Gulf War Reparations and the UN Compensation Commission: Environmental Liability

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Language: English
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Publisher: Oxford University Press

The Gulf War in 1990s became the focus of the international community not only because of the controversial aggression by Iraq but also because of the environmental effects of this armed conflict, which might be considered to have reached a crisis point. To some extent, this case is an outstanding example of how state responsibility is enforced for consequences of war, especially for environmental damage.

With Iraq’s defeat by the coalition states, the UNSC unanimously determined that Iraq was responsible for the consequences of the war (including environmental damage) as a result of its unlawful invasion of Kuwait. This was followed by the establishment of an international body to manage these claims: the United Nations Compensation Commission (UNCC).

This was the first time in history that the claims for environmental damage during war were recognised formally in an international post-war reparation regime. Many celebrated this event as establishing a valuable legal precedent in holding belligerents liable for future armed conflict having severe environmental impact.1

As part of the UN’s sanctions against Iraq for its unlawful actions and pursuant to paragraph 18 of Resolution 687 and the UNSG’s 2 May 1991 report,2 the UNSC adopted Resolution 692 on 20 May 1991, for-

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mally establishing the UNCC as a subsidiary organ of the UNSC that would administer a system to provide compensation for damage arising from the Gulf conflict. The general operation of the UNCC has been associated with the "quick settlement of insurance claims" because it does not adjudicate claims, but merely considers and verifies them, and then determines the amount of losses.

Even though stated to be a non-judicial body, some scholars doubt that the UNCC performs purely non-judicial tasks. This is first because, as described above, the Commission has the task of resolving disputed claims. In addition to this, the organisation's fact-finding function cannot be separated from judicial tasks. Third, the Commission's organs, such as the Governing Council and the Commissioners, use terminologies, techniques, procedures and reasoning that are particularly similar to those applied in a court of law. Lastly, the Commission's tasks of considering and verifying claims and determining the amount of losses are in fact functions similar to those of judges or arbitrators in the judicial system.

The UNCC practice has produced a significant precedent for compensation for environmental damage during war by specifically ruling that "direct environmental damage and depletion of natural resources". In addition, it is important to note that the "F4" panel decided to include "pure environmental damage" i.e. damage to environmental


resources that have no commercial value. This inclusion is crucial because it acknowledges protection for the environment which is purely for the environment's own sake or because of its intrinsic value, not as valued based on its benefit to humans.

In reality, states claiming categories of the compensable claims above not only come from those located in the Gulf region but also other states that have incurred expenses in assisting in the mitigation and reparation of environmental damage. This shows that claims of compensation are not limited to the injured states but also come from third states. In addition, however, the existence and the works of the UNCC have some issues that may prevented it to become a perfect precedent in the area of wartime environmental damage compensation.

In relation to such concern, this book examines in details the major aspects of the UNCC particularly relating to claims for environmental damage. This book is mainly divided into three parts: issues relating to claims preparation and review, jurisprudence and policy, and the possibility of applying the UNCC-model in the future. The book consists of a collection of essays by experts who have involved and played key roles in the process within the UNCC from a range of backgrounds. These articles analyse the procedures and approaches adopted by the F4 Panel in reaching its conclusions in awarding environmental claims.

The editors have done an outstanding work to minimise repetition and present the articles in a logical and coherent way. At the beginning of the book, one of the editors give an overview of the UNCC and the environmental claims so that readers can set their minds in a specific issues relating to them. Unfortunately, despite of such introductory work, general reader may find this book too specific for public dissemination.

Finally, the examination of the work and experience of the UNCC and the F4 Panel particularly should be welcomed by those interested in the fields of the international law of state responsibility for wartime

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7 This decision was made by the panel taking into account previous judgments of the Chorzów Factory and Trail Smelter cases and the interpretation of liability provision of Resolution 687. Report and Recommendations Made by the Panel of Commissioners Concerning the Fifth Instalment of “F4” Claims S/AC.26/2005/10 (2005) at [52-58].

environmental damage. As this book’s foreword states, “the authors have provided much needed insights into the problems posed by wars and their adverse effects on the environment. Hopefully, they have also helped to point the way to the possible means and arrangements for dealing with these problems. Unfortunately, these are problems which the international community may need to revisit again in the future”. In providing further information, this book also contain some basic documents relating to the UNCC and claims to the environment. Also, it may become the most updated reference for researchers who wish to examine more on the issue of environmental impact during armed conflicts.

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