

The Balance Sheet Critical Analysis of the United Nations Compensation Commission for Iraq

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Abstract: *After the Gulf War, the Security Council undertook to restore the international order violated by the invasion of Kuwait by Iraq armed forces and to set up an institution to rule on claims for compensation for losses, damages and prejudices suffered by the victims. Resolution 687 (1991) of 3 April 1991 is undoubtedly one of the longest and most complex resolutions adopted by the Council. It makes two decisions: the first holds Iraq responsible for "any responsibility under international law for any loss or damage including the environment and the destruction of natural resources and any other direct damage suffered by foreign States and individuals and foreign companies as a result of its unlawful invasion and occupation of Kuwait". The second holds the implementation of this responsibility in accordance with procedures and through bodies to be established that will operate within the multilateral framework of the United Nations. This article castigates the delay that this reparation has taken and aims to present in a clear way the kind of damage that IRAK had caused to KUWAIT by the fact of its invasion, in particular the various violations of the human rights and the international humanitarian law.*

1. Introduction

During and after the Gulf war, the security council of United Nations has adopted several resolutions such as the resolution 687 of April the 3rd, 1991 which determines the juridical diet applicable in Iraq like sanction because of the war, In particular the applicable diet in matter of war reparation. This resolution confirms that Iraq is: responsible, according to international rights (law), of all losses damages, included (including), the problem of environment and natural resources destruction and all other direct problems undergone by foreign states and foreign physical persons (foreigners) and societies, because of its unlawful invasion and occupation of Kuwait¹ after the report of the general secretary of the United Nations of May the 2nd 1991 which recommended to put on place a fund and one commission charged with the application of the resolution 687, the security council decided by the resolution 692 of May the 20th 1991, the creation of compensation commission; the United Nations compensation commission (UNCC)² 27 years after its creation, it is necessary to examine the result (of the balance sheet), this article is focused on two parts. In the first part they present the summary of the commission and in the second part, they present the realization of the commission in question:

Presentation / Introduction of the United Nations compensation commission.

In this part, it is question to give the history in summary of the commission and its organs with its juridical nature.

1.1 Historical Commission

In August, the 2nd 1991, Iraq destroyed Kuwait the same day, the United Nations Security Council adopted the resolution 660, in which it condemned the invasion of

Kuwait by Iraq, and required to leave immediately and without any condition to the military intervention on Kuwait territory. In November 1990, the security council authorized the states members to use the force in order to chase out Iraqi forces from Kuwait under the direction of the United States, the military campaign to force (oblige) the Kuwait to begin in January 1991 and Kuwait has been liberated in March 1991.³

During the invasion and the occupation of Kuwait by Iraq, some members of civilian population of Kuwait have lost their life, personal belongs and others have had body wounds.⁴ The security council has approved the resolution 687⁵ of 1991 after the liberation of Kuwait, which has confirmed that the international rights (law) attributed the responsibility of all direct losses including environmental natural resources exhaustion and so is for all damages undergone by foreign governments coming from other states or moral persons because of the invasion and unlawful occupation of Kuwait by Iraq. The resolution 687 authorized equally the creation of compensation funds for the reclamations against Iraq and a commission charged with the administration of the fund. According to / referring to this resolution, the commission has been created. The source of the commission and means of compensation were the incomes tankers of Iraq.⁶

1.2. The organs of the commission

The United Nations compensation commission is composed of three organs.⁷

- 1) Council of administration
 - 2) Council of commissioners and
 - 3) Secretariat (secretary)
- The administration council which is the political organ is composed with fifteen members or is represented by the members in exercise of Security Council; it is this organ

¹ Serge SUR, *resolution 687 of security council in the affair of Gulf; problems of restoration and peace guaranty*, in French directory of international law XXXIV edition of CNRS, 1991, P. 32

² John j. Chung, *the United Nations compensation commission and the rights equilibrium between individual claim and the Iraqi government*: RWU, spring, 2005, p.141

³ John j. Chung, *op cit*, P.147

⁴ Idem, p.148

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⁶ A. Peter, *the funds, and the United Nations compensation commission review* (revue) Belgium of international law, Bryant edition, Brussels, 1992, P.489

⁷ John j. Chung, *op cit*, P.142

which has elaborated and ensures the application of rules of the commission. The mission of this Council is to verify and to assess (evaluate) the given reclamations and to write reports in which are formulated recommendations on the compensation to rent. In this commission the politics takes the first position on the judiciary.

- The commissioner's panel which assist the members of administration council it is composed of experts in the field of finance and environment. Let us note that Iraq doesn't have any representative among the fifty of the commissioners and hasn't been consulted to their nomination at the end.
- The secretariat is the administrative organ of the commission. Meanwhile being given reclamations as the little time to the disposition of commissioners to decide about the answers (replies) to give them. It is in reality the secretariat which does the work of fund.

In the exercise of this task, the secretariat can consult or contact the experts which reports are not published. Iraq doesn't have representative in secretariat and doesn't participate to the selection of experts.

1.3. Juridical nature of the commission

The United Nations compensation commission is subsidiary organ of United Nations created by the Security Council, the creation of this organ is based on the article 29 of the United Nations charter which stipulate that: « the security council can create the subsidiary organs which is judged necessary during the exercise of its functions». ⁸ As indicated in the report of the general secretary of United Nations organization. "The commission is not a tribunal or a referring tribunal in front of the parts which complaints. It is a political organ which has essentially established facts for its functions and to examine compensation demands, to verify its validity."⁹

2. The realization of the United Nations compensation commission for Iraq

In this part, we are going to analyze the responsibility of Iraq, types of damages caused by Iraq in Kuwait, before passing on review the realization of the commission and at the end we'll finish to talk about the damages which are not covered by the commission in question.

2.1 The responsibility of the United Nations compensation commission for Iraq

The resolution 687 of April the 3rd 1991 had decided that Iraq was responsible according to the international law.¹⁰ The violation of international law by Iraq was visible (reality); the putsch with installation of another government, aggression of united nations organization members against

the territory of a sovereign state belonging to United Nations Organization, taking in hostage people who are coming from occidental countries for same weeks and the violation of diplomatic immunities. This action of Iraq had violated the territorial integrity in reality, which enhance from the personal nature of international law. the idea which is on the base of territorial integrity is to demonstrate that between sovereign states one equal each territory must respect another one and the article 2 paragraph 4 of united nations charter.¹¹ The members of the organization must obstinate themselves In their international relations to do the threat or to use the force (the use of force) whether against territorial integrity or the political independence of all states whether from all other manner which is unlawful with the targets of united nations "¹²

The Security Council had several times mentioned the responsibility of invasion actors and negative acts. The resolution 666 of September the 13th 1990 had reminded that Bagdad was responsible of the well-being and the security of those who are coming from abroad (from other states, foreign states) that according to the international humanitarian law including the law or it is applied, the 4th convention of Geneva, Iraqbeard (carried the whole responsibility of this kind of things.

In this invocation of the responsibility in chief they add another one linked to the violence against the diplomatic missions. Iraq has carried the whole responsibility of all acts of violence against people from foreign countries or against all diplomatic missions if those infractions were attributed to Iraqi state. The Security Council had reminded that the particulars who had applied or ordered ('commanded/ gave orders) not to be exempted of individual responsibility.

The resolution 674 of October the 20th 1990, had reminded that Iraq was the responsible of all the losses, all damages or all other negative acts done according to the international law about Kuwait and foreign states and so is people who are coming from their states and societies as matter of facts the invasion and unlawful occupation of Kuwait by Iraq.¹³ The unlawful act of Iraq has begotten (created) damages on behalf of physical or moral persons.

2.2. Kind of damages undergone by Kuwait

Type of damages caused by Iraq in Kuwait is material, physical and environmental ones.

2.2.1. Material damages

The Iraqis authorities had carried out with them when they were getting out of Kuwait (to their withdrawal) belongs of Kuwait: here it is about: the reservation of golds; 3 216kg, and pieces of gold and commercial effects and bank bills. In additional they have practiced a systematic politics of transfer of value furniture or representative of advanced

⁸Lazard BOuony," *Regards on the United Nations compensation commission*",in international, year 1997,p.116

⁹ Andrea Gattini, *The UN compensation commission: Old Rules, New procedures on war Reparation*, 13EURJ. INT'L.,161,165,(2002),(Italy)

¹⁰ Marcelo G. KOHEN, *contested possession and territorial sovereignty*, GIP, Geneva ,1997,p.128

¹¹ Maurice Flory, '*the war of gulf and international law*;' Muslims world review (and of Mediterranean, year 1991,P.5

¹² UN charter,art.2 , paragraph 4

¹³Verhoen J., *allied states or united nations? , the united nations organization face to conflict between Iraq and Kuwait*' , French directory of international law, Paris, year 1990,p.150

scientific technical such as the complete moving out and laboratory of virology extinguisher vehicles (firemen vehicles), the mobile equipment of stadium, gain losses and profits.

2.2.2. Waiting for the life

The invasion of Kuwait by Iraq had provoked bridegrooms' deaths, children and little sons of first degree. The golf war has done 1 082 deaths during the conflict, 625 disappeared, 400 killed by explosives engines in 1991 and thousands of wounded.

2.2.3. Environmental damages

The unlawful act of Iraq in Kuwait has had also like consequence the strong destruction of the environment and natural resources, so, Iraq has been obliged to reward expenditures engaged for the reduction and damages prevention to the environment including those linked to the fire (blaze) of petrol tanks (petrol wells) and the furious or wild of pollution by immersion (diving) of this one in coast waters (sea side's) and international of golf. In which they added the engaged expenditures for cleaning and restore the environment and the watching of public health.

Instituted in 1991 by the United Nations Security Council for treating relative reclamation to the damages and losses resulting of the invasion and the occupation of Kuwait by Iraq, in this commission has treated by its comity, 169 environmental reclamations.

The first international institution charged with the damages compensation willingly caused to the environment during the army conflict. Its practical constitutes Interesting experience which could serve however the specificity of mechanism, model for the future if they could apply. The "comity F4" has contributed significantly in its five reports. In development of international law to the environment and certain innovations could inspire to the coming days the mechanisms and procedures of reparation of environmental damages.

2.3 The imputation (attributions) of damages to Iraq

The committed actions by civil servants, the salaried (employed) or the agents of Iraqis government or placed entities under its control, the rupture (fracture) of social order in Kuwait or in Iraq during this period, taking in hostage or all other form of detention were attributed (imputed) to Iraq.

Iraq was imputed its proper or own actions, whether, they acted themselves or they practices their watching or they have left (the military operations, taking hostages), Iraqi state was obliged to make sure or to ensure order at his, but also they occupied it in the territory of Kuwait, so the following actions were reproached to Iraq.

2.3.1 The human rights violations by Iraq

The human rights violations have been committed by Iraqi forces because of the invasion of Kuwait such as unlawful detention without any judgment (trial) of thousands of civilians and militaries; prisoners' tortures, the imposition of

death penalty and extra-judiciary execution of hundreds of unarmed civilians such as children.¹⁴

1) Unlawful detention, detentions without any judgment and disappearances

The number of detainees was more than 10 000 in November 1990, international amnesty had received the names of more than 875 Kuwait people, civilians and militaries who would have been detained by Iraqis, the majority of those prisoners would be detained in Iraq in jails and detention centers such as in massorah, bagdad and mossoul and a small (little) number would be jailed in the town of Kuwait. Among then figured 11 diplomats from Kuwait who were in post at the embassy and council (consulate) of Kuwait at Bagdad during the invasion. International amnesty had received also the names of 152 other men from Kuwait, aged of nineteen to fifty years, it is about civilians and militaries who would be detained and some among them had been killed by Iraqi forces, several hundreds of occidental people have been arrested in Kuwait. Among the detainees some of them (certain) were tortured or executed the denial of respecting orders has trained the detention of civilians who hadn't participated to the resistance of army or armed resistance), other people (persons) have been detained for denial of respecting other rules introduced in Kuwait; as the interdiction to be shaved. The majority of old prisoners interrogated by international amnesty have declared that they hadn't been deferred in front of any judiciary authorities during their detention and that they had stayed under control of civil servants who had arrested and interrogated them. Almost all of them have been detained in secret and they interdicted them to pay visits or they refused them to visit their families (members), their friends and so is a lawyer or doctors.¹⁵

2) Torture and bad treatments inflicted to the detainees

The majority of victims were men from Kuwait; aged of sixteen to thirty-five years some of them were buried. The women were tortured, beaten and violated. Other persons have been tortured sometimes for they have participated to the activities without violence's (non-violent activities) such as pacific manifestations after the invasion, possessed tracts of opposition and deployed the flag of Kuwait. The torture was largely destined to punish actions of challenge, they aimed equally to get information's on identity of persons having or who have activities of opposition, the place where those activities were done, doctors were forced to indicate that victims were died because of internal hemorrhage and not from torture or wounds caused by ballets, the prisoners were most of time detained a part side or in separated cells or in other sites of detention center or prison.¹⁶

3) The penalty death

In the followed months of the invasion of Kuwait, the council of revolutionary commendations of Iraq has adopted resolutions introducing the penalty death for three infractions: in august the 11th, far storage of foodstuffs in

¹⁴ International amnesty, *Iraq/Kuwait occupied report*, December 1990.

¹⁵ International amnesty, *op.cit*; 1990.

¹⁶ International amnesty, *op.cit*; 1990.

commercial goal or target august the 14th for looting and in august the 25th for the lodging of occidental people. In November the 20th, the council of revolutionary commendation has confirmed again in the new resolution that the storage of foodstuffs, looting and lodging of occidental people were passable to death apparently to response, to answer to effects of international economical sanction imposed to Iraq according to the usual practices. The government of Iraq has obstinate itself to publish the number of executed persons for those crimes passable to penalty death. The resolution 322 of the council of revolutionary commendation which has introduced the penalty death in august the 14th for looting forecasted that those affairs and will be judged by an exceptional tribunal, which the decisions will be definitive (where they will take final decisions) without any claim (appeal).

4) Extra judiciary executions

From the middle of august, four or five executions were observed in overage. The victims were men of all ages, the youngest had about sixteen years, several victims would have been shot by a peloton of execution, sometimes in public apparently without any judiciary procedures, children of others died after the free privation of essential medical care's the majority of victims of extra judiciary executions were from Kuwait and others from Egypt, Iran, Pakistan and a British. Some persons have been freely killed during the distribution of foodstuffs from cooperatives in the houses.

Let us note that actions of Iraq against the citizens of Kuwait are prohibited by the universal declaration of human rights of 1948 at his article 5, the convention of human rights safeguard and fundamental liberties (called also the European convention of human rights at his third article, the united nations convention of 1984 against torture and other penalties or cruel treatments. The fourth article of settlement annexed to convention of "la haye" of 1899 and 1907 about the laws and customs of the land war prohibits the unkind treatments against prisoners and war prisoners must be treated with humanity, torture being prohibited. The article 3 common to four convention of Geneva of 1949 including in the list of minimal rules which must observe all the parts even in armed conflicts which is not international interdiction about "scope to the life, corporal integrity such as mutilations, cruel treatments, torture and executions,..." the same, the protocol II in additional to Geneva convention prohibits : "the life scope, health scope and physically well being or mental of persons in particular, cruel treatments such as tortures, mutilations or all other forms of corporal penalties;". According to the 3rd convention of Geneva, the concerned states and their authorities are kept during the international armed conflicts to treat war prisoners all the times with humanity and to respect their persons in circumstances. The 4th convention interdicts the actions of violence and the torture against protected civilians during the war. At the end article 75 of protocol extends this interdiction at all the persons who are in these kind of situations and precise that: "Torture in all forms physical one or mental are absolutely prohibited". In the same vena, the resolution 2002/38 of the human rights commission of the united nations organization recognize that: "no one must be submitted to the torture or other penalties or cruel treatments, unkind or humiliation,... such

actions represent a criminal tentative to destroy a human being physically and psychologically which cannot justify any circumstances, any ideology, any interest,... a society which tolerate the torture can not in any case pretend to respect the human rights "17. Evidently, the torture is a subject which concerns at the same time the human rights and humanitarian rights both in unison of principles reinforcing each other. just in order to reach this ideal of a world without torture that the united nations have put on place two mechanisms: the preventive mechanism and repressive mechanism.

3. Amount due and a liberated Amount by Iraq for reparation of caused damages to Kuwait

The international law admits several modes of reparations. It is about the restitution of belongs (things), the compensation and the satisfaction in the conflict between Iraq and Kuwait, only the mode of reparation by compensation was retained.

The united nations compensation commission created by the security council of united nations organization in 1991, the year in which a military coalition led by the united states had pushed back the forces of Iraqi president at that time Saddam Hussein out of Kuwait had authorized the payment of 52,4 milliards of dollars (42,3 milliards of Euros) to private persons, societies, governmental organizations and other organizations which had undergone direct losses caused by the invasion and the occupation of Kuwait.¹⁸

The funds which are taken away from fiscal collections on the sales of petrol and of tankers products of Iraq. The commission has paid in total 47, 9 milliards of dollars, about 1, 5millions of complaints.¹⁹ A totality of amount of 52,4 millions of dollars such as arrested by the commission, only 47,9 milliards have been liberated by Iraq in term of compensation of caused damages so it remains Amount of 4,6 milliards of dollars to pay in the accounts of other victims to whom their compensation hasn't been done.

We must also know that on 2, 5 millions of complaints, only 1, 5 millions of complaints have been examined up to now.

4. Conclusion

In summary the degree of reparation of caused damages by Iraq in Kuwait as being evolutionary. The commission continues his harmful deeds since now 27 years. The reclamations have been formulated by persons (individuals) of states, great or big multinational enterprises often most of time tankers and are relative to (deserve) the rights of salutary environments. Rightsof the third generation and to the highly technical aspects.

¹⁷Res. 2002/38 of human rights commission of April the 22nd, 2002 available on www.un.org consulted on April the 20th, 2019.

¹⁸J.C Martin; *the practice of the United Nations compensation commission for Iraq in matter of environmental reclamations*, pedone, Paris 2013,p.54

¹⁹V.O.A "Africa, Iraq takes back the payment of his reparations of war in Kuwait," April the 20th, 2018 available on <https://www.google.com> consulted in April the 15th, 2019.

However with a simple mathematics, it is noticed that if Iraq arrives to support the entire amount due this must take about three years again, it will get 30 years for the reparation by Iraq of damages caused during his invasion in Kuwait in 1991. Here another point of view (opinion) would weigh the problematic of value and function of reparation of damages according to the duration of the reparation.

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