется новыми угрозами). Ученые, политики и активисты предлагают расширить использование концепции безопасности за пределы ее традиционной военной направленности, чтобы учесть экологические угрозы, которые серьезно угрожают благосостоянию людей. В статье исследуется, как экологические и климатические проблемы принципиально изменили наш взгляд на безопасность. Нефизическая безопасность, диверсификация угроз и выделение личности являются ключевыми эффектами глобализации в сфере безопасности. Эти эффекты безопасности превращаются в определенные поведенческие тенденции во внешней политике Германии, до сих пор не изучались в отечественной литературе.

ФРГ позиционирует себя как региональный и мировой лидер в сфере защиты окружающей среды и климата. Идея заботы об окружающей среде становится неременным элементом системы ценностей, правовой культуры и национальной идентичности немецкого общества и государства, которое она не только продвигает как в Европейских сообществах / Европейском Союзе, так и за его пределами, но и последовательно защищает. В рамках законодательной базы экологической политики ЕС сохраняется место для независимых национальных действий немецкого правительства. Это гарантирует ФРГ свободный выбор национальных стратегий при продвижении экологической политики.

Ключевые слова: национальные интересы; безопасность; экологическая безопасность; экологические права; климатические права; международное экологическое право; Германия.

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