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# Compensation as an Effect of International Liability in International Law

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**Abstract.** The incident establishing international responsibility has a legal obligation for persons of international law that includes States and international organizations, and international responsibility arises only when the violation is against the person of international law, where the responsibility is attributed to the international person because the internationally wrongful acts are from the legal system applied between States and organizations and not others, and they have the right to repair the damage resulting from those prohibited acts.

***Keywords:*** International Liability, International Law, legal obligation.

## INTRODUCTION

Responsibility in international law means the obligation imposed by international law on the international person who caused the damage to the other international person, which he must repair. Responsibility is arranged in accordance with the principles of the rules of international law recognized in the international community, and what concerns us in this research is the international legal responsibility as a result of those acts that violate the rules of international law, and through this the person of international law represented by the state bears the legal consequences of those violations stipulated in the provisions of international law,and it does not include international courtesies and moral responsibility contained in the rules of ethics Literary,and the general rule is to apply the penalty for the damage caused, and the evidence of international law is many in the modern era, represented by acts of aggression and violation of the sovereignty of States and the destruction of their property, which requires the international community to move the international responsibility of those who caused these serious damage to States as a result of these acts and violations contrary to the rules of international law in accordance with the international legal methods and methods established by international law and the possibility of diagnosing them according to the evidence and counting the damage resulting from them and listing them as war crimes in many cases, according to which the UN Security Council, which represents the executive organ of the international organization, refers the perpetrators of these crimes To the international criminal courts, and to identify the international responsibility and the resulting effects, the research will be dealt with according to the following investigations:

The first topic: the concept of international responsibility
The second topic: the legal nature of international responsibility
The third topic: Compensation as the effect of international liability

## The First Topic

## The Concept of International Responsibility

International responsibility is one of the main pillars of the general principles of international law as in private law, and persons of international law are asked based on the provisions of international law about all the acts committed to the provisions of that law , and the degree of stability of international custom on the rules of international responsibility and did not distinguish between the state and the natural person, because the interest in the natural person has become clear in jurisprudence and international institutions, and contemporary jurisprudence has identified three basic directions for the idea of international responsibility, the first of which is the idea of moving responsibility towards any international person and the equality of the legal person represented by the state and the international organization, and the natural person represented by the individual, and the second direction has determined the composition of international responsibility as civil or criminal, while the third direction has defined the idea of international responsibility and its establishment when acts contrary to international law are committed and not prohibited that lead to the order of harm to others [5].

This topic will be dealt with as follows:

The first requirement: Definition of international responsibility.

The second requirement: Types of liability.

The third requirement: Forms of international responsibility.

## First Topic

## International liability

The cornerstone of any legal system is international responsibility, but the difference of international jurists in developing a unified definition of international responsibility is due to the lack of agreement among them on a unified basis in international law, and through this we learn about some of the definitions set by Arab and foreign jurists in order to reach the development of the theory of international responsibility, which may contribute to resolving modern international disputes [7].

Among these jurists are the following:

1. Charles Rousseau stated that international responsibility arises from an act that violates a rule of international law, and this act is an act of abstaining from an act that is binding, or of abstaining if the obligation is to perform an act [18].

   This definition was adopted in the wording of Article 2 of the Draft Law on State Responsibility of 2000when it stipulated that "a State commits an internationally wrongful act if the conduct is represented by an act or omission", and is attributed to the State under international law because it constitutes a breach of an international obligation of the State (Draft Law on State Guardianship issued in June 2000, the fifty-second session of the International Law Commission).
2. De Fischer, defined it as the realistic idea that is based on the obligation of the state to reform the consequences of wrongful conduct attributed to it.[17].
3. Padvan defined liability as a legal regime under which a State that has committed an act prohibited by international law must compensate for the injury caused to the abused States.
4. Prof. Dr. Abdulaziz Sarhan, defined it as the legal system under which the State that commits an illegal act in accordance with international law is obligated to compensate the State that has been harmed by this act, which is a legal penalty under public international law for the failure of a person of the law to respect international obligations [8].
5. Prof. Dr. Salah Al-Din Amer defined it as a set of legal rules that govern any act or incident attributed to one of the subjects of international law and leads to the harm of another legal person who is a subject of international law, and the consequent obligation of the former to compensate [6].
6. Prof. Dr. Hamed Sultan, defined it as arising from a breach of the international obligation because it is a new legal link between the international legal person who violated his obligations or refrained from fulfilling it and the legal person against whom the breach occurred, and this entails the obligation of the person who violated to remove the consequences of that and the injured person has the right to claim compensation [2].

Accordingly, international responsibility cannot be defined and reduced to the state only as a single person of international law because of the emergence of international organizations alongside States that have international legal personality and which have been recognized by virtue of the principles and objectives for which it was

established and may also be a plaintiff or defendant in the international responsibility case. The criminal responsibility of the individual at the international level has been recognized as a result of the occurrence of heinous crimes against humanity, and any definition of international responsibility cannot be determined by the illegal act of the existence of other very dangerous acts such as nuclear and atomic tests, which necessitate the adoption of the theory of risks as a basis for international responsibility as well as not being limited to the state. It is possible that there is responsibility on the individual in the event of the commission of international crimes.

## Second Topic

## International liability

After it became clear to us that the international responsibility of the international law person is to bear what happened as a result of the breach of the legal obligation signed by him because of the contractual relationship resulting from the bilateral or collective international agreement, or what is imposed on him by the peremptory international rules because of the breach of the international obligation represented by the general international system that regulates the matters that are of concern to the international community, and the breach may be due to the violation of general legal principles. Therefore, the forms of international responsibility are as follows:

1. Live Liability

Direct responsibility or the so-called original responsibility is defined and is attributed to the actions of the international law person, including the actions of the representatives of the person concerned in the arena of international relations, such as the head of state, and here it is attributed to the responsibility of States for the actions of their legislative, executive and judicial authorities [10].

2. direct Liability:

This responsibility arises when there are acts not issued by the person of international law per se or in its direct form when the wrongful act is issued by individuals or employees of a particular international organization, and thus indirect responsibility has arisen from the acts of individuals and entities that do not represent the official formation of the authorities of the State and are not affiliated or subject to its legal supervision and are not mandated to carry out actions on its behalf [22].

Jurists believe that legal responsibility, with its objective and personal elements, is achieved when a person of international law commits an act contrary to international rules. It includes the objective element in the commission by the State of an internationally wrongful act, which leads to the violation of international legal obligations. As for the personal element, it is what is attributed to the State or one of its official bodies as an unlawful act. In summary, when the two elements above are available, international responsibility is due to the State as a result of violating those obligations and determining the impact thereof.

In addition, international responsibility is classified according to the standards and opinion of international jurisprudence to the nature of the international wrongful act, which is either contractual liability, tort liability, criminal liability, or classified according to whoever committed the wrongful act. Accordingly, the level of responsibility constitutes the real and basic guarantee to ensure rights and the way to not prejudice those rights.

## Third Sub-section

## International liability

After the international responsibility is complete against one or more of the subjects of international law, it is imperative for the international person to bear all the legal effects and has an international obligation to repair the damages resulting from the breach of that obligation, which may be material or moral, which is one of the principles recognized in international jurisprudence and jurisprudence.

It confirms the successive projects of international responsibility starting in 1930, which was called the Hague Conference on Rationing, followed by several conferences, the last of which was the project of international responsibility of international organizations, which was discussed in the International Law Commission in 2009at the session (61) { Article (30/2) of the draft articles on the responsibility of international organizations}.

International responsibility differs in its forms according to the different sources of law when violating the rules of international law. The wrongful act constitutes a violation of any international obligation established by international conventions, international custom or general principles of law, and with reference to the first source of sources of international law, which are international treaties that establish mutual international rights and obligations. As is known in the treaty, it is the written agreement between two or more persons of international law as agreed between the contracting parties [13].

The preamble to the Charter of the United Nations addressed access to the means through which to achieve justice and respect for the obligations established by international treaties as well as other sources of international law, and that the basis of international obligations is the general rule of pacta sunt servanda, and the violation of the obligation by the international person is thus committed an illegal act that leads to the arrangement of international responsibility, and with reference to the international agreement resulting from the international treaty is the origin of mutual rights and obligations in public international law, but if the State concluded a contract with a foreign person, if natural or legal, it does not enter into the chapter of the international treaty, and the State is responsible when violating the provisions of the contract, but constitutes a violation of the international obligation established in international conventions towards foreigners when the State is a party to it. In this case, international responsibility arises when the State of the injured adopts its request after it considers that there is a violation of the provisions of internal law in the contractual relationship or discriminatory measures against foreigners [7].

On the subject of international responsibility, international courts have used some of the general principles of law, including the abuse of the right and objective and absolute responsibility.

## Second Section

## The Legal Nature of International Responsibility

The effect of international responsibility in international law is the legal link between those who have breached the obligation and those who have been breached. In internal law, the breach of the obligation results in a bilateral link. The first is the civil liability of those who have breached it. The second is the claim for compensation. International law differs from internal law in the order of effect because the international obligation is linked according to the principles of international law by necessity to international responsibility as a result of the State's breach of its obligations, which leads to its obligation to compensate, even if it is not stipulated. In general, it is considered a penalty for international responsibility [3].

This topic will be dealt with according to the following demands:

The First Requirement: Legal Association

The second requirement: the penal nature

The third requirement: the conditions of international liability

## The First Section

## Law Association

The legal link between the subjects of international law arises exclusively from the wrongful act,and in 1949 the International Court of Justice issued its opinion that compensation for damages and that the claim for international responsibility is between the subjects of international law, which are two legal personalities that are equal and similar in all directions [3].

As it is known that international responsibility is the legal relationship between the specified persons, so the provisions do not prejudice individuals in their capacities , and here the intervention of the state is carried out when damage is caused to one of its nationals residing in a state, whether the damage is in his money or person, it is the one who sues that state from which the wrongful act that caused the damage was issued,but the individual has his grievance before the domestic or local courts that caused the wrongful act.

International jurisprudence believes that depriving an individual of prosecuting the countries that caused harm to him before international courts may be arbitrary. This jurisprudence view was based on the fact that deprivation causes the loss of the individual's right when his lawsuit is not filed for political reasons that do not interfere with the subject matter of the claim. On the other hand, international procedures take a long time and at the end of the day the individual delays in obtaining his right, as well as the difficulty of evidence and proof if the case continues for a longer period [4].

Criticism of international jurisprudence came about depriving an individual of prosecution before international courts and allowing him to file his grievance before international courts after there are restrictive guarantees to limit the filing of malicious claims and to make an amendment related to individuals based on their consideration as subjects of international law with the possibility of direct claim for compensation for the damage he suffered as a result of the breach of the other State's international obligations. These are among the international rules related to individuals, including customary and economic rules mentioned in the Universal Declaration of Human Rights of 1948, including the legal system of human rights, as well as international conventions related to political, economic and social rights [9].

We believe that the rules of international law that gave the individual rights without imposing obligations on him only through his state or other states and that recent trends distinguish between the direct international concern of the individual and the international legal personality of the individual ,and that international responsibility is the legal link between the subjects of international law that arises between States enjoying full sovereignty and can not arise to the contrary.

## Second Topic

## Criminal nature

The usual form as a penalty for international liability is compensation and it is not the only form of the effects of international liability. The other type may be what is called recovery, which is the restoration of the situation to its origin, which is the obligation of the legal person who caused the violation to remove what caused it. The principle of recovery was applied after the First World War, which stipulated war compensation and the loading of the Allied forces, including Germany under the Treaty of Trianon, which held the aggressors to repair the damage they inflicted on the attacked countries [12].

International jurisprudence and jurisprudence have tended to eliminate the obligation of the international law person who causes harm to repair it because he has violated international obligations. The dispute arises about the nature, scope and form of the obligation. Multiple trends have been divided in this because of the lack of determination of the legal effect, whether it is in civil punishment or in material compensation and alternative methods of the type of obligation. The criminal nature or the imposition of punishment on the real culprit has not been mentioned. This view has been prevalent in international jurisprudence and jurisprudence for some time,but there is another jurisprudential trend that calls for the achievement of the punitive or penal character of international responsibility, especially in cases related to human rights. However, we believe that recent developments in the field of international law, including international criminal law, international human rights law, international humanitarian law and other international laws and conventions related to the field of international responsibility, must be taken into account, and because of the increasing international interest to confer the penal and punitive character of international responsibility, especially in cases related to human rights. These views can be included as follows:

- The increasing interest of international action in consolidating the penal and punitive character of international responsibility when the act is wrongful and involves a serious breach of international obligations that focus on the major fundamental interests of States, including those related to international peace and security, including those related to the protection of human rights. This has found support in international application, including the draft codification of international responsibility, which was addressed by the International Law Commission and preceded by the United Nations General Assembly resolution of 1974on the definition of aggression, which was confirmed by Articles 40 and 41 of the articles of international responsibility of international organizations adopted by the Commission in 2009. It is an extract of the international crime that occurs when there is a serious breach of international obligations that affect the interests of States imposed by the peremptory rules of international law related to violations of human rights and the right of peoples to self-determination and the threat of international peace and security. All of this applies in our opinion to the situation of Iraq after the Anglo-American invasion and occupation in 2003 and the accompanying grave violations of human rights that are considered according to the legal perspective of war crimes.
- After the development of the subject of the punitive nature of international responsibility, we see that the jurisprudential dispute exists over the determination of criminal responsibility for crimes that constitute a significant impact at the international level and whether the individual who committed the offending act, which was considered an international crime, or the State of which he is a national, and who bears civil international responsibility for the damage resulting from the commission of those crimes and determining the parties to the relationship of responsibility [11].
- It is clear to us through the modern development of public international law and what falls on the person of international law, whether a state or an international organization, that the commitment is to ensure the realization of the rules of international legitimacy, especially with regard to international responsibility and what was caused by the perpetrators of the most serious crimes, including war crimes, genocide, crimes against humanity and the crime of aggression, which result in cases of unlawful use of armed force against States.

## Third Sub-Section

## International Liability

The conditions of international responsibility represent a deviation from the rules of international law and a violation of legal obligations, including the occurrence of an act or omission that may be legitimate in accordance with internal law, but it is illegal in accordance with the provisions of international law. In this matter, the legitimacy of the act can not be invoked in accordance with internal law as a result of dependence, and international responsibility cannot be absolved, since the act or act was an international breach and does not comply with the international obligation, even if it originated from an international treaty or international custom. As for the attribution element, it includes the incident establishing international responsibility attributed to a person of international law, and as any general rule is what is issued by the organs of the State, it is attributed to the State according to the fact that the conduct was issued in the name of the State , or the time of the act or act that established international responsibility, so the State bears the burden of international responsibility, and whether the actions of the organs of the State within the limits set by internal law and came in violation of it, including the violation of the organs of the State of the powers granted to it, whether it is individual by exceeding the powers granted to it and violating the instructions issued to it. In these cases, responsibility arises from the actions of the organs of the State and is asked about Actions of its legislative and executive bodies [1].

The responsibility of the State arises in the light of its actions issued by the legislative authority that violate international legal rules, including the issuance of legislation contrary to international law, and that the legislation is directly applicable and leads to damage that leads to international responsibility. Responsibility may arise from an act or omission issued by the central or decentralized executive authority, and one of its conditions is the issuance of the act or omission to do by the employee assigned to him during his work or to be issued by the State. It also includes the judicial authority when carrying out its actions or omission from an act issued by one of the institutions of the judicial authority in the field of judicial rulings issued by it, including disrupting procedures or depriving foreigners of litigation or misinterpretation of internal law [14].

When international organizations are referred to, they are also, as mentioned above, a legal personality, and international responsibility arises when there are actions issued by the actions of their general secretary or employees that caused damage to a state during their actions, including those issued by the armed forces of that organization [15].

The third element is the damage to any of the parties to international liability if it is a legal person such as States, international organizations or legal persons, whether private or governmental entities or natural persons. The damage to any of the above occurs as a result of an act or omission and the damage is material, moral or moral. An example of material damage is the violation of the territorial borders of any State, the attack on diplomatic missions or international organizations, the damage to private or public vessels, as well as the commission of international crimes. As for moral or moral damage, it is the damage to the political interests of the State in international relations with neighboring countries or a person of international law, which often raises difficulties in its estimation. The damage must be direct, which is established by international jurisprudence and jurisprudence, and with regard to the damage to natural or legal individuals, liability shall not be incurred unless the State claiming the response adopts, through diplomatic means, whose rules are found in international custom and general principles of law [9].

## Section Three

## Compensation As an Effect of International Liability

Compensation is one of the objectives of reparation for the damage that has arisen as a result of the violation of the rules of international law, and it is not the only form, but it can take multiple forms, including in-kind compensation to restore the situation to what preceded the wrongful act, and when it is not achieved, it can be resorted to financial compensation or compensation in return , or to take the form of consensual compensation and the so-called appropriate satisfaction, and these forms of compensation are represented by being fair, and this topic was dealt with according to the following demands:

The first requirement: compensation in kind

The second requirement: Financial compensation

The third requirement:

## The First Section

## In-Kind Reimbursement

In-kind compensation means repairing the damage after the State that has incurred international responsibility returns the rights to their owners in accordance with the obligations of the rules of international law in order to end the effects of the wrongful act. Two international trends have emerged. The first trend adopted the precise technical meaning of in-kind compensation and considered that restoring the right in kind is tantamount to restoring the status quo ante before the wrongful act occurred. As for the second trend, it adopts the broader meaning of acknowledging the restoration of the existing situation when the illegal act was not committed and the state that caused the damage returns all funds, things and legal positions to what they were, either physically or legally. The material response is the return of tangible material things with a real virtual presence, including the recovery of things, or the release of detainees by illegal means, as well as the withdrawal from the lands that were occupied illegally. As for the legal response, it is the cancellation of administrative decisions and judicial provisions contrary to the provisions of international law, including the cancellation of any text in an agreement whose implementation is contrary to any international treaty concluded by the state. Examples of annexation of regions include the case of Iraq's annexation of Kuwait in 1990 and its cancellation of the annexation decision after that When he sent two letters to the Secretary-General of the United Nations and the President of the United Nations Security Council that included the cancellation of the Iraqi resolutions (included Revolution Command Council Resolution No. 55 dated March 5, 1991, which stated: "...1. All decisions of the Revolution Command Council issued since August 2, 1990 that are related to Kuwait shall be considered null and void2.All laws, decisions, regulations, instructions, directives, and procedures issued by virtue of the decisions of the Council referred to in the first paragraph above are hereby repealed, and all the effects thereof are hereby repealed).

Accordingly, the legal response is closer to moral and moral satisfaction than the in-kind response because the cancellation of decisions and laws that violate the rules of international law has a moral and moral impact more than to the tangible material. However, the in-kind response is the main one, but in some cases it cannot be applied because it is impossible to implement it,because this physical impossibility is either that the thing to be returned has been damaged or has been linked to it by events that have been realistically changed, including the destruction of homes or civil aircraft or the killing of unarmed residents. Legal impossibility is achieved when there are internal legal difficulties faced by the responsible state, so another means of repairing the damage is resorted to. The general principle is that the causative state cannot invoke national legislation to violate the provisions of international law because it is not capable of one of legal impossibility. The International Law Commission has addressed the in-kind response and set conditions for it, namely:

- It should not be physically impossible.
- It must not be based on a breach arising from a rule of public international law.
- It should not constitute a disproportionate burden on the benefit to the affected State.
- Not to pose a threat to the political or economic stability of the State that caused the internationally wrongful act, and at the same time not to expose the other State to the same dangers (Article 52 of the Draft Law on State Responsibility makes an exception to paragraphs 3 and 4. Where an internationally wrongful act constitutes an international crime, the right of the injured State to obtain restitution in kind is not subject to the limitations set out in subparagraphs 3 and 4).

## Second Topic

## Consideration

Financial compensation means that the State causing the wrongful act pays a sum of money to the affected State. It is one of the known forms of providing compensation in cash. In addition, it can be non-monetary, such as the provision of goods and services. Financial compensation may be complementary to compensation in kind when the latter is not sufficient to repair the damage. Compensation is achieved in return for reparation for damage, as in compensation in kind. As for its difference, it is in the effect that results from compensation in kind, but it is in return for what it was. Compensation in return is characterized by the fact that it aims to remove all the effects that resulted from the harmful act that occurred on the victim of losses. Financial compensation is full and equal in value in kind paid by the State responsible for damage, whether this financial compensation is complementary or alternative to compensation in kind [5].

International jurisprudence has referred to the estimation of the value of financial compensation because there are no precise rules that determine the value of compensation. However, the rule that must be followed is to restore

the thing that was damaged to what it was before the damage occurred or to pay the specified value. The compensation and its amount depend on the facts recorded for each case. The required compensation cannot be ruled less than it or increased without legitimate reasons so that the injured person is not harmed, whether by increase or decrease.

In one of the cases of estimating the damage, the International Court of Justice clarified that its amount is determined for the state that is entitled to the rights, interests and property that are in the ownership of the citizens who have been harmed, which is one of the rules of international law and considers the damage as it affects the state of which they belong to, in addition to what affects the state and its security as a result of what it has done to defend its interests and security. Financial compensation also includes material and moral damage, whether direct or indirect, when it is close and a natural result of the wrongful act, which results in that the financial compensation obtained by the victim includes the past profit in the future after the damage has been caused to him [15].

## Third Sub-section

## Satisfactory Compensation

It is one of the ways to establish international responsibility when the state admits not to acknowledge the actions of its employees and authorities, and it enters the door of a formal diplomatic apology or to direct the penalty of dismissing the employee who actually caused it and may even refer him to trial , and the method of satisfaction is resorted to even if the act that resulted in the violation has caused material damage or not , and the importance of satisfaction is no less than other methods and can surpass them in some cases , for example when Iraq announced the recognition of Kuwait's sovereignty and canceled the decision to annex it, as this decision was more important than other financial and in-kind compensation, and we point out that repairing the damage in the way of satisfaction includes other combined measures represented by the obligation of the violating state to provide an official apology while punishing those who caused the harmful act as well as providing financial satisfaction [19].

We also see in international work, old and recent, especially the decisions of the International Court of Justice, which included in some disputes related to compensation that they were in accordance with the principles of international law that concern international responsibility, and the responsibility of States for satisfaction, we find that Article 45 of the draft law of international responsibility included the following:

- The affected State has the right to obtain satisfaction for the damage from the State that has committed the wrongful act, if necessary to compensate for the damage and according to the necessities.
- Satisfaction may take place for one or more times, including apology, symbolic compensation or compensation expressed in terms of the extent of the violation. In cases of serious violations of the rights of the affected State, as well as serious deviation in the conduct of employees that results in an internationally wrongful act, the punishment shall be punished as a method of satisfaction.
- It is not permissible for the affected States that obtain satisfaction to submit requests that harm the sovereignty and dignity of the State that caused the internationally wrongful act.

With reference to the States that committed international crimes, including war crimes, the violating States invoke appropriate satisfaction to explain that this affects their prestige and prefer to submit to international sanctions in lieu of satisfaction and apology for what they committed or to provide those who caused it, and thus adhere to the text of Article 45 to which reference was made. However, Article 52 of the draft State Responsibility Law included that an internationally wrongful act when it constitutes an international crime and was issued by a State entails a right for the injured State to obtain satisfaction [16].

In the end, the obligation to compensate according to the forms mentioned above is determined according to the cases that are diagnosed according to the severity and nature of the damage and the type of conflict between the parties. Two methods of compensation can be combined together, and it may be more than that, depending on the reality of the case and determining the impact of international responsibility.

## CONCLUSION

International responsibility is the key to every legal system, although the recent studies that resulted from the rapid developments in the international community are still the subject of discussion in international jurisprudence and work,as the International Law Commission, with its continuous legislation of the peremptory legal rules of international responsibility, has not stopped due to important factors, including the capacity and power in international relations and the guarantees it guarantees against arbitrariness. This topic was discussed with a legal

science represented by the results of the implications of international responsibility. Of course, international law scholars dealt with multiple opinions that contributed to the resolution of international problems and disputes and discussed direct and indirect responsibility with the multiplicity of forms of international responsibility and its difference between different sources of international law and the form of the wrongful act of violations of international obligations established in international conventions as a result of the legal nature of international responsibility represented by the legal association and its penal nature, which is based on the conditions of international responsibility resulting from the rules of international law in the occurrence of the act or omission. This may be legitimate in domestic laws and illegal in international law. As is known, the effect of international responsibility ends with reparation of the damage that is determined In several ways, including in-kind or financial compensation or through satisfaction, which proves that this is one of the main objectives of reparation for the damage that resulted from the violation of the binding rules of international law.

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