

## **International Responsibility for Violating the Rules of International Law**

**Hamed Makhlaf Ahmed**

*Faculty of Law/ Cihan University / Sulaymaniyah*

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**Abstract:** Since ancient times and responsibility exist in the life of a person regardless of motives, whether motivated of the revenge idea, The target of revenge may be is the punishment or the goal is to achieve a social just. because it is impossible to imagine that leaves the human in this world without such rules to control his actions and determine his actions and codify what is permissible and forbidden from actions. The idea of responsibility is an old idea that ancient civilizations have known to the extent that their responsibility has been extended to include animals and manure as well as humans.

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### **I. INTRODUCTION**

Human society has been linked to the idea of law. This has necessitated the need for a kind of rules that govern and regulate the relations that arise between its members and arrange responsibility for its violation. Since the emergence of the first human societies, the idea of law has been born. Thus, the study of international responsibility in each legal system is of great importance whether it is an internal or international legal system. This is due to the guarantees it guarantees to respect the duties and the implementation of the obligations imposed by the legal system on its persons and the penalties they impose for violating these obligations and not fulfilling them.

These provisions have contributed to the stability and balance of the situation within the legal systems so that it has become the basis for building the legal system and its development. This importance reached its peak in the international legal system, where it assumed a prominent place in this system, so that it was considered the main pillar on which it is based. Rules and stability of its provisions and provides security to its people with the guarantees guaranteed by the sanctions and those who appeal to those provisions and rules not to get out of them and the need to respect them.

#### **1 - International liability:**

The international legal system has established the rights of its people as obligations are imposed. These obligations are enforceable irrespective of their source, whether customary or conventional or governed by the general principles of the different legal system. This means that if a person fails to With a certain obligation that this underdevelopment entails that it bears international responsibility. (Dr. Al-Attiah, 1993: 17) .Thus, a new legal association arose in the event of a breach of an international obligation between the international person who discharged the obligation and the person who was injured as a result of such breach, and the latter has the obligation to remove the consequences of his or her action.

#### **1 – 1- Definition of International Responsibility:**

International liability: A legal system under which a State which is a wrongful act under international law is obliged to compensate the State which has suffered damage as a result of such action. (Sultan, 1978: 300). Responsibility in international law is the obligation imposed by international law on a person to redress the harm in the interest of a victim of a conduct, omission or punishment for the offense. (Dr. Jouaili S. 2003: 54).

The French jurist (Charles Rousseau) defined international responsibility as stemming from an act that violated a rule of law.

- 1act if the obligation to refrain from work.

-2If he is obligated to perform an act, he shall abstain.

.3Share de Fasher defines the responsibility of the State as: International responsibility is a realistic idea based on the State's obligation to redress the consequences of an unlawful act attributable to it. (Abu Sukhaila, M., 1978: 15).

For our part, international liability can be defined as: the legal sanction under which the rules of public international law violate one of these persons for such rules, whether the violation is an act or omission which results in harm to another person which necessitates compensation or punishment for this violation. 2011: 343.(

## **1 – 2- International liability:**

International responsibility can be divided into direct responsibility and indirect liability:

### **.1Direct liability:**

Which is the result of the State's own breach of any of the rules of international law, or of the international obligations of the State, whatever the source of such obligations. (Sheikha, 1978: 17).

### **.2Indirect international liability:**

It is the responsibility of a State as a result of unlawful conduct or breach of a rule of law or of an international obligation by another State. This responsibility requires a special legal relationship between the two States concerned, such as the responsibility of the Protecting State for protected States, and the responsibility of federal states for the illegal conduct of the federations of the Union (amer. S. 1995:726).

## **1 – 3- Basis of international responsibility:**

Historically, international responsibility in Europe and the Middle Ages was a collective responsibility based on supposed solidarity among all individuals who constituted the group that committed the malicious act of one of its members. The picture known then to satisfy compensation was that the individual The victim to the competent authorities of his or her State, in order to obtain the so-called Letter of Reprisal. The system of letters of vengeance remained in effect in all other European countries until the late 17th century, until it was repudiated by Islamic teachings that take the rule of personal responsibility that prevents a person from committing an unpunished sin (Abd al-Salam, 1981. 236).

International jurisprudence, supported by treaties, international jurisprudence and practice, is almost consistent with the fact that responsibility in international law is governed by three main theories: error theory, theory of internationally wrongful act, and risk theory.

We will briefly present the concept of these theories as follows:

### **1. The theory of error as a basis for international responsibility:**

The foundation of international responsibility for the idea of error is attributed to the famous Dutch jurist Hugo Grotius, who transferred the theory of error in domestic law to international law, and the widespread spread of this theory to the well-known Faqih. (Abu Hafez, 1962: 259). The theory is that the state can not be considered responsible unless it makes a mistake, and therefore does not impose international responsibility unless the state makes a wrong act that harms other countries. This wrong act, either deliberate, or unintentional neglect or malice Or non-reserves, and in such cases the liability shall prevail. According to this theory, it is not enough for the act to be contrary to an international norm, but there must be a picture of this error (Abd al-Salam 1995: 438).

This theory remained dominant in international jurisprudence in general, until the beginning of the 20th century when it began to decline as a result of the studies published in this period by the Italian brand (Anzilotti) criticizing the theory of error. The criticisms that were directed to this theory : -

A - The idea of error is a psychological idea does not fit the legal system and all of its legal persons.

B - If the application of this theory, historically linked to the beginning of the emergence of the state in the modern sense, when the confusion spread and Almtvra between them and the person of the King or the Prince and then was intended to mistake the state is the error of its president. The application of the order is now difficult after the distinction between the State as a moral person and the natural person under its chairmanship has been clarified. It is difficult to measure the error, which is a psychological matter to a moral person who has no soul or conscience (al-Ghunaimi, 1974. 147).

It seems that Anzilotti was influenced in the formulation of his theory of Article III of the Hague Convention IV 1907, which provides for the responsibility of belligerents for all violations of the laws of land war committed by any person in its armed forces. Although Anzilotti went too far in defense of his theory, he did not succeed in completely dismissing the notion of error as a basis for responsibility.

### **.2Theory of internationally wrongful work as a basis for international responsibility:**

According to this theory, the responsibility of the state here arises as soon as it caused the violation of international law by an internationally wrongful act. This wrongful act was committed intentionally or with negligence or negligence. This wrongful act arranges international responsibility, whether it violates a rule of convention or customary law, As long as it has become a source of public international law and has constituted an international obligation on the part of the State (Sultan, 1996: 301) .The illegality of the act is the reference to international law and not to domestic law. The act may be lawful according to the internal law of the state, but it is illegal at the international level (Abu Al-Wafa 2010: 223).

According to the most likely view, the mere existence of the wrongful act that violates the law and attributes it to a person of international law takes the responsibility of that international legal person without requiring actual harm. Damage is not a condition for responsibility according to this theory. The only basis for international responsibility, then, according to this theory, is the violation of the rule of law (Al-Awadhi, 1979: 286.)

In our view, damage is achieved only once there is any violation of the rules of international law. This damage affects the international community as a whole. It is the destabilization and international security, as well as the legal situations and centers that ensure the protection of the stability and non-violation of international law.

This theory is the closest theory to the reality of international life in the contemporary era, and therefore has a great deal of attention in the jurisprudence of international law, the judgments of international tribunals, in particular the International Court of Justice, and the views of the representatives of States at the codification conferences of international law.

The theory is that it is excessively capacitive. It places responsibility on the absolute guarantee of the victim regardless of the fault of the state, and therefore is not very much in line with the situation in the international community, which still adopts the responsibility of the state for its mistakes.

### **.3Risk theory as a basis for international responsibility:**

Although international jurisprudence and work have relied on the theory of the wrongful act as a basis for international responsibility, a new trend has emerged in the jurisprudence of international law that calls for the possibility of international liability if the State carries out an act of exceptional gravity that results in harm to another State, Even if the act itself is an international undertaking.

The proponents of this theory provide an example of legitimate acts of exceptional gravity, atomic activity, and flight activities such as the launching of rockets and satellites, space ships and marine and aerial pollution from offshore oil exploration and extraction. The theory of risk has been widely accepted by international jurisprudence Legitimate activities of particular gravity. (Rakha, 2001: 299).

According to this theory, the state is held responsible only by causing harm to others, even if it did not commit a mistake, negligence or wrongful act, even if it is engaged in legitimate activity but of a serious nature, caused damage to another legal person. To bear the liability. International jurisprudence is almost unanimous in limiting the establishment of international responsibility to the theory of risk in relation to dangerous activities and under international agreement (Gnemi, 1974: 139). As to the validity of any of them as a basis for international responsibility, it can be said that the reality of international relations now, and in light of the enormous scientific and technological developments that our world is experiencing today, none of these theories can in all cases serve as a basis for international responsibility as a general standard.

The theory of error, despite its shortcomings and criticism, can not be ignored because it remains the basis of international responsibility in many cases, especially in terms of proving breaches of international obligations, if they are obligations of care.

### **1 – 4- International Liability Terms:**

International law requires that an illegal act be committed in accordance with international law, that this work be attributed to a person of international law, and that such action would cause damage to another international person.

We briefly review these conditions as follows:

#### **.1The act shall be attributable to the State:**

The act shall be considered as belonging to the State under general international law and, in general, if it is the result of its powers. The authorities of the State shall mean any individual or body to which the domestic law is granted official jurisdiction. International liability arises as a result of an act of such individuals or entities, whether positive or negative, They were issued as state authorities (Ghanem 1972: 677). There is no distinction between the powers of the state on the subject of international responsibility, the behavior attributed to the state may be derived from its legislative, judicial or executive powers, as asked in some (Sheikha H. 1978: 22) as follows:

#### **A - The responsibility of the state for the work of the legislative authority:**

Every State, with its sovereignty, has full freedom to issue its national legislation on the basis of its Constitution, and it is not responsible for such legislation, nor can any other party interfere in it (Ibraheem, 1998: 73). However, the state is responsible for the constitutional rules and the legislative rules that it issues in violation of the provisions of general international law. If the legislative authority of the state does not take into account the enactment of legislation, this legislation does not conflict with the rules of international law. Other countries or Its nationals (Rat., 1987: 309), and the responsibility of the State remains in this case.

In general, the State is asked about the actions of the legislature in two cases:

-The legislature shall refrain from taking the necessary measures to implement an international obligation, as if it fails to pass legislation necessary for the implementation of an international convention, for example.

-The legislative authority shall take action contrary to international obligations, whether customary or convention (Abdel Salam J. 1981: 247).

The fact is that the responsibility of the state is not limited to the laws issued by its legislative authority in contravention of the provisions of international law, but also to the provisions of its constitution, which are often made by a national constituent assembly (Al-Attayah, 1993: 527).

It should be noted that if the legislative authority disregards the repeal of laws that are contrary to the international obligations of the state, this places international responsibility on it, and the state bears the burden of international responsibility (Ibraheem, 1995: 454).

#### **B - The responsibility of the State for the work of the judiciary:**

The State shall be asked about the provisions of its jurisdiction if such provisions are contrary to the rules of international law. Such inconsistency is present in the following cases:

-If the provision is based on a misinterpretation of an internal provision compatible with the international obligations to which the State has been bound in the international sphere.

-or if the judgment is based on a proper interpretation of an internal text which is in its nature contrary to the rules of international law.

-If the judgment is based on an international rule, but it is wrong to apply it or to interpret it (Shukri, 1972: 168).

-If the term "denial of justice" comes from the judiciary, the denial of justice has many images, such as depriving the alien of resorting to the national judiciary or unfair injustice between us after allowing him to resort to the judiciary or Or the unavailability of guarantees indispensable for the proper functioning of justice, which the Permanent Court of International Justice has adopted in many of its judgments and opinions (Al-Attayah, 1993: 530).

-The denial of justice is also the corruption of the judiciary, the widespread bribery among judges, the delay in adjudicating the case involving foreigners for a long time, the judgments of the courts affected by political considerations, and the responsibility of the state if it is proven that it did not punish those who committed the internationally wrongful act. Or they are neglected in the search for him or bring him to trial.

-The State shall not be asked for the wrongful judgments issued by its courts in good faith, as if the judgment contained a mistake in practice or a misjudgment, as long as it was done in good faith (Abdel Salam J. 1981: 248).

#### **(C) The responsibility of the State for the acts of its executive authority:**

The State shall ask the positive and negative acts of all its employees in its executive authority, when such acts or conduct are contrary to international obligations, and it is not important that the act be permitted by the laws of the State or contrary to these laws as long as it contravenes one of the international obligations Attiyah, 1993: 527.(

It includes the executive authority, all those who are responsible for the affairs of the administration in the state or supervised by the central or local authorities, including senior officials such as the head of state or prime minister or ministers or governors and citizens and military forces and members of all kinds As well as the administering Powers in the State's colonies and properties, or in their respective States if they are treaty States (Abu HIF 1962: 268).

As for the actions of State employees, the State shall ask for all acts of corruption which the employee brings in the performance of his or her functions, whether within his jurisdiction or in violation of these limits, because in both cases he acts in the name of the State and it is the duty of the State to improve the selection of its employees , And they also have the burden of misappropriating them (Annani 1984: 96).

As for the responsibility of the state for actions issued by ordinary individuals who do not hold the status of public servant? Jurisprudence and international jurisprudence have established that the State bears responsibility for international responsibility for unlawful acts of ordinary individuals, whatever their nationality, as long as they have been committed on the territory of the State.

Rather, the State is responsible for the actions and actions of a person or group of ordinary individuals acting in the name of the State even if there is no legal association with the administrative State. This is what was taken in article VIII of the draft law on the issue of international liability. According to international law, what is reliable is the real line between the person who made the act and the state apparatus, not the legal bond or the formal line (Refaat, 1999: 613).

The concept of executive power, the organs and groups under use to assist the armed forces or the security forces as volunteers, even if they have not been paid or paid for their actions, such as murder,

kidnapping and destruction, falls within the concept of executive power. (Annani, 1984: 97) .Based on the foregoing, the State is responsible for such illegal acts issued by the central or decentralized executive authority (Shalaby, 2002: 118). As well as the authority it appoints to govern its colonies outside its territory, such as the responsibility of the United States of America for all illegal acts it carried out in Iraq after its invasion and occupation in 2003, including the acts of its civilian authority that it appointed directly during the occupation, as well as its military authority ,Including the killing, destruction, looting and theft of Iraq's property, and the commission of war crimes and against humanity. These acts were committed directly and indirectly. Here, the United States must shoulder the responsibility of international responsibility for all its crimes in Iraq.

### **.1 Responsibility of the State for the work of its armed forces:**

The rule that states are responsible for (all acts committed by persons forming part of their armed forces) is a longstanding rule of customary international law.

Article 3 of the Hague Convention IV of 1907 on Respect for the Laws and Customs of War on Land, which was reintroduced in Article 91 of Additional Protocol I (Henckerts, 2007: 463). It is in fact an application of the general rule on the responsibility of the State for internationally wrongful acts, under which the State is responsible for the conduct of its executive organs.

Since the armed forces are considered a state apparatus, the implementation of this general rule is reflected in the ratio of responsibility to international humanitarian law in the four Geneva Conventions of 1949, which states: "There is responsibility for the state and individuals must be prosecuted for gross violations". The principle of State responsibility as well as criminal responsibility of individuals in Protocol II to the Hague Convention for the Protection of Cultural Property has been reaffirmed. A large number of military manuals state that the state is responsible for violations of the rules of humanitarian law. Some manuals clearly refer to acts committed by members of the armed forces of the state, and more generally address gross violations or war crimes, without specifying who commits such acts. These crimes are to be attributed to the state, but it is clear that the general principle of international law is that all acts of state organs are attributed to the state, whether they are military or civilian (Goetters, 2006: 6).

National case law supporting this: the decision of the International Criminal Tribunal for the former Yugoslavia (ICTY) in its judgment in the Furundzija case in 1998, and in its judgment on the Tadić appeal in 1999, the State is responsible for the actions of its armed forces (Henckerts, 2007: 464). ( . The African Commission on Human and Peoples' Rights has also reached the same view regarding killings and ill-treatment during the armed conflict in Chad.

### **.2 The responsibility of the State for persons or groups has delegated a measure of authority:**

The State shall also be liable for acts committed by persons or groups authorized by it and under its domestic law to exercise a measure of governmental authority (Henckerts, 2007: 465).

This rule is based on the fact that states can resort to quasi-governmental groups to carry out certain activities rather than to demand that government agencies do them, and in fact does not relieve them of their liability.

In general, the state is responsible for the actions of all institutions or individuals used by the armed forces, for example:

- Mercenaries.
- Military or private security companies (Hassib, 2004: 224).

### **.3 Responsibility of the State for violations of individuals or groups acting on its instructions or under its supervision:**

The State may also be held liable for the acts of persons or groups which are not within its organs and are not authorized under its national law to exercise governmental authority if such persons or groups actually act on the instructions, supervision or sponsorship of that State. Such as groups of individuals, or militias.

Where the International Criminal Tribunal for the former Yugoslavia (ICTY) ruled that the conduct of an individual or group that was not militarily organized was attributed to the State, if specific instructions were given on that conduct. According to the court's ruling, such control exists when the state has a role in organizing, coordinating or planning the military actions of the armed groups in addition to funding, training, equipping or providing support related to the military operations of that group. However, the control clause does not amount to issuing or directing orders from the state Per process per se.

For private or unorganized individuals or groups, the ICTY in the Tadić case in 1999 found that they could be considered a de facto state organ, and therefore responsibility for their actions was attributed to the State if specific instructions were given to that individual or group regarding the commission of such acts (Al-Wafa 2010: 324).

**(D) The responsibility of the State for the acts of ordinary persons:**

The origin is that the State does not question the actions and actions of ordinary persons that involve aggression against other States or foreign nationals, but as an exception to the general origin, States are asked in the following cases:

-in the event that it is proved that the State has not taken due care to prevent such harmful acts. This care depends on the circumstances of each case, place and time as well as persons. The required care in the event of a threat to security is not required in the event of disturbances, acts of violence, assault, looting or robbery, as well as the necessary care to protect the person of the foreign head of state other than that required by the protection of a foreign ordinary person (Sultan, 1978: 312).

-In the event that the State does not punish the person who committed the wrongful act. The State must do the necessary attention to arrest and prosecute the perpetrators of the wrongful act. If the state refuses to search for the perpetrators, neglects to search for them or fails to bring the perpetrators to trial if they are arrested, or they pardoned the perpetrators immediately after their sentence or facilitated their escape, they become internationally responsible. 1981: 349.(

**.2The work is internationally wrongful:**

The second condition of international responsibility is that the act attributable to the State must be internationally wrongful. International jurisprudence contends that the wrongful act is an act which is a violation of the provisions of international law, as it is an act that contravenes the rules of general international law, convention or customary law, or the general principles of law (Ghanem 1967: 675) The criterion of illegality is an objective international standard in which the origin of the obligation can not be invoked, since the breach of any international obligation, regardless of its origin, generates international responsibility, without regard to the description of the act in domestic law, nor is it regarded as a means of violating international law, Or by negligence or negligence (Fadel, 1976: 98). What is important is that there is no due diligence in the conduct of the State.

**.3Illegal work may cause damage:**

Finally, international responsibility must result from the wrongful act of harm to a State. The harm here means (prejudice to a right or to a legitimate interest of a person of public international law) (Ghanemi 1982: 450). This damage must be confirmed and not sufficient to be probable or not (Fadel, 1976: 99). Whether it harms the state physically, such as attacking the borders of the state, its ships or aircraft, or cutting off part of its territory or the property of its nationals, as well as the killing of its nationals or causing physical injuries that have caused permanent disabilities (Sheikha 1978: 128).

Or moral, as the dignity of the state or the failure to respect their systems and leaders or assault on their knowledge. Moral damage: Any violation of honor or of the international person or of its nationals, in other words, every attack on a right of international persons or their nationals has caused painful and intangible consequences. Moral damage in the field of international relations may be much more severe in the view of the State in which the damage is caused by much material damage (Abd al-Hamid, 1992: 402).

The damage inflicted upon the nationals of the State may either be material damage to property or physical injury to persons, or moral damage to dignity and reputation. The material and moral damages may be the result of one act (Abd al-'Aziz, 1981: 94). Indeed, international jurisprudence is almost unanimous in the need for damage as a condition of international responsibility, based on the provisions of international law and international arbitral tribunals. Egleton has linked compensation and injury to his definition of international responsibility: "International responsibility is simply the principle Which creates a liability for compensation for damage resulting from any violation of international law by the responsible State (Eagleton.c.1970: 22).

Cavari said that the damage is not a condition of international responsibility. He cites that most international conventions deal with a range of international obligations without mentioning the material damage resulting from the violation of these obligations. . Therefore, the violation of the obligation contained in the Convention is sufficient in itself to establish responsibility, since the damage in his opinion, but a possible result of an international wrongful act, but it is one of its elements. (Sheikhaah 1978: 28). We support this opinion, which we believe to be objective. The mere commission of an internationally wrongful act prescribes international responsibility for this act. Whether or not the damage occurs is the fact that the damage is actually a violation of the international obligation. To the possibility of compensation or not in the face of the State responsible for such damage.

## **II. CONCLUSION**

International responsibility is the subject of the rapid developments of the international community, which still raises a great debate in international jurisprudence and work. The United Nations International Law Commission (ILC), which has been in operation since the start of the UN, has yet to come up with the text of an international resolution on international responsibility. In international law, international responsibility means that the State acts unlawfully or fails to act that would harm others, and that the perpetrator is obliged to repair the damage caused by any means of reform.

The importance of international responsibility lies in general international law as an essential part of every legal system. The effectiveness of this system depends on the maturity of the rules of responsibility and growth as a tool of evolution with guarantees against abuse, and some even consider "the rules of responsibility depends on the success of each legal system".

It should be noted here that what hinders the development of international responsibility is the power and power factor in international relations. A good example of this is the war we are witnessing at the international level, whether in Iraq, Syria, Palestine, Afghanistan or elsewhere.

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