



## **INTERNATIONAL RESPONSIBILITY OF THE HOST COUNTRIES FOR DAMAGES TO THE ALIENS**

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### **ABSTRACT**

*Based on many of the international principles such as the International Minimum Standard of Treatment (which is today accepted as a general international principle in the international law in treating the aliens), the states international responsibility for damages to the properties or aliens in their territory, the principle of treatment based on the Human Rights international standard, etc., the host countries are deemed responsible for the damages to the aliens. The current study has sought to respond to the question that what international responsibilities do the host countries have for the damages to the aliens, through the use of the qualitative method and library-based data collecting procedures. The findings indicate that the country in which an alien resides must protect is soul and property in that domain, to the extent which conforms to the International Minimum Standard of Treatment, and in relation to protection of people's security, soul, and property, the state must treat him as it treats its nationals, and they must be equal before law. In this regard, the host country is responsible for the damages and damages due to action or inaction by the Judiciary, the decisions and measures of the executive power (the state's organ or agent), and the damages due to the military actions by the rebels or the revolutionaries, etc., and it is bound to compensate the damages.*

**Keywords:** *International Responsibility, Damage, Aliens, Foreign Nationals, Citizenship.*

### **INTRODUCTION**

Among the important subjects in today's international law is the international responsibility of the countries, since it is closely related to other domains of international law, especially that of international peace and security. The states, based on the sovereignty and qualifications they have according to international law, decide freely in all issues and problems, following the international rules, and adopt a special policy. In regard to this decision-making power and application of the authority, the issue of the responsibility of the states towards each other arises. The responsible entity is an important and fundamental mechanism in the domain of international law and relationships, and the countries, as the primary and traditional subordinates of the international law, enjoy comprehensive authority over each other and the other subordinates. The classical international law more guaranteed the interests of the powerful countries. It led to the violation of the weak countries rights and the rights of other members of the international community by powerful countries. Also, some countries could inflict damages through the violation of their international obligations or commitment of the acts negating international law, without taking any responsibility. This challenge made the contemporary international law to include the responsibilities of the states in the domain of international law, and develop it, in order to compensate for this weak point (Mostaghimi and Tarem Sari, 1998, 12).

Apparently, it is inferred that the attributes of international responsibility are the relationship between one country and another. In other words, the establishment of the international responsibility and its effects is only possible in the relationships between two countries, while the reality is something else since, except the countries, other natural and legal persons (international governments) can also enjoy the rules of international responsibility. In this regard, it can be said that international responsibility is not merely about the country-with-country relationship. In cases in which the relationship between the state and the natural person (people) is addressed, since the states as one of the international players are obliged to observe the human rights, in case this obligation is violated, would bear an international responsibility and would be obliged to compensate the damage to their own nationals or the aliens (The Permanent Court of International Justice, 1927, paragraphs 8-9), since according to the regulations of the international law, if an act that violates the international law is committed, the country to which the action is attributed, is obliged to pursue, arrest, and punish the perpetrators with utmost power, and compensate the damage to those injured. In other words, it can be said that the country hosting the aliens would take an international responsibility and is obliged to compensate for the damages.

Based on many of the international principles such as the International Minimum Standard of Treatment (which is today accepted as a general international principle in the international law in treating the aliens), the states international responsibility for damages to the properties or aliens in their territory, the principle of treatment based on the Human Rights international standard, etc., the host countries are deemed responsible for the damages to the aliens. The mentioned damages can include different material and moral damage aspects in this regard. In compensation for the damage, the courts of arbitration usually consider the financial aspects and they don't consider the procedure and issuance of the sentences to compensate for the restitution subject to the moral damage. In other words, as long as the plaintiff has not applied for the proceedings, the courts do enter this domain. However, it does not mean that the moral damages cannot be compensated or adjudicated, since no courts have denied the dispute of payment of compensation for the damages, merely on the basis of non-material being of it.

The current study, admitting to the international responsibility of the states for the damages to the aliens and their obligation to compensation for the material and moral damages, has sought to legally analyze the aspects and howness of the states international responsibility towards the damaged aliens and subsidiarily, discuss the way the damages should be compensated.

## **METHODOLOGY**

Based on the nature of the data, the current study is of qualitative type. Since most of the qualitative studies are accompanied by the exploration, description, analysis, explanation, and interpretation, in which the researchers are inclined towards the meaning process and perception obtained from the words (Safari Shali, 2007, 63), and describe and interpret what exists, and consider the existing conditions or relations, conventional opinions, current procedures, the clear effects, or the developing processes (Taheri, 2005, 142), the method of the current study is descriptive-analytical. It should be noted that the data collection method in the current study is documentation (library-based) based on which, through investigation of



different texts including the documents, books, articles, and theses, the intended information was collected and finally, the collected data was analyzed and evaluated by rational inference.

## TERMINOLOGY

### *The International Responsibility of the Countries:*

The international responsibility of the countries as an international legal entity is the obligation to compensate for the damages (material and moral) to the subjects or the subordinates to the international law (the international states and organizations). This damage must be created due to the illegal or illegitimate action or inaction opposed to the international law (conventional or treaty) by one of the subjects or followers of the international law (Musazadeh, 1999, 811).

The Commission (1976) drafting the articles for International Responsibility of States, provided the instances of such responsibility as follows:

- 1- The action of a state that leads to an international obligation, is an international wrong, regardless of the subject of the violated obligation.
- 2- Violation of fundamental international obligation obedience of which is essential for the interests of the international community and violation of which is known as an international crime is itself an international crime.
- 3- Based on the contents of Clause 2 and according to the dominant principles of international law, an international crime may occur due to the following actions: a) the clear violation of the international obligations obedience to which is specially important for maintenance of the international peace and security, such as violation of the principles of Prohibition of Intrusion, b) evident violation of the international obligations which are specially important for securing and proper execution of the right of freedom of people in determining their fate, such as the establishment, continuation and imposition of colonial domination, c) the evident violation of international obligations obedience of which is specially important for the maintenance and protection of the human life, such as violation of the principles of prohibition of mass murder, non-compliance with racial discrimination policy, slavery, and ultimately human rights violations, d) evident violation of international obligations obedience of which is specially important for maintenance and protection of the environment, such as violation of prohibited principles of international law banning deliberate pollution of the sea and atmosphere.
- 4- Other international wrongs which are not included in the crimes mentioned in the above Clause (Clause 3), and are deemed as simple wrongs (Bavand, 2002, 53-54).

However, in the text of the convention on the articles related to responsibility, the element of damage has been excluded from the constituent elements of responsibility. It does not mean ignoring the element of damage in the responsibility since an action opposed to the international law would inevitably lead to damage, and it can be either material or moral (Articles 1 to 4 of the responsibility).

In the past, the international law had merely recognized the regime of international responsibility, which included all the international wrongs, and the delinquent country, based on the conventional principles of international law, was responsible for compensation for the damages and payment of the loss to the damaged country (countries). The mentioned country, in addition to full restoration of the previous state, was pledged not to commit the discussed



wrongs in the future. This inference was in lines with the realities of the time in which the armed violation and mass murder were not considered as international crimes and the war, as the subsequence of war, was deduced another way. Also, evident violation of the human rights and racial discriminations were not included in the prohibited principles of international law, but the mentioned deduction was gradually frowned upon (Bavand, 2002, 46-47). Also, opposing theories have arisen that some international violations are more severe and intense and lead to heavier damaging results and distort the international peace and security in a broader sense, and subsequently, it requires a new and stronger responsibility regime. The theory that considers the intensity of the violation and its results to be effective on the responsibility of the perpetrator, is logically proportionate to the evolutionary course of the international community, and it fully conforms to the hierarchy of the norms and regulations of international law, which was not addressed in the past. A hierarchy which was based on the international community in general (Sharifi Tarzakouhi, 1996, 193-194). In fact, followed by acceptance of the new responsibility regime, in which some international obligations have been extraordinarily and specially focused, in addition to the state's responsibility, the individual criminal responsibility has been also identified. In other words, today, in the new international legal order, those committing crimes should also be punished in the shade of concepts such as the "Jus Cogens" and "General Commitments" and "International Crimes" (ibid, 223-224).



#### *The Foreign Nationals (Aliens):*

In the law terminology, the term "alien/foreign nationals" has been defined as follows: "the one who lacks a specified country's citizenship towards that country and its citizens is considered as a foreign national (alien)" (Jafari Langroudi, 2015, 14).

The Black's Law Dictionary states in this regard: "a foreigner is the one who belongs to another country or nation, or under the jurisdiction of another country" (Black's Law Dictionary, 646). Therefore, the foreign national/alien is a person who either due to having the citizenship of another country or not having the citizenship of any countries, is not a citizen of the country he is residing in (Arfania, 2003, 183). However, it should be noted that the term 'alien' is a quite relative concept since the alien being of a person depends on the way he is connected to a country. In other words, it's not having the citizenship of a country that leads to alienation. The foreign national (alien) can be categorized in different aspects:

- a) From the perspective of personality: in this regard, the aliens are divided into two groups as natural and legal persons. The natural persons which include most of the aliens are those people whose rights and obligations must be proportionate to the position and dignity of human. The legal persons which are formed by the collection of humans collaborate with another aim or interest, and based on the law, have a character independent of the persons that constitute them (such as the commercial firms, insurance institution, etc.) also have rights and obligations that are established based on the mutual interest of the hosting country (the place of working) and the company's owners.
- b) From the Perspective of Relations with the Respective Country: from this perspective also, the foreign nationals are divided into two groups. Majority of them have an ordinary relationship with their respective country, so they are not scared at all to return to their own country and in case they are damaged in the country of residence, that country does not take any measures to compensate for the damage, they can seek their respective

country's political support. However, a minority of the aliens are deprived of having a political and legal relation and tie with the other country. Meanwhile, some people such as the apartheid, have no political and legal relationship with any countries, thus, in case they bear a loss or damage, they would be deprived of political support, and some other such as the refugees who have escaped their own country due to different political, racial, religious, and other reasons, and have sought asylum in foreign countries, have practically cut their relations with their respective country, and in case of damage or loss, they cannot ask for the political support by their own country as long as there is the possibility of harassment by their government (Ghasemi Shoub, 2004, 126-127).

- c) From the Perspective of Duration of Residence in the Host Country: generally, the foreign nationals can be divided into two groups from the perspective of a duration of residence in the host country. The resident aliens (refugees, immigrants, political and consular officers, etc.) and the non-resident aliens (the university students, merchants, tourists, etc.) (Bayat, 2015, 20).
- d) From the Perspective of Privilege of Special Benefits and Immunities: from this aspect also, the foreign nationals are divided into two groups. One is the political and consular officers of the sending country who should be treated uniquely and differently from other aliens by the host country according to the International customary rules as well as the 1961 and 1963 Vienna Conventions, in order to do their jobs well. The other group is those who don't have such a position and they should be treated based on the general rules of international rights as well as the domestic laws of the host country. The rights and obligations of these people are also different based on their status. For example, people such as the workers who go to another country for work, or the employees of commercial companies and financial firms who stay in a foreign country for economic activities, since their activities are allowed by the country of residence, would enjoy more extensive rights and obligations, and in addition to the life immunity, their property would also be immune to violation. In return for that, the country of residence also can oblige them to do some tasks such as tax payment, etc. however, other foreign nationals such as the university students, tourists, the members of sport and art groups, the other people who pass through this country for some reason, have more limited rights and obligations. Obviously, their lives and properties must be immune to infringement, but for example, legally, they cannot undertake economic activity in the mentioned territory (Ghasemi Shoub, 2004, 128).



## THEORETICAL FRAMEWORK

Totally, the basis and origin of international responsibility is the subject of two fundamental theories. One is the theory of errors or subjective responsibility, and the other is the theory of risk or objective responsibility. Indeed, besides acceptance of one of the two theories, there arises a new theory in the international responsibility law and that is the responsibility for actions which are not prohibited according to the international law.

- a) The Theory of Errors or the Subjective Responsibility: based on the theory of errors, the existence of international responsibility is derived from the wrong action of a subject or follower of international law, in a way that undertaking any actions or refraining to take any action which is opposed to international law cannot be merely the basis of establishment of international responsibility, but a wrong or ignorance must have been

done in order for the responsibility to be realized (Mostaghimi and Tarem Sari, 1998, 24). The international judicial proceedings were highly affected by the theory of error in 19<sup>th</sup> century and early 20<sup>th</sup> century, and various sentences were issued based on this basis, among which the Judgment of the International Court of Justice in the Corfu Channel Case dated 1949, can be named.

- b) The Theory of Risk or Objective Responsibility: according to this theory, the reason behind obligation to compensate for the damage is the factor inflicting the loss. In fact, the realization of responsibility depends on the error or ignorance of the person who inflicts the damage, and the mere violation of the international commitment would not lead to responsibility, and the error is the main element in the creation of responsibility.

Regarding the lack of an effective executive pillar in international law and considering the will of the countries in accepting the ‘non-intervention rule’, the classical theory of error cannot be acceptable in international law as it is in the domestic law. International responsibility must be founded on a strong foundation so that none of the international law followers would be able to evade the responsibility by resorting to error and proving its absence. Therefore, international responsibility must be merely acted in a new theory which is called the theory of risk or the objective responsibility, according to which, any ignorance or violation of an international law (conventional or treaty) would lead to international responsibility (be it subject to the error element or not).

- c) The Theory of Responsibility based on non-prohibited Actions: this theory intrinsically includes two approaches:
- 1- The Theory of International Responsibility of the Countries: today, in lines with identification of the classical international responsibility of the countries with opposing theories, a new theory arises on international responsibility and that is the theory of responsibility for non-prohibited actions. Unlike the classical theories of error based on which the obligation to compensate for damages has a subsidiary characteristic, i.e. firstly, international commitment must be violated and then lead to such responsibility, in the theory of responsibility for non-prohibited action, the restoration or compensation for the damage is a primary commitment and depends on the former realization of an internationally wrong action. In other words, according to this theory, the mere infliction of damage by a country to another country is enough for creation of responsibility, although the action or behavior which has been done, is allowable by the international law.

Today, in international law, the situations in which a country is made responsible for doing internationally illegal acts as well as its effects, have been specified. International responsibility has basically a conventional form since although the draft of the International Law Commission has been approved, it has not yet become an international treaty. Therefore, in this regard, the conventional law, the sentences of international courts, mutual or multilateral treaties, especially the General Assembly resolutions and draft law of the International Law Commission, must be taken into consideration, i.e. the international responsibility law should be explored in these cases. In addition to the general law of international responsibility, there are some



internationally conventional texts on the international responsibility of the countries, some of which are as follows:

- The Fourth Hague Convention of 1907 on International Responsibility for Armed Forces Commits
- The Brussels Convention of 25 May 1962 and the Vienna Convention of 19 May 1963 on the International Responsibility of States for Nuclear Activities
- Treaty of 27 January 1967 and Treaty of 29 March 1972 on the Responsibility of States to Launch Objects into Space
- Treaty of 29 November 1969 on Petroleum Pollution of the Seas (Schwarzenegger, 1967, 173).

In this regard, the principles of international law are based on the foundation that the realization of responsibility is always not required to be accompanied with material damage, but any violations of international law would lead to responsibility. The international responsibility of the countries can be derived from Acts of legislation, acts of executive agencies, acts of the judiciary, acts of ordinary people, and finally acts committed in wars and internal revolutions.

2- The Theory of Country's Criminal Responsibility: the thought of criminal responsibility of a country as a legal person has been long discussed by the lawyers in different forms and there have been efforts done in this regard. However, its theoretical discussion from the time of drafting of Article 18 of International Law Commission on the countries international responsibility and introducing the issue of the "country's international crime" in 1967, has been clearly proposed in the international scene. This international document first divided the illegal acts of the countries, i.e. those acts that violate an international commitment, in the Article 19: it considered some of these acts to be international crimes and some to be an international tort. Clause 2 of Article 19 has not provided a clear definition of international crime. Generally, the international crimes include those illegal acts which violate an important and fundamental commitment which is considered by the international community to be specially important, such as evident violation of prohibition of infringement, violation of the right of freedom of fate (such as slavery, mass murder, racial discrimination) and fundamental rules for protection of the environment (such as extensive pollution of the seas). This definition is very general, but it can be said that the mentioned commission has put the "crime" which is a criminal title and has a totally criminal aspect, against the "tort" which mean legal and civil acts whose responsibility require compensation for damages.

Clause 4 of the Article 19 of International Law Commission states about some of the internationally illegal acts: "any internationally illegal act that is not deemed to be a crime according to the Clause 2, is an international tort" (Salimi, 2010, 12).

Regarding the fact that in the Statute of the International Criminal Court, the presence of material, moral, and legal elements have been taken as condition of realization of crime and punishment of the criminal, commitment of crimes mentioned in Articles 6, 7, and 8 of the Statute, including the personal or organized crimes, would lead to criminal liability, i.e. in case the crime is committed with the direct order of the president of the country, he would be considered as an international criminal, and in fact, the criminal liability of a country is the very



criminal liability of its authorities. As in the “Nurnberg” and “Tokyo” courts also, due to consideration of the judges for the moral element (the awareness), although the criminality of the legal persons was announced, it was intended for punishment of their members, and not punishing the legal person, since the court states that: “announcing an organization to be criminal does not indicate that all members of it are criminal, but those directly participating in commitment of a crime are convict. Those members of the criminal organization who have been aware of its activities and have accepted to be its member willingly would be punishable, not all its members (Salimi, 2013, 208).

### ***The International Responsibility of the Countries and Compensation for the Damages to the Foreign Nationals***

- ***The Common Damages Inflicted to the Foreign Nationals***

Generally, the damages inflicted on the foreign nationals in the host country can be either from the government side (government authorities) or the persons (private or the rebels), and the instances of such damages are as follows:

#### **a) The Damages Inflicted on the Foreign Nationals by the Government (Government Authorities):**

In some cases, the acts of the legislative pillar (the Legislation) leads to the damages upon the foreign nationals. These acts may be in the framework of legislating laws opposed to the international law or refraining to legislate laws which are obliged by the international law, ignorance in the abolition of the laws opposed to the international law (Russo, 1969, 206-207). The acts of the judicial agencies (the Judiciary) can also cause damages to the foreign nationals. The countries proceedings indicate that measures such as executing an alien without a trial, killing the foreign nationals by the local authorities without any reasons, illegal detention, imprisonment, and arrest of them and cruel or unfair treatment of them, are below the minimum international standards and among the instances of denial of justice and abusing the rights of foreign nationals. In addition, if the country of residence is not eager to pursue and arrest a person who has committed a crime on an alien, it is an instance of denial of justice (Swift, 1969, 342).

Besides the legislative and judicial pillars which were mentioned, the acts of the administrative and executive organizations (the Executive) also, in case they decide in opposition of the international law regulations, such as issuing a decree that denies the aliens rights or ignores international law, and results in discriminatory treatment of foreign nationals, would lead to compensation for damages to the foreign nationals.

#### **b) Damages Inflicted on Foreign Nationals by the Persons (private/rebels):**

Sometimes, in the interactions, especially the economic ones, between the foreign nationals and the nationals of the host country, there happen cases such as the denial of ownership, failure in the execution of the mutual commitments and agreements, etc. Also, in cases in which riots and protests outbreak in the host country, physical and financial damage to the individuals, regardless of them being nationals or non-nationals, are inflicted and it is inevitable. Among the instances of such damages are confiscation or seizure of property, assault, and battery, etc.

- ***International Responsibility of the Host Countries towards Violation of Foreign National Rights:***

The conditions for realization of the international responsibility of the countries towards the foreign nationals is actually the same cases when acts opposed to international law are done by



a country, which includes the acts of the government authorities, the acts of private persons, and those of the rebels.

### 1- The Acts of the Government Authorities:

The internationally illegal act is attributed to a country when the people or pillars under its effective authority, have committed the act. It should be noted that no country can evade international responsibility due to its government's organization attributes or the problems derived from its political life. The perpetrator may be an individual such as the government authorities, high-rank officials, or inferior agents, or a collective agent, i.e. the government authorities work in the collection. Generally, one of the definite principles of international law is that each country is responsible for the acts opposed to international law by its governmental system, which are the executive, legislative, and judiciary sectors (Foyuzi, 2000, 203). Thus, if the damage inflicted on an alien due to the action or inaction of the mentioned sectors, it would lead to the responsibility of the mentioned country (Akahrest, 1996, 118).

The Articles on Responsibility, based on its 5<sup>th</sup> Article, besides considering attribution of the treatment of a country's officials based on the domestic law of the country, to be that country's act in accordance with the international law, does not consider the position of those officials in the framework of the country's organization to be effective on the subject. Therefore, the acts of the government authorities (the act of government) can be divided as follows:

- a) The Acts of the Legislation Pillar (The Legislature): the country is responsible for damages and the loss due to action or inaction of the Legislature (Russo, 1969, 206-207). Basically, in this regard, the Arbitration Court hearing the Alabama Case, besides condemning Great Britain, announced that this country has been obliged to accommodate its domestic law with the international customary regulations. That is why in some constitutions, the countries have obliged themselves to adapt their domestic rules and regulations with the regulations of international law.
- b) The Acts of the Judicial Organizations (The Judiciary): the judicial organizations of a country may cause international responsibility of a country because of their action or inaction. As the nationals of a country can present before the courts as a plaintiff or defendant, the foreign nationals also have such a right and whenever, due to violation of the rules in the judicial tasks, the rights of the aliens are violated, it would be taken as "denial of justice" and would lead to international responsibility for the country (Ghasemi Ashoub, 2004, 149). It should be noted that the denial of justice would be realized when the aliens are deprived of access to the courts, there are deficiencies in payment of damage compensation the guarantees necessary for the execution of the justice are not provided, or an unjust sentence is issued (Fenwick, 1965, 330). It is worthy of note that lack of the judges' professional knowledge and deficiencies of a country's judicial organization can also lead to responsibility for that country.
- c) Acts of the Executive and Administrative Organizations (The Executive): the decisions and measures of the Executive would also lead to responsibility for the country. Generally, the country is responsible for its acts, on the condition that those acts are attributable to it. the current judicial proceedings indicate that the countries, even in cases their agents go beyond their jurisdiction or disobey the instructions, are responsible on the condition that they have the apparent authority or abuse such authorities or facilitations (Russo, 1969, 331). Therefore, the act of the country's organization or agent



is the same as the act of the country and in the agent's violation of his authorities and jurisdiction, the country is also liable (Van Glann, 2013, 261).

### **2- The Cats of the Private Persons:**

Basically, the behaviors or actions of the private person, including the natural or legal persons, cannot be considered as an international offense and attributed to a country. This principle can be obtained from the opposite concept of Article 8 of the Articles on Responsibility. However, it is possible that in some cases, the acts and behaviors of the private persons in a country's territory lead to international responsibility for that country and the resident country. For example, if the person behavior is derived from the failure in prediction and prevention of offense occurrence or inadequacy, control or shortage, or lack of due care by the state authorities. In fact, this exception is just apparent, since, in this assumption, the country's responsibility is not derived from the act of the agent that inflicts the damage, but it is due to behaviors of the country's organizations themselves who have not fulfilled their commitment of protection, which is upon them. So, the country's responsibility would continue due to the ignorance of its authorities towards ending the people's damage to the aliens or compensating for it. Therefore, on the responsibility of the host countries due to actions of the private persons, the countries have two main tasks: the task of prediction and prevention, and the task of prosecution and punishment. In the first stage, the authenticated officials of each country should predict the incidents as much as possible and prevent their occurrence, and if necessary, protect the aliens against the threats. However, in some cases, exceptionally, the host country cannot be found responsible for all the cases in which the alien is damaged or lost, such as the case in which the inflicted damage is due to the irritating behavior of the aliens, or the country of residence has warned the aliens in advance to leave the country, but they fail to obey. These warnings are usually given at the time of war or internal turmoil. Also, the damages due to military and armed action of the rebels or revolutionaries, or the legal government, inflicted on the internationally protected property or individuals, are among the clear force major instances and consequently, would not lead to liability of the related country, provided that the mentioned military and armed operations are no violation of the international regulations on armed wars and fundamental principles of human rights.

### **3- The Rebels Acts:**

If a riot emerges in a country, and it is oppressed, the legal government would not be responsible for the damages to the aliens due to the defeated rebels acts, and it is only responsible for previous acts of its agents (the Clause 1 of Article 14 of Articles on country's international responsibility), unless it establishes peace with the rebels or forgive them, or does not provide enough protection for the aliens. The reason behind failure in the identification of responsibility is that the rebels or revolutionaries are not the agents of the government, and their acts, at least temporarily, are not controlled or supervised by the country. However, some lawyers believe that in order to protect the interests of the people internationally protected, justice requires that the responsibility of countries must be accepted based on the theory of risk (Ghasemi Shoub, 2004, 153). If the revolutionaries win, it is believed in international law that in this state, the new government is responsible for all the acts committed, including the revolutionaries and the agents of the defeated government, during the revolution provided that the damage is inflicted by military or armed operations, and the reason for it have been mentioned as the principle of sustainability of the country and introduction of the revolutionaries as the executors of national



will for initiation of the fights (ibid, 154), while it seems that as in the case in which the rebels and revolutionaries are defeated, basically, the legal government is not responsible for the damages to the aliens by the rebels, here also, the winning revolutionaries should not be held responsible for the damages inflicted by the agents of the former regime, which has not been approved by the revolutionaries. Indeed, they must be held responsible for measures done under their authority, for which they have accepted the responsibility during the revolution.

- ***Compensation for the Damage to the Foreign Nationals by the Host Country:***

After the realization of the responsibility for the damages inflicted to the foreign nationals, the host country is obliged to compensate for the damages inflicted. Therefore, it can be said that damage compensation is, in fact, the effects of international responsibility of the host damage and it is obliged to fully compensate the damages (Article 24 of the Articles on States International Responsibility).

Damage compensation is actually one of the important tools of the criminal justice system which can be used as a method to compensate for some damages and loss inflicted on the victims, and also, a method to make the criminal account. The desired goal of damage compensation is to increase the accountability of the criminal towards the victim. The damage compensation may be a punitive measure and also an effective financial remedy. Since international responsibility, except in some extraordinary situations, has no criminal attributes, it is obvious that its effects also cannot have a criminal aspect. Thus, damage compensation has just a restorative attribute and not a penal one (punishment and penalty), and the judicial proceedings are also based on this foundation (Raijian Asli, 2011, 66-67), as in the “Upper Silesia” case, the Permanent Court of International Justice approved that the rights of the foreign nationals in the territory of another country must be respected. Also, in the Chorzow Factory case, the court sentenced that illegal confiscation of aliens properties requires compensation. It reflects the approach that the countries, based on the Minimum Standard Treatment, is responsible to oblige to respect the aliens and their properties.

It should be noted that damage compensation itself includes different methods. The Human Rights Commission, in the second part of the draft of Articles on Countries International Responsibility, has allocated several articles to the subject of damage compensation. These cases, in addition to the identification of countries responsible for their offensive acts, based on international law, have noted the ways to compensate for the damages. Article 34 of the mentioned draft has mentioned three different methods for damage compensation: restitution of the situation to the former state, payment of damage compensation, and conciliation.

Restitution to Previous State: it is known as the first, most basic, and best method to compensate the damages in international law, it is applicable for all cases, including the confiscations or denial of properties in which the damaged party cannot claim compensation based on this method, other methods must be taken into consideration. The best replacement for this type of compensation is the restitution, which is mentioned as the second way to compensate in Article 34. The most frequently used method for compensation is the very payment of restitution and in most of the cases, it is used (Parish, Newson, & Rosenberg, 2011, 232).

Restitution must be accurate, correct, full, and proportionate to the damage, as much as possible. It includes any damages economically evaluable. It can include the interests and even loss of prospective if necessary, however, the indirect damages cannot be claimed indirectly, at all. The concept of indirect damage is manifested in the well-known Alabama Case. In this case, the



United States claimed that Great Britain has allowed the Southern separatists to use its harbors to make ships and get armed, including the Alabama Ship which inflicted heavy damage to the US Navy during the separation wars. The conflict between the two countries was referred to the Geneva Court of Arbitration in 1872, under the Washington Agreement dated May 8, 1871. The United States claim was founded on two bases. One was the claim for direct damage, that is the damage by the mentioned ships and the other one was the indirect damage which was the damage due to prolongation of the war, the increase in costs, the increase in ship insurance, etc. The Court of Arbitration, besides converting Great Britain to pay the direct damages, stated that: “according to the principles of international law, claim for indirect damages has no reliable basis on which to adjudicate and calculate damages” (Yusefi Maragheh, 2011, 54).

However, in cases in which one of the parties is a country and the other is a natural person, the third method of compensation arises which is the state-related compensation for the damages to the victim. Basically, the damage compensation by the country is one of the modern solutions in most of the countries to consider the requirements of the victims. The idea of damage compensation by the country is derived from a merely legal approach that the “country” is responsible for the victims of some crimes. Meanwhile, some scholars in the field of criminal policy believe that in the traditional criminal view, any direct encounter between the criminal and his victim must be ignored, since the right of punishment allocates to the country because it is the sovereignty which is damaged by the commitment of the crime (Lopez and Philizola, 2009, 76).

Regardless of the different view on this subject, what is important of note is that damage compensation by the country is more tangible for the case of the alien victims and damaged parties, and actually, it is considered a necessity, since usually, the countries which host the refugees and the displaced people, also enjoy the aid of the UN. This assistance is aimed at the provision of the minimum living standards and security for the aliens. Therefore, when the access to the criminal and compensating the damage he has inflicted is not possible, the host country has a duty to compensate for the damages to the victim (Bayat, 2015, 79).

In terms of damage compensation, we are faced with several types of damages to the foreign nationals, who are the direct victim of the crime, among which the most known are the material and moral damages. However, in sexual-related crimes, the psychological and emotional aspects of the victim must also be taken into consideration. This restoration or compensation for the damage takes different forms and nature to it, among which the symbolic damage compensation (identification of the fault of the convict and probably, the ignorance of the victim), restoration or compensation of the emotional damage, social restoration (empathizing with the victim), and full or partial compensation of the damages to the victim by the country or public institutions, in cases the criminal is unknown, fugitive, or indigent (Lopes and Philizola, 2009, 78). In the following, the damage compensation for each of the material and moral damages would be evaluated:

#### **1- Material Damage Compensation:**

If the damage inflicted on the foreign national is material, with the restoration of the situation to the previous state, the damage is compensated. For example, in case a property which belongs to him is ruined, with the reconstruction of the building, his damage is compensated, or if the foreign national is imprisoned mistakenly, the restoration would be realized with getting him out of the jail. Article 43 of the Articles on Responsibility, besides accepting the restoration of the



situation to the previous state, has also expressed exceptions in this regard and considered it unallowable in four cases: if the restoration of situation is completely impossible, if the restoration leads to violation of one of the binding principles of international law, if restoration creates a commitment for the country outside the proportionality principle, and finally, if restoration threatens the political independence or economic stability of the offensive country. In addition to the restoration to the previous state, the damage compensation is also a basis for compensation of the damages to foreign nationals. In this regard, the damage compensation by the Mexican state to the United States and the right of United States to claim compensation for the farms of the American citizens which were confiscated from 1927 by Mexico, can be noted. It should be noted that in foreign nationals damage compensation if the Arbitration Court is referred to, the criterion and principle this court takes as a basis for issuance of the sentence is very important since the amount of the compensation sentenced by this court would be different based on the criterion used for calculation. Indeed, it has been always controversial and various comments and justifications have been provided by both sides (Habib Zadeh and Nikjah, 2014, 164).

## 2- Compensation of Moral Damages:

Payment of restitution is a proper way to compensate for the moral damage inflicted to people in international law, which is a known method in international law in case the restoration to the previous state is not possible (e.g. if the foreign national has passed away). This method has been also recognized by international institutions such as the arbitration courts and legal doctrine. The mentioned institutions are interested in this method because of compensation of the victim's damage with an amount of money, to a high extent provides both pre-existing benefits and potential future benefits. The draft of the International Law Commission of Countries Responsibility also reveals that payment of restitution is proper compensation for moral damages. It is expressed in the text of this draft that "the compensable individual damage not only pertains to the material damage but also includes the loss inflicted to the people". It is due to the fact that the moral damages to the people are to a high extent financially evaluable (ILC Commentaries, No.11, 252).

Among the moral damages inflicted on the foreign nationals, the Mena Accident and disrespect for the corpses of the victims of this disaster by the Saudi Arabian State can be mentioned. Refraining to provide precise information on the victims of the Mena Disaster and disrespecting their dead bodies such as burying them without the consent of their families or their respective country is among the common cases of international liability of Saudi Arabia in Mena Disaster. Based on the eye witness, the corpses of the victims were transferred to a camp collectively, accumulated on each other without any formalities. It happened while according to Clause A of Article 37 of the 1963 Vienna Consular Law Convention, whenever the authenticated officials of a receiving country (the host) have any information about the death of one of the nationals of the sending country, it must quickly inform the Consulate official, so that the corpses can be protected by that consulate. On the other hand, based on Clause D of Article 2 of Declaration on Human Rights in Islam, "the dignity of the human corpse must be respected and it is not allowable to disrespect it, as is touching it except with religious permission, and it is upon that government to protect it". such measures were not done by the Saudi Arabia government (Tadayon and Kazerouni, 2017, 527).



What is important of note here is that in compensation for foreign nationals damages, the arbitration court usually addresses the material aspects of the case and does not seek to administer or award compensation in respect of moral damages. In other words, as long as the plaintiff is not pursuing a lawsuit, the courts do not intervene in this aspect of the case, but it does not mean that moral damages are not compensable, since no courts have denied the lawsuit of restitution payment for the inflicted damage, merely due to its non-material nature.

## CONCLUSION:

The international documents of human rights determine the minimum standards for a series of basic human rights which also includes the foreign nationals, and in this regard, it is promoting a common legal criterion for respecting the dignity of human beings. Since in international relations scene, the foreign nationals, including the natural and legal (companies and institutions which reside in a country, maybe damaged financially, physically, or emotionally, due to illegal acts or executive and administrative, legislative, or judiciary officials, based on the international rules, the country in whose territory the damage has been inflicted on foreign national, is obliged to take proper measures for punishment of the perpetrators,, and in addition, the host country is responsible for compensating the damage to the foreign national, based on the theory of risk and subjective responsibility, and many of the international principles and conventions. In case of negligence, the damaged foreign nationals can seek political support from their respective country.

In this regard, the respective country is not allowed to take reciprocal measures and retaliate, but he has the right to pursue the rights of its national. Therefore, the damaged person's country can pursue the case through different legal methods (arbitration or judicial), political methods (such as reducing the diplomatic relations or cutting diplomatic ties), and other methods such as imposing sanctions. The preliminaries required for the respective country to protect its national have been facilitated by the 1963 Viena Convention on consulate relations. Based on Article 36 of this convention, the countries have the right to access to their nationals in other countries and even in case of arrest or imprisonment, get aware of their status, since this article has clarified that for facilitation of Consulate post tasks: a) the consulate agents would be free to connect to the sending country nationals and have access to them. These nationals should also be free to connect and access the consulate agents of their country, b) in the case in the consulate domain, one of the nationals of sending country nationals is captured or imprisoned, or is waiting for trial, or is detained in any other ways, the authenticated officials of the host country should inform the sending country consulate on the request of the beneficiaries and without any delays, c) the consular agents would have the right to meet the sending country national who is captured or detained or imprisoned, and negotiate with him and communicate with him. The consular agents also have the right to visit any officials of the sending country who is detained or imprisoned in their consulate domain. However, whenever the national of the sending country who is imprisoned or detained or captured evidently opposed to the measures of consular agents, the agents would refrain o do so, and ....

It should be noted that the support the respective country provides for its national is not exclusive to the material damage compensation, and in case the moral damage is inflicted on the foreign nationals or his dignity is distorted, it can support its nationals and such protections are effects that lead to violation of aliens rights. In this regard, when international responsibility is realized,



the obligation to damage compensation arises right after. Refraining to compensate the damages would lead to cumulative international responsibility (violation of the primary commitment and obligation to compensate for the damage). on the other hand, Articles 75 and 76 of the Statute of the World Health Organization emphasize that if a delinquency occurs in terms of the health of the nationals of the Member States, these states can pursue a lawsuit in the International Court of Justice, and based on Article 76 also, the WHO can ask the International Court of Justice for consultative sentence.

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