

## The rule of international organizations to protecting environment of the countries during the war time

Khaled Abdalhadi A Hamad

Dept. of Law, Acharya Nagarjuna University, Andhra Pradesh, India

### Abstract

In this paper we discussed the overall study related to the rules of the international organization for protecting environment of the countries at the time of war, in that we analyzed roles of the battle for destroying the environment, at the beginning we have to identify the problem, which is how battles destroy the environment. Although all during human history the environment has been one of warfare victims, at 1991, when Iraqi army emitted huge quantities of oil into Kuwait and the Arabian Gulf as a part of its strategy in the "Gulf War" that the safeguard of environment during the war is an affair that attracted the world's attentiveness.

**Keywords:** international organizations rules, environment protection, war, countries

### 1. Introduction

The environmental desolation caused by the two world wars was also big. Over World War II, the Germans purposely ruined 17% of Dutch agricultural lands through salt water immersion. Petrol tankers were mutual aim to both. British army destroyed the Romanian oil fields to impede the German effort, and 15% of Allied bombing was directed to oil facilities to which Germany had arrived. Where, oil tank encompass about 25% of the ships lost by the US army.

While war have historically tended to cause acute and local environmental harm, new weapons and their possibility manufacturing targets have the possibility to cause destroy on a much faster range.

The Vietnam War is the first war in which environmental damage was an essential deliberate component of the strategy of one of the belligerent powers.

The United State bombing campaign caused significant collateral damage to the environment, creating hole, destruction vegetation and murder of wildlife<sup>[2]</sup>.

Armed activities can damage the environment in a diversity of ways: peace time training and operations may cause pollution and destruct wildlife, and the remnants of war like land mines can have continuing result for both humans and wildlife. Also land mines make land not fit for agriculture.

War can also damage the environment more indirectly, by obstruct the domestic environmental institutions, as we could see during recent combat as the one in Angola, the former Yugoslavia, and in the Congo<sup>[3]</sup>.

### 2. Existing law

The law of armed conflict includes provisions that may afford protection to the environment both directly and indirectly. Since 1977 the law of armed conflict has included provisions that expressly address the impact of military operations on the environment, these are the articles 35 (3) and 55 (1) of the 1977 Additional Protocol I to the Geneva Conventions, and the 1977 ENMOD Convention (United Nations Convention on the Prohibition of Military or Any Other Hostile use of Environmental Modification Techniques).

Although these dispositions were a significant step forward, they proved to be insufficient providing limited protection

against the contemporary threats posed by war to the environment. Protocol I has expanded the traditional rules regarding the protection of the civilian population and civilian objects in the conduct of military operations. This instrument is meant to protect not only the population of the countries at war, but also the environment as such. Article 35 (3) represents a conceptual innovation in the law of war, by recognizing not only anthropocentric values but also importance of the natural environment itself. However, its practical effect is likely to be minimal, for many reasons, the most important one is that it establishes a high threshold by requiring three conditions that need to meet cumulative. Consequently, the means and methods of warfare intended or expected to cause damage have to be widespread, long-term and severe.

Moreover, even to the extent that both articles do provide additional environmental protection, they are not universally considered to reflect customary international law and hence may apply only between parties<sup>[4]</sup>.

ENMOD Convention concentrates not on the safeguard of the natural environment per se, but rather on the use of environmental alteration as a means and method in the war. ENMOD is triggered by a lower threshold of environmental damage than the "widespread, long-term, and severe" standard in Article 35 (3) and 55 (1) of Geneva Protocol I, it is also unlikely to provide significant protection for the environment. This is mainly because the language used to define the environmental modification technique is so narrow that the treaty does not identify specific techniques. All these gaps make the Convention difficult to apply, and actually it has never been applied. Considering all these gaps in the existing law, and bearing in mind the seriousness of the matter, many proposals have been made. Some authors have considered essential to celebrate a new treaty which reinforce the protection of the environment during an armed conflict, suggesting the preparation of a V Geneva Convention to deal specifically with the issue. Another proposal consisted in amending Protocol I, in order to modify articles 35.3 and 55. And it has been also proposed to re-interpret these articles, what seems the fastest and most feasible option, because to prepare a new treaty is a hard work very difficult to be successful.

### 3. The role of international organization

We will focus on the Iraq's case, and specifically on Gulf War (1990-91), because as we have already mentioned at the introduction it was the first case that the International Community reacted protecting the environment after an armed conflict. Furthermore, it was in this case where international organizations, within UN system, played an important role as we will see.

#### 3.1 UNCC

Environmental damage in the 1991 Gulf War was mainly caused by the torching and flooding of oil wells in Kuwait, the spilling of oil from Kuwait and Iraq into the Arabian Gulf, and the damage caused by the military action of both sides during the conflict. Giving the serious environmental damages, the Gulf War was termed an "ecowar" and Iraq's acts as "environmental terrorism" [5]. Damage locations were widespread, affecting not only Kuwait and Iraq but also Saudi Arabia, Iran and other neighboring countries in the Gulf. Due to the Earth's rotation and the normal winds on the area, some effects were reported in Afghanistan, Pakistan, and India and, even in the Himalayan peaks between China, Tibet and Nepal [6].

The UN Security Council, acting under Chapter VII of the UN Charter, which concerns action with respect to threats to the peace, breaches of the peace and acts of aggression, responded with Resolution 687, (1991), 3 April 1991, stating that:

"without prejudice to the debts and obligations of Iraq arising prior to 2 August 1990, which will be addressed through the normal mechanisms, is liable under international law for any direct loss, damage, including environmental damage and the depletion of natural resources, or injury to foreign Governments, nationals and corporations, as a result of Iraq's unlawful invasion and occupation of Kuwait (part E, paragraph 16) [7]

As the Secretary-General stated in his report:

"the Commission is not a court or an arbitral tribunal before which the parties appear; it is a political organ that performs an essentially fact-finding function of examining claims, verifying their validity, evaluating losses, assessing payments and resolving disputed claims; it is only in this last respect that a quasi-judicial function may be involved." [8]

The procedure before the UNCC allows individuals, corporations and Governments to present consolidated claims, submitted by Governments and international organizations, and to receive compensation for all loss, damage and injury resulting from Iraq's unlawful invasion and occupation of Kuwait [9]

The Commission, in its "Criteria for Claims" [11], has stated that environmental damage includes losses or expenses resulting from: a) abatement and prevention of environmental damage, including expenses directly relating to fighting oil fires and stemming the flow of oil coastal and international waters; b) reasonable measures already taken to clean and restores the environment or future measures which can be documented as reasonably necessary to clean and restore the environment; c) reasonable monitoring and assessment of the environmental damage for the purposes of evaluating and abating the harm and restoring the environment; d) reasonable monitoring of public health and performing medical screenings for the purpose of investigation and combating increased health risks

as a result of the environmental damage; and e) Depletion of or damage to natural resources. [10]

The main tasks of the Commission are: to establish the link of causation (in order to confirm responsibility), to ascertain the damage (its verification and extent), to clarify the injured States (either directly or indirectly) and to establish the compensation (its kind and amount) [11]

The liability principle was expanded since the claims would include any loss suffered as a result of: a) Military operations or threat of military action by either side during the period 2 August 1990 to 2 March 1991; b) Departure from or inability to leave Iraq or Kuwait (or a decision not to return) during that period; c) Actions by officials, employees or agents of the Government of Iraq or its controlled entities during that period in connection with the invasion and occupation; d) The breakdown of civil order in Kuwait or Iraq during that period; and e) Hostage-taking or other illegal detention. [12]

In the case of environmental harm, particular problems arise in dealing with the link of causation. So, as KISS and SHELTON stated, four main challenges to the link of causation can be identified:

"First, the distance separating the source from the place of damage may be dozens or even hundreds of miles [...] Second, the noxious effects of a pollutant may not be felt until years or decades after the act [...] Third, some types of damage occur only if the pollution continues over time [...] Finally, the same pollutant does not always produce the same effects, due to the important role played by physical circumstances." [13]

As we mentioned before F4 claims fall into two broad groups, however they have been processing into four installments. The first installment was concluded the 22 of June 2001, with the First Report made by the Panel of Commissioners. This report includes 107 claims for monitoring and assessment of environmental damage, depletion of natural resources, monitoring of public health, and performing medical screenings for the purposes of investigation and combating increased health risks (the "monitoring and assessment claims") submitted by the Governments of the Islamic Republic of Iran, the Hashemite Kingdom of Jordan, the State of Kuwait, the Kingdom of Saudi Arabia, the Syrian Arab Republic and the Republic of Turkey. One year later, in October 2002, the Panel of Commissioners finished the Second "F4" installment, which consist of claims for expenses incurred for measures to abate and prevent environmental damage, to clean and restore the environment, to monitor and assess environmental damage, and to monitor public health risks alleged to have resulted from Iraq's invasion and occupation of Kuwait. Specifically, Iran, Kuwait and Saudi Arabia seek compensation in the amount of USD 829,458,298 for measures to respond to environmental damage and human health risks from: (a) Mines, unexploded ordnance and other remnants of war; (b) Oil lakes formed by oil released from damaged wells in Kuwait; (c) Oil spills in the Arabic Gulf caused by oil released from pipelines, offshore terminals and tankers; and (d) Pollutants released from oil well fires in Kuwait. [17]

The third "F4" installment consists of three claims by the Government of the State of Kuwait and two claims by the Government of the Kingdom of Saudi Arabia. The claims in the third "F4" installment are for expenses resulting from measures already taken or to be undertaken in the future to clean and restore environment alleged to have been damaged as a direct result of Iraq's invasion and occupation of Kuwait The

Claimants seek compensation for expenses resulting from cleaning and restoration measures undertaken or to be undertaken by them to remediate damage from: (a) Oil released from damaged oil wells in Kuwait; (b) Pollutants released from oil well fires and firefighting activities in Kuwait; (c) Oil spills into the Arabian Gulf from pipelines, offshore terminals and tankers; (d) Laying and clearance of mines; (e) Movements of military vehicles and personnel; and (f) Construction of military fortifications. The fourth installment of “F4” claims consists of nine claims: three by the Government of the State of Kuwait; two by the Government of the Kingdom of Saudi Arabia; one by the Government of the Islamic Republic of Iran; one by the Government of the Hashemite Kingdom of Jordan; one by the Government of the Syrian Arab Republic; and one by the Government of the Republic of Turkey. This installment was processed in two parts: part one contains the recommendations of the Panel on eight of the nine claims in the fourth “F4” installment, and the remaining claim is the one of Kuwait for which the award recommended by the Panel exceeds 1 billion United States Dollars.<sup>[21]</sup>

The claims in the fourth “F4” installment are for expenses resulting from measures already taken or to be undertaken to clean and restore environment alleged to have been damaged as a direct result of Iraq’s invasion and occupation of Kuwait. The Claimants seek compensation for expenses resulting from measures already taken or to be undertaken by them to remediate damage caused inter alia by: (a) Oil released from damaged oil wells in Kuwait; (b) Pollutants released from the oil well fires and firefighting activities in Kuwait; (c) Oil released from pipelines onto the land; (d) Oil filled trenches; (e) Oil spills into the Arabian Gulf from pipelines, offshore terminals and tankers; (f) Movement and presence of refugees who departed from Iraq and Kuwait; (g) Mines and other remnants of war; (h) Movement of military vehicles and personnel; and (i) Construction of military fortifications, encampments and roads<sup>[22]</sup>. The fifth and final installment concluded the last 30 June 2005, after the publication of the fifth Report made by Panel of Commissioners. It involved 19 claims filed by six Governments. The claims in the fifth “F4” installment are for compensation for damage to or depletion of natural resources, including cultural heritage resources; measures to clean and restore damaged environment; and damage to public health. But, the Panel considered that any loss of or damage to natural resources that can be demonstrated to have resulted directly from Iraq’s invasion and occupation of Kuwait must be deemed to be encompassed in the concept of “environmental damage and the depletion of natural resources” within the meaning of Security Council resolution 687 (1991). The Panel did not consider that there was anything in the language or context of Security Council resolution 687 (1991) or Governing Council decision 7 that mandates or suggests an interpretation that would restrict the term “environmental damage” to damage to natural resources which have commercial value. The Panel, therefore, found that a loss due to depletion of or damage to natural resources, including resources that may not have a commercial value is, in principle, compensable in accordance with Security Council resolution 687 (1991) and Governing Council decision 7 if such loss was a direct result of Iraq’s invasion and occupation of Kuwait.

Following the conclusion of the claims processing stage, the Commission will continue its work, with a small secretariat, on payments of awards to claimants and a number of residual

tasks. In this context, at this session the Council approved the proposed budget of the Commission for the biennium 2006-2007<sup>[25]</sup>.

As we mentioned before, environmental claims have been the last category of claims resolved by UNCC, due principally to the difficulty that means its resolution. Damage to the environment is not easy to verify and quantify, and in order to verify the damage it is necessary a rigorous assessment rationed temporis and rationed loci, mostly because environmental harm is typically extended by time and place<sup>[26]</sup>. Besides, these claims are so large and complex that require the assessment and verification by different types of experts in the following fields: chemistry; toxicology; biology (including microbiology, marine biology, biological oceanography, marine zoology and plant pathology); medicine; epidemiology; environmental, ecological and natural resource economics; geology; atmospheric sciences; oil spill assessment and response; rangeland management; and accounting.

### 3.2 Cooperation between UNCC and UNEP

The main purpose to facilitate the tracking of environmental monitoring and assessment projects in the Arabian Gulf region, following the Gulf war, it was adopted an agreement between United Nations Environment Programme (UNEP) and the United Nations Compensation Commission (UNCC) the 5th of August of 2002<sup>[28]</sup>. The agreement makes UNEP a provider of environmental database services for UNCC, which the UNCC Panel of Commissioners for the environmental claims use to analyze and evaluate the progress and results of the monitoring and assessment projects, awarded by the UNCC Governing Council in June 2001. The databank contains information from claimant governments regarding the monitoring and assessment projects and, in addition, information about environmental policies, legislation and general state of environment reports. The databank also provides information about available remediation methods and technologies.

This agreement of cooperation was initially adopted to cover a two-year period starting in August 2002, and all expenses related to this cooperation have been covered by UNCC. As Dr. Klaus Töpfer, the executive Director of UNEP, stated: "It gives us great pleasure to now start the process of establishing and managing a database to assist in the process of monitoring and assessing the potential environmental situation in the region. Our service will give efficient support to the Panel in their work resolving any inconsistencies or duplications in the on-going assessments"<sup>[29]</sup>

### 3.3 Post-Conflict Assessment Unit (PCAU)

After having been working in the Balkans region to determine the environmental risks from the Kosovo conflict (1999), UNEP focuses on the clean-up and remediation tasks, taking practical steps to raise financial resources to address the identified. Besides, during July-August 2003 two field missions were undertaken to Iraq to study the environmental situation, as well as institutions and local priorities in Iraq<sup>[33]</sup>. In addition, UNEP has been undertaking capacity building training programs for Iraqi officials working in the area of environmental management and contaminated sites assessments. And UNEP is also working with stakeholders from Iraq and Iran in order to increase cooperative actions in the management of the Marshlands.

#### 4. Conclusions

In conclusion, through this study we wanted to find out whether the environment is actually protected by international organizations during armed conflict or not. As we have seen by studying Iraq's case, after the Gulf War, international organizations have been playing an important role, especially through UNCC's work protecting the environment damaged as a result of invasion and occupation by Iraq of Kuwait.

This has been the first time that reparation for deliberate environmental harm has been dealt with by an international (quasi) jurisdictional body, and also the reaction of the Security Council establishing the Iraq's responsibility and the UNCC was completely new, being the first time that the Security Council established the entire system of reparation. However, some scholars stated that the UNCC's work in the Iraq's case cannot be used as a precedent to other conflicts. In conclusion, through this study we wanted to find out whether the environment is actually protected by international organizations during armed conflict or not. As we have seen by studying Iraq's case, after the Gulf War, international organizations have been playing an important role, especially through UNCC's work protecting the environment damaged as a result of invasion and occupation by Iraq of Kuwait.

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#### 5. References

1. Bodansky D. Effects of Military Activity on the Environment, Final Report. 2003.
2. Bodansky D. Legal Regulation of the Effects of Military Activity on the Environment, School of Law, University of Georgia, Publisher: Federal Environmental Agency. 12.
3. For example, the conflict in the Congo has caused the collapse of government management of protected areas. In addition, the destruction of water and fuel sources during war, and the creation of refugee flows, tends to put additional human stresses on the environment. Ibidem. 11-17.
4. The International Court of Justice (ICJ) recognized that: that Articles 35, paragraph 3, and 55 of Additional Protocol I provide additional protection for the environment. Taken together, these provisions embody a general obligation to protect the natural environment against widespread, long term and severe environmental damage; the prohibition of methods and means of warfare which are intended, or may be expected, to cause such damage; and the prohibition of attacks against the natural environment by way of reprisals. These are powerful constraints for all the States having subscribed to these provisions. I.C.J. Advisory case. 1996, 31.
5. Low L, Hodgkinson D. Compensation for Wartime Environmental Damage: Challenges to International Law After the Gulf War, Virginia Journal of International Law. 1995, 35.
6. Aznar Gomez MJ. Environmental Damages and the 1991 Gulf War: Some Yardsticks before the UNCC", Leiden Journal of International Law. 2001; 14(2):2.
7. Previous assessments of Iraq's responsibility were affirmed in resolutions 666 (1990), 13 September 1990, 670 (1990), 25 September 1990, 674 (1990), 29 October 1990, and 686 (1991), 2 March 1991.
8. Report of the Secretary General pursuant to paragraph 19 of Security Council Resolution. 1991, 687. S/22559.
9. They consist of the claims of individuals for departure from Kuwait or Iraq (category "A" claims), the claims of individuals for serious personal injury or death (category "B" claims), the claims of individuals for losses up to US\$100,000 (category "C" claims), the claims of individuals for losses over \$100,000 (category "D" claims), the claims of corporations, other private legal entities and public sector enterprises (category "E" claims), and the claims of Governments and international organizations (category "F" claims). (More information see at the web site: <http://www2.unog.ch/uncc/>).
10. Criteria for Additional Categories of Claims, S/AC.26/1991/7 (4 December 1991), Decision N° 7, para.
11. Although this provision is under the section of Decision N° 7 dealing with government claims, the Commission has allowed claims to be made for environmental damage also under category "E".
12. As stated by Heiskanen. Apart from establishing whether an alleged loss is, as a matter of law, a direct result of, or proximately attributable to, Iraq's invasion and occupation of Kuwait, the Commission's principal task is to verify that the loss has, in fact, occurred, and to value and quantify the loss, in Heiskanen V. The United Nations Compensation Commission, Recueil des cours, Hague Academy of International Law. 2002, 296. Martinus Nijhoff Publishers, The Hague/Boston/Lodon. 2003, 357.
13. Decision 1, para. 18, and Decision 7, para. 6.
14. Kiss, Shelton. International Environmental Law (New York/London. 1991. at p. 352.
15. First Report, S/AC.26/2001/16, 22 June 2001, <http://www2.unog.ch/uncc/>
16. These activities relate to, inter alia, damage from air pollution; depletion of water resources; damage to groundwater; damage to cultural heritage resources; oil pollution in the Arabian Gulf; damage to coastlines; damage to fisheries; damage to wetlands and rangelands; damage to forestry, agriculture and livestock; and damage or risk of damage to public health.
17. Second Report, S/AC.26/2002/26, 3 October 2002.
18. Ibidem, párrafo 6.
19. Third Report: S/AC.26/2003/31, 18 December 2003.
20. Ibidem, par.5.
21. Ibidem, par. 6.
22. The Panel's recommendations on that claim are presented in the "Report and recommendations made by the Panel of

- Commissioners concerning part two of the fourth installment of 'F4' claims. 2004. (S/AC.26/2004/R.40).
23. Ibidem, par. 9.
  24. S/AC.26/2005/10 30.
  25. This Report is analysed by Payne C. UN Commission Awards Compensation for Environmental and Public Health Damage from 1990-91 Gulf War, The American Society of International Law, 10 Agosto. 2005.
  26. Fifth Instalment. 2005, 55-57. S/AC.26/2005/10, 30.
  27. Aznar. 17.
  28. Heiskanen. Supra. 12, 379.
  29. See at: [http://postconflict.unep.ch/uncc\\_new.htm](http://postconflict.unep.ch/uncc_new.htm).
  30. See: "UNEP Cooperation with the United Nations Compensation Commission", UNEP, August 2002, <http://postconflict.unep.ch/>