

The compensation system in international law and the possibility of applying exemplary damages

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Abstract:

The idea of compensation in international law is based on the same reasons that exist in national law, which is an attempt to deter the perpetrator and repair the damage caused to the victim by trying to restore the situation to what it was before the accident, which is the principle called full compensation, but the idea of exemplary compensation is an idea created by The courts in England are similar to criminal punishment because the compensation here aims to punish the defendant for the many cases for which he was not punished. This paper discusses the extent to which exemplary damages can be applied within the scope of international law, provided that its conditions are met.

I. The concept of compensation in international law

Compensation in international law aims to achieve the same idea of compensation in national law by trying to redress the damage caused by one party to another party, which is the process of restoring the situation to what it was before the act occurred or financial compensation, and the latter

is based on the idea of the damage that the affected person suffered and what he missed¹.

When a legal obligation is violated in a domestic legal system, it entails fulfilling the duty to correct the damage caused by the violation. Likewise, in the field of international law regarding state responsibility, any action or inaction by a state that violates an international obligation for that state creates a new obligation to provide compensation for any resulting harm, along with a continuing obligation to stop the violation.

All projects also included an emphasis on the state's obligation to repair damage when it breaches its international obligations. In this regard, Article Three of the draft international responsibility submitted by the Third Committee to the Hague Codification Conference in 1930 stipulates the following: The international responsibility² of a state imposes on it an obligation to repair damage resulting from Failure to fulfill its international obligations). Compensation is also mentioned in the twenty-third principle of the 2000 draft, which relates to the fundamental rules and principles regarding the entitlement to seek compensation for harm suffered by individuals due to breaches of international human rights and humanitarian law, where it was stipulated that compensation must be granted when any damage that can be estimated economically occurs.

¹ -DINAH SHELTON, Remedies in International Human Rights Law,oxford,2015,p 317.

² - MARJORIE M. WHITEMAN, LL.B. , J.S.D, damages in international law, ashington,1938,p 476.

Regarding the responsibility of states for internationally wrongful acts, Article 36 (2) issued by the International Law Commission (ARSIWA) stipulates that “the at-fault state must provide compensation for any measurable financial losses incurred.” However, the committee Above, no practical guidance was provided on how to implement the aforementioned rule, which raises great doubts among the arbitrators responsible for reviewing compensation requests in accordance with international law.

II. Forms of compensation and methods of estimating it in international law;

Compensation in international law takes the form of either financial compensation or moral compensation, and is estimated either Through international agreement, international arbitration, or international judiciary, and this will be explained in the following.

II. Forms of compensation ;

1- non pecuniary compensation in kind, which means returning the thing to its original state or restoring conditions to what they were before the damage occurred that gave rise to international liability.

In other words, it is: repairing the damage by the responsible state returning the rights to their owners in accordance with its obligations in accordance with the rules of international law, so that the situation returns to its previous state as if the act had not occurred and no harmful effects had resulted from it.

2- Financial compensation, or what is known as monetary compensation, means “the payment of an amount of money proportional to the loss suffered by the injured person and the gain he may have lost.” In other words, it is: “compensation in the direct form of repairing the damage resulting from the unlawful act, by providing compensation for Losses incurred by the injured party.

Financial compensation is one of the easiest ways to repair damage in the field of international responsibility, especially within the framework of judicial rulings and in the case of resorting to a peaceful settlement.

However, it is not possible to talk about financial compensation unless it is possible to assess the damage in money. In other cases, the amount paid has the character of satisfaction.

The purpose of financial compensation is to compensate the injured party for all the consequences of the wrongful act, including the loss he suffered and the expected gain and expenses he missed.

non pecuniary Compensation is the original form of international compensation, as it is not possible to resort to cash compensation unless the matter is impossible. The purpose of this is to remove the damage caused by the wrongful act and satisfy the state that suffered the damage.

III. The definition of exemplary damages:

exemplary damages, also known as punitive damages³, may be awarded to a plaintiff in addition to compensatory damages when a defendant's conduct is especially determined, reckless, spiteful, vengeful, or cruel. Exemplary damages are not considered typical damages; instead, they are damages that are distinct from compensatory or nominal damages. They do not provide compensation to the injured party for the losses they have suffered. Exemplary damages are additional fines or penalties that are imposed to punish a party and serve as an example when the jury believes that the defendant's actions have not met certain standards, on top of full compensatory damages⁴.

3- exemplary damages are also termed as “punitive damages”; “vindictive damages”; “punitory damages”; “presumptive damages”; “added damages”; “smart money”; “and “treble damages”. See: J. Cezar S. Sangco, *Philippine Law on Torts and Damages*, Volume 2, 1994, p. 1034. also see: N McBride, *A Case for Awarding Punitive Damages in Response to Deliberate Breaches of Contract*, 1995, p. 214.

4-See: Orrin G. Hatch, *Punitive Damages: Tort Reform & FDA Defenses: Hearings Before the Committee on the Judiciary, United States Senate, First Session, Washington, 1995*. See also: In that sense, Ohio law and rules, which provide: punitive or exemplary damages are not recoverable from a defendant in question in a tort action unless both of the following apply:

(1) The actions or omissions of that defendant demonstrate malice or aggravated or egregious fraud, or that defendant as principal or master knowingly authorized, participated in, or ratified actions or omissions of an agent or servant that so demonstrate.

(2) The trier of fact has returned a verdict or has made a determination pursuant to division (B)(2) or (3) of this section of the total compensatory damages recoverable by the plaintiff from that defendant .Available at the following link: <http://codes.ohio.gov/orc/2315.21>.

In fact, Indeed, exemplary damages fulfill the same objectives as criminal law, that is, "punishment and prevention" Exemplary damages can be awarded in cases where the defendant's harmful conduct towards the plaintiff was malicious, oppressive, or showed reckless disregard for the plaintiff's rights. The defendant's behavior can be considered malicious if it is done with ill intentions, spite, or with the intention of harming the plaintiff. If the defendant's actions show a lack of concern for the plaintiff's well-being or rights, or if they act despite knowing there is a risk, it is considered reckless disregard of the plaintiff's rights⁵.

IV. The role of exemplary damages in global agreements:

International law dictates that when a State fails to fulfill its commitments, it is obligated to adequately compensate for any resulting damage. This principle of full reparation is evident in various international documents, such as a 2006 UN General Assembly resolution on the right to a remedy for victims of severe breaches of human rights and humanitarian laws(6).

5- See: United States Courts for the Ninth Circuit, Manual of Model Civil Jury Instructions, available at the following link: <http://www3.ce9.uscourts.gov/jury-instructions/node/111>.

6 - Paragraph 19 of that resolution provides that "Compensation for any economically assessable damage, as appropriate and commensurate with the gravity of the violation and the circumstances of each case, shall be paid:(A) Physical or mental harm;
(B) missed opportunities, including employment, education and social benefits;
(C) Material damage and loss of income, including potential revenue losses;

It is inconceivable that the international agreements contain clauses controlling their condition or provide for exemplary damages. There are two causes for this. The first is because of how exemplary damages work. Almost everyone agrees that the primary purpose of exemplary damages is to penalize the criminal and discourage future offenders from repeating the same offense⁷. The second reason is the exemplary function intersects with the aspiration of the international documents of protection of the individual from being punished or at least protection against excessive sanctions⁸. In international law, the idea of exemplary damages is conflicted. many reasons are put forward for the generally reject attitude towards this type of remedy. In the first place, it is argued that penal remedies against states

(D) Moral damage. Also the report of the International Law Commission on the work of its fifty-third session of the General Assembly of the United Nations for the year 2001 in Article 36 of the second paragraph, which provided that the compensation includes any damage be financially assessable, including the loss of earnings, as much as this gain.

- 7 - The purpose of *exemplary* damages is inspired by the term itself; to punish and deter intentional and outrageous conduct .see: Don Dyke, Punitive Damages, 1978, p 2.
- 8 - The Universal Declaration of Human Rights (1948), for example, in article 5, which states: No one Shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment, may apply to the theory of punitive damages if we agree with those who characterize exemplary damages as a punitive form of punishment for the defendant. the same meaning as found in articles 7 and 16 of the International Covenant on Civil and Political Rights (1966), which Iraq ratified in 2011, as well as in Romania's (1990) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984).

would be contrary to the principle of sovereign⁹.As is well known, international law lacks a binding judicial mechanism for imposing sanctions, which is currently not available, and therefore the need is clear to a third party to assess the criteria for punishing exemplary damages, noting that most disputes are settled by diplomatic means, exemplary damages are compensated from their content in practice. But the strongest argument that makes exemplary damages unacceptable in international law is that they are not part of positive international law¹⁰.since there is no practice that supports exemplary damages, other cause of distraction surely is the fact that authors in international law seldom ever have the same concept in mind when they refer to exemplary damages¹¹. In view of the nature of international law, it is inconceivable to recognize exemplary damages. The situation we have reached is clearly a rejection of such compensation, but there is doubt about the ambiguity we face in highlighting the elements of responsibility in international law and the

9 - See: Sompong Sucharitkul, Responsibility and Liability for Environmental Damage under International Law, Golden Gate University School of Law, 1996.p2.

10 - Positive international law is the law of nations which is made through express or tacit agreements made between nations, such as the diplomatic immunity accorded ambassadors and international treaties. Positive law refers to a body of man-made laws enacted by a political entity. It is opposed to natural law theory. Positive law encompasses all those laws that have been enacted by a properly, for more information see: Jochen von Bernstorff, The Public International Law Theory of Hans Kelsen: Believing in Universal Law, Cambridge university press, 2010, p155.

11 - See: Dr. Kate Parlett, The Law of International Responsibility, oxford university press, 2010, p668.

similarity with those required by exemplary damages , And the most important question is why does international law avoid exemplary damages?

In international law, liability is a natural consequence of an obligation; any breach by international law of its international obligations entails its international responsibility. The law of State responsibility determines when an international obligation should be violated, as well as the consequences of such breach, including the right to a reaction, and the means permitted for that response¹²Elements of an internationally wrongful act of a State There is an internationally wrongful act of a State when: (a) conduct consisting of an action or omission is attributable to the State under international law; and (b) that conduct constitutes a breach of an international obligation of the State¹³.Some add a third element is that loss or damage has resulted from such wrongful act or omission¹⁴.There is no dispute that every internationally wrongful act of a State entails the international responsibility of that State¹⁵.The description of the act of a state as illegal is subject to the provisions of international law and a way of determining what is the internal law of a State, whether it is prepared

12 - See: The Elements Of State Responsibility, available on <https://www.lawteacher.net/free-law-essays/international-law/the-elements-of-state-responsibility-international-law-essay.php>.

13 - See: Article 3 of the International Law Commission on state responsibility 1980.

14 - see: State Responsibility, available on: <https://sites.google.com/site/walidabdulrahim>.

15 - See: article 1 of Draft articles on responsibility of States for internationally wrongful acts2001.

legitimate or illegal, This is very important because the legal concepts do not match between international law and the internal law of States and the result of different cultures between peoples and traditions and customs Therefore, international efforts have been made to bring the two together. On a preliminary reading of advanced material only it seems to be little clear, but there are many things that do not say, and its importance lies in this silence first it does not provide for any general preconditions for responsibility in international law, such as "wrong" on the part of the State which has committed an illegal act or " damage "suffered by any injured State, secondly, the harm suffered by any injured State does not determine which State or other international person bears international responsibility, and they therefore do not follow the tradition of laws that treat international responsibility as a secondary relationship of a primarily bilateral nature with the State that committed the act. Wrongful act: relationship with the victim state, or in the case of death, there are multiple victim states, each of which is separate, but appears to present the responsible state as a “single target.” The relationship with the commission of internationally wrongful acts¹⁶.Therefore, in theory, the State must meet three requirements in order to be liable: the wrongdoing, the loss or damage, and the culpability. International responsibility is derived from an illegal international act with

16 - see: First report on State responsibility, by Mr. James Crawford, Special Rapporteur, document A/CN.4/490 and add. 1-7, 1998, p27.

regard to a state of international wrongfulness. This constitutes "the fundamental and principal component of accountability, the one to which all others are linked: imputed wrongdoing, discrimination, restitution, and potential sanctions.", and When a State commits an internationally wrongful act, "conduct consisting of an act or omission is attributable to that State under international law" and "such conduct constitutes a breach of an international obligation, that is, a breach of an international obligation." obligations," while an internationally wrongful act is understood as "interference in the security of legal relations between international legal persons. The damage must result from an internationally wrongful act. " Any harm brought on by the globally unlawful conduct is considered injury, regardless of its material or moral nature. Put otherwise, it had to have violated a third party's legally protected claim or interest. International law's guiding premise is that "reparation must, as far as possible, erase all the consequences of the wrongful act and restore the state that would likely have existed if the act had not been committed" and as a result correspond to the harm experienced. The only types of restitution specifically mentioned in the International Criminal Court Statute are compensation and rehabilitation 1998¹⁷.

17 - see: article 75, paragraph 2 which provided that "the Court may make an order directly against a convicted person specifying appropriate reparations to, or in respect of, victims, including restitution, compensation and rehabilitation".

IV. The concept of full compensation in international law:

As stipulated in the articles pertaining to the State's responsibility for wrongful actions, the State bears the constant obligation to offer complete recompense for the wrongful act committed.

The principles of proportionality and complete compensation are closely related to one another. Reparations must, in accordance with the concept of proportionality, be manifestly disproportionate to the harm inflicted by the wrongdoing; it should be noted that damage encompasses both material and moral damages. is not a prerequisite for receiving reparations, and the concept of proportionality has the effect of making recompense inherently non-exemplary. In this case, it is evident that the distinction with exemplary damages—which are fundamentally punitive¹⁸. Several international treaties make it evident how important the proportionality concept is, which leads us to two conclusions. First, international law generally adopts the notion of proportionality without making any adjustments to it. Second, because exemplary damages are compensations that are unexpected or out of the ordinary, the principle of proportionality may act as a barrier to or prevent the application of exemplary damages. This is because the principle of proportionality is a practical application of the principle of full compensation in international law. By addressing

18 -see: Clara Sandoval, Reparation Principles under International Law and their Possible Application by the International Criminal Court: Some Reflections, Reparations Unit, Briefing Paper No.1, Published in August 2011,p3.

flagrant violations of international humanitarian law or substantial violations of international human rights law, adequate, effective, and timely reparations are meant to advance justice. Compensation need to be commensurate with the seriousness of the transgressions and the injuries sustained¹⁹ :

Conclusion

Two major goals are intended to be attained by exemplary damages: punishment and deterrence. They seek to penalize the defendant for his wrongdoing or for attempting to benefit from the plaintiff's good faith actions, and they also seek to discourage the defendant from committing the same act again and to discourage others from attempting to do so. But

19 - see: Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, Resolution adopted by the General Assembly on 16 December 2005, A/RES/60/147. Also Principle 15 from Report of the Working Group on Arbitrary Detention United Nations Basic Principles and Guidelines on remedies and procedures on the right of anyone deprived of their liberty to bring proceedings before a court, General Assembly. A/HRC/30/xx. 2015. Also article 12 of convention on International Liability for Damage caused by space objects 1971 which provided that “the compensation which the launching state shall be determined in accordance with international law and the principles of justice and equity , in order to provide such reparation in respect of the damage as will restore the person, natural or juridical , state or international organization on whose behalf the claim is presented to the condition which would have existed if the damage had not occurred”.

one of the objectives of exemplary damages is also compensation, particularly in nations where the plaintiff has received compensation as opposed to a fine that is paid to the public treasury. Because of all the problems that have emerged in the application of exemplary damages, scholars, jurists, and authors continue to debate exemplary damages extensively. Because compensation in international law adopted the principle of full compensation, which hinders the achievement of that application, international law constantly attempts to distance itself from applying any exception to existing legislation in order to protect and protect the individual from being subjected to any violation, violation, or infringement of the rights of the person.

The goal of compensation in international law is to restore the situation to what it was before the harmful act of the aggressor occurred, and this is the same goal in national law. The principle in international law is full compensation, which is to compensate the defendant for the loss he suffered and the gain he lost. But this Compensation at the present time is no longer sufficient because it is no longer a method of deterrence for those who violate the law. The idea of ideal compensation is an idea that goes beyond full compensation and attempts to be a weapon to deter violators of the law through the amount of compensation imposed. International law can apply the idea of ideal compensation to Some issues that achieve deterrence and reform.

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