

Investigation the concept of compensation for damages caused by oil pollution in the United Nations Commission

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Abstract: Monitoring and evaluation of environmental damage is one of the issues that the Commission's decision No. 7 as an example of direct damage. Accordingly, the cost of direct damage and depletion of natural resources will be payable. These costs include the opinion and assessment of environmental damage and reduce damage to the process of assessment and rehabilitation of the environment. In this article we try to answer the question whether these costs can be considered as part of the damages or not; because it still has not been proven damages in certain areas. However, the Board of Governors of the costs as directs costs, and not even indirect losses. Due to the amount of compensation claims, environmental claims and received, compared with the total volume of the proceedings of the Commission as well as the material environment as well as the extent of the losses incurred shows. Four main claims are: 1) Damages for the cost of monitoring and evaluation of environmental damage; 2) Costs related to the cleanup and restoration of the environment; 3) Costs related to the cost of public health monitoring and treatment; 4) Damages related to loss or damage to natural resources.

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1. Introduction

To determine what steps should be taken to inspect the damage; the first step is to estimate and monitor and assess the damage, injuries and ways to deal with it. UN compensation commission also follow this approach in practice is located. The marine oil pollution damages at the time of the accident. It is time to replace the insurer of the insured (s) shall pay the cost of the measures taken. The chorus fear can also cause this problem; this objection is solely responsible for the payment of certain expenses; Even in relation to the Convention tanks can also specify that only obliged to pay that among the measures that should be taken. But at this stage it is unclear whether or not action should be taken to evaluate and monitor the cost of insurance is based.

On what basis can it bear the cost of research in Iraq (we assume insured) institution. However, the Board of Governors in one of the direct losses, and not even indirect losses is important.

The two modes can be imagined. One of the results of monitoring and evaluation in the field of research indicates that damage has occurred, which is demanding compensation. In other cases it may be concluded that the loss or damage is essentially a proof within the framework of these principles is not created, or if there is determination and separation of damages is impossible.

On what basis can obligate Iraq to pay these costs as the cost of direct damages?

We tip the scales against each other: A pan of the scale is affected by the risk of spending for research,

monitoring and evaluation in the field to accept, in the hope that a result, substantial damage to the environment stand. On the other side of the Iraqi government (the insured or insurance company), which may be exploited by parties claiming direct damage in any area of monitoring and evaluation, and it cost him a time. Among these would not seem to hurt the hand that was not any fault of the damage and accidents caused by the violation if the Iraqi government (or insurance be covered events) not occur essentially fees the monitoring and evaluation was not performed. Do not get the costs related to damages or not. Review board approach to claims related to the cost of monitoring and evaluation show that proof of environmental damage to be compensation as a precondition for the oversight activities in accordance with rule 35¹. For its independent position (regardless of whether they lead to environmental damage proof or not) is attached².

Is the cost of the assessment and monitoring will be limited to survey the damage occurred at the time of the dispute or claim or in accordance with the above may have occurred, or that the cost of monitoring and evaluation of future damage will also be included?

¹- Security Council, REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS CONCERNING THE FIRST INSTALMENT OF "F4" CLAIMS, 22 June 2001, S/AC.26/2001/16, para.377.

²- UNCC Governing Council, 29th session, 1998.

Board proceedings in this regard stated: "According to the delegation, such projects in order to create a mechanism to prevent future damage caused to assess and address the damage is the result of [incident source of pollution] have been created. Therefore, such projects do not fit within the framework of the monitoring and damage assessment."³

In any case, by adopting such approaches this question comes in the acceptance or rejection of claims, monitoring and damage assessment, what criteria should be considered? Is any compensation claim only acceptable basis or restrictions on admission? Board procedures show reasonableness in such cases is a decisive criterion. This measure would have affected the reasonableness of these measures prove to compensation. So then we will review what is considered reasonable.

Evaluation some of reasonableness in accepting regulatory measures

One of the determining factors in whether such an operation, it is possible to assess whether or regulatory activities can damage certain works or not; this information is obtained to enable a full assessment of the effects of damage in a field of study is not sufficient to claim the attention of the Board in evaluating the ability to accept or refuse placed.⁴

Surveillance activities should be in line with expected targets contained monitoring and evaluation activities, including the extent of damage or pollution⁵ and the rehabilitation of natural resources⁶.

Among other factors considered by the Board in investigating this issue, whether regulatory action or make a reasonable assessment of the results will help the panel examines any substantial claim or not. As well as efforts to determine whether the infection has reached the territory of a country, the delegation is acceptable⁷.

Another factor that is important in the study of these reports must describe the activities of monitoring and evaluation practices and methods are used. For example, should include a number of early studies, history, goals and reporting of results and evidence is sufficient to support its claims⁸.

The purpose of monitoring and evaluation measures

The purpose of the establishment of the Commission to adopt a series of measures to redress the effects of violations committed by Iraq during the

Persian Gulf War was considered. To this end, the Commission acts in order to achieve this plan and will follow. First, this category of claims among the substantive proceedings is not directly related to the damage to the environment and natural resources. Secondly, the aim should be to follow the order. So should the measures be adopted for acceptable or reasonable body of opinion that component to achieve the damage, the ability to determine the type, amount and nature of the damage, assess damage, repair costs, and cost-effective solutions for environmental restoration and repair damage to the environment and natural resources to accurately determine.

The overall look to this category of claims is determined to know the cost of monitoring and evaluation, accept them into several categories, the most important of them are:

- Efforts to identify damages to natural resources are considered.
- Efforts to assess damage to natural resources (including marine resources or ecosystems, wetlands) have been carried out.
- Efforts to evaluate or assess the value of the damage done to natural resources.
- Efforts Categories environmental impact assessment and review options for rehabilitation and proposed methods to achieve this fall.

Areas examined in the activities of monitoring and evaluation

Due to the importance and the controversial issues of compensation claims for environmental activities is essential to the proceedings, areas under review these measures a wide range of steps to identify and damage to determine environmental damage or depletion of natural resources covers.

The prayers we are divided in three claims to identify damage, claims for damages and claims for the cost of reconstruction and rehabilitation works, environment and natural resources.

In order for a country to be able to damage suffered hurt in environmental damage or achieve its natural resources damage assessment is the first step. To do so requires an examination of this issue-whether the damaged areas and if yes, how much is nature and extent of the damage.

The study also noted the importance of this part of the monitoring data. Iran's claim for compensation costs 5 research to address the deterioration that may be applied to some of its cultural heritage, the committee had expressed the opinion that the country's efforts to specify as result of fire damage to cultural property imported oil wells in Kuwait is not appropriate action. As a result of this research can be useful not only in assessing the damage suffered, but in determining whether or not there is any need for restorative action is beneficial.

³ - Ibid, Claim No. 5000342, Para.104.

⁴ - Claim No.5000378

⁵ - Claim No.5000397

⁶ - Claim No.5000375

⁷ - Claim No.5000329.para.63

⁸ - Claim No.5000331, para.80

Another category of claims, the cost of monitoring and evaluation to assess the value of losses resulting from Iraq's invasion is related. These claims can not only independently for damages to natural resources and environment used victim, but also as a functional research to investigate ways to restore and rehabilitate damaged areas also used.

So the first step is to learn the outcome of the review and evaluation of the situation and restore the damage is restored. In practice, the vast majority of compensation claims related to monitoring and evaluation costs of research on ways to revive the marine environment, vegetation, forests, wildlife and etc.

Cleaning and restoration of the environment

More the amount of damages and claims related to environmental damage must be relating the costs of cleaning and restoring the environment. As the concept of damage in the Convention related to marine oil pollution and the cost of reasonable measures to restore the environment explicitly stated was among the casualties.

One of the most important issues in relation to the steps taken to clean up the environment is considered the appropriateness of the measures.

As CLC Convention and 1992 Protocol Additional to the Convention CLC was also observed cases. The evolution of the concept of damages, the insurer of the insured obligation is limited to measures that are reasonable for the rehabilitation and restoration of the environment; and as in the text of Resolution No. 7 was also understood that the reasonableness of one of the crucial factors in the assessment of these measures is considered. The same procedure as an indicator of the compensation claims of the Commission also considered. Another issue that must be considered in relation to these claims is the losses attributable to the insured⁹.

In relation to the reasonableness standard, for example, can claim compensation for the collection of mines and unexploded ordnance through contracts with foreign government agencies and private companies cited by the Kuwaiti government¹⁰.

By forming a delegation to Iraq after the invasion and occupation of Kuwait dealing with environmental lawsuits, protect and restore the environment in the area of direct effects of the Iraq war.

The panel believes that governments want to protect and restore the environment and eliminate the negative effects of the Iraq war, it's a commitment that involves all positive obligation to take reasonable measures to restore the situation to normal as possible

⁹- S/AC.26/2003/31, Para.35

¹⁰- Claim No.5000381

and it is necessary that before the attack, are considered.

Therefore, the Board addressed the following measures to restore the environment in cases where the diagnosis was necessary, compensation for this type of project had over Iraq. Considering the above case can be clearly concluded that, when the Commission is faced with toys symmetrical and parallel pollution, need documents that could appeal to the government of Iraq to determine whether the alleged contamination and damage. In the absence of such evidence the government wants, according to paragraph 3 of Article 35 of the Rules of Procedure of the Board claim was rejected and no compensation of the following actions to restore the environment have been proposed.

Notes on environmental claims that were made against Iraqi government were an approach that the Council dealing with claims for the restoration of the environment following the adoption of measures was adopted. In a report published in 2004. The panel concluded that the proposed modification and the nature and range of governments seeking to restore the environment, increase the environmental advantages of expenses related to the projects reduced¹¹. Therefore, the Court of proposals to increase efficiency and reduce the cost of the projects proposed by the governments want to see and compensation claimants have modified proposal.

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