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THE BOUNDARY BETWEEN CIVIL LIABILITY AND LIABILITY FOR ENVIRONMENTAL DAMAGE

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ABSTRACT

Awareness of the importance of the environment and its effective role in human life has made the environment a major concern in recent decades. Due to the alarming conditions of the environment at the present, it is definitely necessary to review legal system of environmental protection in all sections, especially in the field of civil liability. In this study, investigating the concept of liability as one of the pillars of environmental law system, explaining the concept of environmental liability, establishing the inherence of environmental liability, determining the flaws of traditional civil liability in solving environmental problems along with explaining environmental civil liability, dividing environmental civil liability into public and specific liability, the difference of the goal, intention, and elements of this liability with traditional civil liability, and establishing the boundary between these two liabilities, all indicate that environmental civil liability differs from civil liability. It also shows that protecting the environment requires special means other than classic means of civil liability. Moreover, traditional civil liability as one of the pillars of the applicable legal system is not able to protect the environment and environmental security, and environmental civil liability is not the subsection of traditional civil liability, and thus the identity of environmental civil liability is independent of traditional civil liability and has the potential to protect the environment.

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Introduction

The troubling results of the research conducted by environmental scientists in 1970s attracted the attention of the international community to environmental issues and comprehensive efforts were made to eliminate environmental problems, the starting point of which was Summit Conference in 1972 in Stockholm. After this conference, many efforts were made to protect the environmental, both in domestic and international levels. The main cause of these worries is indiscreet human activities that destroyed and polluted the environment and in addition to the current regimes, control and supervision tools, has not had the capacity to safeguard the environment. Also, traditional means of civil liability with regard to environmental requirements, legal flaws and new environmental issues, have not been sufficiently efficient to protect the environment. Thus, environmental issues face three main problems: first, there are no homogeneous rules and regulations

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about liability in an international level; secondly, there are basic differences between environmental subjects and challenges regarding the elements, rules, and applicable means on subjects of traditional civil liability; thirdly, we face weakness and inability of traditional laws of civil liability to cover environmental issues. Therefore, given the goal and territory of environmental law, there is a need for a new viewpoint toward civil liability in environmental law under environmental civil liability. This view requires explaining the concepts and setting the boundary between subjects and elements including environmental liability subject and concepts, so that environmental civil liability is appropriate to safeguard the environment and obviating the flaws of traditional civil liability. On the other hand, because this study aims at specifying the boundary between civil liability and environmental liability, setting this boundary requires the clarification of general and partial differences. Through an analytical view, we try to explain the conditions and elements of traditional civil liability and analytically compare it to environmental civil liability and the concept of environmental liability, and thus we will explain the necessity of codifying a legal regime specific to environmental civil liability along with setting its boundary with civil liability.

Research Method

In this paper, analytical-comparative method was used and contents were collected from library and the Internet. In the study, rules, domestic and international documents and related articles are analyzed.

The concept of liability: one meaning of the word "liability" is to be bound, according to which the responsible person is bound to answer intended questions and this requirement limits his liberty. This concept just like others such as justice, liberty, and ownership are rooted in social needs. From legal point of view, the principle is that there is no liability; thus, the reason of liability should be clear. The non-liability principle is based on the free will; otherwise a forced person, due to the absence of free will, cannot be held responsible. In its broad sense, civil liability includes contractual and non-contractual civil liability; and in its specific sense, it includes non-contractual civil liability which both include, limitations for the liable person.

Theoretical bases of civil liability: If we consider the meaning of the word "liability" as binding a person to be accountable for his acts, civil liability is founded on some basic theories.

Task-oriented theory: This theory includes a set of ethical and normative principles of individual liability in relation to the conduct of people toward each other in which civil liability is justified by ethical concepts and values such as fault, undue risk, justice, right, freedom, equality, causality, social contracts, and risk. According to this theory, the criterion to compensate for the loss is the judgment of justice; does justice require that no compensation be assigned for the losing party? Or when compensation results from violating ethical values, the damaging party should be held accountable or in cases where the damage is the result of the act of the injured party, he must compensate himself. According to this theory, civil liability structurally considers the problem of the injured party, damaging factor, and their rights and obligations against each other without being a means of achieving economic and social goals. However, civil liability may achieve goals that are favorable in social aspect. It acquires its validity not through these goals, but through settling the challenges between the injured party and the damaging party [1]. In this theory, civil liability is considered from private law point of view.

Instrumentalism theory: This theory is the antithesis of task-oriented theory in which civil liability is a means of achieving favorable social goals and civil liabilities acquire their validity from this cause; for example, compensation brings about economic growth and efficiency [2]. In instrumentalist theory, the subject is considered from public law point of view. Here, there is no difference between the damage caused by humans and nature and citizens should be safeguarded against all events.

Risk distribution: According to this theory, rules and principles of civil liability are justified based on political and social goals and ideals like freedom and social justice and the importance of civil liability is in fulfilling these goals .

Relative pluralism theory: This theory is composed of two aspects of pluralism and relativity. Based on this theory, civil liability theory is a combination of various values such as social benefit and ethical principles of individual liability, in which civil liability rules cannot be justified with a single principle but justified by various considerations related to interpersonal justice and social justice. In fact, pluralism is a reflection of individualist and socialist ideals that are different from relativity aspect depending on various economic, cultural, social and political conditions such as time and place, type of violation, type of damage, subject, and injured party's description. Therefore, the claim that civil liability only seeks to establish a formal justice between the parties through allocating goods and establishing distributive justice, or the only condition of fulfilling civil liability is fault, or that the goal of liability is only compensation or containment, does not comply with reality.

Legal systems governing civil liability

Pluralist system: In this system, specific and various titles have their own conditions and effects (such as common law) in which specific faults such as rape, harassment, carelessness, etc. have their own rules and domain. Islamic system is considered a pluralist system that has specific rules for causes of liability such as wrath, causation, wasting, trespass, and failure.

Unitary system: The general principle in this system is to compensate any damage regardless of its basis and conditions; however, ethical bases entered this field later and fault was specified as the base of liability. The rule of "no-damage" from which compensation requirement is not derived and negates damage, cannot be the basis of unitary system.

Mixed system: It is the result of the confrontation and advantages of the above systems and enjoys either upon the growth, development, and progress of the society and with regard to various subjects.

The relationship of civil liability and environmental civil liability

If we describe law as a set of rules governing society and relationships between individuals, legal liability is based on deviating from these rules and regulations that guarantee social values and norms. If a person violates these rules, he is held accountable before the society and the meaning of liability is related to the same accountability requirement. Thus, in proportion to the damage an individual has incurred upon the society, he is bound to compensate and it is called civil liability. In domestic and international level, environmental issues are known as a domestic social issue or an international issue. There is no difference between the damage to properties of individuals and the damage to the environment. The basis of classic rules governing liability includes fault-based liability and fault-free liability; and in international level, liability is based on violation resulted from breach of obligations and international rules. Therefore, they do not consider any specific identity for environmental issues and problems based on specific legal system of Environmental civil liability apart from non-environmental issues.

Therefore, environmental issues and subjects, especially environmental damages in the part that has criminal aspect, is covered by the rules of criminal liability, and in cases where it has civil aspects, is covered by civil liability. In other words, no independent identity has been defined for environmental damages in traditional legal system; even environmental damages is regarded as second-hand and unnecessary issues after damages related to persons, properties, and benefits and environmental liability is considered as a subject in civil and criminal liability.

Structural difference of civil liability and environmental liability

Structurally speaking, there is significant differences between environmental liability and civil liability –civil liability is an offshoot of social and legal liability that is related to order, rules, and justice. Environmental liability is associated with the relationship between mankind and the environment aiming at protecting the environment. The social growth and life of humans and animates is thoroughly dependent on living elements of the environment and there will be no society and social liability without the environment. Civil liability is to observe justice and social order. However, environmental liability is based on an inherent duty to which there is no antithesis and no there are no examples of counteracts of governments in this regard. Civil liability in domestic and international law is based on the rule of no-harm and preemptory rule having mutual enforcement guaranty. Given the traditional structure of civil liability legal system, it refers to material damage done to persons and properties that is called "tort". Apart from compensation characteristic, environmental liability regimes uses inhibition and punishment against specific acts with hazardous effects. Paragraph 16 of the resolution of the United Nations Security Council "reaffirms that without prejudice to the debts and obligations of Iraq arising prior to 2 August 1990, which will be addressed through normal mechanisms, is liable under international law for any direct loss and 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". This resolution has convicted Iraq to direct attack to environment, ignition of oil fields and sea pollution in Kuwait [3].

Legal Bases of civil liability

Fault liability: The concept of fault changes over time because this concept is subject to a justice that changes when life conditions change. Fault is either considered as a function of criminal justice, or as the superior right that is a function of distributive justice, or is based on best interest and counsel that its criterion is profit and loss. Fault liability is based on ethical bases and an error should be committed for it to emerge. In this regard, establishment of fault is the condition of liability and includes the elements if 1.Fulfilment of act and 2.Occurrence of loss. Error condition in this kind of liability is a creation condition and the conditions of assigning loss to act and assigning act to actor are its required conditions. In this situation, liability is not presumed and the principle is that there is no guaranty. The injured party should establish liability elements and the damaging party has the right to defend and exempt himself. In no guaranty presumption, no-guaranty principle will be enforced. The right to defend includes no loss, no loss of the claimant, loss amount, not assigning the damaging act to the factor, and not assigning loss to act.

Absolute liability

Absolute liability: In this liability that is referred to as objective, liability is presumed due to special condition and situation and the existence of risk is sufficient for the liability. Here, the injured party does not need to establish its elements and the damaging party has the right of defense and denial of responsibility. Article 4 of the Convention on Civil Liability for Nuclear damages [4] and Article 7 of the Convention on International Liability for Damage Caused by Space Objects are instances of this liability [5].

Strict liability: This liability is related to those specific cases that are very dangerous, so that the risk is inherent in the act and is referred to as risk liability. In this case, liability is presumed and the occurrence of hazardous act is sufficient to apply the liability and the damaging party does not have the right to defend, just like chemical and nuclear incidents.

Approaches of liability system of states to compensate environmental damages

Regardless of the type of damages, international liabilities of governments regarding damages are based on the rules and means of traditional civil liability the foundations of which has been internalized in domestic legal systems. Article 2 of International Law Commission plan 2001 for wrongful acts specified the base of international responsibility of states and only considers reparable those damages that have been brought about as the result of breaching international obligations. Because some legal measures such as nuclear activities should be compensated for, this challenge emerged as to how the mentioned cases should be compensated. Environmental damage resulted from legal activities is one example. Civil liability commission in 1978 investigated civil liability for unforbidden acts and the approach of the commission in preparing 1987 plan was based on two reasons: The first reason is the prevention golden rule with regard to irreparability of environmental damages in cases like extinction of plant and animal species, soil erosion, reduction of ozone layer, and high costs of compensation and late emergence of environmental damages even for decades. Second, the lack of the development of primary international rules (those rules that directly regulate and control conduct and define the obligations of holders of rights) related to unforbidden hazardous acts and the requirement of developing these rules resulted in the ratification of draft plan on the prevention of trans-boundary harm arising out of hazardous activities 2001. On the other hand, draft principles on the allocation of loss on the case of trans-boundary harm arising out of hazardous activities 2006 inclines toward the new approach of liability legal system to strict liability. Thus, in respect of the weakness of civil liability traditional system in case of damages resulted from unforbidden acts, international liability system has adopted three specific approaches for environmental damages: 1. Preventive approach; 2. Liability privatization approach; and 3. Collective responsibility approach. The above common approaches have provided the required legal basis to achieve unitary international liability system for unforbidden acts.

The necessity of a new view of environmental civil liability

The specific properties of environmental issues regarding meaning and nature, elements, conditions, subject, goal, legal principles and rules and means, requires codification of a specific legal system for environmental issues with regard to the vastness of environmental realm and its trans-boundary challenges. It is to the extent that considering the large number of environmental issues as subcategories of criminal or civil liability is not logical and reasonable and the same thing requires the emergence of concepts such as civil environmental liability and criminal environmental liability. The mentioned titles are indicative of the independence of environmental issues and subjects and it is clear that using some legal means to settle environmental challenges in respect to establishment, allocation, or methods of compensation and the existing relative similarity cannot disturb the principle of the independence of environmental rules. In the other hand, the evolution of public opinion across the world and the sensitivity of them to environmental subjects along with many efforts made all over the world to destroy natural resources, habitats, pollution of air, water and soil, climate change, global warming, ozone layer split and other issues necessitate a new view toward environmental concepts and subjects different from other civil issues such as damages to properties and persons. Because traditional civil liability supports damages to persons and goods as well as damages by pollution produced by private sectors and usually supports environmental damages in general, changing of the approach of traditional regime is mainly due to the fact that the environmental as a “common goods” is available to all members of society and there is no personal ownership or benefit regarding it and no one has the right to damage it [6]. Though such an evolution and viewpoint can be useful, but considering the environment as a common merchandise, with regard to the relationship of mankind and the environment, cannot explain the issue appropriately and is in fact insulting the environment to underestimate it as a common merchandise. From one aspect, the environment can have an inherent value by itself, so that not only the environment is a means for mankind, but also mankind is part of the nature. Therefore, traditional civil liability regime, with regard to the goals and realm of the environment, cannot be efficient.

Concept of Environmental liability: Regardless of rules and regulations that as environmental law have determined the obligations of people against the environment and control and regulate human activities in face of the environment, the importance of environmental liability is related to the mutual relationship between humans and the environment. Just as the environment is important for the life of mankind, the mankind is important to the environment too. In other words, assigning an inherent value to the nature in the first place requires the existence and presence of mankind in the nature and also requires the regulation of mankind-nature relationship; as the introduction of Stockholm declaration [7] puts it, mankind is both created by nature and has created it. Human-based view is of traditional status in face of environment-based view. Environment-based view that emphasizes the inherent value of the environment is a new phenomenon, insist on the inherent value of nature and without one of them the other perishes; thus, either view contain some fault.

In this regard, according to the introduction of Biodiversity Convention [8] and the introduction of the United Nations Universal Charter of Nature, “mankind is part of the nature and life depends on uninterrupted functioning of natural systems which ensure the supply of energy and nutrients” [9]. Moreover, Article 3 of Additional Protocol 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, which is in particular research essential to understand the global environment, shall be fundamental considerations in the planning and conduct of all activities in the Antarctic Treaty area” [10]., Article 1 of Convention on the Protection of the Environment and Human against Hazardous Chemicals and Pesticides [11], Article 1 of the same, and precautionary principles of the convention on persistent pollutants aim at protecting humankind and the environment [12].

Inherent liability: Among animates, the word "liability" only applies to mankind given his will power and common sense. Based on the system of rights and the benefit mankind receives from the environment as a right, this necessitates some obligations for mankind to protect the environment. If man cannot benefit from the environment, he will no longer exist. In other words, life is dependent upon benefit from the environment. The first intake of a newborn is not possible without oxygen as one of the life elements and the first exhale of a newborn contains mono oxide carbon that enters the nature. It is one of the cycles of life and in fact a mutual exchange between mankind and nature, none of them can live along without the other. Thus the benefit mankind receives from the environment is an inherent benefit and this requires inherent liability. Contrary to social liabilities that are based on ethical bases and common norms and non-observance of them brings about material and spiritual loss, environmental liability is inherent and cannot be categorized under social liabilities, **because mankind has to survive and this survival necessitates protecting the environment**. The important point to remember is that though the right of mankind for a healthy environment has been recognized to be among third-generation rights of mankind such the right for peace and security, in the first principle of Stockholm declaration it is among the right for living, freedom, and equality which are among basic rights of first-generation of human rights and have been emphasized in principles 7 and 24 of Stockholm declaration [7]. Moreover, the governance of soft rights in environmental law and considering environmental rules among binding rules from international aspect as well as voluntary execution of environmental rules by states without any international force are indicative of the inherent nature of environmental liability.

Basics of environmental civil liability: Unlike civil liability in which lack of guaranty is the principle, in environmental liability, due to the inherent nature of liability, guaranty is the principle; thus, environmental liability does not require mistake condition. Moreover, fault which is among main means of applying civil liability, is not effective in the immediate relationship. And legal bases of applying environmental liability is restricted by absolute liability and strict liability.

Loss in environmental civil liability: Any environmental harm is considered a loss to the environment; but to consider this harm as a damage to environment, it should have two characteristics. First, it could not be refined naturally; and second, be of common concern. It means that partial harms are considered as loss too but do not cause common concern. For example, simplest of mankind actions like respiration are harmful for the environment for consuming oxygen and producing mono oxide carbon or walking is harmful because it erodes the ground. However, because they are able to refine the environment and thus are not harmful for it, are not considered as environmental damage. According to above principles, it is clear that any environmental damage that cannot be refined cause common concern.

General concept of environmental liability: Environmental liability includes general and specific meanings. The general meaning of environmental liability is based on common concern of mankind regarding unfavorable condition of the environment and its subject is to safeguard it. The domain of this liability is the international community and is not restricted to a specific country or subject. The subject of this liability that is protecting the environment, is of inherent description and applying it does not require the occurrence of harmful act or environmental damage, but applying the liability to damaging factor to compensate necessitates entry into the realm of environmental specific liability. The basis of common concern is based on the fact that earth is the only viable ecosystem and there is a mutual relationship between main elements of life (i.e. water, wind, sun, and soil) and human life is threatened by pollution and destruction of the environment. Because there is no single and comprehensive definition of the environment, the original common concern involves mental and material elements. For mental elopement, biosphere layer should generally be considered, because this layer, due to its integrity, encompasses the while domestic realm of governments and includes all international common things… and its material element causes the recognition of long-term destruction of the environment and protecting it depends of safeguarding it for future generations.

Principles of general environmental liability

The principle that the environment belongs to all mankind: Regardless of geographical divisions, the environment belongs to all animates because there is only one environment. This is not a willful belonging or the one based on a right or the result of collective will that could be cancelled, but is a natural belonging. Thus, mankind and animates cannot be imagined without the environment and mankind cannot claim that he does not belong to the environment or say that he does not need it. In Pure Water Law of 1977 and Oil Pollution Act of 1990 of the states of US, the fact that the environment belongs to everyone and all people are beneficiaries in environmental claims has been emphasized [13].

The principle that all people are injured parties in case of environmental damages: environmental damages usually are the result of pollutions and the destruction of the environment. Given the interrelatedness of main natural elements (water, wind, soil, and sun), these damages may occur in every point of the ecosystem. In addition to direct effects on places of occurrence, environmental damages cause unknown and indirect effects in places other than the place of occurrence. These damages effect all humans and countries due to their trans-boundary nature. Article 2 of the International 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" [14].

The principle of avoiding harming the environment: This principle which exists in principles twenty one of Stockholm Declaration and principle 2 of Rio Declaration, is the first practical measure to undermine the common concern and is the basis of general environmental liability based on which humans and states should avoid harming the environment when

exploiting resources. 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 transboundary environmental impact from proposed activities"[15]. Principle 3 of 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"[16]. Moreover, Article 3 (a), (b), and (c) of The Convention to Combat Desertification [17] all refers to this subject.

The principle of collective responsibility of people against environmental damages: according to this principle, because environmental liability is meant to protect the environment and its aim is to prevent damaging the environment, if a damage is done to the environment, this damage results from the negligence of man in protecting the environment. Therefore, regardless of who has caused the damage, human beings should compensate the damage due to their negligence. Based on general environmental liability, the collective liability of humans requires having states legislate and specify particular mechanisms such as insurance, damage restoration funds, specific tax, etc. to restore the damage. In the other hand, the general meaning of environmental liability involves a series of legal environmental principles that are effective in settling environmental issues and determine the extent of liability and applying it and includes protection principle, the principle of cooperation in case of emergency urgent situations, the principle information, the precautionary principle. According to Article 206 of the UN convention, "when states have reasonable ground for believing that planned activities under their jurisdiction or control may 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[18].

The concept of specific environmental liability

The domain of this concept is the same as environmental civil liability that refers to environmental compensation and has been referred to in Stockholm Declaration of 1972 and Rio Declaration of 1992. This meaning includes specific principles of .1) Damage compensation principle. 2) Compensation halt principle 3) Urgent compensation principle. 4) Absolute compensation principle. 5) The principle of restitution integrum in environmental damage.

Specific environmental liability is somehow the equivalent of civil liability regarding compensation that involves two independent areas of governance and meta-governance. In the area of domestic governance, in which states have governments, the compensation should be fulfilled by the government and outside the territory of a government, the international community should provide the necessary mechanisms for compensation. Just like the general meaning, this liability involves environmental legal principles such as prevention principle, the principle of compensation by the polluter, the principle of common but different liability, the principle of the minimization of trans-boundary damage that is related to environmental compensation in execution phase"[6]. When the damage is done, according to absolute compensation principle, regardless of damage type and factor, the environmental damaged should be compensated for. The important point in this regard is that the nature of environmental damage, with regard to the fact that restitution integrum in case of environmental damages is not actually possible, is to stop damage in the first place. The introduction of World Charter for Nature that states "therefore, [man] must fully recognize the urgency of maintaining the stability and quality of nature and of conserving natural resources", somehow refers to urgency and halt principles in case of environmental damage ([9]. Principle 22 of Stockholm Declaration, Article 12 of Basel Convention [19] –Civil Liability Conference of Vienna 1989 -- Vienna Convention on Civil Liability for Nuclear Damage 1963 - International Convention on Civil Liability for Oil Pollution Damage 1969 – all refer to the subject of compensation.

Elements of specific environmental liability: Fulfilment of this liability requires two basic elements: 1) damage 2) causality (allocation of damage to action –allocation of action to damaging party). Given activity type and liability basis as well as governing means, the effect of the result of general liability in specific liability is effective to defend because allocates the burden of proving quittance to the damaging party and damage claimant does not need to provide reason.

Basic conditions for compensation: in order to compensate for those damages that are in the domain of environmental liability, they should 1). Be outside of tolerance threshold of nature; in other words, they should not be capable of being refined by the nature; 2). They should be unnatural. That is, damages should be caused by force major events in the occurrence of which man does not have direct or indirect role. 3). be outside the realm of standards. With the meaning that they should not be outside customary rules and regulations.

Compensation practices: Though there are some similarities regarding compensation between civil liability and specific meaning of environmental liability, compensation and indemnification have a strong role in civil liability. However, in environmental liability, halting the damage, obviating its effects, and restitution integrum are not considered in the first and last phases of indemnification. In general, factors of damage should pay for the compensation. The polluter pay principle seeks to impose the cost of environmental damage on the party responsible for the pollution. This principle was set by OECD as an economic principle and as the most efficient way of determining costs of pollution prevention and control measures introduced by public authorities of member states. It is intended to encourage rational use of scarce environmental

resources and to avoid distortions in international trade and investment[20]. No direct reference has been made in international treaties to environmental damage compensation but have indirectly pointed to it in some cases. In the other hand, in specific environmental liability, in addition to restitution integrum that is the pillar of measures, involves the obligation of appropriate management of improvement. Article 9 of Kuwait Regional Convention1987, Article 27 of Cartagena Protocol [21], and Principles 2 and 3 of Stockholm Declaration emphasize this issue. Some cases of soft law referring to compensation include principle 12 of Stockholm Declaration, principles 7 and 13 of Rio Declaration, and principle12 of UNEP.

Article 6 of the Convention on Civil Liability for Nuclear Damages holds that 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 that 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"[4]. Also, articles 5, 13, 15 of Convention on Civil Liability for Damage Cause during Carriage of Dangerous by Road Rail and inland Navigation Vessels [22], and Article 1 of the Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment [23], refer to Environmental reparation. Reparation can be done by collective insurances in compliance with certainty and immediacy.

The right to file an action: one of the effects of general environmental liability is the application of environmental law. Because the right to have a healthy environment as a human right has been recognized in principle 1 of Stockholm Declaration 1972 and damage to the environment with regard to the principle of the environment belonging to all humans and the principle of the loss of all humans in case of damage to the environment, all people have a personal right to fine actions in competent courts against violation of environmental right. According to Article 19 of International Covenant on Individual Solidarity Rights that emphasizes his right to have a healthy environment …. , if this right is violated against articles 14-18, he has the right to claim compensation" 1982. Therefore, unlike civil liability, we cannot deprive the claimant from complaint right because no personal damage has occurred. This action is based on two subjects: firstly, human beings are entitled to a healthy environment; thus, if the environmental rights are violated, they have the right to file an action. Secondly, because all people have endured loss, all of them are eligible to commence an action to claim environmental rights before competent international authorities. In international level, governments as the representatives of their territory have the right to bring an action in case damage is done to the territory under their rule. According to Clean Water Act of 1977 and Oil Pollution Act of 1990, the Congress has entrusted to the president the right of bringing an action to compensate for the damage to natural resources [13].

Shimoda Case that was related to the victims of atomic bomb in Japan against United States in September 7, 1963 was rejected in Tokyo District Court due to the international incapacity of the claimant [24]. Generally, bringing environmental actions by non-governmental persons faces some restrictions due to lack of competent authorities. In domestic level, bringing an action about environmental damage with domestic origin by attorney general or natural or legal personalities is not legally prohibited [16], but in case of environmental damage with foreign origin, such as dust, commencing an action against a foreign government requires mutual or regional treaties with specific legal mechanisms.

Outside the territory of governments, like oceans floors, outer space, poles, and generally common interest and heritage of humankind, bringing environmental damage action requires codification of a specific legal system in international level leaded by United Nations. The draft of civil liability regime related to the Additional Protocol of environmental protection of pacific treaty has not achieved an acceptable solution yet. Generally, in these cases given general and specific principles governing environmental liability is evident for the right of persons to bring the action, but the weakness is the lack of appropriate legal system for these claims.

Legal boundaries: Considering the concepts of environmental liability and environmental civil liability as well as legal basis of traditional civil liability determines legal boundaries of these concepts.

- Environmental liability is an inherent liability and is created due to the relationship between humankind and nature, but civil liability is a subcategory of social liability and emerges as the result of the relationship between humankind and nature.

Because environmental liability is inherent, it cannot be waived, but civil liability can be waived upon the agreement of the injured party.

The ultimate goal of civil liability is the satisfaction of the injured party. According to Principle 24 of Stockholm Declaration, the ultimate goal of environmental liability is environmental security [7].

Civil liability is fulfilled in the time when harmful act is conducted, but environmental liability, given in its inherent nature, is fulfilled before the occurrence of loss and based on common principle of protecting the environment.

Fault liability has a lower rank in environmental issues with regard to presumed nature of liability, but in civil liability is the base of liability.

The element of civil liability is loss, but the element of environmental liability is damage.

The subject of civil liability is compensation and it is safeguarding the environment in environmental liability, which has been accepted in some countries as a common duty [25].

In civil liability, the one sustaining a loss in the injured party and the damaging party should compensate for the loss, but in environmental liability the injured party is the biological community and in addition to the damaging party, the whole society should compensate for the loss. Adopting preventive measures, privatization of liability and collective liability to compensate for environmental damage can be done in this regard.

In civil liability the damaging party is usually the beneficiary but in environmental liability the beneficiary is something more than polluter and benefit from reaction to the act of pollution should be considered.

In environmental liability, damage to another person is necessarily damaging oneself and thus the basic principle of sovereignty should be defined as reasonable and logical sovereignty principle. Therefore, according to Article 21 of Stockholm Declaration and Article 2 of Rio Declaration, not only governments do not have the right to damage another, but also are not entitled to damage themselves [7, 26].

In civil liability is concerned with compensating for the damage done to persons, properties, and benefits, but in environmental liability the damage done to the environment is the principal element and the damage to persons and properties is subsidiary.

In environmental liability, compensation is the principle and compensation method and factor are not important; but in civil liability, compensation by damaging party is important, unless in special cases.

The strength of civil liability is the evaluation of compensation but in environmental liability the method of evaluating damage faces some challenges cue to weak evaluation methods.

In civil liability, the principle of proportionality is the criterion for compensation; but in environmental liability because the damage cannot be estimated fully, using proportionality principle is difficult.

In civil liability the damage is limited to time, place, and reinforced benefits; but in environmental liability, some damages such as landscape pollution are not limited.

In civil liability the damage is restricted to economic and material damage; but in environmental liability, in addition to economic loss, damage includes favorability, indemnification as well as prevention and protection costs.

In civil liability, damage ca be evaluated in the time and place of occurrence, but environmental damage may be evaluated in future and places other than the time and place of occurrence in some cases that makes evaluation impossible.

In environmental liability, the environmental policy is to prevent damage and non-compensatory nature of damage, but compensation is important in civil liability.

Environmental damage evaluation methods include hedonic price, travel cost, and market price, but in civil liability it is dependent on evaluating the material loss.

The type of damage in the environment is based on level of activity such as dangerous- harmful, but the role of activity level is not that strong in civil liability.

In civil liability, restitution integrum substitution of equal value for as indemnification is possible, but in environmental liability due to the unknown nature of damage that is outside temporal and spatial reals and even it emerges in ecosystem some years later, compensation and restitution integrum is not actually possible.

Legal systems governing civil liability are based on compensation for the loss, but legal systems governing environmental liability not only considers restitution integrum, but also includes secondary goals such as clearing the pollution, containment, punishment, compensating for the costs related to preventive measures as part of loss compensation.

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.

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