

## Review

## Distinguishing between civil liability and environmental damage liability

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**ABSTRACT:**

The increase of community awareness about effective and favorite role of the environment in humans' social life and the threats resulting from unsustainable development, endangering the domain of human life has necessitated environment protection as one of the main concerns of the human society in the last decades. This fact requires a new and real approach to the environment, in particular, its legal regime focuses on the protection of environment. The civil liability, being one of the main instruments of legal regime, is not capable of protecting environment and outcome of operation of civil liability instruments in scope of the environment does not have effective result in relation to the environmental law, It is essential to analyze environmental damage liability according to the identification of environment, with a short analysis of basic elements of the civil liability and current problems, and recognizing weak points of civil liability in global scale and universal expectations confronting with environmental challenges.

This research tries to identify autonomy of the environment by drawing environmental liability principles and discerning its intrinsic nature and dividing it into general and specific liability considering its aim which is different from civil liability. Obviously, in order to distinguish between civil and environmental liability, it is necessary to briefly examine the philosophical foundations of the responsibility.

**Keywords:**

Environment, Liability, Civil, Damage, Responsibility, Intrinsic responsibility.

**Article Citation:**

**Mehrzad Jamshidi, Mansour Pournouri and Seyed Abbas Poorhashemi**  
Distinguishing between civil Liability and environmental damage liability  
**Journal of Research in Ecology (2018) 6(1): 1348-1362**

**Dates:**

**Received:** 06 March 2017    **Accepted:** 24 June 2017    **Published:** 13 Jan 2018

**Web Address:**

[http://ecologyresearch.info/  
documents/EC0285.pdf](http://ecologyresearch.info/documents/EC0285.pdf)

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## INTRODUCTION

Worldwide attempts have been focused on adducing environmental concerns, arising from catastrophic results of the scientists about environmental conditions, since 1970 when environmental issues became a great problem of the century. These attempts were arisen from high pressure of NGOs on states and related organizations in the world that led to Stockholm Conference (Stockholm, 1972).

Hundreds of conferences were established following this conference in global and regional levels and states have created environmental organizations and legislated environmental laws and rules in order to remove environmental concerns. Since the most important factor of these concerns is the destructive activities of humans in great private and public corporations that destroy environment due to their economic interests, disregarding negative effects of these activities. This fact required regulating special mechanisms in bilateral and multilateral treaties of necessary controlling and monitoring activities in addition to have systems so as to protect and improve the environment. In this regard, specification of environmental issues and scope such as environmental responsibility are essential. Towards this end, identification of principles and establishing border between environmental law issues, such as the concept and subject of environmental damage liability is one of the most important factors in this field.

Environmental issues are faced with three main problems in the field of liability: Firstly, there are no unified global laws and rules of liability to be used in the settlement of environmental issues. Secondly, there is a fundamental difference between civil liability issues and environmental issues and challenges in governing elements, conditions, laws and instruments.

Thirdly, the weakness and inability of traditional laws related to liability in covering environmental issues, considering purpose and scope of the environmental law,

requires new look into the environmental liability.

Therefore, this research seeks to clarify the necessity of providing a new special legal regime in environmental damage liability by distinguishing it with civil liability.

### **Civil liability and environmental damage liability**

If we consider the law as a complex of laws and rules governing individuals' relationship with each other and with government, the legal responsibility is based on violation of these laws and rules which guarantee social norms. Individuals are responsible against the society for the violation of these norms. The theory of responsibility provides that the person has an obligation to compensate his/her damages to society, which leads to his/her civil liability and in some cases is accompanied by more aggravated results called criminal responsibility.

The legal responsibility is one aspect of social responsibility which is defined in social life and social relationship. This responsibility resolves the environmental issues and problems in national and international levels, based on classic laws and principles of responsibility. Actually, in this regime, there has been no specific difference between damages to persons and property and damages to the environment for which we are faced with issues such as civil and criminal environmental liability based on laws and rules governing liability in domestic legal regime. These responsibilities are based on classic rules governing responsibility in national level such as responsibility on fault, strict and absolute, and principles such as no harm, wasting, causation, assumption of innocence, strict interpretation, criminal rules, personality principle and etc., Also, the responsibility is defined in international level as violation of international norms and obligations. Therefore, there is no specific identity for environmental issues required to regulate a special legal regime based on environmental rules. This is highly assumed that environmental issues are included in traditional rules of civil and criminal responsibility. In other words, the

specific identity for environmental issues in the traditional legal regime is not defined.

In fact, the environmental damages are considered as collateral and unnecessary issues after damages to persons, properties and interests. Finally, environmental issues are categorized under civil and criminal responsibility issues.

### **The structural difference of civil liability and environmental liability**

The structural difference between civil responsibility and environmental liability is that, as a branch of social legal responsibility, civil responsibility attempts to improve social life, while environmental liability is based on the relationships of humans and environment and its purpose is to protect environment (based on religious findings, environment is a depository and all persons have an obligation to protect it). The humans' life and other living creatures are entirely dependent on the environment. In other words, social development is dependent on life elements, without which there would be no society and social responsibility. In the other hand, while the legal responsibility is relied upon protecting social values, environmental liability is based on an intrinsic obligation against which there would be no definition and it is meaningless in reciprocal action between states unlike legal responsibility which has reciprocal character between states.

The legal regimes of civil responsibility refer to compensations to persons and properties which is called tort, while legal regimes of environmental liability refer to deterrent and punishments for certain destructive acts and their consequences and its compensatory feature. Paragraph 16 of the resolution of, the United Nations Security Council (1991) "Reaffirms that Iraq, 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" which has convicted Iraq to direct attack to environment, ignition of oil fields and sea pollution in Kuwait (Iraq-Kuwait, 1991). Another point is that special features of environmental issues such as concept, nature, elements, conditions, subject, purpose, and principles require regulating a special legal regime, because considering the wide scope of environmental issues, anew legal environment regime needs to be created other than civil and criminal liability. Obviously, utilizing legal instruments in the settlement of environmental challenges does not prejudice the independence of environmental rules.

### **Theoretical principles of civil liability**

If we consider the responsibility as one's responsibility for his/her actions, there would be two theories in civil responsibility:

- (a) Deontological theories; and
- (b) Instrumentalism theories.

The first theory takes look at moral norms of individual responsibility in their relationships together and tries to justify civil responsibility by moral values such as fault, making undue hazard, justice, right, freedom, equality, causation, social contracts and etc. This theory looks for compensation of damages and seeks to answer these two questions, whether justice requires the damage remain non compensatory or he/she should suffered damage themselves when he/she violates moral values?

According to this structure, civil responsibility clarifies the aim of this field of law and its duty in case of damages is structural examination of defendant and plaintiff's problems and explanation of their rights and obligations together of course, civil responsibility might achieve socially favorite aims, but does not achieve social and economic values through these aims, so its credit is based on settlement of disputes between a

person who is suffered from damage and the one who has caused such damage (Weinrib, 1995).

### **Instrumentalism theory**

According to this theory, civil responsibility is an instrument to achieve aims independently, which is a source of other civil responsibilities, such as; economical applicability and reparation (Cane, 1997).

### **Fair distribution of hazard**

Based on this theory, the rules and principles of civil responsibility are justifiable according to social and political aims and purposes.

Contrary to Deontological theories that consider civil responsibility in private law framework, this theory analyzes this subject in public law framework. Therefore, civil responsibility is not an independent branch of science, and hence there is no difference between private law and public law, since it defines favorite purposes and there is no difference between damages resulting of human or natural factors, however individuals must be protected against any event.

### **Proportional pluralism**

This theory has two dimensions: Pluralism and Correlation. According to this theory, civil liability is composed of various values of social profitability and moral principles of individual responsibility. This theory believes that the rules of civil liability are not regarded from one aspect, but there are different considerations related to justice and social justice that justify responsibility. Pluralism reflects individual and social values, which are different in various economic, social, cultural, and political situations including time and place and damage.

Therefore, this claim that civil liability only focused on establishing formal justice between parties by allocating resources and establishing distributional justice or the condition of civil liability is only fault and negligence and its goal is just to compensate or deterrence dogmatist is just a dream and it is not compatible with the reality.

### **Systems governing civil liability**

Civil liability is divided into three parts in establishing and regulating substantial laws:

#### **1. Plural systems**

These systems have their own conditions and effects due to their various and special subjects, such as Common Law System. Certain faults including aggression, annoyance, negligence, etc. have their own conditions, rules and laws for responsibility.

#### **2. Unity systems and**

The main principle of these systems is to compensate any damages, disregarding of their principles and conditions. Moral principles were entered into this domain, and the fault was as a main cause of responsibility.

#### **3. Mixed systems**

These systems are derived from the counter action of above mentioned systems and were established by the Islamic system which is categorized in Plural systems and has its own rule and laws to guarantee causes such as usurpation, causation, oppression, and excess. Since principle of no harm requires no compensation of damage, but it is based on illegality of harm, and in other words its philosophy is to negate harm, so it cannot be a basis for the unity system.

### **The concept of responsibility**

Responsibility is a synonym of guarantee in Islamic Jurisprudence, which is derived from society, like other subjects, such as justice, freedom and ownership. Legally, guarantee is presumed, unless the contrary is approved. Lack of guarantee is an initial pre requisite for execution of guarantee, since lack of guarantee is legally based on freedom and independence of individuals. Forced on individuals may eliminate guarantee due to the lack of willingness. In other words, there should be freedom to make individuals responsible for their acts. Generally, civil liability includes contractual and unconventional civil liabilities, but in a specific definition, it includes only unconventional civil

liability.

### **The basics of civil liability**

#### **Civil liability is based on fault**

The definition of fault has been changing during time, because it is dependent on justice whose requirements are changing along with life conditions. Fault is either a punishment as a factor of criminal justice, or a superior right as a factor of distributional justice, and sometimes it is based on expedience, whose measure is profit and loses. The responsibility is based on moral principles which requires fault and includes two elements: act and, damage. Condition for fault in this responsibility is creator condition and the two conditions of attribution of damage to action and attribution of act to doer are obligatory conditions.

In this situation, the responsibility is not assumed and the lack of guarantee is a principle which should be approved by the person who has suffered from damage. The person, who has made fault, may defend and assume himself innocent and lack of guarantee principle is applied in case of non determination of guarantee.

The right to defend in responsibility refers to:

1. Lack of damage;
2. Non damage of plaintiff;
3. Amount of damage;
4. Non attribution of harmful act to doer; and
5. Non attribution of damage to act of doer.

However, this right does not refer to intrinsic jurisdiction, such as objection to court jurisdiction.

#### **Liability without fault: (strict liability and absolute liability)**

Here, liability is assumed due to certain conditions and since existence risks are sufficient for responsibility which is referred to as subjective responsibility. The plaintiff does not need to prove elements of liability. The person who is on fault has the right to defend and withdraw his/her liability.

#### **Strict liability**

Sufficient for liability and the right to this

liability refers to special risk situations in which liability is assumed. The right to defend is withdrawn from the damage factor, for instance: chemical and nuclear incidents.

#### **Plaintiff and defendant**

In civil liability, the plaintiff is a legal or natural person whose properties and assets are damaged, and the defendant is a person to whom the harmful act is attributed.

#### **The necessity of a new insight to environmental damage liability and emergence of new conceptions**

The public information growing on the world, their sensitivity to environmental and human rights issues, their similarity, and their increasing interaction have been leading to highlight environmental subjects which threaten natural resources, living resources, climate, and lead to environmental changes, earth warming, and Ozone destruction. This fact requires a new and special insight into environmental conceptions and issues which is different from other civil issues such as personal property damages.

Since traditional responsibility regimes support damages to individuals, goods, and also pollution of private sectors, and since they do not support environmental damages generally, therefore, changing direction of traditional responsibility regimes are mostly derived from this fact that the environment has been considered as a public asset, which is accessible for any member of society.

Therefore, no one should damage it. Although this change and approach can be useful, but considering environment as a public asset, based on the relationship between human and environment, this fact cannot be implied. On the other hand, decreasing environmental value as a general good is actually disrespecting the environment. From another perspective, the environment has intrinsic value and utilizes man, but man is a part of the nature. So, traditional liability regimes cannot be useful considering environment law aims and scopes

(Kurukulasuriya and Rabinson, 2006).

### **Environmental liability**

Before focusing on the environmental liability, a few issues should be noted about status of environmental law and its divisions. According to a simple definition of environmental law, it is a complex of laws and regulations which determines human treatment with nature in various domains on the environment. Environmental law is divided into two parts:

1. National Environmental Law; and
2. International Environmental Law.

International environmental law consists of rules and regulations governing the relations between states in the field of environment. It is a branch of Public International Law. This fact is resulted from principles of Public International Law such as good faith (bona fide) and the principle of cooperation governing the environmental law. Meanwhile, International environmental law is based on agreement between states and their cooperation, whose main mechanism is the principle of Public International Law. Environmental law has certain features of which independence is the most important one. Therefore, international environment domain, which is based on sovereignty of states, cannot be changed in its nature.

Since value and importance of environmental law in some aspects is equal to human rights and since social policy has a vast domain in these two fields, hence, environment like human rights has no political borders.

If the Universal Declaration of Human Rights is the main core of human rights (Universal Declaration of Human Rights, 1948), Stockholm conference (Stockholm 1972), Rio conference (Rio, 1992) and hundreds of bilateral and multilateral environmental conventions are main sources of environmental law, in comparison to Human Rights Covenant International Covenant on Civil and Political Rights (Human Rights, 1966) and International Covenant on Economic, social, and cultural

(Human Rights, 1966).

On the other hand, the sources mentioned in Article 38 of Statute of International Court of Justice (ICJ, 1946), are also applicable to the environmental law. Besides, states' relationship in the International level are based on reciprocity, according to public international law rules, but in environmental issues, states' relationship are based on principles of cooperation and good faith.

The other point is that the validity of soft law in Environmental Law is vaster than hard law and in this domain; Environmental Laws and rules are among jus cogens and without reservation. Moreover, the right to have a proper environment is recognized as a human right and human rights protect this by all means.

As a result, all these require Environmental Law as a branch of public law, other than the International Law. In other words, the term International Environmental Law cannot explain the right to have the environment with all related concepts. So, the part of Environmental law which International should be recognized as Environment International Law, which governs over states' environmental liability, disregarding of determining internationally wrongful acts of states.

### **The concept of environmental damage liability**

Apart from environmental rules and regulations clarifying individuals' obligations and sanctions which regulate bilateral relations between man and nature, the importance of environmental damage liability is far from this, since in this bilateral relationship, there is interdependence between human and environment. In other words, intrinsic value of nature requires human presence on nature and then adjustment of human relationship with nature. Article 1 of convention related to protection of both environment and human against hazardous chemicals and pesticides (Rotterdam, 2003) and according to Article 1 of the convention aims to protect human health and the environment and also according to the precautionary principle in the face of

persistent pollutants (Pops, 1997).

Although the theory of human original is more traditional than the Environment Based Theory, Environmental Theory is a new one, because it is mainly focused on intrinsic value of the environment. This is also highlight in introduction of Biological Diversity Convention (CBD, 1992) in the introduction of United Nations Universal Charter of Nature “Mankind is a part of nature and life depends on the uninterrupted functioning of natural systems which ensure the supply of energy and nutrients (World Charter for Nature 1982)” and Article 3 of additional protocol environmental protection to the Antarctic Treaty states that “The protection of the Antarctic environment and dependent and associated ecosystems and the intrinsic value of Antarctica, including its wilderness and aesthetic values and its value as an area for the conduct of scientific research, in particular research essential to understanding the global environment, shall be fundamental with considerations in the planning and conduct of all activities in the Antarctic Treaty area” (Madrid, 1991). Since there would be no human life without nature, they are highly interrelated together.

#### **The concept of intrinsic responsibility**

“We have not inherited the earth from our ascendants, but we have been given it by our descendants”.

(This expression which comes from Native Americans implies environment priority to human’s birth).

In general, the term (liability), is solely definable to human being, and the environment requires obligation towards that. In other words, if one enjoys the environment, he/she will have a duty to protect it. Since human life is dependent on nature and environment, in such case that the first breath of a human, when he/she is born, without using oxygen of nature is impossible and his expiration with mono oxide returning to the nature is a part of the life cycle. Therefore, enjoying environment has certain liabilities for human beings. So,

human life is meaningless without environment, that is, human enjoyment of environment is an intrinsic one which requires intrinsic liability. Thus, environmental liability is intrinsic, and cannot be one of the social liabilities, contrary to social responsibilities which are based on the customary values.

The point is that although the right to have a proper environment is one of the third generations of human rights, it is recognized as the first generation of human rights in Stockholm Conference, among rights to have freedom, equality and other fundamental human rights. Distinction between human rights into three generations is for their close relationship together, in such a way that the relationship of the right to have the environment and the right to live is so interrelated. The principle of cooperation in international law is a fundamental principle and it is recognized in Article 7 and Article 24 of Stockholm conference (Stockholm 1972). On the other side, soft law governance in Environmental Law has special status and since the Environmental Law rules are among jus cogens, this fact implies its intrinsic nature.

#### **Environmental liability has two definitions:**

- (a) General definition of environmental liability (protection of environment); and
- (b) Specific definition of environmental liability (compensation).

The general concept of environmental liability is based on a common concern of mankind about the environment with the subject of environment protection.

#### **Purpose of environmental liability**

The purpose of environmental liability is protecting the environment against damages. Specifically, environmental liability restitution is the main factor and the protection includes both conservation of environmental elements against destruction, damage and pollution, and also proper management such as improvement of environmental conditions. These are also clarified in Article 2 and Article 3 of Stockholm

declaration (Stockholm 1972).

**General environmental concerns:**

1. Earth is the only living ecosystem;
2. Interrelationship between main life elements: air, water, soil; and
3. Threats to human life due to environment destruction and pollution.

**The scope of general environmental liability**

All countries have an obligation to protect the environment from damage and based on this, states' willingness to hold international conferences and conventions and regulating bilateral and multilateral agreements and emergence of causation and prevention principles is their liability. Since there is no unified and comprehensive definition for the environment, the common concern is divided into two parts: material and moral. According to moral concerns, it is essential that the biosphere layer is regarded generally, because due to interrelationship, this layer includes all of domestic aspects. The material concern implies recognition of long term effects of environmental damages; hence, protection of environment for next generations is vital.

**Principles governing general environmental liability**

**1. Environment belongs to all persons (belonging principle)**

This principle is not voluntary or based on people right or arisen from public desire to be relinquished, but it is an intrinsic principle; therefore, people cannot deny belonging to the environment. This is also emphasized in the US clean water act and oil pollution act (USA, 1990).

**2. Environment destruction is a danger for all persons (all damaged principle)**

Since men's life is inevitably dependent on the environment, so its damage is dangerous for everyone. According to the fact that environmental damages include unknown and indirect effects, therefore, these effects are hazardous for all of people and states, disregarding of their boundaries. Paragraph 2 article 2 of

convention for the prevention of pollution from ships states that "Harmful substance" means any substance which, if introduced into the sea, is liable to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea, and includes any substance subject to control by the present Convention (MARPOL, 1973/1978); which refers to that principle.

**3. Refusal principle of environmental damage**

This principle, which is provided in Article 21 declaration of Stockholm (Stockholm 1972), and Article 2 of Rio Declaration (Rio 1992), is the first step for removing related concerns as general environmental liability basis. On the other hand, the Governments would prevent damage to environment and protect it when using the environment. Article 2 of the Convention on Environmental Impact Assessment in a transboundary states that "The Parties shall, either individually or jointly, take all appropriate and effective measures to prevent, reduce and control significant adverse trans boundary environmental impact from proposed activities (Espoo 1991)". Principle 3 Principles on Shared natural resources states that "States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction (UNEP, 1985)" and Article 3 (a) (b) (c) of the Convention to Combat Desertification (unccd, 1994); all refers to this subject.

**4. Collective responsibility of individuals against environmental damages (collective principle)**

Based on this principle, since the subject of environmental liability is protection of the environment, therefore, if there is damage to the environment, this damage proves human's fault to protect the environment, and based on this, people are responsible for repairing

their failure to protect the environment.

On the other hand, collective responsibility of individuals to protect the environment requires states' obligation to regulate special mechanisms such as insurance, reparation funds, special taxes and others.

#### **Specific concept of environmental liability**

This concept is for reparation of environmental damages, which is clarified in Article 22 Stockholm Declaration (Stockholm, 1972), and Article 13 Rio declaration (Rio, 1992). This concept has various principles, including:

1. Principle of necessity for reparation;
2. Principle of stoppage of damage;
3. Principle of prompt reparation;
4. Principle of certainty in reparation;
5. Principle of restitution in environmental damages and
6. Principle of minimization environmental damage.

#### **There are two scopes of environmental liability**

1. Authorial environment (Internal Governance); and
2. Ultra-Authorial environment (External Governance).

#### **Environmental Legal Principles**

These principles which are called environmental legal tools, and are influential in the settlement of environmental issues, are based on two kinds of liabilities:

1. Principles referring to general environmental liability: protection, cooperation in emergency conditions, information and precaution; and
2. Principles referring to specific environmental liability: prevention, compensation, common responsibility and the principles also address the issue of minimization of transboundary damage in case of incident and the establishment of national and international remedies for insuring that the general principle of ensuring compensation is translated into action in practice (Kurukulasuriya and Rabinson 2006).

According to article 206 of the UN convention "when states have reasonable ground for believing that planned activities under their jurisdiction or control of

cause substantial pollution or significant and harmful changes to the marine environment, they shall assess, as far as practicable, the potential effects of such activities on the marine environment and shall communicate reports of the results of such assessments in the manner provided in article 205", which implies information and the precautionary principles (UN CLS 1982).

#### **Environmental reparation**

In general, damage factors should pay compensation. The polluter pay principle seeks to impose the cost of environmental harm on the party responsible for pollution. This principle was set out by the OECD as an economic principle and as the most efficient way of allocating costs of pollution prevention and control measures introduced by the public authorities in member countries. It is intended to encourage rational use of scarce environmental resources and to void distortions in international trade and investment. (Kiss and Shelton, 2007)

According to the principle of Certainty in Reparation which is the continuation of principles of stopping the damage and urgency in compensation, all of legal and social mechanisms should be regulated in such a way that lead to reparation and no excuse shall justify its breaching.

Environmental damages should be repaired, disregarding of their type and amount. This is considered as the principle of certainty in reparation and Article 9 of Kuwait Regional Convention states that "the contracting state shall individually and or jointly take all necessary measures, including those to ensure that adequate equipment and qualified personnel in the sea Area, whatever the cause of such emergency ,and to reduce or eliminate damage resulting there from the pollution. (KUWAIT, 1978)" and Article 27 of Cartagena Protocol states that "The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first meeting, adopt a process with respect to the appropriate elaboration of international rules and procedures in the

field of liability and redress for damage resulting from transboundary movements of living modified organisms, analyzing and taking due account of the ongoing processes in international law on these matters, and shall endeavor to complete this process within four years)" related to the selection of international rules and compensation resulting from cross-border transfers (NIROBI, 2000).

Note: environmental reparation requires a stop in harmful acts. Since there can be no restitution in environmental damages, stop in damages is very important. According to paragraph (b) Introduction of The World Charter for Nature, "Man can alter nature and exhaust natural resources by his action or its consequences and, therefore, must fully recognize the urgency of maintaining the stability and quality of nature and of conserving natural resources (WCN, 1982)".

Article 22 Stockholm declaration (Stockholm, 1972), Article 13 Rio declaration (Rio, 1992), Article 12 Basel Convention, all state that "The Parties shall cooperate with a view to adopting, as soon as practicable, a protocol setting out appropriate rules and procedures in the field of liability and compensation for damage resulting from the transboundary movement and disposal of hazardous wastes and other wastes (Basel, 1989)". Paragraph 1 article 6 of Convention on Civil Liability for Nuclear damages Rights of compensation under this Convention shall be extinguished if an action is not brought within ten years from the date of the nuclear incident; and article 7(1) of the operator shall be required to maintain insurance or other financial security covering his liability for nuclear damage in such amount, of such type and in such terms as the Installation State shall specify. The Installation State shall ensure the payment of claims for compensation for nuclear damage which have been established against the operator by providing the necessary funds to the extent that the yield of insurance or other financial security is inadequate to satisfy such claims, but not in excess of the limit, if any,

established pursuant to Article V "(Vienna, 1963)". Also, articles 5, 13, 15 of Convention on Civil Liability for Damage Cause during Carriage of Dangerous by Road Rail and inland Navigation Vessels (CRTD, 1989) refer to Environmental reparation. Reparation can be done by collective insurances in compliance with certainty and immediacy.

### **Conception of harm in general environmental liability**

- Any environmental damage which is a public concern can be an environmental harm.
- The harms that are not refined by the environment are environmental harms.
- Obviously, partial damages in domestic level cannot be a public concern.
- On the other side, people's acts can be harmful for the environment; however, the mere harms that cannot be refined by the environment are environmental damages.

### **Elements of environmental liability**

#### **General environmental liability**

This liability does not require harmful act or environmental damages, because its subject is protection of the environment, but attribution of liability to harm requires specific environmental liability.

#### **Specific environmental liability**

This liability requires two basic elements:

1. Damage and
2. Causation.

The effect of general liability on specific liability is measured by the type of activity and basis of liability.

The burden of proving innocence is upon people who cause damage and not the plaintiff.

#### **Instruments of environmental liability**

Contrary to civil liability which is based on none guarantee, environmental liability is based on guarantee. Therefore, the condition of failure is never considered in the environmental liability.

**Instruments of environmental liability are limited to these domains**

**Absolute liability**

According to Article 4 of Convention on Civil Liability for Nuclear damages:

1. "The liability of the operator for nuclear damage under this Convention shall be absolute.
2. If the operator proves that the nuclear damage resulted wholly or partly either from the gross negligence of the person suffering the damage or from an act or omission of such person done with intent to cause damage, the competent court may, if its law so provides, relieve the operator wholly or partly from his obligation to pay compensation in respect of the damage suffered by such person.
3. No liability under this Convention shall attach to an operator for nuclear damage caused by a nuclear incident directly due to an act of armed conflict, hostilities, civil war or insurrection (Vienna, 1963)".

Elaborating on Article 7 of Convention on International Liability for Damage Caused by Space Objects (CILDSO,1971), The Liability Convention provides that a launching State shall be absolutely liable to pay compensation for damage caused by its space objects on the surface of the Earth or to aircraft; and liable for damage due to its faults in space. The Convention also provides procedures for the settlement of claims for damages; and SEC. 1002 (a), of oil pollution act states that "Notwithstanding any other provision or rule of law, and subject to the provisions of this Act, each responsible party for a vessel or a facility from which oil is discharged, or which poses the substantial threat of a discharge of oil, into or upon the navigable waters or adjoining shorelines or the exclusive economic zone is liable for the removal costs and damages specified in subsection (b) that result from such incident. According to (USA, 1990), official ships and oil facilities have absolute liability for leaking into their adjacent waters and the economic region.

**2. Strict liability**

To answer this question that whether environmental liability is intrinsic or by force, we have to say that although both of them are somehow equal, since the word by force is involuntary, and since environmental obligation does not arise from external factor, it is an internal obligation, therefore it is more adaptable with intrinsic domain.

**Basis of Liability According to the Type of Activity**

1. Hazardous Activities;
2. Harmful Activities; and
3. Other Activities.

**Fundamental Conditions of Damage**

1. The harm should be intolerable;
2. The harm should be unnatural; and
3. The harm should be substandard.

**Methods of Reparation**

1. Cessation;
2. Elimination of Effects;
3. Restitution; and
4. Compensation.

International treaties have indirectly emphasized environmental reparation and not directly. The Articles 18, 19, 20 of Convention on Civil Liability for Damage Cause during Carriage of Dangerous by Road, Rail and inland Navigation Vessels (CRTD, 1989) and Article 1 of the Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment "This Convention aims at ensuring adequate compensation for damage resulting from activities dangerous to the environment and also provides for means of prevention and reinstatement (Lugano, 1993)".

**Environmental soft law resources referring to reparation include**

Article 12 of Stockholm Declaration (Stockholm 1972); and Article 7 and 13 of Rio Declaration (Rio, 1992); and Articles 12 and 20 of Principles on Shared natural resources state that "States should co-operate to develop further

international Law regarding liability and compensation for the victims of environmental damage arising out of the utilization of a shared natural resource and caused to areas beyond their jurisdiction. (UNEP, 1985)".

### **Competent plaintiffs**

According to Article 19 of Draft Articles on International Covenant of solidarity Rights 1982 "Anyone who has the right to a proper environment, he/she has a right to compensate when their right is violated". Since the right to have a proper environment is recognized in Art 1 of Stockholm declaration (Stockholm, 1972) as a human right, damage to environment is considered as a damage to all persons and based on this, everyone has the right to defend their right and claim compensation. Protection of Environment as a public obligation has forbidden environmental pollution. In Iran, according to Article 50 of Constitutional Law, which has recognized protection of environmental damage claims, the prosecutor has the right to claim compensation on behalf of people (IRAN, 1979).

### **This claim is based on two reasons**

- (a) Since all persons have the right to proper environment, all have the right to claim damages; and
- (b) Due to environmental harms, all people have the right to claim damages in national and international levels and outside of states' authority:

#### **1. In the International Realm**

In international level, states have the right to claim environmental damages. According to, sec (b)1 of United States Oil Pollution Act "The President, or the authorized representative of any state, Indian tribe, or foreign government, shall act on behalf of the public Indian tribes, or foreign country as trustee of natural resources to present a claim for and to recover damages to the natural resources (USA, 1990)".

The case of Shimoda by Japanese victims of nuclear bombardment against the United States was rejected due to Japan and United States peace agreement. According to the court, Ruling that individuals did not

have rights under international law unless this was specifically recognized in a treaty, the Court took the view that there was no general way open to an individual to claim damages directly under the international law. A claim for damages caused by a State to a national of another State could be based on diplomatic protection, but as it is widely recognized in classical international law, any such claim is in fact the State's own claim for damages suffered by its nationals and not the claim of an individual. Thus, Japan could waive, and did waive, all its claims – including those deriving from diplomatic protection – against the US under the peace treaty of 1951. The Court further held that claims by Japanese nationals under domestic law had also been waived (Tokyo district Court, 1963). Generally, environmental claims by private persons are accompanied with various troubles.

#### **2. In states' sovereignty**

In national level, environmental claims are based on national laws by the prosecutor or natural persons, but in international level, environmental claims against states require bilateral and multilateral treaties or special legal mechanisms. According to Principle 14 of Principles on Shared natural resources "States should endeavor, in accordance with their legal systems and, where appropriate, on a basis agreed by them, to provide persons in other States who have been or may be adversely affected by environmental damage resulting from the utilization of shared natural resources with equivalent access to and treatment in the same administrative and judicial proceedings, and make available to them the same remedies as table aver to persons within their own jurisdictions who have been or may be similarly affected (UNEP, 1985)".

#### **3. Out of states' sovereignty**

Claims of environmental damages which are out of states' jurisdiction such as oceans, sea bed, outer space, poles and generally common heritage of mankind require regulating special laws and rules in global level

by the United Nations. In general, also in these cases, the persons' right to claim damages is determined, but the existed impossibility is resulted from the lack of suitable legal regime for these claims.

## CONCLUSION

Given the concepts of environmental liability, environmental civil liability, and traditional civil liability as well as legal differences and boundaries in respect to their essence, legal basis, subject, domain, elements, conditions, compensation methods and flaws of civil liability regarding restoration and restitution of environmental damage with regard to the extensive territory of the environment, we can see that basic and fundamental differences between traditional civil liability and environmental damage liability emerge in various areas so that traditional civil liability does not involve environmental liability, and also environmental damage liability has been designed so extensively and accurately that traditional civil liability can be considered one of its subcategories. Civil liability cannot cover environmental damage in areas of air, water, and soil pollution as well as audio, visual, radio, nuclear, radioactive and genetic pollutions ... as well as realms of sovereignty and meta-sovereignty such as common heritage of humankind, ocean floors, the arctic, etc. and unknown nature of some environmental damages, impossibility of compensation for some damages such as extinction of plant and animal species, and high compensation costs regarding compensation method. In these cases, environmental liability can cover environmental damages by its independent identity and legal and philosophical and theoretical identity as well as specific elements, conditions, and means within the realm on general civil liability and specific environmental civil liability.

## ACKNOWLEDGMENTS

The authors are thankful to Dr. Farhad Dabiri

(Faculty Member at Islamic Azad University), for his valuable remarks and suggestions which have contributed to this paper significantly.

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