

The Legal Implications of Protecting the Country's Nationals Abroad

Saleem Abdulkareem Al-Sallami

Law Department, College of Law, The Islamic University, Najaf, Iraq

saleemther456@gmail.com

Abstract

The effect of undertaking diplomatic protection by the state, if its conditions are met, entails a set of legal consequences focused on repairing the harm suffered to the person in his rights or interests. The repair of the damage takes an effect that results from establishing responsibility for conducting diplomatic protection one of the following three images—returning the situation to precisely before the action between the brackets in-kind Compensation and the second image: payment of an amount of money compensating the injured for the damages suffered by the pecuniary Reimbursement. The third image is the presentation of the responsible state morally satisfying the arrogant state. Its citizens carry the meanings of apology and regret for what was issued from it with solatium and clarification of the above; we decided to divide this research into three sections.

Keywords: Rights, Law, Sponsorship, State, Outside

Introduction

Definition of Research Topic:

The interest that we are witnessing today regarding human rights and basic freedoms did not come at once, but passed through many stages, and that one of the manifestations of the unity of the contemporary international community and one of its components, lies in that the growing international interest in the necessity of respecting basic human rights, and that the development of life Humanity, and the huge number of internal and international crises during which the rights of the individual were violated, have transformed the problem of protecting these rights from a mere internal issue to an international one, after it was proven to the global conscience that the internal system was often unable to guarantee and guarantee the minimum of those rights. And his rights, the subject of the attention of heavenly legislation and status, both ancient and modern.

It referred to the legal effects of diplomatic protection, texts and provisions contained in the Charter of the United Nations that emphasized respect for human rights, and then culminated in the issuance of the Universal Declaration of Human Rights in 1948, which was the beginning of the issuance of many international conventions on human rights, all of which indicate that the world has developed its concepts and values and that it appeared He realizes that tyranny, injustice, and the failure of a person to obtain his right will lead to unrest and affect the peaceful relations between countries, and then the individual has entered the interest of international law, as his role at the international level has increased as a result of the era of globalization and the entry of the world system into the age of one village where the movement of people and capital is easy And the establishment of multinational projects whose headquarters are located in several countries and the ownership of these projects is for individuals belonging to foreign countries

than the country in which these projects are held. The ease of transportation between countries has also led to the need for each of them to push the development wheel faster to achieve their people's well-being through advanced technology and technical labour, and scientific experiences in various fields. As a result of these new relationships in their multiple forms and formulae, this has drawn the attention of men of international law to regulate these relations and lay down the rules governing them.

Significance of the Study:

The idea of human rights appeared in its simple form with the birth of man himself and then developed from a primitive state, to a civilized one, after passing through successive stages of time, and its aspects were affected by intellectual, philosophical, social and political trends, which appeared and grew in several parts of the world, and human rights enjoyed great care. Global and regional and the international organization of rights taking a more serious form, with the emergence of the United Nations as the successor to the League of Nations, especially with the adoption of the Universal Declaration of Human Rights in 1948, the importance of the study appears in two aspects, the scientific part and the practical aspect. The scientific importance of strengthening this study is the issue of spreading knowledge of the state's welfare rights abroad and grounding it in Islamic law and international law, as well as in international charters and norms, the statement of In-kind Compensation, pecuniary Compensation and solatium and their effects in the protection of human rights. Practical importance is evident For this study to clarify the rights of citizens abroad and the state's role in protecting these rights and directing diplomatic protection for its citizens, and this is what we seek to find out through the results we reach for the benefit of states, relevant bodies and organizations during the state's exercise of consular and diplomatic protection to protect the rights of its nationals abroad.

Objectives:

We found the provisions of international law requiring many obligations on the shoulders of its people. Still, in practice, the matter does not exclude the occurrence of violations from time to time from the state's nationals abroad or the state against foreigners present in its region, primarily Muslims residing in Western countries. Harassment, injustice and violation of human rights, who would protect their rights and interests if they were damaged as a result of these violations, and what is the role of the state in protecting the interests of its citizens, and based on the above, the researcher has generated a sense of the importance of studying this topic, safeguard the state for its citizens, an authentic comparative study, and the importance of what you will reach results.

Research problem:

With its sovereignty over its territory, the state has the full right to regulate its affairs and manage its affairs in the manner and the manner it deems appropriate within the limits of its international obligations and its internal regulations. These rights are for them.

Research Methodology:

In this study, the researcher used the descriptive and inductive approach, which is based on describing and analyzing facts, and referring to their sources in law books, comparative studies, and texts of international conventions concerned with the protection of the state's nationals abroad, and accessing the set of provisions that regulate them.

Research plan:

To clarify what was presented above, we decided to divide this research into three sections. In the first topic we study: the concept of in-kind Compensation, and in the second, we explain: pecuniary Compensation, and in the third topic, we explain satisfaction, and as follows:

1. In-kind Reimbursement:

In-kind Compensation is one of the best types of Compensation because it is to restore matters to the state they were in before the harmful behaviour. The study of In-kind Compensation requires identifying what is meant by in-kind Reimbursement and its methods and the possibility of combining in-kind Compensation and pecuniary Compensation, and to clarify the above. We decided to divide this requirement into three branches as follows.

1.1. Definition of In-kind Compensation:

In-kind Compensation is intended to stop the illegal work and restore the situation to what it was before the unlawful act was committed. This illicit act did not take place in the first place. The text on In-kind Compensation was mentioned in most of the projects prepared concerning the international liability, including the text of the draft global responsibility prepared by the committee International law in its tenth session in 1958 in Article 24 of it⁽¹⁾, which stipulated that "compensation for the damage that occurs to a foreigner can take the nature of compensation, and the form of financial compensation, especially if the restoration of the situation to its original is impossible or not commensurate with the damage." Al-Aini in International Work The Treaty of Versailles in 1919, in which it was agreed that France would obtain the right to exploit coal mines in the Saar region for fifteen years, as Compensation for it for its coal houses that were destroyed during World War I.

1.2. Methods of In-kind Compensation

The ruling to restore the situation to what it was before the occurrence of the wrong act is linked to its execution with the circumstances of the case, for example: if the incident causing the damage is an unlawful legal act, then it is necessary to withdraw that action, and it is not sufficient to cancel it for the future, or to declare its absolute nullity from Before the authority that issued it, while if the wrong act was material, it must be ensured that its effects that were actually realized would not make it possible to restore the situation to what it was, an unattainable thing, for example: If it is possible to restore the means of transportation that was destroyed to what it was, It is not possible to return the people who were inside and died, and there are many examples of methods of In-kind Compensation, including the return of the land that was occupied, or the habit of money confiscated from foreigners, the release of those who were arbitrarily arrested, or the return of property that was seized Owned or confiscated unlawfully⁽²⁾.

1.3. The possibility of combining In-kind Compensation and Pecuniary Compensation

A question arises: Is it permissible to pass judgment for the injured person in the diplomatic protection case for compensation in-kind and monetary compensation together? The general rule and the principle are that it is not permissible to combine them in line with the principle of the impermissibility of asking the state for a single act with two punishments. An exception is acceptable in some cases, and one of them is not sufficient for reform The harm. Instead, it is necessary to combine them with the achievement of justice and the application of legal principles, especially if we are in connection with an international crime, for example, the responsible state authorities have demolished one of the foreigners' projects on its territory,

which caused the death of a foreign person in addition to the material losses. Reconstruct the building before the demolition, and pecuniary Compensation for the death must be paid⁽³⁾.

2. Pecuniary Compensation:

When In-kind Compensation is not possible or does not constitute sufficient consideration, In-kind Compensation is replaced by pecuniary Compensation. This is required by the constant rule in contemporary international law. It is necessary to know what is meant by financial Compensation, the controls and criteria for its assessment, and some monetary compensation issues. This requirement has three branches, as follows:

2.1. Definition of Pecuniary Compensation:

What is meant by monetary Compensation: a penalty that includes the payment of a certain amount of money based on the evidence of international responsibility in the right of a person of international law in favour of another international person who adopted the diplomatic protection lawsuit to repair the damage caused to his subjects, it was impossible to fix it in kind in returning the situation to what it was and was included in the majority International liability projects, for example, Article 24 of the draft international liability prepared by the International Law Commission of the United Nations in 1958, which stipulated that "a- If the restoration of the situation is impossible, he shall pay financial Compensation for the damage caused. B- The value of the financial compensation is determined based on the nature of the harm to the foreigner person, his inheritors, successors, or property. C- When updating the compensation value, the mitigating circumstances mentioned in Article (3) of this bill must be considered. "Among the most prominent international judicial rulings issued in this regard is the arbitrator's decision. In the case of British nationals in the Spanish region in Marrakesh, Max Huber confirmed the compensation by saying: "The result that international responsibility entails is the obligation to pay compensation."⁽⁴⁾

2.2. Controls and criteria for estimating pecuniary Compensation:

The amount of compensation is determined by agreement between the parties to the dispute. If this is not possible, the matter in this matter will be brought before the international judiciary. These two methods will be clarified through which the compensation value and the process of payment are determined.

First: The agreement: The agreement is reached through the state responsible for the damage and the country with diplomatic protection that has adopted the demands of its citizens through negotiations, good offices and mediation, and in the event of the success of the agreement, the value of the Compensation owed to that country will be assessed, in which its citizens incur the damages, and the deal is binding on its parties regardless. Regardless of whether what the state seeking diplomatic protection obtained was more than it deserved or less.

Second: Resorting to the international court: If it is not possible to agree on determining the value of compensation and the method of its payment, the matter shall be submitted to the international court, and whether it is arbitration courts to be chosen or resorting to the International Court of Justice to settle the point where the extent of compensation is included in the legal issues of the jurisdiction of the Court of Justice According to Article 36/2 of its statute, the compensation issued by the international judiciary must be equal to or equal to the damage caused to the injured person, and some different controls and standards can be drawn from arbitration cases, and international courts that help in estimating compensation and some of them can be summarized as follows: :

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- 1- The international judiciary must apply the rules of international law that governs the relationship between the two states (the plaintiff and the defendant) and not the law that governs the relationship between the defendant state and the injured individual.
- 2- Considering the property's value when assessing the citizens' damage, rights, and interests, the compensation that the injured state is entitled to can be estimated.
- 3- That the damages that may have occurred the state itself be included in the compensation estimate, for example, expenditures to defend its citizens' interests.
- 4- The international judge must seek the assistance of many principles and foundations in assessing compensation. The compensation should erase all traces of the illegal act and restore the situation previously.
- 5- The amount of compensation for damages to state property and its citizens is determined based on the property's value when the harmful behaviour occurred.⁽⁵⁾

2.3. Matters related to Pecuniary Compensation

A question arises: Does moral harm be included in the monetary compensation, and does indirect damages count, and what is the ruling on lost profit and interest, and that will be clarified according to the following:

First: Compensation for moral damages: Since pecuniary compensation aims to eliminate all the consequences of the harmful act, it is logical not to limit it to material damage only, but also moral (psychological and moral) damages, because those damages are natural result of the unlawful act, And that monetary compensation is the only form of compensation for moral damages that afflict the nationals of the claimant state.

Second: Compensation for indirect damage: The harm that occurs to foreigners may be direct, or it may be indirect damage, and direct damage means: what was a natural consequence of the error if the injured person could not avoid it by making a reasonable effort, and there is no dispute between international jurisprudence and judiciary regarding the necessity Compensation for it, as, for indirect damage, there is a disagreement between international jurisprudence and the court regarding the necessity of compensation for it. Compensation for indirect damages arose for the first time in the case of (Alabama ship) in 1972. The ruling issued by the Geneva Arbitration Board distinguished between the United States of America. Britain is between direct harm and indirect damage, so the compensation awarded to the United States of America is limited to direct damage, which is the value of the ships that the southern rebels have sunk, and the arbitration panel refused to oblige Britain to compensate for the indirect damages that afflicted the American economy from the prolonged war period.⁽⁶⁾

Third: Compensation for lost earnings: A question arises: Will the lost wages be taken into consideration when assessing the compensation due to him? The lost eclipse means: the profits that the owner would have obtained from his property in the future had it not been for the occurrence of the harmful act, and it does not mean here the actual loss that actually occurred, and the direction of arbitration was the refusal of the judgment to compensate for the lost gain, flattened by its position on indirect damages, and then its decision was limited in compensation for the loss suffered by the injured parties, he must only, and this type of compensation is all that the country causing the damage can adhere to, for example, my case (Canada) between the United States and Brazil in 1870, the facts of which are summarized in the delinquency of a whaling ship Subordinate to the United States to the rocks along the Brazilian coast, and although the crew of the ship did everything in their power to save the ship, the Brazilian authorities used force to prevent the team from carrying out their mission, and the ship was lost and Brazil was considered responsible, despite Brazil's responsibility to pay compensation due to the loss of the ship, However, the court did not decide any bonus for the lost profits that would have been made by the ship during the continuation of the fishing

season, on the grounds that these profits are not certain, and therefore they are not subject to compensation. Another example is the (Lacaz) case between France and Argentina in 1864, the facts of which are summarized in the exposure of a French merchant in Argentina to harassment by the courts. He was detained unlawfully, which was the reason for the loss of what he would have obtained from the expected profits in the period in which he was not Continue to trade. However, the court refused to grant compensation for the lost gain due to these damages' indirect nature. ⁽⁷⁾

Fourth - The interest due on the compensation amount: The judgment must be inclusive of the value of the adjudged compensation with the claim, because the compensation must cover all the harmful effects of the destructive behavior, which necessitates the obligation of the responsible state to pay the benefits for the compensation amount in full until the day when it is paid compensation, for example, the judgment issued in the case of the American ship (Sporn Begin), which decided to oblige the Soviet government to pay the interest on the amount of Compensation, at an annual rate of (6%) until the day the compensation is fully paid.

3. Solatium:

Solatium is the most appropriate form of compensation for moral damages. The state itself suffers directly or indirectly when the harmful behaviour requiring liability does not damage any material. The importance of solatium appears as a means of repairing the damage at the international level, as it is a remedy for a situation that may be Pecuniary Compensation is inappropriate and insufficient for the case at hand, and this will be clarified as follows:

3.1. Definition of Solatium:

International law jurists defined it as: "any measure other than In-kind Compensation, and financial compensation that the responsible state can offer to the affected state according to international custom, or an agreement between the parties to the conflict to repair the damage." Article (3) of the draft international liability prepared by the Institute of International Law stipulated In 1927, on the damage caused to the persons and property of foreigners on the territories of states, by saying: "The responsibility of the state for the damage caused to foreigners ... includes providing solatium to the state in which the person of its subjects is in the form of official apologies, one form or another, and the punishment of the guilty is disciplinary or otherwise. This is one of the types of punishment in appropriate cases and takes the necessary measures to ensure that the act that caused the damage is not repeated." She also referred to the solatium of Article (25) of the draft international responsibility prepared by the International Law Commission at its tenth session in 1958, which stipulated that "In the event of apparent damage suffered by the foreigner, the country to which the foreigner belongs may demand that the defendant country not repeat these acts, and take all means to prevent their occurrence in the future, without affecting the compensation claim." The draft international responsibility submitted to the International Law Commission of the United Nations in 1987 in Article (10/1) of it, which stipulated that "the injured state has the right to obtain from the state that has committed an internationally wrongful act to be satisfied with the harm, especially the moral damage resulting from that. The act, if it is necessary and insofar as it is necessary to provide reparation."⁽⁸⁾

3.2. Forms of Solatium:

Education is considered a penalty incurred by proving international responsibility. It carries the meanings of apology and regret for breaching an international obligation, which constitutes moral solatium for the injured state and its citizens. , Provided that "solatium may take one form or more of the following: a- an

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apology, b- symbolic compensation, c- must be in cases of a gross violation of the rights of the injured state⁽⁹⁾, compensation expressing the severity of the breach, d- in cases in which the act resulted in something other than The project is internationally based on a severe deviation from the behaviour of employees or criminal behaviour, disciplinary action or punishment for those responsible must be taken. "As the preceding, the international custom settled in several forms that can be summarized, and as follows:

First: Apology: It means: the responsible state submits an apology to the state that has suffered damage, whether the apology is in writing, verbally, public, or secret, and the apology is one of the most common forms of solatium in international reality, for example, the apology of the Prime Minister of Italy (Berlusconi) officially in 2001 before a gathering of ambassadors from Arab and Islamic countries about what he said, it was decided that the Western civilization is superior to the backward civilization of Islam and that Islam has no fingerprints on the global civilization, and that was after the bombing of American civil aircraft by terrorists in the buildings of the World Trade Center in New York, and the Pentagon in Washington in 2001, which was considered by the Secretary-General of the League of Arab States at the time to accuse Islam and Muslims of their responsibility for those bombings. ⁽¹⁰⁾

Second: Punishing the persons who committed the harmful act: Likewise, one of the forms of solatium on which international action has settled is that the responsible state punishes the people who have achieved the deadly act, and here the punishment is deemed appropriate to correct the moral damage that violates the dignity and feelings of the claimant state and its citizens, for example, What happened when the American policemen arrested a member of the Iranian diplomatic corps in the United States in 1934 for driving his car at high speed, and when the Iranian government needed that because there was a diplomatic horse, the US State Department apologized for the incident, and also punished the policemen who committed this procedure. ⁽¹¹⁾

Third: Non-approval of the unlawful act: It may be satisfied by noticing the illegal act and not agreeing to it in a judgment issued by the international judiciary, for example, the case (Rinby) between New Zealand and France in 1987, if the arbitration court decided (that the resort to consent and the declaration of The court of the illegality of the committed act is considered a constant behavior in the behavior of states and international courts as a form of compensation in the broad sense), as well as the case (of Milon) between Canada and the United States of America in 1933 and that case is summarized in the sinking of a boat from the coast guard boats of the United States of America A British vehicle registered in Canada was carrying smuggled alcoholic drinks, and this dumping was on the high seas, and the free pursuit of the vehicle outside the territorial waters of the United States began, but it was within the scope of the inspection area stipulated in the alcoholic drinks agreement between the United States and Britain of 1924, and Canada provided A complaint and demanded that this case be decided according to the aforementioned 1924 agreement, and the committee's decision (that the sinking of the ship by American shoremen is an illegal act, and accordingly it ruled on the law. The United States must officially declare its recognition of the illegality of this act (sinking the ship), and apologize to the Canadian government for that, and pay it an amount of (25) thousand dollars in financial solatium for the error that occurred, which is the violation of Canada's rights at sea. ⁽¹²⁾

Fourth: Providing guarantees of non-repetition of the unlawful act:

Presenting guarantees that the wrongful act will not be repeated is a form of satisfaction, which guarantees to the injured state that the responsible state will not repeat the harmful action, and that is to protect the affected first and care, for example, the case (Farsier) that Related to the arrest of (Vrakaric) in 1960, a former commander in the Yugoslav resistance forces, as he was accused of assassinating several German

soldiers during the occupation of Yugoslavia in 1941, and the German Minister of Justice announced in a press conference: The arrest of the Yugoslav citizen (Vrakaric) constitutes an individual act. Unfortunately, appropriate measures have been taken by the competent authorities to ensure that such incidents do not recur.

3.3. The possibility of combining education and nudging education

Proof of international responsibility may result in the imposition of a penalty that includes monetary compensation in addition to satisfaction, for example, the case of (Borgerf) in 1937, between Belgium and Spain following the killing of a Belgian diplomat in Spain, as Belgium demanded that Spain offer it regret and apology, and punish the perpetrator of the accident As a fair punishment, the body of the murdered diplomat is transported to the port from which he will travel from to Belgium in a military convoy. An amount of one million Belgian francs will be paid for the family of the murdered diplomat as compensation for the material and moral damage that befell them with his death. The Permanent Court of International Justice's opinion was that Belgium's requests align with international law principles relating to international liability⁽¹³⁾.

Conclusion

The Results

- 1- The people of the state are made up of citizens, and they are the people who enjoy the nationality of the state. They are called citizens of the state or its citizens, and in addition to these, there is another class of people who do not belong to the state nor are they linked to it except the residence link in this region, and they are called foreigners.
- 2- The distinction between national and foreign residents of the state is essential in terms of the extent of the rights enjoyed by each party and the burdens that are imposed on it. For example, exercising political rights is prohibited from foreigners, and assuming public offices is usually restricted to patriots.
- 3- Each country usually puts in place special legislation in this matter known as the nationality law in which it states the conditions and characteristics it requires to consider a person as enjoying its nationality, the provisions for acquiring this nationality for those who did not enjoy it in an original capacity, the methods for losing it or dropping it, and other rules on this basis that distinguish between National and foreign.
- 4- The original also is that the relationship of each state with individuals residing in its territory, whether they are its citizens or foreigners, is subject to the national law of the state, given that the regulation of this relationship and the related rights and duties is an aspect of the sovereignty that is unique to each state in its region.
- 5- The state's freedom to organize the status of foreigners is not absolute freedom. Instead, it is a freedom that is restricted by international law with two essential restrictions, namely: what lawmen have termed as the minimum for the treatment of foreigners, or the second restriction: it is respecting what the state may have concluded in terms of agreements Concerning the status of foreigners, and it is intended to record the minimum limit for his treatment of foreigners, that every foreigner residing on the territory of the state shall enjoy a certain amount of rights that is the minimum that each country must recognize for him.

The proposals:

1. Exercising diplomatic protection by the state, if its conditions are met, entails a set of legal effects aimed at repairing the harm suffered by the person in his rights or interests.
2. The reparation of the damage shall take as the effect of establishing responsibility in conducting diplomatic protection, one of the three forms (in-kind reimbursement), (monetary reimbursement) and (solatium).

Acknowledgments

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